

CITY OF CHARLOTTESVILLE
"A World Class City"

Department of Neighborhood Development Services

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May 14, 2013

**TO: Charlottesville Planning Commission, Neighborhood Associations &
News Media**

Please Take Notice

A Work Session of the Charlottesville Planning Commission will be held on **Tuesday May 28, 2013 at 5:00 p.m. in the NDS Conference Room in City Hall (610 East Market Street).**

AGENDA

1. Parliamentary Moment
2. Planned Unit Development (PUD) Ordinance Clarification Updates
3. Discussion of broader concerns with the PUD Ordinance
4. Public Comment – 15 minutes

cc: City Council
Maurice Jones
Aubrey Watts
Jim Tolbert
Neighborhood Planners
Melissa Thackston, Kathy McHugh
Mary Joy Scala
Craig Brown, Rich Harris

**CITY OF CHARLOTTESVILLE
NEIGHBORHOOD DEVELOPMENT SERVICES**



MEMORANDUM

To: Planning Commission
From: Missy Creasy, AICP, Planning Manager
Date: May 14, 2013
Re: May 28, 2013 Planning Commission Work Session

During the Fall of 2012, Commissioners expressed concern about aspects of the current PUD ordinance and directed staff to provide updates for clarity. This was formally initiated for study in September 2012 by the Commission and a staff team was established to develop a draft. This was about the time that additional community meetings were set for the Comprehensive Plan for the Fall and Winter so much of staff time was focused on those events as well as drafting of the Comprehensive Plan. In addition, there were a number of PUD's under review and concern was raised about potential changes while those were underway. Staff worked on a draft for many months and it has taken until this time for the Commission to have an available time for the discussion.

Staff is asking the Commission to review and discuss the attached proposed draft of PUD ordinance changes as a first round of review to provide update focused on clarity of the current language and application requirements. The Commission should provide guidance to staff with the intent of scheduling a public hearing this summer.

In addition, concerns have been voiced with the overall PUD ordinance by Commissioners and the public. As the second part of this meeting, we would like you to take the opportunity to talk about the broader ordinance. The information obtained from this discussion will be organized and available if it is determined that a substantial revision to the PUD ordinance is warranted.

Attachments:

Current PUD amendment proposal

Report from 2013 NLI project including PUD/ Rezoning Revision considerations

**CITY OF CHARLOTTESVILLE
NEIGHBORHOOD DEVELOPMENT SERVICES**



MEMORANDUM

To: Planning Commission
Missy Creasy, AICP, Planning Manager
From: Willy Thompson, Neighborhood Planner, AICP
Date: May 9, 2013
Re: Planned Unit Development Zoning Text Amendment

PROBLEM

The Planned Unit Development (PUD) ordinance intends to encourage and accommodate better development projects. In exchange for more development flexibility, applicants are required to provide a certain level of predictability, which is presented using a narrative, PUD development plan, and other supporting pieces of information. The PUD ordinance attempts to define what materials an applicant must submit as part of a rezoning application as well as what level of detail must be shown in those materials. Staff has identified a number of places in the PUD ordinance where requirements for pertinent information is either missing, needs improvement, or needs removal.

OBJECTIVE

Staff identified two primary objectives for amending the PUD ordinance:

1. Ensure that language used in the PUD ordinance is consistent with similar language used in other sections of the zoning ordinance.
2. Establish a list of application materials required of the applicant that will facilitate an accurate and effective review process for both staff and the Planning Commission.

SUMMARY OF PROPOSED CHANGES

- Grammatical improvements.
- Removed specific proximity requirement.
- Clarified when an application is acceptable to present at a preliminary discussion before the Planning Commission.
- Added a requirement for a proposed land disturbance plan.
- Amended the requirements under the conceptual land use plan so that they are consistent with language used in the zoning ordinance site plan requirements.
- Added a number of required pieces of information under the PUD Development Plan contents requirements.
- Added a provision that requires the applicant to consult with the Public Utilities Department and verify current infrastructure capacities.
- Added a provision that allows the director of NDS to require additional information as he deems is necessary to facilitate adequate review of the application.

- Added a provision that states that approval of a PUD does not relieve the applicant from its obligation to comply with all local, state, and federal laws and regulations.

DIVISION 1. - GENERALLY

Sec. 34-490. - Objectives.

In reviewing an application for approval of a planned unit development (PUD) or an application seeking amendment of an approved PUD, in addition to the general considerations applicable to any rezoning the city council and planning commission shall consider whether the application satisfies the following objectives of a PUD district:

- (1) To encourage developments of equal or higher quality than otherwise required by the strict application of zoning district regulations that would otherwise govern;
- (2) To encourage innovative arrangements of buildings and open spaces to provide efficient, attractive, flexible and environmentally sensitive design.
- (3) To promote a variety of housing types, or, within a development containing only a single housing type, to promote the inclusion of houses of various sizes;
- (4) To encourage the clustering of single-family dwellings for more efficient use of land and preservation of open space;
- (5) To provide for developments designed to function as cohesive, unified projects;
- (6) To ensure that a development will be harmonious with the existing uses and character of adjacent property, and/or consistent with patterns of development noted with respect to such adjacent property;
- (7) To ensure preservation of cultural features, scenic assets and natural features such as trees, streams and topography;
- (8) To provide for coordination of architectural styles internally within the development as well as in relation to adjacent properties along the perimeter of the development; and
- (9) To provide for coordinated linkages among internal buildings and uses, and external connections, at a scale appropriate to the development and adjacent neighborhoods;
- (10) To facilitate access to the development by public transit services or other single-vehicle-alternative services, including, without limitation, public pedestrian systems.

(9-15-03(3))

Sec. 34-491. - Permitted uses.

~~A PUD may include any one (1) or more of uses shown on an approved PUD development plan.~~

Only those uses shown on an approved PUD development plan shall be permitted uses.

(9-15-03(3))

Sec. 34-492. - Configuration. 

A PUD shall contain ~~more than~~ two (2) or more acres of land. A PUD may be comprised of one (1) or more lots or parcels of land. The lots or parcels proposed for a PUD ~~planned unit development~~, and all acreage(s) contained therein, shall ~~either be contiguous, or shall be within close proximity to one another~~ and integrated by means of pedestrian walkways or trails, bicycle paths, and/or streets internal to the development. City Council may vary or modify the proximity requirement.

(9-15-03(3); 11-20-06(5))

Sec. 34-493. - Required open space. 

(a)As used within this article, the term "open space" shall mean land designated on an approved development plan for a PUD as being reserved for the use, benefit and enjoyment of all residents of the PUD. Such open space may consist of common areas owned and maintained by a developer, or non-profit corporation or property owners' association, and/or any parkland, hiking trails, drainage area, or similar areas dedicated to the public and accepted by the city.

(b)The following amount of open space shall be required within a PUD: At least fifteen (15) percent of the gross area of all land included within the PUD development site; however, the city council may reduce this requirement in situations where through creative design, or in light of the nature and extent of active recreational facilities provided, it deems the overall objectives of the PUD are best served by such reduction.

(c)Open space must be useable for recreational purposes, or provide visual, aesthetic or environmental amenities. The following areas shall be excluded from areas counted as open space: buildable lots, buildings and structures, streets, parking areas, and other improvements, other than those of a recreational nature. The following improvements may be counted as part of required open space: playgrounds, ball courts, swimming pools, picnic areas and shelters, parks, walking paths and hiking trails, landscaped terraces, open-air plazas, and similar amenities. Land within a floodway or floodway fringe may be used to satisfy the open space requirement for a PUD; however, not more than thirty-three (33) percent of such land may be counted towards open space requirements.

(d)Open space shall be provided within each phase of a PUD, in sufficient amounts to serve the expected uses and/or residential population of that phase.

(e)All property owners within a PUD shall have access to the open space by means of a public street, or a private street or walkway located within an easement reserving property for such access.

(9-15-03(3))

Sec. 34-494. - Ownership of land; common areas. 

(a) All property within a PUD shall remain under single entity ownership of a developer, or group of developers, unless and until provision is made which insures the establishment and ongoing maintenance and operation of all open space, recreational facilities, and other common areas within the development. The developer or developers of the PUD shall not lease or sell any property within the PUD unless or until the director of neighborhood development services determines, in writing, that such satisfactory provisions have been made.


(b) Where a property owners' association is established to own and maintain common areas within a PUD (including all required open space remaining in private ownership) the following requirements shall apply:

(1) The property owners' association shall be established and constituted in accordance with the Virginia Property Owners' Association Act, prior to the final approval, recordation and lease or sale of any lot within the PUD;

(2) The membership of the property owners' association, and the obligations of such association with respect to the common areas, shall be set forth within a declaration, suitable for recording in the land records of the Circuit Court for the City of Charlottesville, meeting the requirements of the Virginia Property Owners' Association Act. The declaration shall detail how the association shall be organized, governed and administered; specific provisions for the establishment, maintenance and operational responsibilities of common areas and the improvements established therein; and the method of assessing individual property owners for their share of costs associated with the common areas.

(c) All common areas and required open space within a PUD shall be preserved for their intended purpose as expressed in the approved development plan. All deeds conveying any interest(s) in property located within the PUD shall contain covenants and restrictions sufficient to ensure that such areas are so preserved. Deed covenants and restrictions shall run with the land and be for the benefit of present as well as future property owners and shall contain a prohibition against partition.

(9-15-03(3))

Secs. 34-495—34-499. - Reserved. 

DIVISION 2. - DEVELOPMENT STANDARDS

Sec. 34-500. - Dimensional standards, generally.

The dimensional standards (i.e., restrictions of the height, area, location and arrangement of buildings and structures, lot area requirements, and required yards) and landscaping requirements applicable within a PUD district shall consist of: (i) any specific requirements or limitations set forth within this article, (ii) those shown on the approved development plan for the PUD, and (iii) those described within any approved proffers.

(9-15-03(3))

Sec. 34-501. - Context.

(a) Within a PUD district:

(1) With respect to any building located within seventy-five (75) feet of a low-density residential zoning district, the height regulations of the residential district shall apply to that building.

(2) No non-residential use shall be located within seventy-five (75) feet of the perimeter of a PUD unless such use is permitted within the adjacent zoning district at the time of PUD approval.

(b) Except as specifically provided within paragraph (a), above, building height, scale and setbacks of buildings within a PUD shall complement existing development on adjacent property, taking into consideration:

(1) The nature of existing uses, and of uses anticipated by the city's comprehensive plan, adjacent to and in the neighborhood of the PUD development site. Where a PUD is established on property that shares a block face with improved property, development within the PUD facing such existing improvements shall be harmonious as to height, mass, lot coverage, and setbacks;

(2) The number, type, and size of the various buildings proposed within the PUD;

(3) The location of natural, topographical, cultural or other unique features of the site;

(4) The location of public utilities, public streets, roads, pedestrian systems and bicycle paths, and of associated easements;

(5) The objectives of the PUD district.

(9-15-03(3))

Sec. 34-502. - Landscaping.

(a) A portion of the required open space shall consist of landscaped open areas, in an amount equal to twenty (20) percent of the aggregate gross floor area of commercial uses within the development.

(b) In all PUD districts landscaping shall be provided using materials consistent with those required by Article VIII, sections 34-861, et seq.) and the city's list of approved plantings.

(c) In addition to the requirements of paragraphs (a) and (b), above, landscaping shall be utilized within a PUD:

(1) To provide visual separations or buffers, as may be appropriate, between uses and areas different in intensity or character from one another, and between the PUD and adjacent low-density residential districts;

(2) To protect and enhance the scenic, recreational, or natural features of a site; priority shall be given to preservation of existing trees having a caliper of eight (8) or more inches and in-place natural buffers;

(3) As a means of harmonizing the street frontage along the perimeter of a PUD with the street frontage of adjacent properties;

(4) To minimize the impact of noise, heat, light and glare emanating from a building, use or structure upon adjacent buildings, uses or structures.

(9-15-03(3))

Sec. 34-503. - Sensitive areas.

The following areas shall be left natural and undisturbed, except for street crossings, hiking trails, utilities and erosion control devices:

(1) Land within a floodway or floodway fringe; and

(2) Wetlands.

(9-15-03(3); 11-21-11(3))

Sec. 34-504. - Parking.

Off-street parking for each use within a PUD shall be provided in accordance with the standards set forth within Article IX, sections 34-970, et seq, unless otherwise approved by City Council.

(9-15-03(3))

Sec. 34-505. - Phased development.

PUDs may be developed in phases, provided the following requirements are met:

(1) All phases must be shown, and numbered in the expected order of development, on the approved development plan.

(2) The open space within each recorded phase may constitute fifteen (15) percent of the gross land area within that phase, or all required open space may be provided in the first phase.

(3) All project data required in section 34-517 for the project as a whole shall be given for each individual phase of development.

(4) Phasing shall be consistent with the traffic circulation, drainage and utilities plans for the overall PUD.

(9-15-03(3))

Secs. 34-506—34-514. - Reserved.

Division 3. Procedures

Sec. 34-515. - Pre-application ~~review~~.

(a) Prior to the formal submission of an application seeking approval of a proposed PUD, the developer or his representative shall hold a conference with the director of neighborhood development services concerning the proposal, and shall provide the director with unofficial preliminary studies of his development concept and a sketch plan that specifies:

(1) The general location and amount of land proposed for residential, office, commercial, industrial, open space/recreation and ~~street use vehicular and pedestrian access and circulation~~;

(2) The number of dwelling units, and the gross floor area and acreage of each use or land area shown on the sketch plan;

~~(3) The maximum height of buildings and structures in each area of the PUD;~~

~~(3) A narrative explaining the development plan and if applicable, any proposed deviations or modifications from generally required provisions.~~

~~(4) Upon confirmation by the director that all materials and information submitted by the applicant satisfy the requirements herein, the pre-application will be scheduled for a preliminary discussion to be held at a regular planning commission meeting.~~

~~(b) Based on the preliminary studies and sketch plan the director shall conduct a tentative review, and provide the developer with comments and recommendations.~~

~~(5) Each application shall be accompanied by the required fee, as set forth within the most recent fee schedule adopted by city council.~~

(9-15-03(3); 4-13-04(2), § 1)

Sec. 34-516. - Application.

(a) Following the required pre-application review, the developer may submit an application seeking a rezoning approval for a PUD.

(b) The rezoning application shall consist of the following materials:

(1) A city rezoning application form;

(2) A development plan prepared in accordance with section 34-517, below.

(3) A written statement of any proffers proposed in connection with the PUD.

(4) In the event the development plan indicates that any critical slopes will be disturbed, the applicant shall submit a request to modify or waive the critical slopes provisions as provided for in section 34-1120.

~~(5) A proposed land disturbance plan to include approximate timing and area of disturbance.~~

(c) The completed application shall be processed in accordance with the procedures applicable to rezonings. In the event that subsection (b)(4) applies, the critical slope waiver application shall be considered simultaneously therewith by the planning commission, and if granted, conditioned upon compliance with the approved plan of development.

(9-15-03(3); 11-21-11(3))

Sec. 34-517. - PUD development plan—~~Requirements~~ Contents.

(a) Each of the following is a required component of a complete plan of development submitted in connection with an application for approval of a planned unit development:

(1) A survey plat describing and depicting the entire land area to be included within the PUD development site, including identification of present ownership, existing zoning district classification(s) of the parcel(s) to be included within the PUD.

(2) A narrative statement of how the objectives described within section 34-490 are met by the proposed PUD.

(3) A ~~concept~~ conceptual development plan, supporting maps, and written or photographic data and analysis which show:

~~a. Existing and proposed public utilities and infrastructure;~~ Location and size of existing water and sanitary and storm sewer facilities and easements;

b. Layout for proposed water and sanitary sewer facilities and storm drainage facilities;

c. Location of other proposed utilities;

d. Location of existing and proposed ingress and egress from the development;

e. Location and size of existing and proposed streets;

f. Location of existing and proposed pedestrian and bicycle improvements;

~~g.~~ An inventory, by tax map parcel number and street address, of all adjacent parcels within a five hundred-foot radius of the perimeter of the PUD, indicating the existing zoning district classification of each.

~~h.~~ A site inventory of the significant natural, environmental and cultural features of a site, including at a minimum: historic landmarks contained on any state or federal register; vegetation; existing trees of eight-inch caliper or greater; wetlands, topography, shown at intervals of five (5) feet or less, critical slopes, and other, similar characteristics or features, and a plan for preserving, protecting, utilizing and/or incorporating such features into the design and function of the proposed PUD.

~~e(4)~~. A proposed land use plan. Such plan will identify:

~~(i)a.~~ Proposed land uses and their general locations (including, without limitation, building and setbacks);

~~(ii)b.~~ Proposed densities of proposed residential development;

~~(iii)c.~~ Location and acreage of required open space;

~~d.~~ Square footage for non-residential uses;

~~e.~~ Maximum height of buildings and structures in area of PUD.

~~e-(5)~~ A general landscape plan which focuses on the general location and type of landscaping to be used within the project as well as the special buffering treatment proposed between project land uses and adjacent zoning districts;

~~f.~~ Where development is to be phased, organization of site into general development phases ("land bays"), wherein all of the information specified within this section is indicated and provided with respect to each phase, and wherein an overall phasing schedule is provided.

~~g.~~ A proposed transportation plan showing internal road improvements, including typical sections for each project street category, as well as proposed pedestrian and bicycle improvements.

~~(6)~~ Phasing plan if needed. Each phase shall individually meet the requirements of this Section.

~~(7)~~ A statement from the City Public Works Department verifying water and sewer infrastructure capacity does or does not exist for the proposed land use(s).

~~(4)~~ A comprehensive signage plan.

~~(8)~~ Additional information as deemed necessary by the director of neighborhood development services in order to facilitate a thorough review of the potential impacts of the proposed PUD that is the subject of the application. If any application fails to demonstrate within their application materials that a proposed PUD meets the minimum requirements specified in section 34-517(a)-(i), above, the application shall be rejected as incomplete.

(9-15-03(3); 11-21-11(3))

Sec. 34-518. - Approval.

(a) Approval of the rezoning application establishes the maximum density/intensity, height and other dimensional requirements, ~~and~~ the general location of each use and locations for streets and utilities street shown on the development plan. Together with any approved proffers, the approved development plan shall establish the zoning requirements applicable to the PUD. Approval of a PUD does not relieve the applicant from its obligation to comply with all local, state, and federal laws and regulations. Any change in use, increase in density/intensity, any substantial decrease in the amount of open space, substantial change in the location of permitted uses or streets, and any other substantial

change from what is shown on the approved development plan shall be deemed a substantial deviation requiring an amendment of the PUD approval. Factors to be considered in determining whether a change is substantial include, but are not limited to: the extent of the locational change and the expected impact on properties adjacent to the PUD.

(b) Following approval of a PUD development plan, preliminary and final subdivision and site plan approvals shall be required. All such plans shall conform to the approved PUD development plan. No building or structure shall be erected, no building permit(s) issued, and no final subdivision plat(s) recorded, unless:

(1) A final site plan has been approved;

(2) Any required dedications, reservations or required improvements have been made in accordance with the final site plan and PUD phasing schedule; and,

(3) Sufficient financial guarantees for completion of required improvements have been received by the city.

(c) Where phased development has been approved, applications for subdivision and site plan approvals may, at the developer's option, be submitted for each individual phase.

(9-15-03(3))

Sec. 34-519. - Amendment.

Following approval of a plan of development for a planned unit development, the owner of the development may amend the plan of development only as follows:

(1) The owner of a PUD may submit a written request for a proposed minor change to the approved plan of development to the director of neighborhood development services. The request shall be supported by graphic, statistical and other information necessary in order for the director to evaluate the request. The director may approve the request upon a determination that it involves only a minor deviation from the layout or design contemplated within the approved plan of development. For the purpose of this section the terms "minor change" and "minor deviation" mean and refer to changes of location and design of buildings, structures, streets, parking, recreational facilities, open space, landscaping, utilities, or similar details which do not materially alter the character or concept of the approved plan of development. Should the director determine that the requested change constitutes something more than a minor change or deviation from the approved plan of development, then the owner may seek an amendment pursuant to paragraph (2), below.

(2) The owner of a planned unit development may apply to city council for permission to amend the approved plan of development, following the same procedure as for the original approval.

(9-15-03(3))

Secs. 34-520—34-539. - Reserved.

6 May 2013

City Council
City Manager
Director of NDS
Planning Commission

**STONEHENGE PUD
NLI Project**

Dear Madams/Sirs:

As many of you know, this NLI project grew out of our ongoing experiences as neighbors to the proposed Stonehenge PUD application that began over a year ago. Our goal was to examine the current policies and procedures that apply to the Planned Unit Development rezoning process and to interview representative stakeholders in hopes of finding ways to: (1) maximize neighborhood input and knowledge in the rezoning/PUD application process; (2) prevent future problems with “by right” versus PUD development; and (3) apply the critical slopes ordinance to all critical slopes.

The project is divided into two parts: an oral presentation and power point given to the NLI class on May 1, 2013 and a written report which provides more specificity for changes. The written report is intended for city officials. Attached is the written report and a summary of the oral report.

Sincerely,

Marla Ziegler
Jeannette Halpin

Charlottesville's PUD Application Process

Background

In the late 1990's, the then City Manager and then Mayor were looking for ways to streamline the development process in the city to encourage development. Until then a developer had to visit several different departments to make the necessary applications. To ease the process, some city departments were reorganized by moving engineering and building permit staff to Planning and creating the Neighborhood Development Services Department. It was hoped that "one stop shopping" would make it easier for developers to work in the city. At the same time, it was believed that it was too expensive for developers to submit full site plans before a PUD was approved. The current use of a "concept plan" began. As time passed, the concept plan worked as long as the developer presented detailed plans that gave decision makers the information needed to make decisions. When less conscientious developers or developers not used to working in the city faced the concept plan approach, they have not always provided the necessary detail required to make an informed rezoning decision. This was certainly the case with Stonehenge.

In spring 2011, survey flags appeared on what became known as the Stonehenge site. Neighbors heard nothing about what was planned until the developer met with residents in the Belmont Village and the Belmont Residences (both PUDs) in early 2012. It was rumored that the developer showed them a "by right" plan that would have extended Stonehenge Avenue to the edge of their property unless they agreed to support his plan for a PUD. As this rumor spread in April to the traditional Belmont neighborhood houses along Druid, Stonehenge and Quarry, people became quite concerned and began trying to get more information.

One of the most frustrating aspects of the first 6 months after the Stonehenge PUD application was submitted on April 19, 2012, (we use the date on the plans) was the inability to get consistent and correct information from either NDS or the developer. The developer continually threatened to begin an immediate "by right" development if neighbors didn't support his PUD plan. He consistently claimed he had all necessary permits. The Planning Department provided inconsistent information about what actually had been submitted and whether or not the developer could begin immediately on a "by right" development. Attempts to clarify information often resulted in contradictory comments. When we asked to review the Stonehenge file at the Planning Department, we were told there was no file and that we had received everything about Stonehenge. Requests for meetings were not always greeted with enthusiasm or consent.

At the end of June, three months after the PUD application was sent to the Planning Department, the developer began clear cutting all the trees on the site, which is very steep. There had been no tree survey done, no protective fencing erected and no large trees tagged for keeping. Calls to the Planning Department, along with emails and pictures, were treated with no urgency and we were told that the developer could do this "by right". Clearing work continued apace on weekends and even July 4, 2012. It seemed that the Planning Department was agreeing with the statement made earlier by the developer: "Why should I spend \$10,000 on a tree survey when I knew I was going to cut them down anyway". It took more emails and phone calls before the city

finally inspected the site and apparently found the developer in non-compliance with the Erosion and Sediment permit and issued a stop work order. We had never been informed there was an Erosion and Sediment permit even though the developer apparently filed it in late April **2011** and we had repeatedly asked to see everything related to the Stonehenge site. A look at that plan shows that the developer promised, among other things, to keep trees in excess of 12 inches, to put up orange protective fencing, and to allow the city to inspect the site before any work was done there. There was no inspection and no protective fencing until after the developer clear cut most of the trees and there was enough public outcry for the city to look at the site. Thus the developer did not follow even his “by right” plan and the city was tardy in responding. As far as we know, no fine was levied.

The confusion of information was accentuated by the developer who continued to make threats about what he could do “by right” while doing little to change the original PUD plan. This resulted in several drafts and several deferrals before the Planning Commission (and ultimately City Council) when these bodies made clear that they would not be approving the PUD as submitted. The developer (now represented by a different individual) then met with a member of the Planning Commission to discuss additional changes. The developer submitted another PUD plan on March 19, 2013 which showed more promise and greater level of detail. After detailed discussions at the Planning Commission meeting on April 9, the Planning Commission praised the changes and suggested that the developer was moving in the right direction but “not yet there.” Voting 3 to 3, the Planning Commission denied the application. The developer took the application to City Council which then agreed with the Planning Commission that a bit more was needed but agreed to let it go forward for a second reading, which will occur the third week in May.

Findings:

1. The rezoning/PUD application process must be made more efficient, transparent, neighborhood friendly, and detailed.

Because there were multiple submissions with the original date of April 19, 2012, the timeline of events was not always apparent, especially in regard to the status of the PUD application and the clearing of trees and soil movement. The same was true of whether the Planning Commission public meeting was “informal” or “formal”; whether the meeting being informal mattered; and whether neighbors had timely access to all relevant information.

These issues can be resolved with some departmental housekeeping details. Maintain a central file of **all** documents (engineering, planning, permits, etc.) for each site, including comments made by staff to developer, staff to citizens, and citizens to staff. The file should contain a statement of what must be submitted and when it is submitted. This could include designations indicating if there are different submissions. This would include the dates of any informal discussions as well as formal ones. There should be a sign out sheet to record which staff members have what documents so that information can be found. To the extent that files are digitized and open to the public,

those websites should be accessible to the public and updated on a timely basis. Someone should be assigned responsibility for maintaining a complete file for each site.

Publish on the web site the name of the developer and the location and time when a meeting is scheduled with someone in the department. Also post a sign with this information at the physical location of the site involved. Allow citizens, especially neighbors, to attend. This will put everyone on the same page and avoid future “he said”/ “no I didn’t” situations.

Consider adding a new step to the PUD process and a new duty for the planning staff. One of our interviewees suggested that perhaps a meeting between developer and neighbors at a neutral site (NDS conference room?) early in the process could solve/prevent a number of problems. Furthermore, he suggested that the four planners receive some training in mediating between groups so they could help keep such meetings on task. Of the many suggestions and comments received, we believe that this is very innovative and would ultimately use fewer resources. It should be voluntary but each developer should be given a chance to engage neighbors in this manner.

Develop a new PUD rezoning approval process. While PUDs are all rezonings, not all rezonings are PUDs. We have no experience with non-PUD rezonings and thus don’t include them here. The “concept plan” is no longer working for PUDs. It is significant to note that the “concept plan” is not used in other forms of development in the city. Is saving a potential developer money prior to approval really what the city should be doing with PUDs? We believe not. The amount of useable residential land in Charlottesville decreases annually. Areas left for development are generally difficult locations. The city should be looking at developers seeking to build on them with greater attention rather than less. One approach would be to use the special use permit approval process as a model or return to using the site plan process without the “conceptual approval”. Both would solve many of the problems that arose with Stonehenge. For those who argue that this would overburden the developer, we must remember the pressure involved to approve changes after the developer submits his “concept” plan, gets it approved, begins work, and then “discovers” that his “concept” can’t be built. We should not allow developers to create fait accompli.

We discovered that Ms. Creasy is working on a revision of the concept application and hope to see that in the near future. Until we see it, our primary emphasis is to get much more detail from the developer and get more input earlier from neighbors. If the city decides not to return to the site plan or special use permit process, it must at least specify the minimum information required for a PUD concept plan. This should include: lot size, house size (and height), amount and location of open space, density, affordable housing, comparison to neighborhood, topographical issues and proposed solutions, transportation links, connectivity to surrounding neighborhood, borders with adjoining land, etc.

NDS should reconsider what appears to be its emphasis on the developer as its primary client. The scorecard established by NDS for the new city performance plan shows very clearly that NDS considers developers their primary customer. The only goal that did not refer to developers was the number of participants in the Neighborhood Leadership Institute. (Look at the elements of providing outstanding customer service on the Charlottesville Measures Up website for the NDS). The NLI is a very valuable and useful program. (Perhaps there is a way to include a couple of high school

students as “interns” who would attend and participate but not be required to do a project unless they wished.) But that should not be the only point of contact that matters between citizens and the NDS. The importance of neighborhood as a significant customer must return to the Neighborhood Development Services. Our Comprehensive Plan does not support development at any cost and NDS should not either. The client should be the city, with developers and citizens as part of the mix.

In terms of performance appraisal, the NDS scorecard emphasizes numbers of things done rather than looking more deeply at results in relation to requests or needs (percentages). Such information is not currently compiled. More complete statistics might provide useful information: for example, how many PUDs were submitted, how many were approved/not approved by NDS, the Planning Commission, and the City Council. This should not be onerous since, according to the NDS statistics, there have been only 5 PUDs formally reviewed since July 2007. It might also be useful to compile similar data for non-PUD rezoning, site plans, subdivisions and special use permits. This might also provide useful workload and staffing information.

(Following is a summary of the oral report.)

2. There is no easy solution to the critical slopes ordinance and the problem of previously platted land.

The Stonehenge project points out a very real problem for land that has been previously platted. Even though the platting was done with pencil and a paper map over a hundred years ago without considering topography, current environmental knowledge, or current engineering possibilities, that process apparently created specific property rights (even if the owner purchased it after the passage of the critical slopes ordinance). The property owner retains full right to build a single family dwelling on each platted property even though he would have to build statute compliant roads to get to those lots. Because Virginia remains a strict constructionist of the “Dillon Rule”, Charlottesville has only limited power to change those property rights without gaining support for such changes in the Virginia Assembly.

We have not looked at the application of the critical slopes ordinance to land not previously platted but assume there are still restrictions. We were disappointed that something as significant as a critical slopes ordinance which seems written to protect vulnerable land is nonetheless often not applicable because of property rights. Most citizens of Charlottesville probably believe (as we did before this project) that truly vulnerable land is protected when, in fact, it is not.

Ultimately this issue will become a fight in the General Assembly when a locality is pushed too far in regard to property rights. It would be interesting research to know what other localities are doing in this regard. Perhaps there are innovative interpretations of current statutes that would give greater protection. However, this is legal research that neither of us is qualified to do.

3. The decision about “by right” work while a PUD application is in process should be a policy decision and should be prohibited.

We began this issue with the question of whether Charlottesville can create an ordinance or policy stating that if a PUD application is in process, the developer can not proceed with any “by right” development during that time. Most people with whom we spoke thought this was a good idea but one raised the issue of the “Dillon Rule.” We believe that the “Dillon Rule” would not prevent such a policy or ordinance. Following are several arguments that would support such an interpretation.

First, there is a straightforward (i.e., layperson’s) interpretation of the PUD ordinance. If the developer is proceeding with the by right development (moving dirt or cutting trees) at the same time that a PUD proposal is being considered for the same land, then the conditions for the PUD proposal have changed and the application being considered by the Planning Department and/or Planning Commission would no longer be current and thus becomes invalid. This should not involve the “Dillon Rule” because it would be based on the same power that allows the city to specify other PUD requirements.

Second, look at other types of laws for appropriate analogies. For example, although Virginia is a right to work state, it allows employment contracts whereby a prospective employee agrees not to work for a competitor for a period of time after the employee leaves current employment. This “non-compete clause” is frequently used and upheld by courts as long as the restrictions are reasonable (limited in time and location). Thus the developer temporarily could agree not to do any “by right” work on a site in return for asking for the rezoning but only as long as a PUD application is in process. In short, the developer would be giving up his “by right” developments options only so long as a PUD application is in process and may, at any time, withdraw the PUD proposal and proceed with “by right” development.

Third, use the carrot rather than the stick. Charlottesville might also use the lure of financial incentives. For example, create a separate contract with the developer that states that fees for the PUD application will be reduced/eliminated if the developer agrees not to do any “by right” work while the PUD application is in process. Unfortunately, fees are rather low and it isn’t clear that their elimination would be much of a financial incentive, especially in the case of situations like Stonehenge.

We understand that many governments, businesses and people do whatever they can to avoid any possible litigation. On occasion, however, such a risk is necessary, especially when not doing so causes harm. Our city councillors must always assess risks in setting policies. We believe that in this case, a decision should be made on a policy basis of what is best for the city while, of course, keeping in mind any risk assessments. Also, the “Dillon Rule” should not be used as an excuse without truly analyzing the issue.

Addendum by Marla Ziegler:

Marla discovered Sunday that Albemarle County requires cash proffers as part of the rezoning process. Perhaps this is something the city should consider, at least as a way of getting affordable housing. Also, if the county can charge money for a rezoning, surely requiring no “by right” work during a rezoning request is ok.