

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on August 2, 2006, beginning at 12:00 p.m. in the County Office Building on McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. Ken C. Boyd, Mr. Lindsay G. Dorrier, Jr. (arrived at 12:05 p.m.), Mr. Dennis S. Rooker, Mr. David Slutzky, Ms. Sally H. Thomas, and Mr. David C. Wyant.

ABSENT: None.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry W. Davis, Acting Clerk, Diane Mullins, and Director of Planning, V. Wayne Cilimberg.

Agenda Item No. 1. The meeting was called to order at 12:00 p.m. in Room 435 by the Chairman, Mr. Rooker.

Agenda Item No. 2. Closed Session: Personal and Legal Matters.

At 12:03 p.m., **motion** was offered by Ms. Thomas, **seconded** by Mr. Boyd, that the Board adjourn into closed session pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to consider appointments to boards, committees and commissions; and, under Subsection (7) to discuss the acquisition of property for a public facility.

Roll was called, and the motion passed by the recorded vote which follows:

AYES: Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Wyant, and Mr. Boyd.

NAYS: None.

ABSENT: Mr. Dorrier.

Agenda Item No. 3. Reconvene into Open Session. At 1:35 p.m., the Board reconvened into open session in Room 241.

Agenda Item No. 4. Certify Closed Session. Mr. Slutzky **moved** 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. Mr. Boyd **seconded** the motion, which passed by the following recorded vote:

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

NAYS: None.

Agenda Item No. 5. Pledge of Allegiance.
Agenda Item No. 6. Moment of Silence.

Agenda Item No. 7. Boards and Commissions: Appointments.

Mr. Boyd **moved** to:

Appoint Ms. Myra Anderson to the Region Ten Community Service Board with said term to expire on June 30, 2009.

Appoint Mr. George Emmitt to the Eastern Connector Alignment Study Committee

Appoint Mr. Morgan Butler to the Fiscal Impact Advisory Committee with said term to expire on July 8, 2008.

Appoint Mr. Colston C. Burrell to the Natural Heritage Committee with said term to expire on June 30, 2009.

Ms. Thomas **seconded** the motion, which passed by the following recorded vote:

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

NAYS: None.

Agenda Item No. 8. From the Public: Matters Not Listed on the Agenda.

Mr. David Blount, TJPDC Legislative Liaison, addressed the Board, presenting information on the process for developing the regional legislative program, noting that the timing is different this year with the process moved up about a month. He explained that the program itself will continue to have the action items which are those that are of most concern to localities, and the continuing concern section that includes recommendations for VaCo. Mr. Blount said that the TJPDC position is that the State budget should be done on time, but there has been a stalemate and an ongoing special session. He noted that

the TJPDC appreciates the County's resolution for funding of budget items, especially those related to transportation.

In response to Mr. Rooker's question about transportation funds going to regional authorities, Mr. Blount said that there is indication that the State would like those funds to be managed through regional entities.

Mr. John Martin addressed the Board, stating that the Board of Directors for the Thomas Jefferson Partnership for Economic Development meets quarterly, and in between those quarterly meetings of the full board they have executive committee meetings. He indicated that the County is not represented on the executive committee, and he would feel more comfortable if Mr. Tucker were added to that committee. Mr. Martin reminded the Board that TJPED told Albemarle they would "have a seat at the table."

Mr. Dorrier asked if there were a lot of business transactions at the executive committee meetings. Mr. Martin responded that it is difficult to know, but the packet of information is not available to the public. He said that Bob Gibson from Louisa County was at the last meeting as was a representative from Nelson County.

Mr. Slutzky asked if Mr. Tucker is informed when these executive committee meetings take place. Mr. Tucker responded that he is not always aware of when the executive committee's monthly meetings are held, but he has been attending the regular TJPED meetings. He emphasized that there are by-laws which stipulate that the Board nominates executive committee representatives.

Mr. Slutzky said that he would like for Mr. Tucker or a representative to attend the executive committee meetings.

Mr. Rooker stated that he would be happy to contact Mr. Robert DeMauri about having Mr. Tucker attend, even if it is not as a member of that committee. He indicated that the larger TJPED Board does not conduct a whole lot of business. He added that it does concern him that they (TJPED) discussed the issue of Dominion Power seeking support for its Lake Anna nuclear plant. Mr. Rooker said that it could be implied that Albemarle was supporting that application, given that their name is on the letterhead.

Mr. Slutzky said that if that is the case, he would oppose future TJPED membership by the County. Mr. Tucker stated that it would have to be approved by the TJPED Board, which it had not.

Agenda Item No. 9a. Recognitions: Jessica Kitchin.

Mr. Rooker recognized Jessica Kitchin for her service as *Daily Progress* reporter for Albemarle County. Jessica thanked the County and indicated how much she enjoyed her work with the Board. She said she would miss everyone when she leaves the area.

Agenda Item No. 9b. Proclamation: Women's Equality Day.

Mr. Rooker read a proclamation for "Women's Equality Day," noting that Albemarle would recognize August 26, 2006 as that day. He presented a certificate to Kobby Hoffman and Grace Zisk.

Ms. Hoffman, President of Charlottesville's NOW Chapter, thanked the Board for this recognition. Ms. Zisk said that she appreciated the Board including some of the recommended points NOW provided and hopes in the future they will include all of them.

WOMEN'S EQUALITY DAY

WHEREAS, many decades of efforts by women and men were required to give women the right to vote; and

WHEREAS, citizens must always be willing to work to assure that the laws and policies in the Commonwealth of Virginia, the United States of America, and this County do not unjustly discriminate against females, and any other group; and

WHEREAS, unjust treatment based on views of inequality is often subtle; and

WHEREAS, it is appropriate for this County to recognize a day that commemorates the passage of the 19th Amendment to the Constitution of the United States, the amendment that gave the right of suffrage to American women;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia, does hereby proclaim

August 26, 2006
as
WOMEN'S EQUALITY DAY

in remembrance of all those women and men who have worked to develop a more equitable community that acknowledges both the real similarities and the important differences between women and men.

Agenda Item No. 10. Consent Agenda. Ms. Thomas **moved** for approval of the Items 10.1 through 10.6 on the Consent Agenda, and to accept the remaining items as information. Mr. Dorrier **seconded** the motion, which passed by the following recorded vote:

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

NAYS: None.

Item 10.1. Approval of Minutes: January 11 (Adjourned & Regular Night), February 1 (Regular Day), February 8 (Adjourned & Regular Night), March 1 (Regular Day), March 15 (Regular Night), 2006.

Mr. Dorrier had read his portion of the minutes of February 1, 2006 and found them to be in order.

Mr. Rooker had read the minutes of February 8, 2006 and found them to be in order.

By the recorded vote above, the minutes were approved as read. The remaining minutes were forwarded to the next agenda.

Item 10.2. Request to set public hearing to amend the Albemarle County Service Authority Jurisdictional Area for Tax Map 46, Parcel 26C1, located within the SOCA sports facility on Polo Grounds Road.

It was noted in the Executive Summary that the applicant is requesting an amendment to the current limited service ACSA Jurisdictional Area designation on an approximately 26-acre parcel described as Tax Map 45, Parcel 26C1. The parcel is located on Polo Grounds Road and includes the existing SOCA South Fork Soccer Park. The property is bounded by the Rivanna River to the south, a tree farm and contractor's yard to the west, and single-family residences to the north and east. The site is located within Comprehensive Plan Rural Area 2, in the Rivanna District.

The current limited service designation was approved by the Board on September 12, 2001, to "provide sewer service to the SOCA South Fork Soccer complex only as approved under SP-1998-18 and SP-1998-22 (Tax Map 22, Parcels 22 and 22C)." The Special Use Permits permitted five soccer fields, a 2,000 square foot storage building and 216 parking spaces. The applicant is now requesting that sewer service be provided to a proposed 1,000 square foot office trailer to be located on the existing SOCA site. This office use/structure was not identified as part of the prior Special Permit approvals for the SOCA site. The office trailer will be used exclusively by SOCA for club purposes. The office use also requires Board approval of a Special Use Permit (SP-2006-14, SOCA Club Offices at South Fork Soccer Park), which has been submitted by the applicant and is currently under review by staff. It is scheduled for consideration by the Planning Commission in August and may be heard by the Board as early as September, pending Commission action.

The properties adjacent to the north and south of the SOCA parcel are located in the Development Areas and are designated for both water and sewer service. The properties adjacent to the west and east of the SOCA parcel are designated Rural Area in the Land Use Plan. The property to the west is zoned Rural Areas and is not within the Jurisdictional Area for water or sewer service. The parcels to the east (Tax Map 45, Parcels 22 and 22C) were part of the original parcels which received the ACSA "limited service" designation for sewer service in 2001 for the SOCA facility and, therefore, all three parcels are subject to same limited service restrictions (Parcel 26C1 was later subdivided from Parcel 22C).

The Utilities section of the Comprehensive Plan includes the following recommendations regarding changes in the Jurisdictional Area outside of the Development Areas: "Only allow changes in jurisdictional areas outside of designated Development Areas in cases where the property is: (1) adjacent to existing lines; and (2) public health and/or safety is in danger." A sewer line passes through the SOCA parcel and the existing soccer park facilities are connected to the sewer line.

The Board action in 2001 that established the limited sewer service designation on this parcel was based on the potential health/safety concerns from using a septic system on this site. Those concerns were caused by the topographic characteristics of the site, which would have required any septic system to be placed either in the floodplain of the South Fork Rivanna River or uphill from the soccer complex, requiring pumping to the drainfield. Use of a pump as part of the disposal system means mechanical failure is an ever-present possibility. With a system located so close to the floodplain of the Rivanna River, the failure of a septic pump poses the possibility of a public health threat resulting from effluent contamination. Use of the public sewer system to dispose of effluent is preferred over a floodplain location for a drainfield or pumping to a drainfield uphill from the floodplain.

The proposed office trailer, and its associated drainfield facility, would be located adjacent to the floodplain of the South Fork Rivanna River and would be subject to the same topographic conditions and health/safety concerns as noted above. There are no additions to existing facilities needed for this use. Construction costs are the responsibility of the applicant.

Staff opinion is that there is merit to setting a public hearing to consider amending the limited service designation for sewer service on the parcel. Staff recommends that a public hearing on an ACSA jurisdictional area amendment for the SOCA property (Tax Map 45, Parcel 26C1) be scheduled for the same meeting that the Special Use Permit for the office use (SP-2006-14, SOCA Club Offices) is heard. Should the Special Permit for the new office use be approved, the Board could then act on the related Jurisdictional Area amendment request.

By the recorded vote set out above, staff was directed to advertise for a public hearing on an ACSA jurisdictional area amendment for a limited service designation for sewer service for the SOCA property (Tax Map 45, Parcel 26C1) for the same meeting that the Special Use Permit for the office use (SP-2006-14, SOCA Club Offices) is heard.

Item 10.3. Requested FY 2006 Appropriations.

It was noted in the Executive Summary that Code of Virginia § 15.2-2507 stipulates that any locality may amend its budget to adjust the aggregate amount to be appropriated during the 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 total of these requested FY '2006 appropriations is \$129,660.70 and will not require a budget amendment public hearing at this time. Should subsequent FY '2006 appropriations total more than \$370,339.30, these two appropriations would be incorporated into a budget amendment public hearing at that time.

This request involves the approval of two new FY '2006 appropriations as follows: One appropriation (No. 2006-091) totaling \$3,340.00 for a donation to the Crozet Greenway Program; and one appropriation (No. 2006-092) totaling \$126,320.70 for various education programs. A detailed description of these appropriations is provided on Attachment A which follows.

Appropriation No. 2006-091, \$3,340.00. The Universal Studios' crew members who were filming "Evan Almighty" in Crozet donated \$3,340.00 to be used for tree planting in the Crozet Greenways.

Appropriation No. 2006-092, \$126,320.70. At its meetings on May 25, 2006 and June 22, 2006, the School Board approved the following appropriations:

The School Board Chair and the Board Clerk believe that an additional appropriation from Board Reserve should be made to cover the NSBA and superintendent search expenses. The NSBA expenses total \$2,600. The additional superintendent search expenses total \$4,300.

Western Albemarle High School received a donation of \$1,000.00 from Mr. and Mrs. Frank J. Quayle III. It has been requested that this donation be used to install a scoreboard at the Boy's Lacrosse Field at Western Albemarle High School.

Greer Elementary School received a donation in the amount of \$300.00 from the Guenther Family. It has been requested that this donation go toward any classroom needs at Greer Elementary School.

Migrant is a federally-funded program designed to locate all eligible migrant students residing within the regional district, evaluate their individual needs, and offer services to meet those needs. There is a fund balance retained by the State in the amount of \$23,132.11, and a local fund balance of \$13,500 from FY '04-05 which may be reappropriated for FY '05-06. The funds will be spent on salaries, benefits, educational materials, travel and printing.

Title III is a federally-funded program designed to improve student learning by states and districts as part of a comprehensive approach to close the achievement gap especially between children who are limited English proficient and their peers. Funding for FY '05-06 was increased by \$19,672.59 from the original budget amount of \$79,685. The funds will be used to pay salaries and benefits.

Adult Education is a federally- and state-funded program, providing educational opportunities to adults whose skills in reading, mathematics, and other subjects are below the 12th grade level. The services include assistance in preparing for the General Equivalency Diploma exam (GED), developing basic educational skills, and learning English as a Second Language. Funding from the State for FY '05-06 was increased by \$1,666 from the original budget amount of \$90,000. The funds will be used to pay for salaries and educational materials.

Albemarle County Public Schools received funds from the Department of Education for Emergency Impact Aid for students enrolled in the School Division who were displaced by Hurricanes Katrina and Rita. The funds will be used to pay compensation of personnel, acquiring curricula material and classroom supplies, providing basic instructional services, and supporting services for displaced students. All funds must be obligated by July 31, 2006 or returned to the Federal government.

Title V, Part A provides formula grants to State and local education agencies and is designed to increase the academic achievement of, and improve the quality of education for, all students. Excess funds for personnel and benefits were transferred so that non-fiction materials in SOL subject areas could be purchased for the library at Walton Middle School. This transfer and subsequent purchase caused expenditures to exceed the appropriation for FY '05-06.

By the recorded vote set out above, the Board approved the following Resolutions of Appropriation:

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2006-091
 DATE: 08/02/06
 EXPLANATION: Donation - Crozet Greenway Program

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER	GENERAL LEDGER		
					CODE	AMOUNT	DEBIT	CREDIT
2	9010	18110	181218	Donation-Greenways	J2	3,340.00		
1	9010	71000	950202	Crozet Greenways	J1	3,340.00		
	9010		0501	Est. Revenue			3,340.00	
			0701	Appropriation				3,340.00
TOTAL						6,680.00	3,340.00	3,340.00

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2006-092
 DATE: 11/01/06
 EXPLANATION: Appropriation - Various Education

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER	GENERAL LEDGER		
					CODE	AMOUNT	DEBIT	CREDIT
2	2000	18100	181109	Donation	J2	1,300.00		
2	3103	33000	330102	Migrant Grant	J2	23,132.11		
2	3103	51000	510100	Approp-Fund Balance	J2	13,500.00		
2	3115	33000	330122	Adult Education Grant	J2	1,666.00		
2	3215	33000	330119	Title III Grant	J2	19,672.59		
2	3315	33000	330001	Emergency Aid Impact Grnt	J2	59,250.00		
2	3216	33000	330001	Emergency Aid Impact Grnt	J2	7,800.00		
1	2410	60100	999981	School Board Res	J1	(6,900.00)		
1	2410	62110	360000	Advertising	J1	1,143.00		
1	2410	62110	550400	Travel - Education	J1	1,775.00		
1	2410	62110	580000	Misc. Expenses	J1	3,157.00		
1	2410	62110	580500	Staff Development	J1	825.00		
1	2302	61105	580000	Athletic Misc. Expenses	J1	1,000.00		
1	2204	61101	601300	Educ./Rec. SuppliesJ1	300.00			
1	3103	61101	111400	Salaries - Other Mgt	J1	1,345.78		
1	3103	61101	132100	Pt/Wages - Teacher	J1	31,694.39		
1	3103	61101	210000	FICA	J1	2,520.42		
1	3103	61101	221000	Virginia Retirement Sys	J1	163.76		
1	3103	61101	550100	Travel - Mileage	J1	680.57		
1	3103	61101	601300	Educ./Rec. SuppliesJ1	219.69			
1	3103	61101	601700	Copy Supplies	J1	7.50		
1	3215	61101	112100	Salaries - Teacher	J1	6,633.00		
1	3215	61101	132100	Pt/Wages - Teacher	J1	10,017.00		
1	3215	61101	210000	FICA	J1	1,273.00		
1	3215	61101	221000	Virginia Retirement System	J1	808.00		
1	3215	61101	231000	Health Insurance	J1	941.59		
1	3115	63322	132100	Pt/Wages - Teacher	J1	900.00		
1	3115	63322	210000	FICA	J1	69.00		
1	3115	63322	601300	Educ./Rec. SuppliesJ1	697.00			
1	3315	61101	111400	Salaries - Other Mgt	J1	2,368.54		
1	3315	61101	132100	Pt/Wages - Teacher	J1	25,161.66		
1	3315	61101	210000	FICA	J1	2,093.59		
1	3315	61101	221000	Virginia Retirement Sys	J1	245.64		
1	3315	61101	231000	Health Insurance	J1	175.80		
1	3315	61101	232000	Dental Insurance	J1	6.00		
1	3315	61101	550100	Travel - Mileage	J1	715.91		
1	3315	61101	580500	Staff Development	J1	3,519.36		
1	3315	61101	601300	Educ./Rec. SuppliesJ1	24,701.00			
1	3315	61101	601700	Copy Supplies	J1	262.50		
1	3216	61311	601300	Educ./Rec. SuppliesJ1	7,800.00			
	2000		0501	Est. Revenue			1,300.00	
			0701	Appropriation				1,300.00
	3103		0501	Est. Revenue			36,632.11	
			0701	Appropriation				36,632.11
	3115		0501	Est. Revenue			1,666.00	
			0701	Appropriation				1,666.00
	3215		0501	Est. Revenue			19,672.59	
			0701	Appropriation				19,672.59
	3216		0501	Est. Revenue			7,800.00	
			0701	Appropriation				7,800.00
	3315		0501	Est. Revenue			59,250.00	
			0701	Appropriation				59,250.00
Total						252,641.40	126,320.70	126,320.70

Item 10.4. Requested FY 2007 Appropriations.

It was noted in the Executive Summary 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 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, The total of this requested FY '2007 appropriation is \$21,347.00. It is anticipated that a budget amendment public hearing will be proposed in September, 2006 and this appropriation would be incorporated into it. This request involves the approval of five new FY '2007 appropriations as follows: Appropriation No. 2007-003 establishing the budget for two Maintenance Worker positions; Appropriation No. 2007-004 providing \$11,350.00 in additional funding for JAUNT from the Board's contingency fund; Appropriation No. 2007-005 to provide \$42,000.00 in funds from the Board's contingency fund for a storage facility lease; Appropriation No. 2007-006 to transfer \$26,427.50 in funds from the Visitor's Center contingency for paving work; and, Appropriation No. 2007-007 totaling \$21,347.00 for the Emergency Communications Center. A detailed description of these appropriations follows:

Appropriation No. 2007-003, \$232,337.00. At its meeting on April 5, 2006, the Board of Supervisors approved the hiring of two General Services Grounds/Facility Maintenance Workers from existing funds. This appropriation reallocates existing funds from General Services, Storm Water Management, and CIP – Facilities Maintenance cost centers to fund these positions. In addition, staff has requested reallocation of several contracted services line items to the newly established General Services – Grounds & Facilities Maintenance cost center. No additional funding is required.

Appropriation No. 2007-004, \$11,350.00. At its meeting on July 12, 2006, the Board of Supervisors approved \$11,350.00 in additional funding for JAUNT as a result of a reduction in State funding for services in Albemarle County. These funds will be appropriated from the Board of Supervisors' Contingency Fund.

Appropriation No. 2007-005, \$42,000.00. The current lease of the Woolen Mills storage facility will expire on November 1, 2006. Staff has negotiated terms of a new lease which will be presented to the Board as a separate action item. The Emergency Communications Center will also be using a small portion of the facility for storage. The lease will be for a period of two years with payment terms that will require \$42,000.00 in funding from the Board's Contingency Fund for the County's portion of the FY '07 lease payment.

Appropriation No. 2007-006, \$26,427.50. The Visitor's Center Building is jointly owned with the City of Charlottesville. The Thomas Jefferson Visitor's Bureau currently leases the building and the rental income, which was formerly used to pay the building's debt service, is now available for building maintenance and improvements. The County has solicited bids to make minor repairs, resurface, and remark the parking lot with the low bids received being \$26,427.50. It is requested that this amount be transferred from the contingency line item in the Visitor's Center Building Fund to be expended for this improvement.

Appropriation No. 2007-007, \$21,347.00. At its July 18, 2006 meeting, the ECC Management Board approved the transfer of funds from the ECC Fund Balance Account to the following operational cost centers for FY07:

- \$3,000.00 for instructional professional services to hire a teaching consultant who will instruct Shelter Management classes to the staff that mans our shelters during emergencies; and
- The hiring of a part-time staff position to assist the Emergency Management Coordinator with office duties at a cost of \$18,347.00.

Staff recommends approval of the FY '2007 Appropriation No. 2007-003, No. 2007-004, No. 2007-005, No. 2007-006, and No. 2007-007.

(Discussion: Ms. Thomas asked about the \$42,000 item for storage facility leasing, stating that she thought that the move to COB on Fifth Street would provide additional storage space. Mr. Tucker responded that some of that space has been used for storage, and some has been leased for a better return on the cost.

Mr. Wyant and Mr. Boyd asked about the allocation for General Services. Mr. Boyd asked why it would cost over \$232,000 to fill two maintenance worker positions. Mr. Tucker responded that the \$232,000 includes both equipment and staff from the CIP to use for maintenance such as mowing of entrance corridors; this is a transfer not new money.)

By the recorded vote set out above, the Board approved FY '2007 Appropriation Nos. 2007-003, 2007-004, 2007-005, 2007-006 and 2007-007, all as set out below:

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2007-003
 DATE: 08/02/06
 EXPLANATION: Establish budget for Maintenance Worker Positions

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
1	1000	43006	110000	Salaries	J1	48,000.00		
1	1000	43006	210000	FICA	J1	3,672.00		
1	1000	43006	221000	VRS	J1	12,782.00		
1	1000	43006	231000	Health Insurance	J1	12,079.00		
1	1000	43006	232000	Dental Insurance	J1	428.00		
1	1000	43006	241000	Group Life Ins.	J1	1,203.00		
1	1000	43006	270000	Worker's Compensation	J1	820.00		
1	1000	43006	301211	Contr Serv - Median	J1	25,000.00		
1	1000	43006	312373	Art-In-Place-Landscaping	J1	13,100.00		
1	1000	43006	331901	Maint-Detention Basin	J1	9,523.00		
1	1000	43006	331920	Polo Grounds Maint	J1	2,000.00		

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1	1000	43006	301221	Maint Contr-Landscaping	J1	20,548.00			
1	1000	43006	332300	Repl&Instal Street Signs	J1	53,834.00			
1	1000	43006	520300	Telecommunications	J1	1,200.00			
1	1000	43006	530900	Auto Insurance	J1	850.00			
1	1000	43006	580000	Miscellaneous Expense	J1	1,000.00			
1	1000	43006	600100	Office Supplies	J1	300.00			
1	1000	43006	600700	Repair& Maint. Supplies	J1	4,000.00			
1	1000	43006	600800	Vehicle& Equip FuelJ1		9,984.00			
1	1000	43006	600900	Vehicle&Equip Repair	J1	1,000.00			
1	1000	43006	601100	Uniforms & Apparel	J1	1,414.00			
1	1000	43006	800501	Motor Vehicle Repl Fee	J1	9,600.00			
1	1000	43005	301210	Contract Services	J1	(64,592.00)			
1	1000	43002	301211	Contr Serv - Median	J1	(25,000.00)			
1	1000	43002	312373	Art-In-Place Landscaping	J1	(13,100.00)			
1	1000	43002	331901	Maint.-Detention Basin	J1	(25,000.00)			
1	1000	43002	331920	Polo Grounds Maint.	J1	(2,000.00)			
1	1000	43002	332200	Maint. Contract-Bldg	J1	(22,645.00)			
1	1000	43002	332300	Repl&Install Street Signs	J1	(50,000.00)			
1	1000	93010	930010	Trsf. To GG CIP	J1	(30,000.00)			
1	9010	43100	800666	CIP-Fac. Maintenance	J1	(30,000.00)			
2	9010	51000	512004	Trsf. From GF	J2	(30,000.00)			
		9010	0701	Appropriation			30,000.00		
			0501	Est. Revenue				30,000.00	
						TOTAL	(60,000.00)	30,000.00	30,000.00

COUNTY OF ALBEMARLE
APPROPRIATION NO. 2007-004
DATE: 08/02/06
EXPLANATION: Additional JAUNT Funding

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER		
							DEBIT	CREDIT	
1	1000	95000	999990	Contingency	J1	(11,350.00)			
1	1000	59000	563300	JAUNT	J1	11,350.00			
						TOTAL	0.00	0.00	0.00

COUNTY OF ALBEMARLE
APPROPRIATION NO. 2007-005
DATE: 05/05/04
EXPLANATION: Security Storage Lease

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER		
							DEBIT	CREDIT	
1	1000	43001	540200	Gen Service-Lease	J1	42,000.00			
1	1000	95000	999990	Contingency-Budget Ad	J1	(42,000.00)			
						TOTAL	0.00	0.00	0.00

COUNTY OF ALBEMARLE
APPROPRIATION NO. 2007-006
DATE: 08/02/06
EXPLANATION: Monticello Visitor's Center - Paving

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER		
							DEBIT	CREDIT	
1	9800	72050	800675	Paving	J1	26,427.50			
1	9800	72050	999999	Contingency	J1	(26,427.50)			
						TOTAL	0.00	0.00	0.00

COUNTY OF ALBEMARLE
APPROPRIATION NO. 2007-007
DATE: 08/02/06
EXPLANATION: Appropriation - Emergency Communications Center

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER		
							DEBIT	CREDIT	
1	4100	31045	312500	Prof. Service-Instruction	J1	3,000.00			
1	4100	31045	130000	Part-Time Wages	J1	10,726.00			
1	4100	31045	120000	Overtime Wages	J1	1,500.00			
1	4100	31045	160900	Salary Reserve	J1	557.00			
1	4100	31045	210000	FICA	J1	950.00			
1	4100	31045	221000	VRS	J1	1,316.00			
1	4100	31045	231000	Health Insurance	J1	3,020.00			
1	4100	31045	232000	Dental Insurance	J1	107.00			
1	4100	31045	242000	Life Insurance	J1	146.00			
1	4100	31045	270000	Worker's Compensation	J1	25.00			
2	4100	51000	510100	Appropriation - F/B	J2	21,347.00			
		4100	0501	Est. Revenue			21,347.00		
			0701	Appropriation				21,347.00	
						TOTAL	42,694.00	21,347.00	21,347.00

Item 10.5. Resolution: Amendment to HOME Consortium Cooperation Agreement.

It was noted in a letter from Ms. Billie Campbell, Chief Operating Officer, Thomas Jefferson Planning District Commission, dated July 19, 2006, that new guidance from the Department of Housing and Urban Development (HUD) requires HOME Consortium to include towns as members in the Cooperation Agreement. In order to continue to qualify for the region's full HOME allocation and to continue to undertake projects within incorporated towns, the HOME Consortium must amend its Cooperation Agreement by August 22, 2006.

The Thomas Jefferson HOME Consortium was established in 1992 to provide affordable housing opportunities for low- and moderate-income citizens throughout the Planning District. Program funds from the Department of Housing and Urban Development (HUD) are divided equally between the City and five Counties and used by sub-recipients to assist first-time homebuyers, rehabilitate sub-standard housing, and add to the affordable housing stock.

The original HOME Consortium Cooperation Agreement included the City of Charlottesville and the Counties of Albemarle, Fluvanna, Greene, Louisa and Nelson. New guidance included in HUD Notice CPD 06-04 issued April 11, 2006, requires HOME Consortia to include all Units of General Local Government (UGLGs). The HUD office in Richmond questioned the application of this under Virginia law, but ultimately determined that the Thomas Jefferson HOME Consortium needs to amend its cooperation agreement to include all towns as members of the consortium. All members of the consortium must sign the amendment to ensure that the funding allocation for FY '07 is not reduced. HOME funds allocated for FY '07 are \$929,816.

Sub-recipients have served homebuyers and homeowners in the towns through the 14-year history of the HOME Consortium. The amendment will allow this to continue. We request that your jurisdiction adopt a resolution to add the towns to the Consortium as a consent agenda item at your next meeting. Documents are enclosed for your use and information and are also being sent electronically.

By the recorded vote set out above, the Board adopted the following Resolution of Support for Cooperation Agreement Amendment for the Thomas Jefferson Home Consortium under the Home Investment Partnership Program, and authorized the County Executive to sign the following Agreement on behalf of the County:

**RESOLUTION OF SUPPORT
FOR
COOPERATION AGREEMENT AMENDMENT
THOMAS JEFFERSON HOME CONSORTIUM
UNDER THE HOME INVESTMENT PARTNERSHIP PROGRAM**

Whereas, there exists a continuing need to provide affordable housing opportunities for low and moderate income citizens; and

Whereas, the HOME Investment Partnership Program provides financial assistance to the members of the Thomas Jefferson HOME Consortium in support of these affordable housing opportunities; and

Whereas, the Thomas Jefferson HOME Consortium has successfully provided affordable housing opportunities for low and moderate income citizens since its inception in 1992; and

Whereas, HUD Notice CPD 06-04 issued April 11, 2006 requires that the Thomas Jefferson HOME Consortium amend its Cooperation Agreement to add the incorporated towns by name into the agreement; and

Whereas, continued participation in the Thomas Jefferson HOME Consortium will increase affordable housing opportunities for low- and moderate-income citizens;

Therefore be it Resolved, the Albemarle County Board of Supervisors does support the amendment to the Cooperation Agreement and authorizes Mr. Robert Tucker, County Executive, to sign the Cooperation Agreement Amendment to add incorporated towns in the Thomas Jefferson Planning District as Units of General Local Government in the HOME Consortium.

**COOPERATION AGREEMENT AMENDMENT
AMONG LOCALITIES IN PLANNING DISTRICT 10
FOR DESIGNATION AS A PARTICIPATING CONSORTIUM
UNDER HUD'S HOME INVESTMENT PARTNERSHIP PROGRAM**

Purpose of Amendment

This amendment to the current cooperation agreement adds the incorporated towns by name into the agreement, as required by HUD Notice CPD 06-04 issued April 11, 2006. The qualification period for the current agreement ends September 30, 2007 and contains an automatic renewal provision for an additional 3 years. Under this amendment, the automatic renewal clause will continue to be in effect for the next qualification period. This amendment adds the incorporated towns in the planning district as Units of General Local Government (UGLGs) in the consortium. All members of the consortium are required to sign this amendment. Original members are the City of Charlottesville and the Counties of Albemarle, Fluvanna, Greene, Louisa and Nelson Counties. Additional members are the incorporated towns of Scottsville, Stanardsville, Louisa, Mineral, and Columbia.

Amended Membership:

1. The members of the CONSORTIUM are the governments of the City of Charlottesville, and the Counties of Albemarle, Fluvanna, Greene, Louisa, and Nelson, and the Towns of Scottsville, Stanardsville, Louisa, Mineral, and Columbia. (MEMBERS).

Allocation of Funds:

Funds available annually to the CONSORTIUM will continue to be available to the City of Charlottesville and five member Counties on an equal basis, with towns within jurisdictions participating under the allocations made to the Counties of Albemarle (Scottsville), Fluvanna (Columbia), Greene (Stanardsville) and Louisa (Louisa and Mineral.) All other provisions remain the same as in the Cooperation Agreement from October 1, 2001 to September 30, 2004, renewed for an additional three years to end September 30, 2007, attached.

Item 10.6. Resolution of Intent to establish a Regional Transit Authority in the Charlottesville-Albemarle Metropolitan Planning Organization Area.

A suggested resolution had been received from the Charlottesville-Albemarle Metropolitan Planning Organization of the Thomas Jefferson Planning District Commission:

(Discussion: Ms. Thomas suggested that the resolution to form a regional transportation authority also be sent to the University after the City signs it so it can be a true regional effort. Mr. Tucker said that when TJPDC and the MPO move forward with this, it will actually be a transportation district and not a transit authority.

Ms. Thomas said she had recommended that this be an item on the County's legislative agenda. Mr. Davis commented that Northern Virginia and Williamsburg have tailored their legislation to an agreement, so it may be premature to seek legislation until the details have been worked out.)

By the recorded vote set out above, the Board adopted the following Resolution of Intent:

Resolution of Intent
To Establish a Regional Transit Authority
in the Charlottesville-Albemarle Area

WHEREAS, transportation planning and systems are regional in scope; and

WHEREAS, transportation planning includes both transit planning and transit operations;
and

WHEREAS, limited transit facilities currently serve the overall Charlottesville-Albemarle Area; and

WHEREAS, the City and County intend to continue to serve existing ridership; and

WHEREAS, the City and County are interested in extended transit service to developing areas and providing faster, more frequent service to the existing system; and

WHEREAS, a Regional Transit Authority would coordinate regional transit planning and operations; and

WHEREAS, a Regional Transit Authority does not currently exist in the Charlottesville-Albemarle Area; and

WHEREAS, the establishment of a Regional Transit Authority in the Charlottesville-Albemarle Area requires that the City of Charlottesville and County of Albemarle utilize available funding and legal authority while considering additional funding sources.

THEREFORE BE IT RESOLVED THAT the City of Charlottesville and County of Albemarle intend to establish a Regional Transit Authority to serve the Charlottesville-Albemarle Area.

Item 10.7. Copy of Final Planning Commission minutes for February 28, March 28, and May 9, 2006 **were received as information.**

Item 10.8. Board-to-Board Communication report of activities from the Albemarle County School Board **was received as information.**

Item 10.9. Copy of letter dated July 7, 2006 from John Shepherd, Manager of Zoning Administration, to Tara Boyd, re: OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS -- Tax Map 122, Parcels 24 & 28 and Tax Map 123, Parcels 33 & 34 (Property of Murcielago LLC) Section 10.3.1 **was received as information.**

(Discussion: Mr. Boyd asked if staff could include in the magisterial district in the zoning determination information. Mr. Rooker added that it would also be helpful to have a street address. Mr. Davis said that there is an application that is filed with the County, which zoning does the legwork on, and it does take a considerable amount of time.)

Item 10.10. Copy of letter dated July 7, 2006 from John Shepherd, Manager of Zoning Administration, to Brian S. Ray, LS, re: OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS -- Tax Map 57, Parcel 81B (Property of Stillman F. Kelley II Trust) Section 10.3.1, **was received as information.**

Item 10.11. Copy of letter dated July 7, 2006 from John Shepherd, Manager of Zoning Administration, to Brian S. Ray, LS, re: OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS -- Tax Map 64, Parcel 1 (Property of Joshua A. Popkin or Ellen Louise Popkin) Section 10.3.1, **was received as information.**

Agenda Item No. 11a. Transportation Matters: Resolution to Governor Timothy Kaine and the General Assembly of Virginia Urging an Increase in State Transportation Funding.

Mr. Tucker reported that staff drafted a resolution to Governor Kaine and all legislators representing the County in anticipation of the General Assembly's upcoming work on the transportation funding.

Mr. Rooker noted that the resolution notes that the County would receive \$1.1 million less in State secondary road funding than they did in 1996, and the cost of projects has tripled over that ten-year period. Mr. Rooker stated that it is a pretty bleak picture.

Ms. Thomas **moved** for approval of the resolution. Mr. Boyd **seconded** the motion, which passed by the following recorded vote:

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

NAYS: None.

**RESOLUTION TO GOVERNOR TIMOTHY Kaine
AND THE GENERAL ASSEMBLY OF VIRGINIA
URGING AN INCREASE IN STATE TRANSPORTATION FUNDING**

WHEREAS, the Commonwealth of Virginia needs an additional \$7.0 billion in funding to complete the interstate, primary, urban and secondary projects in the State Six Year Improvement Program; and

WHEREAS, Virginia counties are receiving almost \$60 million less in current state Secondary Road funding than in 1996; and

WHEREAS, in addition to the 37 percent cut in the Secondary Road construction program, the new State Six Year Improvement Program includes drastic cuts to the Primary construction program; and

WHEREAS, VDOT and Albemarle County have identified a number of priority road projects that are critical to the effective movement of traffic in the community which are now seriously threatened by the lack of state funding; and

WHEREAS, there are \$185 million in candidate primary and interstate projects in Albemarle County; and

WHEREAS, the cost to complete existing interstate, primary and secondary projects in Albemarle County is almost \$134 million; and

WHEREAS, Albemarle County is receiving approximately \$1.1 million less in state Secondary Road funding than in 1996 and approximately \$0.8 million less in total Secondary Road funding than in 1996.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby express the urgent need for more transportation funding for current and future transportation projects in the County of Albemarle.

Agenda Item No. 11b. Transportation Matters: VDOT Monthly Report for July 2006, and Agenda Item No. 11c. Transportation Matters not listed on the Agenda.

Mr. Utterback reported that he has accepted a position in Richmond as Director of VDOT's Project Management office; he is currently "in transition."

Mr. Utterback reported that signals on Route 250 are in various stages of installation, and there is limited flexibility as to what can be done if a signal is recommended. Mr. Utterback said he would find out how the lights are timed in relation to school traffic and Route 250 traffic and provide that information to the Board.

As to Miller School Road, Mr. Utterback will check on sign placement and a 45 mph speed limit.

Mr. Utterback stated that he believes the Buck Mountain Road drainage culvert issue has been addressed, and he would continue to update the Board on its status.

Mr. Utterback reported that trimming along Owensville Road at Whippoorwill Road was done on July 21. Mr. Davis and Mr. Tucker stated that they have not noticed any difference; Mr. Utterback said that they would look at it again.

Mr. Utterback said that they applied dust control measures to Gillums Ridge Road.

Ms. Thomas said the community has requested that VDOT not allow parking at the Ivy Interchange. Mr. Utterback stated that the shift to permit parking was to serve as a deterrent and allow only certain types of work vehicles to park there. Mr. Utterback said VDOT will continue to monitor the area for loitering and nighttime parking.

Mr. Utterback reported that the roundabout study was completed in late May for Owensville Road and determined to be feasible. The next step is to try to determine how to move forward with this project. Mr. Utterback said that there are not sufficient resources at this time to do much further study and what they did evaluate was the level of service if the roundabout were built.

Mr. Utterback reported that dust control measures have been applied several times to Route 713.

Mr. Utterback reported that Maxfield Road qualifies as a rural rustic road project.

Mr. Utterback noted that construction on Hacktown Road as a rural rustic road project will begin after completion of Woods Edge Road; completion dates are likely by the next Board meeting.

As to earlier questions about the Hillsdale/Northfields intersection on Rio Road, Mr. Utterback said a sign saying "left turn must yield" will be installed by mid-August.

Mr. Utterback said that VDOT has begun work on a public information effort for the intersection of Hydraulic Road and Route 29.

Mr. Slutzky responded that the sign needs to indicate which lanes are for right turns. He would like to meet with VDOT staff to discuss signage at this intersection.

Mr. Rooker suggested that there should be a sign that says "Right Turn on Red" and a sign hanging over the other lane that says, "No Right Turn on Red This Lane."

Mr. Boyd noted that this type of signs exist onto Route 20.

Mr. Rooker said that he saw two cars turn right on red from the second Hydraulic Lane onto Route 29. Mr. Utterback and Mr. Slutzky agreed to go to the intersection and make a determination as to what is needed.

Mr. Utterback said the Advanced Mills Bridge has been reopened. Monitoring efforts will continue to ensure that vehicle tonnage does not exceed the three-ton limit.

Mr. Utterback reported that tall grass at key intersections has been cut.

Mr. Rooker asked whose responsibility it is to keep a sidewalk maintained along a State road, noting that there is a sidewalk near Turtle Creek that is "vastly overgrown." Mr. Utterback agreed to look into it.

Mr. Slutzky mentioned the debris on the sides of Old Brook Road. Mr. Utterback advised that VDOT should remove the debris.

Mr. Slutzky noted that there is a vacant lot along Rio Road that has tall grass overhanging into the right-of-way. Mr. Utterback replied that VDOT has crews going out there within the week to address that area.

Mr. Wyant reported broken edges of pavement in the curves of roads in Claymont Subdivision in Earlysville.

In response to Mr. Wyant's question, Mr. Utterback reported that VDOT representatives and Mr. Juandiego Wade met with citizens at the Crozet United Methodist Church about Jarman's Gap Road. Mr. Utterback said it was an informative meeting in conveying VDOT's role and process in obtaining right-of-way. Mr. Utterback said VDOT intends to use its existing plans for the project.

Ms. Thomas asked if there could be more information in the VDOT report pertaining to specific property locations. She asked that the report include road names in addition to the route names. Mr. Utterback responded that they have tried not to make the reports too long, but would take a look to see if there is a way to include more information.

Ms. Thomas asked about posting some type of sign related to alternate routes in the event of a road blockage on I-64 so people are not just wandering around trying to find another route. Mr. Utterback replied that Albemarle County is currently in the Staunton Smart Traffic Center, which seems to be working well as the computer-aided dispatch is tied into the County so there is a direct link between VDOT and County emergency services. Mr. Utterback said that currently VDOT works with the State police to determine whether or not to detour traffic.

Mr. Utterback reported that VDOT maintenance and incident operations along I-64 from Staunton to Richmond is going to contract effective October 1, 2006. Mr. Utterback added that the VDOT residency or Smart Traffic Center will be responsible for managing the maintenance operation.

Mr. Dorrier asked about a speed limit reduction on the last two miles of Route 20 coming into the town of Scottsville from 55 to 45 miles per hour, before you get to the school near Langdon Road. Mr. Utterback agreed to look into it and initiate a study.

Mr. Boyd asked that the Meadow Creek Parkway be shown in the monthly report. He also asked if the project was still on schedule for June 2008. Mr. Utterback replied that in this month's report it is referred to as Route 631 (McIntire Road). He noted that the right-of-way for total takes has been approved, and the process is in motion.

Regarding the Meadow Creek Parkway, Mr. Slutzky asked if there will be a continuous flow bike path owned by the State other than the right of way being acquired, adding that he has discussed with City officials the possibility of putting a bike path in before the road is built. Mr. Utterback responded that hopefully VDOT would come up with several different options.

Mr. Rooker stated that it would be helpful to see VDOT's schedule for right-of-way acquisition. Mr. Utterback explained that the right-of-way plans got held up for Meadow Creek in final approval because of funding issues, and VDOT recently cleared a procedural hurdle to get those plans approved.

Mr. Rooker said that on Roslyn Ridge Road off of Hydraulic Road where you get to the first cul-de-sac, the road is pulling apart and perhaps it should be dealt with before it gets too bad. Mr. Utterback said he will report back to the Board on the status.

Mr. Rooker inquired about the amount of the County's highway maintenance funds. Mr. Utterback reported that the maintenance funds two years ago was \$17.0 million and did not include Greene County, but the district was cut to \$13.0 million last year and is now at \$12.0 million for maintenance. Mr. Utterback stated that it is not the best picture, but it is where we are at right now. Mr. Utterback added that it is a concern across all the districts, and the Chief Financial Officer was directed to look at administrative budgets to try to make up the difference.

Mr. Rooker thanked Mr. Utterback for his work while he was at the Charlottesville Residency and stated that he has been "very responsive" to Board requests and has improved the reports presented to the Board.

Agenda Item No. 12. **Public Hearing:** ZMA-2006-001, Westhall Phase V (Signs #49, 59, 64).
Proposal: Rezone 8.957 acres from R-1 Residential (1 unit/acre) to PRD Planned Residential District residential (3 - 34 units/acre); 38 single-family detached units proposed at a density of gross 4 units per acre.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Neighborhood CT4 - mixed residential and commercial uses (net 4.5 units per acre for single-family detached and attached units and duplexes; net 12 units per acre for townhouses and apartments; net 18 units per acre for mixed use). Neighborhood CT5 - mixed residential and commercial uses (net 12 units per acre for all housing types; net 18 units per acre for mixed use). CT1 and CT2 Preservation and Reservation

Areas with net 1 unit per 20 acres.

Entrance Corridor: No.

Location: Tax Map 56H, Parcel A, located approximately 600 feet east of the end of Park Street (SR 1204) in the Community of Crozet.

Magisterial District: White Hall.

(Notice of this public hearing was published in the *Daily Progress* on July 17 and July 24, 2006.)

Mr. Cilimberg reported that this request is to change approximately nine acres from R-1 and R-6 zoning to Planned Residential Development. He said that under the current rights, nine single-family units and up to 13 units with bonuses could be developed. Mr. Cilimberg noted that the proposal is to use zero lot-line, single-family residential development at about six dwelling units per acre for a total of 36 dwelling units. He noted that this process began with the Planning Commission as a work session to address the larger issues of the project, such as density and mixed uses as it relates to the Crozet Master Plan.

Mr. Cilimberg indicated that in all of those areas, the Planning Commission provided guidance to the applicant and staff as to what they would like to see when the project was brought back for public hearing. He explained that the applicant brought back a proposal in early July, noting that the property is in several designations in the Crozet Master Plan. Mr. Cilimberg stated that there is no mixed use proposed as part of this project, and there are other properties nearby that are slated to become a part of Westhall future phases.

Mr. Cilimberg stated that the factors of the proposal that staff found favorable were the aspects of the Neighborhood Model being provided with particular emphasis on pedestrian orientation, neighborhood-friendly streets and paths, parks and open space, and relegated parking. The density was in keeping with the Crozet Master Plan in that it was in the mid-range of allowable residential development based on all of the CT designations combined. He indicated that the original proposal was for moderately-priced housing, and staff noted the lack of affordable housing as an unfavorable factor. Mr. Cilimberg stated that also unfavorable was the additional traffic on Park Road and Tabor Street from the 36 houses that will add to the traffic from the by-right phases of Westhall and potentially overburden the street system.

Mr. Cilimberg reported that staff has commented that if the Commission and Board believe the cash proffer and spot improvements to Park Road are sufficient to mitigate traffic impacts, then they would recommend approval if the affordable housing proffer were modified to bring it into conformity with County policy. He added that there are also waivers for private streets and setbacks that staff recommended to the Planning Commission, adding that they recommended denial of the rezoning in July because it did not meet the affordable housing criteria. Mr. Cilimberg added that the cash proffer for Eastern Avenue at \$45,000 was not sufficient to offset the impacts of the development. He said that since the Planning Commission meeting, the applicant has modified the proffers to meet the County's affordable housing policy using the 80 percent of median household income criteria and continuing to provide single-family units as part of the design concept. Mr. Cilimberg reported that the applicant has raised the proffer from \$1,500 per market rate unit for Eastern Avenue to \$3,000, with the contribution for the road now at \$90,000, and the total proffer value at \$4,800 per market unit which is significantly above other developments in the area.

Mr. Cilimberg said that the Board may act on the waiver of the Zoning Ordinance for setbacks. He said that staff is recommending approval of the ZMA with current proffers and the amended application plan and also the approval of the waiver to the Zoning Ordinance to allow for the application of setbacks for the affordable dwelling units to be accomplished as shown on the application plan.

Mr. Rooker asked if there was some way that potential buyers in this area would be notified of the plans for the future Eastern Avenue. He expressed concern that there should be some indication of where the route would be located.

Mr. Wyant agreed, stating that the signs showing where the northern and southern ends of the Eastern Connector would be are no longer in place. He believes that the problem they have is that nobody has established the alignment for that Eastern Connector.

Mr. Cilimberg said that Eastern Avenue is actually located on a parcel adjacent to this development. He stated that the applicant is proffering a temporary path as part of the greenway system in the alignment that would be permanently fixed at the time Eastern Avenue is built, but this is offsite.

Ms. Echols noted that it came in as one of the Westhall rezonings.

Mr. Cilimberg suggested that the future Eastern Avenue could be shown in the platting process of Westhall Five, but it could not really be required.

Ms. Thomas asked about the location of Jamestown Court. Mr. Cilimberg responded that it is shown as a potential connection, but it is also offsite.

Mr. Rooker asked if the applicant would agree to show this on the plat, as very few people who are buying a house come to look at the rezoning documents.

Ms. Thomas mentioned that the legislature has required realtors to disclose certain things to potential buyers such as the historic districts and stream buffers. She suggested that an alternative could be to work with realtors so that they inform customers of future roadways. Mr. Davis noted that the subdivision ordinance requires roads to show connections planned on future roads, and there should not be a problem indicating that this is a planned future road. He said that the road is only shown in the

Crozet Master Plan at this time. Regarding Eastern Avenue, Mr. Davis said that it is just a planned future road of the County, not of the property owner necessarily at this time, but those types of things can still be required to be shown.

Mr. Rooker said that by adopting the Master Plan it became part of the Comprehensive Plan, which shows the location of the future road. Mr. Cilimberg stated that the developer of Westhall has a partial interest in the property to the east and has worked with staff on location; the County Engineer has looked at this, but no alignment has been specifically studied. Mr. Cilimberg said that this seems to be the logical location, and the property owner has been aware of that and has been willing to work with them on that. Mr. Cilimberg added that if that property where the Eastern Avenue is shown comes in for development, there is an opportunity to get more reservation of land. Mr. Cilimberg said that, on the other hand, it would not be required if the property came in as by-right. Mr. Cilimberg said that the future Eastern Avenue crossing could be located on the plat, noting that the Dunlora plats indicated that the future alignment for Meadow Creek Parkway would be along that property. He said that is the best way they have been able to make people aware.

Mr. Slutzky asked if the Board could implement some kind of disclosure requirement with respect to sale of residential dwellings. Mr. Davis replied that they do not have authority to do that.

Mr. Rooker noted that the same thing happened with the Meadow Creek Parkway location.

Mr. Dorrier commented that perhaps the Comprehensive Plan could be made more widely available.

Mr. Rooker noted that the document is quite large, and the Master Plan would also show the location.

Mr. Slutzky suggested having someone from the County make a presentation to CAAR.

Mr. Rooker agreed with Mr. Slutzky's suggestion.

Mr. Davis said that putting it on a subdivision plat goes a long way toward creating the disclosure if there is likely to be a significant impact on a property being purchased.

Ms. Thomas stated that contact with realtors about this could be tied in to staff's presentation to them about regulations they are facing from the State.

Mr. Cilimberg referred Mr. Wyant to the proffers related to spot improvements related to transportation, specifically improvements to Park Road.

Ms. Echols said that the County Engineer and another engineer who deals with the VDOT roads went on-site with the applicant and identified the needed improvements. She noted that VDOT wanted a widening of Park Road by one foot, and the staff and Commission thought that it was a lot to ask because of the hassle of widening onto people's property, because it encourages higher speeds.

Mr. Wyant asked about sidewalk placement. Mr. Cilimberg replied that they are just within Westhall now, but the County would like to have them along Eastern Avenue when that is built.

Mr. Wyant asked about potential trail connections. Mr. Cilimberg responded that Dan Mahon is working on trail development in Crozet, and staff is trying to get all the provisions possible with each development. Mr. Cilimberg said that in this case, there is a trail head in one location. Mr. Cilimberg stated that the applicant is providing some trails and a proffer for a pedestrian bridge on the northern end of the property and that they feel like they are getting everything they can get within this project. He added that County staff is working on the larger overall trail system in Crozet.

Mr. Davis noted that he has received a revised version of Proffer 1.3, dated August 1, 2006, that dealt with a clerical error. He said that the note on the proffer with the property description has been removed, and it has been re-signed with the proper owner name; otherwise, the proffers are the same.

Mr. Rooker commented that he believes the County should do better as far as transportation proffers go, noting that many projects have been delayed because of lack of funding. He said that projects like Jarman's Gap are going to get pushed further back because of lack of funds. Mr. Rooker stated that VDOT is directing more of the cost burden toward localities, and localities are looking to proffers to make up the shortfall. He said that Orange County recently approved a subdivision with \$25,000 per unit proffers, and Warrenton approved one with \$74,000 per unit. He added that other localities have enacted similar policies, and what Albemarle is doing is approving development after development without infrastructure. He said that he believes that they are way out in front in approvals of the infrastructure, and they have to comfortably handle what is approved. Mr. Rooker said that one way to look at it would be to set a dollar amount per vehicle trip. He added that commercial development should make a higher contribution. He said that with this development, the transportation proffer should be at least \$1,000 per vehicle trip served per day, which would make it \$8,000 per unit.

Mr. Rooker emphasized that without some significant addition to transportation funds by way of proffers, they are approving things without the money to put the infrastructure in place to handle these developments. He added that the six-year plan money continues to get further and further behind, and he is very concerned that in approving new developments, the quality of life not be degraded for people already living in the area.

Mr. Dorrier stated that this issue should be brought up in a different session and suggested that Mr. Boyd's group tackle the issue. He said that the burden should not be placed on the Westhall development.

Mr. Rooker responded that the packet for this development was received on Friday, and staff expressed concern about inadequate infrastructure. He said that he is not going to vote in favor of rezonings from now on unless it is clear that there is contribution which is paying for the impacts of that development on the infrastructure. He asked if they think that they are going to construct any significant part of Eastern Avenue for \$100,000. Mr. Rooker said that he doesn't believe that is the case.

Mr. Boyd agreed, stating that the County is not getting enough to deal with this.

Mr. Slutzky said that there are a couple ways that the County could achieve better infrastructure, including a combination of proffers through developers and through taxes. He suggested that the Board have a separate discussion of this specific issue as he does not want to tackle the larger issue through votes on one specific development.

Mr. Dorrier asked if the General Assembly had recently passed something related to development fees to help address this. Mr. Davis replied that there was nothing passed related to fees, but there was Transferable Development Rights legislation passed.

Ms. Thomas pointed out that the first four phases of Westhall were done by-right and therefore, contributed nothing towards infrastructure. She added that by-right is less of a burden on roads because the density is less.

Mr. Rooker noted that the problem is that there are a number of approvals that have been granted that will burden the infrastructure, and he is concerned that the County currently has no solution for the increasing problems that this is creating.

Mr. Dorrier said that if the rules are going to be changed, there needs to be comprehensive discussion, debate, and public comment.

Mr. Wyant stated that the rules are not necessarily being changed, emphasizing that the other four phases of this development have been done by-right.

Mr. Slutzky said that to be fair, a work session should be held this fall to address the shortfall in infrastructure funding and solutions to help deal with this problem. Mr. Tucker stated that one of the major items for the Board's September 19 retreat is future funding of infrastructure.

Mr. Rooker said that he had hoped the proposal from the Governor and Senate would have passed as it provided significant increases in transportation funding. He said that what they are seeing is the worst they could have possibly expected. He believes the question is how many additional units should be approved without any clear plan for how to fund them.

With no further questions for staff, Mr. Rooker opened the public hearing and asked the applicant to speak first.

Mr. Chris Schooley of Stonehaus Developers addressed the Board, stating that they have already doubled the proffer amounts from where they started. He said that he pulled out the Master Plan drawing for Crozet and took out the road measurement minus the Licking Hole Creek Bridge and came up with 18,370 feet. He said the property fronts approximately 830 feet of that, and the County has allocated a cost of \$4 million to that entire length. He said that the pro-rated share would be \$177,000, divided by two equaling \$90,000 and that he does not feel like this was an arbitrarily chosen number. Regarding Eastern Avenue placement, he said that his company would definitely let potential buyers know about this as they view it as an asset that provides a quicker route. He said that the development has great pedestrian orientation, a nice style, and amenities that make the community better such as the trail head park. He emphasized that they will build six houses that meet the affordable housing requirements.

In response to Mr. Rooker's question, Mr. Schooley said that the other units would be priced in the low \$300,000's, having increased somewhat to cover the increased proffer costs. He added that the other phases have townhomes that are priced in the \$200,000's.

Mr. Dorrier asked him about the timeframe for build-out. Mr. Schooley responded that they would try to build out in 18 to 24 months.

Mr. Wyant asked the distance from this property to Route 250. Mr. Schooley replied that it is roughly a mile. He also mentioned that they are very much in favor of getting Eastern Avenue.

Mr. Wyant asked about Jamestown Court. Mr. Schooley responded that the connection to Jamestown Court would be made, but the details of the emergency access still need to be worked out.

Mr. Wyant commented that it has always been an issue with the people on Jamestown Court. Mr. Schooley said that his company is in full support of inter-connection.

Mr. Tom Loach addressed the Board, stating that one of the supposed benefits of the Crozet Master Plan was eliminating the need for the public to look at each individual rezoning as it came up. He said that the note on this plan shows 4,400 units as a grand total, but on the second page it shows that

this rezoning would make that number 5,196. He stated that this means Crozet has met its obligation for provision of units under the Master Plan, and it would probably be better off to let this develop by-right as the proffer money would not significantly offset the impacts of the planned development.

Mr. Loach thanked Mr. Rooker for his words, stating that he is the only member of the Board that has put some semblance of sanity into the discussion of growth areas and infrastructure. He acknowledged that most people in Crozet realize that he is a lone voice.

Mr. Jeff Werner of the Piedmont Environmental Council addressed the Board, stating that homes will be sold for what the market will bear regardless of what it costs to build that house. He noted that VDOT had a \$203 billion transportation plan but a lot of that does not include right-of-way acquisition or some projects already planned in the County. Mr. Werner said if Albemarle planning cannot be done without addressing transportation issues, this raises some serious questions about current County regulations.

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

Mr. Wyant asked about waivers associated with this application. Mr. Cilimberg responded that there is one waiver dealing with setback in the affordable housing area, which establishes the relationship with the road and adjacent properties. He said that each of the other lots has a zero lot line element with front and rear setback and side separations.

Mr. Rooker indicated that he is going to vote against the application and suggested that the applicant withdraw the plan until the transportation issues are addressed. He said that if the Board can not deliver on the infrastructure promised in the Master Plan, then they should not be rezoning properties. He added that they are not accumulating the funds necessary to provide the infrastructure that this additional growth is going to create a demand for.

Mr. Wyant asked about the policy for accepting late proffer changes. Mr. Davis replied that the substance of the proffers was submitted in a timely fashion, and the corrections made were non-substantive.

Ms. Thomas asked if it was better to have a by-right development than one providing less infrastructure than desired. She said that Mr. Rooker's proposal that that be required of developers might provide unintended consequences in Crozet.

Mr. Rooker commented that there are a lot of aspects of the proposal that are good, but the lack of adequate infrastructure would probably swing public support against developing the proposal in this way.

Ms. Thomas said that that is the same thing as saying not to do the Master Plan.

Mr. Rooker stated that assuming the projection in the plan is exercised in the next 20 years, there would be at least the units expected. He said that he thinks they have to be careful about approving units that take them beyond 20 years.

Ms. Thomas said that those are two separate issues, and the County would be sacrificing the other things offered in this proposal by denying the application because of lower proffer amounts.

Mr. Rooker emphasized that these proffer amounts are lower than those offered in other areas in the State, especially in light of cuts in transportation funding. He said that the County would have to raise taxes ten to fifteen cents to even come close to funding transportation needs. Mr. Rooker said that he has two problems with this: exceeding the number of units stipulated in the master plan and lack of infrastructure funding. He said that he does not view \$108,000 as something that would want him to accelerate this project.

Mr. Wyant noted that it is \$128,000.

Mr. Rooker said that what the County should be looking for is an adequate contribution toward infrastructure based upon the load that a particular development is going to put on it based on vehicle trips to be generated by a site.

Mr. Wyant stated that it has been a major concern for years, but he is looking for partnership in solving the problem. He said that he would not vote for this proposal today, adding that the County needs to look at the impact beyond the bounds of the project.

Mr. Slutzky said that he will vote in favor of it because there is too much by-right development in the rural area now, and those units have an impact on infrastructure without providing anything to offset it. He indicated that he does not like seeing the by-right development inside or outside of the designated growth areas because they are lost opportunities to collect contributions towards infrastructure. He said that it continues to encourage development in the rural areas by-right and that it continues to encourage development in the designated growth areas by-right which runs in opposition to the purpose of the Comprehensive Plan.

Mr. Rooker responded that this is not in keeping with the 20-year projection in the Master Plan.

Mr. Wyant said that there are a couple unknowns related to Eastern Avenue that need to be resolved before he would vote in favor of this.

Mr. Boyd asked if staff would help clarify some of the numbers presented related to dwelling units and what the Master Plan calls for. He said that he shares concerns with Mr. Rooker and Mr. Wyant, and that he would vote against this application at this time until the infrastructure issues are addressed. He said that maybe this is just a place we need to draw the line in the sand in Crozet.

Ms. Thomas said that just two years ago, the transportation network was going to be State-funded, and now it is becoming clear that the burden for constructing and maintaining secondary roads is going to be shifted to the localities.

Mr. Rooker cited a Loudoun County example of development with devastating consequences because of lack of infrastructure.

Mr. Slutzky said that people will still move here and will just live in by-right developments that offer nothing in the way of proffer money. He said that perhaps the solution would be raising taxes temporarily to address the infrastructure issue. Mr. Slutzky stated that the much more effective strategy is to look squarely at the challenge of offsetting the revenue streams.

Mr. Boyd said that if there were another month or two to work through the issues, the project would stand a better chance at being approved.

Mr. Rooker agreed, and he added that there are about 5,000 units in the growth area that are not built on which is about a ten-year supply of growth area building sites. He said that he does not think the Board is in a situation where they have to immediately make a decision on every rezoning that comes before them based upon a presumption that everybody that would have lived there is now going to the rural area.

Mr. Slutzky asked what the Board is expecting from the applicant.

Mr. Wyant said that he likes the application, especially the design and the trail proffer, but there are already a lot of rezonings in the pipeline.

Mr. Slutzky stated that he just wants to make sure that a clear message is being sent to the applicant and the development community.

Mr. Boyd commented that he appreciates what the applicant has brought forth, but the County has not really done their homework on how the infrastructure needs are being dealt with, especially who is going to fund Eastern Avenue.

Mr. Slutzky asked if the Board's policy in the near term would be to not approve developments that are not funding 100 percent of the impact. Mr. Davis commented that there is no legal obligation for the Board to act on this application today so it can be deferred. Mr. Davis said that with regard to infrastructure, the case law clearly states that you cannot deny a rezoning application solely because of lack of adequate public facilities. Mr. Davis added that this is a case where the courts would look at the standard of whether denial is fairly debatable based on existing zoning of the property versus proposed. Mr. Davis added that with a property zoned R-1 and R-6, the Board has great discretion in whether or not the rezoning should be approved. Mr. Davis cautioned the Board that the discussion of offsite public facilities is a stand-alone matter and is not a sole basis for denial of rezoning under Virginia law.

Mr. Rooker said that it is reasonable to deny a rezoning based on proffers that do not deal with community impacts.

Mr. Davis stated that can be one factor in considering a denial.

At this point Mr. Wyant **moved** for deferral of ZMA-2006-001 to September 6, 2006. Mr. Dorrier **seconded** the motion.

Mr. Davis noted that if there are amendments to the proffers, there would have to be a new advertised public hearing before the Board could accept those. He said that deferring it until September would be fine, but there may not be able to be a vote that day.

Mr. Rooker said that it would make sense to defer it to that date. Mr. Tucker stated that is a fairly quick turnaround.

Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

Agenda Item No. 13. **Public Hearing:** SP-2006-011, Mosby Mountain Stream Crossing (Signs #14, 22).

Proposed: Amendment to existing special use permit for fill in the floodplain to allow a culvert stream crossing.

Zoning Category/General Usage: R-1 Residential (1 unit/acre).

Section: 30.3.05.2.1 (2); 30.3.05.2.2 (3).

Comprehensive Plan Land Use/Density: Rural Area 4 - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/density (0.5 unit/ acre).

Entrance Corridor: Yes.

Location: Approximately 200 feet from the intersection of Ambrose Commons Drive and Old Lynchburg Road (Route 631).

Tax Map/Parcel: 90E-A0.

Magisterial District: Samuel Miller.

(Notice of this public hearing was published in the *Daily Progress* on July 17 and July 24, 2006.)

Mr. Cilimberg reported that the request is to allow the previously approved permit to allow the construction of a box culvert in place of a con-span bridge on Ambrose Commons Drive, which accesses Mosby Mountain development. He said that the applicant has indicated that issues have arisen with the use of con-span at the site, making approval of the bridge by VDOT and the ultimate construction of that bridge difficult. He said that the soils at the site are fine and unstable and would require the addition of pilings to the foundation of the bridge and rip-rap beneath the bridge. He said that a box culvert would require fill of suitable material for a proper bedding. He indicated that the applicant has coordinated with VDOT for various designs without approval, and staff prefers the con-span design to reduce long-term stream impacts. Mr. Cilimberg said that the applicant has not yet submitted a design showing the rip-rap under the span structure.

Mr. Cilimberg said that staff recommended approval with revised conditions including the applicant's submission of one final proposal for the con-span structure with rip-rap scour protection under the structure to VDOT. He said that VDOT indicated in their review of this final submittal that if rip-rap would not effectively address the scour concern and does not approve of the final proposal in a timely manner, then the box culvert would be acceptable.

Mr. Cilimberg said that the Planning Commission did not accept staff's recommendation but instead recommended approval of a box culvert with six conditions as the applicant had exhausted their plans for the con-span approach.

Mr. Boyd asked if there would be a level that is higher than what is expected in the erosion sediment control plan to include stabilization of fill such as at North Pointe. Mr. Graham replied that this is the standard condition for stream crossings, and the impact is not usually as great. He added that the stream has to bypass while the construction is being done.

Mr. Boyd said he is anxious to see sediment control at a higher level than what is required by the State. Mr. Graham responded that a higher level could be sought if that is the Board's wish.

Mr. Davis said that the debate has always been whether the cost-benefit analysis is reasonable for increasing the standard to that level, adding that the benefit gained per dollar decreases dramatically as you get beyond the State standard.

Mr. Boyd recalled aiming for 80 percent. Mr. Graham said that 100 percent would be impossible, and 90 percent would be cost-prohibitive, with 80 percent being state of the art.

Ms. Thomas agreed that a higher standard should be sought, but it is harder to visualize a box culvert. Mr. Graham replied that basically a new stream with a liner is built to divert the water while the box culvert is being built. He added that essentially a coffer dam is being built. Mr. Graham said that the applicant tried diligently to do the con-span, and it has proven to be too difficult to accomplish primarily because of VDOT preferences. He noted that it is a pre-cast bridge, and Richmond VDOT has to approve it. Mr. Graham stated that Richmond VDOT suggested the box culvert instead because of con-span maintenance costs.

With no further questions for staff, Mr. Rooker opened the public hearing and asked the applicant to speak first.

Mr. Pete Caramanis of Beights Development addressed the Board. Mr. Caramanis explained that this amends the special use permit granted in May 2002, and his firm has made numerous attempts to get the con-span bridge approved by VDOT without success. He said that Mosby Mountain residents have been eager to get the project completed so they have a second point of access, and they unanimously supported using the box culvert as they are aware that may be the only option given VDOT's position.

With no one else from the public rising to speak, the public hearing was closed, and the matter placed before the Board.

Ms. Thomas immediately **moved** for approval of SP-2006-011 with the six conditions recommended by the Planning Commission. Mr. Wyant **seconded** the motion which passed by the following recorded vote:

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

NAYS: None.

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

1. Albemarle County Community Development Department approval and VDOT approval of final grading plans and box culvert and road plans and computations;

2. Albemarle County Community Development Department approval of an Erosion and Sediment Control Plan to include stabilization of fill;
3. Albemarle County Community Development Department approval of mitigation plans for disturbance of the stream buffer;
4. If a box culvert is utilized it must be cast in place or otherwise constructed to provide for countersinking of one barrel of the culvert to provide for normal and low flows in a manner satisfactory to the approved U.S. Army Corps of Engineers water quality permit. The applicant must provide computations showing no rise in the one hundred (100)-year floodplain; and
5. In an effort to minimize environmental degradation, no soil shall be removed from the stream to compensate for any fill.

Agenda Item No. 14. From the Board: Committee Reports and Matters Not Listed on the Agenda. (**Note:** this item was moved to the end of the meeting.)

The Board recessed at 5:03 p.m. and reconvened in Room 241 at 6:04 p.m.

Agenda Item No. 15. **Public Hearing:** ZMA-2000-09, North Pointe, and SP-2002-72, North Pointe.

Proposed: Rezone approximately 269 acres from RA Rural Area zoning district which allows agricultural, forestal and fishery uses; residential density (0.5 unit/acre) uses to PD-MC Planned Development-Mixed Commercial which allows large-scale commercial uses; and residential by special use permit (15 units/ acre). A maximum of 893 units is proposed by special use permit at a gross density of 3.31 units/acre.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Neighborhood Density Residential – residential (3-6 units/acre) and supporting uses such as religious institutions, schools, and other small-scale non-residential uses. Urban Density Residential – residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses. Regional Service – regional-scale retail, wholesale, business and/or employment centers, and residential (6.01-34 units/acre). Office Service – office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre).

Entrance Corridor: Yes.

Location: North of Proffit Road, east of Route 29 North, west of Pritchett Lane and south of the Rivanna River.

Tax Map/Parcel: Tax Map 32, Parcels 20, 20a, 20a1, 20a2, 20a3, 22h 22k, 23, 23a, 23b, 23c, 23d, 23e, 23 f, 23g, 23h, 23j and 29i.

Magisterial District: Rivanna.

(Notice of this public hearing was published in the *Daily Progress* on July 17 and July 24, 2006.)

Ms. Elaine Echols, Principal Planner, reported that the North Pointe development is proposed to have almost 600,000 square feet in commercial, 140,000 square feet in office, and 893 in residential units. She said that the actual rezoning is from RA to PD-MC with special use permits and includes proffers. Ms. Echols reminded the Board that at their June 7 work session, which followed the public hearing on May 10, they advised the applicant on outstanding issues. She indicated that the Board had reached a consensus on all but two of eight major items raised during those meetings. She said that staff came away with different conclusions on the timing of construction of the middle entrance to the development from Route 29, and the Board left open the issue as to whether the affordable housing proffers were adequate or not. She noted that the staff report addresses what was brought up at the June 7 meeting, but there was not a conclusion drawn on the timing of residential units relative to commercial development.

Ms. Echols said that staff has recommended that the applicant obtain building permits for 40 units per year until a minimum of 200 units are reached so that residential development is constructed concurrent with commercial development. She stated that the staff report says that the applicant has agreed to only 20 dwelling units per year, and the applicant has now offered to plat 40 lots for single family development per year rather than obtain building permits for that many units. She added that the applicant has provided a marked-up copy of the special use permit with changes showing how the conditions would meet the agreed upon arrangement. She indicated that staff has understood that the Board would rather have unspent cash proffers transferred to the County CIP if a sunset is passed rather than having it revert to the owner. She said that the applicant did not come away from the June 7th meeting with that understanding.

Mr. Ron White, Albemarle Housing Director, addressed the Board. Mr. White noted that the current proffers only meet the affordable housing policy of the County with the added discussion on the moderately priced units. He said that currently the County is proffered 94 units of affordable housing, and 134 units would be 15 percent of the proposed build-out, leaving a shortage of 40 units. He said that taking a half-credit for the moderately priced units would bring the total number up to 102 units or 11 percent; however, that practice is not currently part of the County's affordable housing policy. Mr. White stated that the balance of the proffer would be in the form of cash, \$300,000 payable within 60 days after the approval of the rezoning, which gives about another year for the use of that money. He stated that \$300,000 over an eleven-year period would realize about \$528,000 in value. He said that if the moderately priced units are credited as one-half unit, then the proposal would meet the adopted and discussed guidelines. He stated that the current density bonus policy requires that affordable rental units developed be affordable for five years.

In the enabling legislation, Mr. White reported that there is allowance for localities to provide funding for projects to develop or construct housing with a minimum ten-year requirement for rental units. He added that the low-income housing tax credit program requires a 15-year term on affordability of rent restrictions and occupancy.

Mr. Rooker asked if 66 of the affordable units were apartments and asked him to clarify if they would be affordable for five years. Mr. White confirmed that both of those points are correct.

Mr. Boyd asked about the reaction to this project by the Affordable Housing Committee. Mr. White responded that the committee was unanimously in favor of moving forward with amending their policy to include a sliding scale chart that provides additional credit for lower priced homes and lesser credit for more expensive homes that fit within a moderate range. Mr. White said that the committee would prefer having a flexible policy rather than implement something that might not work in a few years, adding that they agree a better mix of types and more incentives for developers are needed. Mr. White also stated that the committee would like to get away from calculating what is affordable at any one point in time and instead adopting an index such as a percentage of the VHDA maximum sale price for first-time homebuyers.

Mr. Rooker noted that the \$16,500 amount was based on last year's contribution toward down-payment assistance, and he would expect those to be increasing over time, not decreasing. Mr. White responded that the committee also suggested that cash proffers should be pegged at ten percent of the affordable sales price so that the proffers rise in accordance with the sales price, adding that he is working with the County Attorney's office to clarify some language that could be used in the policy. Mr. White noted that with this project, if all of the proffered cash would be invested it would return at six percent.

Mr. Rooker asked if there was a time period for which the party had to pay back the down payment assistance. Mr. White replied that currently there is not.

Mr. Graham said that the proffers before the Board address the immediate impacts of where North Pointe puts traffic onto the adjoining roadway, and some additional improvement funding to build a third lane that goes beyond what the traffic study has stipulated would be needed. He added that there is some debate as to whether those improvements are necessary, and on southbound Route 29 there would be an expectation in the public's mind to make further improvements. He said that with the second phase, there is a question as to whether the Board considers it acceptable to tie the additional improvements to the completion of the commercial space as that date is uncertain. He mentioned that staff was hoping to have the future conditions model from Places 29 by now, and the existing conditions study done in 2005 does not take into account North Pointe or the remaining parts of Hollymead Town Center. He noted that the findings of that study can be found on the County and TJPDC websites, referred to as "Technical Memorandum 3."

Mr. Graham added that the intersection at Airport Road right now is at a "E" level of service, which is very close to failing, and staff indicates that some of the approaches would actually be failing; there is no modeling available yet as to how North Pointe would impact this. He noted that staff can make some projections based on what traffic counts are, and VDOT is saying that there are currently 37,000 cars per day on average; North Pointe would generate an additional 30,000 trips per day. He said that North Pointe's consultant feels that perhaps VDOT's model over-estimates that figure, but common sense says that even 20,000 vehicles per day would be significant in an area that is already near failure. He said that staff is concerned that the majority of those trips would be generated by the retail portion of the development and not the residential portion of the development. He said that he would like for this proposal to be denied until information is obtained through the Places 29 study.

Mr. Boyd asked about the extra southbound lane and how that would be built. Mr. Graham responded that with the approval of the first commercial development the applicant would build some of the residential portion that would use Northwest Passage first, but with the commercial portion the southern entrance would be built first and the third southbound lane would be built from 1,000 feet north of the intersection to Airport Road. Mr. Graham said that they would also build North Pointe Boulevard and Proffit Road improvements, the Leake Road extension and a third northbound lane along the entire frontage.

Mr. Boyd asked if the third lanes would help the condition of the road. Mr. Graham said that he is not certain what difference it is going to make because that information is not available yet. Mr. Graham added that the experts debate whether some vehicle trips would have been taken anyway without the new development but acknowledged that factor should be taken into consideration by the consultants.

Mr. Boyd stated that the spine road through North Pointe is in the plan as is another parallel road between Hollymead Town Center and Berkmar Drive Extended. Mr. Graham said the question is how much traffic those parallel roads are actually going to capture, and it seems logical that the only people who would use them are people who are back in Hollymead and North Pointe anyway.

Mr. Rooker stated that most travelers are not going to get off of Route 29 and use those roads unless they were getting off anyway. Mr. Graham said that Leake Road would have to be built with the first commercial development, and staff believes that is adequately addressed in the proffers. Mr. Graham noted that the majority of people who would be using the shopping area would not already be passing the site as it would be a destination.

Mr. Boyd stated that the shopping center could just as easily go in Greene County, and the traffic would be put on the Route 29 area. Mr. Graham agreed that if it is a regional destination, those trips are being put onto Route 29 for an even longer time.

Mr. Rooker said that it is unlikely that people from Pantops are going to drive up to Greene County and shop.

Mr. Boyd noted that it is possible that Greene County shoppers might stop at North Pointe instead of continuing to drive further south to places like Fashion Square. Mr. Graham said that North Pointe is on the east side so there is a right in, right out for people who are heading home to Greene County.

Mr. Rooker responded that NGIC traffic would be going in the other direction.

Mr. Slutzky asked if the improvements offered are beyond what VDOT would ordinarily require. Mr. Graham replied that most of the expensive improvements are ones that they would require if the project were by-right, such as crossovers, signalization, and the vertical curve correction for the southern entrance.

Mr. Slutzky said that it sounds to him as though the applicant is providing a significant amount of pavement and improvements in the form of the third lanes. Mr. Graham agreed, but he emphasized that the development would also significantly impact Route 29.

Mr. Slutzky stated that the VDOT models tend to be conservative and estimate the numbers as much higher than they end up being. Mr. Graham said that VDOT's primary concern is making sure that the road does not fail so they tend to estimate on the higher end rather than the lower end.

Ms. Echols reported that staff has been unable to recommend approval at this time because of the regional transportation impact and concerns about retail absorption that will cause stale zoning and inhibit the County's ability to respond to changes in future market needs, form and design, and uses. She said that staff has provided several studies indicating the amount of retail absorption the County can reasonably expect. Ms. Echols stated that approval of this rezoning will not allow the Master Planning process to be completed before setting the zoning on the property and use recommendations may be very different than what would be reviewed for this rezoning. She said that staff believes this rezoning would be premature, and the Board will make the decision it believes is best for the County. Ms. Echols said that staff feels it can be approved with the proffers and special use permit conditions if the Board does choose to grant approval.

Ms. Echols emphasized that this rezoning plan has not been reviewed to the detail of a site plan or subdivision plat, and it is not known whether parking and landscaping would be adequate. She said that if the rezoning is approved, staff feels that waivers to setbacks and critical slopes could be approved because they have studied those.

Mr. Boyd asked her to explain stale zoning relative to retail absorption. Ms. Echols explained that if the build-out of the project does not occur in a timely manner, then you have land that is zoned but does not have a use. She said that she does not want the Board to be in the position of having land sitting out there undeveloped for a long period of time.

Mr. Boyd stated that he cannot imagine having millions of dollars put into this plan and not have business sense to put in retail. Mr. Graham said that the applicant is under no obligation to build out the parcel just because it is rezoned.

Mr. Rooker noted that this particular applicant has a parcel on Route 250 West zoned for a shopping center that has not been developed in over ten years.

In response to Ms. Thomas's question about wastewater management, Mr. Graham explained that the applicant would work with the Service Authority to construct a pump station, and all of the waste would flow down to the area and be pumped back across Proffit Road to the Powell Creek sewer trunk line. Mr. Graham added that the Camelot line is not adequate to handle this flow, and he said that the Service Authority has assured him that the alignment for the forced main could be dealt with at the site plan level with the applicant being responsible for those expenses.

Mr. Wyant said that that would only handle the residential portion, not the commercial. Mr. Graham clarified that the applicant is proposing that all of it would come down to the pump station, and the question is whether the Camelot station should be abandoned and pump everything to the Powell Creek trunk line.

Ms. Thomas asked who would have to pay for it if the Powell Creek line was not sufficient. Mr. Graham responded that the Service Authority pays for the upper part, but as you get further down it becomes a Rivanna line. Mr. Graham noted that there is also a special use permit condition not allowing grinder pumps on the houses, but instead they have to have a gravity sewer.

Mr. Boyd asked if the water capacity is sufficient. Mr. Graham replied that it has been determined to be sufficient.

Ms. Echols reported that staff has worked very closely with the applicant on the sewer plan to keep the lines off of the critical slopes, even though the service authority would prefer to put the lines at

the lowest point. She said that it has been very critical to them that the environmental features be preserved.

With no further questions for staff at this time, Mr. Rooker opened the public hearing and asked the applicant to speak.

Ms. Valerie Long, representing Eastern Management Company, addressed the Board. She thanked Ms. Echols, Mr. Graham, Mr. White, Mr. Kamptner and other staff for their help with the process. Ms. Long also thanked Mr. Boyd for his help over the last few months to make sure that his constituents' concerns have been addressed. She reviewed the changes that have been made since the June meeting, stating that the project has progressed over the last several months in a tremendous fashion, and the plan is much better as a result of this work. She also indicated that Mr. Rooker and Mr. Slutzky had put a significant amount of time into improving the plan.

Ms. Long said that the applicant has doubled the width of the vegetative buffer along Route 29 from 25 feet to 50 feet, clarified that the one large building can only be expanded by ten percent, increased the percentage of bio-filters, worked with staff to reorganize the transportation section of the proffers, and provided that the southbound lane is a Phase One improvement. She added that the applicant has corrected the vertical curve on Route 29 as a Phase One improvement, and the applicant has assured that the roundabout on Proffit Road and Leake Road as well as both of the lanes on Proffit Road would be built in that first phase. Ms. Long indicated the entire length of North Pointe Boulevard would be located.

Ms. Long reported that they have added 26 additional affordable housing units for a total of 110 or 102 if half-credit is given for the workforce units. She added that the applicant has agreed to proffer \$300,000 for affordable housing down-payment assistance to be due 60 days after the rezoning was approved. Ms. Long said that 40 single-family detached lots would be created each year for five years, for a total of 200 lots, and they have agreed to a condition that stipulates the timing.

Mr. Rooker asked if the difference in platting and having the infrastructure so that the lots could actually be sold was ever resolved. Ms. Long replied that in order for the lots to be created and sold, the builders have to have access to them, and the recordation of subdivision plats have to be created or bonded.

Mr. Davis commented that the only issue is under what time period they are actually built, and it is typically staff's position that they be built within a year although that is not mandated.

Mr. Graham said that the bonding requires the applicant to provide a schedule for improvements so that roads, water, sewer, street trees, and sidewalks are bonded as part of platting the lots.

Ms. Long said that the applicant talked about whether there would be a tax increase when going from zoned land to platted lots, and Mr. Bruce Woodzell, County Assessor, indicated there was an additional reassessment that would take place when the lots are platted with an increase of three to five times the value. Ms. Long pointed out on a map where buildings would be located and how the plan has changed since its first presentation.

Mr. Rooker asked about one of the boxes that might expand in the future, and he also asked if there was an undertaking to make sure there was an entrance on the street side. Ms. Long replied that if it is expanded, it could be expanded into one area for a maximum of about ten percent.

Mr. Rooker said that he wanted to know if there was an effort to make an ingress/egress entrance at that point. Ms. Long emphasized that the proffered road improvements far exceed the recommendations and requirements of the traffic study which were developed carefully with VDOT, the County transportation planner, and other planning staff. She indicated that everyone has agreed on the scope of the study, the recommendations of the study, and the data and methodology that were used, noting that it assumes a four percent increase in the background traffic and takes into consideration all other projects being proposed for development. Ms. Long added that the applicant has also proffered \$35,000 for synchronization of traffic lights.

Mr. Rooker noted that the projection is a gradual increase of four percent a year which would result from other people living in the area and the other projects that have already been approved. Ms. Long said that the four percent assumption is enhanced by the additional three million square feet that the Research Park has.

Mr. Rooker said that he assumed that part of the four percent was the Research Park. Ms. Long replied that it was not, stating that traffic from that project was considered in addition to that figure.

Mr. Graham explained that in 2002, North Fork Research Park did not exist as far as a transportation volume on Route 29. He said that the background traffic took the existing conditions, excluding North Fork, and took that out ten years. He said that there was never an agreement reached on the value of proffered improvements, but the figure being used is \$12 million.

Ms. Long stated that it is a good faith estimate and that is what they will cost at this time. She confirmed that the traffic experts project that the improvements would make the level of service better than the current status.

Mr. Graham noted that the question is what the future condition would be and that will not be known until the Places 29 study is done.

Ms. Long indicated that the developer of this project has also contributed to that study. She said that at the Proffit Road intersection at the peak hour there are about 1,000 cars or more going through, and the wait time could actually decrease there by as much as a third. She said that they are confident that it is not going to be any worse and that they think it might actually improve.

Ms. Long explained that the zoning ordinance requires a 30-foot setback from the public street for all buildings and a 50-foot setback between the planned district/mixed commercial zoning district and the RA zoned districts.

Mr. John Cruickshank said he is representing the Piedmont Group of the Sierra Club, and he noted that they are in favor of protection of rural landscape. He expressed concern that sedimentation would occur during construction. Mr. Cruickshank stated that comments have indicated that citizens feel the developer needs to make a much greater effort to follow the Neighborhood Model and better integrate commercial and residential areas. He said that the number and size of the stores should be reduced and should be far more accessible to pedestrians and bicyclists. He said that the developer should be required to contribute much more to a public transit system. Mr. Cruickshank stated that the Piedmont Group of the Sierra Club is against approval of this request.

Ms. Jerry McCormick-Ray said this plan does not align with Comprehensive Plan recommendations and will alter streams, critical slopes, and other sensitive natural areas. She thinks this plan sends the wrong message. Ms. McCormick-Ray said that if the plan is accepted, then Albemarle will be no different than the Washington, D.C. suburbs and that the rural area between Greene and Albemarle Counties will be squeezed into development. Ms. McCormick-Ray stated that she is against approval.

Mr. Tom Olivier urged denial of the request. He stated that he is looking to the Board for leadership.

Mr. Carleton Ray said he is astonished that the proposal has gotten this far. He said that it does not meet even the minimum standards of the Neighborhood Model. He said that the North Fork of the Rivanna River contains some of the best habitat in the County. Mr. Ray stated that he is against approval.

Mr. Ed Roberts said he believes the North Pointe development will lead to death by traffic along Proffit Road and will also greatly impact Route 20, not just the quarter mile Ms. Long has referred to. Mr. Roberts stated that he is against approval.

Ms. Kay Slaughter, representing the Southern Environmental Law Center (SELC), said North Pointe would add 30,000 new auto trips per day on Route 29. She expressed concern over the environmental impacts this development would have. Ms. Slaughter thinks the proffer policy should not be changed via this rezoning. Ms. Slaughter stated that the SELC is against approval.

Mr. Tom Hulbert, representing the Charlottesville Regional Chamber of Commerce, said that North Pointe responds to regional design charted by Albemarle County. He stated that it will provide affordable housing, broaden the local tax base, create jobs, and provide workforce housing. Mr. Hulbert stated that the Chamber is for approval.

Ms. Barbara Cruickshank said she is a healthcare provider. She thinks this project would impact air quality. She noted that Madison County has "F" grade air quality. Ms. Cruickshank said that one out of 15 children has asthma, and one out of eight has a chronic illness. She said North Pointe will further degrade air quality and affect youth and the elderly. Ms. Cruickshank stated that she is against approval.

Mr. Fred Gerke, President of the Proffit Community Association, said the Board must consider whether North Pointe would make this a better community or a worse one. Mr. Gerke stated that the Proffit Community Association is against approval.

Mr. Jeff Werner, representing the Piedmont Environmental Council, spoke next. He said the Board should listen to staff and wait until the issues are resolved before voting on this rezoning. He stated that citizens have already expressed concern about traffic congestion. Mr. Werner stated that he is against approval.

Ms. Cynthia Boyd, a resident of Pritchett Lane, said she is against approval.

Mr. Doug Long said there are special interests represented here, and everyone benefits from one extent or another from this development. He stated that he is for approval.

Mr. Chuck Rotgin of Eastern Management Company thanked the consulting engineers, the environmental engineers, the architects, his employees, Ms. Long, and everyone else for their work on this project.

There being no further public comments, the public hearing was closed, and the matter was placed before the Board.

(Note: The Board took a brief recess at this point in the meeting.)

Mr. Rooker stated that this has been a very long process with many meetings and small group work sessions, noting that he has spent 450 hours himself on this. He said that the plan has changed significantly, especially the proffers related to transportation, affordable housing and environmental protection. He commented that the plan is not a great design, but is instead a big-box with some residential on it. He acknowledged that the design is better than it was, and a school site has been proffered. He said that the plan has a number of positive attributes and emphasized that the decision the Board has to make is whether this development is in the best interest of all Albemarle County citizens, and he does not think that it is.

Mr. Rooker said that this development will add 30,000 vehicle trips to Route 29, and he noted that this is an 80 percent increase to existing traffic which is a huge amount. He indicated that the traffic study helped spotlight the fact that many roads in the area are at failing levels of service, and it mentioned specific roads that are either "E" or "F" levels of service. He said that it is not hard to figure out that it is very unlikely that adding a lane or two along Route 29 is going to offset the impacts of an 80 percent traffic increase in this area. He stated that his concern is mainly the traffic problems that would result if this development is approved in its current form, and an actual Neighborhood Model type development would minimize those impacts. He mentioned that the County is receiving less money for road improvements than what it received in 1996 while costs have tripled. He said that this development will create a huge traffic problem on Route 29, and it has been compared to Tysons Corner.

Mr. Rooker said that with three million square feet of unbuilt commercial space already approved for development, there is plenty of room to grow without retail leakage, and staff says that over a million of that can be absorbed over the next ten years. He emphasized that lack of transportation funds from the State is not the developer's fault. He noted that the proffers could be enhanced, and following a recent Orange County example, could be as high as \$20 million. He said that he does not think the proffers make a significant dent in the area's regional transportation problem. He said that this is just not in the best interest of the community at this time, and thanked Mr. Rotgin and his representatives. Mr. Rooker concluded that staff has recommended denial, and he agrees with that recommendation.

Mr. Dorrier stated that he shares the transportation concerns, but he feels that Mr. Rotgin has tried to do a near impossible task of putting a community in a difficult area with critical slopes. He said that this has a school and library site, and it provides improvements to Route 29. He added that if this development were not put there, it would be developed as a commercial area and would not be as well planned and integrated as this proposal is. He stated that infrastructure alone is not a just reason for denying an application; Mr. Rotgin's proposal will help the situation on Route 29. Mr. Dorrier stated that he believes the County would benefit in the long run.

Mr. Slutzky commented that this is not an easy decision for him. He noted that the designated growth area was decided before he came on the Board and now if things are turned down in the growth area the development is pushed into the rural areas. He said that North Pointe is in the designated growth area, and it provides 893 residential units including single family homes in the growth area. He noted that not building North Pointe now would push that development into the rural area. He said that the stewardship of this site will help minimize the sedimentation into nearby waterways. He commented that there will likely be some attrition leading to a random urban sprawl type of development in between Hydraulic Road and this site, but it will be redeveloped in a different fashion. He said that this would have a positive impact on the vision of Places 29, and in his mind this is a successful Neighborhood Model design. He said that the affordable housing issues have been a battle, and the actual policy beyond the 15 percent requirement has been tenuous. He stated that his vote in favor of North Pointe is not an endorsement of support for all the proffers, but he is accepting them nonetheless. Mr. Slutzky said that even though staff has recommended denial of this project, he is going to vote in favor of North Pointe.

Mr. Wyant stated that he would vote in favor of the project, as the applicant is contributing a school site and a park, and the applicant has worked to enact environmental protection measures and buffer protection. He said that the traffic models have to be taken with a grain of salt, and the phasing of the improvements will be beneficial.

Ms. Thomas said that when a rezoning is considered, the Board is supposed to look at whether there are adequate public facilities. She noted that the study done in 2002 only looked at the immediate area and not the ripple effect of additional vehicle trips further down the road. She said that Hollymead Towncenter was asked to make improvements right in front of their property, but anyone who drives along Route 29 knows it is a mess. She commented that with Places 29 getting closer and closer to being completed, it would provide information about some things that could be changed within the development to help minimize impacts. She acknowledged that this development has many laudable aspects to it, such as the Main Street design, but it still has a lot of big box elements to it which are creating most of the traffic. She said that this does not yet have the form and function that will actually reduce traffic, but it could. She said that there is a difference of opinion as to the impact the new shopping will have on the other shopping centers along Route 29, and she views having partially empty shopping centers as a negative thing. She stated that there was an assumption that the State was going to provide transportation funding, but over the last four years it has become clear that would not be the case.

Ms. Thomas said if she could wish anything on the Board tonight, it would be that this vote would fail because that would send a very loud message to Richmond that they are going to have to become more responsible in their funding of transportation.

Mr. Boyd stated that there are positives and negatives to this project, but the Board has approved several thousand units on the basis that they fall under the Neighborhood Model design. He said that none in his mind have met all of those elements, such as schools, parks, retail, and housing, and this

development does. He added that Route 29 North is going to become a major employment center, and this development puts residences close to that.

At this time, Mr. Boyd **moved** for approval of ZMA-2000-009 with the proffers dated July 20, 2006. Mr. Dorrier **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Dorrier, Mr. Slutzky, Mr. Wyant, and Mr. Boyd.

NAYS: Mr. Rooker and Ms. Thomas.

(**Note:** The proffers, as approved, are set out in full below.)

**PROFFER STATEMENT
NORTH POINTE CHARLOTTESVILLE, LLC
REZONING APPLICATION: #ZMA-2000-009, SP -2002-72**

July 20, 2006

With respect to the property described in rezoning application #ZMA-2000-09 and SP-2002-72 (the "ZMA"), CWH Properties Limited Partnership is the fee simple owner and North Pointe Charlottesville, LLC is the contract purchaser of Tax Map 32, Parcels 20, 20A, 20A1, 20A2, 20A3, and 29I (the "North Pointe Property"), Violet Hill Associates, L.L.C. is the fee simple owner of Tax Map 32, Parcels 23, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H, and 23J (the "Violet Hill Property"), Virginia Land Trust is the fee simple owner of Tax Map 32, Parcel 22K (the "Virginia Land Trust Property") and the Edward R. Jackson Trust is the fee simple owner of Tax Map 32, Parcel 22H (the "Jackson Trust Property"). The respective parties are collectively referred to herein as the "Owner", which term shall include any successors in interest. The North Pointe Property, the Violet Hill Property, the Virginia Land Trust Property, and the Jackson Trust Property are referred to collectively as the "Property".

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, Owner hereby voluntary proffers the conditions listed in this Proffer Statement, which shall be applied to the North Pointe Property if the ZMA is approved by Albemarle County. These conditions are proffered as part of the ZMA and it is agreed that: (1) the ZMA itself gives rise to the need for the conditions and (2) such conditions have a reasonable relation to the rezoning requested.

This Proffer Statement shall relate to the multi-page application plan entitled "North Pointe Community", prepared by Keeney & Co., Architects, as revised through June 13, 2006 and attached hereto as Exhibit A (the "Application Plan"), and the Albemarle County Code in effect as of the date of this Proffer Statement (the "County Code"). The North Pointe Community shall be referred to as the "Project".

I. THIS SECTION INTENTIONALLY DELETED

II. ENTRANCE CORRIDOR

2.1 Creation of a 50-Foot Buffer along the Entrance Corridor. Within six (6) months after the acceptance by the Virginia Department of Transportation ("VDOT") of the Road Improvements as defined in Section 5.3 that are along the northbound lanes of U.S. Route 29, Owner shall plant and thereafter maintain at all times a landscaped buffer, including hedgerows, along the Entrance Corridor frontage parcels owned by Owner. The buffer will consist of a minimum 50-foot wide continuous visual landscape area that shall be subject to Albemarle County Architectural Review Board ("ARB") review and approval (the "Buffer"). In the event VDOT at any time in the future reduces any portion of the Buffer located on VDOT property, the Owner shall compensate for such reduction by extending the Buffer on Owner's property in order to maintain a minimum 40-foot Buffer, even if such compensation shall require the removal of parking adjacent to such Buffer.

2.2 Appearance of Storm Water Management ("SWM") Facilities. The SWM facilities visible from the Entrance Corridor identified on the Application Plan (stormwater management facilities 1, 2, and 10) shall be shown on a plan and be subject to ARB review and approval. SWM 1 shall be designed such that its shape, placement, and land form (grading) transition between the adjacent conservation area and the adjacent hard edge of the parking lot and buildings. The plan for SWM 1 shall be submitted to the ARB with the first ARB submission for Building 14 or 19 identified on Sheet B to the Application Plan ("Sheet B"), or any such building that is proposed to be located where Building 14 is located on Sheet B pursuant to the terms of Section 3.2. SWM 2 shall have a more structured appearance than SWM 10 (see below) and shall be designed such that its shape, placement, and land form (grading) transition between the adjacent conservation area and the adjacent hard edge of the parking lot and buildings. The plan for SWM 2 shall be submitted to the ARB with the first ARB submission for any of Buildings 26 through 31. SWM 10 shall be designed such that its shape, placement, and land form (grading) are integral with the adjacent conservation area. The plan for SWM 10 shall be submitted to the ARB at the time road plans are submitted to the County and VDOT for Northwest Passage.

III. DENSITIES

3.1 Total Buildout. The total number of dwelling units within the Project shall not exceed eight hundred ninety-three (893). Subject to Section 3.2, the building footprints and gross

floor areas of commercial, office, and other uses, and the building footprints of hotels shall not exceed those set forth in the Land Use Breakdown Table on Sheet A to the Application Plan ("Sheet A").

3.2 Limited Adjustments to the Elements of the Application Plan. The gross floor area of the buildings used for commercial, office, other uses, and hotels shown on Sheet A may be adjusted within a range of up to ten percent (10%), provided that the maximum gross floor area for each category of uses shown on Sheet A is not exceeded. The footprints of Buildings 6, 14 and 36 as shown on Sheet A can be interchanged. Notwithstanding the terms of this Section 3.2 to the contrary, Building 14 shall not initially exceed 88,500 square feet, provided, however, that after two years following the issuance of the certificate of occupancy for Building 14, Building 14 may be adjusted within a range of up to ten percent (10%), and if Building 14 is located in the location shown on Sheet B, any such expansion shall be located to the east so that the additional space is located along North Pointe Boulevard. Notwithstanding the terms of this Section 3.2 to the contrary, but subject to the provisions of Section 8.1, the County may authorize Building 21 as shown on Sheet A to be adjusted by more than ten percent (10%).

IV. STORMWATER MANAGEMENT AND STREAM BED CONSERVATION

4.1 Flood Plain. The area of the 100-year flood plain within the Project shall remain undisturbed except for road crossings, public utility facilities and their crossings, and pedestrian and biking trails, and only to the extent such exceptions are permitted by County ordinances and regulations. Upon the request of the County, Owner shall provide a survey and prepare the necessary documentation and dedicate the land within such flood plain to the County.

4.2 Stormwater Management Plan. The stormwater/best management practices ("BMP") plan for the Project shall be prepared, and all stormwater management facilities for the Project shall be designed and constructed, to accommodate all current stormwater discharge from Tax Map Parcel 032A0-02-00-00400 (Northwoods Mobile Home Park Development) and from the existing developments on the northeast and northwest corners of Proffit Road and U.S. Route 29, specifically the following parcels shown on the current Albemarle County tax maps: tax map 32, parcels 38, 38A, 39, and 39A; tax map 32A, parcels 2-1, 2-1A, 2-1A1, 2-1B, 2-1C, and 2-1D. The stormwater management facilities shall mitigate the stormwater quality and quantity impacts, for the stormwater generated both within the Project and for such existing offsite conditions as described herein, as though the entire preexisting condition of the drainage area is an undeveloped wooded site and is being developed to the existing off-site conditions and the proposed on-site conditions. In addition, biofilters shall comprise a minimum of thirty-three and one-third percent (33 1/3%) of the total required parking lot landscaped areas within the "Commercial Area" of the Project, as such Commercial Area is delineated on Sheet G of the Application Plan ("Sheet G").

4.3 Erosion and Sediment Control.

(a) The Owner shall, to the "maximum extent practicable", provide such additional appropriate erosion and sediment control measures that exceed State and Local minimum standards. If there is a disagreement regarding whether the standard of "maximum extent practicable" is satisfied, the Virginia Department of Conservation and Recreation will be provided an opportunity to review and advise on such question.

(b) Post-Construction Stormwater Management: The Owner shall, to the maximum extent practicable, provide post-construction stormwater BMPs that are designed to achieve an average annual sediment removal rate of 80% as published by the Center for Watershed Protection in Article 64 of The Practice of Watershed Protection (2000 edition). These will include, but are not limited to, bioretention, bioretention filters and wet retention basins.

4.4 Stream Buffer and Restoration. Upon the commencement of the applicable comment period, the Owner shall notify the County and provide the County with a copy of any application(s) to the U.S. Army Corps of Engineers and/or DEQ for any stream disturbance. In addition, if necessary, after first looking on-site for mitigation opportunities available to satisfy the permitting process, the Owner shall contact the County for a list of off-site opportunities within Albemarle County for such mitigation, and shall look for such mitigation opportunities off-site.

V. TRANSPORTATION

5.1 Internal Street Construction Standards. Public streets, which in any event shall include at least Leake Road, North Pointe Boulevard, Northside Drive East, and Northwest Passage, shall be (i) constructed in accord with the illustrative urban design cross sections shown on Sheet D-1 to the Application Plan ("Sheet D-1") and also in accordance with VDOT design standards pursuant to detailed plans agreed to between Owner and VDOT, and (ii) dedicated for public use and offered for acceptance into the State highway system. Trees (with a maximum spacing of fifty (50) feet), landscaping and sidewalks as shown on Sheet D-1 shall be installed and maintained by the Owner in accordance with County or VDOT standards, unless VDOT or the County agrees in writing to assume this responsibility.

5.2 Timing of Completion for Internal Streets. Before issuance of certificates of occupancy, Owner shall complete that segment of an internal street as shown on Sheet D-1 within the Project which serves the building or residence for which a certificate of occupancy is sought

with at least the stone base and all but the final layer of plant-mix asphalt. The final layer of plant-mix asphalt shall be installed within one (1) year following the issuance of the first certificate of occupancy for a building or residence served by the affected street segment.

5.3 Road Improvements. Owner shall design and construct all of the road improvements referenced in Sections 5.3.1(a), 5.3.1(b), and 5.3.1(c) below, which are also shown on Sheet D-1 to the Application Plan and on Sheet E to the Application Plan entitled "External Road Improvement Plan" ("Sheet E") (collectively, the "Road Improvements"), unless such Road Improvements are first constructed or bonded by others. The various phases of the Road Improvements are also shown for illustrative purposes on a color-coded copy of Sheet B that is attached hereto as Exhibit B. Owner shall dedicate to public use any required right-of-way that it now or hereafter owns in fee simple. For purposes of this Section 5.3, the use of the term "road" as it applies to internal streets shall also have the same meaning as the word "street" in the Albemarle County Subdivision Ordinance (Chapter 14 of the Albemarle County Code) where applicable.

5.3.1 Design and Phasing. All Road Improvements shall be designed and phased as follows:

Design. The Road Improvements shall be shown on detailed road plans satisfying VDOT design standards which shall be submitted by the Owner for review and, when satisfactory, approved by VDOT and the County (except for the Road Improvements to U.S. Route 29, which shall be subject only to VDOT approval) (hereinafter, the "Approved Road Plans"). The Approved Road Plans shall show the width and length (except as specified in Sections 5.3.1(a)(1)(ii) and (v) and Section 5.3.1(b)(1)(i)), location, type of section, and geometrics of all lane improvements as required by VDOT design standards. All of the Road Improvements shall be constructed in compliance with the Approved Road Plans. The Road Improvements to U.S. Route 29 shall be based on the then-current VDOT design speed and cross-slope requirements. Notwithstanding the provisions of this paragraph to the contrary, in the event that the internal residential street designs as shown on Sheet D-1 are not accepted by VDOT, the Owner shall submit detailed road construction plans for such streets to the County for review and, when satisfactory, approval, subject also to the County's approval of private streets under the Subdivision Ordinance (Ch. 14 of the Albemarle County Code).

Phasing. The Road Improvements shall be constructed and completed in three phases as set forth below:

(a) Phase I Road Improvements. Prior to approval of the first commercial subdivision plat or site plan within the Project, Owner shall obtain all associated permits and post all associated bonds required for the construction of the following (collectively, the "Phase I Road Improvements"):

(1) Southernmost Entrance on U.S. Route 29:

(i) U.S. Route 29 Southbound – correction of the vertical curvature in the roadway just north of the entrance.

(ii) U.S. Route 29 Southbound – construction of a continuous 12 foot wide through lane (with shoulders or guard rail as required by VDOT) starting at a point that is 1000 feet north of the southernmost entrance and extending south to Airport Road.

(iii) U.S. Route 29 Southbound – construction of dual left turn lanes with taper at the crossover.

(iv) U.S. Route 29 Southbound – construction of right turn lane with taper to serve northernmost entrance to SR 1515.

(v) U.S. Route 29 Northbound – construction of a continuous 12 foot wide through lane (with shoulders or guard rail as may be required by VDOT) extending from Proffit (Airport) Road (Route 649) to the Northwest Passage entrance.

(vi) U.S. Route 29 Northbound – construction of a right hand turn lane at the Southernmost entrance, the geometrics of which will be subject to VDOT approval.

(vii) U.S. Route 29 Northbound – construction of left turn lane with taper into SR 1515.

(viii) SR 1515 Eastbound – construction and/or restriping to provide left turn lane with taper.

(ix) Installation of a traffic signal with 8 phase timing, video detection, and associated intersection improvements at the intersection with U.S. Route 29.

(x) Close existing crossover at U.S. Route 29 and Southernmost Entrance to SR 1515.

(xi) Proposed Entrance Road between North Pointe Boulevard and U.S. Route 29.

(2) North Pointe Boulevard, Leake Road, and Proffit Road:

(i) Leake Road and North Pointe Boulevard, in accordance with the design cross-sections shown on Sheet D-1, from Proffit Road to either Northside Drive East or, if Northside Drive East has not yet been constructed to the roundabout at North Pointe Boulevard, North Pointe Boulevard shall be extended to Northwest Passage. The Owner shall provide a fifty (50) foot public right-of-way along Leake Road and shall construct a two-lane public street to be accepted by VDOT and as much of the other improvements shown on the cross-sections as possible within the available right-of-way as reasonably determined by the County Engineer.

(ii) The roundabout, or such other improvements as may be approved by VDOT and the County, at the intersection of Leake Road and Proffit Road shown on Sheet B and an additional westbound right turn lane on Proffit Road from Leake Road to U.S. Route 29 as shown on Sheet E. In addition, for property acquisition that is required for the off-site public right-of-way for construction of the improvements required by this Section 5.3.1(a)(2)(ii), the Owner shall make a cash contribution or provide a letter of credit in a form approved by the County Attorney for such purpose in the amount as deemed necessary for the property acquisition by the County Attorney, provided that such amount shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for acquisition and condemnation purposes. The cash contribution or letter of credit described in this Section 5.3.1(a)(2)(ii) shall be used to pay for the total cost of the right of way acquisition. The total cost of the right of way acquisition for the off-site property necessary to construct the improvements required by this Section 5.3.1(a)(2)(ii) shall include the normal costs associated with acquiring land, buildings, structures, easements and other authorized interests by condemnation or by purchase including, but not limited to, land acquisition, engineering, surveying, and reasonable attorneys fees. The cash contribution or the letter of credit shall be provided by the Owner within thirty (30) days upon request by the County. If the property is acquired by purchase, the contribution for the purchase price shall not exceed one hundred fifty percent (150 %) of the County's fair market value appraisal prepared for condemnation purposes without the consent of the Owner. If the cost of the right of way acquisition exceeds the amount previously contributed, then the Owner shall reimburse the County all such excess costs within thirty (30) days upon request by the County. The County shall refund to the Owner all excess contributions upon completion of the land acquisition.

(iii) Intentionally Omitted

(iv) An additional through lane eastbound on Proffit Road from U.S. Route 29 to the roundabout at the intersection of Leake Road and Proffit Road. In addition, for property acquisition that is required for the off-site public right-of-way for construction of the improvements required by this Section 5.3.1(a)(2)(iv), the Owner shall make a cash contribution or provide a letter of credit in a form approved by the County Attorney for such purpose in the amount as deemed necessary for the property acquisition by the County Attorney, provided that such amount shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for acquisition and condemnation purposes. The cash contribution or letter of credit described in this Section 5.3.1(a)(2)(iv) shall be used to pay for the total cost of the right of way acquisition. The total cost of the right of way acquisition for the off-site property necessary to construct the improvements required by this Section 5.3.1(a)(2)(iv) shall include the normal costs associated with acquiring land, buildings, structures, easements, and other authorized interests by condemnation or by purchase including, but not limited to, land acquisition, engineering, surveying, and reasonable attorneys fees. The cash contribution or the letter of credit shall be provided by the Owner within thirty (30) days upon request by the County. If the property is acquired by purchase, the contribution for the purchase price shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for condemnation purposes without the consent of the Owner. If the cost of the right of way acquisition exceeds the amount previously contributed, then the Owner shall reimburse the County all such excess costs within thirty (30) days upon request by the County. The County shall refund to the Owner all excess contributions upon completion of the land acquisition.

Completion of the Phase I Road Improvements. Within (fifteen) 15 months after the issuance of the first building permit for a commercial building within the lands subject to the first commercial subdivision plat or site plan within the Project, or prior to the issuance of a certificate of occupancy for such building, whichever is earlier, all of the Phase I Road Improvements shall be accepted by VDOT for public use or bonded for VDOT's acceptance if such Road Improvements are a primary highway, or accepted by VDOT for public use or bonded to the County for VDOT's acceptance if such Road Improvements are a secondary highway.

(b) Phase II Road Improvements. Prior to approval of the first site plan that would authorize the aggregate commercial, office and hotel gross floor area as shown on Sheet A within the Project to exceed two hundred ninety thousand (290,000) square feet, Owner shall obtain all associated permits and post all associated bonds required for the construction of the following (collectively, the "Phase II Road Improvements"):

- 1570):
- (1) Middle Entrance on U.S. Route 29 (Northside Drive East/SR 1570):
 - (i) U.S. Route 29 Southbound – construction of a continuous 12 foot wide through lane (with shoulders or guard rail as may be required by VDOT) starting at a point that is 1000 feet north of the Middle entrance and extending to the point where it connects with the portion of the lane constructed pursuant to Section 5.3.1(a)(1)(ii).
 - (ii) U.S. Route 29 Southbound - construction of dual left turn lanes with taper.
 - (iii) U.S. Route 29 Southbound – construction of a right turn lane with taper.
 - (iv) U.S. Route 29 Northbound – construction of a right hand turn lane at the Middle Entrance, the geometrics of which will be subject to VDOT approval.
 - (v) U.S. Route 29 Northbound – construction of left turn lane with taper.
 - (vi) SR 1570 Eastbound – construction of or restriping of lanes to result in separate left, through and right turn movements.
 - (vii) Entrance road Westbound – installation of a traffic signal with 8 phase timing, video detection, and associated intersection improvements on U.S. Route 29.
 - (viii) Existing crossover at Cypress Drive – construction to close the crossover.
 - (ix) Frontage road from Cypress Drive to SR 1570 – construction of a public street to serve properties currently accessing U.S. Route 29 through Cypress Drive.
 - (2) Northside Drive East between U.S. Route 29 and North Pointe Boulevard as shown on Sheet D-1.

Completion of the Phase II Road Improvements. Within fifteen (15) months after the issuance of the first building permit for a building within the lands subject to the first subdivision plat or site plan that would authorize the aggregate commercial, office, and hotel gross floor area as shown on Sheet A within the Project to exceed two hundred ninety thousand (290,000) square feet, or prior to the issuance of a certificate of occupancy for any building that causes such gross floor area to exceed two hundred ninety thousand (290,000) square feet, whichever is earlier, all of the Phase II Road Improvements shall be accepted by VDOT for public use or bonded for VDOT's acceptance if such Road Improvements are a primary highway, or accepted by VDOT for public use or bonded to the County for VDOT's acceptance if such Road Improvements are a secondary highway.

(c) Phase III Road Improvements. Prior to the earliest of: (i) the approval of the first subdivision plat or site plan that would authorize the aggregate number of dwelling units within the Project to exceed five hundred thirty-three (533); (ii) the approval of a subdivision plat or site plan for any development of either the Virginia Land Trust Property (Tax Map 32, Parcel 22K) or the Jackson Trust Property (Tax Map 32, Parcel 22H) or any portion thereof; or (iii) the five (5) year anniversary of the date of issuance of the first certificate of occupancy for a building or premises within the Project, Owner shall obtain all associated permits and post all associated bonds required for the construction of the following road improvements to the extent any such road improvements have not already been completed:

- Route 29:
- (1) Northernmost Entrance (opposite Lewis & Clark Drive) on U.S. Route 29:
 - (i) U.S. Route 29 Southbound – construction of left turn lane with taper.
 - (ii) Northwest Passage from U.S. Route 29 to North Pointe Boulevard.
 - (iii) U.S. Route 29 Northbound – construction of a right hand turn lane, the geometrics of which will be subject to VDOT approval.
 - (iv) If not already constructed, North Pointe Boulevard between Northside Drive East and Northwest Passage.
 - (v) If the traffic signal to be constructed by others is in place prior to Owner commencing work on this Northernmost Entrance, and such traffic signal only includes three legs, Owner shall add the fourth leg to the signal, which shall include additional mast arms, signal heads, and ancillary equipment necessary to support Northwest Passage's use of the intersection, as determined by VDOT. If such traffic signal is not in place and the vehicular

traffic generated by the Project causes the VDOT signal warrants to be met, and VDOT requires that a traffic signal be installed as a condition of the entrance permit, Owner shall install such traffic signal.

(2) Notwithstanding any other provision contained in this Proffer Statement, within one hundred eighty (180) days after written notice from the County that it intends to build an elementary school on the School Lot (as "School Lot" is defined in Section 9.1), the Owner shall submit road plans for the construction of Northwest Passage from North Pointe Boulevard to U.S. Route 29 to VDOT and to the County for review, and when satisfactory, approval. Furthermore, within twelve (12) months after issuance of the building permit for construction of the elementary school, and if not already completed, Owner will complete (i) Northwest Passage from North Pointe Boulevard to U.S. Route 29, (ii) the improvements set forth in Section 5.3.1(c)(1) above, and (iii) North Pointe Boulevard from Northside Drive East to Northwest Passage. To allow the development of the School Lot, the Owner shall grant all temporary easements as necessary to allow ingress and egress for vehicles and construction equipment, grading, the installation and maintenance of erosion and sediment control structures or measures, and any other associated construction easements, as such temporary easements are shown on the subdivision plat or site plan for the School Lot and mutually agreed to by the Owner and the developer of the School Lot.

Completion of the Phase III Road Improvements. Within twelve (12) months after the occurrence of the applicable event in Section 5.3.1(c) which required the Owner to obtain all associated permits and post all associated bonds required for the construction of the Phase III Road Improvements, all of the Phase III road improvements shall be accepted by VDOT for public use or bonded for VDOT's acceptance if such Road Improvements are a primary highway, or accepted by VDOT for public use or bonded to the County for VDOT's acceptance if such Road Improvements are a secondary highway.

5.3.2 Upon request by the County, Owner shall make a cash contribution to the County or VDOT for the cost of a cable or wireless radio system that will link one or more of the signals between Lewis and Clark Drive and Airport Road; provided, however, that the total cash contribution shall not exceed thirty-five thousand dollars (\$35,000). Subject to matters of force majeure, if the County does not request the funds, or does request the funds but the construction of the system does not begin by the later of December 31, 2010 or three (3) years after completion of all of the Road Improvements, said funds shall be refunded to the Owner.

5.3.3 Prior to the approval of plans for improvements at any U.S. Route 29 intersection, Owner shall provide VDOT traffic signal network timing plans that VDOT finds acceptably address the impacts of the proposed traffic signals for peak traffic periods.

5.3.4 Regional Transportation Study; Cash Contribution. Upon request by the County, Owner shall make a cash contribution of one hundred thousand dollars (\$100,000) to the County for the purposes of funding a regional transportation study for the Route 29 corridor, which includes the South Fork and North Fork of the Rivanna River and the Hollymead Growth Area of which North Pointe is a part. The contribution shall be made within thirty (30) days after requested by the County anytime after the rezoning is approved. If the request is not made within one (1) year after the date of approval of the first final site plan for the first commercial building within the Project, this proffer shall become null and void. If such cash contribution is not expended for the stated purpose within three (3) years from the date the funds were contributed to the County, all unexpended funds shall be refunded to the Owner.

VI. OPEN SPACE AREAS AND GREENWAY

6.1 Pedestrian Pathways. All pedestrian pathways shall be classified as shown on the Pedestrian Pathway Key on Sheet G and, except for the pathways to be constructed by the County, shall be shown on the subdivision plat or site plan for the underlying or adjacent lands within the Project. The pathways shall be constructed by Owner as Class A or Class B trails as identified on Sheet G, and in accordance with the applicable design and construction standards in the County's Design Standards Manual. Such construction shall be in conjunction with the improvements for the subdivision plat or site plan, as the case may be, and bonded with the streets if the pathways are a subdivision improvement, or with a performance bond if the pathways are a site plan improvement. The pathway shown on Sheet G along Flat Branch north and south of Northside Drive East shall not continue through a culvert if a culvert is used for the stream crossing. The pathway intended for the culvert between Park E and Park F under North Pointe Boulevard shall conform to the applicable standards in VDOT's "Subdivision Street Guidance" and Owner shall maintain the pathway if it is not accepted by VDOT for maintenance.

6.2 Lake. Upon request by the County, Owner shall dedicate to the County the lake shown on the Application Plan for public use, provided that such lake will be available for use by Owner for stormwater management as described in Sheet C to the Application Plan entitled "Stormwater Management and Stream Conservation Plan" ("Sheet C").

VII. THIS SECTION INTENTIONALLY DELETED

VIII. PUBLIC INFRASTRUCTURE AND FACILITIES PROFFERS

8.1 Branch Library.

(a) Upon request by the County, Owner shall dedicate to the County the fee simple interest in the land shown on Sheet B as a library, consisting of a 15,000 square foot fully graded pad site, with utilities, to accommodate a 12,500 square foot building footprint, a five foot perimeter strip and up to a 25,000 square foot building, together with a nonexclusive easement to the adjacent common area for ingress, egress, construction staging and sufficient County Code required parking, stormwater detention and water quality facilities for the location of a freestanding Jefferson-Madison Regional Library and such other uses that are compatible with the proposed surrounding uses, as determined by the County (the "Library Lot"). Notwithstanding the terms of the prior sentence to the contrary, if the requirements for the library building require a larger building footprint, the County may authorize the library building footprint to be larger than as stated in the prior sentence, provided, however, that the size of the area shown as "Park H" on Sheet B ("Park H") and/or the size of the adjacent parking area immediately north of the Library Lot on Sheet B (the "Library Parking Lot") shall be adjusted accordingly to accommodate such larger building footprint. The Owner shall not be responsible for any utility tap fees, but Owner shall complete construction of the Library Parking Lot and other parking areas serving the Library Lot. The Owner shall permit the County to use the Library Parking Lot and/or, if not already constructed, Park H, for purposes of construction staging. Within twelve (12) months after written notice from the County that it intends to begin construction of the library, the Owner shall make the access roads and the area of the Library Parking Lot available with at least a four inch compacted stone base for use as access and construction staging. Such street access serving the Library Lot and the Library Parking Lot shall be completed and available for use no later than ten (10) months after issuance of the building permit for the library, provided, however, that asphalt pavement in areas used for construction staging by the County shall not be required to be installed until thirty (30) days (or such longer reasonable time as may be necessary due to weather conditions) after the County has removed its construction-related materials and equipment. Upon the request of the County, Park H shall also be dedicated to public use, but the Owner shall not be responsible for maintaining such park. Owner shall be responsible for maintenance of the Library Parking Lot and other parking spaces serving the Library Lot and the County shall have no obligation to be a member of any owner's association. The County's request for dedication of the land for the Library Lot and Park H shall be made within three (3) years following the latter to occur of (i) issuance of the first residential building permit within the Project, (ii) Owner's completion of the infrastructure (including but not limited to streets, water, sewer, electric, gas) required for the use of the Library Lot, or (iii) December 31, 2010. If a request for such dedication is not made within three (3) years following the later of these dates, this proffer will be null and void.

(b) Green Roof. In the event that the requirements for the library building require a larger building footprint, and the County elects to authorize the library building footprint to be larger than 12,500 square feet pursuant to section 8.1(a) above, and in the further event that the building is developed as a condominium and the County requests the Owner to assume ownership for a portion of the larger building, Owner shall accept such ownership at a reasonable price upon which the parties may mutually agree, and shall contribute to the County, on a pro rata basis based on the proportional size of the portion of the library building owned by the Owner relative to the size of the library building as a whole, the cost of designing and constructing such building. These costs may include, if desired by the County, installation of a "green roof" and any additional expenses associated with structurally reinforcing the roof as necessary to support the green roof. Within ten (10) days after receipt of a request for payment by the County that is accompanied by documentation to support the progress payment amount as provided in the construction contract, the Owner shall submit such payments to the County. Alternatively, in the event the County elects to design the library building as a Leadership in Energy and Environmental Design ("LEED") building, the Owner shall contribute to the County, on a pro rata basis based on the proportional size of the portion of the library building owned by the Owner relative to the size of the library building as a whole, the additional costs of constructing the library building to obtain LEED certification for the building. Within ten (10) days after receipt of a request for payment by the County that is accompanied by documentation to support the progress payment amount as provided in the construction contract, the Owner shall submit such payments to the County. The design of the green roof, or the criteria utilized to obtain the LEED certification, as applicable, shall be in the County's discretion.

8.2 Affordable Housing. Subject to the terms and conditions of this Section 8.2, the Owner shall provide a minimum of forty (40) "for-sale" residential dwelling units as affordable dwelling units, a minimum of sixty-six (66) "for-rent" residential dwelling units as affordable dwelling units, and a minimum of four Carriage House Units (as Carriage House Units are defined in Section 8.2(d)). The forty (40) "for-sale" residential dwelling units shall be comprised of the following types of dwelling units: twelve (12) from multi-family; twelve (12) from "other" (consisting of townhouses, duplexes, attached housing, condominiums in the commercial areas and other unidentified housing types); and sixteen (16) from single family detached, each at the sale prices and under the terms and conditions set forth in this Section 8.2. The Owner shall convey the responsibility of constructing the affordable units to the subsequent owners of lots within the Property.

(a) Multi-Family and "Other" For-Sale Affordable Units. For multi-family and "other" for-sale affordable dwelling units within the Property, such affordable units shall be affordable to households with incomes less than eighty percent (80%) of the area median family income (the "Affordable Unit Qualifying Income"), such that the housing costs consisting of principal, interest, real estate taxes, and homeowners insurance (PITI) do not exceed thirty (30%) of the Affordable Unit Qualifying Income, provided, however, that in no event shall the selling price

of such affordable units be less than the greater of One Hundred Ninety Thousand Four Hundred Dollars (\$190,400) or sixty-five percent (65%) of the applicable Virginia Housing Development Authority ("VHDA") maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced in Section 8.2(f).

(b) Single Family Detached For-Sale Affordable Units ("Moderately-Priced Units"). For single family detached for-sale affordable units within the Property ("Moderately-Priced Units"), such Moderately-Priced Units shall be affordable to households with incomes less than one hundred twenty percent (120%) of the area median family income (the "Moderately-Priced Unit Qualifying Income"), such that the housing costs consisting of PITI do not exceed thirty percent (30%) of the Moderately-Priced Unit Qualifying Income, provided, however, that in no event shall the selling price of such Moderately-Priced Units be required to be less than the greater of Two Hundred Thirty Eight Thousand Dollars (\$238,000) or eighty percent (80%) of the applicable VHDA maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced in Section 8.2(f).

(c) For-Rent Affordable Units. For a period of five (5) years following the date the certificate of occupancy is issued by the County for each for-rent affordable unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the "Affordable Term"), such units shall be rented to households with incomes less than the Affordable Unit Qualifying Income. No for-rent affordable unit may be counted more than once towards the number of for-rent affordable dwelling units required by this Section 8.2.

(i) Conveyance of Interest. All deeds conveying any interest in the for-rent affordable units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this Section 8.2(c). In addition, all contracts pertaining to a conveyance of any for-rent affordable unit, or any part thereof, during the Affordable Term, shall contain a complete and full disclosure of the restrictions and controls established by this Section 8.2(c). Prior to the conveyance of any interest in any for-rent affordable unit during the Affordable Term, the then-current owner shall notify the County in writing of the conveyance and provide the name, address, and telephone number of the potential grantee and state that the requirements of this Section 8.2(c)(i) have been satisfied.

(ii) Annual Reporting. During the Affordable Term and within ninety (90) days following the end of each calendar year, the then-current owner shall provide to the Albemarle County Housing Office a certified annual report of all for-rent affordable units for the immediately preceding year in a form and substance reasonably acceptable to the County Housing Office. Subject to all federal, state and local housing laws, and upon reasonable notice during the Affordable Term, the then-current Owner shall make available to the County at the then-current Owner's premises, if requested, any reports, copies of rental or lease agreements, or other data pertaining to rental rates as the County may reasonably require.

(d) Carriage House Units. Carriage House Units shall meet the requirements for a single family dwelling as defined in the Virginia Uniform Statewide Building Code, shall be on the same parcel as the primary dwelling unit to which it is accessory, and shall not be subdivided from the primary residence ("Carriage House Units"). The subdivision restriction shall be included on the plat creating such parcels and be incorporated into each deed conveying title to such parcels.

(e) Each subdivision plat and site plan for land within the Property which includes affordable units (which, for this Section 8.2(e) shall include Moderately-Priced Units) shall designate the lots or units, as applicable, that will, subject to the terms and conditions of this proffer, incorporate affordable units as described herein. The first such subdivision plat or site plan shall include a minimum of three (3) such affordable units. Thereafter, and until the total number of affordable dwelling units proffered hereunder shall have been fulfilled, the Owner shall provide a minimum of three (3) such affordable dwelling units per year. Each final subdivision plat and final site plan also shall include a running total of the number and percentage of affordable units previously provided and proposed to be provided by the subdivision plat or site plan. For purposes of this Section 8.2(e), such units shall be deemed to have been provided when the subsequent owner/builder provides written notice to the County Housing Office or its designee that the unit(s) will be available for sale, as required by Section 8.2(f) below. In the event that the Owner provides more than three affordable dwelling units in a single year, the Owner may "carry over" or "bank" credits for such affordable units, such that the additional affordable units which exceed the minimum annual requirement may be allocated toward the minimum number of affordable units required to be provided for any future year. The maximum number of affordable units that may be carried over or banked shall not exceed twelve (12) per year. Notwithstanding the terms of this Section 8.2(e) to the contrary, upon the written request of the Owner, the County may authorize an alternative process and/or schedule for the provision and/or delivery of such affordable units upon a determination that the request is in general accord with the purpose and intent of Section 8.2 and/or otherwise furthers the goals of providing affordable housing in the County.

(f) All purchasers of the for-sale affordable units shall be approved by the Albemarle County Housing Office or its designee. The subsequent owner/builder shall provide the County or its designee a period of ninety (90) days to identify and prequalify an eligible purchaser

for the affordable unit. The ninety (90)-day period shall commence upon written notice from the then-current owner/builder that the unit(s) will be available for sale. If the County or its designee does not provide a qualified purchaser who executes a contract of purchase during this ninety (90)-day period, the then-current owner/builder shall have the right to sell the unit(s) without any restriction on sales price or income of the purchaser(s), provided, however, that any unit(s) sold without such restriction shall nevertheless be counted toward the number of affordable units required to be provided pursuant to this terms of this Section 8.2. The requirements of this Section 8.2 shall apply only to the first sale of each of the affordable units.

(g) The County shall have the right, from time to time, on reasonable notice and subject to all applicable privacy laws, to inspect the records of Owner or any successors in interest for the purposes of assuring compliance with this proffer.

(h) Cash Proffer. Within sixty (60) days after the Board of Supervisors approval of ZMA 2000-009, the Owner shall cause to be contributed three hundred thousand dollars (\$300,000) cash to the County of Albemarle for the Albemarle Housing Initiative Fund or such other similar fund as may be established or authorized by the County. The contribution shall be to fund affordable home ownership loan programs within the Project and other areas of Albemarle County, including those provided by non-profit housing agencies such as the Piedmont Housing Alliance, Habitat for Humanity, and the Albemarle Housing Improvement Program. If such cash contribution is not expended for the stated purpose within five (5) years from the date the funds were contributed to the County, all unexpended funds shall be refunded to the Owner.

IX. EDUCATIONAL AND OTHER PUBLIC FACILITIES

9.1 Elementary School Site. Within two hundred seventy (270) days following request by the County, Owner shall dedicate to the County the land shown on the Application Plan as "Elementary School 12.85 Acres Schematic Layout", consisting of approximately 12.85 acres (or a smaller portion of such land in the County's sole discretion) (the "School Lot"). Prior to dedication, the School Lot shall be graded and compacted by Owner to a minimum of 95% compaction as measured by a standard Proctor test with suitable material for building construction as certified by a professional engineer or as otherwise approved by the County Engineer to establish a fully graded pad site to accommodate an elementary school. The recreational field improvements shown on the Application Plan shall be fine graded and have top soil and soil amendments added, and the mains for an underground irrigation system serving the recreational fields shall be installed. Such improvements shall be reasonably equivalent to those existing at the recreational fields at Baker-Butler Elementary School, exclusive of any above ground improvements. The pedestrian pathways as shown on the perimeter of the School Lot on the Application Plan shall be reflected on the subdivision plat prepared by Owner creating the School Lot and the pathways shall be installed when the site is graded for the recreation fields. The Owner shall provide all utilities to the School Lot. The dedication shall include easements across Owner's land for access to and use of Storm Water Basins 5 and 10 shown on the Application Plan, together with all temporary construction easements to allow Stormwater Basin 10 to be redesigned and enlarged, if necessary, to accommodate the School Lot stormwater. The School Lot shall be used as an elementary school site, but if the County determines that the School Lot will not be used as an elementary school site, it shall be used by the County for park and recreational purposes serving both the North Pointe community and the region. If the County does not request by December 31, 2010 that the School Lot be dedicated, the Owner shall be under no further obligation to dedicate the School Lot for the purpose described herein, but shall, by January 30, 2011, contribute five hundred thousand dollars (\$500,000) cash to the County to be used by the County for projects identified in the County's CIP reasonably related to the needs of the North Pointe community and in such event the School Lot may be used for other residential purposes as approved by the County after request by Owner for an amendment to the Application Plan. After dedication and before the County uses the School Lot for a school or for park and recreational purposes, and if requested by the County, Owner shall maintain the School Lot until requested by the County to no longer do so, subject to the Owner's right to exclusive use of the School Lot for park and recreational purposes. Such park and recreational purposes shall be only those uses shown on an approved final site plan or subdivision plat for the area that includes the School Lot. Upon being requested by the County, Owner shall cease all use and maintenance of the School Lot and remove all improvements established by Owner that the County requests be removed. The County shall not be obligated to pay Owner for any improvements established by Owner that the County retains. The deed of dedication for the School Lot shall provide that if the County accepts title to the School Lot and then does not construct either a park or a school within twenty (20) years following the date the Board of Supervisors approves ZMA 2000-009, then upon Owner's request title to the School Lot shall be transferred to Owner at no expense to Owner.

9.2 Bus Stop Turnoffs, Bus Stop Improvements, and Bus Service.

(a) Owner shall construct ten (10) public bus stop turnoffs as shown on the Application Plan, or otherwise two (2) in the southernmost residential area, four (4) in the commercial areas and four (4) in the other residential areas, each in a location mutually acceptable to Owner and the County. The bus stop turnoffs shall be approved with street construction plans for the Project and bonded and constructed with the streets.

(b) Upon the request by the County, Owner shall contribute the total sum of twenty five thousand dollars (\$25,000) cash towards the design and construction of the above ground bus stop improvements, such as benches and shelters, meeting standards established by

the County at each bus stop. If the County does not request the funds, or requests the funds but does not construct the bus stop improvements by the later of December 31, 2015 or three (3) years after completion of the road network that includes the bus stop turnoffs, then subject to matters of force majeure, the unexpended funds shall, in the discretion of the County, either be returned to Owner or applied to a project identified in the County's capital improvements program within or adjacent to the Project that benefits the Project.

(c) Within thirty (30) days after the introduction of public transportation to the Project, Owner shall contribute twenty-five thousand dollars (\$25,000) cash to the County to be used for operating expenses related to such service and shall thereafter annually contribute Twenty-Five Thousand Dollars (\$25,000) cash to the County to be used for operating expenses related to such service for a period of nine (9) additional years, such that the total funds contributed to the County pursuant to this Section 9.2(c) shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). If the introduction of public transportation to the Project does not commence by the later of ten (10) years after the Board of Supervisors approves ZMA 2000-009, or seven (7) years after the date of the issuance of the first certificate of occupancy for the first commercial building within the Project, this Section 9.2(c) shall become null and void.

X. ACCESS TO ADJACENT PROPERTIES

10.1 Dedication of Right-of-Way-Extension to Parcel 22E. Unless the dedication of public right-of-way and the construction of such street are required in conjunction with the approval of a subdivision plat under Albemarle County Code § 14-409 and related sections, or their successors:

Owner shall reserve the fifty (50) foot wide right-of-way located within the area shown on Sheet B and identified as a "50' R.O.W. Reserved for Future Dedication" connecting a right-of-way from the proposed middle entrance road into North Pointe to the southern property line of Tax Map 32, Parcel 22E ("TMP 32-22E"). Prior to the issuance of a building permit for Building 32 as shown on the Application Plan, Owner shall record in the Clerk's Office of the Circuit Court of Albemarle County, a current, irrevocable deed of dedication dedicating to public use for road purposes, the area labeled "50' R.O.W. Reserved for Future Dedication." Owner acknowledges that if it is not part of a subdivision plat approved by the County, such offer of dedication must be first reviewed and approved by the Board of Supervisors and accepted by the Board. Such deed of dedication shall include the following conditions: (i) that TMP 32-22E shall have been upzoned; and (ii) that prior to its use for road purposes, there shall have been constructed on the land so dedicated a road approved by the County and accepted by VDOT for public use or bonded for VDOT's acceptance. At the time of the construction of the access road serving Building 32, the Owner shall construct the intersection curb radii or the road serving TMP 32-22E and extend construction of such road for at least a minimum of one hundred (100) feet from Northside Drive East. The Owner shall also place at the end of such extended road, a sign, approved by the County, advising and notifying the public that such right-of-way is the location of a future road extension. Owner shall grant temporary construction easements as determined necessary by the County Engineer to allow for the road to be extended to TMP 32-22E, which construction easements shall be on Owner's property and outside of the dedicated right-of-way, and shall be established by the applicable site plan. No improvements shall be located within the temporary construction easements until construction of such road has been completed.

10.2 Access to Tax Map 32A, Section 2, Parcel 4 (current Northwoods Mobile Home Park Property). Unless the dedication of public right-of-way and the construction of such street are required in conjunction with the approval of a subdivision plat under Albemarle County Code § 14-409 and related sections, or their successors:

Owner shall reserve an area in the location labeled "50' R.O.W. Reserved for Future Dedication" at the eastern end of the main commercial access road from U.S. Route 29 on Sheet B for access to Tax Map 32A, Section 2, Parcel 4 ("TMP 32A-2-4"). Prior to the issuance of a building permit for Building 6 or Buildings V1 through V6, each as shown on the Application Plan, whichever is earlier, Owner shall record in the Clerk's Office of the Circuit Court of Albemarle County, a current, irrevocable deed of dedication dedicating to public use for road purposes, the area labeled "50' R.O.W. Reserved for Future Dedication." Owner acknowledges that if it is not part of a subdivision plat approved by the County, such offer of dedication must be first reviewed and approved by the Board of Supervisors and accepted by the Board. Such deed of dedication shall include the following conditions: (i) that TMP 32A-2-4 shall have been upzoned; and (ii) that prior to its use for road purposes, there shall have been constructed on the land so dedicated a road approved by the County and accepted by VDOT for public use or bonded for VDOT's acceptance. At the time of the construction of the roundabout serving Building 6 and Buildings V1 through V6 the Owner shall construct the intersection curb radii and extend construction of the road for a distance of at least thirty feet beyond the roundabout. The Owner shall also place at the end of such extended road, a sign, approved by the County, advising and notifying the public that such right-of-way is the location of a future road extension. After dedication and before the conditions of the dedication have been satisfied, and if requested by the County, Owner shall maintain the dedicated land until requested by the County to no longer do so, subject to the Owner's right to exclusive use of the dedicated land for park, recreational, and/or greenspace purposes. Upon being requested by the County, Owner shall cease all use and maintenance of the dedicated land and remove all improvements established by Owner (if any) that the County requests be removed. Owner shall grant temporary construction easements as determined necessary by the County Engineer to allow for the road to be extended to TMP 32A-2-4, which

construction easements shall be on Owner's property and outside of the dedicated right-of-way, and shall be established by the applicable site plan. No improvements shall be located within the temporary construction easements until construction of such road has been completed.

XI. SIGNATORY

12.1 Certificate. The undersigned certify that they are the only owners of the Property, which is the subject of ZMA-2000-09 and SP 2002-72.

12.2 The Owner. These proffers shall run with the Property and each reference to Owner within these proffers shall include within its meaning, and shall be binding upon, Owner's successor(s) in interest and/or the developer(s) of the Property or any portion of the Property.

(Signature Pages Immediately Follow)

Mr. Boyd then **moved** for approval of SP-2002-072 subject to the conditions recommended by the Planning Commission, with the additional staff recommendation for the number of lots platted per year.

Mr. Davis read the revised second condition of the special use permit:

"Phasing of residential units. Beginning from the date of approval of the first commercial building permit, the owner shall record subdivision plats creating a minimum of 40 lots for single-family detached residential units each year thereafter until plats have been recorded creating lots for a minimum of 200 single-family detached residential units. If the owner records subdivision plats creating lots for more than 40 single-family detached residential units in any year, including any year prior to the date of approval of the first commercial building permit, the excess lots shall be credited to the lots required in subsequent years. The effect of this would create an average of 40 lots per year for five years for a maximum of 200 lots."

Mr. Boyd **amended his motion** to reflect what Mr. Davis read. Mr. Dorrier **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

**North Pointe PD-MC Residential Use
Special Use Permit Conditions (SP-2002-72)**

1. Residential mix. The dwelling units within the Project shall consist of the following three types: (a) single-family detached, including carriage house units; (b) multi-family; and (c) other (consisting of townhouses, duplexes, attached housing, condominiums in the commercial areas, and any other unidentified housing types). The minimum number of each of the three dwelling unit types shall be 205 of the 893 total permitted dwelling units.

2. Phasing of residential units. Beginning from the date of approval of the first commercial building permit, the owner shall record subdivision plats creating a minimum of forty (40) lots for single family detached residential units each year thereafter until plats have been recorded creating lots for a minimum of two hundred (200) single family detached residential units. If the owner records subdivision plats creating lots for more than forty (40) single family detached residential units in any year (including any year prior to the date of approval of the first commercial building permit), the excess lots shall be credited to the lots required in subsequent years.

3. Conservation areas. The conservation areas shown on the Application Plan shall remain undisturbed and shall be protected from development impacts to the satisfaction of the County's program authority for the Water Protection Ordinance (Chapter 17 of the Albemarle County Code) (the "Program Authority"); except that the pedestrian paths shown on the Application Plan may be placed in a conservation area where shown on the Application Plan. Storm drainage outfalls and other pedestrian paths may only be placed in conservation areas if the Program Authority finds that no other location is reasonably available and that the disturbance is necessary for such a proposed use. Notwithstanding the terms of this Condition 3 to the contrary, the Program Authority may approve a utility main within a conservation area, even if it is not shown on the Application Plan, and the Program Authority may approve other disturbances and/or measures as may be appropriate in the Program Authority's discretion to further protect a conservation area.

4. Conservation areas with utilities. The conservation areas with utilities shown on the Application Plan shall remain undisturbed and shall be protected from development impacts to the satisfaction of the Program Authority; except that:

A. The streets and pedestrian paths shown on the Application Plan may be placed in a conservation area with utilities where shown on the Application Plan. Other pedestrian paths, other streets, and sanitary sewers, storm drainage outfalls, and/or stream mitigation measures, may only be placed in a conservation area with utilities if the Program Authority finds that no other location is reasonably available and the disturbance is necessary for such a proposed use. In any event, the construction, maintenance, and use of the improvements shall have the minimum environmental impact on the conservation area with utilities necessary for the improvements to be

established and maintained, and the long-term impacts shall be adequately mitigated. Nothing in this condition shall be construed to obviate the requirements established for stream buffers under Chapter 17 of the Albemarle County Code or shall constitute a waiver of such requirements.

B. Erosion and sediment control structures and measures shall be permitted within a conservation area with utilities solely to address impacts from authorized land disturbing activity within such area, unless otherwise requested by the Owner and approved by the Program Authority.

C. The Program Authority may approve other disturbances and/or measures as may be appropriate in the Program Authority's discretion to further protect a conservation area with utilities.

5. Open space. The Owner shall restrict from development all open space areas designated as greenway, buffer areas, and park areas shown on the Application Plan. This condition shall not apply to development parcels, conservation areas, and conservation areas with utilities shown on the Application Plan.

A. Open space areas not dedicated to public use shall be for the use and enjoyment of the residents of the Project, subject to the restrictions that may be imposed by any declaration recorded as part of a conveyance of these areas to a homeowner's association. Open space areas dedicated to public use shall be for the use and enjoyment of the public, including the residents of the Project.

B. No structural improvements other than utilities, pedestrian and biking trails, and common area amenities such as playgrounds, picnic areas, hardscapes, and PAR exercise equipment shall be established and maintained in the open space areas.

6. Aggregate set aside for open-space related areas. In no event shall the total area of open-space related areas comprised of the conservation areas (Condition 3), conservation areas with utilities (Condition 4), open space (Condition 5), greenway (Conditions 5 and 7), and landscaped buffer areas (Conditions 5 and 8) shown on the Application Plan, be less than a total of thirty-five percent (35%) of the total land within the Project to be developed for residential uses, as shown on Sheet G to the Application Plan entitled "Open Space and Green Way Plan," dated March 6, 2006 ("Sheet G").

7. Rivanna greenway/access. The Owner shall reserve for dedication to public use a greenway along the boundary of the Project and adjacent to the Rivanna River, between the flood plain line and a preservation area (hereinafter, the "greenway") as shown on Sheet G.

A. The Owner may grant such utility easements across the greenway as are required for a forced main utility and for the proposed uses shown on the Application Plan, each with the prior written consent of the County. Erosion and sediment control structures and measures shall be permitted within a greenway solely to address impacts from authorized land disturbing activity within the greenway, except as otherwise requested by the Owner and approved by the Program Authority.

B. The Owner shall dedicate to public use the greenway and all pathways shown through land depicted on Sheet G as "Greenway"; provided, however, that the property owners within the Project shall have access to and over such pathways at all times the pathways are open to the public. The greenway and pathways shall be dedicated either upon the request of the County, or in conjunction with the platting of the residential lots adjacent to the section of the greenway to be dedicated. If the greenway and pathways are dedicated by platting, the greenway and pathways shall be set apart on the plat for public use with a notation that the greenway and pathways are dedicated for public use. If the County accepts dedication of the lake referenced in section VI of the Proffer Statement for the Project (ZMA 2000-009), upon request by the County, the Owner shall dedicate to public use the access pathway east of the middle entrance and leading to Flat Branch as shown on Sheet G.

C. Access easements to the Rivanna River shall be provided as shown on the Application Plan for the benefit and use by property owners within the Project.

D. The Owner shall be responsible for the costs of drafting the deeds of dedication, having required surveys conducted and plats prepared, and recordation costs.

8. Landscaped buffer between residential areas and rural areas. Before the County issues a certificate of occupancy for the first dwelling unit constructed on any of the lots shown on the Application Plan abutting the areas shown on the Application Plan as "Open Space Buffer (30')" along Pritchett Lane (Lots A1-6, H8-20, L15-34 and N2-5), the Owner shall establish and thereafter maintain a heavily vegetated buffer in the open space buffer common areas. The buffer, where one does not already exist, shall be planted in accordance with a landscaping plan approved by the County. The landscaping plan shall include the following: (i) an informal mix of screening trees, loosely staggered, fifteen (15) feet on-center; (ii) the same species of screening trees shall be clustered in groups and alternate groups of screening trees shall be provided to create a naturalistic rural landscape; (iii) large and medium shade trees shall be interspersed among the screening trees; (iv) clusters of ornamental trees shall be provided in groups of 3's and 5's; and (v) tall shrubs shall be massed to help integrate the proposed plantings into a naturalistic

rural landscape. The features described in (i) through (v) herein define a "naturalistic rural landscape." Approved plant species shall be obtained from the Albemarle County Recommended Plants List and the buffer design shall be subject to the review and approval of the Director of the Department of Community Development. The Owner shall maintain the buffer.

9. Extensions. Unless the dedication of public right-of-way and the construction of such streets or accessways, as applicable, are required in conjunction with the approval of a subdivision plat under Albemarle County Code § 14-409 and related sections, or their successors, the following streets or accessways, as applicable, shall be constructed and rights-of-way shall be reserved for dedication to public use as provided herein:

A. Extensions to Pritchett Lane. The Owner shall design and construct as emergency access ways extensions to Pritchett Lane within the fifty (50) foot wide rights-of-way located between Lots H-9 and H-10 and Lots L-16 and L-17, respectively, as shown on the Application Plan, subject to the following:

1. The emergency accessways shall be designed and graded to accommodate a minimum Virginia Department of Transportation standard for a public street as determined by the County Engineer, and constructed using pervious parking pavers or other materials sufficient to support fire and other emergency vehicles, but that support grass or other ground cover, in conjunction with the construction of the streets serving Lots H-7 and L-14, respectively.

2. The fifty (50) foot wide rights-of-way shall be dedicated to public use upon request by the County, together with all necessary right-of-way for the fifty (50) foot wide rights-of-way to be geometrically connected to adjoining streets as approved by the County Engineer.

3. If requested by the County within ten (10) years after the first certificate of occupancy is issued for a dwelling unit within the H or L sections shown on the Application Plan, and after the property on the east side of Pritchett Lane opposite the respective emergency access ways has been upzoned, the Owner shall convert and upgrade the emergency access ways to the applicable Virginia Department of Transportation public street standards for acceptance into the state highway system. Subject to weather delays or force majeure, the construction of the upgrades shall be completed for such acceptance within one hundred eighty (180) days after the request by the County.

B. Extension to Tax Map 32, Parcel 23HI. In the event that any of the residential units within the Project adjacent to Tax Map 32, Parcel 23HI are developed under a site plan, the Owner shall design and construct extensions to Tax Map 32, Parcel 23HI by way of two streets within the fifty (50) foot wide rights-of-way located as shown on the Application Plan and identified by the notation "R.O.W. Reserved for Future Dedication," adjacent to the church property identified as Tax Map 32, Parcel 23HI that fronts on Pritchett Lane. The exact location of the rights-of-way shall be fixed by the applicable final site plan.

1. The streets shall be designed and constructed to applicable Virginia Department of Transportation public street standards. The streets shall be constructed in conjunction with the applicable final site plan, or at such other time authorized by the County Engineer under such terms and conditions the County Engineer determines to be appropriate, including the requirement that the Owner provide adequate surety or other guarantee that the streets will be constructed and maintained until accepted into the state highway system.

2. The streets shall be constructed as close to the property line between the Project and Tax Map 32, Parcel 23HI as determined by the County Engineer to be feasible without obtaining offsite construction easements. The rights-of-way shall be graded as close as possible to the Project property line.

3. To allow the completion of street improvements to and beyond the Project property line, temporary construction easements on the Owner's property and outside of the rights-of-way to be dedicated shall be reserved on the applicable final site plan. The site plan also shall include a note stating that no improvements shall be established within the reserved area. Within ninety (90) days after request by the County, the easements shall be granted. No improvements shall be located within the temporary construction easements until the construction of the street improvements onto Tax Map 32, Parcel 23HI has been completed so that the need for the temporary construction easements no longer exists.

4. Within ninety (90) days after request by the County after Tax Map 32, Parcel 23HI has been upzoned, the Owner shall dedicate to public use the streets and rights-of-way and offer the street for acceptance into the state highway system.

10. Overlot grading plan. For all subdivisions with lots less than 15,000 square feet in size and not otherwise requiring a site plan, a lot grading plan ("Overlot Grading Plan") must be approved by the County Engineer prior to the issuance of a building permit for a new residence on any such lot(s). The Overlot Grading Plan must satisfactorily demonstrate compliance with all Erosion and Sediment Control requirements for drainage conveyed across such lot(s). An "Agreement in Lieu of a Plan" will be allowed for building permits, provided the general drainage patterns and grading matches that shown on the Overlot Grading Plan. The Overlot Grading Plan

may be revised at any time by the subdivision developer or individual lot owners, provided all work can be accomplished within their property lines or within available easements. All amendments shall be subject to the review and approval by the County Engineer.

The Overlot Grading Plan shall be drawn to scale not greater than one (1) inch equals fifty (50) feet, with all proposed grading shown at contour intervals not greater than two (2) feet interpolated and shall demonstrate to the satisfaction of the County Engineer that:

All concentrated runoff is conveyed across lots using vegetated swales or underground drainage structures in a manner that does not result in flooding of buildings or erosion as a result of the grading. For the purposes of this requirement, flows from roof downspouts will be considered concentrated flows if not adequately dispersed before reaching the property line.

2. Overland relief is assured in the event that drainage structures do not function. Overland relief will be considered satisfied if buildings are designed to have finished floors at least one (1) foot above low points for any drainage area which includes the house. With dams and similar impoundments, this should be measured from the top of the dam.

The County Engineer may allow other drainage structures (e.g., riprap ditches) where it has been determined this change will not significantly impact usable yards (e.g., cobblestone swale next to a driveway), where slopes are too steep for vegetated swales (e.g., steeper than 33% grades), or where the change would better mitigate impacts on adjoining properties (e.g., matches offsite drainage structure).

C. Public drainage across lots shall be in storm sewers except open drainage ways may be allowed if the plat restricts construction of a building within fifty (50) feet of a proposed open drainageway. If a storm sewer is used across lots, easement widths must be sufficient to allow excavation with 1:1 side slopes on the trench, sufficient room on one side of the trench to stockpile excavated materials, sufficient room on the opposite side of the trench to allow for movement of materials, and adequate room for a backhoe boom to swing. Fences, walls, driveways, and other uses are not allowed within the easements, except where a "hold harmless" clause is included in the easement agreement.

D. No surface drainage may flow across more than three (3) lots or one-half (1/2) acre, whichever is greater, before being collected in a storm sewer or directed to a drainage way outside of the lots.

E. Retaining walls higher than four (4) feet (measured from the top of the face to the ground on the downhill side) shall be designed by a professional engineer to assure long-term stability. Retaining walls building using a VDOT standard or a pre-engineered product that includes certification are not required to provide a separate professional engineer's certification provided the building contractor provides an affidavit that the wall was constructed consistent with the standard. Retaining walls higher than four (4) feet in useable yards or places where the public might walk must include a railing similar in design to what is required for elevated decks. In circumstances where it is questionable whether a railing is required, the County Engineer will make the determination. The builder must provide evidence of the ability to maintain any retaining wall which could not be maintained without the use of adjoining property.

F. The Plan shall demonstrate that an area at least five (5) feet in width, or to the lot line if the distance is less than five (5) feet, from any possible doorways to dwellings as shown on the Plan or from the edges of any grade level patios as shown on the Plan that will not be served by a stairway, has grades no steeper than ten percent perpendicular to the exterior wall.

G. In lieu of the foregoing provisions, the grading plan for the residential units located in the southeastern portion of the Project as shown on the Application Plan shall be included as part of the site development plan application for the appurtenant commercial area as shown on the Application Plan.

H. Any requirement of this condition may be waived by the County Engineer by submitting a waiver request with the preliminary plat. If such a request is made, it shall include: (i) a justification for the request contained in a certified engineer's report; (ii) a vicinity map showing a larger street network at a scale no smaller than one (1) inch equals six hundred (600) feet; (iii) a conceptual plan at a scale no smaller than one (1) inch equals two hundred (200) feet showing surveyed boundaries of the property; (iv) topography of the property at five (5) foot intervals for the property being subdivided and on abutting lands to a distance of five hundred (500) feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, stream buffers, steep slopes, floodplains, known wetlands; and (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable. In reviewing a waiver request, the County Engineer shall consider whether the alternative proposed by the Owner satisfies the purpose of the requirement to be waived to at least an equivalent degree. In approving a waiver, the County Engineer shall find that requiring compliance with the requirement of this condition would not forward the purposes of the County's Subdivision and Water Protection Ordinances or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the Project, and to the land adjacent thereto.

I. The Owner may request that the Plan be amended at any time. All amendments shall be subject to the review and approval by the County Engineer.

Sanitary sewers. All residential uses shall be served by gravity sanitary sewers; however, basements may be served by grinder pumps.

Mr. Boyd then **moved** to approve waivers to Section 21.7, Minimum Yard Requirements, in accordance with the application plan which provides for alternate setbacks and Section 4.2 of the Zoning Ordinance related to critical slopes and areas of critical slopes disturbance. Mr. Dorrier **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

Agenda Item No. 16. **Public Hearing:** ZMA 2002-004, Cascadia (Signs #30, 91).

Proposal: Rezone 55.71 acres from RA (Rural Areas: agricultural, forestal and fishery uses; residential density (0.5 unit/acre) to NMD (Neighborhood Model District - residential (3 - 34 units/acre) mixed with commercial, service and industrial uses); and rezone 5.06 acres from R-6 (Residential: 6 units/acre) to NMD to allow for up to 330 dwelling units and 20,000 square feet of non-residential in a planned district.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses.

Entrance Corridor: Yes.

Location: Tax Map 62, Parcel 25, Tax Map 78, Parcels 59 and 59A, and Tax Map 78E, Parcel H1, located along Route 20 North, across from Darden Towe Park, north of Fontana Drive and south of Broadus Memorial Baptist Church.

Magisterial District: Rivanna.

(Notice of this public hearing was published in the *Daily Progress* on July 17 and July 24, 2006.)

Mr. Cilimberg reported that this is predominately a residential development, but that it does have a limited area of non-residential, up to 330 dwelling units; it is recommended for up to six dwelling units per acre in the Comprehensive Plan. He noted that it is across from Darden Towe Park across from the Fontana subdivision. He said that when staff first reviewed the project with the Planning Commission, there was direction given to the applicant; subsequently, there have been work sessions and two public hearings. He mentioned that the applicant went before the Commission on June 27, and staff had noted several favorable factors at that time including the design of the plan, the provision of "for sale" and "for rent" affordable housing that met the County's policies, the provision of an emergency pedestrian access to Fontana, which also provided funds to construct a future vehicular connection should it be desired, and various aspects of the code of development that had been modified at that point to deal with issues of the design of the project. He said that staff pointed out several unfavorable factors to the Commission including insufficient proffers for capital improvements, concern about side-yard setbacks, and length of retaining walls in certain areas. He stated that staff recommended approval if the cash proffers would better meet capital needs and if the setbacks were modified. Mr. Cilimberg said that at the Commission's June 27 hearing, he said, they recommended approval of the project with several expectations from the applicant house separations of zero lot-line concept as part of the code of development; a maximum six-foot high, 300 foot long retaining wall with allowances greater than that with approval from the Director of Community Development; further negotiation from the Board in the areas of cash proffers and the 90-day limit on the availability of affordable housing; and maximizing tree protection.

Mr. Cilimberg said that the applicant has made revisions in keeping with those expectations, including side-yard setbacks for larger lots increased to five feet; they did not pursue the zero lot-line concept. He stated that the applicant committed to submitting a tree protection plan, and proffers were revised designating an increase from \$2,000 to \$3,000 in contributions to the CIP, from \$1,000 to \$2,500 for each townhouse, and from \$500 to \$2,000 for each multi-family unit. He said that this increases the total from \$300,000 to \$750,000. He noted that the applicant did not increase the 90-day affordable housing limit availability, but Mr. White did not object as his view was any site plan would identify where they would be provided, and the housing office would be notified ahead of time where the units are.

Mr. Cilimberg noted that there are 18 sections of the County zoning ordinance that necessitate waiver or modification to accommodate the applicant's request, and staff has summarized those in an attachment. He said that staff recommends approval of the rezoning with proffers, the code of development, and those waivers providing that the Board agrees with Mr. White that the 90 days is sufficient time to find purchasers for the affordable units, and with consideration of the increased cash proffer amounts.

Mr. Rooker said that this development would put 3,000 to 4,000 vehicle trips on Route 20, going to the intersection of Route 250, which is already heavily burdened. Mr. Rooker said, "I think this is a well done development, [but] I think the cash proffer amount is way off the mark. Again, what we're doing again is approving a lot of people going into a place in my view, if we approve this, without some significant increase in that cash proffer, without an adequate contribution to the public realm to handle the impacts of the development." Mr. Rooker said that he is not willing to support this proposal without a significant increase in proffer amount. Mr. Davis clarified that proffers are voluntary and the Board can

state the impacts needing to be addressed, but they cannot deny a rezoning solely on the basis that an applicant doesn't proffer cash.

Mr. Rooker replied that there are significant transportation impacts from this development that aren't being mitigated along with impacts on schools. He added that other than that, the development is well done.

Mr. Slutzky said that perhaps providing more feedback to the developers would be helpful. Mr. Cilimberg stated that staff would be appreciative of knowing what the expectations are.

Mr. Boyd commented that there needs to be some basis for assigning costs and assessing what the proffer levels should be.

Mr. Rooker said that he believes the amount should be about \$1,000 per vehicle trip per day.

Mr. Dorrier noted that another work session would be needed to determine an adequate level and to see what other localities are doing.

Mr. Rooker stated that Chesterfield has a proffer policy which assigns a \$25,000 proffer fee per detached single-family unit.

Mr. Tucker said that those communities have hired consultants to help establish that formula, and Albemarle should do the same but with some basis for justification on proffer amounts.

Mr. Rooker noted that the Planning Commission did not feel the proffer amount offered in this application was sufficient. He emphasized the importance of establishing some fair level of reimbursement to offset the impacts of development.

Mr. Slutzky said that the County is not in a position to be taking an "impact fee" from developers because the County has not done what it takes to limit the growth opportunities in the rural areas. Mr. Slutzky said, "Until we either downzone the rural area or in some other way profoundly mitigate the opportunity for these homes [to be built] in the rural areas, we're sort of caught between a rock and a hard place."

Mr. Rooker stated that the only way to slow down development in the rural area will be through phasing, and by the time that is addressed, the Board will have approved 12 or 15 thousand development rights in the urban area without adequate impact compensation. Mr. Rooker said, "I think we're just heading down a road to ruin here. We're putting the future of the County in a position where there are going to be massive infrastructure costs with no reasonable offsets for those impacts."

Mr. Slutzky said that the fault lies with the General Assembly because the Board is not permitted to deny rezonings on the sole basis of lack of infrastructure.

Mr. Rooker suggested deferring the application until some reasonable policy on how impacts would be offset. He said that he would prefer slowing down on rezonings until there is a policy in place, and there does not need to be an extensive timeframe to accomplish that.

Mr. Dorrier commented that there are not legal grounds to stop rezoning. Mr. Davis said that the law provides that the Board has up to 12 months to consider applications from the time they are submitted.

Mr. Wyant said that "automobiles do very little damage to a road," and what needs to be determined is what the traffic impact is.

Mr. Rooker suggested looking at what other communities have used in terms of measuring impact. He stated that he is not in favor of supporting this proposal without an increase in proffer amounts.

Ms. Thomas said that she feels differently about this proposal than she does about North Pointe, as the impact of vehicle trips per day from Cascadia would not be as significant.

With no further questions for staff, Mr. Rooker opened the public hearing and asked the applicant to speak.

Mr. Don Franco of KG Associates addressed the Board, stating that this development is exactly what the Board has been looking for in terms of form, density, and design. He said that it's hard to react to numbers like \$8,000 when the background growth is expected to occur. Mr. Franco said, "We're trying to put it in the right place." He said that they have tried to integrate this project into the neighborhood, and have tried to meet Neighborhood Model elements.

Mr. Rooker commented that it's not hard to compete with what it costs to buy a lot in the rural area and build a house. Mr. Franco replied that they are trying to entice buyers to live in the urban ring, and it does come at a cost.

Mr. Rooker asked how developers in Chesterfield and Orange make it work, with proffers offering much more in terms of cash. He noted that those localities have much less restrictive rural areas policies than Albemarle.

Mr. Boyd said that the County has approved more and more residential lots than ever before. He asked if developers feel there is going to be a big influx of people into town. Mr. Boyd also asked, "Is everybody just trying to get their piece of this pie?" He mentioned that KG Associates has several projects already underway. Mr. Franco responded that essentially what the Board is seeing is the "backlog" of projects that have been planned. Mr. Franco said, "It's just a long, complicated process."

Mr. Boyd commented that Albemarle does not have a proffer policy, and there are already significant transportation problems.

Mr. Dorrier said that if proffers are assigned to the unit costs of houses, then the County is working against the goal of affordable housing. Mr. Dorrier said, "It doesn't make any sense to rule out the affordable housing to improve the roads."

Mr. Rooker stated that people in the community expect the County to find a way to make growth pay for itself in a reasonable way, and most sophisticated peer localities have adopted a proffer policy.

Mr. Wyant asked Mr. Franco how they came up with the cash proffer amount presented. Mr. Franco replied that it is still a "nebulous thing," and they have not received much guidance. He explained that his firm has used what other local developments recently have proffered to contribute. He emphasized that he feels they have addressed the impacts but did not look at the County's impact models.

Mr. Rooker commented that the vehicle trip per day being used here is less than what the multiplier would yield. Mr. Franco replied that they are using the number of 2,400, counting on outside users from VDOT perspective.

Mr. Rooker said that if you take the 330 units and multiply it by eight, the number is higher than 2,400 even without considering the commercial traffic generation. Mr. Franco stated that condominiums generate less than eight.

Mr. Slutzky commented that until there are disincentives for building in rural area, the Board would be "shooting ourselves in the foot" by not approving developments in the development ring. He said that denying developments that meet Neighborhood Model criteria in the urban area is not the best way to handle the situation.

Mr. Dorrier asked if this development meets staff expectations for Neighborhood Model criteria. Mr. Cilimberg responded that it is very much meeting the form expectations as there is a mixed-use component, affordable housing, and an interconnection provision.

Mr. Boyd said that developers need to come in with some formula presented as to how they have arrived at their proffer figure.

Ms. Thomas stated that page 14 of this report does discuss this fairly well, and VDOT indicates that the applicant has not come up with a specific cash proffer for the Route 20/250 intersection but does have combined funds for CIP and schools to mitigate the impacts to schools, roads, infrastructure, emergency services, and parks. She noted that her motivation is not sticking it to the developers but to raise the alarm among someone in the community so they go to the legislature and make the point that localities are going to say "no" to developers.

Mr. Rooker revisited the transportation funding situation, noting the reduced funding and the increased costs for road projects.

Mr. John Warnicke, President of the Fontana Homeowners Association, addressed the Board to express concern about the connector road that is planned to run through Fontana into the new Cascadia development. He said that Fontana has 150 units, and all the traffic generated from Cascadia's 330 units and commercial development would come down Verona Drive right through Fontana. He emphasized that these are narrow, rural roads, with no sidewalks or curb and gutter, and are windy with steep inclines. He said that the homeowners do not feel that this connection is necessary and that it would serve as a way for people to shortcut off of Route 20 and Route 250. He said that the proposal started out as a full-blown access, and Fontana fought that at the Planning Commission level.

Mr. Davis explained that the Commission asked that there be a walking path built to the Fontana neighborhood, and the decision about the road is one that would be made at a later stage by the Commission; the subdivision ordinance requires that, unless a waiver is granted by the Planning Commission, that a road be platted to the property line for a future connection. Mr. Davis said that whether that road would actually be built would depend on other factors, and the developer can ask for an administrative waiver to plat the road and not build it until there is a future connection on the other side, which would be controlled by Fontana.

Mr. Warnicke said the Fontana developer, Mr. Tony Nichols, does not want that to occur. He said that Mr. Nichols wants to zone the adjacent property to one-third acre lots instead of the current one-acre lots. Mr. Cilimberg stated that Fontana 4-C, which is proposed to be 20 lots, is a rezoning that is going to the Planning Commission. He indicated that the applicant is providing a reservation for an eight-foot wide walking and biking path that would connect into the neighborhood. Mr. Warnicke replied that Fontana would rather not have it, but it would be acceptable if that helps with the County's connectivity.

Mr. James McClean addressed the Board, stating that he has a problem with what is now becoming the main entrance and that there is going to be more and more congestion to try to get out and make the light. He said that he proposed another traffic light that would calm the flow of traffic that flies down the hill to get to the light. He explained that he lives in Fontana at the top of the hill on the very first cul-de-sac.

Mr. Rooker explained that VDOT determined whether or not a stoplight is warranted, and the community needs to approach them to start the assessment process.

Mr. Boyd commented that Mr. Slutzky has been trying to get a light in front of Dunlora for a long time.

Mr. McClean said that there has been a recent string of car break-ins, and the interconnectivity and increase in youth population in this neighborhood will make the problem worse.

Mr. Ken Webster addressed the Board, stating that he applauds them for encouraging higher proffer amounts. He said that he is concerned about the connector and would like to eliminate the requirement for the developer to put in a stub for a future road.

Mr. Lou Park, a Fontana resident, addressed the Board, stating that there are already safety deficiencies now in trying to get out of the subdivision. He said that he would like to have an estimate of additional traffic that would be generated if a connector road would be built.

Mr. Neil Williamson of the Free Enterprise Forum addressed the Board, stating that the proffer number for capital improvements recently established by consultants for Greene County was \$3,000 per unit, not including transportation projects.

Ms. Carol Roberts addressed the Board. She asked the Board to please leave intact the existing green buffer of mature trees along Route 20 as it would "hide an awful lot of sins." Ms. Roberts said that the loss of trees is "one of the most heartbreaking results of development," and in this case it could be easily avoided. She asked that all commercial components be kept within the development.

Ms. Clara Bell Wheeler addressed the Board, stating that Route 20 was a beautiful entrance corridor and was a terminal part through hallowed ground. She said that the route is part of the road through hallowed ground that connects Gettysburg and Monticello, and "we're raping and pillaging it faster than we can speak." She emphasized that this development has been opposed by almost all of the neighbors, and there is no need for additional retail here as there is plenty of retail at Pantops. She noted that the only reason for retail is to put money in somebody's pocket, adding that when Darden Towe was made into a park the County guaranteed that there would be no lights on the park so it would be quiet and peaceful. She said that the sidewalk to Wilton Farm cost \$450,000 and caused Stony Point Road to be blocked off for an entire summer. She raised concerns about increased crime in the area because of the additional neighborhoods, and she said that she hopes the County is prepared to pay for more law enforcement. She stated that this project will put runoff into Trevillians Creek into the Rivanna. She thanked Mr. Rooker for his work to get proffer amounts increased. Ms. Wheeler said, "If they're going to build it, they better doggone well pay for it."

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

Ms. Thomas asked for clarification of the green space and preservation areas along Route 20. Mr. Franco explained that the goal has been to preserve the area from the entrance north next to the ponds as directed by the ARB. Mr. Franco said that they will work with the County to determine where the stream buffer is, and they are also proffering about 20 feet of right of way along the property line. Mr. Franco said that the area near the ponds would still have a significant buffer as well as near the parking area along Route 20.

Mr. Boyd commented that there was a pond built when the Montessori School was built. Mr. Franco replied that that is currently dry, but their intent is to make it a wet pond. Mr. Franco said that the creek runs from the lower pond up and along Route 20. Mr. Franco said, "Our goal is to preserve the trees, but if the rural character is lost because the road nature changes, then that's the direction we've got [from staff and VDOT]." Mr. Franco mentioned that they originally proffered the interconnection, and if that is deemed not to be necessary, he would give it to the Board for road improvements.

Mr. Boyd asked if he would be willing to meet the higher standard of erosion sediment control. Mr. Franco responded that the majority of the drainage would be coming down towards Route 20, and the ponds are substantially larger than the typical detention basin so by default it would happen.

Mr. Wyant said that the length of the pond is greater than the width so the particles have more time to settle out and the water would be more filtered. Mr. Franco noted that without having a State standard, they just provide a size. Mr. Franco said that he is not sure how to get from the 40 to 60% up to an 80% standard.

Ms. Thomas commented that she has been responsible for creating some stubs in her district, but none of them have been built out because it takes a willing and well-funded developer on each end to create an interconnection.

Mr. Boyd said that the County knows there is another development coming in on the other side and that has citizens concerned.

Mr. Rooker stated that the Board cannot base a decision based on knowledge of what might come down the pike.

Mr. Boyd said that he realizes the proffer policy needs to be evaluated on a larger scale, but it would be unfair to the developer to change the game plan at this point. He then offered **motion** to approve ZMA-2000-004 with the proffers signed August 1st and August 2nd, 2006. Mr. Dorrier **seconded** the motion.

Mr. Rooker asked if there has been a determination on the existing level of service on Route 20 at the intersection of Route 250. Staff indicated that the level of service was a "D."

Ms. Thomas asked what VDOT was expecting in terms of cost of the intersection. Mr. Cilimberg replied that VDOT could not come up with an exact figure and this actually came up with the Virginia National Bank development. Mr. Cilimberg emphasized that widening of Route 20 is not in any plan.

Mr. Rooker said that this intersection was a "D" level of service a couple of years ago, and it has not been determined what improvements are needed to raise the level. Staff responded that a study would have to be done to make that determination, and VDOT did not stipulate how much the improvements would cost.

Mr. Cilimberg said that the Pantops Master Plan is coming through, as is the Eastern Connector study, which would both provide information that would help determine those improvements. He added that the applicant's proffer money would go through the CIP, and funding for a study would have to be funneled from there.

At this time, roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Dorrier, Mr. Slutzky, Ms. Thomas, Mr. Wyant, and Mr. Boyd.

NAYS: Mr. Rooker.

CASCADIA

PROFFER FORM

Date: July 20, 2006

ZMA # 2002-004

Tax Map and Parcel Number(s) Tax Map Parcel 62-25; Tax Map 78 Parcels 59 and 59A; and Tax Map Parcel 78E-H1

60.8 Acres to be rezoned from RA/R6 to NMD in accordance with the **Cascadia** Code of Development prepared by Cline Design and dated July 12, 2006

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner, or its duly authorized agent, hereby voluntarily proffers the conditions listed below which shall be applied to the property, if rezoned. These conditions are proffered as a part of the requested rezoning and it is agreed that: (1) the rezoning itself gives rise to the need for the conditions; and (2) such conditions have a reasonable relation to the rezoning request.

- 1) **Affordable Housing:** The Owner shall provide a number of affordable dwellings that is equal to or greater than fifteen percent (15%) of the total residential units constructed in Cascadia. The affordable dwellings shall be in the form of "for-sale" townhouses and condominiums and "for rent" townhouses, condominiums, apartments, accessory units, and Special Single-Family Dwelling and Duplex Units as defined by the Cascadia Code of Development. The affordable dwellings shall be reasonably dispersed throughout the property, subject to the requirements of the General Development Plan and the Code of Development.

A. Designation of Affordable Dwellings

1. The Owner shall designate individual affordable dwelling lots, units, and/or unit(s) within a townhouse block during final design. Where final design is pursued through the site plan process, the lot or unit shall be designated on the final site plan. All affordable dwellings designated on the final site plan shall be platted such that the responsibility for this proffer and sale/ rental of the designated affordable dwelling is consistent with the approved final site plan. Where final design is pursued through the subdivision platting process to create separate building lots, the affordable dwellings shall be designated on the preliminary plat. The responsibility for this proffer and the sale/ rental of any affordable dwelling shall be clearly designated with the final plat.
2. When required by paragraph A1, the Owner shall designate a minimum of fifteen percent (15%) of the aggregate number of lots or units on that site plan or subdivision plat as affordable dwellings. Notwithstanding the foregoing, the Owner may "carry-over" or "bank" credits for affordable dwellings in the event an individual site plan or subdivision plat designates affordable dwellings that in the aggregate exceed the fifteen percent (15%) minimum for such site plan or subdivision plat, and such additional affordable dwelling may be allocated toward the fifteen percent (15%)

minimum on any future site plan or subdivision plat, provided however, that the maximum number of affordable dwellings that may be carried over or banked shall not exceed fifteen percent (15%) of the total units on the site plan or subdivision plat.

3. After a lot, unit, or unit(s) within a townhouse block has been designated as containing an affordable dwelling, the requirement to provide the affordable unit shall run with that parcel and the responsibility for constructing and selling/ renting the affordable dwelling shall be with the then-current owner of the individual lot or unit.

B. Mixture of Types of Affordable Dwelling Units

1. At least thirty-three percent (33%) of the required affordable dwellings shall be for-sale units.
2. For purposes of this proffer, no more than thirty-three percent (33%) of the required affordable dwelling units may be Special Single-Family Dwelling and Duplex Units; however, nothing, except the maximum number of dwellings established in the Cascadia Code of Development, shall prohibit the Owner or its assigns from creating additional Special Single-Family Dwelling and Duplex Units.
3. The remainder of the required affordable dwellings shall be "for rent" townhouses, condominiums, apartments as defined in paragraph 1D.

C. For Sale Affordable Dwellings

For purposes of this proffer, a "for-sale affordable dwelling" shall be defined as a dwelling affordable to households with incomes less than eighty percent (80%) of the area median income such that housing costs consisting of principal, interest, real estate taxes, and homeowners insurance (PITI) do not exceed thirty percent (30%) of the gross household income.

All purchasers of the for-sale affordable units shall be approved by the Albemarle County Housing Office or its designee. The subsequent owner/builder shall provide the County or its designee a period of ninety (90) days to identify and prequalify for financing an eligible purchaser for the affordable unit. The ninety (90)-day period shall commence upon written notice from the then-current owner/builder that the unit(s) will be available for sale. If the County or its designee does not provide a qualified purchaser who executes a contract of purchase during this ninety (90)-day period, the then-current owner/builder shall have the right to sell the unit(s) without any restriction on sales price or income of the purchaser(s), provided, however, that any unit(s) sold without such restriction shall nevertheless be counted toward the number of affordable units required to be provided pursuant to this terms of this paragraph 1C. The requirements of this paragraph 1C shall apply only to the first sale of each of the affordable units.

The Owner reserves the right to meet the for-sale affordable dwelling criteria on the market rate for-sale units by retaining a no interest, junior deed of trust that is acceptable to the primary mortgage lender. This junior deed of trust cannot exceed the difference between the sale price and the appraised value of the unit. This junior mortgage may be assigned to a third party.

D. For Rent Affordable Dwellings

1. Rental Rates. The initial net rent for each for-rent affordable unit shall not exceed the then-current and applicable maximum net rent rate approved by the Albemarle County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent affordable dwelling may be increased up to three percent (3%). For purposes of this proffer statement, the term "net rent" means that the rent does not include tenant-paid utilities.
2. Affordable Term. Rents for such for-rent affordable dwellings shall not exceed the maximum rents established in paragraph 1D1 for a period of five (5) years from the date of issuance of a certificate of occupancy for that for-rent affordable dwelling, unless the dwelling is made available for-sale under the terms outlined in paragraph C.
3. Conveyance of Interest. All deeds conveying any interest in the for-rent affordable dwellings during the Affordable Term shall contain language reciting that such dwelling is subject to the terms of this proffer. In addition, all contracts pertaining to a conveyance of any for-rent affordable dwelling, or any part thereof, during the Affordable Term shall contain a complete and full disclosure of the restrictions and controls established by this proffer. At least thirty (30) days prior to the conveyance of any interest in any for-rent affordable dwelling during the Affordable Term, the then-current owner shall notify the County in writing of the conveyance and provide the name, address, and telephone number of the potential grantee, and state that the requirements of the proffer have been satisfied.
4. Reporting Rental Rates. During the Affordable Term, within thirty (30) day of each rental or lease term for each for-rent affordable dwelling, the then-current owner shall provide to the Albemarle County Housing Office a copy of the rental or lease agreement for each such dwelling rented that shows the rental rate for such dwelling and the term of the rental or lease agreement. In addition, during the Affordable Term, the then-current owner shall provide to the County, if requested, any reports,

copies of rental or lease agreements, or other data pertaining to rental rates as the County may reasonably require.

- 2) **Route 20 Improvements:** In order to address the future potential improvements to Route 20, Stony Point Road, the Owner shall dedicate twenty (20) feet of public right of way along the edge of the existing Route 20 right of way with the first subdivision plat.
- 3) **Secondary Road Interconnections to Broadus Baptist Church:** The Owner shall provide for two (2) interconnections to Broadus Baptist Church (TMP 62-25C and 25C1).

For the first interconnection, the Owner shall provide Broadus Baptist Church with a thirty (30) foot wide easement that will allow the Church to construct a driveway within this easement. The easement shall start at the Cascadia property line shared with Broadus Baptist Church and run generally along the centerline of a Class A trail to the intersection of Cascadia Drive and Delphi Lane, as generally shown on the General Development Plan. The Owner shall reserve this easement for a period ten (10) years from the recordation date of the first plat for this area and provide the easement free of charge to the Church. If the Church does not exercise its right to construct a private drive within this 10 year time period, the Owner's obligation to provide this easement shall be void.

For the second interconnection, the Owner shall provide Broadus Baptist Church with a first right of refusal to a lot within Cascadia that will provide reasonable access to the upper portions of TMP 62-25C and 25C1. The lot shall be wide enough to accommodate a public road. If any grading or drainage easements outside the lot are required to construct the second interconnection, the Owner shall grant these easements free of charge. If the Church does not exercise its first right of refusal at the time of sale of this lot, the Owner's obligation to provide for this interconnection shall be void.

- 4) **Cash Proffer for Capital Projects:** For each dwelling unit constructed with Cascadia, the Owner shall contribute cash to Albemarle County for the stated purpose of either funding school projects at Stony Point Elementary School, Sutherland Middle School, and Albemarle High School as identified in the County School's Capital Improvements Program or funding Capital Improvement Projects within or immediately adjacent to Neighborhood 3 as identified in the County's Capital Improvements Program. The cash contributions shall be at the following rates: \$3,000 for each single family detached unit, \$2,500 for each townhouse unit and \$2,000 for each multifamily unit. Dwellings defined as Special Single-Family Dwelling or Duplex Unit in the Code of Development and/ or designated as affordable dwellings under paragraph 1A shall be exempted from this proffer. The cash contribution for each dwelling unit shall be paid at the time of the issuance of the building permit for such dwelling unit. If the cash contribution has not been exhausted by the County for the stated purposes within ten (10) years from the date of the issuance of the last residential building permit within Cascadia, all unexpended funds shall be applied to fund for any public project or program within Neighborhood 3.
- 5) **Overlot Grading Plan:** The Owner shall submit an overlot grading plan meeting the requirements of this section (hereinafter, the "Plan") with the application for each subdivision of the single family detached and single family attached dwelling units shown on the General Development Plan. The Plan shall show existing and proposed topographic features to be considered in the development of the proposed subdivision. The Plan shall be approved by the County Engineer prior to final approval of the subdivision plat. The subdivision shall be graded as shown on the approved Plan. No certificate of occupancy shall be issued for any dwelling on a lot where the County Engineer has determined the lot is not graded consistent with the approved grading Plan. The Plan shall satisfy the following:
 - a) The Plan shall show all proposed streets, building sites, surface drainage, driveways, trails, and other features the County Engineer determines are needed to verify that the Plan satisfies the requirements of this proffer.
 - b) The plan shall be drawn to a scale not greater than one (1) inch equals fifty (50) feet.
 - c) All proposed grading shall be shown with contour intervals not greater than two (2) feet. All concentrated surface drainage over lots shall be clearly shown with the proposed grading. All proposed grading shall be shown to assure that surface drainage can provide adequate relief from the flooding of dwellings in the event a storm sewer fails.
 - d) Graded slopes on lots proposed to be planted with turf grasses (lawns) shall not exceed a gradient of three (3) feet of horizontal distance for each one (1) foot of vertical rise or fall (3:1). Steeper slopes shall be vegetated with low maintenance vegetation as determined to be appropriate by the County's program authority in its approval of an erosion and sediment control plan for the land disturbing activity. These steeper slopes shall not exceed a gradient of two (2) feet of horizontal distance for each one (1) foot of vertical rise or fall (2:1), unless the County Engineer finds that the grading recommendations for steeper slopes have adequately addressed the impacts.
 - e) Surface drainage from one-half (1/2) acre of land or from three (3) lots or more lots, whichever is greater in area, shall be collected in a storm sewer or directed to a drainage way outside of the lots.
 - f) All drainage from streets shall be carried across lots in a storm sewer to a point beyond the rear of the building site.

- g) The Plan shall demonstrate that driveways to lots will not be steeper than twenty (20) percent unless certified by an engineer that the driveway at the proposed steepness would be safe and convenient for vehicles (including emergency vehicles) to use the driveway, and shall include grading transitions at the street that the agent determines will allow passenger vehicles to avoid scraping the vehicle body on the driveway or the street. Additionally, the driveway grading shall provide an area in front of the proposed garage, or an area proposed for vehicle parking where no garage is proposed, that is not less than eighteen (18) feet in length that will be graded no steeper than eight (8) percent.
- h) The Plan shall demonstrate that an area at least ten (10) feet in width, or to the lot line if it is less than ten (10) feet, from the portion of the structure facing the street, has grades no steeper than ten (10) percent adjacent to possible entrances to dwellings that will not be served by a stairway. This graded area also shall extend from the entrances to the driveways or walkways connecting the dwelling to the street.
- i) Any requirement of this proffer may be waived by the County Engineer by submitting a waiver request with the preliminary plat. If such a request is made, it shall include: (i) a justification for the request contained in a certified engineer's report; (ii) a vicinity map showing a larger street network at a scale of no smaller than one (1) inch equals six hundred (600) feet; (iii) a conceptual plan at a scale no smaller than one (1) inch equals two hundred (200) feet showing surveyed boundaries of the property; (iv) topography of the property at five (5) foot intervals for the property being subdivided and on abutting lands to a distance of five hundred (500) feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, stream buffers, steep slopes, floodplains, known wetlands; and (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable. In reviewing a waiver request, the County Engineer shall consider whether the alternative proposed by the Owner satisfies the purpose of the requirement to be waived to at least an equivalent degree. In approving a waiver, the County Engineer shall find that requiring compliance with the requirement of this proffer would not forward the purposes of the County's Subdivision and Water Protection Ordinances or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the Project, and the land adjacent thereto.
- j) The owner may request that the Plan be amended at any time. All amendments shall be subject to the review and approval by the County Engineer.

In the event that the County adopts overlot grading regulations after the date ZMA 2002-004 is approved, any requirement of those regulations that is less restrictive than any requirement in this proffer shall supersede the corresponding requirement of this proffer, subject to the approval of the Director of the Department of Community Development.

The Board discussed how to stipulate a higher level of erosion control with this proposal.

Ms. Thomas suggested including language that says, "current development engineer approval to include erosion and sediment control plan to the maximum extent practicable."

Mr. Graham suggested using what was used for North Pointe.

Mr. Davis read the wording from the North Pointe: "The owner shall to the maximum extent practicable provide such additional appropriate erosion and sediment control measures that exceed State and local minimums."

Mr. Boyd then **moved** for approval of the Summary of waivers (Exhibit F) approved by the Planning Commission with the addition of the following language read by Mr. Davis: "The Erosion and Sediment Control Plan shall, to the 'maximum extent practicable', provide such additional appropriate erosion and sediment control measures that exceed State and Local minimum standards." Mr. Wyant **seconded** the motion, which passed by the following recorded vote:

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

EXHIBIT F
ZMA-2002-004, CASCADIA
Summary of Waivers Approved by Planning Commission

	Albemarle County Code Section	Section Title	Conditions
1	4.2	Critical Slopes	A commitment to an Overlot Grading plan and Current Development Planner approval to include: Landscape plan to include a tree protection plan for land disturbing activity in the "Conservation Area". Current Development Engineer approval to include: Erosion and Sediment Control Plan, Stormwater Management Plan. Reconstructed slopes will be no greater than 3:1 unless landscaped. Landscaped slopes can be no greater than 2:1. A minimum height and length for retaining walls be adopted into the Code of Development.
2	4.2.3	Location of Structures and Improvements:	(Conditions for 4.2 apply to 4.2.3)
3	4.7.3	Open Space Design Requirements:	Waived in substitution for standards established in the Code of Development

4	4.11.1	Covered porches, balconies, chimneys, and like features:	Waived in substitution for standards established in the Code of Development
5	4.11.2	Structures in Required Yards	Waived in substitution for standards established in the Code of Development
6	4.11.2.1	Accessory Structures	Waived in substitution for standards established in the Code of Development
7	4.12.9	Street and Alley Parking	Waived in substitution for standards established in the Code of Development
8	4.12.13	Loading Areas (a,c,e)	At least one Loading Space will be provided in Block One
9	4.15.5.A.1	Off-Site Signs	Directory signs are allowed to be located off-site, but within Cascadia.
10	4.15.5.A.3	Signs in the Public Right of Way	Signs in the public R.O.W. shall be approved by the County Engineer and VDOT.
11	4.15.11	Setback for Signs outside of Right of Way	Signs less than 5' from public R.O.W. shall be approved by the County Engineer and VDOT.
12	4.16.2	Minimum Recreation Facilities	Waived in substitution for standards established in the Code of Development
13	4.16.3.3	Additional Requirements for Recreational Facilities	Waived in substitution for standards established in the Code of Development
14	4.17.4.B.1	(Lighting) Standards	Only 4.17.4.b.1 is waived for Code alternative
15	5.1.16	Swimming, Golf Tennis Clubs:	The pool and clubhouse will not be located within 125 feet of any existing property line not associated with Cascadia.
16	32.4.1.1	Preliminary Conference with staff (site plan)	
17	32.7.9.6	Street Trees	Waived in substitution for standards established in the Code of Development
18	32.7.9.8	Screening:	Waived in substitution for standards established in the Code of Development

The Board approved the waivers shown on Exhibit F on August 2, 2006, adding the following condition to waiver 1 and waiver 2: "The Erosion and Sediment Control Plan shall, to the 'maximum extent practicable', provide such additional appropriate erosion and sediment control measures that exceed State and Local minimum standards."

Agenda Item No. 14. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Mr. Cilimberg noted that Mr. Graham had brought to the Board several months ago the consideration of a proffer policy.

Mr. Rooker suggested using information from other localities.

Mr. Davis stated that it certainly doesn't have to be re-invented, but a reasonable amount of analysis would need to be done. He explained that other localities have used a consultant and have then made the recommendations an amendment to their Comprehensive Plan.

Mr. Cilimberg said that something would be brought forward in October. He said that he would distribute the cash proffer report to the Board.

Ms. Thomas noted that many localities would not be considering transportation impacts in their proffer policies.

Mr. Davis stated that most localities in Northern Virginia do include transportation among other factors.

Mr. Boyd suggested turning the matter over to the Fiscal Impact Committee.

Ms. Thomas said that it needs to include not only roads, but also water and sewer costs.

Mr. Cilimberg stated that Commissioner Eric Strucko recommended bringing it before the Fiscal Impact Committee, and it is his intent to do so.

Mr. Davis emphasized that there are other policy considerations the Board is also going to have to weigh.

Mr. Rooker suggested that the Fiscal Impact Committee go ahead and take a look at it.

Ms. Thomas said the High Growth Commission noted that in Loudoun County the proffers are \$47,000 and \$38,000 in Stafford/Prince William and \$76,000 in Warrenton. She said that the Speaker of the House is interested in "education impact fees." Ms. Thomas added that there is definitely a belief that the State will shift the entire secondary road burden to localities.

Mr. Cilimberg said that the message he got from a recent VHDA meeting was that transportation impact fees were being obtained by working through local homebuilders associations.

Mr. Davis noted that if it is like existing authority that it is a quagmire to implement.

Mr. Slutzky asked if he could bring up a resolution raised by the U.S. Conference of Mayors' to collaborate with the Kyoto accords on global warming.

Agenda Item No. 17. At 11:20 p.m., with no further business to come before the Board, **motion** was offered by Mr. Wyant, **seconded** by Mr. Slutzky, to adjourn this meeting to August 3, 2006 at 6:00 p.m. in the Burley Middle School Auditorium.

Roll was called, and the motion passed by the following recorded vote:

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

Chairman

Approved by the Board of County Supervisors

Date: 09/12/2007

Initials: EWJ
