

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on January 3, 2007, at 9:00 a.m., in the Lane Auditorium, in the County Office Building on McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 9:00 a.m., by the County Executive, Robert W. Tucker, Jr.

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

Agenda Item No. 4. Election of Chairman.

Mr. Tucker assumed the position of chairman until after election of a Chairman of the Board. He opened the floor for nominations.

Mr. Wyant **moved** to elect Mr. Kenneth C. Boyd as Chairman of the Board for Calendar Year 2007. Mr. Rooker **seconded** the nomination. With no other nominations, Mr. Tucker closed the floor for nominations and requested that the Clerk call the roll. The motion carried by the following recorded vote:

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

Mr. Boyd assumed the Chair. He then thanked Mr. Rooker for his work as outgoing Chairman, noting his leadership to the Board and to the community.

Agenda Item No. 5. Election of Vice-Chairman.

Mr. Rooker **nominated** Mr. David C. Wyant to be Vice-Chairman of the Board of Supervisors for Calendar Year 2007. The motion was **seconded** by Mr. Dorrier. Roll was called, and the motion carried by the following recorded vote:

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

Agenda Item No. 6. Appointment of Clerk and Senior Deputy Clerk.

Mr. Boyd indicated that Ms. Ella Washington Carey had expressed a desire to continue serving as Clerk to the Board for Calendar Year 2007 and Ms. Meagan Hoy as Senior Deputy Clerk to the Board for Calendar Year 2007.

Motion to make these appointments was made by Ms. Thomas. The motion was **seconded** by Mr. Wyant. Roll was called, and the motion carried by the following recorded vote:

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

Agenda Item No. 7. Set Meeting Times, Dates and Places for Calendar Year 2007.

Ms. Thomas asked if it would be possible to include afternoon work sessions on the schedule for regular Board meetings. Mr. Davis replied that currently the Board adjourns to the next meeting, which satisfies all the legal requirements for the date and place notifications as required by the State Code. If work sessions are included on a regular meeting date or for a particular time and then didn't take place, it would create an awkward situation in terms of having to notify the public.

Ms. Thomas then offered **motion** that the Board retain its current meeting dates of the first Wednesday of the month at 9:00 a.m., and the second Wednesday of the month at 6:00 p.m., with meetings held in the County Office Building at 401 McIntire Road, Charlottesville. Since July 4, 2007, is a holiday, the meeting dates in July will be: July 11 - 9:00 a.m. and July 18 - 6:00 p.m. Due to the holiday schedule, the meeting dates for January 2008 will be: January 9 - 9:00 a.m. and January 16 - 6:00 p.m.

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

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

Agenda Item No. 8. Set Dates for Hearing Zoning Text Amendments Requested by Citizens.

Mr. Boyd said the proposed dates for hearing Zoning Text Amendments are: September 12 and December 12, 2007, and March 12 and June 11, 2008.

Motion to this effect was offered by Ms. Thomas, **seconded** by Mr. Rooker, and carried by the following recorded vote:

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

Agenda Item No. 9. Rules of Procedure, Adoption of.

Mr. Boyd said the Board has received a copy of its current Rules of Procedure. One amendment is being proposed. In Section D, "Order of Business", the language has been amended to reflect the current procedure for receiving comment from the public for matters not on the agenda.

Motion was offered by Ms. Thomas, **seconded** by Mr. Wyant, to adopt the Rules of Procedure as presented. The motion carried by the following recorded vote:

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

RULES OF PROCEDURE ALBEMARLE BOARD OF COUNTY SUPERVISORS

A. *Officers*

1. *Chairman.* The Board at its annual meeting shall elect a Chairman who, if present, shall preside at such meeting and at all other meetings during the year for which elected. In addition to being presiding officer, the Chairman shall be the head official for all the Board's official functions and for ceremonial purposes. He shall have a vote but no veto. (Virginia Code Sections 15.2-1422 and 15.2-1423)
2. *Vice-Chairman.* The Board at its annual meeting shall also elect a Vice-Chairman, who, if present, shall preside at meetings in the absence of the Chairman and shall discharge the duties of the Chairman during his absence or disability. (Virginia Code Section 15.2-1422)
3. *Term of Office.* The Chairman and Vice-Chairman shall be elected for one-year terms; but either or both may be re-elected for one or more additional terms. (Virginia Code Section 15.2-1422)
4. *Absence of Chairman and Vice-Chairman.* If the Chairman and Vice Chairman are absent from any meeting, a present member shall be chosen to act as Chairman.

B. *Clerk and Deputy Clerks*

The Board at its annual meeting shall designate a Clerk and one or more Deputy Clerks who shall serve at the pleasure of the Board. The duties of the Clerk shall be those set forth in Virginia Code Section 15.2-1539 and such additional duties set forth in resolutions of the Board as adopted from time to time. (Virginia Code Section 15.2-1416)

C. *Meetings*

1. *Annual Meeting.* The first meeting in January held after the newly elected members of the Board shall have qualified, and the first meeting held in January of each succeeding year, shall be known as the annual meeting. At such annual meeting, the Board shall establish the days, times, and places for regular meetings of the Board for that year. (Virginia Code Section 15.2-1416)
2. *Regular Meetings.* The Board shall meet in regular session on such day or days as has been established at the annual meeting. The Board may subsequently establish different days, times, or places for such regular meetings by passing a resolution to that effect in accord with Virginia Code Section 15.2-1416. If any day established as a regular meeting day falls on a legal holiday, the meeting scheduled for that day shall be held on the next regular business day without action of any kind by the Board. (Virginia Code Section 15.2-1416)

If the Chairman (or Vice Chairman, if the Chairman is unable to act) finds and declares that weather or other conditions are such that it is hazardous for Board members to attend a regular meeting, such meeting shall be continued to the next regular meeting date. Such finding shall be communicated to the members of the Board and to the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement shall be required. (Virginia Code Section 15.2-1416)

Regular meetings, without further public notice, may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business of the Board is complete. (Virginia Code Section 15.2-1416)

3. *Special Meetings.* The Board may hold special meetings as it deems necessary at such times and places as it deems convenient. A special meeting may be adjourned from time to time as the Board finds necessary and convenient. (Virginia Code Section 15.2-1417)

A special meeting shall be held when called by the Chairman or requested by two or more members of the Board. The call or request shall be made to the Clerk of the Board and shall specify the matters to be considered at the meeting. Upon receipt of such call or request, the Clerk, after consultation with the Chairman, shall immediately notify each member of the Board, the County Executive, and the County Attorney. The notice shall be in writing and delivered to the person or to his place of residence or business. The notice shall state the time and place of the meeting and shall specify the matters to be considered. No matter not specified in the notice shall be considered at such meeting unless all members are present. The notice may be waived if all members are present at the special meeting or if all members sign a waiver for the notice. (Virginia Code Section 15.2-1418) The Clerk shall notify the general news media of the time and place of such special meeting and the matters to be considered.

D. *Order of Business*

The Clerk of the Board shall establish the agenda for all meetings in consultation with the Chairman. The first two items on the agenda for each regular meeting of the Board shall be the Pledge of Allegiance and a moment for silent meditation.

The procedures for receiving comment from the public for matters not on the agenda shall be at the discretion of the Board. Unless otherwise decided, individuals will be allowed a three-minute time limit in which to speak during the time set aside on the agenda for "From the Public: Matters Not Listed for Public Hearing on the Agenda".

Zoning applications advertised for public hearing shall be on the agenda for public hearing on the advertised date unless the applicant submits a signed written deferral request to the Clerk of the Board no later than noon on Wednesday of the week prior to the scheduled public hearing. The first request for a deferral will be granted administratively by the Clerk. The Board will be notified of the deferral in the next Board package and the deferral will be announced at the earliest possible Board meeting to alert the public of the deferral. Any request received later than the Wednesday deadline and any subsequent request for a deferral for the same application previously deferred will be granted only at the discretion of the Board by a majority vote. The deferral shall not be granted unless the Board determines that the reason for the deferral justifies the likely inconvenience to the public caused by the deferral. The staff will make every effort to alert the public when a deferral is granted.

It is the Board's preference that a public hearing should not be advertised until all of the final materials for a zoning application have been received by the County and are available for public review. To achieve this preference, applicants should provide final plans, final codes of development, final proffers, and any other documents deemed necessary by the Director of Community Development, to the County no later than two business days prior to the County's deadline for submitting the public hearing advertisement to the newspaper. Staff will advise applicants of this date by including it in annual schedules for applications and by providing each applicant a minimum of two weeks advance notice of the deadline.

If the applicant does not submit the required materials by this date, the public hearing shall not be advertised unless the applicant demonstrates to the satisfaction of the Director of Community Development that good cause exists for the public hearing to be advertised. If not advertised, a new public hearing date will be scheduled. If the public hearing is held without final materials being available for review throughout the advertisement period due to a late submittal of documents, or because substantial revisions or amendments are made to the submitted materials after the public hearing has been advertised, it will be the policy of the Board to either defer action and schedule a second public hearing that provides this opportunity to the public or to deny the application, unless the Board finds that the deferral would not be in the public interest or not forward the purposes of this policy.

Final signed proffers shall be submitted to the County no later than nine calendar days prior to the date of the advertised public hearing. This policy is not intended to prevent changes made in proffers at the public hearing resulting from comments received from the public or from Board members at the public hearing.

E. *Quorum*

A majority of the members of the Board shall constitute a quorum for any meeting of the Board. If during a meeting less than a majority of the Board remains present, no action can be taken except to adjourn the meeting. If prior to adjournment the quorum is again established, the meeting shall continue. (Virginia Code Section 15.2-1415)

A majority of the members of the Board present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning such meeting from day to day or from time to time, but not beyond the time fixed for the next regular meeting.

F. *Voting Procedures*

1. *Approval by Motion.* Unless otherwise provided, decisions of the Board shall be made by approval of a majority of the members present and voting on a motion properly made by a member and seconded by another member. Any motion that is not seconded shall not be further considered. The vote on the motion shall be by a voice vote. The Clerk shall record the name of each member voting and how he voted on the motion. If any member abstains from voting on any motion, he shall state his abstention. The abstention will be announced by the Chairman and recorded by the Clerk. A tie vote shall defeat the motion voted upon. (Article VII, Section 7, Virginia Constitution)
2. *Special Voting Requirements.* A recorded affirmative vote of a majority of all elected members of the Board shall be required to approve an ordinance or resolution (1) appropriating money exceeding the sum of \$500; (2) imposing taxes; or (3) authorizing the borrowing of money. (Virginia Code Section 15.2-1428)
3. *Public Hearings.* The Board shall not decide any matter before the Board requiring a public hearing until the public hearing has been held. The Board may, however, at its discretion, defer or continue the holding of a public hearing or consideration of such matter. The procedures for receiving comment from the applicant and the public for public hearings shall be at the discretion of the Board. Unless otherwise decided, the applicant shall be permitted no more than ten minutes to present its application. Following the applicant's presentation, any member of the public shall be permitted no more than three minutes to present public comment. Speakers are limited to one appearance at any public hearing. Following the public comments, the applicant shall be permitted no more than five minutes for a rebuttal presentation.
4. *Motion to Amend.* A motion to amend a motion before the Board, properly seconded, shall be discussed and voted by the Board before any vote is taken on the original motion unless the motion to amend is accepted by both the members making and seconding the original motion. If the motion to amend is approved, the amended motion is then before the Board for its consideration. If the motion to amend is not approved, the original motion is again before the Board for its consideration.
5. *Previous Question.* Discussion of any motion may be terminated by any member moving the "previous question". Upon a proper second, the Chairman shall call for a vote on the motion of the previous question. If approved by a majority of those voting, the Chairman shall immediately call for a vote on the original motion under consideration. A motion of the previous question shall not be subject to debate and shall take precedence over any other matter.
6. *Motion to Reconsider.* Any decision made by the Board may be reconsidered if a motion to reconsider is made at the same meeting or an adjourned meeting held on the same day at which the matter was decided. The motion to reconsider may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to reconsider, if approved, shall be to place the matter for discussion in the exact position it occupied before it was voted upon.
7. *Motion to Rescind.* Any decision made by the Board, except for zoning map amendments, special use permit decisions, and ordinances, (these exceptions shall only be subject to reconsideration as provided above) may be rescinded by a majority vote of all elected members of the Board. The motion to rescind may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to rescind, if approved, is to nullify the previous decision of the Board. Zoning map amendments, special use

permit decisions and ordinances may be rescinded or repealed only upon meeting all the legal requirements necessary for taking action on such matters as if it were a new matter before the Board for consideration.

G. *Amendment of Rules of Procedure*

These Rules of Procedure may be amended by a majority vote of the Board at the next regular meeting following a regular meeting at which notice of the motion to amend is given.

H. *Suspension of Rules of Procedure*

These Rules of Procedure may be suspended by the majority vote of the Board members present and voting. The motion to suspend a rule may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to suspend a rule, if approved, is to make that rule inapplicable to the matter before the Board. Provided, however, approval of a motion to suspend the rule shall not permit the Board to act in violation of a requirement mandated by the Code of Virginia, the Constitution of Virginia, or any other applicable law.

I. Necessary rules of procedure not covered by these Rules of Procedures shall be governed by Robert's Rules of Order.

Agenda Item No. 10. Boards and Commissions Policy, Adoption of.

Ms. Thomas said staff has proposed an amendment to the Board's policy. Currently only certain board and commission members file disclosure forms. The Clerk has indicated that occasionally citizen members will contact her if they feel they should file a disclosure. It is recommended that for consistency and to make sure the necessary individuals are covered, all citizen members file disclosure forms, but she is not sure she supports this change. She can recall one instance where a member of an authority felt it necessary to resign because of the ever changing nature of his business and having to constantly disclose information. She thinks this might be a situation in which consistency is less valuable than the opportunity to have a variety of public members serve on boards and commissions. She proposed that not all citizen members of boards and commissions be required to file a full disclosure form – but instead continue with the current list.

Mr. Davis explained that the State's Conflict of Interests Act requires that certain public officers file the long disclosure form – such as Board of Supervisors members, Authority representatives, and Constitutional Officers. There is no choice in that regard. There is also a real estate disclosure form that Planning Commission members, Board of Zoning Appeals members, real estate assessors, and executive County officers are required by law to file. The area where the Board has a choice is for everybody else, and this amendment would include the short form. That form still requires more information beyond just real estate disclosures, but not as much information as what must be disclosed in the long form.

Mr. Davis said the State Code provides that the Board may direct who they want to file the short form in two categories: 1) positions of trust can be required to fill out the short form by ordinance; and 2) other non-salaried citizen members can be designated by the Board to fill out the short form. The issue is whether you want individuals to file a form other than those required by the Conflict of Interests Act. The benefit of the forms is to make people aware of their potential conflicts, which they are required by the Conflict of Interests Act to disclose if a matter comes before them that involves a transaction they are doing. He said he is not aware of any issues or problems with failure to disclose interests since he has served as County Attorney, noting that it is a choice the Board can make as to whether they want anyone to disclose anything in advance.

Ms. Carey noted that the real estate disclosure form is currently sent to certain boards and commissions, and this proposal is to send that form to everyone.

Mr. Davis said the practice has been to send the real estate disclosure form to those not required by the Conflict Act to file the long form.

Mr. Rooker said he believes the practice should stay with what has been done if that is acceptable under the mandates of the law. Having people fill out long disclosure forms when it is not going to pick up any conflicts could discourage their service on boards. He thinks it is advisable to have people disclose their real estate holdings for select boards. Mr. Davis explained that the Clerk does not have clear direction now on to whom the form should be sent.

Mr. Tucker suggested staff furnish a list of people to whom the form is normally sent.

Mr. Slutzky commented that perhaps people could be allowed to request an exemption if they would be deterred from service if a form were required.

Ms. Thomas responded that she would like to be friendly to the business community, and perhaps business people would be put off by the disclosure requirement. She agreed that the Board should consider which bodies should be required to fill out the short form, and the ARB should probably be added.

Mr. Davis clarified that there is the long form the members of Board of Supervisors fill out; a short form asks for financial holdings, business operations, etc., and the real estate disclosure form requires revelation of real property holdings in the County and in contiguous jurisdictions as well as business interests in real estate.

Mr. Rooker said the short form is problematic, and the real estate form is not extensive. The short form requires investment information.

Mr. Davis suggested that it is not a major intrusion to have everyone fill out the real estate disclosure form for across-the-board consistency. He said that is what the Clerk was looking for.

Mr. Rooker said he would support that.

Motion was then offered by Ms. Thomas to approve an amendment to the current Policy for Boards and Commissions that requires "as a condition of assuming office, all citizen members of boards and commissions shall file a real estate disclosure form as set forth in the Virginia Conflict of Interests Act and thereafter shall file such form annually on or before January 15." Mr. Wyant **seconded** the motion.

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

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

NAYS: None.

ALBEMARLE COUNTY BOARD OF SUPERVISORS POLICY FOR BOARDS AND COMMISSIONS

A. CREATION OF NEW BOARDS AND COMMISSIONS

1. On an annual basis the list of active boards and commissions will be purged of all bodies not required by Federal, State, County or other regulations, which have not met at least once during the prior twelve-month period.

2. Whenever possible and appropriate, the functions and activities of boards and commissions will be combined, rather than encouraging the creation of new bodies.

3. Any newly created task force or ad hoc committee which is intended to serve for a limited time period may be comprised of magisterial or at-large members at the discretion of the Board of Supervisors. The appointment process shall follow that adopted in Section B for other magisterial and/or at-large positions.

B. APPOINTMENTS TO BOARDS AND COMMISSIONS

1. All appointments to boards and commissions based upon magisterial district boundaries will be made by the members of the Board of Supervisors. All magisterial positions will be advertised. At the discretion of the supervisor of that district, selected applicants may be interviewed for the position.

2. Prior to each day Board meeting, the Clerk will provide the Board a list of expired terms and vacancies that will occur within the next sixty days. The Board will then advise the Clerk which vacancies to advertise.

3. In an effort to reach as many citizens as possible, notice of boards and commissions with appointment positions available will be published through available venues, such as, but not limited to, the County's website, A-mail, public service announcements and local newspapers. Interested citizens will be provided a brief description of the duties and functions of each board, length of term of the appointment, frequency of meetings, and qualifications necessary to fill the position. An explanation of the appointment process for both magisterial and at-large appointments will also be sent to all applicants.

4. All interested applicants will have a minimum of thirty days from the date of the first notice to complete and return to the Clerk of the Board of Supervisors a detailed application, with the understanding that such application may be released to the public, if requested. No applications will be accepted if they are postmarked after the advertised deadline, however, the Board, at its discretion, may extend the deadline.

5. Once the deadline for accepting applications is reached, the Clerk will distribute all applications received to the members of the Board of Supervisors prior to the day meeting for their review. For magisterial appointments, the Clerk will forward applications as they are received to the supervisor of that district who will then recommend his/her appointment.

6. From the pool of qualified candidates, the Board of Supervisors, at their discretion, may make an appointment without conducting an interview, or may select applicants to interview for the vacant positions. The Clerk will then schedule interviews with applicants to be held during the next day meeting. For magisterial appointments, the decision to interview selected candidates will be determined by the supervisor of that district.

7. All efforts will be made to interview selected applicants and make appointments within ninety days after the application deadline. For designated agency appointments to boards and commissions, the agency will be asked to recommend a person for appointment by the Board of Supervisors.

8. All vacancies will be filled as they occur.

9. All incumbents will be allowed to serve on a board or commission without his/her position being readvertised unless, based on attendance and performance, the chairman of the body or a member of the Board of Supervisors requests the Board of Supervisors to do otherwise.

10. As a condition to assuming office all citizen members of boards and commissions shall file a real estate disclosure form as set forth in the State and Local Government Conflict of Interests Act and thereafter shall file such form annually on or before January 15.

11. If a member of a board or commission does not participate in at least fifty percent of a board's or commission's meetings, the chairman of the body may request the Board of Supervisors terminate the appointment and refill it during the next scheduled advertising period.

C. ADOPTION

This policy shall be reviewed and readopted by the Board of Supervisors in January.

(Amended and/or Readopted 01-07-98; 02-12-2005; 01-04-2006; 01-03-2007)

Agenda Item No. 11. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. John Martin addressed the Board, stating that he is a proponent of government in the sunshine. He expressed concern about the way in which this meeting's agenda was prepared, specifically the addition of the budget amendment public hearing. He does not think the public received sufficient notice of the political issues that are a part of that public hearing which are joining the Chamber of Commerce and the establishment of an "opportunity fund." He suggested that these budget items be removed from the agenda today and put on another date as separate agenda items.

Ms. Nuala Tobin, a resident of 2510 Northfields Road, said she owns two lots on Sunridge Road, which are mostly overgrown. She has given each of her children one of the lots. She explained that her children wish to build on those lots, but Sunridge Road has not been constructed to her property, therefore, they cannot build on the lots. She asked if the Board would consider completing that road.

Mr. Jeff Werner, of the Piedmont Environmental Council, said that next week the Board will conduct another work session on the proposed framework for a Mountain Overlay District Ordinance. He served on the Committee that reached a consensus on the proposal. At the previous work session, some Board members argued that the MOD proposal failed to address all three legs of the proposal. He thinks the two steps not addressed in the report are hardly insurmountable. The MOD Committee discussed clustering lots to limit impact on identified critical resources. As to incentives, there are two steps the Board could take action on now: 1) increase funding for ACE and allocate it specifically for use in the MOD; and 2) provide tax exemptions for land in permanent riparian buffers, perhaps partnering with the Thomas Jefferson Soil & Water Conservation District.

Mr. Werner also commented that contrary to some comments made, the proposed framework would not have limited Thomas Jefferson's ability to build Monticello. He also proposed a waiver stating: "Any single-family residence, constructed at density of one dwelling unit per 1,000 acres, should be exempted from any or all MOD regulations except for those currently requiring a building site and adequate area for locating two septic fields, height limitations of the County Code, and meeting the strictest provisions of lighting requirements."

Agenda Item No. 12. Consent Agenda. **Motion** was offered by Mr. Wyant, **seconded** by Ms. Thomas, to approve items 12.1 and 12.2, to pull Item 12.3, and to accept the remaining item for information (Discussions are included with the individual agenda item). The motion carried by the following recorded vote:

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

Item No. 12.1. Adoption of revisions to County Grievance Procedure and Sexual Harassment Policy.

The executive summary states that the County Attorney's Office, assisted by the Human Resources Department, has been engaged in a comprehensive revision of the County's Personnel Policy Manual during the past year in order to update existing policies in a number of areas. Two specific policies are brought forward at the present time for approval as part of this update process: (1) Employee Grievance Procedure and (2) Sexual Harassment.

Employee Grievance Procedure: In the 2006 session of the Virginia General Assembly, special legislation sponsored by Delegate David Toscano authorized the County to utilize an administrative hearing officer in all employee grievance hearings. Currently, the County is required to use a three-member panel in all grievance hearings, except cases involving termination or retaliation. State government agencies (including UVA) have successfully utilized the administrative hearing officer format since the mid-1990's, when State law governing employee grievances eliminated the panel selection method. Since then, localities throughout Virginia have sought similar authority to utilize this format. In 2006, the General Assembly granted Albemarle County authorization to implement this change. This legislation requires the County to adopt the changed format on or before June 30, 2007. The proposed policy incorporates this change and clarifies the grievance procedure in several other areas, detailed more specifically below.

Sexual Harassment: The County's current policy regarding sexual harassment has not been updated in a number of years and is outdated. Current policy does not reflect changes to Federal law addressing sexual harassment and has been the subject of review and discussion as the County embarks upon a new employee training program in this area. The revised sexual harassment policy is much more comprehensive and specific. It should provide much-needed guidance and direction to all employees and should serve as a strong basis to support employee training.

Employee Grievance Procedure: The substantive changes to the grievance procedure can be summarized as follows:

1. *Change from Panel to Hearing Officer*: The change from a hearing panel to the administrative hearing officer is reflected in Section XII of the revised policy. Under this change, an administrative hearing officer selected from the list of qualified hearing officers maintained by the Virginia Supreme Court or the Virginia Department of Employment Dispute Resolution will preside over employee grievances. The hearing itself will be conducted according to the same procedures that exist under current policy. The employee retains all other rights under current policy; e.g., the rights to legal representation, to call and cross-examine witnesses, introduce exhibits, etc.

The County Attorney's Office and the Human Resources Department believe that utilizing a single administrative hearing officer will result in an improved process for handling employee grievances. Under the current panel method, it can often take several months merely to select a panel and schedule a hearing, resulting in delays that affect the ability to resolve employee grievances efficiently and fairly. In addition, panels often experience difficulty in deciding issues involving the admissibility of evidence and related matters, and lack the expertise in employment and personnel law that trained administrative hearing officers typically have. With this change, the County's ability to afford an immediate and impartial method for the resolution of disputes that may arise between County government and employees in County service will be improved.

2. *Coverage of Employees*. Employees with the Commission on Children and Families will now be covered under the County grievance procedure, as a result of Board action making the County the fiscal agent for the Commission. This change is reflected in Section II (A).

3. *Change to Step 1 Procedure*. The proposed policy modifies the current requirement that an employee meet with his immediate supervisor at the beginning of the process, even where the decision being grieved was made at a higher level. In such cases, the Step 1 meeting would occur between the employee and the supervisor whose decision is being grieved, rather than requiring the employee to meet with a lower-level supervisor who lacks authority to review or change the decision. This change is reflected in Section IX (C).

Sexual Harassment: Employees throughout the County will be better-served having specific, detailed guidance regarding their rights and responsibilities under the proposed, revised policy. The revised policy defines (in Section III) the different kinds of sexual harassment that courts and other bodies have recognized, and sets forth specific examples (also in Section III) of sexual harassment that violate the policy. The Human Resources Department will utilize the policy for training purposes, both at the initial hiring stage and as part of ongoing employee training that will begin in 2007.

Staff recommends that the Board adopt Resolutions which will approve the proposed changes to Personnel Policy P-03 and P-21.

(Discussion: Ms. Thomas congratulated staff on the revision of personnel policies and commented on its thoroughness. She then asked who should investigate complaints (names by position, not person). Mr. Davis said Human Resources is the department in charge of complaints, and they have people trained to do the investigations in consultation with the County Attorney's office.

Ms. Thomas said if the results are only provided to the department head, the County needs to make sure founded behavior is reflected in performance evaluations. Mr. Davis responded that the obligation of the County, in a founded complaint, is to take corrective action and that would be part of that action.)

By the above-recorded vote, the Board adopted the following resolutions approving the proposed changes to Personnel Policy P-03 and P-21.

RESOLUTION

WHEREAS, the County of Albemarle Personnel Policy Manual sets forth the grievance procedure for County employees; and

WHEREAS, the 2006 General Assembly granted Albemarle County enabling authority to establish an administrative hearing officer format for grievance hearings; and

WHEREAS, the Board desires to implement the hearing officer format and make other appropriate updates and modifications.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of Albemarle County, Virginia, hereby adopts Personnel Policy P-03, Employee Grievance Procedure, of the County of Albemarle Personnel Policy Manual, as attached hereto and incorporated herein, effective January 3, 2007.

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ALBEMARLE COUNTY PERSONNEL POLICY Employee Grievance Procedure Policy

Policy Number: P-03

Date Adopted: January 3, 2007

I. Objective

The purpose of the Albemarle County Grievance Procedure is to afford an immediate and impartial method for the resolution of disputes that may arise between the County government and employees in County service.

II. Coverage of Grievance Procedure

- A. This procedure applies to all non-probationary employees in regular full-time and regular part-time positions in:
1. Albemarle County Local Government;
 2. The Department of Social Services of Albemarle County, in accordance with Virginia Code § 15.2-1507(A)(4);
 3. The Charlottesville-Albemarle-University of Virginia Emergency Communications Center; and
 4. The Commission on Children and Families.
- B. This procedure shall not apply to the following employees:
1. Appointees of the Board of Supervisors;
 2. Officials and employees who by law serve at the will or pleasure of the Board of Supervisors or the County Executive;
 3. Deputies and Assistants to the County Executive;
 4. Department and agency heads;
 5. Employees whose terms of employment are limited by law;
 6. Employees in temporary, on-call or seasonal positions;
 7. Probationary employees;
 8. Any law enforcement officer whose grievance is subject to the provisions of the Law Enforcement Officers Procedural Guarantee Act, Virginia Code § 9.1-500 et seq., and who has elected to proceed pursuant to such provisions in the resolution of his or her grievance; or
 9. Any other employee who elects to proceed pursuant to any other existing procedure in the resolution of his or her grievance.
- C. The County Executive or his designee shall determine the officers and employees excluded from the grievance procedure, pursuant to section II(B) above, and shall be responsible for maintaining an up-to-date list of the affected positions (See Appendix to the Grievance Procedure, Positions Not Covered by the Grievance Procedure).

III. Definitions

County Attorney shall mean either the County Attorney or his designee.

County Executive shall mean either the County Executive or his designee.

Grievance shall mean a complaint or dispute by an employee eligible to use this procedure relating to his or her employment, including but not limited to:

- (a) disciplinary actions, including dismissals, demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;
- (b) the application of personnel policies, procedures, rules and regulations;

- (c) acts of retaliation as the result of using the grievance procedure or of participation in the grievance of another Albemarle County employee;
- (d) acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and
- (e) complaints of discrimination on the basis of race, gender, religion, political affiliation, age, disability or national origin.

Grievant shall mean an eligible employee who has filed a complaint under this procedure.

Human Resources Director shall mean either the Human Resources Director or his designee.

Management shall mean the Board of Supervisors and its designees who establish policy for Albemarle County.

IV. Management Responsibilities

Management retains the exclusive right to manage the affairs and operations of County government. Accordingly, the following complaints are non-grievable:

- (a) establishment and revision of wages or salaries, position classification or general benefits;
- (b) work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content;
- (c) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
- (d) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly;
- (e) the methods, means and personnel by which or by whom work activities are to be carried out;
- (f) termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition, except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance;
- (g) the hiring, promotion, transfer, assignment and retention of employees within the County; and
- (h) the relief of employees from duties of the County in emergencies.

In any grievance brought under the exception to Section IV(f) above, the County's action shall be upheld upon a showing by the County that: (i) there was a valid business reason for the action, and (ii) the employee was notified of the reason in writing prior to the effective date of the action.

V. Human Resources Department Responsibilities

The County Human Resources Department ("Human Resources") shall serve as an impartial administrator of this process. Upon the filing of a grievance, Human Resources shall do the following:

- (a) open a file and assign a number to the grievance;
- (b) ensure that all parties are aware of the process;
- (c) provide access to and copies of grievance forms;
- (d) monitor procedures and time frames;
- (e) notify either party of noncompliance;
- (f) be informed of the status of the grievance by both parties at each step;
- (g) maintain appropriate documentation; and
- (h) perform all other responsibilities as specified in this Procedure.

VI. Grievance Procedure Generally

- A. For purposes of this procedure, "days" shall be defined as calendar days and time periods shall begin to run on the day following that on which any action is taken or report rendered, without regard to weekends or County-observed holidays. If a time period specified in this procedure ends on a weekend or holiday, the last day of the time period shall be the end of the first business day following the weekend or holiday. For example, a written grievance under Step 1 must be presented to the grievant's immediate supervisor within five (5) days of the supervisor's verbal reply to the informal grievance. The five (5) days shall begin to run on the day after receipt of the supervisor's verbal reply and shall terminate on the fifth day following. If the fifth day is a weekend or holiday, the time period shall terminate at the end of the next full business day.
- B. Time limits established under this procedure are intended to be strictly construed and enforced. However, in the interests of fairness, such time limits may be extended if both parties agree to such extensions in writing.

- C. All stages of this procedure beyond Step 1 shall be reduced to writing on forms supplied by Human Resources. At Step 3 and above, the grievant may, at his option, choose to have a representative of his choice, including legal counsel. If the grievant is represented by legal counsel or other person(s), the County likewise has the option of being represented by legal counsel, provided that a person may not serve as both a witness and a representative at any Step under this procedure.
- D. The grievant shall bear any and all costs involved in employing representation and preparing his case at all steps of this procedure, including but not limited to attorneys' fees and expenses and any costs of judicial filings or appeals.
- E. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of this procedure, without just cause, shall result in a decision in favor of the other party on any grievable issue, provided that the noncomplying party fails to correct the noncompliance within five (5) days of receipt of written notification by the other party of the compliance violation. However, the right of the grievant to correct compliance violations shall not apply to any determinations under Steps 1 through 3, or to grievability determinations, provided that the grievant has previously received written notice of the applicable deadlines for appealing such determinations at the time the determination was rendered but has failed to respond in a timely fashion.
- F. The County Executive may require a clear written explanation of the basis for any requests for just cause extensions or exceptions, and shall determine all compliance issues. Such determinations by the County Executive are subject to appeal by the grievant by filing a petition with the Circuit Court of Albemarle County within thirty (30) days of the compliance determination. The grievant shall be solely responsible for filing such petition.

VII. Grievability

- A. The County Executive retains sole authority to render decisions regarding grievability, including the question of access to this procedure. In the event that a question regarding grievability arises at any stage of this procedure, the County Executive shall be notified by Human Resources so that a proper decision regarding grievability can be made. A copy of the County Executive's decision concerning grievability shall be sent to the grievant, to the department head and/or immediate supervisor and to Human Resources.
- B. Decisions by the County Executive that an issue or complaint is not grievable may be appealed by the grievant to the Circuit Court of Albemarle County for a hearing de novo on the issue of grievability as provided in Virginia Code § 15.2-1507(A)(9). Proceedings for the review of the County Executive's decision regarding grievability shall be instituted by filing a notice of appeal with the County Executive within ten (10) days from the date of receipt of the decision and giving a copy thereof to all other parties. Within ten (10) days thereafter, the County Executive shall transmit to the Clerk of the Circuit Court of Albemarle County a copy of his decision, a copy of the notice of appeal, and any exhibits that may have been provided in connection with the resolution of the issue of grievability. A list of the evidence furnished to the court shall also be furnished to the grievant.
- C. The failure of the County Executive to transmit the record shall not prejudice the rights of the grievant. If the County Executive fails to transmit the record within the time required, the Circuit Court, on motion of the grievant, may issue a writ of certiorari requiring the County Executive to transmit the record on or before a certain date.
- D. Within thirty (30) days of receipt of such records by the clerk, the Circuit Court, sitting without a jury, shall hear the appeal on the record transmitted by the County Executive and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Court, in its discretion, may receive such other evidence as the ends of justice require. The Court may affirm, reverse or modify the decision of the County Executive. The decision of the Court shall be rendered no later than the fifteenth (15th) day from the date of the conclusion of the hearing. The decision of the Court is final and is not appealable.
- E. The issue of grievability may be raised at any step of the Grievance Procedure prior to the hearing officer hearing provided in Section XII of this procedure, or it shall be deemed waived by all parties. Once raised, the issue shall be resolved before further processing of the complaint. A request that grievability be determined shall toll the time limits under this procedure. Time limits shall begin to run again the day after the decision on grievability is made by the County Executive or the Circuit Court.
- F. The classification of a complaint as nongrievable by either the County Executive or the Circuit Court of Albemarle County shall not be construed to restrict any employee's right to seek, or management's right to provide, customary administrative review of complaints outside the scope of the Grievance Procedure.

VIII. Consolidation of Grievances

If more than one grievance is filed arising from the same factual circumstances, the County Executive may, at any time prior to a hearing officer hearing, consolidate those grievances for joint processing, including grievability determinations. If consolidation occurs, all time limits set forth in this procedure shall thereafter be calculated from the date of the last filed grievance. Once consolidated, the grievances shall all be processed as a single matter pursuant to this procedure.

IX. Step 1 Procedure: Immediate Supervisor Level

- A. No later than twenty (20) days after the occurrence or condition giving rise to the grievance, the employee affected shall identify the grievance verbally to his immediate supervisor. Within five (5) days of such identification, the immediate supervisor shall give his response to the employee with respect to the particular grievance. The failure of an employee to identify the grievance within the time specified above shall constitute a forfeiture and a waiver of any rights to proceed further and shall terminate the grievance.
- B. If a satisfactory resolution is not reached by this informal process, the grievant shall notify Human Resources of the intent to file a grievance and shall obtain a copy of Grievance Form A from Human Resources. The grievant shall reduce the grievance to writing on Grievance Form A, identifying specifically and in detail the nature of the grievance and the requested remedy. Such written grievance shall be presented to the immediate supervisor within five (5) days of the supervisor's verbal reply to the oral grievance. The supervisor shall promptly notify and supply a copy of the written grievance to Human Resources. The supervisor shall reply to the employee in writing in response to the written grievance within five (5) days of receiving it.
- C. If the grievant's supervisor is also his department/agency head, or if the department/agency head decided the matter that is the subject of the grievance, the grievant shall pass by Step 2 of this procedure and proceed immediately to Step 3. If the grievant's supervisor is the County Executive, he shall pass by Step 3 and proceed immediately to Step 4.

X. Step 2 Procedure: Department/Agency Head

If a satisfactory resolution is not reached at the conclusion of Step 1 as outlined above in Section IX, the grievant shall have the right to appeal as follows. Within five (5) days following receipt of the Step 1(B) written reply, the grievant shall notify his department/ agency head and the Human Resources Department in writing on Grievance Form A that resolution has not occurred and shall supply the reasons why the grievant believes that resolution has not occurred. The department/agency head shall schedule and hold a meeting with the grievant to review the grievance within five (5) days of receipt of such submission, or on such other date as the parties may mutually agree. The only persons who may be present at this meeting are the grievant and the department/agency head. The meeting may be adjourned to another time or place by agreement of the parties. A written reply to the grievance shall be provided to the grievant (with a copy to Human Resources) within five (5) days after the meeting.

XI. Step 3 Procedure: County Executive Level

- A. If a satisfactory resolution is not reached at the termination of Step 2 as outlined above in Section X, the grievant shall notify Human Resources, indicate on Grievance Form A that resolution has not occurred and submit the grievance to the County Executive within five (5) days following receipt of the Step 2 reply. The County Executive shall schedule and hold a meeting with the grievant to review the grievance within ten (10) days of receipt of such submission, or on such other date as the parties may mutually agree.
- B. The grievant may have legal representation or another representative present at the Step 3 meeting. If the grievant is represented by legal counsel or another representative, the County Executive may also have legal counsel or another representative present. The grievant shall inform the County in writing of the name of his legal counsel or other representative at least two (2) days prior to the Step 3 meeting. Either party may call appropriate witnesses, who shall be present only while actually providing testimony. The County Executive shall, in his sole discretion, determine whether the testimony of witnesses is relevant or, if witnesses have testified, whether additional testimony by other witnesses is necessary.
- C. A written reply to the grievance shall be provided to the grievant (with a copy to Human Resources) within five (5) days after the Step 3 meeting, or on such other date as the parties may mutually agree.

XII. Step 4 Procedure: Grievance Hearing

- A. If a satisfactory resolution is not reached at the termination of Step 3 as outlined above in Section XI, the grievant shall notify Human Resources, indicate on Grievance Form A that resolution has not occurred and request a hearing before an administrative hearing officer ("hearing officer"). The request shall be submitted to Human Resources within five (5) days following receipt of the Step 3 reply.

- B. Upon receipt of the request for a grievance hearing, Human Resources shall contact the County Attorney and request that he initiate a request to the Supreme Court of Virginia for appointment of a hearing officer to hear and preside over the grievance hearing. The hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to the Code of Virginia. In the alternative, the County Attorney may request the appointment of a hearing officer from the Virginia Department of Employment Dispute Resolution. The County shall bear all expenses associated with the hearing officer's services.
- C. Human Resources and/or the County Attorney shall provide the hearing officer prior to the hearing with a copy of the grievance record and all other documentation relied upon by the County in rendering the decision or action being grieved, and shall provide the grievant with a list of documents furnished to the hearing officer. At least ten (10) days prior to the hearing, the grievant and his attorney or other representative shall be allowed to inspect and copy all documentation supplied by the County to the hearing officer. At least five (5) days prior to the hearing, the grievant and the County shall exchange lists of witnesses and exhibits to be called or introduced at the proceeding. Witnesses or exhibits not disclosed in a timely manner as required by this section shall not be allowed or introduced at the hearing, unless the hearing officer finds good cause shown.

XIII. Conduct of Grievance Hearing

- A. The role of the hearing officer is limited to a determination of whether a grievance filed by an employee is substantiated and what remedy, if any, should be provided. The hearing officer may not formulate or change County policy, rules or procedures. The hearing officer shall determine whether the grievant has demonstrated, by a preponderance of the evidence, that the action complained of was without cause, or done in violation of a law, rule, regulation or other policy. The hearing officer shall not otherwise substitute his or her judgment for that of management.
- B. The hearing officer shall conduct the hearing as follows:
 - 1. At the request of either party, the hearing shall be private and limited to the grievant, the hearing officer, the legal counsel or other representative of the grievant and the County, appropriate witnesses as they testify, and any court reporters or other official recorders of the hearing. At the request of either party, witnesses shall be separated from the hearing room and allowed to be present only during the time that they actually testify.
 - 2. The hearing officer shall consider the grievance without regard to any proposed disposition (including offers of settlement) by any lower authority, unless the grievant and the County Executive shall agree in writing that the issue(s) shall be so limited. In all other cases, the hearing officer shall consider the matter as if presented to it in the first instance.
 - 3. The hearing officer may at any time ask the parties or their representatives for statements clarifying the issues involved in the grievance.
 - 4. Exhibits, when offered by the grievant or the County, may be received as evidence by the hearing officer, and when so received shall be marked and made a part of the record.
 - 5. Both parties shall have the right to make opening statements, starting with the grievant. After opening statements, the order of the hearing shall be as follows: the grievant shall proceed first, and shall bear the ultimate burden of persuasion. At the conclusion of the grievant's evidence, the County shall have the opportunity to present its evidence. At the conclusion of the County's presentation, the hearing officer shall specifically inquire of all parties whether they have any further evidence to offer or witnesses to be heard. Upon receiving a negative response, the hearing officer shall permit the parties to summarize their cases (beginning with the grievant) and shall then declare the hearing closed.
 - 6. Both parties have the right to offer evidence and cross-examine witnesses, and shall produce such additional evidence as the hearing officer deems necessary for understanding and ruling upon the dispute. There shall be no formal rules of evidence at the hearing; however, the hearing officer shall have the right to determine the relevancy of any evidence offered. All evidence shall be taken in the presence of the hearing officer and the parties, except by mutual consent of the parties.
 - 7. The hearing may be reopened by the hearing officer on his own motion or upon application of either party for good cause shown at any time before a final decision is made.
 - 8. Upon the request of the hearing officer, the County or the grievant, the Human Resources Director shall insure that a verbatim record of the hearing is made and

retained for not less than 12 months. The record may be in writing or by a taped recording. The party requesting the record shall bear the costs of preparation and transcription, including any costs associated with attendance of a court reporter. If both the grievant and the County request such a record, they shall share equally in all costs incurred.

9. The Human Resources Director or designee may be called upon by the hearing officer or either party as a witness at any time to provide specific policy interpretation or clarification of applicable County policy and these procedures.
10. In any matters not covered by this section, the hearing officer shall determine the applicable procedures to be followed.

XIV. Decision of Administrative Hearing Officer

- A. The hearing officer shall provide a written decision to the County Executive and the grievant, with copies to Human Resources and the County Attorney, no later than twenty (20) calendar days after the completion of the hearing. The decision shall summarize the grievance and the evidence, shall make specific findings of fact, and shall state in full the reasons for the decision, and the remedy (if any) to be granted. The decision of the hearing officer shall be consistent with law and written policy, and as such shall be considered final and binding.
- B. The question of whether the relief granted by the hearing officer is consistent with applicable law and written policy shall be determined by the County Executive, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth's Attorney of Albemarle County. The County Executive or Commonwealth's Attorney shall request the hearing officer to reconsider any decision which in his judgment is inconsistent with the laws or written policy applicable to the specific grievance at issue.
- C. If the hearing officer determines that the grievant prevails on any grievable complaint or dispute, he may remedy that complaint or dispute by ordering that the grievant be reinstated to a former position; awarding back pay; or ordering expungement of information contained in the grievant's personnel file(s) maintained by Human Resources or individual department; or rendering opinions specifying the application or interpretation of County personnel policies and procedures as they may relate to the specific facts of the grievance. The grievant shall not, however, be entitled to any relief that he has not specifically requested in the original written grievance form, unless the parties have mutually agreed otherwise as to alternative relief.
- D. If, in response to a grievable complaint or dispute, the hearing officer finds that a department head or other County official failed to follow established procedures governing promotion, demotion, transfer, hiring or layoff, the hearing officer shall remand the grievance back to the department head or official with instructions that the actions taken be rescinded, and proper procedures be followed for the matter at issue. In connection with such remand, the hearing officer may make appropriate provisional orders concerning the case.

XV. Implementation of Hearing Officer Decision

- A. The County Executive shall implement any remedy that may be ordered by the hearing officer, provided that such remedy is consistent with applicable law and County personnel policies. If the County Executive determines that the hearing officer decision is not consistent with applicable law or County personnel policies, the following steps shall be taken:
 1. The County Executive shall inform the hearing officer and the grievant of his determination within ten (10) days of his receipt of the hearing officer's written decision; and,
 2. The County Executive shall not implement the decision of the hearing officer.
- B. Either party may petition the Albemarle County Circuit Court for a decision regarding implementation of the hearing officer decision. The review of the Circuit Court shall be limited to the question of whether the hearing officer's decision is consistent with provisions of law and written County policy.

* * * * *

RESOLUTION

WHEREAS, the County of Albemarle Personnel Policy Manual sets forth the sexual harassment policy for the County; and

WHEREAS, the Board finds that an amendment to Personnel Policy P-21 is necessary to clarify and update County policies relating to sexual harassment;

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of Albemarle County, Virginia, hereby adopts Personnel Policy P-21, Sexual Harassment, of the County of Albemarle Personnel Policy Manual, as attached hereto and incorporated herein, effective January 3, 2007.

* * * * *

ALBEMARLE COUNTY PERSONNEL POLICY
Sexual Harassment Policy

Policy Number: P-21

Date Adopted: January 3, 2007

I. POLICY

Sexual harassment in the workplace is prohibited by the County because it erodes morale, impairs employees' work ability and violates state and federal law. All employees shall be responsible for abiding by this policy and promoting a workplace that is free of sexual harassment.

To ensure employees are informed of the County's Sexual Harassment Policy and trained on their rights and responsibilities under the policy, the Department of Human Resources (HR) will offer sexual harassment training to all new employees within 30 days of employment or appointment to the new position, and will offer training on an ongoing basis to existing employees. It is the department director/office administrator's responsibility to ensure new employees register for training. Additionally, all department directors/office administrators and supervisors should periodically attend refresher training on sexual harassment offered by HR and employees will receive a copy of the policy periodically.

II. IDENTIFYING SEXUAL HARASSMENT

- A. **General Guidelines** – Acts of sexual harassment shall result in disciplinary action which may include dismissal. Under this policy, sexual harassment occurs whenever unwelcome conduct of a sexual, sex-based or gender-based nature affects a term or condition of employment or creates a hostile or abusive working environment. The conduct is measured against what an objective, reasonable woman or reasonable man, depending on the gender of the complainant, would consider sexually harassing. The complainant need not suffer any physical injury to be a victim of sexual harassment.

Sexual harassment may occur by a man against a woman, a woman against a man, a man against a man or a woman against a woman. Sexual harassment may occur by or against an employee, contractor or vendor. Sexual harassment may occur at the workplace, or away from the workplace, and may occur during or after work hours, if the conduct impacts the complainant's work environment.

- B. **Supervisor Duties** – Supervisors and department directors/office administrators are obligated to ensure that their employees are not subjected to sexual harassment from other employees, citizens, customers, contractors or vendors if they know or should have known that such sexually harassing behavior was occurring.
- C. **Supervisor/Subordinate Relationships** – Romantic relationships between supervisors and subordinates are never considered legally consensual and shall result in transfer or disciplinary action, depending on the circumstances, against one or both of the participants based on the needs of the County.
- D. **Consensual Relationships** – Employees involved in consensual relationships have an affirmative duty to notify the other party that continued non-work related contact is unwelcome as a precondition to filing a sexual harassment complaint.
- E. **Refusal to Disclose** – The County is not obligated to force an alleged victim of sexual harassment to reveal the name of their harasser if the victim refuses to disclose the name because the victim has talked with the harasser, resolved the matter to their satisfaction and represented in writing that they do not want the County to investigate the incident. However, the manner in which the County will handle these situations will be determined only after interviewing the victim and analyzing the facts and circumstances of each case.
- F. **Retaliation** – Retaliation exists when an individual is discriminated against for reporting sexual harassment or for cooperating, giving testimony, or participating in any manner in a sexual harassment investigation, proceeding or hearing. Retaliation is prohibited under this policy. Anyone who is being subjected to retaliation shall report it pursuant to Section IV of the policy and it shall be investigated and resolved in the same manner as sexual harassment complaints.
- G. **Liability** – In addition to facing disciplinary action from the County, employees who engage in or permit sexual harassment, including supervisors who know or reasonably should know that such misconduct is occurring in their workplace, may face civil liability under federal anti-discrimination laws, such as Title VII of the Civil Rights Act ("Title VII").
- H. **False Claims** – False allegations of sexual harassment shall constitute violations of the County's standards of conduct and shall be cause for disciplinary action.

III. FORMS OF SEXUAL HARASSMENT

- A. One form of prohibited sexual harassment under this policy occurs when someone:
- (1) attempts to force an individual to submit to unwelcome sexual advances;
 - (2) requests sexual favors; or
 - (3) engages in unwelcome verbal or physical conduct of a sexual nature when submission is made a term or condition of employment or submission or rejection is used as a basis for employment decisions, including hiring decisions and provision of job benefits or failure to submit alters a term or condition of employment or results in a tangible change in employment status. Employment decisions, terms and conditions of employment and tangible changes in employment status may include promotions, demotions, compensation, termination, performance appraisals, and decisions causing a significant change of benefits, reassignment with significantly different responsibilities or disciplinary actions.
- B. Another form of prohibited sexual harassment under the policy occurs through the creation of a hostile work environment when unwelcome conduct of a sexual or gender-based nature unreasonably interferes with an individual's work performance or creates an intimidating, hostile, abusive or offensive work environment. A hostile work environment can be created when any of the following behaviors are directed at another or when a third party overhears or observes such behaviors. The following are examples of behavior that may create a hostile work environment; however, generally, depending on its severity, one single isolated incident will not result in a hostile work environment but may still result in disciplinary action. The behaviors include but are not limited to:
1. Verbal harassment, insults, ridicule or acts of intimidation, aggression or abuse, based on gender;
 2. Unwanted, intentional touching (i.e., patting, massaging, rubbing, hugging or pinching);
 3. Sexual or suggestive remarks about a person's weight, body, clothing, make-up, appearance or hairstyle;
 4. Demeaning or inappropriate sex-based terms, including intimate or offensive nicknames;
 5. Subjecting members of one sex to disadvantageous terms or conditions of employment to which members of the other sex are not subjected;
 6. Displaying or distributing sexually suggestive calendars, magazines, pin-ups, graffiti, pictures, cartoons, posters, software, e-mail or jokes;
 7. Repeated or continuing use of inappropriate gestures or profanity of a sexual nature;
 8. Telling sexual jokes or making sexual remarks, including sexual innuendo or comments with a double meaning;
 9. Unwelcome pressure to date or engage in sexual activities;
 10. Encouraging others to make inappropriate jokes, comments or advances;
 11. Commenting to a group on an individual's identification or complaint of sexual harassment;
 12. Commenting to a group, teasing an individual or telling lies or spreading rumors about issues of a sexual nature;
 13. Engaging in consensual sexual activity on the job;
 14. Displaying or fondling one's own intimate parts in front of others;
 15. Making facial expressions such as throwing kisses or licking lips or whistling at another in a sexually suggestive manner;
 16. Asking intimate or sexually probing questions;
 17. Boasting of sexual experiences or discussing sexual activities;
 18. Giving sexually explicit notes or pictures or sexually offensive items to another;
 19. Stalking an individual by following them, making repeated telephone calls, etc.,

whether during or after work hours, and either asking them for sexual favors or otherwise harassing them; or

20. Requesting sexual favors, accompanied by implied or overt threats concerning an individual's employment status or benefits or promise of preferential treatment with regard to an individual's employment status or benefits.

C. A third form of sexual harassment, sexual assault or battery, is prohibited by this policy and may constitute a crime. Substantiated allegations of sexual assault or battery constitute grounds for disciplinary action, including immediate leave without pay of the alleged harasser pending investigation. A finding of sexual assault or battery constitutes grounds for immediate dismissal. (Sexual assault or battery may include but is not limited to: Unwanted kissing, grabbing, pressing against or fondling of the intimate parts of another's body or rape or forcing another to touch the intimate parts of one's body.)

IV. ENFORCEMENT PROCEDURE

A. **Complaint Procedure** – Any person covered by the policy who is being subjected to sexual harassment should tell the offender to stop the behavior unless they are uncomfortable doing so. If they are unable to tell the offender to stop or if the conduct reoccurs after the offender has been told to stop, the person shall make a complaint to their supervisor, department director/office administrator or HR.

If a complaint is not made within 300 days of the sexually harassing incident, the County is not obligated to investigate but may do so if, due to the nature of the complaint or the position of the alleged offender, the County concludes that an investigation will further the County's sexual harassment policy. However, if the complainant alleges an incident against an alleged harasser that occurred within 300 days and other incidents that occurred over 300 days ago, then all such incidents shall be considered by the investigator in determining the outcome of the complaint.

If a complaint is made against a person who is not in the complainant's department, then the complainant's supervisor or department director/office administrator shall contact and notify HR, which shall notify the alleged harasser's department director/office administrator and initiate an investigation.

B. **HR Notification** – The department director/office administrator, supervisor (or other person to whom a sexual harassment complaint is made) shall immediately notify HR concerning a sexual harassment or sexual assault/battery complaint, regardless of whether they believe the complaint is valid, in all cases.

If the complaint is made against an employee in the HR Department, the department director/office administrator, supervisor (or other person to whom a sexual harassment complaint is made) shall contact the County Attorney's Office for guidance. The County Attorney's Office shall evaluate the complaint and, in consultation with the County Executive, refer the complaint to an appropriate investigator for further action.

C. **Previous Complaints** – If a department director/office administrator, supervisor or other person receives a complaint from an individual who previously complained about sexual harassment, whether or not the new allegations are against the same person, or if the complaint is against a person who has previously been accused of harassment, then HR shall be notified. If the person who receives the complaint is unsure whether a person has previously complained or previously been accused, he shall contact HR.

D. **Complaint Involving Non-Employee** – If a complaint is filed by or against a contractor or vendor or against a customer or citizen, the department involved shall immediately notify HR. If the complaint is founded against a nonemployee, the investigator shall take appropriate action to ensure that the harassment ceases.

E. **HR Investigation** – Upon notice to HR that a complaint of sexual harassment has been filed or received, the following procedures shall be followed:

Within five (5) calendar days of receipt of the complaint, HR will issue a Notice of Complaint to the alleged harasser.

One or more HR representatives shall conduct confidential, in-depth interviews with the complainant, witnesses, co-workers and the alleged harasser to gather all relevant information. After interviewing all relevant parties, the HR representative(s), in conjunction with the County Attorney's office, shall determine whether or not sexual harassment has occurred based on the evidence gathered during the investigation. The HR representative(s) shall suggest appropriate disciplinary actions in writing, if necessary, (i) to the alleged harasser's department director if the alleged harasser is subordinate to a department director; (ii) to the appropriate assistant County executive if the alleged harasser is a department director or (iii) to the County Executive if the alleged harasser is an assistant County executive or other County official who reports directly to the County Executive. HR shall also inform the complainant of the final outcome of the investigation. The complaint shall be resolved within 60 days if practicable. HR shall maintain all

documents regarding sexual harassment in a confidential manner and advise the County Attorney's Office of the results of the investigation once it has been concluded.

- F. **Accused Rights** – If accused of an act of sexual harassment, an individual: (1) shall be notified of the complaint as soon as possible, (2) shall be entitled to respond to the complaint; (3) shall receive discipline in conformance with the County's Personnel Policies and Procedures if the charges are substantiated; and (4) shall be entitled to utilize the County's Employee Grievance Procedure if the employee disagrees with the disciplinary action, if the employee is eligible to file a grievance and if the action is grievable.
- G. **Cooperation** – All County employees are required to cooperate in sexual harassment investigations.
- H. **Impeding Investigations** – Impeding an investigation or otherwise covering up a violation is prohibited.
- I. **Confidentiality** – All participants in the investigation, including the complainant and the alleged harasser, shall be required to keep the details and results of any investigation confidential, unless otherwise directed under this policy. However, this requirement shall not prevent communications with legal counsel or other legally protected communications, and shall not in any way interfere with rights protected under state or federal law.
- J. **Violation/Discipline** – In determining whether a violation of the policy has occurred, the investigator shall consider the totality of the circumstances, the nature of the act and the context in which the incident occurred. HR will make recommendations on situationally appropriate discipline. HR and the County Attorney's office shall be consulted if the department considers discipline that is different than the original recommendation. All violations of this policy, including violation of the retaliation, confidentiality, cooperation, impeding investigations and false/vindictive claims provisions, shall result in disciplinary action up to and including termination in accordance with the County's Personnel Policies and Procedures. Any employee who fails to report a sexual harassment incident to HR pursuant to this procedure or who allows sexual harassment to continue or fails to take appropriate corrective action or retaliates or discriminates against the complainant, or any other individual who cooperates in the investigation, shall be subject to discipline, up to and including termination. A complainant should report such a violation to HR for investigation.
- K. **Interim Remedial Measures** – After a complaint is received, interim remedial measures may be taken to protect the individuals involved and/or to protect the interests of the County. Any remedial measure may be reversed or modified pending final resolution of a complaint.
- L. **Follow-up** – Once a complaint has been resolved, HR will follow-up with the complainant periodically to ensure that the harassment has ceased and/or no retaliation is occurring.
- M. **Files** – The supervisor or department director/office administrator shall ensure that all documents and files regarding a sexual harassment investigation are maintained in a confidential manner and that access to such files is restricted. Sexual harassment files shall be maintained separate and apart from any other files containing employee information. At the time that a supervisor or department director/office administrator leaves their position, all departmental files maintained pursuant to this section shall be delivered to HR.

For investigations conducted by HR, all documents, files and final reports shall be maintained in a confidential location in HR. Copies will be forwarded to the County Attorney's office. Upon request, the department director/office administrator and appropriate departmental leadership will be permitted to come to HR to review the report.
- N. **Grievance** – Eligible employees may use the County's Employee Grievance Procedure for relief from acts of sexual harassment that are not resolved to the satisfaction of the complainant. The Grievance Procedure time limits shall begin to run after the initial investigation is completed and the complainant is notified of the results.
- O. **Title VII** – Individuals may also consult with the Equal Employment Opportunity Commission concerning their rights under Title VII.

Item No. 12.2. Value Engineering in future CIP projects.

The executive summary states that the construction industry has been experiencing unprecedented escalation in building costs for the past 24 months. Construction costs have increased as much as 30 +/- percent during this time, depending on what source of information is referenced. The County's most recent experience with this cost escalation was with the Northern Fire/Rescue Station recently reviewed with the Board.

At the November 1, 2006, Board meeting, the Board instructed staff to conduct a value engineering process on the fire station with the contracted architect and low bidder in an attempt to reduce

the project cost. This was in addition to the value engineering effort completed by staff at the 90 percent design stage when it became apparent that the project was going to exceed estimates. These two efforts combined have netted a savings of approximately \$400,000.

As part of the discussion in November, the Board also asked staff to investigate the possibility of including value engineering into the project management process for all future CIP projects as a matter of practice.

Value engineering was first developed approximately 60 years ago. It was originally utilized during World War II by General Electric in an effort to produce war items at a cheaper cost and with different material during a time when raw materials were scarce. Throughout the decades and into the 1990's, value engineering has been evolving to meet the needs of designers, producers and customers. For the past fifteen years or so, value engineering (sometimes referred to as value management) has become an integrated part of project management. In 1993, the Society of American Value Engineering (SAVE) developed a certification program for value engineering professionals and the practice has since become a highly regarded engineering discipline.

Staff has conducted research on the practicality of applying value engineering to County projects. Besides extensive on-line research and contacting other localities, engineering firms that include value engineering in their scope of expertise were consulted. Through review of this information, staff believes that value engineering should become a component of the ongoing project management process in one form or another, depending on the scope and size of the project.

Contracted value engineering is typically conducted on the more expensive and complex projects such as new schools, hospitals, municipal buildings and the like. However, staff believes it can also be applied to projects in the +/- \$5.0 million range with which the County is regularly involved. Typically, the cost of value engineering is negotiated with an engineering firm and is based on the complexity of the project. Realized savings are normally in the four percent to six percent range of project costs. Therefore, on a \$5.0 million project, a realistic savings may be in the range of \$200,000 to \$300,000. The cost for value engineering for such a project could be expected to be in the range of \$15,000 to \$20,000. An expectation of saving approximately \$20.00 for each dollar spent on value engineering is an acceptable rule of thumb. While value engineering does have a place in the ongoing project management system of the County, not all projects would benefit by contracting for this service in all circumstances. Staff would have to weigh the costs and benefit of contracting for services on small, less complex projects.

It was mentioned throughout the research that the best value for the customer was achieved by involving the value engineering firm early in the design process. Having them work with the design architect (A/E) results in issues being discussed early and avoids requiring redesign work, costing both time and money. In today's engineering market, A/E firms are receptive and experienced in working with value engineering firms for the benefit of the customer. If value engineering is to be an integral part of the project management process, staff believes a firm would need to be under contract at the same time as the primary A/E so they could become involved at the schematic design phase.

While the most common perception of value engineering is bottom line cost savings that is not its only function. Value engineering firms are dedicated to bringing a balance between project cost and quality, depending on the needs of the customer. This balance would include, as an example, consideration of "green" building design principles as a part of the process of seeking the best value.

Finally, a question may be asked as to why County staff engineers could not be used to conduct value engineering efforts on larger projects to avoid value engineering costs. While the County certainly has talented and well-educated engineers on staff, value engineering is a multi-disciplined process. Value engineering firms utilize a full realm of expertise to conduct this work, including civil, structural, mechanical, electrical and environmental engineers plus the support staff to research methodologies, materials, and various product availability in the marketplace. They are also prepared to work fulltime on the process without interruption. In-house value engineering has been and will continue to be utilized on smaller projects constructed by the County.

Staff recommends that the Board approve the use of value engineering as an established component of the construction process for all Local Government projects. Value engineering will be achieved through a combination of contracted and in-house services, depending on the complexity and cost of the project, and will begin during the design process.

(Discussion: Mr. Rooker requested that when a firm is retained to do value engineering, staff must be certain they have a good background in green building and the environmental aspects of developing sites so those aspects are included in the estimate. Mr. Tucker said staff is trying to be sure all of the "green" aspects are worked into the project with all proposals.

Mr. Slutzky said he was surprised at the cost estimate for the Northern Fire Station so he talked with some of the unsuccessful bidders to get an idea of how it could be so expensive. He was told the County had a design and they had to bid on that design; if they had been asked to come up with an alternative design that was more cost effective they could have done it for significantly lower dollars per square foot. He suggested that in addition to the value engineering component, it might be possible to change the RFP process by asking for a quote. Mr. Davis interrupted to say that the County is not enabled to do design/build contracts in Virginia. It can only get a cost proposal for what is being bid on. Except for some limited circumstances where you have to get pre-approval from the State, there must be a design that has already been accepted and then you have to bid that design for a construction contract.

Ms. Thomas said the University had to go to the General Assembly to get approval for their design/build.

Mr. Dorrier said he has heard comments from citizens who feel that not enough analysis is done before the bidding process so the County does not always get the best price. He thinks the County needs to look at the procedures used in framing bids to make sure the citizens get the best value for their dollar on construction projects. That is a part of this value engineering process.

Mr. Boyd said it sounds like the County needs to work on its design requirements before a project is put out to bid. He asked if value engineering would be used for design requirements before it is bid, or if that would occur afterwards.

Mr. Foley said staff can work the process however the Board desires. He is not surprised at the comments Mr. Slutzky received. Staff has standards in place which are used as a guideline for projects. In the case of the Northern Fire Station being built in the UREF business park, there are guidelines in place there which dramatically increased the construction cost. Staff needs to know if the Board wants a process that evaluates the project early in the design process, and if the standards used now are supported by the Board. If the staff had done what the bidder suggested, the project would have been out of line not only with the UREF park standards, but also the County standards. The guidelines in that park were approved by this Board when they were rezoning land for that park and those guidelines clearly drove up the cost of that building.

Mr. Foley said when the County builds the new Crozet library, the design standard of that building will be critical. Next month, the architect will be asking the Board to set some parameters at the beginning of the process because of differing opinions among the citizens as to the design of that building. Perhaps what is expected from a value engineer needs to be flushed out on the front end of the project.

Mr. Boyd asked if the Crozet Library is the next construction project for the County. Mr. Foley said it is.

Mr. Boyd asked if school projects will also be involved. Mr. Foley said staff did not ask if value engineering should be included for school projects. Now, the pre-design process is completely handled by the Schools and not by General Government staff. Staff does construction management of the School project once it has been designed and delivered to staff. He thinks it is important to clarify the Board's expectations in the pre-design as to the level of staff's involvement. That would be a departure from what has been done in the past.

Mr. Wyant said School projects are a part of the CIP process. Another issue to look at is whether to do the value engineering before taking public input. Mr. Foley said staff has concluded that it needs to discuss large projects with the Board on a more regular basis. With the exception of schools, there have not been many large County projects in the past. However, significant capital projects are scheduled in the next few years. The Crozet Library is the first significant project that staff has been involved in for quite a while, other than the Monticello Fire Station. That project will be designed from ground zero so staff needs to know how the Board wants to work in the value engineering and the standards for design. The community would like to have many different components worked into the project; staff asked the architect to help, and the Board set some parameters at the beginning of the process along with the community. One thing to be considered is the budget. The capital program is going from a small construction/management process, to pre-design and initiation of projects with community involvement, so it is becoming very complex.

Mr. Foley said staff would like the Board to support the use of value engineering for County projects throughout the process including its design. He said the executive summary only asks that the Board say value engineering will become a part of the capital project process. Value engineering will be done either by in-house staff or a consultant on the front-end of the process. The client will have to determine what standards they want to use. Concerning the Northern Fire Station, any person could have said money would be saved if it were a metal building. Upfront, it was decided it would not be a metal building, but would be built to the standards being used in the UREF Park. That same analogy will apply as the County goes forward with other projects.

Mr. Boyd said this is a conceptual idea. He said that \$5.0 million was used as a break even point on a project, and he wonders if value engineering should be made a requirement. He interprets the recommendation as saying staff won't necessarily use value engineering for every project over that amount of money.

Mr. Rooker said staff recommends that the Board approve the use of value engineering as an established component of the construction process for all Local Government projects; it does not include any dollar amount. He said the Board would only be approving the use of value engineering in some form on all projects. The question of whether to hire a consultant or do it in-house may be based on the dollar amount of the project. That is his interpretation. Mr. Foley said the complexity of the project would also be considered. Staff intended to use this process on all projects; it is just a matter of whether it is done in-house or by hiring a consultant.

Mr. Boyd said in that case he does not have a problem with the recommendation. He asked the other Board members if they would like to review the design standards. He was not a part of setting up those standards. He suggested holding a work session to discuss the County's standards for building design and how that could be coordinated with the Schools. Mr. Foley asked if the Board intends this to be applied to School projects as well.

Mr. Davis said this would have to be requested by the School Board. It has control over the design of school buildings. The separation of powers between the School Board and the Board of Supervisors is the amount of money that this Board appropriates for them to build a building. If they work within this Board's budget, it is at their discretion. There has been cooperation between the two bodies on how to deal with the process of building schools. It can be discussed with them, but when the final decision is made, the design is a School Board decision.

Mr. Boyd said when Monticello High School was built, there was quite a bit of discussion between this Board and the School Board. He thinks everything should be addressed collectively and there should be a common County-wide approach toward design standards for capital projects. He does not think the School Board should be excluded from that discussion. Mr. Davis said the discussion around Monticello High School was about additional dollars from this Board and whether that expense was justified.

Mr. Dorrier said he thinks the Board should look at the amount of money spent on buildings in the last ten years. Mr. Foley noted that this recommendation is the beginning of trying to develop standards, although more discussion needs to take place. He added that staff would like more input from the Board as they move forward. Staff did not have to devise standards for the fire station because those standards already existed.

Mr. Rooker said he is comfortable with what staff has recommended. If the Board is going to talk about this, generally in context of the new Crozet library, he would like to have some input from a value engineer regarding how design standards impact cost. He thinks the Board should be looking at both sides of the page at the same time so it understands how much it costs, and what would be accomplished by imposing one particular design standard versus another.

Ms. Thomas added that she doesn't want this to be an invitation to micro-manage, so staff should give the Board some guidance. Mr. Foley agreed, stating that staff would like to show how the Board's broad principles have been met, but not come back to them with every detail. He encouraged broad direction from the Board on the front-end instead of more details on the back-end.

Mr. Slutzky asked if the Board is only allowed to operate within the plans through the winning bidder for design engineering. Mr. Foley replied that the Board would be giving design standards up front to ensure comparative bids are secured, then it could be reevaluated after the engineer is involved. He emphasized that it is an issue of competition in the marketplace.

Mr. Davis noted that this issue has been debated in many different General Assembly sessions, and they have been reluctant to enable design-build contracts, but have done it in certain limited situations for State agencies and for certain types of projects. He added that there is a process that allows localities to go to a board in Richmond and get authorization from the State to do a design-build project, but there are certain standards that must be met to do that.

Mr. Slutzky said that in his business, alternative proposals are sent to the Federal government all the time, and he can't imagine that what he is suggesting would have a chilling effect on competition, but would bring about design innovation. Mr. Davis responded that local governments have argued that for years.)

By the above-recorded vote, the Board approved the use of value engineering as an established component of the construction process for all County Local Government projects.

Item No. 12.3. Resolution of Support – Lewis and Clark Enhancement Grant Application.

It was noted in the executive summary that a request has been made to the Board for a resolution of support for an application to VDOT for \$300,000 in Transportation Enhancement Funds. The Rivanna River Ferry will provide a link from one side of the Rivanna River to the other, allowing pedestrians crossing from the Darden Towe Park and the Lewis & Clark Expedition Center (LCEC) trails and facilities to the Rivanna Trails system and the Pen Park facilities. The Visitors' Center will offer interpretation of Jefferson's inspiration for the transcontinental journey and will enrich visitors' experience of Albemarle County. The new trails system, funded in part by the National Park Service, will enhance and expand existing trails.

The community has provided significant financial and volunteer support for the project. Support has come from individual donors, as well as businesses and foundations. The land, 18 acres of woods and fields adjacent to Darden Towe Park, has been secured by a 40-year lease from the County of Albemarle and City of Charlottesville for \$10 a year. The LCEC has secured \$372,000 in funding for Phase I, the Visitor's Center, trails, and the Rivanna River Ferry, as well as for the access road and the parking lot.

There is no budget impact to the County or City. Matching dollars will be provided by the LCEC. At its meeting on December 18, 2006, the Charlottesville City Council adopted a resolution supporting the grant application. It is recommended that the Board adopt a resolution supporting the LCEC's grant application.

(Discussion: Mr. Slutzky said the Lewis & Clark Center needs money. Representatives of the center came before the MPO recently asking for an endorsement of their request for a grant. He asked if this will undermine the opportunity to locate an eastern connector through the land that is being used by the Center. He said the agreement for the center contains a caveat that if design of an eastern connector

should pass over some of the land the center is using, they would relocate their use out of that pathway. He wants to be sure that by requesting these funds, the Board would not be precluding enforcement of that clause.

Mr. Davis said this item was added late to this agenda so he is not sure what type of funds would be requested. In general he does not think this is a problem because the Center is already located in a park that has to go through a rather intensive process in order for Federal funds to be used to disrupt the park itself. He doubts this creates any greater hurdle than what the County/City already have to overcome.

Mr. Slutzky suggested the Board wait a week to act on this request so the County Attorney has a chance to research this question.

Ms. Thomas said that question was asked at the MPO meeting and was answered accordingly. She said the Lewis & Clark project has already received Federal funding. It has been understood from the inception of the center that an eastern connector might come right over it.

In response to Mr. Slutzky's concerns, Mr. Davis emphasized that the County is already "in the hole" if there is a problem.

Mr. Boyd noted that every step of the way this question has been asked and the issue would be present regardless of what the Board does now.

Mr. Rooker said he thinks some of these funds would be used to establish trails within the park. However, it is possible the Eastern Connector might wipe those trails out. The technical issue is whether having pedestrian facilities within a park financed with Federal money in any way changes the equation.

Mr. Davis said he is not sure if there are any strings attached to this grant that would preclude changes in where the funds are used. He said the general prohibition has been that you can't disturb or replace a park with a Federally-funded transportation project without doing an analysis that says there's no other reasonable alternative, and you may have to mitigate that alternative.

Ms. Alex Searles, Director of the Center, stated that it wouldn't be detrimental to wait a week, noting that this Federal grant has paid for trails that are on the other side of the river, and the eastern connector would likely connect to something that's already been built with this money.)

By the above-recorded vote, the Board deferred this request until January 10, 2007.

Item No. 12.4. Copy of the Albemarle County Service Authority's *Comprehensive Annual Financial Report* for the Fiscal Year ended June 30, 2006, **was received for information.**

Agenda Item No. 13a. Transportation Matters: Work Session on 2007-08/2012-13 Six-Year Secondary Road Plan.

Mr. David Benish, Chief of Planning, reported that the work session today is to provide an initial overview of the new Six-Year Plan in order to set the necessary public hearing before adopting the County's priority list. Due to the funding shortfall from the State, this year's update focuses on allocation of available funds to priority projects identified through the County's strategic plan, i.e., the Meadow Creek Parkway, Jarman's Gap Road and Georgetown Road. To date, staff has authorized VDOT to reallocate funds from previous six-year plans to these three projects in their order of priority. The County is requesting \$2.5 million in State Revenue-Sharing funds for the Meadow Creek Parkway project based on the recommendation of the VDOT residency office. This would help cover existing or future shortfalls on that project; any excess monies would filter down to other priority projects.

Mr. Benish mentioned that there are very few changes in the Plan from the previous year. This Plan is based on available funding. Few new projects were considered to be added. Staff recommends adding the Advance Mills Bridge project to the priority list, as well as adding the Eastern Connector study. He said that the Eastern Connector concept is a priority, which helps in negotiations, whether or not the County decides to go forward with it. The only other change is to delete the Airport Road project since it is now completed.

Mr. Wyant asked if Rural Rustic Road projects are a top priority. Mr. Benish explained that the first page of the report includes regular construction projects. The VDOT Six-Year plan lists Bishop Hill Road and Red Hill Road as two projects scheduled for paving this year through the rural rustic road program; one regular paving project is the Rio Mills Road from Route 29 to Earlysville Road. He explained that the Heards Mountain Road project is being scheduled in conjunction with Nelson County's six-year program since the road goes into Nelson.

Ms. Thomas said there are many railroad crossings along Route 29 South that will require upgrading in the near future in order to accommodate freight traffic. She is not happy about Dry Bridge Road being moved down in priority, as neither school buses nor fire trucks can cross it; she does understand the importance of the Advance Mills Bridge.

Mr. Juandiego Wade, Transportation Planner, pointed out that the County is looking to federalize most transportation projects to get them done as soon as possible; bridge projects are really a national

issue. He said the best case scenario with Advance Mills bridge is two to three years away; the County has had to step up enforcement regarding its weight limit.

Mr. Rooker said bridge projects do not compete with secondary road projects, but do compete against other bridge projects for funding. He noted that Albemarle's Secondary Road funding starts at \$3.8 million in 2008, then \$3.2 million in 2009, and \$2.6 million in 2010, emphasizing the declining allocation at a time of increased costs. This is just another example of dwindling funds for transportation.

Mr. Alan Sumpter, Residency Administrator, commented that the State has been in jeopardy of not being able to produce enough funds to meet the Federal transportation match.

Mr. Rooker said federalizing projects makes them longer and more costly, adding that the State has virtually no money to put in projects and has to use all those funds to pull down an allocation.

Mr. Sumpter said using Federal funds also limits design flexibility, as Federal standards must be met and it is difficult to obtain waivers. He said the district bridge engineer will be prioritizing Culpeper on a district-wide basis as to funding for bridges based on structure ratings. Consideration will be given to the worst bridges based on the bridge evaluation system VDOT currently uses.

Mr. Boyd suggested it would be helpful to have a report broken into project categories as presented today – rustic roads, bridges, etc. – as well as the priority list.

Mr. Sumpter commented that there are three “pots” of money – unpaved, regular construction, and bridges – but because of federalization there are more line items. For FY 2008, there is \$609,000 for secondary unpaved roads, including gravel or rural rustic projects.

In response to Mr. Boyd's question, Mr. Sumpter said the sheet of information presented today shows the allocation of funds, although it is complicated with Federal fund information being included. He said there is \$219,000 for bridges, and the remainder of funding is for regular construction such as the Meadow Creek Parkway, Jarman's Gap Road and Georgetown Road.

Mr. Boyd said what is confusing to him is to have projects high on the priority list, but not realistically be on target for funding for many years. Mr. Sumpter said he asked staff to only show projects that will receive some kind of allocation within the six-year period.

Mr. Benish agreed to simplify the information by category, noting that he would add a column to the chart showing the amount of funding required as well as what has already been allocated. He said there are additional questions about the costs for the Meadow Creek Parkway related to the retention basin in the City, and also the final cost for Jarman's Gap and Georgetown Roads.

Mr. Rooker noted that the Georgetown Road project has been listed at \$7.0 million for the last several years. He would like to get the cost reduced to \$2.0 million in order to get it done. Allocating money to projects that don't get built right away reduces the value of that allocation as costs rise. He noted that the County has received “somewhat of a warning or a request” from Senator John Warner's office that the Meadow Creek Parkway interchange project be moved along quickly.

Ms. Thomas commented that the rural rustic road projects don't seem to all be listed on the Attachment B presented, expressing concern that Rocky Hollow Road, Hacktown Road and Bunker Hill were not listed. Mr. Sumpter replied that these roads are on the FY 2007 list; VDOT essentially goes right down the list. He noted that Bunker Hill does not qualify.

Mr. Benish said VDOT gives the list of what would qualify, and if roads – such as Bunker Hill – don't qualify, they are put on the regular secondary road construction list.

Ms. Thomas said she would like some input from the Route 250 West Task Force about the Tilman Road, Morgantown Road, Owensville Road intersections, currently ordered in that priority. Mr. Sumpter said he hopes to be able to set up a forum for public input on the Advance Mills bridge project by the end of January, especially from Free Union residents. His staff has been looking at possible alignments.

Mr. Rooker **moved** to set a public hearing on February 14 for the VDOT Six-Year Secondary Road Improvement Program. Mr. Wyant **seconded** the motion, which passed by the following recorded vote:

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

NAYS: None.

Agenda Item No. 13b. Transportation Matters: VDOT Monthly Report and Agenda Item No. 13c. Transportation Matters not listed on the Agenda.

Mr. Sumpter reported that one of the long-term goals set by VDOT's Regional Traffic Management Division is signal synchronization throughout the area. It is possible that some signals might be on two separate systems so are not particularly well-coordinated.

Mr. Rooker noted that the signals along Route 29 North in the City are not synchronized with those in the County because they are on a different system.

Mr. Rooker mentioned that there are some erosion problems because of a drainage problem along Dominion Drive close to Whole Foods.

Mr. Rooker said there is a pot hole in the center of Route 29 and Hydraulic Road.

Mr. Rooker said a church is being built with an entrance off of Roslyn Ridge Road, at the corner of Hydraulic Road and Roslyn Ridge Road. The work is creating substantial destruction of pavement where equipment is entering and exiting on a daily basis. He asked VDOT to speak with the contractor to ensure the road is repaved at the end of construction. Mr. Sumpter said his permit staff will be inspecting the area on a regular basis.

Mr. Wyant said a section of White Mountain Road is eroding on top of the hill.

Ms. Thomas said residents of Bellair have complained of vehicles entering their subdivision in an attempt to get to I-64. It has been suggested that the sign "to I-64" be changed to a straight ahead arrow, and an arrow be added to the right lane as you get to I-64 so there will be less traffic in that neighborhood.

Ms. Thomas said there is a State program being used in some areas where parolees are assigned sections of roads to keep clean as a condition of parole. She asked that VDOT research to see if this program is working in other localities.

Agenda Item No. 13d. Transportation Matters. Sunridge Road Improvement Project (RIP 99-001).

Mr. Jack Kelsey, County Engineer, summarized the following Executive Summary:

"The objective of this road improvement project was to upgrade an existing privately-maintained public road so it could be accepted into the State system for maintenance. The project was divided into two phases. Phase I consisted of replacing/widening the existing pavement from the Northfield Road intersection to the last driveway serving Lot 15 (Stacy) and improvements to the existing drainage system. Phase II was to extend the road within the existing public right-of-way and along the existing graded but unpaved roadbed to serve three remaining undeveloped lots of record, as well as address improvements to the existing drainage system. This matter has been discussed a number of times by the Board over the past several years.

"Through these discussions it was concluded that expending funds on this project was reasonable because of the fact that a public right-of-way had originally been dedicated for the subdivision road, but the road was never built by the developer. At that time, the County did not have a road bond requirement and, therefore, was not able to guarantee that the road would be completed. Given these unique circumstances, the Board approved moving forward with this project. However, that commitment was limited at the time to a total cost of \$150,000.

"Plans were prepared for both phases of the project and bids were received February 1, 2005. Unfortunately, the complexity of the Phase II drainage issues increased the project cost above the budget approved for the project. Based on bids received, the total cost for both phases of the project came in at about \$177,000, excluding any unforeseen costs associated with the design, easements and construction of stormwater improvements. Priority was given to the public health, safety and welfare of the residents along the existing portion of the street, so the County pursued the construction of the Phase I improvements only. That Phase was completed in August 2005 and accepted into the State System of Secondary Roads in April 2006. The total cost of the Phase I project was about \$130,000, leaving an unspent balance of approximately \$20,000.

"An inquiry was recently received about the status of Phase II and Mr. Slutzky asked staff to estimate the current cost of the public road extension and to explore possible alternatives. The purpose of this executive summary is to outline the full cost and scope of the Phase II extension and to explore several alternatives.

"Original Phase II Design Plans (Kimley-Horn Associates, 2005) provided for a 350 foot extension of the Phase I public street (18 feet wide), included a cul-de-sac at the 'T' intersection of the existing undeveloped public right-of-ways, and drainage improvements to adequately convey stormwater runoff to an existing culvert under Huntington Road. Staff has generated a construction cost estimate of \$169,700 based on these design plans.

"In the course of considering alternatives, staff determined that Tax Parcel 62A1-F-10 (6.96 acres), just beyond the limits of the potential Phase II project, is zoned R-2 Residential and could be subdivided to create four new lots along the existing undeveloped public right-of-way. While

not a part of the Phase II project, if the road were further extended at the cost of the developer of these lots, such a development proposal would allow for the extension of Sun Ridge Road to the existing Wakefield Road (Route 651). This future private improvement, made possible by the full extension of Phase II, could benefit the County by encouraging the future infill or redevelopment of this parcel and providing an opportunity to complete the interconnection to Wakefield Road. However, this interconnection is not currently identified in the Comprehensive Plan as a specific transportation infrastructure improvement.

“Alternative No. 1: As an alternative to the full extension shown in the Kimley-Horn Associates design of Phase II, this minimizes the street extension to that necessary to serve the southernmost undeveloped parcel. This alternative limits the street extension to approximately 160 feet and takes advantage of the existing road fill and the depression on the west side to provide the new cul-de-sac. The drainage improvements provided in the Phase II Design Plans would still be necessary, but the shortening of the street and relocation of the cul-de-sac could achieve a \$40,000 reduction in the construction cost. But, this alternative requires the cooperation of the property owners to dedicate additional public right-of-way for the cul-de-sac and public drainage easements.

“Alternative No. 2: As an alternative to provide adequate access for the development of two of the three undeveloped lots, Tax Parcels 62A1-0F-7 and 62A1-0E-14, have frontage off the current Sun Ridge Road cul-de-sac and can be developed as of today, pending VDOT approval of a driveway. It is important to note that the third parcel without street access, Tax Parcel 62A1-0F-8, would not have the minimum frontage required by Albemarle County Code § 18-6.4.1 under this alternative, and there is no legal basis for a waiver to allow access over a private driveway for this third parcel. Access over the undeveloped public right-of-way is not permitted under current regulations. Even if permitted, staff would have concerns that private driveways located within undeveloped public rights-of-way would create issues of ‘perceived ownership’ and could not be authorized without a public hearing required before the County could transfer any public property rights now held by the County.

“Finally, if the County were to decide not to participate in the further extension of this road, a ‘private street’ could be extended from the limit of the Phase I project to serve the three undeveloped lots. The use of a “private street” would require authorization of the Planning Commission per Albemarle County Code § 14-233A. Since this street is located within the ‘development area’, Code § 14-412 would require this street to be an urban section (curb and gutter). The Commission would also have to grant a waiver (per Code § 14-225.1) to use the ‘rural private street’ section consisting of 14 feet of pavement (grade exceeds seven percent) with shoulders and ditches. The public right-of-way would need to be vacated by the Board and replaced with a private street easement. Lastly, the three properties served by the private street would need to record documents declaring their obligation to maintain the private street. A private street would have to be constructed using private funds; public funds could not be used in this circumstance.

“Based on the determinations made for the Phase I project, this road project is not eligible for State funding. The road extension would need to be constructed privately or funded by the County as a one-time capital improvement cost. If funded as a one time capital project, the alternative costs would be as follows:

- Phase II - Full Extension - \$149,700 (equal to \$169,000, minus the current \$20,000 balance) provides access to the remaining undeveloped lots in the subdivision and provides potential access to four additional lots if the road were further extended through private investment.
- Phase II - Alternative I - \$109,700 (equal to \$129,700, minus the current \$20,000 balance) provides access only to the requesting subdivision to serve the undeveloped lots.
- Phase II – Alternative II - \$-0- provides access from the end of the current road to two of the three remaining lots

“Staff requests that the Board provide direction regarding the Phase II portion of this project. Specifically, should staff proceed with the final design and construction of Phase II and if so, which street option should be pursued?”

Mr. Slutzky said he hopes the Board will agree to resolve this situation in favor of the property owners. There was a reasonable expectation among purchasers that the road would be built. At the time this subdivision was platted, the County didn’t require performance bonds from the developer so the road was not finished and there is now this dilemma. He said four lots could be created out of the one large parcel, but the owner of that piece has expressed no interest in further development.

Mr. Davis said a prior Board authorized staff to vacate the right-of-way of this road and that requires a public process, but it never happened because Phase I and Phase II were never figured out. All of this land was platted in the 1960s with City staff involved and there is a 50-foot right-of-way; the connection between Sunridge Road and Huntington Road was never constructed and homeowners built a driveway that was never approved.

Mr. Slutzky said the connector was constructed, but never paved.

Mr. Davis said the parcel at the top of the plat – from Northfield Road down to the cul-de-sac (Phase I) – was supposed to be taken into the State Secondary System after it was improved; in 2000 the Board decided not to do that section because it didn't meet unpaved road standards and wasn't serving occupied lots. In 2004 the Board voted to do the section with a limited budget but there was not enough money so it was not completed. He emphasized that if improvements to the right-of-way are allowed and they cause offsite drainage problems, the County would have some responsibility; if the County doesn't make improvements, it has no responsibility for drainage problems.

Mr. Slutzky said there are now significant drainage problems downhill from that area. He asked if the County is immune from responsibility. Mr. Davis replied that the County is not legally responsible at this time to resolve this problem. However, if the Board is inclined to make improvements they should take steps to design them correctly.

Mr. Rooker said three alternatives were presented, but he is unclear what the "middle option" is (Phase II, Alternative I would provide access only to the requesting subdivision to serve the undeveloped lots).

Mr. Slutzky said the idea is to take the \$20,000 remaining from the Phase I improvements and add \$110,000 to solve this problem for the property owners so they can use their land.

Mr. Boyd said he thinks this would essentially be a reaffirmation that the County is supporting full use of these lots.

Mr. Rooker said he is concerned about spending \$110,000 in public money to provide access to a single lot.

Mr. Slutzky said the funds would also address the drainage problems, and address access for the third lot. He thinks there is a certain moral imperative here. These people bought these lots over 30 years ago fully intending to be able to develop them.

Mr. Rooker noted that the cost of improvements could well exceed the value of the lot.

Mr. Slutzky said there would be tax revenue benefits from these lots, and money would have to be spent on the drainage problem regardless.

Ms. Thomas said if the County is going to try and rectify problems created 40 years ago, there are a lot of subdivisions with drainage problems and other issues such as the dam in Key West and the dam in West Leigh. Maintenance for those dams could cost hundreds of thousands of dollars. This is just one case the Board has been made aware of. There are dozens of similar cases where things were not done well in the past. She emphasized that there has to be something extraordinary about this case for the County to invest that kind of money for one lot and some drainage problems.

Mr. Tucker said when the right-of-way is vacated perhaps an easement could be granted to the third lot (Lot 8) so the owner could extend a driveway from the end of the existing cul-de-sac to that lot. He added that drainage improvements may still be needed.

Mr. Wyant said the area is fairly steep. He asked how the drainage is currently being handled given that grade. Mr. Kelsey said there was some pavement added with the road improvements, so the amount of drainage was only minimally increased. He said drainage ditches have been improved to help resolve some of those issues, including replacement of pipes.

Mr. Davis said there is an exception for lots that were platted prior to adoption of the Subdivision Ordinance; if they have access, they can build even if the lot does not front a public or private street, but an adequate driveway is needed. If the drainage problems are not solved first, they would be exacerbated with additional driveway improvements and building out of the lots. A solution to the drainage issue is needed if you're going to allow a driveway to be built and the lots developed.

Mr. Slutzky said if the Board accepts the \$110,000 proposal it would help correct the drainage problems. Mr. Kelsey agreed, noting that about \$22,000 of that amount would go toward the drainage improvements.

Mr. Rooker said there are numerous similar problems around the County, specifically those related to drainage.

Mr. Slutzky said in this instance a developer laid out a subdivision that included a road and drainage system, and the County didn't hold him to that. He said these property owners have been taxed as if they were developable lots, and a waterline and sewage has been put in to accommodate that. This is about giving these folks the right to rely on the County's credibility in its conduct.

Mr. Dorrier asked if Mr. Slutzky is arguing to have the road built to private road or public road standards.

Mr. Slutzky said he wants it built so that the lots can be developed and the drainage problem solved. Mr. Kelsey said the public road standard would need 18 feet of pavement, and a private road would be held to a lesser standard. Mr. Davis noted that the County cannot build a private road.

Mr. Dorrier commented that it doesn't seem to make much sense to have a public road built next to private roads.

Ms. Thomas suggested accepting the drainage problem, then having the access issues resolved by driveways through easements given by the County.

In response to Mr. Rooker's suggestion of having the driveway built out to Huntington Road, Mr. Kelsey said the cost to do that would be considerably higher.

Mr. Wyant commented that he is not convinced the burden is more on the County than on the landowners.

Mr. Slutzky asked what had changed in the years since the Board approved this project.

Mr. Rooker responded that the Board approved the project twice with costs increasing each time, but now it is being presented at an even higher cost. The cost of the access now far outweighs the value of these lots.

Mr. Slutzky said he finds it inappropriate for the Board to back off of its commitment, when all along the position has been to support development of the lots. Mr. Foley noted that there is money in the Stormwater Fund to deal with drainage problems, and the driveway could be used if the public right-of-way were abandoned.

Mr. Wyant said he thinks the answer is how far down the hill the drainage improvements would go. Mr. Foley said the Phase I project didn't increase the drainage problems, but actually improved them.

Mr. Boyd encouraged the Board and staff to move this discussion along since the Board meeting was running far behind schedule.

Mr. Slutzky said he wants staff to come back with a proposal to deal with these issues and their costs. Mr. Foley clarified that staff would bring back the cost of addressing the drainage issues by allowing a private driveway to the third lot, as access already exists to the first two lots, and an explanation of how the vacated right-of-way would work. Mr. Kelsey said this could be presented again on February 7, noting that it is difficult to make an estimate without final design plans.

(Note: At 11:56 a.m., the Board recessed, then reconvened at 12:06 p.m.)

Agenda Item No. 14. Update on Podcasting Program.

Ms. Lee Catlin, Community Relations Manager, reminded the Board that it had expressed an interest in making Board meetings more accessible to the public, specifically through use of podcasting technology as a means of sharing meeting information with citizens. In May, 2006, the Board authorized staff to initiate a six-month pilot project by podcasting all of its meetings. Board meetings from July 2006 through December 2006 have been podcast. Because the County already captures audio from Board meetings via the FTR Gold recording equipment used by the Clerk's Office to record minutes, creating podcasts was a relatively easy task.

Ms. Catlin said the website provides a list of podcasts and it grows as meetings are recorded and converted to MP3 files. For the first five months of the pilot program, the meeting podcast consisted of one continuous audio file that covered the entire recorded portion of the individual meeting. For the December meeting, several options were offered with the podcast including both the entire continuous audio and a series of "chunked" segments focusing on individual agenda items.

Ms. Catlin said response to the podcasts has been positive and staff believes the podcasting program should continue with two modifications. First, chunking the meeting into discrete agenda items makes the podcasts more user-friendly to those who may have an interest in only one or two topics. In order to do that easily and effectively, staff needs to purchase equipment to automate that function and provide more flexibility in how the audio is manipulated. The new equipment would also allow staff to produce podcasts of events that are not recorded via the FTR Gold system, which will greatly expand its ability to share audio with citizens.

Ms. Catlin said interest has been expressed in posting video to the County website in addition to audio. There are several ways that video is being used in other jurisdictions. One option is real-time video streaming, which involves live broadcast of video via the website as the meeting or event is actually happening. Another option is delayed broadcasting. That involves capturing video and posting it to the website at a later time. While the technical requirements for video streaming are not overwhelming, Albemarle County currently does not have any means to capture video on a regular basis at the level of quality required for broadcast. There would need to be a significant investment in equipment and staff training to bring the County to the level of producing broadcast quality video. One option is to explore partnership opportunities with the City of Charlottesville, which currently has the equipment to produce broadcast quality video. While it would be challenging to create a partnership to allow complete recording of all Board meetings, there might be some significant events where an arrangement could be worked out.

Ms. Catlin said there is a cost of approximately \$800 required to obtain the new equipment, including a recorder, microphones, and the software necessary to continue providing the "chunking" option for the podcasts and to allow podcasting of events beyond Board meetings. Staff recommends that the

Board authorize the podcasting program to be continued and expanded to provide the ability to divide the file into discrete agenda items and that the equipment necessary to have the capability to podcast events outside of Board meetings be obtained. If the Board is interested in some type of video streaming, staff recommends that a partnership with Charlottesville be explored as a first option.

Mr. Rooker said he has talked with people from other localities and they have not seen an increase in use of video streaming in lieu of podcasting. Since there is good use of podcasting in Albemarle, he doesn't see an advantage to having the video. He thinks it may be advisable to look at a cable franchise as factors have changed that might make that favorable now. Mr. Davis said there is no longer the ability for the County to get revenue from a cable franchise, but it could receive services and might be able to negotiate facilities – but those costs are usually passed back to the customers through rate increases.

Mr. Rooker then **moved** to authorize staff to continue the podcasting program, to expand the program in order to provide the ability to chunk discrete agenda items, and that the digital equipment proposed be purchased at a cost of \$800.00 in order to have the capability to podcast events outside of Board meetings. He suggested that staff explore a partnership with both Charlottesville as a first option for video streaming and a cable franchise.

The motion was **seconded** by Dorrier. Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

Agenda Item No. 15. Pantops Community Advisory Council Guidelines.

Ms. Lee Catlin, Community Relations Manager, said the Board has recognized that successful implementation of the master plans being created for the County's development areas will depend on residents remaining fully and actively engaged after the plans are adopted. Using the Crozet Master Plan as the model, specific opportunities are recognized for community leadership. The individual community advisory councils appointed by the Board are expected to serve as a primary vehicle by which action items related to community leadership can be achieved. Adoption of the Pantops Master Plan is scheduled for sometime this spring, therefore, staff is anxious to begin advertising and recruiting potential members for the Pantops Community Advisory Council (PCAC). Based on recommendations from the existing Crozet Community Advisory Council and a review of similar advisory bodies in other communities, staff drafted guidelines for a PCAC for consideration by the Board. Once the guidelines are approved, staff will advertise to fill the necessary positions. There will be no direct budget impact from establishing the PCAC – any funding requests that might be initiated by the PCAC would be presented to the Board through the regular budgeting process. Current staff will provide assistance to the committee. Staff recommends that the Board review the proposed PCAC guidelines, make any changes it deems necessary, and approve them after making the changes.

Mr. Slutzky suggested having someone from Crozet work with this committee in order to draw upon their experience.

Mr. Boyd expressed concern about competing interests for County dollars among the committees. He said it might help that situation by using some people from the Crozet committee. He wonders if these advisory councils will be set up to exist in perpetuity, or would there be a cut off point.

Ms. Catlin responded that in Crozet, the County set a timeframe of two years at which time the Board and staff would evaluate the status of implementation and the committee's charge change. She said some evaluation point needs to be included in the charge.

Mr. Wyant said he sees these advisory groups as continuing for quite some time. He said there will be a five-year update of the Comprehensive Plan, and he sees them being involved with that. He sees these groups as being much more active and acting as the Board's liaisons in the community.

Mr. Tucker said he envisions these groups as planning entities working on a specific area of the County, similar to what the Planning Commission does but with less authority, and similar to what the City has set up with its neighborhood groups. After each master plan is finished, it will be updated in five years, so that group would still provide information for that update. Over time, the Board will have to let them know that the responsibility of funding capital projects lies with this Board. They should focus more on planning issues that relate to their master plan.

Mr. Boyd emphasized that he is in favor of these groups, but wanted to voice his concerns about the ongoing process, the use of staff time, and the management of all the different processes.

Mr. Wyant said that he thinks new projects should go before these committees and get their input before presenting that request to the County. He thinks all projects should go that route. Mr. Tucker said in the development review process, developers are being encouraged to go to the neighborhoods first. That sounds nice, but is not easy to do. This may be the entity they could go to for feedback.

Ms. Catlin said the Crozet Advisory Committee has suggested that the first few informational meetings of the new advisory groups be held up front so people quickly become involved in the tasks of the committee.

Ms. Thomas said a responsibility for this committee is listed as "Gathering input from the constituencies represented." She thinks it will be important for this Board to emphasize that when it appoints members to this committee. Even if a person is appointed to represent a certain region or entity, after being appointed they tend to think they were appointed for their brilliance and they forget to talk with their constituencies.

Ms. Catlin said "principles" was included. That may be helpful to use in the interview process so people understand they are not representing their own personal views.

Mr. Boyd asked if there is to be a Board member, a citizen and a Planning Commissioner on the committee. Ms. Catlin said the Commissioner would attend meetings, but would not be a voting member; the Board member would also be an ex-officio member. Mr. Tucker said staff did not believe these people would attend all meetings of the committee.

By consensus, the Board supported the proposed guidelines for the Pantops Community Advisory Council.

Agenda Item No. 16. County Attorney's Office Position Request.

Mr. Tucker said that staff had listed an overview of the responsibilities of the County Attorney's Office in the Executive Summary. There are costs involved in adding a paralegal to the staff. If a paralegal position is approved, it is anticipated that the position could be filled in March, 2007 for a FY '07 cost of less than \$22,000. Salary and benefits for one-third of a year are projected to be approximately \$16,000 with additional operating costs of approximately \$400. One-time costs for the position are projected to be approximately \$5,500. Recurring annual costs in FY '08 would be approximately \$50,000. Staff recommends that the Board approve the County Attorney's Office Paralegal position to help handle the workload they are experiencing.

Ms. Thomas said she thinks the County Attorney's Office gives all in the County a good value for the dollar. She supports this request. She would like to put what she sees as an additional need before the Board. The Public Recreational Facilities Authority does not have its own attorney, and since it is the Board's goal to have an increasing number of acres in conservation easements, there are potential conflicts between the responsibility of the Authority and the goals of the County. As an example, she said if Red Hill School should need an addition that would take property off of the land the ACE Program has put under a conservation easement next door, would it meet the easement holders responsibilities to have that land go to the County? She said that is a conflict. Sometimes when easements are a gift, people want to get a good tax benefit, and if the County does not proceed with correct legal advice, the Authority could get into trouble if someone wanted credit for a gift that did not actually qualify.

Mr. Dorrier said that is an excellent point. Mr. Davis said currently under legal/ethical principles if his office determines there is a conflict in a matter when they are representing the County and a separate legal entity such as that Authority, they would have to disqualify themselves from representing that Authority in that transaction, and then hire outside counsel. That has rarely happened. They try to be careful about those issues. He said there are some instances where there is that potential.

Mr. Boyd said when he was a member of the School Board there were a couple of situations where it had to hire outside counsel because of a conflict.

Ms. Thomas said as the Board begins work on the budget, she thinks there may be an increasing call for money. Lack of budgetary support should not lead the County into questionable situations.

Mr. Dorrier said he feels the County could hire a full-fledged attorney for \$50,000 a year rather than just a paralegal. Mr. Davis said recent salary studies show that an attorney cannot be hired for that amount of money for salary and benefits. The lowest range for an attorney is substantially higher than that.

Mr. Boyd said in reading through all of the services provided, he wondered if there is any way to bill the individual departments for services. Mr. Tucker said that is not done, just as accounting services are not billed to the Schools, etc.

Mr. Boyd said he thinks Attorney services are unique and expensive. When programs are created that create expenses in that office, the cost should come out of that program's budget. Mr. Davis said his office is involved in almost everything the County does in some form. Allocating those costs to everyone would be complicated unless the office started doing billable hours, like private law firms do. Some departments would not be able to afford their work.

Mr. Boyd said when the Board receives the request for an additional attorney, which he understands will be in the next budget cycle, he would like to have a comparison of Albemarle's expenses against those of other localities.

Mr. Slutzky said when characterizing how Albemarle's legal expenses compare to other jurisdictions, it should be made clear what work Albemarle's staff is required to do. When adopting rules, a greater need for legal counsel is created.

Mr. Tucker said staff is requesting today that the Board approve the addition of the paralegal position to the County Attorney's staff.

Mr. Rooker **moved** for approval of the County Attorney's Office paralegal for the remainder of the fiscal year. Mr. Dorrier **seconded** the motion, which passed by the following recorded vote:

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

Agenda Item No. 17. Report on Proffer Management Program.

Mr. Tucker introduced Ms. Jan Sprinkle, Manager of Zoning Administrator, who will be retiring from County service this year after 30 years of employment.

Ms. Sprinkle reported that over 400 rezonings have been approved since zoning was adopted in the County in 1969. Of these, these 237 were proffered – ranging from use or density limitations, to cash, land dedication or specific improvements to the site. She said that in 1990, the General Assembly enabled the County to accept cash proffers to offset the impacts of development through rezoning. Since that date 200 rezonings have been approved, 163 of which include proffers – 30 were approved with cash proffers totaling \$2.5 million since 1997. Preliminary information from the Finance Department shows that \$2,585,285 in cash proffers have been collected since 1997.

Ms. Sprinkle explained that until 2004, compliance was achieved in a variety of ways through the efforts of various staff – during compliance review for zoning clearances when commercial tenants change, or for compliance reviews requested by lenders or purchasers, through site plan or subdivision reviews, or through CIP planning and budgeting.

Ms. Sprinkle said the program consists of several components to assure proffer compliance that enable staff and the public to reliably determine if a property is proffered, and it allows stakeholders – such as staff and schools – to quickly review proffer status, and it provides an interface with key operating systems as well as various reporting mechanisms. She said components of the system are: the proffer tracking database that's accessible to stakeholders; a direct link to proffer language, type, status and triggers – number of units, date, etc. Within the database, she said, proffers can be searched by the date due or various fields such as schools, parks, transportation, and the system links to CityView, CAMA, and the Performance Bond database. She said the link to CityView allows reviewers to be alerted to critical dates, triggers, and proffers that are in default.

Ms. Sprinkle said a future link to the financial management system will provide better tracking of revenues, expenditures and deadlines. Standard Operating Procedures are also being developed with each stakeholder group, which are important in establishing roles and procedures for implementing the proffers. Proffers are also available on the Laserfiche link on the County's website.

Ms. Sprinkle said there are several proffers currently in default, considering cash, greenways, and land dedication, but their status can change quickly. She said Greenbrier Office Park owes \$9,334 but they said they had overlooked it and will pay it; the Fried Company (Gray Rock) has paid \$17,000. There are currently seven greenway proffers which have been more problematic, with staff trying to obtain dedication as early as possible by plat or plan, rather than later when the greenway is owned by a homeowner's association. She noted that all land dedication proffers are in compliance at this time, but in some cases the land hasn't been requested by the County yet.

Ms. Sprinkle then introduced Ms. Sarah Baldwin, the Proffer Planner, who made a presentation on how the proffer database is being used. Ms. Baldwin said that by using a pull-down arrow, a user can locate proffers by project name, ZMA number, or tax map and parcel. She showed a rendering of Hollymead Section "C" as an example, including sunset dates and deadlines; if a user needs more detail they can double-click the proffer for more information. She added that the last screen allows staff to monitor and enforce proffers that may be tied to a site development plan, building permit, or certificate of occupancy. In the case of Hollymead, the proffer is due at the issuance of each certificate of occupancy.

Mr. Dorrier asked how much staff time is involved in securing proffers. Mr. Davis said his office reviews at least one draft of every proffer and ensures that the proper signatures are secured. A significant amount of time is devoted to the process.

Mr. Rooker asked about the tracking system for affordable housing proffers. Ms. Baldwin noted that staff has the ability to mark which units in a project have been designated as affordable housing units, and once staff knows which actual unit is designated, they can follow through on that.

Ms. Sprinkle said staff is trying to follow through on the proffers before Certificates of Occupancy are issued.

Ms. Thomas said she is very happy with the progress that has been made.

Agenda Item No. 18. Closed Session.

At 1:00 p.m., Mr. Slutzky **moved** to adjourn into closed session pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to consider appointments to boards, committees and commissions. Ms. Thomas **seconded** the motion, which passed by the following recorded vote:

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

Agenda Item No. 19. Certify Closed Session. At 2:00 p.m., the Board reconvened into open session.

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

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

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

Agenda Item No. 20. Boards and Commissions: Vacancies/Appointments.

Mr. Wyant **moved** to:

Appoint Mr. William Jackson to the Jordan Development Corporation with said term to expire on August 13, 2007.

Reappoint Ms. Betty Black to the Community Mobility Committee with said term to expire on January 12, 2009.

Reappoint Mr. C. Marshall Thompson to the Equalization Board to represent the Rio District with said term to expire on December 31, 2007.

Reappoint Mr. Leonard Winslow, III, to the Housing Committee with said term to expire on December 31, 2009.

Appoint Ms. Deborah Van Eersel to the Housing Committee, to fill the unexpired term of James P. Fitzgerald, said term to expire on December 31, 2008.

Reappoint Mr. Scott Goodman to the Albemarle County Industrial Development Authority to represent the Jack Jouett District with said term to expire on January 19, 2011.

Reappoint Chief John Miller to James River Alcohol Safety Action with said term to expire on January 1, 2010.

Appoint Steve Elliott to the Thomas Jefferson Emergency Medical Services Council with said term to expire on January 1, 2010.

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

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

Agenda Item No. 21. **Public Hearing:** Proposed FY 2007 Budget Amendment. (Notice of this public hearing was advertised in the Daily Progress on December 24, 2006.)

Ms. Laura Vinzant said this FY 2007 Budget Amendment totals \$776,771.50. It consists of eight appropriations as follows: Appropriation No. 2007-042 provides \$61,390.00 in funds for various Education programs; Appropriation No. 2007-043 allocating \$250,000.00 to establish an Economic Development Opportunities contingency; Appropriation No. 2007-044 in the amount of \$15,811.00 to provide FY '07 funding for the Community Engagement Specialist position beginning in April 2007; Appropriation No. 2007-045 for the Emergency Communication Centers' CERT Grant totaling \$4,800.00; Appropriation No. 2007-046 providing \$1,210.00 to the Chamber of Commerce membership; Appropriation No. 2007-047 allocating \$2,163,000 in additional funding for construction of the Northern Fire Station; Appropriation No. 2007-048 in the amount of \$487,213.50 to establish the FY '07 budget for the Commission on Children and Families; and Appropriation No. 2007-049 in the amount of \$22,645.00 to provide FY '07 funding for a Paralegal position in the County Attorney's Office starting March 2007.

Staff recommends approval of the FY '2007 Budget Amendment in the amount of \$776,771.50 after the public hearing, and then approval of Appropriations No. 2007-042, No. 2007-043, No. 2007-044, No. 2007-045, No. 2007-046, No. 2007-047, No. 2007-048, and No. 2007-049 to provide funds for various Local Government, School, ECC and Capital projects and programs as described below.

Appropriation No. 2007-042, \$61,390.00: Revenue Source: Donations \$5,580.00; Federal Revenue \$55,810.00. At its meeting on November 9, 2006, the School Board approved the following appropriation requests:

Federal grant funding in the amount of \$55,810.00 has been received by Albemarle County's Adult Education's Race to GED initiative. This initiative is a program wide commitment to an intense one-year effort to permanently improve this program. Through caring planning, research, assessment, data analysis, professional development and structural changes, we will substantially increase the number of students passing the GED; increase the number of GED students; increase the number of student hours; assist more GED students to successfully transition to employment, apprenticeships or post-secondary programs; identify effective techniques that help meet these goals and incorporate them into our regular program; and, establish a vital Professional GED Learning Community.

Henley Middle School received a donation in the amount of \$3,580.00 from the Henley Middle School Parent and Teacher Support Organization. It was requested that this donation be used to pay the salaries for their At-Risk program and their Library night.

The Henley Middle School Cultural Enrichment Program, formally the Frederick S. Upton Foundation Grant, has received a grant donation from Douglas and Sarah Dupont in the amount of \$1,000.00. This donation will support Henley's Cultural Enrichment Program in funding Artists-In-Residence programs: Sculpture, Writer and Dramatic Interpretation. The projects will involve interactive activities to include hands-on-learning experiences for students with performing, visual and musical arts.

At its meeting on December 7, 2006, the School Board approved the following appropriation requests:

Sutherland Middle School received a donation from David B. Rogers in the amount of \$750.00. It has been requested that this donation be used to support the Intervention/Prevention efforts at Sutherland Middle School.

Broadus Wood Elementary School received an anonymous donation in the amount of \$250.00. It has been requested that this donation go specifically to Broadus Woods's art program.

Appropriation No. 2007-043, \$250,000.00. Revenue Source: Board Contingency \$200,000.00; General Fund Balance \$50,000.00. At its meeting on December 6, 2006, the Board approved the establishment of an Economic Development Opportunities Fund in the amount of \$250,000.00. Funding is provided through a reallocation of \$200,000.00 previously budgeted in Human Resources to address any changes in retiree health insurance funding and a \$50,000.00 appropriation from the General Fund Balance.

Appropriation No. 2007-044, \$15,811.00. Revenue Source: Board Contingency \$15,811.00. At its meeting on December 6, 2006, the Board approved the hiring of a Community Engagement Specialist in the County Executive's Office effective April, 2007. This position will assist the County in meeting the steadily increasing community engagement needs and expectations created by the Strategic Plan and other public priorities. FY '07 funding for the position will be allocated from the Board of Supervisors' Contingency.

Appropriation No. 2007-045, \$4,800.00. Revenue Source: Federal Grant \$4,800.00. The Emergency Communications Center has been awarded a grant from the Virginia Department of Emergency Management in the amount of \$4,800.00. This grant will provide funding for the Community Emergency Response Team (CERT) and will be used for training and equipment. CERT is comprised of community volunteers who are trained to assist emergency responders in the event of a manmade or natural disaster. They are also trained to assist their neighbors and local community area during a major disaster in the event emergency response is overwhelmed and cannot respond.

Appropriation No. 2007-046, \$1,210.00. Revenue Source: Board's Contingency \$1,210.00. At its December 6, 2006, meeting the Board proposed County membership in the Charlottesville/Albemarle Chamber of Commerce. The 2007 membership for the County, \$1,210.00, will be funded from the Board of Supervisors' Contingency.

Appropriation No. 2007-047, \$2,162,000.00. Revenue Source: CIP Contingency \$1,988,632.00 CIP Fund Balance \$173,368.00. At its November 1, 2006, meeting the Board received information regarding the bids that were received for the construction of the Northern Fire Station. Based on these bids staff projected the total cost of the facility, including design, construction and building equipment to be \$5,945,300.00. Since that time, staff has worked with the contractor and architect to achieve \$83,800.00 in cost saving changes that would not negatively impact quality or long-term maintenance nor require additional review by the UVA Review Committee, County ARB, or County Community Development Department. Staff is continuing to pursue other potential cost saving changes that the UVA Real Estate Foundation may approve administratively without requiring the full review committee process. To date the Board has appropriated \$3,699,500.00 for construction of the facility. Based on the revised cost estimate of \$5,861,500.00, an additional \$2,162,000.00 is needed for this project. Funding will be provided with a transfer of \$1,988,632.00 in contingency funds currently budgeted in the Capital Improvement Fund and a \$173,368.00 appropriation from the CIP Fund Balance.

Appropriation No. 2007-048, \$487,213.50. Revenue Source: Local Revenues, \$252,615.50; State Revenue \$234,598.00. At its December 6, 2006, meeting the Board approved an amendment of the Agreement between the Albemarle County Board of Supervisors and the Charlottesville City Council for the Commission on Children and Families, which transfers fiscal agent responsibilities from the City to the County effective January 1, 2007. This appropriation establishes the Commission on Children and

Families' budget in the County's accounting system effective January 1. No additional County funds are required.

Appropriation No. 2007-049, \$22,645.00. Revenue Source: Board Contingency \$22,645.00. The County Attorney's Office has requested a Paralegal position for their office to be hired March 1, 2007. The details of this position request are provided in a separate Executive Summary for Board consideration. This appropriation provides the FY '07 funding for this position from the Board of Supervisor's Contingency pending approval of the request.

Mr. Boyd suggested changing the name in Appropriation No. 2007-043 to "Jobs Opportunity Development Fund."

Mr. Rooker said he doesn't have a problem with the name change, but he is unclear as to what this fund would do for the County.

With no further questions for staff, Mr. Boyd opened the public hearing.

Mr. John Cruickshank addressed the Board on behalf of the Piedmont Chapter of the Sierra Club in support of an Ag/Forestral Program position in the new County budget, which would encourage purchase of locally grown and organically grown food. He said locally grown foods are more nutritious and safer, and costs are reduced when food is not shipped, adding that using rural areas to grow food will help protect rural lands. He said the Sierra Club also supports an amendment to the County's Comprehensive Plan to identify a sustainable, optimal population size for Albemarle. Part of the \$250,000 should be used to determine how many people can live here and enjoy clean water, fresh air and an abundance of natural beauty.

Mr. Tom Olivier addressed the Board, stating that he is present to take issue with some of the proposed amendments and noting that the Economic Development Opportunity Fund would be devoted to recruiting new businesses to the area. He said Albemarle has for a long time been considered a "business unfriendly locality," but has maintained one of Virginia's best local economies. As long as the University of Virginia produces Ph.D.'s there will be underemployment. This proposal will fuel growth and undermine many goals of the Comprehensive Plan. He added that if the Board really wants to fund economic development, it should target areas with demonstrable public needs where economic development is more likely to support Comprehensive Plan goals. Unlike much of the economy, the agriculture sector has been declining and its best prospects appear to lie in local marketing of local produce. He urged the Board to earmark money for staff and any consultant time needed to identify sustainable optimal size, and asked them not to join the Chamber of Commerce.

Mr. Jack Marshall addressed the Board on behalf of ASAP (Advocates for a Sustainable Albemarle Population), stating that two items in the proposed budget amendment represent denial of the economic and demographic situation in Albemarle County – the creation of the opportunity fund and joining the Chamber of Commerce. He emphasized that the local marketplace, thanks to wise decisions made by supervisors in the past, has operated successfully for decades. He said the area's unemployment is envied by many localities around the State, as it is so low there is a shortage of workers, not jobs. New businesses do not hire the Ph.D.'s, but instead bring in their own workers and even kill off local "mom and pop" businesses. The current population growth has impacts that can't even be coped with now. He emphasized that while new businesses may provide short-term profits to a few they provide little long-term benefit to the whole community. Times are changing. The citizens want their leaders to adapt and make decisions based on new realities, not old ideologies. He asked that the Board not slip into a denial of the local economic and demographic situation. A vote for these two budget allocations is a vote for more County growth. A vote against these two items reflects the will of a majority of the Board's constituents.

Ms. Jerry McCormick-Ray addressed the Board on behalf of Citizens for Albemarle stating opposition to the joining of the Chamber of Commerce. She said that money could be better spent on preservation of water resources and natural areas.

Mr. John Martin addressed the Board in opposition to joining the Chamber of Commerce and for creation of the Economic Development Fund. He emphasized that by continued membership on the TJPED the Board is diminishing the voice of everybody else and representing instead pro-growth factions. He said the suggested change in name to "Economic Development Opportunity Fund" is a red flag that this money is intended for use as incentives for developers. In the 2006 Citizens' Survey, two-thirds of County residents indicated that slower growth was in the County's best interest, and only 3.4 percent wanted faster growth. He thinks these people deserve equal representation.

Mr. Jeff Werner of the Piedmont Environmental Council addressed the Board, reading from an e-mail he sent to the Board in October: "I want to thank you for your commitment to exploring sustainable and green design practices in Albemarle County. Even if one is suspect to the premise of manmade global warming, the reality is that the pursuit of these objectives is, as California among others has realized, an economic catalyst. America and the world are more than ever interested in this issue, and the development of green tools, practices, methods, and materials can truly be part of the County's economic plan. For example, consider the possibility of the City, the University, and Albemarle County working together in converting UVA's coal-burning steam plant into a less polluting facility that co-generates power for the community. If coal must be used, then promote ways to make it burn cleaner. Consider the clean power available in the water that every day passes through our local reservoirs and over our dams. An idea I've offered for some time is to consider the use of the dredged soils from the South Fork Rivanna Reservoir as a homegrown industry for providing cover soil to regional turf farms, among other possible

uses and markets. Look at saving the Reservoir not as a cost, but as an economic opportunity. Even if revenue-neutral, the result would be beneficial for local residents and local turf farms and others I would hope. Jobs would be created for people needed to manage, operate and maintain this system. How is that not economic development? Representative Virgil Goode has long discussed the possibility of getting downstate farmers to grow fuel crops in lieu of paying them to not grow tobacco. Consider how Albemarle and UVA, and the State and the TJPED and the Farm Bureau could find a role for local agricultural operations and work together to pursue technology which turns that raw material into a useable fuel. Consider the technology that leads to farmers using a clean fuel to grow crops which produce clean fuels for the Commonwealth, and fuel local research and development opportunities. Consider the possibilities of a community that is a leader in promoting sustainable design and practices and results in other localities and industries coming here to see what we have done and how we have done it. All across the country and even here at home, it seems everyone is pursuing biotechnology as the next great panacea. What if Albemarle and Charlottesville committed themselves to an economic niche that separated them from every other town in America, and collectively, even regionally, set its sights on being a leader in green technology. We could be leaders in both our land use decisions and in our economic development." Mr. Werner said he thinks economic development must include environmental issues.

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

Mr. Rooker said he would like to remove two of the appropriations for a separate vote – Appropriation No. 2007-043 (the Economic Development Fund) and Appropriation No. 2007-046. He then offered **motion** to approve a budget amendment in the amount of \$525,561.50 and to approve Appropriation Nos. 2007-042, 2007-044, 2007-045, 2007-047, 2007-048, and 2007-049. Mr. Wyant **seconded** the motion, which passed by the following recorded vote:

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

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2007-042
 DATE: 01/03/07
 EXPLANATION: Education Donations and Programs Grant

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
2	2000	18100	181109	Donation	J2	3,580.00		
2	3104	18000	181221	Henley MS - Cultural Enrich.	J2	1,000.00		
2	3309	33000	330001	Race To GED Gran t	J2	55,810.00		
1	2252	61101	134100	Part-time Teacher Aides	J1	3,325.59		
1	2252	61101	210000	FICA		254.41		
1	3104	60252	312500	Prof. Serv. Instruction		1,000.00		
1	3309	61101	114100	PT Wages - Teachers Aides		7,100.00		
1	3309	61101	132100	PT Wages - Teachers		36,200.00		
1	3309	61101	210000	FICA		3,312.00		
1	3309	61101	360000	Advertising		4,448.00		
1	3309	61101	520100	Postal Services		100.00		
1	3309	61101	550100	Travel-Mileage		300.00		
1	3309	61101	580500	Staff Development		1,000.00		
1	3309	61101	601300	Education & Rec Supplies		1,000.00		
1	3309	61101	601700	Printing		1,000.00		
1	3309	61101	800700	Data Processing Equipment		1,350.00		
	2000		0501	Est. Revenue			3,580.00	
			0701	Appropriation				3,580.00
	3104		0501	Est. Revenue			1,000.00	
			0701	Appropriation				1,000.00
	3309		0501	Est. Revenue			55,810.00	
			0701	Appropriation				55,810.00
2	2000	18100	181109	Donation	J2	1,000.00		
1	2201	61101	601300	Education & Rec Supplies	J1	250.00		
1	2255	61101	580000	Miscellaneous Expense	J1	750.00		
	2000		0501	Est. Revenue			1,000.00	
			0701	Appropriation				1,000.00
TOTAL						122,780.00	61,390.00	61,390.00

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2007-044
 DATE: 01/03/07
 EXPLANATION: FY '07 Funding for Community Engagement Specialist

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
1	1000	95000	999990	BOS - Contingency	J1	(15,811.00)		
1	1000	12013	110000	Salaries	J1	8,633.00		
1	1000	12013	210000	FICA	J1	660.00		
1	1000	12013	221000	VRS	J1	1,119.00		
1	1000	12013	241000	Group Life	J1	105.00		
1	1000	12013	231000	Health Insurance	J1	1,510.00		
1	1000	12013	232000	Dental Insurance	J1	54.00		
1	1000	12013	270000	Worker's Comp	J1	10.00		
1	1000	12013	350000	Printing	J1	200.00		
1	1000	12013	520100	Postal Services	J1	200.00		
1	1000	12013	580000	Miscellaneous Exp	J1	300.00		
1	1000	12013	600000	Materials & Supp	J1	200.00		
1	1000	12013	600100	Office Supplies	J1	200.00		
1	1000	12013	800700	ADP Equipment	J1	2,620.00		
TOTAL						0.00	0.00	0.00

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2007-045
 DATE: 01/03/07
 EXPLANATION: ECC CERT Grant

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
2	4100	33000	330213	CERT Grant	J2	4,800.00		
1	4100	31045	301210	Contract Services	J1	720.00		
1	4100	31045	800100	Machinery & Equipment	J1	4,080.00		
			0501	Est. Revenue			4,800.00	
			0701	Appropriation				4,800.00
TOTAL						9,600.00	4,800.00	4,800.00

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2007-047
 DATE: 01/03/07
 EXPLANATION: Additional Funding for Station 12 - Northern Fire Station

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
1	9010	11010	999999	BOS - Contingency	J1	(1,988,632.00)		
1	9010	32017	312350	Station 12 - A/E	J1	231,034.60		
1	9010	32017	800200	Station 12 - F/F/E	J1	(70,000.00)		
1	9010	32017	800605	Station 12 - Const	J1	1,863,500.00		
1	9010	32017	800741	Station 12 - IT Costs	J1	(19,000.00)		
1	9010	32017	999999	Station 12 - Contgcy	J1	156,465.40		
2	9010	51000	510100	Appropriation - F/B	J2	173,368.00		
			0501	Est. Revenue			173,368.00	
			0701	Appropriation				173,368.00
TOTAL						346,736.00	173,368.00	173,368.00

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2007-048
 DATE: 01/03/07
 EXPLANATION: Appropriate the budget for the Commission on Children and Families for January 1, 2007-June 30, 2007

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
2	4400	16000	160502	City of Charlottesville	J2	142,862.00		
2	4400	16000	160503	County of Albemarle	J2	109,753.50		
2	4400	24000	240000	State Categorical Aid	J2	30,522.00		
2	4400	24000	240500	State Revenue - Grant	J2	204,076.00		
1	4400	54010	110000	Salaries - Regular	J1	103,582.00		
1	4400	54101	130000	Part Time Salaries	J1	4,768.00		
1	4400	54101	210000	FICA	J1	6,258.00		
1	4400	54101	221000	Virginia Retirement Sys	J1	11,090.00		
1	4400	54101	231000	Health Insurance	J1	11,575.00		
1	4400	54101	232000	Dental Insurance	J1	482.00		
1	4400	54101	241000	VRS Group Life Insurance	J1	652.00		
1	4400	54101	270000	Worker's Compensation	J1	77.00		
1	4400	54101	310000	Professional Services	J1	1,400.00		
1	4400	54101	312710	Computer Support	J1	1,650.00		
1	4400	54101	320000	Temp. Help Services Fee	J1	500.00		
1	4400	54101	350000	Print & Bind External	J1	5,500.00		
1	4400	54101	360000	Advertising	J1	250.00		
1	4400	54101	520100	Postal Services	J1	868.00		
1	4400	54101	520300	Telecommunications	J1	650.00		
1	4400	54101	530000	Insurance	J1	500.00		
1	4400	54101	540000	Leases & Rentals	J1	2,775.00		
1	4400	54101	550100	Travel/Training/Education	J1	500.00		
1	4400	54101	580000	Miscellaneous	J1	1,000.00		
1	4400	54101	580100	Dues & Memberships	J1	100.00		
1	4400	54101	600100	Office Supplies	J1	2,815.00		
1	4400	54101	600200	Food Supplies	J1	600.00		
1	4400	54101	601200	Books & Subscriptions	J1	170.00		
1	4400	54101	601300	Educ. & Recreation Supplies	J1	700.00		
1	4400	54102	301200	Contract Services - Other	J1	204,076.00		
1	4400	54103	110000	Salaries - Regular	J1	39,973.00		
1	4400	54103	210000	FICA	J1	2,746.00		
1	4400	54103	221000	Virginia Retirement Sys	J1	3,202.00		
1	4400	54103	231000	Health Insurance	J1	5,838.00		
1	4400	54103	232000	Dental Insurance	J1	243.00		
1	4400	54103	241000	VRS Group Life Insurance	J1	299.00		
1	4400	54103	270000	Worker's Compensation	J1	20.00		
1	4400	54103	312710	Computer Support	J1	1,250.00		
1	4400	54103	350001	Annual Report Preparation	J1	600.00		
1	4400	54103	520100	Postal Services	J1	500.00		
1	4400	54103	520300	Telecommunications	J1	500.00		
1	4400	54103	530000	Insurance	J1	100.00		
1	4400	54103	540000	Leases & Rentals	J1	5,414.00		
1	4400	54103	550100	Travel/Training/Education	J1	650.00		
1	4400	54103	580000	Miscellaneous	J1	1,300.00		
1	4400	54103	600100	Office Supplies	J1	500.00		
1	4400	54104	301200	Contract Services - Other	J1	5,145.00		
1	4400	54105	110000	Salaries - Regular	J1	34,101.50		
1	4400	54105	210000	FICA	J1	2,045.00		
1	4400	54105	221000	Virginia Retirement Sys	J1	6,662.00		
1	4400	54105	231000	Health Insurance	J1	2,942.00		
1	4400	54105	232000	Dental Insurance	J1	123.00		
1	4400	54105	241000	VRS Group Life Insurance	J1	211.00		
1	4400	54105	270000	Worker's Compensation	J1	25.00		
1	4400	54105	301200	Contract Services - Other	J1	200.00		

1	4400	54105	312710	Computer Support	J1	2,050.00		
1	4400	54105	350000	Print & Bind External	J1	400.00		
1	4400	54105	520100	Postal Services	J1	200.00		
1	4400	54105	520300	Telecommunications	J1	50.00		
1	4400	54105	530000	Insurance	J1	300.00		
1	4400	54105	540000	Leases & Rentals	J1	5,236.00		
1	4400	54105	550100	Travel/Training/Education	J1	900.00		
1	4400	54105	550600	Travel - Subsistence	J1	150.00		
1	4400	54105	580000	Miscellaneous	J1	500.00		
1	4400	54105	600100	Office Supplies	J1	300.00		
	4400		0501	Est. Revenue			487,213.50	
	4400		0701	Appropriation				487,213.50
TOTAL						974,427.00	487,213.50	487,213.50

COUNTY OF ALBEMARLE
 APPROPRIATION NO: 2007-049
 DATE: 01/03/07
 EXPLANATION: FY '07 Funding for County Attorney's Office Paralegal

SUB LEDGER		GENERAL LEDGER						
TYPE	FUND	DEPT	OBJECT	DESCRIPTION	CODE	AMOUNT	DEBIT	CREDIT
1	1000	95000	999990	BOS Contingency	J1	(22,645.00)		
1	1000	12040	110000	Salaries	J1	11,691.00		
1	1000	12040	210000	FICA		894.00		
1	1000	12040	221000	VRS		1,515.00		
1	1000	12040	231000	Health Insurance		2,013.00		
1	1000	12040	232000	Dental Insurance		75.00		
1	1000	12040	241000	Group Life		132.00		
1	1000	12040	270000	Worker's Compensation		11.00		
1	1000	12040	282040	Total Rewards		87.00		
1	1000	12040	360000	Advertising		1,700.00		
1	1000	12040	520300	Telecommunications		505.00		
1	1000	12040	550100	Education		400.00		
1	1000	12040	580100	Dues & Memberships		25.00		
1	1000	12040	600100	Office Supplies		367.00		
1	1000	12040	800200	Furniture		3,030.00		
1	1000	12040	800710	Data Processing Software		200.00		
TOTAL						0.00	0.00	0.00

Mr. Rooker said regarding Appropriation No. 2007-043, the discussion of the use of the proceeds was to set up a fund to make incentives available to attract local companies to come to the area. He asked for a clarification if that is not the case. He suggested that this appropriation not be voted on today, but be considered as a part of the budget process. It is a fairly large amount of money and it hasn't really been fleshed out as to what this money would be used for. He does not know what's in the minds of the other Board members. He does not know that the Board has even decided what might be a good use for these funds. He opposed this even being put on the agenda today, noting that it has not been well-defined and there have been some good points made by the public including the statistics from the citizens' survey.

Mr. Rooker stated that the TJPED report on underemployment included information that was simply not accurate. Ultimately they admitted it was not accurate. He said the Virginia Employment Commission's figure shows underemployment at eight percent, which is what they say for every community in the State. He has talked with people involved in surveys who say there is no way to compute an underemployment number. He emphasized that a number of people holding advanced degrees are doing what they want to do, not because they have to. He asked that this item be included in the regular budget process.

Mr. Dorrier commented that the Board would have discretion as to how the fund was used; other communities have funds like this. He explained that there are employers who want to come to the County; there is some reason for having public support of their efforts. He cited an example of an employer who was considering locating in the UVA Research Park, but decided instead to locate to another state. He said there is a need for support from the County budget for alternative employment, noting that the City has an economic development fund. He thinks the Board would control how the money was spent. Setting up a fund does not mean the money is going to be unwisely spent or misused.

Mr. Wyant said he thought this item would be included in the budget process. He supports the concept of employers wanting to locate to this community, but does not want the money used for incentives to entice employers to come here.

Mr. Slutzky said he believes growth management should be accomplished through land use policy. The issues here relate more to employment. County staff has told the Board that 20 percent of Albemarle County's residents live at, or below, 200 percent of poverty. He finds that number to be stunning and disconcerting. He said the allocations in the fund would be made available in the event there were a prospective employer meeting the following benchmark: non-polluting employer who will hire the vast majority of his employees through the existing local employment pool if a company met those standards, and there were not a lot of advocacy among that part of the population reflected in the 20 percent statistic. He would like to see growth in sustainable agriculture, and in each case the Board would make a decision on proposed allocations.

Mr. Slutzky also said the Chamber of Commerce currently includes membership by County schools, the City, City schools, and the University. To him there is nothing inherent in the Chamber that is inappropriate or reprehensible, and he would like to see the County thought of as being in consort with those organizations.

Mr. Slutzky recalled that budget items were to be considered the next time the Board had a budget amendment vote after public notice. He also recalled that there was going to be a more thorough explanation in the advertisement to the public. Mr. Tucker said he believes a notice was included in the A-mail.

Ms. Thomas responded that it was not listed separately, and she found it difficult to find.

Mr. Rooker said you had to read through all of the appropriation requests to find it.

Mr. Boyd said he thinks of this as being specifically about jobs; the money is just being allocated, not spent. He mentioned that Badger-Powhatan, Technicolor, Comdial, Con-Agra, have all moved to other areas because companies are looking for assistance when moving in and creating jobs. He said there was already \$200,000 in the budget for an item and that money was not spent. His idea was to take that amount and add \$50,000 to the fund to bring it to the current level. He emphasized that his goal is to create jobs, not growth.

Ms. Thomas said she thinks the proposed \$250,000 fund will be labeled a "slush fund." The Board had no staff report and no comparison with other budget requests. She said the demographic group growing in poverty is composed of small children, and the group of adults most likely to be in poverty is single mothers. Based on opinion polls, the one group in the community that feels it is important to provide more economic development and jobs is the African-American community. If the County would like to pinpoint programs, they should only give incentives to businesses that provide daycare and focus on recruiting minority and single mothers, which is a very difficult group to employ. She said that information has not been available in this dialogue, noting that the Board requests a lot of detail for even the smallest budget item. If some company is that important, the Board should have this kind of public discussion and then decide whether to give them some kind of incentive. Perhaps there should be money set aside for training at PVCC, and it should be included in the PVCC budget item. She said public trust is a fragile thing and approval of this item compromises that trust.

Mr. Rooker said he is aware of about 2,000 jobs coming to this community without spending a dime of the taxpayer's money. In this community there is very low unemployment. The biggest challenges to be faced are things like traffic and other growth-related issues. If this were a different area – such as Southwest Virginia that has high unemployment – he would feel differently. He thinks the Board needs to spend taxpayer dollars solving real problems in the community.

Mr. Boyd said he thinks there is disagreement as to what those real problems are.

Mr. Slutzky asked where the \$50,000 came from, asking if it was also from a "slush fund." Mr. Tucker responded that it came from the Board's Contingency Fund in undesignated moneys set aside to use in the event of an emergency appropriation request.

Mr. Slutzky said he understands Ms. Thomas' concern that this isn't being done with sufficient input from staff and the public, but he thinks further discourse will take place during the allocation stage of this fund.

Mr. Rooker said he believes it is unlikely that will take place because when private companies are thinking about relocating to an area, it is not a public matter – it is usually through private discussions with a landowner, such as UREF.

Mr. Boyd said there is a huge fund balance that could be used for this type of thing anyway, and he doesn't understand the logic of not specifically allocating \$250,000 for improving job opportunities.

Mr. Slutzky encouraged the public to bring forward innovative ideas such as what Mr. Werner mentioned related to sustainable agriculture, alternative energy, etc. He does not think of this money as being earmarked in a traditional business development or economic development way. He challenges the public to give the Board the opportunity to spend this money wisely if it decides today to set it aside.

Mr. Dorrier said the County spends \$25,000 or \$50,000 a year for just one special-needs student, and this is a way to target another disadvantaged population.

Mr. Wyant said Ms. Thomas' point about single-mothers and daycare is highly valid. He hopes the Board will be open about their use of these funds.

At this time Mr. Wyant **moved** for approval of a budget amendment in the amount of \$250,000 and approval of Appropriation No. 2007-043 for job development opportunities. Mr. Dorrier **seconded** the motion, which passed by the following recorded vote:

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

COUNTY OF ALBEMARLE
APPROPRIATION NO. 2007-043
DATE: 01/03/07
EXPLANATION: Economic Development Opportunities Funding

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
2	1000	51000	510100	Appropriation - F/B	J2	50,000.00		
1	1000	12030	231005	Retiree Health	J1	(200,000.00)		

1	1000	95000	999987	Econ Dev Opp	J1	250,000.00		
	1000		0501	Est. Revenue			50,000.00	
			0701	Appropriation				50,000.00
TOTAL						100,000.00	50,000.00	50,000.00

Mr. Rooker commented that the primary reason he opposes County membership in the Chamber of Commerce is that it is a special interest group. There are numerous groups in the community that are private special interest groups that do a great job but the County has not joined those. In 1979, the Board voted 4:2 not to join the Chamber; it was discussed again in 1999 and the Board did not move forward to join the Chamber at that time. He said one of their goals is to maximize effectiveness by “monitoring and proactively influencing local legislation and other government actions in a way that benefits their members.” Part of their goal is to appear before the Board and persuade them to do things that are in their interest. He emphasized that it would be difficult to be a neutral body when the Chamber comes forward and promotes issues related to growth – such as they did with Hollymead, Forest Lakes, etc. He does not think it is wise to be a member of special interest organizations.

Mr. Boyd said Mr. Tucker has been on the Chamber Board during his tenure as County Executive, as was his predecessor. Mr. Boyd emphasized that his business is a member of the Chamber and they have never come to him and asked for his support on any specific item.

Mr. Dorrier said by not “having a seat at the table”, the County is hurting itself, noting that the Albemarle County schools and the City belong. He does not think the Chamber is a group the Board will have any conflict with. He also believes the membership fee is a bargain.

Mr. Boyd drew a parallel between the schools as an advocacy group for education, stating that he would not want to withhold support for them. He thinks it would be tough to find anything the Board could ever participate in if it should not belong to any group that advocated anything.

Mr. Rooker responded that schools are a service provided through County government. He does not view schools as an advocacy group. He views it as a service the County provides to the public with taxpayer funds. He said that he has spoken with School Board members, and there is a significant difference in them joining the Chamber and the County joining the Chamber.

Mr. Slutzky mentioned that VML and VACo are advocacy groups.

Mr. Rooker said they are quite a bit different from the Chamber. They are local government bodies. VACo is not a private advocacy group. The Chamber is a private advocacy group.

Ms. Thomas said she feels strongly that the Board is going down the wrong path today. She explained that in 1974 there was a mistake made when a contractor (who is still a developer in the community) had not been billed for his contractor’s license fees. Today that would largely be viewed as a clerical error that could be straightened out, but at that point there was a low level of trust of local government. There was a Grand Jury convened and the Board was brought before it to testify. At the end of the trial the Supervisors were not found guilty but the County Executive was. The public had their say and two Board members were voted out of office, and the Supervisors struggled to gain back trust. She said that in talking to a Board member from that era, he indicated that the Board at that time decided it was too awkward to belong to a group that came before the Board advocating on behalf of an applicant, and then have to take an action.

Ms. Thomas emphasized that the Chamber had done nothing wrong, but there were serious doubts among the public, and joining that organization now will create a level of mistrust. She thinks all will have to work harder to convince everybody the Board is totally open if it takes this vote.

Mr. Slutzky said he doesn’t know the history of why the Board pulled out of the Chamber as well as Ms. Thomas does, and he doesn’t understand what creates the mistrust. He asked where the essence of loss of public trust lies in this decision to join the Chamber.

Ms. Thomas explained that if the Board has supported a group that then comes before it and advocates for an issue, it creates a “closed loop” making it appear the Board may have given preference to that group.

In response to Mr. Slutzky’s comment about individual memberships on advocacy organizations, she said that is “quite different and quite acceptable.” But, Ms. Thomas said Board membership on such organizations is a “different animal.”

Mr. Slutzky asked if the Board could express displeasure with the School Board using their funds for Chamber membership.

Ms. Thomas replied that the School Board does not have the Chamber coming before them to advocate for land use decisions.

Mr. Slutzky said he doesn’t quite understand the public assumption that there is a mischievous dimension to the County’s membership in the Chamber.

Ms. Thomas reiterated that when the Board belongs to an organization that then comes before it to urge it to vote one way or another, there is the question of whether the Supervisors’ minds were already

made up. Questions would arise that don't arise today. She does not know why the Board would put itself in the position of having such questions arise when she does not see any reason to do so.

Mr. Boyd commented that the County has been a member of the Chamber through Mr. Tucker's membership, so essentially the County is freeloading.

Ms. Thomas emphasized that there is a big difference between having the County Executive sit on the Chamber's Board and having the County be a paid, listed member.

Mr. Slutzky stated that he believes there will not be an impression of distrust created by this decision; he is very sensitive to the nature of public trust. He said the Board has to be thoughtful before making any of these kinds of decisions today and in the future. If it gives that up, it's got a disaster on its hands.

Mr. Rooker said the Chamber's governing documents state that one of its goals is maximizing their effectiveness by "monitoring and proactively influencing local legislation and other government actions in a way that benefits their members".

Mr. Wyant said he believes the members of this Board will vote in the best interest of the County. He then offered **motion** to approve a budget amendment in the amount of \$1,210.00 and to approve Appropriation No. 2007-046 as follows. Mr. Dorrier **seconded** the motion, which passed by the following recorded vote:

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

NAYS: Mr. Rooker and Ms. Thomas.

COUNTY OF ALBEMARLE
APPROPRIATION NO. 2007-046
DATE: 01/03/07
EXPLANATION: Chamber of Commerce Membership

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
1	1000	95000	999990	BOS - Contingency	J1	(1,210.00)		
1	1000	11010	580100	Dues & Memberships	J1	1,210.00		
TOTAL						0.00	0.00	0.00

Agenda Item No. 22. Water Protection Ordinance (WPO) Amendment – Illicit Discharge Detection and Elimination, Discussion of.

Mr. Greg Harper, Albemarle Water Resources Manager and Chief of the Division of Water Resources, addressed the Board. He stated that Albemarle County, under its Virginia Pollutant Discharge Elimination System (VPDES) permit, must implement a program to detect and eliminate illicit discharges to its storm sewer system. One component of this program is the adoption of an ordinance explicitly prohibiting discharging or dumping of non-stormwater pollutants into the County's MS4, or municipal storm sewer system. The proposed amendments to the WPO Ordinance will include either public or privately-owned storm sewer systems and natural streams because the intent is to protect natural resources. In addition to a new article in the WPO regarding illicit discharges and connections, other housekeeping type amendments are proposed to include: 1) designating the watershed of the North Fork Rivanna River intake as a water supply protection area, 2) correcting an omission in stream buffer requirements for crop lands, and 3) updating obsolete language throughout the WPO. He said staff does not receive a lot of complaints at this time, so he does not believe there are a lot of illicit discharges taking place, but it needs to be included in the ordinance. He said they do receive complaints about people dumping paint in storm drains or putting trash in streams. There is nothing in the ordinance at this time to prohibit these sorts of discharges.

Regarding the North Fork Rivanna River intake, Mr. Harper said the water supply reservoirs of the County are protected through the ordinance as protection areas, but this does not extend to the North Fork because it is not located on a reservoir. He emphasized that staff feels it is important to include the watershed that drains to this intake as a protection area because it is the main water supply source north of the Hollymead Towncenter, yet doesn't enjoy the same level of protection as other water supplies. According to staff it was not included in the past due to concern about the accumulation of sediment in reservoirs. He added that in talking to water treatment plant operators at RWSA, they indicated that during rainfall, the turbidity in the North Fork is so high they have to drastically adjust their water plant processes but sometimes it can't be adjusted enough and they have to close the plant down. He said there is only a day and half supply in storage to maintain operations.

Mr. Rooker asked if it has resulted in elimination of service. Mr. Harper said that that area is connected by pipeline to other areas.

Mr. Wyant asked if anyone had determined what's causing that problem. Mr. Harper replied that presumably land-use disturbance, including development, is the culprit, and a lot of the watershed is located in the county north of Albemarle.

Ms. Thomas asked if the County should be "coloring blue" some portion of Albemarle County because it is the water supply area for something downstream. Mr. Harper said he does not know the answer to that question. He does not know the closest intake downstream. Perhaps that could be a topic of future discussion.

Mr. Wyant asked if all counties are mandated to have such ordinances, or if it is just because of the NPDES permit. Mr. Harper said this portion of the amendment is not mandated by the State. It is only the prohibition of illicit discharges to the storm sewer system that is mandated. This is an extra measure that staff believes should be taken to protect the water supply and the County's natural resources. He said the effect of the change would mean that areas noted on the map on display would be subject to the 100-foot stream buffer requirement for intermittent streams within those areas.

Mr. Slutzky asked if there are additional protections of the watershed the Board is empowered to implement that are not reflected in this ordinance. Mr. Greg Kamptner was present and said there are a number of things which were outlined in 1998 that were not exercised at that time. If the Board wishes, staff can present a list of additional things which can be done. Mr. Slutzky said he would be interested in seeing a list of additional protections the Board can impose.

Mr. Rooker said stream buffers could be changed. The Board has talked about that as part of the MOD. He said the board is empowered to do a number of things which it has not done. Mr. Davis noted that under the Chesapeake Bay Act, the County voluntarily imposes the resource protection area limits, the 100-foot buffers, but under the Bay Act the Board could establish a management area that has a larger dimension where further restrictions could also be imposed.

Ms. Thomas said one of the main restrictions she has been interested in is the septic tank pump-out requirement.

Mr. Slutzky asked if other Board members object to having staff present something in the next few months. If the Board looks at the ecological bases of a sustainable population, there may be a need to identify the vulnerable points in the ecological system.

Mr. Boyd said a lot of these ideas have been brought to the Board many times before. He said the Board is to discuss the work plan for Community Development, and if it keeps piling on additional work, he wonders how that will impact the things the Board has asked them to do.

Mr. Rooker suggested that the 1998 memo Mr. Harper brought up be recirculated so the Board might look at it while considering the MOD and things that might be extended into the rural areas.

In response to Mr. Wyant's question about the 100-foot buffers, Mr. Harper explained that the ordinance requires that 100-foot buffers be placed on all perennial streams within the County, but only within water supply protection areas; under this amendment the intermittent streams would be subject to the buffers as well. He confirmed that this would be for any development – residential or commercial – but not agricultural, adding that perennial streams within the entire County have that protection already; intermittent streams do not have that requirement except in the water supply protection area. This amendment would enable the County to enforce a 100-foot buffer on the intermittent streams located on the designated areas shown on the map presented.

Mr. Harper said there is a 25-foot buffer requirement on agricultural lands used for crops. Staff cannot enforce that due to the exclusion of agriculture in the applicability section of the code; the text amendment shows a change to that verbiage so that can now be enforced.

Ms. Tamara Ambler said the County will not be expanding into other areas of agricultural properties. When the ordinance was drafted it was intended to keep the 25-foot buffer for row crops. That number comes from the Bay Act where the 100-foot buffer is allowed to be reduced as long as there are best management practices in place. She said this was enforced until a number of years ago; the word agriculture was excluded so the County has been unable to enforce the buffer on row crops, adding that there is no mandate that it be reduced.

Mr. Slutzky asked the main reason behind the reduction in buffer width. Ms. Ambler replied that the main concern is phosphorus, which is a sedimentation issue. She added that the County would be looking to the Thomas Jefferson Soil and Water Conservation District to ensure those practices are being done.

Ms. Thomas said most farmers are going through the process with the TJS&WCD. She is comfortable with the 25-foot buffer.

Mr. Wyant said many farmers do side planting which means they do not plow and lose moisture. They have an investment in this as well, so most farmers are adhering to this.

At this time, Mr. Rooker **moved** that a public hearing on An Ordinance to Amend Chapter 17, Water Protection, of the Code of the County of Albemarle, Virginia, by Amending Article I, General, Article III, Stormwater Management and Water Quality, Article IV, Groundwater Assessments, and by Adding Article V, Illicit Discharges and Connections be set for February 14, 2007. Mr. Slutzky **seconded** the motion.

Mr. Wyant asked who was responsible for trash that is over the bank, when it is not cleaned up. Mr. Kamptner replied that the owner or whoever is responsible for the land is obligated to keep it clean. The Zoning Office encounters this problem frequently.

Ms. Thomas asked about VDOT's illicit discharges, as far as tar and runoff. Mr. Harper said that would qualify as stormwater discharge; it wouldn't qualify as illicit, but something dumped out of a car would be.

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

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

NAYS: None.

Agenda Item No. 23. Potential Revenue - Route 29 North Service District, Discussion of.

Mr. Tom Foley, Assistant County Executive, reported that because of the proffers for Hollymead Towncenter and Albemarle Place, the Board discussed the use of a service district or community development authority to generate revenues for road improvements. He said the County Attorney has provided an analysis of having a CDA rather than a service district and included information on how much revenue could be generated by those two developments from a 25-cent tax on the assessed value of their property. He said that analysis includes the rate at which the property is expected to develop, presented in five-year increments. By 2012 the projection is \$2.6 million and by 2017 it is \$3.0 million; if it is limited just to these developments the numbers would be \$568,000 in 2012 and \$738,000 by 2017.

Mr. Rooker said North Pointe was not included in this analysis, but it is clear in the minutes that they were to be included, which would increase the revenues by 50 percent. Mr. Foley replied that Mr. David Benish did these projections, and he believes North Pointe was included in the overall total; 50 percent could be added to the option that just includes these developments.

Mr. Slutzky asked if the County could do a service district for the entirety of the growth areas. Mr. Davis responded that the Board has discretion to define the boundaries of a service district, but they have to be reasonable and with identified improvements. He said any improvements that take place must take place within the boundaries of the service district, noting that the courts have determined that construction of new roads is permitted, but improvement of existing roads is not.

Mr. Slutzky asked if the revenue can be used to issue a bond. Mr. Davis replied that a service district cannot issue a bond, but if the County were to issue debt through some other means, that revenue could be used to fund the debt for any improvements constructed within the service district. He said it would have to be a capital project constructed within the service district.

Mr. Rooker asked if a grade-separated interchange could be covered if it were in a district that included those properties. Mr. Davis responded that this was possible. Mr. Davis said that there are districts that have been created that just apply to commercial property.

Mr. Slutzky would like to have information about two more numbers: how much revenue would be generated if it included the entirety of the commercial property in designated growth areas, and how much that would support in terms of debt service. Mr. Foley said that can be calculated using existing values, but it would be hard to calculate beyond that.

Mr. Rooker agreed it would be helpful to look at this on a Countywide growth area basis. Mr. Davis said as far as proffers are concerned, there is only one locality that has attached a cash proffer policy to commercial development, generally because they are recruiting this business and don't want to discourage it. Likewise, if there is a differential tax rate for commercial properties included within a service district, the argument goes that it is a disincentive.

Ms. Thomas commented that she does not feel anyone at the State level understands that roads are being expanded and impacted because of commercial development, but instead point to residential development. Mr. Davis emphasized that defining the service area is the key. Once it is defined there is the capability to collect the service district tax efficiently.

Mr. Rooker said a huge supply of developable area is being approved ahead of cash proffers being in place, and the Biscuit Run development is presently in the pipeline. He would like to have a process in place before that petition gets to the Board. Mr. Davis said that if parcels are not contiguous, they would need to be treated as separate service districts. He explained that Mr. Foley would like to create a list of projects the Board wants to fund and then come up with a revenue source to fund them, which could fit in with this discussion.

Mr. Foley recognized Mr. Andy Bowman from the County Executive's office who helped with this report.

Agenda Item No. 24. Community Development Work Program, Discussion of.

Mr. Mark Graham, Director of Community Development, addressed the Board. He said staff has assumed that Strategic Plan initiatives remain the Board's highest priority. The Development Review Task Force is hoping to get its report to the Board in the next month or so. He explained that a TDR proposal is likely to come before the Board in February, and the Mountain Overlay District will be on the Board's agenda next week. He said sustainable population projections will be the most challenging for staff, as they have not been able to locate another local government that has undertaken an effort to use them to direct their land use policies.

Mr. Rooker responded that for master planning, the upper limits of population are defined to an extent, and this is just a way of doing that in a larger context. With all of the issues before the County, this would allow the Board to make more effective decisions related to land use.

Mr. Slutzky said he had suggested that traditional land use planning methodologies start with which activity should be accommodated – setting up a growth area, setting up a subset of that to be master planned, deciding what human activities are to be accommodated, addressing green needs, and then calculate how many people are going to live there. He would like to have this effort identify what the ecological systems are (using work from the Natural Heritage Commission), look at places within the County's geographic domain, and then evaluate the carrying capacity of those economic systems. This would produce an ecologically-driven, reasonable scientific basis to determine the maximum number of people that realistically could be in the County.

Mr. Rooker emphasized that it is important for the Board to consider what type of community the County wants to become, in addition to including the information Mr. Slutzky set forth.

Mr. Boyd said he doesn't understand how a maximum population number can be set for the County.

Mr. Rooker responded that the number is embedded in the master plans.

Mr. Slutzky said he is suggesting taking the considerations reflected in the Comprehensive Plan and relating those to land use planning practices, which has not been done. He thinks the Board needs to look at what a reasonable, optimal population capacity is for the community – considering the carrying capacity of ecological and infrastructure systems.

Mr. Boyd asked how the science of ecological systems would be translated into people.

Mr. Slutzky said sometimes it is the way human activity is managed that enables the ecological systems to handle the influx of population. A green inventory of the County would be needed to determine where ecological systems are most vulnerable and then an evaluation of what the carrying capacity of those systems is, and that would be translated into a population number. When land use planning is done, the Board can adapt plans to this new information so fulfillment is less disruptive of the ecological systems.

Mr. Wyant said there is only so much water available and the land can only take much sewage. Those databases need to be redone to make those figures more accurate, focusing on what resources can support.

Mr. Boyd said everything that would need to be determined costs money and time.

Mr. Slutzky suggested having staff define the project to see if there is an outside funding and staffing solution, such as a foundation grant, etc.

Mr. Rooker emphasized that this discussion might be overstating the scope and cost of such a project. Perhaps Mr. Graham could present a project definition and provide estimates on what would be entailed.

Ms. Thomas noted that in the Executive Summary, Mr. Graham said that the process of incorporating this work into the Comprehensive Plan would be a major undertaking. She has been on the Board long enough to know that the Board has come up with some brilliant ideas, and it has also had some amazing citizen committees working on things, sometimes for years. She knows these ideas sit languishing in the Comprehensive Plan due to lack of ordinances. Sometimes it is hard to get those efforts incorporated into the Plan because of the fear that something might actually come of them some day. She is a whole lot more cynical today than she was five years ago. She does not want the Board to go ahead with this if they are just letting a committee work on it, but have no thought about it impacting anything the County is doing. She thinks the Board might ask staff to flush out the sustainable population and the green building sustainable initiatives. She thinks the not-for-profit world might actually find this undertaking appealing.

Mr. Dorrier said this is what Mr. Jack Marshall and ASAP have been talking about for years. Maybe they could help the County in this effort.

Mr. Slutzky said the first step might be to have staff describe the project so it is intelligible to the Board members and get it refined enough that it might be shopped around to the foundation community.

Ms. Thomas said she thinks there will be weak links identified in the County related to its ability to support an increasing population.

Mr. Boyd said the only way for him to meaningfully decide on this is to have a more specific project and cost.

Mr. Rooker agreed, saying phasing and clustering were "taken off the table" – and that was something staff was going to spend a lot of time on.

Mr. Slutzky said if there are some items the Board doesn't desire, then now would be the time to get that out.

Mr. Graham noted that the starting assumptions are critical – for example, how much of a trout stream should be restored – and someone is going to have to make those decisions. Ultimately, that question will come back to this Board. He added that for him to define the process now would be difficult.

Mr. Rooker said manmade systems need to be included as well as natural systems, noting that without a huge investment the transportation system would not be able to accommodate another 50,000 people.

Ms. Thomas said the Eastern Planning Initiative showed that it would depend largely on what form of land use the County chooses, adding that the form needs to be a part of this along with the population numbers.

Mr. Graham said since his report was prepared, the Planning Commission decided at its meeting on December 19 to move forward with a Comprehensive Plan amendment concerning green building. The question is whether there will be a number of measures to be implemented, which is where the impact on staff will come in.

Mr. Boyd said he is concerned that those standards seem to be on a parallel track to what staff is already trying to come up with for the Board. Mr. Graham indicated he is uncertain how the two efforts will work together.

Regarding the enhanced erosion and sediment control program, Mr. Graham reported that it includes stricter requirements and enhanced enforcement; the changes would be fairly easy for staff to draft.

Ms. Thomas said she wasn't sure if that was the same as erosion control plans. Mr. Graham replied that this is beyond that, such as County enhancement of the program to make it stronger. Staff has looked at those measures which translate into stricter requirements and stronger enforcement.

Ms. Thomas said the Board had recently discussed requiring a plan in place of an agreement. Mr. Graham said that idea stays with the Mountain Overlay District Ordinance.

Mr. Rooker said that idea pertains just to residential areas. He thinks Mr. Graham is talking primarily about commercial development in the growth area. Mr. Graham said that is correct. He said staff can draft the changes simply, but the process of getting an agreement among all interested parties will be time-consuming. He said this came up with the Hollymead Towncenter and also with North Pointe. There is a proffer by North Pointe that provides for a state-of-the-art sediment and erosion control program when they develop the property. Staff would be taking what is being considered for North Pointe and applying it to the rest of the development area.

Mr. Boyd said he remembers a meeting at Forest Lakes a couple of years ago where erosion and sediment control was discussed. At that meeting there were some APA people and people from a number of different agencies. He remembers that someone said State standards are totally inadequate. He thinks that someone has already gone through the thought process of how to improve sediment control. It seems that some of this technology has already been figured out. Mr. Graham said staff knows what to do, that is not the issue. The issue is how to reach an agreement as to where that balance point is.

Mr. Rooker said he thinks that is a decision of this Board. Mr. Graham said that is correct. He said there will be resistance from the development community since a lot of what will be presented will be fairly expensive.

Mr. Rooker said he thinks the Board needs a list of measures which can be enacted. Mr. Graham said staff can do that.

Mr. Boyd said those things are already defined, so it would be simple to develop that list. Mr. Graham said staff can do that, but it is the process of going forward from that point that will be the time-consuming process. Mr. Davis said it is the cost-benefit analysis that becomes critical.

Mr. Foley said he works closely with Mr. Graham. They really want to know today if the Board wants to remove any items from the work plan because items in that plan now require that the Board approve some initiatives during the next few months.

Mr. Boyd said that is not what he wants. If the Board approved even one new project, what would have to be dropped from the list without adding additional resources? Mr. Tucker said that has been noted in the recommendations. He said Mr. Graham needs some directions as to what should be deferred.

Mr. Boyd said that would be hard for him to do. Mr. Foley said if the Board says which work items are priorities, then staff can decide on resources.

Mr. Slutzky said the Board has talked about putting some of these projects out to outside resources, or staff could be added to do all of them. He thinks the Board needs to know the implications of all of this in the way of staff. Since managing the future of Albemarle County is so complicated, there may be more staff people needed to accomplish this work.

Mr. Graham said he did not want to ask the Board to manage at that level but would like a sense of the relative priority of items in the work plan. Staff will then decide how to manage them. Mr. Foley said this will have to come back to the Board with more information to get that done. Within current resources, there needs to be a decision as to the priority of these items.

Ms. Thomas said having old items listed that still need to be taken care of lessens her enthusiasm about assigning staff to new tasks and plans.

Mr. Rooker said the overlot grading and critical slopes issues fall into that "old" category. He emphasized the importance of concluding measures that have been brought up and are not yet resolved.

Agenda Item No. 25. Guidelines for Growth in the Development Areas (Part 2), Discussion of.

Mr. Cilimberg said staff listened to the discussion of October 4, 2006, regarding these guidelines to see what is left to be addressed. The intent of the Board was to accommodate the foreseeable growth of the County in development areas, knowing that not all of it could be accommodated. Master planning should work on a 20-year period to help program what's going to be needed for the growth anticipated over that timeframe. He said a desire was expressed to establish priority areas for development and public sector infrastructure investment, with the Board stating a hope that investment would provide incentives for greater private investment and development within those areas rather than in non-priority and rural areas.

Mr. Cilimberg reminded the Board that it did not reach a consensus during the last discussion as to a policy for prioritizing future land use decisions within these same priority areas. He indicated that staff had outlined decisions to be considered, including focus on centers, to establish a type and form of development that should occur in a certain timeframe. He said there is no guarantee that all new development would occur in growth areas because of by-right zoning.

Mr. Cilimberg noted that if a property doesn't have a connection to other areas or the centers identified in a Master Plan, it would likely result in a more scattered pattern of development where neighborhoods are not as connected to and with the necessary infrastructure to achieve the vision of the Neighborhood Model as well as achieving rural area protection. Because of this, it is important for the Board to provide final guidance by answering the remaining question from the discussion on October 4, 2006, to wit: "Should Master Planning establish priority areas for land use decisions within each Development Area?"

Mr. Cilimberg said the Crozet Master Plan is the County's only completed plan at this time, but it does not specifically prioritize areas for public investment or preference in land use decisions. With the Board's stated desire to establish priority areas and master plans for the purpose of public infrastructure and investment, there will need to be an element on that included during the next plan review. He said that needs will have been identified, and those could be priority areas – such as western Crozet, eastern Crozet and downtown Crozet.

Mr. Cilimberg emphasized that because of a lack of policy in prioritizing future land use decisions, most particularly rezonings, there has been concern among some Board members that this is a problem confronting Crozet, as one example. The result has been approval of new development that is somewhat scattered geographically and presents a more cost-prohibitive challenge to consistently aligning public infrastructure investment with new development. Such a policy could match priority areas for infrastructure investment with new development and land use decisions.

Mr. Cilimberg explained that with the Pantops Master Plan and the Board's stated desire to establish priority areas in master planning, staff is identifying priority areas for public infrastructure and corresponding future capital project funding as an element, as well as for the Places29 Master Plan as that moves forward. This will reflect a timing element that reflects current needs based on development that has occurred and anticipated needs based on growth expectations in the Pantops area for the planning period consistent with the population growth projected for the County. He commented that the question arises as to whether master planning should establish priority areas for land use decisions for each development area in addition to the investment of infrastructure.

Mr. Cilimberg said it has been noted that there is a high development inventory available in the County right now. That information is being used as the County looks at the Pantops Master Plan and its backlog of needs. He emphasized that the Pantops focus would need to be on infrastructure and tying that infrastructure to needs that have already arisen, which may call for not deciding or making new land use decisions outside of those areas or even within them until infrastructure is in place.

Mr. Cilimberg concluded by saying he would like to get the Board's direction on master planning, and establishing priority areas for land use decisions in each development area. He noted that there is a way to phase development and reflect it in the Master Plan, but staff needs to know that the Board wants to phase development.

Mr. Wyant said he thinks phasing needs to be looked at within the master planning areas, given the need for infrastructure and available resources. He emphasized that if all the development in Crozet takes place toward Old Trail, that will take away from the old "downtown" part of Crozet so the center of development would move out toward the Old Trail development. He thinks it comes down to providing infrastructure to the areas where development is wanted. He thinks this should only be looked at in the development areas.

Mr. Rooker said he thinks staff has stated it just the way it should be considered. Staff has said that rezoning property in a master planned area and not having a connection to other areas or the centers identified in the Master Plan, it would most likely result in a scattered pattern of development with neighborhoods not being connected and without the necessary infrastructure to achieve the vision of the

Neighborhood Model in the rural area. Without some kind of plan within the master planned areas about how the development should occur and in what order and where the County's investment should be, the County is just allowing random build-out.

Mr. Boyd said he has received a lot of feedback from people living in these communities who said that what is in the Master Plan is different than what was originally intended and planned. He feels there is a disconnect between the planner's view and the community's view of what a master plan should look like.

Mr. Wyant commented that the Crozet master planning process went pretty well, and the Board listened to the citizens during that process.

Mr. Rooker said the issue of whether the Board should give priority to rezonings in areas that help realize the Master Plan for a particular area makes sense. Every rezoning involves winners and losers. Somebody gets property rezoned and somebody else doesn't. He added that there would likely be a better public investment if there were some order to the development that is proposed to take place. The projects that have already been approved cannot be taken back, but the County can plan for future rezonings to take place in some order of reasonable priority.

Mr. Boyd said he believes that within the master planning process, there should be an identification of properties that are likely to be rezoned.

Ms. Thomas said she is grateful to staff for bringing in information showing development areas that are too big, with pockets of smart subdivisions – but not a Neighborhood Model. She thinks the only way to redeem what was a mistake in the sense that the development areas are too big is to do some focusing. The Board will have to make some hard decisions.

Mr. Slutzky said he does not want a repeat of what happened in the County in 1980. The question is whether the Board wants to phase infrastructure and development activities. He doesn't think the latter can be done because it might force growth into the rural area. If the County can phase infrastructure, there will be market pressure for development to occur closer to that infrastructure. Unless the Board is willing to downzone the remainder of the designated growth areas and then phase inside the growth areas, he thinks it would be a mistake to have a central area developed first. The lower priority areas would end up being developed by-right. Focusing on infrastructure improvements in areas where the Board would like to see development occur first would help constrain that development.

Mr. Rooker said he does not agree with a lot of what Mr. Slutzky said because no one knows how things will play out. He said what happened in 1980 was a massive downzoning of the rural area. He said Mr. Slutzky characterized what occurred as if it were a mistake. Prior to that downzoning, a person with 100 acres could have 50 lots in the rural area. After that downzoning, that same rural parcel could have only nine lots. For taking that action, the County was sued by a number of developers. The case went to the Fourth Circuit Court of Appeals and then to the Virginia Supreme Court and the County was upheld because of the health, safety and welfare aspects. That was largely associated with the water supply. He just wanted to put that into context. That was probably one of the most difficult, gutsiest moves by a board of supervisors in the history of Albemarle County. He does not want that characterized as though there was something evil done in 1980.

Mr. Slutzky said he agrees with Mr. Rooker's characterization to some degree. It was an extraordinarily positive step for the Board to take. With that said, because of the size of what was left behind, it had the unanticipated effect of not sufficiently forcing the growth into the growth areas. He thinks that is where it is relevant as a model for what he is talking about. He said at its moment it was a phenomenal accomplishment, but in retrospect it would have been more effective if it had been even more dramatic.

Mr. Rooker said that could always be said to be the case. He said development rights throughout the entire rural area could be eliminated entirely and that would change the parameters of what the Board is talking about. He said that thus far there does not seem to be a great relationship between the amount of lots being developed in the rural area and rezonings or the activities that take place in the growth area. It has been progressing at about 291 building permits per year issued in the rural area.

Mr. Slutzky said he disagrees with that statement.

Mr. Rooker said he does not know how the future will play out. In certain cases, one developer responds to a certain incentive and another does not. He thinks it could be made clear that the Board will look more favorably at an area within a growth area than at another, and the market will respond and move there with an emphasis on getting rezonings in that area. He assumes that will take place. There has been a renewed push for development in the growth areas. The Board adopted the Neighborhood Model, and there has been a lot of activity to rezone in the growth areas. If particular sections within growth areas are focused on, he feels there will be hyperactivity in those focused areas.

Mr. Slutzky said that in 2006 he believes there were more than 500 building permits issued in the rural area. Mr. Graham said he does not have a final count for 2006, but it will be between 293 and 300 building permits, with over 600 total units for the entire County.

Mr. Slutzky said that Mr. Rooker is right that the rural area level of development has continued relatively steadily. However, Fluvanna County, Greene County, and the Fisherville area have seen a significant influx of Albemarle employees finding homes there, and he suggests that the Board has in effect, by the way it has gone about land activities in the County, pushed that development out because

land use costs are expensive. By making it challenging for development to be concentrated inside growth areas, there is an outward pressure on developers to go where they can find easier places to develop.

Ms. Thomas replied that the Board has had more approvals than ever in the last year and a half, so if there was any effect in increasing the rate of approvals in the urban area, it should be the opposite of what Mr. Slutzky is saying.

Mr. Slutzky said the day that North Pointe was approved, the likelihood of them building out within the next few months was small. In the next several years he thinks there will be increased development activity in the area from those approvals.

Ms. Thomas said if Mr. Slutzky is talking about what this Board has done. It has been more open and approved more development in the last year and a half than in the five previous years.

Mr. Slutzky said that is true, but in the last several months there has been a shift. For example, in Crozet the saturation point may have been reached. When Westhall was before the Board, there was discussion about allowing another development inside of that growth area when over 12,000 houses have already been approved.

Ms. Thomas said there has been concern about what the roads will be like since VDOT seems to be "dropping the ball" on the Board's shoulders.

Mr. Graham said he has been looking at the rural rate of development versus other factors. He has looked at it in terms of the rural area versus the development area rate, and there is almost no correlation between the two. The development area grows at whatever rate it wants to, and the rural area stays about the same. There is little connection between the rate of rural area development and interest rates for mortgages. He said it stays fairly constant, and whatever factor is used, it does not make much difference. The County has about the same number of rural units developed each year regardless of all the other factors.

Mr. Boyd asked how population impacts it. Mr. Graham said it has also remained constant.

Mr. Slutzky asked if Mr. Graham has examined the Albemarle County employees who move to other localities and then drive back here to work.

Mr. Rooker said Ms. Thomas pointed out that this Board has approved more single-family residential development in the growth areas over the last three or more years than has been approved in any three year period in the history of the County. There does not seem to be any correlation between that and the number of people who want to drive to Waynesboro because they can buy a house there cheaper. He thinks more people have decided to do that over the last four or more years, but that has taken place in virtually every metropolitan area over the last 50 years. People are willing to drive further to buy a cheaper piece of land. Whether or not this Board decides to phase development in the growth areas will not impact the number of people who decide they want to live where a piece of ground is cheaper.

Mr. Dorrier noted a map of the Crozet growth area and asked if there is anything on the lots that are not colored yellow. Mr. Cilimberg said there are some approved developments there.

Mr. Dorrier asked if there are houses on those lots. Mr. Cilimberg said "yes." There is Western Ridge, the Highlands, Gray Rock, Waylands Grant, the Bargamin tract and some older developments. There are also areas of undeveloped lands. Some have a lot of by-right opportunities, and some are almost developed out under the Zoning Ordinance.

Mr. Dorrier asked if there are areas there that are not zoned for development. Mr. Cilimberg said that within the Crozet boundaries, all of the land is zoned for some type of urban development, residential or non-residential. He said that this discussion is interesting. In-house staff has discussed the effects of decision-making. The one observation they made is that there was a certain part of the market going to the rural area that responded to the development of Forest Lakes and Glenmore. The numbers in the rural area went down by about 100 a year, and that has stayed constant since then. What is the next thing that will make a difference? There was some demand in the market that responded to the development of Forest Lakes which moved very quickly. Other projects have not done the same thing since that time. When the thousands of units in the development area that have not gone under development yet actually come on the market, what affect will that have? Old Trail in Crozet is the only one that has been around to compete. Some of it moved quickly, and some has moved very slowly.

Mr. Rooker said he thinks the County will see decisions made by developers to develop property as a matter of right simply because of their judgment of the market. He said existing zoning cannot be taken away, and a developer can always exercise the right to build under existing zoning. Most of these decisions are market-driven. In the case of Foothills Crossing, for example, if it developed at one and one-half acre lots, there might be a falloff of development in the rural area just because it provides an option that's more like what somebody might do in the rural area. People don't move to the rural area to live in townhouses. At this time, people building in the rural area are building half million dollar houses.

Mr. Boyd said if the Board wants to reduce the amount of building taking place in the rural area, it might make sense to provide for a large number of detached homes in the development area. He said the people moving into this community (retired and with the money needed for a large size home) are looking for a single-family detached home. Maybe the Board's strategy should be more toward a product than to density.

Mr. Tucker said the market will control that to some degree, because there is not an ordinance requiring someone to build to the maximum density, even though a lot of the zoning would allow that. If the market dictated, they could go in and use one-half or one-quarter acre lots with single-family detached units.

Mr. Boyd said they could afford the infrastructure without increasing the number of products they will provide at an affordable rate. He thinks that is the problem at Old Trail. Their single-family detached homes start at \$1.0 million. They are not selling those houses as fast as they thought because it is outside of the price range even of the people coming from the north. He said he is more in line with Mr. Slutzky's concept. If in its guidelines for the growth area, the Board said the lots closer to downtown Crozet would go first, people would probably put very high prices on that land, and he fears that would drive development into the rural areas.

Mr. Slutzky said they might also build inside the growth area on a parcel that was not in a priority zone, by-right so the Neighborhood Model would not be used.

Mr. Rooker said he thinks that would be the most likely thing to occur if there were an ill effect from this.

Mr. Boyd asked if in the master planning process some importance should be given to people who own land because there is land being held for speculation. He thinks that should be taken into account in the master planning process.

Mr. Cilimberg said the master planning approach includes working with individual landowners to try to integrate their prospective plans with the larger plan of an area, consideration of what infrastructure might be provided, and consideration of what makes sense in creating a community. Sometimes decisions may or may not reflect a particular property owner's interest. He said the whole idea in bringing this to the Board is so staff will understand what to plan for. Work on the Pantops Master Plan is at a critical point now. Shortly, work on the Places29 Master Plan will begin which involves trying to lay out a plan for the future decision-making of that area.

Ms. Thomas said 15 years ago, the only answer for people who were concerned about good planning was to say "no." A lot of people decided that was counterproductive; the community needed to make the development areas attractive in all senses. So, the Neighborhood Model was created. One of the things in the Model was to have walkable schools and other things where you could walk which would help reduce traffic congestion. There was also the possibility of public transit. Both of those things require quite a bit of density. She said it was done to develop the kind of community that would be attractive, but would not be a place where everybody wanted to live. If the County ends up with little pockets of densely settled neighborhoods but not ones where people can walk to anything and which are not dense enough to have public transit, the great dream for the development areas has not turned out right. She does not think what the Board has been talking about is a bad result if it gets concentration in some areas and single-family houses in other areas within the development areas. That will be a change in planning because at one time that was thought to be a waste of land. She thinks that focusing – even though it is going to require some difficult decisions – is the direction which will capture the good aspects of what the Board thinks this community should take.

Mr. Wyant said it is timing that will make these things happen. He has some questions about the walkable schools, but as this moves along, it needs to be tweaked to make it work. He thinks this is good planning, so "don't give up the ship."

Mr. Rooker said the Board is debating things that are within the scheme of Neighborhood Model growth areas that a lot of communities have not even started to address yet. He will make a **motion** to have staff come back with an approach to prioritize zoning approvals within the growth areas as the County continues to develop Master Plans. He wants that on the table as a motion. If the vote comes out 3:3 then that will be known, but the issue might as well be out there to see where the Board stands. The Board has been talking about it now for an hour and a half.

Mr. Boyd said he does not quite understand what Mr. Rooker is asking for. Is he asking that staff include in each master plan some prioritization, or that staff come back with some kind of policy.

Mr. Rooker said the Master Plan for Crozet is finished. He is suggesting that for the master plans now in the process, and for future plans, one component should be to develop how priority will be given to areas in terms of the order in which they will be developed. He said there have been a lot of arguments on both sides. He would like to make a **motion** that the Board accept the staff's recommendation.

Mr. Wyant **seconded** the motion.

In response to Mr. Wyant's question, Mr. Cilimberg said he envisions having a map in each master plan showing the various center areas, what the priority areas are for infrastructure investment, and also the approach for land use development of those areas; this would serve as a guide to decisions the Board would make in rezonings.

Mr. Dorrier referred to a map and asked if that means that areas denoted as "15", "16", "17", and "18" which are outside of the oval areas, will not be developed first.

Mr. Rooker said those areas are already rezoned and can be developed whenever they want to develop. It just means that as part of the master planning process for future master plans, one of the things planned would be the areas where the Board wants to focus priority for the earliest development.

Mr. Slutzky said the Board has already talked about prioritizing infrastructure. With respect to development patterns, is Mr. Rooker proposing that staff present a strategy for phasing in the growth area such that the Board would pick the first priority area and it would then be developed to some level of capacity before considering proposals in other parts of that master planned area.

Mr. Rooker said he is not sure what approach staff might come back with, but he envisioned that as part of the master planning process there would be areas recommended for priority of development.

Mr. Slutzky said that would be a recommendation, but would not be binding.

Mr. Rooker said a master plan is not binding.

Ms. Thomas said at least a developer would know whether their project fell within the priority area and they could then decide how to figure out infrastructure in order to make it attractive. It would give one more tool for the Board to use to get a development area that will hold together.

Mr. Boyd said in order to clarify Mr. Rooker's motion he would suggest a change in the language under the second bullet to say: "Master planning will establish suggested priority areas for land use decisions for these development areas." He said that would not bind the Board to do that. He has heard people complain that when reviewing plans, staff applies things that are not policy, or established as policy, and he does not want this to happen. He wants the Board to be the final decision maker.

Mr. Cilimberg said there has to be something to let staff know how to advise people who walk in the door. The Board is the ultimate decision maker, and what it suggests, recommends, or anticipates as being the desired outcome, is what staff will use with applicants. If their project is not in that area, it is a strike against them because the project is not in an area identified as a priority by the Board. Staff has to follow something in analyzing the project and making a recommendation to the Commission and the Board. He said staff might even recommend approval even if the proposal did not meet that one particular principle. This is what gives staff, the public, and the applicants some idea of what they can expect.

Mr. Boyd said that is why he used the word "suggested." He does not want to have it be a reason staff would not recommend approval because it was not in the suggested priority sequence. He could not support it otherwise.

Mr. Cilimberg said staff has to do that in working for the Board.

Mr. Slutzky said if the Board supports this direction to staff, it must also be prepared to support the idea that it might be more likely to vote down a proposal that is not in a priority area. He does not think this Board is likely to do that. He thinks this will create two consequences. One is to drive up the cost of land in those areas characterized as priority areas when it is not likely to back it up with its vote.

Mr. Boyd said that is why he asked about the caveat of how staff would treat that kind of statement.

Mr. Davis said the whole idea is that even though a development comes in that is consistent with the ultimate vision of a Master Plan, the Board may deny it because it is being done too early in the process.

Mr. Slutzky said the Board could signal its intent by prioritizing infrastructure improvements in a staged way. That is a way to tell the development community (as an example – Crozet), that the Board is most interested in projects close to the downtown area because infrastructure priorities have been given to that area. To go beyond that and say the Board will create some kind of a factor in the valuation of these proposals that it will not honor, is misleading.

Mr. Boyd said he thinks the Board is discussing the same things again. He said there is a motion on the floor which has been seconded.

Mr. Rooker pointed out that infrastructure investment ultimately responds to where people live. The Board may intend to focus infrastructure investment in a particular master planned area, but if developments are approved that are not in that area, the cry for infrastructure improvements in other areas will detract from the planned order of infrastructure investment.

Mr. Dorrier asked if infrastructure improvements could be proffered by the developer as part of the rezoning.

Mr. Rooker said to the extent the County "holds their feet to the fire" to cause that to happen.

Mr. Slutzky said that is an argument for not prioritizing infrastructure in this way.

Mr. Rooker said he is suggesting that infrastructure be prioritized, but if it is not done, it may be hard to do as pockets of population develop in concentrations that are not near those planned areas.

Mr. Davis said if the development was proposed in a priority area, the development might be approved if the developer provided what is expected of a normal developer, but if they wanted something approved outside of the priority area they might have to provide extra infrastructure to tie that area into the priority area.

Mr. Boyd said what Mr. Davis said does not address his personal concern. He is assuming that the developer has a choice of property "A" or property "B", but if a developer only has the choice of one property, he may move into a rural area or a non-priority growth area for his development.

Mr. Davis responded that staff considered that. A negative consequence of this approach would be getting by-right development that is not in accordance with the Master Plan, but that must be weighed against getting development where it is wanted consistent with planned infrastructure.

Mr. Rooker said that's taking place in Crozet right now, and it is almost entirely market-driven.

Mr. Boyd said there is a **motion** and a **second** on the floor. He asked if the Board was ready to vote. Roll was called and the motion passed by the following recorded vote:

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

NAYS: Mr. Boyd and Mr. Slutzky.

Agenda Item No. 26. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Thomas announced that she had been appointed to the Transportation Accountability Commission, and asked for input from other Board members in the future. She said there are two people representing local government on this commission comprised largely of builders, some who are interested in transit.

Mr. Rooker asked about the Safe Routes to School grant applications, noting that the MPO passed a resolution of support for these. Mr. Cilimberg replied that it is to be on the Consent Agenda next week.

Mr. Rooker noted that one grant in Crozet would allow for installation of better pedestrian and walking facilities around the school there, and the other would be at Baker-Butler Elementary School.

Agenda Item No. 27. Adjourn. At 6:48 p.m., there being no further business to come before the Board, **motion** was offered by Mr. Wyant, **seconded** by Mr. Rooker to adjourn to January 10, 2007, at 2:00 p.m.

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

NAYS: None.

Chairman

