Albemarle County Planning Commission
July 17, 2018

The Albemarle County Planning Commission held a public hearing on Tuesday, July 17, 2018, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Julian Bivins, Pam Riley, Vice-Chair; Jennie More and Daphne Spain, Karen Firehock, Bruce Dotson and Bill Palmer, UVA representative.

Other officials present were Andrew Knuppel, Senior Planner, Elaine Echols, Chief of Community Development; Bill Fritz, Manager of Special Projects; Andrew Gast-Bray, Assistant Director of Community Development/Director of Planning; Sharon Taylor, Clerk to Planning Commission and Andy Herrick, Assistant County Attorney.

Call to Order and Establish Quorum

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

The meeting moved to the next agenda item.

Work Session

ZTA-2017-00006 Updates and Clarifications to Section 33 Zoning Text Amendments, Zoning Map Amendments, Special Use Permits and Special Exceptions.
Work Session on Zoning Text Amendment related specifically to Deferrals. (Elaine Echols)

Elaine Echols, Chief of Community Development noted that Bill Fritz is helping with this since we both have been dealing with the problems with the ordinance related to deferrals for many years. She said they have bounced many ideas off each other about how we can use our time most effectively as well as serve the public the best with zoning proposals that somehow are postponed. She pointed out that Bill Fritz is here to help answer questions and he will be taking this after I have retired on to the Board of Supervisors. Tonight we want to talk about proposed changes to a portion of Section 33 of the Zoning Ordinance. As noted in the staff report, this is not the complete group of changes but may be the most substantive thing we want to talk about. We will review these proposed changes and see if the Commission have any questions that we may answer and you may want to get some public comment on this, advise of off any changes and if you are ready for a public hearing after we are done. Staff can go ahead and set the public hearing sometime in August.

Ms. Echols explained in a PowerPoint presentation that part of the group of changes from the County's Attorney's office related to Section 33 relates to processes and procedures for special use permits (SPs), zoning map amendments (ZMAs), Special Exceptions (SPEx), and zoning text amendments (ZTAs).

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- Page 4 of Table has a mistake
- Page 5 of Proposed Ordinance has funky numbering -- is supposed to reference for 32.52
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Purpose of Work Session

- Fee changes have not been included
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Context

- County Attorney's minor changes to update /modernize /standardize/ organize portions of the Zoning Ordinance
- Updates to Section 33: ZTAs, ZMAs, SPs, Special Exceptions
- Staff request for hard dates for action

Ms. Echols said just to give you some context, the County Attorney Office has been working on a lot of housekeeping changes; it is to cleaning up and clarifying the language of the Zoning Ordinance trying to modernize it. The Commission have seen two that have been approved and there may be more that you have reviewed. When we bring them to you, the Commission provides us with the comments about when we think this is ready to move or we think you need to go back and look at this a little further. Therefore, that is why this is in a work session format and not trying to do a public hearing. She said what we are talking about is mostly deferrals related to zoning text amendments, actually some of the procedural things with zoning text amendments, deferrals for zoning map amendments and special use permits but we are not really talking about special exceptions. The biggest change in here is for us to ask for hard dates for action by the Board of Supervisors.

Ms. Echols said the Commission should have gotten the explanation table, the color copy of the changes to the ordinance and the flow chart, which was sent out with the email sent to the development community letting people know that we were having a Round Table and the changes are to:

- Remove citizen-initiated zoning text amendments (ZTAs) from the text that is a request from the Board of Supervisors basically if somebody wants to request a zoning text amendment they need to approach you to find a sponsor with the Commission or the Board of Supervisors to get a resolution of intent passed. That is something the Board wanted to do to better manage their resources and not have staff working on things before the Board agrees that staff time needs to be spent on this and the State Code does not require that we have a citizen initiated zoning text amendment policy.
- Clarifications about the community meeting is the rule, not the exception. When we originally started community meetings, we were not exactly sure how to do them and it became clear that the way the ordinance was written some people were interpreting that this was an option and we had to make it clear that this was the rule and not the exception. Therefore, staff just wants to clean up the language for that.
- Refine language and set firm deadline for action by the Board of Supervisors (BOS).
- No separate legal ad fee; and instead increase the application fee to cover the cost of ad.
- Remove deferral fee because it takes more staff time to administer that than we recover in the cost that they pay.
- Reduce fee for reapplication of the same rezoning request, if authorized by Board of Supervisors (BOS). Ms. Echols said if you get past the 36 months but there is some compelling reason why your project has not been able to get an action on it you can't reapply for a year except to have the Board of Supervisors give you that permission. Therefore, what we are saying is in addition to that permission they can reduce the fee so that you do not have to pay the full fee and we are hoping that will be sufficient to help encourage people to continue getting this thing done and only use that as an exception.

- Remove fee reduction for special use permit/zoning map amendment (SP/ZMA) concurrent with Site Development Plan (SDP) except for Entrance Corridor (EC) projects. This is to try to clean up some of those timepieces that take a lot of time and discussion when we get concurrent site plans with a ZMA or SP.
- Active projects under review right now that have already passed 36 months we would say you have 12 more months to get to the Board of Supervisors for action. If a project is currently under review because we do not have an end date for when action needs to be, taken saying that you have up to 36 months from the time your application was accepted.

Ms. Echols said the question that we really wanted to concentrate on is what is a deferral? The problem with our ordinance is that it implies that everybody knows what that is, but it really is not explicit. A deferral is a postponement but it might be a postponement at the time for a decision, a suspension of review, an extension of time for making a decision or an extension of time for an applicant to resubmit. Any one of those could fall under what people think of as a deferral and we want to make that clear in this ordinance it is a suspension of review that allows for extending the time period for action. In other words, we want projects to be in the best state possible when they come to you and the Board of Supervisors and from time to time after someone makes an application, they need to do some more work. Therefore, we need to stop the process in order for them to do something more but also need if we are going to establish an end date for when action is needed to allow for an extension of time because the State Code requires that the Planning Commission take an action within 90 days of acceptance of that application. In addition, the Board of Supervisors is required to take action within 12 months of that same beginning time.

Ms. Spain asked is a request for a deferral always initiated by the applicant.

Ms. Echols replied that the Planning Commission is allowed to defer something only if it is within that 90-day window. Therefore, if 90 days has not passed and you want to postpone a decision that is the only opportunity you have; otherwise, it has to be up to the applicant because you are obligated to give them a decision within 90 days. She pointed out the Board could defer but only up to a year.

Ms. Spain thanked Ms. Echols.

Ms. Echols said as noted in information sent you can see that we have a lot of projects that defer and she was not sure if anybody outside the Planning Department really had any idea how many projects there are that go into deferral. Those deferrals range from any number of things from we want our first set of comments and, oh, we may resubmit again someday maybe to yes we will resubmit and then four or five months goes by and we say you need to do something and so they say yes we will resubmit next month and then they don't. Then staff has to say you need to resubmit because we've got to have this on a schedule and keep this moving. What we are trying to do now is to establish for all those projects at a level playing field so that we can do our job and spend our time and resources wisely.

Ms. Echols pointed out in the flowchart staff is recommending that you have five options after we give you your first set of comments. Staff provides a set of comments 32 days after we have accepted an application for submittal. That is a hard deadline and we need that deadline. Then it is in the applicant's hands and they have a choice to say we are ready to go to a public hearing, which happens about a tenth of the time; or, they can say we want to resubmit and are not ready to go to a public hearing; or, they cannot respond to those comments at all. What we are proposing is for those three things, they are going to a public hearing because we want to keep them moving and to take

responsibility for what happens with their project. We are recommending that the other two options that already exist are that they can withdraw their application or they can request a deferral. The only change in this is that instead of having an applicant decide when they are going to a public hearing, and we have to wait on them telling us, we are taking them within 90 days. That puts the onerous on the applicant to say oh no do not take me I am going to put in my letter of deferral and we say give it to us or we are taking you to public hearing.

Ms. Echols said we do not do that now because we don't have the public hearing fee that has been paid, which is why we want to include it in the initial cost. Therefore, if you look at the top level in the flow chart the gray box on the left says public hearing and decision within 90 days of acceptance and that is if somebody wants to go within 90 days. There is a minimum of 25 days from a Planning Commission meeting before we can schedule something for the Board of Supervisors.

Ms. Riley asked where does the case of an application that does not have complete information come into this.

Ms. Echols replied that it never even gets its first set of comments.

Ms. Riley asked if it is halted at the very first level.

Ms. Echols replied yes that an incomplete application is not processed, put in our system as incomplete. we contact the applicant and say you need to give us all this information the next submittal period, which information complete enough to meet our ordinance requirements. She said it may not satisfy all the questions we have but it meets the legal standard for being able to process an application. Therefore, if a person gets to the Planning Commission within 90 days and decides when they get here and to they are not quite ready and ask to defer then they can do that. We are recommending that continues but they just have to give us something in writing and tell us what the time period is that they want and can still get to the Board within 12 months if they make all their submittals on time. These are the two fast tracks and she would say many of our special use permits where the applicants are serious about their project get through in less than a year. Many if not most of the projects for special use permits for an applicant conscientiously pursuing approval they will get through somewhere in 4 to 6 months, a year at the most.

Ms. Echols said we have the other group of people who have deferred and what happens to them. Therefore, if someone has requested a deferral they need to give us the information within the time period that they have asked for so that a decision can be made within 36 months or 3 years of the time of the acceptance of their application. We have heard that is generous and it may be but that is sort of the way the ordinance is set up now. If you read the ordinance, you can see that it implies that you can have a deferral for one year from the planning director, the planning director can extend it for up to another year and then if you want another deferral you go to the Board of Supervisors. They are not restricted to a year but that is their cutoff generally and why we are talking about the 36 months to try to follow the pattern that was already in the Zoning Ordinance. We have projects that have been here for well over 36 months with a project that has been here since 2010 that has been deferred and taken out of deferral and deferred and taken out of deferral; a project from 2015 that is very controversial and the public keeps asking when is it going to get to the Planning Commission and to the Board; and we have a lot of trouble answering that question because we don't have that ability to cut it off and say they have exceeded the time period that they have.

Ms. Echols said that is why we are asking for comments from you of putting in a definitive time period so that then we know when something will end, close the file out and say nobody is going to come back and ask to resurrect this. Therefore, there are different points along the way that we are asking people to either resubmit or withdraw and if they fail to resubmit within a time period then we are considering that a voluntary withdrawal. If someone defers the onerous is on the applicant and if they have not given us anything and we have nothing we can take to the Planning Commission for a public hearing at that point we say you have failed to meet your obligation and voluntarily withdrawn.

Ms. Echols said you did not have this in your packet so you could really look at it in some detail, so not all of my detailed pages shown in the slide might make any sense to you right now, and you may or may not be ready to make any recommendations or decisions on this. However, she wanted to set it up for you to see that we are trying to establish the different times during the process that someone can ask for a deferral, resubmit and what happens if they fail to resubmit. She said it is not unusual for someone to be in a state of deferral but in contact with us asking questions if this will work; and that is okay because they are still actively pursuing but we still need to have some deadlines on it.

Ms. Spain noted that it is a state of deferral and it sounds like a state of denial.

Ms. Echols replied that we have had some of those, too. She pointed out when we went to the Roundtable there was only two people and she had sent between 55 and 60 emails to our applicants for the last several years and our regular customers. We had one member of the development community who does a lot of work with clients and represents a lot of applicants that came and she provided a great deal of good comment. We also had a Board of Supervisors member who was there to also listen and provide some comment and they thought in general that the proposed changes seemed fair.

Comments from Roundtable

- In general, changes proposed seem to be fair, but…
- Concern: Unfair to take advertisement fee up front and not use it if the applicant withdraws before the public hearing and the applicant would be out of that money. Ms. Echols said what we tried to explain to them is that we spend well in excess of what we take in for an application and maybe as much as 2½ times at the minimum of what we take in. However, we also said we would call this an application fee; we are not separating out the legal ad fees; we would just increase the application fee to represent the average advertisement cost. We still are not going to recover our money but we will be able to cover the advertisement in almost all cases by that increase in the fee. That gave the Board member some pause because increasing fees is not done lightly and so he wanted to bring some of those issues to the Board of Supervisors so that is something else we would need to be talking about is how we deal with fee increases. One of the things that was talked about was in order to deal with what might seem like an unfair situation is to setup a refund based on the percentage of activity that had taken place. We kind of do that now, but something a little more formal like if you are doing it from the application point to the time you get your comments we might give you one-half of your fee back because we have not done all of that work. Therefore, you would not be out of that money. That is something the Board wants to review as well.
- Refund of a portion of the application fee should be available if withdrawal takes place before public hearing.
- Requests for action or withdrawal should go to the Planning Division, not the Clerk.
- From Board of Supervisors member: we need to look at reducing fees for special use permits (SPs) for certain uses. He was most concerned with the impact of the fees on religious

institutions especially the small religious institutions that don't have a lot of money to work with in the first place.

- From applicant representative: we need to look at reducing the number of uses for which special use permits (SPs) are required and that might also save everyone some time and money.

Ms. Echols said we provided a lot of examples to the two people that was at the Roundtable on the kinds of deferrals we get and they both were surprised at the range of things we deal with that take so much time to figure out what state is this in. However, after we explained that she believe that is why they came to the conclusion that they felt like the changes that were proposed were fair. We can come back around and you can ask all of your questions but from here we need to know whether you have enough with what you have gotten to say okay you can bring us the rest of the Section 33 changes and we will go ahead and set a public hearing for August 7. We can get you those changes 10 days in advance and it is possible that if we get through this in August that it could go to the Board in September. She said the staff is very anxious to see this change so that we can discontinue the activities we have to do to get applicants to give us some kind of a letter telling us the state of the application. The changes in the fees we need to do a little bit of work on and bring back and we need to talk about that internally. However, for right now we wanted to know if the basic ideas about deferrals and the 36-month deadline are things you could support.

Ms. Spain said when we asked for that in Pantops she had no appreciation of the complications involved here in the number of cases and thinks this is a well-needed change and asked the grandfathering situation for those in deferral now and if those would be held to these changed guidelines.

Ms. Echols replied staff is recommending that anything that is under review now that is past three years from the date of acceptance has 12 months to get finished and anything that has not hit three years yet they have up to three years.

Mr. Keller asked to build on what Ms. Spain said, and suggested that it would be helpful for new planning commissioners from this point on to get whatever ultimately is the process that is agreed upon that this be in the orientation packet and explained. He said the details presented are a great clarification to some of the statements made from the development community, staff and the public at different points asking these kinds of questions. Mr. Keller asked Andy Herrick if a note could go in that notebook given to the new commissioners.

Mr. Herrick replied that he was making a note of this for Mr. Blair and agreed that is a great observation for what might be part of future commissioner orientation.

Mr. Keller thanked Ms. Spain for pointing that out.

Ms. Firehock said the first question about the ordinance language pertaining to community meetings and public notice is one under #3 guidelines, which is on page 2 of 5, that says the director of planning shall establish written guidelines pertaining to notification for nearby property owners scheduling and conducting community meetings. She said this is changing it from they are authorized that they could do this to they "shall" do this.

Ms. Echols replied that they are established and we provide them to the CAC's if you have not seen them.

Ms. Firehock replied that I have but was just confused by the thing that it says shall using a future verb tense, and Ms. Echols replied that there always will be established community guidelines and it won't be lost.

Mr. Fritz pointed out the other advantage is if we discover a better way of communicating it is easier for the director to amend that than to have to come back and amend the ordinance.

Ms. Firehock said that makes sense and then the other question was regarding the community meeting will be held ahead of the public hearing. She asked staff how far ahead of the public hearing the community meeting must be held.

Ms. Echols relied that we typically like the community meeting to be held within the first 30 days so that we can get the comments we send to the applicant so that we note that these were the items that were discussed at the community meeting please pay attention to them or we believe these things are important. But, right now all we have said by practice is that you need to have that community meeting before the public hearing and so people have said well the ordinance does not require that and we are thinking that is what the intension was. That is the only reason why we wanted to put it in here so that it is clear when people say I don't even want to have a community meeting then staff can say you need to have a community meeting and it needs to happen before the public hearing.

Ms. Firehock asked would it be too difficult to specify how many days prior to the public hearing, such as 7 days, because sometimes it seemed that the community meeting is held so close to the public hearing that in fairness to all sides the applicant has not had a chance to even digest what the community told them. She said we are not really realizing the importance sitting around the dias saying well what about these comments and how are you addressing those when they have not even had time to address them and they just might not be realizing the importance that we place on the community input. She asked is there some way we could say like 7 days before or some period of time where one could have maybe done something with their application or at least come up with a proposal for how they might modify it.

Ms. Echols replied yes, we could put that in the community guidelines but not in the ordinance.

Mr. Fritz pointed out that the director is sitting here and he heard you so when he goes to develop those guidelines that we have talked about in the prior section for scheduling and conducting of the meetings.

Ms. More asked when a community meeting is held and then there is an excessive amount of time between that and a public hearing, particularly when there has been a deferral, if there are substantial changes to what the applicant is requesting my experience so far has been the applicant has not come back to do another community meeting so she had a concern about that. She said your intention here is to stop the deferrals from going on and on, and wonders if that can be considered as part of the processes if there is a threshold where there is enough substantial changes that needs to go back to the community because they have not given input on changes that were made after a deferral.

Ms. Echols said we could put something in the community guidelines that recommends that if substantial changes have been made over a period of time it is strongly recommended that an applicant attend a second community meeting. There are other avenues for the public to be able to know what is going on and we are trying to sort of walk that line. If we have people who are very interested in a project we keep their emails so that we can let them know when there is a new submittal that has come

in. In addition, we let you know on controversial projects that our planners are sending something to the CAC is saying just so you know X project has been resubmitted you can find the information here.

Ms. More said that has worked for those projects that tend to not move swiftly but there is a large interest in the CAC and guessed that was putting another pressure on the planner to make sure that list goers out especially if something suddenly gets onto the schedule. We have had those people who have had their community meeting, they are waiting and enough months go by and it kind of goes off their radar and then it is next Tuesday. She pointed out that just happened with one, but the notification did go out and was comfortable with that. She said my other question is about the factors that would be considered by the director of planning and waiving the community meeting and asked can you give an example.

Ms. Echols replied yes, the only time the planning director waives a community meeting is after he has contacted the Board of Supervisors member to have them say it is okay to waive it. She said it is actually the planning director's designee and the planner is always in consultation with either a principal planner, chief or the director. The first thing we do is contact the Board member and we say this is the project, we don't think it rises to the level of needing a community meeting; do you agree and then they tell us if it does or it does not. Ms. Echols said in one case we had a body shop and the applicant was very offended that he had to do a community meeting at all and we have made other body shops do community meetings and he just decided that he did not want to do one. We sent it to the Board member of that area and said the applicant has made this request and we have had similar projects that have come through; there have been community meetings and we have had no one to show up; do you believe a community meeting is needed in this particular situation. Sometimes the Board member will say a community meeting is needed or not; one example is the Yancey project that you saw tonight where we contacted the Board member and said there have been a number of different community meetings that have taken place, do you think we need to have an extra community meeting and the Board member said no; and it is a rarity that we recommend that somebody not have a community meeting. Another example, is a person who is asking for a Class B Home Occupation, which is for an accessory structure, what they want to do is make their art in an accessory structure on their property and we said that one we think maybe does not rise to the level of needing a community meeting so we asked the Board member who agreed since it is so minor as to not really rise to that level.

Ms. More said if there is a long deferral that the applicant has been very engaged with the community that a second community meeting probably is not necessary. However, I can think of some situations where there might have been a community meeting and what was shown to the community and they were not that interested at the time and a deferral happens. If there are substantial changes she feels like something could slip through and just wanted to make sure that there is some kind of process that would trigger the request is different enough that we need to go back to the community with this.

Mr. Keller asked what about timeframe and do you think if something is at the three-year window even if it is the same.

Ms. More replied that she was saying it is not the same and there would have to be some kind of whatever it is that staff could determine where there has been enough substantial change.

Mr. Keller pointed out we have seen with a number of things recently that have stretched out that there is a whole new community in effect in some of these areas; and was asking the question is there a responsibility to involve the community a second time closer to that time.

Ms. Firehock said that is a judgment again that we can leave to our planning director, but she was sensitive making somebody have the same meeting over again when it is a straight forward proposal and not controversial and was comfortable with some judgement being exercised.

Ms. More said she would like to call attention to those applications that are controversial and have substantial changes and maybe it is a reach out to the CAC of that area if that is where the original community meeting was held.

Ms. Riley agreed with Commissioner More that if there has been substantial change or there was inadequate information provided at the first meeting would be a good basic for a second community meeting.

Andrew Gast-Bray, Director of Planning, said the nature of the three years being selected was supposed to in no small part address the idea of something capturing most transients in just a pure timeframe issue. In fact, when he was in New England it was five years and that was because of what the state legislature had determined as being it is no longer really the same situation so whatever that might be. Mr. Gast-Bray said he agreed with what he was hearing that if there is substantial change that what was reviewed is no longer accurate that he liked the idea of sort of in the context of a minor versus major change in an application that we might recommend a second community meeting.

Ms. More suggested that it could be the consideration of the director of planning in waiving a meeting to talk with that supervisor to find out if we should do another community meeting.

Ms. Riley said Section 33 seems to be broken up in 33.3 which is for initiated zoning map amendments by the county and then 33.4 is those not initiated by the county. She asked what is the definition of initiated by the county.

Ms. Echols replied if the county wanted to rezone an area like the Downtown Crozet District that would be a zoning map amendment initiated by the county and we would not do it on a spot basis but we might have a district or an area that we want to redesignate. It does not happen often, it is rare that it happens, but it does happen and we might do that with what comes out of the small area plan and might initiate a zoning map amendment for 200 properties or something like that.

Ms. Riley said so just to be clear about this then the efforts to expand the boundary for Sweet Spot would that have been a county initiated zoning map amendment.

Ms. Echols replied that it was a Comprehensive Plan Amendment but the applicant would have had to make and sign the application for that zoning map amendment.

Ms. Riley asked if the Southwood rezoning application going to be a county initiated zoning map amendment.

Ms. Echols replied no, we don't own the property so that will be initiated by the applicant. She said the rezoning that the county does are comprehensive in their scope like the 1980 zoning map amendment where we established zoning districts throughout the development areas; that was one the county initiated.

Mr. Fritz said there have been two county initiated rezonings, one is the 1980 rezoning and the other was the Downtown Crozet District.

Ms. Riley asked for a clarification on staff's recommendation for removal of language under a and why it is being removed.

Ms. Echols replied that was a zoning text amendment and the language is something that the Board of Supervisors back in January said that they did not want to have applicant initiated zoning text amendments. She said because what happens is the staff may get started down a path on something that does not have the support of the Board and we may be using those resources that we need to be using on other Board priorities. Ms. Echols said the alternative that they laid out was if an applicant wants a zoning test amendment they need to approach the Commissioner or the Board of Supervisors to get someone that will champion it for them to get the Planning Commissioner or the Board to adopt a resolution of intent to begin the process of study where we had also set up a public participation process. She said it is not to prevent someone with a good idea from saying we think this would be a good change, but mainly to get it to the right decision makers rather than having staff have to drop everything they are doing and do all the work on a zoning text amendment because someone has made an application.

Mr. Bivins said regarding the flowchart when an applicant is none nonresponsive after you have reached out to them why should that come on to a public hearing and not enough to say you are nonresponding you are no longer on the calendar.

Ms. Echols replied partly because we are obligated to get somebody to you within 90 days.

Mr. Bivins said there are other opportunities when someone is not responsive we can push them along earlier in the process to free up slots for people who are engaged and trying to move through the process in a timely manner.

Mr. Fritz replied that it would be nice but thinks we are taking the view that the Code says when we get an application the Planning Commission is supposed to act on it within 90 days. If they make the application and it clears the hurdle to get and be reviewed they are entitled to being heard without any further action on their part so we are taking that reading of it to make sure that we are compliant with the Code.

Ms. Echols said we are also using that as a tool for an applicant to understand; they have to make a choice either to have a public hearing that goes down and that they are denied or they are going to defer or withdraw and so it is trying to push the applicant to make a decision. She said we are also trying hard to get out of the business of having to call and beg for someone to give us a status.

Mr. Fritz said it actually takes a lot of resources.

Mr. Bivins said that he appreciates that so my point is since it does take a lot of resources that at some point, a person or entity is nonresponsive and there are consequences in other parts of our life for not being responsive. He asked why that should take the space on the Commission's agenda when you have a group of individuals here who are actually trying to move projects forward.

Mr. Fritz noted that we are just taking a very literal reading of the State Code if they file their application and meet the minimum threshold to get their application in they are entitled to a review.

Ms. Echols said we are hopeful that people will not want to waste your time and staff will do what we can to encourage them to get it in a shape for you to act and not take something to you that you are just going to have to say we have to deny this.

Mr. Fritz pointed out we would not advise someone to do that but it is an option.

Mr. Bivins said he understood that the proposal is to move all fee collection up front and not an increase in the fee that he thinks is an important thing for people to understand. He said there is a rebate function here that if you get to this point then we will give you some X amounts that staff will figure out. Mr. Bivins said he would like it clear that you are not increasing fees and changing the timing of the fee.

Mr. Dotson said he had two comments and requests two clarifications. The first comment is that he would agree with Commissioner More if a project changed substantially the planning director would have the basis for calling for a second community meeting. However, he would not agree if the population in the area changes that would warrant a second meeting since he would think that the original population was still representative of public concern rather than holding another meeting if the population changed. The second comment is that he was amazed in reading through this how much staff time must go into calling, chasing, pushing and begging, etc. and he has served on two groups one about 20 years ago the Land Use Regulation Committee (LURC) and more recently the Regulatory Streamlining Committee and it would always come up about how the county staff is dragging its feet or extending the process and how the applicant was having to push the county staff. Mr. Dotson said everybody is interested in making the process work better.

Mr. Dotson said he had two clarifications and asked if an applicant requests a zoning text amendment or a Comprehensive Plan amendment and has filed an application that has to go to the Board of Supervisors for them to agree to even consider it and asked if that is a fact.

Ms. Echols replied that Is a true fact that when we were talking to the Board about zoning text amendments and staff resources early this year what we said is we have a hard time knowing how to balance the Board's priorities and we think if the Board will say what is important to them the staff can respond to them and also for the Board to prioritize the things that we do including some of the initiatives that you would like for us to take. The Entrance Corridor issue set aside, if you have something that you want to work on and adopt a resolution of intent we are obligated to take that to the Board and ask them how do you want us to address this so we have the staff resources to do the work that needs to be done.

Mr. Dotson said if there is an applicant who is interested in a zoning text amendment or a Comprehensive Plan amendment is there an application and a fee.

Ms. Echols replied no, there has been an application and a fee and what we are proposing is that be all taken out, but if someone wants to do it they need to get your ear, the Board member's ear and come to speak to the Commission in matters not on the agenda asking if you would consider pursuing on our behalf because we think these things can be improved by it and the Commission would ask staff to find

out more about that. We would start with the authorization of this work rather than a response to someone's idea.

Mr. Dotson said a special use permit or zoning map amendment would be for a particular property; there is an application, a fee and an obligation, as Mr. Fritz said to process that within a certain time. If on the other hand there an idea, issue or a problem that person needs to either go to the Board of Supervisors or the Commission to make a convincing case and then it becomes county initiated matter with no fee to that person at all.

Mr. Fritz replied that was correct and that part of the issue, and you have stated it perfectly, the State Code outlines a process for rezonings and special use permits, however, it outlines no process for the zoning text amendments. So it creates this false understanding if you file an application and submit a fee we can take that and never process it and the Board could simply say don't put it on schedule ever or on our agenda for a resolution of intent. There is nothing in our ordinance or the State Code that would require that to move forward at all so this allows them to come to the Commission meeting and speak under matters not on the agenda and they can talk to individuals. There are plenty of opportunities to speak before the Planning Commission and the Board.

Mr. Dotson said in a sense if there is a private interest in a zoning map amendment or a special use permit there is an application and a fee and if it is more of a policy or public matter then it has to go through the public bodies.

Mr. Fritz replied that he had that exactly.

Ms. Spain asked how the applicant would know that and if they would contact your office and you tell them that is what they need to do, and Mr. Fritz replied yes.

Ms. Firehock commented that you asked at the beginning and we were generally in support of this approach and I am and applaud efforts to reduce confusion and wondered whether we might also at some point move towards making an easy searchable data base since we will have this nice clear process. She said other communities to have this where you can look up a status of a proposal and know whether it was deferred, went to the Board or the community meeting is coming up so she spends a lot of time as do other Commissioners and staff answering questions from confused citizens that have no idea where that thing is in its process. She said now if we clean up the process perhaps we could make it easier to find.

Mr. Gast-Bray said that is something we are very much working on; it is part of the Rio/29 as our pilot test to vet it and make sure we can really track this through. He said we have been working with elements including our County View software to see if we can track this. He said other places do that and we are trying to figure out how we can do the same thing.

Ms. Firehock said that being on the website would help many people track projects.

Mr. Gast-Bray said that is understood but he cannot promise because we do not have all the ducks in a row and we will do this first and maybe look and explore that opportunity later but that is very much the questions that we are asking as well.

Ms. Echols pointed out our Neighborhood Planner David Fox who has moved on to greener pastures was looking into that and he did a lot of research for us on and we want to get to that point so she is hopeful we will.

Mr. Keller invited public comment.

Morgan Butler, with the Southern Environmental Law Center, said that he came tonight primarily to get some clarification on what is being proposed and the idea of clarifying this section of the ordinance makes a lot of sense. From reading through the staff report and listening to the discussion tonight he has one question as well as one concern to raise. He said my question is that Ms. Echols mentioned that there were some deferrals that have been setting there for years, the applicant requested deferral and they are just kind of in this no man's land but they are not being moved forward and the question is why 33.4.r.2 does not address those under the current ordinance. He said it says, "an application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the action be indefinitely deferred and the Commission or the Board of Supervisors is not requested by the applicant to take action on the application within one year after the date the deferral was requested." He said it seems that it is getting to Mr. Bivins point that after a year of inactivity if a deferral has been requested this to me reads that it should be at that point deemed voluntarily withdrawn; there is nothing in here that says the request for the deferral has to be in writing so that should not be the hang up and so that is the question.

Mr. Butler said the concern that he has is another thing that some of the Commissioners have touched on tonight and that is the proposed process that seemed to allow for a very long deferral. As an example, you consider an applicant goes to the Planning Commission; gets a recommendation from the Commission within that 90 day window, and then they decide to defer; they could do so for another 2½ years and then suddenly bring it back up and be able to go straight to the Board of Supervisors at that point after 2½ years of this thing just sitting dormant. He said that to me does not seem to be fair to the public, as folks have noted tonight a lot can change in 2½ years; the development can occur around the proposal; Planning Commission member, Board of Supervisors members change; the Comprehensive Plan can change; and of course the project itself may have changed significantly in that period of time. He said it seems that after a certain amount of time passes it will often make sense to have a proposal be deemed withdrawn and have it go back through to the process so it can go through these different layers of public review again. Under the current system the default rule as he just read a minute ago is that you have one year for a deferral, yes there is a possibility that you may extend it beyond that year if the planning director or the Board of Supervisors approves of extending that but one year is the default. If you go beyond that you are deemed withdrawn and have to go back to the Planning Commission. He said the concern is that we are considering some could in some circumstances change that period to 2½ years that is concerning and wondered if maybe the solution may be to cap the one for deferral at one year or 16 months under this proposal that has a 36-month total time period. He said it is hard to explain and hoped that made sense.

Neil Williamson, with the Free Enterprise Forum, said the intent of this is quite good and that the term of art in the legal realm of voluntarily withdrawn is a misnomer but it is probably a legal misnomer that we get to live with. He said in terms of the differences for requiring an additional community meeting before going back to the Planning Commission you have seen these applications morph. He said the community meeting identifies a buffer of trees that they want to have on the south side of the property that changes the application from the community meeting to the Planning Commission meeting or the ARB has an issue with the specimen of tree and that changes so the levels of changes happen all the

time and some times these are significant. He said in an ARB meeting on Monday they wanted to swing the building around and make it an L instead of in a rectangle; those changes are significant changes and it takes time to do those things. He said that as some of you know that are involved in development it is not always easy to get these things changed on a dime and it costs you more than a dime. He said the process at three years for an entire process is not overly lengthy; the concern of the transient nature of the community is something that we deal with everyday with approved projects. He said leaving it in the 36-month period whenever the Planning Commission hears it and whatever changes that he has found that the instance of having two public hearings, unlike the city where there is one, has created the opportunity for significant improvements between the two even if they are different and he would push hard against going forward with anything that changes that 36 months. However, he would completely agree to end this nebulous business, but respect the person that has paid the money on the front end for everything, communicating so to bring it forward with the staff recommendation probably for denial for the reasons of the comments not answered. He said if you are requiring paying everything up front, you have to deliver everything in the end.

Mr. Keller said in light of these two speakers and the points that they have made does the commissioners have any further thought for staff in going forward to public hearing.

Mr. Dotson asked that the request go forward to public hearing.

Ms. More said she was comfortable going forward.

Ms. Firehock said that she had already said everything except in light of the two speakers she was leaning more in the sympathy zone for the length of time it takes to make substantial changes especially as we saw with the last recession where financial hardship also made it very difficult for people to move forward with proposals as they were originally construed.

Ms. Riley said she was comfortable moving forward with this.

Mr. Keller said that he was also.

Ms. Spain said that she was also.

Mr. Bivins said that he was comfortable but would still like there to be some conversation about constructive withdrawal when a person does not response and also was concerned that good ideas and people with investment ability tend to go to places where they can have those ideas be realized. Therefore, given that this area is entering into a group of regions that are competitive and attractive that we figure out ways in which we can be responsive and keep individuals who are bringing good ideas here. He said there is a population here that is being left on the side of the road and some of that occurs because we are comfortable with the amount of time that it takes to make a decision and does not think that time is what the market actually would like us to do.

Mr. Keller thanked everyone for coming.

Ms. Echols said this was the hardest presentations to put together due to the hard concepts and thanked the Commission for the direction. She said that the other changes to Section 33 and a table on what is going on will be provided and we will set the public hearing for August 7.