

DRAFT MINUTES – AUGUST 15, 2013

VIRGINIA: At a Regular Meeting of the Hanover County Planning Commission in the Board Auditorium of the Hanover County Government Building, Hanover County, Virginia, on Thursday, August 15, 2013 at 7:00 P.M.

PRESENT: Ms. Claiborne R. Winborne, Chairman
Mr. Larry A. Leadbetter, Vice-Chairman
Mr. Jerry W. Bailey
Mrs. Edmonia P. Iverson
Mr. C. Harold Padgett, Jr.
Mrs. Ashley H. Peace
Mr. Randy A. Whittaker

STAFF

PRESENT: Mr. David P. Maloney, AICP
Mr. Dennis A. Walter
Mrs. Mary B. Pennock
Mrs. Betty S. Gray

Roll Call

All members were present.

Welcome and Pledge of Allegiance

Ms. Winborne welcomed everyone present and Mr. Whittaker led everyone in the Pledge of Allegiance.

Consideration of Agenda Amendments by Action of the Commission

There were no requested changes to the Agenda.

Citizens' Time

No one addressed the Commission during Citizens' Time.

PUBLIC HEARINGS

Expedited Hearings

DRAFT MINUTES – AUGUST 15, 2013

C-4-13(c) LINDA J. AND DONALD R. FIELDS AND SUSAN D. AND JAMES E. COLLISON, Request to rezone from A-1, Agricultural District to AR-6(c), Agricultural Residential District with conditions on GPINs 7799-15-2952 and 7799-15-5895, consisting of approximately 17.58 acres, and located on the east line of Mount Hermon Road (State Route 656) approximately 300 feet southeast of Shelton Farm Lane (Private Road) in the **BEAVERDAM MAGISTERIAL DISTRICT**. The subject property is designated on the General Land Use Plan Map as Agricultural. The proposed zoning amendment would create two (2) 8.79 acre parcels each with an existing residence. (PUBLIC HEARING)

Mr. Maloney briefly presented this request to rezone from A-1, Agricultural to AR-6(c) to reconfigure the property lines, which would permit an existing 7.29 acre parcel (Fields) and a 10.29 acre parcel (Collison) to be reconfigured. Staff recommended approval subject to the proffers submitted with the application.

Ms. Winborne explained the expedited hearing process. She read the Rules of Order for a public hearing. She opened the public hearing and asked if the applicant was present and in agreement with staff's recommendation. The applicants from the audience said yes, they were in agreement. She asked if anyone else wished to speak. Seeing no one else come forward, she closed the public hearing.

Upon a motion by Mrs. Iverson, seconded by Mr. Bailey, the Planning Commission voted **UNANIMOUSLY TO RECOMMEND APPROVAL OF C-4-13(c), LINDA J. AND DONALD R. FIELDS AND SUSAN D. AND JAMES E. COLLISON SUBJECT TO THE SUBMITTED CONCEPTUAL PLAN DATED MARCH 3, 2013 AND THE FOLLOWING PROFFERS DATED MAY 28, 2013 AS OUTLINED IN THE STAFF REPORT:**

1. Conceptual Plan: The property shall be divided in substantial conformity with the conceptual plan attached, titled "Fields/Collison Property Line Adjustment Plan," dated May 3, 2013, and prepared by James Collison.
2. Property Line Adjustment: The plat shall be recorded within six (6) months of the date of rezoning approved by the Board of Supervisors.

DRAFT MINUTES – AUGUST 15, 2013

The vote was as follows:

Mr. Bailey	Aye
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Aye
Mrs. Peace	Aye
Mr. Whittaker	Aye
Ms. Winborne	Aye

The motion carried.

Rezoning Proffer Amendment Cases

C-34-02(c) VIRGINIA LAND DEVELOPMENT, L.L.C., ET AL. (HONEY MEADOWS),
AM. 1-13 Requests an amendment to the proffers approved with rezoning request C-34-02(c), AJA Land Company, Inc./ Estate of Robert L. Figg, Jr., on GPINs 7797-72-9151, 7797-70-5645, 7797-90-2829, 7797-82-1054, 7797-81-9574, 7797-71-5332, 7797-80-6429, 7797-81-6751, 7797-90-5364, 7797-90-4496, 7797-90-7595, 7797-71-4524, 7797-72-2064, 7797-81-5747, 7797-70-9652, 7797-81-5552, 7797-81-6541, 7797-81-9774, 7797-80-4982, 7797-81-8563, 7797-90-7487, 7797-71-8011, 7797-80-7444, 7797-82-1338, 7797-90-7683, 7797-81-8795, 7797-90-2181, 7797-81-7542, 7797-90-5561, 7797-90-3118, 7797-80-6476, 7797-91-0613, 7797-80-3880, 7797-90-6328, 7797-80-4653, 7797-80-5730, 7797-72-7731, 7797-80-6834, 7797-80-3166, 7797-81-4836, 7797-71-0871, 7797-80-5764, 7797-71-0519, 7797-80-3127, 7797-80-6975, 7797-71-5987, 7797-72-3291, 7797-80-4833, 7797-82-0427, 7797-80-1387, 7797-80-3747, 7797-80-2734, 7797-72-9659, 7797-80-1372, 7797-81-6956, 7797-72-5343, 7797-71-7191, 7797-82-3116, 7797-81-2558, 7797-80-6709, 7797-71-3861, 7797-80-4867, 7797-80-2178, 7797-80-1267, 7797-80-1253, 7797-82-0170, 7796-89-7889, 7796-89-8887, 7797-80-0760, 7797-72-7191, 7796-89-7930, 7797-80-0616, 7797-80-4687, 7797-80-5906, 7797-80-7130, 7797-80-8038, 7797-80-6859, 7797-81-3489, 7797-80-6142, 7797-80-9075, 7797-80-9026, 7797-80-7089, 7797-80-6191, 7797-80-6014, 7797-70-8912, 7797-70-7865, 7797-80-1713, 7797-80-1755, 7797-80-5573, 7797-80-5090, 7797-80-2129, 7797-80-8077, 7797-71-1397 and 7796-89-8837, zoned RS(c), Single-Family Residential District with conditions, and located on Honey Meadows Road (State Route 2380) approximately 1,700 feet north of Atlee Station Road (State Route 637) in the **CHICKAHOMINY MAGISTERIAL DISTRICT**. The proposed zoning amendment would amend the cash proffer. (PUBLIC HEARING)

Mr. Maloney briefly presented this request to eliminate the cash proffers for 94 lots originally approved with this rezoning request in the Honey Meadows subdivision. The applicant is also recommending that that proffer be replaced by a majority of the property owners listed in the staff

DRAFT MINUTES – AUGUST 15, 2013

report with a road proffer payment in the amount of \$3,491.00. There are several property owners listed in the staff report that entered into contracts between November and December and the applicant is requesting that the proffer be eliminated. Staff recommended approval subject to the proffer document included in the staff report.

Ms. Winborne opened the public hearing and asked if the applicant was present. The applicant was not present; therefore, it is assumed he is in agreement with the staff recommendations as stated in the staff report.

Upon a motion by Mr. Padgett, seconded by Mr. Whittaker, the Planning Commission voted **UNANIMOUSLY TO RECOMMEND APPROVAL OF C-34-02(c), AM. 1-13, VIRGINIA LAND DEVELOPMENT, L.L.C., ET. AL. (HONEY MEADOWS) SUBJECT TO THE FOLLOWING PROFFERS DATED AUGUST 1, 2013 AS OUTLINED IN THE STAFF REPORT:**

1. Contribution for Road Improvements: The Owner, for himself, his successors and assigns of GPINs 7797-72-9151, 7797-70-5645, 7797-90-2829, 7797-82-1054, 7797-81-9574, 7797-71-5332, 7797-80-6429, 7797-81-6751, 7797-90-5364, 7797-90-4496, 7797-90-7595, 7797-71-4524, 7797-72-2064, 7797-81-5747, 7797-70-9652, 7797-81-6541, 7797-81-9774, 7797-80-4982, 7797-81-8563, 7797-71-8011, 7797-80-7444, 7797-82-1338, 7797-90-7683, 7797-81-8795, 7797-90-2181, 7797-81-7542, 7797-90-5561, 7797-90-3118, 7797-80-6476, 7797-91-0613, 7797-80-3880, 7797-90-6328, 7797-80-4653, 7797-80-5730, 7797-72-7731, 7797-80-6834, 7797-80-3166, 7797-81-4836, 7797-71-0871, 7797-80-5764, 7797-71-0519, 7797-80-3127, 7797-80-6975, 7797-72-5343, 7797-71-7191, 7797-81-2558, 7797-80-6709, 7797-71-3861, 7797-80-4867, 7797-80-2178, 7797-80-1267, 7797-80-1253, 7797-82-0170, 7796-89-7889, 7796-89-8887, 7797-80-0760, 7797-72-7191, 7796-89-7930, 7797-80-0616, 7797-80-4687, 7797-80-5906, 7797-80-7130, 7797-80-8038, 7797-80-6859, 7797-81-3489, 7797-80-6142, 7797-80-9075, 7797-80-9026, 7797-80-7089, 7797-80-6191, 7797-80-6014, 7797-70-8912, 7797-70-7865, 7797-80-1713, 7797-80-1755, 7797-80-5573, 7797-80-5090, 7797-80-2129, 7797-80-8077, 7797-71-1397, and 7796-89-8837, agrees to pay Hanover County prior to issuance of a Certificate of Occupancy for the Property, the amount of Three thousand four hundred ninety-one and 00/100 (\$3,491.00) per single family unit built on the Property. The funds shall be used for the purpose of completing off-site road improvements relating to the development allowed by the rezoning and included in the Business and Residential Development Road Improvements Transportation Policy, adopted March 13, 2013. In the event funds are paid and are not used for such improvements, the County shall return the funds paid to the Owner or his successors in title.

DRAFT MINUTES – AUGUST 15, 2013

2. The Property Owner, for himself, his successors and assigns of GPINs 7797-80-4833, 7797-82-0427, 7797-80-1387, 7797-80-3747, 7797-80-2734, 7797-72-9659, 7797-80-1372, 7797-82-3116, 7797-81-5552, 7797-71-5987, 7797-81-6956, 7797-72-3291, and 7797-90-7487 agree to pay Hanover County prior to issuance of a Certificate of Occupancy for the Property, the amount of 00/100 (\$0) per single family unit built on the Property.
3. Building Materials: Exterior of all foundations shall be brick or stucco. The primary exterior cladding materials for the dwelling shall be limited to brick, vinyl siding or concrete fiber siding; cladding options shall not include concrete masonry units (whether split face or smooth) or plywood.
4. Sidewalks: Concrete sidewalks shall be provided along streets within the community to the extent depicted on the Conceptual Plan. Final location may vary based on final design, provided that the construction plans submitted with the subdivision request demonstrate the provision of sidewalks in the amount depicted on the Conceptual Plan. Sidewalks shall be designed and constructed in accordance with VDOT standards where parallel to and/or adjacent to streets.
5. Paved Driveways: All dwelling lots will be improved with paved bituminous or concrete driveways.
6. Dwelling Size: Minimum house sizes shall be as follows:
 - a) One acre lots – 3,000 square feet
 - b) Lots with frontage from 70' to 90' – 2,000 square feet
 - c) Lots with frontage of 55' – 1,600 square feet
 - d) Duplex or townhouse lots – 1,400 square feet
7. Floor area shall be measured along the exterior walls of the building and shall not include garages, breezeways or porches in any category.
8. Provision of Recreational Amenities: The community shall include both passive amenities (open space, trails, and sidewalks) and active amenities (club house, pool, parking area(s)), and although final design may change, the minimum extent and character of such features shall be substantially as depicted on the Conceptual Plan. In the case of the clubhouse and pool, this shall be construed to mean that the clubhouse shall have a floor area of at least three thousand two hundred (3,200) square feet, and the pool shall have a water surface area of at least eight hundred (800) square feet. The facilities shall be constructed at the expense of the Property Owner, and shall be conveyed at no cost, and with no liens and encumbrances, for ownership and maintenance by a homeowner's association with appropriate covenants established to ensure the continued funding of the ongoing ownership, operational, and maintenance responsibilities. Prior to the issuance of the building permit for the one hundredth (100th) structure, the clubhouse and pool shall have received its certificate of occupancy. The trail system shall be substantially as shown on the Conceptual Plan. Trails may be asphalt or gravel.

DRAFT MINUTES – AUGUST 15, 2013

9. The number of building permits to be issued for any dwelling units shall be limited to fifty (50) per calendar year, cumulative to a limit of ten (10) units annually. By way of illustration, should only twenty (20) permits be issued the first year than sixty (60) permits might be issued in the second, and so on.
10. Tree Preservation: Subject to the limitations hereinafter set out, the required rear and side yard area of each lot, as required by the Zoning Ordinance, shall be selectively cut with no cutting of trees of five (5) inch caliper or greater. However, said areas may be used for driveways and drainage and utility easements when necessary for dwelling construction and/or when required by the County of Hanover. In such cases cutting shall be limited to the minimum amount necessary, except when cutting is permitted in accordance with approved grading plans issued by the Hanover Department of Public Works and to provide positive drainage away from dwellings as required. Nothing contained herein shall prohibit the removal of dead or diseased trees. This provision shall not apply to areas devoted to townhouse or duplex development.
11. Tree Planting: Two deciduous trees of a minimum of two (2) inch caliper shall be planted upon each lot before issuance of occupancy permit, except on lots that have comparable existing trees preserved. This provision shall not apply to area devoted to townhouse or duplex development.
12. Stormwater Management: The Property Owner shall dedicate the necessary property interest for a stormwater management facility T-8A, in accordance with the Hanover County Regional Storm Water Management Plan, which shall include the dam and, to the extent of ownership by property owner, an area that extends up to the one hundred year flood pool (maximum water surface elevation 167.6), a twenty foot (20') maintenance easement around such facility upland and contiguous to the one hundred year flood pool elevation, and a twenty foot (20') contiguous access easement to the stormwater management facility from the closest public road.
13. Screening: Property Owner shall erect and maintain a decorative board fence meeting, at a minimum, the standard established by Article 7, Section 2A of the current Hanover Zoning Ordinance along the rear of Lots 23, 24, 25, and 26 as shown on the Conceptual Plan; as such Plan may be amended by agreement of the abutting property owners. There shall be no access from Lots 26 and 27 to the road in the rear of such lots, as shown on the Conceptual Plan.
14. Emergency Access Road: Property Owner will provide a 40' wide private easement to be maintained by the Homeowner's Association, from the connection with Talbot Green Lane in Kings Charter to Road B as shown on the Conceptual Plan. At Talbot Green Lane, Property Owner will establish a gate locked with a chain which can be cut by emergency personnel to provide access only for emergency vehicles between Kings Charter and the development proposed by Property Owner. The Homeowner's Association will be charged with the responsibility of replacing the chain, if the gate is opened for emergency vehicles. Within the 40' easement, Property Owner will construct an 18' paved road, capable of supporting vehicles with a weight of 65,000 pounds, from Talbot Green Lane to said Road B with

DRAFT MINUTES – AUGUST 15, 2013

shoulders and ditches as shown on the Conceptual Plan. In addition, Property Owner will provide at this point a connection for pedestrians and bicycles and a sidewalk comparable to the other sidewalks in its development from the end of Talbot Green Lane to said Road B.

15. Section A1, shown on the conceptual plan titled “Honey Meadows, Conceptual Plan/Preliminary Subdivision Plat,;” dated September 2, 2003, and last revised May 26, 2011, shall be graded, stabilized and maintained by the owner(s), including removal of the soil stockpile currently on this site. The stockpile shall be removed in accordance with applicable State Erosion and Sediment Control regulations. In addition, a “No Trespassing – Private Drive” sign shall be placed on-site, next to the road easement as it enters the A1 section from the subdivision road and grass shall be cut on a regular basis and shall not exceed twelve inches (12”) in height.

The vote was as follows:

Mr. Bailey	Aye
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Aye
Mrs. Peace	Aye
Mr. Whittaker	Aye
Ms. Winborne	Aye

The motion carried.

C-16-07(c) AM. 1-13 **D&R PROPERTY DEVELOPMENT, INC.**, Requests an amendment to the proffers approved with rezoning request C-16-07(c), Am. 2-10, D&R Property Development, Inc., on GPIN 8706-66-9058, zoned R-4(c), Residential Cluster Development District with conditions, and located on east line of Chamberlayne Road (U.S. Route 301) approximately 700 feet south of its intersection with McKenzie Drive (State Route 1239) in the **CHICKAHOMINY MAGISTERIAL DISTRICT**. The proposed zoning amendment would amend the cash proffer. (PUBLIC HEARING)

Mr. Maloney presented this request to eliminate the cash proffers for Marley Point subdivision which is yet to be recorded. In this instance the applicant has provided a purchase contract between the developer and builder. As outlined in the staff report it is somewhat unclear from the Board’s motion as to what the intent of the proffer policy clarification was with respect to this particular case. The instances in which the Commission has recommended and the Board has approved, elimination of cash proffer in its entirety have been limited to instances in which individual home purchases have entered into contracts between themselves and the builder. This is the first case in which a builder has

DRAFT MINUTES – AUGUST 15, 2013

come into the process requesting relief from the cash proffer policy due to a purchase contract to purchase lots from the developer. And as stated the staff generally would leave it to the Planning Commission's judgment and ultimately the Board's judgment as how the policy would apply in this instance.

Ms. Winborne opened the public hearing and asked if the applicant was present.

Mr. Jeff Geiger, attorney representing the applicant came forward. He said in reliance of the Board's action in November 2012, in the elimination of the cash proffers at that time, his client the developer of Marley Point entered into a contract for the sale of lots in Marley Point to Royal Dominion Homes. He stated that the Board's action had an immediate and desired effect as this once stalled project has "come to life" as there is new landscaping at the entrance, roads and sewer are being put in and finished lots are being prepared. He said they anticipate Royal Dominion Homes buying its first scheduled lot "take-down" in about 30 days, and soon thereafter homes will be build, taxes will be paid to the County and new residents will move in.

Mr. Geiger stated they were present to ask the Planning Commission to recommend to the Board that the new March transportation proffers not be imposed on this project. He described the sequence of events: On November 29, 2012 the Board of Supervisors eliminated the cash proffers and the balance receivable of cash proffers. On December 12, 2012 the Board instructed staff to develop an expedited means of expediting removal of existing cash proffers. He said the moment the cash proffers were eliminated, his client had visited the Planning Office several times a month asking staff how they could remove the cash proffers from the project based on the Board's action. He said on December 21, 2012 his client was able to reach finance terms with the homebuilder because the cash proffer was eliminated. Without the cash proffer the homebuilder was willing to commit to a project based on economics that would allow the homebuilder to sell homes in a new market price created by

DRAFT MINUTES – AUGUST 15, 2013

the recession. He stated that his client continued to ask staff how to eliminate the cash proffer with no expectation that any type of proffer would be forthcoming.

Mr. Geiger said the Board of Supervisors decided to adopt a new transportation cash proffer in March. In May staff provided his client with information on how to apply for an amendment to its cash proffer and received the form of the amendment. On May 30, 2013, his client submitted to the County an amendment form with the amount of the cash proffer blank. At that time his client was only aware of a credit being offered for off-site road improvements. This information came from news reports about the apartment project that was approved near Sliding Hill Road. His client was not aware of any other policies providing for the eliminating of the cash proffers.

He stated that on June 12, 2013, they met with staff to discuss a reduction in the transportation cash proffer and the applicants' traffic engineer attended as well. They presented their request for the credit and staff advised that they would consider the request and speak with Mr. Flagg about the request. The next day they learned that staff would not support the credit and they agreed to a deferral so they could review and discuss the issue further with staff.

He said in early July in discussions with the homebuilder, his client learned of a new policy by the Board. As stated in the Board's June 26, 2013 minutes, to eliminate the cash proffer for properties that entered into a contract between November 28, 2012 and March 13, 2013. On July 8, 2013, his client made the request for complete elimination of the cash proffer under the Board's stated policy. Staff advised his client to take a deferral so the staff could evaluate the request and so they took a deferral. On July 16, 2013 staff requested to see the contract and a copy was provided to them. On July 24, 2013, his client met with staff to discuss the contract and was advised that staff would take a neutral position.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Geiger said the staff report refers to this lot purchase agreement dated December 21, 2012 as an option contract. He stated this is not an option contract. The buyer cannot walk away at any time for any reason under the option contract. It is a binding industry standard lot sale contract that requires the homebuilder to buy the lots once they are finished. In this contract his client makes a binding promise to the homebuilder. His client must build certain improvements, complete certain residential community work and complete finished lots. Once this is done the homebuilder must buy the lots on a binding schedule and at a binding price. For example, their first “take-down” could be 5 lots at \$10,000 per lot; 90 days later the homebuilder is then obligated to buy another 5 lots at \$11,000 per lot; another 90 days another 5 lots at \$12,000 per lot and so forth.

Mr. Geiger said this is just like a contract between a homebuilder and a homebuyer. The contract between the homebuilder and homebuyer is a contract where the homebuilder agrees to build a house on a lot that the homebuilder owns. The homebuilder must build a home and the developer must do the infrastructure work and complete the finished lots before the homebuyer or in their instance the homebuilder must buy the home.

Mr. Geiger reiterated that his client relied on the Board’s action in November and pursued a means in of eliminating the cash proffer immediately after the Board’s vote. This project is an example of what the Board sought to do with the elimination of the cash proffers. The stalled project was put into action. Taxes will soon be paid on the new homes going in. He said his client has supplied a contract dated between the periods of when the cash proffers were eliminated and in conformance with the Board’s direction to the Commission at their last meeting. He respectfully requested the Commission to recommend that the Board eliminate the cash proffers as requested by the applicant because of his client’s reliance on the Board’s action.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Padgett thanked Mr. Geiger for the very thorough summary of the events. He said he read through the contract and he has never seen one quite like it although he was sure they are common in business. It seemed to him that there was at least an opportunity for the builder to “bail-out” in the event that things change and did not want to continue. A right of first refusal is mentioned in Article 16 on page 13 of the contract. And the builder put down a cash payment equal to \$1,050.00 on each of the 72 lots which amounted to about \$76,000.00 and of course if they did get out of it then they would forfeit that deposit; however it seemed to him to say “they cannot get out of the contract” is a little exaggerated.

Mr. Geiger stated it is an example of a contract for two promises: 1) we promise to make certain improvements to finish the lots and 2) they have an obligation to come in and buy the lots on the schedule that is set forth in the contract.

Mr. Padgett understood that; however, it seemed like the reason for the down payment was basically giving an incentive to continue and then that down payment per lot was credited towards that as they proceeded with each lot.

Mr. Geiger said he understood but the consideration for the two promises is the mutual promises going back and forth. The right of first refusal does not kick in if his client does the work they are supposed to do.

Mr. Padgett said ok, when does it “kick in.”

Mr. Geiger stated that he would have to consult with his contractor.

Mr. Padgett said it seemed to him it would kick in the event that the buyer defaulted or decided not to go forward or assigned the contract to someone else. There is always a “bail out” position, someone can default, whether it is a bankruptcy or whatever and possibly be sued and possibly not.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Geiger stated that in any contract someone makes a calculated decision and if someone defaults or not does not make it any less binding.

Mr. Padgett said he understood the distinction he was making.

Mrs. Peace felt this case is the same as an individual purchasing a home. The contract has certain obligations that both parties have to meet and certainly one party could default on the contract. So, it is not really any different than some of these other homeowners who have entered into a contract an individual lot with a builder. They could certainly probably get out of that contract for some reason.

Mr. Geiger replied that there might be a finance contingency in those contracts. He did not know the details of those contracts but there might be contingencies in there for financing. If a lender says they will not lend to someone because their credit rating is not good or they lose their job that does not make that contract any less binding. The same principle applies here. We have a binding contract both parties have promised each other that they are going to perform.

Mrs. Peace said obviously the proffer conversation is primarily wrapped around transportation enhancements. She asked Mr. Geiger to speak to what the developer agreed prior to any of these proffer discussions to do for transportation enhancements and what are the transportation impacts from the development.

Mr. Geiger explained that this case was originally made in 2007. The traffic impact analysis by the County's traffic engineer was done and in the original sets of proffers and there were certain road improvements that had to be made. He thought there were three. Two of them are site specific. They were off-site but they were directly related to the traffic being generated from the project. There was one road improvement that was made to the median of Chamberlayne Avenue. At the intersection of McKenzie Drive there was an existing taper lane for the U turn movement that was 50 feet in length. The traffic report stated that their project would only require a stacking length of 9 to 10 feet. But still

DRAFT MINUTES – AUGUST 15, 2013

at the County's request they proffered to extend it to 200 feet. The reason it was extended was because the traffic engineer stated that the length in general for turn lanes on rural roads that have a designed speed for 50 miles per hour or greater require a taper lane at 200 feet in width. So, we agreed to make it 200 feet.

Mr. Winborne stated that during his presentation that this project had been a "stalled" project and now because of the removal of cash proffers it is moving.

Mr. Geiger stated yes they were able to start moving and get a contract in place and once that happened they were off and running. He said the reason they were coming in and talking to staff about the cash proffers is because they had been coming in and applying for and picking up permits, because they were moving dirt and getting everything ready to go because they were able to get a contract in place.

Ms. Winborne asked if Mr. Geiger felt that this case is any different than some of the cases that have come before the Commission that were between the homebuyer and the builder, and that your client and whomever else is involved in this transaction on a different scale have entered into this transaction because they believed there were no cash proffers.

Mr. Geiger said correct. The economics of the deal worked with the cash proffers taken out they were able to come to terms with the homebuilder on economic terms that benefited both the developer and the homebuilder but allowed for a price that could sell in this market. We need to be able to sell homes at a price that the market dictates. The Board's action spurred development here.

Ms. Winborne said in essence they are saying the proffers were removed and then they entered into negotiations (the developer and builder) and then his client began the filing process.

Mr. Geiger stated that on November 28th the proffers were removed. He said there had not been negotiations with Royal Dominion.

DRAFT MINUTES – AUGUST 15, 2013

Ms. Winborne said alright let's say finalized.

Mr. Geiger said yes the contract is dated December 21, 2012.

Ms. Winborne asked when they came to the County to apply for proffer relief.

Mr. Geiger stated that he was told by his client immediately after those cash proffers were pulled, they were “knocking on the door” asking how to eliminate the proffers.

Ms. Winborne said this is not something that just happened and you all were aware of the cash proffer elimination and began your process.

Mr. Geiger said yes it was in the Times Dispatch, Herald Progress, Richmond Business the headlines were everywhere. Everybody knew that cash proffers were gone and it was time to start recalibrating economics ideas.

Ms. Winborne asked if anyone wished to speak in favor of or in opposition to this request. Seeing no one come forward, she closed the public hearing.

Mr. Maloney advised there was a question regarding the submittal date of the application. The application was submitted to the Planning office January 2013. He offered comments to help facilitate the Board discussion; however, he did not believe he was in a position to make a definitive recommendation one way or the other. He had talked to several of the Commission members over the past couple of days and continued to think about this case and the Board action to eliminate proffers in certain circumstances. He felt the question that really needs to be asked and discussed amongst the Commission is not so much whether the Board policy on a cash proffer applies *or* not, in this case; or whether there is a contract and whether it is an option contract and whether that contract was entered into between specific dates. He felt they should take a step back and look at the County's Proffer Policy in broader terms rather than just a specific action by the Board.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Maloney advised that when it comes to a builder and a home buyer, and there is a contract between the specified dates in November and February, the matter is pretty well settled. This request is a little different. In those instances in which individual property owners had a contract to purchase a house between these dates and during that date there was no proffer policy. In essence, the action the Board has taken is not to eliminate cash proffers for the project but to eliminate individual cash proffers associated with individual lots on a case-by-case bases.

Mr. Maloney stated therefore, the real question is was it ever the Board's intention for a particular development in its entirety not to address road impacts because of a technical contractual date. That's the real question and if the answer is yes, because of this technical date an applicant does not have to address issues arising from their development, particularly in the context of roads, then the Commission's conclusion that the applicant's request should be accepted. However, in all his years with Hanover County, he could not think of one incidence whether it is a small, medium or large development, in which the applicant in some manner has not been asked to address impacts. Specifically impacts arising to the road network because of a technical date. If the Commission agrees with that position then fundamentally the applicant should be responsible for addressing road impacts then there should be some sort of a proffer. The next question the Commission needs to ask themselves is what that proffer is.

Mr. Maloney advised that Mr. Geiger mentioned that the applicant approached staff about credits for road improvements. Mr. Geiger is correct as well regarding the sequence of events that he described in his statement. The original proffer document divided up proffer responsibility specifically related to the R-4 townhomes proffers, to the accompanying business zoning, and proffers related to the entire project. At the time of the original zoning the staff viewed those improvements that Mr. Geiger mentioned as essentially entrance improvements. One of the proffers says all those

DRAFT MINUTES – AUGUST 15, 2013

improvements shall be designed in conformity with VDOT standards and regulations. Mr. Geiger mentioned that although they only needed 10 or 15 feet they did in fact build a 200 foot turn lane. That improvement was installed when the commercial business, Atlee Auto, opened up. It was *not* specifically a part of this request. It was part of the *entire* project request. But at the time the staff viewed those improvements essentially as entrance improvements. The County's long standing policy has been for those safety improvements that are designed and built to VDOT standards that the County does not typically offer proffer credits for those projects. A good example is the Charleston Ridge project approved this past spring. In that instance the applicant proffered construction of turn lanes into the property. The applicant proffered improvements to the main line of Atlee Station Road, and the applicant included a cash proffer, which represented the difference between the calculated proffer and the value of the Atlee Station Road improvements. In that case the staff did not recommend and the applicant did not request a credit towards those entrance improvements. There have been several zoning cases, proffer amendments that Commission has considered lately where because at the time of zoning a significant road improvement was negotiated and that was not a cash proffer. So, the only proffer the applicant came to request elimination was for other public facilities, school, libraries and so forth. Because they built a road or substantially improved a road there was no credit.

Mr. Maloney continued saying in this case if staff had considered those entrance improvements as regional creditable improvements they would have been reflected in the original 2007 proffer document and they were not. The next question is if the Board's intent is for development to essentially address its impacts and if entrance improvements are not eligible then what is the right proffer amount. The right proffer amount in this instance would be \$2,306 in accordance with the proffer policy.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Maloney advised that he had an opportunity to discuss this at some length with Mr. Flagg, Director of Public Works and neither of them can identify a specific regional project that is going to be influenced by this project. So, what we have done in other cases involving 50 or more lots is defaulted to the \$2,306. Therefore, if the Commission's conclusion is the Board did not intend for a developer to be responsible for potential impacts to the road network arising from their development and if it is determined that the entrance improvements mentioned typically would not be considered as improvements for which proffer credits would be granted, then the proper proffer amount to request of the applicant would be \$2,306.

Mr. Maloney in summary said, if the Commission thinks the Board intended because of a contract date that a project, not an individual homeowner, a project in its entirety because of that contract date is excused from addressing off-site impacts then the Commission's action should be to recommend approval of the request. If the Commission does not think that was the intent of the Board's action then the proper motion would be to recommend denial of the request and recommend a proffer in the amount of \$2,306. As stated in the staff report staff is leaving it to the discretion of the Commission to determine what the Board's intent was when they made that decision back in June 2013.

Mr. Whittaker stated that regarding the road improvements some of these road improvements were done because of Atlee Auto Service; therefore, this development most likely did not take the whole blunt of that cost, because a lot of road improvements had to be done when Atlee Auto Service was built.

Mr. Maloney advised that the proffered road improvements were installed at the time the Atlee Auto site was being developed and they were installed simultaneously with that site's completion.

DRAFT MINUTES – AUGUST 15, 2013

Mrs. Peace said when she visited the site she took lots of pictures and it appears that they actually rerouted the entrance to the Atlee Auto Center which they would have had a by-right entrance off of 301, so they are taking commercial traffic off of the road network there and filtering it in through the site. So, there will be less in and out traffic at the Auto Site. Also, there is only one way in and out and it is pretty far from the Shady Grove intersection and there is not a lot of traffic on 301 in that area and no new development in that area for decades. Therefore, she did not see any impacts to the transportation network from this small townhouse development.

Mr. Maloney asked if it is not reasonable to assume like any residential development that there is going to be traffic entering and exiting the site to shop, go to schools, for recreational purposes, travel purposes and so forth. He said here again he thought the issue is not so much whether or not there is going to be traffic arising from this project because as a townhouse project there is probably six vehicle trips per unit per day. The question is “should the developer have some responsibility for improving the capacity along the transportation network.” He was not suggesting that there is a specific impact to any road but it does add traffic to the entire network. And that is what the base \$2,306.00 proffer amount is intended to support, those overall improvements outlined in the proffer policy.

Mrs. Peace said she understands that new development needs to pay for itself; however, at the same time these homeowners can walk to Food Lion and the Commission is charged with looking at the facts of each individual case. The applicant has stated the major investment they have made for the extended turn lane and addressed the minimal traffic impact that they have shown through their traffic studies. She understood Mr. Maloney to say he and Mr. Flagg really cannot identify any regional project that this project would be contributing to financially.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Maloney replied that they actually could. It will be contributing to all of the projects in the proffer methodology.

Mr. Padgett mentioned that the point is that in the absence of more specific additional impacts the general impact would be \$2,306. If it were additional it would be over and above the \$2,306 which are the ones they have had for \$3,000 or \$4,500 or upwards because they add an additional impact. He said U.S. Route 301 is a nicely built road so it is not going to affect 301 as much but there is a difference as he understands it.

Ms. Winborne mentioned that “we live in a world of date certainties and the Board has defined these date certainties.” If this case were a homeowner and a builder staff would suggest the recommendation be the elimination of the proffers.

Mr. Maloney replied yes, that was correct for individual lots.

Ms. Winborne stated the applicant has a contract and they are within the window [of proffer elimination]. Her struggle with this case was with the memo that Mr. Maloney had given to the Commission and the direction and guidance they received regarding property owners and transfer of properties, as well as with qualifying or quantifying who the buyer is and who the seller is. Because she heard the applicant say his client’s intention as soon as he heard there was no proffer, was to enter into this deal. “Everyone’s got intentions.” Therefore, she is left to look at language in that memo Mr. Maloney gave them last month and it did not leave a lot of “wobble room,” and she did not know how the Commission will be able to handle reconciling that.

Mr. Maloney responded saying the Board took a specific action to allow consideration of cash proffers on an individual lot basis involving a builder and a homebuyer. The memo that he distributed, the words were not that specific but that was the situation that the memo intended to address because that was the situation that was presented to the Board. He said he would reference the comments he

DRAFT MINUTES – AUGUST 15, 2013

made a few moments ago, that if they look to intent, ultimately it is going to be the Board that makes this decision. And if the Commission looks to intent the question is the intent of a project not to contribute at all to the transportation impacts or is the intent where individual buyers are bound by an individual contract to buy an individual home that they will be residing in. Is it to negotiate and make some allowances for those homeowners. He said he was trying to articulate two thought processes for the Commission because what this is really about is a land use decision and impacts arising from a particular use.

Mr. Maloney reiterated that in November 2013 the Board of Supervisors eliminated the then cash proffer policy. That is a specific remedy to address specific impacts in a specific formula. What the Board did not do back in November is amend the zoning ordinance. In Section 26.306: Applicant may submit proposed proffers: the owner of the property which is the subject of rezoning request may proffer that, in the event the property is rezoned to a requested zoning district, the use and the development of the property will be subject to specified reasonable conditions, in addition to the regulations provided by the Zoning Ordinance for the zoning district provided; however, (1) that the rezoning itself gives rise to the need for the proffered conditions, (2) such conditions have a reasonable relation to the zoning, (3) all such conditions are in conformity with the Comprehensive Plan and requirements of the Code of Virginia. He said what the Board did not do is authorize an amendment to the zoning ordinance precluding the County from negotiating proffers and that section is not specific to a cash proffer verses a performance proffer to install a turn lane or use certain building materials, it is a general proffered condition and he did not recall in the Board's discussion giving staff direction not to "look at impacts arising from zoning." The action the Board took was to eliminate a specific proffer policy.

Ms. Winborne asked if there are proffered conditions with this project.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Maloney replied yes and they are in compliance with the zoning ordinance. He said the only request here is elimination of the cash proffer.

Ms. Winborne advised that the other problem has to do with “retrospective analysis in that now we do have a transportation methodology,” and when the applicant filed his application in December or January, that transportation policy was a “glimmer in somebody’s mind. It did not exist.” She said now there is a standard and her question was if they are looking backwards to try to make a “square peg fit in a round circle.”

Mr. Maloney reiterated that is the Commission’s question to answer.

Mrs. Peace said she did not see how this case differs in from the cases that they have already approved based on the Board policy.

Mr. Leadbetter said he agreed with Ms. Winborne as far as not knowing what was going to be put into place in that “donut hole” as they call it. At one time the Board was talking about replacing it with a car tax, so nobody realized that there was going to be a transportation impact. He said the other “heartburn” he has is with this whole process that they are going through instead of relying on their policies to make recommendations they are being asked to make a recommendation on what they “think” the Supervisors’ intent is and he did not believe they should be “guessing” but rather asking the Board to put that in some sort of amendment so the Commission knows what do.

Ms. Winborne asked if he was suggesting that the Commission does not have sufficient information and if they need some kind of pause to access more facts to understand “intention verses the words in that memorandum.”

Mr. Leadbetter said he believed that would be the correct move because it is not necessary for the Commission to be guessing the Supervisor’s intentions.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Padgett said as he recalled on November 28, 2012 the Board did not eliminate the policy but the dollars. The policy remains in effect.

Mr. Maloney stated that they had an adopted cash proffer policy that included the dollar figures and that that specific cash proffer policy is what the Board eliminated.

Mr. Padgett said that was not quite the way he understood it; however; it probably does not matter much.

Mr. Bailey asked Mr. Padgett and Ms. Winborne, who both served on the proffer committee, if at any time during their meetings anyone brought the subject up concerning elimination of proffers for the developer.

Ms. Winborne advised that it was never delineated. She said it was the policy that proffers will be gone in Hanover County.

Mr. Padgett said that was the vote of the committee, which he did not support. He added they did not talk about a category of folks to whom this would apply.

Mr. Whittaker said he sat through a lot of these meetings and relief has been given to the builder and buyer but they have not given it to the developer/builder.

Ms. Winborne said they gave relief to the Rutland folks by reducing their proffers.

Mr. Whittaker replied the Rutland folks had done \$11 million worth of road improvements.

Mr. Maloney agreed that there were road improvements associated with that.

Mr. Padgett added they gave relief but *not* elimination.

Mrs. Peace stated that Rutland is significantly more of an impact on the community and road network than this townhome development.

Mr. Geiger asked if he could speak.

Ms. Winborne agreed since there was time left for his rebuttal.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Geiger said on November 28, 2012 according to minutes of the Board, they eliminated cash proffers. His understanding was every applicant in the County who has said they are going to pay cash proffers and anybody who had not paid them already based on the Board's vote were not going to have to pay them. He continued by saying his client is just like any other applicant who can come before the Commission and say they want to amend their proffers. He stated that his client filed an application in January 2013 and they were not allowed to move forward until May.

Mr. Geiger said the same lot owners that are being excused from paying the cash proffers are the ones driving and using the road network going to the grocery store, dropping the kids off at the parks and taking them to schools as will our homebuyers. This request is a small community with 72 lots and they will not have a big impact on the road network. He read the County's traffic impact analysis which was done in 2007 when the commercial and residential were to be built at the same time. He mentioned that when this traffic impact study was done it was looking at the joint traffic. He said the study was talking about a general improvement to the road network. The wording in their original proffers in 2007 matches exactly what is in this traffic report. He said this is a mixed-use project and his clients did the whole entrance.

Mr. Geiger said the Board's guidance whether it is in the minutes from the Board meeting of June 28, 2013, or in the memo that was given to the Commission from Mr. Maloney at the Commission's last meeting, the explanation was if the contract falls between these two dates cash proffers were not to be negotiated. He asked the Commission to recommend to the Board elimination of the cash proffers.

Mr. Walter stated regarding focusing on the date of the contract and whether that is relevant to this discussion, he understood the Commission's unenviable task of trying to determine the Board's intent when they announced their policy about two months ago to deal with those contracts that were

DRAFT MINUTES – AUGUST 15, 2013

entered into between late November and sometime in February. He believed the concern the Commission needed to raise is precedent. This Commission and Board have certainly been aware of the desire to be consistent in approach. The cases that have gone to the Board up until this point have been between a builder and a homebuyer. In this situation there is a transaction between a property owner, who is a developer, and somebody who is going to build houses for someone else.

Mr. Walter expressed concern with just looking at the dates in this situation. He said imagine a scenario where there are 100 acres located on Atlee Station Road and a developer entered into an agreement on January 15, 2013 to purchase that property. They could get 400 hundred houses on this property and they say they were under the impression that there would be no cash proffers, and when they negotiated with the original property owner who was a farmer selling his property they factored in that they would have \$0 cash proffers. Then there would be no cash proffers for road improvements on 400 units.

Ms. Winborne said she appreciated what Mr. Walter said but she believes that the Board and their legal team should have been clearer in what their intention is versus just saying “if someone had a contract in this date then they have no proffers.”

Mr. Walter stated that in the Board and the County Attorney’s defense that question was asked of them. He did not believe it would be appropriate for the Commission to defer this request because they want the Board to clarify their policy, because the Board really only acts based upon cases that are before them. He recommended that the Commission make a recommendation one way or the other for this case and when the Board makes their decision for the request their question will be answered.

Ms. Winborne said she did not believe anyone was suggesting that they ask the Board to make a clarification when folks were talking about intent instead of having a theoretical discussion about what our Supervisors’ intentions were; however, if the request was deferred they could ask their

DRAFT MINUTES – AUGUST 15, 2013

individual Supervisor. She added that when Mr. Walter said the Commission should be looking at policy “we come full circle to the whole question if intent is irrelevant then we need to look at the language that we were given.”

Mr. Walter felt that discussion with individual Board members while it may be informative actually does not indicate what the Board’s policy is because that may be an individual Board member’s interpretation of what the Board policy is but the Board can only act as a group.

Ms. Winborne agreed. She said Mr. Peterson’s comments in the Board’s minutes of not going along with developers not paying proffers if they are selling to a builder, are Mr. Peterson’s views not the entire Board’s (handout of the Board’s minutes given to the Commission and filed in case file).

Mr. Walter advised that his intent was not to try to interpret what the Board said or meant because he was not there. What he meant was the Commission in essence has to base their decision upon the evidence they have and make a recommendation on this case based upon previous Board actions both on those particular cases as well as all of these dealing with the cash proffers.

Ms. Winborne said she appreciated Mr. Walter’s comments; however, Mr. Walter also said the other cases that came before the Commission were homeowners and builders which are potentially circumstantial in her opinion. She said if this gentlemen’s case had been submitted to the Commission at the January meeting when he had applied they would have heard the request before the explanation memo by the Board. She was not sure the order and the circumstances of the cases really change the fact in her mind of what the policy is, what was that guidance document that they got and how are they supposed to apply that without getting down the “slippery slope” of interpreting what they think somebody means.

Mr. Maloney said regarding Mr. Leadbetter’s comment of concern that the Planning Commission is placed in somewhat of a “precarious” position in terms of being in a position to

DRAFT MINUTES – AUGUST 15, 2013

interpret, as Mr. Walter stated earlier, regardless of the Commission's recommendation, once that recommendation is sent to the Board the action they take will provide the staff, applicants and Commission significant direction. So, if the Commission recommends approval of the case as requested and the Board agrees with that then there should be a pretty clear understanding of how to act in similar circumstances in the future. Likewise if the Commission recommends approval and the Board said "sorry that's not what we intended" that will send an equally clear message. Therefore, it is appropriate to take a definitive action on this case and let the Board speak to its intent through their action on this specific request. That will provide guidance for all of us in the future.

Mr. Geiger said he appreciates Mr. Walter's distinction and concern but it is the homebuilder who pays the cash proffer at the time of C/O.

Mr. Bailey said Mr. Geiger mentioned that elimination of the cash proffers sort of "made the deal." In looking at the original proffer of \$14,000 that is about \$1M plus. If the transportation policy of \$2,306 were paid that would be approximately \$160,000; therefore, Mr. Geiger's client would still be saving over \$800,000. He asked if his client would not do the project if he had to pay the \$2,306.

Mr. Geiger stated that his clients have invested the money in infrastructure and they relied on the no cash proffer policy. So, it is not a question of whether or not they are going to do the development. It is a question of going back and resetting the economics of the deal where they have a binding contract and try to renegotiate price. That will ultimately impact the economics of the deal that were entered into at that time.

Mr. Padgett advised that it was his understanding that the seller is responsible for all proffers, fees, contributions and so forth and he also pointed out the exhibit was in contradiction to that because it says that the buyer would pay it and in no case did it say that the homebuyer would pay it although it obviously would be reflected in the price of the home, and Mr. Geiger told him if the \$2,306 were

DRAFT MINUTES – AUGUST 15, 2013

imposed then that might well lead to renegotiation between the seller, whom Mr. Geiger represents, and the builder.

Mr. Geiger said yes his client would have to go back to the builder and renegotiate price.

Ms. Winborne understood the applicant to say there was a VDOT study and the traffic impact was zero.

Mr. Maloney replied no, the study said in order to facilitate the movement of traffic there had to be an improvement to the turn lane at the “turn around” just north of the property. The consultant recommended and what the applicant was required is that “turn around” be constructed in accordance with VDOT standards and specifications, which he believed to be a required 200 foot taper and 200 feet of storage. From the staff’s standpoint it is really relevant as to the dimensions of the turn lane that is simply a VDOT standard. Staff always requires improvements to be installed in accordance with VDOT standards. And the reason it is stated in the proffer document is to put the applicant on notice that ultimately it is *not* Hanover County that is going to approve this transportation improvement design it will be VDOT and their standards have to be met.

Ms. Winborne stated she did not ask her question correctly. She thought Mr. Maloney told her that if staff uses the transportation methodology there would be no impacts.

Mr. Maloney said he was referring to two issues. 1) If staff felt that they contributed to the regional road impacts then they would have been given a credit as part of the original zoning; but we did not. So, circumstances associated as to whether those are credible improvements or not is really a “moot” point. That issue was decided with the original zoning case. 2) Because of the geographic location and disbursement of this traffic from this project, it is not going to have a material effect on any one road. It is going to have an impact throughout the network; therefore, the \$2,306 is the default

DRAFT MINUTES – AUGUST 15, 2013

number for projects to contribute to all of the improvements that are used to develop the cash proffer methodology.

Ms. Winborne said under different circumstances it could have been higher.

Mr. Maloney stated yes that is correct; however, because this traffic is going to be disbursed and affect a variety of projects, it is that default amount of \$2,306.

Mrs. Peace asked if the case preceding this one that just got their proffers eliminated would have an impact on the regional road network.

Mr. Maloney advised that staff would say absolutely; however, their recommendation is based on direction in a similar case received from the Board when the Board established their policy he believed “everybody in this room understands.” Obviously it is staff’s role is to carry out Board Policy.

There was general discussion regarding proffer methodology and potential road impacts from this development.

Mr. Padgett reiterated what Mr. Walter said that no matter what the Commission recommends the Board is going to make the final decision and then the Commission will understand what they meant by the memorandum Mr. Maloney gave to the Commission last month. He stated that he learned today that on the June 12, 2013 Board meeting they discussed cash proffer policy issue. He read the following section of the minutes of that meeting: Mr. Peterson agrees with Mr. Hazzard there was no policy in effect and true astute negotiation would have looked at the worst case scenario and said what happens at the Board if they flip but a small business person may have assumed that the Board meant what it said “that is none”. This is reasonable as long as it was within this time frame and a final contract between the builder and the owner “existed”. Mr. Peterson stated that he would not go along with a contract between the developer and selling the lot to a builder. Mr. Padgett said , granted

DRAFT MINUTES – AUGUST 15, 2013

the Board did not take an action on that but on the other hand nobody opined one way or the other on it.

Ms. Winborne stated that is the opinion of one person.

Mr. Padgett reiterated that it is the opinion of one person but nobody objected to his statement and nobody took issue with it. He continued reading: Mrs. Kelly-Wiecek said anyone with a contract between those dates going forward. Mr. Peterson stated there is a reasonable argument but it would be the vote of the entire Board. He said his understanding of this is that the end user is the ultimate buyer. So, there was no choice, either he was going to buy the house during that period of time that the contract was entered into he would have to pay it and the builder would not have to pay it but the buyer would.

Mr. Padgett stated regarding this case the original proffers, had no action been taken in November, amounted to the total of the 72 units approximately \$1 million. The reduction of proffers would be \$859,000 which Mr. Bailey pointed out. If Mr. Geiger is correct in his presentation this \$166,000 might require some renegotiation amongst those two parties. It is hard to believe that they would have refused to do this. The reduction of \$14,000+ proffer amount going down to \$2,306 was quite substantial by itself and in all probability it would have gone through. He questioned if they were placed at an unfair competitive advantage because they have the \$2,306 and nobody else does. The answer is no because almost everybody else has to pay it. Therefore, he did not understand how this is going to create a lot “gnashing of teeth” regarding the competitive advantage. In the issue of fairness he had mixed feelings. If it was truly unfair and he thought that the applicant had relied on this and would not have done it otherwise then he would say “let them be exempt from it.” However, he thought they would have gone through with the deal anyway regardless of the \$2,306 road impact proffer and he believed the applicant is reaching out for the last little “bit of meat” that they can get

DRAFT MINUTES – AUGUST 15, 2013

and he did not believe that is the Board's intent to allow a whole subdivision not to have to pay the road impact proffer even if it is only a 72 unit subdivision. His conclusion was to recommend denial as submitted but approval subject to the inclusion of a transportation cash proffer of \$2,306.

Ms. Winborne said she did not believe Mr. Padgett could impugn the motive of the applicant and she did not believe that could figure into a decision any more than taking a sentence that Mr. Peterson said as the intent of the whole Board. She said they have a guidance document that they were given and this applicant said they filed as soon as they heard the proffers were being eliminated. She said they got deferred by staff.

Mr. Padgett said that is true; however, they would not be here at all had there not been a June 12th meeting of the Board to discuss this very issue because prior to that they had to come in and ask for the reduction.

Ms. Winborne agreed; however, if the Board had never done a transportation policy they would have been getting \$0. There are all of these what ifs from what happened from the date they applied. She said in the future she would appreciate staff giving the Commission a recommendation and some guidance. She came to the meeting thinking they would defer the request until they could gather more data to understand what they are really being asked to do.

Mrs. Peace agreed with Ms. Winborne's comments and she believed they were given a policy that is extremely clear. She said the Commission went over the Board's directions regarding the dates that the cash proffer policy was not in effect and she did not see any evidence in this particular case that is any different than any other case that they have approved for recommending removal of the proffers.

Mr. Padgett stated that he did not see any advantage that will be gained by deferral of the request because the amount is either \$0 or \$2,306.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Padgett made a **MOTION TO RECOMMEND DENIAL AS SUBMITTED BUT APPROVAL IF PROFFER NUMBER 1 SPECIFIES A ROAD IMPROVEMENT PROFFER OF \$2,306.00 PER UNIT FOR C-16-07(c), AM. 1-13, D&R PROPERTY DEVELOPMENT, INC.**

Mr. Whittaker **SECONDED**.

Mrs. Peace made a **MOTION TO AMEND THE ORIGINAL MOTION SO THAT IT WOULD PROVIDE THAT THE PLANNING COMMISSION RECOMMENDS APPROVAL AS SUBMITTED WITH \$0 ROAD PROFFER AMOUNT.**

Ms. Winborne **SECONDED THE MOTION TO AMEND.**

Mr. Walter advised that a yes vote at this point means that the Commission member wishes to consider the \$0 road improvement proffer amount.

Ms. Winborne asked all in favor of Mrs. Peace's amendment.

The vote was as follows:

Mr. Bailey	Nay
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Nay
Mrs. Peace	Aye
Mr. Whittaker	Nay
Ms. Winborne	Aye

The motion carried 4 to 3.

Ms. Winborne announced that Mr. Padgett's motion was amended.

Mr. Walter advised that the motion now pending before the Commission is the recommendation of approval as submitted with a reduction of the road improvement proffer to \$0.

Ms. Winborne asked all in favor of the pending motion.

The vote was as follows:

DRAFT MINUTES – AUGUST 15, 2013

Mr. Bailey	Nay
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Nay
Mrs. Peace	Aye
Mr. Whittaker	Nay
Ms. Winborne	Aye

The motion carried 4 to 3.

The Planning Commission voted 4 to 3 to **RECOMMEND APPROVAL OF C-16-07(c), AM. 1-13, D&R PROPERTY DEVELOPMENT, INC. SUBJECT TO THE PROFFERS AS SUBMITTED JULY 31, 2013 WITH A \$0 ROAD IMPROVEMENT PROFFER.**

PROFFERS APPLICABLE TO R-4 PROPERTY:

1. Contribution for Road Improvements: The Owner, for himself, his successors and assigns, agrees to pay Hanover County prior to issuance of a Certificate of Occupancy for the Property, the amount of Two Thousand Three Hundred Six and 00/100 (\$2,306.00) per single family unit built on the Property. The funds shall be used for the purpose of completing off-site road improvements relating to the development allowed by the rezoning and included in the Business and Residential Development Road Improvements Transportation Policy, adopted March 13, 2013. In the event funds are paid and are not used for such improvements, the County shall return the funds paid to the Owner or his successors in title.
2. Conceptual Plan: The R-4 area shall be developed in substantial conformity with the conceptual plan, titled “Lawhorne Conceptual Plan” dated May 7, 2007, last revised December 16, 2010, and prepared by Balzer and Associates, Inc.
3. Elevations and Exterior Materials: The proposed townhouses shall be constructed in substantial conformity with the elevations, titled “Elevations For: Marley Pointe Development,” dated December 22, 2010, and prepared by Royal Dominion Homes.
4. Irrigation System: An irrigation system shall be provided for the community. Lawn areas within the common space as well as individual dwelling front lawns shall be irrigated.
5. Tree Preservation: Existing trees of 5 inch caliper or greater on the Property shall not be removed with the exception of dead or diseased trees or parts thereof. This shall not prevent the removal of trees necessary for the construction of improvements, driveways, drainfields, or drainage facilities.
6. Amenities: The community shall include on-site passive amenities such as trail or path, playground, and neighborhood greens. Although final design and location may change, the minimum extent and character of such features shall be substantially as depicted on the

DRAFT MINUTES – AUGUST 15, 2013

conceptual plan. The facilities shall be constructed at the expense of the Property Owner, and shall be conveyed at no cost, and with no liens and encumbrances, for ownership and maintenance by Homeowners' Association, as described herein, with appropriate covenants established to ensure the continued funding of the ongoing ownership, operational, and maintenance responsibilities. All recreational facilities serving the Property shall be maintained by a homeowners' association.

7. Homeowner's Association: Concurrent with the recordation of a subdivision for the community, a homeowners' association shall be established, to consist of the owners of the dwelling lots on the property, that shall have responsibilities for maintenance of common area and certain features on individual lots, and shall have responsibility for monitoring compliance with covenants and restrictions on the use of individual dwelling lots. The homeowners' association shall be required to employ at all times a firm or outside consultant to provide professional management services to assist the homeowners' association with its responsibilities.
8. Watertables. Watertables of houses shall be of brick or stone construction unless the house is constructed of synthetic stucco (DriVit) in which case the watertable may be of like material. Above the watertable the exterior of the houses shall be constructed of brick, stone, synthetic stucco (DriVit), premium vinyl siding or concrete-based siding material (Hardi Plank). Watertables shall be constructed in substantial conformity with the elevations, titled "Elevations For: Marley Pointe Development," dated December 22, 2010, and prepared by Royal Dominion Homes.
9. House Size: Minimum house size shall be 1,500 square feet. The calculation of minimum floor area shall not include floor area devoted to garages or breezeways in any category. Floor area shall be measured along the exterior walls of the structure.
10. Landscaping: A landscaped hedge, berm, and/or a low fence enhanced with landscaping, shall be provided along the north property line of the R-4 area, with such hedge, berm, and/or fence designed and arranged so as to minimize the likelihood of pedestrian movement from the R-4 portion of the property onto adjoining properties to the north.

PROFFERS APPLICABLE TO THE B-3 AND R-4 PROPERTY:

1. Transportation Improvements:
 - a. The Property Owner shall construct a right turn deceleration lane at the Chamberlayne Road site entrance consisting of a 200-foot taper and 200 feet of storage.
 - b. The Property Owner shall construct the Chamberlayne Road access with a channelizing island to physically inhibit wrong-way left turns out of the roadway.
 - c. At the intersection of Chamberlayne Road and McKenzie Drive, the Property Owner shall modify the median of Chamberlayne Road to provide a northbound U-turn lane with a minimum 200 feet of taper and 200 feet of storage.

DRAFT MINUTES – AUGUST 15, 2013

- d. The Property Owner shall remove the “No U-Turn” sign for southbound traffic at the Hanover Commons (North) intersection. Removal of the “No U-Turn” sign shall only be allowed with VDOT approval.
 - e. The Property Owner shall build an emergency access to McKenzie Drive with a VDOT approved turnaround (hammerhead turnaround) installed at the end of the publicly-owned McKenzie Drive. Property owner shall install a gate to prevent unauthorized entry from the Property to McKenzie Drive.
 - f. The “Hammerhead Turnaround” at the terminus of McKenzie Drive shall be dedicated to VDOT, free of cost, upon request by the County or VDOT.
 - g. All transportation improvements shall be designed and constructed in accordance with VDOT standards and specifications and shall be approved by VDOT prior to construction.
2. Utility Easement: The Property Owner shall dedicate a minimum twenty (20) foot wide permanent utility easement across the property for the Opossum Creek Sewer Interceptor project, free of cost, upon request by the County. The location and width of such easement shall be determined during the construction process.
3. Environmental Assessment: Prior to site plan or construction plan approval whichever occurs first, the Property Owner shall submit a Phase II environmental assessment, conducted by a qualified professional, to the Planning Department for review. At the time that the Owner submits a site plan or construction plan for approval, the Owner shall perform all remediation work required by the Phase II assessment that has not already been completed, and shall provide appropriate documentation certifying completion of the required remediation work to the Planning Department.

C-12-94(c) **SLA, L.C. (DAVIS PLACE)**, Requests an amendment to the proffers approved with rezoning request C-12-94(c), Donald R. Crump, on GPINs 8725-03-6389, 8715-93-, 8725-03-1382, 8725-03-1255, 8715-93-9351, 8715-93-8372 and 8715-93-7382, zoned R-2(c), Single-Family Residential District with conditions. This subdivision is located on the east line of Lee-Davis Road (State Route 643) at its intersection with Wesbeam Drive (State Route 2187) in the **HENRY MAGISTERIAL DISTRICT**. The proposed zoning amendment would amend the cash proffer. (PUBLIC HEARING)

C-4-96(c) **SLA, L.C. (DAVIS PLACE)**, Requests an amendment to the proffers approved with rezoning request C-4-96(c), SLA, L.C., on GPINs 8715-93-2462, 8715-93-1454 and 8715-93-0436, zoned R-2(c), Single-Family Residential District with conditions. This subdivision is located on the east line of Lee-Davis Road (State Route 643) at its intersection with Wesbeam Drive (State Route 2187) in the **HENRY MAGISTERIAL DISTRICT**. The proposed zoning amendment would amend the cash proffer. (PUBLIC HEARING)

DRAFT MINUTES – AUGUST 15, 2013

Mr. Maloney explained that in both of these cases the applicant is requesting elimination of the cash proffer for community facilities. In both cases the existing road proffer even with inflation is less than the base proffer in the amount of \$2,306.00. In both cases the current proffer in accordance with the original proffers accepted for roads is \$1,259.00. Under the Board's policy if the existing proffer for roads is less than the base amount then there would be no increase in the proffer amount. Staff recommended that the community facilities component of both proffers be eliminated and the existing cash proffer amount for roads remain.

Ms. Winborne opened the public hearing for both cases and asked if the applicant was present. The applicant was not present; therefore, it is understood that the applicant is in agreement with staff recommendations.

Ms. Winborne asked if anyone wished to speak in favor of or in opposition to either of these requests. There was no one; therefore, she closed the public hearing.

Upon a motion by Mr. Bailey, seconded by Mrs. Iverson, the Planning Commission voted **UNANIMOUSLY TO RECOMMEND APPROVAL OF C-12-94(c), AM. 1-13, SLA, L.C. (DAVIS PLACE) SUBJECT TO THE FOLLOWING PROFFERS DATED JULY 16, 2013:**

1. Exterior foundations of houses shall be of brick construction.
2. Minimum square footage for residences shall be as follows:
 - a. One-story: 1,150 square feet
 - b. One and one-half story: 1,350 square feet
 - c. Two-story: 1,600 square feet
3. Subject to the approval of VDOT, the applicants will provide and build a right turn lane and a left turn lane into the property.
4. Applicants have provided to the Director of Planning a conceptual site plan dated September 15, 1994, as revised October 26, 1994, showing potential development of the property which is the subject of this rezoning from Agricultural to R-2. The general configuration of the conceptual site plan with respect to the subject property will be followed,

DRAFT MINUTES – AUGUST 15, 2013

and the number of lots shall be limited to 78. Applicants reserve the right to adjust road and lot lines subject to the approval of the Planning Commission, in order to effectively design the subdivision following detailed engineering. At subdivision, lot lines of lots adjacent to wetland areas will be extended through such areas to the property line of the subject land. The graveyard will be incorporated into the rear or side yard of a lot and will have pedestrian access from a public road of a minimum width of eight (8) feet.

5. The applicants agree to dedicate an area of right-of-way on their property consistent with the functional alignment proposed for Lee-Davis Road as shown on the attachment in order to achieve a six degree curve on the center line.
6. Four deciduous trees of 2-inch caliper or greater shall be placed upon each lot in open area at the time of lot development. Trees in the rear and side yards will be selectively cut with no cutting of trees of 5 inch caliper or greater to be allowed, except that said areas may be used for drainage and utility easements when necessary for the appropriate development of the property and when required by the County of Hanover, and then only to the minimum extent necessary. The buffering along Route 643 shall consist of a columnar type tree four to five feet in height at planting and set approximately three feet apart, as depicted in the Landscape Ordinance.
7. The Owner, for himself, his successors and assigns, agrees to pay Hanover County prior to issuance of a Certificate of Occupancy for the Property, the amount of One Thousand Two Hundred Fifty-Nine and 00/100 (\$1,259.00) per single family unit built on the Property. The funds shall be used for the purpose of completing off-site road improvements relating to the development allowed by the rezoning and included in the Business and Residential Development Road Improvements Transportation Policy, adopted March 13, 2013. In the event funds are paid and are not used for such improvements, the County shall return the funds paid to the Owner or his successors in title.
8. Not more than 50 building permits shall be issued in any calendar year following the date of rezoning. Prior to the recordation of the fifty-first lot, the second means of access must be approved.

The vote was as follows:

Mr. Bailey	Aye
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Aye
Mrs. Peace	Aye
Mr. Whittaker	Aye
Ms. Winborne	Aye

The motion carried.

DRAFT MINUTES – AUGUST 15, 2013

Upon a motion by Mr. Bailey, seconded by Mr. Whittaker, the Planning Commission voted **UNANIMOUSLY TO RECOMMEND APPROVAL OF C-4-96(c), AM. 1-13, SLA, L.C. (DAVIS PLACE) SUBJECT TO THE FOLLOWING PROFFERS DATED JULY 16, 2013:**

1. Exterior foundations of houses shall be of brick construction.
2. Minimum square footage for residences shall be as follows:
 - a. One-story: 1,150 square feet
 - b. One and one-half story: 1,350 square feet
 - c. Two-story: 1,600 square feet
3. Four deciduous trees of 2-inch caliper shall be placed upon each lot in open areas at the time of lot development. Trees in the rear and side yards will be selectively cut with no cutting of trees of 5 inch caliper or greater to be allowed, except that said areas may be used for drainage and utility easements when necessary for the appropriate development of the property and when required by the County of Hanover, and then only to the minimum extent necessary.
4. The Owner, for himself, his successors and assigns, agrees to pay Hanover County prior to issuance of a Certificate of Occupancy for the Property, the amount of One Thousand Two Hundred Fifty-Nine and 00/100 (\$1,259.00) per single family unit built on the Property. The funds shall be used for the purpose of completing off-site road improvements relating to the development allowed by the rezoning and included in the Business and Residential Development Road Improvements Transportation Policy, adopted March 13, 2013. In the event funds are paid and are not used for such improvements, the County shall return the funds paid to the Owner or his successors in title.
5. Applicants have provided to the Director of Planning a conceptual site plan dated March 12, 1996, showing potential development of the property which is the subject of this rezoning. The general configuration of the conceptual site plan with respect to the subject property will be followed. Applicant reserves the right to adjust road and lot lines, subject to the approval of the Planning Commission, to effectively design the subdivision following detailed engineering.

The vote was as follows:

Mr. Bailey	Aye
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Aye
Mrs. Peace	Aye
Mr. Whittaker	Aye
Ms. Winborne	Aye

DRAFT MINUTES – AUGUST 15, 2013

The motion carried.

C-53-04(c) AM. 1-13 **RE2, L.L.C., ET AL. (LIBERTY TRACE)**, Requests an amendment to the proffers approved with rezoning request C-53-04(c), John H. Beahr, Jr., et al. (Entropy, L.L.C.), on GPINs 8724-27-4849, 8724-27-4856, 8724-27-4853, 8724-27-4860, 8725-27-4778, 8725-27-4784, 8725-27-5637, 8725-27-5665, 8725-27-5684, 8725-27-6612, 8725-27-6630, 8725-27-6568, 8725-27-9625, 8725-27-9647, 8725-27-9669, 8725-27-9772, 8725-27-9794, 8725-37-0717, 8725-37-0834, 8725-37-0828, 8725-37-0921, 8725-37-0913, 8725-37-0906, 8724-27-9999, 8724-28-9084, 8724-28-9077, 8724-28-9160, 8724-28-9163, 8724-28-9155, 8724-28-9148, 8724-28-9231, 8724-28-9214, 8724-28-8341, 8724-28-8215, 8724-28-7381, 8724-28-7350, 8724-28-7219, 8724-28-6278, 8724-28-6227, 8724-28-6257, 8724-28-6206, 8724-28-5265, 8724-28-6163, 8724-28-6194, 8724-28-7124, 8724-28-7145, 8724-28-7186, 8724-28-8038, 8724-28-8044, 8724-28-8052, 8724-27-8959, 8724-27-8966, 8724-27-8973, 8724-27-8874, 8724-27-8851, 8724-27-8739, 8724-27-8726, 8724-27-8704, 8724-27-7782, 8724-28-3019, 8724-28-3140, 8724-28-3160, 8724-28-3180, 8724-28-4101, 8724-28-4121, 8724-28-4141, 8724-28-4161, 8724-28-4148, 8724-28-4230, 8724-28-4232, 8724-28-4234, 8724-28-4236, 8724-28-4238, 8724-28-4330, 8724-28-4333, 8724-28-4359, 8724-28-4329, 8724-28-4309, 8724-28-3389, 8724-28-3369, 8724-28-3349, 8724-28-3329, 8724-28-2399, 8724-28-2359, 8724-28-2339, 8724-28-2319, 8724-28-1399, 8724-28-1379, 8724-28-1348, 8724-28-1340, 8724-28-1268, 8724-28-1276, 8724-28-1274, 8724-28-1283, 8724-28-1291, 8724-28-2109, 8724-28-2126, 8724-28-4543, 8724-28-4512, 8724-28-3592, 8724-28-3572, 8724-28-3552, 8724-28-3532, 8724-28-3512, 8724-28-2582, 8724-28-2552, 8724-28-2522, 8724-28-2502, 8724-28-1582, 8724-28-1572, 8724-28-1541, 8724-28-0499, 8724-28-0479, 8724-28-0458, 8724-28-0437, 8724-18-9387, 8724-18-9394, 8724-18-9392, 8724-28-0300, 8724-28-0208, 8724-28-0216, 8724-28-0225, 8724-28-0232, 8724-28-0159, 8724-28-0167, 8724-28-0175, 8724-28-0183, 8724-28-0191, 8724-28-1009, 8724-28-1018 and 8724-28-1025 zoned R-4, Residential Cluster District with conditions, and located at the terminus of Compass Point Lane (State Route 1075) approximately 800 feet south of its intersection with Mechanicsville Turnpike (U.S. Route 360) in the **MECHANICSVILLE MAGISTERIAL DISTRICT**. The proposed zoning amendment would amend the cash proffer. (PUBLIC HEARING)

Mr. Maloney presented this request for elimination of the proffers in the amount of \$9,741 for the non-age restricted units and \$5,422 for age-restricted units. They are requesting proffers in the amount of \$2,306 be substituted for 118 lots. There are several property owners (13 lots) that are requesting there be no cash proffers because they entered into a purchase contract during the time

DRAFT MINUTES – AUGUST 15, 2013

period between November 28, 2012 and March 13, 2013. Staff recommended approval in accordance with Board policy.

Mr. Padgett asked if there is any immediate impact other than the general impact in this case.

Mr. Maloney replied that is correct.

Ms. Winborne opened the public hearing and asked if the applicant was present and in agreement with the staff recommendation. The applicant from the audience said yes, he was in agreement with staff recommendations. Ms. Winborne asked if anyone wished to speak in favor of or in opposition to this request. Seeing no one, she closed the public hearing.

Upon a motion by Mr. Whittaker, seconded by Mr. Bailey, the Planning Commission voted **UNANIMOUSLY TO RECOMMEND APPROVAL OF C-53-04(c), AM. 1-13, RE2, L.L.C., ET AL. (LIBERTY TRACE) SUBJECT TO THE FOLLOWING PROFFERS DATED AUGUST 1, 2013:**

1. Conceptual Plan: The Property shall be developed in substantial conformity with the conceptual plan, titled “Liberty Trace, Mechanicsville District, Hanover County, Virginia” (“the Plan”), dated June 29, 2005, prepared by Kestner-Werner, L.L.C.
2. Architectural Treatments: The Property shall be constructed in substantial conformity with the elevations entitled “28 foot Townhome Product” and “20 foot Townhome Product.” All building elevations will be submitted to the Planning Commission for its review and approval prior to site plan review and approval.
3. Age Restriction: Seventy-five (75) lots shown on the Plan marked with an asterisk (*) shall be age restricted. Dwellings within this portion of the Property shall comply with the definition of “housing for older persons” (currently 55 years of age and up) as defined in the Virginia Fair Housing Act, and occupancy of that housing shall comply in all respects with the age restrictions and other provisions of Section 36.96.7 of the Code of Virginia. In addition, persons under the age of 19 shall not be housed or domiciled and shall not reside on any age restricted lot. A covenant shall be recorded, and a homeowner’s association established for enforcement of said covenant, to limit the use and occupancy of the dwellings as specified above.
4. Contribution to Road Improvements: The Owner, for himself, his successors and assigns, for tax parcels: 8724-27-4849, 8724-27-4856, 8724-27-4853, 8724-27-4860, 8725 27-4778, 8725-27-4784, 8725-27-5637, 8725-27-5665, 8725-27-5684, 8725-27-6612, 8725-27-6630,

DRAFT MINUTES – AUGUST 15, 2013

8725-27-6568, 8725-27-9625, 8725-27-9647, 8725-27-9669, 8725-27-9772, 8725-27-9794, 8725-37-0717, 8725-37-0834, 8725-37-0828, 8725-37-0921, 8725-37-0913, 8725-37-0906, 8724-27-9999, 8724-28-9084, 8724-28-9077, 8724-28-9160, 8724-28-9163, 8724-28-9155, 8724-28-9148, 8724-28-9231, 8724-28-9214, 8724-28-8341, 8724-28-8215, 8724-28-7381, 8724-28-7350, 8724-28-7219, 8724-28-6278, 8724-28-6227, 8724-28-6257, 8724-28-6206, 8724-28-5265, 8724-28-6163, 8724-28-6194, 8724-28-7124, 8724-28-7145, 8724-28-7186, 8724-28-8038, 8724-28-8044, 8724-28-8052, 8724-27-8959, 8724-27-8966, 8724-27-8973, 8724-27-8874, 8724-27-8851, 8724-27-8739, 8724-27-8726, 8724-27-8704, 8724-27-7782, 8724-28-3019, 8724-28-3140, 8724-28-3160, 8724-28-3180, 8724-28-4101, 8724-28-4121, 8724-28-4141, 8724-28-4232, 8724-28-4236, 8724-28-4238, 8724-28-4359, 8724-28-3369, 8724-28-2359, 8724-28-2339, 8724-28-1399, 8724-28-1379, 8724-28-1348, 8724-28-1340, 8724-28-1268, 8724-28-1276, 8724-28-1274, 8724-28-1283, 8724-28-1291, 8724-28-2109, 8724-28-2126, 8724-28-4543, 8724-28-4512, 8724-28-3592, 8724-28-3572, 8724-28-3552, 8724-28-3532, 8724-28-3512, 8724-28-2582, 8724-28-2552, 8724-28-2522, 8724-28-2502, 8724-28-1582, 8724-28-1572, 8724-28-1541, 8724-28-0499, 8724-28-0479, 8724-28-0458, 8724-28-0437, 8724-18-9387, 8724-18-9394, 8724-18-9392, 8724-28-0300, 8724-28-0208, 8724-28-0216, 8724-28-0225, 8724-28-0232, 8724-28-0159, 8724-28-0167, 8724-28-0175, 8724-28-0183, 8724-28-0191, 8724-28-1009, 8724-28-1018, and 8724-28-1025 agrees to pay Hanover County prior to issuance of a Certificate of Occupancy for the Property, the amount of Two Thousand Three Hundred Six and 00/100 (\$2,306.00) per single family unit built on the Property. The funds shall be used for the purpose of completing off-site road improvements relating to the development allowed by the rezoning and included in the Business and Residential Development Road Improvements Transportation Policy, adopted March 13, 2013. In the event funds are paid and are not used for such improvements, the County shall return the funds paid to the Owner or his successors in title.

5. The Property Owner, for himself, his successors and assigns of GPINs 8724-28-2319, 8724-28-2399, 8724-28-3329, 8724-28-3349, 8724-28-3389, 8724-28-4148, 8724-28-4230, 8724-28-4234, 8724-28-4329, 8724-28-4330, 8724-28-4333, 8724-28-4161, and 8724-28-4309 agree to pay Hanover County prior to issuance of a Certificate of Occupancy for the Property, the amount of 00/100 (\$) per single family unit built on the Property.
6. Planning Commission Review: The Planning Commission shall review and approve or disapprove the following, at its sole discretion, prior to or concurrently with preliminary plat approval:
 - a. Amenities plan, to be no less than what is shown on the Conceptual Plan last revised June 29, 2005.
 - b. Landscape Plan, to be no less than what is shown on the illustrative plan titled, “Liberty Trace” and dated May 19, 2005, and to include landscape, lighting, buffer, entryway and signage details.
7. Dwellings: The dwellings constructed on the Property shall be limited to townhouse dwellings on individual lots. The dwellings constructed on the Property shall consist of no more than two hundred eighteen (218) townhomes. Lots shown on the Plan marked with (2) and age restricted lots shall be 2-story. All other units may be 3-story.

DRAFT MINUTES – AUGUST 15, 2013

8. Building Permits: The Owner may apply for no more than one-hundred (100) building permits in any twelve month period following the date of approval of this rezoning. Age-restricted housing units shall not be subject to the provisions of this section.
9. Irrigation: An irrigation system shall be provided for the community. Lawn areas within the common space shall be irrigated.
10. Amenities: The community shall include on-site passive and active amenities. Passive amenities shall include pathways and trails that provide pedestrian access and connectivity throughout the community. Active amenities shall include three (3) tennis courts as shown on the Plan. Although final design and location may change, the minimum extent and character of such features shall be substantially as depicted on the Plan and on the colored rendering filed with the Director of Planning. The facilities shall be constructed at the expense of the Property Owner, and shall be conveyed at no cost, and with no liens and encumbrances, for ownership and maintenance by a homeowners' association, as described herein, with appropriate covenants established to ensure the continued funding of the ongoing ownership, operational, and maintenance responsibilities. All recreational facilities serving the Property shall be maintained by a homeowner's association. All recreational facilities shall be bonded prior to final recordation as subdivision improvements.
11. Homeowner's Association: Concurrent with the recordation of a subdivision for the community, a homeowner's association shall be established, to consist of the owners of the dwelling lots on the property, that shall have responsibilities for maintenance of common area and certain features on individual lots, and shall have responsibility for monitoring compliance with covenants and restrictions on the use of individual dwelling lots. The homeowner's association shall be required to employ at all times a firm or outside consultant to provide professional management services to assist the homeowner's association with its responsibilities.
12. Foundations: Exterior of all foundations shall be clad in brick or stone.
13. House Size: Minimum house size shall be 1,550 square feet. Floor area shall be measured along the exterior walls of the structure.
14. Pine Drive Improvements: Should the owners of Pine Drive agree to allow such improvements, and if the agreed improvements are not precluded by the appropriate regulatory agencies, the developer of the property shall raise and make improvements to Pine Drive to accommodate the 100-year storm event. Improvements shall be shown with the first set of construction plans for the project and shall be bonded as subdivision improvements prior to recordation.
15. Roads: Compass Pointe Lane shall be designed and constructed to VDOT public road standards and shall be maintained by VDOT. The Property Owner shall reserve a fifty (50) foot right-of-way in the area shown as Compass Point Lane Extended, and no improvements shall be constructed within the right-of-way reservation. The owners shall

DRAFT MINUTES – AUGUST 15, 2013

dedicate the reserved area to the County, upon request of the County or VDOT, free of cost and free of encumbrances restricting its use for public road purposes.

16. **Parking Lot Landscaping:** The parking lot landscaping shall be in accordance with Article 5A, Section 3.2.
17. **Tree Clearing:** The Property Owner agrees to meet with residents of Lark Way prior to commencement of any tree clearing operation.
18. **Berm Drainage:** The Property Owner agrees to take all necessary steps to ensure no water ponding behind the berms.

The vote was as follows:

Mr. Bailey	Aye
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Aye
Mrs. Peace	Aye
Mr. Whittaker	Aye
Ms. Winborne	Aye

The motion carried.

C-33-98(c) AM. 1-13 J3G PARTNERS, L.L.C., ET AL. (MOUNTAIN RUN), Request an amendment to the proffers approved with rezoning request C-33-98(c), Thomas Pollard, on GPINs 7840-34-8089, 7840-12-4956, 7840-12-8856, 7840-13-7070, 7840-13-6161, 7840-13-5481, 7840-13-8794, 7840-11-3406, 7840-12-6882, 7840-13-5285, 7840-13-8485, 7840-41-6283, 7840-41-1593, 7840-42-6822, 7840-42-9337, 7840-42-8230, 7840-51-0522, 7840-42-0952, 7840-20-3225, 7840-23-0128 and 7840-51-4540, zoned RC(c), Rural Conservation District with conditions, and located on the north line of Mountain Road (U.S. Route 33) at its intersection with Palmers Way (Private Road) and located on the west line of Farrington Road (State Route 670) at its intersection with Palmers Way in the **SOUTH ANNA MAGISTERIAL DISTRICT**. The proposed zoning amendment would amend the cash proffer. (PUBLIC HEARING)

Mr. Maloney presented this request to amend the cash proffers for 21 lots in the Mountain Run subdivision. The current road proffer is \$1,259, which is less than \$2,306; therefore, that proffer would remain in accordance with the staff recommendation. The applicant did include several GPINs (7840-51-4540, 7840-42-0952, and 7840-20-3225) in the request; however, those GPINs are preservation lots within this particular Rural Conservation district and are not building lots; therefore,

DRAFT MINUTES – AUGUST 15, 2013

the cash proffer policy does not apply to them. Staff recommended that the applicant amend the application proffer document prior to going before the Board of Supervisors. Staff recommended approval of the request.

Ms. Winborne opened the public hearing and asked if the applicant was present and in agreement with the staff recommendations. The applicant from the audience stated yes, he was in agreement with staff recommendations. She asked if anyone wished to speak in favor of or in opposition to this request. Seeing no one come forward, she closed the public hearing.

Upon a motion by Mr. Leadbetter, seconded by Mr. Whittaker, the Planning Commission voted **UNANIMOUSLY TO RECOMMEND APPROVAL OF C-33-98(c), AM. 1-13, J3G PARTNERS, L.L.C., ET AL. (MOUNTAIN RUN) SUBJECT TO THE FOLLOWING SUBMITTED PROFFERS DATED JULY 29, 2013 BASED ON THE BOARD OF SUPERVISORS' ACTION OF NOVEMBER 28, 2012 AND THAT THE THREE (3) GPINS WHICH CANNOT BE DEVELOPED BE REMOVED FROM THE REQUEST:**

1. Finished Foundations: All houses shall have brick or stone type finish foundations.
2. Minimum House Size: Minimum house size shall be 3,000 square feet of heated living space.
3. Cash Proffers: The Owner, for himself, his successors and assigns, agrees to pay Hanover County prior to issuance of a Certificate of Occupancy for the Property, the amount of One Thousand Two Hundred Fifty-Nine and 00/100 (\$1,259.00) per single family unit built on the Property. The funds shall be used for the purpose of completing off-site road improvements relating to the development allowed by the rezoning and included in the Business and Residential Development Road Improvements Transportation Policy, adopted March 13, 2013. In the event funds are paid and are not used for such improvements, the County shall return the funds paid to the Owner or his successors in title.
4. Tree Planting: Three deciduous trees of 2-inch caliper minimum shall be placed upon each lot where no tree cover is provided, before issuance of an occupancy permit for an individual lot.

DRAFT MINUTES – AUGUST 15, 2013

5. **Tree Retention:** There shall be no cutting of trees of five inch (5”) or larger caliper in the required rear and side yard area of each lot, as defined by the Zoning Ordinance, provided that portions of such areas may be cleared for driveways, wells, septic fields, drainage and utility easements, when necessary for dwelling construction and/or when required by Hanover County only to the minimum extent necessary for the specific uses.
6. **Road Improvements:** The Property Owner shall as subdivision improvements, construct, at a minimum all road improvements described in the letter from Robert Stanley dated April 4, 1999, attached to these proffers, and shall comply with all other requirements of the Virginia Department of Transportation. The improvements described in paragraph 3 of the letter shall be bonded and completed as a subdivision improvement; provided that completion of those improvements shall occur no later than six (6) months after the issuance of the Certificate of Occupancy for the first 18 holes of the golf course as depicted on the conceptual plan. The Property Owner shall take all action necessary to apply for the certificate of occupancy.
The main entrance into the Property shall be from Mountain Road. The Mountain Road entrance shall be designated by signage as the entrance to the golf course and will be open prior to the opening of the golf course. There shall be no signage on the Farrington Road side of the Property referring to or identifying the golf course in any manner, nor shall there be any written or other representations made by the Owner indicating that there is an entrance to the golf course from Farrington Road.
7. **Buffer:** Applicant agrees to maintain a fifty foot (50’) natural buffer along Route 670 and Route 33, as depicted on the conceptual plan. Applicant shall be allowed to plant and remove vegetation, including trees, so long as removal is necessary for the construction or maintenance of the golf course. Any trees removed five inches (5”) or greater in caliper shall be replaced by trees planted within the buffer areas with a total caliper equal to or exceeding the trees removed, with a minimum caliper of two inches (2”), including but not limited to, evergreens, dogwood, cherry, oak or maple trees.
8. The applicant may apply for no more than 50 building permits in each twelve (12) month period following issuance of the first building permit except as modified herein. In addition, if in any such twelve (12) month period the Applicant is not issued 50 building permits, the Applicant shall be entitled in the succeeding twelve (12) month period to additional building permits in an amount, not in excess of 10, by which 50 exceeds the number of building permits actually issued. For example, if in a twelve (12) month period 35 building permits are issued, the Applicant shall be entitled to 60 building permits in the next such period. If 45 building permits are issued, the Applicant shall be entitled to 55 in the next twelve (12) month period. Such additional permits must be used in the next twelve (12) month period and may not be carried forward.
9. **Groundwater Withdrawal:** No wells on the Property shall be used for golf course irrigation purposes.

If, at any time after the initiation of use of a well on the Property, any owner of property using a well located within one-half mile of the perimeter of the Property, and existing

DRAFT MINUTES – AUGUST 15, 2013

prior to the effective date of this rezoning, alleges that there is a decrease in the yield of the well resulting from withdrawals from wells on the Property, the matter shall at the option of the owner of the effected well pursuant to applicant of the owner of the affected well, be the subject of binding arbitration pursuant to the rules of the American Arbitration Association and the Uniform Arbitration Act. In the event of conflict between the rules and the Act, the provisions of the Act shall govern.

The arbitrator(s) shall have authority to:

- a. Make findings with regard to all matters related to an adverse effect on historic yields of re-existing wells and the relationship between the ground water withdrawals on the Property and those on the affected property.
- b. Order all appropriate remedies, including damages and other remedies for any adverse effect. Damages may include but are not limited to monetary compensation for reduction of fair market value of real estate, compensation at fair market value for the full value of property rendered uninhabitable, and costs of providing alternate water sources.
- c. Order equitable relief in the nature of requiring or prohibiting actions of the parties.

The remedies set out in this paragraph shall in no event be exclusive remedies, and parties affected by groundwater withdrawals may avail themselves of any other remedies, legal or equitable.

10. If a gate is constructed at the Farrington Road entrance to the Mountain Run Subdivision, the gate shall restrict access to the residential traffic only.
11. In addition to the proffers accepted with the rezoning case C-33-98(c), Amendment 1-01, the owner further agrees to enter into an agreement with the County prior to site plan approval for the owner to dedicate at no cost to the County, and at the County's option, the water and wastewater treatment systems serving "the Property" upon verification by the County that the system or systems have not been maintained or operated in compliance with the applicable regulations for three (3) months in any twelve (12) month period. The dedication shall include the treatment facilities, as well as the financial assets and the real property interest of such systems.
12. Any portion of the system constructed above ground and not enclosed within a building shall be screened in accordance with Article 7, Section 2A, of the Hanover County Zoning Ordinance.
13. Any buildings constructed as part of the treatment facility shall be constructed of materials and colors compatible with the residential portion of the property.

DRAFT MINUTES – AUGUST 15, 2013

14. In addition to the original proffers accepted for the Mountain Run development and Federal Club Golf Course with C-33-98(c), Thomas F. Pollard, Jr., et al., and amended proffers C-33-98(c), Am. 1-01, Thomas F. Pollard, Jr., accepted June 27, 2001, and C-33-98(c), Am. 1-02, Thomas F. Pollard, Jr., accepted July 24, 2002, which shall all remain in full force and effect, the following proffer is provided:

Architecture: The golf course storage building on Preservation Lot B4, Section 1, shall be developed in conformity with the conceptual elevation titled, “Gilman/Federal Club, Storage and Maintenance Shed,” prepared by the J. Christopher Gilman, submitted on May 5, 2011. The building will be frame construction on slab with vertical board and batten style hardiplank exterior siding will be painted with Sherwin Williams “Red Barn” (SW2307) or equivalent color, which is comparable to the color of the existing structure on the adjacent well lot. The roof will be a 26-gauge “Union” screw down metal roof in green, also matching other golf course structures. Final elevations shall be submitted to the Planning Director for his review and approval or disapproval, at his sole discretion, prior to site plan approval.

The vote was as follows:

Mr. Bailey	Aye
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Aye
Mrs. Peace	Aye
Mr. Whittaker	Aye
Ms. Winborne	Aye

The motion carried.

INDIVIDUAL HEARINGS

Chesapeake Bay Exception

EMERALD BUILDERS, L.L.C., Requests an Exception from Chapter 10, Environmental Management, Article II, Section 10-40 (b), of the Hanover County Chesapeake Bay Preservation Ordinance, to permit development in the Resource Protection Area (RPA) on GPIN 8726-01-5849. Permission is being requested to allow an encroachment into the RPA to facilitate a buildable area for a proposed single family residence. The property is zoned R-2, Single-Family Residential District, consisting of approximately 0.62 acres. The property is located on the north line of Strawbank Drive (State Route 1765), approximately 600 feet west of the intersection with Rural Point Road (State Route 643) in the **HENRY MAGISTERIAL DISTRICT**. It is bordered on the north by an unnamed creek, and to the east, south, and west by residential development. The property is designated on the General Land Use Plan Map as Suburban General. (PUBLIC HEARING)

DRAFT MINUTES – AUGUST 15, 2013

Mr. Mike Flagg, Director of Public Works, advised that one of their responsibilities is to administer the Chesapeake Bay Preservation Act. In 2003 our local ordinance was amended in accordance with State statute to add a provision to consider exceptions formally in the form of a public hearing. A hearing body had to be appointed and at that time the Board shows the Planning Commission because of your expertise in land use matters. So, the Commission is the body that will make the decision on the exception request. These requests are very rare.

Mr. Flagg stated that this is a request for permission to allow an encroachment into the RPA to build a single-family dwelling on a home lot that recorded prior to adoption of the Chesapeake Bay Preservation Ordinance. The current contract owner is Jones Realty, it is zoned R-2, Residential district, and is 0.62 acres. In April they received a building permit and evaluated the permit. There is an administrative authority granted to the Director of Planning to grant an encroachment up to 50 feet if the lot was recorded prior to the Chesapeake Bay Act. In this case it requires an encroachment that goes beyond those 50 feet. He said they consulted with the County's local assistants' division liaison and the County Attorney determined that an application for an exception was the only recourse for the owner at this time.

Mr. Flagg advised with regard to the exception there are seven findings that the Commission is charged with determining. Some of them are a little conceptual. He said he would state the applicant's position and then staff's recommendation as they go through the findings. The Commission has the ability to say they find this request in accordance with the findings or not in accordance. The Commission also has the ability to offer conditions that would make this in accordance if they determine that to be appropriate.

Mr. Flagg advised that this particular lot is located in Strawhorn Subdivision on Strawbank Drive. It drains to a tributary of the Totopotomoy Creek and in fact it drains through an intervening

DRAFT MINUTES – AUGUST 15, 2013

pond down slope. It is relatively steep in terms of topographic relief. The lot was recorded in 1973. He reviewed the building application and proposed scope of work to build the house. It will be clearing 865 square feet. The front yard area will be largely taken up by the required septic field and driveway. Wetland areas adjacent to this are not proposed to be impacted with this permit.

Mr. Flagg reviewed the findings, applicant's statement and staff's comment:

1. Is the minimum necessary to afford relief in this instance?

- Applicant's Statement:
The applicant has stated that the lot is located within the 100 foot buffer and more specifically the lower 50 foot buffer. In order to facilitate a buildable area, it needs to disturb that area. It was recorded before the Chesapeake Bay Act was adopted.
- Staff Comment: Staff generally agrees with the owner's statements.

2. Does it confer any special privileges that are denied to others?

- Applicant's Statement: The lot was designed and recorded before the Chesapeake Bay Preservation Act (CBPA). The owners of the lot do not have an opportunity to build unless they get an exception.
- Staff Comment: This is a very unique circumstance and that the lot was recorded prior to the adoption of the CBPA. This exception is unique and does not confer special privileges.

3. Is it in harmony with the purpose and intent of the Bay regulations?

- Applicant's Statement: The proposed house and grading plan will not disturb any wetlands or waters of the U.S. The buildable area will be limited to the RPA buffer and will be controlled during home construction with common Erosion and Sediment Control practices. Once complete the area will be stabilized with vegetation.
- Staff Comment: Again, this is a very unusual circumstance; however, the owner cannot comply with the requirements to maintain a 100 foot buffer on this lot. Erosion and sediment control measures will be required and the wetlands will be preserved to filter runoff.

4. Is it not based on conditions that are self-created or self-imposed?

- Applicant's Statement: The lot was recorded prior to the CBPA laws were adopted. This was not the fault of the landowner.
- Staff Comment: The need for the exception is not due to conditions or circumstances that are self-created or self-imposed.

5. Does it allow for the reasonable use of the property?

DRAFT MINUTES – AUGUST 15, 2013

- Applicant's Statement: Without the exception, the lot is not buildable.
- Staff Comment: Staff concurs with that statement.

6. Is it in compliance with the other environmental management provisions?

- Applicant's Statement: As stated in #3.
- Staff Comment: Staff believes that the project complies with all requirements of the Environmental Management provisions of the Hanover County Code other than those for which the exception is requested.

7. Is water quality preserved to the maximum extent practicable?

- Applicant's Statement: All erosion and sediment control measures will be installed prior to land disturbance and will remain throughout construction. The wetlands / waters of the U.S. will remain undisturbed.
- Staff Comment: Staff concurs with the applicant's statement.

Mr. Padgett asked what the very heavy dark lines were around the plat.

Mr. Flagg answered that essentially the limits of clearing and disturbance on the outer parcels are the dark lines. So, they would be where the tree surface would actually be removed and replaced with either the appurtenances shown or grass once it is complete.

Mr. Padgett stated that there is a huge pipe running from across the street down to the next property as well. He asked if that was a sewer line.

Mr. Flagg stated no, he was not aware of a pipe running beyond the roadway.

Mr. Padgett said according to this plat there is some kind of large pipe there.

Mr. Flagg advised that he will investigate that further.

Mr. Leadbetter asked when the CBA applied to this property.

Mr. Flagg said it is being applied at this time when the applicant filed for a building permit. The lot was recorded in 1973 and existed as a recorded buildable lot from 1973 until today. The CBA was enacted initially in 1989 and it has been amended several times.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Leadbetter asked in a case like this where a property owner has a buildable lot and because of the CBA it becomes unbuildable, are they awarded any kind of compensation under Federal, State or local government for that.

Mr. Flagg replied not to his knowledge and he has never known that to occur.

Mr. Leadbetter asked if the property gets reassessed for tax base purposes.

Mr. Flagg explained if the property is found to be unbuildable it is his general understanding that they could apply to the assessor's office for consideration against their assessment and it is likely the assessment will change.

Mr. Leadbetter asked if the property owner is liable for damages that violate the Chesapeake Bay Act, if damage is caused by an "act of nature" or something they do not have control over that may affect the Chesapeake Bay Act.

Mr. Flagg advised it would be dependent on a case specific circumstance. For example, if during the process of construction of this house and they have put in all the required erosion and sediment controls including the silt fences that are shown on the Plan, then they have complied with the law. So, if a hurricane comes through and knocks down the silt fence then essentially there is some protection. However, if they did not have the silt fence up and were required to have it up then the tables turn. They would not have any immunity from having violated the law. So, there are these different provisions and laws that might apply to some circumstances. So, if they are in compliance with the ordinance and laws and an "act of God" happens they should be protected.

Mr. Leadbetter asked if the applicant was not planning to build a home on the lot and they had an instance where there is erosion and it created problems where it violated the ordinance, are they liable from that point to make improvements.

Mr. Flagg replied that he needed more of a specific example.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Walter stated that he believed Mr. Leadbetter was asking if a week ago a tornado had come through here before this exception request was considered, and knocked down a bunch of trees and put a lot of dirt into the creek what, if any, responsibility would the property owner have to replant trees or put in vegetation when it basically was an “act of nature” that caused the damage.

Mr. Flagg replied generally speaking, he was not aware that there would be any responsibility for the property owner. He said there are a few unusual circumstances when a buffer does not exist at the time of planning from ground zero and they are required to restore that buffer, so if the weather was so extreme it completely removed the buffer they may have some obligation to restore that buffer as part of the planning development.

Mr. Walter said, however; if they had no plan to develop it, if this was just a farm or something like that there would be no responsibility to put things back. There would be a responsibility if it is part of an improvement of the property.

Ms. Winborne opened the public hearing and asked if the applicant was present and in agreement with staff recommendations. The applicant from the audience said yes, he was in agreement with staff recommendations. Madam Chairman asked if anyone wished to speak in favor of or in opposition to the request.

Mr. John Stevenson, an adjacent property owner, said he had talked at length with Mr. Bailey regarding this request. He expressed that there is some open community property reserved right behind this property and it has naturally degraded this particular lot has over time. He said on this lot the ground falls severely, it is not by any means a flat lot. He said regarding Mr. Padgett’s your question about the pipe on the plat that is a culvert running underneath the road. He said during the presentation it was mentioned that the creek is perennial but it is a spring and it flows all of the time. He thought perennial implies that it goes away and comes back on a seasonal basis and this does not.

DRAFT MINUTES – AUGUST 15, 2013

He expressed concern with the lot that is next to him because he did not get a notice about that lot and he wondered why. He said 100 feet of waterway separates these two lots and Strawbank Drive is in the middle.

Ms. Winborne asked if he got a letter for this request.

Mr. Stevenson answered yes and therefore he wondered why he did not receive notice for the lot next to him.

Ms. Winborne asked how he gets to the “community property” behind the subject lot.

Mr. Stevenson explained that on the left side of the property line is an easement between the adjacent property on the left and this property and they walk that easement to get to the back property.

Ms. Winborne asked how he would describe the degrading of the subject property that he has seen.

Mr. Stevenson replied that there are sink holes that are appearing naturally from the underground flow of water and this property is located at the bottom of a hill. The water travels underground on both sides of Strawbank Drive and comes out back behind the property he lives on and the adjacent property, passes underneath the culvert on Strawbank Drive and runs down into Totopotomoy creek. He questioned why he did not receive a letter for the property adjacent to him but received a letter on this request.

Mrs. Joanne Stevenson, spouse of John Stevenson, expressed concern with the impact to the wetlands and the turtles, salamanders and so forth. She said the reason for the Chesapeake Bay Act is to protect wetlands and once it is gone it cannot be brought back. She said this is near the wetland area that the Pole Green Church Foundation has protected. She said when hurricanes Isabel and Gaston came through that culvert was full and the water was almost over the road and the culvert is there to

DRAFT MINUTES – AUGUST 15, 2013

help keep that from happening. She expressed concern that their neighborhood has a septic system and with that draining near the creek.

Ms. Carolyn Cook, Beaverdam District resident, stated that she appreciated Mr. Leadbetter and Mr. Padgett's comments regarding the CBA and the questions they had asked. Her concern was that of setting a precedent; however, after based on Mr. Flagg's comments when she had talked to him and during his presentation she was at ease that it probably will not set a precedent since these types of exceptions are so rare. She expressed concern with impact on the property with the under cutting of springs and water flow, which usually causes sink holes. She said she is also a Chesapeake Bay concerned person and she appreciated Mrs. Stephenson thoughts.

Ms. Winborne closed the public hearing. She asked who was responsible for sending out notification letters.

Mr. Flagg replied the County and the applicant do send notices out jointly. He said regarding Mr. Stevenson's comments about perennially, the term *perennially* is to imply that it stays essentially wet all of the time. It would be referred to as *intermittent* if there were some period or lag where it was not wet. Therefore, Mr. Stevenson's observations are consistent with the findings in the reports staff received regarding the property. He said regarding notification, the lot adjoining him was also tested. Staff is required to have a site specific perennial evaluation done on any lot such as these. The adjoining lot has intermittent characteristics in accordance with the standards that the biologists apply and the road is a break between the two lots and the lower area was determined to be perennial. Therefore, the upstream lot was eligible for a building permit because there was no required RPA buffer adjacent to that intermittent stream and the downstream lot is perennial and in order to build a house it will require an exception to the building requirements. He said Mr. Stevenson is correct in his

DRAFT MINUTES – AUGUST 15, 2013

statement that the land is very steep. For Hanover topography it is relatively unusual to see a lot of homes built on those steep slopes.

Ms. Winborne asked if he was saying that although the two lots might have looked similar but technically there is a difference based on the intermittent verses perennial stream which determined whether or not there was a letter or not a letter sent to Mr. Stevenson.

Mr. Flagg answered that was correct.

Ms. Winborne advised that Mr. Stevenson has stood up, so she will recognize him.

Mr. Stevenson said he neglected to say they have lived there for 35 years and that stream has always had a flow.

Mr. Flagg asked for clarification if he was referring to the lot upstream on the road.

Mr. Stevenson said yes.

Mr. Flagg explained that there is a range of criteria that goes into the definition. It is just beyond the presence of flow that is the basis for the decision. Regarding Mrs. Stephenson's comments part of the development process there is concern with things like floods and where the houses are placed. The first floor of the house that will be built upstream will have to be above the crescent road to prevent it from flooding in those extreme events. The septic systems have to be approved by the Virginia Department of Health and he will have to rely on the Health Department to state that the proper separations to ground water and that the proper soils exist in order to install a septic system. He said he acknowledges the wetlands that potential sensitivity and staff will apply the measures that the codes require if the Commission approves the exception.

Mr. Flagg concurred with Mrs. Cook's comments that this is a very unusual circumstance. He said the choice from his role and making a recommendation relies on the reasonable use of the property and guidance from the Findings as much as any of the others are very important but there is a

DRAFT MINUTES – AUGUST 15, 2013

choice to be made here; do they get to build a single family residential home on the lot or is it essentially unbuildable. There are varying degrees of measures that could apply on some of the other findings but that is a very important finding and one he considered in making my recommendations. It has been recorded that taxes have been paid on this lot as though it was buildable for a long time and this would constitute a change if it is found unbuildable but that is the Commission's judgment to be made.

Mr. Leadbetter asked if it was Mr. Flagg's opinion that the integrity of the wetlands can be maintained if the house is built.

Mr. Flagg replied he believed so; however, they may risk greater potential damage particularly during the construction process and the builder has to be very diligent and staff will be pursuing it. He said he had talked with Mrs. Stevenson about some of her concerns on the upper lot. He said he put a special flag on this lot to follow it through the grading process and so forth because that is typically done by the building inspector. He acknowledged it is at greater risk because of the steep slopes and there have been unusual weather events the past few years. It was his experience that the wetlands will rejuvenate themselves if they are damaged during the construction process and they also evolve. Therefore, he would not expect it to look 10 years from now exactly like it looks today.

Mr. Leadbetter said to Mr. Flagg, to be clear this lot has been assessed as a buildable.

Mr. Flagg said yes, in his research in the parcel that was his interpretation when he looked at the assessment. It was of value that would have constituted a typical buildable lot in its current form.

Mr. Leadbetter asked if they could have built a home on this lot prior to 1989.

Mr. Flagg answered yes.

Mr. Padgett said in trying to figure out why it is perennial on one side of the road and intermittent on the other and the only thing he could think of is that maybe there is a drainage ditch on

DRAFT MINUTES – AUGUST 15, 2013

the lower side of the road that feeds into it and that makes the difference. He visited the property and quickly decided he could not walk the lot due to the [at least] 30 foot drop from the road. He assumed that the left side where the driveway is shown is the only place it can be accessed that would be level enough to have a driveway going back there. He said the only thing he sees going for this lot is that anyone who built there could have a great deal of privacy. Otherwise, it is perennial and in a sense it is a shame to disturb it. However; in looking at the 7 findings, all of them are met.

Ms. Winborne asked if the driveway is going to be on the easement that the Stevenson's talked about walking on to go to the community property.

Mr. Flagg answered that has not been disclosed to staff. He said perhaps Mr. Warner the applicant's representative could answer that question.

Ms. Winborne asked if the easement goes to the house to the left of this property.

Mr. Flagg replied that the applicant described it as being on the lot to the left but he had no knowledge of such easement.

Mr. Adam Warner, representative of Emerald Builders, stated that the easement that they are talking about does not show up on the survey. He said during their research it is his belief that the easement is on the property to the left.

Mrs. Peace asked what kind of material the driveway will be made of.

Mr. Warner answered he was not certain because he is the engineer. His guess is that it will be a paved driveway.

Mrs. Peace asked if there is any consideration for an impervious surface.

Mr. Warner said something like gravel or stone pavers, he was sure they would be open to that.

DRAFT MINUTES – AUGUST 15, 2013

Ms. Winborne said she also visited the property and it is a very steep drop right at the front of the property. However; if an engineer says they can build a house there that is way beyond her thought process or skill level. Mrs. Winborne closed the public hearing.

Mr. Bailey said he visited this property three times and he did visit with a number of the neighbors. He said he actually spoke with four neighbors and some were not home and he left his card in the door for them to call him. He spoke to Mrs. Walker who lives immediately on the right before getting to this lot and she did not have any concerns or objections at all. He talked with Mr. Waldren who lives immediately to the left of this lot and he stated that there is a 20 foot easement or right-of-way and he said he moved his fence off of the easement line. The property that Mr. and Mrs. Stevenson referred to apparently was community property. It is not a County park as he understood it but at some point in years past it was common property that was used and he believed it had a swing set and some things like that on it. However, now he believes the vegetation has grown and it has become somewhat deteriorated. Mr. Waldren's concern was because of the slope of the lot where the house is going to sit because he did not want it too far towards Strawbank and perhaps cover his view. He said he had Mr. Flagg's department do some research and Mr. Waldren's house from the right-of-way on Strawbank to the corner of his house is 66 feet and this proposed house will be approximately 90 feet from the right-of-way so it will actually sit back from Mr. Waldren's property. He said he spoke with Mr. Waldren about that and he did not have anything else to say about it.

Mr. Bailey said in talking with Mr. and Mrs. Stephenson they specifically had questions about the lot next door to them and to reiterate what Mr. Flagg said there has been an engineering study done and according to the scale that they use to determine the water flow through that creek the analysis was below the score and that is why that lot did not need an exception. Explaining that during the analysis

DRAFT MINUTES – AUGUST 15, 2013

if the score is 30 or above the lot needs an exception and that lot scored 26 so it did not need an exception.

Mr. Bailey reviewed the seven (7) findings Mr. Flagg explained earlier in order for the Commission to say this request is in accordance with the findings. He said if they look at all seven of these the applicant has addressed each one. Staff has reviewed what the applicant has stated what he was going to do and they have concurred that he is in compliance with that. Mr. Flagg has stated that this is only the second request that he has had since he has been with Hanover County.

Mr. Bailey said he talked with Ms. Emerson, Assistant to the Director of Planning for Henrico County to see if they have had any of these request and she told him she did know of a couple of cases in Henrico County. He said so based on the analysis of these seven things that the applicant needs to concur with in order to be in compliance, and based on the fact that the staff acknowledges that and they are recommending approval he was in favor of the request.

Upon a motion by Mr. Bailey, seconded by Mr. Padgett, the Planning Commission voted **UNANIMOUSLY TO APPROVE EMERALD BUILDERS, L.L.C. TO HAVE AN EXCEPTION OF THE CHESAPEAKE BAY PRESERVATION ORDINANCE FOR LOT 19.**

The vote was as follows:

Mr. Bailey	Aye
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Aye
Mrs. Peace	Aye
Mr. Whittaker	Aye
Ms. Winborne	Aye

The motion carried.

DRAFT MINUTES – AUGUST 15, 2013

Ordinance Amendment

ORDINANCE 13-01

PARKING OF RECREATIONAL VEHICLES IN RESIDENTIAL DISTRICTS

AN ORDINANCE to amend the Hanover County Code, Zoning Ordinance, Sections 26-19, 26-34, 26-44, 26-58 and 26-71, which regulate accessory uses in the A-1, Agricultural District, the AR-6, Agricultural Residential District, the RC, Rural Conservation District, the RS, Single-Family Residential District and the RM, Multi-Family Residential District, and, by reference, to amend the regulations of the AR-1, AR-2, R-1, R-2, R-3, R-4, R-5 and R-6 Districts, to provide that the parking of recreational vehicles, boat trailers and other similar vehicles are permitted as an accessory use in the affected residential districts under certain specified standards. (PUBLIC HEARING)

Mr. Maloney presented this ordinance amendment. Hanover County has provisions within the zoning ordinance to allow the parking of travel trailers, tent trailers, boats and boat trailers as an accessory use in the various residential zoning districts, including the A-1 district. However; in reviewing the ordinance the language pertaining to that accessory use is somewhat inconsistent from district to district. Further there appears to be a conflict between the types of trailers and recreational vehicles, boats and so forth listed in the specific district regulations from the County's Zoning Ordinance definition of recreational vehicle. For instance, there are requirements that travel trailers, pop up tents, and boat trailers cannot exceed a certain length, can be parked in the side and rear yard. Our definitions under recreational vehicle also address motor homes and other things beyond just a pop up or travel trailers and they are not addressed one way or the other which strict interpretation would simple state if you have an RV or if you have a motor home you cannot park it on your property because it is not specifically listed as one of the accessory uses. Staff does not think that is the intent of the ordinance, and it is apparent that these provisions were cuddled together over time and various sections of the ordinance were drafted, amended and so forth. This is an ordinance to clean all of that up.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Maloney explained that what this ordinance simply states is for recreational vehicles in all of their various forms, boat trailers, utility trailers and the like, if they are properly licensed, they may be parked as an accessory either in the driveway or in the side or rear lot. Therefore, if someone has one of these accessory type vehicles they can park it in the driveway like any other licensed vehicle in the side or rear yard. For purposes of clarity the ordinance also defines what constitutes a driveway, which is essentially an approved area leading from the public right-of-way into the property and that improved area is contiguous on the property. Somebody cannot simply create a dirt path from the driveway into a yard and therefore the question is whether it is an approved area. This ordinance amendment cleans up a discrepancy in our ordinance and provides some clarity. Initially this whole issue arose as a result of several zoning complaints and whether or not the complaints were in violation of the “intent of the ordinance.” One of the complaints involved a motor home. Another complaint involved a boat trailer, both of which were parked at driveways and it seemed sort of unusual that someone has a driveway and can park a licensed vehicle there, so why can they not park one of these other vehicles there as well. He said many subdivisions have restricted covenants that may be more restricted than this ordinance provision. Although they are privately enforced, those restricted covenants would apply in those instances. Once again, this is really a “clean up” provision of the ordinance in response to several zoning complaints. This ordinance was authorized by the Board in June 2013 for a public hearing.

Ms. Winborne said on page 2 with beginning with the second paragraph, first sentence which reads: Storage of recreational vehicles, utility trailers, boat trailer, and similar vehicles, in the driveway...however, number (b) states the vehicle is not used for commercial purposes but that is a use. She asked if he was saying the vehicle is not identified with commercial because those are two different things.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Maloney replied there are separate provisions for the parking of commercial vehicles. This is for vehicles that are used for private purposes.

Ms. Winborne asked how anyone would know whether a vehicle is used for commercial purposes, unless of course it is very obvious.

Mr. Maloney replied there is a completely separate set of definitions that address what is or is not a commercial vehicle. This is simply stating for those vehicles that are not otherwise classified as commercial and meet all of these other requirements. This is where that ordinance applies.

Ms. Winborne said she understood.

Mr. Whittaker said he believed there are a lot of people who do not understand that individual subdivisions enforce their own restrictions, so this would not affect those subdivision covenants.

Mr. Maloney answered no, and this would not in any way lesson those private covenants.

Mrs. Peace said if someone is in the A-1 district and they have a tremendous amount of land and no neighbors, your utility or boat trailer still has to be in a driveway.

Mr. Maloney said in accordance with this provision yes, in a driveway or side or rear yard.

Mrs. Peace asked what if your neighbors are to your rear yard but there are no neighbors next to your front yard, would the trailer have to go in the rear yard where the neighbors are and they may find it to be a nuisance.

Mr. Maloney said the ordinance defines what constitutes what is front, sides and rear yards, not the orientation of the home.

Mrs. Peace said she could see this as a potential issue in the A-1 district because someone might have 100 acres and they want to put up a trailer somewhere but it is not technically their rear yard.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Maloney reiterated that the current ordinance states storage of a boat trailer or camp trailer or boat but not in the front yard. Therefore, under the current ordinance if someone has a 5'x10' utility trailer technically speaking they cannot keep it in their yard at all. He said he understood her question but “let’s just approach it from the fact that this ordinance is more permissive than what the A-1 district regulations require, technically speaking.” He said if somebody approached the County today and said they wanted to complain because a particular person has 100 acres and they are keeping a 5'x10' utility trailer in their side yard, he felt that would be reasonable for him to interpret the ordinance to say that is in the spirit of what is intended; however, a technical reading is limited to a boat trailer, camp trailer or a boat.

Mr. Maloney said in looking at other provisions of the ordinance it talks about a tent trailer which is a distinction between a camp trailer and tent trailer. Now, if someone has a vehicle trailer they cannot store that in the A-1 district, and that is what this amendment is trying to clean up. He said if Mrs. Peace is concerned that somehow this is restrictive for large lots, then the Commission may want to defer and staff redraft the language regarding A-1 lots with 10 acres or less and for lots greater than 10 acres, and have a different set of standards.

Mr. Leadbetter mentioned that the Commission was going to revisit the A-1 zoning ordinance to do some modifications.

Mr. Maloney explained that included in the Commission’s resolution to the Board when the Commission recommended approval of the updated zoning ordinance the recommendation to revisit the A-1 zoning ordinance was included and the Board did not act on that recommendation. Therefore, there is no authorization from the Board to undertake that task.

Ms. Winborne asked if there was a consensus among Commissioners to ask the Board if they can “tweak” this amendment to include the A-1 folks.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Whittaker said he did not know if there could be “enough tweaking in the world on that.”

Mr. Walter said it sounded like the discussion is dealing with front yard verses side or rear side yard in the A-1. Therefore, assuming that all the intent of this ordinance is to make all types of trailers applicable to this, the current language prohibits the storage of trailers in the front yard in A-1. Now whether it includes all of these RVs the existing language states storage of a boat trailer or boat but not in the front yard. So, currently trailers cannot be parked in the front yard.

Ms. Winborne asked if they can change that.

Mr. Walter replied they could make that recommendation but he felt the underlying intent of staff is to try to achieve some sort of consistency among these regulations. And not necessarily a review of what the accessory use is in the A-1 district. The ordinance is before the Commission so that is certainly they can do but in terms of that particular issue the recommendation is consistent with the current regulations. It’s a clarification rather than a change.

Ms. Winborne said they could ask Mr. Maloney to do both.

Mr. Walter replied yes, but if the intent is that this constitutes a change in the ability to park in the front yard, he did not think the intent is to change what or where individuals in the A-1 can park. This amendment is to clarify what is covered by this.

Mr. Maloney said that was correct. He explained that when this amendment was drafted it was to create a uniform standard where there is no standard under the current ordinance.

Ms. Winborne said since Mrs. Peace has brought up this phenomenon in the A-1 district because not everyone has a nice big shed/garage to store their things.

Mr. Maloney said he did not know how they are going to approach it but there are a couple of ways. For example if someone has less than 10 acres they cannot park RVs and similar vehicles in the

DRAFT MINUTES – AUGUST 15, 2013

front yard, if they have greater than 10 acres they cannot park it within a 100 feet of the public right-of-way.

Ms. Winborne asked if it was everyone's consensus that they would like to see some more language.

Mr. Bailey advised that he did not have a problem with it the way it is. He thought they are trying to "micro manage" every single ordinance.

Mr. Whittaker agreed. He said it is one of those things that will never be completed and if we do there is going to be something else.

Mr. Maloney replied that to keep the ordinance as that is problematic if only because of the distinction and the types of accessory vehicles that can be parked district to district. And there is a consistency in that list and definitions for RVs and so forth. And that is the number one issue. The driveway issue was a clarity issue. So, at the very least if the Commission does not want to address the driveway issue he recommended an ordinance that at least references RVs, boat trailers, utility trailers and similar vehicle because the ordinance now by omission, is artificially constrained as to the types of vehicles.

Mr. Whittaker left.

Mrs. Peace said maybe they can talk about trailers in the A-1 district at another time.

Ms. Winborne reminded Mrs. Peace the Commission does not have the authority to do that.

Mrs. Peace said she raised the question because most all of her neighbors are probably not conforming to the existing ordinance. And this includes horse trailers.

Mr. Maloney said that is a very good point and that is why at least "cleaning" the ordinance up to a degree is important because if you look at the definition for recreational vehicle it states: A piece of equipment designed for use as temporary living quarters during periods of travel or recreation which

DRAFT MINUTES – AUGUST 15, 2013

can be moved under its own power or drove by another vehicle including travel trailers, pop-up trailers, pick up campers, conversion vans and motor homes.

Mr. Whittaker returned.

Mr. Maloney added that is a pretty broad definition. In the A-1 district the only thing that can be parked is a camp trailer not a motor home, not a pop-up trailer. So, if we say boat trailers, recreational vehicles, utility trailers, and similar vehicles then that is broad and so if somebody has a horse trailer or trailer that moves vehicles or something else then it is clear that is intended with this change.

Mr. Maloney said regarding the comment that we are trying to “micro manage” one of the efforts of updating the zoning ordinance was to eliminate ambiguities and it is not a matter of micro-managing, it is a matter of clearing up ambiguities. So, if we get a complaint from somebody in the A-1 district who maybe has a 2-acre lot and they are parking their motor home in the front yard right next to the right-of-way and it is creating an obstruction to traffic then the ordinance is clear that they cannot park an RV. If somebody’s has a motor home and it is properly parked on a 2-acre lot in the side yard technically they cannot do that. That would be micro-managing and we are trying not to micro-manage and the ordinance is micro-managing too far.

Mrs. Peace said in the same respect, if someone has a trailer parked sort of in their front yard but it is probably 100 feet away and no one can see it, they are technically breaking the zoning ordinance and could get fined.

Mr. Maloney said that is correct.

Mrs. Peace stated she knew it sounded hypothetical but it is very important.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Maloney explained that staff has seen some very ugly property disputes over very “petty” issues and the first thing property owners do in the case of a dispute is file a zoning complaint. And then the County is in the middle of a property dispute.

Mr. Leadbetter asked if most of the conflicts are in the A-1 district.

Mr. Maloney replied no actually most of the conflicts are in the Suburban Service Area.

Mr. Whittaker stated that this is worded the way he thought it needed to be.

Mr. Maloney said yes it creates a clear uniform understandable standard; it is evenly applied across all residential districts. Notwithstanding the concerns Mrs. Peace raised that particularly in the A-1 district, not all lots are created equal but it is a broader and more liberal standard than what exists today.

Mr. Whittaker said he did not feel the way Mrs. Peace did regarding a case of having 20-acres of A-1 land that somebody else with 20-acres will look across and say “you need to move that trailer.”

Mr. Maloney asked if the Commission would like to defer this amendment a month and let staff make that distinction between smaller and larger lots and come back with a slight revision.

All Commission members were in agreement.

Upon a motion by Mr. Padgett, seconded by Mr. Leadbetter, the Planning Commission voted **UNANIMOUSLY TO DEFER ORDINANCE 13-01, PARKING OF RECREATIONAL VEHICLES IN RESIDENTIAL DISTRICTS TO THE SEPTEMBER 19, 2013.**

The vote was as follows:

Mr. Bailey	Aye
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Aye
Mrs. Peace	Aye
Mr. Whittaker	Aye
Ms. Winborne	Aye

DRAFT MINUTES – AUGUST 15, 2013

The motion carried.

MISCELLANEOUS

Approval of Minutes

Ms. Winborne stated that Mrs. Gray did an extraordinary job with the three sets of minutes.

Upon a motion by Mr. Leadbetter, seconded by Mr. Whittaker, the Planning Commission approved the draft minutes of the June 13, 2013, June 20, 2013, and July 18, 2013 meetings.

The vote was as follows:

Mr. Bailey	Aye
Mrs. Iverson	Aye
Mr. Leadbetter	Aye
Mr. Padgett	Aye
Mrs. Peace	Aye
Mr. Whittaker	Aye
Ms. Winborne	Aye

The motion carried.

Mr. Padgett also commended Mrs. Gray on the minutes. He said as he read through them it was almost like “reliving” the meetings. He added that he looked forward to reading tonight’s minutes.

Mr. Whittaker agreed and said Mrs. Gray did a great job.

Ms. Winborne asked that the record reflect that all of the Commission members commended Mrs. Gray for her diligence.

Inquiry

Mr. Leadbetter said he had gotten phone calls from some of the citizens asking if what is posted on the website on the Comprehensive Plan is up-to-date.

Mr. Maloney answered yes, sir.

Mr. Leadbetter asked when these minutes would be posted.

DRAFT MINUTES – AUGUST 15, 2013

Mr. Maloney replied that since the Commission just approved the minutes they will posted within the next couple of days.

ADJOURNMENT

There being no further business Madam Chairman adjourned the meeting at 10:14 P.M.