

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on August 10, 2005, at 6:00 p.m., Room 241, County Office Building, McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. David P. Bowerman, Mr. Kenneth C. Boyd, Mr. Lindsay G. Dorrier, Jr., Mr. Dennis S. Rooker, Ms. Sally H. Thomas and Mr. David C. Wyant.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry W. Davis, Director of Community Development, Mark Graham, Director of Planning, V. Wayne Cilimberg, and Senior Deputy Clerk, Debi Moyers.

Agenda Item No. 1. The meeting was called to order at 6:00 p.m., by the Chairman, Mr. Rooker.

NonAgenda. **Motion** was immediately offered by Mr. Dorrier that the Board certify by a recorded vote that to the best of each Board member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed session were heard, discussed or considered in the closed session

The motion was **seconded** by Mr. Boyd. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dorrier, Mr. Rooker, Ms. Thomas, Mr. Wyant and Mr. Bowerman.  
NAYS: None.

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Agenda Item No. 2. Pledge of Allegiance.  
Agenda Item No. 3. Moment of Silence.

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Agenda Item No. 4. Other Matters Not Listed on the Agenda from the Public.

Mr. Mike Zbailey, a resident from Keswick, spoke about the proposed Rivanna Village project. He noted that there does not seem to be any planning for this new development. He has been told that there is no funding or staff time available to plan and that the planning might happen after the development begins. Mr. Zbailey said that this does not make sense, and if the Pantops project is any indication of the county's planning capabilities, officials should get "a failing grade." He quoted Ken Boyd from an article in *The Daily Progress* as saying, "We in the county could have done a better job of master planning sooner."

Mr. Zbailey said that Margaret Maliszewski, Design Planner from Community Development, commented that "any new development in the area must be compatible with the area's historic character." The Rivanna project is giving the Supervisors an opportunity to do a better job, and asked them not to make the same mistakes as with Pantops. Mr. Zbailey commented that the Planning Commission seems like a "loose cannon," and quoted *The Hook* as saying, "while the Planning Commission's vote is merely advisory, it's usually rubber-stamped by the Board of Supervisors in the county." He concluded by encouraging the Board to get input from the public, produce a master plan, prepare the infrastructure, and then execute the plan. We must do a better job in preserving the historic character of Albemarle County.

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Mr. Tom Loach, a resident of Crozet, commented that he was surprised at the discussion from the earlier work session which seemed to lean towards less public involvement. He does not understand the reasoning of that. The reason he thinks there are more deferrals is there are two people on the Planning Commission that have expertise in architecture who are holding the developers to the goal standards. Mr. Loach suggested that in the case of an impasse, there should be an arbitrator brought in.

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Agenda Item No. 5. Consent Agenda. **Motion** was offered by Ms. Thomas, **seconded** by Mr. Bowerman, to approve Items 5.1 (as noted) through 5.8 on the consent agenda, and to accept Item 5.9 for information. (Discussions are included with the agenda items.) Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dorrier, Mr. Rooker, Ms. Thomas, Mr. Wyant and Mr. Bowerman.  
NAYS: None.

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Item 5.1. Approval of Minutes: September 1, 2004 and April 18(A), 2005

Mr. Rooker had read September 1, 2004, Pages 51-end and found them to be in order.

**By the recorded vote set out above, the minutes which had been read were approved. The remaining minutes will be placed on the next agenda.**

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Item 5.2. **ZMA-2004-017.Wickham Pond (Sign #64)**. Applicant requests deferral until October 12, 2005.

**By the recorded vote set out above, the applicant's request for deferral until October 12, 2005 was approved.**

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Item 5.3. Resolution of Intent to establish a segment of East Rio Road as an Entrance Corridor Overlay District and to amend the zoning map accordingly.

At its May 4, 2005 meeting, the Board of Supervisors considered a request from the Chair of the Architectural Review Board (ARB) to reclassify East Rio Road as an arterial highway and to establish it as an Entrance Corridor Overlay District. (see Attachment A) In consensus, the Board of Supervisors agreed to support the request. On July 14, VDOT notified the County that Route 631 (East Rio Road) between Route 29 and the Norfolk Southern Railway has been officially changed to an Urban Minor Arterial.

East Rio Road has seen considerable development in recent months. The ARB has suggested that future development along this heavily traveled corridor could benefit from the application of the ARB's Design Guidelines, and that this review would result in orderly and attractive development that reflects the traditional architecture of Albemarle and that is coordinated with other development on our major roadways.

Each final site plan requiring review by the ARB has a fee of \$200.00. While each such review provides revenue to the County, the costs associated with these reviews can often exceed the fee received.

Based on the ARB's recommendation, staff recommends approval of the attached Resolution of Intent (Attachment B) to designate East Rio Road between Route 29 and the Norfolk Southern Railway as an Entrance Corridor Overlay District and to amend the zoning map accordingly.

**By the recorded vote set out above, the Board adopted the following resolution of intent:**

#### **RESOLUTION OF INTENT**

**WHEREAS**, the intent of the Entrance Corridor Overlay District (Zoning Ordinance § 30.6, contained in Chapter 18 of the Albemarle County Code) is to, among other things, implement the Comprehensive Plan's goal of protecting Albemarle County's natural, scenic, historic, architectural and cultural resources; ensure a quality of development compatible with those resources through architectural review of development; and to enhance the County's attractiveness to tourists and other visitors and to sustain and enhance the economic benefits accruing to the County; and

**WHEREAS**, the Entrance Corridor Overlay District is established upon parcels along certain transportation corridors designated as arterial streets or highways pursuant to Title 33.1 of the Virginia Code, which are identified in Zoning Ordinance § 30.6.2(c); and

**WHEREAS**, that portion of State Route 631 (East Rio Road) between Route 29 and the Norfolk Southern Railway tracks has been recently reclassified by the Commonwealth of Virginia from Urban Collector to Urban Minor Arterial, and is now therefore a transportation corridor upon and along which an Entrance Corridor Overlay District may be established; and

**WHEREAS**, it is desired to amend Zoning Ordinance § 30.6.2 to establish an Entrance Corridor Overlay District upon and along that portion of East Rio Road described above for the reasons set forth herein and the additional reasons set forth in Zoning Ordinance § 30.6.

**NOW, THEREFORE, BE IT RESOLVED THAT** for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to amend Zoning Ordinance § 30.6.2 and any other regulations of the Zoning Ordinance deemed appropriate to achieve the purposes described herein, and to amend the Zoning Map accordingly.

**BE IT FURTHER RESOLVED THAT** the Planning Commission shall hold a public hearing on the zoning text amendment and the zoning map amendment proposed by this resolution of intent, and make its recommendations to the Board of Supervisors at the earliest possible date.

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Item 5.4. Requested FY 2005 Appropriations.

It was noted in the staff's report that the Code of Virginia §15.2-2507 stipulates that any locality may amend its budget to adjust the aggregate amount to be appropriated during the current fiscal year as shown in the currently adopted budget. However, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget or the sum of \$500,000, whichever is lesser, must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The Code section applies to all County funds, i.e., General Fund, Capital Funds, E911, School Self-Sustaining, etc. The total of this requested additional FY 2005 appropriation is \$254,608.74. It is anticipated that a budget amendment will be proposed in September 2005 and these appropriations would be incorporated into it.

This request involves the approval of two (2) new FY 2005 appropriations as follows: One (1) appropriation (#2005063) provides \$48,889.64 for year end grant adjustments; and one (1) appropriation (#2005064) provides \$205,719.10 for various education programs and grants. A detailed description of these appropriations follows. Staff recommends approval of the FY 2005 Appropriations #2005063 and #2005064.

**Appropriation #2005063, \$48,889.64.** In FY 03/04, the Department of Social Services (DSS) applied for and received a grant, in the amount of \$48,623.00, from the Virginia Department of Medical Assistance Services (DMAS) to develop and test innovative, cost-effective strategies to increase the retention of eligible children in FAMIS Plus (Medicaid Expansion and Medically Indigent Medicaid), to improve the transition of eligible children between FAMIS Plus and FAMIS, and to increase enrollment of eligible children in the appropriate program. The Department agreed to carry out such activities as (but not limited to): hiring a bilingual eligibility worker and/or secure language interpreter services dedicated to the project; building a relationship with enrolled families through phone calls, home visits and written communication; providing at least 3 contacts from project or agency staff between enrollment and re-enrollment; developing new and revised letters and brochures, among others. This grant was approved for an equal amount of \$48,623 for FY05. This appropriation is for the FY05 amount plus \$266.64 unexpended from the FY04 grant.

**Appropriation #2005064, \$205,719.10.** The Drivers Safety Fund consists of driver's education behind the wheel and the motorcycle safety programs operating on a fee for service basis. Approximately 1,300 students are trained each year in Drivers Safety. Operating before school, after school, and in the summer, students receive eighteen hours of training. The latest driving techniques and decision-making skills are emphasized. Expenditures have exceeded appropriations for FY 04/05 due to an increase in the number of classes, types of classes offered, and purchasing a vehicle. There is a local fund balance in the amount of \$91,528.69 from FY 03/04 which may be reappropriated to FY 04/05. We are requesting permission to use \$45,000 of the fund balance for FY 04/05.

The No Child Left Behind Act (NCLB Act), Public Law 107-110, authorized the Title II, Part A as a federal grant program that combines the Eisenhower Professional Development, School Renovation, and Class Size Reduction Grants into a Teacher Quality grant program that focuses on preparing, training, and recruiting high-quality teachers, principals, and paraprofessionals. Expenditures have exceeded appropriations for FY 04/05 due to an increase in professional development opportunities that promote research-based instruction within a curricular framework. Stipends were paid for more teachers to participate in Curriculum Assessment Instruction (CAI). There is a fund balance retained by the State in the amount of \$149,833.40 from FY 03/04 which may be reappropriated for FY 04/05.

Albemarle County Adult Basic Education collaborates with local institutions and agencies when requested to provide tuition classes tailored to the individualized needs of particular students. All expenses are covered through said tuition and fees. Expenditures have exceeded appropriation for FY 04/05 due to an increase in the number of classes. This program received an additional \$1,712.82 in tuition for FY 04/05 and has a local fund balance of \$8,747.88 from FY 03/04 which may be reappropriated for FY 04/05.

In January, Albemarle County Schools received and accepted a donation from Gary W. Taylor to support the fine arts programs for elementary schools. The Northwestern Mutual Foundation made a matching donation of \$425.00.

**By the recorded vote set out above, the Board approved the following FY 2005 appropriations:**

**COUNTY OF ALBEMARLE  
 APPROPRIATION**

**APP #** 2005063  
**DATE** \_\_\_\_\_  
**BATCH#** \_\_\_\_\_

**EXPLANATION:** Year end Adjustments for "Keep'em Covered Grant"

					SUB LEDGER		GENERAL LEDGER	
TYPE	FUND	DEPT	OBJECT	DESCRIPTION	CODE	AMOUNT	DEBIT	CREDIT
2	1565	24000	240615	STATE	J 2	16,531.82		
2	1565	33000	330029	FEDERAL	J 2	32,091.18		
2	1565	51000	510100	FUND BALANCE	J 2	266.64		
1	1565	53155	110000	SALARIES	J 1	40,409.00		
1	1565	53155	210000	FICA	J 1	2,506.00		
1	1565	53155	270000	WORKER'S COMP	J 1	266.64		
1	1565	53155	301210	CONTRACT SERVICES	J 1	2,900.00		
1	1565	53155	520100	POSTAL	J 1	115.00		
1	1565	53155	550100	TRAVEL	J 1	900.00		
1	1565	53155	600100	OFFICE SUPPLIES	J 1	793.00		
1	1565	53155	800100	MAC & EQUIP	J 1	1,000.00		
	1565		0501	Est. Revenue			48,889.64	
	1565		0701	Appropriation				48,889.64
<b>TOTAL</b>						<b>97,779.28</b>	<b>48,889.64</b>	<b>48,889.64</b>

**COUNTY OF ALBEMARLE  
 APPROPRIATION**

**APP #** 2005064  
**DATE** \_\_\_\_\_  
**BATCH#** \_\_\_\_\_

**EXPLANATION: Various Education Programs**

					SUB LEDGER		GENERAL LEDGER	
TYPE	FUND	DEPT	OBJECT	DESCRIPTION	CODE	AMOUNT	DEBIT	CREDIT
2	3305	51000	510100	Appr. Fund Balance	J 2	45,000.00		
2	3203	33000	330105	Title II, Part A	J 2	149,833.40		
2	3116	16000	161206	Tuition-Adult Education	J 2	1,712.82		
2	3116	51000	510100	Appr. Fund Balance	J 2	8,747.88		
2	2000	18100	181109	Donation	J 2	425.00		
1	3305	61235	132100	PT/Wages-Teacher	J 1	8,168.60		
1	3305	61235	132101	PT/Wages-Teacher Adult	J 1	20,000.00		
1	3305	61235	160300	Stipend-Staff/Curr. Dev.	J 1	1,000.00		
1	3305	61235	210000	FICA	J 1	2,231.40		
1	3305	61236	800500	Motor Vehicle	J 1	13,600.00		
1	3203	61311	112100	Salaries-Teacher	J 1	16,841.72		
1	3203	61311	115000	Salaries-Office Clerical	J 1	5,110.00		
1	3203	61311	160300	Stipend-Staff/Curr. Dev.	J 1	105,000.00		
1	3203	61311	210000	FICA	J 1	9,729.43		
1	3203	61311	221000	VRS	J 1	2,719.28		
1	3203	61311	231000	Health Insurance	J 1	2,092.80		
1	3203	61311	232000	Dental Insurance	J 1	72.00		
1	3203	61311	312700	Prof. Ser. Consultants	J 1	5,399.00		
1	3203	61311	550400	Travel-Education	J 1	501.17		
1	3203	61311	601300	Materials	J 1	2,368.00		
1	3116	63348	132100	Teacher Wages	J 1	9,717.32		
1	3116	63348	210000	FICA	J 1	743.38		
1	2111	61339	601300	Ed/Rec Supplies	J 1	425.00		
	3305		0501	Est. Revenue			45,000.00	
	3305		0701	Appropriation				45,000.00
	3203		0501	Est. Revenue			149,833.40	
	3203		0701	Appropriation				149,833.40
	3116		0501	Est. Revenue			10,460.70	
	3116		0701	Appropriation				10,460.70
	2000		0501	Est. Revenue			425.00	
	2000		0701	Appropriation				425.00
<b>TOTAL</b>						<b>411,438.20</b>	<b>205,719.10</b>	<b>205,719.10</b>

Item 5.5. Requested FY 2006 Appropriations.

It was noted in the staff's report that the Code of Virginia §15.2-2507 stipulates that any locality may amend its budget to adjust the aggregate amount to be appropriated during the current fiscal year as shown in the currently adopted budget. However, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget or the sum of \$500,000, whichever is lesser, must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The Code section applies to all County funds, i.e., General Fund, Capital Funds, E911, School Self-Sustaining, etc. The total of this requested additional FY 2006 appropriation is \$467,506.60. It is anticipated that a budget amendment will be proposed in September 2005 and these appropriations would be incorporated into it.

This request involves the approval of six (6) new FY 2006 appropriations as follows: One (1) appropriation (#2006005) provides \$68,249.60 for the Child and Family Services Review; One (1) appropriation (#2006006) provides \$34,247.00 for a DCJS grant for Comprehensive Community Corrections Act and Amendment and eliminates a PAPIS grant in the amount of \$52,733.00; One (1) appropriation (#2006007) provides \$22,007.00 for a new DCJS grant; One (1) appropriation

(#2006008) transfers \$53,372.00 from the contingency account for the CTS contract and transit study; One (1) appropriation (#2006009) provides \$182,366.00 for additional radio units and accessories for the 800 MHz Radio System; and One (1) appropriation (#2006010) provides \$160,000.00 in funding for a 29N Corridor Transportation Study. A detailed description of these appropriations follows. Staff recommends approval of the FY 2006 Appropriations #2006005, #2006006, #2006007, #2006008, #2006009, and #2006010.

**Appropriation #2006005, \$68,249.60.** The federal CFSR assesses a state's performance with regard to seven child welfare outcomes pertaining to children's safety, permanency and well-being. The CFSR found Virginia's (and all other states') child welfare program to be substantially out of compliance in several areas. Therefore, the State is required to implement a Program Improvement Plan (PIP). In order to strengthen Virginia's child welfare system and improve outcomes for our children and families, Governor Warner and the 2005 General Assembly allocated additional general funds to help implement the PIP. The allocation for Albemarle County, which includes a 20% local match, is \$68,249.60. Upon review of the outcomes where ACDSS has historically fallen short of the Federal standard, ACDSS has chosen to focus on improvement in the outcome of "Increase the percentage of children who reunify with their prior custodian within 12 months of entering foster care." The national standard is 76.2% or more. The agency's baseline, provided by VDSS, is 71.43%. Our target is improvement to 73.57% by December 2005, and 76.2% or more by December 2006. In order to accomplish this improvement, ACDSS will hire a Foster Care social worker/case manager whose primary role is to work together with the primary foster care social workers on cases that fall under the Concurrent Planning and/or Structured Decision Making processes. Responsibilities will include (but not be limited to): facilitating supervised and/or quasi-supervised visitation, including sibling visitation; representing the social worker at weekly Family Treatment Court eligibility and/or review hearings; attending case-related but non-foster care court hearings such as delinquency, child support, CHINS and custody petitions; interviewing and visiting possible relative placements; visiting child in placement; and other duties. The local match of \$13,649.92 will be funded from the General Fund Balance.

**Appropriation #2006006, -\$18,486.00.** This appropriation recognizes \$34,247.00 in additional funding for the Department of Criminal Justice Services (DCJS) Grant for Comprehensive Community Corrects Act. In addition, it eliminates the DCJS PAPIS grant which had been funded at \$52,733.00

**Appropriation #2006007, \$22,007.00.** The DCJS has awarded the Police Department a grant in the amount of \$16,505 with a local match of \$5,502 for a total of \$22,007. The purpose of this grant is to purchase software, printers and training for investigative personnel to assist with developing criminal investigations and eventual prosecutions. The local match will be funded from the Police Departments existing budget.

**Appropriation #2006008, \$53,372.00.** Funding of \$53,372.00 is requested from the Board's contingency for additional costs related to CTS. This includes \$16,430.00 for the improved day time service on Route 5 (Barracks Road/Fashion Square) and Route 10 (Pantops/Wilton Farm) based on the 40% credit for state and federal transit operating revenues, \$16,942.00 in funding for Route 23 night service (Pantops/Wilton Farm), and \$20,000.00 to update the CTS transit study for FY07-FY11. This request is based on the Board's approval of the CTS funding options presented at your July 2005 meeting.

**Appropriation #2006009, \$182,366.00.** Funding of \$182,366.00 is requested for the final radio system equipment and accessories needed for the 800 MHz radio system. This request includes radios for the Sheriff's volunteers and the additional approved position, an additional radio for the Town of Scottsville, radios for the additional positions approved in the FY06 budget for the Police Department, and the associated accessories (microphone, batteries, holsters, etc) for these areas and the Fire/Rescue Division. Funds had been reserved in the E911 Service Charge Fund for this purpose. The implementation date of the new system is scheduled for August 14, 2005.

**Appropriation #2006010, \$160,000.00.** The cost of the Thomas Jefferson Planning District Commission (TJPDC) contract for the 29N Corridor Study is \$300,000. Funding of this contract will be provided by using \$140,000 of Transportation funding already allocated in the CIP and additional \$160,000 from various proffers for the Hollymead Town Center and Albemarle Place.

**By the recorded vote set out above, the Board approved the following FY 2006 appropriations:**

**COUNTY OF ALBEMARLE  
 APPROPRIATION**

**APP #** 2006005  
**DATE** \_\_\_\_\_  
**BATCH#** \_\_\_\_\_

**EXPLANATION: Child and Family Services Review**

					SUB LEDGER		GENERAL LEDGER	
TYPE	FUND	DEPT	OBJECT	DESCRIPTION	CODE	AMOUNT	DEBIT	CREDIT
1	1568	53013	110000	Salaries	J 1	43,503.00		
1	1568	53013	210000	FICA	J 1	2,697.00		
1	1568	53013	210000	Medicare	J 1			

							631.00		
1	1568	53013	221000	VRS	J	1	4,785.00		
1	1568	53013	231000	Health	J	1	7,215.04		
1	1568	53013	232000	Dental	J	1	246.40		
1	1568	53013	270000	Worker's Compensation	J	1	131.00		
1	1568	53013	332104	Computer Maintenance	J	1	450.00		
1	1568	53013	520100	Postal Services	J	1	200.00		
1	1568	53013	520300	Telecommunications	J	1	500.00		
1	1568	53013	540200	Lease/Rent Bldgs.	J	1	1,512.00		
1	1568	53013	550600	Travel - Subsistence	J	1	929.16		
1	1568	53013	600100	Office Supplies	J	1	550.00		
1	1568	53013	601700	Copy Supplies	J	1	400.00		
1	1568	53013	800100	Furniture	J	1	2,000.00		
1	1568	53013	800700	Computer Cost	J	1	2,500.00		
2	1568	24000	240110	Administration- State	J	2	54,599.68		
2	1568	51000	512004	Trs. General Fund -local	J	2	13,649.92		
1	1000	53013	939999	S/S-Transfer to Fd 1568	J	1	13,649.92		
2	1000	51000	510100	G/F Balance	J	2	13,649.92		
	1568		0501	Est. Revenue				68,249.60	
	1568		0701	Appropriation					68,249.60
	1000		0501	Est. Revenue				13,649.92	
	1000		0701	Appropriation					13,649.92
TOTAL							163,799.04	81,899.52	81,899.52

**COUNTY OF ALBEMARLE  
 APPROPRIATION**

**APP #** 2006006  
**DATE** \_\_\_\_\_  
**BATCH#** \_\_\_\_\_

**EXPLANATION:** DCJS Grant for Comprehensive Community Corrections Act-Amendment & Elimination of Papis Grant.

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER		
					CODE	AMOUNT	DEBIT	CREDIT	
1	1520	29406	566120	Offender Aid & Restoration	J	1	32,176.00		
1	1520	29406	566140	Central Va. Regional Jail	J	1	2,071.00		
1	1520	29406	566121	Papis Grant	J	1	(52,733.00)		
2	1520	24000	240440	DCJS-Comm. Correction	J	2	34,247.00		
2	1520	33000	330409	DCJS-Papis Grant	J	2	(52,733.00)		
	1520		0501	Est. Revenue					18,486.00
	1520		0701	Appropriation				18,486.00	
TOTAL							(36,972.00)	18,486.00	18,486.00

**COUNTY OF ALBEMARLE  
 APPROPRIATION**

**APP #** 2006007  
**DATE** \_\_\_\_\_  
**BATCH#** \_\_\_\_\_

**EXPLANATION:** DCJS Grant

					SUB LEDGER		GENERAL LEDGER	
TYPE	FUND	DEPT	OBJECT	DESCRIPTION	CODE	AMOUNT	DEBIT	CREDIT
2	1531	330 00	330001	Grant Rev-Federal	J 2	16,505.00		
2	1531	510 00	512004	Tr - General Fund	J 2	5,502.00		
2	1000	510 00	510100	Appr. Fund Balance	J 2	5,502.00		
1	1531	310 13	550100	Travel/Training	J 1	2,211.00		
1	1531	310 13	601600	Data Supplies	J 1	10,996.00		
1	1531	310 13	800700	ADP Equipment	J 1	8,800.00		
1	1000	310 13	930200	Tr - Grant Projects	J 1	5,502.00		
	1531		0501	Est. Revenue			22,007.00	
	1531		0701	Appropriation				22,007.00
	1000		0501	Est. Revenue			5,502.00	
	1000		0701	Appropriation				5,502.00
<b>TOTAL</b>						<b>55,018.00</b>	<b>27,509.00</b>	<b>27,509.00</b>

**COUNTY OF ALBEMARLE  
 APPROPRIATION**

**APP #** 2006008  
**DATE** \_\_\_\_\_  
**BATCH#** \_\_\_\_\_

**EXPLANATION:** FUNDING FOR ADDITIONAL COST OF CTS CONTRACT AND TRANSIT STUDY

					SUB LEDGER		GENERAL LEDGER	
TYPE	FUND	DEPT	OBJECT	DESCRIPTION	CODE	AMOUNT	DEBIT	CREDIT
1	1000	89000	580406	CTS-CONTRACT	J 1	33,372.00		
1	1000	89000	580418	TRANSIT STUDY	J 1	20,000.00		
1	1000	95000	999999	CONTINGENCY	J 1	(53,372.00)		
<b>TOTAL</b>						<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

**COUNTY OF ALBEMARLE  
 APPROPRIATION**

**APP #** 2006009  
**DATE** \_\_\_\_\_  
**BATCH#** \_\_\_\_\_

**EXPLANATION:** FUNDING FOR 800 MHz RADIO SYSTEM ADDITION RADIO UNITS & ACCESSORIES

					SUB LEDGER		GENERAL LEDGER	
TYPE	FUND	DEPT	OBJECT	DESCRIPTION	CODE	AMOUNT	DEBIT	CREDIT
1	4101	93010	930024	Trs. To G/F CIP-Radio	J 1	182,366.00		
1	9010	31000	800305	Radio Sys-Police	J 1	65,545.00		
1	9010	31000	800305	Radio Sys-Sheriff	J 1	11,700.00		
1	9010	31000	800305	Radio Sys-Sheriff	J 1	32,942.00		
1	9010	31000	800305	Radio Sys-Fire/Resc.	J 1	66,400.00		
1	9010	31000	800305	Radio Sys-Scottsvl	J 1	5,779.00		
2	4101	51000	510100	E911 Serv Chg-F/B	J 2	182,366.00		
2	9010	51000	512027	Trs from E911	J 2	182,366.00		

	4101		0501	Est. Revenue				182,366.00	
	4101		0701	Appropriation					182,366.00
	9010		0501	Est. Revenue				182,366.00	
	9010		0701	Appropriation					182,366.00
<b>TOTAL</b>							<b>729,464.00</b>	<b>364,732.00</b>	<b>364,732.00</b>

**COUNTY OF ALBEMARLE  
 APPROPRIATION**

**APP #** 2006010  
**DATE** \_\_\_\_\_  
**BATCH#** \_\_\_\_\_

**EXPLANATION:** FUNDING FOR 29N CORRIDOR TRANSPORTATION STUDY

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER		
					CODE	AMOUNT	DEBIT	CREDIT	
1	8527	93010	930010	Trs to CIP	J	1	10,000.00		
1	8530	93010	930010	Trs to CIP	J	1	100,000.00		
1	8532	93010	930010	Trs to CIP	J	1	50,000.00		
1	9010	81010	950173	29N Transp. Study	J	1	300,000.00		
1	9010	81010	950136	Transp. Planning	J	1	(140,000.00)		
2	8527	18917	18911	Hollymead-Area A Prof	J	2	10,000.00		
2	8530	18920	189923	Alb. Place Proffer	J	2	100,000.00		
2	8532	13020	520100	Hollymead-Area C Prof	J	2	50,000.00		
2	9010	51000	512046	Trs fr Hollymead-Area A	J	2	10,000.00		
2	9010	51000	512047	Trs fr Alb Place Proffer	J	2	100,000.00		
2	9010	51000	512048	Trs fr Hollymead-Area B	J	2	50,000.00		
	8527		0501	Est. Revenue				10,000.00	
	8527		0701	Appropriation					10,000.00
	8530		0501	Est. Revenue				100,000.00	
	8530		0701	Appropriation					100,000.00
	8532		0501	Est. Revenue				50,000.00	
	8532		0701	Appropriation					50,000.00
	9010		0501	Est. Revenue				160,000.00	
	9010		0701	Appropriation					160,000.00
<b>TOTAL</b>							<b>640,000.00</b>	<b>320,000.00</b>	<b>320,000.00</b>

Agenda Item No. 5.6 BENEPLUS Plan Revision.

The County's Flexible Health Benefits Plan (BENEPLUS) was established in 1990 to permit eligible employees to pay for certain health and dependent care benefits on a pre-tax basis. This pre-taxed reimbursement is allowed under Section 125 of the IRS Code and is commonly referred to "Cafeteria Plans." One of the mandatory requirements of this IRS code section is that all remaining unused benefits or contributions remaining at the end of the plan year will be forfeited. This rule is commonly referred to as the "use-it-or-lose-it" rule.

The IRS recently approved a change to Section 125, permitting a 2 ½ month grace period immediately following the end of each plan year during which unused benefits or contributions, remaining at the end of the plan year, may be paid or reimbursed to plan participants for qualified benefit expenses incurred during the grace period.

Section 13 of the County's BENEPLUS plan provides that the plan may be amended from time to time by the Board of Supervisors. Section 9.04 of the plan states that claims submitted for reimbursement must be submitted to the Plan Administrator no later than thirty (30) days after the end of the Plan Year or the end of the Participant's period of coverage. If approved by the Board, the IRS-approved change would extend this submission deadline up to two and one-half months.

This change would allow Plan Participants to expand their reimbursement period to a maximum of fourteen and one-half months. Currently, Plan Participants must submit requests for reimbursement within the Plan year or within 30 days after the end of the Plan Year or the end of the Participant's period of coverage, if the Participant has ceased to make Plan Contributions. The longer submission period would directly benefit eligible employees, whose unused benefits or contributions remaining at the end of the plan year would otherwise be forfeited.

Staff recommends that the Board approve an amendment to the BENEPLUS plan incorporating the IRS-approved change and extending the claims submission deadline by the two and one-half month grace period. The amended language is set forth in a new subsection 9.05.

**By the recorded vote set out above, the Board approved the amendment to the BENEPLUS plan incorporating the IRS-approved change and extending the claims submission deadline by the two and one-half month grace period.**

## COUNTY OF ALBEMARLE FLEXIBLE HEALTH BENEFITS PLAN (BENEPLUS)

### Section 1

#### PURPOSE

The purpose of this Plan is to permit Eligible Employees of the Employer to choose among the Benefits provided by the Employer under this Plan in such a fashion as best suits their individual circumstances, and further to encourage and help provide for expanded, but cost effective medical and dental benefits and other health coverage for each Eligible Employee and for his spouse and Dependents, and dependent care coverage for each Eligible Employee. It is the intent of the Employer that this Plan qualify as a "cafeteria plan" within the meaning of Section 125 of the Code, and to the maximum extent possible, that any Benefits paid under the Plan be eligible for exclusion from gross income under Sections 105, 106, and 129 of the Code. The employer presently provides, and will continue to provide, a variety of other employee benefits to some or all of its employees on a non-elective basis. The Benefits provided under this Plan shall be in addition to and not in lieu of such other benefits, and such other benefits shall not constitute a part of this Plan.

### Section 2

#### EFFECTIVE DATE AND PLAN YEAR

The effective date of this Plan, as amended, shall be September 1, 1990. The plan shall be kept on the basis of a fiscal Plan Year beginning September 1<sup>st</sup> and each subsequent August 31<sup>st</sup>.

### Section 3

#### DEFINITIONS

- 3.01 Benefits.** "Benefits" means the health and accident benefits available under this Plan that are described in Section 5.
- 3.02 Code.** "Code" means the Internal Revenue Code of 1986, as now in effect or as it may be amended hereafter, and includes any regulations or rulings issued thereunder.
- 3.03 Dependent.** The "Dependents" of a Participate for each Plan Year shall include his spouse and any of the following individuals who depend on the Participate for more than one-half (1/2) of their support during the Plan Year:
- (a) his son or daughter, a descendent of either, or stepson or stepdaughter;
  - (b) his father or mother, an ancestor, brother or sister of either, or stepfather or stepmother;
  - (c) his brother or sister, a son or daughter of either, or stepbrother or stepsister;
  - (d) his son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; or
  - (e) any other individual whose principal residence is with the Participate and who is a member of the Participant's household during such Plan Year.
- 3.04 Dependent Care Recipient.** A "Dependent Recipient" qualified to receive Benefits under Section 5 of the Plan is any Dependent who is either:
- (a) a son, daughter, stepson, or stepdaughter ("child") of a Participate who is under the age of thirteen (13);
  - (b) any Dependent who is physically or mentally incapable of taking care of himself or who regularly spends at least eight (8) hours a day in the Participant's home;
  - (c) any other Dependent who is under the age of thirteen (13) and whose gross income for each of the calendar years covered by such Plan Year is less than \$2,000.
- 3.05 Educational Institution.** "Educational Institution" means any educational institution which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

- 3.06 Eligible Employees.** An “Eligible Employee” is any Full-time or Part-time employee who is eligible to participate in the Plan under Section 4.01.
- 3.07 Eligible Health FSA Expenses.** “Eligible Health FSA Expenses” means any medical, dental, or other health care expenses deductible under Section 213 of the Code that are incurred by a Participant or by the Participant’s spouse or Dependents, that are not otherwise reimbursed under the Insurance Policies maintained by the Employer or under any other health plan coverage, and that are described in requests for reimbursement under the Health FSA provided under the Plan that comply with the Claims Procedures described in Section 9 hereof. Notwithstanding the above, “Eligible Health FSA Expenses” do not include reimbursements for any Participant’s premium payments for other health plan coverage, such as premiums paid for health coverage under a plan maintained by an employer of the Participant’s spouse or Dependents.
- 3.08 Eligible Dependent Care Expenses.** “Eligible Dependent Care Expenses” means all expenses for Qualifying Dependent Care Services incurred by a Participant or by his or her Spouse which are paid to a Qualified Caregiver or a Qualified Dependent Care Center.
- 3.09 Employer.** “Employer” means County of Albemarle, or any other agency that is affiliated with the Employer within the means of the controlled group rules of Section 414 (b), (c), or (m) of the Code that has adopted this Plan (or an amended version of this Plan) after obtaining formal approval for such adoption from the Board of Supervisors.
- 3.10.a. Full-time Employees.** “Full-time Employees” are employees (other than leased employees within the meaning of Section 414(n) of the Code) who customarily work at least 40 hours per week for the Employer or as otherwise designated by policies governing employment status.
- 3.10.b. Part-time Employees.** “Part-time Employees” are employees who work at least 20 hours per week and are not classified as full-time employees.
- 3.11 Health Benefits.** “Health Benefits” means the medical and dental benefits described in Sections 5.01 and 5.02(a) of the Plan.
- 3.12 Health FSA Account.** “Health FSA Account” means the Flexible Spending Account (“FSA”) of the Plan under which Eligible Health FSA Expenses are paid.
- 3.13 Insurance Policies.** The “Insurance Policies” shall mean the agreements between the employer and various insurance companies licensed to provide health insurance coverage in the State of Virginia, under which such insurance companies are required to provide insurance coverage to support, in whole or in part, as agreed by the Employer, the medical, dental or other insurable Health Benefits described in Schedule A attached to the Plan.
- 3.14 Participant.** A “Participant” is any Eligible Employee who is a Participant under the Plan under Section 4.02, or any individual who is receiving coverage under either the Insurance Policies, the FSA Accounts of this Plan, or in accordance with the Continuation of Health Benefits rules in Section 8.
- 3.15 Plan.** The “Plan” is the County of Albemarle Flexible Benefit Plan (Beneplus) as it exists and may be amended from time to time.
- 3.16 Plan Contributions.** “Plan Contributions” are the amounts paid by Participants during the Plan Year for benefits described in Section 5, by reducing salary to pay for additional non-cash Benefits. Such Plan Contributions may be made on a “pre-tax basis”, in which case the Plan Contributions are not included in the Participant’s taxable income for such Plan Year, or on an “after-tax basis”, in which case the Plan Contributions are included in the Participant’s taxable income for such Plan Year.
- 3.17 Plan Year.** “Plan Year” means the twelve month period commencing on September 1<sup>st</sup> and ending on August 31<sup>st</sup>.
- 3.18 Qualified Caregiver.** A “Qualified Caregiver” is a person performing Qualifying Dependent Care Services who is not:
- (a) A Dependent;
  - (b) A Spouse; or
  - (c) A child of the Participant who has not attained the age of nineteen (19) as of the close of the Plan Year in which the Qualifying Dependent Care Services were provided.
- 3.19 Qualified Dependent Care Center.** A “Qualified Dependent Care Center” is a license dependent care center that provides dependent care for more than six individuals, and operates in compliance with all applicable laws of both the state and town, city or village in which it is located.
- 3.20 Qualifying Dependent Care Services.** “Qualifying Dependent Care Services” means services which are performed to enable a Participant or his Spouse to maintain gainfully employed, which

are related to the care of one or more Dependent Care Recipients (including household services related to such care), and which are performed either within or outside the home of the Participant. Such Qualifying Dependent Care Services must be performed during the Plan Year and after the Participant has filed an election to receive Benefits under the procedures described in Section 7.

#### Section 4

### ELIGIBILITY AND PARTICIPATION

**4.01 Eligibility.** All full-time or part-time (as defined in 3.10) Employees of the Employer shall be eligible to participate in this Plan.

**4.02 Participation.** Each employee who is eligible to participate in the Plan under Section 4.01 shall become a Participant in this Plan on the later of the effective date of this Plan or on the first day of the calendar month following employment if starting employment before the 15<sup>th</sup> of the month, otherwise the first day of the second month following employment if starting employment after the 15<sup>th</sup> of the month. A Participant who terminates or is discharged from employment with the Employer shall cease to be a Participant in the Plan on the effective date of such termination, or discharge, or reduction in hours to less than 20 hours per week. Notwithstanding the above, an individual who has ceased to be an Eligible Employee can continue to be a Participant in the Plan, if and to the extent such an individual elects Continuation of Health Benefits under the rules in Section 8.

#### Section 5

### BENEFITS

**5.01 Pre-tax Contributions for Employee Share of Insurance Policy Premiums or Other Health Plan Costs.** From the effective date of the Plan and for so long as this Plan is continued, the Employer shall provide to each Participant for each Plan Year a cafeteria benefit to permit Employees to pay their share of Insurance Policy premiums or other health plan costs (out of pre-tax dollars) by reducing their salaries in the total amount shown on schedule A. Each Participant may elect to receive this Health Benefit as an after-tax benefit, by indicating on the health plan enrollment form.

**5.02 Additional Salary Reduction Benefits.** From the effective date of the Plan and for so long as this Plan is continued, every Participant in the Plan shall be eligible to elect to reduce his salary and receive instead some or all of the following Benefits by filing an election to receive such Benefits under the Procedures described in Section 7 and 8:

(a) Health FSA Benefits. Reimbursements under the Plan are available for all eligible Health FSA Expenses incurred by a Participant or his spouse or Dependents for health care provided or other medical expenses incurred during the Plan Year and after the date on which the Participant has filed (or is deemed to have filed) an election to receive such benefits under the procedures described in Sections 7 and 8. The maximum Plan Contribution during any Plan Year by a Participant may not exceed the maximum amount of Benefits described in Section 5.05, except to the extent that contributions equal to 102 percent of plan costs are required under Section 8. The maximum reimbursement under the Health FSA available at any time during the period of coverage of any Participant during any Plan Year equals the maximum Health FSA Benefits elected for such period of coverage, reduced by all prior reimbursements for Eligible Health FSA Expenses paid for the same period of coverage. If any Participant ceases to make required contributions to the Health FSA, no Benefits shall be paid hereunder for any health expenses incurred after the end of that portion of the period of coverage which corresponds to the portion of total scheduled Plan Contributions to the Health FSA for such period of coverage that were paid by the participant prior to his or her cessation of contributions. If Health FSA Benefits cease to be provided after such a cessation of required contributions, the Participant may not make an election to rejoin the Plan for the remaining portion of the Plan Year.

**5.03 Maximum Health FSA Benefits.** The maximum Health FSA Expenses payable to any Participant during any Plan Year is \$4,000.

**5.04 Maximum Dependent Care FSA Benefits.** A Participant who is married at the close of a Plan Year may not receive Benefits for Eligible Expenses incurred by him for the Plan Year in excess of the least of :

- (a) \$5,000 (or \$2,500 in the case of a married Participant filing a separate federal income tax return from his spouse);
- (b) His Earned Income for such Plan Year; or
- (c) The earned Income of his spouse for such Plan Year.

A participant who is not married at the close of the Plan Year may not receive Benefits for Eligible Expenses incurred by him in the Plan Year in excess of the lesser of \$5,000 or his

Earned Income for the Plan Year. Notwithstanding the above, the maximum Benefits paid under this Plan must be reduced by the amount of any tax-exempt dependent care assistance benefits received by the Participant or his spouse from any other employer during the Plan Year.

**5.05 Nondiscriminatory Benefits.** The plan is intended not to discriminate in favor of highly compensated individuals as to eligibility to participate, contributions and/or Benefits, and to comply in this respect with the requirements of the Code. If, in the judgment of the Plan Administrator, the operation of the Plan in any Plan Year would result in such discrimination, then such Plan Administrator shall make recommendations to select and exclude from coverage under the Plan, such Participants and/or reduce such Plan Contributions and/or Benefits under the Plan, all as shall be necessary to assure that, in the judgment of the Plan Administrator, the Plan does not discriminate.

#### Section 6

### LIMITATIONS

**6.01 Maximum Overall Contributions.** No Participant who is an Eligible Employee shall be entitled to forego or reduce cash compensation by more than the aggregate maximum amount of Benefits specified in Section 5. Individuals participating under the Continuation of Health Benefit Rules or Section 8 shall not be required to make Plan Contributions in excess of the amounts specified in such Section.

**6.02 Forfeiture of Unused Benefits.** A Participant shall receive no reimbursement for Benefits elected, but unused, during a Plan Year for any reason.

#### Section 7

### ELECTIONS BY ELIGIBLE EMPLOYEES

**7.01 Effective Date of Elections.** For any Plan Year, a Participant who is an Eligible Employee may affirmatively elect to receive any of the Benefits listed in Section 8 by filing an election form, which may be obtained from the Employer, and which shall specify the type and exact amount of each of such Benefits, and the corresponding amount of Plan Contributions to be paid by the Participant for such Benefits during the period covered by the election. The initial election filed by any Participant who is an Eligible Employee shall become effective on the first day of the monthly pay period which commences after such election form is submitted, properly signed and dated, by the Participant to the Employer and accepted on behalf of the Employer. Any subsequent election filed by such a Participant shall become effective on the first day of the subsequent Plan Year for which such election is made. If any Eligible Employee fails to file an election form by the end of the thirty (30) day period after he first becomes an Eligible Participant, he shall be deemed to have elected to receive all cash Benefits under this Plan.

**7.02 A. Duration of Elections for Health Insurance Premiums.** Once effective, any such affirmative or deemed election described in Section 7.01 shall remain in effect until the end of the Plan Year for which it was made, and throughout all subsequent Plan Years, unless a change is made pursuant to Sections 7.03 through 7.06 below.

**7.03 B. Duration of Elections for Health and Dependent Care FSA's.** Elections expire at the end of each Plan Year.

**7.04 New Elections for Subsequent Plan Years.** A Participant may change his election for any Plan Year subsequent to the Plan Year in which such a change is made, by filing a new election form by the first day of the Plan Year for which he wants such revised election to be effective.

**7.05 Revocation of Election on Termination of Service or Switch to Part-time (less than 20 hours per week) Employment.** The election of any Participant who terminates or is discharged from Employment with the Employer or who becomes Part-time with less than 20 hours per week will be automatically terminated, effective as of the effective date of such termination, resignation, or reduction in hours. Such a terminated election may be reinstated, however, solely to the extent that a Participant elects to continue to receive the Health Benefits covered by such an election under the Continuation of Health Benefits Rules in Section 8. Except as provided in Section 8, no Benefits will be paid for any expenses incurred for services provided after the effective date of any revocation of a Participant's election. Any Plan Contributions made for the portion of the Plan Year extending beyond such election revocation date will be refunded to the Participant. If the Participant becomes an Eligible Employee again within the same Plan Year, the Participant may not make a new election for the remainder of the Plan Year with respect to any Benefits that were terminated as of the effective date of such termination, discharge, or reduction in hours.

**7.06 Mid-year Changes in Health Benefit Election on Account of Cost or Coverage Changes.** If the cost of any Health Benefits described in Schedule A increases or decreases during the Plan Year, corresponding changes consistent with such increase or decrease will automatically be made in Plan Contributions for such Health Benefits scheduled to be made by affected Participants. If any such cost increase raises a Participant's Plan Contributions for such Health Benefit by more than 25 percent, or if any health coverage under any policy described in

Schedule A is significantly curtailed or ceases during the Plan Year, the affected Participants may elect to cease participation under such Health Insurance Policy or plan, or in lieu thereof to receive on a prospective basis coverage under a similar health insurance policy or plan provided by the Employer. Amendments in outstanding Health Benefits elections, including elections under the Health FSA, may also be made during the Plan Year whenever there has been a significant change in the health coverage of the Participant, or his or her spouse attributable to the spouse's employment, provided that such election changes are consistent with the change in health coverage. Notwithstanding the above, this Section 7.06 does not permit a Participant's election to be changed to reduce Plan Contributions to the Health FSA and the corresponding Benefits reimbursing Eligible Health FSA Expenses, unless the Participant's Plan Contributions to the Health FSA made during the part of the Plan Year preceding such election change either equal or exceed the Benefit reimbursements for Eligible Health FSA Expenses during the portion of the Plan Year preceding such election change.

**7.07 Mid-Year Changes in Health and Dependent Care FSA Elections on Account of Life**

**Events.** A participant may change his election for the remainder of any Plan Year for which an election has been made or deemed made only if such change in his election is on account of, and consistent with, a Life Event. A "Life Event" shall be an event in the life of the Participant which, as determined in the discretion of the Plan Administrator, increases or decreases the number of Dependents qualifying for Benefits under this Plan, including, without limitation, marriage or divorce of the Participant, death of a spouse or other Dependent, birth or adoption of a Dependent, termination or commencement of a spouse's employment, a switching from full-time to part-time employment status by the Participant's spouse, and the taking of a leave of absence by the Participant or his or her spouse. In the event that Plan Contributions and the corresponding Plan Benefits for the balance of the Plan Year are terminated as the result of such a change in an election, any Plan Contribution made for the portion of the Plan Year extending beyond such election revocation date will be refunded to the Participant. Changes will be effective the first of the next month if received by the Plan Administrator by the 10<sup>th</sup> of the month, otherwise the change will be effective the first of the second month.

**7.08 Effect of Change in FSA Account Election on Maximum Health FSA Benefits.**

Any change in an election affecting annual Plan Contributions to the Health FSA pursuant to Section 7.06 also will change the Maximum Health FSA Benefits for the period of coverage remaining in the Plan Year. Such Maximum Health FSA Benefits for the period of coverage following an election change shall be calculated by adding the balance remaining in the Participant's FSA as of the end of the portion of the Plan Year immediately preceding the change in election, to the total Plan Contributions scheduled to be made by the Participant during the remainder of the Plan Year. Changes to reduce the health FSA shall be no less than any benefits already paid during the plan year.

Section 8

**CONTINUATION OF HEALTH BENEFITS FOLLOWING  
TERMINATION OF EMPLOYMENT OR COVERAGE**

**8.01 Availability of Continued Health Benefits.** The Health Benefits under the Plan will be available to all persons whose Health Benefits would otherwise terminate due to a qualifying event described in Section 8.04 or 8.05, and who qualify under the terms of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended and subsequent regulations and amendments. Anyone eligible to elect to continue coverage under this Section 8 shall be referred to herein as a "Qualifying Beneficiary".

**8.02 Continuation of Health Benefits By Payment from Final Paycheck.** Any Participant who is terminated or discharged from employment with the Employer or who switches to part-time (less than 20 hours per week) employment status may elect to receive all or some of the Health Benefits covered by his Plan election in effect at the time of such termination or reduction in hours, by paying the Plan Contribution due for such Health Benefits for the balance of the Plan Year out of the Participant's final paycheck (in the case of a termination of service) or last paycheck for the pay period prior to the reduction in hours. If such paycheck is not sufficient cover the full amount of the Plan contribution due for the balance of the Plan Year, the Participant must pay any balance due to the Employer, by making an additional after-tax Plan Contribution within ten (10) days after termination of employment or reduction in hours.

**8.03 Purchase of Health Benefits at 102% of Cost.** A Qualified Beneficiary whose Plan Benefits have been terminated for any of the qualifying event enumerated in Section 8.04 or 8.05 has the right to continue in the Plan for all health benefits which under the Plan the Qualified Beneficiary was entitled to receive on the day immediately preceding the date of the qualifying event. The time period for which the continuation coverage is available is indicated below in conjunction with the qualifying event. One Hundred Two Percent (102%) of the full cost of providing such coverage shall be charged to any person continuing in the Plan. Notwithstanding the foregoing, in the case of an extension of the 18-month period described in Section 8.04 to 29 months pursuant to Section 8.06, One Hundred Fifty Percent (150%) shall be substituted for One Hundred Two Percent in the preceding sentence for any month after the eighteenth month of continuous coverage. This cost shall be determined at the beginning of each Plan Year and shall remain in effect for the remainder of such Plan Year.

**8.04 Qualifying Events Triggering Eighteen Months of Continuation Coverage.** An eighteen (18) month continuation of Health Benefits shall be available to Qualified Beneficiaries who lose coverage due to one of the following qualifying events:

- (a) the termination of employment by a Participant who is an Eligible Employee for any reason except gross misconduct;
- (b) the loss of eligibility of a previously Eligible Employee to participate in the Plan due to reduced work hours.

**8.05 Qualifying Events Triggering Thirty-six Months of Continuation Coverage.** A thirty-six (36) month continuation of Health Benefits shall be available to Qualified Beneficiaries who lose coverage due to one of the following qualifying events:

- (a) death of a Participant who is an Eligible Employee;
- (b) divorce or legal separation from a Participant who is an Eligible Employee;
- (c) a covered Dependent child's loss of eligibility to participate in the plan due to age or a change in student status;
- (d) a covered Dependent's loss of eligibility to participate in the Plan due to the Eligible Employee becoming entitled to Medicare.

If a qualifying event listed in this Section 8.05 occurs within the 18-month period described in Section 8.03, the 36-month continuation period shall be deemed to commence as of the date of the qualifying event in Section 8.04. Solely to the extent required by law, in the case of an event described in Section 8.05(d), the period of continuation coverage for covered Dependents for such event or any subsequent qualifying event shall not terminate before the end of the 36-month period beginning on the date the Eligible Employee became entitled to Medicare.

**8.06 Other Qualifying Event Rules.** In the case of a Qualified Beneficiary who is determined to have been disabled (within the meaning of the Social Security Act) at the time of a qualifying event described in Section 8.04, any reference in Section 8.04 to 18 months with respect to qualifying event is deemed to be a reference to 29 months, but only if the Qualified Beneficiary provides notice of such determination of disability to the Plan Administration within 60 days of such determination, but not later than the otherwise applicable 18-month period. Such Qualified Beneficiary must also notify the Plan Administrator of any final determination that he is no longer disabled, within 30 days of such final determination.

**8.07 Notification Rules.** The Eligible Employee or Qualified Beneficiary is required to notify the Plan Administrator within 60 days of a qualifying event described in Section 8.05 (b) or (c). If an Eligible Employee or Qualified Beneficiary fails to provide such notice, the Qualified Beneficiary shall lose his right to elect continuation of coverage under this Section 8. The Employer is required to notify the Plan administrator within thirty (30) days of any other qualifying event. The Plan Administrator shall notify each Qualified Beneficiary of his right to continuation of coverage within fourteen (14) days of the notice made to the Plan Administrator of the qualifying event. The Eligible Employee or covered Dependent is also required to provide the Plan Administrator with all information needed to meet its obligation of providing notice and continuation of coverage.

**8.08 Termination of Continuation Coverage.** Continuation of Health Benefits coverage under the Insurance Policies shall not be provided beyond whichever of the following dates is first to occur:

- (a) the date the maximum continuation period expires for the corresponding qualifying event;
- (b) the date of termination of Health Benefit elected under the Plan, together with all other health benefits provided by the County that have been continued under continuation of Health Benefits rules;
- (c) the date the Eligible Employee or Qualified Beneficiary fails to pay the applicable Plan Contribution on time;
- (d) the date the Eligible Employee or Qualified Beneficiary becomes covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any pre-existing condition of such Beneficiary;
- (e) the date the Eligible Employee or Qualified Beneficiary becomes entitled to Medicare; or
- (f) in the case of an extension of coverage under Section 8.06 due to disability, the later of one of the foregoing events described in subparagraphs (a) through (c) or the month that begins more than 30 days after a final determination that the Qualified Beneficiary is no longer disabled.

**8.09 Non-payment of Plan Contributions to Health FSA.** If any Participant fails to pay on time any applicable Plan Contribution to the Health FSA, the Employer will reduce any reimbursement for Eligible Health FSA Expense remaining to be paid to the Participant by the amount of any Plan Contributions due for the balance of the Plan Year, as part of the Employer's effort to collect any overdue unpaid Plan Contributions.

Section 9

**CLAIM PROCEDURES**

**9.01 Health, Medical and Dental Benefits.** Claims for medical, dental, or other Health Benefits under this Plan shall be made on forms maintained and provided by the county. Each participant electing to receive medical, dental or other Health Benefits shall be entitled to claim reimbursement for medical, dental or other health expenses. Such claims shall be made by filing, on a form provided by the County, a request for reimbursement of medical expenses incurred and paid by the Participant in this plan. Such form shall be filed together with such evidence of either payment of indebtedness to the third party as shall be required by the Insurer in accordance with the Insurance Policy for medical or dental care or other Health Benefits received during the Plan Year. The Employer assumes no obligation to pay Benefits under the applicable Insurance Policy or any other policy or contract of insurance. Any review of any claim or denial of a claim shall be performed by the Insurer in accordance with the rules of the Insurance Policy.

**9.02 Health FSA Benefits.** Each participant who desires to receive reimbursement under the Plan for Eligible Health FSA Expenses (up to the maximum amounts outlined below) shall submit to the Plan Administrator, at the time indicated in Section 9.04, a form or other supplementary requests for information provided by the Employer providing:

- (a) a written evidence of the amount of payment to the independent third party showing the amount of the medical expense that has been incurred; and
- (b) a written statement that the amount of such expense has not been reimbursed and is not reimbursable under any other health plan;
- (c) written evidence from the third party provider showing the type and amount of the incurred expense.

As soon as is administratively feasible following the 20<sup>th</sup> of each calendar month, the Plan Administrator will review all the claims submitted by Participants during that month in accordance with the foregoing procedures, and shall pay Participant the Health FSA Benefits which each Participant is entitled to receive under the Plan, in accordance with Section 5.01, 5.03, and 9.02. The maximum amount of such Health FSA Benefits available during the period of coverage, as calculated under the rules of 7.07, properly reduced by prior reimbursements for the same period of coverage.

**9.03 Dependent Care FSA Benefits.** Each Participant who desires to receive reimbursement under the Plan for Eligible Expenses incurred for Qualifying Dependent Care Services shall submit to the Plan Administrator, at the times indicated in Section 9.04, a form provided by the Employer, or responses to other supplementary factual requests. By submitting this form the Participant acknowledges:

- (a) the nature and dates of performance of the Qualifying Dependent Care Services for which the Participant wishes to be reimbursed is permissible;
- (b) that the Participant will include on his or her Federal Income Tax return the name, address and (except in the case of a tax-exempt Qualified Dependent Care Center) the taxpayer identification number of the provider of the Qualifying Dependent Care Services;
- (c) evidence of indebtedness or payment by the Participant to the third party who performed the Qualifying Dependent Care Services.

As soon as is administratively feasible following the 20<sup>th</sup> of each calendar month, the Plan Administrator shall review all the forms submitted by Participants during that month in accordance with the foregoing procedures, and shall pay each Participant the Benefits which each Participant is entitled to receive under the Plan in accordance with Sections 5.01, 5.03, 5.05, and 9.02.

**9.04 Claims Submission Deadlines.** Claims submitted under Section 9.01 must be filed with the applicable insurance policy or other insurance contract. Claims submitted under Sections 9.02 and 9.03 must be submitted to the Plan Administrator no later than thirty (30) days after the earlier of the end of the Plan Year or the end of the Participant's period of coverage, if the Participant has ceased to make Plan Contributions to the FSA's.

**9.05 Grace Period for Qualified Benefits Expenses.** Notwithstanding the Claims Submission Deadlines established in Section 9.04, and as permitted by IRS regulations, a grace period of two and a half (2 ½) months after the earlier of the end of the Plan Year or the end of the Participant's period of coverage, if the Participant has ceased to make contributions to the FSA's, shall apply (the "Grace Period"). During this Grace Period, Participants may have as long as 14 months and 15 days (the 12 months in the Plan Year plus the grace period) to incur and claim reimbursement for qualified benefits or contributions for the Plan Year before those amounts are forfeited under Section 6.02.

Section 10

**REVIEW PROCEDURES FOR CLAIMS DENIED BY PLAN ADMINISTRATOR**

**10.01 Notice of Claim Denial.** If any claim for Benefits under this Plan submitted under Section 9.02 and 9.03 is denied in whole or in part, the claimant shall be furnished promptly by the Plan Administrator a written notice setting forth the following information:

- (a) a specific reason or reasons for the denial;
- (b) specific reference to pertinent Plan provisions upon which the denial is based;
- (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- (d) an explanation of the Plan's claim review procedures, as set forth below in Sections 10.02 and 10.03.

Failure by the Plan Administrator to respond to a claim for Benefits submitted under Sections 9.02 or 9.03 within thirty (30) days following the end of the calendar month in which such claim was submitted shall be deemed a denial.

**10.02 Appeal Procedures.** Within sixty (60) days after denial of any claim for Benefits under this Plan, the claimant may request in writing a review of the denial by the Plan Administrator. Any claimant seeking review hereunder is entitled to examine all pertinent documents, and to submit issues and comments in writing.

**10.03 Response to Appeal.** The Plan Administrator shall render a decision on review of a claim not later than sixty (60) days after receipt of a request for review under Section 10.02. Such decision shall be in writing and shall state the reasons for the decision, referring to the Plan or Code provision upon which it is based. Such decision of the Plan Administrator shall be final and conclusive.

Section 11

**PLAN ADMINISTRATOR**

**11.01 Plan Administrator.** The "Plan Administrator" shall be the Director of Personnel or his/her designee. The Plan Administrator shall have authority and responsibility to take any reasonable action necessary to control and manage the operation and administration of this Plan under the rules applied on a uniform and nondiscriminatory basis to all Participants.

**11.02 Appeals Committee.** The "Appeals Committee" shall be a committee of three (3) individuals appointed by the Plan Administrator, who shall have authority and responsibility to decide by majority vote any appeals of claims denied pursuant to the provisions of Section 10 above.

**11.03 Expenses.** All reasonable expenses of the Plan Administrator and Appeals Committee shall be paid by the Employer and any expenses not paid by the Employer shall not be the responsibility of the committee members personally.

Section 12

**PLAN CONTRIBUTIONS**

**12.01 Characterization of Employer and Employee Contributions.** All Plan Contributions made on a pre-tax basis shall be designated and deemed to be Employer contributions. All contributions made on an after-tax basis shall be designated and deemed to be Participant Contributions.

**12.02 Trust.** The plan can provide that no separate trust will be established.

Section 13

**AMENDMENT OR TERMINATION**

This plan may be amended or terminated at any time by the Board of Supervisors provided, however, that any termination or amendment shall not effect the right of any Participant to claim Benefits for that portion of the Plan Year or coverage period prior to such termination or amendment, to the extent such amounts are payable under the terms of the Plan as in effect prior to the calendar month in which the Plan is terminated or amended. Any amendment or termination shall take effect only as of the end of a pay period.

Section 14

**MISCELLANEOUS**

**14.01 Right to Interpret the Plan.** All final decisions in interpreting provisions of the Plan shall be the responsibility of the Plan Administrator and the Appeals Committee.

- 14.02 No Personal Liability.** Nothing contained herein shall impose on any officers or directors of the Employer any personal liability for any Benefits due a Participant or Dependent pursuant to this Plan.
- 14.03 Additional Procedures.** Any rules, regulations, or procedures that may be necessary for the proper administration or functioning of this Plan that are not covered in this Plan shall be promulgated and adopted by the Plan Administrator.
- 14.04 Agreement not an Employee Contract.** This plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant. This Plan shall not be deemed to give any Participant or other employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or other employee at any time regardless of the effect which such discharge shall have upon such a person as a Participant in this Plan. This Plan shall not be deemed to give the Employer the right to require any Participant or other employee to remain the employment of the Employer or to restrict any such person's right to terminate his employment at any time.
- 14.05 Severability.** If any provision of this Plan shall be held invalid for any reason, such illegality or invalidity shall not affect the remaining parts of this Plan and this Plan shall be construed and enforced as if such illegal and invalid provisions had never been included.
- 14.06 Gender and Number.** In the construction of this Plan, reference to any gender shall include the masculine, feminine, and neuter genders, the plural shall include the singular and the singular the plural, wherever appropriate.
- 14.07 Construction.** The terms of the Plan shall be construed under the laws of Virginia except to the extent such laws are pre-empted by federal law.
- 14.08 Rights.** Participants in the Plan are entitled to:
- (a) examine, without charge, at the Employer's office, all Plan documents; and
  - (b) obtain copies of all Plan documents and other Plan information upon written request to the Employer. The Employer may make a reasonable charge for copies.

The Employer has a duty to operate the plan prudently and in the interest of Plan Participants and beneficiaries. No one, including the Employer, may discriminate against a Participant in any way to prevent a Participant from obtaining a Benefit or exercising his or her rights. If a Participant's claim for a Benefit is denied in whole or in part, he or she must be given a written explanation of the reason for the denial. A Participant has the right to have the Employer review and reconsider such claim.

- 14.09 Delegation.** The County of Albemarle shall have the power to delegate specific duties and responsibilities to officers or other employees of the County of Albemarle or other individuals or entities. Any delegation by the County of Albemarle may allow further delegations by the individuals or entity to whom the delegation is made. Any delegation may be rescinded by the County of Albemarle at any time. Each person or entity to whom a duty or responsibility has been delegated shall be responsible for the exercise of such duty or responsibility and shall not be responsible for any act or failure to act of any person or entity.

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Agenda Item No. 5.7. Resolution approving the filing of application to the Virginia Public School Authority for bond revenue in a principal amount not to exceed \$7,790,000.

Funding for the FY 2005/06 Capital Improvement Budget anticipated the utilization of \$7,790,000 of bond revenue from the Virginia Public School Authority (VPSA) for various school projects.

Participation in the bond issue requires both the School Board and Board of Supervisors to pass a resolution authorizing the filing of an application to the VPSA. It is anticipated at this time that the School Board will adopt the resolution at their meeting on August 11, 2005 and the Board of Supervisors on August 10, 2005. The required application must be submitted to the VPSA by the August 31, 2005 deadline. A number of additional actions (resolutions, public hearings, approvals) will be required before November 2005 to meet the requirements of the VPSA schedule. The further approvals will be scheduled when the required documents are received by the Director of Finance from the County's bond counsel.

The FY06 CIP and Debt Service budgets anticipated the issuance of the \$7,790,000 using a projected 20 year amortization and 5% interest rate. The first payment of this debt will be required in FY07 and is projected to be \$778,600.

Staff recommends approval of the attached resolution authorizing the County's application to the Virginia Public School Authority for \$7,790,000 in bond revenues.

**By the recorded vote set out above, the Board approved the following resolution:**

**RESOLUTION APPROVING THE FILING OF AN APPLICATION WITH  
THE VIRGINIA PUBLIC SCHOOL AUTHORITY FOR A LOAN IN AN  
APPROXIMATE PRINCIPAL AMOUNT OF \$7,790,000**

**WHEREAS**, the Board of Supervisors (the "Board") of Albemarle County, Virginia (the "County"), in collaboration with the Albemarle County School Board, has determined that it is necessary and desirable for the County to undertake capital improvements for its public school system;

**BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF ALBEMARLE COUNTY, VIRGINIA:**

1. The Board hereby approves the filing of an application with the Virginia Public School Authority for a loan to the County in an approximate principal amount of \$7,790,000 to finance capital improvements for its public school system. The County Executive, in collaboration with the other officers of the County and the Albemarle County School Board, is hereby authorized and directed to complete an application and deliver it to the Virginia Public School Authority.
2. This resolution shall take effect immediately.

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Agenda Item No. 5.8. Resolution to Waive the Ivy Landfill Settlement Agreement's "No Opposition Provision" Regarding Cell 5.

**By the recorded vote set out above, the Board adopted the following resolution:**

**RESOLUTION TO WAIVE THE  
IVY LANDFILL SETTLEMENT AGREEMENT'S  
"NO OPPOSITION PROVISION"  
REGARDING CELL 5**

**WHEREAS**, the Rivanna Solid Waste Authority (the "RSWA"), the City of Charlottesville (the "City"), and the County of Albemarle (the "County") are parties to a *Settlement Agreement and Release* dated October 2, 2000 (the "Settlement Agreement") with certain individuals and entities who were plaintiffs (the "Plaintiffs") in an action filed against the RSWA, the City, and the County relating to the Ivy Landfill; and

**WHEREAS**, Section D.1.a. of the Settlement Agreement requires the Plaintiffs to refrain from opposing the issuance to the RSWA by the Virginia Department of Environmental Quality, or any other applicable federal, state, local or regional governmental authority, of a permit to construct and operate a CDD waste disposal cell identified as Cell 5 in the Settlement Agreement within certain limitations (the "No Opposition Provision"); and

**WHEREAS**, the County understands that certain Plaintiffs desire to have the County waive its rights under the No Opposition Provision and the County is willing to waive such rights.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby waives the rights of the County under the No Opposition Provision contained in Section D.1.a. of the Settlement Agreement.

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Agenda Item No. 5.9. Notice of application filed with the State Corporation Commission by Virginia Electric and Power Company to revise its market prices for generation and resulting wires charges for Calendar Year 2006 (Case No. PUE-2001-00306), **received for information**.

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Agenda Item No. 6. Public hearing to receive comments on proposed short-term lease agreements between Albemarle County and Piedmont Housing Alliance, Inc. and between Albemarle County and Lewis & Clark Exploratory Center of Virginia, Inc. for a portion of the Albemarle County Office Building located on McIntire Road. (Advertised in Daily Progress on August 1, 2005)

Mr. Tucker said as some of the Board members are aware, staff has been working with Lewis & Clark Exploratory Center of Virginia, Inc. and Piedmont Housing Alliance, Inc. to assist them in meeting their short term space needs. Staff is currently in the process of finalizing design of the former Police Department space for the Department of Community Development. Because these two agencies had short term needs and that area of the building is not scheduled for renovation until January, staff has worked to temporarily assist them in meeting their needs through the end of the calendar year.

Because these agencies are private, non-profit organizations rather than governmental agencies, a formal lease and public hearing are required to allow the use of the space. Under this proposal, both agencies will be occupying the space until the end of the calendar year and intend to make other arrangements to relocate by January. Lewis & Clark Exploratory Center of Virginia, Inc. would be leasing 307 square feet from August 1 through December 31 for \$10. Piedmont Housing Alliance, Inc., which is essentially relocating its entire operations until they finalize long term arrangements, would be leasing 3,664 square feet for the same time period and have agreed to pay \$2,000 a month. Staff has estimated

that the market rate for the lease of this space is approximately \$16 per square foot and therefore, approval of this proposal will result in a subsidy to both agencies when compared with the market rate. However, because this space was not on the market due to its short term availability and would have been vacant until January, staff feels this arrangement is a benefit to both the County and the community.

Approval of these lease agreements will generate approximately \$10,000 in unanticipated revenue.

Mr. Tucker said staff recommends that the Board authorize the County Executive to execute the building leases for Lewis & Clark Exploratory Center of Virginia, Inc. and Piedmont Housing Alliance, Inc. under the terms outlined in this executive summary, provided that the lease is in a form approved by the County Attorney.

Mr. Boyd asked if there was any remodeling cost with the lease arrangement. Mr. Tucker replied that there would not be.

The Chairman opened the public hearing. There being no one to speak, the public hearing was closed.

Mr. Bowerman commented that the subsidy is about \$2,000 or one-half of the usual commercial cost. Mr. Tucker responded that because they are a non-profit, the county wanted to give them a break.

Ms. Thomas noted that the Lewis & Clark Board appreciates the temporary space.

**Motion** was offered by Ms. Thomas to authorize the County Executive to execute the building leases for Lewis & Clark Exploratory Center of Virginia, Inc. and Piedmont Housing Alliance, Inc. under the terms outlined in the executive summary, provided that the lease is in form approved by the County attorney. The motion was **seconded** by Mr. Boyd. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dorrier, Mr. Rooker, Ms. Thomas, Mr. Wyant and Mr. Bowerman.

NAYS: None.

#### **AGREEMENT OF LEASE**

THIS LEASE AGREEMENT is made as of October 17, 2007 by and between the COUNTY OF ALBEMARLE, VIRGINIA, Landlord, and LEWIS & CLARK EXPLORATORY CENTER, INC., Tenant.

#### **ARTICLE I. PREMISES AND IMPROVEMENTS**

In consideration of the rents and covenants herein set forth, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the premises described on Exhibit A attached hereto and made a part hereof together with any and all improvements thereon (the "Leased Premises"). The Leased Premises shall be occupied by the Lewis & Clark Exploratory Center, Inc.

#### **ARTICLE II. TITLE: QUIET ENJOYMENT**

So long as Tenant is not in default hereunder, Tenant shall have peaceful and quiet enjoyment, use and possession of the Leased Premises without hindrance on the part of the Landlord or anyone claiming by, through, or under Landlord.

#### **ARTICLE III. TERM**

Section 3.1. Commencement and Expiration. The term of this Lease shall commence on June 1, 2005 (the "Date of Commencement") and shall expire December 31, 2005 unless extended or sooner terminated. All references to the "term" of this Lease shall, unless the context indicates a different meaning, be deemed to be a reference to the term described herein.

Section 3.2. Renewal. This Lease may be renewed for an additional period as may be mutually agreed by the Landlord and Tenant. If renewal is not agreed upon by the Landlord and Tenant, this Lease shall expire upon expiration of the initial term.

#### **ARTICLE IV. RENT**

Section 4.1. Rent. On the Date of Commencement, Tenant agrees to pay to Landlord one-time rent of \$10.00.

Section 4.2. Address for Rent Payment. All payments of rent due Landlord pursuant to Section 4.1 shall be made to Landlord at the address specified in Section 15.3, or to such other party or at such other address as hereinafter may be designated by Landlord by written notice delivered to Tenant at least ten (10) days prior to the next ensuing monthly rental payment date.

#### ARTICLE V. UTILITIES AND SERVICES

Landlord shall provide water, sewer, electricity, and heating and cooling at no additional cost to Tenant. Tenant shall provide telephone, custodial and all other services.

#### ARTICLE VI. USE OF PROPERTY

Section 6.1. Permitted Use. Tenant shall have use of the Leased Premises for offices. Tenant shall also have use of the lunchroom, restrooms, elevators and main entry corridors, which areas will not be calculated in the gross square footage for rental purposes.

Section 6.2. Parking. Tenant shall be entitled to the use of parking spaces in the Lower Parking Lot and an access easement to the Leased Premises.

#### ARTICLE VII. ALTERATIONS, IMPROVEMENTS, FIXTURES AND SIGNS

##### Section 7.1. Installation by Tenant.

(a) Tenant may, from time to time, make or cause to be made any interior non-structural alterations, additions or improvements which do not damage or alter the Leased Premises, provided that Landlord's consent shall have first been obtained in writing, and provided that Tenant shall obtain all required governmental permits for such alterations, additions or improvements.

(b) Tenant may, from time to time, make interior structural alterations, additions or improvements, only with Landlord's prior written consent to plans and specifications therefor, which consent shall not be unreasonably withheld. Upon the expiration or sooner termination of this Lease, Landlord shall have the option (exercisable upon sixty (60) days notice to Tenant except in the case of a termination of this Lease due to a default by Tenant, in which case no such notice shall be required) to require Tenant to remove at Tenant's sole cost and expense any and all improvements made by Tenant to the Leased Premises or to elect to keep such improvement as Landlord's property. In the event Tenant is required to remove any improvements, (i) Tenant shall be responsible for the repair of all damage caused by the installation or removal thereof, and (ii) if Tenant fails to properly remove such improvements or provide for the repair of the Leased Premises, Landlord may perform the same at Tenant's cost and expense.

Section 7.2. Signs. Tenant shall have the right to place signs on the interior or exterior of the Leased Premises with the prior written approval of Landlord.

#### ARTICLE VIII. MAINTENANCE OF LEASED PREMISES

Section 8.1. Maintenance. Landlord shall be responsible for all repairs and maintenance for the Leased Premises, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, including, but not limited to, plumbing, heating, electrical, air conditioning, plate glass and windows. Notwithstanding the foregoing, Tenant shall be responsible for all maintenance and repairs necessitated by the negligence of Tenant, its employees and invitees.

Section 8.2. Surrender of Leased Premises. At the expiration of the tenancy hereby created, Tenant shall surrender the Leased Premises and all keys for the Leased Premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, which Landlord has granted permission to have left in the Leased Premises. At such time, the Leased Premises shall be broom clean and in good condition and repair, commensurate with its age. If Tenant leaves any of Tenant's personal property in the Leased Premises, Landlord, at its option, may remove and store any or all of such property at Tenant's expense or may deem the same abandoned and, in such event, the property deemed abandoned shall become the property of Landlord.

#### ARTICLE IX. INSURANCE

Section 9.1. Liability Insurance of Tenant. Tenant covenants and agrees that it will, at all times during the term of this Lease, keep in full force and effect a policy of public liability and property damage insurance with respect to the Leased Premises and the business operated by Tenant and any sub-tenants of Tenant on the Leased Premises in which the limits of public liability for bodily injury and property damage shall not be less than One Million Dollars (\$1,000,000) per accident, combined single limit. The policy shall name Landlord as additional insured. The policy shall provide that the insurance thereunder shall not be cancelled until thirty (30) days after written notice thereof to all named insured.

Section 9.2. Indemnification of Landlord. Tenant shall reimburse Landlord for, and shall indemnify, defend and hold Landlord, its employees and agents harmless from and against, all costs, damages, claims, liabilities, expenses (including attorney's fees), losses and court costs suffered by or claimed against Landlord, directly or indirectly, based on or arising out of, in whole or in part from (a) use and occupancy of the premises or the business conducted therein by Tenant, (b) any act or omission of Tenant or any invitee, (c) any breach of Tenant's obligations under this lease, including failure to surrender the premises upon the expiration or earlier termination of the lease term, or (d) any entry by Tenant or any invitee upon the land prior to the lease commencement date.

Section 9.3. Fire and Extended Coverage. Landlord agrees that it will, during the initial and any renewal term of this Lease, insure and keep insured, for the benefit of Landlord and its respective successors in interest, the Leased Premises, or any portion thereof then in being. Such policy shall contain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at

standard rates under policies of insurance commonly referred to and known as "extended coverage," as the same may exist from time to time. Landlord agrees to name Tenant as an additional insured on such policy, as its interest may appear.

Section 9.4. Evidence of Insurance. Copies of policies of insurance (or certificates of the insurers) for insurance required to be maintained by Tenant and Landlord pursuant to Sections 9.1 and 9.2 shall be delivered by Landlord or Tenant, as the case may be, to the other upon the issuance of such insurance and thereafter not less than thirty (30) days prior to the expiration dates thereof.

Section 9.5. Waiver of Subrogation. Landlord and Tenant each hereby releases the other from any and all liability or responsibility to itself or anyone claiming through or under it by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty results from the negligence of itself or anyone for whom it may be responsible, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as any such release shall not adversely affect or impair the releasor's policies or insurance or prejudice the right of the releasor to recover thereunder.

#### ARTICLE X. WASTE, NUISANCE, COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Section 10.1. Waste or Nuisance. Tenant shall not commit or suffer to be committed any waste or any nuisance upon the Leased Premises.

Section 10.2. Governmental Regulations. During the term of this Lease, Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Leased Premises or Tenant's use and occupancy thereof.

#### ARTICLE XI. FIRE OR OTHER CASUALTY

If the Leased Premises shall be damaged so as to render two-thirds (2/3) or more of the Leased Premises untenantable by fire or other casualty insured against under the insurance required to be carried by Landlord pursuant to Section 9.2, Landlord may elect to either terminate this Lease as of the date of damage or repair the Leased Premises. Unless Landlord elects to terminate this Lease, such damage or destruction shall in no way annul or void this Lease except that Tenant shall be entitled to a proportionate reduction of the rent payable under Article IV while such repairs are being made, such proportionate reduction to be based upon the proportion of the Leased Premises rendered untenantable as a result of such damage. Notwithstanding the foregoing, if any damage or destruction from any cause whatsoever has not been repaired and such repairs have not commenced within one hundred eighty (180) days of the date thereof, Tenant may, as its exclusive remedy, terminate this Lease upon thirty (30) days written notice to Landlord.

#### ARTICLE XII. CONDEMNATION

If the whole or any part of the Leased Premises shall be taken under the power of eminent domain, then this Lease shall terminate as to the part so taken on the day when Tenant is required to yield possession thereof, the Landlord shall make such repairs and alterations as may be necessary in order to restore the part not taken to useful condition; and the rent payable under Article IV shall be reduced proportionately as to the portion of the Leased Premises so taken. If the amount of the Leased Premises so taken is such as to impair substantially the usefulness of the Leased Premises for the purposes for which the same are hereby leased, then either party shall have the option to terminate this Lease as of the date when Tenant is required to yield possession.

#### ARTICLE XIII. DEFAULT OF TENANT

Section 13.1. Default. The occurrence of any of the following shall be deemed a "default" under this Lease:

- (a) Tenant fails to pay when due any amount of rent, additional rent or other monies due under this Lease, including Articles IV and V, and such payment is not received by Landlord within ten (10) days after written notice of such failure is received by Tenant; or
- (b) a default in any of the other provisions of this Lease, and such default continues uncured for a period of thirty (30) days after written notice thereof from Landlord.

Section 13.2. Remedies. In the event of any default or breach hereof by Tenant, Landlord shall have the right (in addition to all other rights and remedies provided by law) to terminate this Lease or to re-enter and take possession of the Leased Premises, peaceably or by force, and to remove any property therein without liability for damage to and without obligation to store such property, but may store the same at Tenant's expense, and to collect from Tenant all rent then due and which would accrue for the unexpired portion of the term hereof, together with reasonable attorney's fees. In addition, in the event of a failure to pay rent, additional rent or other money within five (5) days of its due date, Tenant shall pay to Landlord the greater of Twenty-Five and no/100 Dollars (\$25.00) or one half (1/2) of one percent (1%) of such sum for each day after the fifth day such rent or other money is late.

ARTICLE XIV. HOLDING OVER, SIGNS, SUCCESSORS

Section 14.1. Holding Over. Any holding over after the expiration of the term hereof, with the consent of Landlord, shall be construed to be a tenancy from month-to-month at the same rent herein specified (prorated on a monthly basis) and shall otherwise be on the terms and conditions herein specified as far as applicable. During any hold-over period, this Lease may be terminated at will by either party upon 30 days' written notice.

Section 14.2. Showing the Leased Premises. During the last ninety (90) days of the term hereof, Tenant shall allow Landlord, or its agents, to show the Leased Premises to prospective tenants or purchasers at such times as Landlord may reasonably desire.

Section 14.3. Successors. All rights and liabilities herein given to, or imposed upon the respective parties hereto, shall extend to and bind the heirs, executors, administrators, successors and permitted assigns of the parties. All covenants, representations and agreements of Landlord shall be deemed the covenants, representations and agreements of the fee owner from time to time of the Leased Premises and Landlord shall be automatically released of all liability under this Lease from and after the date of any sale by Landlord of the Leased Premises. All covenants, representations and agreements of Tenant shall be deemed the covenants, representations, and agreements of the occupant or occupants of the Leased Premises.

ARTICLE XV. BROKER'S FEES

Tenant and Landlord hereby warrant that there are no brokerage commissions due in connection with this Lease.

ARTICLE XVI. NO ASSIGNMENT

Tenant shall not assign this Lease or sublet all or any portion of the Leased Premises, either directly or indirectly, without the prior written consent of Landlord. No assignment, sublease or transfer of this Lease by Tenant shall (i) be effective unless and until the assignee, subtenant or transferee expressly assumes in writing Tenant's obligations under this Lease, or (ii) relieve Tenant of its obligations hereunder, and Tenant shall thereafter remain liable for the obligations of the Tenant under this Lease whether arising before or after such assignment, sublease or transfer.

ARTICLE XVII. SUBORDINATION OF LEASE

This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to (1) any mortgages, deeds of trust and building loan agreements affecting the Leased Premises, including any and all renewals, replacements, modifications, substitutions, supplements and extensions thereof, and (2) each advance made or to be made thereunder. In confirmation of such subordination, Tenant shall promptly upon the request of Landlord execute and deliver an instrument in recordable form satisfactory to Landlord evidencing such subordination; and if Tenant fails to execute, acknowledge or deliver any such instrument within ten (10) days after request therefor, Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on behalf of Tenant. Tenant further agrees that in the event any such mortgagee or lender requests reasonable modifications to this Lease as a condition of such financing, Tenant shall not withhold or delay its consent thereto.

ARTICLE XVIII. MISCELLANEOUS

Section 18.1. Waiver. The waiver by Landlord or Tenant of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition contained herein. The subsequent acceptance or payment of rent hereunder by Landlord or Tenant, respectively, shall not be deemed to be a waiver of any breach by Tenant or Landlord, respectively, of any term, covenant or condition of this Lease regardless of knowledge of such breach at the time of acceptance or payment of such rent. No covenant, term, or condition of this Lease shall be deemed to have been waived by Tenant or Landlord unless the waiver be in writing signed by the party to be charged thereby.

Section 18.2. Entire Agreement. This Lease, and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises; and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced in writing and signed by them.

Section 18.3. Notices. Any notice, demand, request or other instrument which may be, or are required to be given under this Lease, shall be in writing and delivered in person or by United States certified mail, postage prepaid, and shall be addressed:

- (a) if to Landlord, at  
County of Albemarle  
County Executive's Office  
401 McIntire Road  
Charlottesville, VA 22902  
or at such other address as Landlord may designate by written notice;

(b) if to Tenant, at  
Lewis & Clark Exploratory Center  
Suite \_\_\_\_\_  
401 McIntire Rd  
Charlottesville, VA 22902

Section 18.4. Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease nor in any way do they affect this Lease.

Section 18.5. Partial Invalidity. If any term, covenant or condition of this Lease, or the application thereof, to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 18.6. Recording. Upon request of either party, a memorandum of lease will be executed and recorded. Such memorandum shall contain any provisions of this Lease which either party requests except for the provisions of Article IV, which shall not be included. The cost of recording such memorandum of lease or a short form hereof shall be borne by the party requesting such recordation.

Section 18.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 18.8. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 18.9. This lease is subject to annual appropriations by the Board of Supervisors of Albemarle County, Virginia.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument as of the day and year first above written.

**TENANT**

**LEWIS & CLARK EXPLORATORY CENTER, INC.**

By: \_\_\_\_\_  
Francis McQ. Lawrence, President

**LANDLORD**

This Lease is executed on behalf of the County of Albemarle by Robert W. Tucker, Jr., County Executive, following a duly-held public hearing, and pursuant to a Resolution of the Albemarle County Board of Supervisors.

**COUNTY OF ALBEMARLE, VIRGINIA**

By: \_\_\_\_\_  
Print Name: Robert W. Tucker, Jr. \_\_\_\_\_  
Title: County Executive \_\_\_\_\_

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

All that certain portion of the Albemarle County Office Building, located at 401 McIntire Road, Charlottesville, Virginia, shown shaded in blue on the attached floor plan titled "First Floor Plan Existing," and being 307 square feet of office space, more or less.

AGREEMENT OF LEASE

THIS LEASE AGREEMENT is made as of October 17, 2007 by and between the COUNTY OF ALBEMARLE, VIRGINIA, Landlord, and PIEDMONT HOUSING ALLIANCE, INC., Tenant.

ARTICLE I. PREMISES AND IMPROVEMENTS

In consideration of the rents and covenants herein set forth, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the premises described on Exhibit A attached hereto and made a part hereof together with any and all improvements thereon (the "Leased Premises"). The Leased Premises shall be occupied by the Piedmont Housing Alliance, Inc.

## ARTICLE II. TITLE: QUIET ENJOYMENT

So long as Tenant is not in default hereunder, Tenant shall have peaceful and quiet enjoyment, use and possession of the Leased Premises without hindrance on the part of the Landlord or anyone claiming by, through, or under Landlord.

## ARTICLE III. TERM

Section 3.1. Commencement and Expiration. The term of this Lease shall commence on August 1, 2005 (the "Date of Commencement") and shall expire December 31<sup>st</sup>, 2005 unless extended or sooner terminated. All references to the "term" of this Lease shall, unless the context indicates a different meaning, be deemed to be a reference to the term described herein.

Section 3.2. Renewal. This Lease may be renewed for an additional period as may be mutually agreed by the Landlord and Tenant. If renewal is not agreed upon by the Landlord and Tenant, this Lease shall expire upon expiration of the initial term.

## ARTICLE IV. RENT

Section 4.1. Annual Rent. Commencing upon the Date of Commencement, Tenant agrees to pay to Landlord monthly rent of \$2,000.00 payable on the first day of each month during the term hereof.

The lease term may be extended on a month to month at this monthly rate if mutually agreeable to both Landlord and Tenant. Such agreement must be executed in writing no less than 30 days prior to the expiration date provided above.

Section 4.2. Address for Rent Payment. All payments of rent due Landlord pursuant to Section 4.1 shall be made to Landlord at the address specified in Section 15.3, or to such other party or at such other address as hereinafter may be designated by Landlord by written notice delivered to Tenant at least ten (10) days prior to the next ensuing monthly rental payment date.

## ARTICLE V. UTILITIES AND SERVICES

Landlord shall provide water, sewer, electricity, and heating and cooling at no additional cost to Tenant. Tenant shall provide telephone, custodial and all other services.

## ARTICLE VI. USE OF PROPERTY

Section 6.1. Permitted Use. Tenant shall have use of the Leased Premises for offices. Tenant shall also have use of the lunchroom, restrooms, elevators and main entry corridors, which areas will not be calculated in the gross square footage for rental purposes.

Section 6.2. Parking. Tenant shall be entitled to the use of parking spaces in the Lower Parking Lot and an access easement to the Leased Premises.

## ARTICLE VII. ALTERATIONS, IMPROVEMENTS, FIXTURES AND SIGNS

### Section 7.1. Installation by Tenant.

(a) Tenant may, from time to time, make or cause to be made any interior non-structural alterations, additions or improvements which do not damage or alter the Leased Premises, provided that Landlord's consent shall have first been obtained in writing, and provided that Tenant shall obtain all required governmental permits for such alterations, additions or improvements.

(b) Tenant may, from time to time, make interior structural alterations, additions or improvements, only with Landlord's prior written consent to plans and specifications therefor, which consent shall not be unreasonably withheld. Upon the expiration or sooner termination of this Lease, Landlord shall have the option (exercisable upon sixty (60) days notice to Tenant except in the case of a termination of this Lease due to a default by Tenant, in which case no such notice shall be required) to require Tenant to remove at Tenant's sole cost and expense any and all improvements made by Tenant to the Leased Premises or to elect to keep such improvement as Landlord's property. In the event Tenant is required to remove any improvements, (i) Tenant shall be responsible for the repair of all damage caused by the installation or removal thereof, and (ii) if Tenant fails to properly remove such improvements or provide for the repair of the Leased Premises, Landlord may perform the same at Tenant's cost and expense.

Section 7.2. Signs. Tenant shall have the right to place signs on the interior or exterior of the Leased Premises with the prior written approval of Landlord.

## ARTICLE VIII. MAINTENANCE OF LEASED PREMISES

Section 8.1. Maintenance. Landlord shall be responsible for all repairs and maintenance for the Leased Premises, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, including, but not limited to, plumbing, heating, electrical, air conditioning, plate glass and windows. Notwithstanding the foregoing, Tenant shall be responsible for all maintenance and repairs necessitated by the negligence of Tenant, its employees and invitees.

Section 8.2. Surrender of Leased Premises. At the expiration of the tenancy hereby created, Tenant shall surrender the Leased Premises and all keys for the Leased Premises to Landlord at the place then fixed

for the payment of rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, which Landlord has granted permission to have left in the Leased Premises. At such time, the Leased Premises shall be broom clean and in good condition and repair, commensurate with its age. If Tenant leaves any of Tenant's personal property in the Leased Premises, Landlord, at its option, may remove and store any or all of such property at Tenant's expense or may deem the same abandoned and, in such event, the property deemed abandoned shall become the property of Landlord.

#### ARTICLE IX. INSURANCE

Section 9.1. Liability Insurance of Tenant. Tenant covenants and agrees that it will, at all times during the term of this Lease, keep in full force and effect a policy of public liability and property damage insurance with respect to the Leased Premises and the business operated by Tenant and any sub-tenants of Tenant on the Leased Premises in which the limits of public liability for bodily injury and property damage shall not be less than One Million Dollars (\$1,000,000) per accident, combined single limit. The policy shall name Landlord as additional insured. The policy shall provide that the insurance thereunder shall not be cancelled until thirty (30) days after written notice thereof to all named insured.

Section 9.2. Indemnification of Landlord. Tenant shall reimburse Landlord for, and shall indemnify, defend and hold Landlord, its employees and agents harmless from and against, all costs, damages, claims, liabilities, expenses (including attorney's fees), losses and court costs suffered by or claimed against Landlord, directly or indirectly, based on or arising out of, in whole or in part from (a) use and occupancy of the premises or the business conducted therein by Tenant, (b) any act or omission of Tenant or any invitee, (c) any breach of Tenant's obligations under this lease, including failure to surrender the premises upon the expiration or earlier termination of the lease term, or (d) any entry by Tenant or any invitee upon the land prior to the lease commencement date.

Section 9.3. Fire and Extended Coverage. Landlord agrees that it will, during the initial and any renewal term of this Lease, insure and keep insured, for the benefit of Landlord and its respective successors in interest, the Leased Premises, or any portion thereof then in being. Such policy shall contain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as "extended coverage," as the same may exist from time to time. Landlord agrees to name Tenant as an additional insured on such policy, as its interest may appear.

Section 9.4. Evidence of Insurance. Copies of policies of insurance (or certificates of the insurers) for insurance required to be maintained by Tenant and Landlord pursuant to Sections 9.1 and 9.2 shall be delivered by Landlord or Tenant, as the case may be, to the other upon the issuance of such insurance and thereafter not less than thirty (30) days prior to the expiration dates thereof.

Section 9.5. Waiver of Subrogation. Landlord and Tenant each hereby releases the other from any and all liability or responsibility to itself or anyone claiming through or under it by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty results from the negligence of itself or anyone for whom it may be responsible, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as any such release shall not adversely affect or impair the releasor's policies or insurance or prejudice the right of the releasor to recover thereunder.

#### ARTICLE X. WASTE, NUISANCE, COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Section 10.1. Waste or Nuisance. Tenant shall not commit or suffer to be committed any waste or any nuisance upon the Leased Premises.

Section 10.2. Governmental Regulations. During the term of this Lease, Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Leased Premises or Tenant's use and occupancy thereof.

#### ARTICLE XI. FIRE OR OTHER CASUALTY

If the Leased Premises shall be damaged so as to render two-thirds (2/3) or more of the Leased Premises untenantable by fire or other casualty insured against under the insurance required to be carried by Landlord pursuant to Section 9.2, Landlord may elect to either terminate this Lease as of the date of damage or repair the Leased Premises. Unless Landlord elects to terminate this Lease, such damage or destruction shall in no way annul or void this Lease except that Tenant shall be entitled to a proportionate reduction of the rent payable under Article IV while such repairs are being made, such proportionate reduction to be based upon the proportion of the Leased Premises rendered untenantable as a result of such damage. Notwithstanding the foregoing, if any damage or destruction from any cause whatsoever has not been repaired and such repairs have not commenced within one hundred eighty (180) days of the date thereof, Tenant may, as its exclusive remedy, terminate this Lease upon thirty (30) days written notice to Landlord.

#### ARTICLE XII. CONDEMNATION

If the whole or any part of the Leased Premises shall be taken under the power of eminent domain, then this Lease shall terminate as to the part so taken on the day when Tenant is required to yield possession thereof, the Landlord shall make such repairs and alterations as may be necessary in order to restore the part not taken to useful condition; and the rent payable under Article IV shall be reduced proportionately as to the

portion of the Leased Premises so taken. If the amount of the Leased Premises so taken is such as to impair substantially the usefulness of the Leased Premises for the purposes for which the same are hereby leased, then either party shall have the option to terminate this Lease as of the date when Tenant is required to yield possession.

#### ARTICLE XIII DEFAULT OF TENANT

Section 13.1. Default. The occurrence of any of the following shall be deemed a "default" under this Lease:

(a) Tenant fails to pay when due any amount of rent, additional rent or other monies due under this Lease, including Articles IV and V, and such payment is not received by Landlord within ten (10) days after written notice of such failure is received by Tenant; or

(b) a default in any of the other provisions of this Lease, and such default continues uncured for a period of thirty (30) days after written notice thereof from Landlord.

Section 13.2. Remedies. In the event of any default or breach hereof by Tenant, Landlord shall have the right (in addition to all other rights and remedies provided by law) to terminate this Lease or to re-enter and take possession of the Leased Premises, peaceably or by force, and to remove any property therein without liability for damage to and without obligation to store such property, but may store the same at Tenant's expense, and to collect from Tenant all rent then due and which would accrue for the unexpired portion of the term hereof, together with reasonable attorney's fees. In addition, in the event of a failure to pay rent, additional rent or other money within five (5) days of its due date, Tenant shall pay to Landlord the greater of Twenty-Five and no/100 Dollars (\$25.00) or one half (1/2) of one percent (1%) of such sum for each day after the fifth day such rent or other money is late.

#### ARTICLE XIV HOLDING OVER, SIGNS, SUCCESSORS

Section 14.1. Holding Over. Any holding over after the expiration of the term hereof, with the consent of Landlord, shall be construed to be a tenancy from month-to-month at the same rent herein specified (prorated on a monthly basis) and shall otherwise be on the terms and conditions herein specified as far as applicable. During any hold-over period, this Lease may be terminated at will by either party upon 30 days' written notice.

Section 14.2. Showing the Leased Premises. During the last ninety (90) days of the term hereof, Tenant shall allow Landlord, or its agents, to show the Leased Premises to prospective tenants or purchasers at such times as Landlord may reasonably desire.

Section 14.3. Successors. All rights and liabilities herein given to, or imposed upon the respective parties hereto, shall extend to and bind the heirs, executors, administrators, successors and permitted assigns of the parties. All covenants, representations and agreements of Landlord shall be deemed the covenants, representations and agreements of the fee owner from time to time of the Leased Premises and Landlord shall be automatically released of all liability under this Lease from and after the date of any sale by Landlord of the Leased Premises. All covenants, representations and agreements of Tenant shall be deemed the covenants, representations, and agreements of the occupant or occupants of the Leased Premises.

#### ARTICLE XV. BROKER'S FEES

Tenant and Landlord hereby warrant that there are no brokerage commissions due in connection with this Lease.

#### ARTICLE XVI. NO ASSIGNMENT

Tenant shall not assign this Lease or sublet all or any portion of the Leased Premises, either directly or indirectly, without the prior written consent of Landlord. No assignment, sublease or transfer of this Lease by Tenant shall (i) be effective unless and until the assignee, subtenant or transferee expressly assumes in writing Tenant's obligations under this Lease, or (ii) relieve Tenant of its obligations hereunder, and Tenant shall thereafter remain liable for the obligations of the Tenant under this Lease whether arising before or after such assignment, sublease or transfer.

#### ARTICLE XVII. SUBORDINATION OF LEASE

This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to (1) any mortgages, deeds of trust and building loan agreements affecting the Leased Premises, including any and all renewals, replacements, modifications, substitutions, supplements and extensions thereof, and (2) each advance made or to be made thereunder. In confirmation of such subordination, Tenant shall promptly upon the request of Landlord execute and deliver an instrument in recordable form satisfactory to Landlord evidencing such subordination; and if Tenant fails to execute, acknowledge or deliver any such instrument within ten (10) days after request therefor, Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on behalf of Tenant. Tenant further agrees that in the event any such mortgagee or lender requests reasonable modifications to this Lease as a condition of such financing, Tenant shall not withhold or delay its consent thereto.

ARTICLE XVIII. MISCELLANEOUS

Section 18.1. Waiver. The waiver by Landlord or Tenant of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition contained herein. The subsequent acceptance or payment of rent hereunder by Landlord or Tenant, respectively, shall not be deemed to be a waiver of any breach by Tenant or Landlord, respectively, of any term, covenant or condition of this Lease regardless of knowledge of such breach at the time of acceptance or payment of such rent. No covenant, term, or condition of this Lease shall be deemed to have been waived by Tenant or Landlord unless the waiver be in writing signed by the party to be charged thereby.

Section 18.2. Entire Agreement. This Lease, and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises; and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced in writing and signed by them.

Section 18.3. Notices. Any notice, demand, request or other instrument which may be, or are required to be given under this Lease, shall be in writing and delivered in person or by United States certified mail, postage prepaid, and shall be addressed:

(c) if to Landlord, at  
County of Albemarle  
County Executive's Office  
401 McIntire Road  
Charlottesville, VA 22902  
or at such other address as Landlord may designate by written notice;

(d) if to Tenant, at  
Piedmont Housing Alliance  
Suite 110  
401 McIntire Rd  
Charlottesville, VA 22902

Section 18.4. Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease nor in any way do they affect this Lease.

Section 18.5. Partial Invalidity. If any term, covenant or condition of this Lease, or the application thereof, to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 18.6. Recording. Upon request of either party, a memorandum of lease will be executed and recorded. Such memorandum shall contain any provisions of this Lease which either party requests except for the provisions of Article IV, which shall not be included. The cost of recording such memorandum of lease or a short form hereof shall be borne by the party requesting such recordation.

Section 18.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 18.8. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 18.9. This lease is subject to annual appropriations by the Board of Supervisors of Albemarle County, Virginia.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument as of the day and year first above written.

**TENANT**

**PIEDMONT HOUSING ALLIANCE, INC.**

By: \_\_\_\_\_  
Stuart Armstrong, Executive Director

**LANDLORD**

This Lease is executed on behalf of the County of Albemarle by Robert W. Tucker, Jr., County Executive, following a duly-held public hearing, and pursuant to a Resolution of the Albemarle County Board of Supervisors.

**COUNTY OF ALBEMARLE, VIRGINIA**

By: \_\_\_\_\_  
Print Name: Robert W. Tucker, Jr.  
Title: County Executive

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

All that certain portion of the Albemarle County Office Building, located at 401 McIntire Road, Charlottesville, Virginia, shown shaded in blue on the attached floor plan titled "First Floor Plan Existing," and being 3,062 square feet of office space, more or less.

Agenda Item No. 7. **SP-2005-004. Final Touch Tree Service, LLC (Sign #73). Public hearing** on a request for Home Occupation Class B for office use to support tree trimming business, in accord w/Sec 10.2.2.31 of the Zoning Ord which allows for Home Occupations Class B in the RA by special use permit. TM 7, P 30 contains approx 5 acs. Loc at 2985 Shiffletts Mill Rd (Rt 687), approx 1 mile W of its intersec w/Free Union Rd (Rt 601). Znd RA. White Hall Dist. (Advertised in Daily Progress on July 25 and August 1, 2005).

Mr. Cilimberg reported that this permit would allow a home occupation class B permit for a home office for the tree service business, to be located in an accessory building detached from the resident from the property. He said that there are no employees other than members of the household, and there are no customers visiting the site. Mr. Cilimberg pointed out that storage and maintenance of equipment take place at another location. He reported that staff has determined that no additional traffic would be generated from the proposal, and there are no noise or lighting impacts to surrounding neighbors. He mentioned that there are no unfavorable factors identified, and staff and the Planning Commission have recommended approval with four conditions including one addressing sight distance.

Ms. Thomas asked if VDOT would require that sight distance provision. Mr. Cilimberg replied that they would not because there is no new entrance being established.

Ms. Thomas said that there is no entrance and no increase in traffic.

Mr. Boyd commented that he is not sure why the county is even reviewing this, as this is only a home office.

The Chairman opened the public hearing.

The applicant, Kim Umstader, addressed the Board and said she would answer questions.

Ms. Thomas asked the applicant about the requirement to increase the sight line at the entryway.

Ms. Umstader replied that there is a weeping cherry tree that impacts the sight distance, and they would move it if they had to. She said that in the summertime, it can block sight distance somewhat.

There being no other comments, the public hearing was closed.

**Motion** was offered by Mr. Wyant to approve SP-2005-004, subject to the four conditions recommended by the Planning Commission. The motion was **seconded** by Ms. Thomas. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dorrier, Mr. Rooker, Ms. Thomas, Mr. Wyant and Mr. Bowerman.

NAYS: None.

**(Note: The conditions of approval are set out in full below).**

1. Structures used for this home occupation shall not exceed four hundred (400) square feet in size and shall be limited to the building labeled "Util Bldg" on the physical survey plat of the property dated July 17, 1996. (Attachment B);
2. No tree service equipment or materials shall be stored on the property;
3. No customers of the tree service business shall visit the site; and
4. Prior to the issuance of a Zoning Clearance for the home occupation class B, the applicant shall provide sight distance at the entrance/exit to the property onto Shifflett's Mill Road (Route 687) to the satisfaction of the Virginia Department of Transportation.

Agenda Item No. 8. **ZMA-2004-007. Belvedere (Signs #62,76&84). Public hearing** on a request to rezone approx 206.682 acs from R-4 to NMD to allow up to 775 du, w/overall density of 3.74 du/ac, ranging from density of 1.6 du/ac in some areas to 9.4 du in others. TM 61 Ps 154, 157, 158, 160 (portion) & 161, TM 62 Ps 2A (portion) 2B (portion), 2C, 3, 5 & 6A, & TM 62A3 PI 1. Loc on E side of Rio Rd (Rt 631) immediately E of Southern Railroad. (The Comp Plan designates this property as

Neighborhood Density in northern portion of property (3-6 du/ac), Urban Density in middle & southern portions (6-34 du/ac) & Community Service adjac to railroad, in Neighborhood 2. Rio Dist. (Advertised in Daily Progress on July 25 and August 1, 2005).

Mr. Cilimberg said that the Board identified issues at last week's work session for the applicant to address. He reported that there are several transportation and road related updates to provide, including a question about the accommodations for the North Free State Connector Road. Mr. Cilimberg stated that the applicant has proffered to give the right of way for the highway alignment. He also said that the existing Free State Road had at one time a proffer to allow dedication of a 50-foot right of way along Tax Map 61, Parcels 160 and 161, and that proffer has now been removed so those properties would only be accessible by prescriptive easement.

Mr. Cilimberg reported that the initial two lanes to be built as part of this project may not allow for a second two lanes to be built throughout the entire length of the development. He said that the applicant has also provided a concept that meets the width requirements for the road with sidewalks, median, etc. for Belvedere Boulevard. Mr. Cilimberg reported that formerly, the proffer of the greenway right of way stipulated at least 100 feet of width to be dedicated to the county for a greenway trail, but the revised proffer substitutes "at least" with "no more than," which could limit the 100 feet. He added that the sloping banks might not allow for a greenway in other sections of the property.

Regarding the affordable housing provisions, he said, there has not been any new information provided on the applicant's intent.

Mr. Graham addressed the Board regarding identified transportation issues. He said that the "choke point" was a concern, and VDOT has come up with a road section that they would find acceptable that calls for two lanes through the section and two bike lanes, but provides a continuous sidewalk on one side with a two-foot strip between it and the curb with no median and planting area. Mr. Graham said that there would not be a sidewalk on the other side, and the county would typically ask for the extra dedication for right of way for the other sidewalk. He added that the swim club could give the extra sliver to allow for that sidewalk.

Ms. Thomas noted that it would be possible for the applicant to say he would build the sidewalk if and when the swim club agrees to it being built. Mr. Graham responded that the applicant has indicated he would construct the sidewalk if the right of way were available now.

Mr. Bowerman asked if the applicant has asked the county to take the right of way. Mr. Graham replied that he had not. It appears the sliver of dedication would not impact any of their facilities, but would impact some of the useable yard that they have surrounding the pool facilities. He said that it would only mean about six feet of dedication if just a sidewalk were added. Mr. Graham stated that the applicant is building improvements right up to their available right of way, and it is rare that you can construct improvements within the available right of way, which raises the question as to whether adjacent property owners would allow use of their property while the road was constructed. It is a potential issue for the applicant as far as being able to go forward.

Mr. Rooker said that if it were approved, the applicant would have to work those things out at the site plan level. Mr. Graham responded that the applicant is fully aware that they are proceeding at their own risk in that regard.

Mr. Graham reported that one other issue related to the "roundabout," as it would cause considerable problems and cost to relocate in the event the North Free State Connector is built. He said that the applicant has provided a sketch that proposes a way to accommodate the highway, but staff has determined it does not quite work, because it shows the roundabout on the swim club's right of way.

Mr. Graham noted that the internal road would be the primary means of access for the potential 4,000 vehicle trips per day for the development, versus the previous plan showing traffic going onto the future parkway. He explained that the traffic would still be coming down the North Free State Connector, but it would be diverted and go through the units, adding that it is essential to deal with the roundabout placement issue now. It does need further refinement. Mr. Graham then showed a rendering of how the traffic would have to flow through the residential development, turning a minor street into a major road.

Mr. Bowerman commented that the permanent location of the roundabout would be more interior to their property.

Mr. Boyd asked why that would change the entrance. Mr. Graham replied that the entrance would still come through the roundabout, but the roads that were fairly minor would now become major traffic roads at that one point. He said that the original design is better, but would not work if the Free State Connector is built.

Mr. Rooker asked why a roundabout is needed. Mr. Graham responded that it is a feature the applicant wanted to use, as there is a lot of traffic and this is a functional way to handle the volume.

Mr. Graham said that there had been discussion of shifting the lanes of the connector to the east and the applicant has done that in part of the plan, but that would shift away the planned connector alignment and require a lot of fill. He added that the downside of not building in anticipation of the connector is there would have to be another road built as a temporary road and shift the other one, tear out improvements already built, build the new permit improvements then build the other two lanes to the west. If we really think the North Free State Connector is going to happen sometime in the future, he

would advise the Board to make sure we are building those northbound lanes in the location that will serve them.

Mr. Graham pointed out where the 50-foot simple dedication of right of way has been requested so that those properties could eventually be accessed. He noted that staff has not discussed this with the applicant yet.

Mr. Graham said that the last issue is how to connect through to Free State Road from Belvedere Boulevard, and VDOT is leaning very heavily towards the "Road K" option. Jack Kelsey, the County Engineer, is leaning toward another option. He added that he does not think it will be a major issue at the site plan level. We need to make sure as part of the rezoning we are allowing enough flexibility that we can decide on that alignment at a future date.

Mr. Rooker asked if it is within the applicant's control to do either option. Mr. Graham responded that both options are within the applicant's purview, and would be resolved at the preliminary site plan level.

Mr. Boyd asked where the interconnecting roads are from Dunlora, etc. Mr. Graham replied that there is a proposed connector that the county feels is important, and there is another potential connection through Dunlora that has not been proposed. He said that the connection from Dunlora would be with Loring Run.

Mr. Cilimberg commented that Free State Road would also be a connection to serve other properties.

Mr. Graham emphasized that staff wants to make sure that future connections could be made. He added that very little of the Belvedere development would likely use Dunlora to get out, but the opposite is likely to occur.

Before opening the public hearing, Mr. Rooker said it is unlikely that the Board would make a decision tonight because of the proffer status. He then opened the public hearing and asked the applicant to come forward.

Mr. Don Skelly addressed the Board on behalf of the applicant, Frank Stoner. Mr. Skelly reported that the 50-foot right of way was removed after meeting with Mr. Graham and VDOT, in response to the new alignment that eliminated the need for it because of a solution that would have the road come out and form a "T" that would provide access to both parcels.

Mr. Rooker said that it would be helpful if Mr. Graham would comment on that point. Mr. Graham replied that he never wanted the 50-foot right of way taken out, adding that it is appropriate for that to be there. Mr. Skelly said that he thought it was no longer required, but would be happy to look at it.

Mr. Skelly explained that the road through Belvedere is already in the Six Year Plan, and they have made a commitment to construct it, which has significant costs. He emphasized that they would be extremely reluctant to move the entire alignment over because of the costs associated with it.

Mr. Rooker commented that the road was moved between the last meeting and the one today. Mr. Skelly said that it was moved in response to Mr. Kelsey's comments, adding that there is a segment where it continues on its original alignment.

Mr. Graham clarified that the issue is if the road is not to be torn out in the future to accommodate the Free State connector, it all needs to be shifted over. Otherwise, we need to go into it with the understanding that there will be a section of North Free State Connector that will have to be torn out if and when that road is four-laned through.

Mr. Wyant said that he heard this road would not be built to standards to accommodate future traffic. Mr. Graham replied that he has not heard that, and believes that it would be built to standard.

Mr. Skelly said that regarding the issue of the sidewalk, there is an existing gate that accesses pedestrian traffic into Fairview Swim Club, and VDOT is satisfied that providing a sheltered crossing and a sidewalk on one side addresses the key concerns.

Mr. Bowerman asked to define "sheltered crossing." Mr. Skelly responded that pedestrians only have to cross one lane of traffic before being able to reach a "safe haven" in the median.

Mr. Bowerman noted that the island is only four feet. Mr. Skelly said that there is not pedestrian accommodation for the bridge over the Norfolk Southern tracks, and staff had expressed concern that residents of Northfields might want to access the swim club and come up along the road and down to the current entrance. He stated that this would allow them the means of getting to or from the bridge without having to walk along the road, by crossing the road.

Mr. Rooker asked if the applicant would proffer that if the right of way were available they would complete the design to match the design on the rest of the road. Mr. Skelly agreed to provide full facilities on both sides of the road if the right of way should become available. He mentioned that they are in discussions with members of the Fairview Board to try and acquire the necessary right of way. Mr. Skelly added that they do feel it is necessary to have an Option B.

Mr. Davis pointed out that there is no proffer to reflect that sidewalk. Mr. Rooker said that that would need to be proffered. Mr. Skelly agreed to proffer that. He said that the bike lane has five feet on both sides of the road to accommodate traffic, both heading out as well as coming in.

Mr. Bowerman noted that there needs to be a construction easement off of the property to accomplish this, which the applicant currently does not have. Mr. Skelly acknowledged this, adding that it would need to be worked out at the site plan level.

Mr. Rooker said that this is a little different than what was presented last week, which showed only planting strips and lacking a median. Mr. Skelly responded that after meeting with Mr. Graham and Mr. Proctor (VDOT), the applicant changed the profile of the road slightly, increased the pavement width, adding that Mr. Proctor preferred a five-foot sidewalk and two-foot planting strip on one side rather than having a compressed sidewalk on both sides.

Mr. Davis pointed out that there are ADA requirements that must be met with a sidewalk.

Ms. Thomas said that she pictured a swim club as being accessed by young people walking and riding bikes, which has fueled her concern over the appropriate accommodations.

Mr. Skelly stated that they share that concern and have kept the bike paths fully striped and five feet in all plans. He stressed that there are no residents on one side of the entry boulevard, so the only people accessing the swim club on foot would be from Northfields – who would cross the bridge and immediately have access to a gate that brings them into the property at the corner. Mr. Skelly said that they have tried to accommodate Mr. Proctor's concerns about the Free State connector road by moving the roundabout and providing an alternate means of access where traffic would be routed through the development and enter through an area serving as a model home village and sales center. He explained that the current bridge is not at the height required by Norfolk Southern, and that is the reason for shifting the roundabout further into the property.

Mr. Bowerman asked if that changes the location of Free State Road. Mr. Skelly replied that it does not. He noted on the map presented where the traffic flow would be, stating that the Belvedere section of the road would terminate at one point with traffic going into lot 2 and coming into the roundabout. Mr. Skelly explained that Free State Road would continue in its current alignment, and then would intersect with the entry road at the roundabout.

Mr. Bowerman commented that the future parkway further back would have an entrance to the development. Mr. Skelly said that this would be the case.

Mr. Bowerman asked if the roundabout was to accommodate Belvedere traffic accessing the parkway. Mr. Skelly replied, "no". It would simply be to accommodate the intermingling of Free State Road traffic, not the connector.

Mr. Rooker noted that there is a large section of the road that will not be built under the current proposal that would have been built in the previous proposal. He added that the traffic on the northern part of the subdivision would be going through interior roads in the subdivision as opposed to being on the connector road. This is a significant change from the traffic pattern that the Board saw last week. Mr. Skelly agreed, adding that the change is strictly in response to VDOT's comments, which were received in the last couple days.

Mr. Rooker asked if VDOT has indicated a preference for the newly proposed traffic pattern. He asked if there would not be a roundabout, and if there was any rationale for this approach. Mr. Skelly responded that VDOT is concerned that integrating three roads at that juncture is a difficult task, and by segregating out two of those roads and allowing the parkway to serve as a non-connecting through-road at that juncture provides greater flexibility in the future and would be less expensive.

Mr. Graham stated that Mr. Kelsey has made this comment since February regarding the potential conflict with future construction, and has asked for that separation, pushing the intersection back from the Free State connector road. He pointed out the section of the road that would not be built, adding that the Free State Road needs to be separated from Belvedere Boulevard.

Mr. Rooker asked how staff viewed the 4,000 vehicle trips per day within the subdivision. Mr. Graham replied that staff feels that is a good thing.

Mr. Skelly said that the 100-foot greenway dedication was changed at the advice of counsel, and the applicant is happy to give a minimum as well as a maximum figure, and they have no problem giving 100 feet.

Mr. Bowerman emphasized that the county wants useable space and access, which might not be accomplished with 100 feet because of slopes. Mr. Skelly reported that he has met with Dan Mahon, of Community Development, and they are going to determine what areas might need more than 100 feet. They simply did not want to have an open-ended dedication.

Mr. Rooker said that the proffer could be worded: "the width of the right of way dedicated to the greenway would increase beyond 100 feet where necessary to provide a safe pedestrian travelway." Mr. Skelly agreed that this would be acceptable.

Ms. Thomas said that she was at a meeting recently where concern was raised about another subdivision where the greenway was unusable because of slopes. Mr. Wyant said that he also has concerns about the steepness of the slope in Belvedere. Mr. Skelly described the topography as “rather gentle on the bottomlands” that run along the river.

Mr. Stoner mentioned that he has met with Ron White (Housing Department) and Stu Armstrong, and said that he is serious about finding a solution, but feel that the affordable housing is a complicated matrix particularly in light of transportation issues. He said that if the road shifts over into the ravine the cost implications are overwhelming. Mr. Stoner said that he heard two needs in the affordable housing work session – more units that people could afford, and cash assistance to afford the affordable units that are available. He hopes to have something back to the Board within a week or so, adding that some of the issues need to be resolved, such as moving the road.

Mr. Rives Bailey, representing the Fairview Swim & Tennis Club, addressed the Board. He said that Fairview neither supports nor opposes the Belvedere development, recognizing that it is a large piece of land within the urban ring and in the development zone. Mr. Bailey said that he has had ongoing discussions with Stonehaus regarding an agreement with the Fairview property, particularly in the area nearing the roundabout. He explained that there are additional challenges within their own property, specifically the 100-foot interference of the Free State connector – which would take out the swimming pool, two tennis courts, and remove 25 percent of their land. Mr. Bailey said that this could seriously impact how the club serves its members, and greatly complicates discussions with Belvedere.

In response to Mr. Dorrier's request, Mr. Bailey illustrated on the map the location of the swim and tennis facilities. Mr. Bailey noted that they have 8.1 acres, and would be losing a little over two acres.

Mr. Rooker asked how much a two-lane road would compress the right of way requirement. Mr. Graham replied that it could get it down to 50 or 60 feet, depending on the bike and pedestrian accommodations. He cautioned that the grading in this area would be a challenge, and there will be disturbance of 80 to 100 feet in width just to build a roadway in the future. He does not see any way you could build that road and keep the existing pool.

Mr. Charlie Trachta addressed the Board. He commented that Albemarle keeps growing, but there are not adequate recreational outlets. Mr. Trachta said that this development is a large project, but offers so little in the way of proffers. He mentioned that Still Meadows' developer proffered protection for its neighbors, and paid \$1,000 per home to the school CIP. Mr. Trachta said that Stonehaus does not have the land it requires to build the infrastructure properly, and to do so they need the county to acquire property belonging to private landowners. He said that Stonehaus has forced an alignment that will cause Fairview to cease to exist, and the swim team just celebrated its 15<sup>th</sup> consecutive JSL championship. Mr. Trachta stated that if the Board approves the project, they will defeat Fairview and show these children that they will lose to money and greed. He added that he wondered what Charlotte Humphris would have thought about 775 housing units with one main way in and out.

Ms. Pat Earle of Dunlora addressed the Board to express concern about the plan as it is being developed. She said that the county's emphasis on interconnectivity in this situation is misplaced. Ms. Earle said that residents in the affected neighborhoods are very upset with this concept. It is one thing to connect newly developing subdivisions where the homeowners know beforehand that the street on which they are purchasing their home will become a major thoroughfare and could provide them with a working alternative to get them to and from town. She added that it is an entirely different matter to convert established neighborhoods where people purchased their homes largely because they wanted limited access, both for traffic as well as security reasons. Ms. Earle said that once Meadow Creek is built, there may not be a need to adversely affect these neighborhoods by connecting them. She added that trying to build this road seems to be driving up the costs of the homes, which runs counter to affordable housing efforts. Ms. Earle noted that the development may have limited appeal among homebuyers.

There being no further public comment, the matter was placed before the Board.

Mr. Bowerman commented that there is a lot more work to be done before the Board acts on this request.

Mr. Rooker noted that just because this project is approved does not mean that the North Free State Connector is going to be built, as that is a decision to be made based on transportation needs, availability of funds, etc. at that time. He acknowledged that the county would be reserving the right of way on the applicant's property.

Mr. Boyd commented that the entrance to the property is being built around the other road being built. He wonders if the whole design of Belvedere would change if [the road] was not in the picture.

Mr. Rooker pointed out that the road that was once called the “northern section of the Meadow Creek Parkway” was in the county's transportation plan for at least 12 years, and was a top priority. He said that the county tried for at least eight years to get the road categorized as primary so they could get funding, but were never successful in having that done. He mentioned that the county gets only \$3.7 million in secondary road funds for the entire county, and four years ago there was \$4.8 million, with construction costs doubling over that time period. Mr. Rooker emphasized that the county has tried to reserve a potential future transportation corridor with limited funds, and there is a development being built within that area.

Mr. Rooker asked if the connection for the Belvedere property is shown on the Dunlora plans. Mr. Graham responded that the county has always anticipated that the intent was to build the connection through to Free State with section 4 of Dunlora. He explained that Meadow Creek Parkway is scheduled for construction in Fall 2008, and by the time Belvedere comes on line it should be under construction. Mr. Graham mentioned that it would be a much more convenient access for people to go west to get on 29, and to get on Meadow Creek to go downtown.

Mr. Dorrier asked if VDOT had come up with the present design of the road that goes through Fairview. Mr. Graham replied that the alignment was generated by the county several years ago. Staff had looked at the best possible alignment given the constraints in the area and determined that the road should be located adjacent to the railroad right of way.

Mr. Bowerman noted that Fairview's problems are not related so much to Belvedere, but are more related to the road alignment. Mr. Graham agreed that the problems really arise because of the North Free State Connector.

Ms. Thomas said that it is highly unlikely that the road will be built any time soon, given the state's road funding situation. She said that if the proper position isn't taken now, future generations will be "cursing" the decision made before hand. This remains the best opportunity on the eastern side of Route 29 to have a road that helps form a transportation system as opposed to everyone having to go out onto Route 29 for every trip that they take, but it involves a bridge across the river. It is going to be very expensive.

Mr. Dorrier commented that the road seems to be preceding the development. Mr. Graham acknowledged that there is a chicken and egg connection with the development and the North Free State Connector. Staff is trying to make sure that since North Free State Connector is still on the books as a future possible road to be built by the county that we are not doing anything that is going to preclude and make that road more difficult to build in the future.

Mr. Rooker said that one lingering issue is whether the reservation needs to be made for a four-lane or two-lane road. He said that if you compare this road to Berkmar, it is a two-lane road that carries a lot of traffic, as the Meadow Creek Parkway would also be. Mr. Rooker said that the Board needs to establish whether this is to be reserved as four or two lanes.

Mr. Bowerman asked if the alignment should be moved 50 feet to the west to keep away from the ravine. Mr. Graham replied that it would be more cost effective to get the extra right of way from the church property.

Mr. Rooker said that a reasonable approach would be to have the road built where the applicant proposes, to dedicate the right of way that would enable the county to build a four-lane road in the future if decided, but not to require the applicant to build a road over a ravine contemplating that in 40 or 50 years it may become four lanes. We could still build it, but the question is do you impose the cost today, or do you impose the cost 40 or 50 years from now on something that is speculative to begin with.

Mr. Graham said that is a decision for the Board.

Ms. Thomas agreed with Mr. Rooker, but separates the discussion of whether the right of way could be added to four lanes without taking back yards of houses in the further north section, which the applicant has to accommodate. She would not want the plan to go back to what it was.

In response to Mr. Wyant's question about drainage, Mr. Graham said that there is an old sediment basin that had been used by the church, an equipment storage yard, etc., but was never designed as a regional stormwater management facility. Mr. Graham said that the stream does stay wet, even during the drought.

Mr. Rooker said that there should be a proffer that when the right of way is available, the applicant should accomplish "the profile to match the profile" to the rest of the road. He added that staff recommended the shift based on the traffic patterns, and asked Mr. Graham to comment on access to adjacent parcels.

Mr. Graham explained that there is an issue regarding the 50-foot dedication along the existing prescriptive right of way for Free State Road, and staff is still discussing the connection through to Free State Road and how that would be made. He added that the 50-foot dedication is important as far as potential future development of properties.

Mr. Boyd noted that the applicant did not have a problem with including the 50 feet.

Mr. Bowerman said that he would rather see a plan for provision of affordable housing than a cash contribution. He stated that the carriage house idea is interesting because it provides something the county does not have, but does not guarantee housing because it is left up to the property owner.

Mr. Rooker said that there should be some combination of the carriage house approach plus a contribution to the affordable housing fund so there is some assurance of down payment assistance going forward.

Mr. Davis noted that the current carriage house proffer says there is no mechanism that assures those carriage houses will ever be built.

Mr. Rooker said that the language needs to be worked out in the proffers.

Mr. Davis stated that one idea is to have the carriage houses secured prior to a certificate of occupancy being issued for the main house.

Ms. Thomas recalled issues presented in the last week from staff.

Mr. Graham said that the substantive issues have been presented here, but there are smaller issues being worked out with the applicant and staff.

Mr. Rooker stated that the property is currently zoned R-4, and under that zoning if the developer can max out the current build-out there would be 800 residences, depending on topographical considerations. He said that what is presented is lower in density, and the only reason it is coming forward as a rezoning is to implement this kind of development in this area. Mr. Rooker noted that in the past, developments have been built without sidewalks, planting strips, etc., and through the rezoning process the amenities are greater. He mentioned that the demand in Old Trail near Crozet has been "terrific," so the question is whether something better can be accomplished through a rezoning, rather than by-right. Mr. Rooker concluded that there are a few lingering issues that need to be resolved prior to Board action.

Mr. Tucker said that this could come back September 7<sup>th</sup> at the earliest, but if the information cannot be finalized a week before, then it could be deferred again.

Mr. Rooker stated that there may be new speakers at that public hearing, but those tonight should not speak again.

Mr. Bowerman requested that the meeting be held in the evening, on September 14<sup>th</sup>. Mr. Cilimberg noted that it is a heavy meeting. Mr. Bowerman mentioned that the issues are straightforward, and shouldn't take that much more time. Mr. Tucker said that Old Trail would also be considered at the September 14<sup>th</sup> meeting.

Mr. Rooker suggested that the Belvedere item be considered at the end of their day meeting on September 7<sup>th</sup>, at 6:00 p.m. He acknowledged that if the issues are not finalized by then, the item would probably have to move into October.

Mr. Davis mentioned that the Old Trail item review is dependent on whether the Commission acts on it on October 23<sup>rd</sup>.

Mr. Dorrier asked if the Planning Commission could work through the lingering issues on the Belvedere item.

Mr. Rooker responded that the Commission has done everything they can do, and recommended denial based on six or seven issues, which the Board is now dealing with. He said that the applicant has agreed to go along with most of what the Commission has recommended, and a few issues are left to be resolved such as the Free State connector placement.

Mr. Tucker commented that the Board has narrowed down these issues very well.

**Motion** was then offered by Mr. Bowerman to add the public hearing to the end of the agenda on September 7<sup>th</sup> day meeting. The motion was **seconded** by Mr. Wyant. (Mr. Rooker suggested the public hearing not start before 5:30 p.m.) Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dorrier, Mr. Rooker, Ms. Thomas, Mr. Wyant and Mr. Bowerman.

NAYS: None.

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Agenda Item No. 9. From the Board: Matters Not Listed on the Agenda.

Ms. Thomas said that she met with Monacan Indian tribe members recently to discuss a plan to have seven or eight historical markers placed around the county about their role in the County's history.

She reminded Board members about the upcoming VaCo meeting, August 13 through August 15, at the Omni. Mr. Rooker said that he is registered to attend the VaCo conference, but will not be able to attend. He asked if anyone would like to go in his place.

Mr. Rooker stated that the county recently accepted proffers on Albemarle Place and Hollymead Town Center that included an agreement to participate in the Community Development Authority's contribution of a 25-cent tax increment for public improvements, specifically transportation improvements. Mr. Rooker said that there has been an issue with people getting from Forest Lakes to the Hollymead Town Center without dealing with traffic, and there was a pedestrian overpass planned as part of an overall transportation plan for the area. He suggested that Mr. Davis bring back specific recommendations for establishing a structure for a "service district" or "community development authority." Mr. Boyd said that he supports this concept entirely.

Mr. Boyd said that he received a call from a constituent who lives near the Orange County line regarding a gated 600-home development right across into Orange. He asked fellow Board members how this has been dealt with in the past.

Mr. Tucker said that a regional planning agency might be able to help, but Orange is not in Albemarle's planning district – it is in Rappahanock's. He noted that this happens in Greene all the time, with heavy development right across the Albemarle line.

Mr. Rooker said that people are surprised at how little control there is within borders under state law, and the vehicle for discussion is the Thomas Jefferson Planning District Commission for neighboring counties in that district.

Ms. Thomas said that there have been verbal agreements about discussing development plans with U.Va., and it might be possible to have similar discussions with neighboring counties as well.

Mr. Tucker said that his staff could check with Orange's planning staff to see what is planned for the development Mr. Boyd mentioned, adding that there are lots of units planned for that county.

Mr. Rooker stated that Orange has its own plans for development patterns that may differ from Albemarle's.

Mr. Wyant asked if there is a list of proffers for Albemarle Place and Hollymead. Ms. Thomas pointed out that they are available online.

Mr. Rooker added that there were a number of tables for the North Pointe development that summarize proffers.

Mr. Rooker mentioned that he had received a letter from Sheriff Ed Robb and Jim Camblos regarding their pay plan requesting their inclusion in raises for county classified employees. He asked when the appropriate time to respond would be, and if it should be put on a Board agenda.

Mr. Tucker reported that he is trying to determine the reason for state increases in constitutional officers' pay, noting that state employees are receiving raises of three percent to 4.4 percent effective in December. He added that because sheriffs got an adjustment a year ago, they are getting a flat three percent increase. Mr. Tucker said that the county supplements their pay, and he wants to check and see if this over and above the state raises.

Mr. Rooker said that his understanding is that their request is for a combination that provides them with a raise comparable to that of classified employees.

Mr. Boyd asked if this was already being done with their staff. Mr. Tucker replied that it is, noting that being an elected official is a bit different.

Ms. Thomas emphasized that the state is responsible for providing those raises, not the county. Mr. Rooker said that the county is already supplementing their salaries. Mr. Tucker said that the county has recently increased the supplement, but primarily for their staff.

Mr. Rooker asked when a decision should be made on this.

Mr. Boyd said that he understands all they want is it to be a budget consideration line item.

Ms. Thomas said that she understood it to be giving them whatever the county pays itself.

Mr. Davis stated that constitutional officers' salaries are set in the Budget Act – a two-year budget – generally based on population brackets. He noted that there are increases, and it is done every other year.

Mr. Tucker pointed out that the county could increase the supplement to those offices, and they could still get whatever the state gives them. He emphasized that they are proposing that their salaries receive the same increase that classified employees get on the average.

Mr. Rooker said that the Board agreed to get whatever classified employees get on the average. He clarified that the request is that the combination of what the state provides and the county provides be comparable to the average raise given to classified employees.

It was the **consensus** of the Board that this request was fair and to approve funding on an annual basis for the Sheriff and Commonwealth's Attorney effective July 2006. Mr. Rooker clarified that it would be put into the budget for July 2006 and could be revisited at that time.

Mr. Dorrier asked if the retirement issue for police officers had been resolved.

Mr. Tucker responded that Mr. Breedon would be bringing the item back to the Board for discussion in September.

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Agenda Item No. 10. Adjourn. At 8:10 p.m., there being no further business to come before the Board, the meeting was immediately adjourned.

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Chairman

Approved by Board
Date: 12/07/2005
Initials: DM