

**Orange County Planning Commission
Regular Meeting
Auditorium Orange County High School
201 Selma Road, Orange, VA 22960
Thursday, March 15, 2012
7:00 p.m.
Minutes**

PRESENT: Nigel Goodwin, Walter Smith, Andy Hutchison, James P. Tucker, III, Donald Brooks and Jim White, Supervisor Representative

STAFF: Gregg B. Zody, Planning Director; Kevin McMahan, Planner; Sharon Pandak, County Attorney; Lisa Robertson, Esq. Greehan, Taves, Pandak & Stoner; Janet Jones, Permit Technician

All discussion and comment made during this meeting was captured via digital audio recording. The minutes as written below are intended to be a summary of this discussion and comment. Anyone desiring detailed information about comment or discussion made during the meeting is referred to the recording.

- 1. Call to Order**
- 2. Determination of Quorum**

Chairman Goodwin called the meeting to order at 7:00 p.m. He stated a quorum was present to conduct business.

- 3. Approval of Agenda**

Chairman Goodwin asked if there were any additions to or deletions from the agenda.

Chairman Goodwin stated he would like to add item 3A – Presentation of Resolution to Walter Smith by Supervisor White.

A motion was made by Mr. Brooks seconded by Mr. Smith that the agenda be approved as amended. Motion carried 5-0.

A. Mr. White presented a Resolution by the Orange County Board of Supervisors to Mr. Smith for his faithful service as District Two Planning Commissioner since 1999 and who's term concludes effective March 30, 2012, after 13 years of dedicated service. Mr. White stated the Board of Supervisors extends its appreciation and admiration to Mr. Smith for his outstanding accomplishments with the Orange County Planning Commission and for his dedication and service to the County of Orange.

- 4. Public Comment**

Chairman Goodwin stated if anytime has something to say that is not on the agenda for the meeting tonight could speak.

There was no public comment.

5. Old Business

A. Board of Supervisors Report – Jim White

Mr. White spoke of budget work being done and stated April 3, 2012 will be public hearing on tax levy and at the BOS meeting scheduled for April 10, 2012 the adoption of the 2012-2013 Orange County budget.

B. Planning and Zoning Report – Gregg Zody

Mr. Zody stated the January and February monthly reports from the Planning and Zoning Department is part of the Commission packet and he would be happy to answer any questions of the Commission. Mr. Zody stated he would like to recognize Janet Jones Employee of the Month for February.

Chairman Goodwin stated he would like to pass on his congratulations to Ms. Jones on her being chosen Employee of the Month.

C. Action on PROF MOD 11-04: Village Motorsports – tabled from the February 16, 2012 public hearing

Mr. Zody reviewed with the Commission the signed proffers received from Mr. & Mrs. George Carter. The Commission continued the discussion on the Village Motorsports proffers after the public hearing was held on the text amendments.

D. Action on Alternative Division Policy – tabled from the February 16, 2012 public hearing – to be considered with Alternative 2 (public hearing item)

7:15 P.M. PUBLIC HEARING:

SUMMARY – The proposed changes repeal Sec. 54-27 of the Subdivision Ordinance and replace it with provisions in the Chapter 70, the Zoning Ordinance, primarily Sec. 70-304, which keeps a minimum lot size of 2 acres in the Agricultural District and allows 1 division per year. The newly created lot may not be further subdivided. Boundary line changes must yield lots which comply with the lot size requirements. The rest of the proposed revisions accommodate the foregoing changes.

DRAFT SUBDIVISION ORDINANCE LANGUAGE

Sec. 54-5.

Contiguous means abutting, adjoining or touching and having a boundary, or portion thereof, which is coterminous or located immediately across the street.

Parent Parcel means:

- a) In the Agricultural zoning district, a parcel of land of ~~ten~~ four (4) or more acres that is of record upon the effective date of this ordinance;
- b) In any Residential zoning district, a parcel of land that is of record upon the effective date of this ordinance, or
- c) For the purposes of continued division, the residue as defined herein.

Residue means the remainder of a lot after a subdivision has detached one or more lots.

Right-of-way means either a fee simple strip or other parcel of land owned by VDOT or others for the purpose of constructing and maintaining a road.

Street means a thoroughfare for vehicular traffic, including all of the area within an ~~easement or~~ right-of-way, and is interchangeable with the terms alley, avenue, boulevard, court, drive, highway, lane, road, or any similar term.

Subdivider means any individual, partnership, corporation or group, owning or having an interest in land, or representing the owners of any land proposing to subdivide such land.

Subdivision means the division of any lot of record into two or more lots, parcels or building sites, including residue, for the purpose of recordation in the county land records, transfer of ownership, or building development. Where a tract of land is bisected by the dedication of fee simple right-of-way, that lot is effectively subdivided, and not contiguous. As the context requires, the term "subdivision" may mean the land divided, the process of division, or both.

Sec. 54-25. Compliance with other laws, rules, regulations and conditions.

No plan or plat of subdivision shall be approved unless all lots and other features shown thereon are in conformity with the following laws, rules, and regulations:

1. All applicable provisions of the Code of Virginia.
2. Chapter 70 (~~z~~Zoning) of the Orange County Code of Ordinances.
3. The special requirements of these regulations and any rules of the health department and appropriate agencies.
4. The rules of VDOT if the subdivision or any lot contained therein abuts a public street.
5. Conditions proffered and accepted as part of the zoning of any land which are included in the proposed subdivision.

(Statutory Reference: § 15.2-2241; 15.2-2254 VA Code Ann.)

Sec. 54-27. Divisions of land in the agricultural zoning district. Repealed.

The division of land in the agricultural zoning district is allowed as follows:

(1) No more than one lot may be subdivided from any parent parcel within any four-year period.

(2) Phased division:

a. Any lot divided from the parent tract pursuant to this section may be further divided one time every four years as counted from the date of county approval of the initial division. However, the tract divided from the parent tract shall not be further divided into tracts smaller than 50 acres. The following note shall be shown on the plat and in the corresponding deed:

"The division of property as shown hereon is subject to the provisions of [section 54-27](#) of the Orange County Code of Ordinances. The parent tract, tax map # _____ consisting of (A) _____ acres is being subdivided to create a new tract of (B) _____ acres as shown hereon. A subsequent division of this newly created tract shall not be smaller than 50 acres and shall not occur until four years have elapsed from the date of the county's approval of this plat as signed hereon." ((A) is the total acreage of the parent parcel prior to subdivision and (B) is the acreage of the parcel being subdivided off.)

b. The residue may continue to be subdivided at a rate of one lot every four years. The following note shall be shown on the plat and in the corresponding deed:

"Further division of the _____ acre residue as shown hereon shall not occur until four years have elapsed from the date of approval by the county."

c. Where a tract of land was simultaneously divided into four lots during the four years prior to the effective date of this chapter, further division of those four lots shall not occur until four years from the date of approval on the plat, or until one year has elapsed from the effective date of this chapter, whichever is later.

(3) Simultaneous division. Parcels of land in the Agricultural zoning district may be simultaneously divided into an unlimited number of tracts 50 acres or larger in size. Divisions of land in accordance with this provision are not subject to the limit on divisions as stated in subsection (1) above. However, further division of tracts created under this provision is prohibited. For such divisions, the following note shall be shown on the plat and in the corresponding deed:

"The simultaneous division of land into tracts 50 acres or larger in size as shown hereon is not subject to the limit on divisions as stated in section 54-27(1) of the Orange County Code of Ordinances. However, further division of these newly created tracts as shown hereon is prohibited pursuant to section 54-27(3) of the Orange County Code of Ordinances."

~~(4)The following divisions of land are exempt from this section: family subdivisions, court-ordered subdivisions, part and parcel subdivisions, and the division of property for the purposes of boundary line adjustment.~~

~~(Statutory References: §§15.2-2241; 15.2-2242 VA Code Ann.)~~

Sec. 54-28. Family Subdivision.

....
~~17. Family subdivisions are exempt from the provisions of section 54-27.~~

Sec. 54-30. Boundary Line Adjustment Survey.

....
Divisions of property for the purposes of a boundary line adjustment are exempt from the provisions of section ~~54-27~~ 70-304 of Chapter 70 (Zoning) but the resulting lots shall have a minimum lot size of two (2) acres.

Sec. 54-36. Court-ordered subdivisions.

....
Court-ordered subdivisions are exempt from the provisions of section ~~54-27~~ 70-304 of Chapter 70 (Zoning).

Sec. 54-37. Family Subdivisions.

....
Family subdivisions are exempt from the provisions of section ~~54-27~~ shall otherwise comply with section 70-304 of Chapter 70 (Zoning).

Sec. 54-42. Part-and-Parcel Subdivisions.

Part-and-Parcel subdivisions require the submission of a final plat pursuant to the requirements of Division 5, Final Plats, of this ordinance. Land divided pursuant to this section and made a bona fide portion of an adjoining tract through the vacation of a common boundary line shall not count as a division of property in the Agricultural zoning district pursuant to section ~~54-27~~. Staff approval of part-and-parcel subdivisions shall be given within 30 working days of submission by the owner or designated agent unless the plat is: (a) incomplete; (b) review by other agencies, e.g. VDOT and VDH, is not completed; or (c) the subdivision does not meet the requirements of this ordinance or Chapter 70 (Zoning).

Sec. 54-94. Certificates.

The following certificates shall appear on the final plat, and shall be executed as appropriate:

....

(6) For divisions of land in the Agricultural zoning district, the plat shall clearly state the following:

"The division of property as shown hereon is subject to the provisions of section ~~54-27~~ 70-304 of Chapter 70 (Zoning) of the Orange County Code of Ordinances. The parent tract/residue, tax map # _____ consisting of (A) _____ acres is being subdivided to create a new tract of (B) _____ acres as shown hereon. ~~A There shall be no subsequent division of the this newly created tract(s) shall not be smaller than 50 acres and shall not occur until four years have elapsed from the date of the county's approval of this plat as signed hereon. Further division of the acre parent parcel/residue as shown hereon shall not occur until one (1) year has elapsed from the date of approval by the county.~~ ((A) is the total acreage of the parent parcel/residue prior to subdivision and (B) is the acreage of the parcel being subdivided off.)

~~(7) Repealed. For divisions of land into 50 acre tracts or larger in the Agricultural zoning district, the plat shall clearly state the following:~~

~~"The simultaneous division of land into tracts 50 acres or larger in size as shown hereon is not subject to the limit on divisions as stated in section 54-27(1) of the Orange County Code of Ordinances. However, further division of these newly created tracts as shown hereon is prohibited pursuant to section 54-27(3) of the Orange County Code of Ordinances."~~

....

(12) For family subdivisions, the plat shall clearly state the following:

"This is a family subdivision as defined in sSection 54-5 of Chapter 54 (Subdivision) of the Orange County Code of Ordinances and pursuant to all requirements of section 54-28 Chapter 54. Each lot created on this plat as a family subdivision shall be titled in the name of the immediate family member for whom the subdivision is made for a period of no less than five (5) years from the date of final plat approval. This subdivision is exempt from the provisions of Section 54-27 shall otherwise comply with section 70-304 of Chapter 70 (Zoning) of the Orange County Code of Ordinances."

(13) For part-and-parcel subdivisions, the plat shall clearly state the following:

"This is a part-and-parcel subdivision pursuant to sections 54-5 and 54-42 of Chapter 54 (Subdivision) of the Orange County Code of Ordinances. This subdivision is exempt from the provisions of Section 54-27."

DIVISION 2. GENERAL STREET DESIGN STANDARDS

Sec. 54-171. Minimum widths.

The minimum width of proposed streets right-of-way, measured from lot line to lot line, shall be in accordance with regulations established by VDOT. Except as provided for in section 54-27 28(10), in no case shall a street right-of-way be less than 50 feet in width.

DRAFT ZONING ORDINANCE LANGUAGE
Article I. In General

Sec. 70-1. Definitions

Contiguous means abutting, adjoining or touching and having a boundary, or portion thereof, which is coterminous or located immediately across the street.

Parent Parcel means:

- a) In the Agricultural zoning district, a parcel of land of four (4) or more acres that is of record upon the effective date of this ordinance;
- b) In any Residential zoning district, a parcel of land that is of record upon the effective date of this ordinance, or
- c) For the purposes of continued division, the residue as defined herein.

.....

Residue means: the remainder of a lot after a subdivision has detached one or more lots.

Right-of-way means either a fee-simple strip or other parcel of land owned by VDOT or others for the purpose of constructing and maintaining a road.

Street means a thoroughfare for vehicular traffic, including all of the area within an easement or right-of-way, and is interchangeable with the terms alley, avenue, boulevard, court, drive, highway, lane, road, or any similar term.

Article IV. District Regulations
Division 2. Agricultural Zoning District (A)*

Sec. 70-301. Intent.

The agricultural zoning district (A) comprises most of the land area of the county. It preserves the traditional rural character of the county by protecting agricultural, forestal and horticultural uses, and other lands of significance for protection of the environment from

conflicts with incompatible uses and discourages, such as large residential subdivisions not typically found in rural, agricultural areas. Discourage the random scattering of large

commercial and industrial uses not associated with agricultural, forestal and horticultural land uses, and residential developments. In addition to agriculture, it permits the traditional rural development pattern of homes in order to protect against the overcrowding of land and undue density of population in relation to the community facilities existing or available and small agricultural-related businesses which maintain and preserve the rural and agricultural character of the area.

Sec. 70-304. - Area regulations.

1. In the agricultural zoning district the minimum lot area shall be two (2) acres or greater larger. One lot per year may be created from a parent parcel. Newly created lots from the parent parcel may not be further divided.
2. Lots shall be developed according to the provisions of this section, except as follows:
 - a) lots in cluster developments subject to article VI shall comply with the requirements of that article, or
 - b) lots within manufactured home parks subject to article VII shall comply with the requirements of that article, or
 - c) lots created pursuant to Section 54-37 of Chapter 54 (Subdivisions) shall have a minimum area of two (2) acres.

(Ord. of 5-2-1996, § 204; and _____)

Mr. Zody briefed the Commission on the proposed changes stating on January 24, 2012, the Orange County Board of Supervisors requested the Commission to provide a recommendation for text amendments to the Zoning and Subdivision Ordinances regarding lot division policy in the Agricultural zoning district by February 17, 2012. Mr. Zody stated the Commission heard the amendment (Alternative 1) as scheduled on February 16, 2012 and after closing the public hearing the Commission briefly discussed the merits of the proposed division policy moved to continue the item to combine Alternative 1 and the second division policy amendment (Alternative 2) forwarded to the Commission by resolution from the BOS on February 14, 2012, requesting the Commission take action by March 16, 2012. Mr. Zody stated the BOS intends on holding its public hearing on Alternative 2 of the division policy at its April 10, 2012 meeting.

Mr. Zody further explained to the Commission proposed division policy Alternative 1 (5 lots) and proposed division policy – Alternative (“1 in 1”).

Chairman Goodwin asked for persons to speak on the proposed text amendments.

The following is a list of speakers for the public hearing on text amendments.

Steve Yelton, 15620 Burnley Road, Barboursville, VA; Clifton Barnes, 8011 Burr Hill Road, Rhoadesville, VA; Diane Strong, 3495 Ham Road, Barboursville, VA; Jimmy Strong, 3495 Ham Road, Barboursville, VA; Roderic H. Slayton, 6094 Blue Run Road, Somerset, VA; Steve Satterfield, 21041 Clarks Mountain Road, Rapidan, VA; Robert Page, 12298 Kendall Road, Orange, VA; Nancy Williams, 11388 Marquis Road, Unionville, VA. (withdrawn); Teri Pace, 25485 Gooch Lane, Unionville, VA; Tom Bundy, 13049 St. Just Road, Unionville, VA; Myra

Soden, 23199 Monrovia Road, Orange, VA; Jack Snyder, 12574 Chicken Mountain Road, Orange, VA.

The concerns stated by the speakers were the keeping of Orange rural (plenty of lots of record now). A concern was voiced about the proposed changes being in violation with the Dillon rule, why the changes are being proposed at this time and the concern the changes are inconsistent with Comprehensive Plan.

There being no further speakers, Chairman Goodwin closed the public hearing at 7:44 p.m.

Mr. Brooks asked how it was determined who received a letter on the proposed changes and also if this was a violation of the Dillon Rule. Mr. Zody and Ms. Pandak, County Attorney addressed the question raised by Mr. Brooks on who received letters by explaining it was based on the particular alternative. Ms. Pandak stated both alternatives are under authority of Orange County and the Dillon Rule and both alternatives do not suffer from the Dillon Rule.

The Commission discussed the proposed text amendments and the need to slow down, listen to what the public are saying. The ability to subdivide for family and road standards associated with this type of division were discussed as well as property rights and lot sizes being an issue.

Chairman Goodwin asked for a motion on the draft language for Alternative 1.

Mr. Brooks made a motion seconded by Mr. Hutchison to forward a recommendation of denial to the BOS for Alternative 1.

RESOLUTION RECOMMENDING DENIAL – Alternative 1

MOTION:	Mr. Brooks	March 15, 2012
		Regular Meeting
SECOND:	Mr. Hutchison	<u>Res. No. 12-03</u>

RE: Proposed Amendments to County Code Chapter 70, Zoning Ordinance. Article I. In General: Sec. 70-1 Definitions. Article IV. District Regulations: Division 2, Sec. 70-301 Intent; Sec. 70-304 Area Regulations.

Proposed Amendments to County Code Chapter 54, Subdivision Ordinance. Article I. General Provisions: Sec. 54-5 Definitions. Article IV. Plats and Plans. Division 1. Generally: Amend Sec. 54-25 Compliance with other laws, rules, regulations and conditions. Repeal Sec. 54-27 Divisions of land in the agricultural zoning district. Amend Sec. 54-28 Family subdivision; Sec. 54-30 Boundary Line Adjustment Survey; Sec. 54-36 Court-ordered subdivisions; Sec. 54-37 Family Subdivisions; Sec. 54-42 Part-and-Parcel Subdivisions; Sec. 54-94 Certificates. Article VI. Streets. Division 1. Amend Sec. 54-171 Minimum Widths.

WHEREAS, the Board of Supervisors directed the Planning Commission to consider certain Zoning and Subdivision Ordinance amendments pertaining to lots in the Agricultural District; and

WHEREAS, the Planning Commission advertised and held a public hearing on February 16, 2012 to receive public comment regarding such proposed amendments (Alternative 1); and

WHEREAS, the Planning Commission discussed the proposed amendments at length, and considered comments received during the public hearing and desires to recommend denial of the draft Zoning and Subdivision Ordinance amendments; and

WHEREAS, public necessity, convenience, general welfare, and good zoning practice does not support approval of the draft Zoning and Subdivision Ordinance amendments;

NOW, THEREFORE, BE IT RESOLVED, that the Orange County Planning Commission hereby recommends denial to the Orange County Board of Supervisors of the proposed amendments to County Code Chapter 70, Zoning Ordinance and Chapter 54, Subdivision Ordinance, as modified.

Votes:

Ayes: Brooks, Smith, Hutchison, Goodwin, Tucker

Nays: None

Abstained from Vote: None

Absent from Meeting: None

Chairman Goodwin asked for a motion on the draft language for Alternative 2.

Mr. Brooks made a motion seconded by Mr. Tucker to forward a recommendation of denial to the BOS for Alternative 2.

RESOLUTION RECOMMENDING DENIAL – Alternative 2

MOTION: Mr. Brooks

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SECOND: Mr. Tucker

Res. No. 12-04

RE: Proposed Amendments to County Code Chapter 70, Zoning Ordinance. Article I. In General: Sec. 70-1 Definitions. Article IV. District Regulations: Division 2, Sec. 70-301 Intent; Sec. 70-304 Area Regulations.

Proposed Amendments to County Code Chapter 54, Subdivision Ordinance. Article I. General Provisions: Sec. 54-5 Definitions. Article IV. Plats and Plans. Division 1. Generally: Amend Sec. 54-25 Compliance with other laws, rules, regulations and conditions. Repeal Sec. 54-27 Divisions of land in the agricultural zoning district. Amend Sec. 54-28 Family subdivision; Sec. 54-30 Boundary Line Adjustment Survey; Sec. 54-36

Court-ordered subdivisions; Sec. 54-37 Family Subdivisions; Sec. 54-42 Part-and-Parcel Subdivisions; Sec. 54-94 Certificates. Article VI. Streets. Division 1. Amend Sec. 54-171 Minimum Widths.

WHEREAS, the Board of Supervisors directed the Planning Commission to consider certain Zoning and Subdivision Ordinance amendments pertaining to lots in the Agricultural District; and

WHEREAS, the Planning Commission advertised and held a public hearing on March 15, 2012 to receive public comment regarding such proposed amendments (Alternative 2) ; and

WHEREAS, the Planning Commission discussed the proposed amendments at length, and considered comments received during the public hearing and desires to recommend denial of the draft Zoning and Subdivision Ordinance; and

WHEREAS, public necessity, convenience, general welfare, and good zoning practice does not support approval of the draft Zoning and Subdivision Ordinance amendments;

NOW, THEREFORE, BE IT RESOLVED, that the Orange County Planning Commission hereby recommends denial to the Orange County Board of Supervisors of the proposed amendments to County Code Chapter 70, Zoning Ordinance and Chapter 54, Subdivision Ordinance, as modified.

Votes:

Ayes: Brooks, Tucker, Goodwin, Hutchison, Smith

Nays: None

Abstained from Vote: None

Absent from Meeting: None

The Commission took a 5 minute break at 8:00 p.m. and returned at 8:13 p.m.

Action on PROF MOD 11-04: Village Motorsports – tabled from the February 16, 2012 public hearing

The Commission discussed at length the amended proffers given to the county on March 13, 2012. The Commission discussed the hours of operation on the amended proffers received on March 13, 2012. Chairman Goodwin stated he has issues with the proffer 7, the amended proffers were to lower the impact on neighbors and it does not. Chairman Goodwin stated no attempt has been made to help the neighbors. Chairman Goodwin stated new proffers should protect the neighbors.

Ms. Robertson, stated the amended proffers received on March 13, 2012 is a replacement set of proffers and the original proffers will not take place of the ones presented tonight.

The Commission agreed to review each proffer has presented and vote on each separately.

RESOLUTION RECOMMENDING APPROVAL

MOTION:

**March 15, 2012
Regular Meeting
Res. No. 12-02**

SECOND:

**RE: PROF MOD 11-04: GEORGE D. CARTER REQUESTING A
 MODIFICATION OF PROFFERS CURRENTLY APPLICABLE TO 2.54
 ACRES OF TAX MAP NO. 32-69**

WHEREAS, George Carter has applied for a modification of certain zoning conditions currently applicable to 2.54 acres of the property identified as Tax Map No. 32-69 (“Subject Property”). The Subject Property is designated as Agricultural on the Future Land Use Map, and is currently zoned C-2 (General Commercial) and R-1 (Limited Residential). Use and development of the C-2 zoned portion of the Subject Property is currently subject to eight (8) conditions proffered by the applicant as part of a rezoning application and approved by the Board of Supervisors on October 14, 1997 and subsequently amended by the Board of Supervisors on November 10, 2009 (“1997 Proffers, as amended”); and

WHEREAS, this application for a proffer modification seeks to revise the text of the 1997 Proffers, as amended, and to make the revised 1997 Proffers, as amended, applicable to the entire acreage of Tax Map No. 32-69, all as set forth within a document entitled “Proposed Proffers,” dated January 26, 2012, revised and resubmitted by the Applicant on March 13, 2012; and

WHEREAS, on February 16, 2012 the Planning Commission held a duly advertised public hearing on the January 26, 2012 proposed revisions to the 1997 Proffers, as amended; thereafter, the Applicant submitted a revised set of proposed proffers, received by the County on March 13, 2012; and

WHEREAS, the Department of Planning and Zoning staff provided analysis and recommendations to the Planning Commission prior to its meetings on February 16, 2012 and March 15, 2012, with respect to the amended proffers that are proposed within PROF MOD 11-04, dated January 26, 2012 and March 13, 2012; and

WHEREAS, the Planning Commission reviewed and discussed the merits of the specific revised proffers (dated March 13, 2012) proposed by PROF MOD 11-04 and decided to vote on the merits of each individual proffer as serving the public necessity, convenience, general welfare and good zoning practice, as follows:

1. The Chairman called for comments and discussion of the provisions of proposed **Proffer #1**. There being consensus that the contents of this proffer are acceptable, it was moved by Mr. Smith that the Commission should recommend approval of this proffer as presented. The motion was seconded by Mr. Tucker, and the following vote was recorded: “aye,” by Brooks, Tucker, Smith, Hutchison, and Goodwin.

2. The Chairman called for comments and discussion of the provisions of proposed **Proffer #2**. There being consensus that the contents of this proffer are acceptable, it was moved by Mr. Smith that the Commission should recommend approval of this proffer as presented. The motion was seconded by Mr. Tucker, and the following vote was recorded: “aye,” by Tucker, Smith, Goodwin, Brooks, and Hutchison.
3. The Chairman called for comments and discussion of the provisions of proposed **Proffer #3**. It was noted that the Applicant incorporated changes suggested by the Commission and staff following the February 16, 2012 public hearing, to the effect that trees would be installed along the border between the residential and commercial districts, and the Chairman noted that other landscaping requirements might still be required as part of the site plan approval process. It was moved by Mr. Brooks that the Commission should recommend approval of this proffer as presented. The motion was seconded by Mr. Goodwin, and the following vote was recorded: “aye,” by Smith, Hutchison, Tucker, Brooks, and Goodwin.
4. The Chairman called for comments and discussion of the provisions of proposed **Proffer #4**. It was noted that this proffer reflects the current conditions existing on the commercial site, and continues the one-sign requirement of the 1997 proffers, as amended. It was moved by Mr. Brooks that the Commission should recommend approval of this proffer as presented. The motion was seconded by Mr. Tucker, and the following vote was recorded: “aye,” by Hutchison, Tucker, Smith, Goodwin, and Brooks.
5. The Chairman called for comments and discussion of the provisions of proposed **Proffer #5**. Mr. Hutchinson noted that, in his opinion, the 1997 Proffers, as amended, contained preferable provisions, such as limited hours of operation for the repair shop and restriction of the horsepower of equipment that may be repaired on the premises **(strikeouts suggested by Chairman Goodwin)** ~~Mr. Tucker, Mr. Brooks and Mr. Smith noted opinions that the provisions of Proffer #5 provide reasonable noise protection to adjacent properties and that they found the hours referenced in the proposed proffer to be acceptable. -- It was moved by Mr. Goodwin that the Commission should recommend approval of this proffer as presented. After further discussion, Mr. Goodwin amended his-~~ **(Highlighted inserts suggested by Chairman Goodwin)** There was considerable discussion over the impact on the neighborhood of the increased hours of operation and noise levels now proposed compared to those agreed at the 1997 re-zoning. Mr. Goodwin made a motion to recommend ~~to the BOS that Proffer #5 be reworded to reflect the wording of the 1997 Proffers, as amended. denial of Proffer #5 and that the original 1997 proffer #6 wording remain in force.~~ The motion was seconded by Hutchison, and the following vote was recorded: “aye,” by Hutchison, Smith, Goodwin; and “nay,” by Tucker, Brooks.
6. The Chairman called for comments and discussion of the provisions of proposed **Proffer #6**. Mr. Brooks asked for a comment from the County attorney as to whether the current use of the parcel is lawful. The County attorney replied that the answer to Mr. Brooks’ question depends on several circumstances, but that an interpretation of the 1997

Proffers, as amended, and County zoning ordinances, would need to be made by the County's Zoning Administrator. The County attorney noted that this issue is not among the issues previously determined by the Zoning Administrator and pending before the Circuit Court on appeal. The Chairman also noted that the Commission may properly consider whether the language of the proposed proffers would offer more clarity on the issue of permitted uses than the 1997 Proffers, as amended. It was moved by Mr. Brooks that the Commission should recommend approval of this proffer as presented. The motion was seconded by Mr. Tucker, and the following vote was recorded: "aye," by Smith, Tucker, Goodwin, Hutchison, and Brooks.

7. The Chairman called for comments and discussion of the provisions of proposed **Proffer #7(a)**. It was moved by Mr. Goodwin that the Commission should recommend approval of **Proffer #7(a)** as presented. The motion was seconded by Mr. Hutchison, and the following vote was recorded: "aye," by Tucker, Hutchison, Goodwin, Smith, Brooks. The Chairman then called for comments and discussion of the provisions of proposed **Proffer #7(b)**. The Chairman noted that staff and the County Attorney's office had indicated a concern that the contents of this proposed proffer amounted to an impermissible grant of authority to conduct a use accessory to a commercial use within a residential district. Also, there was discussion of the difficulty staff might have with the 10-minute limitation referenced in this proffer, in terms of enforceability, and that the demonstration of one piece of equipment at a time, for 10 minutes, one right after another all day long, may be just as intrusive as the demonstration of multiple pieces of equipment at one time, for a shorter period. It was moved by Mr. Brooks that the Commission should recommend approval of **Proffer #7(b)** as presented. The motion was seconded by Mr. Tucker, and the following vote was recorded: "aye," by Brooks, Tucker, and "nay," by Goodwin, Smith Hutchison. The Chairman then called for comments and discussion of the provisions of proposed **Proffer #7(c)**. It was noted that, so long as health or zoning laws would otherwise allow a replacement drainfield for the commercial site to be located on the residential-zoned portion of the parcel, including reference to a replacement drainfield within the proffer statement is reasonable. It was moved by Mr. Hutchison that the Commission should recommend approval of Proffer #7(c) as presented. The motion was seconded by Mr. Smith, and the following vote was recorded: "aye," by Brooks, Tucker, Smith, Goodwin, and Hutchison.
8. The Chairman called for comments and discussion of the provisions of proposed **Proffer #8**. He inquired of the County attorney whether this proffer, as proposed, is written sufficiently clearly to ensure continued applicability of the proffers following residential development of the residential-zoned portion. The County attorney suggested that the provisions could be better clarified if the phrase "with respect to the Residential District" were added at the end of the sentence. It was moved by Mr. Brooks that the Commission should recommend approval of this proffer, subject to the recommendation that the wording suggested by the County attorney should be added. The motion was seconded by Mr. Tucker, and the following vote was recorded: "aye," by Smith, Goodwin, Brooks, Hutchison, Tucker.

9. The Chairman called for comments and discussion of the provisions of proposed **Proffer #9**. Mr. Hutchison noted that the County should already have in hand an approved site plan for the commercial use, and that using a specific date, July 31, 2012, would be in the County's best interests. Other members indicated that the proposed proffer's reference to a time period, 6 months from the date of proffer adoption, would be adequate to ensure that site plan requirements will be met. It was moved by Mr. Goodwin that the Commission should recommend approval of Proffer #9 as presented. The motion was seconded by Mr. Tucker, and the following vote was recorded: "aye," by Tucker, Brooks, Goodwin, Smith; and "nay" by Hutchison.

6. New Business

There was no new business to come before the Commission.

7. Commissioner Comments

Mr. Brooks asked about the work on the comprehensive plan. Mr. Zody stated he hopes to have a meeting next week with comprehensive plan committee but will have to meet all requirements for public meetings (notice to press, etc.).

Mr. Brooks also asked about having a procedure on standard operations so nothing like what has happen concerning Village Motorsports happens again.

8. Next meeting

The next meeting of the Commission will be Thursday, April 5, 2012. Mr. Zody stated one public hearing has been scheduled for this meeting.

9. Adjourn

Mr. Smith made a motion, seconded by Mr. Hutchison that the meeting be adjourned. Motion carried with all members voting in the affirmative. Meeting adjourned at 8:59 p.m.

Nigel Goodwin, Chairman

Gregg B. Zody, Secretary