

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on September 13, 2006, at 2:30 p.m., Room 235, County Office Building, McIntire Road, Charlottesville, Virginia. The meeting was adjourned from September 6, 2006.

PRESENT: Mr. Kenneth C. Boyd, Mr. Lindsay G. Dorrier, Jr., 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, Director of Community Development, Mark Graham, Director of Planning, V. Wayne Cilimberg, Chief of Planning, David Benish, and Clerk, Ella W. Carey.

Agenda Item No. 1. The meeting was called to order at 2:30 p.m., by the Chairman, Mr. Rooker.

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**NonAgenda.** Meadow Creek Parkway Funding.

Mr. Rooker noted that before proceeding with the agenda, there are three sheets that have been distributed to Board members regarding funding of the Meadow Creek Parkway. The first was prepared for the recent meeting with Legislators regarding the Meadow Creek Parkway deficit and to encourage additional transportation funding in the upcoming session. He reported that a meeting was called by Delegate David Toscano, which was attended by Butch Davies of the Commonwealth Transportation Board, City Mayor David Brown, and VDOT staff to review the project status and schedule, including city/county funding. Mr. Rooker said that on the first page of updated information, VDOT's estimate show that the county's deficit has increased by \$1.6 million, and the city's deficit has increased to \$5.1 million – based on right of way acquisition, etc.

He indicated that the second page – entitled Albemarle County Funding – shows various six-year plan projects that will likely need to be delayed unless there is additional state transportation funding in the current year. The Meadow Creek Parkway is a totally state funded project; it does not have federal funds. It would be detrimental to the time schedule of the Parkway if it got federal funds and had to go back through federal compliance. Mr. Rooker added that the county is going to need to find another \$4.5 million if the goal is to keep the Parkway on schedule. The last page of the information is a more detailed explanation of the current costs of the county's section of the Meadow Creek Parkway and how these costs breakdown among the various components, i.e., right-of-way acquisition, preliminary engineering, engineering and construction, etc. He also said that "the long and short of it is we're going to have to delay other projects if we're going to get the Meadow Creek Parkway."

Mr. Boyd asked if the city seemed to be willing to come up with their part of the additional funding. Mr. Rooker replied that Mayor Brown has said that the city has indicated their willingness to look at ways to allocate money to keep the project on schedule. Mr. Rooker added that their deficit might be overstated, as \$2.0 million is allocated for parkway right-of-way acquisition and assuming the city donates that right-of-way to the project or provide an easement free of charge, that \$2.0 million might not be necessary. Mr. Tucker said that the city is probably going to have to conduct the same evaluative process as the county to determine how money needs to be moved around to accommodate the Meadow Creek Parkway project.

Mr. Boyd emphasized that it's important to move forward collaboratively. Mr. Tucker said county staff can follow-up with city staff to see what they are planning and their thoughts on how they might make up that deficit.

Mr. Rooker noted that virtually all revenue-sharing money that has been allocated to projects could be moved. The county can make a decision on which projects to take the money from in order for the Parkway to go forward contingent on the city also staying on schedule.

Mr. David Benish, Chief of Planning, said that the first step for the county would be to act on the Secondary Road Plan, which staff plans to bring to the Board in November or December. He noted that staff is trying to keep Jarman's Gap and Georgetown Road projects on track, as the Board has recommended those as well as Meadow Creek to move forward.

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Agenda Item No. 2. Phasing & Clustering of Rural Area Subdivisions, Family Divisions; Mountain Overlay District.

Mr. Rooker opened the discussion by mentioning general statements in the Comprehensive Plan such as "to be consistent with the guiding principles, the county's land development policies must be changed to stop the ongoing trend toward fragmentation and loss of rural character," adding that there are a number of statements throughout the Plan that talk about the fact that there is fragmenting occurring, and phasing and clustering were among recommendations to try and thwart that. He indicated that the Planning Commission has spent time on the issue, and came back with a recommendation for a joint program of phasing and clustering; the public had an opportunity to comment on those proposals. He added that Albemarle has consulted with other localities to gain information on their phasing and clustering policies. The purpose of today's meeting is to discuss the proposals and to provide guidance to staff.

Mr. Slutzky stated that he is comfortable voting for all proposed items, as he has been advocating all along for measures to help stem the tide of development in the rural areas.

Mr. Dorrier asked Mr. Davis about the constitutionality of a phasing ordinance, in response to the committee report from Neil Williamson, of the Free Enterprise Forum. Mr. Davis replied that there is an Attorney General's opinion that phasing cannot be accomplished under the Subdivision Ordinance, which he (Mr. Davis) agrees with. This proposal is not based on the Subdivision Ordinance; it is based on the Zoning Ordinance. He added that there are general provisions in the Zoning Ordinance which allow for regulation of density and timing of development; and although phasing is not specifically enabled in the zoning regulations, there is a viable and defensible argument that under the general authorities that are set forth in the zoning enabling legislation that there is enabling authority for a phasing ordinance. Mr. Davis added that Rockingham and Madison counties have taken that position and have not been challenged on that. He commented that there is "devil in the details as the ordinance is drafted."

Mr. Boyd asked how many counties have phasing. Mr. Davis responded that he believes it is very limited, but other than the counties Mr. Rooker mentioned, he is not aware of any others in Virginia that have implemented it. Mr. Rooker said that Madison, Rockingham, Augusta, and Orange have done it. Mr. Davis noted that the concept is the same, but each of the ordinances is different.

Mr. Dorrier emphasized that the public is not in favor of the proposed ordinance; and nine out of ten speakers came out against phasing. He does not understand why the Board is considering it when there is such strong bias and disfavor. He said that it seems discriminatory against older people, and puts people who put all of their investments into land at risk. If the residents of Albemarle County do not want phasing, he does not understand why the Board is pushing it.

Mr. Rooker responded that people with an economic interest show up to speak, and there were about 35 people who spoke out of about 95,000 in the community. If you look at the surveys that have been taken of our citizens at large, there is huge support for taking additional steps to protect the rural area and natural resources. He added that he has had about 100 emails, and about 80 percent of those are in favor of the combination of phasing and clustering as proposed by the Commission.

Mr. Slutzky said that in the most recent election, the three Board members who were up for election and won took strong positions on supporting additional measures for protection of the rural areas. He added that he doesn't think it's a fair assumption that the majority of the people are against protecting the rural areas.

Mr. Wyant emphasized that he doesn't think anyone is against protecting the rural areas, but "how we go about it" is the issue. He indicated that he has received phone calls that are the opposite of what Mr. Rooker has received. It depends on the constituency and demographics. The White Hall, Scottsville and Samuel Miller District contain more rural area than the other districts. He added that most of the people who spoke did not understand what the proposal was about.

Mr. Dorrier commented that he is not sure the County needs phasing. There are developments occurring under current ordinances that complement the County. He questions the proposal for two development rights in a ten year period which is disadvantageous to elderly people. He noted that some people are reliant on being able to sell their property in order to get money for medical expenses and other imperative things.

Mr. Rooker commented that in the Commission's version of the plan, a landowner could sell as many as four lots in the first year, and there has been a lot of misinformation circulated about this plan. He stated that this proposal makes family subdivisions an exception, and it is "not nearly as onerous as a lot of people seem to [think]."

Ms. Thomas stated that most people she has spoken to have come around to an agreement on phasing, once they understood it fully, providing it keeps large outside developers from coming in and tearing up rural land. There are 50,000 potential lots in the rural areas. There are 7,500 dwelling units currently in the pipeline or have been approved in the development area. Just two days ago, the city discovered they had 2,600 dwelling units in its pipeline. The County has provided tremendous potential for development in the development area; and a lot of those people (in the development area) are asking what we are doing to keep the rural areas rural. Several years ago, the Board decided not to downzone land in the rural area. At that time the Board adopted a Comprehensive Plan Amendment which included phasing and clustering. What we're proposing is some way to make sure that the big outside developers don't salivate after our rural area and decide that's exactly where they want to make their purchases and their buildings, and phasing of some sort – no matter how small a step and how restrictive – is going to be our best tool for keeping our rural areas lived in and developed by local people. She added that phasing tied with clustering is going to be our best chance to have the form of development in the rural area that our voters and citizens have said again and again that they want to see. It is the basis for our whole growth management that has been occurring since the 1970's.

Mr. Wyant emphasized that any type of phasing implemented decreases property values. He mentioned a hypothetical situation of a landowner wanting to subdivide to allow for their children to live on the property. Mr. Rooker and Ms. Thomas emphasized that family subdivisions are exempt. Mr. Wyant said that that doesn't hold true for the purchaser. Mr. Rooker stated that there is no evidence in the places that have adopted phasing that there has been any decline in property values.

Mr. Slutzky indicated that there have been at least four articles he's read that show property values as being either neutral or increased based on appraisals.

Mr. Rooker emphasized that the only tools the county has are land use mechanisms, as there is no power to prevent developers from coming in. We have to try to have land use policies in place where we end up having the county go in the direction that we want it to go from a land use standpoint. He added that since 1979, over 95,000 acres of the rural area have been subdivided. Mr. Rooker emphasized that this greatly fragments the rural area, noting that in 1950 Fairfax County was the greatest dairy-producing county in the state. Today there are probably not ten cows in Fairfax County.

Mr. Boyd said that it's the economic engine that changed that area, not placement of subdivisions.

Mr. Rooker noted that there are more and more pressures to subdivide as the price that can be gained from land sales continues to increase. What is it that will slow down the fragmentation of our rural areas?

Mr. Dorrier said that the county should move in the direction of conservation easements whereby property owners can voluntarily protect their land. Mr. Rooker responded that there is an ACE program that encourages this already.

Mr. Wyant stated that people don't want to get involved because of restrictions, adding that it needs to be established what can attract landowners to the program.

Mr. Boyd mentioned "baggage" and restrictions associated with conservation easements. Mr. Rooker asked what the baggage is. Mr. Boyd responded that the restrictions on the property, having to get approval from government officials, etc. Ms. Thomas said that she has tried to track down who those people are, and has not found any who feel there is "baggage" associated with conservation easements.

Mr. Boyd noted that Albemarle has more area in conservation easements than any other county.

Mr. Rooker said that one of the reasons the county leads the state is that the Piedmont Environmental Council is located here; there are people who want the tax incentives that conservation easements bring. We've got 400,000 acres of rural land. And we're not going to preserve the rural character of Albemarle County solely through the ACE Program. He added that the county can work with the PEC, VOF, and Nature Conservancy to try to "make their job easier," but what the county has the most direct influence over are "land use policies." Mr. Rooker said that phasing was a compromise strategy in lieu of downzoning.

Mr. Dorrier said that putting land in conservation easements allows for compensation and seems to be a much better way to approach it.

Ms. Thomas stated that she didn't understand why those would be a better option than not giving up development rights at all with phasing and clustering.

Mr. Rooker asked for a "straw poll" on phasing.

Mr. Slutzky said that there are fairness issues that trouble him, but the county has committed to protecting the rural area so he is ultimately willing to support it.

Mr. Boyd stated that he is opposed to phasing, but does want to protect rural areas through making development attractive in the designated growth areas and through enhancing the conservation easement program.

Mr. Dorrier said that he is opposed to phasing, but supports the conservation easement program.

Ms. Thomas noted how little the county is doing to support the ACE Program, and asked how much the Board wants to raise taxes to preserve more acres.

Mr. Boyd said it sounds to him that Albemarle is doing the best job in the state, and finding out what reservations people have would forward that program even more, along with "easing restrictions" on conservation easements. Mr. Rooker responded that the county has only preserved 4,500 acres out of 61,000 in the state, as most are done through the agencies so the county has no control over conservation easement restrictions.

Ms. Thomas said that if the parameters for conservation easements need to be changed, then the county would have to tackle the IRS.

Mr. Dorrier commented that he had seen a map that showed half of county land in conservation easements. Ms. Thomas said that that percentage is about 18 percent.

Mr. Rooker said that perhaps what he is viewing is Shenandoah National Park property. We've got about 80,000 out of 440,000 acres, which is about 18 percent. Mr. Wyant asked what number they want to get to. Mr. Rooker responded that there is a very aggressive conservation easement goal, and wondered if there were four Board members who were interested in promoting phasing at all.

Mr. Rooker said that since he did not get an adequate indication from four Board members to move forward with phasing, it should be abandoned as a strategy. Mr. Rooker thanked staff and the Planning Commission for all of their work on the proposal, even though it would not go forward.

Mr. Boyd said that personally supporting the Nature Conservancy and similar organizations would go a long way to promoting conservation easements and other similar land protection efforts.

Mr. Rooker stated that what was recommended to the Board from the Planning Commission was something that combined phasing and clustering, and the county currently has a Rural Preservation Development clustering option that has some discretionary characteristics with it. It's been reasonably popular, but it's not mandatory, and the question is do we want to go down the road of mandatory clustering as the only way to develop in the rural areas.

Mr. Rooker said that clustering without phasing is a "double-edged sword" that might lead to quicker development in the rural areas than what's being experienced now. He added that with clustering it would make it easier to put a large number of lots in the rural areas instead of in the growth areas. Mandating clustering would prohibit perhaps a number of innovative approaches to better utilizing rural resources. He would support the two in combination, but without phasing he does not think we should go down the road of mandatory clustering. He thinks that we should preserve our Rural Preservation Development option.

Mr. Rooker again thanked staff and the Planning Commission for all their work on this.

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Mr. Rooker reviewed that the Board had appointed a committee two and one-half years ago to make a recommendation concerning mountain protection that would have broad support from different segments of the county. He emphasized that the committee had broad and diverse representation, and made a recommendation to the Board and Commission followed by public information meetings and public hearings.

Ms. Thomas said that the committee felt their charge was to come up with something effective, met the charge in the Comprehensive Plan and was adoptable. She indicated that the group started work on April 5<sup>th</sup>, 2004 and began reading from Fred Scott's "Proposed Changes to the Findings and Purpose of Ordinance" section of the April 7<sup>th</sup> version of the straw proposal (attached). Ms. Thomas said that the group had recommended phasing and clustering, and development rights were discussed at great length. She noted that the group talked about clustering being one of the best ways to use existing measures to help protect rural areas. Ms. Thomas said that one of the committee's primary concerns was making sure that erosion was not increased in the mountain areas.

She explained that the committee viewed clustering, monetary incentives, and zoning as a "three-legged stool" for the Mountain Protection Ordinance and perhaps the zoning measures were not made clear enough. Ms. Thomas said that there are a number of monetary incentives such as conservation easements and the committee formulated a list of many of these. She indicated that there are 1,800 parcels in the Mountain Overlay District and since then 375 of those have been built upon. We do have an issue of losing our mountainous areas and she commended the work that the committee did.

Mr. Boyd said that he did not understand the monetary incentives, especially in the case of lost development rights. Ms. Thomas replied that the committee talked a lot about loss of development rights, and there are lots of parcels that would not be able to use those because of topographical barriers, but "we didn't talk about compensation, but rather, incentives."

Mr. Boyd asked what was new in the MOD proposal. Ms. Thomas responded that the proposal includes moving property distance from a minimum of 100 feet to 200 feet from intermittent streams, and requires a soil erosion plan that is not currently required.

Mr. Rooker said that anything in the books could be argued as being costly to the landowner, and he noted that he has received a number of complaints from areas that aren't in the mountains where people have developed in the rural areas without an Erosion and Sedimentation Control Plan (E&S) and have created all kinds of erosion problems for their neighbors.

Ms. Thomas stated that most people don't have land just on the ridge and the critical slopes, and if they do they probably don't have a lot of actual development rights. She said that a lot of mountain properties already have roads built up to them, and there is often another access from a neighboring property rather than going straight up. Ms. Thomas stated that the committee felt strongly that there needed to be a sufficient emergency access route for fire and rescue.

Mr. Rooker said that the Board should consider whether these measures should be adopted in the rural areas in general, not just in the Mountain Overlay District, noting that the recommendations focus on resource protection and safety. He commented that since the other things have been "put aside," would the Board consider taking the recommendations from the committee and applying them to the rural areas in general.

Mr. Boyd asked if the 200-foot distance from intermittent streams, and wondered if that was as necessary on flat lands.

Mr. Slutzky noted that the current 100-foot distance was rather "minimalist" to begin with in terms of protecting natural resources.

Mr. Wyant expressed concern about the impact on farmers if the stream buffer is made even greater. Mr. Davis responded that the existing ordinance only applies a 25-foot buffer to cropland, and that is not being proposed for change.

Mr. Rooker said that the cropland would remain an exception, as the new provisions apply to residential construction.

Mr. Wyant commented that the E&S plan kind of bothers him.

Mr. Rooker mentioned that in Denver, Colorado and Asheville, North Carolina, previously mountainous areas are now full of subdivisions.

Mr. Boyd asked if Albemarle's current critical slope ordinance would prevent this from happening. Ms. Thomas replied that because of state legislation, the county can't be exclusively concerned with aesthetic impact, but can consider proposed development based on environmental impacts.

Board members then suggested going through the committee's recommendations.

Mr. Benish reported that the ordinance is drafted in a way that if the MOD is adopted, the requirement for erosion and sediment control would have a new threshold of 2,500 square feet that automatically kicks in.

Mr. Davis noted that the Water Protection Ordinance already has a provision in it that anticipated the adoption of the Mountain Overlay District which provides there would be a 2,500 square feet threshold; if the MOD is adopted, then that goes with it. He added that it is possible to apply that limit to the entire RA district, but that would require written revisions.

Mr. Rooker mentioned that the Chesapeake Bay Act requires setback for structures from streams that ultimately feed into the bay, and the reason for implementing these standards would be to protect Albemarle County's own water.

Mr. Wyant asked how far upstream they should go, noting the intermittent and perennial stream differences.

Mr. Davis explained that there are two different areas required under the Bay Act – a resource protection area has to have 100 feet on each side of a stream or other body of water; and a resource management area that is a larger area than the resource protection area. He indicated that some jurisdictions under the Chesapeake Bay Act adopted the resource management restrictions county-wide, whereas other jurisdictions mapped them based on sensitive soils and other characteristics identified under the Chesapeake Bay Act. Mr. Davis emphasized that the area could include large or small areas depending on the approach a locality might want to take and the characteristics of the soil, noting that Albemarle voluntarily adopted the resource protection area requirements of the Chesapeake Bay Act. It could be 200 feet, it could be more.

Mr. Boyd asked what the difference between an intermittent stream and a drainage ditch is. Can people redirect intermittent streams? Mr. Wyant responded that the USGS maps define intermittent stream locations.

Mr. Boyd wondered if it would be possible to direct a stream into a perennial stream. Mr. Davis replied that the Chesapeake Bay Act prohibits that in protection areas, and the Army Corps of Engineers also has some oversight into management of watersheds. He added that Albemarle's regulations in protection areas are pretty restrictive compared to other localities.

Mr. Benish noted that the Mountain Protection Ordinance also stipulates that driveways would be subject to critical slope provisions whereas currently they're not. He added that roads are subject to certain standards, such as safe access, but there is not a prohibition on roadways on critical slopes currently. Mr. Benish noted that height restrictions, etc., would also be relevant to an MOD district.

Mr. Davis emphasized that the critical slope regulations that apply to how lots are accessed would be the most significant change.

In response to Mr. Boyd's question about grandfathering in lumbering roads, Mr. Benish explained that the MOD ordinance does provide use for one house and noted that that would be applicable to the 1,800 homes currently captured in the district boundaries.

Mr. Boyd asked if that could be changed to be one road for a cluster. Mr. Benish said that that would be possible to change in the ordinance, adding that the intent of the MOD is based on the assumption that greater clustering could be done under the current ordinance, which restricts clustering to 20 lots under RPD provisions. He mentioned that the county has a long history, for example in the Coveseville area that took mountain properties and aggregated clusters of 40 or 50 lots.

Mr. Rooker mentioned that the county cannot change that at this point. Mr. Davis replied that if the county changed it, they would have to come into compliance with all the new state regulations that would apply to clusters, by-right. One of the main requirements is that it has to be by-right and ministerial with no review by the Planning Commission or the Board of Supervisors.

Mr. Slutzky emphasized that the purpose of the MOD is to enact environmental protection measures, but there are a lot of ways that the waiver process accommodates the landowner better than the current ordinance.

Ms. Joan McDowell, Planner, noted that if the road was in place before December 10, 1980, you could establish your first single-family residence provided you didn't have a place that you didn't need to build on the top.

Mr. Dorrier commented that the limit to one house on a property is kind of restrictive. Ms. Thomas said that the MOD does not address family subdivisions because it assumes that those rights are there in Albemarle County.

Mr. Davis noted that family subdivisions currently have to comply with all applicable zoning regulations except for road/driveway standards, and the assumption was that would continue. It doesn't change the VDOT entrance requirements, only the actual construction standards of the roadway itself. He said that his interpretation is that you could have one house on the mountaintop, and two others below the ridgeline. Mr. Davis emphasized that if someone has three development rights and wants to do a family subdivision, they could put three houses on top of a mountain if they meet all zoning requirements; under this proposal they would be limited to one on top of the mountain.

Mr. Rooker emphasized that that would only apply from a road standard. Mr. Davis agreed, adding that if a suitable building site can be found and a landowner can meet all the zoning requirements relating to critical slopes, drainfields, etc. that exist today, they could put three houses on top of the mountain. Under this proposal, he added, they would be limited to one on top of the mountain if they have to traverse critical slopes.

Mr. Slutzky noted that there is a waiver process as part of this that is available to landowners.

Mr. Wyant asked if the property would comply if there was already a road – such as a logging road – built on the property. Mr. Slutzky replied that if it was built before 1980, then yes. Mr. Rooker read from the proposed ordinance: “a ban on construction would not apply to roads built for forestry, agriculture, and horticultural purposes.” Mr. Davis said that he isn't sure if it's been fully worked out by the committee.

Mr. Benish said that he thinks the intent is that an existing road prior to 1980 would be exempt from that provision of the ordinance, and what kicks in after that would be a waiver procedure for roads. The next step is looking at those concepts and how you apply those in practical form.

Ms. McDowell said that there is also a section in the critical slopes section that talks about roads built for agriculture, horticulture or forestry purposes, stating that after they were built after 1980 they couldn't be converted for residential.

Mr. Slutzky added, “Except with a waiver.” He emphasized that he wants to make sure the public is aware of what those details are so there are not misconceptions about exceptions such as family subdivisions.

Ms. Thomas said that the keeping of roads is a primary concern as there is skepticism about building them on critical slopes. She indicated that there is also cynicism about holding family subdivisions for five years before and after they are divided, noting that she did not want to take up any more staff time unless the Board is sincere about the Mountain Protection Ordinance.

Mr. Wyant stated that the concern is in the details of the ordinance.

Mr. Rooker emphasized that there are really only four parts to it: protection of critical slopes; an erosion and sediment control plan for certain amounts of land disturbance; an enhanced stream buffer; and height restrictions and safe access.

Mr. Boyd asked if the five-year limitations already existed or is part of the MOD.

Ms. McDowell said that it wasn't connected with the MOD, but was connected with the phasing and clustering because family subdivisions were going to be exempt from both of those ordinances. She added that the state is allowing 15 years now.

Mr. Rooker said that that provision means a person has to hold it that long.

Mr. Slutzky commented that there is something to be said for preserving the interest of families who have been “long-time stewards” of their land.

Mr. Boyd asked how a property owner demonstrates building a second mountaintop structure is not detrimental.

Mr. Rooker said that if someone complies with critical slopes and stream buffers, a landowner can build a second home.

Mr. Dorrier commented that people do not want to have to jump through hoops to build on their property, especially through an arbitrary process.

Mr. Davis explained that it's not an arbitrary decision, but if it's a waiver to be granted by the Planning Commission or staff, an ordinance would have to set forth identifiable standards or criteria to be measured against the request. The challenging part of an ordinance and a waiver process is coming up with that criteria, and he thinks it would be challenging in this case to capture fully the criteria that would affect the intent of the ordinance.

Mr. Benish mentioned that clustering was intended to be part of this ordinance to help minimize building on ridge tops, and without that mandatory clustering there is a vacuum about how to evaluate the number of units on mountain tops.

Mr. Boyd said that perhaps one reason to grant a waiver would be good voluntary clustering.

Mr. Dorrier asked about transfer of development rights from mountaintop to lowland. Mr. Rooker replied that in effect, clustering does that. He emphasized that he does not want to pass an ordinance that encourages even more development in the mountain areas.

Mr. Wyant commented that if a section could be put in that communicates the specifics a little better, it would be easier and more likely to be accepted by the public.

Ms. Thomas expressed concern that if the Board waits to review an ordinance until every detail is worked out ahead of time, they are criticized for not allowing sufficient public input.

Mr. Rooker said that he might not be willing to accept a proposal that says a building height cannot exceed the height of an adjacent crest, because in driving around the mountains a lot of the most hidden sites are on top rather than on the sides. He thinks that we need to certainly consider whether we're really achieving anything by that particular prohibition if we protect stream buffers, and if we protect critical slopes.

Mr. Slutzky noted that that may have been an aesthetically-driven requirement that could be reworked. He suggested that staff evaluate the current state of rural protection now that other pieces are not in place (like phasing).

Mr. Rooker said that at the next work session what's been proposed with respect to the Mountain Protection Ordinance would be discussed; as well as the fact there is not a mandatory phasing and clustering provision to go along with it; how it works with family subdivisions; to get a better perspective of perennial versus intermittent streams; to get a sense of whether these measures might be applicable throughout the rural areas.

Mr. Tucker noted that the MOD has gotten a "bad rap," but he understands the Board wants information on rural area protection as a whole, not just as it relates to mountain areas.

Mr. Dorrier said that he wants to make sure the waiver process is discussed.

At this time it was the consensus of Board members to move forward with an overview of the proposal for a Mountain Protection Ordinance as discussed above for a work session with the Planning Commission.

The Board then took a recess at 4:42 p.m., and reconvened at 4:49 p.m.

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### Agenda Item No. 3. Green Building and Sustainability

Mr. Graham provided an overview of the following executive summary which was forwarded to Board members:

"Over the past several months, some Board of Supervisors and Planning Commission members have expressed an interest in reviewing green building and sustainability against existing County policies and what others are doing in this area. The attached report from Community Development staff examines sustainability and green design and what steps other localities and organizations have taken. This includes a review of recent efforts by the City of Charlottesville and the University of Virginia. With this review of green building and sustainability, the Board can determine if additional initiatives in this area are desired.

Philosophically, the green building movement exists in order to address a wide range of environmental issues, from protecting forests and habitats to saving energy, reducing toxins, and keeping materials out of landfills. It seeks to protect the whole planet as well as a building's occupants. The buildings created through pursuing these ideals are often healthier to live in, have lowered operational and maintenance costs, and a have better "feel" to them. As a result, they achieve a broad appeal far beyond traditional environmentalism.

Checklists are the main tool used to evaluate the effectiveness of a green project. Green rating systems, whether for buildings or land planning, offer an ala-carte list of options for fulfilling green design. While those are very helpful, underlying those lists is a fundamentally different way of thinking. It's about optimizing a building's relationship with its external environment. It's about making buildings reflect the way we use them and it's about looking at our impacts locally, regionally, nationally, and globally.

Defining green building and planning is challenging because it encompasses many environmental issues and can be applied on many levels. As green building address a wide range of issues where the modernized world pushes against protection of natural resources, there are no fixed set of priorities. Instead, solutions are based on carefully weighing all of the issues and recognizing compromises will be required. In addition to green building, there are smarter ways of designing neighborhoods and communities that decrease impacts. This is sometimes referred to as "green planning".

Green building and green planning is about building with smaller impacts and lower lifecycle costs. As such, the green building and green planning movements push for a decreased dependence on energy and other resources by requiring less. By extension, green design responds to our dependence on the world's conventional fuel supply and offers hope for resilience in changing market conditions. Green building techniques and various approaches to landscaping, water consumption, and water collection work to demand less from the public water supply. As our regional climate has trended toward drought several of the past eight years, green building and water conservation is an increasingly relevant tool to make better use of our water resources. Though the green building and planning movements began as an effort to address a wide range of environmental impacts, it is also a method for local government to buffer itself from the fiscal impacts of a volatile energy market and shifts in climate.

#### **Green Building Rating Program**

Green building rating programs have been developed and implemented locally, regionally, and nationally to provide some measure of effectiveness. Local rating programs, discussed in more detail by location below, are a locally-developed and administered program that helps to guide local government and developers toward a more green design. Local rating systems may have particular objectives. For instance, solar power and water conservation may be more important in New Mexico while sustainable-harvested building materials and energy efficient heating systems may be more important in Maine. National rating systems provide a checklist or guidelines to encourage green design and construction with less weighting of locally important issues. In general, all green rating systems set a standard for what is green. In some localities, green building checklists are reviewed in conjunction with development proposals. See Attachment C, D and E for examples of the leading national green building rating system checklists.

#### **Energy Star – National Program**

Energy Star is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy to help consumers save money, make energy go farther, and protect the environment through energy efficient products and practices. Americans, with the help of Energy Star, saved enough energy in 2005 alone to avoid greenhouse gas emissions equivalent to those from 23 million cars while saving \$12 billion on their utility bills. The Energy Policy Act of 2005, signed in to law last summer, significantly increases incentives for a wide range of Energy Star programs. See Attachment D for the Energy Star incentives made available through the Energy Policy Act of 2005.

Energy Star qualified homes are at least 15 percent more energy efficient than homes built to the 2006 International Energy Conservation Code. With the help of independent Home Energy Raters, Energy Star builder partners choose the most appropriate energy-saving features for their homes. Additionally, raters conduct onsite testing and inspections to verify that the homes qualify as Energy Star. However, other options and incentives exist for utilizing Energy Star-rated products in new and existing commercial and residential buildings.

The Energy Star program offers tax credits for new construction and renovations for commercial, institutional, and residential uses. For example, a homeowner who retrofits an existing home with Energy Star windows and heat pump qualifies for a tax credit of 10 percent of the cost of the windows and 30 percent (up to \$300 on a system costing at least \$500) of the cost of the heat pump. Home builders are eligible for a \$2,000 tax credit for a new Energy Star-rated home.

#### **Energy Star Tax Deductions for Commercial Buildings**

Through Energy Star, a tax deduction of up to \$1.80 per square foot is available to owners or designers of new or existing commercial buildings that save at least 50 percent of the heating and cooling energy of a building that meets certain standards. Partial deductions of up to \$.60 per square foot can be taken for measures affecting any one of three building systems: the building envelope, lighting, or heating and cooling systems.

#### **LEED – National Program**

The LEED program (Leadership in Energy and Environmental Design) represents the efforts of a coalition including the US Green Building Council to establish a nationwide standard for constructing "green" buildings. Obtaining LEED certification requires compliance with a minimum number of criteria affecting many aspects of a project, from site selection to the recycled content of building materials. Projects earn points for criteria that they fulfill; those that earn more points are awarded a higher level of certification. Thus far, participation in the LEED program has been mostly voluntary. Some government entities have implemented requirements that publicly funded projects apply for LEED certification.

While empirical and projected data vary widely, the American Institute of Architects estimates that LEED certification will add from one to 15 percent to a project's construction costs. An analysis of the cost of LEED certification prepared by Northbridge Environmental Management Consultants of Westford, Massachusetts for The American Chemistry Council of Arlington, Virginia has determined that obtaining LEED certification adds from four to eleven percent to a project's construction costs. More than half of these costs are for "greening" investments in alternative systems, practices, and materials that earn points under the LEED system. The remaining costs fall outside of the range of construction costs; these are "soft costs" and they include incremental costs for design, documenting compliance, and verifying compliance through the commissioning process. The cost impact of LEED certification may decline over time as a percentage of total construction costs as architects, contractors, and consultants become more familiar with the process.

Given the County's objective of fiscal responsibility, a focus on LEED principles short of certification may allow us to achieve green building goals without some of the soft costs that go along with certification. This has been done in other localities by using the LEED certification criteria and hiring a

LEED-certified architect or designer. However this approach, though intended to recognize the fine balance local government works to achieve with revenue, would not yield much if it led to only marginally environmentally-friendly buildings.

### **Earth Craft – Regional Program**

Earth Craft House is a green building program that serves as a model for healthy and comfortable homes that reduce utility bills and protect the environment. Earth Craft House is a partnership between the Greater Atlanta Home Builders Association, Southface (a nonprofit organization dedicated to improving understanding of sustainable building), and other government and industry partners focusing on residential construction and renovation. Earth Craft Homes are currently being built and certified in Virginia, including Charlottesville and Albemarle County.

The Southface Institute, the organization that administers the Earth Craft rating, estimates that energy upgrades on a 1,500 square foot home in the Earth Craft House program would cost only \$700 more than a standard (\$160,000) home. For example, improvements to the home's building envelope (insulation, sheathing, windows) allows for a smaller air conditioner to be installed. Earth Craft design allows for the cost of green upgrades to be mitigated in some other way. Though the upfront cost is slightly higher, the long-term costs are lower because the utility costs are much lower.

An Earth Craft home must be certified as Energy Star. A builder must provide verification of Energy Star certification upon completion of construction. The house must be rated "5 star" by a certified rater, requiring a blower door and a duct pressurization test plus a certified software rating. This rating qualifies the developer for a \$2,000 Energy Star tax credit as outlined above. The implementation of Energy Star or Earth Craft certification and associated residential tax credit programs for builders would provide enough credit to cover certification costs and a portion of the cost of "green" upgrades.

### **Green Building Programs - Local**

Most local-government green building programs are implemented through a formal municipal process such as comprehensive plan change or ordinance adoption. Mandatory programs are typically codified through a standard local procedure. In many cases, programs are implemented through a committee created for this purpose. Many green building programs have no mandatory requirements. Most green building programs rely on one or more full-time staff members. If a program or rating standard is created and administered by a locality, trained building inspectors would be needed to provide support and evaluate a project's attainment with the established rating system. Additionally, some locations have offered certification free of charge in support of increasing the number of homes and businesses built green. Utilizing and augmenting existing green building rating systems, such as LEED, Earth Craft, or Energy Star to evaluate building performance is normally conducted by a privately-operating trained inspector. Outreach and education regarding monetary incentives, decreased energy costs, and general benefits of green building are a critical part of local government green building programs.

### **Austin, Texas**

Austin administers its own voluntary green building program by rating new and remodeled homes on a scale of 1 to 5 stars in the following areas: energy efficiency, testing, water efficiency, materials efficiency, health and safety, community. A new or remodeled home in the Austin Energy service area may be rated if the builder, architect, or designer is a member of the green building program. The Austin green building program helps developers and homeowners by providing information regarding design and specification choices.

### **Boulder, Colorado**

Boulder's Green Points Ordinance created the first mandatory residential green building program in the United States. Building permit applicants are required to earn Green Points according to a schedule based on house size. For example, use of certified sustainable-harvested lumber for framing earns 5 points.

### **Portland, Oregon**

Portland's residential program promotes voluntary green building practices in the general residential market and sets mandatory requirements for city-funded affordable housing. The residential program relies heavily of training, outreach, development of materials, and grants. The program grew from an intensive public process which led to the city council adopting mandatory LEED requirements for city-funded buildings.

### **Charlottesville, Virginia**

On July 17, 2006, the City of Charlottesville endorsed the U.S. Mayors Global Climate Agreement which supports policies adopted by the U.S. Conference of Mayors in response to global warming and climate change. Charlottesville joins at least 202 other cities in endorsing the climate agreement. The agreement acknowledges the findings of Inter-Governmental

Panel on Climate Change, the international community's most respected assemblage of scientists, who have found that climate disruption is a reality and that human activities are largely responsible for increased concentration of global warming pollution. Global Warming gasses, based on data provided by the U.S. EPA and Department of Energy, come from the following sources: automobile: 34 percent; electricity generation: 28 percent; natural gas for heating and cooking: 18 percent; shipment and processing of goods and waste: 20 percent. The agreement challenges municipalities to inventory and then work to reduce global warming emissions, adopt and enforce land use policies that reduce sprawl, purchase only Energy Star-rated equipment, convert diesel vehicles to bio-diesel, and increase the use of clean energy, to name a few. The city of Charlottesville will be developing an action plan in conjunction with this recent endorsement. To date, the following Virginia cities have signed the climate

agreement: Richmond, Williamsburg, Virginia Beach, and Alexandria. See Attachment D for the U.S. Mayors Global Climate Agreement.

Charlottesville's transit center, currently under construction on the east end of the Downtown Mall, is designed to fulfill the requirements of a LEED certified building. Included in the transit center design are a geothermal heating and cooling system, recycled and local building materials, water efficient landscaping, extensive use of natural lighting, and public education displays. This transit center represents a government project that responds to the U.S. Mayors Global Climate Agreement.

After a charette last spring to explore how the City of Charlottesville may attain a higher level of energy efficiency and ecological balance, the city formed a green building committee. During a scheduled review and update of the city's comprehensive plan this fall, the City of Charlottesville is expected to include guidelines and objectives prepared by the green building committee in May 2006 to reach the following goals:

1. Promote the achievement of a 30 percent reduction from current energy use by businesses and residences through a citywide education, assistance and incentive program.
2. Encourage green building and resource and energy conservation practices in new and existing buildings through financial incentives.
3. Ensure a consistent citywide policy that promotes green building by ensuring that other city regulations, practices and guidelines actively allow for and encourage green building practices.
4. Prevent excessive resource use through capturing the 'embodied energy' of existing buildings via adaptive re-use of existing structures to minimize use of 'virgin' resources.

Attachment H includes a complete summary of the revisions proposed for the City of Charlottesville's Comprehensive Plan.

#### **Arlington County, VA**

Arlington County makes use of the LEED green building rating system as a way to measure the energy and environmental performance of buildings in their county. Arlington is committed to building its own public facilities using LEED as a guide and the silver LEED certification as the goal. Virginia's first Silver LEED certification was awarded to an Arlington school in September 2003. Arlington County encourages private developers to evaluate the environmental impacts of all site plan projects. *In Arlington County, site plan projects are approved by special exemption of their zoning ordinance.* Conditions of approval for those development applications typically include:

1. LEED Accredited Professional. Approval is conditioned upon agreement that all site plan projects have a LEED accredited professional on the development team.
2. LEED Scorecard. Approval is conditioned upon agreement that all site plan applications complete the LEED scorecard with an explanation of each LEED credit, describing how they intend to achieve the credit, or why they are unable to incorporate the component into the project.
3. LEED Tracking. Approval is conditioned upon agreement that a final number of LEED credits are identified and the commitment to incorporate them into the project is formalized in a site plan condition.
4. Construction Waste Management. Approval is conditioned upon agreement that the developer provide a plan for diverting from landfill disposal the demolition, construction, and land clearing debris generated by the project.
5. Energy Star Appliances. Approval is conditioned upon agreement that, for multi-family residential projects, the developer assures that appliances, fixtures, and/or building components used in the project shall have earned the U.S. EPA's Energy Star label.

#### Green Building Fund

In 2003, Arlington County established a green building fund and a policy for site plan developers (site plans approved by special exception) who do not commit to achieving a LEED rating to contribute to the fund. The contribution is calculated at a rate of \$0.03 per square foot. The green building fund is used to provide education and outreach to developers and the community on green building issues. If a project achieves 26 or more points and the developer receives LEED certification from the USGBC, the Fund contribution is refunded upon receipt of the final LEED certification.

#### Green Building Incentive Program

Originally adopted in October 1999, the incentive program was revised and enhanced in December 2003. The program allows a private developer to apply for additional density if the project achieves a LEED award from the USGBC. The program applies to all types of building projects (office, high rise residential, etc.) achieving any one of the four LEED awards. The density bonus ranges from a minimum of .15 FAR for a LEED Certified project to a maximum of .35 FAR for a platinum project.

#### **Alexandria, Virginia**

Alexandria made use of the same funds that assisted Albemarle County with our green roof project. Their project includes a 9,000 square foot green roof, which serves as an outreach and

demonstration project. The city of Alexandria has signed the U.S. Mayor's Global Climate Agreement. To date, no green building programs exists in Alexandria.

#### **University of Virginia**

The University of Virginia has worked to further identify goals and objectives through the creation of sustainability guidelines. The guidelines are intended to educate students, staff, and A/E consultants. The university developed and is utilizing a sustainability assessment tool to identify and analyze current university activities. Sustainability concepts have been applied to various projects and sustainability goals have been incorporated into the grounds plan for the university. In terms of green planning, the university has worked to increase walkability and provide excellent management of storm water runoff in new construction.

#### **Charlottesville Community Design Center**

The design center is one of over 40 community design centers across the country that provides design assistance and works to identify and solve social, economic, and political problems as they relate to the built environment. This process promotes change to the built environment from the neighborhood to regional scale, and aims to meet community needs through participatory decision-making at all levels.

Last spring, the Community Design Center assisted the City of Charlottesville with a public charette to determine the interest of and collect ideas regarding green building from the people of Charlottesville.

This fall, the design center will focus on the achievements being made in green building and sustainability in our area. Through this effort, the recognition, visibility, and understanding of green building will be enhanced. In discussing green building ideas with design center staff, it has been suggested that an education and outreach partnership between the City of Charlottesville, University of Virginia, and Albemarle County would provide information and resources to a wide range of residents and could work to reduce the area's energy consumption through simple short-term steps and defining long-term goals for creating a more sustainable region in general.

#### **Green Building Education and Outreach**

Fundamentally, all green building programs rely on outreach, education, technical assistance, and the individual desire of building users to strike a balance between development and the natural environment. Significant opportunities exist to provide information and guidance on how residents can build green or go green with existing structures. This can be as simple as winterizing a home to helping a homeowner in locating the Energy Star tax credit information.

Similar to the pamphlets the County distributes regarding our urban areas, a pamphlet illustrating tax credits and resources available, techniques for utilizing resources more efficiently, among others can work to raise awareness, and help residents to better define their vision of a green and clean community. However, a more comprehensive outreach partnership with multiple organizations would work to address green building and local stakeholders as a whole. This partnership would likely require funding, but could be managed and implemented through an organization such as the Charlottesville Community Design Center.

#### **Green Planning Rating Programs**

##### **LEED – ND (for Neighborhood Development)**

The LEED for Neighborhood Developments (LEED-ND) rating system, currently under development, integrates the principles of smart growth, urbanism, and green building into the national standard for neighborhood design. LEED-ND is being developed by U. S. Green Building Council in partnership with the Congress for New Urbanism and the Natural Resources Defense Council.

Using the framework of the LEED Green Building Rating System, LEED-ND certification will recognize development projects that successfully protect and enhance the overall health, natural environment, and quality of life of our communities. Like other LEED rating systems, LEED-ND will deliver more efficient energy and water use – especially important in urban areas where infrastructure is often overtaxed. It will also focus on smart growth and new urbanist best practices, including designing neighborhoods that reduce vehicle miles traveled and building communities where jobs and services are accessible by foot or public transit.

The LEED – ND program is finalizing the rating criteria and will be seeking entities interested in their pilot program sometime this fall. Though the rating system is not finalized, the proposed criteria are established and could be administered or reviewed versus development proposals regardless of the LEED-ND timeline.

##### **LID – Low Impact Development**

Low impact development is a more environmentally sensitive approach to development than conventional practices. Low Impact Development is a comprehensive land planning and engineering design approach with a goal of maintaining and enhancing the pre-development hydrologic regime of urban and developing watersheds. LID primarily focuses on site planning and can be approached in different ways. This design approach incorporates strategic planning with micro-management techniques to achieve superior environmental protection, while allowing for development. Techniques used to achieve LID include pervious pavers, rain gardens and biofilters, sand filters and filter vaults, compensatory plantings, green roofs, and use of cisterns and rain barrels.

### **County Comprehensive Plan**

In 1996, the Albemarle County Comprehensive Plan was amended to include a strategy to support the accords of the Thomas Jefferson Sustainability Council. Many of these accords are reflected in the County's strategic plan today and others have room for further development.

Some of the accords include striving for a size and distribution of human population that will preserve the vital resources of the region for future generations; ensuring that water quality and quantity in the region are sufficient to support the human population and ecosystems; promoting clustering in residential areas and the integration of business, industry, recreation, residential and open space; retaining farmland and forest land for the future; promoting the sale of locally produced farm and forest products in local, national and international markets; developing attractive and economical transportation alternatives to single occupancy vehicle use; providing educational opportunities open to every member of the community to encourage greater understanding of sustainability issues as they affect individuals and the region, using formal and informal education and local media coverage. See Attachment A for the complete set of the Comprehensive Plan's sustainability goals.

### **Local Government and School Efforts**

To date, the County has undertaken several efforts toward green building and sustainable design. The most visible accomplishments are the construction of the Monticello High School and associated storm water management facilities, the construction of the green roof on the County Office Building, tax credits for energy efficiency measures, as permitted by law, and the adoption of the Neighborhood Model, which guides a more sustainable form of development. In addition, in January of 2005, the Board of Supervisors and School Board officially adopted an Environmental Management Policy that clearly states a commitment to compliance, pollution prevention, and continual overall environmental improvement. Both local government and the school system have hired environmental compliance managers to begin implementation of Environmental Management Systems (EMS) with the responsibility for implementing the adopted policy throughout our operations. General Services has made "green" qualifications a consideration when hiring A/E firms to design new buildings or major renovations. For example, the architect for the Crozet library is LEED certified and General Services intends to incorporate cost effective green building measures into the design. With existing operations, General Services is also replacing light fixtures with high efficiency bulbs, has purchased and is evaluating the performance of hybrid vehicles, is improving building and grounds maintenance procedures, and is pursuing Low Impact Development (LID) and Best Management Practices in storm water management.

The schools division has a broad approach to green building and sustainability. This includes the use of water efficient toilets and shower heads and use of biofilters to improve the quality of the water that leaves school sites. New carpet installation will use closed cell foam in carpets, and "green" cleaning and floor finish supplies are used to improve indoor air quality. All interior paint in new construction and remodels is required to be low in volatile organic compounds. All new classrooms will have a significant amount of lighting furnished by the sun through low energy efficient windows and roof monitors. New construction and renovation will include the installation of high-efficiency heating and cooling systems. To limit energy usage, cycle equipment, and control hall and exterior lights, all existing controls are being upgraded with direct digital controls. Roof replacement projects and new construction requires an R-30 insulation rating.

Schools are managing energy by using the strategies listed above. Virtually every school now has summer school and building rental usage throughout the year, which was not the case five years ago. Despite this increase in usage, the school division has been able to control energy consumption. For example, the schools consumed less natural gas and fuel oil, per SF in 2005 than in 2000, and experienced a modest increase of 1 KWH of electricity, per square foot, during the same time frame. This was accomplished by using the strategies noted above and with the use of energy audits, which involved nighttime building inspections and encouraged the building occupants to conserve energy. With everyone's assistance, the school's 2005/06 over-all energy consumption was less than in 2004/05, even though several changes were made to buildings, including constructing a new, large gym at Hollymead, an addition at Henley and an auxiliary gym at Monticello High School.

The School EMS incorporates compliance and pollution prevention-initiatives into its goals, objectives, and targets. This includes biodiesel testing in school buses, stormwater pollution prevention training, rechargeable battery recycling, mercury-containing lamp recycling, hazardous chemical clean-out, electronic waste recycling, chemical hygiene plan for instructional areas, hazardous waste management, and refrigerant management program. See Attachment B for a complete summary of our efforts. The school division has developed and implemented a school-wide Environmental Management System (EMS) that is recognized by the Virginia Department of Environmental Quality's Environmental Excellence Program.

Beyond the Sustainability section of the County's Comprehensive Plan, the County has taken initiative in demonstrating and integrating green building and sustainability into many of its programs. Beyond those current efforts, questions have typically fallen into three categories: what obstacles can the County remove, what can the County require, and what can the County do to encourage green building?

### **What obstacles can the County remove?**

It does not appear there are any significant obstacles in County process to green building. Numerous structures are being built in the County to green building standards and the County permit process has not been found to create any obstacles. Additionally, the County has already adopted tax incentives as allowed. Thus, it appears there are no additional obstacles that the County controls.

### **What can the County require?**

By the building code, the County cannot require buildings to be built to a different standard than the code. It does not appear local governments have the authority to require structures be constructed to a different standard than the building code. It is possible that the County could seek commitments to green building as part of legislative reviews, which will be discussed under ways to encourage green building.

### **What can the County do to encourage green building?**

There are several possible measures the County could initiate. The following are some examples.

1. Similar to the University of Virginia, the County can create sustainability guidelines for all of its future building activities. Recognizing the vast majority of the County buildings are schools, it would be best if this effort was coordinated with the School Board.
2. Independent of schools, the County can initiate a policy that all future public buildings should be designed to one of the above described standards. Recognizing certification can be both expensive and time consuming, this policy should consider whether it is sufficient to build to the standard or if certification is also required.
3. The Sustainability section of the Comprehensive Plan can be revised to incorporate green building and sustainability guidelines. The County could then seek commitments to green building as part of legislative reviews.
4. The County can develop education materials and work with the development industry in finding ways to encourage more green building.

Incorporating green principles in building and site design often increases the upfront costs when compared to conventional construction, with reduced lifecycle costs. These additional upfront costs are associated with design and green upgrades. Given that the long-term operational costs are reduced, green buildings are designed to pay for themselves over time. The time it takes for a green building to recover upfront costs varies depending upon the design, efficiency a building achieves, and interest rates used for determining payback.

The state of California has conducted extensive research on the cost of green building. Though some variables, such as the cost of electricity and raw materials by region may vary somewhat, they have found that integrating green building practices into the construction of buildings is a solid financial investment. A comprehensive analysis contained in a report titled, "The Costs and Financial Benefits of Green Buildings: A Report to California's Sustainable Building Task Force" finds that a minimal upfront investment of about two percent of construction costs typically yields life cycle savings of over ten times the initial investment. For example, an initial upfront investment of up to \$100,000 to incorporate green building features into a \$5 million project would result in a savings of at least \$1 million over the life of the building, assumed conservatively to be 20 years.

Green buildings provide a way to help address a range of challenges with budgetary impacts such as:

- The high cost of utilities
- Water shortage and waste disposal issues
- Continued state and federal pressure to cut criteria pollutants
- Growing concern over the cost of global warming
- The rising incidence of allergies and asthma, especially in children
- The health and productivity of employees
- The effect of the physical school environment on children's abilities to learn
- Increasing expenses of maintaining and operating inefficient County facilities

Local government green building and green planning programs have costs. These costs are relative to the breadth and nature of the program. Programs focusing on education and outreach have the lowest costs while locally-administered programs require the most staff support, generating the highest costs.

Finally, if the Board desired to expand efforts at promoting green buildings, there could be additional operational costs to support that effort. Until that effort is defined, it is not possible to estimate those costs.

Staff has presented this information to help the Board understand current efforts at green building and sustainability, as well as what others are currently doing. Should the Board be interested in expanding beyond the current effort, staff would develop a recommendation based on the Board's guidance and bring this to the Board for consideration."

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Following Mr. Graham's summary, Mr. Sean Dougherty, Planner, reported that the US Mayors' Climate Agreement takes CO2 levels to seven percent below 1990 levels by 2012.

Mr. Slutzky mentioned that he had planned to bring this up for discussion at the Board's meeting later tonight.

Mr. Dougherty presented global warming estimates from the EPA and Department of Energy, presenting maps showing the polar ice caps in 1979 and 2003. He emphasized that green building began in the 1970's with approaches to reduce energy consumption and use better materials. Mr. Dougherty

said that there are three leading green building systems – Energy Star, LEED, and Earth Craft House. He explained that Energy Star is a joint effort between the EPA and Department of Energy to rate homes and appliances and provide tax credits. Mr. Dougherty said that LEED is the highest standard, and is an effort led the US Green Building Council, and a LEED certification can provide no more additional cost than a conventional building. He stated that Earth Craft House was developed in Atlanta to save energy and stave off the need to develop more power plants, so it is a coalition of energy providers, industry and homebuilders to basically reduce consumption.

Mr. Dougherty said that green planning is land planning that takes into consideration all of the things that work to minimize a development's impact, such as the Neighborhood Model. He explained that in green planning, there is a development underway for a neighborhood rating system which is expected to be finalized this fall. Mr. Dougherty noted that the low-impact development is basically an approach to land planning that protects resources, especially waterflow issues and in general decreases impact. He said that local green programs work off of a standard checklist or framework established by each locality, or uses one of the nationally established rating systems as mentioned.

Mr. Dougherty presented a list of localities throughout the U.S. that have implemented green building programs, noting that some of the implementation considerations are lack of awareness, lack of financial and/or technical resources, perception of increased building costs, complexity of implementation and resistance to change. He indicated that Charlottesville has signed the climate agreement, updated their Comprehensive Plan to include green building, and incorporated some measures in their transit system, and said that U.Va. has developed sustainability guidelines and a sustainability assessment tool that they have used in their grounds plan. Mr. Dougherty noted that Arlington has several programs that they have implemented.

Mr. Rooker asked whether the county's current accords or the guidelines as mentioned would be more effectively implemented.

Mr. Dougherty replied that the guidelines are more thorough than the county's current accords, and the Board and staff would need to take a closer look to get more detailed information. He said that the guidelines are essentially an internal tool to be used to evaluate actions and plans being taken. He said that in 1998 the Comp Plan was updated to include a commitment to review the Jefferson Sustainability Council Statements of Accord, and presented an abridged set of accords. Mr. Dougherty reported that the county has constructed Albemarle High School, adopted the Neighborhood Model, constructed a county green roof, hired an environmental management coordinator, implemented an environmental management policy for the county and the schools, reduced overall energy use, provided tax credits for energy-efficient measures, required green-qualifications for AE firms hired by the county, etc. He noted that staff has not found many obstacles that would keep someone from planning or building green, and what can be required is nothing in excess of the current building code.

Mr. Davis explained, in response to Mr. Rooker's question, that Arlington requires that the vast majority of their site plans go through the special use permit process.

Mr. Dougherty said to encourage green building, Albemarle could adopt sustainability guidelines, initiate a policy independent of the schools that all future public buildings would be built to some nationally recognized standard, revise the Comp Plan to incorporate green building and sustainability guidelines and review development proposals against these guidelines.

Mr. Rooker commented that hopefully the Board is interested in having Albemarle be at the forefront of green building and both the City and University have already gone down this road. He asked what would be required in terms of staff time, etc. to change the Comp Plan to incorporate some of the guidelines mentioned.

Mr. Graham said that it has varied from community to community, and Mr. Slutzky has distributed information on what Seattle has done, noting that it is a very resource-intensive effort. He added that the University of Virginia is taking a less intense approach to it and are trying to "feel their way through it," noting that the county should discuss how they want to proceed as a locality.

Mr. Dougherty said that many studies show that a fairly small up-front investment by localities yields anywhere from a five to ten-fold benefit in the end.

Mr. Boyd expressed concern that this could be an expensive undertaking, adding that he is not opposed to spending it on internal process, but said that he is interested in throwing it back to the development community and let them come forward if they're willing to take this on.

Ms. Thomas agreed, and asked if it was necessary to have one full-time person to be a LEED educator in this process and wondered if they could be shared instead.

Mr. Dougherty said that the locally administered green-building programs that use their own criteria instead of already established criteria require the most staff time.

Mr. Rooker noted that the city is already considering changes to its Comprehensive Plan and they have had builders attend, noting that there are builders in the area who are going down this road. He mentioned the Belvedere development as an example of green building.

Mr. Graham suggested that perhaps building inspectors could be trained to become "LEED inspectors" whereby they would be qualified to perform LEED inspections including the green building standards.

Mr. Rooker wondered if it would be possible to engage the homebuilders and have the city and county each put up some money to enable that process, as there are a lot of builders who seem to be interested in this. He stated that Doug Lowe has indicated that the certification process is costing him about \$5,000 per home because he has to bring in a person from outside.

Mr. Graham said that he would like to gauge the interest of the Board.

Mr. Boyd said that he would like to turn it back to the private sector with the county essentially monitoring it.

Mr. Slutzky said that the county could support and thereby validate the private sector's interest in promoting green building that homebuilders have already been involved with. He said that he is in the process of starting a 501(c)(3) organization focusing on green planning. Mr. Slutzky commented that staff could put effort in, but might want to look at ways to inventory existing green infrastructure first and then suggest ways to actually have those components drive land use decisions.

Mr. Rooker asked if that inventory had already been done, stating that when a plan comes in the environmentally sensitive features are noted.

Mr. Slutzky emphasized that he would like the staff to take a deeper look at the green objectives they would recommend for the county to support, rather than jump in quickly to "claim victory in the green battles."

Mr. Bill Edgerton addressed the Board, stating that what could be done without a lot of expense is: developing an internal standard for Albemarle; encourage the development community through the rezoning and special use permit processes, noting that the national average shows no additional cost to provide a LEED-certified building; support the private sector work such as Earthcraft and associated training for builders; and educate the population of the county about green building.

Mr. Boyd agreed that he is in favor of the county employing green practices and simultaneously encouraging the private sector to participate.

Mr. Wyant noted that it is important to educate the community on these efforts as well, as there seems to be lack of awareness.

Mr. Rooker mentioned Belvedere again, stating that they are requiring every home to be Energy Star certified. They (the developer) view it as a marketing advantage, and they are going to promote that. He added that land use decisions generally should be looked at with an environmental component for analysis.

Ms. Thomas emphasized that costs should be included early when staff provides updates, so time is not wasted down the line.

Mr. Rooker noted that these things discussed today would not cost a lot of money, adding that he is in favor of making sure that the county's own projects are environmentally sound even if they are more costly up front.

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Agenda item No. 4. Alternative Engineering Review Pilot Program.

Due to time constraints, the Board agreed to move this discussion to the end of the meeting.

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Agenda Item No. 5. Recess.

At this time (5:31 p.m.), Mr. Rooker called for a recess. The Board reconvened at 6:01 p.m., when called to order by the Chairman, Mr. Rooker.

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Agenda Item No. 6. Pledge of Allegiance.  
Agenda Item No. 7. Moment of Silence.

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

Mr. Alexis Ziegler from Charlottesville Peak Oil addressed the Board, stating that the production of oil has likely stopped growing. He said that while bio-fuel may be useful in some ways, it takes about four gallons of oil to produce five gallons of ethanol. Mr. Ziegler stated that while the local and global agricultural system is strong and healthy, the scale in which we use energy (85 million barrels a day globally and 20 million barrels a day nationally) causes an enormous amount of damage.

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Mr. Don Wells addressed the Board, also on behalf of Charlottesville Peak Oil. He said that when people are faced with shortages and price increases, people mention that coal and tar-sands can serve as reserves. Mr. Wells said that the Governor of Montana is pushing to have coal converted into petroleum, but if that happens to support transportation and other liquid fuel uses there will be even larger environmental problems than already exist for energy production. He emphasized that the biggest problem will continue to be the emission of carbon dioxide, which causes global warming. At some point, we're going to have to stop emitting that CO<sub>2</sub>. Mr. Wells said that while coal to liquid might be a temporary measure, it cannot be a long-term solution. He stated that the tar-sands can have the tar separated by steam and then converted to liquid fuel to get the hydrogen out of natural gas and that again will only be a short-term solution.

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Mr. David Steinberg addressed the Board on behalf of an informal group that formed after seeing the Al Gore film, "An Inconvenient Truth," and the group agrees this is the most pressing issue of our lifetime as well as a crucial one faced by society today. He said that they have discussed many ideas for energy use reduction, including plans for distributing energy-efficient light bulbs and ideas for ride-sharing in the county. Mr. Steinberg said that one idea is to organize a "competition" with a similar locality to reduce energy consumption, noting that they would like to ask the Board for leadership and interest on this issue, as well as help coordinating individual initiatives in the community.

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Mr. Jack Marshall addressed the Board on behalf of Advocates for a Sustainable Albemarle Population. He noted that population growth is transforming the county into something that people don't want. Mr. Marshall said that citizens need to know where the county is heading, and whether the direction reflects today's preference or just an "unexamined point in the compass set by leaders a quarter-century ago." He mentioned that Charlottesville and Albemarle populations combined total 130,000 and Albemarle should amend its Comprehensive Plan to include a sustainable optimal population size for the community. Mr. Marshall suggested that outside consultants be hired to oversee this effort, and no changes to zoning should be enacted until the population size is set.

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Mr. Jeff Werner of the Piedmont Environmental Council addressed the Board, stating that Albemarle County is not the leader in conservation easements, as Fauquier County has 71,000 acres in conservation easements, and three other counties actually have more rural area protected when their size is taken into consideration. He said that 18 percent of Fauquier County is under easement, followed by Loudoun County with 16 percent, Clarke at 14 percent, and Albemarle at just under 14 percent. Mr. Werner said that "misinformation and disinformation" have really been effective. Even among some of the Board members, there is just complete lack of understanding on what a conservation easement does and does not do. He emphasized that easements are not an impediment to agriculture, adding that he is "disappointed" that some Board members don't fully understand conservation easements and their role.

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Mr. Ridge Schuyler, Director, Piedmont Program, The Nature Conservancy of Virginia, thanked the Board for joining the River Basin Commission on July 12<sup>th</sup>. He said that each locality is asked to appoint two members to serve on the commission. He asked the Board to go ahead and make the appointments.

Mr. Rooker responded that the Board would take this up at the end of the meeting tonight.

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Agenda Item No. 9. Consent Agenda.

**Motion** was offered by Ms. Thomas to approve the consent agenda. The motion was **seconded** by Mr. Wyant.

Roll was called, and the motion carried the following recorded vote:

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

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Item 9.1. Approval of Minutes: February 8, March 15, April 5 and April 12, 2006.

Mr. Dorrier had read the minutes of February 8, 2006 and April 5, 2006 (pages 1-18, ending at Item No. 12), and found them to be in order.

Mr. Wyant had read the minutes of March 15, 2006 and found them to be in order with some typos.

Mr. Rooker had read the minutes of April 5, 2006, pages 18, with Item No. 12, to the end, and found them to be in order.

Mr. Boyd had read the minutes of April 12, 2006 and found them to be in order.

**By the above recorded vote, the minutes were approved as read.**

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Item 9.2. Authorize County Executive to Accept Deeds on behalf of the County Conveying Right of Way and any Easements Necessary to Improve Right of Way.

The executive summary states that typically right of way is dedicated to the County in the approval process for subdivision plats and site plans. However, where right of way has only been reserved and is desired to be dedicated outside of a plat or plan approval, the right of way must be dedicated by a Deed of Dedication that must be accepted by the County. In addition, some transportation projects and road improvement projects require acquisition of right of way by the County as well as easements necessary for constructing the improvements in the right of way. That right of way and easements may also be required to be transferred to the County by deed. Currently, the Board of Supervisors authorizes the County Executive to accept such right of way and easements on a case by case basis.

The efficiency of County government would be improved by generally delegating the authority to the County Executive to accept deeds for right of way and any related easements necessary for improving such right of way. A proposed Resolution authorizing the County Executive to accept such deeds and easements is attached as Attachment A.

This authorization will streamline the process and minimize staff resource requirements that would otherwise be required for staff to schedule the authorization for a Board meeting, prepare an executive summary, and then have the Board of Supervisors act on the authorization. For those conveyances that are associated with a development application that is contingent upon such a conveyance by a third party, this authorization would save the applicants 3 to 6 weeks of possible delay.

Staff recommends that the Board adopt the attached Resolution (Attachment A) to authorize the County Executive to accept deeds on behalf of the County conveying right of way and any easements necessary for improving right of way, provided that the deeds are approved as to form and content by the County Attorney.

**By the above recorded vote, the Board adopted the following Resolution to authorize the County Executive to accept deeds on behalf of the County conveying right of way and any easements necessary for improving right of way, provided that the deeds are approved as to form and content by the County Attorney.**

**RESOLUTION TO AUTHORIZE COUNTY EXECUTIVE  
TO ACCEPT DEEDS CONVEYING RIGHT OF WAY AND EASEMENTS  
NECESSARY TO IMPROVE SUCH RIGHT OF WAY**

**WHEREAS**, the County of Albemarle may acquire lands for its transportation system through Deeds conveying right of way and easements necessary to improve right of way; and

**WHEREAS**, such Deeds set forth the rights and responsibilities of the landowner and the County, including the County's rights and obligations to make improvements within the right of way and easement area; and

**WHEREAS**, the efficiency of government is improved by delegating the authority to the County Executive to accept such Deeds on behalf of the County.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors authorizes the County Executive, on behalf of the County, to accept Deeds conveying to the County right of way and easements necessary to improve right of way, provided that such Deeds are approved as to form and content by the County Attorney.

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Item 9.3. Copy of 2006 Statement of Assessed Values for Local Tax Purposes for Railroads and Interstate Pipeline Transmission Companies, as provided by the Virginia Department of Taxation, **was received for information.**

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Item 9.4. Copy of certified 2006 Statements of Assessed Value for the electric, gas, telecommunications, and water companies for the County of Albemarle, as provided by the State Corporation Commission, **was received for information.**

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Item 9.5. Copy of Planning Commission minutes for July 11, 2006, **was received for information.**

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Agenda Item No. 10. **Resolution:** Virginia Public School Authority (VPSA) Bond Issue. (Advertised in the Daily Progress on August 28 and September 4, 2006)

Mr. Tucker reported that FY 06-07 CIP budget was approved with the intent of issuing approximately \$15.465 million in bonds through the Virginia Public School Authority and those school-recommended projects are listed in the staff report. He said that a resolution was adopted by the School Board on August 10<sup>th</sup> of this year, and this resolution authorizes issuance of bonds after the public hearing tonight. Mr. Tucker noted that the FY 07 CIP and debt service budgets anticipated the issuance of

\$11.775 million in bonds for several school capital projects, but due to the unprecedented escalation of construction costs, the school division requested a restructuring and reallocation of funding for existing FY 07 school CIP projects. He said that this was approved by the School Board at their August 2<sup>nd</sup> meeting, and will require an increase of \$3.688 million debt to be issued in FY 07, with an equal reduction in issued debt in FY 08.

Mr. Boyd asked if this is for work already done, or to be done. Mr. Tucker replied that some of the projects are underway, but most of them are planned for the future.

Mr. Boyd asked if there was anyone overseeing the costs. Mr. Tucker responded that the School Board and staff review these projects, and the CIP. They look at the projects when they're submitted but not after the costs increase. He said that the architects do value engineering on their proposals.

Mr. Rooker said that the Board saw them all before the costs went up, but there was a 40 percent cost overrun to where the bids started – including the Gale construction and Monticello auditorium. He stated that where there are significant cost increases, the CIP committee should take a look at the project and see if it should move forward.

Mr. Tucker stated that this fits into the budget that the schools have been giving for their CIP, and they are postponing or reducing other projects in order to fund these, and the School Board had to make those decisions. He said that if the Board feels they need to come back to the CIP there would need to be special meetings.

Mr. Boyd commented that when there is such a significant overrun, the projects should be reviewed. Mr. Tucker noted that these estimates were done several years ago and are not really valid any more.

Mr. Rooker pointed out that someone at VDOT mentioned to him yesterday that costs were starting to fall, and perhaps that would be seen in public construction.

Public comment was invited. There being none, the matter was placed before the Board.

**Motion** was then offered by Mr. Dorrier to adopt the following Resolution to authorize the issuance of bonds in the maximum principal amount of \$15,465,000 to finance certain capital improvements for the County's public schools. The motion was **seconded** by Ms. Thomas.

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

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

(**Note:** The ordinance as adopted is set out in full below.)

**RESOLUTION AUTHORIZING THE ISSUANCE OF  
GENERAL OBLIGATION SCHOOL BONDS, SERIES 2006A,  
OF THE COUNTY OF ALBEMARLE, VIRGINIA,  
IN A PRINCIPAL AMOUNT NOT TO EXCEED \$15,465,000  
TO BE SOLD TO THE VIRGINIA PUBLIC SCHOOL AUTHORITY  
AND PROVIDING FOR THE FORM AND DETAILS THEREOF**

**WHEREAS**, the Board of Supervisors (the "Board") of the County of Albemarle, Virginia (the "County"), has determined that it is necessary and expedient to borrow a principal amount not to exceed \$15,465,000 and to issue its general obligation school bonds for the purpose of financing certain capital projects for school purposes; and

**WHEREAS**, the County has held a public hearing, duly noticed, on September 13, 2006, on the issuance of the Bonds (as hereinafter defined) in accordance with the requirements of Section 15.2-2606, Code of Virginia 1950, as amended (the "Virginia Code"); and

**WHEREAS**, the School Board of the County has, by resolution adopted on August 10, 2006, requested the Board to authorize the issuance of the Bonds and consented to the issuance of the Bonds; and

**WHEREAS**, the Bond Sale Agreement (as hereinafter defined) shall indicate that \$15,465,000 is the amount of proceeds requested (the "Proceeds Requested") from the Virginia Public School Authority (the "VPSA") in connection with the sale of the Bonds; and

**WHEREAS**, the VPSA's objective is to pay the County a purchase price for the Bonds which, in VPSA's judgment, reflects the Bonds' market value (the "VPSA Purchase Price Objective"), taking consideration of such factors as the amortization schedule the County has requested for the Bonds relative to the amortization schedules requested by other localities, the purchase price to be received by VPSA for its bonds and other market conditions relating to the sale of the VPSA's bonds; and

**WHEREAS**, such factors may result in the Bonds having a purchase price other than par and consequently (i) the County may have to issue a principal amount of Bonds that is less than the Proceeds Requested in order to receive an amount of proceeds that is substantially equal to the Proceeds Requested, or (ii) if the maximum authorized principal amount of the Bonds set forth in Section 1 below does not exceed

the Proceeds Requested by at least the amount of any discount, the purchase price to be paid to the County, given the VPSA Purchase Price Objective and market conditions, will be less than the Proceeds Requested.

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

1. **Authorization of Bonds and Use of Proceeds**. The Board hereby determines that it is advisable to contract a debt and issue and sell its general obligation school bonds in an aggregate principal amount not to exceed \$15,465,000 (the "Bonds") for the purpose of financing certain capital projects for school purposes as described in Exhibit B. The Board hereby authorizes the issuance and sale of the Bonds in the form and upon the terms established pursuant to this Resolution.

2. **Sale of the Bonds**. It is determined to be in the best interest of the County to accept the offer of the VPSA to purchase from the County, and to sell to the VPSA, the Bonds at a price, determined by the VPSA to be fair and accepted by the Chairman of the Board and the County Executive, either of whom may act that is substantially equal to the Proceeds Requested, except that the Bonds may be sold for a purchase price not lower than 95 percent of the Proceeds Requested if issuing the Bonds in the maximum principal amount authorized by Section 1 of this Resolution is insufficient, given the VPSA Purchase Price Objective and market conditions, to generate an amount of proceeds substantially equal to the Proceeds Requested. The Chairman of the Board and the County Executive, either of whom may act, and such other officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to enter into a Bond Sale Agreement dated as of the sale date of the VPSA's bonds (the "Bond Sale Agreement"), with the VPSA providing for the sale of the Bonds to the VPSA. The Bond Sale Agreement shall be in substantially the form submitted to the Board at this meeting, which form is hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officer executing the Bond Sale Agreement, his execution to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

3. **Details of the Bonds**. The Bonds shall be dated the date of issuance and delivery of the Bonds; shall be designated "General Obligation School Bonds, Series 2006A"; shall bear interest from the date of delivery thereof payable semi-annually on each January 15 and July 15 beginning July 15, 2007 (each an "Interest Payment Date"), at the rates established in accordance with Section 4 of this Resolution; and shall mature on July 15 in the years (each a "Principal Payment Date") and in the amounts set forth on Schedule I attached hereto (the "Principal Installments"), subject to the provisions of Section 4 of this Resolution.

4. **Interest Rates and Principal Installments**. The County Executive is hereby authorized and directed to accept the interest rates on the Bonds established by the VPSA, provided that each interest rate shall be ten one-hundredths of one percent (0.10%) over the interest rate to be paid by the VPSA for the corresponding principal payment date of the bonds to be issued by the VPSA (the "VPSA Bonds"), a portion of the proceeds of which will be used to purchase the Bonds, and provided further that the true interest cost of the Bonds does not exceed five and fifty one-hundredths percent (5.50 %) per annum. The Interest Payment Dates and the Principal Installments are subject to change at the request of the VPSA. The County Executive is hereby authorized and directed to accept changes in the Interest Payment Dates and the Principal Installments at the request of the VPSA, provided that the aggregate principal amount of the Bonds shall not exceed the amount authorized by this Resolution and provided further that the final maturity of the Bonds occurs no later than December 31, 2026. The execution and delivery of the Bonds as described in Section 8 hereof shall conclusively evidence such interest rates established by the VPSA and Interest Payment Dates and the Principal Installments requested by the VPSA as having been accepted by the County Executive as authorized by this Resolution.

5. **Form of the Bonds**. The Bonds shall be initially in the form of a single, temporary typewritten bond substantially in the form attached hereto as Exhibit A.

6. **Payment; Paying Agent and Bond Registrar**. The following provisions shall apply to the Bonds:

(a) For as long as the VPSA is the registered owner of the Bonds, all payments of principal, premium, if any, and interest on the Bonds shall be made in immediately available funds to the VPSA at, or before 11:00 a.m. on the applicable Interest Payment Date, Principal Payment Date or date fixed for prepayment or redemption, or if such date is not a business day for Virginia banks or for the Commonwealth of Virginia, then at or before 11:00 a.m. on the business day next preceding such Interest Payment Date, Principal Payment Date or date fixed for prepayment or redemption.

(b) All overdue payments of principal and, to the extent permitted by law, interest shall bear interest at the applicable interest rate or rates on the Bonds.

(c) SunTrust Bank (or any successor entity), Richmond, Virginia, is designated as bond registrar and paying agent for the Bonds (the "Bond Registrar"). The County may, in its sole discretion, replace at any time the Bond Registrar with another qualified bank or trust company as successor Bond Registrar.

7. **Prepayment or Redemption**. The Principal Installments of the Bonds held by the VPSA coming due on or before July 15, 2016, and the definitive Bonds for which the Bonds held by the VPSA may be exchanged that mature on or before July 15, 2016, are not subject to prepayment or redemption prior to their stated maturities. The Principal Installments of the Bonds held by the VPSA coming due after July 15, 2016, and the definitive bonds for which the Bonds held by the VPSA may be exchanged that mature after July 15, 2016, are subject to prepayment or redemption at the option of the County prior to their stated maturities in whole or in part, on any date on or after July 15, 2016, upon payment of the prepayment or redemption prices

(expressed as percentages of Principal Installments to be prepaid or the principal amount of the Bonds to be redeemed) set forth below plus accrued interest to the date set for prepayment or redemption:

<u>Dates</u>	<u>Prices</u>
July 15, 2016 through July 14, 2017	101%
July 15, 2017 through July 14, 2018	100½
July 15, 2018 and thereafter	100

Provided, however, that the Bonds shall not be subject to prepayment or redemption prior to their stated maturities as described above without first obtaining the written consent of the VPSA or the registered owner of the Bonds. Notice of any such prepayment or redemption shall be given by the Bond Registrar to the registered owner by registered mail not more than ninety (90) and not less than sixty (60) days before the date fixed for prepayment or redemption.

**8. Execution of the Bonds.** The Chairman or Vice Chairman of the Board, either of whom may act, and the Clerk of the Board or any Deputy Clerk, either of whom may act, are authorized and directed to execute and deliver the Bonds and to affix the seal of the County thereto.

**9. Pledge of Full Faith and Credit.** For the prompt payment of the principal of and premium, if any, and the interest on the Bonds as the same shall become due, the full faith and credit of the County are hereby irrevocably pledged, and in each year while any of the Bonds shall be outstanding there shall be levied and collected in accordance with law an annual ad valorem tax upon all taxable property in the County subject to local taxation sufficient in amount to provide for the payment of the principal of and premium, if any, and the interest on the Bonds as such principal, premium, if any, and interest shall become due, which tax shall be without limitation as to rate or amount and in addition to all other taxes authorized to be levied in the County to the extent other funds of the County are not lawfully available and appropriated for such purpose.

**10. Use of Proceeds Certificate and Certificate as to Arbitrage.** The Chairman of the Board, the County Executive and such other officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to execute a Certificate as to Arbitrage and a Use of Proceeds Certificate, each setting forth the expected use and investment of the proceeds of the Bonds and containing such covenants as may be necessary in order to show compliance with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and applicable regulations relating to the exclusion from gross income of interest on the Bonds and on the VPSA Bonds. The Board covenants on behalf of the County that (i) the proceeds from the issuance and sale of the Bonds will be invested and expended as set forth in such Certificate as to Arbitrage and such Use of Proceeds Certificate and that the County shall comply with the other covenants and representations contained therein and (ii) the County shall comply with the provisions of the Code so that interest on the Bonds and on the VPSA Bonds will remain excludable from gross income for Federal income tax purposes.

**11. State Non-Arbitrage Program; Proceeds Agreement.** The Board hereby determines that it is in the best interests of the County to authorize and direct the Director of Finance to participate in the State Non-Arbitrage Program in connection with the Bonds. The Chairman of the Board, the County Executive and such officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to execute and deliver a Proceeds Agreement with respect to the deposit and investment of proceeds of the Bonds by and among the County, the other participants in the sale of the VPSA Bonds, the VPSA, the investment manager and the depository, substantially in the form submitted to the Board at this meeting, which form is hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officer executing such Proceeds Agreement, his execution to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

**12. Continuing Disclosure Agreement.** The Chairman of the Board, the County Executive and such other officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to execute a Continuing Disclosure Agreement, substantially in the form attached as Appendix F to the Bond Sale Agreement, setting forth the reports and notices to be filed by the County and containing such covenants as may be necessary in order to show compliance with the provisions of the Securities and Exchange Commission Rule 15c2-12, under the Securities Exchange Act of 1934, as amended, and directed to make all filings required by Section 3 of the Bond Sale Agreement should the County be determined by the VPSA to be a MOP (as defined in the Continuing Disclosure Agreement).

**13. Filing of Resolution.** The appropriate officers or agents of the County are hereby authorized and directed to cause a certified copy of this Resolution to be filed with the Circuit Court of the County.

**14. Further Actions.** The members of the Board and all officers, employees and agents of the County are hereby authorized to take such action as they or any one of them may consider necessary or desirable in connection with the issuance and sale of the Bonds and any such action previously taken is hereby ratified and confirmed.

**15. Effective Date.** This Resolution shall take effect immediately.

Park Street (SR 1204) in the Community of Crozet. **(Deferred from August 2, 2006)** (Advertised in the Daily Progress on August 28 and September 4, 2006)

Mr. Cilimberg said on August 2, 2006, the Board of Supervisors held a public hearing on the Westhall Phase V rezoning. This rezoning had been recommended for approval by staff because the applicant had addressed the Planning Commission's concerns expressed at their July 11, 2006 public hearing. The Commission had recommended denial because the applicant had proffered to provide affordable housing for up to 100 percent of the median household income rather than limiting it to 80 percent of the median household income. In addition, the Commission believed that a total cash proffer of \$45,000 for Eastern Avenue was not sufficient to off-set the impacts of the development. The proffers for the August 2 public hearing reflected a change to provide affordable housing up to 80 percent of the median household income and a doubling of the contribution towards Eastern Avenue to a total of \$90,000.

At the meeting, several Board members expressed satisfaction with the affordable housing proffer change, but most Board members did not believe that the cash proffers were sufficient to mitigate public infrastructure impacts including off-site impacts for the transportation system. The Board voted to defer action on the rezoning pending additional information regarding timing for the construction of Eastern Avenue.

Since the August 2 Board meeting, the applicant has modified the proffers related to timing of the contributions for capital improvements. For Eastern Avenue, the owner proffers to provide \$45,000 prior to issuance of the first building permit and \$3000 per unit for the second through sixteenth building permits. For other capital improvements, the applicant proffers \$15,000 prior to the issuance of the first building permit and \$1,000 per unit for the 2<sup>nd</sup> through 16<sup>th</sup> building permits. While the amount of money has not changed, the timing has changed to allow for half of the capital improvements contribution to be paid up front. The early contribution makes the cash available for County use in advance of half of the units being built.

The value of the early contribution is that it provides the County with cash earlier for the implementation of its capital improvements program. As design/preliminary engineering for Eastern Avenue has not yet been selected for funding, \$5,000 may enable this process to begin earlier. Providing \$15,000 towards other capital improvements earlier in the process may be beneficial if a currently funded capital improvements project requires additional cash.

Mr. Cilimberg said staff recommended approval of the rezoning on August 2, 2006, when the Planning Commission's concerns were satisfied. The Board will need to determine whether this change in the timing of the cash proffer is sufficient to satisfy concerns related to infrastructure and the pace of growth in Crozet. If the Board is satisfied that the proffers adequately satisfy these impacts, staff recommends approval of ZMA 06-01 with the current proffers (Illustration A) and the amended application plan (Illustration B).

Mr. Cilimberg said staff also recommends approval of a waiver to Sections 4.6.2 and 4.6.3.b. of the Zoning Ordinance to allow for the application of setbacks for the affordable dwelling units to be as shown on the application plan.

Mr. Cilimberg said that staff is in the process of completing an analysis of rezonings in the Crozet area that includes certificates of occupancy to establish a new baseline number for new development there. He stated that any new rezonings approved for Crozet will raise the potential number of units in Crozet beyond what by-right development would have been.

Board members discussed the infrastructure costs, with Mr. Rooker noting that the Board is challenged with finding an additional \$5 million to keep Meadow Creek Parkway on schedule, and one of the projects to be considered for delay is Jarman's Gap Road. Mr. Rooker said unless the Board wants to expand its CIP dramatically, he does not know where this money is coming from.

Mr. Boyd said he understand that, but said it is time for the county to step up and take the lead on the road building rather than waiting for a developer to do it. Mr. Wyant said that if the developers are building the road, the Lickinghole Bridge is going to be expensive.

The Chairman asked the applicant for comments.

The applicant, Chris Schooley, Director of Land Development for Stonehaus Development, addressed the Board. He stated that there was almost unanimous support for this development, and there are six affordable housing units out of 36 and the rest of the home sites are not outrageously expensive. Mr. Schooley said that proffers in the county need to go up, and this project offers \$4,800 per unit in addition to a park and tot lot in the center of the development.

Mr. Rooker said that when he adds up the totals, he comes up with \$120,000 in total cash proffers. Mr. Schooley replied that the bridge construction for the greenway and the greenway itself were given value in staff's analysis.

Mr. Rooker stated that when the proffers per unit are calculated, that amount is \$3,300 without considering the amenities. Mr. Schooley explained that how Stonehaus came up with their contribution for Eastern Avenue was taking out 4.5 percent of half-frontage and came up with \$90,000.

Mr. Wyant asked when they would likely get the first building permit. Mr. Schooley responded that if they get approval tonight, they would be ready to go to construction within seven months.

Public comment was invited.

Mr. David Whelan, of Crozet, said that he is a member of the Crozet Community Advisory Council. He has concerns with the timeframe stipulated to identify a buyer for the affordable housing, as it may take people longer than 90 to 120 days to get the funds together needed for down payment.

Ms. Barbara Westbrook, of the Crozet Community Advisory Council, said that she spends a lot of time talking to people within the area and many of them won't come to Board meetings. She stated that her biggest concern is the impact on the streets around that area, to get to Route 240, and more effort should be put into working on Eastern Avenue and delaying some of the traffic that will be using that route.

Mr. Schooley commented that there would be improvements made to the 90-degree intersection at Park Road, and there were a few drainage improvements including a ditch along Claudius Crozet Park that the county agreed to, as mentioned in the proffers.

Mr. Rooker asked Ron White, Director of Housing, to address the concern raised about having time to find an affordable housing buyer.

Mr. White clarified that the 90 day period is intended to be a period of time when the developer gives written notice that the unit will be ready for occupancy on or about a certain date. He doesn't think that he will get a commitment from people for a home that hasn't been built yet. He added that if the period is extended, he's not sure what the impact on the market would be from holding up that available unit, adding that 90 days is a good time frame.

Mr. Rooker asked if the 90-day period was acceptable. Mr. White said that it would be great to be able to identify everyone to buy every one of the proffered units, but that is likely not going to be the reality. He mentioned that Avon Park, which was the first development approved with proffers, got a site plan approval last March, and the County's affordable housing office has been looking for occupants since then.

Mr. Slutzky asked if the Board was unanimous that the 90-day window was acceptable.

Mr. Rooker said that if it turns out not to work, then that time period could be reevaluated. He commented that there may be good reasons to approve this development, but the \$45,000 proffered to help with the design is not one of them. We can do that with money already available in our CIP identified for transportation; \$45,000 is not going to make a difference. Mr. Rooker noted that there was discussion during the Wickham Pond public hearing about the impact of that development on public infrastructure, including schools.

Mr. Rooker stated that this proposal is well designed and fits in well with the designation in the master plan and makes some contribution to infrastructure, but he does not feel that the contributions being made are adequate to offset the impact of the development on infrastructure in the community. He added that there are 7,500 units approved in the growth area that are not yet built, and by the time some decision is reached on an exact amount for cash proffers "the game's going to be over." Mr. Rooker said that 10,000 units would be about a 25-year supply of units for the community.

Mr. Boyd said that at the last meeting about this, the Fiscal Impact Committee, which is discussing proffers, sped up their meeting timeframe to make that determination. He plans to support this proposal tonight because the developers are "playing by the rules," and they've done what the county asked them to do. He thinks it's unfair of us to take this approach especially when we have good developers. We need to stick by what we've asked them to do.

Mr. Slutzky said that he did not feel that the Board could fairly turn down an applicant who is proffering \$4,800 when there are other applicants who are proffering just around \$3,000. Mr. Slutzky emphasized the importance of what's expected from the development community, and up to now \$3,000 has been acceptable while the issue is being studied. He added that denying an application on the basis of inadequate public facilities is not acceptable.

Mr. Davis stated that the Attorney General has said that the inadequacy of cash proffers or the inadequacy of public facilities cannot be the sole basis for denial, but those can be considered in combination with other factors that can justify denial of a rezoning.

Mr. Slutzky said that when the county master planned Crozet, there was an active public dialogue relating to density with ranges associated with them, and this proposal is consistent with that range that was called for. He added that the Board has discussed at length how 12,000 units could be accommodated, stating that it's appropriate for them to approve those developments, and limiting population in Crozet should be done through a Master Plan that limits that number. When the Board did the Master Planning and had ranges that included numbers that were above 12,000, we felt that was because of the market absorption rate, and the percentage of them that would locate themselves in Crozet seemed to be around 12,000 is where we'd end.

Mr. Slutzky stated that by making the approval of projects that are consistent with the vision of the Master Plan – that are within the density range for this location and are consistent with the county's form and design criteria – it does not mean that there will be more than 12,000 people in Crozet in less than 20

years. They're not the same thing. If we're concerned about limiting population in Crozet to a certain number by a certain date then we ought to go back and do a whole new Master Plan that is designed to have a carrying capacity of 12,000 people. He added that he thinks we're running the danger of undermining the whole point of the master planning exercise, which was to dictate the form and design and cohesive nature of the entire growth area and then recognize that the market will potentially, at some point, fill out that deeply; as a practical matter it is not reasonable to expect that it will. There is no legitimate reason to think that we're going to get [beyond] 12,000 people within 20 years because we approved or didn't approve a particular project in Crozet today. He emphasized that he is not convinced it is good policy to turn down projects based on inadequate public facilities.

Mr. Rooker emphasized that he did not mean to imply that the sole reason for denying this proposal would be inadequate public facilities, but he does not know when the county will have the money to complete Eastern Avenue based on what is in the budget. He also said that he did not see an adequate contribution from this development to offset the impacts, which is different than inadequate public facilities. Mr. Rooker noted that there are 1,451 by-right units in existence, and 3,500 additional units have been approved, making it possible for another 12,000 in population not even counting by-right development that could happen without any rezonings.

Mr. Rooker said the only power the Board has, that he is aware of, to keep an eye on the pace of growth in Crozet is to control the rate at which we rezone property. He does not know of any other way. He emphasized that the Board has told the people of Crozet that they will keep an eye on the population in the area.

Mr. Slutzky said that the county doesn't want to control it through having inadequate infrastructure, but the county could decide when they get to the midpoint in the master plan, no further approvals would be granted; the Master Plan could be redesigned for a 12,000 buildout maximum capacity; and the market could be trusted not to over-saturate just because there are approvals any more than the population raises just because it was master planned.

Mr. Dorrier commented that he feels it is dangerous territory to start capping the number of people coming to the area, and that should not be a basis by which to turn this proposal down. He is supporting this project.

Ms. Thomas said that she shares concerns about infrastructure and "stale zoning" by over-zoning the development area, and the increasing population numbers. But she also stated that there is a fairness issue here, and in addition a by-right development would put vehicles on this road also. Ms. Thomas commented that she is pleasantly surprised at VDOT's agreement to create a road that will not require traffic-calming measures. She emphasized that a by-right development will provide nothing towards Eastern Avenue, and would also mean losing out on other things through the developer's proffers.

Mr. Wyant commented that the developer has followed the Master Plan, and the county has no set number for proffer contributions which sends an "unclear message." He added that the developer is designating 17 percent of the units as affordable, is contributing something to Eastern Avenue. Mr. Wyant said that it will take some time to get to 12,000, and working on downtown Crozet is his top priority, with the Eastern Avenue connector being second. He noted that there is a timing issue with the building of this, and he is not in favor of it.

**Motion** was then offered by Mr. Slutzky to approve ZMA 06-01 with the current proffers and the amended application plan. The motion was **seconded** by Mr. Dorrier.

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

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

NAYS: Mr. Rooker and Mr. Wyant.

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**Motion** was then offered by Mr. Slutzky to approve a waiver to Sections 4.6.2 and 4.6.3.b. of the Zoning Ordinance to allow for the application of setbacks for the affordable dwelling units to be as shown on the application plan. The motion was **seconded** Mr. Dorrier.

(**Note:** The proffer form as adopted is set out in full below.)

#### **PROFFER FORM**

Date of Proffer Signature 8/34/06  
ZMA # 2006-00001  
Tax Map 056H0-00-00-000A0,

**8.9 Acres to be rezoned from R-1 and R6 to Planned Residential Development (PRD)  
In accordance with Application Plan entitled "Westhall Phase V – Application for Zoning  
Map Amendment" prepared by WW Associates and dated July 13, 2006**

With respect to the property described in rezoning application #ZMA-2006-00001 (the "ZMA"), Shiflett Farms LLC is the fee simple Owner of the following parcels:

- **TMP 56H -00-00-A**

Shiflett Farms LLC shall be collectively referred to herein as the "Owner," which term shall include any successors in interest. The parcel listed above is referred to collectively as the "Property."

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance (the "Ordinance"), Owner hereby voluntarily proffers the conditions listed in this Proffer Statement, which shall be applied to the 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.

### **1. Capital Improvements**

1.1 Eastern Avenue: The Owner shall contribute \$3,000 cash for each market rate unit to the County for the purpose of constructing Eastern Avenue to mitigate traffic impacts from the development. If Eastern Avenue has not begun construction within ten years of rezoning approval of the property, the cash proffer shall be reallocated to the County's Capital Improvement Program for transportation improvements for the Community of Crozet. The contribution will be paid as follows: \$45,000 will be paid prior to the issuance of the first building permit, the remaining \$45,000 will be paid in \$3,000 increments prior to the issuance of the second through sixteenth building permits.

1.2 Capital Impacts: The Owner shall contribute \$1,000 cash for each market rate unit to the County's capital improvement program for the purpose of mitigating impacts from the development. The cash contribution shall be used for schools, libraries, fire, rescue, parks or any other public use serving the Community of Crozet as identified in the Comprehensive Plan. The contribution will be paid as follows: \$15,000 will be paid prior to the issuance of the first building permit, the remaining \$15,000 will be paid in \$1,000 increments prior to issuance of the second through sixteenth building permits.

1.3 Traffic Impacts on Park Road: Prior to issuance of the first building permit for housing units in the project, the Owner shall construct the following improvements to the satisfaction of the County Engineer:

Re-grade the ditch/shoulder on the east side of Park Road in front of the townhouses in Westhall Phase IV (lots 84-89) approximately 180' to assure proper flow into the pipe crossing Park Road.

1. Install a pipe at the intersection of Adele Street and Alfred Street and regrade the ditch around the pipe, as necessary.

2. Regrade the ditch/shoulder in front of Claudius Crozet Park (approximately 650') along the east side of Park Road extending north from the main entrance to the park to assure a minimum 1.5-foot shoulder width, and 2-feet from the edge of shoulder to the centerline of the ditch.

Improvements shall be made by the Owner, prior to or at the time of issuance of the first building permit for any improvements thereon.

### **2. Affordable Housing**

2.1 Affordable Dwelling Units. Owner proffers to require through the lot sale contracts on the Property the construction of a minimum of six (6) Affordable Dwelling Units (17% of all units) on the Property that meet the requirements for a single family dwelling as defined below. Each Affordable Dwelling Unit shall be on a single parcel and be conveyed fee simple. A home Owner's association shall be created to maintain the parking area and sidewalk. Access easements shall be required to access the two provided parking spaces for each unit.

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 percent (30%) of the Affordable Unit Qualifying Income.

All purchasers of 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) shall be available for sale. This notice shall not be given more than sixty (60) days prior to anticipated receipt of the Certificate of Occupancy. 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 proffered. The requirements of this proffer shall apply only to the first sale of each of the affordable units.

### **3. Open Space and Greenways**

3.1 Temporary Greenway Connection: In conjunction with the Owners of Lickinghole Creek LLC, the Owner shall grant a temporary access easement for a Class B public greenway as specified in the County's Comprehensive Plan, in a form approvable by the County on the property described as TMP 0560-00-00-05300 prior to the approval of the first building permit for any new construction on the property. The temporary access easement shall be replaced by the projected 80' right-of-way required for Eastern Avenue.

3.2 Trailhead Park: The Owner shall dedicate and convey in fee-simple to Albemarle County, Open Space, Parcel A, or "Trailhead Park" as shown on the application plan with the first subdivision plat and grant drainage easements in a form approved by the County Attorney. In conjunction with improvements approved with the first subdivision plat, the Owner shall construct a 6' asphalt trail consisting of four (4) inches of 21-B stonebase material and two (2) inches of SMA-2 asphalt or other specifications approved by the County Engineer. The trail shall connect five parking spaces to the greenway system, a 2100 +/- square foot tot lot with a 42" fence, a stormwater management facility and landscaping. The stormwater management facility shall be designed such that its shape, placement, and land form (grading) transition between the adjacent residential lots, the tot lot on the site, and the trailhead elements, to the satisfaction of the Department of Parks and Recreation. The tot lot shall contain the following elements: a play structure, a small swing set and a set of two spring mounted riding figures, or other elements approved by the Director of Planning. Open space areas dedicated to public use shall be for the use and enjoyment of the public, including the residents of the project.

3.3 Open Space: The Owner shall dedicate and convey to Albemarle County, Open Space, Parcel C, as shown on the application plan with the first subdivision plat and grant drainage easements in a form approved by the County Attorney. The Owner shall construct a 6' asphalt trail consisting of four (4) inches of 21-B stonebase material and two (2) inches of SMA-2 asphalt or other specifications approved by the County Engineer and a stormwater management facility. The stormwater management facility shall be designed such that its shape, placement, and land form (grading) transition between the adjacent street, greenway, and trails to the satisfaction of the Department of Parks and Recreation and minimize disturbance of the stream buffer within Parcel C shown on the Application Plan to the satisfaction of the Program Authority. Open space areas dedicated to public use shall be for the use and enjoyment of the public, including the residents of the project. The Owner shall make a contribution of \$3,000 to the County to be used by the Parks and Recreation Department for the construction of a pedestrian bridge in the general location shown on the Application Plan. The contribution shall be payable prior to issuance of the first building permit for the property. If the bridge is not constructed within 10 (ten) years of rezoning approval of the property, the contribution shall be reallocated to the County's Capital Improvement Program for park improvements for the community of Crozet.

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Agenda Item No. 12. ZTA-2005-005 Farm Worker Housing. Ordinance to Amend Section 3.1 ("Definitions"), Section 5 ("Supplementary Regulations"), and 10 ("Rural Areas") of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Section 3.1 by defining certain terms; Section 5 by adding supplementary regulations for farm worker housing; and Section 10 by adding farm worker housing facilities for 20 or fewer occupants and having 5 or fewer sleeping structures as a by-right use (farm worker housing, Class A), and adding farm worker housing facilities for more than 20 occupants or having 6 or more sleeping structures as a use requiring a special use permit (farm worker housing, Class B), in the Rural Areas zoning district. **(Deferred from June 7, 2006)** (Advertised in the Daily Progress on August 28 and September 4, 2006)

Mr. Cilimberg said in April, 2005, the Zoning Division of Community Development issued a determination that, while the housing of farm workers in structures intended for temporary, seasonal use (i.e., not dwelling units as defined in the Zoning Ordinance) has existed for decades in the Rural Areas of the County, it is not currently a permitted use in the Rural Areas (RA) zoning district. The determination also stated this use is not considered accessory to agriculture. This means that existing farm-worker housing facilities are non-conforming uses, and cannot be changed or expanded (with a few exceptions) under Section 6 of the Zoning Ordinance. Further, no new facilities can be created.

The Zoning Division determination was in response to a request regarding the creation of an on-farm program using seasonal interns who would provide labor while learning about agriculture. However, the determination affects all forms of seasonal farm-labor housing in the RA district.

The determination was appealed to the Board of Zoning Appeals (BZA). On July 6, 2005, the Board of Supervisors considered a Resolution of Intent to pursue this text amendment. The Board referred the issue to the Planning Commission rather than adopting a formal motion. The BZA appeal has been deferred while staff and the applicant have been working on this text amendment as an alternative method to make this use permissible in the Rural Areas.

After working with the applicant and representatives of the farming community, staff presented a proposed text amendment to permit farm-worker housing at a Planning Commission work session on January 17, 2006. The Commission decided to proceed to a public hearing, with one change to the proposed text and more input from the Building Official (see below).

The Commission identified two issues to be addressed before the public hearing: (1) changing the scale of the sketch plan to "at a scale of not more than one (1) inch equals forty (40) feet."; and (2) establishing that these structures would be subject to building-permit review and not exempt from that review as farm buildings (those used for residential purposes would be reviewed).

On March 21, 2006, the Planning Commission held a public hearing on this amendment. The Commission identified several additional areas for changes to the proposed text:

- The workers must be employed on the farm containing the housing only. The intention would not be to provide housing for non-farm related workers or to have housing for many farms inside and outside the area. That restriction needs to be very specifically indicated in this ordinance
- Individual structures in the facilities cannot have all of the features of a dwelling unit. That needs to be very specifically referenced.

- Remove “human habitation” as a reference in subsection d. Subsection d. should be rewritten to permit any use accessory to a primary agricultural use.
- The facilities will not be permitted to convert to uses that are not consistent with the ordinance, which can be done through the affidavit. The affidavit will be recorded and run with the land.
- Determine a limit to the number of structures. Determine a threshold for the number of facilities which will trigger a requirement for a special use permit.
- “Seasonal agricultural workers” should be defined more specifically.
- Indicate what types of units (structures, trailers, vehicles, etc.) should be either included or excluded.

Changes reflecting those comments were made to a version presented at a Commission hearing on April 18, 2006.

On April 18, 2006, the Planning Commission reviewed staff’s proposal and made further modifications to the proposed ordinance (see below). The following changes were made, as recommended by the Commission, and presented to the Board on June 7, 2006.

- Notification of adjacent property owners shall be required after the submittal of the concept plan for temporary farm work housing. Sections 5.1.44(a)(3) and (4) were added to require this notification process and to specify how adjacent landowners may request Planning Commission review of the concept plan for the use.
- Modification of the definition of “seasonal agricultural work” to include livestock operations activities by inserting the clause, “work related to keeping livestock and/or poultry.”
- In subsection e, striking the phrase “farm worker”. That was relating to some additional language in an earlier draft.
- In 10.2.1 adding to the phrase “up to twenty occupants” (for the by-right) the phrase “and five or fewer sleeping structures.” This change was intended to help clarify the language for the people looking at the rural areas regulations.
- In 10.2.2 adding to the phrase “more than twenty occupants” the phrase “or six or more sleeping structures.”
- In 10.2.2.a. (iii) changed “vehicular access to, and parking for, the facility,” to read, “Vehicular access and adequacy of travel ways and parking for the facility.” This change was made, but was moved to section 5.1.44(d)(2)(e), as adequacy is not something to be shown on the plan by the applicant, but a matter to be judged by the Fire/Rescue department as they review the plan. Subsection (d)(2)(e) is the appropriate location for review standards.

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Mr. Cilimberg then summarized the following executive summary:

On June 7, 2006, the Board considered the proposed amendment as revised by the Planning Commission. After considering the proposal, the Board decided to defer action so that staff could address the following items:

- Special use permits:
  - Issue: The Board directed staff to change the proposal to require special use permits for all farm worker housing facilities.
  - Solution: The attached version has been changed to remove the by-right “Class A” facilities and to require special use permits for all facilities.
- Commercial entrances:
  - Issue: The Board wanted to avoid requirements for commercial entrances where possible.
  - Solution: Section 5.1.44(d)(2)(b) of the attached amendment specifies that:

*Approval of the access to the site from a public street by the Virginia Department of Transportation; provided that nothing herein shall be deemed to require that a commercial entrance be constructed unless such an entrance is required by the Virginia Department of Transportation.*

This reflects the Board’s intent that the County not require commercial entrances for these facilities.

- Remaining Issue: While the County would not require commercial entrances for these facilities, entrance requirements will be set by the Virginia Department of Transportation based on their standards. County Engineering staff has explained that VDOT would be likely to require an entrance permit for either new entrances or entrance upgrades that served uses that were commercial or similar in character to commercial uses (as opposed to single private residences). VDOT would control the type of entrance to be built.
- Housing quality:
  - Issue: The Board wanted to ensure that this ordinance would not encourage the creation of housing facilities not suited for human habitation.

- Solution: Housing quality for migrant farm workers is regulated with detailed standards by the US Department of Labor's Occupational Safety and Health Administration (OSHA), under regulations contained in 29 CFR 1910.142. The Virginia Department of Health inspects the facilities to ensure that they meet those federal standards and any state requirements for camp operation as directed in 12 VAC 5-501-10 *et seq.* Section 5.1.44(d)(2)(b) of the attached amendment has been changed to require that applicants submit a "[w]ritten approval of the farm worker housing facility as a migrant labor camp under 12 VAC 5-501-10 *et seq.*" before receiving a zoning clearance for the use.

In addition, Section 5.1.44(d)(2)(d) of the attached amendment now requires that facilities have "[w]ritten approval of the adequacy of the structures intended for human habitation by the building official" before issuance of the zoning clearance.

- Misuse:
  - Issue: The Board was concerned that abuses of this ordinance might lead to the creation of additional housing in the Rural Areas not related to legitimate agricultural uses.

- Solution: Staff has added a new section—5.1.44(a)(3)—that requires that:

*The concept plan shall include a written description of the type(s) of seasonal agricultural work to be performed on the farm by the persons housed in the farm worker housing facility.*

Use of the facilities for non-farm worker residents would be violation of the special use permit, and the Zoning Administrator could require that the violation cease.

- Remaining Issue: If a plan was approved for a certain agricultural use and the landowner later needed to house workers for different agricultural use, the special use permit would have to be amended. This would create a burden for landowners.

#### General Analysis

The Rural Areas chapter of the Comprehensive Plan contains the following policies for agricultural land uses:

*GOAL: Protect Albemarle County's agricultural lands as a resource base for its agricultural industries and for related benefits they contribute towards the County's rural character, scenic quality, natural environment, and fiscal health.*

*OBJECTIVE: To support agricultural land uses and to create additional markets for agricultural products through creative economic and land use strategies.*

Housing for farm labor is a traditional part of some forms of agriculture in Albemarle County (especially in orchards), and is expected to be increasingly important in other forms, particularly vineyards. While the Zoning determination regarding farm-worker housing established that this use is not currently permitted by ordinance, allowing it to continue is consistent with the Comprehensive Plan policies.

As the Board considers proceeding with this issue, staff wanted to raise several issues for consideration, which have also been raised by the Farm Bureau. The proposed ordinance (Attachment A) would create additional restrictions and difficulties for landowners hoping to upgrade existing facilities or to build new ones. Even for small facilities, farm worker housing, which supports a preferred use in the Rural Areas, would be subject to more review and regulation than many other uses in the Rural Areas that do not support agriculture, forestry, or conservation. Due to the requirements proposed in this ordinance such as, restricting work location to the farm in which the housing is located and provisions contained in the definition (no waivers possible) requiring separate structures from sleeping for eating, food preparation and sanitation (bathing and or toilets), the risk for abuse through the unintended creation of new residential units is significantly reduced. These concerns are shared by the Farm Bureau, which participated in the development of the first proposed ordinance. In summary, the Farm Bureau's concerns (see their comments in Attachment B) are:

- Increased expense and time delays due to the requirement for special use permit approval. (During discussions with staff, Farm Bureau representatives agreed that special use permits were appropriate if more than 20 workers would be housed.)
- Concerns over potential misuse as dwelling units should be sufficiently addressed by the requirement that no single structure include all the facilities typical for dwelling units.
- The relative importance of supporting agriculture compared to controlling any potential misuses, which could be controlled through monitoring and enforcement.

Mr. Cilimberg said based on the Board's original direction, the Board would need to approve the proposed ordinance (attachment A) for public hearing. However, if the Board shares the concerns noted above, staff recommends that the Board consider revisions to the proposed ordinance that would make facilities with 20 or fewer workers by right in the Rural Areas zoning district, while requiring a Special Use Permit for facilities with more than 20 workers.

Mr. Rooker asked if the designation could be kept reasonably broad. Mr. Cilimberg replied that it could be, and would be subject to the approval of a special use permit if that were acceptable. They just need to anticipate the variety of things they want to do. He said that staff noted that housing for farm labor is part of traditional agricultural forms in Albemarle County, and is expected to be increasingly important in other forms in the future such as vineyards. Mr. Cilimberg noted that even though it has been a zoning

determination that this is not a permitted use, staff feels that allowing it is consistent with the Comprehensive Plan.

Mr. Cilimberg said that the Farm Bureau raised concerns regarding this being part of a special use permitting process, specifically increased time and costs associated with the approval requirements, but their representatives have agreed that it is appropriate if more than 20 workers would be housed, and the Planning Commission essentially recommended that as well. He added that they also had concerns about misuse of dwelling units but felt that this would be addressed by the requirement that no single structure include all the facilities typical for dwelling units, and the relative importance of supporting agriculture compared to controlling any potential misuses would be controlled through monitoring and enforcement.

He concluded by stating that staff has brought forth an amendment, but if the Board decided to go back to requiring permits for facilities with more than 20 workers only, that would require another advertising of public hearing and another amendment.

Mr. Wyant noted that the entrance is a concern to him, as that is in VDOT's hands. He asked how much leeway the county had here, as the permit might be held hostage by requirements for commercial entrances.

Mr. Cilimberg acknowledged that the commercial entrance requirements of VDOT are based on volume of activity at the entrance, and they will judge it based on whether the improvement associated with a use necessitates the need for a commercial entrance. He added that the Board has often tried not to require entrance improvements for rural area activities that might need site distance clearance unless there are safety considerations.

Mr. Wyant pointed out that most of these workers would be traveling within the farm, but occasionally might have to leave to go to another part of the farm or orchard.

Mr. Slutzky said that he would like to figure out a way to accommodate the farm operators to have workers on site, but the standard allowing human habitation is a pretty low benchmark, and he is concerned about creating "substandard housing" even if it meets basic federal requirements. Mr. Slutzky asked if it would be possible to require the structures to be built in a more traditional way and be able to meaningfully enforce the conditions of the special use permit or the conditions of the by-right provisions for 20 people or less. Mr. Cilimberg replied that the Board could certainly accomplish the intent, but it might be difficult to enforce because essentially additional dwelling units would be created. Mr. Davis said that that would be the same as creating dwelling units requiring development rights, and that is contrary to the intent of this ordinance.

Mr. Slutzky asked if there could be part of the ordinance that would require that anyone living in the dwelling units to work on the said farm. Mr. Davis replied that you could create those "carve-outs," but for the last 25 years there have intentionally not been those.

Ms. Thomas emphasized that she would be strongly opposed to having additional rural dwelling units be the unintentional outcome of this ordinance.

Mr. Cilimberg said that you can have bathing or eating in a building and the OSHA requirements for adequacy of habitation are applicable.

Mr. Scott Clark, Planner, addressed the Board, stating that there are four elements that are considered – sleeping, eating, food preparation and sanitation – and three out of four can be in any structure.

Mr. Slutzky said that he just wants to make sure that the county is not enabling substandard housing for a certain part of the population, but he also wants to make sure that rural areas continue to operate as they have.

Mr. Rooker replied that he shares those concerns, and that was part of the Board's original debate. He added that he would like to ensure that rental units are not created in the rural areas that are basically apartment houses.

Mr. Davis said that each case would need to be evaluated individually, adding that this ordinance requires every situation to require special use permit whereas the original ordinance had 20 or less workers allowed by-right.

Mr. Wyant contemplated the time frame involved in applying for a special use permit. Mr. Cilimberg stated that an applicant must allow at least 90 days from application to approval.

Ms. Thomas said that she would be interested in hearing about a number smaller than 20, as that seems to be a bit high. She stated that having just a few interns or workers is a different matter.

Mr. Wyant said that he has spoken with several farm owners that only need a handful of workers for a short period of time.

Mr. Davis noted that the original ordinance dealt with persons, not farm workers, and this housing could include families. That's where the zoning enforcement issue becomes very complicated.

Mr. Rooker agreed, stating that “the problem is trying to come up with a one size fits all that doesn’t allow for significant abuse.”

Mr. Slutzky said that it is uncertain how many applicants there will be, and he tends to favor having a special use permit required regardless of number of employees.

Mr. Davis added that the Zoning Administrator can cite someone for violation, but only the Board can revoke the permit. He said that if there were a willful violation, the permit could be revoked and a penalty could be imposed.

Public comment was invited.

Ms. Marcia Joseph addressed the Board. She presented information on organizations that support sustainable agriculture and farming, including their use of labor. Ms. Joseph mentioned that this is a “movement that is growing,” and there are several already in Albemarle. She indicated that the intent is not to create dwelling units, but farming such as organic does require a lot of intensive labor. Ms. Joseph asked the Board not to require a special use permit for everyone, and wondered if some number could be agreed upon. She indicated that she had spoken with a farmer about this, and he expressed interest in a number such as 10. Ms. Joseph expressed concern that the special use permitting process might take more than 90 days, and having more than 20 workers is really more of an agribusiness situation. She pleaded with the Board to look at a number that is a little less since some of these places are asking for three or four or five.

Ms. Thomas asked if it were to be amended to accommodate some by-right usage, would they even know to come in once their employee number crept higher. Ms. Joseph replied that they would have to come in and work with staff, and supplemental regulations would apply to everyone. Mr. Cilimberg noted that adjacent landowners are notified.

Mr. Davis mentioned that there are supplemental regulations that exist that are required before a zoning clearance could be issued, but that doesn’t give staff or the Planning Commission the right to impose additional conditions.

Mr. Rooker said that part of his original concern is that you could have people that live there forever and there would be no reasonable way for the Zoning Administrator to assess whether they worked or didn’t work on the property, and they could keep their families there as well. The problem is enforcement of things that go beyond [work].

Ms. Joseph responded that a time limitation was set for March through October, and some of the internships are limited in time.

Mr. Rooker stated that this is not geared toward internships; it is geared towards a lot of other circumstances that might arise.

Mr. Davis added that the ordinance doesn’t address workers, but speaks generally to numbers of people. He noted that the original ordinance said persons, not workers.

Ms. Thomas said that the new ordinance stipulates farm workers, not just people in general [families].

Mr. Davis noted that the original ordinance said persons and their immediate families.

Mr. Boyd commented that there is bound to be some lead-time, and asked Ms. Joseph why she objected to a special use permit process. Ms. Joseph replied that the committee felt there should be some regulation from the county, but a farmer wouldn’t have to go through a burdensome legislative process.

Mr. Slutzky noted that the fact that the county is creating an opportunity for this dwelling to exist is a pretty strong gesture of support for the agricultural sector. Ms. Joseph reminded the Board that there was a determination made that this was not permitted in Albemarle County, and that is why the matter arose.

Mr. Corky Shackelford addressed the Board, echoing what Ms. Joseph said regarding encouraging agricultural use in the rural areas. He said that farmers have to ask for permission to “do this and that wherever they go.” Mr. Shackelford added that seasonal workers are becoming more and more important, and the 20 limit – whether it’s persons or workers – is a good benchmark. He said that small ventures should be allowed by-right and not through special use permitting.

Mr. Jeff Werner said that the PEC has a grant from BAMA Works to develop a directory of some of the farm operations going on – such as pick your own and organic farms. He noted that Tim Beatley did a report that referenced community-supported agriculture (CSA), and this number is growing, with several operations like this already in operation in Albemarle. Mr. Werner said that there are some good things in the county, and he hopes to be able to report soon on progress with the directory.

Mr. Slutzky noted that there is a thriving CSA business in the Shenandoah Valley that has brought produce to Albemarle, and this should be mentioned to TJPED so that they can help promote it.

Mr. Boyd commented that he feels these programs support rural areas and protect property rights by supporting agribusiness, which TJPED already promotes. He said that he would like to see staff

prepare an ordinance with by-right for the first 20, and special use permits required for any number beyond that.

Mr. Rooker said that his concern remains that the situations might not remain temporary, and his understanding is that people could be living there year-round in up to five different structures without any action by the Planning Commission or the Board. To him that just opens up a gigantic loophole. He said that saying 10 in two structures without a permit would be acceptable, but five structures for year-round use are just too much.

Mr. Slutzky stated that he feels a special use permit is needed regardless as to whether that number is 10 or 20.

Mr. Davis responded that it is a zoning nightmare to actually make that determination. He said that it is very difficult to enforce whether it's 10 or 11, family members or not. The Board needs to understand that the enforcement of that will be next to impossible.

Mr. Rooker said that that would be true with or without a special use permit. Mr. Davis said that a permit would be reviewed, and whether or not that is overkill is the Board's decision.

Mr. Wyant commented that the concern seems to be with the special use permit time.

Ms. Thomas said that the concern is having to go through legislative bodies just to get three people to help out even if it is for a small operation.

Mr. Cilimberg said that the ordinance now states that the number of such structures designed and arranged for sleeping does not exceed five, and Mr. Rooker is saying it is not to exceed two.

Mr. Wyant said that a lot of time the permit is signed and the applicant is not always aware of what the conditions are, so it needs to be spelled out in a user-friendly fashion.

Mr. Slutzky stated that one of his constituents had to go before the Planning Commission just to get more than seven piano students for a Home Occupation. He added that he would be more comfortable, however, doing all of the farms by special use permit.

Mr. Boyd said he would agree with 10 people in two structures.

Ms. Thomas commented that she really wants to be supportive, and would rather err on the side of not being nit-picky when it comes to agricultural work.

Mr. Cilimberg pointed out that the county's rural area staff and Susan Stimart does try to do some work with the Farm Bureau. There is an additional position scheduled for a rural areas person specifically in next year's budget.

At this time, it was the consensus of the Board to direct staff to readvertise ZTA-2005-005 to allow as a by-right use "up to ten occupants/persons" in two dwelling structures, and anything beyond that requiring a special use permit.

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Agenda Item No. 13. **ZMA-2005-018. Wickham Pond Phase II (Sign # 7).** PROPOSAL: Rezone 19.69 acres from RA - Rural Areas: agricultural, forestal, and fishery uses; residential density (.05 unit/acre) to NMD Neighborhood Model District - residential (3 - 34 units/acre) mixed with commercial, service and industrial uses. Maximum number proposed residential units: Approximately 106. Approximately 16,000 sq ft commercial uses. PROFFERS: Yes. EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Corridor General (CT4) - mixed residential and commercial uses (net 4.5 units per acre for SFD, sfa & duplexes) (net 12 units per acre for townhouses and apartments) (net 18 units per acre for mixed use). Urban Edge (CT3) - supports center with predominately residential uses, especially single-family detached (net 3.5-4.5 units per acre) (net 6.5 units per acre if accessory apartments are added for 50% of the residential stock). Development Area Reserve (CT2) and Preserve (CT1) - development area open space preserve or reserve with very low residential density (net 1 unit per 20 acres). LOCATION: Between Route 240 and the C & O railroad. Approximately 2,200 feet from intersection of Route 240 and Highlands Drive. TAX MAP/PARCEL: 56/91. ENTRANCE CORRIDOR: Yes. MAGISTERIAL DISTRICT: White Hall. (Advertised in the Daily Progress on August 28 and September 4, 2006)

Mr. Cilimberg said on July 11, 2006, the Planning Commission held a public hearing on the rezoning request and the parking waiver for on-street parking. Staff recommended approval and the Commission unanimously recommended approval with the following changes:

1. Revision of proffers relative to transportation impacts to include Eastern Avenue as a capital improvements project to which they could apply.
2. Addition of screening for adjacent parcels on the General Development Plan and Code of Development.
3. Minor revisions to the Code of Development, Application Plan, and to the proffers relative to form.
4. Pull Building A back to 20 feet and add more landscape buffer.
5. Cut off lighting shall be added in the Code of Development.
6. Setbacks are to be addressed on the plan.

The Commission also unanimously recommended approval of the parking waiver for on-street parking.

New proffers were submitted on August 25, 2006 and modified on September 5, 2006 which are included as Attachment A. All of the changes requested by the Planning Commission have been completed and, in addition, the applicant has increased the amount of cash proffers from \$213,300 (\$2,370 per unit for 90 units) to \$405,000 (\$4,500 per unit for 90 units) as shown in the current proffers.

Revisions to the code of development and plan have been reviewed to the satisfaction of the Architectural Review Board (ARB). The proffers have been revised per the recommendations of the County Attorney. Attachment B contains the General Development Plan revised August 25, 2006 and Attachment C contains the Code of Development dated August 25, 2006.

The Planning Commission's requested changes have been satisfied. The Board will need to determine whether the proffers are sufficient to satisfy concerns related to infrastructure and the pace of growth in Crozet. If the Board is satisfied that the proffers adequately satisfy the impacts, staff recommends approval of ZMA 2005-00018 with the current proffers (Attachment A), the amended General Development Plan (Attachment B) and the amended Code of Development (Attachment C).

Mr. Cilimberg said staff recommends approval of a waiver to Section 4.12.9 (a) of the Zoning Ordinance to allow for the on-street parking to be provided for the purpose of meeting minimum parking requirements on lots that do not necessarily abut the lot that the spaces serve.

Mr. Cilimberg reported that this proposal is for rezoning from Rural Areas to Neighborhood Model district, and the property is 20 acres adjacent to the previously approved Wickham Pond I. He explained that this new development would include 106 dwelling units, 16 of which would be affordable with a mix of housing types and an average of about 8.7 dwelling units per acre net, and approximately 16,000 square feet of non-residential neighborhood service uses. Mr. Cilimberg added that there is also a parking waiver being requested. He said that this is part of the Crozet Master Plan area, and Block I is the area that encompasses the CT3 designation, and consists of 48 single-family detached residences, 8 affordable apartment units that would be located in a single structure similar to the other units. Mr. Cilimberg added that there is also greenspace and pedestrian path, some of which attaches to Wickham Pond Phase I located in this particular block that is the back two-third of the project; Block II is four buildings offering a mix of residential and commercial uses, two will be solely residential and the others will have both.

Mr. Cilimberg said that there will also be a plaza area, greenspace, tot lot, and community garden; the access will be to Route 240 with interconnection to Wickham Pond Phase I, and that road will also show future interconnection to adjacent property to the west. He added that staff has evaluated the project using a number of criteria, and the Planning Commission has held several work sessions on this and has recommended approval with certain provisions being met. Mr. Cilimberg said that staff discussed the question of density, as this project bumps up against the maximums for this designation, adding that there is no residential development being proposed in the CT1 and CT2 areas. In the CT3 area, he said, there are 56 units proposed with a maximum in that area of 57 units; in the CT4 area, there are 50 units recommended with a maximum there of 61.

Mr. Cilimberg said that in the CT3 area, the county is dealing with what the Master Plan has said in terms of allowable density – which stipulates 3.5 and 4.5 units per acre as a minimum/middle range, with up to 6.5 units per acre with apartments adding to the residential component. He noted that the wording is not particularly clear, and staff has applied the 50 percent to the additional two units per acre of density and said at least half of that should be affordable. Mr. Cilimberg said that in their consideration of the Liberty Hall proposal, the Board interpreted that as a literal 50 percent of total residential housing stock to get up to the maximum density of 6.5 dwelling units per acre. He indicated that the Planning Commission considered that as well in their deliberation of the Wickham Pond proposal, and the appropriate density for the CT3 section would be different depending on which interpretation is applied.

Mr. Cilimberg said that the applicant has committed to restricting the certificate of occupancy for residential units in buildings C & D in Block II at no earlier than the three-year anniversary of the county's approval of the first site plan, so they are staggering the development a bit. He added that they are also putting a restriction applying to the certificate of occupancy to not allow the issuance earlier than five years of the county's approval of the final site plan. Mr. Cilimberg said that the project positively addresses elements of the Neighborhood Model and includes affordable housing as well as including a neighborhood center; the density as interpreted by staff is in keeping with the Crozet Master Plan. He indicated that the Planning Commission recommended approval based on changes that they anticipated to be made regarding proffers and the code of development before this public hearing; the applicant has addressed all items identified by the Commission.

Mr. Boyd asked about the "moratorium" on commercial and retail development. Mr. Cilimberg explained that in Block II, regarding the non-residential on the first floor – which is all the commercial for this project – they are proffering to delay that development by five years.

Ms. Thomas asked if the Master Plan was taken literally, how many units would be approved. Mr. Cilimberg responded that that would mean 39 units, and they are proposing 56; the other block stays within range as it is mixed with commercial. He explained that the literal interpretation is 50 percent of the total to be affordable, which would mean 28 out of 56. Ms. Thomas noted that the other interpretation is that it would be 50 percent of the new structures.

Mr. Rooker asked if it could be read any other way but literally. Mr. Davis responded that it is up to the Board how they interpret it, as the Comprehensive Plan is a guide.

Mr. Rooker noted that with Liberty Hall, the bonus was not allowed because they did not meet those criteria. He said that a bonus density should be triggered by something significantly beyond the stipulated standard, and the 50 percent should be looked at in this proposal against the total number of units, not adding the affordable in before you do the 50 percent. Mr. Cilimberg mentioned that the CT3 area of this project suggests that the mid-range upper end would be 39 units, and basically what Mr. Rooker is saying that the 18 or 19 units would be affordable and added onto the 39 to get the total allowed.

Mr. Rooker said that was reasonable, adding that otherwise there is a density bonus granted simply for meeting the Comprehensive Plan.

Mr. Rooker added that if it were 19 of those 39 that totals 58 instead of 56 as the applicant proposes (but with only 8 affordable). He said that as he understands the proffer, there is no guarantee that any affordable units be sold; they could be rented, and the maximum period they're proffered to be affordable is five years. Mr. Rooker emphasized that the five-year question was raised with North Pointe, and a number of Board members expressed concern with that.

Ms. Thomas noted that the Board has determined the need for affordable rental units.

Mr. Rooker said that in Old Trail, that provision escaped the Board's review, and in this situation all of the affordable units could essentially disappear.

Mr. Slutzky stated that he expressed concern with this during the North Pointe review, and even though he might support this particular proposal in spite of the five-year "out clause," there needs to be more attention paid to that in the future.

Mr. Boyd asked how the percentages were deduced for affordable housing. Mr. Cilimberg replied that staff had to start somewhere, and used the 50 percent applied to the difference between mid and max, adding that the math works that you get 15 percent of the total as affordable.

Ms. Thomas noted that the bonus never got utilized, but then without reconsidering it the Board and staff set it as a Comp Plan policy at 15 percent.

Mr. Davis said that the density bonus that has been in the ordinance for 20 years is not in play in this particular application; this bonus is specific to the CT3 designation in the Crozet Master Plan.

Mr. Rooker emphasized that this is not what was done in Liberty Hall. Mr. Cilimberg replied that in Liberty Hall, the Board decided that unless the applicant provided more affordable units there would be no density bonus. He said that staff needs some guidance, as the Board interpretation seems to differ from staff's.

Mr. Rooker said to him it would make sense to take 50 percent of the original number.

Mr. Cilimberg stated that the applicant is meeting the 15 percent of the total, but using Mr. Rooker's calculations that number would be 19 instead of 16. He added that in the past, there has been a liberal interpretation of providing affordable housing in the CT3 area.

Mr. Wyant noted that it could be a distribution within the total project.

Mr. Rooker reiterated that the county dealt with the exact same issue with Liberty Hall and did not support the density bonus. Mr. Cilimberg clarified that with Liberty Hall, no affordable housing was being proposed within the CT3, but they were within the project.

Mr. Rooker said that he doesn't have any problem with it being spread across other units, but the question is at what point you qualify for a density bonus. He interprets this application as the proposal being three affordable units short, noting also that these are not accessory apartments.

Mr. Cilimberg noted that accessory apartments do not count towards density under the current zoning ordinance. They are actually units within a larger unit that is a second living space. They were not created expressly for affordable housing purposes. He mentioned that the Crozet Master Plan says that these "granny flats" could take a number of forms, and the bonus density is specific to this particular plan which is why it didn't appear in North Pointe. Mr. Cilimberg confirmed that there would be five units available were this developed by-right, and the cash proffers are applied just to the market rate units.

Public comment was invited.

The applicant, Vito Cetta of Weatherhill Homes, addressed the Board. He stated that the growth area of the county is very small, presenting a map showing the proportion of growth area to the entire county area. Mr. Cetta showed what areas would be built out, and what the Crozet Master Plan shows, commenting that his plan for this "infill property" is in accordance with the Master Plan. He mentioned that the idea is to include a restaurant and grocery in the midst of residential that would comprise a village center.

Mr. Rooker asked what the price point would be for these homes. Mr. Cetta responded that the homes would be in the low \$400s to high \$500s, adding that he would be happy to make the affordable units for sale, not just for rent. He emphasized that the Master Plan says that you can have 4.5 to 6.5 acres, with the high end being allowed if there are half of the units having accessory affordable apartments. Mr. Cetta said that an accessory unit wasn't counted as a unit, but essentially 90 units would be allowed here, and the number he is presenting now is more than acceptable to the Planning Commission. He reviewed the positive aspects of his proposed development, stating it is "exactly what the Master Plan had in mind." Mr. Cetta commented that lots are expensive, and having an over-supply of lots is a good thing to keep prices stable.

Ms. Valerie Long addressed the Board, stating that the project complies with all of the applicable provisions of the Neighborhood Model: it is pedestrian-oriented; there is a significant network of walking trails, sidewalks, neighborhood-friendly streets, interconnectivity, vast areas of open space, and a mixture of uses.

Mr. Rooker asked what the recreational amenities are with this project. Ms. Long replied that there is an outdoor plaza, space for a ballfield, walking spaces, a pond with green space around it, a tot lot, etc. She explained that Block I has rear-loading garages, and Block II has underground relegated parking.

In response to Ms. Thomas' question about parking, Ms. Long explained that all four of the buildings have underground parking, but there would also be street parking for people coming to use the commercial/retail facilities.

Ms. Long emphasized that the site plan respects the terrain, and there is no grading proposed in the CT1 and CT2 areas, and there is a clear boundary with the rural area along Route 240. She said that there is a network of pedestrian trails, 35 percent green space, community garden, playground, and outdoor dining space. Ms. Long explained the "phasing plan," showing the 48 single-family homes and 8 affordable units. She said that the proffers provide that they could not request a certificate of occupancy for any of those structures in Block I until April 2008, and it would be built out in April 2011. Ms. Long explained that there are a total of 30 residential units in Block II, and the proffers provide that they would not request certificate of occupancy until three years after approval of the first site plan – estimated as June 2010.

She concluded by stating that the two remaining (mixed-use) buildings with ground floor retail and second and third-story residential would not obtain a certificate of occupancy until five years after the first site plan is approved, approximately June 2012. Ms. Long said that the first site plan would probably be approved in June 2007. They are talking about a six-year delay until those commercial spaces could be developed. She noted that it totals about 16,000 square feet and is moved further back from Route 240 than the Master Plan initially contemplated. She added that it is a logical phasing also because the Wickham I and Wickham II developments need residents to support the commercial/residential phases.

Mr. Rooker asked about the status of Wickham I. Ms. Long noted that the site plans were approved a few weeks ago.

Ms. Long talked about the three projects Weatherhill Homes has in Crozet, and what they provide in terms of cash proffers, noting that Liberty Hall, Wickham I, and Wickham II would proffer \$842,600 total. She noted that they are flexible as the county has the option of using that money for whatever it wants to, and if it chose to use the funds for the Eastern Avenue road and bridge, it would equate to 10.5 percent of those costs, and that share increases if those costs end up being less.

Mr. Boyd asked how long it would take the county to collect that. Ms. Long responded that on Phase I, the county could ask for \$216,000 in funds in \$50,000 blocks up front, except for Wickham I, starting with the first building permit. She mentioned that there seems to be a perception that there has been a tremendous amount of housing approved in Crozet, but in reality – aside from Old Trail – the only other projects are the Wickham projects and Liberty Hall.

Mr. Rooker asked about the timing of the amounts beyond the \$216,000. Ms. Long replied that the \$216,000 is the amount of proffers that would be contributed for all of the 48 single-family detached houses, and the remaining proffers are obtained through the residential units that are in the mixed-use areas, and the cash for those proffers would be contributed at the time of each building permit issuance. She added that Weatherhill would be pursuing approximately 30 building permits per year, based on build-out levels, absorption rates, etc., adding that the company has already reduced the density originally planned for this site.

Ms. Thomas asked about the "stub out" noted on the top of the plan. Ms. Long replied that the railroad is there, but the land is reserved for future dedication if necessary. She showed a picture of Colonel Wickham, who was President of the C&O Railway in the late 1800's, and named the whistle-stop in honor of Claudius Crozet, who engineered the tunnel. She added that staff's analysis of density, affordable housing, and density bonuses, was excellent.

Mr. Rooker noted that there are no single-family detached affordable units. Ms. Long stated that it is extremely difficult to provide those, noting that only North Pointe has accomplished this so far. She said that the staff's analysis in the staff report prepared for the Planning Commission was "very clear and very sound" and furthers the Comprehensive Plan goals.

Mr. Rooker said that he does not see the sense in providing a 50 percent bonus density for providing 15 percent affordable housing on the total of the project. He stated that the bonus was intended for providing additional affordable units. To him, that is not logical. Ms. Long said that it provides a disincentive to applicants. Mr. Rooker disagreed, stating that you end up with more market-rate units, as you end up with more affordable and market-rate units. Ms. Long said that there is not sufficient space for more open units. Mr. Rooker responded that that is not the suggestion here.

Mr. Cetta stated that there has to be some incentive for developers to build affordable units, adding that the county has already limited the developable area to 80 percent. Mr. Rooker responded that there has to be 20 percent left anyway for stormwater treatment, some amenities for residents, etc.

Mr. Cetta reiterated that there must be some incentive to provide affordable housing. He emphasized that the density is needed in this area. Mr. Cetta also emphasized that there are 106 units total, and 15 percent of them would be 16 units designated affordable.

Mr. Rooker said that the question is how 106 become allowed, and you get there through some credit for affordable housing. Ms. Long added that they are under density in Block II, and the staff's interpretation makes sense.

Public comment was invited.

Ms. Barbara Westbrook said she is concerned about the merchants downtown and those in the area are worried that they will go out of business because they won't be able to stay in "Crozet Station," and there is new competition for them with 16,000 square feet of retail created with the new Wickham development. She added that she is also concerned about the lighting that this project will bring, adding that most people would like the library to be located at the old Crozet school site.

Mr. Morgan Butler, Director of SELC's Charlottesville-Albemarle Initiative, addressed the Board, stating that the group works to support smarter growth and more sustainable transportation for the region. He is neither supporting nor objecting to the Wickham development, but has concerns about the population increase overall in the county in light of infrastructure issues. Mr. Butler stated that the county needs to be more proactive than just waiting for market forces to work things out, adding that the SELC has opposed several recent massive rezoning proposals because they will harm the character of the community, dramatically increase traffic congestion, and harm the environment. He said that Wickham II is a smaller development, with positive features such as the underground parking for mixed-use buildings, the network of pedestrian paths, the proposed roadway connections to adjacent properties, and mixes of uses within the neighborhood. Mr. Butler said that the additional buffer along Route 240 and the stormwater runoff into a rain garden and biofilter are also positive aspects of this design "that captures many aspects of the Neighborhood Model." He stated that the SELC hopes that other developers will follow Weatherhill's lead.

Mr. Butler said that when Mr. Rooker's interpretation of the affordable housing units is used, it is possible that just 15 percent would be achieved, and for the sake of simplicity staff's interpretation could be used. He suggested taking the difference between the lower limit and the density and take half of that, but concentrate all of those in the CT3 areas.

Mr. Jeff Werner addressed the Board, stating that the affordable housing shortage has been blamed in part on the county for delaying projects while costs go up, and the bigger question is why the builders aren't building the units as they are being approved. If they are not building them and their response is 'well because the market's not there,' then he is confused.

Ms. Long mentioned that all of the residential fixtures would be full cut-off fixtures. She also said that none of the projects with affordable housing have been completed yet, but they are being built and this takes time.

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

Mr. Wyant commented that the applicant has provided a delay with developing the commercial aspects of the project, and he appreciates that.

Mr. Dorrier said that this is a textbook Neighborhood Model project, and the developer should be commended for doing a project that the Board has consistently asked for.

Ms. Thomas asked if there is a traffic study that has been done for this project. Mr. Rooker said that there has been, and the traffic at Route 250 and Route 240 would be over capacity with or without the project, but this adds another 1,000 vehicle trips per day with half going to this intersection. Mr. Cilimberg stated that the traffic study was actually built from the Wickham I development.

Mr. Wyant noted that this project is on the north side of the railroad tracks, so the Eastern Connector wouldn't really help. Mr. Cilimberg responded that the idea is that some of that traffic would be diverted away from Route 250 and Route 240.

Mr. Slutzky noted that he is inclined to support the proposal as it is in keeping with the Master Plan, but the affordable housing proffers and density bonus need to be clarified.

Mr. Cilimberg commented that what he is hearing is that the Board didn't agree with staff's calculations for the density bonus.

Mr. Rooker emphasized that with Liberty Hall, the Board did not agree with that method of calculation. He thought the Board provided some guidance at that point about whether or not you could exceed the density for a project that would normally be allowed under the Crozet Master Plan, what you had to do by way of affordable units in order to in effect acquire bonus density to go beyond what the Crozet Master Plan recommends for density in that area. He clarified that what is being said here is that the county is allowing a greater density than the plan calls for simply because the affordable housing criteria has been met.

Mr. Slutzky responded that while he agrees with that interpretation, there is a market challenge presented with that. He thinks we need to give clarity so we do not have a moving target. Mr. Cilimberg agreed that staff needs that too.

Mr. Rooker said that this project will have a \$30 million sale value, so we are talking about a development that has a lot of high-priced housing that can help carry some affordable units. He added that three more affordable units is not a "huge undertaking" in an area that has a lot of \$500,000 homes. Mr. Rooker said that with the infrastructure contemplated by staff as part of this and other rezonings in the area, the county is facing about \$40 million in infrastructure improvements. He indicated that given approved units, there is currently a greater than 12,000 population approved, and the county must find a way to capture more per unit to offset those costs. We have got a huge amount of approved projects where we are not getting in his view anywhere near significant contributions to infrastructure.

Mr. Rooker added that he will not support this project because it does not meet the density stipulated for the Master Plan, and this project increases by-right density by over 2,000 percent. Mr. Rooker said that the rezoning does add value, but should give more to infrastructure, and the county has assured the people in Crozet that things don't usually build out to maximum density, and this even exceeds that. He acknowledged that the phasing does help protect downtown Crozet, but regardless he cannot support this.

Mr. Wyant asked how many units it would be if the applicant followed the Master Plan. Mr. Cilimberg replied that it would mean a total of 39 units if the CT3 mid-range were followed, plus 61 for CT4, for a total of 100 units.

Mr. Rooker said that the maximum density without a bonus would be 100 units, and this is the second or third rezoning where an applicant has come in at maximum – and this one exceeds it.

Mr. Slutzky stated that staff interpreted the density bonus differently.

Mr. Rooker noted that this is the same applicant who came in with the Liberty Hall proposal.

Mr. Wyant said that the applicant might be confused by the interpretation, and asked if the Liberty Hall standard is what should be used. He asked what is meant by that statement.

Mr. Slutzky responded that his approach would be to look at the overall design, and to the extent that there are discrepancies, it would not be fair to hold the applicant to undefined standards.

Ms. Long said that she felt strongly that the density for Liberty Hall was reduced between the Planning Commission hearing and the Board review. They were not looking for density bonus provisions at Liberty Hall. She added that it is ultimately the Board's decision, but the applicant looked to staff for guidance. They do not exceed the overall maximum density. Ms. Long noted that it is very difficult to provide affordable units already.

Mr. Cilimberg said that Liberty Hall was acted on while this project and Haden Place were already being worked on. Staff actually constructed its' report to acknowledge what happened in Liberty Hall in the middle of doing a review [with the applicant] before it went to the Planning Commission. He stated that staff explained that predicament to the Commission related to CT3 and affordable housing. It has all come along during concurrent reviews.

Mr. Rooker asked if this project without the density bonus is beyond the upper limits allowed through the CT3. Mr. Cilimberg said that the maximum allowed would be granted in CT3 (39) and in CT4 (61) because the CT4 is mixed use.

Mr. Slutzky stated that he does not have any problem with how staff has interpreted this.

Mr. Tucker said that if there is a majority of the Board who agree with Mr. Rooker, then the plan could be approved with that used instead.

Mr. Slutzky stated that he hasn't had time to think through the impact on the market.

Ms. Thomas commented that there are some very good aspects to this, and five years has to be enough to encourage development in downtown Crozet. She also is pleased with the cutoff lighting and hopes that sets a precedent for future proposals. Ms. Thomas stated that she agrees with the SELC's assessment of positive aspects of this plan, including interconnectivity, and she is contemplating whether the additional units should be permitted to bring the total to 106 instead of 100 given citizen concerns. She suggested that the applicant come back with a deferral and come back with 100 units.

Mr. Rooker noted that the other way to look at it would be to add three affordable units to get the number up to 106. He would support a proposal with those elements, noting some of the previously mentioned positive factors. Mr. Rooker stated that he does not agree that the \$4,800 is at all adequate for public infrastructure, but on balance the project is positive.

Mr. Slutzky commented that this is a very good project, and he is not sure how much better it will be to hold the applicant to standards that staff didn't really even agree with.

Mr. Wyant said that he is committed to making downtown Crozet work, and he is concerned about five-years delay for new commercial not being enough time.

Mr. Slutzky asked how much time would be enough. Mr. Wyant stated that the infrastructure is vital in making the downtown work.

Ms. Thomas said that she does not want this to be turned down.

Mr. Rooker said that this is in Mr. Wyant's district, and his opinion counts regarding downtown and supporting infrastructure. He said that this would likely be a three-to-three vote if it were to happen right now.

Mr. Boyd stated that he is 100 percent committed to this approach to development, and he feels it is wrong to turn this down.

Mr. Wyant asked for clarification of the density bonus. Mr. Rooker responded that the current figure is 100 if the maximum density is taken into account.

Mr. Boyd emphasized that a six-lot difference is not enough for him to send a message that the Board is not committed to this type of good development.

Ms. Thomas noted that the perceptions among Crozet residents are equally important.

Mr. Rooker asked if the applicant would have to come back if this meant a difference of just a few units.

Mr. Davis explained that the Board has no obligation to vote on it and can defer as they see fit. If the applicant chooses to amend the proffers, that would constitute a material change under state law and would require another public hearing to be advertised. He added that they would also have to make changes to the code of development, and all of that could come back in October.

Mr. Rooker said that those changes would be relatively minor.

Mr. Dorrier commented that it seems this applicant is treated differently than other applicants.

Mr. Boyd said that it is unfair to nit-pick this applicant.

Mr. Slutzky responded that it is not nit-picking, but just following the plan. He said that this is an excellent project, and turning it down sends a bad message.

Mr. Dorrier added that the Planning Commission unanimously recommended approval of this project.

Ms. Thomas said that she would agree to the project on face so that the applicant would not have to go through the entire process again just to add three affordable units.

**Motion** was then offered by Mr. Dorrier to approve ZMA 2005-018 Wickham Pond Phase II with the current proffers, the amended General Development Plan, and the amended Code of Development. The motion was **seconded** by Mr. Boyd.

Roll was called, and the motion carried by the following vote:

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

**Motion** was offered by Mr. Dorrier for approval of a waiver to Section 4.12.9 (a) of the Zoning Ordinance to allow for the on-street parking to be provided for the purpose of meeting minimum parking requirements on lots that do not necessarily abut the lot that the spaces serve. The motion was **seconded** by Mr. Boyd.

Roll was called, and the motion carried by the following vote:

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

**PROFFER FORM**

Date of Proffer Signature: Sept 5, 2006.  
ZMA # 2005-00018 Wickham Pond 2  
Tax Map 56 Parcel Number 91

19.69 Acres to be rezoned from RA to NMD (Neighborhood Model Development)  
in accordance with the Code of Development (dated August 25, 2006)  
and Application Plan (dated August 25, 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 with the offered plans approved for development. 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. The Owner shall contribute \$405,000 cash (\$4,500 per unit for 90 units) to the County for the purpose of mitigating impacts from this development. The cash contribution shall be used for transportation improvements, schools, libraries, fire and rescue, parks or any other public use serving the Community of Crozet as identified in the Comprehensive Plan (hereinafter, "Capital Improvement Project"). Contributions for Block 1 shall be payable under one of the following methods, which shall be designated by the County: (1) ninety (90) days after receipt of written notice by the Owner from the County identifying a Capital Improvement Project within the Community of Crozet for which the cash would be applied, provided that contributions for a Capital Improvement Project shall not exceed \$50,000 during any sixty (60) day period, said request is after the County's approval of the first building permit within the Project, and the aggregate amount of said requests does not exceed \$216,000 (48 detached units at \$4,500 per unit), or (2) in increments of \$4,500 cash per unit, for any market-rate condominium or new detached single family dwelling unit prior to or at the time of issuance of a building permit for any such dwelling unit. Contributions for Block 2 shall be payable in increments of \$4,500 cash per unit for any market rate condominium unit prior to or at the time of issuance of building permit for any such dwelling unit. If the cash contribution has not been exhausted by the County for the stated purpose within (10) ten years from the date of the County's receipt of the final contribution, all unexpended funds shall be applied to a Capital Improvements Project for the Community of Crozet.
2. Detached single family units within Block 1 as identified on the Application Plan shall have the following restriction: The Owner shall not request that the County issue certificates of occupancy for residential units earlier than April 1, 2008.
3. Buildings C and D within Block 2 as identified on the Application Plan shall have the following restrictions: The Owner shall not request that the County issue certificates of occupancy for residential units earlier than the three-year anniversary of the County's approval of the first final site plan; The Owner shall not request that the County issue certificates of occupancy for ground floor commercial/retail space earlier than the five-year anniversary of the County's approval of the first final site plan.
4. The Owner shall install a landscape buffer along the eastern property line of Block 2 if the units immediately adjacent to Block 2 on the adjoining property are not constructed with a façade (facing Block 2) that is evocative to a typical front entry elevation and as approved by the County's Director of Planning.
5. The Owner shall provide sixteen (16) units of affordable housing as identified on the Application Plan produced by Timmons Group, dated August 25, 2006, entitled "Application Plan — Figure 2"; eight (8) units to be built within Block 1 (for sale or rent), and eight (8) units to be built within Block 2 (for rent or sale). The Owner shall convey the responsibility of constructing the affordable units to any subsequent purchaser of the subject property. The current Owner or subsequent Owner shall create units affordable to households with incomes less than 80% of the area median income, such that housing costs consisting of principal, interest, real estate taxes and homeowner's insurance (PITI) do not exceed 30% of the gross household income.
  - A. For-Sale Affordable Units - All purchasers of for-sale affordable units shall be approved by the Albemarle County Office of Housing or its designee. The Owner shall provide the County or its designee a period of 180 days to identify and pre-qualify an eligible purchaser for the affordable units. The 180-day period shall commence upon written notice from the Owner that the units will be available for sale. This notice shall not be given more than 120 days prior to the anticipated receipt of the certificate of occupancy. If the County or its designee does not provide a qualified purchaser during this period, the Owner shall have the right to sell the unit(s) without any restriction on sales price or income of purchaser(s). If these units are sold, this proffer shall apply only to the first sale of each unit.

B. For-Rent Affordable Units

- i. 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 County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent affordable unit 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. The requirement that the rents for such for-rent affordable units may not exceed the maximum rents established in this paragraph 5B shall apply 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").
  - ii. 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 paragraph 5. 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 paragraph 5B. At least thirty (30) days 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 paragraph 5B(ii) have been satisfied.
  - iii. Reporting of Rental Rates - During the Affordable Term, within thirty (30) days of each rental or lease term for each for-rent affordable unit, the then-current owner shall provide to the Albemarle County Housing Office a copy of the rental or lease agreement for each such unit rented that shows the rental rate for such unit 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.
6. Overlot Grading Plan - Subdivision Plats: The Owner shall submit an over-lot grading plan (hereinafter, the "Plan") meeting the requirements of Proffer 6 with the application for each subdivision of the Property into single family detached lots 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 site plan or subdivision plat. The Property within the subdivision shall be graded as shown on the approved Plan. The Owner shall not request that the County issue a certificate of occupancy for any dwelling on a lot where the County Engineer has determined the lot grading is not consistent with the approved grading Plan. The Plan shall satisfy the following:
- A. The Plan shall show all proposed streets, building sites, setbacks, 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 designed 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 may flow across up to three (3) lots before being collected in a storm sewer or directed to a drainage way outside of the lots.
  - F. No surface drainage across a residential lot shall have more than one-half (1/2) acre of land draining to it.
  - G. All drainage from streets shall be carried across lots in a storm sewer to a point beyond the rear of the building site.
  - H. The Plan shall demonstrate that an area at least five (5) feet in width, or to the lot line if it is less than five (5) 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 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 one hundred (100) 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.

- 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.
- K. In the event that the County adopts overlot grading regulations after the date ZMA 2005-018 is approved, any requirement of those regulations that is less restrictive than any requirement of Proffer 6 shall supersede the corresponding requirement of this paragraph, subject to the approval of the Director of the Department of Community Development.

Charlotte Dammann  
Barnes-Crozet, LLC  
by: Charlotte Dammann, Member

Barnes-Crozet LLC  
Printed Names of All Owners

September 5, 2006  
Date

(At this time the Board went back to Agenda Item No. 4.)

Agenda item No. 4. Alternative Engineering Review Pilot Program.

Mr. Boyd said that the Board had requested last month that the Development Review Task Force take time to review this pilot program, which they did over the course of three meetings. He explained that it is a pilot study for two years, and the task force wants to build in an evaluation process with six months of review at the final stage (not the beginning) of the process. Mr. Boyd noted that Mr. Graham's staff has felt confident with the plan, and there are a number of checks and balances that will remain.

Mr. Rooker asked when the checklist for review gets created. Mr. Graham replied that staff has already drafted a checklist, which has already turned out to be 14 pages long with 25 pages of attachments. He said that one of the concerns heard from the task force was that it is narrowing the field of judgment as it relates to engineering.

Mr. Boyd noted that the engineer would have the option at that time to pull the project out of the process and take the long route.

Mr. Graham confirmed that this would only apply to final site plans, and there is currently a backlog of five or six weeks with site plan reviews. He said that there are mandatory review requirements that go to the top of the list, and the final site plans fall in the gaps. Mr. Graham said that typically final site plans only go to the Commission when during a review of the preliminary the Planning Commission has requested that the final come back to them. He added that if it is called up, it would not be allowed to go through this abbreviated process and would get a full staff review.

Mr. Boyd noted that routine engineering matters would likely fall into this category, and more complicated items would be reviewed in more detail.

Mr. Graham said that if an engineer wants to do something different than the checklist process, then they would need to come in to one of the group's Thursday meetings and get agreement that it's OK to skip that step. He explained that every plan would still get an abbreviated review with focus on problems that are most likely to occur with that project, where the consequences of an error are the most severe. Mr. Graham noted that the engineers have not had time to get out in the field and look at projects, and a number of plans are not being built as approved which holds up the certificate of occupancy.

Ms. Thomas acknowledged that engineering staff is less than what Mr. Graham wanted, and asked if he had a full staff if he would still recommend using this method of review. Mr. Graham replied that he would, as even with a full staff there is not enough time for detailed review of preliminary site plans. He emphasized the importance of evaluating the actual 'buildability' of projects.

Mr. Boyd reported that the online and paper survey for developers would be issued Monday, and encouraged developers in attendance to participate. Mr. Graham said that Community Development is also providing paper copies and the link to the online form.

Ms. Thomas asked who would be compiling the surveys. Ms. Catlin replied that an intern from U.Va. would be responsible for compiling the data.

**Motion** was offered by Mr. Boyd to approve the Alternate Engineering Review pilot program for two years as set out below. The motion was **seconded** by Mr. Dorrier. Roll was called, and the motion carried by the following recorded vote:

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

### **Alternative Engineering Review Pilot Program**

**Purpose/Outcome:** The program's goal is to require fewer reviews with equal or better plan quality through use of detailed checklists, while making submitting design professionals more responsible for quality control of their plans. This effort will also allow County staff to focus more time on preliminary plans and plats, documentation of processes and training private engineers on County processes, and field inspections to verify proper construction.

**Length of pilot program:** 2 years pilot study, with 6 month reports to the Board on number of plans submitted for the pilot program, number of plans not included in the pilot program, number of plans pulled from the pilot program due to noted problems, and number of mistakes found in the field. At end of 2 year pilot program, there will be a decision by the Board on whether to continue the program as part of the plan review process.

**Eligibility for pilot program:** Design professionals holding a current Virginia license. (Architects, Engineers, Landscape Architects, and 3B Surveyors)

#### **Staff's Obligations with Process:**

- Collect data on number of plans using the process, number of plans not using the process, number of plans pulled from the process for noted problems, and number of problems found in the field after approval for both plans using the process and those not using the process.
- Prepare and distribute detailed checklists for engineers using the process (as well as those not using the process)
- cursory reviews of certified plans to verify work complies with checklists. Plans found to not comply with checklists may be removed from the pilot program at staff's discretion.
- Prepare reports to the Board on the pilot program status at six month intervals.
- Staff will assure design professional are notified of eligibility to submit under the pilot program with approval of preliminary plans or plats. Staff will also provide a list of requirements for final approval, checklists for final approval, and submittal forms for final approval as part of the preliminary approval.

#### **Design Professional's Obligation with Process:**

- Familiarize themselves with County ordinances, design standards and checklists.
- Submit plans that fully comply with checklists. Whenever questions arise as to complying with the checklist, the design professional will seek guidance from staff and incorporate their recommendations into submitted plans.
- Assure owner understands improvements must be built as shown on approved plans and changes from the approved plan must be approved by the County.

#### **Property Owner's Obligation with Process:**

- Assure design professional is given adequate time to assure quality of certified plans.
- Construct improvements as shown on the approved plans.

\* \* \* \* \*

#### **How will the program work?**

A: Staff will provide certification forms and courtesy checklists at the front desk and through the department's web page. Engineers will review their plans against the items on the applicable certification statement and when they are confident they have addressed all of the items, place the certification on the plan. When a plan is submitted, staff will see if a certification is on the plan. If so, staff will give the plan a quick check to verify selected items. If staff doesn't find significant issues with this check, the plan will be approved. If staff finds significant issues have not been addressed, the plan will be put in the review queue and receive the normal review in the order received. In the latter case, the engineer will be notified their plan is receiving the normal review. With this process, the engineer who properly prepares a certified plan can expect approval in about a week. Conversely, the plan that follows the normal process will receive the same review as currently done. A resubmitted plan may also use the certification process, provided the engineering reviewer finds the number and extent of changes is not excessive.

#### **What plans are eligible for this program?**

A: Certifications are available for engineering plans associated with final site plans (where a preliminary plan has been approved), private road plans (where a preliminary plat has been approved), stormwater management plans, erosion control (grading) plans, and mitigation plans.

#### **What plans are not eligible for this program?**

A: Preliminary plans and plats will not be eligible for this program. Public road plans will not be eligible for this program, as VDOT approval of those plans is necessary. Waiver requests will not be eligible for this program. Special plans, such as an early grading plan in a planned development, will be considered on a case by case basis.

**What happens if the engineer is uncertain of an ordinance or policy requirement?**

A: County staff will still be available to assist designers with any questions they may have prior to certifying a submission. As many of you already know, the engineering reviewers have a regularly scheduled time on Thursday afternoons, starting at 2:00pm, when designers and developers can discuss applications and reviews. Staff does ask that the engineer call and set up an appointment in advance of the meeting.

**What happens if errors are found after approval?**

A: Staff will treat errors the same as currently happens when errors are found after approval or we find the project has not been built to the approved plan. In those cases, staff will review and determine what corrections are needed to comply with County ordinances. As part of this pilot program, staff will report all errors and resolutions to the County Board.

**What happens if you find the process needs to be changed?**

A: As this process is totally administrative, staff can easily modify the program or even abandon the process if it doesn't work. If there are major program changes, we will send out a notice similar to this notice. For minor changes, we anticipate keeping an email list of engineers using this program and they will be notified of those changes.

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

Ms. Thomas reminded the Board that the Rivanna River Basin Commission would like two members from the Board as representatives. She said that she would be interested in serving. Mr. Rooker said that the meetings would likely be frequent in the beginning, but would taper off. Mr. Dorrier said he would also serve. Ms. Thomas said that there is a major U.Va. grant due in early November, so the group wants to get off the ground as soon as possible.

**Motion** was offered by Mr. Boyd to appoint Ms. Thomas and Mr. Dorrier to represent the Board on the Rivanna River Basin Commission. The motion was **seconded** by Mr. Wyant. Roll was called, and the motion carried by the following recorded vote:

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

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Ms. Thomas indicated that she had brought some books and other information back from the NACo annual meeting, and they are available upstairs in the Board office. She noted that there are some good pictures available of the plastic recycling containers used by other localities for public events.

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Ms. Thomas mentioned that there is a transportation conference scheduled for November.

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Ms. Thomas said on September 18<sup>th</sup> and 19<sup>th</sup>, she would also be attending the Governor's Natural Resource Leadership summit at Hungry Mother State Park, which would include about 60 people from around the state.

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Mr. Boyd said Board members have been provided with a copy of a resolution approving acquisition of property in Crozet. He would like to make a **motion** to adopt the resolution.

Mr. Wyant commented that the news release issued by Ms. Catlin gives this property as a downtown option for the library. It does not mean the decision has been made.

Mr. Davis mentioned that the resolution references that the purchase is subject to the contingencies in the contract, one of which is the Board chooses the property for a library site, and if they don't then the sellers won't sell and the contract won't go forward.

Mr. Tucker noted that the County will hold some public meetings on a proposed location after which it will come back to the Board for a decision.

Mr. Davis again said the resolution does not obligate the Board to construct the library on this site. In fact, if that site is not used the contract will not be completed. Mr. Rooker clarified that this is for the property at 1171 Crozet Avenue in Crozet.

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

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

**RESOLUTION TO AUTHORIZE  
ACQUISITION OF PROPERTY**

**WHEREAS**, the County of Albemarle desires to acquire certain property within the County in the community of Crozet for the purpose of providing public space for library facilities and other public improvements; and

**WHEREAS**, an agreement for the acquisition of such property owned by Thomas Amato and Martha B. Amato located at 1171 Crozet Avenue in Crozet has been negotiated.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby approves the County Executive's execution of the Sales Contract dated September 1, 2006 between Thomas Amato and Martha B. Amato for the purchase of approximately .9 acres of property and the improvements thereon located at 1171 Crozet Avenue, Crozet, Virginia, (Albemarle County tax parcel 056A2010001800) and authorizes the County Executive to execute the deed and all other documents approved by the County Attorney necessary to purchase and accept the property on behalf of the County upon a determination that all the contingencies in the Sales Contract have been satisfied.

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Mr. Boyd noted that there is a United Land development project adjacent to Hollymead Town Center that is being held up pending Places29, and he would like for it to get back into the system, as it would help get Berkmar Drive Extended built.

Mr. Rooker noted that this would require a Comprehensive Plan change.

Mr. Graham said that this is a CPA, not a rezoning, and the idea was to incorporate that change into the master planning process.

Mr. Boyd stated that he would like to see those go on parallel tracks at this point. Mr. Graham said that the Planning Commission was not willing to proceed without the Comprehensive Plan Amendment ahead of Places 29.

Mr. Rooker stated that when you're talking about increasing the growth area, it is a significant undertaking, well beyond a typical rezoning. He added that he would like to see what comes out of the Places 29 process.

Mr. Boyd said that the county might be losing an opportunity.

Mr. Rooker stated that he is not aware of what the developer is offering or not offering, but building a piece of that road within his development to serve his own development "is not a big deal." He indicated that the bridge is \$25 to \$30 million, and he is not aware of any developer willing to offer that kind of money. Mr. Rooker said that the developer came in to meet with him a couple years ago and there was no offer to build the bridge. He would be very hesitant to vote to increase the growth area and adopt a Comprehensive Plan change without knowing what would be on the table. Mr. Boyd said he agrees, but we are not allowing the developer to get anything on the table.

Mr. Rooker emphasized that it seems like the wrong approach to allow a CPA change just to accommodate this developer.

Mr. Graham said it is on the table right now in terms of Places29; they are proposing that land use change as part of the process. It is part of the Places29 process as opposed to a separate Comprehensive Plan amendment.

Mr. Boyd commented that it would take until next year.

Mr. Davis responded that it would take that long anyway, adding that a Comprehensive Plan change would take staff review, Planning Commission review, work sessions, and Board review.

Mr. Rooker emphasized that if it gets approved as part of the master plan, it becomes part of the Comprehensive Plan for that area.

Mr. Boyd complained that a developer came forward a year or more ago to pursue a Comprehensive Plan change, and it hasn't gone anywhere.

Mr. Graham clarified that the Planning Commission said they were not interested in pursuing the amendment, but they said they were interested in pursuing it as part of Places29. The Comprehensive Plan Amendment died. He emphasized that the Commission wanted it to be considered as part of Places29.

Mr. Boyd responded that the developer decided not to appeal it. Mr. Davis explained that there is no appeal process, as there is no requirement to act on the Comprehensive Plan.

Mr. Wyant commented that Places29 is the "quickest route" available.

Mr. Boyd asked when anything would come back from Places29. Mr. Graham responded that the draft plan would be taken to the public in January or February, then the Planning Commission will get it and start considering the master plan.

Mr. Wyant commented that it won't get to this Board until sometime next summer possibly.

Mr. Boyd commented that it takes years to get anything approved. It is always interesting to him how it takes it so long to do this; it is forever.

Mr. Rooker said there is a presumption that you know what needs to be done; what is it we're trying to get done here? Mr. Boyd responded that Berkmar Drive Extended has been discussed for years and years. Mr. Rooker stated that the developer put in a proposal just a year ago when the Places29 process had already begun.

Mr. Boyd commented that businesses don't wait forever, and would move onto other locations.

Mr. Rooker said that Albemarle doesn't seem to have any problem attracting businesses to the county, so apparently we are doing something right. He added that it seems the county is grappling with trying to deal with all of the applications coming in here, not trying to drum up more business.

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Mr. Slutzky mentioned that at the last meeting Mr. John Martin asked the Board to address TJPED openness, and Mr. Tucker has now been invited to join the Executive Committee and will be able to attend all meetings and share those discussions as appropriate.

Mr. Tucker said that any closed session would not be open to the public and discussed, and he will now be in on those.

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Mr. Tucker reminded the Board to bring their notebooks for Friday's Strategic Planning session.

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Agenda Item No. 15. Adjourn to September 15, 2006, 9:00 a.m. (Zehmer Hall) for the Board's Annual Retreat, "Funding the Future".

At 10:55 p.m., with nothing further to come before the Board, Mr. Wyant offered **motion, seconded** by Ms. Thomas, to adjourn to September 15, at 9:00 a.m. (Zehmer Hall) for the Board's Annual Retreat, "Funding the Future".

Roll was called, and the motion carried by the following recorded vote.

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

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Chairman

Approved by Board
Date: 02/14/2007
Initials: EWC