

The motion carried by a vote of (6:0).

Mr. Zobrist noted the consent agenda was approved with staff's recommended conditions, as follows

1. The plat shall be subject to the requirements of Section 14-303 (Contents of final plat), as identified on the "Final Subdivision Checklist" which is available from the Community Development Department;
2. The final plat shall address all minimum requirements from Sections 14-410 (Standards for all street and alleys) and 14-412 (Standards for private streets only).
3. Health director approval of individual private wells and/or septic systems.
4. The final plat includes the signature of the appropriate Greene County official, indicating that municipality's approval of the plat.

Deferred Item:



ZMA-2010-0014 Hollymead Town Center (Area A-1)

PROPOSAL: Rezone 59.162 (portions) acres from Planned Development-Mixed Commercial (PD-MC) zoning district which allows large-scale commercial uses; and residential by special use permit (15 units/ acre) to Planned Development-Mixed Commercial (PD-MC) zoning district which allows large-scale commercial uses; and residential by special use permit (15 units/ acre), in order to amend the existing proffers.

PROFFERS: Yes

EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Town Center-compact, higher density area containing a mixture of businesses, services, public facilities, residential areas, and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre) in Hollymead Development Area.

ENTRANCE CORRIDOR: Yes

LOCATION: Hollymead Town Center Area A-1, the southwest quadrant of Seminole Trail (US 29) and Towncenter Drive in the Hollymead Development Area

TAX MAP/PARCEL: 032000000042A0, 04600000000500, 03200000004400 (portion), 03200000004500 (portion)

MAGISTERIAL DISTRICT: Rio

DEFERRED FROM THE DECEMBER 21, 2010 PLANNING COMMISSION MEETING
(Judith Wiegand)

Ms. Wiegand presented a Power-Point presentation and summarized the staff report.

Purpose of This Rezoning:

To amend the existing proffers relating to road improvements and public transit operating expenses.

The full Hollymead Town Center—all five areas—had already been rezoned prior to this application. Area A-1, the subject of this application, was rezoned in 2007. The original proffers were approved as part of this rezoning.

Hollymead Town Center—Areas

As a refresher, the diagram shows the different areas that are part of the Hollymead Town Center. Area A-1 is shown in red.

Location

In the Northern Development Areas—four parcels are involved in the rezoning. Only portions of 34 and 35 are involved in this.

Zoning

HTC Area A-1 was rezoned to PD-MC, Planned District-Mixed Commercial under ZMA 2005-00015, and approved on September 12, 2007. Area A2 was rezoned to NMD, Neighborhood Model District and was not part of the discussion this evening. This zoning is in conformity with the Comprehensive Plan, which shows this area as Town Center.

Road Improvement Proffer

The discussion tonight will involve two proffers. The first is the road improvement proffer. Staff explained the changes in the road proffer and the road segments that would be affected. The original language and the amended language for this proffer for Proffer 1, Road Improvements are in the staff report. There are three road segments discussed within that proffer.

ORIENTATION: US 29 North is to the RIGHT

Meeting Street--southern end where it will connect with Berkmar Drive Extended north, to Airport Road
(which does not show on this plan)

Towncenter Drive

Harris Teeter – Target – Kohl's

Greenway with trail—Powell Creek tributary

The original road improvement proffers refer to three segments:

1. Towncenter Drive—NO CHANGE
2. Meeting Street north of the intersection with Towncenter Drive—NO CHANGE
3. Meeting Street south of the intersection with Towncenter Drive—shown in red in presentation—that is the one affected by the proffer change.

The County asked the property owner to change the proffer language to dedicate the portion of Meeting Street south of the intersection with Towncenter Drive. This is the new language that's in the "B" part of the proffer. The County would like dedication of this segment in the Area A-1 proffers. The reasons are related to acceptance of the road into the state system and maintenance.

The applicant is looking for a temporary Certificate of Occupancy for the Kohl's as soon as possible. The store wants to begin stocking and preparing for its opening. They want to get a permanent Certificate of Occupancy within the next few months. In order to qualify for that Certificate of Occupancy under the currently approved proffers, they would have to construct this segment of Meeting Street. That is not necessary for Kohl's. In fact, the County is concerned if the whole segment was constructed, particularly the part towards the southern end, they basically would be construction a road for the time being would be a road to nowhere. Eventually this would connect to Berkmar Drive Extended at the time that road is built. Most likely, that is several years in the future.

Once the County Engineer approves a road upon completion it normally would be accepted into VDOT's system and qualifies for state maintenance. VDOT does not normally accept roads to nowhere for maintenance. Therefore, the County would be left with the tab for maintaining a portion of this road that would not serve anything, which would have a couple stream crossings and things that might require extra maintenance expense. The County is currently looking this and requesting dedication of the whole stretch so they know where the road will be and have the appropriate right-of-way. For A-1 proffers that would be sufficient. Staff is expecting at the time the indoor theater site plan comes in that this segment of road would have to be constructed before its Certificate of Occupancy could be issued. It would be part of that site plan and not the Kohl's site plan. That is not a part of the proffer, but what the County is expecting as the way that this stretch of Meeting Street would be constructed. That would give a second entrance to the indoor theater where the road would connect in that direction. Kohl's would also connect at that point. It is not necessary for Kohl's to have that entrance because they are going to have one coming from Route 29 and another from Town Center Drive.

Proffer Language (New)

The owner has said he was comfortable with that language.

- B. Reserve and dedicate. The Owner shall reserve for dedication and dedicate to public use, upon the written request of the County, the right-of-way for Meeting Street from the intersection of Town Center Drive to the southern boundary of the Property. The land reserved and dedicated shall be at least the minimum width necessary to comply with applicable VDOT standards for the construction and maintenance of the road, and include all necessary easements. The right-of-way shall be dedicated within the period specified by the County, which period shall not be less

than 90 days. If the right-of-way is not dedicated in conjunction with a subdivision plat, the Owner shall be responsible for the cost of a survey and preparing the deed to convey the right-of-way to the County.

Public Transit Operating Expenses Proffer

- **Public Transit Operating Expenses** - Within thirty days after demand by the County after public transportation service is provided to the Project, the Owner shall contribute \$50,000 cash to the County to be used for operating expenses relating to such service, and shall contribute \$50,000 cash to the County each year thereafter for a period of nine (9) additional years, such that the cash contributed to the County pursuant to this Proffer 4, shall total Five Hundred Thousand Dollars (\$500,000). The cash contribution in years two through ten shall be paid by the anniversary date of the first contribution. **If public transit service is not provided to the Project by July 1, 2012, this proffer shall be null and void.**

During a meeting with staff on January 3 called to finalize the language for the road improvement proffer, the property owner requested a change in Proffer 4. Public Transit Operating Expenses. The original language and amended language are included in the packet. The change is the addition of a "sunset clause" after which the proffer would become null and void if no transit service is available to the Hollymead Town Center Area A-1. The applicant explained that no other part of HTC had such a proffer. He proposed a sunset date of July 1, 2012, which is approximately seven years after the opening of the first commercial business in HTC—Target. While staff has no problem with a sunset clause, the date proposed is so close—approximately 18 months from now—that it effectively removes the obligation that was part of the original rezoning to provide some funding for transit. Transit service is expected in the area in five to ten years, so staff thinks a date of January 1, 2021—about ten years from now—is more appropriate.

Other Projects With Transit \$ Proffers

In the other five areas of Hollymead Areas A1 and A2 are owned by the same owner. Area A1 has the proffer. Areas B, C and D do not have transit proffers.

1. **North Pointe:** \$250,000 total over 10 years; sunset clause = 10 years from BOS approval or 7 years after first commercial CO—whichever is *later*.
2. **Martha Jefferson Hospital:** \$50,000 total; sunset clause = 1 year of CO for hospital
3. **Albemarle Place:** Jitney service; sunset clause = 1/1/2007 or first commercial CO-*last*.
4. **Biscuit Run:** \$1,000,000 (lump sum); unexpended funds to be retained by *County*. In addition, a proffer for private transit service to bridge the gap until public service was available.
5. **5th Street-Avon Center:** cash contribution based on 20 center/SF after provision of transit service to property and for as long as service provided; *no sunset date*.

Mr. Cilimberg noted last year the Albemarle Place Jitney service discussion in their proffer ended up having the option for them to contribute cash to the CTS Service. That was a recent amendment to that service. He did not remember the cash amount, which was in lieu of the Jitney service. The Planning Commission had that before them when making their recommendations.

Staff Recommendation

- Staff does not recommend acceptance of the July 1, 2012 sunset date for the Public Transit Operating Expenses proffer. Staff believes a sunset date of January 1, 2021 gives a more realistic opportunity for transit service to be provided in the area to which this project would contribute.
- Staff does recommend approval of the rest of the revisions to the proffer language as included in the signed Amended Proffers, dated January 3, 2011.

Mr. Zobrist invited questions for staff.

Mr. Loach asked what would be the date if staff applies the seven and ten year date to the Certificate of Occupancy.

Ms. Wiegand replied that the first commercial Certificate of Occupancy in the entire Hollymead Town Center would have been the Target, which would have been approximately July 31, 2012. The first commercial use in A-1 would be Kohl's, which would be coming up in another few months. It would be seven years from that time.

Ms. Porterfield asked staff to go back to the map where it showed the roads. The change in the proffer is that from the circle going south where the applicant is going to build the road to the first intersection.

Ms. Wiegand replied no, according to the proposed proffer, he would dedicate the right-of-way for this entire stretch upon request by the County.

Mr. Kamptner asked staff to clarify that segment of Meeting Street that actually goes through both A-1 and A-2. He asked staff to show where the A-1/A-2 boundary would be for Meeting Street.

Ms. Wiegand replied that Meeting Street is bounded on one side by area A-2 and on the other side by area A-1. Further south Meeting Street is all within area A-2.

Ms. Porterfield asked staff to explain when that stretch of road that comes up to access Kohl's will be built.

Ms. Wiegand replied that would be built as a part of the site plan submitted for the indoor theater. Before the indoor theater could get their Certificate of Occupancy, they would need to have this road built to the dimensions as set forth in the site plan. The road has to be done to just south of this intersection.

Ms. Porterfield noted that the applicant was planning to complete the theater this year. She asked if staff sees this being built.

Ms. Wiegand replied yes.

Ms. Porterfield noted in the meantime the road that is going out to 29 North from the Kohl's is going to be out there. She asked if there is a stop light.

Mr. Cilimberg noted that there would not be a signal there. The signal exists at Town Center Drive and Route 29. It is a right in and right out basically for the lower entrance because it was at a median.

Ms. Porterfield said if it is a right in and right out, anyone else that is going to be accessing will have to come in at the light.

Mr. Cilimberg replied yes, that was the intention from the beginning with the original rezoning.

Ms. Porterfield asked if that entrance is built to the standard that was planned with the correct number of lanes. It is a very interesting access because one has to be in certain lanes to be able to access. Otherwise, there would be people crossing over on top of someone else. She was just wondering if there was going to be a single road that was going to go to the west and then the other lane was going to bear off to go to the Target or go on up to the Harris Teeter. That would be the main access for Kohl's.

Mr. Cilimberg noted it was Town Center Drive. What they have out there built and open is what was planned.

Ms. Porterfield noted what she saw is what they would get. She just wondered if there was anything else that was supposed to be done to that. When this is built and since VDOT does not want a road that goes nowhere, who is going to maintain the section from the roundabout to as far as that road is going to extend.

Ms. Wiegand replied that she understood that because it would provide a connection that VDOT would be able to accept that part. It is primarily the part south of there that would be a problem.

Ms. Porterfield said eventually when Berkmar Drive connects the whole thing would be acceptable to VDOT.

Ms. Wiegand replied that would be built as part of the movie theater, which was on the site plan.

Mr. Zobrist asked if Mr. Kamptner suggested the July 12, 2012 date for the proffer of cash for the transportation component.

Mr. Cilimberg replied that was the request of the applicant.

Mr. Zobrist asked who drafted it into the document.

Ms. Wiegand replied that the applicant came in to speak with staff last Monday concerning questions on other revisions that Mr. Kamptner had requested. The applicant asked at that meeting to have that sunset date. Staff put the sunset date in at the applicant's request.

Mr. Zobrist noted it seemed that a developer would want to make proffers for public transportation because it was going help his shopping center. He asked if that was why it was made in the first place.

Ms. Wiegand replied yes. Staff has no problem with a sunset date, but just wants to push it out.

Mr. Cilimberg noted it was staff's desire to try to make the sunset date usable because they don't expect the transit service to be there before July, 2012. It is going to be five to ten years, which is staff's best guess. If not in effect by July 2021, then it would no longer be in effect.

Mr. Kamptner asked what percentage of the segment of Meeting Street within A-1 would be constructed for the A-1 portion and site plan that came in for A-2.

Ms. Wiegand replied she had not looked at the site plan for A-1, but the entire road segment is shown on the site plan for the indoor theater for A-2.

Mr. Zobrist opened the public hearing and invited the applicant to address the Planning Commission.

Wendell Wood, owner of the properties, said they are in agreement with the road plan as proposed by the proffer and staff's approval. He would be happy to answer questions, but thought it was clear where the road would be built to.

Ms. Porterfield asked Mr. Wood to summarize the request.

Mr. Wood said that the road would be built 20' beyond the intersection going south at the time a Certificate of Occupancy was issued. That road would be complete at that time. The rest of the road would be completed at the request of the County as written, which they had agreed to. In other words, if Berkmar Drive was extended they have agreed to build that part. Right now if one goes beyond the Kohl's and theater entrance it dead ends or goes nowhere. It is a steep terrain with a creek.

Ms. Porterfield asked if at this time they have any plans to develop that area.

Mr. Wood replied that they do have plans, but nothing going on.

Ms. Porterfield noted that there was nothing going on in the near future. She makes the assumption that if his plans become brick and mortar, he will build the road.

Mr. Wood replied that was correct.

Ms. Porterfield asked if he anticipates if he has to build the road that VDOT will accept it if it does not intersect with Berkmar Extended or who is going to maintain it.

Mr. Wood said he did not understand the question.

Mr. Franco noted the quick answer to the question is if there is a user down there VDOT will accept the road. However, if it is just a couple hundred feet of road that goes to no users they won't accept the road.

Ms. Porterfield noted they don't have a problem with the road being maintained, and Mr. Franco agreed.

Mr. Wood said he thought that was correct.

Mr. Zobrist asked if he wanted to address the requested sunset clause.

Mr. Wood said that he would like some type of relief. This was put on by the previous owner in times that were different than today's world. He suggested that they compare it with what they saw on the map tonight. Martha Jefferson had a total liability of \$50,000. Albemarle Place has a liability of \$35,000. North Point has a sunset of seven years. This project, if they apply the same criteria of seven years, only has the July 12th deadline. That was with the opening of Target. Therefore, they think that is a reasonable request. Their number is a much larger number of \$50,000 per year. That is a little onerous. He would really like to have some consideration. It is tough to be put in a position that your neighbor has no responsibility. They are in competition when renting something by the square foot. If the person next door does not have to pay \$50,000 per year, it creates a big disadvantage. He knew of no conditions placed on Willow Glen when the County rezoned the property. He made this request because it was hard to cover the ½ million dollars. Albemarle Place was done in a more recent timeframe. Getting the job done today is not quite the same world. It puts a cloud on the title for trying to get financing. The financing is already almost impossible with the \$500,000 liability. He would like to have a shorter timeframe and something similar to Albemarle Place, which is twice as large with a total liability of \$35,000.

Ms. Porterfield asked if the previous owner of the property owned everything.

Mr. Wood replied no, he owned this same property.

Ms. Porterfield asked if the entity did not own anything else if possibly this was being looked at as a proffer for the entire area as opposed to just these two particular pieces.

Mr. Wood suggested that the times might have been different. When he sold the piece of property to them, which included Target, it was considered as one development.

Ms. Porterfield said Target was a part of this and the half a million dollars may have been looked at as taking care of all that area.

Mr. Wood replied yes, they have spent 13 million dollars meeting those proffers already. The public has the misconception that Route 29 was paid for by the State of Virginia or Albemarle County. Not one penny of that has been paid for by the State. Town Center Drive, which is over 3 million dollars, was not paid for by Albemarle County or the State of Virginia. He paid for it himself, which included Meeting Street dedication. It was part of these provisions. He did sell it. The new owner when he came in did agree to quite a few things that are not in the cards today. That owner agreed to parking decks and a 5,000 car parking garage on this property. That is not going to happen. It just can't happen. He agreed to \$17,000 per unit. He believed since that has been adopted there has not been one project approved in Albemarle County. It virtually makes the land value zero. The land cost used to be represented at about \$17,000 a unit, which was contributed to the land cost. That was pretty standard. Now they have that as a proffer, which was virtually why nothing is being done. It is not economically feasible.

Mr. Wood continued along with this project as one of the conditions they agreed to build 100 units of a mobile home park. They have done that. They were approved for 244. They went in about two months

ago to expand it for affordable housing. When they got it, approved 16 homes were allowed on one water meter. The water meter at that time cost \$450 for 16 homes. The water meter today for one mobile home is \$8,000 per home. There is no way they can provide a mobile home park. That is a form of affordable housing. It can't be done. They sell the homes at \$40,000. Now they would have an additional \$8,000 to add a water meter plus the monthly bill of about \$45 per month.

Ms. Porterfield said the half a million dollars that were agreed to in the proffer was agreed to prior to his getting the land back.

Mr. Wood replied that was correct.

Ms. Porterfield said that at that time the individual who agreed to this also was developing the Target, and Mr. Wood replied no.

Ms. Porterfield said this was just for these two sections.

Mr. Wood replied that was correct. It was discussed with Target at that time there were no plans for bus service. The proffers included the whole area of Hollymead Town Center, which consisted of 140 acres. This project is 72 acres of that area, which included the Target. There are no proffers for bus service on any of the rest of the property there.

Ms. Porterfield said this originally included the Target area, which was one half of the original size. That is potentially part of the reason why the proffer is at such a large number. She was trying to see why they were looking at the half a million dollars.

Mr. Wood noted that the proffer was only being applied to this section. In other words, the owner of Target does not need to pay anything.

Mr. Cilimberg explained that originally there were four sections being A, B, C and D in Hollymead. The last of the sections to be rezoned at least three years after the first three was A-1 with A-2 later. Areas B, C and D were the first to be rezoned, which did not have the transit proffer requirement at that time. The rezoning was done in a different timeframe. It was with the A-1 and A-2 rezoning that the transit was being used in other projects and was also offered for this project. It was in part to recognize that the transit had been identified as a real need up in that area ultimately. It also had to do with the fact that A-1 and A-2 together were proposing a much larger amount of square footage of development. If they look at the Meeting Street, it was actually like a main street with a very high square footage possibility along that street as well as residential development up to about 1,900 units. There were other reasons. There was a timing aspect of it associated to the degree of development that would occur under the zoning approval at least.

Mr. Wood said they were not opposed to doing something.

Mr. Zobrist invited public comment.

Neil Williamson, of Free Enterprise Forum, noted they do not comment on projects and have no position on the proffers for this project. However, they do comment on how the policy works in the project. The Free Enterprise Forum is very concerned that staff continues to use Biscuit Run as a proffer comparison when evaluating projects. Biscuit Run is dead. The proffers that were offered with Biscuit run will never materialize. Some in the community have suggested that the level of proffers that were accepted by the owner willingly volunteered by the owner by the Code were a contributing factor to the project's eventual conversion to a State park. The Free Enterprise Forum asks the Planning Commission what their opinion is with regard to directing staff to continue or discontinue using proffers for comparison that will never be recognized.

Morgan Butler, of Southern Environmental Center, noted that he spoke with Ms. Wiegand today about this and thought he understood. He had questions particularly with respect to the first proffer change. The second proffer change is more a question of philosophy. It will be interesting to see whether they

deem its worth in forcing commitments that were made to get this project approved. As to the first request, his understanding from reading the proffers is that the proffers that are currently in existence, which are currently valid and enforceable. This applicant has an obligation to construct Meeting Street from that roundabout down to the southern end of the property. With the proffer changes proposed that obligation to construct will be softened so it is simply an obligation to reserve and dedicate the right-of-way to the County. There is a significant difference between constructing that road and simply reserving and dedicating the right-of-way, especially when they all know how important that Berkmar Drive Extended is going to be and how essential it is to the County's transportation network to get that connection made all the way up to Hollymead Town Center. He fully understands that it may not be wish to require construction of that road to its southern terminus at this point in time, but he did not think it particularly wish to basically remove that obligation from the proffers and leave it as an obligation to reserve the right-of-way. The proffers could be changed in a way that postpones when that segment of road has to be constructed as opposed to removing the obligation to construct it altogether. He understands from speaking to staff that there is likely to be proffers for Area A-2 coming forward in the near future in the next month or so. Perhaps these commitments to construct those additional portions of road all the way down to the southern boundary may materialize in those proffers. However, he did not understand why they would not do that simultaneously so they don't have this period of time where that commitment simply banishes. He did not understand the rush or why this has to be done tonight. He asked why this couldn't be done in conjunction with the proffer change to Area A-2 to make sure that commitment does not simply disappear. It does not seem to be wise policy especially considering the importance of the road in play here.

Kirk Bowers, resident of Key West, noted that he was a licensed professional engineer with a lot of land experience over the last 30 years. He stated that proffers are pretty much a standard item for any locality. Compared to northern Virginia he did not believe that the standards or proffers here are really high enough. Listening to Mr. Wood, he is probably right about Albemarle Place. They may need to go back and revisit the proffers on that site. He believed those proffers were too low. It is not fair for the public to pay for developments. Taxpayers should not have to pay for anything that contributes to development.

There being no further public comment, Mr. Zobrist closed the public hearing to bring the matter before the Planning Commission.

Ms. Porterfield asked that the Planning Commission invite Joel DeNunzio of VDOT to speak about this road. She questioned whether it makes sense to go ahead and build the road since it has been proffered.

Joel DeNunzio, of VDOT, pointed out that it was correct that VDOT would not accept a road that does not go anywhere. It would have to serve a public purpose. It could be residential or to some sort of commercial office or retail. He thought that down to the intersection shown that would be constructed at the Kohl's entrance they could accept that when it was constructed as long as Kohl's or the movie theater is open.

Mr. Zobrist asked for comments on the road.

Ms. Porterfield said the question was raised by one of the speakers as to if there are proffers coming in with A-2. Those proffers are going to require the building of this road much farther south. She asked why they are not dovetailing the requests and totally taking it out of this one.

Ms. Wiegand replied that staff is working with the applicant on both sets of proffers at the same time. Staff needed to get this one before the Commission for Area A-1 because of the need to have this issue about the dedication versus the construction of the road resolved in order that the applicant would qualify for a Certificate of Occupancy for the Kohl's. They could not build the road in time for that, of course, to get the Temporary Certificate of Occupancy sometime this month and the Final CO in another few months. Staff wanted to get that done first. Staff is in discussion on the second one.

Ms. Porterfield said that Kohl's is only going to be accessed by either the piece that is coming off the east/west road or by coming off Route 29 itself. Therefore, why does it need to have this other road in order to get a CO.

Ms. Wiegand replied that it does not. The current proffers require the construction of this road. It is not needed for the Kohl's. However, unless it was built it would keep them from getting a CO because they had not fulfilled the requirements of the proffers. The applicants would not be able to get the CO for the Kohl's. Staff wanted to require they dedicate it. If that is in the proffer, the County gets the dedication for the road and Kohl's gets the CO. Then at the time, that the A-2 proffers come in there will be a discussion of what to do with how they handle the construction of the section of road below that entrance at the southern most section. They don't have the language finished yet.

Ms. Porterfield noted that there are more than one half of the proffers that have not been satisfied. She asked if staff was saying all of the proffers would be satisfied in order for them to get the CO or only this one. She asked if they were talking about every single item on the proffer list has to be satisfied in order to get the CO.

Ms. Wiegand replied it was her understanding that they will.

Mr. Cilimberg suggested that Zoning staff speak to that question because they are the enforcement entity. It is staff's understanding that the void they would have in the A-1 proffers towards the ability of Kohl's to get their CO is with the proffers regarding the road construction that would prevent CO to be issued. Zoning staff can speak to that issue. This was actually requested by the County as a change for the proffers regarding the relationship of the improvements to what was being built to enable this project to be achieved.

Ms. Porterfield asked Mr. Higgins to address the concern whether they are actually going to be moving potentially to not constructing the road, but getting a right-of-way.

Mr. Higgins replied that staff does not think that is what is happening at all. What they are merely doing tonight is enabling a timing mechanism to be put in place that was simply not thought about when the original proffers were done. This road is supposed to have been built by December 31, 2010. Everyone understands that road makes no sense to be built. They don't want to eliminate the obligation. They want to phase it and time it and it would still be their obligation. They wanted to make sense out of the timing of the road construction. Without getting into detail, it is linked to many other road pieces that are going to have to be dedicated and really for acceptance prior to Kohl's getting their CO. Therefore, they have a lot more on the plate in that list of proffers than just this piece.

Ms. Porterfield asked since Kohl's has those other two access points, why is this needed for their CO.

Mr. Higgins replied that it was not needed for Kohl's. The original proffer anticipated the build out of A, which later became A-1 and A-2. They are simply looking at one building being built right now whose site plan has approved that only the two access points that will be provided for Kohl's are needed to provide the traffic control for Kohl's.

Ms. Porterfield asked why is it so important at this point.

Mr. Higgins replied that Kohl's couldn't open unless this proffer is met.

Mr. Franco noted the clarity he thought she was looking for was as a proffer anything that develops in that area is subject to that proffer. To get a CO that proffer has to be met regardless of what is going on. Engineering does not require the traffic for the road to be built, but the proffer requires that the road be built.

Mr. Cilimberg noted under the current proffer they have build the road all the way to the southern boundary from the traffic circle.

Ms. Porterfield noted that everyone expected this shopping center to be up and going.

Mr. Cilimberg said that they expected a more comprehensive development at the time. That is why they are not dealing with it in pieces rather than as a whole. They are really trying to associate the proffers with what is actually being built.

Mr. Porterfield asked Mr. Kamptner if they make the change do they have the problem that was cited by a previous speaker that they may be giving up getting it constructed in case they don't get a proffer that comes in that is going to finish it.

Mr. Kamptner replied that part of it was the timing under the State Subdivision law and under both the Subdivision and Zoning regulations. Pertaining to site plans, they can require public roads to be extended to the edge of the property line. Mr. Wood, Ms. Wiegand, and he had a brief conversation discussing the staff report. He made the point during his presentation. There may be a failsafe provision that allows the Kohl's CO to be issued. That would include some language that would allow the County to ask that portion be constructed upon the request by the County. There is no deadline imposed. If he heard Mr. Wood correctly, he was agreeable to put that language in the proffer as well. It would allow the CO to be issued so that it is not set against a hard deadline, but when appropriate for it to be extended even though there may not be a subdivision plat or site plan. That could provide the additional comfort that he was hearing some people seeking.

Ms. Porterfield asked if Mr. Wood is agreeable. If so, could they get some language drafted.

Mr. Kamptner said he could do that between now and before tomorrow morning.

Ms. Porterfield said if they adopt this, then the Commission could put something in like that.

Mr. Kamptner replied yes.

Mr. Franco said that the Commission's would be a recommendation to the Board as a rezoning.

Mr. Kamptner said that they would circulate the language to staff and the applicant and make it available to the public.

Mr. Zobrist asked if this request was going to the Board tomorrow, and Mr. Kamptner replied yes.

Mr. Morris noted based upon the question this phasing of the road makes a lot of sense and he was fully in favor of it.

Mr. Zobrist asked if he was making a motion that they bifurcate this into two issues in making a resolution with respect to the road and then coming back to the cash proffer for rapid transit.

Mr. Cilimberg pointed out that the Commission needs to make one recommendation on the rezoning. The Commission could do a straw pull regarding the two elements, but he would not suggest separate actions.

Mr. Morris noted that he was in support of this portion.

Mr. Zobrist said it sounds like there is a consensus on the road portion. He would like to have a ten minute break and come back and talk about the change of the cash proffer since that is a longer discussion.

Mr. Kamptner said he heard that the Commission was going to reach a consensus on the road.

Mr. Zobrist noted the Commission would not come back to discuss the road since they were done with it. He asked for a consensus to accept the road portion with no further discussion when it was time to vote on the rezoning. He asked for a straw pull of those in favor.

Mr. Franco asked if that was with the proffers as written, but amended to include the provision.

Mr. Zobrist agreed that it would include the provision that upon demand of the County the applicant would build the road. He noted that the Commission would come back and talk about the cash proffer after the break.

The Planning Commission took a ten minute break at 7:22 p.m. The meeting reconvened at 7:34 p.m.

Mr. Zobrist asked to direct the discussion to a certain degree since they have three options here with respect to the proffer regarding public transportation. They can leave it the way it is. They can follow the staff recommendation and put it out to ten years. They can cut that back to a lesser number if they choose to do it. On the other hand, they can modify the proffers if they choose to. Right now, it is before the Commission to make a recommendation to the Board. It is up to the Planning Commission to decide what the policy is going to be on this in trying to take into consideration what is reasonable, correct, makes good policy, and what the Board of Supervisors would want to do. At the end of the day, the Commission's job is to vet these things out and collect all of the information so the Board can make a reasonable decision.

Mr. Loach asked for guidance from staff on what would be a reasonable expectation for what the transportation needs are so they can make a reasonable decision.

Ms. Wiegand replied that when the original proffer was adopted there was no sunset date. The amount was agreed to. She did not know specifically why they chose \$50,000. At that time it was to cover all of area A, which is now area A-1 and A-2. When those were split, the proffer was left in area A-1 proffers. Staff was surprised by a request for a sunset date. Staff has no problem with the idea, but the date itself was little more awkward. David Benish noted staff expected transit to be extended into this area in five to ten years. Staff was looking for a date to give a date certain to the applicant so that he would know what the date was and if he did not make it in ten years, he would be off the hook for it. That is why staff chose that date. Staff did not discuss the possibility of changing the amount.

Mr. Loach said if he heard from applicant correctly the person with the first section was not liable for any of that proffer money.

Ms. Wiegand replied that was correct and the property was not Mr. Wood's.

Mr. Loach suggested that they apply it to both and make it five years.

Mr. Morris agreed with staff completely that 2012 is too soon. That date is too short. He thought that 2021 is way out there and puts the developer in a real bad light. He agree with Mr. Loach to put a date of 2016 or 2017 on the proffer.

Mr. Zobrist noted that the suggestion was for a five year date.

Mr. Smith concurred with Mr. Morris.

Ms. Porterfield questioned whether the half million dollars was reasonable.

Mr. Loach said that there was not a sure answer out there for that.

Mr. Zobrist agreed that it was not based on what was in front of the Commission.

Ms. Porterfield agreed with the speaker that they couldn't use Biscuit Run as a comparison. She would be more inclined under the current circumstances to try to end up with a proffer that actually is paid. Instead of putting a sunset date on it, she suggested bringing the amount down to something that seems

to be reasonable and get it paid at some point. They need to make sure the County has some money to help extend transit.

Mr. Zobrist suggested that they go back and ask why the County asks for transit. He thought the reason is that they need more buses to bring people out to the shopping center area, which the developer would want. He did know where the number came from. Obviously, the amount is way out of line of the other numbers in front of the Commission right now. North Point has a ten year sunset clause, which their attorney negotiated for. He was not sure they should ask the applicant to pay for it if he is not going to get any buses to bring people out to his development. Nevertheless, he was in agreement with shortening the sunset provision. He did not think it should be hanging out there forever. If the buses are going to be provided, he thought the applicant should pay for them.

Mr. Franco asked how the North Point proffer is written.

Ms. Wiegand replied that it is a \$25,000 a year for ten years. The sunset clause on that one is if no transit service comes in either ten years from the Board of Supervisors approval or seven years after the first commercial Certificate of Occupancy, which would be whichever of those two things is later. The bus service would have to start before they starting paying the \$25,000 a year for ten years.

Mr. Loach asked for a comparison in the square footage.

Ms. Wiegand replied that she did not have those figures for North Point. Hollymead Town Center is larger, but they are only talking about one area, A-1.

Mr. Wood pointed out that North Point was almost as large of an area, which had residential and commercial. There is no residential in this portion of Hollymead Town Center.

Mr. Zobrist asked Mr. Wood if he had any idea of what he would like to propose.

Mr. Wood replied that they have spent 11 million in building. He questioned the developer who spoke that said that the developer does not pay. He has paid every penny of roads, water, sewer, and donated land. On this site, he donated 14 acres of the site for open space in addition to this. The man is clearly wrong that says the developer does not pay. He noted that Albemarle Place is larger in square footage. This site is 250,000 square feet with no dwelling units. Albemarle Place is 375,000 square feet and 500 dwelling units. Albemarle Place's proffer is \$7,000 per year for five years.

Mr. Zobrist asked where that number is coming from.

Ms. Wiegand said she used an older version for Albemarle Place without realizing it. Therefore, that may not be accurate. They do have a proffer for expenses.

Mr. Cilimberg pointed out they have existing service. It was to supplement the service that exists in that area. In this case, they are talking about the new service in the 29 north area. There are different circumstances. It is a closer comparison to North Point.

Mr. Wood suggested that the cost be spread out to other people. Their next door neighbors have nothing.

Mr. Zobrist asked Mr. Graham to weigh in.

Mark Graham noted that he was involved in coming up with proffer amounts on all of the rezoning. He cautioned the Commission not to look at the dollar amounts. Those were one part of the proffers. They would do all the proffer together including road improvements, affordable housing, parks and everything else to come up with a total number. The parks may be high in one project and low in another. It is similar with things like transit. It was a juggling act to try to balance the amount. It was recognized that each project came up with a unique approach. He noted that some of these were done prior to the County implementing a cash proffer. That is an important point to remember. The County now has a

cash proffer policy that specifies how proffers with residential units are calculated. That came into place with Biscuit Run. This project was actually approved after that, although it has no residential. That is one of the reasons why Biscuit Run keeps being used. It was the first project after the County had the policy, which is still in place for cash proffers. He could not speak to the date or time line, except to say that each of the projects was individually discussed with the applicant and they offered what they put in the proffers. He would really caution the Commission from trying to compare one project to another.

Mr. Zobrist noted that they were trying to get some idea on what should the policy be. This is not a decision about money right now. It really is what should the policy be. If someone came in today with this project what would they ask him to pay for public transportation.

Mr. Graham replied that there is no answer. There is no existing policy on what the County expects for a transit contribution. That policy does not exist for the County.

Mr. Zobrist said if someone was willing to pay \$17,000 per unit for housing they probably would not ask for the transit.

Mr. Graham replied yes as far as the residential recognizing that the cash proffer policy speaks to residential units. It does not speak to commercial units. If it was a residential project, they do have a cash proffer policy.

Mr. Zobrist noted the commercial has to pay for all the infrastructure.

Mr. Graham agreed that the commercial pays for the infrastructure necessary to support that development, as it is determined on a case by case basis.

Mr. Zobrist noted that Mr. Wood said he paid 13 million dollars out there putting in roads and fixing 29, etc.

Mr. Graham replied those were the improvements that when they did the transportation model for that development said these are the road improvements that must be put into place to assure that they are maintaining their capacity on that highway. It was not to improve the road and make it better than it was. It is to assure that they are maintaining the same capacity that they had than before that development was put into place.

Mr. Franco asked if residential would pay that as well. It would be for any development.

Mr. Graham replied that was correct. He just wanted to be clear on how the proffer policy works there.

Mr. Loach asked why one section of this entire development has no obligation.

Mr. Cilimberg replied that was an earlier set of approvals for b, c, and d at a time when they did not have the transit identified. It was not included in those particular proffers at that time for those projects. They did not have a cash proffer policy at the time. There is residential over there that has not been charged because it was not in place at the time either. Therefore, they were dealing with a transit proffer a little later than that point in time when b, c, and d were approved.

Mr. Graham added that Area B is where Target is located. There was a lot going on with that project. It actually had a recommendation for denial by staff and the Planning Commission that went to the Board. Many things were worked out at the Board after that. When this went through the Planning Commission, there were a lot of open questions and concerns that had not been addressed. Then the Board came up with the package they thought satisfied their concerns.

Mr. Loach said he heard staff saying not to consider money. He questioned whether they should vote either up or down on the policy for proffers in place now.

Mr. Graham said he was suggesting the Commission not to try to compare the amount that has been proffered for one packet with the dollar amount being considered here. Those are just one part of a total proffer packet that was being evaluated. They were not done with equal parts in each rezoning. It is not an apples to apples comparison.

Mr. Cilimberg noted if this project came in new today staff would use when they thought transit would be available there in the comparison. He could not speak to the amount. What they would want to make sure was any sunset would at least be established in line with when they thought transit could be established. They would not want to have a sunset that would expire before it was really practically possible for transit to be put in place. That is why staff suggested five to ten years to be the date for when transit would be put in place.

Mr. Zobrist suggested reducing the amount for every year they don't have transit there so that at least he was not getting the benefit that he thought he was getting. Again, if he had transit there it would bring customers out to his site. For every year they don't have transit they will reduce it by \$25,000.

Mr. Cilimberg said it would not take long to hit zero that way.

Mr. Zobrist noted if in ten years he would still owe one-half of it.

Mr. Cilimberg noted it was a yearly contribution. It is not a lump sum.

Ms. Wiegand pointed out the sunset date is to govern when the contributions begin.

Mr. Zobrist understood that the policy is to get money to put buses out there. It seems to be a balancing act.

Ms. Porterfield noted that the transit proffer was originally for areas A-1 and A-2. A-2 does include residential.

Ms. Porterfield recommended the Commission use the sunset date staff suggested, but cut the proffer in half. Bringing the number down to \$25,000 per year is basically a trade-off for keeping the proffer out at the ten plus years so they have the opportunity to get transit out there.

Mr. Franco said that is a long time out there. He liked what had been discussed about some kind of incentive from the County's perspective that the funds may diminish over time.

Mr. Zobrist said that he would get to the exact same place if it were ten years out. If they reduced it to \$25,000 a year for the next ten years that would be \$250,000 they would have to pay for the following ten. He liked cutting it in half since it makes better sense. They can rationalize that acknowledging it is a whole package. It looks more like the number North Pointe is paying.

Mr. Franco said if they are looking at ten years from the Board approval, which was 2007, for the first Certificate of Occupancy that was now. Seven years from now would be 2018. That would make it more consistent with North Point instead of 2021.

Mr. Zobrist suggested that they craft the language so a motion could be made.

Mr. Franco said they don't need to craft the language since they know the first CO is coming this year. Therefore, they can recognize that seven years from the first CO is going to be the limiting factor versus the ten years.

Mr. Zobrist noted that they would just cut it in half.

Mr. Cilimberg noted it would be \$25,000 per year.

Motion: Mr. Morris moved to recommend approval of ZMA-2010-00014, Hollymead Town Center (A-1) proffer amendments to include the amended proffers as included in Attachment C with the modification of the proffer dealing with transit to state that the sum be cut to \$25,000 per year and the sunset clause timeframe go to July 1, 2018.

Mr. Franco pointed out the amendment for proffer 1 needed to be added.

Mr. Kampner reiterated that the provision would allow the County to require construction upon request by the County. Staff will fill in the details using standard language.

Ms. Porterfield seconded the motion.

The motion was approved by a vote of 6:0.

Mr. Zobrist noted the ZMA-2010-00014, Hollymead Town Center (Area A-1) proffer amendments would be forwarded to the Board with a recommendation for approval as included in Attachment C, amended as follows:

1. With the modification of proffer dealing with transit to state the sum be cut to \$25,000 per year and the timeframe go to July 1, 2018; and
2. Proffer 1 (Road Improvements) amendment to include a provision that would allow the County to require construction upon request by the County. Staff will fill in the details using standard language.

ZMA-2010-00001 Pantops Ridge

PROPOSAL: Rezone approximately 38 acres from PD-SC Planned Development Shopping Center, which allows shopping centers, retail sales and service uses and residential by special use permit (15 units/ acre) to R-15 Residential zoning district which allows single family attached/detached uses and multifamily residential uses up to 15 units/acre. Proposed number of units is 566 for a density of 15 units/acre.

PROFFERS: Yes

EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses; Urban Density Residential - residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses; Greenspace.

ENTRANCE CORRIDOR: Yes

LOCATION: 1998 Hansens Mountain Road, Intersection of US Route 250 East and Hansens Mountain Road. Access is proposed from a relocated Hansens Mountain Road and through 106 Viewmont Court.

TAX MAP/PARCEL: Tax Map 78, Parcel 53; Tax Map 78B-A-4

MAGISTERIAL DISTRICT: Rivanna
(Claudette Grant)

Ms. Grant presented a Power-Point presentation and summarized the staff report for ZMA-2010-00001 Pantops Ridge.

The applicant is requesting to rezone approximately 37.5 acres from Planned Development Shopping Center (PD-SC) to Residential zoning district (R-15) to allow 562 dwelling units for a density of 15 units per acre. No plan of development has been provided.

An extension of Viewmont Court and a relocated Hansens Mountain Road will be a safety improvement for Ashcroft residents and can address many of the traffic impacts of the development. The existing entrance to Hansens Mountain Road will be closed. The proposed Hansens Mountain Road would allow vehicles from the development and the Ashcroft neighborhood access to US Route 250 through Glenorchy at an existing signalized intersection at Peter Jefferson Place. The current vehicular access for this site and Ashcroft is an un-signalized intersection at Hansens Mountain Road and Route 250. As mentioned in the staff report these proposed improvements will depend on acquisition of right-of-way from