

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, and joint meetings of the Albemarle County Planning Commission (Commission) and Architectural Review Board (ARB) were held on May 21, 2008 at 1:30 p.m. in Room 241, County Office Building, McIntire Road, Charlottesville, Virginia. The Board of Supervisors meeting was adjourned from May 14, 2008. (**Note:** Although the meeting was adjourned to 12:00 noon, the meeting did not convene until 1:30 p.m.)

PRESENT: Mr. Kenneth C. Boyd, Mr. Lindsay G. Dorrier, Jr., Ms. Ann H. Mallek, Mr. Dennis S. Rooker, Mr. David Slutzky and Ms. Sally H. Thomas.

ABSENT: None.

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COMMISSION MEMBERS PRESENT: Mr. Jon Cannon, Mr. Bill Edgerton, Ms. Marcia Joseph, Mr. Tom Loach, Mr. Cal Morris and Ms. Linda Porterfield.

ABSENT: Ms. Julia Monteith (UVA non-voting member) and Mr. Eric Strucko.

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ARB MEMBERS PRESENT: Mr. Bill Daggett, Ms. Candace M.P. Smith and Mr. Paul M. Wright.

ABSENT: Mr. Fred Missel and Mr. Charles T. Lebo.

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OTHER STAFF PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry W. Davis, Deputy County Attorney, Greg Kamptner, Director of Community Development, Mark Graham, Director of Planning, V. Wayne Cilimberg, Design Planner, Margaret Maliszewski, Environmental Manager, Sarah Temple, Senior Deputy Clerk, Meagan Hoy, Clerk to the Planning Commission, Sharon Taylor.

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Agenda Item No. 1. Call to Order and Establish Quorum.

At 1:30 p.m., Mr. Boyd, Chairman, called the meeting of the Board of Supervisors to order.

At 1:30 p.m., Mr. Morris, Chairman, called the meeting of the Planning Commission to order.

At 1:30 p.m., Mr. Wright, Chairman, called the meeting of the Architectural Review Board to order.

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Agenda Item No. 2. Presentation on Local Sustainability Initiatives – **Sarah Temple**

Ms. Temple introduced Ms. Kristel Riddervold, an Environmental Administrator for the City of Charlottesville. She also introduced Ms. Connie Warnock, the University Architect, attending for Julie Monteith. Ms. Temple introduced the topics of discussion: built environment, transportation, natural systems, conservation, education and communication, environmental management systems, and climate protection. As part of built environment, the focus is on Green Building initiatives such as the green roof and LEED certification. The County's first plan for LEED certification is the Crozet Library. In addition, there are two LEED registered projects this summer for the schools, one is an addition on Albemarle High School and the other is an addition on Brownsville Elementary School. She then narrated a Power Point presentation that included images of a green roof over part of the new roof of Albemarle High School. She noted that in addition to that there will be green screens added to the addition on the outside of the building to block glare and solar heat gain in the building. The screens are described as like a wire mesh to enable growing plants, a type of three-dimensional trellis, and due to the placement they should help the building save energy. The green roof on the County Office Building at McIntire will be three years old this summer. Temperature measurements from gauges atop the green roof are as much as 38 degrees cooler than the adjacent conventional roofs on hot summer days and as much as 25 degrees warmer in the winter. Measurements also indicate that the roof is retaining up to a quarter inch of rain, indicating that with a rainstorm of a quarter inch of rain or less essentially results in no runoff from that part of the roof.

Ms. Warnock noted that in January 2007 the Board of Visitors mandated that all new capital projects go LEED, and now there are nine projects that are in the process of being LEED-certified. There are four at the College at Wise, including an anticipated Platinum-rated project. She announced that every other project from now on will have the goal of LEED certification as part of its initial planning. A few green roofs are underway currently, as the County's green roof appears to be doing well. There also are a number of initiatives involving the utilities infrastructure and resource conservation in the built-in environment.

Ms. Riddervold said there is one LEED-certified building for the transit station, certified as LEED Gold in March, relating to energy efficiency, water conservation, and where the materials were procured from or manufactured. Also in progress is a bus maintenance and administration complex on Avon Street that is registered as a LEED project and the goal is also for Gold certification on that project. Anyone interested in viewing a green roof under construction, one is being planted at City Hall and the Police Annex, and you can view the site from the top level of the Market Street parking garage. The green roof comprises approximately 10,000 square feet and has approximately 80,000 seed implants that are going in.

Ms. Temple provided an update on the Regional Transit Authority. She noted that during a joint work session on February 11, 2008 to discuss a Regional Transit Authority, the City, the County, and the Metropolitan Planning Organization agreed to move forward with planning for the provision of a regional system of transit for the Charlottesville and Albemarle area. The next step is to seek enabling legislation in the 2009 Virginia General Assembly.

She announced that pretty good strides have been made to green the fleets, noting that in addition to the six or seven hybrid vehicles in the County fleet, the Monticello Fire Station has successfully been using a 20 percent blend of bio-diesel in all of their fire engines for over one year. The new Hollymead Fire Station is interested in switching to bio-diesel as well, as soon as it is feasible. It is further anticipated that the School Division is planning to switch to bio-diesel in the Fall, which would result in over 215 buses running on bio-diesel.

Ms. Warnock said that UVA has a full-time Transportation Demand Manager working for the Department of Parking Transportation, and a lot of investigation has been made to see how much public transit is being used, who is commuting from where, and how much that is costing them and how much it is costing the commuters. A number of initiatives have sprung out of that endeavor. Some bus planning maps have been created, as well as walking and bicycle planning maps. A Bicycle Master Plan has been developed, with guidelines that are included in all the capital projects, including reference to bicycle racks, showers, etc. They have a new initiative entitled "HOOS," which is a real time geographic positioning system that shows where the buses are. This will enable someone, such as a student, to check the bus locations on a computer to determine when the next bus is available at a bus stop, where the buses are located, and the interval time. The bus location information can then be downloaded onto a Palm device, or can be retrieved via telephone. Another initiative is a commute calculator, which is proposed to be placed on the UVA website, to calculate how many miles are traveled per week, and then figure out the cost of travel depending on the cost of gas. Ms. Warnock said that has spurred a lot of interest in carpooling and ride sharing, which are becoming increasingly popular with the increasing price of gas.

Ms. Riddervold commented that the City has a number of activities involving what is termed, "greening the fleet" effort. The City bought its first hybrid in 2003, and now owns 21 hybrids. There have been strict directions for their Fleet Manager to review every vehicle request, which does not automatically mean approval of a vehicle request for the same type of vehicle being replaced. They started using bio-diesel in the Summer 2006. In the Spring most all of the City school buses transitioned to using bio-diesel. The goal is to continue to expand the bio-diesel product for use in all diesel fleet vehicles. Several school buses are dedicated compressed natural gas vehicles, which produce extremely low fuel emissions. In the Fall of this year, the City Manager approved a City-wide anti-idling policy for municipal fleet operations that takes into consideration bus issues, weather issues and emergency issues. There may be new State enabling legislation that allows for some restrictions on private bus idling which is not something that the localities have been able to enact in the past.

Ms. Temple said that in 2006, the County partnered with Energy Star in an effort to reduce its overall energy consumption. The County quickly formed an energy management team. The team decided to set a fairly aggressive goal of reducing internal energy consumption by 30 percent in five years. The County has been using the EPA Energy Star portfolio manager web-based tracking tool to track all consumption used and reduction efforts. The County has been able to measure a combined five percent reduction since the baseline year of 2005. That figure is a weighted average of all the buildings. However, they have done particularly well on this building with a shown 7.6 percent reduction, which is due to increased employee awareness. An official energy management policy has been implemented. She is currently in the process of training all of the departments regarding the new policy. Over 130 occupancy sensors have been installed. As this building qualifies for the Energy Star label, an application is being prepared. The overall reduction efforts can be estimated as the carbon dioxide equivalent of 44 cars removed from the roads for a year, filling 50 hot air balloons, and planting 66 acres of trees, which demonstrates the order of magnitude in savings. Internal recycling efforts have been increased and now include battery and cell phone recycling for employees. In 2007, schools and local government combined measured an effort of 18 tons of electronic waste recycled.

Ms. Warnock stated that UVA has an excellent recycling plan, diverting approximately 40 percent from the landfill. These materials mostly consist of paper, plastic and aluminum. There are also some specialty programs that recycle some of the odd things that come up on a college campus. UVA has a program called "Chuck It for Charity," which involves recycling items left by students who move out at the end of the year into programs that deliver the items to the people who can use them the most. UVA also has a "Sofa Swap" program, which allows individuals to drop off their old sofas and chairs, and other people in the community can come to the site and pick up the items, which keeps them from going into the Landfill. The LEED program has been illuminating in advising about recycling of construction materials. Currently, UVA is not recycling very much of the construction materials, limited to a little bit of wood, though efforts have begun to also recycle masonry and concrete. UVA's energy efficiency has improved based on square footage and population increases, due mostly to building automation systems, enhanced commissioning processes and rigorous monitoring of the building envelope and the mechanical systems. The human behavior component of the project program has not been so good; therefore, four new staff people are being hired, including conservation advocates who will be in charge of working with students, working with faculty and staff and working with building designers and planners to help achieve better energy savings targets.

Ms. Riddervold said that in the City, there has been a curbside recycling program for quite some time and there has been increased emphasis and increased demand for expanding the types of materials that are accepted. As of this year the plastics and cardboard and office papers have been added to the recycling program. The process has also changed to single-stream collection, whereas previously

multiple bins were required, now everything goes in one bin. The combined materials are then picked up by a single-stream recycling service. There has also been an expanded effort to work with apartments and multi-family homes to enable them to have some recycling opportunities, as the bins and curbside do not work quite as well in those situations. There has been increased emphasis or re-emphasis on recycling internal-to-City buildings, recreation centers and some other locations. Interestingly, with regard to the transit station, one of the credits achieved in obtaining the Green Building certification was related to construction waste and at that building 62 percent of what typically would have gone to the Landfill was diverted. This achievement is a result of paying attention to the goal of diverting construction waste and communicating some of these requirements to contractors.

Ms. Temple said that in December 2007, the County Board adopted the U.S. Cool Counties Climate Stabilization Declaration, which basically commits the County to reducing its greenhouse gas emissions by 80 percent by 2050. This past February, staff presented a stepwise plan to the Board for implementing that goal, which basically involves conducting a baseline inventory of the County's current greenhouse gas emissions. Secondly, setting an interim target or set of interim targets, and thirdly, developing a local action plan and working with the City and some other local entities to achieve the goal. Currently, the County's baseline inventory of greenhouse gas emissions is approximately 75 percent completed. The County, as well as the City, has established the year 2000 as a baseline, and is currently in the middle of this program. It is anticipated that by the end of October the baseline inventory will be completed, after which point a report will be prepared and presented to the Board.

Ms. Warnock commented that UVA has just completed a draft of its first baseline carbon inventory, and while no analysis has been completed, it has been discovered that unsurprisingly, almost all of the carbon comes from purchased energy, the energy created in plants on site and from transportation. Almost all of the other items that are typically folded into that are almost immeasurable, indicating definite targets are known. The goal is to start achieving reductions in that area.

Ms. Riddervold announced that Charlottesville became a signatory to the U.S. Mayor's Climate Protection Agreement in 2006. In 2007 a sustainability committee largely focusing on climate protection and broader sustainability issues was established. The City joined ICLEI, which is an international organization that promotes efforts at the local level and provides a lot of powerful tools. The City is using the same database as the County, and after incorporating the University's data, the result is a powerful way to deal with this issue because as with watershed issues, air shed and global climate change, the issues go way beyond political boundaries. The City finished its baseline and published a baseline report in March of this year. A 40-page document regarding emissions is posted on the City's website. Reference was made to a graph that shows 2000 as the baseline, showing approximately 868,000 tons of carbon dioxide from Charlottesville as a community, including the University, which is approximately 20 tons per capita, or five hot air balloons. The graph, using projections provided by the Department of Energy, demonstrates the difference between making no change and resulting in a significant increase on average across the nation, compared to a downward trend reflecting a ten percent reduction from the current perspective. She noted that the graph emphasizes that the longer the wait to do anything, the bigger the gap to the projected goals. The approach toward achieving the goals is through adaptation and mitigation simultaneously. She noted the graphs including pie charts that demonstrate the sectors of the community that are players in this game, including commercial, residential, business, industrial, municipal and transportation.

Ms. Temple indicated the County will be using the same software, which will be used to produce similar graphs, which are projected to be available in the fall. Focusing on natural resources conservation, there are two large stormwater management projects currently underway. The downtown Crozet stormwater management system is in the planning stage, which will basically be treating a 50-plus acre watershed and will be creating a wetlands type area that will be treating the runoff, which will basically improve the quality of the water flowing to Powell's Creek. It is anticipated that some walking paths will be added, and some trees will be planted to help with the stream buffers. There is another large project that is more of a City and urban stream restoration project, the Woodbrook Lagoons Project, which will be treating 225 acres of runoff, again utilizing a wetlands type area. This basically involves converting an old waste water treatment lagoon into a constructed wetlands area. One of the reasons a wetlands area was selected is because it provides a natural way to treat storm water runoff. It both stores the runoff and then some of these pollutants can bind to the sediment, which are then taken up by the plants. The pollutants bonded to the sediment will settle out of the bottom and also provide a good habitat.

Ms. Warnock reported that UVA recently completed a master plan that has a five, ten, and twenty year horizon for physical planning. In addition to some of the studies they have already done based on utilities, land formation, topography, and other factors, they have also done a bio-diversity analysis which yielded results that indicate optimal areas on which to build, which areas need conservation initiatives, and which areas contain sensitive species or sensitive plantings. The knowledge gained points to a good direction now about which activities can be performed and which areas cannot be developed, and an assessment of where the resources are located. A similar approach is underway involving stormwater management to avoid having to filter it mechanically, or maintain it in big holding tanks or detention basins. Every parking lot now is being built with swales. A lot of passive groundwater management and conditioning is being conducted to avoid having big tanks and big unsightly lakes at the University. UVA is also trying to bring these features to the surface so that they become amenities as well.

Ms. Riddervold commented that the City achieved Tree City U.S.A. designation in 2007, which has yielded not only a pretty plaque but also acknowledges the emphasis that the City has placed on urban tree canopy and the role that trees play in both stormwater management, heat island affect, and climate protection. Results from a University class indicate approximately 32 percent urban tree canopy cover in the City, and the American Forests encourage 40 percent in an urban setting. The City now has a

point of reference and a goal to work towards, which was incorporated in the most recent 2007 Comp Plan. Significant stream corridor mapping has been conducted, which is something the County had done earlier in the 2000's. The City now also has funding approved, \$3.2 million from the Virginia Aquatic Resources Trust Fund, to do a mile and a half major natural design restoration of Meadow Creek behind Seminole Square and through Greenbriar Park. This will be a very visible, extremely exciting urban stream restoration. There is a major interceptor that Rivanna Water and Sewer Authority owns that runs parallel, and the resulting infrastructure upgrades will occur concurrent to natural system restoration. The City has received direction and support from City Council to proceed with the development and implementation of a water resources protection program, which in addition to addressing stormwater, also includes pipes, drainage, and environmental restoration and protection.

Ms. Temple next provided an update on the Stream Buffer Restoration Initiative which includes a cost share program the County is offering to help assist residents with funding, plantings, and trees in their stream buffers. She announced that Tamara Ambler assisted her in compiling some of this information. As of May 15<sup>th</sup> there are 21 participants in total, which is calculated to enhance over 20 acres of stream buffer. The program has allocated roughly \$45,000 with about \$80,000 still available for additional projects. Of the 21 participants, six have already completed their projects, which equates to roughly six acres. The remaining participants anticipate completing their projects in the fall of 2008. This was made available through a grant from DCR, which is expected to expire in April of 2009.

Ms. Temple then directed attention to some of the education initiatives, and some of the joint organizations involving the City, the County and UVA. One educational initiative involves the Rivanna Regional Stormwater Education Partnership, "RRSWEP," basically a collaborative effort among the local entities that hold fixed storm water permits. It involves the City, the County, UVA, the Rivanna Authorities, and the County schools with the goal being to streamline the community message about reducing stormwater pollution and generally educating the public on related initiatives. There are two large initiatives, one involving educating the vehicle and automotive repair industry on things that they can do in their daily activities and operations to reduce stormwater pollution, such as placing a drip pan under cars undergoing repair so that motor oil does not enter the storm drains. She provided examples of three ads placed in some local newspapers. One initiative is educating people on removing pet waste. Another involves educating people as to where it is best to wash a car, keeping in mind that runoff flows toward the River. A community workshop was held at the County Office Building, educating people how to build a rain garden, if they are interested. She added that the website has some good free materials for teachers for use in educating classes on stormwater pollution.

Ms. Warnock noted that, on the academic side, UVA has always had a very strong Environmental Sciences Program, and they are currently observing an absolute explosion of sustainability curriculum in all kinds of different schools; in the law school and in the business school. This deals not only with buildings, landscapes and planning issues, but also with the ethics and the economics of sustainability.

Ms. Riddervold said that, in conclusion, there is a mutual understanding regarding the need for public awareness and public education, making information available, and making these initiatives transparent. The City, County and UVA all have websites. These web pages will grow and probably have a lot more changing information on them than many other municipal or institutional web pages because these are dynamic programs. There is a general understanding that if the community is not even aware, it is very difficult to expect them to understand and appreciate the benefits.

Ms. Temple referred to a handout listing of websites of environmental-type for all three organizations. The City, the County and UVA are implementing what is known as an Environmental Management System which is basically a living, breathing system. It is not just a one-time project or program, but one that helps ensure that day-to-day operations and activities have as little impact on the environment as possible. She also pointed out the three EMS logos. These three organizations have a history of working together on a whole host of issues, and working together on an issue such as climate change may involve elevating that to a regional level, i.e., working with other cities and counties in the State.

Mr. Boyd said that he and Mr. Rooker saw a longer version of this presentation several months prior at a PACC meeting and were quite impressed with how the City, the County and the University collaborate and work together. They are doing a great job.

Mr. Rooker commented that everyone is interested in making this a green community. He was not aware of everything being done by the local governmental organizations to achieve that goal of being a green community, and it has really made him proud to be a citizen of this area.

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Agenda Item No. 3. Review of Roles and Responsibilities of each body - **Greg Kamptner**

Mr. Graham commented that the Board had a Development Review Task Force that came back with a series of recommendations in May of 2007. One of those recommendations included a joint meeting of the Board, the Planning Commission and the Architectural Review Board to consider the roles and expectations of those three bodies with emphasis on the extent of the review or the details of those reviews. He equates this to whether the three bodies and staff are working in sync. More work is achieved than if each body works independently and if they are not in sync they are not as effective. Coordination and the sequence for consideration by the parties on legislative reviews has been worked on by the ARB and the Commission, and from staff's perspective they have done an excellent job at resolving any of those outstanding issues. The presentation today will have four parts. First, Mr. Kamptner will provide an overview on the legal authority and the responsibilities for each body. Second,

Ms. Maliszewski will present an overview on the ARB processes. Mr. Graham indicated that thirdly, he will be providing a perspective on the ministerial review process, i.e., site plans and subdivisions. And fourth, Mr. Cilimberg will provide a perspective on the ordinance amendment processes.

Mr. Graham stated that staff believes that everyone is trying to do their best in representing the County's interests. There is a need to point out where it appears the joint efforts are out of sync, and any constructive criticism will be a starting point for discussion, to try to move this forward. Mr. Graham then turned the presentation over to Mr. Kamptner.

Mr. Kamptner said he was asked to speak about the roles of the County's public bodies. He noted that his presentation would speak to the powers and duties of the various bodies. He referred to a detailed outline that was provided to the bodies last week with the focus on legislative land use matters. Most of his presentation is a snapshot that identifies the problems identified by the Task Force approximately one year ago in their report to the Board on May 2<sup>nd</sup>. There were two main issues identified by the Task Force with respect to the coordination between the Board, the Commission and the ARB. The main problem identified was the coordination on legislative matters between the ARB and the Commission. The Task Force found that there was a need for clarity in the sequencing of the County's legislative review process to alleviate confusion for staff, applicants, the Commission and the Board. The Task Force identified a problem with the roles of the Commission and the ARB. They recommended that training and guidance be provided to both bodies so that they would understand their roles. The Task Force identified the need to clarify the ARB's advisory role on legislative matters. The Task Force also recommended that a flowchart be developed by staff that would guide staff and the applicants on the process. The other issue was to clarify the extent of review by the Commission and ARB prior to review of the application by the Board. Around 2000, the Commission developed a list of information they thought to be appropriate for submission with primarily rezoning applications. He noted that currently the Zoning regulations do not delineate what those requirements are. They were adopted by the Commission and presented to the Board of Supervisors. It has been the practice since that time that that is what is expected for a legislative action that proceeds before the County.

Mr. Kamptner then referred to the duties and roles of the various bodies. He noted the first slide that looks at legislative matters that come before County bodies. There are comprehensive plan amendments, zoning text amendments, zoning map amendments, and special use permits. The Board has final approval or disapproval authority on all legislative matters. He noted there is one exception for special use permits that may be delegated to the Board of Zoning Appeals. The Commission is advisory to the Board on all of these matters, so when the Commission takes an action on a rezoning or on a text amendment, they are merely making a recommendation to the Board on a particular action. The ARB has enabling regulations that gives them advisory authority on all matters that are within the Entrance Corridor Overlay District. The other types of land use matters that can proceed through the County are variances, site plans, subdivision plats and certificates of appropriateness. Variances are within the purview of the Board of Zoning Appeals. With regard to site plans and subdivision plats, some of them may be approved by the site plan or subdivision agents so they may be subject to administrative approval but if they do go to the Commission, the Commission has authority to approve or disapprove unless appealed to the Board. Again, with the site plans and subdivision plats the ARB is advisory on all issues within the Overlay District. Finally there is another class of land use matters with waivers and modifications of the Zoning Ordinance, Subdivision Ordinances and private street requests, of which some of these may be approved administratively. If they do go to the Commission, the Commission's authority is final unless it's appealed to the Board. Once again, the ARB is authorized to be advisory on matters within the Overlay District.

The Task Force recommendations identified a need to clarify the process, particularly that between the ARB and the Commission. They also recommended that the amount of information that's required to be submitted, essentially the extent of the review conducted by the Commission and the ARB needed to be clarified. Mr. Kamptner said there are a number of ways in which this could be done. Ms. Maliszewski will speak about some changes in procedures that staff has implemented which have addressed some of the problems with respect to primarily rezoning matters between the Commission and the ARB. There are a number of ways in which the role of the ARB can be clarified. One way is to identify who may request advisory review. The enabling regulations currently do not identify who is authorized to request review. There are no standards in place as to when advisory review should be requested. There is no limitation to the scope of the advisory review. The fourth plan would be to identify matters for which administrative review is permissible, and to establish applicable standards.

The Task Force also recommended that the ARB's role in these matters go back to the original intent, which was to have the ARB focus on aesthetics issues. Aesthetic issues, when they are considered in a vacuum, are shown to be problematic, particularly in a rezoning process. In addition aesthetics issues are problematic with planned development where some of the regulations that may apply are not in place; height regulations, setback, build-to lines, etc. It is important that those land use issues be delineated up front. Another issue that needs to be resolved is that in some cases aesthetics may become a paramount issue and override other issues such as height consideration. When information is communicated to the Planning Commission, some anecdotes that were received in the process were that there may not have been a clear distinction when the ARB was making a recommendation. For example, on building height, the ARB considered it from an aesthetic standpoint and not from a land use standpoint. Another place of improvement is the need for better communication between the ARB and the Commission.

The Commission's advisory review extends to all of the other issues that are important when considering legislative matters, and sometimes the land use issues clash with the aesthetics issues. Building height, building orientation, configuration, and location, parking area configuration and location, and buffering requirements, are all areas that have been assigned to the ARB to consider when they are

looking at a project when considering a Certificate of Appropriateness but the Commission and the Board also recognizes that those all trigger issues other than aesthetics. The Commission needs to acknowledge that when the ARB's comments are received, they are advisory and the ARB is commenting on aesthetic issues. An example, involved an anecdote raised at the May 2, 2007 work session regarding a rezoning application, where the ARB commented on the height of the buildings. The applicant then amended the project to address the ARB's comments that no building should be taller than three stories. The question is, why did the applicant do that? Mr. Kamptner noted that there is a perception that without addressing the ARB comments, even at an early stage in the process, the Commission may respond less favorably to the application. The result is that the project ends up being modified because of comments pertaining to aesthetics sometimes before the Commission has considered key land use issues. This is also exemplified in two scenarios. One is that it is assumed that the Comprehensive Plan may have called for a particular density range that can no longer be achieved because the project has been modified to respond to the ARB's comments. The ARB's comments on aesthetics may have been shaped by the context of the existing area, but the Comprehensive Plan is a statement of what the County wants the area to become over five, ten, fifteen, twenty years, so the context for this particular project may be different from what the County's vision is for that particular area.

Mr. Kamptner said the last area for him to cover was clarifying the process, information that is supposed to be submitted with a rezoning application and other legislative matters, and to lay out an administrative process in zoning regulations. The Commission has a sheet that guides applicants on what is expected to be submitted. One way to clarify the process would be to lay out in the Ordinance what exactly is required and explain what level of detail should be provided at a particular stage in the process. The zoning regulations can also delineate the legislative process. Staff recognizes that there are a lot of deferrals and that there are a lot of issues that may require the process to deviate from the timeline laid out in the Ordinance. For administrative matters such as subdivisions and site plans, the Ordinances go into quite extensive detail as to the various steps that are to be taken and the timeframes in which those steps would be taken.

Mr. Rooker asked if staff had suggestions regarding the amounts of information required for the different kinds of applications. Mr. Kamptner said staff does have some suggestions. He pointed out that the review will be different for a small site of three to five acres being rezoned, compared to a 900-acre, 3,100 lot rezoning.

Ms. Thomas asked why they have to put these into the zoning regulations that will likely take months before the changes are made. She asked if there could be a policy or a worksheet without modifying the Zoning Ordinance. Mr. Kamptner replied that the County has gotten along without having everything laid out in the regulations, although including them in the Ordinance does a couple of things. One is that it makes it available to anybody. It also eliminates the ability for somebody to unilaterally waive from the Ordinance standards. It would also clarify the process to all involved. He noted that part of the problem that staff has had over the years is that information dribbles in and the clock starts running. The Commission has 90 days under the Ordinance to make a recommendation, recognizing that the applicant often will request a deferral and then the Board has 12 months act. Perhaps the regulatory changes just need to identify what is required for an application to be deemed complete. Everybody needs to know up front what is required and what they need to get in, in order to force the County to start the process.

Mr. Rooker said it makes sense from a legal standpoint. His concern would be involving a potential situation where there is a list of things that have to be submitted, and then a different situation arises. What is needed is a catchall where such additional information is perhaps required by the Commission or the Board, to avoid a situation involving very complex large applications where only a minimal list is required, and the person submits and says that is all that is required by the Ordinance. Mr. Kamptner acknowledged that this will require much more study and analysis.

Mr. Kamptner continued, indicating that the fourth reason as to why putting this into the Ordinance might be helpful is that an applicant can simply say "no I don't want to provide that information. It's not required in the ordinance, it's required where? I'm not gonna do it." Then staff processing the application will be in a position of potentially denying the application, though if it is denied, will it be denied because the applicant simply did not provide some information that is not required in any regulations? Putting something in the Ordinance will help clean up the process, but staff recognizes that if they are overly detailed they are going to box themselves and applicants into situations where they do not need to be.

Mr. Wright said the presentation specifically mentioned the ARB in terms of heights and densities. The ARB's mission is to protect the Entrance Corridors, and vis-à-vis mountain views, and there will be times where those two will be in stark contrast with each other. Just because one organization has a zoning height requirement, it is not compelling enough for him not to talk about height in certain situations. He thinks that a better idea is a way to resolve that between the two boards, where there is not enough communication. He pointed out that the ARB will say one thing, and then Planning says there is a density consideration, and then the ARB asks the question, "Do you realize that density is going to obscure the skyline of Albemarle County forever"?

Mr. Kamptner said that a lot of the problem in the past has been with communication. He observed that since he sits with the Commission every week, he sees that the Commission pays careful attention to what the ARB recommends and the Commission often expects an applicant to adhere to what the ARB has advised. He also agrees that there needs to be more back and forth in the process because the ARB is looking at issues from an aesthetics basis, and there may be countervailing Comprehensive Plan issues that weigh equally, outweigh, or need to yield to the aesthetics.

Mr. Wright said there are times when the Comprehensive Plan and the ARB's mission are in direct conflict. Currently there is no mechanism to resolve that, or to declare this is what we want, and there is no way to have that meeting between the minds. What then happens is that the Commission will propose its solution, and the ARB its own solution, and then the Board will have to make its decision, but even after a well argued look at both of the views there is no real way or precedent for that to happen.

Mr. Boyd asked if there is a defined sequence of how projects are supposed to flow through. At one point the ARB was in the later stage of the process, and now it seems they are at the beginning, and appears to be driven by the applicant. Mr. Wright said it is driven by the applicant. He thinks that sometimes the applicant realizes that in certain cases it may be easier for them to go through one board rather than another.

Mr. Boyd said Mr. Kamptner's presentation indicated that some projects are being altered because of the comments from ARB, just because they are the first encountered. The same could happen if the Commission was first. Mr. Kamptner said there needs to be more communication and the land use issues need to be considered. He used as an example, the ARB not making a decision on building height in a vacuum. The ARB may decide that a certain building height is appropriate in a particular case. If the project then goes through the land use process and the applicant has proffered a building height of not less than six stories, the ARB may not support approving a Certificate of Appropriateness. That is a problem and that is when there may be a need for more back and forth in the process.

Mr. Rooker commented that no matter what, any arrangement could result in a potential problem. There have been problems where application plans were approved before they went to the ARB, and then the ARB looked at the plan and had difficulty with what was mandated in the zoning approval.

Ms. Thomas said she does not recall a situation coming to the Board where an application was approved at a density that matches the Comp Plan, but if it was built at a particular height, it would block the view of the mountain, and the Board had to debate the aesthetics and the desired density. At some point somebody has to make that decision and maybe it has to be the Board, but, again, in the present system, it is unlikely that the Board will ever have to make such a decision.

Ms. Smith said it is not just height for mountain views, but also involve the overall square footage of buildings that impact the amount of parking that is required, and if taller buildings are proposed there will be more parking required. Ultimately the Board will have to make a decision. If that is the desire, then they need to talk about what needs to be given up. As an example LEED, there may be things that will be accepted because they are heading in that sustainable design, but they impact the overall aesthetics. It is a process and not necessarily as simple as writing it into the zoning text amendment.

Mr. Edgerton commented that the whole purpose of the Task Force recommendations was to clarify the sequence. One of the frustrations that staff and the Commission struggles with is the 90-day mandated review. One of the problems that he personally has been frustrated with in the last six and a half years is that there is no established delineation of what is required for an application, and so it varies with the scale of the project. If an application arrives and is judged in the process by the Commission or by the staff as being incomplete or needs more information, almost invariably the 90-day deadline looms. The perception from the public and from the development community, specifically, is that the County is being arbitrary and deliberate. He believes that if the requirements and flow of the legislative review were clearly stated in the Ordinance, and the clock does not start until that delineation has been met, the County would have the opportunity to respond appropriately and get additional information if needed, within the 90-days.

Mr. Boyd said that is a good point. He added that Mr. Kamptner did an excellent job of identifying the circumstances and situations.

At this time, Ms. Maliszewski began her presentation.

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Agenda Item No. 4. Review of Current Entrance Corridor (EC) processes - building permits, signs, SDP's, SPs/ZMA's; - **Margaret Maliszewski**.

Ms. Maliszewski said she was asked to talk about how the ARB deals with applications that require Certificates of Appropriateness. The types of applications that require ARB approval are site development plans, and that would include a regular site plan and the amendments, both major and minor site plans, and building permits. The work is then divided into three kinds, building permits that relate to buildings with approved site plans, mechanical permits, and sign permits. The other types of applications that the ARB might review are special use permits and zoning map amendments.

ARB approval is required prior to final site plan approval and that applies to the site plan, the major amendment and the minor amendment. Applicants are generally encouraged to submit their ARB applications for site plans when they are submitting their preliminary site plan application, but that is not a requirement. The ARB process is set up as a two-step process, starting with a preliminary, and the applicant's return is a final. There are some occasions when it takes more than two steps to get through the ARB process and those could be times when the project is a very large one, like Albemarle Place, or when there is a situation where the ARB's comments or suggestions have not been followed.

With ARB review of building permits, there are generally two types of projects that fall into this category, building and permit applications for new buildings or additions to existing buildings that follow

site plan approval. These building permits do not go back to the ARB, but staff reviews them and makes sure that the drawings that come in with those permit applications match what the ARB has already approved. The other type of project that falls under this category are proposals that require a building permit but do not require a site plan or site plan amendment. This would be for something relatively simple like enclosing a porch. These projects would go to the ARB and would follow the two-step process but generally they are often very simple and get through in one review.

Ms. Maliszewski said the ARB reviews signs for properties that fall within the Entrance Corridor District and if the signs are visible from the Entrance Corridor. This includes wall signs, freestanding signs and window signs. The ARB does not review applications for temporary sign permits. There is a section of the Ordinance that authorizes the agent to act on approvals for signs under certain circumstances. For most sign applications staff gets to review them and approve them if they meet the Entrance Corridor Guidelines. For those projects, they still require the ARB application and submittal materials for review and tracking purposes. Signs that do not meet the guidelines and in instances when the applicant is not willing to change the design of the sign to meet the guidelines still have to go to the ARB. Some of those signs end up being appealed to the Board. The other type of application that still has to go to the ARB are new illuminated signs for buildings that either do not have or are not eligible for comprehensive sign reviews. Those are the reviews that the ARB does for buildings that contain more than one business, to ensure that all of the signage on the building is coordinated. Every couple of weeks the Board is sent an e-mail with a list of all the applications that had been received for ARB review, including everything that has been applied for, but that does not mean that every single one of those is going to the ARB. Lately, there have been a large number of sign requests; however, that does not mean they are all going to the ARB.

Ms. Maliszewski explained that as a type of building permit, mechanical permits do require ARB approval and there are generally two types of them. These are the permits for equipment that is associated with an ARB approved building, or permits for replacement equipment. Unless there is a problem with those applications, those permits are not generally forwarded to the ARB for review and are handled by staff. ARB review of SP's and ZMA's were discussed by Mr. Kamptner. The ARB review of these applications is advisory and until about a year ago the staff had applicants make ARB applications for each of the SP's and ZMA's in the Entrance Corridor and they were forwarded to the ARB for review. However, last year that policy was changed and now staff provides comments on the SP's and ZMA's to the lead planner unless there has been some unusual situation that would warrant that particular application being forwarded to the ARB.

Ms. Maliszewski said the term "administrative review" is used a lot, and sometimes it is an accurate term, though most often it is not an accurate term which needs to be clarified as to what it really means for ARB review. Generally everybody likes administrative review because it is used as shorthand for something that needs review but does not have to actually go to the ARB. It is something that staff deals with, but does not have to write a staff report on; it can be quicker both for staff and for applicants getting through the process. Applications available for administrative review include most of the signs because the Ordinance spells that out and allows staff to do those. There is also a section in the Ordinance that lists the number of exemptions from ARB review, and one that is used often is additions or modifications to a building or no substantial change in design or material proposed. Because a certain amount of information is needed to determine whether or not it is a substantial change in design or not, that gets called as administrative review. The third answer to what applications are available for administrative review is really not enough; therefore, some suggestions are being offered.

Ms. Maliszewski stated that there are ways to simplify the review and approval of applications in the Entrance Corridors. One is to increase the applications that are available for administrative review. The other way is to a couple of process changes such as combining the zoning and ARB applications for signs. This is something staff has already started; the problem is finding the time to complete the process changes. While this may not be a huge time savings in review, it would streamline the process particularly for applicants. Another potential process change is to revise the Entrance Corridor review of mechanical permit applications for existing buildings to include exactly the information staff needs to review them. Another potential process change is eliminating Entrance Corridor review of sub-permits for new buildings and additions. With this change, staff would have to find a way to make sure that all roof top equipment is not visible and that nothing else has changed since the ARB approved the original building. That would be a huge time saver. The other change is a few recommendations for revisions to the Ordinance: to allow the rejection of incomplete ARB applications, to put an expiration date on ARB approvals, to establish deadlines for ARB re-submittals and to not allow the re-submittal of denied proposals.

Ms. Maliszewski noted some ideas on possible ways to increase administrative review of applications in Entrance Corridors, includes allowing staff to review all applications for new building or additions that are located 2,000 feet or more from the Entrance Corridor. An example of this might be buildings in the Old Trail Development. Another way to increase administrative review would be to allow staff to deal with applications for all telecommunications proposals, which could be done in the manner staff currently handles the SP's and ZMA's, where the ARB staff could give recommendations to the lead planner on those applications. Another suggestion involves "second tier" buildings, such as a building already standing between the Entrance Corridor and the proposed site. An example of that would be University Tire at Pantops, which is currently under review. Also, potential for administrative review would be minor amendments, and this would be both for site plan and minor architectural changes. These would still be minor but it would be a situation where that exemption does not apply. An example of that might be the new drop-off canopy that was reviewed for the 5<sup>th</sup> Street Holiday Inn. Another idea would be any building permit that does not require a site plan or site plan amendment. These are generally much simpler projects and a recent example is the change to the entrance at the R.E. Lee building on Hydraulic Road. Lastly, the Ordinance could be changed to make all the signs able to be reviewed by staff.

Mr. Rooker asked about the intention for doing some of these things. He also noted that one of the recommendations is for administrative review of new additions to buildings located 2,000 or more feet from the Entrance Corridor road. He asked if the current rule is 500 feet, or the depth of the lot? Ms. Maliszewski responded that if the parcel was adjacent in 1990, the full depth of the parcel is included in the Entrance Corridor, and if the parcel was not adjacent then it is up to 500 feet, but then only if it can be seen.

Mr. Wright commented that the golf course at Old Trail was a half a mile away, and technically it had to be reviewed.

Ms. Mallek commented that another issue involves structures that are farther away but the elevation is such that it makes them visible from the roadway, and that needs to be considered when making changes.

Ms. Smith commented that these recommendations are from staff and have not been reviewed or voted by the ARB.

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Agenda Item No. 5. Review of Ministerial Process (SDPs and SUBs) - **Mark Graham**

Mr. Graham said there is limited interaction between the Commission and ARB, with the exception of circumstances where a site plan has a special use permit. The most common special use permit involves an outdoor display or drive-up windows. In regards to the subdivisions, there is no review as the agent or the Commission reviews those, and the same with site plans. In both cases, if the issue is not "called up" before the Commission (called up comes from an adjoining property owner, a Commissioner or Board member), it is being administratively reviewed by staff. Staff is happy to see these things handled administratively. Roughly, it doubles the work of a review if it requires the item to go to the Commission which includes preparation of the staff report, presentation to the Commission, and follow-up after the Commission meeting. The issues seen with ministerial reviews are the workload, the number of Commission meetings, the number of ministerial reviews being required at the Commission, the level of detail required with some of the reviews, and how it impacts staff. Also, the questions involve the differences in the expectations of the Board and the Commission.

Mr. Graham said the first item to consider is the frequency of Commission reviews. One of the things the staff has found in looking around the State is that there is a strong correlation between how often ministerial reviews are able to be called before the Commission and how often the Commission meets. In Albemarle practically anything can be called before the Commission by anybody who wants to get into the process. He has spoken with the Board a number of times and with the Commission concerning frustrations with ministerial reviews. A neighbor can call the permit before the Commission thinking they can influence the decision, and then realizes that the Commission has no discretion in the decision if it satisfies the requirements of the Ordinance. That is something that is difficult for neighbors to understand.

Regarding trends in ministerial reviews by the Commission, there is a strong upward trend on the number of reviews being done. In 2001 and 2002, there were about 20 to 31 reviews per year, and last year there were approximately 31 reviews. Just for the first four months of 2008, they are already ahead of the number done in 2001 and 2002, and if that trend continues, it will be a challenge for staff to keep up with the workload.

In terms of the layer of detail with ministerial processes, he commented that as more time is spent on something there are fewer benefits for more costs. He asked if there is a fairly good "bang for the buck" or are we seeing little benefit for what it is costing for the review? For an example, he used Dunlora Subdivision, Section 3 and 3B. In 1998 a critical slope issue was basically addressed in memo from an engineer, as part of the consent agenda, which probably involved a total of eight hours. In contrast, Dunlora, Section 3B, involved quite a significant disturbance, with a crossing of a protected stream buffer, and approximately 24 hours were spent on that in 2002. Dunlora Gates took a full staff report, went to the Commission twice, and staff spent approximately 120 hours on that this year. The question is whether we are getting the bang for the buck for the level of detail being provided?

Ms. Thomas asked if these three projects were comparable. Mr. Graham replied that in terms of the amount of disturbance, Dunlora 3A and Dunlora Gates, are very comparable. Dunlora 3B, had approximately eight to ten times larger disturbance area than with Dunlora Gates and required filling in a significant stream buffer, which was a larger impact than the other two.

Mr. Graham said one of the issues stressed here is the impact on staff. With the increase in ministerial reviews there is also the problem with staff retention and turnover as one of the consequences of trying to stretch staff too thin. The next issue is making sure we have common understandings and expectations of each other. In the last year there have been seven Commission decisions appealed to the Board, and all seven have been reversed by the Board. This has caused staff to wonder how much agreement there is between the Board and the Commission about development and what the expectations are with development.

Mr. Rooker pointed out that some of the appeals were decided with changes that the Commission may have requested, noting that occasionally the applicant has gone back and filed an almost new plan.

Mr. Slutzky also pointed out that there were also times when information was given to the Commission too late for consideration in its decision.

Mr. Graham noted that there have been a couple of those, but the one area he encourages discussion on involves private road waivers, especially in the rural area. That is one area where the Commission and the Board do not appear to be in total agreement.

Mr. Rooker suggested that the minutes of the Board meeting be provided to the Commission to give them an understanding of where the Board is coming from. Mr. Graham agreed that what is needed is communicating Board action back to the Commission.

Mr. Slutzky commented that another way to achieve that would be when there's an actual reversal by the Board of what the Commission recommended that a memo be sent to the Commission saying "this was reversed, here is the link to the portion of the podcast that covers the discussion by the Board".

Mr. Graham said that would help. He also suggested that if the decision could be handled like an appeals court, and rather than the Board actually making the decision they would remand it back to the Commission with some direction on the expectation. The key point is the communication between the Board and the Commission and why the Commission is taking a different perspective on a circumstance than the Board's.

Mr. Graham said the Development Task Force recommended that administrative waivers should simplify a lot of the ministerial reviews that are currently being worked on by the Commission. There have been two work sessions on that subject, and administrative waivers have decreased just a little. Staff is moving forward with a third work session with the Commission before going to a public hearing.

Mr. Graham then posed the following questions for the Board and Commission: Are we having the appropriate level of detail in our reviews? Also, with regard to the number of waivers that have been reversed, are we sure that we have common expectations with respect to those development processes?

Referring to the three different Dunlora projects, Ms. Mallek asked if the increase in time, investment and detail is a response to previous things that did not go well to prevent future disasters.

Mr. Graham said, in his personal opinion, some of that has happened. He thinks that the initial Dunlora project was not given as much attention as it deserved, but the fear now is that staff is spending a lot of time and not getting the benefit in comparison with the cost.

Mr. Rooker, referred to the critical slope disturbance application which has to be approved by the Commission, and asked what is being suggested with the process.

Mr. Graham replied that he would like to see them administratively approved, with a set of guidelines in the Ordinance. He noted that there is some progress as far as the administrative approval for permits in the development areas. The administrative waivers that are being considered right now are just for the development area, though the rural areas are still being considered by the Commission.

Mr. Boyd asked if the language would be written to enable appeal of an administrative review. Mr. Graham replied, if there is a disagreement with staff, then absolutely there would be a basis for appeal, and that is how it is being presented.

Ms. Mallek said she supports it as long as the process allows the administrative review not being the final decision, but that it can be appealed.

Mr. Rooker also pointed out that there is a question of who can appeal, noting in some cases only the applicant can appeal, and there may be a situation where you have impacted neighbors and they do not have a right to appeal.

Ms. Mallek questioned if there is no hearing then how do the neighbors have a role in the process. Also, if there is no staff report, what is the record that is kept of the decision in the deliberative process?

Mr. Graham said there is always a staff analysis that is entered in the files on how the review was completed. Reviews involve a site review committee with a record of what each of the people have identified as far as issues, and whether the issues have been adequately addressed. Those records are maintained, both in the file and the new ones are available to the public online.

Ms. Mallek asked if a lot more has to be done to make it available to the Board. Mr. Graham replied that placing the information in a formal staff report, writing the report, going through the process, presenting it to the Commission, and follow up effectively doubles the work.

Mr. Rooker asked on what basis is there to distinguish those situations requiring Commission approval and those that would be administratively approved, such as a critical slope disturbance? Mr. Graham replied that if it is in a development area, then it is appropriate to be considered. He noted that thresholds can be set, and there are localities that do that with site plans, and with subdivisions. When they reach a certain size they get called before the Commission, but up until that point they are strictly administrative.

Mr. Rooker noted that disturbance in a growth area of four acres would probably be something the Commission would look at, but that a couple of hundred feet, or even a quarter of an acre on a large project would not require review by the Commission. It seems to be the amount of area to be disturbed would be the consideration. There might be some numbers on the number of applications that fall into various size categories, and also percentage limits that would be administratively approved.

At this time, the Board moved to the next item of discussion.

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Agenda Item No. 6. Review of Zoning Text Amendment (ZTA) process - **Wayne Cilimberg**

Mr. Cilimberg said that ultimately the things that might change get accomplished through Ordinance amendments. Many of them are zoning text amendments, and some are subdivision text amendments and there have been resource protection amendments. Basically Ordinance amendments accomplish the policies and the procedures that you want to implement. There have been many amendments over the years and many are now being considering, but in a time of limited resources and the labor-intensive nature of undertaking amendments to accomplish aspects of the Comprehensive Plan and process improvements, it can be very resource intensive. There have been 43 amendments since 2000, which have been in a wide variety of areas. A number are in process now, some of which are very close, and some of which are months or more away in getting potential approval. Some have come up in the discussions of the Commission and Board, as well as the ARB, but they all are ordinances or ordinance amendments that are related to land use. He noted that the time that it might take to work with these will require a lot of staff to accomplish what is needed for what is wanted in the ordinances. There is a multi-step process with zoning text amendments and subdivision text amendments that can involve the initial resolutions of intent, the decision to go ahead. They involve work at staff level, determining the right staff people to work with the proposed amendments, and a core group of staff that will be working on the amendments that include the County Attorney's office, County Planning staff and the Community Development Department, as well as staff from other departments in some cases.

Mr. Cilimberg commented that there is an effort to go out and talk to the public in many cases, unless staff is directed not to. Ultimately, what is heard from the public and what has been developed at staff level is brought to the Commission, initially in work sessions. Dependent on where the Commission is at that point in time it may come back to staff for further work before another work session. There could be, as in the case of the administrative waivers, more than two work sessions involved. After completion of that process with the Commission, preparation is made for presentation to the Board, including developing the ordinance in a form that can be advertised for the Board's consideration, and decisions on whether the Board is going to have its own work session, or go straight to public hearing. If the Board has work sessions on ordinances, they can potentially go through several iterations, and the Board may have more than one work session. Ultimately, there will be a new public hearing with the Board, and eventually a decision by the Board. If it's a decision to adopt, then that concludes the process, other than codifying what is adopted. But that process has many steps and involves a lot of players and a lot of time, both for the decision makers as well as staff.

Mr. Cilimberg noted that there are some elements of the neighborhood model text amendments that began before the neighborhood model was adopted. An example is a parking ordinance that started in 2000 and was adopted in 2003. The subdivision text amendments under the neighborhood model began in September 2002, and ultimately the Board adopted those amendments in April 2005, to become effective in June 2005. That involved the work of DISC II, the Development Area Initiatives Committee, which spent a lot of time, at the Board's request, reviewing aspects of the neighborhood model as they might be implemented through the subdivision ordinance. Work is still in progress on things like setbacks. A zero lot line ordinance will be coming to the Board, which at one time was an application made separately that was incorporated with a number of other amendments related to setbacks by the Commission. Time passed, work sessions were held, and it was decided to break zero lot lines back out and they are coming to the Board in the near future. There are still aspects of the neighborhood model zoning amendments that have not been completed and acted upon that have been forwarded from the Commission to the Board. This is an example of the type of complexity and time that might be taken with any kind of text amendments, including those of the neighborhood model.

Mr. Cilimberg noted that the issues, as seen by staff, are commitment and political will. The number and volume of these are an issue in that there are a lot that the public, staff, and the elected and appointed bodies are dealing with at one time. The process can take time. At times, there is a tendency on more sensitive items for them to morph into other areas that may not have been initially a part of the essence of the initial amendment, and staff even has the tendency sometimes to morph some of the amendments. There are complex issues many times and the decision making process can be difficult, and as a result the demand on staff time can be quite great. Depending on the outcome there can be ill will in the applicant's mind, some of the public's mind, as well as frustration as to the outcome after a long period of time. It is understood that it is a political process, but staff wants to make sure they are also understood as they work through the process.

Mr. Cilimberg said some suggestions are to consider the political will to implement when setting Comp Plan policy, when creating committees to study amendments, and passing resolutions of intent. The focus should be on whether an amendment is realistic. Priorities should be set for expectations as they relate to resources before adding the amendments. When there is a long list, it is good to know where the priorities are and what should be focused on first, and as new ones are added to think about the old ones already on the list. Staff should stay focused on the amendment review process. If necessary, staff could break down complicated amendments into fundamental elements. In a few of the amendments that has been done. Sometimes it is better to address incrementally so as to get more in place. Also, there needs to be a realization that no amendment will be perfect. At some point, there needs to be a will to let it go and see how it works. He does not think there have been any zoning text changes or subdivision text changes in the County that have not, after awhile, needed to have some adjustment. He comments that sometimes you learn best by just getting them passed and then starting to see how they work. He pointed out that the more controversial, the lower the likelihood of complete consensus and having everybody on board, and so there is no need to delay if consensus is expected because that may

just end up being a repeated delay. At some point it must be accepted that is the best it will be and move on from there.

Mr. Boyd suggested that any kind of work on the ordinance amendment process should be approved by the Board. It should not go directly to staff to start working on it, unless the Board being the ultimate decision maker sees that there is an interest on the part of the Board for moving forward.

Mr. Slutzky said he understands the value of that, but he sees a problem if there is an issue, on the front end, where by the public process or by the work of the staff, a consensus could be achieved in support of a good purpose. It might be hard sometimes to get four people who on the front end want to say they have the political will to do so when they really don't.

Mr. Boyd asked if that is not done, then how will staff's workload ever get controlled because if everybody can put work on them, what are they supposed to do. Who are they supposed to follow?

Mr. Rooker said there is a process for citizens to initiate zoning text amendments, for example.

Mr. Cilimberg said there is a public process for application twice a year. The way an amendment would start at the decision maker level would be through a resolution of intent. That could be at the Commission or Board level for zoning and subdivision ordinance. He noted that if the Board were to do what Mr. Boyd is suggesting probably all resolutions of intent would be passed by the Board.

Mr. Boyd said he is not necessarily talking about zoning text amendments as much as ordinance changes. It is different to state that some policies should be changed. Those are two separate issues. They should know beforehand if the Board is willing to put staff time into it.

Mr. Rooker asked what other ordinance changes are they talking about. The Commission doesn't generally initiate ordinance changes.

Mr. Boyd asked if the Commission is working on the possibility of an ordinance change. Mr. Cilimberg replied that zoning and subdivision would be initiated by the Commission. He noted that this might be about the level of policy when deciding whether ordinance directions should change and that usually happens in the Comprehensive Plan.

Ms. Mallek noted that occasionally at Board meetings she has brought up things that are on the Commission list that the public is concerned about, and the Board has generally agreed at that point to go forward. She asked if formalizing that process is what is being discussed.

Mr. Davis said that under State law, the Commission statutorily has the legal right to initiate a zoning text amendment or a subdivision text amendment. As Mr. Cilimberg explained, the Board has that right as well by resolution of intent. The process is a statutory process and certainly the Board can provide policy direction for the Commission but they would still retain the right to initiate a text amendment if they so chose to do so.

Mr. Boyd commented that the Commission does not have the right to allocate staff time to it. Mr. Davis pointed out that is a different issue. Traditionally Planning staff has worked with the Commission and provided them with the level of staff that's needed to accomplish their direction, but that is an issue that the Board could certainly weigh in on.

Mr. Boyd said he thinks that should be part of the process for deciding on anything. The Board just put the barking dog ordinance on staff recently and he questions its priority in relation to other issues. Mr. Rooker commented that the barking dog was in response to requests from citizens.

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Agenda Item No. 7. Discussion among ARB/PC/BOS members.

Mr. Wright commented that there were a couple of issues he wanted to mention. The ARB is faced with situations like the Hollymead Town Center, or what is called the "mud hole" behind Target, which was promised as something with fountains and trees, etc., and nothing has been done. It is still a mud hole, and the seller is denying responsibility, and the buyer is denying responsibility because nothing was promised. Also, there are planning situations, as with developers wanting to build a large Crozet station, yet its height will take one of the nicest mountain views in all of Albemarle County. While the height is alright, at the same time there is an argument for mountain views and the things the ARB are empowered to do, and that is where there are some disagreements. There also are a lot of problems with buildings that are maximum capacity, including the parking lot and the size. The applicants make the building as large as possible, and then come to the ARB and say they cannot put in enough trees. They argue to the ARB that it is the last one on the list, basically the least. There is no return on what the ARB makes them do in terms of trees and grass and all the other things, and they will say that they cannot give more land. The answer is that the building needs to be smaller, and with increased conversation between the ARB and the Planning Commission, perhaps that can get solved. Mr. Wright questioned whether he should appear in front of the Commission to make this a little easier to understand, although currently there is no process for that to occur. The third concern that he pointed out is that a lot of times things get translated, as people are talking about it, into things that are not intended. He cited an example on Route 250 where there is a development that had two very large leaning cypresses that nobody wanted, and eventually they were knocked down. When the ARB received the proposal it could not tell them that removing the trees was permissible. The ARB should be the tree authority in that particular respect.

Mr. Wright said the ARB has inadequate enforcement, citing an example of a chain link fence at Hollymead Town Centre that has been there for a year. It can be seen from the Entrance Corridor and is not allowed. The ARB talked to inspectors and to other people but it still sits there. Another example is when Virginia National Bank put a large generator on top of their building that is four to five feet above its precipice, and now there is the issue of screening. The ARB's number one problem today is mechanical equipment, such as at Albemarle High School. The next issue is the need to start discussing the County's skyline. There is a proposal, at a location near the Hollymead Town Centre, where the ARB is technically not allowed to review, where there will be 80 and 100 foot buildings built on already higher land that will forever change the skyline of Albemarle County. If the proposed 12-story building was built at Albemarle Place you would be able to see it from Rio Road and Route 29. He pointed out that for reference purposes, a crane that can be seen from Route 29 affects the skyline, and by comparison one can see how these much larger buildings will affect the skyline.

Ms. Smith stated that this has to do with distance from the Entrance Corridor. She commented that these buildings could be neon pink and as long as they meet the site height and square footage requirements, there is nothing the ARB can do about them.

Mr. Wright said that they also need to look at increasing fees. It seems incredible that somebody in Scottsville making a small addition to his gas station has to pay the same fee that Albemarle Place did, and that was an enormous amount of staff time and was broken up into several reviews. It is not a fair level playing field and in fact the fee schedule is subsidizing larger projects.

Mr. Rooker commented that staff is in the process of redoing the fee schedule.

Mr. Wright commented that in terms of staff resources and time, when compared to a business, the ARB's generation of fees would in no way come close to what it costs to run it, and while that is not the ultimate goal, it should be looked at.

Mr. Boyd said he brought up that issue of when looking at the fees, whether the County could move to a time and materials type of charging, and staff stated that it can be done. In fact some communities are doing that, but it probably involves long range planning.

Mr. Wright said he hoped part of this meeting would deal with communication about those type issues.

Mr. Rooker asked about enforcement, noting Mr. Wright mentioned a couple of issues. There were things related to issuance of the Certificate of Appropriateness and/or the application plan. In the case of the fountains, what time limit was placed on the installation of certain improvements, aesthetic improvements?

Mr. Davis said those are Zoning Ordinance enforcement actions and Ms. McCulley's staff will cite them and give them a time to comply. If they do not comply, then the County can initiate civil summons violations and those are then dealt with at the Court level. If that resolves the problem, good, if it does not they sometimes are cited again and go through the Court process again. If that does not resolve the problem, then the County seeks injunctions against them to require them to actually comply with the Zoning department as well as pay a civil fine. Mr. Davis said he is not aware of these particular violations that were referenced but they may well be in the process.

Mr. Rooker asked if there is a time limit on completion of what is now the mud hole, noting it is supposed to be an amenity.

Mr. Wright said that for the recent new development at Briarwood, the ARB insisted that for the new smaller mud holes, at the time of application, a planting plan be presented should they not go away. The applicant said the mud holes would go away within 24 months when they finish the building. The ARB said, in case they do not, a pre-approved planting plan is required for the areas before anything is approved.

Mr. Davis said some of these things are functions of an erosion and sediment control plan, and then having it be stabilized at the end of the erosion and sediment control plan. How long it is a mud hole depends on how long the approval process goes on for renewing the erosion and sediment control plan.

Mr. Graham said Area C, behind Timberwood Boulevard and Route 29 is still under an erosion and sediment control plan. It is providing sediment control for some of the area up above it.

Mr. Wright said some of the front and side areas could have been planted two or three years ago.

Mr. Graham replied that he was not aware if there is a site plan that includes that property.

Mr. Wright said the ARB has seen a couple of developments behind Target and that is the only wedge they have to use to make them do anything.

Ms. Smith said this is not just how to fix that individual problem, but when they were presented for vote by the Board, they were shown pretty pictures that represent what might be. Decisions are made to vote or support something that does not actually look like what is going to get built. The ARB is recommending caution that the County is not sold by a developer on something that they are never going to follow through on because they know that most of the enforcement has no teeth.

Mr. Cannon asked if the primary concern is that requirements that should be part of the development are not being included as enforceable requirements, or is the concern that enforceable requirements are not being enforced.

Mr. Wright said, as an example, in Biscuit Run there was language used that meant nothing. The recreation area was labeled as "x" and could not be defined. Occasionally there are terms that have no meaning, and therefore what has been promised means nothing.

Mr. Rooker said the County receives a fairly detailed application plan with most of these applications and generally requires more than about 90 percent of other counties in terms of specificity. To him it sounds like that part of the application plan is not specific enough.

Mr. Wright said these are tweaks, not major revisions.

Mr. Slutzky said when the ARB forwards its recommendations and has to accept something with vague terminology hopefully they will be flagged in the recommendation.

Ms. Smith said that is a good idea. Hopefully when applications come back to the ARB indicating it is approved pending ARB approval, that tool can be utilized. It helps the ARB to say sorry you did not leave enough room to plant that tree next to that utility but you have got to accommodate it somehow.

Mr. Rooker commented that usually there is a Certificate of Appropriateness on these items before the Board acts on them.

Mr. Davis commented that there are different scenarios where this comes forward. Sometimes proffers are received where they proffer that something will come back to the ARB as a final review process. That works in this situation. Sometimes there are special use permit conditions where we could say that a project is subject to some additional ARB review and that has been done on occasion. If it is not a special use permit or a proffered condition then the statute will control the process and if it does not require an ARB review and approval that probably cannot be added without some additional authority.

Mr. Wright added there was one last thing that should be looked at because of the problems with the School systems. They came to the ARB with a completed plan and said they had to have a bid immediately so the County has got to do this right now, otherwise it's going to be a problem. The ARB does not want to be at the end of the process, or the last hurdle to jump over. He noted that this was discussed with staff and they were very receptive. It is worth talking about that the ARB look at every County building if everybody else must go through this. He used as an example the Hollymead Fire Station and how large it is, although nothing could be done about it. Another example was being at the end of the process with review of Brownsville Elementary School and the location of the gym close to the Entrance Corridor. A lot of the ARB's power is taken away by the County. With Albemarle County High School there were repeated inquiries about showing mechanical equipment on the roof. Eventually that was able to be negotiated but it should not have happened. The ARB does not want to be an impediment, instead be the most helpful part of the process and not cause the County to have problems with the bidding season.

Using Albemarle High School, as an example, Mr. Rooker asked when in the process does the ARB get the plans. Mr. Wright replied that it is at the very end.

Mr. Rooker asked if the ARB receives the preliminary plans. Mr. Wright replied that the final plan came with enormous mechanical equipment on top of the roof. Nobody on the initial plan figured out how to do the mechanical equipment.

Ms. Smith pointed out that they have their own issues of having to get through the School Board approval and they have to get it to a certain level to get it approved, and it becomes complicated.

Mr. Wright said it might be better if the ARB sees the plans almost before the School Board because once they have approved a plan everyone has an investment before there are issues of placement and mechanical equipment and all those other issues.

Mr. Rooker commented that the Hollymead Fire Station had to go through the University's Research Foundation before ARB approval.

Ms. Thomas stated that personally she depends so much on the Commission and on the ARB to look at things. The Board receives voluminous stuff and it is assumed the Commission and ARB have gone through the materials presented, and she is really appreciative of that. She has heard from the ARB about things that did not come to the Board and that were not heard, so there is some breakdown in the communication. Somebody should have put a red flag somewhere along the way. If that does not get to the Board, then they may make some wrong decisions.

Mr. Boyd said it appears to him that there are really two problems here. The first is that there is not a defined sequence that projects have to follow and some of them do not go to the ARB before they go to the Board. The other thing is that the Board needs to have some sort of executive summary report from each one of the groups, including the Board when it overturns a decision. If there is an executive summary to summarize the Commission's discussion it would be much easier to deal with, and likewise, if the Board had a similar summary from the ARB.

Mr. Slutzky suggested that the ARB review the staff report before it comes to the Board to make sure that attention is directed to what was intended and is reflected in the staff report. If not, then maybe when the Commission and ARB act on something that is an uncertainty, they could identify that specific issue, and have staff report on it.

Mr. Wright asked if it would be appropriate for the ARB to show up from time to time on certain issues that it found problematic.

Mr. Rooker said 90 percent of the time things go pretty smoothly; ten percent of the cases end up taking 50 percent of the time, typically. The Board receives reports with iterations of the ARB letters and the final report reflects the sequence that things have gone through. There have been issues that have come to the Board where it was stated that the ARB has recommended something but the Commission did not incorporate that. He noted that there have been some cases with issues that have been flagged for the Board.

Ms. Smith said for the seven years she has been on the ARB she has tried to figure out ways to increase communication. She has proposed something as simple as having a coffee for an hour every three months or six months, because the last time everyone met as a group was in 2006. And then before that it had not happened before she was on the ARB. She asked if there could be a way where they could meet, for example, once a month. Not everyone has to come, but could designate a person from their Board and meet for an hour and say these are projects that are of concern. The applicants with these projects could be made aware that that meeting was actually happening. There might be no topics some months, and there might be other topics coming up, but there is a need for an ongoing way of having a conversation even if only for general concepts, not specific projects, at least once a quarter.

Mr. Boyd said the Board just initiated that process with the School system for some of those very same reasons. He is not one for adding additional meetings, but maybe quarterly the Commission, ARB and the Board could sit down as a group and have a discussion. All of these problems are not going to be solved today.

Mr. Slutzky mentioned the issue of enforcement and suggested that an email be sent directly to the enforcement parties. Mr. Wright suggested the ARB pass it onto Ms. Maliszewski and let her talk to the appropriate person in Zoning. Most of the time, the issues are handled very well.

Mr. Rooker said there seems to be two overriding issues that were brought up. One is the skyline issue, and the extent to which protecting the skyline is something that ought to be considered, is important and ought to be looked at by the ARB.

Mr. Slutzky commented that the skyline issue is beyond the Entrance Corridor.

Mr. Rooker continued, noting a decision needs to be made as to the extent to which the ARB is expected to act.

Ms. Smith suggested that the Board consider having a conversation of buildings over five or six stories regardless of where they are in the County, to let the ARB at least have a conceptual review of it.

Mr. Wright suggested treating them basically no different than cell towers. He noted that balloon tests could be done, with a photograph viewed from a distance to determine if it is going to visually impact, or if it is not going to visually impact.

Mr. Slutzky commented that the balloon test is not to scale.

Mr. Wright suggested a hot air balloon tethered at a certain height, then take photos and then you'll have a real sense of the visual effect.

Mr. Morris commented that balloon tests were run in Cascadia and as a result major changes were made because of the height.

Mr. Davis noted that the jurisdiction of the ARB is defined in the Ordinance and currently it is restricted by the depth of the parcel or 500 feet but it has to relate to the arterial roads. That is enabled by enabling legislation relative to the visual quality for specified arterial roads. Certainly some type of a standard could be enacted so that if the site line from an arterial road was being blocked by a tall building, and that was obscuring mountains, it could be addressed, but that is not in the Ordinance now.

Ms. Smith said their intent is to protect the traditional Jeffersonian area, and that is how the ARB came into existence. It does not have to be a Jeffersonian building but it has to be protecting that as a tourist attraction. Regardless of whether it's blocking a mountain or not, if it suddenly has an impact on the community to give it an appearance, that authority could be extended, but right now there is no language.

Mr. Slutzky said he would be interested in seeing a recommendation for some language that addressed in an advisory capacity the aesthetic impacts beyond the 500 feet for this particular purpose.

Mr. Rooker said the other over-arching thing is the interaction between green building and what is expected by the ARB and how that gets worked out.

Mr. Wright said there is nothing to lead him to believe that green cannot be aesthetic. He personally is becoming LEED-accredited because he wants to understand things better.

Mr. Boyd said a lot of good ideas are being presented, and how they are translated into an action plan is a little more difficult. He suggested coming back on a quarterly basis for awhile and then going through the four or five different sets of recommendations.

Mr. Rooker replied that that was a good idea. This could be done as a lunch.

Mr. Dorrier suggested a committee massage the actual problems and come up with recommendations for the whole group to consider.

Mr. Slutzky said he thinks a quarterly meeting is a great idea. He suggested choosing one issue to tackle and then pick a meeting date. The ARB went to the effort of placing some issues on the table, so those would be first.

Ms. Thomas said there could be a good discussion about the ARB with the Commission also present.

Mr. Boyd said all three groups should participate in the discussions.

Ms. Smith said she thinks the quarterly meetings are a good idea for ongoing maintenance of communication, but perhaps to initiate these discussions, the next meeting should be held in a month.

Mr. Wright suggested working at the pleasure of the Board.

Mr. Boyd suggested staff bring forward some meeting time suggestions.

With regard to enforcement of carrying out requirements for permits, Ms. Mallek asked if the County has anything like a stop work order that can be laid down if someone does not build the road they agreed too.

Ms. Smith noted that Ms. McCulley has a great Power Point presentation that she could present perhaps at the beginning of one of their meetings. It outlines the steps and why it takes two years to legally get things through the process. She added that her concern is that the County does not have enough teeth so people are now proceeding to do things without approval. She mentioned a particular sign request that required a landscaping plan; however, the applicant went ahead and built it and never submitted the plan for approval. Basically the developer said too bad, you're not going to make us remove it because it had already been done. She noted that was because of the knowledge that there is no penalty.

Mr. Davis commented that project could be cited with a zoning violation. They could be fined a number of times and if it is not in compliance at that point the expectation would be to seek an injunction, and make them remove the sign. Also, if it is something that is proffered by a deadline and that deadline is not met, the County has the power to not issue any additional permits so they get no building permits. There are enforcement tools available.

Ms. Smith suggested using the enforcement tools.

There was no further discussion.

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Agenda Item No. 8. Adjourn.

At 3:45 p.m., with no further business, the meeting of the Board, Commission and ARB was adjourned.

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Chairman

Approved by Board
Date: 05/06/2009
Initials: EWJ