

**Albemarle County Planning Commission
April 26, 2016**

The Albemarle County Planning Commission held a regular meeting on Tuesday, April 26, 2016, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Karen Firehock, Vice Chair; Mac Lafferty, Jennie More, Daphne Spain, Pam Riley, Bruce Dotson and Tim Keller, Chair. Bill Palmer, UVA representative, was present.

Other officials present were Mandy Burbage, Senior Planner; Megan Yaniglos, Principal Planner; Rebecca Ragsdale, Senior Planner; Elaine Echols, Acting Chief of Planning; John Anderson, Civil Engineer; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Keller, Chair, called the meeting to order at 6:00 p.m. and established a quorum.

Public Hearing Items:

ZMA-2016-00003 Out of Bounds Cash Proffer Amendment

MAGISTERIAL DISTRICT: Jack Jouett

TAX MAP/PARCEL: 06000000006500; 060L0000501900; 060L0000502000; 060L0000502100; 060L0000502200; 060L0000502300; 060L0000502400; 060L0000502500; 060L0000502600; 060L0000502700; 060L0000502800; 060L0000502900; 060L0000503000; 060L0000503100; 060L0000503200; 060L0000503300; 060L0000503400; 060L0000503500; 060L0000503600; 060L0000503700; 060L0000503800; 060L0004A00400; 060L0004A00500; 060L0004A00600

LOCATION: Located on Barracks Road (Route 654) across from its intersection with Georgetown Road (Route 656). 225 Out of Bounds Road, Charlottesville, Virginia 22901.

PROPOSAL: Reduce cash proffer amount from ZMA201500005.

PETITION: Request to amend proffers on property zoned NMD Neighborhood Model District - residential (3 – 34 units/acre) mixed with commercial, service and industrial uses.

OVERLAY DISTRICT: Entrance Corridor (EC); Airport Impact Area (AIA) PROFFERS: YES

COMPREHENSIVE PLAN: Neighborhood Density Residential- residential (3-6 units/acre); supporting uses such as religious institutions, schools, and other small-scale non-residential uses in Neighborhood 7. (Megan Yaniglos)

Ms. Yaniglos presented a PowerPoint presentation to summarize the staff report. An email was distributed regarding the Fiscal Impact Analysis of ZMA-2015-09 (Spring Hill Village) from Steven Allshouse dated March 31, 2016.

Purpose of the Public Hearing

This is a request for ZMA-2016-03 Out of Bounds Proffer Amendment to change the previously approved cash proffer amounts as follows (FIAC's recommendation):

\$4,918.00 for each single family detached unit

\$3,845.00 for each single family attached or townhouse unit

Out of Bounds is a previously approved rezoning. It was rezoned from Residential to Neighborhood Model in December, 2013 with a maximum of 56 units. Some of the development has been built, including the Bennington Road extension and Georgetown Road, but a majority of the units are yet to be built. At this time 15 units have been built that they are not requesting because they have already paid the cash proffer amount.

The approved application plan for the Neighborhood Model District has a mix of attached units, affordable units, and the existing single family house will remain.

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FINAL MINUTES - Partial

Specifics of Proposal

- At the time of the rezoning the applicant proffered the cash proffers for the residential units in the following amounts:
 - \$20,460.51 for each single family detached unit
 - \$13,913.18 for each single family attached or townhouse unit.
- With ZMA-2016-03 the applicant requests to change the cash proffer amounts to the FIAC recommended amounts as follows:
 - \$4,918.00 for each single family detached unit
 - \$3,845.00 for each single family attached or townhouse unit
- No other changes to the zoning are being proposed.

Factors for Consideration

Factors Favorable:

1. The applicant's requested cash proffer amounts would be consistent with the current Capital Improvements Program (CIP) and Capital Needs Assessment (CNA) and would be consistent with the amounts recommended by the Fiscal Impact Advisory Committee (FIAC).
2. Acceptance of the proffered amounts is consistent with the County's Cash Proffer Policy which sets a maximum amount but no minimum amount.

Factors Unfavorable:

1. The Planning Commission has not completed its review of the Cash Proffer Policy, as requested by the Board of Supervisors; however, the applicant's proffered new amounts based on the current CIP and CNA are consistent with State law.
2. The cash proffered by the applicant and accepted by the Board when the property was originally rezoned was consistent with the cash proffer policy and was a reasonable condition intended to address the impacts from the rezoning.

Staff Recommendation

- In light of the re-evaluation of the maximum cash proffer amount by FIAC, which is based on the current CIP and CNA, staff must recommend approval of this rezoning amendment ZMA-2016-03 Out of Bounds Proffer Amendment, with the revised proffers submitted by the applicant.

Mr. Keller invited questions for staff.

Mr. Lafferty asked if they know how this will effect school enrollment, and Ms. Yaniglos replied that she did not ask the schools for the numbers and not sure about that information.

Mr. Lafferty noted that most of our schools are in capacity now if not over capacity.

Ms. Yaniglos suggested staff can get that information together for consideration and provide it to the Board.

Mr. Lafferty said it is hard to make a decision when without all of the information that we said we would be evaluating. As a matter of fact, he was not even sure why this is coming to the Planning Commission and not directly to the Board of Supervisors.

Mr. Benish pointed out the request is an amendment to the action on the rezoning, and the typical path for that is through the Planning Commission. However, it is the Commission's discretion to determine how to act and what recommendations you make on it.

Mr. Lafferty said he was a little bit surprised since we typically have not been involved in calculating the proffers. Generally in our reports from the staff we will get it and it will say that a proffer was offered and

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the Commission will assume that it is right. The Commission has not been typically involved in those calculations.

Mr. Benish said the cash proffer policy approach was sort of an accepted approach through that policy and the modeling process gave us numbers that were accepted as the standard. The basis for our recommendations for these cash proffer amounts here are based on the recalculation of that process. He thinks what the Commission has expressed some concern about is those modified numbers are much lower based on the recalculation of the CIP. However, what is before you is essentially a similar process that we originally took with Out of Bounds applying the cash proffer amounts that were calculated through that cash proffer process.

Mr. Lafferty said as he understands it the old cash proffer guidelines were a maximum and one would assume that it was negotiable up to that maximum.

Mr. Benish said that is correct the cash proffer amounts have been set as the maximum amount as the policy was drafted.

Mr. Lafferty asked were they set or was it negotiable.

Mr. Benish replied they were theoretically negotiable; but, what the cash proffer policy identified was the maximum amount so it was up to that amount. However, the typical practice had been through reviews because most applicants in the past had proffered the maximum amount.

Mr. Kamptner pointed out that the applicants always had the option to make the case as to why a lower cash proffer could be made. Just to add a little more to the response from Mr. Benish on what is before you tonight, he pointed out that staff recognizes that we are dealing with a couple of issues that are in the state of flux. One is that we have FIAC's recommended amount based on the current CIP and CNA and FIAC's recommendation has not yet been accepted by the Board. So the cash proffer policy has not been revised yet. The other thing that is in the state of flux, as the Commission knows, is that the cash proffer policy is currently in the process of being repealed, and that is coming to the Planning Commission on May 10th. However, right now the cash proffer policy is still in effect. The Commission has the information in the staff report to weigh. One thing that he would bring to the Commission's attention is the second paragraph in the discussion section, which kind of highlights it. There is not one single number that is reasonable. When these cash proffers were proffered the proffer statement signed by the owner acknowledges that the proffers are reasonable and they were accepted by the Board. So he would just point the Commission to that paragraph as well because you are not tied to FIAC's recommended number.

Ms. Firehock said also just to confirm my recollection of the changes to the State Code that the changes to proffer policies that counties are now being required to enact are not retroactive. Therefore, it is at our discretion whether or not we want to take prior approved proffers and change them.

Mr. Kamptner asked to clarify two changes. The one change that became effective July of 2013 was the law that requires cash proffers be applied to either new capital facilities or changes to existing capital facilities that increase capacity. Since that law came into effect the cash proffers that had been received had been applied consistent with that state law. So when staff is looking at projects to which the cash proffers would be applied they go through that analysis. There have been some close calls where a group of us will gather to discuss and make sure that we are complying with that statute. The other law that you may be talking about is the law that will become effective July 1st of this year. That is probably one of the primary drivers of the repeal of the cash proffer policy. That will apply only to applications for zoning map amendments that are filed on and after July 1st. That bill is not a factor in this analysis.

Ms. Firehock thanked Mr. Kamptner.

Mr. Keller said he would just add one piece because FIAC keeps being referred to in the FIAC report. He served on that committee as the Commission's representative and he attended every meeting. It was
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about a year ago that this report occurred and we did not anticipate the changes that occurred in this legislative session. At that point with a reworking of the CRIM Model it was determined that the numbers were lower. There was discussion about whether there should be a retroactive component to that. While that is not called out in that report there certainly was discussion about it and the feeling was that was for future development projects that came in. However, that lower number was most likely more realistic and there was not anything about going backwards for those numbers. This is just a clarification before we open the public hearing. He opened the public hearing and invited applicant and public comments.

Mr. Lafferty said it is not retroactive and so we would look back and make adjustments.

Mr. Kamptner pointed out that it had been a while since he had looked at the report. But, based upon what Mr. Keller has just explained that was FIAC's recommendation that its new recommended dollar values not be applied retroactively.

Mr. Keller said he needs to clarify that since it does not state that in the report.

Mr. Kamptner said that it does.

Mr. Keller said the implication from our discussions was that we were talking about that point forward. There were some side discussions; but, there was not a vote on the issue of looking retroactively. There were discussions about the impacts that might have in terms of the amount that might come in. He thinks that is most likely why in that report it was just a recommendation for a new set of numbers.

Mr. Keller opened the public hearing and invited the applicant to come forward.

Valerie Long, with the law firm of Williams Mullen representing the owner and the applicant of the property, said Mr. Vito Cetta is the principle of the owner, Barracks Heights, LLC. There are a couple of comments that she might start out with in response to Mr. Lafferty's question on why this application is even before the Planning Commission and why doesn't it go straight to the Board. Unfortunately, as Mr. Benish indicated because it is a proffer amendment we don't have a choice. We would be pleased to have it go directly to the Board, and we share your opinion that this is a broader policy issue for the Board to discuss.

Ms. Long said we would, of course, request that it meet with your recommendation for approval for the reasons that she will state. This project is already underway. Ms. Yaniglos indicated there were 15 units that had been constructed. There actually has been 18 units that have been sold; however, some of them have not yet been constructed and people have not moved in yet. But, Mr. Cetta who is here tonight has confirmed that there is not a single purchaser of any of the units in this project that is under the age of 60. So to address your question Mr. Lafferty about the impact on the school system at least thus far we expect that there is no impact. These units are being marketed to older folks who are ready to either downsize or at least to stop having to take care of a yard and other things who want to be close to town. They are selling their farms out in the county and moving closer to town on small lots with nice amenities in a beautifully designed convenient project.

Mr. Long noted the price points for these units also exceed what is commonly considered the threshold price at which the property tax revenue that is generated with each of these units exceeds the estimated fiscal impact of the units on the county. They have changed; but, historically that number has always been about \$600,000 or \$650,000. These units have all sold in excess of \$700,000. Many of them are selling for almost a million dollars when people start fitting out the basements, adding lots of amenities and things like that. The tax revenue that is generated from them will exceed the impacts to the county.

Ms. Long said the fiscal impact analysis prepared for one of Mr. Cetta's other projects, Springhill Village project on Avon Street, is in the staff report. There was apparently not one done for Out of Bounds. The one for Spring Hill Village is a little complicated to understand. However, the conclusions as best we can tell using our formula looks like the numbers that are proffered are about equal to the costs for the impacts from the project on the county. But, it also says that the model that was used is not consistent

with the state law requirements because it includes CIP projects that don't expand capacity. So even a very conservative model says that the Springhill Village project proffered amounts cover the impacts. The Springhill Village project is quite different it involves different types of units not nearly as high priced. Those units will most likely, she thinks they will all agree, will have young families that will have children which will go to Cale Elementary School. So if you extrapolate the argument of the county's fiscal impact experts are saying Springhill Village's proffered amounts will cover the impacts of the Springhill Village style community. Then it is fairly easy to conclude in my opinion that the same proffered amounts would more than cover the fiscal impacts of a project like Out of Bounds, which has much higher price points and thus generate much higher tax revenue for the County and they don't expect further to generate any impacts on our public schools.

Ms. Long said so we think that under the new rules of state law, the state law says yes the proffers were accepted back in December of 2013 after the state law had been enacted. I think there is an argument that the proffer amounts that have been accepted thus far by the county violate state law because they were accepted by the county based on a formula that no longer complied with state law. So Mr. Cetta is not trying to be disagreeable on this application. The project is very successful; but, the state law says the proffers have to be based on a formula that only counts CIP projects that expand capacity. The theory makes sense that proffers are intended to mitigate the impacts caused by growth and development. If CIP projects are not responding to expansion needs or capacity needs it is not appropriate to add those to the formula for purposes of calculating the proffers. So all we are doing is asking the county to modify the proffers so that they can be in compliance with state law. We have not pulled the numbers out of the air. As was discussed this was a committee that Mr. Keller and others spent months and months. She thinks the committee met twice a month for a number of months. It was thoroughly vetted, discussed and analyzed by a broad cross section of the community. Staff expertise and input was provided. We have exactly matched the numbers that are in that report. So all we are asking is that the county accept the numbers that are consistent with its own committee's report and recommendations and which both the staff and the county attorney have suggested is appropriate to be accepted.

Ms. Long said in response to Mr. Keller's comment about the retroactivity that is an issue we followed as well, we had hoped that the county might enact blanket legislation that would essentially make these lower figures in effect intermediately. We think that would be the most legal response to the state law changes. Unfortunately, since that did not happen we have no choice but to come forward, pay the application fees for a proffer amendment and to ask that the numbers be revised in the proffers for each and every application. So you are right the numbers are not automatically retroactive nor is there anything in the policy that says it is inappropriate for applicants to come back before you and request on a case by case basis that the proffers be amended. The time they were accepted in 2013 the applicant and the county, assuming the county did not know that the proffer figures was in violation of state or they would not have adopted them. The applicant did not know that. So all we are asking again now is that they be adjusted to be in compliance with state law.

Ms. Long said they have the two points: we just want to be in compliance with state law, and in addition this project is adequately covering the estimated fiscal impacts with the requested proffer amounts. She would be happy to answer any questions on that issue and respond to anything. We likewise would ask that you move it on to the Board. We would certainly ask for your support given the facts at hand. It is an excellent project and it has been very well received. Mr. Cetta has gone above and beyond in working with these neighbors. I think the buildout and the construction is going very well. It is a beautiful project; it is selling well; and will continue to contribute to the county. It exactly complies with the comprehensive plan. It implements a number of amenities that are being well received in improving the quality and the tax base of that area in a way that furthers the county's comprehensive goals.

Mr. Keller invited questions for the applicant.

Mr. Dotson noted in 2013 the property was rezoned from R-1 to its current zoning. He asked if Mr. Cetta was the owner at that time.

Ms. Long replied that he was.

Mr. Dotson said the second question was Mr. Cetta sent to Wayne Cilimberg back in September, 2015 an email which was forwarded to the Commissioners about Spring Hill. In it Mr. Cetta indicated that we are under construction with Out of Bounds and paying the present proffer amount for townhouses which is over \$14,000 and we can afford these proffers since the selling prices of the homes are from \$500,000 to \$900,000. As you indicated I am also familiar with the \$600,000 or sort of break-even point; however, what happened between September and now is why these proffers are being proposed for change.

Ms. Long said that Mr. Cetta is, if nothing, he is the most honest person I have worked with.

Mr. Dotson agreed.

Ms. Long said Mr. Cetta is here and can explain it. Yesterday Mr. Cetta told me we can afford these proffers; we are paying them and the market is absorbing them; however, the state law says that he is entitled to a reduction in the proffer amount. That is all we are asking for. From a pure legal perspective we are asking for the proffers to comply with the changes to state law; and, frankly from an equitable perspective. The fact the project can support the proffers and can absorb them despite the fact that they exceed the legal levels in my opinion I would contend do not make it appropriate to continue to the proffer levels at the current figures. So yes it is absorbing it and he is incredibly fortunate that he is able to. Spring Hill Village I would note is the exact opposite. That project will not happen and is absolutely on hold if the proffers can't be reduced. That is not at the issue today. So he is very, very fortunate. It is a testament to the quality of the development and the quality of the location; the improvements and the design of the project, and frankly his astute response to market demands providing the project product in that location is highly desirable working with an excellent local builder who knows the market well. So he is very fortunate and grateful. But, that does not mean that it is appropriate to continue it just because it can afford it. Nor, in my opinion is it appropriate to continue it for projects that can't afford it. All we are asking is that it comply with state law and to the extent that there is concern by the Commission or the Board or others that by lowering the proffers to the requested amount it is creating fiscal impacts on the county we contend that is not accurate for all the reasons I have said.

There being no questions for Ms. Long, Mr. Keller invited further public comment. The being none, the public hearing was closed to bring the matter back to the Planning Commission for discussion and action.

Mr. Keller invited the applicant for a five minute rebuttal.

Mr. Vita Cetta said that he agreed with everything that has been said, and yes we can afford it. He also will give you a perspective. We have processed about 12 projects in the county through rezoning starting in the 1990's. In those days there was no affordable housing and no cash proffers. As we moved through we did add cash proffers and affordable housing. There was not a substantial burden and we all absorbed it. The market just went like that until 2007. As you know the cash proffer went from \$800, \$1,500, \$2,200, \$4,200, and then in 2007 the Commission and Board were on a roll since it looked like good money and decided to raise it to \$20,000. Then the market took a drive. Well I took a dive personally with it at 7 projects and I sent you all my savings. At 76 years old I am here working, and I should not be working. Fortunately, I had a good project since Out of Bounds is a fabulous project. There actually has been 25 units sold and there are not children in that neighborhood. I am one of the buyers. It is close in town and a real winner. It is very much an infill located around Canterbury Hills, sidewalks and new traffic light. The Canterbury Hills people use it all the time. We cut a road into their neighborhood and they use that to go north. It is a very successful project.

Mr. Cetta noted that Spring Hill Village is a totally different story. We are competing with places like Cascadia, which have cash proffer of \$2,000 and \$2,500. It is just absolutely no way that a moderate price house you can afford \$21,000 and \$15,000. You just can't do it. We have been on hold on that project for two years. In Crozet there is property being developed now that is by right with no affordable housing and no cash proffers. Mr. Cetta said in a perfect world you would essentially assess everybody cash proffer. That is the way it is done in California. That way it is a level playing field. Everybody files for a building permit; it is \$50,000 and so it is all even. In this case there is no way that we can ever build

that project with those kind of cash proffers. He asked if there were any questions. He noted that it is a wonderful business; but, you can get nailed. Fortunately, there is a gift for us here that maybe we can get these proffers reduced and put some more money in our pocket. We can afford it right now and I will repeat that.

There being no further questions for Mr. Cetta, Mr. Keller closed the public hearing to bring the matter before the Planning Commission for discussion and action.

Mr. Kamptner said he would disagree with Ms. Long one issue about the county's acceptance of the proffers in this case being unlawful. As he said before the amount in the cash proffer policy is a maximum amount. These are sophisticated developers and their proffer statement says that they are being voluntarily provided and that they are reasonable. I recognize the argument that they are making. But, the Board's acceptance of the proffer not only the first time this project was rezoned but when it came through in the amendment last year it was reasonable and it was never challenged.

Mr. Keller thanked Mr. Kamptner.

Mr. Dotson noted a question prompted by Mr. Kamptner's comment was under the policy that is yet to be appealed could someone proffer more than the stated maximum amount. That had never occurred to me.

Mr. Kamptner replied yes, the cash proffer policy does have a provision. However, with my system currently off-line, he would note in section 1 or 2 there is a provision that states that nothing in this policy prevents an applicant from proffering other cash.

Mr. Dotson asked staff if the upcoming agenda item for repeal of the cash proffer policy on May 10th a simple appeal or will there be discussion and ideas provided about how in the future once that is repealed the county would proceed.

Mr. Kamptner replied yes, staff hopes it will be a simple repeal. The Commission may recall that there were two resolutions of intent. One was to repeal the cash proffer policy because we think that it really does need to be repealed before July 1st. The Commission also adopted a second resolution of intent that initiates the study to develop a new cash proffer policy consistent with the new state law.

Mr. Dotson said so in the interim period of months there would be sort of an intent perhaps to still consider applications, but in line with maybe what the thinking was but had not been adopted as guidelines.

Mr. Kamptner asked if he was asking whether or not the Commission can ignore the cash proffer policy.

Mr. Dotson replied no, he was saying what would happen after it was repealed until a new set of guidelines and procedures are adopted. That would be a number of months he was assuming.

Mr. Kamptner replied that it would be a project by project analysis evaluating the impacts and the range of issues that can be addressed by proffers as being narrowed under the new law. So there would be a whole new type of analysis focused on four areas and it will be done on a case by case basis. As we are interpreting the new standards that case by case analysis is going to be compelled. Speaking to attorneys in Chesterfield County, which has a similar cash proffer policy, they are going to continue with their cash proffer policy as it is. But, the way we read those new standards our cash proffer policy will not meet those new standards.

Mr. Dotson said the reason he asked in part is that he thinks this is a very interesting case for Out of Bounds. On the one hand we are not provided any information on school impacts; however, he knows it is in the Greer Elementary and the Albemarle High School attendance area which are the two most impacted areas. On other hand, testimony has been provided by Ms. Long that the nature of this product and the buyers are not generating students and beyond that given the price of the units they are probably

bringing in more money than would be their cost. So is that is something that is going to be addressed in the guidelines.

Mr. Kamptner replied that they are going to be looking at everything, and we will have to. In this particular case the information that you have heard so far tonight is something that you can weigh. One advantage of it being a legislative decision is that you are allowed to consider a number of factors.

Mr. Dotson said one last question of staff just in terms of scheduling this for the Board strikes me as there would be some advantage to having this on the same agenda as Springhill. He did not know if that was possible or not, but it would seem useful to have the two together.

Mr. Benish replied that he can't remember when Springhill is scheduled. However, staff can try to work with the clerk of the board in scheduling those items. He believed the items were scheduled for a later date than next month. Staff will try to get the two items coordinated.

Mr. Dotson suggested if nothing else that would get Out of Bounds more quickly before the board.

Mr. Lafferty said he understands one of the benefits of the previous proffer was to give the developer a figure that they could work into estimating the cost of their project and the profitability. In doing this it is going to change from year to year depending on the financial status of the county, as he understand it, and there will be an evaluation that has to take place before the developer can factor those figures into what it is going to cost to do it. That seems to me will be quite a delay because there is a lot of research that will have to go into that. Yet, they get calls from the developers that they want to streamline it and want to move the bulldozer in tomorrow. How do we take these figures into account? It will take longer to go through the process to get a finite financial figure, which will delay the application.

Mr. Benish said he was not sure of the question.

Mr. Lafferty asked are all of my assumptions right, will this delay the process.

Mr. Benish replied depending on what alternatives are to evaluate the impacts of the development conceivably if we utilize new procedures for evaluating proffers; but, that depends on the Board's action in what is before you today.

Mr. Lafferty asked would it be possible to come up with figures that would be a compromise if you could say these would probably be adequate for the evaluation of the proffer.

Mr. Benish replied that he did not want to speak for the applicant, but did not believe the numbers they are interested in are the FIAC's numbers and not a negotiated number. These are proffers that have to be volunteered by the applicant.

Mr. Lafferty said he really was not trying to address this particular one, but felt they were going to see more and more of these come up and just wondered if we could have a standard response.

Mr. Benish said he thinks our intent is to try to work towards that response. However, they are working on it right now and to tell you how long it is going to take and what is involved is a work in progress right now. He just does not have a good answer right now for him.

Mr. Lafferty noted that is problem because he does not have a very good answer for the applicant.

There being no further questions or comments, Mr. Keller asked for a motion.

Motion: Ms. Firehock moved and Ms. More seconded to recommend denial of ZMA-2016-00003 Out of Bounds Proffer Amendment due to the fact that the cash proffered by the applicant and accepted by the Board when the property was originally rezoned was consistent with the Cash Proffer Policy and was a reasonable condition intended to address the impacts from the rezoning.

Mr. Keller invited discussion. There being no further discussion he asked for a roll call.

The motion passed by a vote of 7:0 to recommend denial of ZMA-2016-00003 Out of Bounds Proffer Amendment.

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

Approved by Planning Commission
Date: 6-21-2016
Initials: SCT