

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

The Albemarle County Planning Commission held a work session on Tuesday, November 17, 2009, at 5:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Margaret Maliszewski, Design Planner; Wayne Cilimberg, Director of Planning, and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Strucko called the regular meeting to order at 5:05 p.m. and established a quorum.

Work Session:

ZTA-2009-00009 Entrance Corridor Administration Process Amendments

Amend the Zoning Ordinance to change Section 30.6 Entrance Corridor Overlay District (ECOD) and related sections to streamline procedural requirements and improve efficiency and effectiveness in Entrance Corridor (EC) review, and to address recommendations of the Development Review Task Force (DRTF). (Margaret Maliszewski)

Ms. Maliszewski presented a PowerPoint presentation and reviewed summarized the staff report. (See PowerPoint presentation)

ZTA-2009-00009 Entrance Corridor Administration Process Amendments

Amend the Zoning Ordinance to change Section 30.6 Entrance Corridor Overlay District (ECOD) and related sections to streamline procedural requirements and improve efficiency and effectiveness in Entrance Corridor (EC) review, and to address recommendations of the Development Review Task Force (DRTF). (Margaret Maliszewski)

Ms. Maliszewski reviewed the current ordinance text with the proposed draft in a PowerPoint presentation, which included the chart and flowchart. (Attachment: Flowchart)

The first section deals with previous discussion with the Planning Commission regarding what a county-wide Certificate of Appropriateness is. The following portion has been added: "An ARB action that outlines design criteria that a particular type of building, structure, landscape feature or other site element must adhere to in order for the proposed element or development to be approvable by staff without being forwarded to the ARB for review at an ARB meeting." There being no questions, staff moved to the next section.

Section 30.6.1 deals with the intent of the overlay district and, as discussed at the previous work session, this part of the ordinance was added to expand on the connection between the text of the ordinance, the enabling legislation, and the County's Comprehensive Plan. There had been some concern that the last draft of the text mentioned some but not all of the historic resources in the County. The language was changed to read "including, but not limited to" to take care of that problem. That was the language the Commission proposed at the work session. There was also some discussion in that section about using the term "quality development" and that term has been taken out and changed to "development compatible with." Again that was the Commission's suggestion at the work session. There being no questions, staff moved to the next section.

Section 30.6.2 talks about the boundaries of the district and there have not been any changes since the last work session. Included in this section is the list of Entrance Corridors. The Entrance Corridors themselves have not changed. The actual street names for each State route number have been added as previously requested. There being no questions, staff moved to the next section.

Section 30.6.3 talks about permitted uses, and there have been no changes since the last work session. There being no questions, staff moved to the next section.

Section 30.6.4 will be renumbered to 30.6.3.c. There was discussion at the last work session about bonus factors. That language has been changed based on the Commission's recommendations to indicate that a condition of a Certificate of Appropriateness can't affect eligibility for a bonus factor. There being no questions, staff moved to the next section.

Section 30.6.4.c had some discussion on the language proposed previously that said "without regard to regulations of the underlying zoning district." That language led to some confusion and was a bit misleading. Therefore that language has been reworded to cover elements which are in addition to the requirements of the underlying zoning district. That language is more to the actual point that was intended

Section 30.6.3.d engendered discussion about potential wording confusion that could cause somebody to think that all of the existing trees at a site had to be maintained. That wording has been taken out and the previous wording reinserted, which was a recommendation from a previous work session.

Section 30.6.5 in sections e, f and g previously referred to structures. Those sections have been changed to include structures and site improvements, which is the current practice. Wording reflects the current practice. There being no questions, staff moved to the next section.

Sections 30.6.6 and 30.6.7 have changed since the previous review. This section on administration now outlines the processes for preliminary and final applications for review in the Entrance Corridors. Staff moved to the review of the flow chart, since the chart makes it easier to review this section.

Using the flow chart, staff reviewed the submittal process of an application including all the options with regard to deadlines. The right side of the chart outlines the process that would be followed if an application is determined to be not complete. On the left side is the process if the application is complete.

Starting on the left, staff noted that within 10 days of the submittal deadline staff needs to determine whether the application is complete. If found to be incomplete there are two things that can happen. One, the application would be rejected and the applicant informed of this decision within 10 days of the application deadline. The second occurs if staff fails to meet the review deadline and to inform the applicant.

If staff has informed the applicant two things can happen. One, within 15 days the applicant can submit the needed information to make the application complete. If the applicant does that the next submittal deadline is the official submittal date, the application is deemed complete and comes in for review.

If the applicant fails to submit the application information that would make it complete, then that application is denied. If staff fails to advise the applicant within 10 days that the application is incomplete, then staff will accept that application. Two things can happen. One, staff can request that the needed information be submitted. If that happens, then the applicant has 10 days to supply that information. If that information is received in 10 days, then the review continues. If that information is not submitted within 10 days, then that application is deemed to be incomplete and is rejected. If staff fails to inform the applicant that it is incomplete, then staff accepts the application for review. If staff does not ask for additional information, then the review process continues and proceeds to the action. Those are all of the options that can happen when an application is submitted but not complete.

Mr. Morris asked what can be done to impress upon the applicant that an application has to be complete as incomplete applications require more staff time and therefore incur more cost to the applicant.

Ms. Maliszewski replied that the point is that they don't have this process in place right now. That will occur once an applicant realizes that the application can be denied and rejected and that a new fee will be required in order to get it back in the process.

Mr. Morris asked if staff can emphasize the process right up front so the applicant realizes that it is not the County dragging their feet but the applicant not submitting a complete application that is delaying the process.

Ms. Maliszewski replied that staff feels that this would make it clearer.

Ms. Porterfield asked if the days are counted as working days or just days in general.

Mr. Kamptner replied that it is calendar days.

Ms. Porterfield questioned if that is doable for staff because if there are weekends and holidays it can really cut the time frame down. She asked if staff really wants to count calendar days.

Mr. Cilimberg pointed out that the language in other sections of the ordinance right now is based on calendar days.

Mr. Kamptner agreed with the concept of working days and suggested when the County looks at the ordinance as a whole that can be considered. He noted that it is easier for everyone to use the same measurement. Actually these 10-day and 15-day periods are also carried over from other application regulations. Consistency helps everybody keep all of these deadlines in mind.

Ms. Maliszewski noted that if within 10 days of the submittal deadline staff determines that the application is complete, a notice (display ad listing applications received) is sent within 5 days via email. The Planning Commission is on that email list. The review begins at this time. If staff finds that the proposal does not meet the guidelines, then staff might ask the applicant to provide additional information or to make some changes so the application meets guidelines. These revisions are not like the revisions on the other side of the chart because an application has been deemed complete but staff does not believe it meets the guidelines. Staff would notify the applicant in writing, and the applicant would have 15 days to respond. If the applicant responds in 15 days, the applicant can make a choice whether to make those changes. If the applicant doesn't make the changes the review continues, staff writes the report and the request continues on to the ARB. If the applicant wants to make those changes, then the 60-day review period is suspended. Staff waits for the applicant to make those revisions. Then the next submittal deadline is the new submittal deadline, and staff continues with the review of that application.

Mr. Cilimberg pointed out that is not any different than how they are treating other applications in the review process. If they have a special use permit or rezoning that comes in and staff provides comment within the specified time frame, the applicant chooses whether to resubmit based on those comments. When the applicant wants to resubmit, there are several submittal dates each month and the clock stops until they resubmit again.

Ms. Maliszewski said that if staff has informed the applicant that they would like revisions for consistency with the guidelines and the applicant does not respond in 15 days, then staff would proceed to action, write the staff report and move it on to the ARB. If the applicant responds but it is after 15 days and they want to make revisions, they can still proceed, the 60 day period is suspended and staff waits for those revisions. Again, it moves on to that next submittal deadline. If staff finds that the application is complete, they begin the review. If no revisions are needed they proceed to action, write the report and it goes on to the ARB. The applicant could also decide that they want to make revisions even if staff did not ask for them. In that case, the applicant should inform staff of that and then that 60-day review period is suspended and staff waits for the revisions and goes with the next submittal deadline. Any applications

that go to the ARB have a 60-day period within which action has to be taken. If action is taken within 60 days, staff sends the action letter. If action is not taken within 60 days, the applicant can request that action is taken. Such action needs to be taken within the next 21 days. If the ARB does take action within that 21-day period, staff sends the action letter. If the ARB does not take action, an approval letter is sent within 5 days.

Mr. Kamptner pointed out that the procedure Ms. Maliszewski described is borrowed in part from the state subdivision law regarding subdivision and site plans where the localities are required to take action within 60 or 90 days if there is state review. But the process gives the sub-divider or the developer the ability to essentially demand action within 10 days. For this particular process, staff selected 20 days because of the standard schedule of the ARB. Staff is confident that within a 21-day period they will capture the next ARB meeting.

Mr. Strucko asked if an application followed this diagram with staff and the applicant taking the maximum length of time allowed to make their deliberations, how long would it take for the application to work through the system.

Ms. Maliszewski replied that if staff is getting revised information, she could not put a number on it because it depends how long the applicant takes to resubmit. An action would be taken within 60 days, but in actuality it is less than that because staff is doing it within six weeks.

Mr. Strucko said that one of the driving forces of doing this is to streamline the process and expedite it. Within ten days of the deadline, there is a determination of completeness. So that is ten days. Then there is five days to send out notice. Therefore they are up to 15 days. If there are no revisions, then it would take 60 days at most to get to the diamond in the middle of the chart.

Ms. Maliszewski noted if the application is not taking extra time to resubmit information, definitely it will be done within 60 days.

Mr. Edgerton agreed with Mr. Morris that at first sight, this is an intimidating chart. Staff has done a remarkable job in trying to clarify exactly what has to be done, when it has to be done and what happens if there has to be a delay. He suggested adding some color to the chart such as using green to lead to the most expeditious review, red would be a delay caused by the applicant and maybe yellow a delay caused by the ARB or staff. The colors could emphasize the quickest route to approval.

Ms. Maliszewski noted that the ARB thought the flowchart was a good thing to share with the public.

Mr. Morris said that the traffic-light concept could show an applicant the steps to the most expeditious review timetable. The burden is on the applicant's shoulders to submit a complete application; and if they want to change it, it is going to cost them days. It makes a great deal of sense.

Mr. Edgerton suggested putting some additional dollar signs in if there are additional fees required because of delinquency in response.

Ms. Maliszewski referred to the table where they are comparing the text; 30.6.6 and 30.6.7 are the sections they just went through in the flow chart. In 30.7.h, the period of validity of the Certificate of Appropriateness was a point of discussion at the last work session. That period is aligned with that of the site plan. Section 30.6.8 on appeals was another point of discussion of the work session, and the revised text provides for appeal by the applicant,

Mr. Edgerton asked who is an aggrieved person.

Mr. Kamptner replied that an owner of an adjoining property would typically be the aggrieved person.

Mr. Edgerton asked if the adjoining property owners would be notified and be part of this whole process.

Ms. Maliszewski noted that they don't do that type of notification for Entrance Corridor applications.

Mr. Edgerton asked how adjoining property owners would know they were aggrieved until the process was completed if not notified.

Mr. Strucko said that was a change to consider. He suggested that they discuss notification. It was mentioned that the ARB, Planning Commission and the Board were notified. He asked who in the public would get notified about an application.

Ms. Maliszewski replied that the only people right now notified are the members of the public who have been asked to be added to the email list.

Mr. Strucko reiterated that only persons on the general email list are notified and the adjacent property owners are not.

Ms. Porterfield said that she had assumed that Entrance Corridor applications would have notification just like other items.

Mr. Cilimberg noted that the process is in part for the large number of certificates tied in with site plan review, which is a notification review. There are different types of applications that include signs and building permits that don't get notification for the permitting process now. If they add notification, they are going to add cost and time to applications, which was what the Commission discussed last week. There is no doubt more time and cost would be incurred with additional notification.

Mr. Morris asked how staff notifies the people. He agreed with what Mr. Cilimberg said regarding the written letter etc., but how does staff do it. An email and web site don't do it.

Mr. Cilimberg replied that they don't do it now. A Certificate of Appropriateness application is not in and of itself subject to the notification requirement.

Mr. Kamptner pointed out that there was the notice requirement that was attached to site plans. For building permits, the State Code allows a person to challenge the issuance of a building permit within 15 days of the start of construction. There are a number of zoning decisions made all of the time for which notice is not given to adjoining property owners. These decisions are probably being made on a daily basis.

Mr. Strucko asked if one of the criteria for a Certificate of Appropriateness is consistency in an entrance corridor in terms of architectural features. Adjacent property owners would have to be in compliance with that presumably.

Mr. Kamptner said that it is really compatibility with the Design Guidelines. So the determination of compatibility can result in likeness in adjoining properties but not necessarily looking consistent provided that each individual property satisfies the ARB that their design is compatible with the Design Guidelines.

Ms. Porterfield asked if they have had any instances where they did not have notification but had a problem. She asked if anything has arisen out of not notifying except for what was indicated by Mr. Kamptner.

Ms. Maliszewski replied that it seemed that when there were people that are interested, they find out that something is happening. Some interested people attend ARB meetings. It is not typical, but it does happen. Staff has started putting the ARB agendas on line so as to be available to the public. She noted that anyone could request to be on the email list.

Mr. Cilimberg noted that as mentioned earlier a large number—including some of the more significant--Certificates of Appropriateness applications and the ensuing review process are part of a site plan. That site plan receives notification, so people can find out about all of the reviews going on through that

notification and their follow up. Sometimes the public comes to site review meetings, which is an indicator that something is going on.

Ms. Porterfield asked if staff has ever had people show up after the approval to say that they have not been notified and did not know this was happening or did not agree with it.

Ms. Maliszewski replied that she did not get much of that, but it was not to say that everybody is completely happy with everything that gets built.

Mr. Cilimberg noted that experience to date has been that the largest number of disagreements or concerns ends up being with the applicant not liking what the Certificate of Appropriateness issuance is and appealing to the Board. Those are the typical cases.

Ms. Maliszewski noted she had presented all of the primary points. She asked if there were other questions or issues.

Mr. Strucko invited questions for staff.

Ms. Porterfield suggested the following two changes in the draft language:

- On Page 18, section H, "shall be valid" is repeated.
- Replace the word "background" in the opaque background definition.

There being no further questions, Mr. Strucko invited public comment.

Morgan Butler, representative for Southern Environmental Law Center, thanked Mr. Kamptner for going over his questions for an hour yesterday when he made some suggestions. He hoped his suggestions would be acted upon. He made the following comments.

- He recommended that notice be required to abutting landowners similar as it is for special use permits. Streamlining means notice to adjacent owners is more important. It will ensure that those property owners who will be most directly affected by a Certificate of Appropriateness will at least have notice that this proceeding is going on, can review the plan and attend the ARB meeting. The compatibility/consistency concept in the Entrance Corridors means abutting owners have meaningful input to contribute to that dialogue.
- Page 11 doesn't spell out *how* the county-wide CofA will happen. The ordinance should spell out the categories/uses that qualify. The public should have an opportunity to weigh in whenever there is a change in these uses and should trigger an ordinance change.
- 30.6.9 states that the Planning Commission and the Site Development Plan agent can waive Entrance Corridor conditions for public health reasons. Currently this is limited to the Planning Commission. It is odd to add staff ability to overstep the ARB.

Neil Williamson, with Free Enterprise Forum, made the following comments.

- The comprehensive plan changes regarding economic development state that costs associated with new ordinances must be outlined. This hasn't been done yet.
- He agreed with the previously stated health/safety comments.
- Regarding notice, the ARB/ARB staff see a lot of applications that aren't huge (signs, for example). Placing the notice cost on the county or the applicant for this is unfair.
- Regarding page 44 of attachment C, 30.6.7.i. it is grossly unfair to not allow an applicant to resubmit the same application as was denied. It is the job of the ARB to receive applications.

There being no further public comment, the matter came back before the Planning Commission.

Mr. Strucko thanked Mr. Williamson and Mr. Butler for their comments and agreed with a few of their points. Personally he liked the notion of getting the public involved and giving them a fair opportunity to get involved in a kind of deliberative process. The ARB like the Planning Commission is such a process and do take public comment as a matter of course for their business. At least to the abutting landowner or adjacent property owner there should be some sort of notification that there is an application that is being submitted by the adjacent owner. He did buy the argument that the whole point of this process is architectural compatibility. Certainly somebody on an adjacent property would have an interest as to what is going on. He supported a change in this text amendment to give the public that opportunity for input. As far as delegating the authority to staff of determining public health and safety he would like to hear the thoughts from others. He agreed with Mr. Williamson that any kind of new ordinances or text amendments should have a cost component to it. He did not think it would be too onerous to at least overlap the fee structure with the process chart so applicants know what kind of fees they are facing and can factor in the cost of their decisions regarding whether to resubmit or to change or to add to information.

Mr. Cilimberg noted that is actually a standard that they include in the final report for the public hearing for zoning text amendments.

Mr. Strucko invited other comments or thoughts.

Mr. Morris said that as far as public notice, he agreed that they really need to get public involvement. But regarding what Mr. Cilimberg said, he believed that when they put out the notice that something is happening it indicates that there will be a hearing and if in the Entrance Corridor the ARB is going to get involved. It is all one umbrella. He did not see the need at this time for additional notification because it adds expense and time to the process. He agreed that they really want public input; but he also agreed with Mr. Cilimberg that once the steps are set in motion regarding a proposed development, church etc., that is where the public notice goes out. Then the process begins, and ARB is just one of the steps in the process.

Mr. Edgerton said that if there was a site plan or a rezoning, certainly that would cover the notice. The language in the notice could include that this is going to be reviewed by the ARB. It could be a problem when there is no rezoning notification. If the neighbor does not know about a hearing, he/she will not be able to act on being an aggrieved person. It is tricky determining where they draw the line on how many notices are sent. He was sympathetic to what staff is saying that this will overwhelm and add cost to the process. The reason this is being reviewed is to streamline the process. At a certain point, the public has to take some of the responsibility of knowing the process. If notice is not required by State law, then perhaps there is another way to provide notice such as a sign or something that could go up on the site instead of mailing notices out.

Mr. Cilimberg pointed out that they don't put public notice signs up for site plans. To be very frank, it is a choice between streamlining and literally adding more time and cost to the process. They can't do both. After last week's discussion and considering the budget conditions of the county and the concern about fees and the cost of the time the county takes with things, he thought that public notification regarding what they don't notify on right now is adding to that cost. If the public being informed is the most important thing, then there is a cost to that and there is a time commitment necessary to do it. These letters do take time to be produced even if no recipients respond.

Mr. Strucko asked what the definition was of "abutting."

Mr. Kamptner replied that abutting was touching.

Mr. Cilimberg said that he thought those receiving notification would be concerned about the design, architecture, and color of what is before the ARB. Those are all judged based on guidelines that are set out separately from the ordinance itself. Maybe public opinion could persuade the ARB to look at things a little differently in terms of architecture, but in a sense people were talking about a fairly specific kind of

review by the ARB that is set out by the guidelines that are in place. He could see it opening potentially other issues when the ARB/staff are trying to focus on the design of a building or the color of a sign.

Ms. Porterfield clarified that if the applicant is asking for more than what is allowed, would that trigger neighbor notification.

Mr. Kamptner replied that if the applicant was requesting a variance, the notices would go to the abutting owners. It is under a different state law.

Mr. Edgerton asked whether the notices mention if the property is in the Entrance Corridor and therefore will receive ARB review. He suggested adding language to the site plan letter that would state whether the applications will require ARB review.

Mr. Cilimberg replied that the letter indicates the property is located in the Entrance Corridor. In a rezoning, the fact that a property is located in an Entrance Corridor does not in and of itself mean that it is going to go to the ARB. The Planning Commission gets input based on staff review of those as to their fit so to speak.

Mr. Edgerton suggested adding language to the site plan letter that states the application will require ARB review.

Ms. Porterfield suggested adding wording that it is possible that ARB review will be required and if interested the neighbor could check the county website and the actual ARB agenda.

Mr. Cilimberg noted that the letter includes a reference regarding getting in touch with the planner handling the project with any questions. The lead planner would know whether ARB review is necessary. He thought that the contact opportunity is certainly there. One thing to note in the county-wide Certificate of Appropriateness process is that for any county-wide certificate to be in effect, there must be a determination made by the Architectural Review Board.

Mr. Kamptner agreed that it was an action by the ARB.

Mr. Cilimberg said that it was an action taken by a body in a public meeting to decide a certain type of certificate is county-wide. It would be hard to enumerate what could be Certificates of Appropriateness that are county-wide. They would be hard to identify until actually considered by the ARB.

Mr. Kamptner noted identification would actually elevate this issue to a Board decision, which could be done. But it is the ARB that has the expertise in these issues. One thing they could add to the ordinance is the criteria as to eligibility for a county-wide Certificate of Appropriateness. That would establish the parameters of the types of structures for which a county-wide Certificate of Appropriateness might be available.

Mr. Strucko agreed that type of clarification would help. He asked Mr. Kamptner to talk about the determination of public safety.

Mr. Kamptner said that he would try to explain a couple of ideas as to why the language was changed and why it was expanded to include the site plan agent. One is that at the time these regulations were originally adopted, all of the site plans came to the Planning Commission for review and approval. So that is why the language was expanded to include the authority to the agent. The other is that at least the expectation is that kind of determination is going to be very technical in nature and may have a situation where the building official, county engineer, someone from fire/rescue has identified an issue that creates a public health or safety concern. If the item or site plan is not otherwise going to the Planning Commission for review, it seemed like an expeditious approach to allow the site plan agent to make that call. Staff can provide some additional criteria as to when the site plan agent can do it. That action can be upon consultation with the building official, county engineer, someone from fire/rescue if there is a public health or safety issue that needs to be addressed.

Mr. Morris said that he liked the idea that they were trying to streamline and make it easier. But that additional language would be helpful.

Mr. Strucko noted that there were only four Commissioners present, but he would like to get a general feeling about the one issue he was still hanging on regarding the public notification. He would potentially like to see a requirement to do the abutting landowners even though it may add some cost and time to the process. A common criticism that the Commission had heard arose due to an action or activity by the county that adjacent property owners felt they didn't get appropriate notification. It is just a perception and may not be true since the adjacent property owners may have gotten a fair notification. He did want to be sensitive to that criticism. He asked if he was the only Commissioner that thought that at least the abutting property owners should receive some sort of notification.

Mr. Edgerton said that he was sympathetic with the idea in a perfect world where it did not cost an arm and leg and did not slow the process down. But the whole reason this issue is being revisited is to try to figure out how to make it a more responsible expeditious review. Since this is not a perfect world, he would defer to staff on this one.

Ms. Porterfield asked staff to go back and think if there was a way to provide notification at not very much cost. For example, maybe there was a poster-type sign that the applicant could hang in their window with the information. She agreed with Mr. Strucko that notification would be good. She had heard tonight that at least anything that would be out of the ordinary would trigger notification of the neighbors. She firmly believed that if it was out of the ordinary, they need to notify.

Mr. Cilimberg noted that he thought out of the ordinary fell into areas already receiving notification

Ms. Porterfield asked staff to think of a simple, cost-effective way to provide abutting owners knowledge of what is happening without having to constantly be checking the county website.

Mr. Morris said that as much as he encourages public input, he felt this was adding one more step that is not needed.

Mr. Strucko noted that he was in the minority here. There would be another opportunity for this discussion at the public hearing on December 15.

The Planning Commission was in agreement to endorse staff to schedule the public hearing on December 15 and take the public comment and their comments and responses into consideration as summarized below.

- Revise the flow chart by adding colors (such as red, green, yellow) to emphasize the quickest route to approval. Also add \$ to emphasize where fees occur.
- Page 18, section H, "shall be valid" is repeated.
- Replace the word "background" in the opaque background definition.
- The Planning Commission agreed with the notion of getting the public involved and giving the public opportunity to comment. Abutting land owners should get notice.
- The architectural compatibility issue was mentioned.
- The new ordinance should address the cost component/fee structure.
- Agreed with the public safety/health issue and questioned the language expansion to give authority to the agent. Staff was requested to work on this language.
- Fair notification to the public is needed without adding time and cost. The question was raised on where to draw the line on the types of applications to provide public notice. The public has some responsibility for knowing the process. It is a choice between streamlining and cost.

- A question raised: can wording be added to the notification letter for SPs and ZMAs regarding upcoming ARB review? ARB review doesn't always follow these applications.
- A suggestion was made by Mr. Kamptner to add criteria to the ordinance regarding parameters for the county-wide Certificate of Appropriateness.
- In reference to public safety, Mr. Kamptner noted that when the original ordinance was adopted, all site plans went to the Planning Commission. The determination is very technical in nature. Criteria can be added for when the site plan agent can make that determination, which would be in consultation with the county engineer, building official, and fire/safety.
- Concerns over the costs of notification were expressed. Mr. Strucko expressed concern over lack of notification in general. Ms. Porterfield asked if there was a way to provide on-site notification at a lesser cost. Mr. Morris said notification was adding an unnecessary step. Staff assured the PC that anything out of the ordinary already fell within notification bounds.

Mr. Strucko noted that the meeting was five minutes behind schedule. The Commission would take a five minute break and reconvene at 6:10 p.m.

The Planning Commission took a five minute break at 6:05 p.m.

The regular meeting reconvened at 6:10 p.m.

The Albemarle County Planning Commission held a regular meeting on Tuesday, November 17, 2009, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Elaine Echols, Principal Planner; Wayne Cilimberg, Director of Planning; Claudette Grant, Senior Planner; Mark Graham, Director of Community Development; and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Strucko called the regular meeting to order at 6:05 p.m. and established a quorum. He noted that the meeting schedule had been rearranged due to Ms. Higgins' request for ZMA-2007-0002 Hollymead Town Center to go first due to her health issues.

Public Hearing Items:

ZMA-2007-00002 Hollymead Town Center (TIKI)

PROPOSAL: Rezone 1.021 acres from PD-MC Planned Development Mixed Commercial - large-scale commercial uses; and residential by special use permit (15 units/ acre) and HC Highway Commercial - commercial and service uses; and residential use by special use permit (15 units/acre) to PD-SC Planned Development Shopping Center - shopping centers, retail sales and service uses.

PROFFERS: Yes

EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Town Center -- Compact, higher density area containing a mixture of businesses, services, public facilities, residential areas and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre) and Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses.

ENTRANCE CORRIDOR: Yes

LOCATION: 450 feet West of the intersection of U.S. Route 29 and Timberwood Boulevard within the Hollymead Town Center, directly behind the existing CVS Pharmacy in the Community of Hollymead.

TAX MAP/PARCEL: Tax Map 32, Parcel 41 R (portion) and Tax Map 32, Parcel 41D1
MAGISTERIAL DISTRICT: Rio
(Claudette Grant)

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

- Staff corrected the site's acreage to 1.021 acres. The purpose of tonight's hearing was to create harmonious zoning on a parcel for commercial development by rezoning .711 acres from Planned Development Mixed Commercial and .310 acres from Highway Commercial to Planned Development Shopping Center.
- Favors favorable for this request are:
 - The proposal eliminates split zoning on the site, and
 - The proposal makes administration of regulations such as uses and parking on the site easier to follow.
- There are no factors unfavorable.
- Staff recommends approval of this rezoning inclusive of proffers.
- Staff also recommends approval of a waiver from Chapter 18 section 2.7(a) of the Zoning Ordinance to allow the setback of 5' for the building front on Timberwood Boulevard.

Mr. Strucko invited questions from the Commission.

Ms. Porterfield noted that she could support the request. She did not have a problem with the application. She had a problem because staff has identified a dangerous turning movement using the cut through section that is located a little further to the west of the CVS property. There are cars coming through there and then going down the wrong way to get into CVS. Personally it would be difficult to vote to approve this because staff has identified a bad situation. She had been looking to see if there was a way they could make a bad situation better. Since it is an offsite improvement, she understood that they can't ask the applicant to handle this. From talking to staff this afternoon she wondered if they could at least erect some "wrong way/do not enter" signs that would indicate what they don't want drivers to do. She took pictures of the signs that have been erected on Glenmore Way which had the same problem there where people were going the wrong way on the wrong side of the street. Ms. Grant has those pictures if the other Commissioners were interested.

Mr. Strucko noted that the cut out in the median is across from the south building.

Ms. Grant pointed out on a slide the area that is going to be developed on the other side as well as this site. She pointed out the property that goes to the proposed hotel across street and the area in question. She had been told by the engineering staff that they have worked out something with VDOT and the applicant across the street for the hotel site in which they would make further improvements to this opening so it would hopefully eliminate the bad turning movements currently going on. It would eliminate that from happening in the future.

Mr. Strucko said that if he was heading east bound, which he assumed was Timberwood Boulevard, the only way he could access CVS is to go through the intersection and do a U-turn. There is no way to access the CVS parking lot from the side of the road where the arrow is located on the slide.

Ms. Grant replied that one would have to go through the roundabout and go through the development that is adjacent to the Timberwood Commons site. CVS could be accessed through that site by going around.

Ms. Porterfield asked if that access is available right now; and Ms. Grant replied that it is not available right now, but only when that site is developed.

Mr. Strucko agreed that signage is needed in the mean time.

Mr. Edgerton pointed out that on the 250 bypass there was a cut in the median near the children's pool that created problems. There were some posts put up to discourage this activity. He asked if that could be required as part of this rezoning.

Mr. Kamptner replied that the applicant could proffer that.

Mr. Edgerton noted that the roundabout was put there for the hotel development. He asked if the developer of the hotel was different from this site.

Ms. Grant replied that the developers were different.

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

Jo Higgins, representative for the applicant, thanked the Commission for accommodating her request to go first.

- After receiving an email this afternoon, she followed up with an email and made a call to VDOT. She spoke with Mr. Charles Baber and he confirmed that the road is not in the state system and until that issue is worked out, it will not be taken into the system. His knowledge of the cut through was that it might be closed. But then some further information with Mr. Marlow with VDOT is that the hotel developer wants to reconfigure it physically to make it less easy for anyone to turn left there.
- Unfortunately there are interim situations when development is occurring. There is not much traffic coming in that way, and that is why people try to shoot through. She believed that if there was temporary signage it would help. She believed that if the developer does not step up to the plate to modify it, they could lose the crossover. That is very compelling because the crossover was constructed for their behalf. Unfortunately, they don't have an entrance on the road. They would have liked to have an entrance on the road, but it was not a possibility.
- This development has a long history. It is actually infill between block 9, area C and the CVS. By infill there is actually a connection that will occur with this development. If that does not take place, the people going from block 9, which is going to have substantial square footage of development, and CVS would have to go back out on Timberwood Boulevard to get back and forth between the two. This infill development was actually the connecting piece. It has been in the works since block 9 was envisioned and when Hollymead Town Center was rezoned. They have hit some stumbling blocks with some zoning issues that have to do with the actual zoning of CVS and other things. That is what brought them before the Commission today. They perceive this as a critical piece that will give the people that interconnectivity off the state right-of-way.
- It was also approved and Mr. Anderson has brought the actual drawings of the buildings that have been through the Architectural Review Board. It was reviewed with area C block 9 as being consistent. That is why the waiver to go to a 5' setback is so important. The buildings would actually be lined up. The footers have been poured on block 9. The buildings and site plan were approved. There was a Certificate of Appropriateness issued about a year ago. The buildings and site were taken into consideration as part of that connection. Architecturally, she felt that the buildings blend in. If they don't get the 5' setback, it would not work and would have a jagged appearance. So the Architectural Review Board has implied by their approval that the setback works for them. The applicant asks that the Commission approve the 5' setback.
- Other than that they are trying to make use of the PD-SC which is intended for small acreage. It will not have a residential component. It will be managed and there is a cooperative agreement for the whole corner of the CVS and the Seminole Commons buildings to flow as their own shopping center with the other buildings. This designation will allow them to have a blanket parking rate. In other words it so much gross square footage, which is very critical; so when uses change there is no need to go out and count and assign a space. This is what most planned districts have moved to. It has pedestrian sidewalks that connect to block C. It has an upper level that will be at the elevation of the parking lot of block C and a lower level that will be at the level of the parking lot of CVS. It was even envisioned when CVS was approved for pedestrian sidewalks that connect the area for good pedestrian flow. The zoning change since they have proffered out specific uses that generate more traffic is a better plan for the future.

Mr. Strucko asked if there were any questions.

Ms. Porterfield noted a couple of signs were needed.

Ms. Higgins noted that what is happening is illegal but there is no police enforcement. That could be put into place by the board. Regarding the signage, there is a bond being held by the county. VDOT is the overseer of that and they could require the road to be built or temporarily close the crossover because the entrance it is serving is a dead end. Unfortunately the pavement is not owned by VDOT. The curb and gutter is not owned until it is taken into the state system. From her experience if there was an issue like this, that developer and that benefactor of that crossover would have to step up to the plate. For another developer to enter their property and punch holes in their pavement or modify their curb and gutter would create problems. It is not the property of her clients, Dr. and Mrs. Valente. Their hands are tied because they would have to take responsibility at the road acceptance for any damage. That gets into another issue. They don't like the turning movements either. This is not a long-term problem because the people in block 9 can go around the roundabout and enter CVS through Timberwood. It would relieve the pressure from that crossover and the illegal turns.

Ms. Porterfield noted that her problem is the words "in the long term." She asked staff if they can provide the signage.

Ms. Echols replied that staff can look into the signage. Because the road is privately owned right now, even though it probably has been dedicated, it is in an odd situation. But staff can look into the signage.

Ms. Porterfield asked what about putting bollards in the center to close it off completely for the time being. She asked if they could get one or the other.

Ms. Echols replied that she was not sure.

Mr. Benish noted that staff could look at the options available. He could not tell the Planning Commission specifically what mechanisms can be used given the circumstances.

Ms. Porterfield voiced concern with approving this application knowing there is a very dangerous traffic pattern existing right now.

Mr. Strucko pointed out that he did not think that this application would change that one way or the other. If this application was to go through and there were buildings, there would be no access from Timberwood Boulevard onto their parcels. So it is not going to alleviate or acerbate the traffic pattern because they have no control over that.

Ms. Higgins said that in the Hollymead Town Center area C there was a proffer in the final draft for Timbrwood Drive from the Route 29 intersection to Airport Road to be taken into the state system before any CO's in area C could be issued. Therefore she thought between this and the intermediacy of the hotel that something is going to happen. VDOT has the authority to request this because it was not shown on the road plans if the county pursued it.

Mr. Strucko invited public comment. There being none, the public hearing was closed and the matter was before the Planning Commission. He asked staff what recourse they have to fix this problem.

Mr. Benish said that VDOT does not control the property. Since this is a new issue, he asked the Commission to give staff time to review the proffers to see what kind of enforcement mechanisms are there and what kind of options are available. He felt that staff could find a way to address the issue.

Ms. Porterfield agreed that they would not have more people accessing the property in today's application because there is no opening to Timberwood, but there will be more traffic going west because they have

to go farther to access that property. So that traffic could get slammed into by the people going the wrong direction. She would feel good if staff could solve the problem.

Mr. Morris said that the Commission has to ask staff to look at this very seriously and take action on what they find. But they can't hold the current applicant hostage on this. He asked Mr. Graham to address the issue.

Mark Graham said as the Director of Community Development he wanted to make sure everybody understood that this is not a new issue for staff. The County Engineer and others have been looking at this for quite some time. The road does have a performance bond on it. It is a public right-of-way. They need the road accepted by VDOT. VDOT ultimately decides what kind of signage, closing of the crossover or whatever will happen to be able to accept the road for state maintenance. Ultimately it is VDOT's decision. They are working with VDOT to come up with a decision that works for everybody for the public safety. The issue is still out there and is on everybody's radar.

Motion: Mr. Morris moved and Mr. Edgerton seconded for approval of ZMA-2007-00002 Hollymead Town Center (TIKA) with conditions/proffers. (See Attachment H of Staff Report – Proffer Statement)

Ms. Porterfield asked to put it on record that the Commission asked staff to see what they can do about the traffic issue, and that they and staff all recognize that there is a traffic issue.

Mr. Strucko replied that he thought that was agreeable and asked that the record show that.

Ms. Porterfield noted that issue ought to be front and center on this particular motion.

The motion passed by 4:0.

Mr. Strucko said that ZMA-2007-00002 Hollymead Town Center (TIKA) would go before the Board of Supervisors on December 9, 2009 with a recommendation for approval.

Motion: Ms. Porterfield moved and Mr. Edgerton seconded for approval of the waiver request to Chapter 18, Section 2.7 (a) to allow the front setback of 5 feet for the building fronting on Timberwood Boulevard.

The motion passed by a vote of 4:0.

Mr. Strucko noted that the waiver was approved.

Other Matters Not Listed on the Agenda from the Public

Mr. Strucko noted that he had skipped an item. At this time he asked if there was anyone present to speak on other matters not listed on the agenda. There being no one, the meeting moved to the next item.

Public Hearings

CPA-2008-00003 Village of Rivanna Master Plan

Amend the Land Use Plan section of the Albemarle County Comprehensive Plan by replacing the existing profile of the Village of Rivanna with the Village of Rivanna Master Plan, which establishes new policies, guidelines, recommendations, goals and strategies for future development within the master plan area. The master plan would establish the following for the master plan area: a vision for the area, which would be a distinct small community surrounded by rural Albemarle, and guiding principles; a description of existing conditions pertaining to natural, scenic and historic assets, demographics, land uses, community facilities and the transportation network; a framework for future land use, transportation, and parks and green systems; and a plan for implementing the master plan, including a list of implementation projects. The master plan would provide that residential uses will be the most prominent use in the plan area with a mix of housing types. The master plan proposes to retain the density, design and character of existing

residential neighborhoods in the plan area as the area further develops. The existing golf course and recreational facilities within Glenmore and a new Village Center will be the two major focal points for the plan area. Density would diminish as the distance increases from the Village Center, with the lowest densities at the edges of the plan area. A copy of the full text of the Village of Rivanna Master Plan is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, 401 McIntire Road, Charlottesville, Virginia. (Elaine Echols)

Ms. Echols presented a PowerPoint presentation and summarized the key points of the proposed Master Plan. (Attachment – PowerPoint presentation)

This is the public hearing for the Village of Rivanna Master Plan. The work began on this Master Plan began in October, 2007. The Planning Commission held the following meetings:

- October 16, 2007
- June 17, 2008
- September 23, 2008
- March 17, 2009
- September 8, 2009
- October 13, 2009

The last work session was held on October 13, 2009 where the Commission gave staff direction on some changes that needed to be made. There were also a number of community meetings and a stakeholder's group. There has been a lot of public participation in the development of this Master Plan.

The executive summary outlines the changes from last time. The key points for this Master Plan are:

- Retain existing neighborhood character
- New development only after transportation improvements are made and if sewer capacity exists
- Density closest to center
- On east side of Carroll Creek – very low density

At the last meeting, the Planning Commission decided that they did not want to recommend any additional development until the transportation needs on Route 250 East have been constructed. These improvements as recommended in the plan are as follows:

- Six lanes from Free Bridge east to I-64
- Four lanes from I-64 to Milton Road (Rt. 729) or Glenmore Way
- Bridge improvement or replacement over RR at Louisa Road (Rt. 22)
- Four lanes from Black Cat Rd. (Rt. 616) to County Line
- Eastbound left turn and westbound right turn lanes on Rt. 250 at Black Cat Rd (616)

From the Commission's perspective, any additional traffic on Route 250 from new development made the situation worse. Therefore, the Commission's recommendation was that all of these improvements take place which are listed in the plan.

To date staff has received comments from several Planning Commissioners on minor edits and map clarifications. Staff needs to clarify Service Standards for Fire/Rescue and Police. The Community Facilities' Plan recommends that the urban level of service be applied in all of the development areas and that will be changed in the final version of the Master Plan. That was the Commission's recommendation from the last meeting that did not show up correctly in this particular addition. It is the Community Facilities Plan standard that will be copied into this plan so that it is very clear that is the expectation for the development areas and the Village of Rivanna in particular.

Staff recommends that the Commission make comments and refer this matter to the Board of Supervisors with a recommendation for approval with staff edits.

Mr. Strucko invited questions for staff. There being none, he opened the public hearing and invited public comment.

William Orr, resident of Shadwell and a member of the VOR Stakeholder's Committee, said that he owned about 20 acres that was almost across the road from Glenmore.

- His property was located in the section between Route 250 and I-64. That land was zoned into lots in 1948 as part of the Royal Acres Subdivision long before Glenmore was a residential area. He thought when the issue came up of forming a Village of Rivanna that it would be a true village and take in the people that lived around where the center would be and not just those on the south side of 250 representing essentially one developer. He had asked several times for his property to be considered to be included in the Village or Rivanna. About ten years ago, he asked one of the Supervisors how he could be included and he said to just ask. But despite that his land had been left out. He felt that area between Route 250 and I-64 that has been in lots for so long should be included in the Village of Rivanna.
- Since beginning the Glenmore Community, the developers of Glenmore have bought three farms and added those to the Glenmore holdings, which has been included in the Village of Rivanna. His property is located much closer than those farms are and is even in walking distance to where the Village Center would be. He would ask that consideration be made to adjust the boundaries to include at least the area that has been lots for such a long time on the north side of Route 250. There is going to be a stop light at the Glenmore Way entrance which would allow those who live on the north side easy access to Rivanna Village. He felt that it was not a village but a development for one holder essentially. A true village should have more landowners involved than the way this is set up

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

Mr. Morris said in response to Mr. Orr, he sympathized with him and had heard him the three times he has mentioned inclusion in the Village of Rivanna. However, it seems that what they are being asked to do is to put rural area into development area and the Commission does not have that authority. Personally he was not in favor of it.

Mr. Strucko agreed that he was not in favor of expanding the designated growth area.

Mr. Edgerton said that he was in total agreement of not expanding the growth area to include Mr. Orr's land.

Ms. Porterfield said that at this stage she felt that this master plan is in very good shape and would give Ms. Echols a lot of credit. She commended the consultant who really did go out and listen. She felt that both staff and the consultant have really listened to the community. At this stage she felt the Commission should move the master plan on to see what will happen with it. Once it is adopted the master plan will be reviewed on a regular basis, giving Dr. Orr an opportunity to revisit his request.

Motion: Ms. Porterfield moved and Mr. Morris seconded recommendation of CPA-2008-00003 Village of Rivanna Master Plan to the Board of Supervisors.

Mr. Strucko noted that this was an exciting moment because the Planning Commission has worked on this master plan for years. This is the second master plan of this scale that he had worked on. The last master plan he worked on was Crozet. Each community likes to think that they hold a unique feature or aspect. The Village of Rivanna has very unique features that are very different from Crozet. But there is a lot of consistency in the issues that they tackle. Concurrency of infrastructure is a theme that is getting more prominent in the county's growth management and planning efforts. There is a lot of concern about capacity of roads, sewer, schools and water. As a community, they have made a commitment that they want to do good planning, develop the growth areas and engage in rural area protection and preservation. But they want to do it in a way that it does not impose burdens, such as crowded roads,

crowded schools that threaten education or insufficient water and sewer. He thought that those themes are really represented in this document. He thanked everyone for their time and effort.

The motion passed by a vote of 4:0.

Mr. Strucko noted that CPA-2008-00003 Village of Rivanna Master Plan will go to the Board of Supervisors with a unanimous recommendation for approval at a date to be determined.

ZTA-2009-00001 Wind Turbines

Amend Secs. 3.1, Definitions, 10.2.1, By right, 11.3.1, By right uses, 12.2.1, By right, 13.2.1, By right, 14.2.1, By right, 15.2.1, By right, 16.2.1, By right, 17.2.1, By right, 18.2.1, By right, 19.3.1, By right, 20.3.1, By right, 20A.6, Permitted uses, 20B.2, Permitted uses, 22.2.1, By right, 23.2.1, By right, 24.2.1, By right, 27.2.1, By right, 28.2.1, By right, and add Sec. 5.1.46, Small wind turbines, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would add small wind turbines as a by right use in all zoning districts and standardize the introduction of each of those sections (Secs. 10.2.1 through 28.2.1 listed above), would amend Sec. 3.1 to add definitions of "small wind turbines" and associated terms and "historic areas," and would add Sec. 5.1.46 to establish substantive and procedural requirements to establish and use small wind turbines. 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. (Mark Graham)

Mr. Graham presented a PowerPoint presentation and summarized the executive summary.

This is a public hearing to provide a recommendation to the Board of Supervisors on the zoning text amendment with respect to wind turbines.

In February 2008, the Board of Supervisors reviewed Community Development's annual work program and directed staff to include consideration of an amendment to the Zoning Ordinance that would allow wind turbines. In May 2008, staff presented the Planning Commission an overview of the subject to solicit direction. This was followed by four additional worksessions, including a combined Board/Planning Commission worksession in May 2009. Following that May 2009 worksession, a Board member, David Slutzky, and two Planning Commission members, Marcia Joseph and Bill Edgerton, agreed to help staff prepare a draft concept. On October 6, 2009, the Planning Commission reviewed this draft concept, approved a resolution of intent to amend the Zoning Ordinance in support of this concept, and directed staff to proceed to public hearing. This is provided in the staff report in Attachment A.

Staff has prepared an ordinance amendment for public hearing that reflects the reviewed concept. (See Staff Report Attachment B) The purpose of tonight's meeting is to provide a public hearing where comment can be received on the proposed ordinance amendment before the Planning Commission forwards a recommendation to the Board. Anticipating a Planning Commission recommendation, a Board public hearing has been tentatively scheduled for December 9, 2009.

Staff believes the ordinance amendment in Attachment B accurately represents the Planning Commission's direction. The ordinance concept laid out today for a small wind turbine is a two-tier concept very similar to the concept used for cell towers or personal wireless facilities.

Staff considers the following to be the important elements of this proposal:

- A simplified administrative process that eliminates the need for a Special Use Permit. It was recognized that a modification of Supplemental Regulations would provide an opportunity for public vetting of any issues associated with modifying the standards without the need for the complex and expensive process required for a Special Use Permit.
- Allowing small wind turbines in the Development Areas and Entrance Corridors as part of a Tier 1 use. It allows approval by the agent. It was recognized that the proposed setback requirements result in a much greater restriction on wind turbines than it would for other structures. This assures there is no increased impact on adjoining properties.

- Tier II requires the Planning Commission approval with a waiver or modification of those Tier I conditions under the supplemental regulations. With Tier II, there are notices that are sent to the abutting property owners in advance of the Planning Commission considerations. As part of their consideration, the Planning Commission can set reasonable conditions with the application.
- Restricting the use of wind turbines within the county recognized Historic Districts and Mountain Overlay as defined in the ordinance. By placing this requirement in the Supplemental Regulations, this assures wind turbines in those areas would be allowed only if a waiver of the Supplemental Regulations is granted by the Planning Commission. The Planning Commission after consideration could decide whether to allow a wind turbine within one of the historic districts or the ridge areas and set reasonable conditions associated with that. These could also include reducing building heights or setbacks, lighting of the structure, or co-location of the personal wireless antenna with that facility.
- It is an accessory use to the use on the property whether that is a residence, business or barn. It is not a stand-alone use. The structure must meet the building height allowed in the district. The setback must meet the height of the structure plus 20'. It does allow for administrative modification of that setback where there is an agreement with the adjacent property owner. In addition the definition of fall zone has been added. There shall be no lighting on the structure. There shall be no co-location of a personal wireless antenna. If a wind turbine goes into disuse, it must be disassembled and removed within 90 days of that time.
- Additional changes include adding a definition of "fall zone" to be used with the setback requirement under Section 5.1.46 b.3 on page 39 of the packet. Including this definition helps define what that means for staff interpretation.

Staff recommends the adoption of ZTA-2009-0001 Wind Turbines as presented in Attachment B with the addition of the fall zone definition.

Mr. Strucko invited questions from the Commission. There being no questions at this time he opened the public hearing and invited public comment.

Kathy Rash represented Forever Albemarle, a group from the White Hall District in favor of wind turbines in our area. They have been having local meetings with farmers and others in the area. They think they should look at wind turbines in the county to help in the farming areas and the residents around farms. They are thrilled that this is being considered and thank the staff and the PC for their efforts.

Jeff Werner, with the Piedmont Environmental Council, agreed with Ms. Rash that it is good to move forward on this issue. Overall the way it is broken down is the way they wanted to see it when they talked about the Entrance Corridors being Tier I or II. He was most concerned about historic districts and ridge tops which has been taken care of, but hoped that they don't see wind turbines on monopoles. The visibility issue is going to be there. Everyone in Albemarle County has worked hard to protect the view shed, and he did not want to give up on that with the wind turbines but still encourage them. He supported that when an issue comes up regarding a wind turbine that they aesthetically look at the pros and cons. He supported looking at possibly requiring Tier II for the Entrance Corridor in areas such as Route 250 west. He asked for some clarification on whether a public hearing is conducted by the Planning Commission or if it is just something that they see.

Morgan Butler, representative for the Southern Environmental Law Center, asked to add his voice in applauding the county for promoting renewable energy. It is important for the county to facilitate the use of wind turbines, but at the same time it is important that they balance this important use with other scenic and environmental values that the county has long promoted. In the context of this ordinance when they are talking about balance, they are not talking about when something is permitted or when something is prohibited. They are simply talking about when something has a potential impact and generates an additional level of review other than at staff level. He raised the following three points.

1. The question of whether or not a public hearing is involved as part of the Tier II is an important one. He liked that this ordinance requires notifying the adjacent landowners. But the notice could

be meaningless if the owners don't have a chance to come before the Planning Commission to discuss their concerns and help influence the conditions the Commission may decide on a particular turbine.

2. The question on whether to require a special use permit for wind turbines in the Entrance Corridor is a tricky one. He could see merits to both approaches as they have gone to great lengths to try to protect our Entrance Corridors but at the same time to try to promote wind turbines. He questioned whether there was some kind of middle ground. At the last meeting, Mr. Kamptner said that wind turbines could potentially be considered as one of these county-wide Certificates of Appropriateness discussed earlier tonight. He questioned if there was a way to limit it to just those entrance corridors that have more of that scenic value as suggested by Mr. Werner. He felt that is an important consideration.
3. It looks like anything said to limit the overall number of wind turbines on a parcel has been dropped. It simply says that they provide energy for the primary use on the parcel. If there was an excessive use on the parcel, they could have any number of wind turbines on the parcel. He did not necessarily think that is a bad thing, but it may indeed be one of those situations that might need an additional level of review. If they get to the third wind turbine on that parcel, then perhaps it would kick it into another level or a Tier II review.

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

Ms. Porterfield noted concerns with the view-shed issues because she hears about it due to Monticello being located in her district. She wondered if there should be some kind of additional review if the wind turbine was in the view shed. She was concerned with a blanket by-right in the Entrance Corridor since it may negate many of the other things the county has tried to achieve in those areas. If they are going to do by-right in the Entrance Corridors, she suggested that they select only two different uses for Tier I--single family residential since that is not subject to ARB review and main and accessory residential forestall and agricultural buildings. Other uses she felt should be reviewed as Tier II. Additionally and from the beginning of these discussions, she had been concerned about not putting a limit on the number of wind turbines that could be placed on a parcel without at least requiring a Tier II review.

Mr. Morris thanked Mr. Graham because this has come a long way. He saw with great joy on the news today one community in the Midwest that is totally powered by wind and no more fossil fuel. That is not what we are looking at, but it is a start. He commended staff and supported the application.

Mr. Edgerton said that he was enthusiastic about this approach. He thanked Mr. Graham for figuring out a reasonable approach to start this process. He did not think that issues mentioned are going to become problems in the near future because of the cost of wind turbines and the economic viability. His interest initially is leaving the door open to encouraging people when the value is there to employ wind energy. If problems arise, the ordinance could be tightened up. This ZTA as proposed will allow the testing of whether wind power makes sense in Albemarle County and will encourage people to think of sustainable energy. A wind turbine investment of \$25,000 to \$30,000 is significant.

Motion: Mr. Edgerton moved and Mr. Morris seconded to recommend approval of ZTA-2009-00001 Wind Turbines in accordance with Attachment B including the definition of fall zone.

Ms. Porterfield wondered if there was any support for making a few minor changes.

Mr. Graham noted that they need to recognize when a Certificate of Appropriateness is required or not. If there is a site plan required, there is a Certificate of Appropriateness required. The single-family house and farming use is not covered with that Certificate of Appropriateness. If it was a site plan and there was a commercial building, the wind turbine would be expected to be shown with that site plan; and therefore it falls with the Certificate of Appropriateness which the Architectural Review Board will review. He asked Mr. Kamptner if he was correct.

Mr. Kamptner noted that it would if the prerequisite for that triggers their oversight exists. But the Entrance Corridor Overlay District also exists as a territory and something apart from ARB review.

Ms. Porterfield asked if the site has been approved, the building completed, there is no site plan under consideration and the owner is only adding the wind turbines to the top of the roof, would the wind turbine(s) be looked at.

Mr. Graham said that this would be no different than if they came in to exchange out the air conditioning units on the building and they need new parapets around the air conditioning unit. There is an ARB review with that.

Mr. Kamptner said that what has been suggested is including not only ridge areas and historic areas but the physical areas that are comprised of the Entrance Corridors as being those areas that should be subject to Tier II. Not necessarily ARB review, but simply having the small wind turbines in those territories should be Tier II instead of Tier I.

Mr. Edgerton said that sounds like a reasonable approach except for the fact that as staff has explained that will add substantially to the cost of this and in so doing will discourage the implementation of this technology. Therefore, he had a problem with that.

Ms. Porterfield noted that she was suggesting that any single-family home or farm use would not fall under Tier II and would be exempted if in the Entrance Corridor. It would be the other types of uses such as commercial that are probably the most prominent in the Entrance Corridors that would be considered as Tier II.

Mr. Edgerton noted that he deferred to the majority of the Commission, but personally would like to leave the motion as it stays.

Mr. Kamptner said that if the requirements were as Ms. Porterfield suggested then essentially in most or if not all cases those facilities would be subject to ARB review anyway because they would be serving commercial uses so there would be review under the ARB.

Ms. Porterfield clarified that in those cases the wind turbines would automatically be reviewed even though the ordinance would allow the turbines by right in the Entrance Corridor.

Mr. Kamptner said that within the Entrance Corridor if they exclude residential uses, agriculture and forestal related structures, then this would be an accessory structure to a commercial use. Therefore if visible and within the Entrance Corridor, the wind turbine would be subject to ARB review. In addition, if they wanted any kind of waiver from any of the small wind turbine Tier I standards, it would require coming to the Planning Commission.

Mr. Porterfield asked if they need to rewrite the ordinance to indicate the exclusions.

Mr. Kamptner replied that is the way it is written now.

Mr. Graham noted that in the cases of a Tier I facility with a commercial building in the Entrance Corridor, the ARB would have to approve it. This is already implied.

Mr. Strucko asked if the process for reviewing the Tier II by the Planning Commission would involve a public hearing.

Mr. Kamptner replied that as the Commission does with almost everything that comes before them, they invite public comment. It is not the mandatory public hearing that is held for zoning map and zoning text amendments, Comp Plan amendments and special use permits. But it would be akin to the Tier II Wireless considerations, waiver considerations, site plans and subdivision plats where public comment is always permitted.

Ms. Porterfield asked if there is any support for a limit on the number of Tier I wind turbines before an application must be made for Tier II on a piece of property.

Mr. Edgerton and Mr. Morris did not support it.

Mr. Kamptner asked if the Commission wants to include the definition of the fall zone that staff recommends which is included in the Wireless regulations.

Mr. Edgerton replied that was the intent of the motion.

The motion passed by a vote of 4:0.

Mr. Strucko personally thanked Ms. Joseph and Mr. Edgerton who were really instrumental in getting this ordinance to the point where they are today. He also thanked Mr. Graham and his staff for their hard work. He noted that ZTA-2009-00001 Wind Turbines would go before the Board of Supervisors on December 9, 2009 with a recommendation for approval.

Old Business:

Mr. Strucko asked if there was any old business. There being none the meeting moved to the next item.

New Business:

Mr. Strucko asked if there was any new business.

- There will be no meeting on November 24, 2009.

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

Adjournment:

With no further items, the meeting adjourned at 7:15 p.m. to the December 1, 2009 meeting at 6:00 p.m. at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

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

