

**Albemarle County Planning Commission
February 17, 2009**

The Albemarle County Planning Commission held a public hearing, meeting and work session on Tuesday, February 17, 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, Calvin Morris, Bill Edgerton, Linda Porterfield, Thomas Loach, Vice Chair and Eric Strucko, Chairman. Julia Monteith, AICP, non-voting representative for the University of Virginia was absent.

Other officials present were Juan Wade, Transportation Planner; Megan Yaniglos, Senior Planner; Wayne Cilimberg, Director of Planning; Rebecca Ragsdale, Senior Planner; Elaine Echols, Principal Planner, Joan McDowell, Principal Planner; Bill Fritz, Chief of Current Development 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.

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.

Review of Board of Supervisors Meeting – February 11, 2009

Mr. Cilimberg reviewed the actions taken by the Board of Supervisors on February 11, 2009.

Consent Agenda:

SDP-2007-00119 Shelton Property/Verizon Tier II PWSF - Final

The request is for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 111 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with a 10'- 7" high 360 square foot shelter/equipment cabinet that will be contained within a 2,400 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 42.79 acres, described as Tax Map 87, Parcel 7E, is located in the Samuel Miller District and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property as Rural Area in Rural Area 3.

Mr. Strucko noted that there was a recent addition to the consent agenda and asked if any Commissioner would like to pull this item.

Ms. Joseph asked to pull and move SDP-2007-00119 to the end of the meeting for discussion since she felt that it was more of a policy issue, the agenda is full and there are a lot of people here.

Mr. Strucko asked if there were any objections.

There being no objections, the Commission deferred the discussion to the end of the meeting.

Other Matters Not Listed on the Agenda from the Public:

Mr. Strucko reopened up other matters not on the agenda due to a request made by a citizen who arrived late.

Carol Harris, a 25-year resident of Crozet, expressed concerns about the Crozet Library proposal in

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response to the newspaper article on the Planning Commission work session. She saw Mr. Morris' comment in the newspaper about the library being too small already. She went to the first meeting that she was invited to as a resident of Crozet to decide whether they wanted the library in the bottleneck in the downtown area or next to the school. At that meeting somebody held up their hand and suggested that the library be built next to the school and the architect said that it was not feasible because it was a floodplain. She thought that she would wait until the next architect comes to present his or her case. But there were no more architects, which is unusual because she believes in participatory democracy. She thought that usually they have three or four architects. She is concerned when she sees that the library is going to be obsolete after 13 years. Some of the conservative members of Crozet feel that they are spending way too much money for this library or 6 million just to build the building. They wondered why the citizens were not more involved besides just the business community. It was obvious that the 500 signatures were never produced when she went to the meeting. Then when they were broken up into little circles most of the people who were there wanted the library next to the school because it would be convenient with the computers so to have a great library. But, the business community did not see it that way. The business community wanted a parking lot for their businesses. She did not know why they could not have built them a parking lot and grade it and let them have a library. There are many other Crozet residents that agree with her.

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

Public Hearing Item:

HO-2008-00245 John Penn Turner

The request is for a modification for a Home Occupation Class A for counseling services in accordance with Section 5.2 of the Zoning Ordinance. The modification is for the number of vehicles trips allowed and off-site parking for his residence at 106 Caty Lane. The applicant is currently allowed seven clients per week and is seeking to have that modified to be allowed to have seven clients per day. The property described as 062GO-01-6B-05300 is located in the Belvedere subdivision. The property is zoned neighborhood modeling district. The Comprehensive Plan designates this property as neighborhood density in the Rio Magisterial District. (Juan Wade)

Mr. Wade presented the staff report. This is a request for a Home Occupation modification for the number of vehicles and off-site parking. The home occupation is for a counseling practice and is to be located in the carriage house in the Belvedere Subdivision. Staff reviewed the request and recommends approval with the conditions noted in the staff report. A representative for the applicant is here to answer any questions that the Commission might have. (Attachment 1 – Staff Report)

Mr. Strucko invited questions for staff.

Ms. Joseph asked if staff could remember when Belvedere Subdivision was approved if there was a proffer for affordable housing. She asked if the cottages were part of the affordable housing proffer for Belvedere.

Mr. Wade replied that it was his understanding that was discussed at length with the Zoning Department and this is a permissible use.

Ms. Joseph noted that she understood that part. But, what she was trying to remember is whether or not when Belvedere was approved with that rezoning and they were required to do affordable housing she thought that they offered to do cottages as part of their requirements for affordable housing.

Mr. Cilimberg noted that actually that rezoning predated the affordable housing requirements that were put into the Comp Plan as policy. What happened was that they proffered ultimately with the Board to provide the units for the purpose of providing potentially for affordable housing but they did not designate any specific units that would be affordable housing. That was what went through zoning and was reviewed for the compliance with the proffers. This was right on the cusp of us getting into the actual affordable housing requirements that had been passed through the policy of the Comp Plan for affordable housing. But the Belvedere rezoning did not have the 15 percent and did not specify that any particular

carriage units would be affordable.

Ms. Joseph noted that she remembered the discussions by the applicant who said that those cottages would be what they were offering for affordable housings.

Mr. Cilimberg recalled that the Commission did not recommend approval of the rezoning. At the Board level they went through several iterations themselves after the Commission and ultimately approved it. So what was approved by the Board ultimately was not exactly what the Commission was reviewing either at the time it was before them.

Mr. Loach noted that in the letter there was a reference to the Neighborhood Model standards. He asked if Belvedere was built and designed under the Neighborhood Model standards.

Mr. Cilimberg replied that the zoning was to provide for principles of the Neighborhood Model and in fact if they had a chance to visit the sections under development they have several of the attributes of that.

Mr. Loach said that the carriage house would be consistent with the Neighborhood Model principle.

Mr. Morris recalled that the Neighborhood Model was alive and well at that time, but the commercial part was not in center but closer to Rio Road simply because that was where the existing commercial area was.

Mr. Loach said that consistent with the Neighborhood Model the carriage houses could be office space.

Mr. Morris agreed that was correct.

Mr. Cilimberg said this is also in an area close to the Village Center that they had identified to provide for mixed use. The commercial area was towards the Rio Road side of the project.

Mr. Loach noted that he had one technical question. In the notes it refers to the by-right day care could generate an additional 20 trips. He asked if it was inconsistent that they now have a business that is being judged differently even though it is in the Neighborhood Model. He asked how they judge it as far as the traffic.

Mr. Cilimberg said that all home occupations are classified in the same way and that is that they are not supposed to exceed the number of trips normal in a neighborhood. So Home Occupation Class A's have to stay within those kinds of limitations. If zoning in issuing a clearance on a Home Occupation Class A believes that the traffic is going to exceed that amount then that is what comes to the Commission for a modification. It is not very honestly any of the home occupations whether the Neighborhood Model or another residential location is not by the restrictions of the ordinance the same as what is allowed for the daycare for up to five children when one thinks of the traffic generation that could come. So they are using the daycare for five children as measure of how traffic can be permitted in a neighborhood for what is not a home occupation but another use under our ordinance that can exist by right.

Mr. Loach said that when he judges the maximum number of trips based on the 20 saying that would be the upper limit of a home occupation no matter what the business.

Mr. Cilimberg said that is what they have to work with because it is another use in a residential area.

Mr. Strucko opened the public hearing and invited the applicant to address the Commission.

Chris Bradley said that he was present representing his partner John Penn Turner who is the therapist they are talking about with this home occupation. He could not be here tonight because he was with a client until 7:00 p.m. He handles his accounting and business planning on the side for him. Mr. Turner is the only person who is on site and the only employee at the practice. It is Albemarle Counseling Associates, but he is the only person working there. The goal of the plan is to see seven clients per day up to 35 per week. He does not provide any kind of medical injection or medical services like that. It is a

kind of behavioral therapy, which is commonly referred to as talk therapy. There is not retail component and no medical waste.

Mr. Morris said that staff has recommended that the hours go to 5:30 p.m. He noted that the applicant is not here because he is with a client. So if it ends at 5:30 p.m. rather than 7:00 p.m. that was requested how is this going to affect the practice.

Mr. Bradley replied that it is not an issue for him. He actually would prefer to work during normal business hours, which is the 9:00 a.m. to 5:30 p.m. but he has been in a situation where his clients have critical situations and someone that needed to be seen tonight. But, certainly that is not an issue for him because he can limit his hours to 5:30 p.m.

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

Mr. Loach asked if there would be a way to put language in the conditions to allow the applicant to handle an off hour emergency. He asked if the conditions meant that the patient would be in by 5:30 p.m. and actually would leave by 6:30 p.m.

Mr. Wade replied that staff envisioned that the last person would leave by 5:30 p.m. As far as an emergency he would refer to Mr. Kamptner to see how it could be enforced. They usually have zoning look over the conditions. It is something that staff can certainly look into.

Mr. Kamptner said that his analogy was that they have had permits for schools where they have normal hours of operation, but they do allow the schools to extend the hours for special events. They could just add a clause that it excludes emergencies from these time restrictions.

Ms. Porterfield said her concern was since he sees them on a clinical hour which is actually 50 minutes is there a reason to shorten them to 45 minutes. Or is he going to have all of his appointments stagger by having one at 1:05 as they stagger around the clock.

Mr. Wade said that the applicant was aware of the conditions and knew about the 15 minutes. Staff did that so that there would not be two client vehicles there at one time waiting for the other one. He asked Mr. Bradley if that would be an issue.

Chris Bradley said the preference would be a clinical hour which is 50 minutes. So if the Commission is open to the idea of doing the ten minute instead of a 15 minutes break between clients that would be helpful. That way they would not be dealing with the situation of someone coming at 9:00 and the next person is at 10:05 or whatever the case is. So it gets to be sort of a strange way to schedule people. That is the preference if the Commission is open to that.

Mr. Strucko asked if that changes the hour of operations at all.

Mr. Bradley replied that it would not affect them at all.

Ms. Porterfield said that it just changes the conditions, but not the hours of operation.

Ms. Joseph said that she did not have a problem with this. But, she had a problem when she when she thought that this was part of the affordable housing. If there is something written that zoning has done as an interpretation she would really love to see it with the proffers.

Mr. Wade said that it was certainly a good conversation to have because the Planning Commission will hear another home occupation in the Belvedere Subdivision next month.

Mr. Morris agreed with what Ms. Porterfield said that it really should be the 50 minute clinical hour and that will keep the hours exactly the same. But, they should add the clause that "in case of an emergency it could extend longer".

Mr. Kamptner suggested the following proposed language be added to the existing condition one: "provided that these hours of operation shall not apply in an emergency." In condition two the 15 minutes would be changed to 10 minutes.

Motion: Mr. Morris moved and Mr. Loach seconded to approve HO-2008-00245, John Penn Turner with the conditions as recommended by staff, as amended.

1. Client visits to the site shall be limited to the hours between 9:00 a.m. and 5:30 p.m., Monday through Friday. These hours of operation shall not apply in an emergency.
2. Clients shall be scheduled with a minimum of 10 minutes between appointments;
3. The conduct of the home occupation shall generate no more than fourteen total vehicle trips per day to the site (one client visit equals 2 vehicle trips).

The motion passed by a vote of 6:0.

Mr. Strucko noted that HO-2008-00245, John Penn Turner was approved.

Ms. Joseph asked staff to provide any written zoning interpretation regarding the affordable housing proffers for Belvedere, particularly as related to the carriage houses.

Regular Items:

SDP-2008-00180 Piedmont College Tier II Personal Wireless Facility-Final

The request is for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 90 feet tall (7 feet AMSL above the tallest tree within 25 feet), with a small platform for the equipment cabinets at the base of the tower, within a 1600 sq foot lease area. This application is being made in accordance with Section 10.2.1 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property, described as Tax Map 77, Parcel 25, contains 157.486 acres is located in the Scottsville Magisterial District, and is zoned RA, Rural Areas. This parcel is separated by Interstate 64, and the proposed facility is located on the northern portion of the parcel to the north of I-64. The Comprehensive Plan designates this property as Institutional in Urban Area 4. (Megan Yaniglos)

Ms. Yaniglos presented a PowerPoint presentation and summarized the staff report.

- The request is to install a Tier II personal wireless service facility at a height of seven (7) feet above the reference tree.
- It is located off of State Route 20. The parcel is separated by Interstate 64, and the proposed facility is located on the northern portion of the parcel to the north of I-64.
- A balloon test was conducted and it was determined that the balloon would be visible for a short period of time from the westbound lane of Interstate 64. As well as for a short period of time on Route 20.
- An Architectural Review Board application was received and the ARB approved the proposal with conditions.
- Staff has determined that this minimal visibility will not have a negative impact and will not adversely impact the resources of the entrance corridors.
- Factors Favorable:
 1. Proposal meets the requirements of Section 5.1.40
- Factors Unfavorable: none identified
- Staff recommends approval at the proposed height of seven (7) feet above the reference tree with the conditions outlined by the Architectural Review Board.

Mr. Strucko opened the public hearing and invited the applicant to address the Commission.

Kimberly Selz, representative for Alltel Communications, agreed that staff had summed up most of the facility. It will be painted Java Brown to match the surrounding trees that will include the pole as well as the flush-mounted antennas. The balloon flown was about 7' in diameter. The monopole is 18" wide at the top. Therefore, it is not going to be as visible. They are aware of the ARB comments and will make those changes.

Mr. Strucko invited public comment.

Paula Figgatt, with the University of Virginia Foundation, said that with her tonight is Jeff Wiley who is the property manager at the site. She strongly recommended the site to the Commission. They do operate this as a collaborative effort with Albemarle County and the court system. They get \$250 a month from the Piedmont House. Their expenses for the last two years have exceeded \$39,000. So this rental income would offset some of the expenses that they are experiencing there. They went to the Monticello Foundation and the former CEO, Dan Jordan, looked at the site and they did a prior balloon test before they signed the lease agreement. Mr. Jordan strongly recommended approval and they have emails to that account.

Mr. Strucko closed the public hearing to bring the matter before the Commission for comment and action.

Ms. Joseph questioned the reference tree to be used.

Ms. Yaniglos replied that there was some straggly vegetation that will be removed. But, the tree will have to have an arborist report when they come in for the building permit.

Ms. Joseph asked if the reference tree looked sound to staff and if the removal of the vegetation was part of their conservation plan, and Ms. Yaniglos replied yes to both questions.

Mr. Morris supported the request because it meets all of the criteria.

Mr. Fritz clarified that there were no conditions being put in place. The ARB conditions stand as the ARB conditions.

Motion: Mr. Morris moved and Mr. Loach seconded to approve SDP-2008-00180 Piedmont College Tier II Personal Wireless Facility-Final as recommended by staff at the proposed height of seven (7) feet above the reference tree with the conditions outlined by the Architectural Review Board.

The motion passed by a vote of 6:0.

Mr. Strucko noted that SDP-2008-00180 Piedmont College Tier II Personal Wireless Facility-Final passed.

Mr. Cilimberg noted that this was the type of application that could be included on the consent agenda as it was basically a recommendation for approval within the requirements of the ordinance. He asked if the Commission would be willing to have these types of ministerial items in the future included on the consent agenda.

Ms. Joseph asked staff to wait to the end of the meeting to discuss the matter because it was another communication tower and was pertinent to the previous issue.

Mr. Strucko noted that the matter would be discussed at the end of the meeting.

Public Hearing Items:

SP-2009-00001 Montessori Community School-Pantops Mountain (Signs # 105 & 106)

PROPOSED: Special Use Permit (SP) request to extend approval for an existing special use permit (SP 06-038) for a private school to allow for replacement of modular trailers with permanent buildings for 40,700 square feet of total building area on a 6.71 acre site. ZONING CATEGORY/GENERAL USAGE: CO Commercial Office - offices, supporting commercial and service uses; and residential use by special

use permit (15 units/ acre). SECTION: 23.2.2.9 Private School. COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential - residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses in Neighborhood 3 (Pantops) Development Area. ENTRANCE CORRIDOR: Yes. LOCATION: 305 Rolkin Road, adjacent to the NW of the intersection of Rolkin Road and Richmond Road (Route 250). TAX MAP/PARCEL: TMP 78-12A and 12A1. MAGISTERIAL DISTRICT: Rivanna. (Rebecca Ragsdale)

Ms. Ragsdale summarized the staff report and presented a PowerPoint presentation. (See Staff Report SP-2009-1)

- This is a request to extend the time period allowed to establish a special use permit for the Montessori Community School of Charlottesville on Pantops. A special use permit (SP 06-038) for new buildings and campus improvements at the Montessori School was before the Commission in February and approved by the Board on March 14, 2007. That special use permit was for an updated campus plan or master plan for the property. The campus improvements include a phased plan to replace temporary modules with permanent classrooms and to develop the site with features such as an amphitheatre, ball field and ball court, playgrounds, gardens, lawns, and other associated site improvements like parking. There was no increase in enrollment; staffing or change in operating hours associated with SP#2006-038 and it was approved with conditions.
- Since the last time the special use permit was reviewed the school acquired the American Legion property to the west.
- The property is zoned Commercial Office, which requires a special use permit for private schools. It is surrounded to the west by Highway Commercial. The school is a by-right use on the American Legion property. There is residential in the back with the Pavilions' development and more commercial on the other sides with the Eckerd and the Giant across the road.
- At the time SP 06-038 was reviewed, a zoning violation existed on the site (VIO-2006-239) because a fence was installed without site plan or ARB approval. Most of the fence is chain link and visible from the Entrance Corridor. The applicant agreed, following ARB discussion of the matter at their meeting on February 5, 2007, to address the fence violation. The fence issue has not yet been resolved. Staff has recommended a condition that would reinforce the ARB's recommendation that the fence be removed or addressed with landscaping.
- When this was approved in 2007 it was approved with a condition to address maximum enrollment and that the site would be developed in accordance with the new concept plan. Staff had some comments from the reviewers that there are some specifications for safety fencing for some of the playgrounds since they would be adjacent to slopes. The site is located up on a hill. The school has moved forward with Phase One. They did develop a phasing plan for their own construction purposes or fund raising primarily. So they begun with the building on the corner of the site. There is a final site plan under review for that portion of it.
- Staff has recommended approval with the same conditions as before except they have modified condition 2 to use standard language. Staff is working with the County Attorney to develop a standardized language and better wording for conditions of approval for the special use permit. Condition 2 has been modified with the new wording. Condition 3 is recommended to address the ARB and the fence issue. Condition 4 is the condition where staff recommends that the time period be 48 months, which is twice as long as the ordinance provides for special use permits. The County Attorney since they sent the staff report has recommended they go with the standardized language. So that wording is a little different from what was in the staff report. The applicant may address the issue of the time period allowed and request a longer period in their presentation this evening. Since the staff report was written the applicant sent in a letter requesting 72 months to explain since they acquired the American Legion property they would be doing fund raising to move forward with the phases of the property and would like a longer time window.

Mr. Strucko invited questions for staff.

Mr. Loach asked if the Commission can add a time frame into the fencing condition since this was a problem in 2007 and it is now 2009.

Ms. Ragsdale replied that condition 3 states that the fencing be resolved by September 1, 2009, which was the action and recommendation of the Architectural Review Board. There is already a time period in the condition.

Mr. Morris asked where the 4' fence is suppose to be in accordance with the Architectural Review Board.

Ms. Ragsdale noted that the fence was constructed without any site plan or ARB approval. In the site plan under review the fence will be addressed. The existing fence is part board and chain link. It is visible from the Entrance Corridor. She did not have a copy of the site plan that shows where it will be removed, but the applicant is working with the ARB on that.

Mr. Cilimberg said that the fence as is right now is not approved. So it is not shown on the plan.

Mr. Morris said that from reading the staff report it seems that the 4' fence is around a playground area for young children.

Ms. Ragsdale said that the school did construct the existing fence for safety purposes. Staff will ensure that their reviewers look at the slopes and suggest where fencing should go, that it meets ARB requirements and the recommended safety guidelines for the safety of the children.

Ms. Porterfield asked if there have been other extension requests in the past for this length of time.

Ms. Ragsdale replied that the length of time varies.

Mr. Cilimberg replied that there have been a few, but not typically. Actually the Commission needs to hear from the applicant in terms of their reasoning. If they get a site plan approved, as an example, a site plan of itself has five year duration of the final site plan to get started on the work. So it literally would be 60 months from that site plan's approval.

Ms. Porterfield asked if there was any logic in saying that if there are any ordinance changes that would affect this between now and when they get to the site plan approval that they would have to meet those changes if they want the extension.

Mr. Cilimberg deferred the question to Mr. Kamptner.

Mr. Kamptner said that both in the approval of the special use permit and probably more directly in this case the approval of the final site plan is the first step in establishing vested rights anyway. So once they get those approvals they are probably well on their way to having their rights vest in the regulations at the time of the approval.

Ms. Porterfield said that they would have to meet anything up to the point that they vest. Therefore, it would be a moot point in putting anything in.

Mr. Kamptner replied yes because that was controlled by State law.

Mr. Cilimberg noted that one of the reasons that the two years is in the ordinance as it is now is to protect in the event that a special use permit is granted and then certain ordinance changes occur in the two year period so that it could be reevaluated based on that. That is why they have the two years in the ordinance. They have had a lot of requests recently for a longer period. They have seen some up to five years. The Board of Supervisors not too long ago gave a ten year allowance for a special use permit. It can be modified.

Ms. Joseph asked if they have a site plan that comes in that vests this special permit, the site plan she is assuming is one of the phases in this, that with each phase that comes in and a new site plan is submitted they have to meet whatever the current ordinance regulations are for that site plan.

Mr. Kamptner said if they have an approved preliminary for the entire site and they are going to final with

each phase the approved preliminary site plan is also considered a significant governmental act for purposes of determined vested right. That preliminary site plan for the entire site may establish the vested rights. Each phase is really just there diligently pursuing that approval.

Ms. Joseph said that each phase as it comes in will have to meet whatever the current ordinance requirements are for that site.

Mr. Kamptner said that if it is found that it is vested by virtue of the preliminary site plan the regulations in effect at that point for a phased development may establish the vested rights at the time of approval of the preliminary site plan.

Ms. Joseph asked if they vest tomorrow the current ordinance will cover any subsequent site plans that are submitted on that site.

Mr. Kamptner said that if the special use permit or whatever site plan is approved may vest their rights.

Ms. Joseph said that if they come in for a site plan for phase 2 three years from now and the ordinance has changed a little bit they have to meet whatever standards are in the ordinance three years from now for any subsequent site plans that come in or the current ordinance.

Mr. Kamptner said that they would have to look at everything. It may be that the special use permit that authorized this use may create vested rights independent of and in addition to any site plan that follows as well. When they do a vested right analysis with zoning it is very fact specific. But it is possible for a developer to develop in phases and to have rights vest with the initial phase.

Ms. Joseph asked how they could word something then that worked for what Ms. Porterfield was talking about that as the site plans comes in throughout the years that they have to comply with whatever the current standards are for site plans.

Mr. Kamptner said that the State vested rights statute prohibits localities from altering the vested rights statute.

Mr. Cilimberg noted that in other words they can't do that.

Mr. Kamptner said that when they are looking at the 24 month period or in this case the 48 or 72 months, if their rights are vested under State law they vest. The 24 month commencement period is a hold over from the old days before the vested rights law was put into a statute.

Mr. Strucko opened the public hearing and invited the applicant to address the Commission.

Wendy Fisher, Head of School of Montessori Community School, said that the Commission has all of the information in front of them. She highlighted that the reason they are asking for the extension is for a number of reasons, but mainly because they were quite pleased to have the opportunity last year to buy the adjacent property. That was a once in a life time opportunity for the school. The school pulled all of their resources in order to take advantage of that. Thus it delayed their ability to begin construction on new buildings. They plan to go into a fund raising phase once the economy finds itself in a more attractive situation. So they just want to make sure they have enough time in order to do things in a responsible manner.

Ms. Porterfield asked for an explanation of the fence problem

Ms. Fisher replied that the fence was constructed during a period when they were having a change in leadership. They simply did not follow the process. They have been through a lot of meetings with the county. In retrospect they realized they made a terrible error and are working to make sure that they correct it. Either they will screen the fence now according to ARB guidelines or they will replace it with a fence that provides a safe campus for their students but complies with ARB guidelines by September 1. The issue will go away by September 1. It is planned for a summer time project.

Mr. Morris asked what the length of time is that they are requesting this to be extended to.

Ms. Fisher replied that the request is for 72 months, which is two more years beyond what staff has recommended.

Mr. Strucko invited other public comment. There being none, he closed the public hearing to bring the matter before the Planning Commission.

Mr. Morris said that the request to extend this time frame to 72 month is very realistic especially due to the economic situation that we are in right now. Everyone is in a fund raising campaign right now. Therefore, he was in favor of granting the request.

Motion: Mr. Morris moved and Ms. Porterfield seconded to approve SP-2009-00001 Montessori Community School-Pantops Mountain with the conditions recommended by staff, as modified, to extend the time period to establish the special use permit to 72 months.

1. Maximum enrollment shall be three hundred (300) students.
2. Development of the use shall be in conformity with the "Montessori Pantops Mountain Community School Sheets SP01-SP-03", prepared by Neal R. Deputy, Architecture & Master Planning, last revised January 16, 2007, as determined by the Director of Planning and the Zoning Administrator. To be in conformity with the plan, development shall reflect the general size, arrangement, and location of proposed Buildings A, B, C, D, and E, Central Lawn, Amphitheatre, playgrounds and ball fields, wooded natural area, and parking areas. Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.
3. Fencing shall be provided at a minimum around the perimeter of the Central Lawn, Lower Elementary Playground, and Children's House Playground, or at other locations as required by the County to ensure safety of children adjacent to Route 250 and Rolkin Road. Final design of the fence shall be subject to review and approval by the Architectural Review Board. However, to address safety concerns, the fence details shall include:
 - a. At least forty-eight (48) inches tall;
 - b. No more than a two (2) inch gap under the fence;
 - c. Openings shall be small enough that a four (4) inch sphere will not pass through;
 - d. No ornamental indentations that can be used as a ladder;
 - e. Maximum mesh size for chain link fences is two and one-quarter (2-1/4) inches; and
 - f. Maximum mesh size for diagonal lattice fences is one and three-quarter (1-3/4) inches.
4. The existing chain link fence shall be replaced with a new fence that satisfies the requirements of the Architectural Review Board by September 1, 2009. Alternately, planting shall be installed by September 1, 2009 that will screen the fence from the Entrance Corridor. That planting shall be in accord with an approved landscape plan that satisfies the requirements of the Architectural Review Board.
5. Construction of proposed buildings as shown on the concept plan shall commence on or before March 11, 2015 or this special use permit shall expire.

The motion carried by a vote of 6:0.

Mr. Strucko noted that SP-2009-0001 Montessori Community School-Pantops Mountain will go to the Board of Supervisors on March 11, 2009 with a recommendation for approval.

Public Hearing Item:

SP-2008-00032 Central Virginia Recycling Center (Signs #49&52)

PROPOSED: Special Use Permit on approximately 25 acre portion of a 100.261 acre parcel and a .23 acre parcel containing a central well. Proposal is to receive wood products from timber, stumps, and wood waste from construction, shipping and excavation and then processed/recycled by grinding, chipping, dying and composting into mulch and wood biofuel; conduct both retail and wholesale sales of

the products at the site; site would include structures related to this use. ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)SECTION: 10.2.2 (14) Sawmills, planing mills and woodyards COMPREHENSIVE PLAN LAND USE/DENSITY: RA Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development lots); EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access. ENTRANCE CORRIDOR: Yes. LOCATION: 4545 Richmond Road; South side of Richmond Rd. (Rt. 250 East) at its intersection with Three Chopt Road (Rt. 794), approximately 1,325 feet west of Union Mills Rd. (Rt. 759) and Black Cat Rd. (Rt. 616). TAX MAP/PARCEL: TMP 94-21N and TMP 94-21N1 (well lot). MAGISTERIAL DISTRICT: Scottsville. (Joan McDowell)

Ms. McDowell presented a PowerPoint presentation and summarized the staff report. (SEE Attachment 3: Staff Report and Attachment 4: PowerPoint Presentation)

Proposal: This is a special use permit request for Central Virginia Recycling Center to receive wood products and process into wood mulch; conduct wholesale and retail sales; repair vehicles; office for business

In the preparation and review of this application staff explored the local recycling facilities as well as all the way to Williamsburg since they have not done a wood recycling facility before. Ms. Porterfield visited the recycling facility in Williamsburg. As shown in the photographs of other recycling facilities there is some scattering of wood materials as they process. In a photograph at Ivy Landfill there was some smoke coming from the wood mulch pile that was left over from last year. The wood mulch pile was being turned as they were visiting the site. She reviewed other photographs in the PowerPoint presentation of other materials on the site.

This application received an incomplete review. The applicant directed that the application proceed to public hearing. Early in the process staff offered to have the request brought before the Planning Commission as a work session, but the applicant declined.

Staff had some issues in the review that they asked for additional information or materials on. These are listed at length in the staff report. They include the following:

Noise – There was a noise test done last June. In one area it exceeded the allowable noise levels. No additional noise tests have been conducted. The proposed grinding area moved closer from where it was tested at the tree line because the applicant did not want to take down trees. On the site plan it actually moved closer to the east property line. The existing trees between the mulching operation and the east and south property lines would be preserved with this application. The applicant has assured that noise issues would be resolved when the business is in operation. The remaining noise concerns are noise from the operation, noise from the traffic (which includes the truck back up warning devices and the flapping of truck tailgates that they were told at Ivy were a problem for their neighbors), noise from trucks slowing down and braking before entering the site and both the levels and duration during the hours of operation. The neighbors would be placed in the position of policing this operation. This operation would generate noise that is uncharacteristic of this rural area.

Parking – Onsite parking may not be adequate to meet ordinance requirements. A parking study was requested, but not submitted. The applicant said they would submit the parking study with the site plan. The special use permit provides an opportunity to make adjustments that may be necessary to the concept plan since the first condition will always tie it to a concept plan.

Traffic – Access is from Route 250 (Richmond Road) and Route 794 (Three Chopt Road). The entrance would be constructed in a Y configuration with access onto each road. The existing driveway would be 24' and paved. An east bound right turn lane would be constructed on 250. A west bound left turn lane on 250 is not warranted at this time.

Water – The projected usage was 1,000 gallons per day. The review stated that without a justified

estimate of the water usage the effect on the local groundwater cannot be determined at this time. No permits are required by the Department of Environmental Quality. A letter from DEQ is included in the conditions.

The Comprehensive Plan -

- Rural Areas Land Use Designation
 - Preservation and protection of agricultural, forestal, open space, and natural, historic and scenic resources
- The wood products to be recycled (turned into mulch) would come primarily from land clearing for development, pallets, construction waste
- The proposed use would not directly support the preservation and protection of the Rural Areas.
- The Guiding Principles has a pledge to “Protect and enhance rural quality of life for present and future Rural Areas residents.” The negative impacts would not allow fulfillment of the Guiding Principles.

There are a couple of properties across the street currently under easement.

Factors Favorable:

1. The wood recycling would provide a service to reuse waste from land clearing, construction, and pallets.

Factors Unfavorable:

1. The operation would cause noise and traffic that is uncharacteristic to this area.
2. The operation could exceed the maximum allowed noise standards in the Zoning Ordinance.
3. The noise, both volume and duration, could disturb the neighbors.
4. The mulching operation would be of greater benefit to development occurring in both Albemarle’s Development Areas and in other counties, instead of the Rural Areas.
5. The information requested by staff pertaining to groundwater, parking study, traffic generated from this operation has not been forthcoming; therefore, the review is incomplete

RECOMMENDED ACTION:

Based on the findings contained in this staff report, staff recommends denial of SP-2008-00032 Central Virginia Recycling.

However, if the Planning Commission or Board of Supervisors determines that the application should be approved, the following conditions are offered for consideration:

1. Development of the Special Use Permit SP200800032 Central Virginia Recycling use shall be in general accord with the “Central Virginia Recycling Center Concept Plan”, last revised November 17, 2008, as determined by the Director of Planning and the Zoning Administrator. To be in conformity with the plan, development shall reflect the general size, arrangement, and location of the mulching operation, access, driveway, proposed buildings, parking, and limits of clearing. Minor modification to the plan which does not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.
2. Dust emitted from the operation and traffic associated with the operation shall be controlled at all times. Procedures to control dust from intruding on any abutting property shall include at a minimum and as necessary, sprinkling with water the ground surface, wood and soil material stockpiles, and access road; sprinkling with water the trucks prior to their leaving the property, stabilize soil by planting and maintaining a vegetative ground cover or other landscape material approved by the Planning Director in all areas not expected to handle vehicular traffic or paved or gravel areas dedicated to the operation of the mulching operation.
3. A minimum 20’ wide landscape screening buffer of evergreen trees and other suitable evergreen landscape materials starting on the west property line at Route 250, extending

around the entire special use permit boundary and on the east side of the access road, excluding the entry, as necessary, in order to achieve adequate sight distance. Existing evergreen trees and shrubs shall be supplemented as necessary to achieve and maintain a visual barrier between the entry, the access road, and the wood mulching facility "dedicated to the special use permit", as shown on the Concept Plan identified in Condition 1. This landscape buffer shall be at a height and density that would prevent visibility of the entry, the access road, and the building, equipment, vehicles, product piles (mulch and materials waiting to be processed) from the adjacent property on the west side of TMP 94-21N. The buffer shall be subject to the approval of the Planning Director or designee.

4. The use allowed by SP199300007 shall not be permitted on the property while the use permitted by SP200800032 is operated on the property.
5. All fixtures emitting 3000 lumens or more for outdoor lighting shall be full cut-off luminaire as defined in Zoning Ordinance Section 4.17.3. and arranged or 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.
6. The hours and days of operation shall be limited to no more than the following: Monday through Friday between 7:00 AM and 5:00 PM and Saturdays between 7:00 am and 1:00 PM.
7. No grinding or processing shall be allowed on Saturday or Sunday.
8. There shall be a maximum of ten employees on the site at any time.
9. Storage and repair of equipment and trucks not used onsite for the delivery and / or process of wood mulching shall be prohibited.
10. A tree protection plan shall be required to be submitted with the site plan.
11. No tree removal, grading, or disturbance shall take place within the driplines of the trees shown outside the limits of clearing area, as shown on the concept plan described in condition number one. The applicant shall have the dripline of the trees surveyed and shall mark the dripline in the field with a minimum five (5) feet high, three-board fence. The fence shall be maintained for the duration of SP-2008-00032. Any grading or disturbance within ten (10) feet of any dripline shall necessitate submittal of a "Tree Protection Plan" in accord with section 32.7.9.4 of the Zoning Ordinance. No grading or disturbance within ten (10) feet of any dripline shall be permitted until a) the survey and fencing have been completed and b) the Planning Director approves a plan which show the grading or disturbance and the surveyed dripline of the existing trees.

Mr. Strucko asked if there were any questions for staff. There being none, he opened the public hearing and invited the applicant to address the Commission.

Mark Keeler, of Terra Concepts PC of Charlottesville, represented the applicant Central Virginia Recycling and explained the proposal in a PowerPoint presentation.

The applicant, Bobby Vess, is present to answer questions. The request is very controversial. Regardless of the points that are made against the request there are quite a few more than just one positive aspect of this application. So he wanted to bring those to the Commission's attention. The description of the business is a wood recycling center. It is strictly wood and the recycling of natural materials that are otherwise considered waste product. These products consist of pallets, branches, construction debris, section of logs and stumps. These are by-products of land clearing, construction and in some cases storm damage. These are recycled into marketable secondary products.

This is not a dump, but quite the opposite. It is mandatory for a facility of this nature to remain clean. Otherwise, the products will not be purchased. Furthermore, it is self regulating since once at capacity a load in needs to equal a load out. These products do not stay on this property. In fact, the permit that DEQ will issue at some point in time will require that 75 percent of these products stay on the site no longer than one year. Having a facility of this nature would reduce the activity at the Ivy Landfill. It enables the county to curtail burning of these natural

products as was the case in Belvedere. It would reduce erosion and the compromising of good land which now occurs through on-site burial of these types of materials.

Mr. Vess has operated a mobile tub grinding operation for several years. The site conditions when he shows up at these properties are often time muddy and littered with debris. The items are not sorted. As a result the product is contaminated and many times unmarketable. Typically the produce is casually disposed of. He has in the past contracted with Ivy Landfill to go there and do tub grinding. It would not be surprising that the photo presented was mulch that he had grinded for the county. Tipping fees still apply when a contractor comes into the Ivy Landfill with these materials. In addition the county has to pay somebody to come in and grind it. Then there is a product which is unsorted and of dubious quality.

The following key points they would like to bring to the Commission's attention:

- Recycling is the right thing to do
- Must be cheaper than landfill
- Controlled environment = quality products
- Importance of second income stream in this recycling process
- Accessibility and convenience are crucial for the land to be used. If not the people will dispose of it otherwise
- Proposal represents true "recycling" They are not taking the products to a transfer station hoping to find a market for those products and then having to ship them to some other location to be processed there into a reusable raw material. This is a turn key proposal.

There are a series of core requirements for any kind of recycling facility, as follows:

- Proper Zoning Clearances
- Facility Area Requirements – What kind of land does the property require?
- Site Requirements – What type of site do they need to shop for?
- Operational Requirements – For Zoning:
 - Business Definition – Sawmill / Planing Mill/ Wood yard
 - By-Right in Heavy Industrial Zone
 - By Special Use Permit in Rural Area

In the report they have broken down the flow chart of the activities that this facility is built around. It is rather complex. He offered to answer any questions since he has been dealing with this project for nearly a year. He created the process flow chart so that he could explain it. (See Central Virginia Recycling Process Flowchart in PowerPoint Presentation) The left hand side of the chart describes the incoming and processing of the material. The right hand side describes for the most part the customization of those ground products and their sale and distribution.

The site requirements are as follows:

- Ready Access to Interstate 64
 - Frontage on Major Roadway That Can Handle Trucks
 - Large Acreage (10-15 Acre Operations Area + Buffering) Note: This site is significantly larger.
 - Wooded Area for Screening and Abatement
 - Adequate Water Supply Note: This is not a high use water facility. It is somewhere between 5 and 10 equivalent residential connections. That over 100 acres would not be significant. This facility does require water to maintain dust and to properly age the products. But, it is not an enormous amount.
 - In an Area of Predominantly Large Rural Parcels
- All in an effort to avoid the response, "Good plan...wrong location." They are doing their best so they don't hear that tonight.

The property selected is located east of Charlottesville, west of Zion Crossroads and the Fluvanna county line. About two-thirds of the property is wooded. An exhaustive search was done first analyzing those parcels in the HI district of which there were eight. None of the eight parcels were over nine acres. So

that would not allow them to do any buffering, although buffering in a HI District would be less. But it still was not large enough for them to accomplish what they needed to do. So they decided to pursue this property and found somebody willing to sell it. He reviewed photographs of the property.

The Certified Engineer Report is submitted to acquire a zoning compliance clearance and is pre-requisite to approval of a site plan. Given the nature of this business proposal the applicant went to the time and expense of preparing this report. There are operational requirements which are performance standards that when a business is in operation it must operate within these perimeters. It includes such items, as follows.

- Noise
- Vibration
- Glare
- Air Pollution
- Water Pollution
- Radioactivity
- Electric Interference

The applicant wanted to perform enough due diligence to ensure that his operation could perform on this site and not exceed these limitations. That is the reason for the engineer's report. The applicant is aware of the limits and consequences. He has performed preliminary noise tests to approximate impacts. He has involved experts to study and/or provide professional input on dust, traffic, odor, fire avoidance and groundwater and environmental matters. All of this information is in the report. He is confident that he can operate his facility within these limitations.

They conducted an on-site test with a tub grinder and an excavator. The equipment was not located back in the wooded area where they would actually do their work but rather on the wood's edge much closer to the property line. It displayed a 69 decibel reading. Everybody knows that 60 is the maximum decibel reading. They feel that by moving that back and preserving trees that will be greatly abated. But there are a series of other mechanical and architectural means by which they can further abate noise if it becomes a problem regardless of whether it is 60 decibels or more.

They have some additional considerations, as follows.

- Traffic
- Water Consumption
- Visual Impact
- Hazardous Chemical Storage
- Trash Collection

There are operational limitations. Many of the following have already been discussed.

- Operations (M-F 7 am – 5 pm) (Sat 7 am – 1 pm)
- Saturday primarily a sales day – sale of product to homeowners and landscapers
- No grinding on weekends
- Maximum 50 dump trucks and 3 semis per day
- Strictly limit site lighting
- Water truck to control dust
- Limit activity during dry, windy days
- Other conditions you may deem appropriate

Summary

- This is the type of business we should be promoting.
- Rural area is the most appropriate location for this business.
- Large parcel capable of buffering the operation is best.
- Facility needs to be convenient to promote patronage.
- Appropriate limitations can be placed on these operations.
- We've done what we can to present all the facts about this application and have performed enough due diligence to know that this facility can operate within the performance standards that apply.

- They feel that they have a good plan at the right location, and
- Ask you to make a determination on this item tonight.

Also, he has with additional slides and information that discuss the recycling process, the facility, the equipment and specifics on other issues, but he would leave that to the Commission's discretion to bring to their attention.

Mr. Strucko invited questions for the applicant.

Mr. Edgerton noted that in reading the materials and staff report there was a discrepancy that jumped out that perhaps could be clarified. On page 11 of the staff report under maximum sound levels the staff report states that the decibels range was 65 to 78 in one test. On the second report it was 64 to 79. In Mr. Keller's material it contradicts that and says that in only one instance did the noise level exceed 60 decibels at 69. He asked how to reconcile those two. He asked if it was the same test.

Mr. Keller noted that he would like to confer with the expert here tonight to answer that question.

Mr. Loach noted regarding water that the letter from DEQ references the mulching operation, but does not address the colorfast colorants that the applicant plans to use. He wondered if in the context of their communication with DEQ that they were only referencing the mulching operation and did not take into account the use of colorants.

Mr. Keller replied that may have been the case. What they actually did was involve someone that was more aware of the products that are used. Subsequent to the engineer report there is a letter about the materials being used behind fire safety that says the materials are non toxic and water soluble. But, that he might not be answering the question in stating that.

Ms. Joseph asked if only part of the entire parcel would be used for the special use permit.

Mr. Keeler replied that was correct. What the applicant really wanted to do was have the front part of the property, which is roughly 25 acres, to be a horse farm. There is an existing house back up on the hill overlooking that pasture. Staff suggested wisely that they not designate it as a horse farm, but to put some form of easement or buffer that limits one house on those 25 acres.

Ms Joseph said that the sections show that there will be a lot of trees that will be buffering from one side of the site to the other and the trees are not within the special use permit zone. She asked how is that going to work as far as preserving those areas if the applicant sells them off.

Mr. Keller replied that the sections were designed to go through each individual adjacent home.

Ms. Joseph said that there are sections that were cut through the wooded area. A lot of them are going through Sections A, C, B, D and E that go through the wooded area that is not part of this area that has been designated for the special use permit.

Mr. Keller said that there is no clearing to occur in those areas.

Ms. Joseph said that maybe it is a legal question that needs to be asked. She asked if that area is not designated as part of the special use permit how do they ensure those areas remain wooded.

Mr. Kamptner replied that ordinarily the special use permit applies to the entire parcel. What the applicant might be showing is where the use itself would take place. The conditions can reach out to the entire parcel.

Mr. Loach said that he had a process question because the diagram says for sales. He asked what type of sales would occur if people are coming in to the property with trucks.

Mr. Keller said that it would include anything from your little car pulling a trailer to get mulch in small

portions. That is a small portion of the business. There would be landscape companies and big purchasers like UVA that would purchase specific products. Primarily exporting is going to be the same trucks that are going to be bringing in materials that would be anything from a single axle truck to a semi tractor trailer.

Mr. Keller noted that he would try to answer Mr. Edgerton's question. What he had been told was that the county also had another person out there other than the person who the client hired to do the decibel readings. Apparently that person recorded a range of decibels. The report given to them was done in averages. So he had no way to contest what was said. It was the same test done by different people and arguably the same kind of equipment.

Ms. Joseph noted that one of the things listed to be done is truck repair. She asked how extensive are his expectation of that. There is a whole building designated as truck repair. Not only would the people be working with the wood, but folks would be working on repairing trucks and selling to the public.

Mr. Keller presented slides to show what kind of trucks and equipment will be used in the operation. He said that all or most of the vehicle and equipment would be worked on inside the structure. The applicant plans to place several 5,000 gallon tanks to store water below the shop. So rather than having a peak demand on the well he would like to have a small draw down and gradually fill those wells. Then he would fill his water truck from the location behind the shop to avoid a peak demand on the water well system. The 23 gallons per minutes that well yields equates to 33,120 gallons per day. The recharge rate for that area is 49 gallons per day. They feel that they are using a small percentage of the water in that area.

Mr. Strucko opened the public hearing and invited public comment. He noted that if there were a lot of speakers the Commission may take a break in the middle of the public hearing. While they want to give everybody a chance to speak he encouraged each person to consider if prior speakers have made their point that they come up and agree. They are looking for each speaker to add something new to our discussion. But, they don't want to preclude anyone from actually coming up and saying what they want to say.

Eric Wagner, resident of 2040 Fox Hunt Drive, spoke in opposition to the request. The staff has done a good job in summarizing the problems of this application considering that the applicant has not responded to so many of the inquiries that the staff has had. As neighbors they have asked the same questions and have gotten very little in response. The one noise test that was done, which failed, was done with one piece of equipment running. There will be ten employees at this site at any given time, which indicates that there will be far more than one piece of equipment running at any given time. So there will be a lot more noise. In summary he felt they are talking about a manufacturing facility, retail facility and construction equipment yard, which is not what they want in a rural area surrounded by such beautiful property. There are too many unanswered questions.

Dr. V. Cole Peyton, resident of 2140 Fox Hunt Drive and a physician at the Martha Jefferson Hospital spoke against the request. As a home owner in the adjacent community of Keswick Farm he opposed the proposed "industrialization" of the nearby countryside for many reasons. He asked for a show of hands from the audience of all that opposed the request. He noted concerns about the proposal due to many reasons such as air pollution, abhorrent traffic conditions, noise pollution, spontaneous combustion of wood piles, destruction of wildlife habitat, health issues including respiratory and water contamination, disturbance of adjacent livestock such as horses and cattle and depletion of water with the proposed 2,000 gallon use per day. There are more reasons if the truth would be known. He addressed two other topics – what are the goals or ulterior motives and the industrialization of the Keswick eastern section of Albemarle County. It is difficult to see how a start up project that costs 3 million dollars to operate a recycling center when there are cheaper opportunities in Zion Crossroads which is already zoned industrial. It is 100 acres and the first 25 acres is proposed as a horse farm. It is hard to imagine a horse farm in front of a facility with this amount of heavy traffic. He could not make sense of this economic question and how it was economically feasible. The neighborhood is a group of concerned citizens trying to preserve the area. This is not a project to be undertaken to be stuck in the middle of the Keswick area.

Julie Minetos, an adjacent property owner and resident of 1950 Fox Hunt Drive, spoke against the request. She has had problems with wells on her own 21 acres and actually has drilled 4 wells to get 1.5 gallons a minute. She worried about the fire hazard and taking care of a fire if it happened. The noise level is terrible. She stood on her deck while they conducted the test in June and it sounded like a helicopter was flying in her back yard. If they take the leaves off the trees and adding the trucks coming in and the people coming in she felt that the noise is going to be greater than the 60 decibel limit. She worried about the dust. She was not against small business growth but this is not a proper place for this business. The increased traffic would be bad for the farm land and horses. There are safety factors due to limited sight distance and increased accidents. There are a lot of unanswered questions that need to be addressed. She did not think that the road could handle this type of traffic and kinds of large vehicles. Once the special use permit is granted it is a done deal. She asked for denial of the request.

Dr. Matthew Bassignani, adjacent property owner and resident of 4653 Vista Court in Troy and physician at University of Virginia, spoke against the request. He presented 245 signatures opposed to project of area residents. **(Attachment 5 – Petition with 250 signature against SP-08-32)** As a physician at the University of Virginia one of his interests is bladder cancer. There were about 62,000 new cases in 2006. The two most common risks are smoking and exposure to commercial dyes. He noted concerns with the proposed operation in dying the mulch depending on buyer's wishes. The product will be stored on site and they will be exposed to the air which will send obnoxious odors over to their properties. The dye may seep into well waters and they may drink them. These dyes may become concentrated into our body. The study says that these dyes are safe. But, no level of a foreign substance in our bodies is safe if not intended to be there. In the materials it does not mention the three different dyes to be used. But it notes that respirators are required for the yard workers. So it is not going to be as non-toxic as is told. This is not a saw mill, but actually a manufacturing plant which will disturb the neighborhood. He felt there were better places than Keswick to put this type of business such as in the new industrial park in Crozet. It is not meant to be in Keswick.

Karen Warren, resident of 140 Warren Crescent Drive in Keswick, spoke in opposition. She lives one mile from the site. They already have existing traffic problems during the day. She worked out of her home and is at home in day. They already have large trucks going to and from Zion Crossroads and Luck Stone. There are three inclines between the site and her house that create sight distance problems. The left hand turn would be very difficult particularly with the vehicles not adhering to the 45 mile an hour speed limit. The road is already unsafe. There is a current special use permit on an adjacent property that is not policed. He breaks the rules almost every day. Therefore, she had concerns over who would police the activities of the proposed site if the special use permit is approved. She opposed the request because it adversely impacts the adjacent neighborhood. It is may be a good plan, but in the wrong place.

Sylvia Straun, resident of 4939 Richmond Road, spoke in opposition and deferred her comments to her husband.

Tom Struan, resident of 4979 Richmond Road, spoke in opposition to the request. He did not have anything against Mr. Vess because he was a small businessman himself. His main concern being that he lived .4 mile from this project going east on 250 was the increase in truck traffic on a narrow road that could not handle it. His wife's mom is afraid to go up to the mailbox because of traffic. With that in mind he decided to measure the road. From the yellow line to the white line it is 123". From that white line to the lid of his mailbox is 24". His neighbor's mailboxes are the same. His small pick up truck is 75" wide. He measured bigger trucks which range from 80" to 94" in width. He did the math and determined that if they can thread the needle they can do it. But, he forgot about the mirrors. Also when two big trucks meet on the road they are going to veer over more towards the while line. He would not want to be standing at his mailbox when these trucks go by. Therefore, he felt that the road was not wide enough. He felt that this is a residential area and the road is not built for big trucks.

Paul Manning, President of Keswick Farms, spoke in opposition. He was worried about the health and safety issues, particular about the dust and potential respiratory problems. He manufactures infant formula. The EPA has already told us they would measure this as parts per million. That would be like several drops in a swimming pool causing kidney infections. He was worried about the noise because he

has a horse farm down the road. He was very concerned about the health and safety issues down the road. It is critical. Ten years from now it may be a problem and they should do something about it now.

Stephen Reynolds, of Keswick Farms, spoke in opposition to the request. He came to this area because Albemarle County wants to preserve its scenic resources. Looking at 50 to 250 dump trucks per day is not going to be very scenic. His brother-in-law tried to put a canopy over Cismont Market and was turned down based on that very same reason. He lives 100 yards from the proposed site. When he moved here he brought a special needs daughter who is 12 years old. Her life is dependent on clean air. They have an air filtering system in her bedroom and have to give air treatments. If they cannot keep the dust down his daughter's welfare will be at great risk. He wants to protect his family. He was not against this business man, but he wants to protect his family. He was concerned over the noise, water and how to keep the dust down.

Brian Verhoff, an adjacent property owner, spoke in opposition to the request. He had lived there for ten years near Boyd Tavern Market. He has seen four major accidents on the road. One accident involved a dump truck that had wrecked in front of his house. The speed limits were lowered. The 0.4 of a mile of road is a problem. He agreed with everything that had been said. He wondered about bringing waste wood products in that might bring new diseases to area.

Marcia Buck said that she owned Boyd Tavern with her husband. She spoke in opposition to the request because they wanted to preserve the historic nature of the properties in Albemarle County. She was concerned with the noise, traffic and damage to the historic fabric of their home. They have been approved to be a Virginia Landmark. They prefer that the area remain residential.

Steve Friedman, resident of Albemarle County, said that he lived off of Woodsedge Road a couple of miles from the site. He was not going to be impacted like the other speakers. He appreciates what Mr. Vess is trying to do in trying to fit a round peg into square hole. He felt that it would be cheaper and a lower cost for Mr. Vess to locate this business at this location instead of in an industrial area. He suggested that another site be found in an industrial area.

Charles Meyer, resident of 4562 Three Chopt Road, spoke in opposition. A lot of his concerns have already been addressed. He lived right across from this property which is a gravel rd where two cars have difficulty passing each other. The approach from the south onto Three Chopt Road will require engine braking as well as off of Three Chopt Road. The noise generated from this engine braking is a big concern. The speeding on the road is already a concern. The road is already being used as a pass to the traffic light at the intersection of Route 616 and 794. Increased truck traffic will decrease the safety along the old remaining part of Three Chopt Road. They have seen traffic increase along this road and feel that the most recent traffic studies done in 2006/2007 understate the traffic volume

Donna Knoll, resident of Albemarle County on Three Chopt Road, spoke in opposition. Many of her concerns over this application have been expressed. She has two issues. One is referred to as a flood gate. The second is the truck noise on Route 250. With regards to the noise it has been well covered. The flood gate issue is that the project will represent the first domino that is going to fall. Then there will be more and more commercial development along 250. The impact from this development will be unacceptable to the adjacent residential property.

The Planning Commission took a five minute break at 8:02 p.m.

The meeting reconvened at 8:07.

Heinz Gadiant spoke in opposition to the request. He represents Gadiant Enterprises Inc t/a Woods Edge Water Facilities which is a community water system supplying 42 homes with drinking water. The well that supplies all the drinking water is a short distance and directly downstream from the property where the Zoning hearing sign #49 is posted. Our easement passed exactly over the same property in question. He would like to be brought fully up to speed on the particulars of what is proposed. There was a wood-chipping operation that lasted a short time last year in this area and coincided with a bad bacterial

sample taken which gives me cause for great concern for the safety of our public drinking water. This exact watershed is a very porous limestone area and therefore very sensitive to contamination from run-off of anything. He was worried about water contamination. Last summer he had a bad water sample. He found a chipping operation breaking down and moving away. He did not know if it was the cause, but it caused him to be concerned. He had not had a bad water sample since. In 2002 he hired Nick Evans to do a study for him regarding his water supply. At that time he was financially an interested person in the land this project was on. He suggested that possibly Mr. Evans should have recused himself from submitting a report on this. He did not know if Mr. Evans still owned part of this property, but he did in 2002.

Carlton Brooks, resident of Keswick Farms, spoke in opposition to the request particularly because his home was the closest to where this will happen. His home is about 400' due east of this property line. He was not opposed to recycling, but felt its advantages should outweigh the disadvantages. He was concerned with the noise, flying debris dangers and dust. He met with an owner of one of these facilities and he told him that if someone wanted to locate a mulch grinding operation next to his home close to his home that he would oppose it also. He said that there were reasons why a facility of this type should be located on an industrially zoned property because it is noisy, dusty and potentially dangerous from the flying debris and fire. He met with some of the residents around the facility in Williamsburg. When he asked them if the noise and dust ever bothered them and they replied that you get used to it. He felt that is the same response one would hear from residents about the odor from a wood mill. He felt that the granting of the special use permit would impact his home for the rest of his life and he would therefore ask the Commission to deny the request.

Bill Johnson, owner of Limestone Farm and resident of Keswick for 35 years, spoke in opposition to the request. He had a farm on Black Cat Road that was close to 500 acres, which had been put in an easement. He supported preserving the land. His company is in the lumber business. He was very concerned about the air and water pollution. There is no way that properties that have wood products and do this kind of manufacturing on them are not going to seep into the ground. He urged the Commission to consider the trees and streams and protect the land.

Leslie Dorsey, resident of an adjacent property, spoke in opposition to the request. She had many concerns about the proposal. The first and foremost concern was if this business was allowed to operate in the community and to police themselves disposing of contaminants in the way they are planning will this ensure the safety of the community. According to the applicant's concept of operation they will have strategically located gates at the check points and at the entrance of the state road. To control access they are proposing a modest care taker residence/office/shop complex to police around the clock. This in itself is concerning in that they must have someone to police your business around the clock. Another one would be to have the man power to monitor this business and that being the county and police. She asked if this would bring crime to their area. The applicant plans to monitor the materials that are being trucked going in. She was concerned that the applicant was monitoring this himself and wondered if they were licensed professionals. She asked if the county can guarantee that the contaminated loads will not be accepted in the facility. Then if the loads are not accepted where will they be taken to. Will the customer take them off or is the business going to take the loads and put them somewhere on the property as contaminated loads. There are too many unanswered questions. She felt that the proposed business was like putting the fox in charge of the hen house. This is not good for the neighborhood or community. Working out of her home she would have to watch the trucks going in and out of the site if the special use permit was approved.

Trevor Joselin, President of the Home Owner's Association for Glenmore, spoke in opposition to the request. He pointed out that one mile west is Running Deer Road that has about 80 residences on it. Then to the west of that is the edge of Glenmore, which has about 750 homes. Rivanna Village will have another 300 to 400 homes. There are high density developments in the area. They are concerned about the proximity and the traffic. He felt that they were talking about 250 truck trips a day when counting the trips in and out of the facility. A high proportion of the trucks going to and from the Charlottesville area will go west along Route 250 and avoid the one mile each direction in getting to I-64. This is going to add a lot of traffic between Glenmore and the freeway junction to the west of Glenmore which is currently a total bottle neck. The application does not mention the word odor once. He quoted Tom Richard of The

Cornell Waste Management Institute, which says, "Odor is perhaps the most common problem associated with composting and the failure to adequately address it has led to numerous neighbor complaints and the closure of many large scale facilities. Fortunately for the most part odors can be controlled but proper management can take time and money." Anyone that lives near these types of mulch piles says that there are tremendous smells that happens when the humidity is high and the proportion of air and moisture within them are not managed. It is a technical issue. He had not heard anything in the application that says how they are going to stop it from smelling when it gets wet and humid.

Diane Reynolds, resident of Keswick Farm on an adjacent property, spoke in opposition to the request. She home schools her daughter who has special needs as referred to earlier. Her son has attention deficient and focusing is specifically related to noise. In the rural area they don't have to compete with all of those noises. She noted concerns about the noise issues and the safety issues related to the increased traffic. If the applicant moves the operation eastward it would move it closer to her home. If they have two pieces of equipment instead of one running at the same time the decibel level would increase by about 3 decibels. She asked that the Commission take that into consideration.

Mary Beth Wagner spoke in opposition to the request. She asked to tell a story about when the noise test was done. She agreed with Ms. Minetos that it sounded like a helicopter outside during the early morning test. In the afternoon the noise test was done while she was inside vacuuming and it sounded like a helicopter. She was told that the helicopter was tested at either 69 or 70 decibels. If she could hear that while vacuuming one could just imagine what it would sound like if they were outside. She asked that the Commission take this in consideration and preserve the rural area.

Bill Dorsey, Senior, said that he was one of the largest adjoining landowner to Mr. Vess' operation. He spoke in opposition to the request. He agreed with comments of the other speakers particularly about the noise and pollution concerns. This is a beautiful area and should be preserved and not become an industrial area.

Bill Dorsey, son, spoke in opposition to the request. He noted that the white house in the center of the field was his residence. His biggest concern among many was the traffic. He asked that the request not be approved.

Carol Mallon, resident of Boyd Tavern Lane and a local artist, spoke in opposition to the request. She was concerned with the truck traffic going to the west and going by Luck Stone. But previous to passing Luck Stone they would be passing the entrance to 250 where the buses from Stone Robinson school bus come and go twice a day. She asked that they consider the mix and number of trucks with the school buses for their safety. She was a local artist and had done a portrait of one of the residences on Fox Hunt Lane and felt this was an area of unparallel beauty and would hate to see anything happen to destroy that. .

Doug Lowe, resident in the Greenwood area, said that if they would like put this use near his property that he did not want it in his backyard. He was someone interested in environmental issues, recycling and affordable housing. The county needs to out a way to possibly have an operation like this whether this location or something else because they need to tie this in with burning issues as an alternative to clearing lots. There are a lot of different trade offs. Whether they approve this location there may be a need in our community for those interested in recycling. As a second issue he was asked by the County Assistant Fire Marshall to do an evaluation on burning issues in regard to the clearing of lots and so forth. He would tie that to the affordable housing issue. It was determined that our current way of clearing lots is that they clear for the house site. They may be able to get rid of the good wood at a facility that could use it, but the stumps and debris go to the current land fill and have certain costs associated with doing that. Without going into the detail it turned out to be if there was a facility like this it would probably be about \$1,800 less per house on the affordable housing issue. He would like to see the recycling issue concern addressed. He did not have the expertise to address the dyes. Whether this is the site or not for recycling there needs to be a consideration to do something like this somewhere in the county.

Jay Willard spoke in opposition to the request. He pointed out that most of what he knew about this proposal is by being in this room tonight. The second is that he did know Mr. Vess. He wanted to echo

what Mr. Lowe just said that this could be a very valuable solution to their concern about other alternatives. The comments specific to this site were noise, dust, sounds, etc. They will not be able to find a site in Albemarle County industrially zoned, residentially zoned or whatever zoning possible that would allow a site outside some of the parameters they have heard about. If they are serious about finding some alternatives this may be an acceptable solution. There are a number of solutions such as the denial or approval of the project. This is not the last time this will be considered. He urged the Commission to keep in mind some of these things as they consider the choices.

Matt Montgomery, area resident on Fox Hunt Drive, spoke in opposition to the request because the health issues are very important. He agreed with what everybody said particularly about the potential spontaneous combustion in the areas of the compost. Just a few miles down the road at Zion Crossroads there is already a developed facility for this type of thing. He did not want this intense use in their backyards due to health issues.

Laura Aurisy, resident who lived a mile down the road on 250, spoke in opposition to the request. She said that it was apparent that there will be no policing if the materials contain lead paint or asbestos. They already know that there are children who live in Keswick already diagnosed with cancer. She noted that she had problems getting her mail on 250. She had to flatten herself against the mail box to get mail if trucks go by. She questioned asked how they know where the policing is going to be for the products brought in. The business is to take the product. She was concerned with what is going to go into this mulch and into their ground water.

Aaron Zatlolf, resident of 4571 Woodsedge Road, echoed the concerns of the community in opposition to the request. He had heard dozens of people talk against the request, but only one in favor except the applicant. He submitted a petition with 12 additional signatures against the project request. (Attachment 6 – Petition with 12 additional signature in opposition to the request)

There being no further public comment, Mr. Strucko closed the public hearing to bring the matter before the Commission for further discussion and action. He pointed out that Mr. Keller was available for questions.

Ms. Joseph noted that several persons mentioned spontaneous combustion. She asked if staff had gotten any information from the fire official about their concern for that.

Ms. McDowell replied that their response was they were aware of that and were also concerned, but they would handle it if it came up. The Fire Department has its own set of regulations and this operation would have to fall under their regulations. So they felt that they could handle it. When they visited the Ivy facility they were told that they had a fire about three years ago and she assumed it was handled.

Ms. Joseph asked if the fire official had to come out and inspect periodically.

Ms. McDowell replied that they would have to go out and inspect it to make sure it complied with all of their regulations. But, she did not know what their schedule would be for periodic visits.

Mr. Morris asked Mr. Keller to come forward and address the hazardous waste situation. As he recalled when he visited the site that issue was specifically addressed but he could not recall exactly how that is handled.

Mr. Keller questioned if as far as hazardous waste they are referring to incoming materials being compromised. He explained the process as follows.

- The trucks are checked in at the guardhouse by the employee who has a logbook and knows who is coming in, who has an account and who does not. If they don't have an account their truck does not go anywhere. They have to park the truck, go up to the guardhouse and establish an account. There is a preliminary query as to what they are bringing in on the truck and where it came from. If the answer is good enough and there is an account then that person is directed to continue into the site to the unloading area which is back in the woods.
- At that point an employee of Central Virginia Recycling Center physically inspects what is on the

truck and then it is unloaded. The truck is unloaded under the supervision of one of those ten employees. If something comes off the truck that has a stain or paint on it or is questionable in any way, such as having pieces of metal that would highly compromise the equipment when it processes the wood, all of that is stuff is thrown right back on the truck. If there is a great deal of materials then that person has to reload their truck or it is reloaded for them and he is dismissed. They are no longer invited back to the facility. If there are small portions of impurities that are discovered either at that time and they are not hauled off, or if in their subsequent sorting of materials, such as the sorting of stumps that might come in with brush or pallets, they are put in separate piles. It would be unprocessed, but in separate piles.

- During that sorting process there is a second review of that material. With that second sorting process he assumed that the person who brought it are now gone. There would be two bins and the business name is put on that. Next time that business or person comes in they are told they brought something bad and have to pick it up. If that person never comes back then they put it over to the side and as small amounts are gathered together they are then taken to the proper repository for that.
- It is critical for Mr. Vess to have clean product coming in because people are not going to buy his product if he does not do it properly. He is going to be selling a product that is grinded up stumps to be used for mulch and landscaping for residential and commercial uses. The mulch that goes around our house would be medium to good grade. Then he is also going to be selling product that are very fine, color specific and texture specific for specific commercial uses. He wants to be able to meet the specifications and criteria for a variety of users and not reject 50 percent of the product that comes in. He wants to impress upon the Commission that the applicant is very sensitive to contamination of his products and wants to have several ways to inspect and dispose of it if it comes to the property.

Mr. Loach questioned how many pieces of equipment would be grinding at one time.

Mr. Keller replied that there is only two pieces of equipment that does grinding. The tub grinder does the major grinding. There is a piece of equipment used at the very beginning of the process before the tub grinder that is called the trammel. At the beginning the material is put on the grizzly, which is a vibrating grate that goes on the trammel. When stumps specifically brought to the site and they are put on grizzly and shaken and the dirt and gravel comes off of it. The trammel may do some minor grinding, but its primary job is to gradate the mulch and also to internally colorize. All of the coloration occurs within the confines of the trammel. After discussion with Mr. Vess, Mr. Keeler noted that with the proper equipment purchased with the proper screens the tub grinder could be the only one.

Mr. Strucko asked if there were other questions for Mr. Keeler.

Mr. Keller asked to mention one other thing. Regarding the truck traffic and the limitations they are proposing to limit the traffic on has increased. He asked to restate that they are proposing to limit the traffic for bulk materials coming in and going out to 50 trucks and 3 semis per day. With the guard house they have a turn around and can send people away. They know if they violate any of the performance standards or proffers that this operation would be shut down. Regarding the issue about spontaneous combustion that is an increasingly large concern where people do not properly manage the product that they grind. They allow it to sit there and stream which creates internal combustion and many piles would catch fire. But this whole process is predicated on the fact that they are creating a quality product and for the product to look good it needs to have uniformity. The only way to get that is to turn it and to prevent all of this anaerobic decomposition so it does not turn into compost. Nobody wants to purchase something that three months later would be powder around their plants. They would want it to last a long time. The 50 truck trips would be coming or leaving would mean that it would be times two.

Ms. Porterfield noted that the proposed project is in her district. She commended Mr. Vess and Terra Concepts because they have done a good job in educating her by sending her out to the facility in Williamsburg that was most like what Mr. Vess is planning. She visited the facility in Williamsburg and then met with Ms. McDowell and Lindsay Dorrier to ask questions and get more educated on the project. She visited one site on her own and the other three sites with Joan McDowell. They have looked at a variety of mulching facilities. She certainly wanted to see them bring more business into Albemarle

County. But frankly she believed from having looked at things that this is not the place. She would love to be able to have ten more employees in Albemarle County and to have the machinery, property and product sales taxes. She would like to know that they would be eliminating burning and dumping in the landfills. She liked the thought that they would be providing a useful product.

From a review of other mulching operations Ms. Porterfield made the following observations and concerns:

The one thing that she saw when visiting three of the four facilities is that all of the facilities basically came first. The facility near Zion Crossroads, Agri-Mulch, is on a piece of property approximately 44 acres that already had Light Commercial zoning. The facility located outside of Williamsburg, Waltrip Recycling, had been owned by the same family since World War II. They started a landfill around 1950 on 200 acres. They also in the mid-60's opened a small regional airport. In the early 90's they made application for their mulching facility. Anything that came in around them already knew there was a landfill there. The landfill is closed today. The noise issues she doubted were very big because they already had an airport. The owner indicated that probably if he was applying for the permit for the mulching facility today he might not get it. It took him over a year in the early 90's to get it. The most recent trip was to the Ivy Landfill, which has a lot of acres.

Dust and fire issues - The dust issues and fire issues were discussed. There was a significant fire that burned at Ivy Landfill but they were able to take care of it. It is a problem. In fact, a number of the piles were smoldering when she visited. They could see the smoke coming out of them. It is true that the mulch piles have to be managed well. But there is the possibility of fire. The people in Williamsburg indicated that even in moist air condition they have dust problems down there. One member of Agri-Mulch indicated that they try to weed out all of the poison ivy that might be on some of the wood because it could be air-borne.

Grinder danger, safety issues - She had not thought about grinder danger until they actually came upon a log that had been thrown out of the grinder. She was told that the log could be thrown 100 to 150 yards. At that facility, they don't allow anybody outside without a hard hat when grinding. Usually it is just the one person running the things.

Dying process – There had been talk about the safety of the colorants. The application suggested that fire fighters should choose self-contained breathing apparatus when fighting the fire in mulch that had been colored. Also the application indicated that there could be discoloration of land or water. Those are definite concerns in that area.

Water Use – She has been heavily involved in the Village of Rivanna master planning, and she had been made aware that there are significant well-water issues in the eastern part of Albemarle County. The residents on the west side of Running Deer have asked to be in the development area because they have had so many problems with their wells. That needs to be taken into consideration.

Noise – There was a noise test done last June. In one area it exceeded the allowable noise levels. No additional noise tests have been conducted. There is no question that there have been the noise tests that they could say either failed or did not fail. But the problem is that they were in the height of summer and they had all the leaves on the trees. The logic says that the noise is going to get a little worse. Having a helicopter in your backyard for eight hours is totally different from having one fly over.

The residents came first - She could not support the request because there is already a large residential population around this land. The residents came first and they should not have to expect something like this to be there. There are lots of reasons to say there are definite problems with it, but the biggest thing is that unlike the other three facilities the residents here came first. If it had been the other way around and they chose to build their houses around the facility that would have been their choice. They did not anticipate having a heavy-industrial application in their backyard.

Mr. Strucko opposed extending this industrial operation into the rural areas. This is a rural area zoned parcel inside the rural area. In preserving Albemarle County's rural character they have to stick to that

principle. That is why he is not in favor of the request. It has been compared to the Ivy landfill, which has been a headache for Albemarle County for quite some time. One of the major issues was leakage into the ground water. He could not view this operation as an agricultural, forestall or fishery use. He could not view it as a saw mill or wood yard. This does have an industrial component. There is treatment going on here. They run the risk of contaminating the ground water in a sensitive ground water area of the county where they have had wells fail and county concern about what is available in this particular section of the county. He felt that the factors unfavorable weigh very heavily. Given the incomplete nature of the application relating to ground water, parking and traffic he could not support the request.

Mr. Edgerton concurred with what had been said. He felt strongly that the rural area is not the place to put this use even though it was a potential value for the county to someday have a facility of this sort. This is far too industrial to ever be put into the rural area.

Mr. Loach agreed. He was glad to hear Ms. Porterfield say that the residents came first. The report is really incomplete. With that said he could not support the request. The DEQ memo did not deal with the aspect of coloration. The carcinogens do not belong in Crozet either as one of the speakers pointed out. There was some concern by the county engineer that the traffic was understated. The report is incomplete and therefore he could not support the request.

Mr. Morris agreed very much with his colleagues. When he went out to the site he was very impressed with the operation. It does provide a tremendous service. However, he was also amazed at looking at its location and connection with the residential areas and so on. It is a great idea, but the wrong location.

Ms. Joseph said when they first went out there and looked at this in June they were just contemplating at that point in time a grinding operation. The proposed operation has grown. There is a reason that we allow or at least have it within our ordinance that some of these things are allowed in the rural areas. They need a big piece of land. Some of this stuff they do in the rural areas is industrial. This area is very developed. It is hard to look at this and say it is rural area when she looks at this tax map and sees all of the subdivisions that have occurred in the area. She was grateful to the Johnsons for putting their land under easement because that really is saving a beautiful part of the county for all of us. She looks at this as being incredibly intense. It is not just tub grinding with bringing in stuff and wholesaling it. This is a retail enterprise, the repairing of trucks and a manufacturing process with the coloration. She felt that is not the intent of the rural areas. Maybe grinding something up where it is not so close to a residential area is something that can happen. It is important that everyone remembers that industrial stuff happens in the rural areas with trucks going back and forth. They want people to use the rural areas for agricultural and forestry, but this goes well beyond that. Therefore, she could not support the request.

Ms. Porterfield moved for denial of SP-2008-00032 Central Virginia Recycling Center for the reasons listed in the staff report, as follows.

1. The operation would cause noise and traffic that is uncharacteristic to this Rural Area.
2. The operation could exceed the maximum allowed noise standards in the Zoning Ordinance.
3. The noise, both volume and duration, could disturb the neighbors.
4. The mulching operation would be of greater benefit to development occurring in both Albemarle's Development Areas and in Fluvanna County.
5. The information requested by staff pertaining to groundwater, parking and traffic generated from this operation has not been fully provided; therefore, the review is incomplete.

Mr. Morris seconded the motion.

The motion carried by a vote of 6:0.

Mr. Strucko noted that SP-2008-00032 Central Recycling Center would go to the Board of Supervisors with a recommendation for denial on March 11, 2009 for further consideration.

Mr. Cilimberg said that there was a list of conditions included in the event that there was a Board inclination to approve this. He asked if the Commission has any comments regarding the conditions that they would want forwarded on or just leave them as they are.

Mr. Loach said that they need to get clarification on the DEQ and the coloration because they dealt only with the water aspects versus the water and the contamination. He would make that a condition that DEQ address the potential groundwater contamination from the colorants. He was not sure that they have a full handle yet on the traffic.

Mr. Edgerton said that several Commissioners commented, which he did not comment on but agreed with it, that staff has judged this application to be incomplete. As such he did not know how they could narrow down a list of conditions to go with it. So he would suggest that they not leave the door open as far as their opinion.

The Planning Commission agreed with Mr. Edgerton not to pass on a list of conditions to the Board of Supervisors due to the incomplete application.

In summary, the Planning Commission recommended denial of SP-2008-00032 Central Virginia Recycling Center based on the findings stated in the staff report. These include factors listed as unfavorable, as follows:

1. The operation would cause noise and traffic that is uncharacteristic to this Rural Area.
2. The operation could exceed the maximum allowed noise standards in the Zoning Ordinance.
3. The noise, both volume and duration, could disturb the neighbors.
4. The mulching operation would be of greater benefit to development occurring in both Albemarle's Development Areas and in Fluvanna County.
5. The information requested by staff pertaining to groundwater, parking and traffic generated from this operation has not been fully provided; therefore, the review is incomplete.

And the following findings stated in the staff report:

- ***Use will be of substantial detriment to adjacent property.***
 - Potential impacts of the volume and length of time of noise from the operation.
 - Potential impacts of dust and odor based on similar mulching operations.
 - Potential for mulch piles catching on fire.
- ***Changes to the character of the district.***
 - Visibility of operation from neighboring properties.
 - Impact of operation including traffic from heavy trucks and customer vehicles, and the equipment running the wood mulching operation.
- ***Not in harmony with the purpose and intent of the ordinance and uses permitted by right in the district.***
 - Use is of an industrial nature otherwise only permitted by right in the Heavy Industrial District and is not consistent with the intent of the Rural Areas District and uses permitted by-right there-in.
- ***Not in harmony with the public health, safety and welfare.***
 - Although intersection and entrance improvements to meet VDOT standards are proposed, the truck traffic accessing the site is not customary for this area and safety is a concern for trucks using Route 794.
 - Potential for mulch-pile fires.

Commissioners also noted the following additional concerns in making their recommendation for denial:

- The proposed operation has grown and become incredibly intense. It is not just the tub grinding

of material being brought in and wholesaling it. This would be a retail enterprise along with the repairing of trucks and a manufacturing process with the coloration. This is not the intent of the Rural Areas and the Rural Areas needs to be protected.

- The potential groundwater contamination from the colorants needs to be addressed. DEQ has not commented on this contamination issue.
- The traffic is understated. The Commission does not have a full handle on the traffic impacts.
- This proposal is a great idea, but in the wrong location. The existing surrounding rural residential area was here first and must be taken into account. (Staff and/or a Planning Commissioner made three trips to similar operations in VA. The land used for the operation in each case had been zoned a minimum of light industrial prior to the decision to operate a mulching facility.)
- This should not be viewed as a saw-mill or wood yard because of the treatment going on. There is a risk of contaminating the ground water in a sensitive area.
- Potential for injury as grinder might "throw" large pieces of wood hundreds of feet.
- Potential for contaminated material to be brought on site.
- Noise tests were conducted in the summer when trees were leafed out.
- Question of whether the amount of water needed for this use will deplete the wells of surrounding property owners and other owners as far away as Running Deer Drive, where property owners have long reported well issues.

ZTA-2008-00002 Planned Developments and Neighborhood Model District

Amend the following sections of Chapter 18, Zoning, of the Albemarle County Code: 3.1, Definitions, to amend and delete several definitions; 8.2, Relation of planned development regulations to other zoning regulations, to change section heading, to clarify the regulations applicable to planned developments ("PD"), to require that waivers and modifications be expressly granted, and to reorganize the section; 8.3, Planned development defined, to revise the definition of "planned development"; 8.5.1, Applications and documents to be submitted, to revise the standards and information accompanying an application to establish a PD district; 8.5.2, Pre-application conferences, to revise the parties in a preapplication conference; 8.5.3, Review and recommendation by the planning commission, to revise the matters considered by the planning commission in acting on an application for a PD district; 8.5.4, Review and action by the board of supervisors, to change section heading and to clarify the documents applicable to a PD upon approval of the PD rezoning; 8.5.5, Final site plans and subdivision plats, to change section heading; 8.5.5.1, Contents of site plans and subdivision plats, to revise a cross-reference; 8.5.5.2, Review of site plans and subdivision plats, to provide that when subdivision plats and site plans are reviewed, they shall be reviewed for compliance as follows: (a) if the PD district was established on or before December 10, 1980, the zoning and subdivision regulations currently in effect apply unless vested rights are established; (b) if the PD district was established after December 10, 1980, at the option of the developer, the zoning and subdivision regulations in effect when the PD district was established or those currently in effect apply, provided that if the developer elects the former, six delineated subjects of regulation are not so grandfathered and the developer must comply with current regulations pertaining to those 6 subjects unless vested rights are established; to revise the zoning administrator's and director of planning's review for compliance, to define "applicable regulations," and to declare that vested rights are not impaired; 8.5.5.3, Variations from approved plans, codes, and standards of development, to revise the provisions of a plan, code or standard the director of planning may vary, and to authorize the director to require that specified information be provided ; 8.5.5.4, Building permits and erosion and sediment control permits, to revise references to county officers and bodies and to clarify other clauses; 8.5.5.5, Site plan and subdivision plat requirements for planned development zoning districts established without an application or application plan, to change section heading and to clarify the procedure and requirements for reviewing a site plan or subdivision plat where there was no application plan when the PD district was established; 8.6, Amendments to planned development districts, to revise and expand the procedure to amend a PD district by establishing requirements for who is an eligible applicant, submitting a map if the rezoning affects less than the entire district, notice, and factors considered during review; 20A.3, Application requirements; required documents and information, to change reference from "general development plan" to "application plan"; 20A.4, General development plans, to change section heading and the required elements of an application plan in a neighborhood model district (hereinafter, NMD); 20A.5, Codes of development, to clarify that any substantive or procedural requirement of the Zoning Ordinance applies in an NMD unless the subject matter is expressly addressed in the code of development (hereinafter, the "code"), to expressly require that the code be in a form required or

approved by the director of planning, to change the required elements of a code, and to limit the applicable architectural standards in pre-existing codes to only the new required elements unless determined to be key features; 20A.6, Permitted uses, to change a reference from "general development plan" to "application plan" and to allow a code to provide that any use allowed by right or by special use permit in any other zoning district be a use allowed by special use permit in an NMD; 20A.7, Residential density, to correctly state the formula for calculating residential density in an NMD; 20A.9, Green spaces, amenities, conservation areas and preservation areas, to change references from "site area" to the "area proposed to be rezoned" when calculating the areas of green spaces and amenities; and 20A.10, Streets, to change a reference from "department of engineering and public works" to the "department of community development." 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. (Elaine Echols)

Mrs. Echols provided a PowerPoint presentation on the ZTA. She said that on April 22, 2008, the Planning Commission passed a resolution of intent to consider minor changes to the PD regulations as well as a major change that would require that certain site plans and subdivision plats permitted under old planned development zoning comply with current rather than "old" regulations that existed at the time of rezoning approval. The resolution of intent and proposed text is provided in the staff report. In July the Commission held a work session. In September a Round Table was held with the development community. The final work session was held in December where the Commission made the recommendations to be included in the ordinance. At the time Mr. Kamptner drafted an ordinance that reflected those changes. It has four important areas of change.

- The first set of changes would bring titles and other references in conformity with current Community Development job titles and current zoning references as well as clarify how amendments to PDs can be made.
- The second change deals with old PDs, new regulations and vesting.
- The third change deals with timing for a parking study.
- The fourth set of changes reduces the architectural information required for NMDs. Each of these items is discussed in detail later in this report.
- Staff recommends adoption of the ordinance amendment as written.

Mrs. Echols noted that in a Hollymead Town Center proposed zoning amendment, there was a question as to whether or not everyone who owned property in Hollymead Town Center Area C had to sign the application for a change. The issue came before the Board of Supervisors and there was a lot of discussion on it at the time. Because of the amount of time and discussion about this type of issue, staff decided to make it a little clearer in the ordinance as to who has to sign an application to amend a Planned District. That wording was put in the ordinance. Mr. Kamptner can speak to that one if there are any questions.

Mrs. Echols said that, with regards to vesting, the Commission wanted to require that the current regulations be applied to Planned Districts approved prior to or with the 1980 zoning map change unless the owner can establish a vesting.

The Commission also wanted the current regulations relating to the Entrance Corridor Flood Hazard Overlay District, outdoor lighting, signs, parking and landscaping to be applied to Planned Districts approved after the 1980 zoning map change unless the owner can establish a vesting.

In terms of the architectural requirements the ordinance amendment removes the requirements for styles, materials, colors and textures unless an infill project necessitates them or for some other reason. At the last meeting, the Commission said it believed that it is important that the other architectural features be retained. Staff also noted the removal of the requirement for ornamentation and an added requirement that the developments have their own architectural review and give us that certification so they have that when starting the county building permit processing.

In terms of parking studies staff asked to allow for parking studies to be submitted with a rezoning or at the site plan or plat review. The Commission agreed with that.

Staff said they had received a few comments to date. One had to do with topography and maps regarding the resolution of topographical maps and whether a 5', 2' or 4' contour was appropriate. The Commission read Frank Cox's comment in the staff report. The existing ordinance requires topography shown with a maximum of 5' intervals. Staff recommended that the topography use the county's geographic information system or better, which is in 3' to 4' intervals. Frank Cox, one of our development professionals, has suggested that the topography be provided with a maximum of 2' contour intervals along with the source of the topographical information. Mrs. Echols said that this really is the best idea when working on a tight site. But the applicants are the ones who need to be aware that they need to be doing this kind of work themselves so that the surprises don't come out at the end. In talking to the County Engineer and Director of Community Development they both believe that staff's recommendation right now for using the county's GIS information should be good enough for a rezoning. If there is a tight site staff will always recommend that an applicant do their own topo so that they are not caught off guard.

Staff had one other comment from Southern Environmental Law Center who had a question relative to determinations about Planned Districts. Staff feels like their concerns have been satisfied. They also told us about some mis-numbering that they need to take care.

Mrs. Echols said that since the staff report went out, the County Attorney's Office has been rereading the ordinance and would like to add some clarifying revisions which are on the screen as noted below. At this point she asked Mr. Kamptner to work his way through the proposed ordinance language as noted below.

1. Section 8.5.5.2(a): Add a reference to Virginia Code 15.2-2997 right before the reference to Virginia Code 15.2-2307. Reason: For a pre-1980 PD ZTA, it is possible that an owner could argue vested rights accrued under what is now Virginia Code 15.2-2297, which was the proffer enabling legislation applicable to Albemarle County from July 1, 1978 until Virginia Code 15.2-2298 was adopted in the 1980's.
2. Section 8.5.5.5(b): Clarify by adding to the first part of the new text that the site plan or subdivision plat was valid "at the time the zoning map amendment was approved. . ." Reason: We don't want to allow an owner to rely on a plan or plat that was no longer valid by the time the ZTA was approved; and we don't want to prevent an owner from relying on a plan or plat as the application if it was valid when the ZTA was approved, but later expired.
3. Section 8.6(a): In the next to last line after the clause pertaining to a change to a proffer or regulation in a code of development, we should add a clause adding an additional circumstance when other owners would need to be an applicant – when the amendment might change an owner's obligations under a proffer or regulation in a code of development (without changing the proffer regulation itself). Lump sum cash proffers come to mind as an example, but there are likely a number of less obvious, subtle effects that may arise that we should provide for. Call me if you have any questions.

Mr. Kamptner noted that it was his habit to review and revise until the Board takes final action. He was reviewing the ordinance this morning in preparation of tonight's public hearing and there were three substantive changes he was suggesting to be made. The first one is to expand the source of possible vested rights. The draft ordinance now refers only to Virginia Code Section 15.2-2307. But it is possible that there are some properties out there who could claim that they have a vested right under their proffered rezoning which relies on 15.2-2297 as the source. That is an old source of zoning that proffered rezonings that there are only a few localities around the state that still use. That was our enabling authority from 1978 until the new enabling authority was adopted in 1980's. There may be no land owners out there that could claim, but just in case they don't want their vested rights claimed by not including that section in the ordinance. It is a very technical change, but one they recommend be made.

Ms. Joseph said that the Code of Virginia tells us how to vest.

Mr. Kamptner replied yes, that in Section 15.2.2307 that is the general vesting right statute. About ten years ago vested rights were codified in the statute. Before then vested rights analysis was done on a case by case basis. There were about a half dozen Virginia Supreme Court decisions, but it was developing under the case law or common law. It was codified then. But also in the proffer enabling statutes there is now vesting related rights that are granted under proffered rezonings. For example, if an

owner has agreed to donate a substantial piece of land or a cash proffer of substantial value they can have vested rights arise because of what they have done through their proffered rezoning.

Ms. Porterfield asked if that means that proffer should have already been paid or it is just written down on paper.

Mr. Kamptner replied that it depends. The proffer may be triggered by a certain event that simply has not occurred yet such as the payment of cash at the time of final subdivision plat approval or something like that.

Ms. Porterfield asked what if they could not fulfill the proffer.

Mr. Kamptner replied that then there would be no approvals. If they can't fulfill the proffers the localities have the ability to not approve any further permits or approvals. The second amendment in Section 8.5.5.5(b) was to clarify that the site plan or subdivision plat that may serve as the application plan had to be valid at the time that the map amendment was approved so they would not have a plat or a plan that had already expired at the time of the rezoning serving as the application plan. Section 8.6(a) is the section that deals with amendments to Planned Districts where they are trying to put into the regulations the standards for when the owners within the districts must sign the application or if there is a single parcel. What they tried to do was look at the impacts resulting from the application and the impacts it might have on other owners within the Planned Development District. The regulation lists a number of things, events or consequences that would require the owner of other parcels to co-sign the application essentially when their interest may be affected. In reading that regulation this morning there was another possible event that may happen. That is when an applicant is proposing to amend a proffer to rezone their property that may have the effect of increasing the obligations of the other properties within the Planned District. It is unlikely that this type of amendment would be approved but the best example is that you have a \$100,000 lump sum cash contribution that has been proffered for this Planned Development and there are ten parcels. The owner of one applies to rezone his property, but would still be in the Planned Development, but that applicant does not want that lump sum cash proffer apply to his property. The result of that would increase the obligation of the remaining land owners assuming that the rezoning was approved. But this provision is just to address that unlikely situation.

Ms. Echols completed her presentation saying that staff recommends approval of the ordinance with the clarifying amendments that Mr. Kamptner has provided tonight and pass it on to the Board of Supervisors. She offered to answer any questions.

Mr. Edgerton said that he liked Frank Cox's suggestion, but questioned if staff would decide application by application if it was a tight enough site or they going to make a strong recommendation. He asked if that is the way staff plans to handle it.

Ms. Echols replied that it depends on what the proposed development would be. If the Commission feels strongly to recommend that to be the requirement for the 2' contours that certainly can be done.

Mr. Cilimberg pointed out that staff felt that in a lot of applications the available topo from the county will be sufficient for the application. But there could be cases where a better topo would be called for based on the particular situation. Nothing prevents Frank Cox to act in his capacity as their consultant to direct his applicant to provide 2' contours. .

Mr. Edgerton said that on the first page of the staff report staff refers to the four important areas of change. The one he could not find in the actual language of the ordinance was the change dealing with the timing of the parking study.

Mr. Strucko pointed out that it was on page 4 of the staff report.

Mr. Edgerton said that would just be in the Comprehensive Plan and would not be part of the ordinance.

Mr. Cilimberg replied that it should be in the Neighborhood Model District section of the ordinance as an amendment.

Ms. Echols noted that it starts on page 18 in paragraph B.

Mr. Edgerton said that in the top of the paragraph on page 5 it states the standards related to architectural styles, textures, colors and materials would be required only if architectural compatibility was important for the rezoning. He asked who was going to determine that.

Ms. Echols replied that part of that would be the Commission's determination since staff would be making a recommendation. Certainly the Commission has to determine whether or not that is essential to the rezoning. On the older ones or the ones already approved that would be the Planning Director's call.

Mr. Joseph asked what façade treatment means.

Mr. Edgerton replied that a façade treatment is basically like a stage front. It would be like if Barracks Road Shopping Center decides to double the rent, leave all the buildings the same and take down the façade and put up new facades that have fake roofs and new columns.

Ms. Joseph asked what it means within a Code of Development. If they are asking for a façade treatment what are they asking for?

Mr. Edgerton replied what he thought was intended was that they are not really concerned about what is happening inside the building but what is on the outside or the façade of the building and the impact it would have on the surrounding neighborhood.

Ms. Joseph questioned how that is different from architectural styles because they have taken out architectural styles and kept in façade treatments.

Mr. Edgerton said that he was more comfortable with dealing with the façade treatment. They could have a very contemporary building next to a very traditional building and have it work with the traditional building if there was some respect for the rhythm that was established in the traditional building. Perhaps it could be in the height of the windows and the coursing of the levels to the building. This is done quite often and done very successfully. He thought that the way this was written it would instead of saying that it all has to look like Williamsburg that there has to be some respect for that. That becomes very subjective and some people will not like that.

Mr. Cilimberg pointed out that in the Downtown Crozet zoning they had façade treatments as the part of the language in the ordinance about at what distance you break and that type of thing.

Mr. Edgerton said that instead of picking a particular style and saying this is what it has to be, attention should be paid to getting the rhythm right and getting respect for the elements of the building so that they don't end up having a high rise next to a two-story house.

Mr. Morris said that he liked the comment that he was really concerned about the outside appearance of the building rather than what the building is being used for in side.

Mr. Edgerton noted that the Commission has been addressing that on several projects in recent months. He thought that the project on Berkmar Extended for the old amusement park was a good example.

Ms. Echols noted that Berkmar Business Park was where they had a one-story building that they wanted to look like two-stories. She said that façade treatments are actually the features that help break up the massing. The façade treatments are on the exterior of a building that will show us that there are floors, rhythm and spacing of those things that make it less like a box and more like a building. There is one thing that was pointed out that was missing, which was missing words on page 18 under B parking and loading needs study. The wording did not make it back into this version.

Mr. Kamptner agreed to put the words back in on page 18 under B for parking and loading needs study.

Mr. Cilimberg asked if the Commission decides to have the parking as an either/or at the time of rezoning or at site plan staff will make sure that the wording is added.

Ms. Porterfield said that on page 3 regarding mapping interval it says the modification to the fee schedule will include a fee for variations sometime in the future. She asked if they know when that is.

Mr. Cilimberg replied that they have to get subdivision ordinance fees done first which are being advertised for the March 10 meeting. After that Mr. Graham plans this year to bring forward the zoning ordinance fees.

Ms. Porterfield asked if it would be better to go the lesser distance now so they would not have to worry about the variations. She assumed that variations would have to be mapped in a more exact form.

Ms. Echols noted that they do have a few examples where that has happened. But she thought that they were going to get variation requests regardless. They will have variations that are requested for Planned Districts.

Mr. Cilimberg said that variations referred to here are not about changes in contours. That is what he thought Mr. Porterfield was asking about. Those variations are actually about how a layout might be changed over what was in the original zoning action. It could be as a result of market changes or more fine tuning in the design because they are not going to get down to level of a site plan at the rezoning stage and they are getting into their site and realizing that they have to make some changes because of that. That will be coming to the Commission as a package.

Ms. Porterfield said that on page 5 under individual notice on the bottom they are talking about written notice of the proposed amendment shall be provided to the owner of each parcel within the Planned Development District. She asked if they know who is going to provide that. She asked if that would be staff.

Mr. Cilimberg replied that it would be under the current procedures unless those get changed by a different decision down the road.

Ms. Porterfield asked if he meant a different financing decision on it.

Mr. Cilimberg replied yes because it could be a responsibility decision or a fee decision.

Ms. Porterfield asked if staff wants to keep it open ended the way it is.

Mr. Cilimberg replied yes that this would not be the time to do that.

Ms. Porterfield questioned why the Board of Supervisors and Planning Commission titles are not capitalized in the proposed amendment but are capitalized in reports. She suggested that the titles be consistently done one way or the other.

Mr. Kamptner replied that the style of not having the titles capitalized is one that has been in the ordinance for 28 years is that most of the entities including the Board and Commission are not capped. They are in the early stages of looking at doing a recodification of the zoning ordinance. One of the things that will be developing is a consistent style in not only capitalization but also terminology. That is something that they will be looking at.

Ms. Porterfield suggested that they pull out the capitalizations because there are some in here already. On page 32 under zoning administrator they talk about the fact that they shall determine whether the proposed permitted uses comply with the applicable regulations and in doing so may permit as a use by right a commercial use that is not expressly classified in this chapter if the zoning administrator further determines that the use is similar to general character to a commercial use permitted by right. . . She asked if this a little bit about what they just had with the issue they just determined. The reason she asked that is there was a lot of discussion as to whether that was inappropriate comparison. If they had not had

that they would not have had this issue.

Mr. Cilimberg said that this is about trying to make sure that they are able to get the commercial uses one might not think about in a commercial setting within a Neighborhood Model District permitted even if they were not expressly identified. They are dealing right now with a zoning text amendment that is coming to the Commission for a beauty shop in a commercial district where some like uses are allowed but beauty shops are not. So they have to do a zoning text amendment. These kinds of circumstances under Planned Development where there is suppose to be a little bit of flexibility to accommodate with good plans some of the ideas and uses that could evolve over a few years. The idea is to give the zoning administrator the opportunity to say well this use, this beauty shop, is like a barber shop which is something allowed. So it could be permitted as well.

Ms. Porterfield said that it would be a much more similar situation than what they just had. That situation was so different.

Mr. Cilimberg said that was a conventional zoning district whereas this is for Planned Development Districts. That was for a different use type altogether.

Mr. Kamptner said that particular paragraph actually is mirroring the provision in the C-1 conventional district regulations that allow the zoning administrator to make a similar kind of determination. What happened with the application before that was simply a classical zoning administrator's or zoning official's determination as to whether or not a particular proposed use fits in with one of the use classifications within the RA zoning district. He thought that the research found that as the speaker kept referring to it as a saw mill but he thought that particular classification also included wood yards. So zoning staff did research to determine whether or not what is proposed could fall within that classification.

Ms. Porterfield said that it sounds like in this case it is narrower.

Mr. Kamptner said that it was narrower recognizing that the regulation does not capture every single type of use or the terminology that might be used.

Ms. Porterfield noted that on page 35 they have Section 8.5.4.4 twice.

Ms. Echols replied that would be corrected.

Ms. Porterfield questioned on page 40 under g #4 the architectural style, materials and textures if deemed to be necessary. She understood in Rivanna Village that it definitely was going to be done in the Williamsburg style. She thought that the neighborhood bought into that and the developer as she understood thought it was fine. She wondered about adding something to this "and/or has been agreed to by the developer as a condition of their rezoning." In other words in the case if a particular style has been agreed to.

Ms. Echols asked if she was talking about ones that have previously been approved.

Ms. Porterfield replied yes if the applicant has agreed to a general style that most people know.

Ms. Echols said that in Rivanna Village at Glenmore, the styles indicated in the Code of Development would be retained because they were important features of that rezoning. In new rezonings, the importance of style would be determined on a case-by-case basis.

Ms. Porterfield said that Rivanna Village is fine, and past things are fine. If an architectural style is specifically put in the Code, then they would have a feel for what it is supposed to look like.

Ms. Echols replied yes.

Mr. Kamptner said that the reference to it being agreed to that would be memorialized either in a proffer or in the Code of Development.

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

Neil Williamson, of Free Enterprise Quorum, said that he had two sets of remarks the first set of which are his own and thus are disjointed, but touch on some of the things that Mr. Kamptner raised. He was still uneasy with regards to the changes for 8.6 with regards to what property owners sign when and how they influence the other property owners. He was really thinking specifically of the Hollymead case and how that could be construed in a very tightly understood language to impact everyone. It really freezes that particular land owner. He thought that was a reason not to go into a Planned District. He thought that Planned Districts generally have a very solid purpose and a planning purpose. He thought that it would be good to preserve those. He needed to spend a little more time thinking about what Mr. Kamptner presented on the PowerPoint. In the Round Table discussion staff quantified the PD's that were out there that might be impacted by this. He would love to have staff quantify an estimate of the number of PD's that were created with the 1980 zoning, which is kind of where they have honed down to. Also on his wish list he also would love it if the provisions regarding the application of parking and entrance corridor, etc. could be applied in an ala carte method if it works better for the plan. He did not know if that could be codified.

In addition Mr. Williamson noted that his good friend Valerie Long has put forth a very comprehensive memo with details and things that he thought was worthy of his touching on it. He passed out a copy to the Commission. (Attachment – Valeria Long's Memorandum) She cites a number of issues including the section that Mr. Kamptner referenced 8.5.5.3(a) suggesting that the Planning Director/Zoning Administrator and all others makes sense but it might have some language like other changes that the Planning Director deems reasonable to add some flexibility. One of the key things that most of these recommendations in Ms. Long's memo touch on is the need for the flexibility within the Planned District to accomplish the overall goals. He thought that the Commission has been pretty clear dating back to some of their services on DISC II that flexibility and a level of trust is going to be required to make these things work. There is a lot of good stuff in Ms. Long's well organized memo that he did not write. Therefore, he would turn the memo over to the Commission to review. He would love to see them move this forward, but he would also like to see if these issues can be addressed. As Mr. Kamptner proved from an examination just this morning of the Code there is always more legal work to be done.

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

Ms. Porterfield suggested pushing off the decision for a couple of meetings so staff could go back and make the changes before they adopt it.

Mr. Morris felt that was a realistic suggestion in that there are so many changes that the Commission had suggested. He did not know if he could support the proposal as it was before them. The majority of it is great, but do they really want it to go forward before they have a chance to look it over.

Mr. Cilimberg noted that what Mr. Kamptner suggested was pretty straight forward and simple modification that staff can take care of very easily before the Board would see it. The Board is going to have a work session before the public hearing. He asked if the Commission felt that the things in the memo should be considered as well for possible changes.

Mr. Edgerton said that he was not comfortable saying to just hand the memo over and incorporating it. He thought that the Commission needs a chance to review it and if it puts it off a week or month it is okay.

Mr. Kamptner said that he would be happy to incorporate the changes they discussed and work with staff to review Mr. Williamson's comments and Ms. Long's memo.

Mr. Cilimberg said that they would not need to have another public hearing.

Mr. Kamptner said that they don't need to readvertise it if they set it to another date to come back and discuss.

Ms. Cilimberg noted that March 24 is going to be next real opportunity.

Motion: Mr. Edgerton moved and Mr. Morris seconded to defer ZTA-2008-02 Amendment to Planned District (PD) and Neighborhood Model District (NMD) Regulations.

The motion passed by a vote of 6:0.

Mr. Strucko noted that ZTA-2008-02 was deferred to March 24, 2008.

Old Business:

Mr. Strucko asked if there was any old business. The first item was the consent agenda which was deferred from the beginning of the meeting.

Consent Agenda:

SDP-2007-00119 Shelton Property/Verizon Tier II PWSF - Final

The request is for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 111 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with a 10'- 7" high 360 square foot shelter/equipment cabinet that will be contained within a 2,400 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 42.79 acres, described as Tax Map 87, Parcel 7E, is located in the Samuel Miller District and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property as Rural Area in Rural Area 3. (The applicant is requesting an extension.)

Ms. Joseph said she asked to pull and move SDP-2007-00119 to the end of the meeting for discussion since she felt that it was more of a policy issue. This item does not appear to be a big deal in what the applicant is requesting but it came to the Commission today. She asked if that is something the Commission wants to establish a policy or do they not care. It bothered her when she received the email today requesting action tonight due to the extra reading involved.

Mr. Strucko asked when staff received this request.

Mr. Fritz replied that he received the email on Thursday and the actual information on Friday. The deferral will expire on February 26th and the next meeting of the Planning Commission is not until March 10th.

Mr. Cilimberg pointed out that there was another shot of giving the applicant an extension which was next week's Board of Supervisors meeting. That would put this item on the Board's budget meeting. After Mr. Fritz explained the circumstance he changed his mind to ask the Commission to consider the deferral. It is a situation where otherwise there is no remedy. This is an out of the ordinary procedure. The policy of the Commission is that they don't have things come like this. But staff did it in this case because of the circumstances. What it means to the applicant is that they will have to pay another fee to reinstitute an application that basically expired.

Mr. Edgerton agreed with Ms. Joseph that the applicant has a responsibility to watch his clock. The applicant knows what his rules are. The decision is only to grant the applicant a six month deferral. But at the same time the unfortunate thing is the way it came through on the email. It looked like the Commission was going to have to go through it real quickly. The follow up email make it clearer that it was only a deferral request. From a policy stand point he felt that Ms. Joseph was right on target. The Commission needs to have a hard and fast rule.

Ms. Porterfield asked if the Commission had a meeting next week would it have solved the problem.

Mr. Fritz replied yes that staff would have put this item on that agenda.

Ms. Porterfield said that the applicant got caught in the fact that the Commission no longer meets every week.

Mr. Cilimberg noted that the Commission will not meet for two weeks actually.

Mr. Strucko said that was a good point.

Motion: Ms. Porterfield moved and Mr. Loach seconded to grant the consent agenda item SDP-2007-00119 Shelton Property/Verizon Tier II PWSF Final for an extension of the review period to August 26, 2009.

The motion was approved by a vote of 6:0.

Mr. Morris noted that the Commission needs to be very careful to make sure that their schedule is gotten out to the public well in advance so that people know when they are not going to be available or when they get caught with items like this they meet next week.

Mr. Williamson asked that the Commission examine fees and that it is a real advantage to the county in not granting a deferral and what county purpose is being served beyond hard and fast rules. He agreed that this is a rare situation and the ten day rule for an administrative deferral seems most reasonable. But these rare circumstances come up and he would ask the Commission to consider them on a case by case basis.

Ms. Porterfield suggested that staff put something on the website that the Planning Commission is not meeting every Tuesday so to please look at their schedule.

Mr. Cilimberg agreed that he would make sure that the schedule is clear on the website.

- The Planning Commission moved the work session for the tables, charts and maps for Chapters 1 – 6 of Places29 from March 17 to March 31.
- The March 17 Planning Commission meeting will be devoted solely to the Village of Rivanna Master Plan.
- In the discussion of the processing of the consent agenda item, the Commission agreed they should review such items on a case by case basis.
- Staff should make sure the Planning Commission's schedule for Places 29 is made available to the public.

New Business:

Mr. Strucko asked if there was any new business.

- No Planning Commission meeting will be held on February 24 or March 3, 2009.
- The Commission's 2009 schedule has changed so there is not a meeting every week and this should be clearly reflected on the web site.
- Staff will proceed with placing more ministerial items on the consent agenda as discussed.

Adjournment:

With no further items, the meeting adjourned at 10:13 p.m. to the Tuesday, March 10, 2009 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary