

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on December 13, 2006, at 3:00 p.m., in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia. This meeting was adjourned from December 6, 2006. The regularly scheduled night meeting began at 6:00 p.m. in the Lane Auditorium.

PRESENT: Mr. Ken 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, Clerk, Ella W. Carey, and Director of Planning, V. Wayne Cilimberg.

Agenda Item No. 1. Call to Order. The meeting was called to order at 3:00 p.m. in Room 235 by the Chairman, Mr. Rooker.

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Agenda Item No. 2a. Work Session: Alternatives to amend and update the County Code to regulate the firing of firearms in the County (deferred from November 1, 2006).

Mr. Davis said at the Board's meeting on November 1, there was discussion as to what State and County laws control this situation. He will first review those laws and then present the Board with alternatives. He said that under State law there are several statutes that generally apply across the Commonwealth. One statute is a provision which regulates the reckless handling of firearms. It is a crime under State Code if anyone handles a firearm which directly endangers the life, limb or property of another. Another State law prohibits maliciously shooting at trains or cars, and another makes it illegal to maliciously discharge a weapon within or at an occupied house.

Mr. Davis said another statute makes it illegal to willfully discharge in any place of public business or place of public gathering, a firearm. This has been a somewhat difficult statute to interpret. His initial conversation with the Commonwealth's Attorney was that this would probably not apply, but upon additional research, they found a case decided in Virginia Beach which held that a sidewalk in front of a place of business in Virginia Beach was determined to be a place of public gathering. This may have applicability in places that would not generally be publicly-owned places of business or gathering. It could have some application where even on private property it is a place where people publicly gather.

Mr. Boyd said at the last meeting there was discussion about what has been happening at the Waffle House restaurant. Would that qualify as a public gathering place? Mr. Davis said if it occurred where people publicly gather, it is possible. He said that after finding the Virginia Beach case, an argument could be made that in a public parking lot or a public sidewalk Section 18.2.280 could apply. It had not generally been construed to apply, but now there is an argument that it could. There is not a one hundred percent guarantee it would be successfully prosecuted depending on the circumstances.

Mr. Boyd asked if schools and churches would be considered as public gathering places. Mr. Davis said under this interpretation churches would probably be covered by the statute that says you cannot discharge a firearm in a public place of gathering.

Mr. Davis said this same statute goes on to make it illegal to discharge a firearm upon grounds of schools, and a firearm cannot be discharged on public property within 1000 feet of the property line of any school. He does not know where that circumstance would arise, but there must be some place where there is public property close to a public school.

Mr. Rooker asked if the statute covers the building or the building and everything around the building. Mr. Davis said it would be either in the building or around the building.

Mr. Rooker asked how "around the building" has been interpreted. Mr. Davis said it is illegal to discharge a firearm on school property, or to even carry a firearm onto school property. Also, it is illegal under State code to fire a firearm in or across any road or within the right-of-way of any public road.

Mr. Davis said that under the current County Code, it is illegal to discharge a firearm within any residentially-zoned district except for the Neighborhood Model district, which has not been added to the definition. Under this regulation, there are no exceptions to that rule except for the defense of person or property. In addition, the County currently has restrictions on carrying loaded rifles or shotguns on roadways, restrictions on hunting within 50 feet of primary or secondary roads, and a County Code restriction similar to State law that says you cannot shoot in or across any road or right-of-way in the County.

Mr. Davis said that generally most jurisdictions like Albemarle County have more stringent restrictions. Virginia Code Section 15.2-209 is the enabling authority allowing counties to adopt more stringent firearms ordinances. This section allows the Board to prohibit shooting in any area of the County which in its opinion is so heavily populated as to make such conduct dangerous. That has been interpreted by many localities to apply to areas of the County that have been zoned for a use other than agricultural. In many localities it has been applied to create safety zones around any occupied dwelling or place of business or place of public gathering. He said ordinances in Chesterfield, Prince William, Hanover and Fauquier create safety zones of 100 yards to 200 yards around those types of dwellings. The theory is that in heavily populated areas where there are occupied structures or places of business,

etc., the shooting of firearms creates a danger for the people who live in close proximity to those buildings or those people who may gather there.

Mr. Davis said he had indicated in the executive summary that there is enabling authority that specifically applies to public schools and county parks. It gives the locality the authority to restrict shooting within 100 yards of any public school or park. That authority has been adopted by a lot of localities who used it to give the public a sense of greater security around those areas of public gatherings and where school kids are located. Albemarle has not adopted that restriction.

Mr. Davis said at the Board's direction, after the discussion on November 1, he put together six alternatives for the Board to consider further regulating the discharge of firearms. Alternative 1. Just fine-tune what is already in place, but not expand it beyond the residential districts. Alternative 2. Create a countywide safety zone. This would establish a 200-yard safety zone around occupied buildings and places of business in addition to prohibiting shooting throughout the residential districts.

Mr. Davis said there are variations of those alternatives offered. Alternative 3. One would be to create it so there would be a prohibition countywide except for the RA District. Under that option there would no longer be a safety zone concept; this would be a concept similar to that presently used in the residential districts except it would be expanded throughout all the other zoned areas of the County, except for the RA district.

Mr. Davis said Alternative 4 would be to have it countywide, except for the RA prohibition, and within the rural areas district allow populated subdivisions to request the Board to consider declaring their subdivisions restricted areas similar to the running at large ordinances for animals.

Mr. Rooker asked if that option would only apply within a subdivision's borders. Mr. Davis said it would be at the Board's discretion as to how to do that, but it could be done in the way leash laws apply. He said there would be the option of establishing a safety zone around the boundaries of a subdivision if the Board found that area was so heavily populated as to make shooting dangerous, which is the standard under the enabling legislation.

Mr. Davis said Alternative 5 basically is to have a prohibition countywide except in the RA District, plus having the petition by subdivision option, plus establishing a safety zone around parks and schools. The final alternative, Alternative 6 is to establish it countywide, except in the RA District, and in the RA District establish the safety zone surrounding occupied dwellings, places of public gathering, businesses, and also protect schools and parks without having a specific regulation dealing with them.

Ms. Thomas asked for clarification of the rural area safety zone. She asked if this is something other than the 200 yards from each subdivision. Mr. Davis said the 200-yard safety zone in Alternative No. 6 (see staff report) is intended to be the same concept as presented in previous draft ordinances which created a safety zone around each individual dwelling, business or place of gathering. It is a variation of what the Board saw before, but was only applied to the rural areas. In addition, Alternative 6 would have a blanket prohibition against shooting in all areas that were zoned anything other than RA.

Mr. Rooker asked if in all of these alternatives Mr. Davis is proposing, the exceptions included before would still be included. Mr. Davis said generally that is true, but in further examining the ordinance, some tweaking of those alternatives may be necessary. For example, proposed exceptions 5 and 6 deal with the discharge of firearms to kill any dangerous or destructive wild animals or to euthanize any sick or wounded animals. The police expressed concerns about having those exceptions apply in heavily populated areas, particularly in the urban areas. Since the last meeting he has learned that euthanizing animals by shooting them can be a dangerous method of shooting; law enforcement officers prefer that they do that.

Mr. Davis said there may be areas in the rural part of the County where that danger would be less significant. Limiting that exception to the rural areas might be considered. The same applies to dangerous or destructive wild animals. The destructive term is troubling to law enforcement; it could be a squirrel or a raccoon and they do not want people shooting at those types of animals in neighborhoods. He said that might be narrowly defined again to apply to less populated areas of the County. He said these exceptions could be applied countywide. However, they do not apply to the residential districts. The only exception that currently applies in the residential districts is a very narrow one in defense of persons or property as permitted by law. He said the Board may want to give some additional attention to where those exceptions should apply.

Mr. Boyd asked if when talking about schools and businesses or gathering places which are already covered by State law, if that has to do with the word "recklessly". He asked why the County would want to enact a 100-yard restriction if there's already a 1,000 yard restriction around schools. Mr. Davis said the general restriction under State law applies to shooting on the property itself. You can't carry a gun onto school property or shoot on school property. It doesn't create a safety boundary independent of any action by the County. There is one exception to that which is an odd restriction. If there is public property which is within 1,000 feet of a school property line, there is a State law that says you cannot shoot a firearm on the public property. He does not know where that would have any application in Albemarle.

Mr. Rooker asked if that would apply if you were on a sidewalk by a school. Mr. Davis said "yes." Generally, State law prevents shooting within a right-of-way, and most sidewalks are within a right-of-way. State law has protections, but they are not broad protections. There was an incident within the last couple of months where firearms were being discharged in close proximity to Crozet Elementary School which is in an RA part of the County. The school was concerned about it and took the children off of the

playground. It was determined later that it was not a violation of any law because it was lawfully being done and was not within a restricted area of the County as far as shooting a firearm. Shooting was not occurring on school property although it was within a couple of hundred yards of the school. It was disconcerting to the school folks but it was not illegal.

Mr. Dorrier said he thinks the Board is setting up a solution in search of a problem. The problem doesn't exist, and the Board would be setting up an additional law for a problem that is nonexistent. He thinks there will be strong opposition to this proposal because it would affect the lawful landowners of the County who may seek to target practice or discharge a firearm within 200 yards of their house. He thinks this will be unnecessary and counterproductive. As a prosecutor, he prosecuted some gun charges, and he had criminal statutes that were used to do that. He said the gun laws which were violated usually resulted in conviction and the State law was sufficient to address the problem. He thinks that if another district is created, the Board is complicating a situation which is not a problem at the present time. He said Mr. Davis had noted in the executive summary that "Option A, No. 1, has been in effect since 1981 with few enforcement problems."

Mr. Rooker said the 200-yard suggestion is only one of a number of suggestions. He said there was a question about whether the Board should prohibit the firing of firearms around business establishments. Another is whether to prohibit the firing of firearms near parks and schools. Another is the issue of residential areas in the rural areas. He said that now, for example, the County's ordinances do not cover Neighborhood Model developments.

Mr. Dorrier asked why the reckless discharge of firearms, which is a State statute, does not cover that.

Mr. Rooker said Mr. Jim Camblos started this whole process by saying he did not think what the County has on the books at this time is sufficient. Then Chief John Miller said you can't have a good quality of life if you are afraid to let your kids outside or let your dog roam in the yard. He said there was a case in Earlysville where people set up a firing range on private property near a relatively developed area. The neighbors contacted County police but because the firing range was not illegal the neighbors did not have any recourse. The Board received a letter today from someone whose son was hit by a bullet while he was sitting in his living room. There is another case where a lady was shot while standing on her porch and was killed. He read aloud from other letters which had been received.

Mr. Dorrier said he has seen the letters, but thinks the State laws will protect these people, but you have to catch the person who did it first.

Mr. Rooker said that after someone is shot, there is recourse. They never did find the person who shot the lady standing on her porch. They found who accidentally shot the person in their living room, but the shooter could not be prosecuted because there was no violation of law. He thinks there are certain categories recommended that there would not be a lot of argument about, like businesses or a Neighborhood Model development. He hopes the Board will agree to the ordinance changes recommended by the County Attorney which do not include the issue of 200 yards or 100 yards within the rural area neighborhoods. He asked for opinions from other Board members.

Mr. Boyd said he has seen the letters mentioned by Mr. Rooker. He wondered if some or all of these ordinances were in effect if it would have made any difference in the cases mentioned.

Mr. Rooker suggested removing from the discussion at this time the subject of rural area subdivisions. The first part of this discussion has to do with fixing the parts of the current ordinance that do not involve rural area neighborhoods. It would be to include businesses and Neighborhood Model subdivisions. He said the County Attorney has recommended that certain things be done regardless of what the Board decides to do in the rural areas.

Mr. Boyd said he has no problem with that. He thinks the Neighborhood Model needs to be included in the gun ordinance. He would have preferred to have a checklist as to how these laws could be enforced rather than a mix and match of different ways to enforce this. Mr. Davis said one decision the Board could make is whether there should be a restriction on shooting firearms not only in all residential districts but also in all commercial and industrial districts. Those districts are primarily located within the urban area since the five percent of the County not zoned Rural Areas is generally high density residential. Is it appropriate to restrict the shooting of firearms in commercial, industrial, as well as all residential districts? He would add to that a second component. Does the Board want to adopt an ordinance specifically enabled by State Code to prohibit shooting within 100 yards of all County parks and schools? There is already a State law restriction on shooting on the grounds of those areas, but the Board can create a 100-yard buffer area around schools. In the rural areas there is obviously a "hot button" argument between hunters and other people, but within the commercial, industrial and residential districts, there are no hunting issues at play. Does the Board want to further restrict those areas?

Mr. Wyant asked if there is nothing in the ordinance now to cover the schools, as well as businesses and the Neighborhood Model because of density. He thinks the Board should agree on what areas should be covered. Last year the State Legislature passed a law saying a loaded gun can be carried in a public right-of-way if you own property on both sides of the road. That is difficult to enforce. He does not approve of it because he thinks it is an unsafe situation. He thinks the law should apply to all public roads whether you own property on both sides or not. Mr. Davis said the State Legislature said you could carry a loaded gun within the right-of-way to hunt if you had permission from property owners on both sides of the right-of-way; but discharge of a firearm in that area is still prohibited by State law. You can carry a loaded weapon under that limited circumstance; otherwise within Albemarle County you

cannot carry a loaded rifle or shotgun in a public right-of-way. The County ordinance needs to add the exception the General Assembly has now mandated upon local ordinances; you have to provide an exception if the hunter has permission of the property owners on either side of the right-of-way. The County's ordinance has not addressed that yet and it does need to be done.

Mr. Wyant asked if the County has any choice here. Mr. Davis said it does not.

Mr. Rooker asked if the Board members agree that schools, the Neighborhood Model District, parks and commercial areas should be included.

Mr. Slutzky asked if that means everything inside the designated growth area plus schools, businesses, and parks outside of the growth area.

Mr. Rooker said at this time the law does not apply to schools inside the growth area. Enabling legislation allows creation of a 100-yard safety zone around schools. Mr. Davis said that is regardless of what the school is zoned. He would present it as restricting the discharge of firearms in all zoning districts except the RA which is the most basic way to approach the question. In addition, for those schools located in RA areas and parks, there would be the 100-yard restricted area that is enabled specifically by State law.

Ms. Thomas said she has a technical question which was brought up by one of the letters the Board received. She said someone mentioned in a letter that the County is required to install a sign delineating these areas. She can't find that in what she has read. Mr. Davis said that is not correct. The enabling legislation for restricting shooting that the Board is talking about does not have that requirement. There is another Code section dealing with restricting hunting that says if areas where hunting is restricted are created, signage to identify those restricted hunting areas must be posted. Legislation was presented to the General Assembly last year and was passed in the House, but tabled in the Senate that would have repealed the general enabling legislation that enabled counties to restrict shooting. Instead, a new statute was created that would combine shooting and hunting under one statute and would have had a requirement that the areas be posted with signage wherever shooting or hunting were restricted. That would make it difficult for counties to implement the ordinance being talked about.

Ms. Thomas said the Board has received letters inquiring as to the definition of "firearm." She asked if it is within the County's purview to deal with that issue. Mr. Davis said the Board can deal with it in local ordinances. In the options he presented (see Staff report) he proposes a definition of firearm, which is a broad definition found in several other local ordinances. There is no State Code definition as far as obligating a locality to adopt a definition. A local governing body could change the definition of firearm if it so desired. What he has proposed is a generally accepted definition.

Mr. Rooker agreed the Board should look carefully at that definition.

Mr. Wyant said he can already see problems with the definition.

Mr. Dorrier asked if there are already State laws on the books prohibiting deliberate shooting in commercial areas. Mr. Davis said there is a State law which makes it unlawful to willfully discharge a firearm in any place of public business or place of public gathering. It does not make it illegal to discharge a firearm in a place of business, the distinction being that it has to be a place of "public" business. There is no case law defining what a place of public business is. It would cover a place where there is a government meeting or something of that nature. Whether or not it applies to a shopping center is debatable. The term that has been defined by the courts is "place of public gathering." In the case he referenced earlier in Virginia Beach in 2001, there was a dispute as to whether a sidewalk in front of a business was a place of public gathering. In that case the Court of Appeals determined that even a private sidewalk connecting a place of business to its parking lot was a place of public gathering because a sidewalk is a place where people gather. The Court found it was proper to prosecute someone under a similar statute that had a definition of place of public gathering as being one of the prohibited areas. In some instances he thinks current State Code Section 18.2-280 which makes it a crime to discharge a firearm in a place of public gathering would have some application to some businesses under some circumstances. Whether or not it would apply at the Waffle House at midnight after the public business has closed, he does not know, and would doubt someone could be successfully prosecuted under that circumstance.

Ms. Thomas said she thinks there is no excuse for shooting in a commercial/industrial area or close to schools or close to parks. She does not know if other Board members are saying they have a problem with those limitations.

Mr. Rooker said if that could be decided, the Board could then move onto what he thinks is a more difficult issue.

Mr. Slutzky said as much as he is always wary of abridgement of what some people feel are constitutional rights, he thinks it is completely appropriate to outlaw the discharge of a firearm in the entire designated growth areas and add to that schools and parks in the rural area. Beyond that he has not decided what he thinks and would likely be influenced by a public hearing. Right now, he is convinced he would support those two things.

Ms. Thomas said there is a distinction between shooting and hunting. No one is going to be hunting in a commercial area or in schools. When it comes to limiting hunting, she will be influenced by what she hears. She does not understand how the person whose bullet ended up in the arm of a child

inside of a house was not found guilty of recklessly handling their firearm. She wanted to be sure everybody was agreeing to the core idea, and she thinks they are.

Mr. Wyant asked for clarification on two issues. He asked if hunting could be grandfathered within the newly proposed County park. He said there was an agreement that the County would maintain the trails. Mr. Davis said that is a short-term situation. As soon as the land becomes a park, that arrangement is not envisioned to continue. He said hunting and the use of those trails by the public are probably not a compatible use. Once the land is designated as a park, he would surmise that hunting would be a conflict.

Mr. Wyant asked if someone who had a gun license and sold guns could shoot within a gun shop basement or room. Mr. Davis said that exception could be expanded to cover that possibility. He said that in other ordinances that situation has been addressed.

Mr. Slutzky said he would support that exemption.

Mr. Wyant said he has no problem with everything else which has been discussed.

Mr. Boyd asked for clarification of what zoning districts would be included. Mr. Davis said there is a map showing where the zoning districts are located. He would not recommend doing something by Comprehensive Plan designations because there are not clear boundaries in that Plan, but he would recommend doing it by zoning districts. The vast majority of the urban area is zoned something other than RA. There are some small sections of the urban area which are still zoned RA.

Mr. Wyant said the State hands out a booklet of hunting laws to hunters, and he asked if these boundaries, etc., would be shown in that book. He said most hunters will be looking at that book, not looking at Albemarle County ordinances. Mr. Davis said this information would be included by reference.

Ms. Thomas said the map shows the rural area as white, while the parks are shown with a magenta line around them. She said the schools are magenta dots. Mr. Davis said outside of the growth areas there are some areas which are zoned PRD or PUD in the rural area (aqua color). The current ordinance restricts shooting within the boundaries of those subdivisions. He said the magenta circled properties are either parks or schools. A number of those are scattered throughout the County, and they are not currently protected other than that the County Code now restricts any shooting within County parks, and State law prohibits shooting on school grounds. There is no buffer area around parks or school grounds at this time. He said State Code specifically enables a 100-yard buffer restriction. This Board has the discretion to expand that under Section 15.2-1209 authority. The authority that deals specifically with schools enables this Board, without any finding of danger or other public population consideration, to put a 100-yard buffer around schools.

Mr. Rooker asked if the Board members were comfortable with the schools, Neighborhood Model, parks and commercial areas being included. Mr. Davis said it would include all zoning districts except RA.

Mr. Dorrier said he is not in favor of doing it beyond the Neighborhood Model district and the schools. He is against putting in parks and commercial areas. He thinks they are already protected.

Mr. Rooker asked Mr. Dorrier if he thinks shooting should be enabled in commercial areas within the County.

Mr. Dorrier said he does not think it should be enabled. He thinks State law should be enforced, and he does not think it is a problem in parks and the commercial areas.

Mr. Rooker said the County Attorney has said there is a situation which has arisen over the last year or so where people gathered at a commercial establishment in the County fired guns late at night. It is unlikely that current State law prohibits that.

Mr. Dorrier asked why that is not reckless use of a firearm.

Mr. Rooker said Chief Miller said it was highly unlikely that they could successfully prosecute someone under those circumstances under the current statutes. At the worse, the law would be redundant. Under Mr. Dorrier's argument that it is not allowed, what difference would it make if there were an ordinance that is at worse redundant with State law? Mr. Davis said under State law the Commonwealth's Attorney would have to prove that it specifically endangered life or limb when it happened, and to do that there would have to be some evidence or testimony that there was a reasonable likelihood that specific shooting endangered someone. That would make it difficult to prosecute that case, whereas if shooting were prohibited because the area was so populated as to create a danger, the simple fact of shooting would be the violation rather than proving it in fact endangered someone in that particular instance.

Mr. Dorrier asked about someone shooting within 1,000 feet of a public property if the shot went across the road; there is a road near the Waffle House. Mr. Davis said you would have to prove that it was discharged across the road or within the road for it to be a violation of that Code section.

Mr. Dorrier said he can go along with including commercial areas, but he does not see any situation with parks that needs to be corrected. Mr. Davis said the current County Code prohibits shooting

of firearms within designated County parks. State law allows creation of a safety zone of 100 yards around the boundaries of those parks.

Ms. Thomas said one issue has been bothering her during this discussion. She said a bullet from a deer hunting rifle can travel much further than 100 yards. There are laws about reckless handling of a firearm. If anyone were hit, there are laws that should be enforced, but she does not want people to falsely believe they are safer than they are. She thinks the mere sight of hunters and hunting within 100 yards of a school and park is something that visually is upsetting to people. She would not want people to think they should not pay attention to what is going on around them. She thinks the Board has arrived at an agreement on the items the Chairman mentioned.

Mr. Rooker said it seems a majority of the members are interested in the first part of this going forward. He suggested that the Board now talk about the rural area subdivision component. Mr. Davis said there are a couple of different options to deal with the rural area. One option is to create a safety zone around occupied dwellings, places of business and public gathering places. That safety zone could be any distance the Board feels is appropriate to provide some safety to occupied dwellings. Chesterfield has used 200 yards, which other localities have used 100 yards. Another approach is to only deal with those neighborhoods where the neighborhood expresses a desire to have that restriction in place. The Board could consider each neighborhood individually based on the circumstances if 50 percent of the property owners petitioned the Board to place restrictions on that neighborhood. He said the map he presented earlier shows the lots that exist in the rural areas. There are hundreds of areas in the County that have neighborhood-like situations in the rural areas. The Board could potentially have hundreds of public hearings on this issue over the next few years if people wanted this type of protections. He said this is the same option the Board uses now for having the running-at-large dog laws in certain areas.

Mr. Rooker asked how many of those hearings there are each year. Mr. Davis said there are 40 some neighborhoods that have petitioned the Board over the years to have the dog laws implemented. In the rural area, not many have petitioned for that law, most are in the growth areas.

Mr. Slutzky asked if PUDs are already included in the restrictions. Mr. Davis said PUDs are included in the current restrictions on residentially-defined areas. He said the only PUDs are old, nonconforming developments approved in the 1970s. There are not many of them, but they are included in the existing ordinance. He said there are two options for the Board to consider. One is to create safety zones around structures, and the other is to address the issue on a case-by-case basis upon petition of the neighborhoods.

Mr. Rooker said if it were done on a case-by-case basis, it would only apply within the subdivision. It would not create the 200-yard restriction unless that was imposed on top of it. A neighborhood could petition to have the no shooting ordinance apply within the borders of that neighborhood. Mr. Davis said the option he presented would be limited to that.

Mr. Dorrier said he thinks that would be a nightmare to enforce and prosecute. There would be one neighborhood with the restriction, and another neighborhood without it. Law enforcement officials would have to figure out where the boundaries are.

Mr. Rooker said that same thing is done today with the leash law. Basically the Board allows subdivisions to petition for that law to apply within their neighborhood. He said there are some horror stories where people who live in neighborhoods on two or three-acre lots and somebody takes up shooting in their backyard. It seems neighborhoods should be able to decide whether they want to create no-shooting areas within their neighborhoods. He said he hunts and owns guns, but he doesn't think it's safe to use guns on two and three-acre lots. He would be in favor of allowing neighborhoods to determine for themselves whether they want their neighborhood to be a no-shooting neighborhood except for the exceptions that have been mentioned. He asked that all the Board members express an opinion one way or the other. Should there be no law in the rural area neighborhoods; should they be able to elect for themselves; should a countywide safety zone be setup? Those are the three options. The Board needs to make a decision and move on.

Mr. Slutzky said he is comfortable with what's already been agreed to, but his dilemma in having a public hearing on what might be done in the rural areas comes from two perspectives. One - when you live in the rural part of the County, the bargain is that the rural life is what you get and that includes dirt roads, and it might include hunters being around. Hunters and other responsible users of firearms in a rural setting is generally accepted component of rural life. On the other hand, he would be interested in hearing from the public to what degree this restriction would actually disrupt their ability to hunt. A public hearing might provide that kind of information.

Mr. Rooker asked about the option of letting the neighborhoods decide for themselves.

Mr. Slutzky said they are still in a rural area so he has the same dilemma in his mind.

Mr. Rooker asked if Mr. Slutzky is in favor of sending this to public hearing so the people can weigh in on it.

Mr. Slutzky said he would like to always take these deliberations to the public.

Mr. Wyant said in densely populated areas it is unsafe, but hunting is a variable. One never knows where the game will be, so you could be shooting in any direction. That is why he thinks the Board should think about the distance. In the case of the 200 yards, is that 200 yards from each house within

the subdivision, or is it 200 yards from the boundaries of the subdivision? He thinks it is the smaller subdivisions where it is unsafe. If someone wants to target practice so that it takes place in a set direction, it is not as unsafe as people think. However, when hunting you just don't hunt where there are houses.

Mr. Rooker asked if in order to hold a public hearing on this subject the Board has to pick one of the options. Mr. Davis said he would have to draft an ordinance for a public hearing if the Board wants to consider adoption of an ordinance. If the Board just wants to have a general public hearing on the options without an ordinance, it could do that. He thinks staff was trying to get the Board to a point where it would have a public hearing on a real option so it is not just asking for debate on something the Board is not interested in adopting.

Ms. Slutzky asked if it would be appropriate to ask staff to draft three different ordinances for public hearing and the Board could decide after that hearing whether to go forward with any of them. Mr. Davis said that is unwieldy. It could be done, but would be out of the ordinary for a Board to advertise a public hearing on three ordinances and consider adopting just one of the three.

Ms. Thomas asked if the Board would be under any constraints with a nonspecific ordinance. Mr. Davis said this will not be a provision in the Zoning Ordinance, so the Board is not under the same restrictions. A public hearing notice has to give the public a reasonable notice of what the ordinance is about; if the ad provides a reasonable notice of what the restrictions are then the Board has the ability at the conclusion of the public hearing to make reasonable amendments to the ordinance. It becomes a subjective matter as to whether or not the ordinance gave people reasonable notice as to what was going to be adopted.

Mr. Wyant said if all options were put out to the public, the Board would have some people for guns and some against guns, and it would not help the Board make a decision at all. He thinks the Board needs to settle on some basic thing with a minimal ordinance about safety, etc. and let that be the ordinance put out to the public. He thinks there would be a better chance of getting favorable comments from both sides. People will always be opposed to guns while some will be for guns. He thinks the Board needs to think about safety and density.

Mr. Boyd said thinking about the time staff has to spend on this, what about holding a general public hearing on this before going with a specific ordinance.

Ms. Thomas said she agrees with Mr. Wyant that the Board would probably just get pro and anti comments that would not be helpful. If there is a proposal which takes the middle ground, she thinks people would say whether it meets their concerns or not and there would be a more practical response. Anyone who has sat through the Board's discussion of this subject knows it is not greatly enthusiastic about any of the options.

Mr. Boyd asked if an ordinance is needed. It seems there could be specific proposals without writing an ordinance. He thinks it is unfortunate the Board has to legislate common sense, but it seems that is what must be done. On the other side of it, there is the controversial question of how much the Board will restrict neighborhoods and rural areas. Does the Board need a drafted ordinance to bring those options to a public hearing?

Mr. Rooker said a public hearing is needed for an ordinance. There are three options, and if it is the sense of the Board that one of these options is not palatable, that option should be eliminated now. The Board could go forward and take Mr. Slutzky's approach and say the first part of the ordinance deals with what the Board discussed earlier today which everybody seemed to agree on. There are three possibilities for the second part, and the ordinance could be drafted to include those three possibilities.

Mr. Boyd said Mr. Davis indicated that would be difficult to do. Mr. Davis said he thinks it could be done, but it is unusual to take that approach. In this circumstance, there could be a basic ordinance with an RA component which could be either a no-change, neighborhood-by-neighborhood or safety zone. If one of those three is unacceptable to a majority of the Board, he thinks it should be eliminated now. If all three of those are acceptable to the Board, that is something staff could draft.

Mr. Boyd said one of the options is fairly clear. He asked the other two options.

Mr. Rooker said there is the "do nothing" option. There is the option of allowing neighborhoods to have the ordinance apply only within the boundaries of the neighborhood itself. The third option is to create a safety zone of 200 yards around residences, or whatever the Board decided.

Mr. Boyd said there are then really four options. The fourth option would be commercial, parks and schools.

Mr. Rooker said all of the options include that as a component. The variations relate to what happens in the rural subdivision areas. There are three potential options, so Mr. Slutzky's idea, given the Board's discussion of taking it to public hearing with three alternatives, is probably advisable. Mr. Davis said there is really only one alternative that would be drafted because the no-change would not need any drafting, the neighborhood-by-neighborhood does not require an ordinance as it would be a policy established by the Board, so there would only be the safety zone option before the Board, or the Board could do nothing.

Mr. Boyd said he wants to make it clear that he will not decide what, if any, changes are needed until he hears from the public. He sees no reason to have a public hearing if the Board has already made up its mind about a portion of it.

Mr. Rooker said he does not think the Board has made that decision yet, it is only deciding what it will take to public hearing. He asked if the Board agrees to what Mr. Davis just outlined.

Mr. Dorrier said he does not agree. He disagrees with adding parks and the area wide approach to this question. He thinks that is a mistake and will create a problem with enforcement. If it were limited to just commercial buildings and schools, that would be appropriate.

Mr. Rooker said if the Board decided not to do that, that change could be made later. Mr. Davis said that is correct.

Mr. Rooker said the Board is only deciding what to take to public hearing in order to get citizen comments.

Mr. Dorrier said he thought the Board was trying to come up with a reasonably restrictive ordinance that does not put the County "over the edge" and cause a major enforcement problem. He thinks that is why the Board needs to be conservative in putting out the ordinance, and try to find an ordinance the majority will support. Mr. Davis said he understood the Board had reached a consensus that there would be a public hearing on an ordinance that would restrict shooting in all zoning districts except RA, and in addition there would be a 100-yard restriction around public parks and public schools in the rural area.

Mr. Slutzky said commercial was to be included.

Mr. Rooker said "all zoned districts" would include commercial as well.

Mr. Dorrier said he would support that except for the 100 yards around the parks, as they are contiguous with wooded areas where hunters could be hunting.

Mr. Rooker asked if the Board could agree to include that for purposes of the public hearing.

Ms. Thomas, Mr. Wyant and Mr. Slutzky all agreed.

Ms. Thomas said she thinks it is interesting that Mr. Davis has said the middle ground would be a policy rather than a legal decision. She suggested that the notices of the public hearing include a description of this in order to get comments from the public as to that option.

Mr. Rooker asked if it is possible to include this in the notice of the public. Mr. Davis said it is possible. He said the second part of the ordinance would be to propose a safety zone in the rural area around structures and other places of public gathering of business, with the understanding that the Board may or may not accept that. A fallback position would be to have neighborhoods petition, or place no additional restrictions in the rural area at all.

Mr. Slutzky asked that the 200 yards be included in what is written, knowing that it could be made less restrictive.

Mr. Boyd asked if records could be retrieved on how many gun issues there had been over the last 20 years.

Mr. Rooker asked what "gun issues" entails.

Mr. Boyd said it could be just complaints about shooting. Mr. Tucker said he would ask Chief Miller for such a report.

Mr. Davis suggested that unless there is great urgency to the issue that the public hearing take place in March. That would let staff know if the General Assembly is taking any action in this regard which could short circuit this discussion.

Mr. Rooker said he thinks that would be wise.

**(Note:** The Board took a brief recess at this time, and then reconvened.)

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Agenda Item No. 2b. Mountain Overlay District (MOD) and Rural Areas Resource Protection, Work Session with the Albemarle County Planning Commission.

Present at this time were members of the Albemarle County Planning Commission: Mr. Jon Cannon, Mr. William "Pete" Craddock, Mr. William Edgerton, Ms. Marcia Joseph, Ms. Julia Monteith, Mr. Calvin Morris, Mr. Eric Strucko and Mr. Duane Zobrist.

Ms. Marcia Joseph, Chairman of the Planning Commission, called the Commission to order.

Mr. David Benish, Chief of Planning, explained that on September 13, 2006, the Board had a work session to discuss the Mountain Overlay District (MOD) Committee's recommendations for a three-part

program to "protect the economic, cultural, and natural resources of Albemarle County's mountains." The Committee's report advised that, "Several aspects of the proposal, such as enhanced protection for critical slopes, might be appropriate for general application in the County's Rural Areas." The Board directed staff to investigate extending the protection measures recommended in the MOD framework to the rest of the Rural Areas and to schedule a joint meeting with the Planning Commission to review this report.

Mr. Rooker said as a way to proceed it would make sense to talk about the items in the report with respect to the MOD, and get a sense of the Board's willingness and the Planning Commission's interest in moving forward with the various aspects – critical slopes, erosion and sediment control plan, stream buffer recommendations, building heights, safe access, waivers and modifications. At a later time, if the Board decides to move forward with all or some of these recommendations, it could talk about extending some of these recommendations to the rural areas.

Mr. Benish said most of the information provided today is applicable to the entire rural area. As a background, he explained that critical slopes are defined as slopes of 25 percent or greater. The major changes between the proposed MOD framework and the existing regulations is that the MOD would essentially prevent roads and driveways from disturbing critical slopes and through improvements to those ordinance requirements ensure that buildings and appurtenances to buildings such as septic fields and the like are not located in critical slope areas. He said staff believes that applying these critical slope provisions over the entire rural area would be effective in reducing development impacts and potentially protecting natural resources. He said staff believes that having these applied to the entire rural area would simplify the implementation process in lieu of having two separate standards, one for the rural areas and one for the development areas. It should be recognized that these provisions can reduce the ability of some properties to exercise their development rights, but there would be some development potential in the proposed MOD Ordinance for the initial home on the site. Applying critical slope restrictions for driveways and roads and buildings could have the potential of affecting development potential on certain properties. He then offered to answer questions on this recommendation.

Mr. Boyd said there are already ordinance provisions related to critical slopes. He asked what is not already covered in the proposed Mountain Protection Ordinance. Mr. Benish said the critical slopes provisions don't prohibit establishment of driveways and roadways on critical slopes, so the MOD provisions would enforce that.

Mr. Boyd asked if one must apply for a critical slopes waiver in order to do those kinds of things. Mr. Benish said parts of the ordinance control road design; the owner is not precluded from constructing them on critical slopes – there are design standards for those roadways.

Mr. Dorrier asked if a critical slope is defined as anything over 13 percent. Mr. Benish said critical slopes are slopes of 25 percent or greater.

Mr. Mark Graham, Director of Community Development, said there is currently an exemption for accessways – including roads and driveways – if there does not appear to be an alternative available for development; this would restrict the applicant's ability to choose how they develop their property. If there are two building sites on a lot, one below the critical slopes and one above the critical slopes, the critical slopes could not be crossed with a driveway just because they preferred the higher building site.

Mr. Benish said the goal of the MOD effort in critical slopes was to ensure that residences are not places on those critical slopes. He said improvements are needed to the ordinance to ensure that building locations through final plats and through building permits accurately show where the buildings are to be located, and that they are off of critical slopes. That is in the ordinance now, but is difficult to enforce. He said erosion and sediment control recommendations are one way to address that issue.

Mr. Rooker asked if the Board and Commission would prefer to discuss each of these recommendations as they are given, rather than waiting until after the full presentation. He thinks that first there needs to be a consensus that there is an interest in having a Mountain Protection ordinance at all. He said he personally supports having a Mountain Overlay District ordinance.

Mr. Boyd said when this was discussed previously the Board asked that it come back for further discussion. At that time, the Board basically discussed phasing and clustering and did not spend much time on the details of an ordinance. He, personally, thought there were some good parts to the recommendations, but he did not understand how it would be implemented or how to compensate people for lost property values. He said the Board heard from the public who said there should be no restrictions on building on plateaus (one of the recommendations), and he thought the Board would get a list of alternatives based on public input. The Board had said there might be some merit to having these recommendations apply in areas other than the mountaintops. He said this presentation seems to be geared toward saying the Board agrees with all of the recommendations of the MOD Committee and how to apply those recommendations. He would rather go back to just the MOD Ordinance.

Mr. Rooker said it should be made clear that this discussion is about the applicability of these recommendations in a mountain overlay district. Once the Board gets through that discussion, the Board might go back and discuss the elements that could be extended throughout the rural area.

Mr. Boyd said looking at the bigger picture, the Board never discussed the third part of the consensus recommendation of the Committee to come up with a compensation method for people who would lose property rights because of this new ordinance. That is a critical issue to him and will guide how he feels about adoption of this ordinance. He asked Ms. Thomas, who was a member of the MOD Committee, to explain that third part.

Ms. Thomas said it is listed on Attachment A to the staff report. She said it is "public acquisition of interest in land." The Committee thought it was important to have incentives, and a subgroup brainstormed what those incentives might be. There are a lot of them, but it was not viewed as compensation. It was considered as a way to have incentives. There was interest in discussion of what might help landowners in the mountain area. Mr. Benish said the three parts were to take a regulatory approach, an incentive approach, and to have better land management through design review. He said the entire committee did not intend that the acquisition concept be a compensation concept. It was more of a proactive approach to reserving certain areas.

Mr. Rooker said that would be an almost impossible task. That is true with virtually every zoning ordinance that has been passed in the County; ordinances essentially take away property rights. He said this is a recommendation to come up with reasonable strategies to protect the rural area and at the same time consider incentives that might benefit property owners in the rural area in a general way, not be specific to a claim for compensable loss. He said present day stream buffers restrict property rights. Everything restricts property rights in some way; the question is the benefit of the restriction and whether it is reasonable given the circumstances.

Mr. Dorrier said the question at the public hearing was how to deal with property owners who have land with flat areas halfway up the mountain but they have to cross critical slopes to get to those flat areas. He asked if the new, revised ordinance has ways to deal with that. What is the County going to do for those landowners? Mr. Benish said the MOD Ordinance is structured to allow for a road for the initial building lot in the mountain protection area and to allow for a road for lots which were established as of 1980. That was the intent of the ordinance, but the ordinance was also trying to regulate and control the amount of impact the development of roads would have in the mountain protection area. There was an understanding that the road improvements could have an impact to development potential in the MOD.

Mr. Wyant asked the original intent of the ordinance. Was it to not view houses on slopes? Was it to not build on steep slopes? He said there are many other things which are tagged onto this. He would like to know the basic thought behind this ordinance. Mr. Benish said the intent is to protect the mountain areas as a critical resource that has both economic and environmental value to the County. Visibility adds an impact to the economy, and it is an important component of the tourist base. It is an important area for resource protection as identified in the Comprehensive Plan. It is a headwater area. It is an area of significant critical slopes. It is an area where development creates a higher risk for safe access to the property. There are multiple reasons to protect the mountain areas. The committee looked at balancing all of the issues that were identified. One of the reasons for the multi-regulatory approach was to address those issues so as to provide a benefit to the quality of development in the mountain areas which has an economic benefit to the community, and to use a proactive approach to set that land aside.

Mr. Benish said that presently no ordinance has been drafted. Staff has only an outline which gives some directions. One of the goals of the meeting today was for the Board to advise staff how much depth to get into when devising an ordinance; should it apply only to the mountain protection area or should it apply to the entire rural areas of the County. He said the Committee looked for an ordinance which would use design components to address some of the issues, such as clustering where it would have the least impact for development in that area. The Committee recognized that some provisions might limit total development potential in certain areas given the particular character of the site.

Mr. Wyant said he thinks the idea is not to have a major development on a mountainside. Staff said there could be a house or two on the mountainside, but there must be a way to get to that site by a road that does not run through a critical slope area.

Mr. Bill Edgerton said he is in favor of a Mountain Protection Ordinance. His understanding of what originally initiated concern about mountain protection was the regional significance of any development that occurred on mountaintop ridges that would go far beyond the individual landowner and become a community concern. Suggestions for how to do and restrict development on the mountaintops is based on good physical design. Perhaps that same design could be applied to other parts of the rural area that would not have a regional impact as far as vision, but might have some impact as far as erosion or destruction of habitat or critical slopes. The critical slope is currently protected to a degree in the County's ordinance. He has not understood why the ordinance exempted roadways and parking areas from critical slopes. He said the Commission reviewed a project last night which had buildings proposed in critical slopes that certainly were in violation of the ordinance, but the parking areas and the driveways which cut across the critical slopes were exempt. That is a loophole in the ordinance. He thinks that over three-quarters of the residents of the County have continuously asked for protection of these rural areas because of the impacts they have on the entire community. He thinks this is a healthy exercise. He also thinks a critical slope in the rural area is just as valuable on a regional basis as it is on a mountaintop. He hopes the same standards can be applied in both situations.

Mr. Benish said that is staff's conclusion on this particular recommendation. This will help staff, if and when it moves forward to draft an ordinance, to more clearly craft that ordinance knowing where it should be applicable.

Ms. Thomas said if all cannot even agree there should be greater protection for critical slopes than there is today – whether they are in the mountains or in the rural area – then there is no need to talk a lot about where it should be applied. She said the Committee was composed of people having quite diverse opinions and it took a long time to get a consensus of the committee members. The idea of protecting critical slopes better than they are protected today was one of the easier issues discussed. Committee members wanted to protect the piece of property which existed as a parcel before 1980 in order that a house could be built. That is why the wording is as it is (she referred to Page 2 of Attachment

A). The provision is that it would apply to "lots of record created before 1980 in order to establish the first single-family residence, provided there is no alternative building site and no alternative route for the road." She said there was the question of what "mountain protection" means. She is distressed that the Board is still talking about whether it wants an ordinance at all.

Mr. Boyd asked why the Committee chose the date of 1980. What if people bought property prior to that?

Ms. Thomas said that was the date of the great rural area rezoning.

Mr. Boyd asked if people might not have done something prior to that date in anticipation of building that family home, or two family homes, or a family subdivision, and had already roughed in roads they will no longer be able to use.

Mr. Slutzky said he does not have the benefit of the history that others do, but he understands this is not about eliminating activity on the mountaintops. It is about accommodating activity in a way that is deferential to the optimal preservation of ecological systems that are valued in the County. There is an aesthetic component, but it's not the only one. There are erosion issues associated with construction of dwellings and driveways and parking on these slopes. All of these technical/ecological considerations were discussed by this Committee. What the committee came up with was a consensus of the best way to accommodate activities on those mountaintops to protect the ecological systems while at the same accommodating human activity. It was his impression that there was strong support among the Board members for what was already established.

Mr. Slutzky said in order to move forward, the Board would need to direct staff not only to create an ordinance, but it would need to discuss in greater detail some of the incentives discussed during the committee process. To the extent that this management initiative might cause some people to lose some use of their lands for this good purpose, some offsetting tools must be created. He suggested that today, these bodies move through each of the particular elements the consensus group has already agreed to, and which the Board several months ago agreed to carry forward to the next step, and identify which measures they are supportive of just in the MOD. Once there has been a decision as to what the Board will move forward with, it should tackle the question staff wanted to discuss today; that question is the application of those same principles to the rest of the rural areas.

Mr. Dorrier asked if a family subdivision would be allowed on a flat piece of property on the mountain. Mr. Benish said a family subdivision is just a method of subdividing property, and ultimately would be subject to the same zoning regulations in terms of density of development and location.

Mr. Dorrier said he did not understand the answer. Mr. Davis said it might be helpful to understand the current ordinance concerning critical slopes. Under the current County ordinance which would apply in the Mountain Overlay District, you can't develop on critical slopes except that roads and utilities can be located on critical slopes if there is no reasonable alternative to creating a lot for which you have a development right. Currently, in the Mountain Overlay District, if you have two development rights, and you can meet the other regulations regarding those lots, and you have to cross a critical slope in order to create those lots, you can cross a critical slope to create as many lots as you have development rights if there is no reasonable alternative. That applies to family subdivisions or any other lot. There is no special treatment for family subdivisions under the critical slopes ordinance.

Mr. Rooker said at this time apparently the waiver is interpreted to mean that if one proposes a particular building location and can show that in order to get to that location you must cross critical slopes, you get the waiver. Mr. Davis said you don't need a waiver for a road or utilities if there is no alternative. If there is an alternative, then you could apply for a waiver. If you could argue that a waiver is appropriate in order to encroach on critical slopes for a building site, you would be required to get a waiver. But, for a road or utilities, if you can establish that there are no alternative means to get to the site that does not disturb critical slopes, no waiver is required. That is a by-right disturbance of critical slopes.

Mr. Rooker said that is the current interpretation by staff, but it could be interpreted that if there is an alternate building site that doesn't require crossing critical slopes, you need to select the alternate site. Mr. Davis said that under the current ordinance, that is the case.

Mr. Rooker said he does not know how the other Board members feel about this, but this is just a matter of the way staff interprets and applies the current ordinance. Mr. Davis said that is the way staff applies the current ordinance unless you can show there is no alternative to disturbing critical slopes; you can't disturb them for a roadway or utilities.

Mr. Rooker suggested that there are three building sites, one of which requires crossing critical slopes to get to it, but staff does not say there is an alternative site that does not require crossing critical slopes. He understands staff only looks at the alternative for the road, not the alternative for the building sites. Mr. Davis said this only applies to the first building site on a lot. If there is a large parcel with three potential building sites, you could propose a subdivision plat that would create three lots that would each have one building site and the exception for a road to get to each of those building sites would apply. If a road is necessary to get to that first building site on the lot, that road is by right if there is no alternative to crossing the critical slopes. That is the major distinction between what exists today and what he understands the Mountain Overlay District Committee is proposing. Under their proposal, you could not subdivide a piece of property and establish those three lots. If there were a lot of record as of December, 1980 you could still cross critical slopes if you could prove there were no alternative way to establish one building site on that existing parcel. In addition, under the Committee's proposal on critical slopes, any lot

that was created after 1980 could not cross critical slopes to get to that building site unless it met some criteria or was granted a waiver or variance in order to have reasonable use of that lot. It would be more restrictive because development rights that exist today could not necessarily be used under the Mountain Protection Ordinance proposal because you would not be able to create multiple lots to utilize building sites. You would only be able to create a road to use one building site if you had to cross critical slopes.

Mr. Boyd asked if crossing those critical slopes requires you to provide proper sediment and erosion control under the current ordinance. Mr. Davis said currently, for residential development, in most instances the County allows development to occur with an "Agreement in Lieu of a Plan" so no specific erosion and sediment control plan has to be prepared, but there are general requirements in place to address erosion control, but there is not a detailed examination of erosion issues associated with that residential building site.

Mr. Wyant asked if, under the existing ordinance, he had three building sites on a mountaintop with no alternative route for a road and he builds the road through critical slopes to his house. If his child wanted to build on one of the other sites, could they use that same road? Mr. Davis said that under the existing ordinance, the answer is "maybe." Under the proposed ordinance the answer would be "no."

Mr. Jon Cannon said there is a safety valve by way of the waivers.

Mr. Wyant said a waiver is not easy to get because he has been dealing with staff over such an issue. Mr. Benish said there are provisions that call for considering waivers. The Committee focused on administrative waivers but there was also the issue of the intent of those waivers. The Committer left that issue somewhat vague, but he thinks the waivers are not tantamount to the same development that could have been achieved under the old ordinance. When there is an ordinance and waivers are allowed – what is the purpose of that waiver and how do you measure the intent of that waiver?

Mr. Cal Morris asked if you could accomplish the same thing by requiring a site plan and approval any time critical slopes are crossed, just as is done now with subdivisions.

Mr. Rooker said in the next section it talks about an erosion and sedimentation control plan.

Mr. Cannon said the Committee spent a lot of time on this question. For individual dwellings on already created lots, the Committee was told there is no site plan requirement. Therefore, there is not the ability to do a more site-specific review that might be appropriate in certain circumstances. The Committee had to write "with a broad brush" in order get the level of protection thought to be appropriate, and to use the waiver as a device by which further review could be accomplished on a case-by-case basis through the administrative process.

Mr. Wyant said if he built the road for the first house, he is not doing anymore damage by putting in a second house and using that same road. There is no way someone could get a third house on that land because of the need for a special road. He thinks the Committee was trying to prevent having a development in the mountains like Wintergreen.

Mr. Cannon said the Committee did not want a Wintergreen situation if it produced adverse affects against the purposes for which this ordinance proposal was brought forward, the purposes which the Committee thought it was tasked to further in this exercise.

Mr. Wyant asked if they used the critical slope as a way to prevent having that adverse affect.

Mr. Cannon said the critical slopes and the stream buffer are the two pieces of the recommendation which have an effect on the resource itself; it is not an ordinance about aesthetics. This is about the mountain resource itself – the soils, the forest, the water that comes out of the mountains. Provisions were designed with the tools the Committee felt it had at its disposal. They tried to get at the level of protection felt appropriate with enough flexibility so that situations which warrant tailored consideration can get that.

Ms. Joseph asked to talk about waiver requests. She said the Commission gets many waiver requests for critical slopes. Often mitigation is offered by the developer for going into the critical slopes. Perhaps that is something that could be considered when the waiver request is filed. Maybe some sort of "shopping list" could be offered to applicants so they could understand what sort of mitigation measures are expected of them such as a way to help groundwater recharge, to help minimize erosion, and to help visual aspects.

Mr. Dorrier said he thinks there needs to be some protection for family subdivisions. Mr. Davis responded that currently there is no enabling legislation to have different regulations based on family relationships, except in the Subdivision Ordinance. There is enabling legislation to allow for a differentiation in road standards and process in that ordinance. There is no enabling legislation to allow family subdivisions to fall under different zoning requirements than any other subdivision. Without going to the General Assembly and seeking additional enabling legislation, what Mr. Dorrier is asking cannot legally be accomplished.

Mr. Rooker said that is true today. Family subdivisions have to meet all subdivision requirements except for the two Mr. Davis explained. He suggested moving on to discussion of the erosion and sediment control plan.

Ms. Thomas said after working on this for many years, she hates to give staff more work on something the Board is never going to take action on. If there is not a consensus or a majority who say they care enough about the impact of encroaching on critical slopes to make critical slope protections tighter than they are today, there is no excuse for asking staff to decide if that would be appropriate in the rural area or to go any further on this whatsoever. She said, to her ears, this discussion has been inconclusive. The Board should come to some statement of whether it is in general agreement with this sort of protection for critical slopes, at least in the mountainous areas.

Mr. Slutzky said he is completely supportive of most of the provisions as laid out in the staff report. When it gets to higher restrictions, he has some questions, but with respect to critical slopes there is no ambiguity. He said it makes sense to protect ecological systems in a thoughtful way. It is differential to property owners' interests and is the kind of output from a deliberative consensus process that was painful in its desire to achieve consensus, but he thinks they did a remarkable job. He is one voice in strong support of the critical slopes component. He asked if the Board needs to go through the recommendations one by one.

Mr. Rooker said he thinks so. He agrees with what Ms. Thomas said. The Board does not want to get to the end of the process, have staff spend a lot of time drafting an ordinance, and find out there are critical elements that will not have a consensus to go forward. He supports this, and supports going forward with an ordinance.

Mr. Slutzky said he would add a caveat to his comment by saying he supports this assuming there will also be a productive discussion of incentives coupled with the more restrictive dimensions of the Mountain Overlay framework. He cannot image a scenario where he would not see the benefit of doing this, but he is not doing it in the vacuum of restrictive actions. He is also interested in doing it in the context of creating some incentives.

Mr. Rooker said the Board is considering whether to have an ordinance drafted and setting it for a public hearing. The Board is not voting on an ordinance today.

Mr. Eric Strucko asked if what is proposed for critical slopes covers buildings, roads and driveways. Mr. Benish said that is the overall intent of the MOD Committee.

Mr. Wyant said he supports the critical slopes measures. As an engineer he knows it is a difficult issue. He is concerned about building houses on those slopes. He is concerned when roads are built on them. That is why he keeps going back to the same thing. When he talks about erosion and sediment, it all falls back to critical slopes because he does not want the soil washing off of the mountainsides, so this is the number one thing in his opinion.

Mr. Rooker asked if all the Board members were comfortable with moving forward with this component of the plan.

Mr. Dorrier said he is comfortable with it, but he thinks the Board needs to answer the landowners who have their flat surface of land on the mountain and want to subdivide it for their family. He thinks there needs to be something to address it other than the waiver process. The waiver process pits one person against the government and it's an arbitrary process.

Mr. Wyant said he supports family subdivisions, but critical slopes are critical to everyone. When the Board finishes going through this process, he thinks they need to go back to this question and try to find some resolution.

Mr. Slutzky agreed that there might be some legislative relief sought from the General Assembly for family subdivisions, but that's outside of the context of the MOD ordinance now.

Mr. Rooker suggested discussing the next element, the erosion and sediment control plan.

Mr. Benish said an erosion and sediment control plan is required for land-disturbing activities of greater than 10,000 square feet. The MOD Committee proposed to reduce the MOD area to a minimum threshold of 2,500 square feet. Because of the sensitivities in the MOD - for the things which have been previously identified by the Committee - there is support by staff for the 2,500 in the MOD area. Staff provided the Board some information about that setting out its benefit to the larger RA. Staff believes that type of provision for the rest of the RA is not necessary. Most single-family homes within the RA, due to the amount of grading that takes place for new homes including roads, septic system, etc., has an impact area of 10,000 square feet. The provisions for the rest of the RA at 10,000 square feet are sufficient. The issue of the "Agreements in Lieu" is an important concept, particularly if you wish to implement future critical slope provisions. It is also important for safe access to the properties. However, the agreement in lieu of an erosion control plan does not provide the grading detail provided on an erosion/sedimentation plan. He said the actual requirement for a grading plan will be important to implementation of the critical slopes provisions. It would have a fairly significant impact to staffing, so that issue would need to be addressed.

Mr. Slutzky asked if the proposal being addressed now with respect to the MOD would require an erosion control plan. Mr. Benish said that is true.

Mr. Rooker said there could be an "Agreement in Lieu of Plan." Mr. Benish said that is correct. He noted that the 2,500 square feet requirement typically picks up a small addition or a garage

improvement. He said 10,000 square feet picks up the full construction of the house and all of the appurtenances to the house.

Mr. Wyant asked if that includes the road, parking area, septic area and the house structure. Mr. Benish said it covers any grading activity.

Mr. Edgerton said in the MOD Committee discussions, there was not any concern about tying a more stringent standard for soil erosion to areas that might be adjacent to a critical slope. He said a lot of what is being talked about today will be linked to critical slopes. He wonders if the more stringent requirement for anything more than 2,500 square feet might be considered if that disturbance is adjacent to or above a critical slope.

Mr. Cannon said he does not think that particular issue was discussed by the Committee. They imagined that where critical slopes were allowed to be disturbed under the waiver process, there would be conditions imposed through the waiver process to protect those critical slopes from more intense erosion or other effects. Mr. Benish said under the 2,500 square feet requirement, it would be required regardless of whether it was inside or outside.

Mr. Edgerton said as to applicability for the rest of the rural area, staff's recommendation was that it be left at the 10,000 square feet. He asked if there was any consideration for disturbances adjacent to a critical slope in the rural area. Mr. Benish said he does not recall that being discussed.

Mr. Rooker asked that the discussion be limited to the MOD areas at this time.

Mr. Wyant said he would like to clarify one point. Currently, you cannot have a critical slope in a buildable area when you demonstrate the 10,000 square feet to the County. Mr. Benish said for a preliminary subdivision plan, typically a building site must be shown, and also the critical slopes. It is not required for final platting, or for a building permit. That is where control of buildings on critical slopes is lost. He said the erosion control plan is the one that would provide that critical slopes information. That would provide the enforcement the intent of the ordinance is trying to achieve.

Mr. Wyant said for the MOD he would offer a modified version of this except on the roadway which is going across critical slopes. They would have to get a waiver and then demonstrate to the County that there will not be a lot of erosion. In the building sites of the MOD, he thinks most people could use silt fences. When footing inspections occur, all the erosion control measures could be checked without making that party go through a total erosion control plan. He said he does those types of plans and it is a lot of effort. He believes there is an in-between which is not in the critical slope area. A major concern to him is that it is difficult to control soil coming off of that site. He thinks it should be where there is a gentle slope of seven percent for septic systems. Mr. Mark Graham said the septic field is less than 25 percent; it cannot be on a critical slope. The issue is that staff has no mechanism at the time a building permit is granted to verify that the driveway or house are not being built on critical slopes. There is nothing that shows any grading. The "Agreement in Lieu of a Plan" used at this time does not show any grading.

Mr. Wyant asked if a "topo" is needed more than anything else to determine if it is a critical slope. Mr. Graham said a grading plan is needed. The way to get a grading plan is the erosion and sediment control plan, instead of the agreement.

Mr. Wyant said going to an erosion and sediment control plan is a lot of work. It adds another burden. It is the add-on things that bother him about ordinances like this one. He thinks the same thing can be achieved by modifying regulations.

Mr. Rooker said Mr. Wyant pointed out earlier that the erosion and sediment plan is the essence of this proposed ordinance. The question is how you determine the critical slopes are being violated if there is no plan.

Mr. Slutzky said that on the MOD lots, staff will not know with the "Agreement in Lieu". The only way they will know is by the erosion/sedimentation plan for each of those properties. They may determine there is no problem.

Mr. Wyant said for the grading, a topo is needed. He would not know the grade on that road unless he had elevations all along the alignment. That is needed for an erosion/sedimentation plan, but why go through full development of an erosion control plan? He said the road is across critical areas which could easily erode. The house is being built on more gentle grades, not on the critical slopes area.

Mr. Graham said in certain cases the County requires erosion control plans instead of agreements for single-family houses. There is a cost for preparing that grading plan. Typically the sediment control measures that go with that are silt fence. The grading plan is essential to be able to enforce the critical slope provision.

Mr. Wyant said he is still concerned about the roadway across the critical slopes to get to the lot. Mr. Graham said with the building permit they would also have to show the driveway from wherever the existing road is to that house. The land disturbance associated with that building permit is covered by the agreement or the erosion control plan. That would include the driveway, the septic field, the building site, the well and all structures included as part of that building permit.

Ms. Joseph asked what triggers the current requirement that staff see a topo for a building permit. Mr. Graham said there are two things. One is that there are particular subdivisions that have either proffered a topo, or it is a condition of approval. Also certain building applications have had such obvious extreme disturbance that staff said there must be a full-blown erosion control plan filed because staff was not convinced it could understand the impacts without that plan.

Ms. Joseph asked if these are mostly large subdivisions or just two and three lot subdivisions. Mr. Graham said there are two cases; one is the smaller proffered developments on harsh terrain in the Development Area, and the large estates in the rural areas where they are building not just a house, but swimming pools, tennis courts, a polo field, etc. Some of these people are clearing enormous amounts of ground as part of the building.

Mr. Slutzky asked if that is typically occurring in what will be the MOD so there needs to be a grading plan. Mr. Graham said without a grading plan staff cannot tell whether the critical slopes are being honored or not.

Mr. Wyant said he knows of one case in his district where they put horse stables on the mountain. He is for the protection of the roadway across that critical slope. What is the square footage up on the top and outside of the critical slope area where the County would want an erosion/sedimentation plan?

Mr. Rooker asked if Mr. Wyant was talking about the 2,500 square feet.

Mr. Wyant said he does not think it should be more than 10,000 square feet which is more than one-quarter of an acre for a septic and a house. He said a house will not be built on 2,500 square feet.

Mr. Rooker asked if Mr. Wyant was suggesting it be less.

Mr. Wyant said he was trying to go with the 10,000 square feet but is still concerned with the critical slope. When someone asks for a waiver, they need to demonstrate that they are protecting the water and everything; that is what is critical.

Mr. Slutzky asked Mr. Wyant if he objects to having a grading plan if it has a square footage of greater than 2,500 square feet which means requiring the erosion and sediment plan.

Mr. Wyant said he would need a topo.

Mr. Slutzky said it sounds like Mr. Wyant is supporting the MOD proposal in its current form.

Mr. Wyant said he thought the Committee suggested more than 2,500. Mr. Benish said it is 2,500 for the MOD.

Mr. Wyant said he was trying to cut down on the amount of time staff spends on review. He said nearly the same thing is done on every application; only the site-specific conditions are different.

Ms. Thomas said the only way staff can make sure those critical slopes are not being unduly impacted is to require a plan. She does not know if the 2,500 square feet is reasonable or not, or if it should be a bigger number. She thinks the idea of having a plan is simply a way for staff to be able to ensure the Board's intentions are carried out with these developments on the mountains.

Mr. Rooker said the same thing applies to safe and convenient access. That cannot be determined if there is not a plan that shows grade, etc. submitted before it is built. Now, technically the fire marshal could go out after something is built and before the occupancy permit is issued, and say there is not safe and convenient access. That is not a good time to make that declaration.

Mr. Wyant said that could apply to subdivisions. He does not think that applies to individual dwelling units.

Mr. Slutzky said this is an opportunity for the County to make it harder for people to develop those sites as much as it is an opportunity to make it possible for them to demonstrate that it is reasonable for them to go ahead and build under these circumstances. The County just needs to have the correct information.

Mr. Wyant said he wants to apply his logic one more time. If he built a house on the mountain, in order to cross critical slopes he must have some grades. He has to determine the elevation so he can establish the grade and the alignment of the road. The only way to do it is to get the elevations across the critical slope. He thinks erosion control measures and other measures are needed so there is not a high velocity of water coming down the mountain. When he gets on the top, if he has some elevations and it is gently graded, he does not think they need to go through the detail where they are going to build the house. Most people don't do that today. The County would not allow them to build that house on a critical slope.

Mr. Slutzky asked how within the MOD the County would know the grade is flat without having them produce information.

Mr. Wyant said they would need to give the County some elevations.

Mr. Slutzky said that is what the requirement is.

Ms. Thomas agreed.

Mr. Wyant said that is not an erosion control plan. But, it must be done for the road because it is across the critical slope on the top.

Mr. Dorrier asked if an engineer has to develop an erosion/sedimentation plan or if it can be developed by the individual. Mr. Graham said there is no requirement under the existing ordinance that the plan be prepared by an engineer or architect. That is not proposed to change.

Mr. Wyant asked if the plan has to be stamped. Mr. Graham said "no."

Mr. Wyant said he might take a different stance if it does not have to be stamped.

Mr. Rooker asked if Mr. Wyant is okay with this recommendation.

Mr. Wyant said somebody has to give the County information.

Mr. Rooker asked if anybody wanted to add anything else to this part of the recommendation. If not, the stream buffer requirements are next. He suggested that Mr. Benish point out the difference between the requirements today and what the Committee recommended.

Mr. Benish said the current Water Protection Ordinance requires one hundred foot buffers on intermittent and perennial streams within the water supply protection area. There are only buffer requirements on perennial streams for the rest of the County. He said the MOD proposes to double the current buffer and include both perennial and intermittent streams. Due to the environmental sensitivities of the MOD area, staff feels this is a viable and beneficial ordinance. There are other issues when this is considered for the RA district.

Ms. Thomas said she knows the Board does not want to discuss incentives at this time, but this is an issue where State enabling legislation allows the County to treat riparian buffers in a couple of tax ways that can provide incentives, particularly for forests if they are not going to be harvested in the buffer, etc. It is an area that would not have negative impacts on landowners. It may have other negative impacts, but this is one of the areas where the General Assembly has allowed the County more leeway. Mr. Benish said staff had provided some maps so the impacts of that additional width can be seen. There are some implications for widening in the MOD if homes were within the one hundred foot buffer and it was expanded to two hundred feet. There are waiver provisions within the WPO that protect for a certain minimum level usage of property.

Mr. Rooker asked if there were other comments regarding stream buffers.

Mr. Slutzky said he is supportive of it within the MOD area.

Mr. Dorrier asked how this would impact development. He does not understand the total impact upon development. Mr. Benish said there should be no development within the buffer. As the buffer is widened out by one hundred feet it would reduce some area available for development.

Mr. Dorrier asked if lots would be expanded. Mr. Benish said that now a lot with a stream on it has a one hundred foot buffer requirement. The addition of two hundred feet would essentially double the width on either side of the stream. Given the topography of the property and the site, it would have the potential of minimizing that envelope. There are waiver provisions which allow some modification to the buffers for hardship issues. He said it would widen the band of the area protected and so would have some impact on the remainder of the site that can be built on.

Mr. Wyant pointed to the map and said he knows that in some places the width of the buffer has been varied. Down in the bottom land the intermittent streams coming out of the mountains also need to be protected.

Ms. Thomas said that is probably why staff had recommended in "c" that it not go into the non-mountainous area, but it is appropriate in the mountain area. Mr. Benish said the boundaries of the MOD are defined by where there are concentrations of critical slopes, among other parameters. By and large, if you are in the MOD area, you will be in steeper areas, and for various other environmental reasons, staff thinks the 200 feet is valid. Once you are out of the MOD, you will be in the flatter areas.

Ms. Joseph said a lot of houses are shown in the blue area on the map. In order not to alarm people, this does not mean properties will be in jeopardy because of anything that happens with the MOD, unless the owner decides to subdivide. Right now, anyone located in this area will be okay, but they could never put a house within that area if they decided to subdivide. Mr. Benish said staff would have to look at the details of that property. There would need to be waiver provisions for expanding a particular building. Also the maps displayed today were more focused on the entire rural area. There are not that many buildings in the mountain areas.

Mr. Boyd referred to a comment made by Mr. Rooker earlier. Just because there are no comments being made does not indicate that everybody here is in support of this feature. He has a premise problem with this issue, and some of the other issues. He heard the public speak before and there was a lot of concern expressed. He said there are people who may have moved to Albemarle after 1980 and bought a piece of property with the idea that they would build a house for themselves and children. Now the Board would legislate them out of that possibility. He wants to hear from those people

because he is not in that situation. Before then, he is not going to say he supports this ordinance. He said Mr. Rooker can say the Board is moving forward to a public hearing, but he should not say that because someone is not commenting on every item, they agree. He understands what is being proposed, but is not ready to say he would vote for it.

Mr. Rooker said he thinks what he said is that the Board is in favor to taking this ordinance to a public hearing. If there are any specific questions that people need answers to, that should be expressed at this time. Also, if there are objections, that should be stated.

Mr. Wyant said in the bottom land where cattle are grazing, he does not want to be required to fence that land on that buffer because that is expensive.

Ms. Thomas said this all relates to residential property, not farming. Mr. Graham said those activities are exempted under the stream buffer provisions.

Mr. Wyant asked if fencing will be required.

Ms. Thomas said "no", that is State law.

Mr. Wyant said he thinks that needs to be made clear. He thinks a lot of people will come to the public hearing and express concerns about this.

Mr. Rooker said this does not involve fencing or any positive act. It basically says that structures cannot be located inside this 200-foot buffer.

Mr. Rooker said the next item for discussion is height restrictions. Mr. Benish said the height restrictions might take a good deal of time, so he suggested skipping that recommendation today. He said the next item has to do with safe access and it is actually embedded in the ordinance in various places; it relates to enforcement of that. He said the key issues to safe access are the roads on critical slopes, proximity to the building location, ability to turn around, ability to get an emergency vehicle in and out; the best mechanism for enforcing that is through an erosion control plan.

Mr. Wyant said that falls in with what he has been talking about, so he has no problem with that provision.

Noting time constraints, Mr. Rooker said the Board could resume discussion of the MOD at its meeting on January 10, 2007, at three o'clock.

Mr. Slutzky asked if the Board would also discuss the incentive side. Would extension to the rural area also be on the table in case the Board had time to discuss that issue?

Mr. Rooker said "yes." Hopefully a two-hour session would allow the Board time to finish this discussion. He thanked the Planning Commission members for their presence today.

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Agenda Item No. 3. Recess. At 5:52 p.m., the Board recessed and reconvened at 6:12 p.m. for the regular night meeting.

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Agenda Item No. 4. Call to Order. The meeting was called back to order by the Chairman, Mr. Rooker.

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

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Agenda Item No. 7. From the Public: Matters not listed for Public Hearing on the Agenda.

Mr. John Martin addressed the Board. He said during the decade he has lived in Albemarle County, he has witnessed the County government abide by both the letter and spirit of government "in the sunshine." The conduct of government in the sunshine builds public trust which is the glue which holds everything else together. This is why the events at the conclusion of last week's nine-hour Board of Supervisors' meeting were so jarring. What happened seemed to be such an aberration of government in the sunshine.

Mr. Martin said a motion was made and passed to create a quarter million dollar "opportunity fund." Reference was made to the need for such a fund to cure underemployment in this community, and there was a reference made that it was needed so PHDs would not have to wait table. He said the public had no prior notice about this, no staff report, and even though he and a few others were present, he had no idea what this was about at the conclusion of that meeting, nor did he have any better idea when he listened to a podcast put out by Charlottesville Tomorrow two days later.

Mr. Martin said that since then he has learned this is a quarter million dollar fund to be used to provide monetary incentives to private companies to locate "here" as opposed to "there". He said it is a giveaway program for the benefit of private corporations. He thinks the public is entitled to know more about this. What is this money to be spent for specifically, what are the goals and objectives? Why does

the money need to be spent? What are the needs that require this expenditure? What will be the public process in the decision-making for the expenditure of these sums? What is the County's policy regarding competitions with poorer jurisdictions regarding recruitment of businesses to this area? What will the controls be for waste/fraud and abuse in this program? He thinks there should be a public hearing and a work session and written information as to exactly what this is all about.

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Mr. John Cruickshank addressed the Board on behalf of the Sierra Club. He thanked the Board for signing the U.S. Mayor's Climate Protection Agreement, a commitment to reduce carbon dioxide pollution to seven percent below the 1990 level by the year 2012. He said CO2 is the major cause of global warming, which is expected to worsen in the coming decades. Over 330 localities in the U.S. have signed the agreement, and the state of California passed legislation that will dramatically reduce greenhouse gases during the next decade.

Mr. Cruickshank said it is his hope that the U.S. will join the Kyoto Protocol and move toward a more ambitious effort to address climate protection; public polls show an increasing concern about climate change. He thinks the County needs to take decisive action, and the Sierra Club recommends four major courses of action to pursue in the reduction of CO2 emissions: provide transportation alternatives to the automobile and purchase the most fuel-efficient vehicles for the County fleet; promote energy efficiency; increase the use of renewable energy; and, protect green spaces and encourage reforestation.

Mr. Cruickshank encouraged the Board to follow the example of the City and organize a sustainability council to develop a plan of action. Perhaps the two governments can collaborate. He presented Mr. Rooker with a Cool City certificate to recognize the County's participation.

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Ms. Sue Chase said she is a member of the Charlottesville Center of Peace and Justice, working for people and the environment. She thanked them for endorsing the agreement. She also encouraged them to create a sustainability council and collaborate with Charlottesville to fully implement the U.S. Mayor's Climate Protection Agreement they have both endorsed.

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Mr. Tom Olivier addressed the Board. He said he had come to express his dissatisfaction with some members of the Board who are unwilling to implement measures in the Comprehensive Plan designed to protect open spaces and natural resources. He said since 1999, the Albemarle Comprehensive Plan has called for creation of a Natural Heritage Committee whose purpose is to protect biological resources. Last year, some Board members tried to block creation of this committee claiming it might stop all building projects and direct farmers as to when they could cut their hay. Only by a slim margin was this committee created. In 2005 the Board adopted a new Rural Areas Chapter to the Comprehensive Plan. It promoted phasing and clustering of residential development as open space protection measures. Nonetheless, earlier this year, after a period of public comment, several Board members indicated an unwillingness to support clustering and phasing thus killing the measures. What had changed? Long foreseen complaints were made by rural landowners who wished maximum freedom of residential development of rural properties. The agricultural old guard added baloney claims that phasing was theft. He said the County needs a Board of Supervisors that will not succumb to such pressures.

Mr. Olivier said other decisions by this Board undermine achieving the protection of rural areas called for in the Comprehensive Plan. In the recent past the Board has approved growth promoting measures including the North Pointe development and the allocation of \$200,000 to bring in new businesses. He asked what residents are to do if they wish to see natural resources protected. One option is to elect new supervisors next fall who commit to implementing protection measures that are called for in the Comprehensive Plan. If the Board would prefer that voters not follow that path, he would urge them to become more energetic in implementing serious protections for open spaces. Although clustering and phasing may be dead, the Board can support the ASAP optimum population program, it can aggressively implement measures from the Climate Agreement, it can buffer streams, and it can support proposals coming this spring from the Natural Heritage Committee. Finally, if the Board really wishes to fund agricultural development, he would urge them ---to fund that Agricultural/Economic Development position that has been called for in the Comprehensive Plan, but so far has gone unfunded.

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Ms. Laurie Delehanty, speaking on behalf of the Charlottesville Center for Peace and Justice, addressed the Board and thanked them for endorsing the Mayor's Climate Protection Agreement. She looks forward to see what kind of comprehensive plans the Board comes up with in implementing that agreement.

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Ms. Logan Blanco, representing Charlottesville Peak Oil, addressed the Board. She said the people of Tomkins County which surrounds Ithaca, New York, have developed a plan that can be viewed at [www.cvillepeakoil.org](http://www.cvillepeakoil.org). She said that after providing comprehensive evidence that world oil supplies will have peaked by 2010, not allowing time for a gradual transition to other fuels, the Tomkins County plan treats peak oil as a disaster management problem. The plan predicts widespread unemployment accompanied by rising costs of transportation, heating, food and basic goods and services, and proposes specific solutions to these issues. In regard to transportation, their plan suggests expanding public transit and possibly incorporating school buses when they're not being used to transport students, resurrecting river transportation and zoning for greater denser in both urban and rural areas. In regard to the food supply, the plan recommends encouraging local food production by lowering taxes on agricultural land,

funding programs to train people in sustainable gardening, and encouraging the development of community-supported agriculture. Imagining winters with food in short supply, the plan questions whether the county should have its own food and storage systems. In regard to the potential for widespread unemployment, the plan suggests retraining people in farming noting that the sizeable expansion of local agricultural needed to feed the population will be accompanied by a demand for farm labor. The plan also suggests that when it becomes too expensive for big box chain stores to import goods from China, there would be a strong market for locally manufactured goods. She said when oil prices skyrocket, Albemarle County will share many of these challenges as well as many of its assets.

Ms. Blanco said there is agricultural land in Albemarle, as well as rivers which could be used for transportation, and a major research university. There are also several active citizen groups which are already addressing these challenges. Eat Local is a group which began as a UVA Urban Planning Class studying regional food systems and is now creating a directory of local farms, starting a food co-op, and launching a vegetable gardening program at Charlottesville High School. She said that soon there will be a Charlottesville Barter Network so people can barter with each other for goods and services. The Alliance for Community Trust in Transportation encourages developing safe routes for walking to school, using alternative transportation and creating a safe car system. She said there is still a lot to do, and she hopes the Board will look at the plan.

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Mr. Stephen Bach said he lives in the City and is also a representative for Charlottesville Peak Oil. He said America's oil base is not sustainable and will end, although it is not known when that will happen. Not thinking about this issue will not change the fact of the finiteness of the oil supply. He said it's already late in the game to start preparing for a very constricted energy future. These changes take decades and it is time that we do not have. He said this organization would like for the Board to help bring this issue to the public's attention through creation of a task force whose members would be County officials and other citizens to assess the issues raised by Peak Oil and to recommend actions for the County to take.

Mr. Bach listed several questions which they feel a task force might address: how should an environment of reduced energy supplies affect the County's policies and plans regarding commercial and residential development, general land use, water use, transportation, education and agriculture. How will County services be impacted by energy costs which could be as much as eight times what they are today? What changes can the County make to help re-localize the economy? What can the County do to promote wider scale agriculture operations here? What can the County do with the City to prepare for a much more expensive energy future? What could the County do with the surrounding rural counties to provide food for people in the more urbanized areas? He said this unprecedented crisis which is approaching can be an opportunity to make some very positive changes in this region. They hope the Board will consider creating this task force and join them in bringing these issues to the public so that as the inevitable crisis approaches, we will be better prepared to deal with it in constructive ways.

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Mr. Jack Marshall addressed the Board on behalf of the 300 members of Advocates for a Sustainable Albemarle Population (ASAP). He said last week's Board meeting concluded with two actions which seemed disrespectful to constituents who expect the Board to listen to their views before making decisions on important issues. With no advance warning to the community, and with no public hearing, and with an apparent disregard for residents' concerns about the impacts of relentless population growth, Mr. Boyd proposed hundreds of thousands of dollars be earmarked to attract new businesses to Albemarle County. Four of the Board members voted to approve this new economic opportunity fund. Mr. Boyd then moved that the County become a member of the Chamber of Commerce, the most powerful lobbying group in the area and a frequent advocate on issues the Board is expected to consider without bias. Four of the Board members voted to approve that also.

Mr. Marshall said if it weren't for Charlottesville Tomorrow's podcast and articles in the Daily Progress, these pro-business, pro-growth votes might have slipped through without much notice. While he does not want to believe these decisions were calculated to slide under voters' radar, why was comment not invited at a public hearing before rushing in with a vote? What was the urgency? Was the Board unwilling to reopen the discussion that preceded the County's ill-advised decision to become a member of Thomas Jefferson Partnership for Economic Development (TJPED)? Equally disturbing was the fact that the Board's decisions on these two issues provided solutions to problems that don't exist and fly in the face of available facts. There is no evidence that new business in the community would provide jobs for the unemployed and underemployed. Indeed, the week before the Board's vote, the Chief Economist of the Virginia Employment Commission labeled Albemarle County a labor shortage area, an area where the unemployment rate is so low that there is a shortage of workers, not jobs.

Mr. Marshall said if the Board is genuinely concerned about the unemployed and underemployed, the money could be far better spent strengthening the very good workforce training opportunities in the area. Where is there any evidence that Albemarle County's absence at the table of the Chamber of Commerce has hindered its prosperity or impeded communication? With actual membership in the Chamber, the County sacrificed the appearance of neutrality when a Chamber supported issue comes before the Board. He said the difficult work of the Supervisors becomes regrettably even more cumbersome with input from the citizens, but please make time to listen to the citizen's views on important issues. That is part of what a representative democracy and respect for the Board's constituent's demands.

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Mr. Tom Loach addressed the Board, asking if there was to be a public hearing on the Haden Place petition tonight. Mr. Davis said a public hearing was held at a previous meeting, but the Board

cannot act on this rezoning with the modified proffers unless and until an additional hearing is advertised and held. The only action the Board can take tonight would either be a denial or if they decided to approve it, to accept the proffers that were previously tendered. Before the Board tonight is simply a discussion of the new proffers.

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Mr. Jeff Werner from the Piedmont Environmental Council said he had anticipated speaking tonight about the Mountain Overlay District anticipating the Board would have killed that ordinance, so he is happy that he does not have to make that statement tonight. He would like to address some of what happened last week. He said some Board members have said many times that the County has to have "a seat at the table" with the TJPED and now the Chamber of Commerce. He said he works for a non-profit, advocacy group and there are a lot of non-profit, advocacy groups in the community that would love to have the \$2,000 given to the Chamber of Commerce or the \$16,000 given to TJPED. He listed groups such as the Farm Bureau, Citizens for Albemarle, ASAP, PEC, the Southern Environmental Center, the Sierra Club, the Nature Conservancy, the Free Enterprise Forum, the League of Women Voters, Peak Oil, ACT (which is an alternative transit group in the City), the EARL homeowner's association, the Blue Ridge Homebuilders, Charlottesville Tomorrow, the Thomas Jefferson Memorial Foundation, or the Area Association of Realtors. He said staff at PEC debated this. He does not think it is necessary. The real irony is that the money the Board wants to give away is to groups that essentially run contrary to the Comprehensive Plan.

Mr. Werner said a few years ago PEC wrote a check to the County for \$25,000 to help with the ACE program. PEC is about to give the county \$5,000 toward the historic district study in Crozet. Recently, PEC got Coveseville designated as a historic district at a cost of about \$15,000, and it did not cost the County a dime. He said the Chair of the Chamber of Commerce in minutes to the TJPED sometime ago reported that tourism was not a viable part of economic development plans for the County. That is completely contrary to what PEC works for and what the County's Comprehensive Plan calls for. If that is who the Board wants to "be at the table" with, that is its call.

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Mr. Neil Williamson of the Free Enterprise Forum said he would like to clarify a statement made by Mr. Werner. He said the Chair of the Chamber of Commerce is a part of the Tourism Committee. He has worked diligently for tourism. Mr. Williamson said he does not believe the Chair does not believe tourism is a viable and important aspect to this region's economy.

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Mr. Rooker recognized a group of students from one of Western Albemarle High School's government classes that were present at the meeting.

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Agenda Item No. 8. Consent Agenda. Ms. Thomas **moved** for approval of Items 8.1 through 8.8 on the Consent Agenda, and to accept Item 8.9 for information. Mr. Dorrier **seconded** the motion, which passed by the following recorded vote:

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

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Item 8.1. Approval of Minutes: March 13(A), May 10A/N, August 1(A) and August 3(A), 2006.

Mr. Boyd had read the minutes of March 13, 2006 (Afternoon) and found them to be in order as presented.

Ms. Thomas had read the minutes of May 10, 2006 (Afternoon and night) and found them to be in order as presented.

Mr. Wyant has read the minutes of August 1, 2006 (Adjourned) and found them to be in order as presented.

Mr. Wyant had read the minutes of August 3, 2006 (Adjourned) and found them to be in order as presented.

**By the recorded vote set out above, these minutes were approved.**

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Item 8.2. Resolution authorizing the issuance of revenue bonds by the Industrial Development of the Town of Louisa, in an amount not to exceed \$8,000,000 for the benefit of the Region Ten Community Services Board, Inc.

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

**RESOLUTION  
OF THE BOARD OF SUPERVISORS OF THE  
COUNTY OF ALBEMARLE, VIRGINIA**

WHEREAS, the Industrial Development Authority of the Town of Louisa, Virginia (the "Authority"), has been requested by Region Ten Community Services Board, Inc. (the

"Company"), a non-profit, Virginia nonstock corporation, to approve the issuance of a revenue bond in an amount not to exceed \$8,000,000 ("Bond") to assist the Company in (1) refinancing the Industrial Development Authority of Albemarle County, Virginia's \$5,000,000 Variable Rate Community Services Facilities Revenue Bonds (Region Ten Community Services Board, Inc.), Series 1999, issued on August 31, 1999 originally issued to finance and refinance Company facilities located in the County of Albemarle, Virginia and the City of Charlottesville, Virginia (2) financing the acquisition, construction, renovation and equipping of the property known as Mountainwood, to house the Company's administrative offices and community services, located on an approximately 9 acre tract of land on Old Lynchburg Road, in the County of Albemarle, Virginia and (3) financing the acquisition, construction, renovation and equipping of the Nelson County Counseling Center located at Tanbark Plaza, Lovingston, Virginia in the County of Nelson, Virginia (collectively, the "Project"), and has held a public hearing on December 7, 2006;

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), provides that the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of private activity bonds is located must approve the issuance of the bonds;

WHEREAS, a portion of the Project is to be located in the County of Albemarle, Virginia (the "County") and the Board of Supervisors of the County of Albemarle, Virginia ("Board") constitutes the highest elected governmental unit of the County;

WHEREAS, in accordance with Section 147(f) of the Code, the public hearing held by the Authority was within 100 miles of the County;

WHEREAS, for purposes of Section 15.2-4906 of the Code of Virginia of 1950, as amended (the "Virginia Code"), the Authority is issuing the portion of the Bond relating to the portion of the Project located in the County on behalf of the County.

WHEREAS, the Authority has recommended that the Board approve the issuance of the Bond; and

WHEREAS, a copy of the Authority's resolution approving the issuance of the Bond, subject to the terms to be agreed upon, a certificate of the public hearing and a Fiscal Impact Statement have been filed with the Board.

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

The Board approves the issuance of the Bond by the Authority for the benefit of the Company, as required by Section 147(f) of the Code and Section 15.2-4906 of the Code of Virginia of 1950, as amended ("Virginia Code") to permit the Authority to assist in the financing of the Project.

The Board concurs with the resolution to be adopted by the Authority and approves the issuance of the Bond by the Authority for the benefit of the Company as required by Section 15.2-4905 of the Virginia Code.

The approval of the issuance of the Bond does not constitute an endorsement to a prospective purchaser of the Bond of the creditworthiness of the Project or the Company.

This resolution shall take effect immediately upon its adoption.

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Item 8.3. Resolution authorizing the issuance of revenue bonds by the Industrial Development of Fluvanna County in an amount not to exceed \$4,000,000 for the benefit of the Westminster-Canterbury of the Blue Ridge, located at 250 Pantops Mountain Road in Albemarle County.

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

**RESOLUTION  
OF THE BOARD OF SUPERVISORS OF THE  
COUNTY OF ALBEMARLE, VIRGINIA**

WHEREAS, the Industrial Development Authority of Fluvanna County, Virginia (the "Authority"), has been asked by Westminster-Canterbury of the Blue Ridge (the "Company"), a non-profit, Virginia nonstock corporation, to approve the issuance of a revenue bond in an amount not to exceed \$4,000,000 ("Bond") to assist the Company in financing the costs of capital improvements at the Company's existing residential care retirement facility located at 250 Pantops Mountain Road in the County of Albemarle, Virginia including without limitation the construction and equipping of additional cottages at the facility ("Project"), and has held a public hearing on November 29, 2006;

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), provides that the governmental unit having jurisdiction over the area in

which any facility financed with the proceeds of private activity bonds is located must approve the issuance of the bonds;

WHEREAS, the Project is to be located in the County of Albemarle, Virginia (the "County") and the Board of Supervisors of the County of Albemarle, Virginia ("Board") constitutes the highest elected governmental unit of the County;

WHEREAS, in accordance with Section 147(f) of the Code, the public hearing held by the Authority was within 100 miles of the County;

WHEREAS, for purposes of Section 15.2-4906 of the Code of Virginia of 1950, as amended (the "Virginia Code"), the Authority is issuing the Bond on behalf of the County.

WHEREAS, the Authority has recommended that the Board approve the issuance of the Bond; and

WHEREAS, a copy of the Authority's resolution approving the issuance of the Bond, subject to the terms to be agreed upon, a certificate of the public hearing and a Fiscal Impact Statement have been filed with the Board.

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

1. The Board approves the issuance of the Bond by the Authority for the benefit of the Company, as required by Section 147(f) of the Code and Section 15.2-4906 of the Virginia Code to permit the Authority to assist in the financing of the Project.
2. The Board concurs with the resolution to be adopted by the Fluvanna Authority and approves the issuance of the Bond by the Authority for the benefit of the Company as required by Section 15.2-4905 of the Act.
3. The approval of the issuance of the Bond does not constitute an endorsement to a prospective purchaser of the Bond of the creditworthiness of the Project or the Company.

This resolution shall take effect immediately upon its adoption.

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Item 8.4. Resolution allowing the County to participate in VDOT's Revenue Sharing Program for FY 2007.

It was noted in the Executive Summary that VDOT's Revenue Sharing Program provides the opportunity for the County to receive an additional \$1.0 million for road improvements. The County has participated in this program since 1988; however, the program changed significantly this year. The most significant change is a new tiered approach to prioritizing applications and awarding funds, which is oriented to encouraging a larger match of funds from the locality than the previous dollar-for-dollar match under the old program requirements. An explanation of the changes to the Revenue Sharing Program and, specifically, the tier concept can be found in the attached letter (on file) from VDOT.

The Revenue Sharing Program is a competitive funding program with a total statewide funding of \$15.0 million for FY'07. In order to provide the most competitive application, the County will need to provide a greater amount of match than in previous years to qualify under the Tier One category. Tier One projects will be funded first before proceeding to other Tiers and the priority of funding will be based on the amount of local match above a dollar-for-dollar match. Specifically, VDOT's policy for Tier One states:

Tier One provides funding when the governing body commits more than \$1.0 million in local funds for a \$1.0 million match. The locality's total requests are considered for tier one funding. If requests exceed funds available, tier one requests will be prioritized based on the amount of local funds committed above the matching funds. Please note, local matching funds must be available for use by April 1, and those in excess of the \$1.0 million match, must be spent prior to receiving State matching funds. The use of State Revenue Sharing funds requires that State laws, policies and procedures be followed.

The Revenue Sharing Program is expected to be very competitive this year under the new guidelines. Staff recommends providing a \$1.5 million match for the Meadow Creek Parkway. This will allow the County's request to meet the Tier One criteria and make the request more competitive. Since this is the first year under the new program criteria, there is little history or guidance from VDOT on what other localities will be financially committing to the program or how competitive a \$1.5 million local match will be.

If funded, this would result in an additional \$2.5 million for the Meadow Creek Parkway. VDOT Residency staff has recommended applying FY '07 Revenue Sharing funds to the Meadow Creek Parkway project to ensure that sufficient funds are available to cover the current estimated funding shortfall and ensure the project stays on schedule for construction. To date, the County has authorized VDOT to move prior Revenue Sharing Funds and prior Secondary Fund allocations from the Free State Road, Old Ivy Road and Proffit Road projects to cover some of the shortfall (no funds have been moved

from Jarman's Gap Road or Georgetown Road at this time). As a result, approximately \$2.4 million of previously allocated Revenue Sharing funds from Old Ivy Road and Proffit Road will be transferred to the Meadow Creek Parkway project (\$1.2 million County share and VDOT match). However, there is recent concern at the VDOT Residency Office that there is still a shortfall of \$2.0 to \$2.5 million in funding for the Parkway based on the current project cost estimates.

In early November, it appeared that approximately \$4.0 million of the estimated \$4.6 million shortfall had been covered, but last week Residency staff was advised that \$1.5 million which was thought to be available to transfer to MCP, may not be available for transfer. VDOT staff will be available at the December 13 meeting to provide further information on the status of funding. Providing Revenue Sharing Funds to the Meadow Creek Parkway project will ensure sufficient funds will be available to cover this project. Any funds from other sources or prior allocations from other projects which may become available in the future could then be transferred to the other high priority local projects such as Jarman's Gap Road and Georgetown Road.

The County's match of \$1.0 million has been allocated in the Capital Improvement Program. The \$500,000 is available from funds allocated to the Transportation Program in the CIP. The \$1.5 million will leverage an additional \$1.0 million in VDOT funds to be used toward high priority road improvements. Staff recommends that the Board of Supervisors adopt a resolution to participate in Revenue Sharing for FY 2007.

**(Discussion:** Mr. Rooker pointed out that not only has there been a reduction in transportation funds for the area over the last five years, but the Revenue-Sharing Program has also been substantially curtailed. The way it is presently put together, the competitive aspects of the program mean the County may get no funds at all. That is just another area where transportation funds are becoming more difficult to come by.)

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

**RESOLUTION TO PARTICPATE IN  
VIRGINIA DEPARTMENT OF TRANSPORTATION  
REVENUE SHARING PROGRAM FOR FISCAL YEAR 2007**

**WHEREAS**, the County of Albemarle desires to submit an application for allocation of funds of up to \$1.5 million through the Virginia Department of Transportation Fiscal Year 2006/07, Revenue Sharing Program ; and

**WHEREAS**, \$1.5 million of these funds are requested to fund the Meadow Creek Parkway for new construction between Melbourne Road and 0.0466 miles north Norfolk Southern Railway; and

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby requests that the application for \$1.5 million from the Virginia Department of Transportation Revenue Sharing Program be approved.

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Item 8.5. Resolution supporting Proposed Workforce Housing Legislation.

It was noted in the Executive Summary that Prince William County is seeking legislation to amend the Virginia Code by adding § 15.2-542, which would grant broader and less restricted authority for the County Executive form of government than current enabling statutes in order to provide grants, loans and other assistance for county and school board employees, as well as employees of local constitutional officers, to purchase or rent residences, for use as the employee's principal residence, within the county. Prince William County requests that the Albemarle Board of Supervisors support this proposed change so that Prince William County can determine if its request for legislation should apply to the County Executive form of government or solely to Prince William County. The proposed legislation would only augment existing enabling authority and not require the Albemarle to implement such a program. Enabling authority similar to the proposed Code section already exists for the County Manager form of government (§ 15.2-720.1).

Prince William County, like Albemarle, operates under the County Executive form of government. Thus, any legislative amendments to the County Executive form of government would apply to both Albemarle and Prince William counties. Prince William County will pursue this proposed legislation regardless of the Albemarle Supervisors' support, but if the Board does not support the resolution, Prince William County will change the legislation to apply solely to Prince William County. Prince William County prefers to draft this legislation to apply to the County Executive form of government and requests that the Albemarle County Board of Supervisors support them through adopting the resolution.

There is no fiscal impact created by this resolution or the proposed legislation, if approved. The requested legislation only grants enabling authority and does not require the adoption of an ordinance or creation of a program in a county. Staff recommends approval of the resolution. If the resolution is approved, staff will work with Prince William County to monitor the proposed changes during the 2007 General Assembly session.

**(Discussion:** Mr. Boyd asked if other forms of government have the same capability as the County Executive form has. Mr. Davis referred to Attachment "B" to the staff report. He said that Section 15.2.958.2 gives general authority to all local governments, and the provision below that is the enabling

authority that is given to county manager forms of government, such as Henrico and a couple of others. The proposed legislation mirrors the legislation that is given to the county manager form of government and that is what has been proposed by Prince William County. Prince William and Albemarle are the only two counties in the Commonwealth that operate under the County Executive form of government.)

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

**RESOLUTION TO SUPPORT AMENDMENTS  
TO EXISTING WORKFORCE HOUSING LEGISLATION**

**WHEREAS**, Prince William County desires to request legislation to amend the Virginia Code by adding § 15.2-542 to enable counties under the County Executive form of government broader and less restricted authority to provide housing assistance to local employees; and

**WHEREAS**, proposed Virginia Code § 15.2-542 would apply to the County Executive form of Government; and

**WHEREAS**, Albemarle County, like Prince William County, operates under the County Executive form of government; and

**WHEREAS**, the proposed Virginia Code § 15.2-542 would broaden existing enabling authority granted in Virginia Code § 15.2-958.2; and

**WHEREAS**, the County of Albemarle generally supports the expansion of enabling authority for localities; and

**WHEREAS**, the Albemarle County Board of Supervisors adopted a Strategic Objective stating: "By June 30, 2010, working in partnership with others, increase affordable housing opportunities for those who work and/or live in Albemarle County."

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors of Albemarle County does hereby support amending the Virginia Code by adding § 15.2-542 to allow counties under the County Executive form of government to provide funds, other than state funds, to provide grants, loans and other assistance for county and school board employees, as well as employees of local constitutional officers, to purchase or rent residences, for use as the employee's principal residence, within the county.

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Item 8.6. Resolution to accept road(s) in Crozet Glen Subdivision into the State Secondary System of Highways.

**At the request of County staff, and by the vote set out above, the Board adopted the following Resolution:**

**RESOLUTION**

**WHEREAS**, the street(s) in **Crozet Glen Subdivision**, described on the attached Additions Form LA-5(A) dated **December 13, 2006**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

**WHEREAS**, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

**NOW, THEREFORE, BE IT RESOLVED**, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Crozet Glen Subdivision**, as described on the attached Additions Form LA-5(A) dated **December 13, 2006**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

**BE IT FURTHER RESOLVED** that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

**FURTHER RESOLVED** that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

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The road(s) described on Additions Form AM-4.3 is:

- 1) **Lanetown Way (State Route 1387)** from the intersection of Route 684 (Lanetown Road) to the intersection of Route 1388 (Gala Court), as shown on plat recorded 05/03/2004 in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2740, pages 692-704, with a 50-foot right-of-way width, for a length of 0.03 miles.

- 2) **Lanetown Way (State Route 1387)** from the intersection of Route 1388 (Gala Court) to the intersection of Route 1389 (Stayman Court), as shown on plat recorded 05/03/2004 in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2740, pages 692-704, with a 40-foot right-of-way width, for a length of 0.05 miles.
- 3) **Lanetown Way (State Route 1387)** from the intersection of Route 1389 (Stayman Court) to the end of state maintenance, as shown on plat recorded 05/03/2004 in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2740, pages 692-704, with a 40-foot right-of-way width, for a length of 0.17 miles.
- 4) **Gala Court (State Route 1388)** from the intersection of Route 1387 (Lanetown Way) to the cul-de-sac, as shown on plat recorded 05/03/2004 in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2740, pages 692-704, with a 40-foot right-of-way width, for a length of 0.03 miles.
- 5) **Stayman Court (State Route 1389)** from the intersection of Route 1387 (Lanetown Way) to the cul-de-sac, as shown on plat recorded 05/03/2004 in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2740, pages 692-704, with a 40-foot right-of-way width, for a length of 0.04 miles.

Total Mileage – 0.32

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Item 8.7. Resolution to accept road(s) in Country Oaks Subdivision into the State Secondary System of Highways.

**At the request of County staff, and by the vote set out above, the Board adopted the following Resolution:**

#### R E S O L U T I O N

WHEREAS, the street(s) in **Country Oaks Subdivision** described on the attached Additions Form LA-5(A) dated **December 13, 2006**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Country Oaks Subdivision** as described on the attached Additions Form LA-5(A) dated **December 13, 2006**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

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The road(s) described on Additions Form AM-4.3 is:

- 1) **Susan Drive (State Route 1614)** from the intersection of Route 743 (Earlsville Road) to the cul-de-sac, as shown on plat recorded 10/29/2003 in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2627, pages 250-254, with a 40-foot right-of-way width, for a length of 0.18 miles.

Total Mileage – 0.18

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Item 8.8. Resolution to accept road(s) in Marshall Subdivision into the State Secondary System of Highways.

**At the request of County staff, and by the vote set out above, the Board adopted the following Resolution:**

#### R E S O L U T I O N

WHEREAS, the street(s) in **Marshall Subdivision** described on the attached Additions Form LA-5(A) dated **December 13, 2006**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Marshall Subdivision** as described on the attached Additions Form LA-5(A) dated **December 13, 2006**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

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The road(s) described on Additions Form AM-4.3 are:

- 1) **Hill Top Street (State Route 1014)** from the intersection of Route 691 (Hill Top Street) to the end of statement maintenance of Hill Top Street West, as shown on plat recorded 10/03/2002 in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1974, pages 487-492, with a 40-foot right-of-way width, for a length of 0.02 miles.
- 2) **Hill Top Street (State Route 1014)** from the intersection of Route 691 (Hill Top Street) to the end of statement maintenance of Hill Top Street East, as shown on plat recorded 10/03/2002 in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1974, pages 487-492, with a 40-foot right-of-way width, for a length of 0.08 miles.

Total Mileage – 0.10

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Item 8.9. Resolution to accept road(s) in Grayrock, Phase IV, Subdivision into the State Secondary System of Highways.

**At the request of County staff, and by the vote set out above, the Board adopted the following Resolution:**

#### RESOLUTION

WHEREAS, the street(s) in **Grayrock Subdivision, Phase IV**, described on the attached Additions Form LA-5(A) dated **December 13, 2006**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Grayrock Subdivision, Phase IV**, as described on the attached Additions Form LA-5(A) dated **December 13, 2006**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

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The road(s) described on Additions Form AM-4.3 is:

- 1) **Grayrock Drive (State Route 1381)** from the intersection of Route 1385 (Russet Road) to the intersection of Route 1386 (Braeburn Street), as shown on plat recorded 10/20/2003 in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2619, pages 624-632, with a 50-foot right-of-way width, for a length of 0.20 miles.
- 2) **Grayrock Drive (State Route 1381)** from the intersection of Route 1386 (Braeburn Street) to the intersection of Route 1381 (Grayrock Drive), as shown on plat recorded 10/20/2003 in the office of the Clerk of the Circuit Court of

Albemarle County in Deed Book 2619, pages 624-632, with a 50-foot right-of-way width, for a length of 0.00 miles.

- 3) **Braeburn Street (State Route 1386)** from the intersection of Route 1381 (Grayrock Drive) to the intersection of Route 1385 (Russet Road), as shown on plat recorded 10/20/2003 in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2619, pages 624-632, with a 50-foot right-of-way width, for a length of 0.15 miles.

Total Mileage – 0.35

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Item 8.10. Crozet Crossing Trust Fund – 2006 Annual Report, **was received as information**, as follows:

It was noted in the report that the Crozet Crossings Housing Trust Fund was established in 1994 via an agreement between the County of Albemarle, the Charlottesville Housing Foundation (CHF), and the Albemarle Housing Improvement Program (AHIP) as a means of holding notes on houses in Crozet Crossings and recovering funds upon the resale of houses in Crozet Crossings. It was required to be established as a condition of the Virginia Department of Community Development's approval of the Community Development Block Grant for the Crozet Crossings project. The Trust Fund is responsible for reusing recovered funds for housing projects that benefit low- and moderate-income households. The Fund is managed by five trustees and staffed by the Chief of Housing.

This report is provided as information to the Board to summarize the activity over the past five years and to present the current financial status of the fund. No action is requested for the report. However, next spring the Trustees plan on recommending future projects that can be supported by available funds and the Board will be asked to make the necessary appropriations at that time.

The Trustees for the Crozet Crossings Housing Trust Fund met on November 16, 2006, to review the financial position of the Fund and consider issuing a Notice of Funds Available (NOFA) for available funds. The Fund is in a very good financial position with over \$330,000 in cash. The attached summary (on file) shows the Funds condition for each year since it was established. In 2002-03, the Fund made a loan to AHIP in the amount of \$90,000 to support the construction of five new houses in Esmont as a part of a community revitalization project. Since that time, the Fund has received repayments, recapture, and interest earnings of almost \$270,000. With the recent repayment of \$50,000 from AHIP, the Fund's cash balance is \$332,009.75.

In addition, the Fund has receivables estimated to be \$533,466 with all but \$40,000 (balance of AHIP's loan) representing fourteen loans of \$269,720 and equity recapture of \$223,746. These loans and the recapture of equity are due and payable only upon the sale or refinancing of the property and will be forgiven if the owners continue to maintain their properties as their primary residence for thirty years from the date of the loan.

The Trustees also directed staff to proceed with the issuance of a NOFA for at least \$300,000. The NOFA will specify projects that are eligible for funding and establish eligibility requirements for application. All funds must benefit those households with incomes at or below 80 percent of the area median income.

This report on the Crozet Crossings Housing Trust Fund **was received for informational purposes only**.

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Agenda Item No. 9. Red Hill Community Well. **Public Hearing** to amend the Jurisdictional Area Boundary of the Albemarle County Service Authority to provide water service to Tax Map 87B, Parcels 4, 4A, 6, 6A, 6B, 7, 7A, 8 and 10 located on Taylors Gap Road (Route 710), and Tax Map 87B, Parcels 9, 10A, 11, 12, 60, 60A, 60B and 61 located on Red Hill School Road (Route 760). (Notice of this public hearing was advertised in the Daily Progress on November 27 and December 4, 2006.)

Mr. David Benish, Chief of Community Development, said this is a proposal to amend the Albemarle County Service Authority jurisdictional area boundary to provide water service to a number of parcels in the Red Hill area. He said Albemarle County has been working with the Virginia Department of Environmental Quality (DEQ) since 2003 on a study to find a replacement water supply for the Red Hill area; this is needed due to a major groundwater contamination incident originating at The Trading Post on Route 29 South. He said 11 wells have been contaminated by gasoline; seven of these have had carbon filters installed. Although the contamination seems to have stabilized, the complete clean-up of the site is not expected in the foreseeable future. DEQ continues to be concerned about the need for a permanent reliable water supply to provide service for the impacted properties.

Mr. Benish said County staff, the Rivanna Water & Sewer Authority (RWSA), and the Albemarle County Service Authority (ACSA) have worked with DEQ to find a water supply to provide a permanent source for these contaminated properties. The staff report provides some details on the background of the problem and the steps taken to date. The step tonight is just one step in the process. That step is to allow the ACSA to be the provider of service to the contaminated properties from the well site. In order to do that, it requires amendment of the jurisdictional area boundary.

Mr. Benish said County policies regarding both the provision of central utility systems and a proposed central well as the source for this system, and designating ACSA jurisdictional area boundaries, discourages provision of both central systems and the extension of jurisdictional boundaries into the rural areas except in cases to address public health or safety issues. This area is designated rural area, but in staff's opinion the existing groundwater contamination does pose a significant health or safety issue and the water system is needed to provide safe and potable water to the properties. He said staff believes the request is consistent with the County's Comprehensive Plan and utility policies and recommends approval of a jurisdictional area map amendment to provide a water-only designation to the 17 properties listed in the staff report on Tax Map 87B. The properties recommended for inclusion into the jurisdictional area boundary are either contaminated or DEQ has determined that they are at risk. No other properties are recommended into the jurisdictional area boundaries. He said the property that is the location of the proposed well is not recommended to be included in the ACSA jurisdictional area because it does not meet the criteria of having a documented health or safety issue, it does not have a contaminated well and DEQ has not determined that it is at risk. He said the Board typically would extend service to that property if and when that property was subjected to a health or safety issue. He said there are representatives from both of the service authorities, the DEQ and County staff present tonight, and he then offered to answer questions.

As a technical issue, Mr. Slutzky asked if staff knows the flow rate of the pump and treat well, and is it more than 31 gallons per minute.

Mr. Todd Pitzenberger, the DEQ Geologist managing this project, addressed the Board. He asked if Mr. Slutzky was asking about the supply well.

Mr. Slutzky referred to a Superfund site in Battle Creek, Michigan, which was one of the first pump and treat systems installed at an MPL site. He said they drew water out of the old wells that were supplying the community supply system, then they created a new well field and used that to supply the public, but the flow rate in the new well field was greater than the old one so over a period of time they just ended up moving the plume toward the new well. He is sensitive to that issue and does not see anything in the report because it is not a detail they would necessarily expect to put in. He wants to be sure somebody has looked at the amount of water being drawn from the aquifer as part of the pump and treat for the spill to make sure it will not be less than what is going on at the new well. The new well should not draw the plume toward their supply. Mr. Pitzenberger said DEQ has done an extensive hydrologic study and is confident the location of the proposed water supply well would not draw contamination from the source to the new well.

Mr. Slutzky asked if DEQ had looked at the flow rates of the two. Mr. Pitzenberger said they did. DEQ will continue to operate the remediation system for two to three years after developing the community well in order to contain the plume and to have a few more years to monitor the situation to be sure that when the new well comes online nothing unexpected happens.

Mr. Wyant asked if the demand was estimated to be nine gallons per minute for the houses and school. Mr. Pitzenberger said it was determined that nine gallons per minute were needed but they actually found 29 gallons per minute.

At this time, Mr. Rooker opened the public hearing.

Ms. Kristin Messina addressed the Board to read a statement on behalf of her mother, Ann Messina, who was out of town this night. Her mother had written that she and her family are residents of North Garden. Her home is one of the 11 that are affected by the leaking underground storage tanks at the Trading Post gas station. They have lived with a temporary alternative water supply for over 15 years. Their sense of security continues to be of concern. She appreciates the support, cooperation, expertise and leadership between Albemarle County staff, the ACSA, the Health Department, and the Virginia Department of Environmental Quality all working toward a permanent supply and solution. She supports the adoption of the proposed amendment to the ACSA jurisdiction area. She supports the intent of the Comprehensive Plan, but appreciates the flexibility that allows for the creation of this small community well when it is necessary to provide a permanent water supply for those wells affected and those at risk of contamination.

Mr. Frank Messina said his wife Ann Messina was not able to be present tonight. He said they moved into their newly-constructed home in North Garden with two small children in July 1990. At the time, they believed they were living every young couple's dream. By 1991 they realized a portion of that dream had become a nightmare. Their family's potable water supply was deemed unsafe, not just for human consumption, but for use in general. Leaking underground storage tanks located at The Trading Post, a nearby country store, were the source of the problem. With the assistance of, and gratitude for authorities having jurisdiction over those matters at that time, they received a temporary alternative for their water woes. It is now 15 years later, and they and ten more nearby residences still rely on temporary water systems. He supports the Board moving forward with the plan to amend the jurisdictional boundary areas of the ACSA. He hopes this proposal will bring about a permanent solution to a significant community health issue facing the North Garden area. One day soon he would like to wake up from this 15-year long water nightmare.

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

Ms. Thomas said when she ran for office over 13 years ago she was met with this situation, so has been dealing with it since then. She said this is approaching a \$2.0 million project, at this point. That

is about the end of the money that DEQ will put into it. It will be an expense for all the other water users because the system will not pay for itself. She said there is no other alternative to getting a safe water system to these citizens. It is contrary to the County's Comprehensive Plan to propose individual community well systems like this, but this is definitely a place where it has to be done.

Ms. Thomas said if there were no other comments, she would **move** to amend the service (jurisdictional) area boundary of the Albemarle County Service Authority to provide water service to the 17 parcels listed on the agenda, including the Red Hill School. She said there is one small item she would like to add to her statement, The neighbor who has allowed the well to be drilled on their property would like some assurance from the County that if their own well is ever inadequate, they can hook into the system. She said this Board cannot obligate a subsequent board of supervisors, but it is within the Board's policy at this time to say that if that happened they would be able to hook up. She thinks the Board can only say today that that seems eminently reasonable. By adopting this motion, she thinks the Board will agree to that, as well as to the amendment to the jurisdictional area.

Mr. Wyant **seconded** the motion, which passed by the following recorded vote:

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

NAYS: None.

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Agenda Item No. 10. **Public Hearing.** ZMA-2005-007, Haden Place (Signs #12, 13).

Proposal: Rezone 6.69 acres from R-2 Residential (2 units/acre) to NMD Neighborhood Model District-residential (3-34 units/acre) mixed with commercial, service and industrial uses for 20 single-family homes and 14 townhomes.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Community of Crozet; CT-3 Urban Edge: single-family residential (net 3.5-6.5 units/acre) supporting uses such as religious institutions and schools and other small-scale non-residential uses.

Entrance Corridor: No.

Location: Between Haden (Rt 1209) & Killdeer Lanes (Rt 1215) south of Jarman's Gap Road.

Tax Map/Parcel: TM 55, Parcel 69 & TM 56, Parcel 9.

Magisterial District: White Hall.

(Public hearing continued from October 11, 2006)

Mr. Cilimberg said what is before the Board tonight would give the Board the option of acting on the prior public hearing or setting a new hearing in consideration of information recently provided by the applicant. He said the staff's report outlines the history of the Haden Place petition, and mentions issues identified at the Board's last meeting, including provision of an interconnection to Summerford Lane, deficiencies of roads serving the site, timing of construction of the affordable housing units, and adequacy of cash proffers.

Mr. Cilimberg showed the Board a rendering of the prior proffered plan. He said the applicant has presented a response to the Board's issues from the last meeting on this request which includes revised proffers. This information was just received December 1 so staff has not had a lot time to review all of the new information and the changes in the plan, nor to advertise this petition for a new public hearing tonight. He said the applicant is now showing an interconnection between the southern area of their property and Summerford Lane. Previously that road only went to the property line, but now it shows as going through as an interconnection. That was something the Board was interested in and something which staff generally endorsed. He said the County Engineer has mentioned that the improvements the applicant is able to do on Haden Lane (and has proffered to do on Haden Lane), would not allow for an adequate upgrade to handle through traffic that may occur between Summerford Lane and Jarman's Gap Road if that connection is made. Restricting opening of that connection until improvements are made to Haden Lane in order to fully accommodate that traffic is something which might necessitate a change in what has been proffered.

Mr. Cilimberg said regarding deficiencies of roads that serve the site, the revised proffers no longer include offsite improvements for Killdeer Lane which is on the western side of the project. The applicant had previously offered to upgrade that road within available right-of-way similar to Haden Lane and had a proposed connection. In the latest proposal, that connection for vehicular access has been removed, but it will still be available for pedestrians and bicycles. They do not propose improving Killdeer Lane. Previously, that improvement along with the opening of the connector was not to take place until improvements along Jarman's Gap Road occurred.

Mr. Cilimberg said the County Engineer noted that there are still six units on Killdeer Lane that could increase traffic, so he feels an upgrade to the standards that were previously proffered would be necessary to adequately accommodate the project. In this proposal, the connector road would serve units 6 through 14 along Killdeer on the back side of those homes; visitors or service vehicles would utilize Killdeer and park along the street in front of the homes. He said they have shown their frontage improvements to Killdeer on this plan, but beyond that point to Jarman's Gap Road they no longer proffer any improvements.

Mr. Cilimberg said the applicant did not revise the cash proffer amount offered to mitigate transportation impacts but has provided further information regarding cash value improvements offered through proffers either "value in cash", or "value of the improvements" provided directly by them or their write-down on the affordable units. The six units that are affordable compared to market value are the six units numbered 20, 21, 22, 27, 28 and 29 around the center of the project.

Mr. Cilimberg said the applicant has proffered to provide phasing of affordable units with construction of the market-rate units. That was an issue raised by the Board previously. He said staff has not had time to fully review that with Mr. Ron White, Housing Director, but it is another proffer. He added that if another public hearing is set, staff would want to complete its review on all of these items and advise the Board based on that review. He said the key tonight is to get directions from the Board as to whether it wants to set another public hearing to consider these changes or take some action this evening. He offered to answer questions.

Mr. Rooker asked if the only action the Board could take tonight would be for denial. Mr. Cilimberg said the Board could vote for approval based on the proffers it received previously.

Mr. Rooker said the Board cannot approve the plan before it tonight. Mr. Cilimberg said that is correct. Mr. Davis said the previous proffers would have to be acknowledged to still be on the table. Technically, the amended proffers have effectively replaced the previous proffers, but the public hearing was held on the previous proffers.

Mr. Rooker asked if the Board members had questions for staff. He asked if the Board wanted to hear from the applicant since this is not a public hearing.

Mr. Wyant said in looking at the plan, it shows parking in front of the units on Killdeer. Mr. Cilimberg said the parallel parking next to the curb would primarily be for vehicles visiting, but there will be back loading of the units through the proposed connector road.

Mr. Wyant asked if the applicant is building curb and gutter. Mr. Cilimberg said "yes." He is making frontage improvements on his side of Killdeer, but not anything beyond that under the new proffers.

Mr. Wyant said he asked because the plans show parking along that section. Mr. Cilimberg said there is the likelihood that some vehicles will go back and forth to those units which will not come around and through the back, so there is some traffic that is going to be a natural result of this.

Mr. Wyant said the only thing being accomplished is to shut off the road going into the next project. Mr. Cilimberg said in the prior proffer they were not going to have the connection open between the connector road and Killdeer until Jarman's Gap Road was improved because of difficulties with the intersection at Killdeer/Jarman's Gap. This new proffer removes that connection altogether for vehicles.

Mr. Wyant asked if the improvement to Killdeer and Haden is down to the edge of their property. Mr. Cilimberg said they would improve the frontage along Killdeer to the north edge of their property. On Haden Lane they would improve not only their frontage to a full urban section but also do the widening possible to upgrade Haden to Jarman's Gap Road which is essentially a rural cross-section, but a wider road. The additional proffer made is for a connection through from the connector road to Summerford Lane. This was done in response to some of the concerns raised by the Board at its prior hearing. He said eliminating the connection with Killdeer is an attempt to address some of the concerns of Killdeer Lane residents who did not want additional traffic on their road from this development.

Mr. Wyant said Killdeer is extended up to Old Trail. Mr. Cilimberg showed a rendering of the existing system and some of the possible future road upgrades. He said the one being provided by the applicant in the new proffers is "this" connection. "This" is Killdeer from Jarman's Gap to the property line shown on a site plan which has now been withdrawn. Theoretically, Killdeer could be extended through in some form. He reiterated that this plan includes a full connection from Haden Place to a point short of Killdeer, with bicycle and pedestrian access for the rest of the length. There would be frontage improvements on Killdeer only and no improvements between the applicant's property and Jarman's Gap. There would be frontage improvements on Haden, as well as improvements beyond Jarman's Gap Road within the right-of-way available. He said traffic potentially coming through this connector on Haden is what raised concerns for the County Engineer. He felt that without a full improvement of Haden all the way to Jarman's Gap (which the applicant can't do because they do not have the right-of-way necessary), would create a potential for more traffic than the section of road could handle. The County Engineer felt this connection should not be allowed until Haden is in its fully improved state.

Mr. Rooker asked when that would occur. Mr. Cilimberg said it is not in any plan, and probably cannot occur until development occurs in "this" area. He said there will be upgrades to the intersections of Haden and Killdeer with Jarman's Gap Road as part of the Jarman's Gap Road project. He said those improvements only come back so far off of Jarman's Gap.

Ms. Thomas said one of the Board's concerns was that without that connection into Ballard Field, all traffic would have to go to Jarman's Gap Road. She understands the concern about that additional traffic onto Haden Lane, but on the other side it could take traffic off of that road by having it go into Old Trails; it would reduce traffic on Haden Lane. Mr. Cilimberg said essentially all the Haden Place traffic would only have that one route to take. With the connection, Haden Place and other traffic on Haden Lane has either direction to take. Traffic from Old Trail's development could come up to Jarman's Gap Road. He said Mr. Jack Kelsey is present and can speak about that particular matter. He does not know if there was a traffic study comparing traffic with and without the connection under the scenario offered by the applicant.

Mr. Rooker asked staff's position on the elimination of the connector road on the south side of Haden Place. Mr. Cilimberg said as to the elimination of "this" connection for an ultimate connection through to Jarman's Gap Road, staff does not feel it is a change that should be made. Staff would prefer

to see the connection made and for the Killdeer upgrade to occur to the extent the applicant could do that within the right-of-way available.

Mr. Jack Kelsey, County Engineer, referred to a rendering of Ballard Field, and said that on the right hand side where it shows Haden Terrace, there is a connection built between Ballard Field and Haden Lane. One of the requirements of the site plan was that the connection would be barricaded until Haden Lane was upgraded to carry the additional traffic from Ballard Field. He said if a connection is made at Summerford Lane that would essentially allow that same traffic to go to Haden Lane, which is already a substandard road. The only improvement offered by the applicant is to widen the pavement of Haden Lane to 18 feet to accommodate the traffic from Haden Place alone. It cannot accommodate the additional traffic from Ballard Field. He did a preliminary estimate of what he thought the distribution of traffic would be and how many people from Ballard Field would come through Haden Place to make the right-hand turn at Jarman's Gap Road to go into Crozet. Essentially, it would almost double the traffic coming onto Haden Lane.

Mr. Rooker asked what would happen if Killdeer Lane was opened. Mr. Kelsey said even if minimum improvements were made offsite, and that was enough to take the traffic coming from Haden Place and any of the existing lots on Killdeer, Killdeer Lane at this time is just a glorified driveway. It is a substandard, non-tolerable road and improvements to Killdeer Lane need to be made in order to carry any additional traffic. He said it is even worse the closer you get to the Haden Place development.

Mr. Boyd asked if there are right-of-way issues on both of those roads. Mr. Kelsey said there is some existing right-of-way. The big issue with Killdeer Lane and Haden Lane offsite improvements was the amount of traffic being added on these roadways versus what the ultimate traffic would be if all the interconnections were made. The question was whether this entire burden of making the upgrades to carry traffic from Ballard Field and Old Trail through to Jarman's Gap Road should be put on this developer, or do they just provide the minimum necessary. As to offsite improvements, the Planning Commission felt the minimum necessary to get the pavement width to 18 feet and the drainage improvements necessary was all that should be required. He said those improvements would address the additional traffic coming from Haden Place, but would not address additional traffic from any other development.

Mr. Boyd said he did not understand what Mr. Kelsey said about the minimum required. Is it actually the maximum amount available to the developer? Mr. Kelsey said 30 to 40 feet of dedicated right-of-way is available on Haden Lane. If the roadway is widened to the ultimate Neighborhood Model type street section with curb and gutter, etc., and the roadways widened the same as that being done along the frontage and extending that roadway offsite including sidewalks, there is inadequate right-of-way for that. In order to accommodate the frontage improvements along Killdeer and Haden within the property limits of the Haden Place development, additional right-of-way would be needed.

Mr. Boyd said part of the reason he was not ready to vote for the past proposal was because there was not a connector road. Now, the connector road is included and staff is not recommending the connector road. He asked if the Board went back to the original proposal and proffers, if the request could be approved tonight. Mr. Kelsey said the way the proffers were set up and the way the plan was laid out there was the potential to get that connection at some time in the future. It is not being provided now because there are not the offsite improvements necessary to carry additional traffic.

Mr. Wyant said at Haden Terrace it was barricaded off for a future connection when something is developed at that point. He asked who would pay for that connection when the time comes for it to be built. Mr. Kelsey said when the site plan for Ballard Field was being reviewed, the reviewers tried to get offsite improvements but could not because it was a by-right development. The only thing they could do was to require that there be a note on the plan that the connection would be barricaded until such time as the improvements were made. The improvements could only be obtained through additional development along those properties or if at some time in the future the County deemed it important enough for that interconnection to occur that it would be worth putting public dollars into making that connection.

Mr. Rooker asked if there were 30 feet of right-of-way on Haden Lane and the sidewalk was not extended all the way out, could there be significant road improvements made to make the traffic situation more tolerable. Mr. Kelsey said "yes," more paving could be put it and even a wider curbed section. He said it is the cost factor versus the number of lots proposed. Staff had asked directions from the Planning Commission as to how far to push the offsite improvements. The directions they got where to require minimum pavement widening to accommodate the additional traffic generated by Haden Place but to require no more than that.

At this time, Mr. Rooker asked the applicant, Mr. Wendell Gibson, to respond to questions from the Board.

Mr. Boyd said given what has been said tonight, staff's perspective is that the revised plan is not as good as the original plan. He asked Mr. Gibson if he had really thought about this plan, and would he revert back to the old plan. Mr. Gibson said at the last meeting the main concern was that everyone wanted the Summerford Lane connection. He met with the Beights Development Group. They were happy with the connection to Summerford but did not want to do anything to Killdeer because of the improvements that were done in the Garden Condos. He thought he did was he was asked to do.

Mr. Kelly Strickland with Dominion Development Resources was present to represent the applicant. He said they have been working with County staff for two years trying to figure out how to make the interconnections work. They tried to find a way for all five connections to conceivably use Killdeer

Lane in both directions, Haden Lane in both directions, and the Summerford Lane connection in the middle. They had a work session with the Planning Commission and everything seemed acceptable. When it got to this Board the Board was hesitant the connection could happen, and if it did, when it would be made and who would be responsible for it. He thinks this arose because the property is centrally located in a growth area. It is accessible by already existing roads.

Mr. Strickland said there is not a secondary road in Albemarle that isn't a substandard road. Even though funding isn't currently available for the Jarman's Gap Road improvements, it is slated for improvements. He said there has been talk about putting up bollards so too much traffic does not go down Haden Lane. The bollards could also block off Haden Lane rather than Summerford Lane, so Haden Lane could essentially turn into a cul-de-sac off of Summerford Lane.

Mr. Dorrier said he thinks the applicant has made significant progress on the interconnectivity issue. That was his main objection to the last plan, but he can see from the roads being proposed that the problem has been cleared.

Mr. Boyd said he agrees, but staff is saying this is a worse project. He thinks that what the Board thought would make a better project, according to staff, makes a worse project because of concentration of traffic. He is in a dilemma now.

Ms. Thomas said she understands what staff is saying about Killdeer Lane and wanting to have as many options for interconnectivity as possible, but having driven both of those roads, Killdeer Lane is worse than Haden Lane. There are two different ways to impact neighborhoods, increase traffic and widen the roads. She thinks both of those roads would be difficult to widen and leave the community feeling good about it. Killdeer would be harder to widen and have the neighborhood left with a feeling that it is intact. She said when the developer showed her what he had planned it didn't cause her alarm. She did not understand what staff is saying about access to houses 9 through 14. She asked if car access to those houses will be completely from Haden Lane. Mr. Gibson said houses 9 through 14 all have garages at the rear of their property. He thinks the owners would access their homes through Haden Lane. He does not think there would be that much traffic on Killdeer. He thinks Killdeer should be left as a nice rural-setting road for the community.

Mr. Boyd asked if the houses would front on Killdeer Lane. Mr. Gibson said the fronts of the houses will face Killdeer for aesthetic reasons.

Mr. Rooker said the primary entrance to the houses for guests would be off on Killdeer. Mr. Cilimberg said that is correct. Mr. Gibson said each house has a garage and a driveway in the rear, so technically most people would come and go where the garage is located.

Mr. Wyant said the Board is trying to make sure the "downtown" part of Crozet grows and survives. That is the concern of the Crozet Advisory Committee. He is not happy with the road, actually neither one. If that is one of the interconnected roads, he wonders who will pay for the dead-end section to be connected. Will it fall to the County as another project in transportation? He wonders about the best way to direct traffic into Crozet. Is there some way to limit traffic until those are improved roads? He thinks that everything that fronts on this property should be the responsibility of this developer and then there are other improvements needed beyond that. He said there is not the right-of-way needed through there.

Mr. Rooker asked if there were traffic counts available with and without the connector being open to Ballard Field. Mr. Kelsey replied that just the traffic from Haden Place plus from the existing properties on the road is about 400 on either street. If additional traffic from Ballard Field were added in, it would make a total of 800 vehicles on both Killdeer Lane and Haden Lane.

Mr. Rooker asked if the presumption is that not much traffic from Haden Place would go out the Ballard Field direction. Mr. Kelsey said if the driver's destination is downtown Crozet or Route 240, they would use Jarman's Gap Road; if their destination is Route 250 or I-64, they'll cut through Ballard Field and take Old Trail Drive. When he was looking at the development and trying to figure out the splits in that distribution he took into consideration the ways that people could exit the development.

Ms. Thomas asked if Mr. Kelsey calculated 30 percent of those trips going through Old Trail. What split was he thinking of? Mr. Kelsey said it was about 50 percent. He figured people from Ballard Field would go through Haden Lane.

Mr. Wyant asked if using 34 homes with 10 vehicle trips per day is a reasonable number to use. Mr. Kelsey said "yes." He said 18 feet of pavement is the minimum necessary to carry the existing traffic; adding an interconnection it would need to be wider.

Mr. Wyant asked if it would be enough to handle Haden and the existing traffic. Mr. Kelsey said it could handle Haden Lane and the existing lots on Killdeer Lane.

Mr. Slutzky said he thinks the Board has a choice tonight, or it can hold a public hearing later. He thinks that when the Board makes its decision, they are trying to convey a message to the public about their thinking on these developments. The Board has set the Neighborhood Model of design and given some signals about what it wants in the way of proffers. He thinks that when the Board makes a decision on each individual application, it is sending a signal not only about that application, but informs the public as to where it is heading with future applications. He thinks the Board may have been confusing on this application last time by almost unanimously saying "no" to what most felt was a good form and design

compatible with what the Crozet Master Plan calls for. Perhaps for good reason the Board got hung up on the interconnecting road issue.

Mr. Slutzky said the Board signaled to the applicant that he would need to address that southern connection in order to get the Board's support. He has done that, and the Board is struggling with all the other road improvements offsite that need to be done. The Board also knows those improvements will not be addressed by developers building by-right. That means a significant amount of the burden will fall on developers who come to the Board and ask for changes. He said this developer has given proffers and a form of design the Board wants, but apparently it is so consistent with the Crozet Master Plan in most respects that the original plan was unanimously supported by the Planning Commission. He said that clearly there are transportation implications of approving this. He does not think any Board member is satisfied with the fact that the Jarman's Gap Road project has not been built yet. There are problems with dumping the traffic out of this development onto either Haden or Killdeer or Summerford.

Mr. Slutzky said there are implications to approving this request, but he thinks there are also implications to turning it down based on what has been discussed so far. He encouraged the Board to give a clear signal to the developer that it wants to go to a public hearing soon to consider the new proffers with the expectation that for the moment the Board is convinced the developer has addressed what it asked them to do. The Board could go ahead and approve the original proffers, or just go ahead and make a decision that it does not want to have this form and design if all of the transportation implications off of the property are not adequately addressed. He is worried about the Board getting too burrowed in on the particulars of the larger scale transportation implications of just this project when there is the same issue on every application.

Mr. Rooker said before voting tonight he would like to have the minutes of the Board's meeting when this request was discussed. He feels that what the developer proposed tonight is a better transportation plan for this project. In the worst case, the Board could request that the connection to Summerford Lane be blocked until there were additional improvements on Haden Lane. He thinks it would be a mistake to approve this development without that connection being provided and built. He said it could be built and closed until such time as Haden Lane is improved going out of the development. He asked if staff has analyzed the developer's computation of the value of the proffers. Mr. Cilimberg clarified that staff has not had time to go through and establish whether the values the applicant provided in the proffers are reasonable or not.

Mr. Rooker said, as the applicant has presented it, most of the value is in the affordable housing component. That was based upon a projection of lost profit opportunity. As proposed, the affordable units would yield a profit of \$47,000 per unit and the applicant said they would make \$90,000 a unit if they were sold at market. There is a \$43,000 value per affordable unit being put on this for the purpose of coming up with the computation of \$14,000 per market unit of total proffer value. Personally, he would rather see this application come back for a public hearing based on what the applicant has proposed. He would like for staff to have an opportunity to provide the input the Board needs to make an intelligent decision on the new plan. He thinks it has some attributes that are better than the prior plan. Having the access onto Killdeer for those six homes, does split some of the traffic, albeit most of the traffic would still be going out Haden Lane. There is a provision for a connection that at some point would be important to have made. There is the problem here that is going on throughout the County in terms of inadequate transportation facilities. The opportunity to improve Haden Place is not there today, and it may never be there. From his perspective, he would like to have this application come back for a public hearing. That is what the applicant has proposed doing.

Mr. Slutzky agreed that this is an improved version of what was presented to the Board before.

Mr. Wyant said the way this development is proposed, it is helping the County develop the Crozet Master Plan. He wants to funnel traffic back into Crozet, but until Haden Lane is improved, he does not want additional traffic coming through there.

Mr. Rooker said the road could be made a one-way road initially and that would enable people to go out that way to get to the schools and Route 250. He said there would be some benefit from the connection. Mr. Davis said he does not think VDOT would allow that to happen.

Mr. Wyant said he would like to comment about Proffer No. 3 concerning stormwater drainage. He said it needs to be made clear in that proffer when it will occur. He would not want them to build a stormwater structure and then have it silted up during construction. During construction, it is an erosion control measure.

Mr. Rooker asked for current traffic counts on Haden Place and Killdeer Lane. Has a traffic counter ever been placed on those roads? Mr. Kelsey said he does not know at this time. He will check.

Mr. Wyant said that if the townhomes are built before the affordable houses, not much will have been achieved. He said it is the way that Proffer No. 5 is written. Mr. Strickland said there are three blocks of townhomes and no block can be started until two of the affordable units are started.

Mr. Wyant asked when the townhomes will be constructed compared to the detached units. Mr. Strickland said in order to build the houses, a site plan must be approved along with the road plans and everything else for the interior portion; the existing frontage is available now along Killdeer and Haden Lanes, so only a subdivision plat plus the offsite road improvements would be required. Time wise the perimeter units could be built a lot quicker; it would hurt the applicant to proffer to do the affordable

housing at the same time as the single-family detached. That is why they were put with the townhouses because they knew they would be built at the same time since they are on the same road.

Mr. Wyant asked that the applicant think about doing some of the affordable units with the six on each side. Mr. Gibson said the problem is that they will have to have the site plan approved, so they would be able to start the single-family houses before the townhouses depending on how fast site plan approval occurs. If it moves quickly, the affordable homes would go in. His goal is to build affordable units.

Mr. Wyant said it was brought up at the Crozet Advisory Council meeting that a lot of affordable units have been proffered, but none are on the market so far. If this development is approved, he was hoping that one unit could be built early. He wants to see something occupied soon. Mr. Cilimberg said if a site plan were submitted for the middle area at the same time as plats for the outer area, staff's timing would theoretically be the same for review. Whether that happens or not will be based on issues related to either the site plan or the subdivision review. Theoretically they are on the same timeline review if they are submitted at the same time.

Mr. Rooker asked if the applicant would be willing to proffer that a certain number of affordable units would be put on the market within a certain time period. That is what Mr. Wyant is talking about. Theoretically the perimeter of the development could be built and the inside not be built for five years in which case none of the affordable units would come forward in a reasonable time period.

Ms. Thomas said if they do that the people in the single-family detached houses would become their opponents. She thinks they will realize it is better to build it all as quickly as possible so they do not create a neighborhood that would protest the build-out of the rest of the plan.

Mr. Rooker said Mr. Wyant has raised an issue that the developer might want to think about before bringing this plan back to the Board. Mr. Gibson asked Mr. Wyant how he would like to see the affordable units addressed.

Mr. Wyant suggested the affordable units be started as the applicant completes the townhouses. He would rather they run concurrently with some set time frames as the County has made a commitment to the community to provide affordable housing. Mr. Strickland responded that putting a date specific on it would put a burden on the County to get a plan approved.

Mr. Rooker said the proffer could be written that a plan would be submitted for that section by a date specific, and they would build half of the affordable units in a certain period of time after approval. Mr. Strickland said affordable housing proffers are a nightmare to write.

Mr. Davis commented that staff has not had a chance to review and comment on the latest proffers, but there is an issue related to the Killdeer Lane improvements. There is a proffer in this proposal that a future connection shall be made available at the request of the County, but there is no clarity as to what that means, whether or not that future connection means a dedication of right-of-way, an improvement of right-of-way, etc. He said there must be some additional clarity as to what is being proffered before these proffers are acceptable.

Mr. Rooker asked if Mr. Davis sees anything else that needs to be addressed. Mr. Davis said not at this point. The Board's policy has been to not set a matter for public hearing until final proffers had been received by staff, at least 21 days prior to the meeting.

Mr. Cilimberg said with what the Board has mentioned tonight, the applicant has some work that must be done in order for staff to review and get comments back to them so they can prepare a final version of the proffers. He said a hearing would probably need to be scheduled in February. Mr. Tucker suggested this request be deferred without a date specific so the applicant and staff can work together to get it back to the Board as quickly as possible.

Mr. Boyd asked if the request could come back in January. Mr. Tucker said he sees no way that could happen.

Mr. Rooker said timing of this is in the applicant's hands. He said whenever the applicant gets the proffers in and reviewed, this petition can be rescheduled.

Mr. Cilimberg said he thinks the Board has expressed its preference for the plan presented by the applicant tonight. There seems to be a question of whether the connection should be open between Summerford Lane and Haden Place. It would be good to understand whether the Board wants it completely open or have the option to block it until such time as the Board feels the traffic situation and the improvements on Haden could take care of the connection.

Mr. Rooker said he thinks it would be advisable to have the option to block the connection on the part of the County or to make it a one-way road. He asked if there could be flexibility in the proffers so it is at the option of the County. Mr. Davis said that can be proffered. Mr. Cilimberg said the one-way proposal might hold it up, but staff could work with Mr. Kelsey to get actual traffic numbers on sections of road with and without the connection.

Mr. Wyant said the barricading off of Summerford Lane should be considered carefully because there could be construction equipment using Killdeer or Haden that will tear up the roads. He thinks Summerford could be used during the construction phase, and then barricaded afterward.

Ms. Thomas said the applicant does not necessarily have to proffer that. They can proffer that the connection be built, and it would be up to the County to barricade it or not. She said Mr. Wyant has raised a good point about the strength of those roads. Mr. Davis said the road section that leads to the barricaded point will still have to meet VDOT requirements. He said VDOT may have to weigh in on this before staff can have a final recommendation. He does not know how that might affect review time.

Mr. Strickland said the plan right now shows Haden Lane as a private road; the connector down to Summerford Lane is an extension of that road and it could also be a private road and not fall under VDOT's review process. Mr. Davis said having two public roads connected by a private road is somewhat problematic.

Ms. Thomas asked if that has been the proposal all along. Mr. Strickland said Haden Place has been proposed as being a private road, but the connector road has not been proposed one way or the other. It is just shown as a road connector.

Mr. Rooker said the applicant needs to work those issues out with staff between now and when the request comes back to the Board. Mr. Davis agreed and said that is an issue which has resulted from this discussion. Mr. Cilimberg said Mr. Kelsey has heard this discussion, so will need to work on how that can be addressed.

Mr. Rooker asked if any Board member had further guidance for the applicant. He asked if the applicant needed to ask for a deferral. Mr. Davis said the Board would need to take action to defer this item, and it would be helpful if it was at the applicant's request, otherwise the Board would actually have to take action to deny the request.

Mr. Rooker asked if the applicant would like to request deferral. Mr. Gibson said "yes." Mr. Davis said the motion should be to grant the applicant's request for a deferral until final plans and proffers are prepared for a public hearing.

Mr. Wyant **moved** to grant the applicant's request for deferral of ZMA-2005-007 until final plans and proffers are prepared for a public hearing. Ms. Thomas **seconded** the motion. Roll was called, and the motion was passed by the following recorded vote:

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

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Agenda Item No. 11. **Public Hearing.** ZTA-2005-005, Temporary Farm Worker Housing. To Amend Sections 3.1 ("Definitions"), 5 ("Supplemental Regulations") and 10 ("Rural Areas") of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Section 3.1 by adding definitions of "Farm", "Farm worker housing, Class A" and "Farm worker housing, Class B"; amend Section 5 by adding supplemental regulations for temporary farm worker housing; and, amend Section 10 by adding temporary farm-worker housing facilities for 10 or fewer residents as a by-right use (farm worker housing, Class A), and temporary farm-worker housing facilities for more than 10 residents as a use requiring a special use permit (farm worker housing, Class B). (Notice of this public hearing was advertised in the Daily Progress on November 27 and December 4, 2006.)

Mr. Cilimberg said in April, 2005 there was a determination made by the Zoning Division that while the housing of farm workers in structures intended for temporary, seasonal use has existed for decades in the Rural Areas of the County as a nonconforming use, it is not currently a permitted use in the Rural Areas (RA) zoning district. Since that time, staff has worked with the agricultural community and other agencies to develop an ordinance to address this situation by allowing farm worker housing as a use in the RA zoning district.

Mr. Cilimberg said several versions of the ordinance went through Planning Commission and Board review. The last draft ordinance was considered by the Board on September 13, 2006, but that ordinance would have only allowed farm worker housing facilities by special use permit. The Board directed staff to revise the draft ordinance to allow farm worker housing as a by-right use for up to ten persons in up to two dwelling structures and to allow farm worker housing for more than ten persons, or more than two dwelling structures, by special use permit. The draft of the ordinance presented tonight is based on the version considered by the Board on June 7, 2006, which allowed farm worker housing for up to twenty persons by right and required a special use permit for such facilities housing more than twenty persons.

Mr. Cilimberg said the draft before the Board tonight is based on what the Board considered in June of allowing up to 20 farm workers by-right, and having a Special Use Permit for facilities housing 20 persons, but it's been refined to reflect particulars necessary to make the ordinance work. It also follows the Board's direction from its September 13 meeting and clarifies that Class B facilities would be processed through a standard special use permit review. He said staff recommends approval with the revisions provided.

Mr. Rooker asked if any Board member had a question for staff.

Mr. Slutzky said he read this draft carefully in the context of the earlier discussion, and he was impressed at how staff precisely and accurately captured what the Board said. He appreciates that work and does not think the ordinance will require a lot of further dialogue.

Ms. Thomas said the Legal Aid office had some concerns with the original proposal. She asked if they had seen and reviewed this draft. Mr. Cilimberg said Mr. Scott Clark did a lot of the groundwork on this issue. Mr. Greg Kamptner, Deputy County Attorney, worked on drafting the ordinance.

Mr. Scott Clark said staff worked with Legal Aid several months ago. They were more involved when earlier drafts were being discussed.

At this point, Mr. Rooker invited public comment.

Ms. Marcia Joseph said the person from the farm that was responsible for this ordinance change being considered called her on Monday and asked about the process. They want to start moving with their operation and want to submit a request to the County this year. She asked that the Board consider this ordinance favorably and thanked them for supporting agricultural use in the County.

Mr. Jeff Werner, representing the Piedmont Environmental Council, thanked the County for all of its hard work in this matter. He said PEC is very supportive of anything that promotes the agricultural industry in the County. He thanked Ms. Joseph and County staff for all of their hard work.

Mr. Cilimberg also recognized Mr. John Shepherd from the Zoning Division for his work on this ordinance.

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

Ms. Thomas **moved** to adopt An Ordinance to Amend Chapter 18, Zoning, Article I, General Provisions, Article II, Basic Regulations, and Article III, District Regulations, of the Code of the County of Albemarle, Virginia, by amending Sec. 3.1, Definitions, Sec. 10.2.1, By right, Sec. 10.2.2, By special use permit, and by adding Sec. 5.1.44, Farm worker housing, which will permit the housing of farm workers and facilities intended for temporary habitation.

Mr. Wyant **seconded** the motion, which passed by the following recorded vote:

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

NAYS: None.

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

#### **ORDINANCE NO. 06-18(2)**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE II, BASIC REGULATIONS, AND ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Regulations, Article II, Basic Regulations, and Article III, District Regulations, is hereby amended and reordained as follows:

**By Amending:**

Sec. 3.1           Definitions  
Sec. 10.2.1       By right  
Sec. 10.2.2       By special use permit

**By Adding:**

Sec. 5.1.44       Farm worker housing

#### **Chapter 18. Zoning**

##### **Article I. General Regulations**

##### **Sec. 3.1 Definitions**

*Farm:* The term "farm" means one or more parcels of land, whether such parcels are abutting or not, operated under the same management and whose primary use is agriculture.

*Farm worker housing, Class A:* The term "Farm worker housing, Class A" means: (i) structures located on a farm that are designed and arranged to be occupied exclusively by up to ten (10) persons employed to work on the farm on which the structures are located for seasonal agriculture work or up to ten (10) persons including the farm workers and their immediate families; (ii) the number of such structures designed and arranged for sleeping does not exceed two (2); and (iii) no single structure contains all of the following: provisions for sleeping, eating, food preparation, and sanitation (bathing and/or toilets).

*Farm worker housing, Class B:* The term "Farm worker housing, Class B" means: (i) either structures located on a farm that are designed and arranged to be occupied exclusively by more than ten (10) persons employed to work on the farm on which the structures are located for seasonal agriculture work or more than ten (10) persons including the farm workers and their immediate families, or the number of such structures designed and arranged for sleeping is three

(3) or more, regardless of the number of farm workers or their family members who could sleep in such structures; and (ii) no single structure contains all of the following: provisions for sleeping, eating, food preparation, and sanitation (bathing and/or toilets).

*Seasonal agriculture work:* The term "seasonal agriculture work" means work by a person employed to work on a farm to perform either field work related to planting, cultivating, work related to keeping livestock and/or poultry, or harvesting operations, or work related to canning, packing, ginning, seed conditioning or related agriculture operations, and the work pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A person who moves from one seasonal activity to another while employed by the farm to perform agriculture work is engaged in seasonal agriculture work even though he or she may continue to be employed by the farm throughout the year.

## **Article II. Basic Regulations**

### **Sec. 5.1.44 Farm worker housing**

Each farm worker housing facility shall be subject to the following:

- a. *Concept plan to be submitted with application for farm worker housing.* Before applying for the first building permit for a farm worker housing, Class A, facility, or in addition to any other information required to be submitted for a farm worker housing, Class B, special use permit, the applicant shall submit a concept plan meeting the requirements of section 5.1.44(b).
- b. *Contents of concept plan.* The concept plan shall show the following: (i) the boundary lines of the farm (may be shown on an inset map if necessary); (ii) the location and general layout of the proposed structures at a scale of not more than one (1) inch equals forty (40) feet; (iii) vehicular access, travelways and parking for the facility; (iv) topography (with a contour interval of no greater than ten (10) feet); (v) critical slopes; (vi) streams, stream buffers and floodplains; (vii) source(s) of water for fire suppression; (viii) building setback lines as provided in subsection 5.1.44(g) below; and (ix) outdoor lighting. The concept plan also shall include a written description of each structure's construction and materials used, and the number of persons to be housed in the farm worker housing facility.
- c. *Notice of receipt of concept plan to abutting owners.* The zoning administrator shall send notice of the receipt of a concept plan as follows:
  1. *Farm worker housing, Class A, facility:* For each concept plan received for a farm worker housing, Class A, facility, the zoning administrator shall send notice to the owner of each lot abutting the parcel for which a concept plan has been received within ten (10) days after submittal of the concept plan deemed by the zoning administrator to be complete. The notice shall include a copy of the concept plan and shall advise each recipient of the right to submit written comments within ten (10) days of the date of the notice and the right to request planning commission review as provided in section 5.1.44(d). Notice mailed to the abutting owner shall be mailed to the last known address of the owner, and mailing the notice to the address shown on the current real estate tax assessment records of the county shall be deemed compliance with this requirement. The failure of an abutting owner to receive the notice required by this section shall not affect the validity of an approved concept plan or zoning compliance clearance.
  2. *Farm worker housing, Class B, facility:* For each concept plan received for a farm worker housing, Class B, facility, notice to the owner of each lot abutting the parcel for which a concept plan has been received shall be provided in conjunction with the notice required for the special use permit.
- d. *Request for planning commission review and action on farm worker housing, Class A, facility concept plan.* An abutting owner to whom notice for a farm worker housing, Class A, facility concept plan under section 5.1.44(c)(1) and who submitted timely written comments about the concept plan as provided therein may request that the planning commission review and act on the concept plan. The request shall be in writing, state the reasons why the commission should review the concept plan, and be filed with the director of planning within ten (10) days after the date of the notice from the zoning administrator.
- e. *Review and action on concept plan.* A concept plan shall be reviewed and acted upon as follows:
  1. *Farm worker housing, Class A, facility.* For a farm worker housing, Class A, facility, the concept plan shall be approved by the zoning administrator or the planning commission, as the case may be, before any building permit is issued for the facility. The concept plan shall be approved by the zoning administrator or the commission if it satisfies all applicable requirements of the zoning ordinance and the design is determined to not be a substantial detriment to abutting parcels.

In approving the concept plan, the zoning administrator or the commission may impose reasonable conditions to mitigate impacts on abutting parcels arising from facility. The commission shall give due consideration to the recommendations of the zoning administrator, the director of planning and other officials. In addition, the commission may consider such other evidence as it deems necessary for a proper review of the application.

2. *Farm worker housing, Class B, facility.* For a farm worker housing, Class B, facility, the concept plan shall be reviewed and acted upon in conjunction with the special use permit.
- f. *Farm worker housing facilities; permissible structures.* Farm worker housing facilities shall not use motor vehicles or major recreational equipment, as that term is defined in section 4.12.3(b)(1) of this chapter, to provide for sleeping, eating, food preparation, or sanitation (bathing and/or toilets).
- g. *Minimum yards.* Notwithstanding any other provision of this chapter, the minimum front yard shall be seventy-five (75) feet. The minimum side and rear yards shall be fifty (50) feet. All yards shall be measured from the farm worker housing structures.
- h. *Zoning compliance clearance.* The owner shall obtain a zoning compliance clearance from the zoning administrator as provided in section 31.2.3.2 of this chapter before a farm worker housing facility is occupied, subject to the following additional requirements:
  1. The applicant shall apply for a zoning compliance clearance at least thirty (30) days prior to the first expected occupation of the farm worker housing facility. The application shall be submitted to the zoning administrator.
  2. The zoning compliance clearance application shall include all of the following information:
    - a. Written approval of the farm worker housing facility as a migrant labor camp under 12 VAC 5-501-10 *et seq.*, the food preparation area, the private water supply, and the septic disposal system by the Virginia Department of Health.
    - b. 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.
    - c. Written approval of the adequacy of the access to the site for emergency vehicles by the fire marshal.
    - d. Written approval of the adequacy of the structures intended for human habitation by the building official.
  3. Upon the zoning administrator's determination that all requirements of the zoning ordinance are satisfied, that all conditions of the special use permit authorizing a farm worker housing, Class B, facility, are satisfied, and upon receipt of the approvals and documents required in section 5.1.44(h)(2), the zoning administrator shall issue a zoning compliance clearance for the facility.
- i. *Use of farm worker housing facility by workers and their families only.* A farm worker housing facility shall be occupied only by persons employed to work on the farm on which the structures are located for seasonal agriculture work and their immediate families as provided herein.
- j. *Use of farm worker housing facility when not occupied.* When not occupied by seasonal farm workers, farm worker housing facilities may be used for any use accessory to a primary agriculture use.

### **Article III. District Regulations**

#### **Sec. 10.2.1 By right**

The following uses shall be permitted in any RA district subject to the requirements and limitations of these regulations:

...

23. Farm worker housing, Class A (up to ten occupants and up to two sleeping structures) (reference 5.1.44).

...

#### **Sec. 10.2.2 By special use permit**

The following uses shall be permitted only by special use permit approved by the board of supervisors pursuant to section 31.2.4: (Added 10-9-02)

...

51. Farm worker housing, Class B (more than ten occupants or more than two sleeping structures) (reference 5.1.44).

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Agenda Item No. 12. **Public Hearing.** ZMA-2006-012, UVA Foundation-Advanced Research & Technology Building Annex (Signs 35, 36, 40).

Proposal: Rezoning on CO-Commercial Office (offices, supporting commercial and service uses; and residential use by special use permit at 15 units/acre) zoned property to allow an additional 30,000 square feet for a building square footage total of 565,000.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Office Service-office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre) in the Development Area.

Entrance Corridor: Yes.

Location: Ray C. Hunt Drive in the Fontaine Research Park located on Fontaine Avenue adjacent to the northeast of the Rt 29/250 Bypass in Neighborhood 6 of the Development Area.

Tax Map/Parcel: TMP 76-17B, 17B6.

Magisterial District: Samuel Miller.

(Notice of this public hearing was advertised in the Daily Progress on November 27 and December 4, 2006.)

Mr. Cilimberg said approval of this rezoning request would amend existing zoning at the University's Fontaine Research Park, specifically to cover the advanced research and technology building annex, allowing an additional 30,000 square feet in a basement annex under existing parking, bringing the total square footage to 565,000 square feet. He said it can be accommodated under the existing site plan without adverse impacts to the fiscal environment, other activities on the site, or nearby properties and neighborhoods. He said the Research Park is located in the urban area close to the City, concentrating office and research activities in a location close to areas of dense population.

Mr. Cilimberg said the Planning Commission held its public hearing and unanimously recommended approval of the rezoning provided the proffers were updated and a certified engineer's report submitted with a final site plan for the proposed building annex. He said the certified engineer's report is already a requirement, and staff determined during its review when that requirement should be met with the proposed annex. Staff now has final signed proffers which have been revised to reflect the increase in square footage requested and other minor changes to meet proffer requirements. He showed to the Board an illustration which he said had been added as an exhibit to the proffers to further detail requirements and to improve Zoning's administration of the proffers. He said the proffers are in order, and this rezoning is recommended for approval.

Mr. Rooker asked if Board members had any questions.

Ms. Thomas said the Fontaine Research Park was a participant in the Southern Urban Area B Study. It was the object of a road that will someday be needed to connect this area with a more interior area. There was some verbal assurance from the University that they were willing to do at the appropriate time what is necessary to turn the Fontaine Research Park into something that matched the Area B study. She realizes this is not the significant upgrading that would trigger that action, but she wants to make sure that nothing the Board approves impedes the Area B type of interconnectivity recommended.

Mr. Cilimberg said that Area B study is currently under review by the Planning Commission. It has not been formally adopted into the County's Comprehensive Plan. It has some relationship not only to this site, but a site to the south called the "Granger" site. The preferred alignment from that study would propose a road on the more eastern side of the property. This annex is occurring on the more western side of the property. Nothing is happening with this particular proposal that would affect that potential alignment.

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

Mr. Fred Missel, Director of Design and Development for the University Foundation, addressed the Board. He thanked the Board for its consideration of this amendment that will enable additional research in the Park. He said Mr. Mike Stumbaugh, their project manager, was also present. He offered to answer questions. He said that in the spirit of thanks, he would thank County staff members Rebecca Ragsdale and John Shepherd for their work on this petition.

Ms. Thomas asked if there are any plans for bus service to the Park. Mr. Missel replied that there are now two connections between the University and the Park via University Hospital shuttles. As far as the critical mass needed for bus service, he does not have an answer. He said as part of the proffers for the Advanced Research and Technology Building they proffered to build a bus shelter and that will be done before they get their certificate of occupancy for the building.

Mr. Rooker said it has been mentioned that there is another plan for this property which would expand the square footage in the Research Park substantially. He asked the status of that plan. Mr.

Missel said they just started that process two weeks ago. They have hired a civil firm and a land-planning firm to start the process of that expansion. They are also in the process of doing a traffic analysis to better understand the regional traffic and how that will play into the future development. They are also focusing heavily on the access through Stribling Avenue and how that interconnectivity will assist in lightening the load on the current single entrance into the Park.

Mr. Rooker said there is also a proposal for the adjoining Granger property, which is in the Comprehensive Plan application stage. He wants to make certain that the traffic studies give a picture of the total traffic that might result from the two expansions were they to be accommodated.

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

Ms. Thomas **moved** to approve ZMA-2006-012 as recommended by the Planning Commission with the attached proffers. Mr. Wyant **seconded** the motion, which passed by the following recorded vote:

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

(**Note:** The proffers are set out in full below:)

ZMA-2006-012  
PROFFERS  
FONTAINE RESEARCH PARK  
November 30, 2006

TAX MAP PARCELS 76-17B, 17B(1), 17B(2), 17B(3), 17B(5), 17B(6), 17B(7), 17B(8), 17B(X), and 17B(W).  
53.52 Acres, Zoned Commercial Office (CO)

Pursuant to Section 33.3 of the Albemarle County, Virginia Code (the "Code"), and consistent with the Water Protection Ordinance, or "Ordinance" (Chapter 17 of the code) the Owners (as defined below), or their duly authorized agents, hereby voluntarily proffer the conditions listed below which shall be applied to the above-referenced parcels. The proffers contained herein amend, restate and supersede all previous proffers pertaining to the above-referenced parcels. Any previous proffers applicable to such parcels have either: i) been fully satisfied, ii) are no longer applicable, or iii) have been incorporated in their entirety into these proffers. These conditions are proffered as part of the requested zoning (ZMA 2006-012) and it is agreed that: 1) the rezoning itself gives rise to the need for the conditions; 2) such conditions have a reasonable relation to the rezoning request; and 3) all such conditions are in conformity with the Albemarle County Comprehensive Plan.

The Applicant of ZMA 2006-012 is the University of Virginia Foundation (the "Applicant"), successor to the University of Virginia Real Estate Foundation, which is successor to UREF Research Parks, Inc. The owners of parcels of land within the Fontaine Research Park include the University of Virginia Foundation, the University of Virginia Health Services Foundation, and the Rector and Visitors of the University of Virginia (collectively, the "Owners").

1. Proffer number 1 from ZMA 2000-04 has been satisfied.
2. Development shall substantially adhere to the Fontaine Research Park Master Plan, prepared by Draper Aden Associates, last revised August 18, 2000 ("Master Plan"), submitted with the proffers for ZMA 2000-04, which proffers were accepted as part of the Board of Supervisors approval of ZMA 2000-04 on September 20, 2000. The Master Plan replaces in its entirety all previous proffered plans, including the Zoning Application Plan, dated May 1992, and prepared by McKee/Carson. The locations of certain pedestrian ways, greenways and other features have been indicated on a copy of the Master Plan which is attached hereto as Exhibit A.
3. Proffer number 3 from ZMA 2000-04 has been satisfied and is shown in Red on Exhibit A. This path is constructed of asphalt from Fontaine Avenue to the point of intersection with the existing concrete pathway in front of Building A. This path shall be maintained by the Owners under a common maintenance agreement, until such time as the common areas are conveyed to The Fontaine Research Park Association (or such other name as may be selected pursuant to the Declaration of Protective Covenants and Restrictions for Fontaine Research Park, dated January 20, 1993, and recorded at the Clerk's Office of the Circuit Court of the County of Albemarle, Virginia in Deed Book 1286, page 604) at which time the path will be maintained by the Association.
4. The University of Virginia Foundation shall construct a pedestrian system within the Research Park, in general conformance with the system shown on the Master Plan. Specific features for conformity shall include pedestrian connection from buildings to other buildings and parking areas. The pedestrian system shall be completed prior to the issuance of a Certificate of Occupancy for the Life Sciences Annex (LiSA) referenced as the ART Annex in ZMA 2006-012 and in the location shown in Orange on Exhibit A.

5. Total development on the site shall not exceed 565,000 square feet of gross floor area. Support commercial uses shall not exceed 20,000 square feet of gross floor area
6. No buildings shall exceed four stories in height. The University of Virginia Foundation or the Owners under a common maintenance agreement shall maintain the existing landscape buffer area in the location shown in Green on Exhibit A to screen the project from Fontaine Avenue and residential neighborhoods adjoining the Fontaine Research Park.
7. Strict architectural and landscape architectural guidelines and restrictions shall continue to govern the design and construction of all buildings and parcel specific site development. Such architectural guidelines and restrictions shall be applied and enforced in accordance with the Declaration of Protective Covenants and Restrictions for the Fontaine Research Park, dated January 20, 1993, and recorded at the Clerk's Office of the Circuit Court of the County of Albemarle, Virginia in Deed Book 1286, page 604.
8. Best Management Practices, as approved by the County Engineer, shall be implemented in all areas of earth disturbing activity. Storm water management shall be accomplished through a combination of new storm water management facilities and modification of existing storm water and/or erosion control facilities, as modified and as shown on the Master Plan. All required storm water management and BMP structures are existing and complete as required by the Master Plan. The University of Virginia Foundation will not create any land disturbance in the area indicated as Resource Protection Area on the Master Plan, except for pedestrian pathways and the storm water management facility, (as shown on the Master Plan) without the approval of the Planning Commission. The Resource Protection Area is delineated as all the area within 100 feet of the boundaries of the 100 year flood plain elevations.
9. Prior to issuance of a Certificate of Occupancy for the Life Sciences Annex (LiSA) the University of Virginia Foundation shall dedicate a strip of land one hundred feet (100') in width along the entire property boundary adjacent to Morey Creek to the Southern Railway right-of-way and along the Southern Railway right-of-way (as it exists on September 20, 2000), from Morey Creek to the intersection of such right-of-way and Stribling Avenue (the "Greenway"). The Greenway Location is shown in Violet on Exhibit A. The Greenway will be conveyed in an easement in such form as the Board of Supervisors may require, and the University of Virginia Foundation shall be responsible for the cost of a survey and preparing the deed of easement. The University of Virginia Foundation will reserve in such easement the right of pedestrian and vehicular passage across the Greenway for access to adjoining properties. A pedestrian connection from Stribling Avenue to the parking areas shall be constructed by the owner within 120 days of a request by the Zoning Administrator to do so. The location of the pedestrian connection shall be as shown on Exhibit A and identified as "Future Pedestrian Pathway to Future Greenway". This pathway shall be constructed to hiking trail standards as defined by the Virginia Greenway Standards in place at the time of execution of these proffers.
10. The University of Virginia Foundation has adopted, and shall continue to implement, a Transportation Demand Management Plan (TDMP) for the Research Park, incorporating traffic reduction amenities (such as pedestrian access, as depicted on the Master Plan), facilitating employer traffic reduction measures and promoting educational programs.
11. On or before the issuance of a certificate of occupancy for the building identified as the Future ART (Advanced Research and Technology) Building on the concept plan dated September 3, 2004, and initialed SET and labeled as Attachment B as part of the staff report for ZMA 2004-010, the University of Virginia Foundation shall construct at its expense a bus shelter of a design and in a location to be reasonably determined by the University of Virginia Foundation upon consultation with University Transit Service, JAUNT, the University of Virginia Health Services Foundation, and the Albemarle County Transportation Planner. The shelter shall be of a standard size and design based upon the projected usage and site constraints, shall include a bench with a back, and shall be maintained by the Owners under a common maintenance agreement.

Submitted as of the 30th day of November 2006 by:

**UNIVERSITY OF VIRGINIA  
FOUNDATION**

By: \_\_\_\_\_  
Tim R. Rose, Secretary

**UNIVERSITY OF VIRGINIA  
HEALTH SERVICES FOUNDATION**

By: \_\_\_\_\_  
Marc Dettmann, Chief Executive Officer

Owner of tax map parcels: 76-17B, 17B(1),  
17B(3), 17B(5), 17B(6), 17B(7), and 17B(X)

Owner of tax map parcel: 76-17B(2)

**THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA**

By: \_\_\_\_\_  
Leonard W. Sandridge, Executive Vice President and  
Chief Operating Officer  
Owner of tax map parcels: 76-17B(8) and 17B(W)

\_\_\_\_\_

Agenda Item No. 13. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Mr. Wyant said he recently attended with Mr. Slutzky a committee meeting concerning the living wage. It is a complicated subject.

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Mr. Wyant said he also is a member of the Development Review Committee.

Mr. Rooker asked when the Board may expect a report from that committee.

Mr. Boyd said they hope it will be in February.

\_\_\_\_\_

Mr. Wyant said he recently rode around the County with a representative from VDOT. The Board has been dealing with the Neighborhood Model and the issue of cleaning sidewalks when it snows. He said these sidewalks are being put into the road system. He said people living in Charlottesville must clean the sidewalk in front of their properties. He asked if an ordinance is needed to require this be done in the County. Mr. Davis said that under Virginia law cities are specifically enabled to adopt ordinances to require that sidewalks be cleaned, and counties are not enabled to do that.

Mr. Wyant said with all the sidewalks being built in the County, this is going to be a big issue.

Mr. Slutzky asked if this issue could be added to the Board's legislative agenda.

Mr. Rooker suggested that the idea be submitted to VACo. Mr. Davis said staff can do that.

\_\_\_\_\_

Ms. Thomas said she believes the Board may have had a major impact on the "Preservation Tax Credit-Conservation Value Criteria." She said staff worked hard on a letter which the Chairman sent to the Department of Conservation and Recreation. She recently got a report of their final adoption and the proposal was drastically changed. She has not heard from PEC or others who deal with these conservation easements, but to her reading it was completely improved to the point that it will not have any of the negative impacts the Board thought it would have. She is proud the County took a stand on this matter.

\_\_\_\_\_

Ms. Thomas said when the first Mountain Overlay Protection Committee was meeting, one of the few concrete recommendations that came out of that committee was a proposal for a lighting ordinance. She said Fan Mountain has millions of dollars of research projects as does McCormick Observatory (which is actually a historic observatory). She said there is a group in town which wants the County to again improve its lighting ordinance. It is relevant to the rural areas because apparently the lightning ordinance is not applied to residential lighting. She said as development increases in the rural area, more and more people put up bright lights that are dimming the night skies. That affects millions of dollars of research in this community, research which might be moved to Arizona where the skies are still dark enough for the observatories. She said that whenever ordinance changes are next contemplated, if it is enabled, she would like to have a requirement included that residential lighting be regulated under the ordinance. The present ordinance says that lighting fixtures have to be full cut-off which means there is a cap on top so the light does not go up into the air.

Mr. Davis said special legislation was granted to Albemarle County giving the County tremendous authority to regulate existing lighting outside of the Zoning Ordinance. The County can require retrofitting in any area of the County. Although the County has the authority, it has not utilized it significantly. All the County did in the existing lighting ordinance was to address future lighting and only for facilities which are subject to a site plan. Residential development has not been addressed. The Board has the authority to go further if it desires to do so.

Mr. Rooker asked if Board members are amenable to having staff look at this and report on any ramifications.

Mr. Boyd said if it makes sense to protect the skies in the urban area, it would make sense to do so in the rural areas also.

Mr. Wyant asked if this would cover all houses in the rural areas.

Mr. Rooker said the Board has a lot of latitude and can look at all options. Mr. Mark Graham said this was actually on staff's work plan, but it was put on the back-burner. In January, staff will be looking at the five-year work plan, and the Board can set a priority for review of the lighting ordinance at that time.

Mr. Slutzky asked if there is any enforcement of the ordinance today. Is there any assessment, particularly in the urban areas, where it is enforced? If there is a huge glow over the urban area it is possible some of the larger institutional lighting sources are not complying.

Ms. Thomas said the Board may not have the ability to tell the University of Virginia what to do with its stadium.

Mr. Davis said lighting that existed before the ordinance that does not have full cut-off is not regulated under the ordinance.

Mr. Slutzky asked if the University is doing the research Ms. Thomas alluded to earlier. He said there might be some leverage there.

Ms. Thomas said there is a problem in the University, and she does not know why they don't listen to their own Astronomy Department. She said there are lighting fixtures for every situation that can be full cut-off, but they are not used in sports facilities in this area. Mr. Tucker said the University did a good job at the Kloeckner stadium.

Mr. Rooker said Scott Stadium is terrible. A huge percentage of the light they put out is wasted because it goes into space.

Mr. Wyant said his home is ten miles away from Barracks Road, but he can see the lights in Charlottesville.

Mr. Slutzky asked about Albemarle High School. Mr. Davis said Albemarle pre-existed the lighting ordinance. He said the lighting at Western Albemarle and St. Anne's-Belfield is a better example of what can be accomplished. There may be newer technology that could even improve that somewhat. Lighting does have an impact on sporting events, so there are trade-offs for sports fields versus the night skies, but he thinks Western and St. Anne's-Belfield have done a good job of dealing with this issue, all things considered.

Mr. Wyant said he has had staff approach him about athletic facilities. He used to live back in the woods and a 40-watt light bulb in one of those night lights made it look like "the middle of New York City."

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Mr. Dorrier commented that this Friday the Meriwether Lewis celebration is coming back to Charlottesville. Tickets are still available to the dinner at 6:00 p.m.

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Mr. Dorrier said he is now a member of the Jail Board. There is a new program at the Jail which is to clean up the entrances to Albemarle County and the city of Charlottesville. There are inmates working on this program. An anonymous donor funded the program.

Mr. Rooker said there was to be a van bought. Mr. Tucker said they have the van, and the program has started.

Mr. Dorrier said that so far it has been very successful.

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Mr. Boyd said he has received public comments about votes taken at the Board's December 6 meeting. He said "Other Matters from the Public" is scheduled at the beginning of each meeting, but "Other Matters from the Board" is scheduled at the end of the meeting. On December 6 he proposed what he feels were two accounting entries, not policy changes. There was \$200,000 in Undesignated Funds in the Board's Reserve Fund for use in FY '07. He asked that it be set aside for an Opportunity Fund. He also asked that another \$50,000 for that purpose be worked through the public process and brought forward as part of the County budget for FY '08. He considers this as an accounting entry.

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Mr. Boyd said he requested at the December 6 meeting that the County pay dues to the Chamber of Commerce. He does not like the term "seat at the table", but the County has actually had a seat at the table for a number of years. Mr. Tucker has been on the Chamber Board of Directors for 15+ years and his predecessor was on that Board for a number of years. That did not corrupt the County or put this Board in any kind of situation. He felt it was important that the Board not "free load" anymore and pay its dues so he asked that it be brought forward as an appropriation initiative. He also asked that it be done at a time when there would be a public hearing.

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Mr. Boyd said during the discussion the Board had last week about downzoning, the question was posed as to who would be willing to vote for downzoning. At that time he viewed it as taking away people's property rights and he would not vote for anything like that. That did not mean he is opposed to a downzoning which was tied somehow to providing compensation for what people might lose. The reason he wants to make that point clear is because he felt that because of timing last week and because the Board was pushed up against a closed session at lunch, as far as he is concerned the Board did not give an adequate discussion to Mr. Slutzky's TDR proposal. At one point during the discussion he asked that the Board hold a work session on that question, and that is his request again this week. He would like to see if Board members are willing to put that questions back on the agenda for another work session with

adequate time available so it can be talked out. He would not want to do it at the same time as the Board discusses the MOD because he thinks they are unique talks.

Mr. Tucker said there is already a work session scheduled on the Business Plan, and staff was going to put the MOD discussion on that same agenda.

Mr. Boyd said he does not to discuss the TDR proposal at the same session as the MOD is discussed. He thinks they are two important issues that might press each other for time.

Mr. Rooker said he would support putting that matter on an agenda for a work session. He thinks it would be helpful to get a staff report setting out some of the facts and details of how it might work and the size of the area. He reminded the Board members that he had handed out a sheet of information in an attempt to set out some of the facts as he viewed it on the size of the development area that would be required to accommodate various numbers of development rights being retired at certain presumed densities. He thinks staff needs to present more analysis of the details. Any plan will be good or bad depending on the details of the plan and how it works. He thinks the Board should give the proposal a fair consideration; hopefully, the Board can go through that work session and decide whether it is willing to support the basic elements of some kind of TDR plan. If not, he does not think anybody wants staff to spend a year churning through something that the Board is not even close to supporting.

Mr. Boyd said he thought the Board left the subject dangling, and he wanted it to come back and be addressed. He is also interested in more details.

Mr. Dorrier said he thinks the Board should give time in the process for organizations like the PEC and Blue Ridge Homebuilders' to give their thoughts about it. Even if that makes it a public hearing, their input is helpful. The Board needs to know the pitfalls and what State enabling legislation is needed.

Mr. Boyd said some of those people weighed in last week during Other Matters Not Listed on the Agenda. He has heard from some of those groups that they are interested in hearing further details.

Mr. Rooker said he would prefer to hold a work session so the Board has time to reach some conclusions and not turn it into a public hearing yet.

Mr. Slutzky thanked the Board members for agreeing to consider his proposal.

Mr. Slutzky said that tomorrow afternoon from 4:00 to 6:00 p.m. he will be presenting the background of his TDR proposal at a Five C's Committee meeting.

Mr. Rooker said Happy Holidays to everyone and said he has enjoyed serving as Chairman for the past two years.

Agenda Item No. 14. Adjourn. With no further business to come before the Board, the meeting was adjourned at 8:44 p.m.

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Chairman

Approved by the Board of County Supervisors
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Date: 03/14/2007
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Initials: EWC
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