

An adjourned meeting and the regular night meeting of the Board of Supervisors of Albemarle County, Virginia, was held on January 10, 2007, with the adjourned meeting beginning at 2:00 p.m., and the regular night meeting beginning at 6:00 p.m. in the County Office Building on McIntire Road, Charlottesville, Virginia. The meeting was adjourned from January 3, 2007.

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 2:00 p.m., by the Chairman, Mr. Boyd.

Agenda Item No. 2a. **Work Session:** Business Plan.

Ms. Roxanne White, Assistant County Executive, explained that there are major outcomes staff would like to accomplish today to be sure the Board understands available resources, to be sure it understands major budget drivers for FY '08, to be sure it understands the impacts on the five-year forecast, and to get input on Department initiatives which have been prioritized by the Leadership Council. Before staff finalizes its recommendations on the budget, this is the opportunity to get input from Board members.

Ms. White said a lot of issues have not been resolved, although all department and agency requests are in. She explained that staff will provide an update on revenues based on the December, 2006 tax bills. Staff will briefly explain the allocation commitment of new revenues, some expenditures, and the five-year forecast and finish with a discussion of the strategic plan initiative.

As to revenues, Ms. White said there has not been a significant increase in those since the Board saw the budget projections in November. The January estimate for real estate revenue is \$116.7 million which is an increase over the FY '07 budget projection of about \$15.7 million. As to the reassessment, in January '08 there will be an additional \$3.5 million as a result of changing to an annual reassessment. Last November, the annual reassessment numbers were incorporated into the projections given at that time because the fiscal model looks at the reassessment on an annual basis. The revenues seen last November and the ones seen today include that \$3.5 million. She said staff wanted to make that clear because it recognized that there is often confusion about the calendar year tax year and translating that into fiscal year increases.

Mr. Boyd said he takes for granted that has been pointed out because the Board had discussed rebating any windfall profit from changing to the annual reassessment of real property.

Ms. Thomas said the Board said it would not automatically put that money into the budget. What Ms. White said is that it is in the budget now unless the Board goes to some lengths to remove it. Mr. Tucker said staff wanted to make sure the Board understood that \$3.5 million is the amount so if it wants to do anything in the way of a rebate, it will have to deduct \$3.5 million from the \$15.7 million.

Ms. Thomas said the Board members did not agree there would be a rebate only that staff would do just what it has done.

Ms. White said the allocation of resources is \$21.0 million, an increase in local tax revenues for FY '08. She said that first the City-County Revenue-Sharing Agreement funds are taken from those dollars; the County will be transferring an additional \$3.0 million to the City in Revenue-Sharing, an increase from \$10.0 million in the current fiscal year to \$13.0 million in FY '08. That is a result of the high reassessment rate that was seen two years ago. The transfer to the City lags behind about two years based on the last reassessment.

Ms. Thomas said the jump in that amount will be less in the future because of the shift to annual reassessments. Mr. Tucker said the model shows that future increases will not be that large anyway.

Ms. White said from the \$17.9 million the next allocation is about \$2.0 million in additional moneys going to the CIP. The projected estimate of the money going to the CIP is about \$26.0 million which is a result of the formula used for putting money into that program. That leaves net revenue of \$15.8 million; when that is divided between the School Division and Local Government the share going to the School Division is an increase of about \$9.5 million and to General Government about \$6.34 million which is a little less than the increase in revenues last year. The additional \$500,000 in local revenue will allocate about \$200,000 to the Schools, to Local Government about \$130,000 and to the CIP about \$33,000. She noted that total available revenues for operating expenses are \$7.8 million, including Local, State and Federal revenues.

Ms. White explained that committed expenditures include a four-percent market adjustment increase totaling \$1.130 million, some salary changes include reclassifications and merit totaling \$110,000, and over \$600,000 to fund some positions now for a full year that were previously funded for one-half year – a technology trainer, a battalion chief, and funding for a full year of the new Northern Fire Station. There has been a \$370,000 increase in health and dental insurance, but the projections now for

next year include an increase of just seven percent instead of 10 percent as expected. There are also four new police officers the Board committed to funding and the CIP operating impact from the Access Albemarle project which is the cost of maintenance for the new software, leaving about \$5.0 million in available revenues.

Ms. White referred to a sheet showing revenues for other anticipated FY '08 expenditures. Some of these commitments were not anticipated when the figures were shown in November – such as a living wage reserve of \$230,000 at the Board's direction to budget at \$9.75 per hour. The number was smaller in November, but it only included those employees who are at or below \$9.75. This will address all the compression issues and part-time temporary employees, such as the substantial number of employees in the Parks and Recreation Department in the summertime. She said the Board will be talking with the School Board about this issue on February 14.

Ms. White added that there is a two-percent baseline increase for operation of all departments which totals \$270,000; for agencies and joint operations (some of the smaller Human Services Agencies such as the Commission on Children & Families) account for a \$60,000 increase; and for City/County agencies which includes the Regional Library, Region 10, the Regional Health Department, Piedmont Housing, and a lot of the arts and cultural agencies the increase is about \$640,000.

Ms. White said joint public safety operations – the ECC, the Regional Jail, and the Juvenile Detention Facility – there is an increase of \$1.0 million for next year, which was not anticipated in November. She added that the Rivanna Solid Waste Authority has an additional \$200,000 in operating expenses, and there is \$150,000 in additional funds for the volunteer fire/rescue operation. The last item on the list is an increase for CSA. At the end of last year the County had to bring the CSA local expenditure up by about \$400,000 to meet the actual cost; this year it brings it up to where it was last year and adds \$200,000 for a total of almost \$600,000 which is an anticipated five-percent increase over what was expended last year.

Ms. Thomas asked what increase the base-line increase will be for reviewed agencies. Ms. White confirmed that it will be six percent.

Mr. Rooker asked Ms. White to explain the CSA increase. Ms. White explained that the County had been level funding the program and the costs were about \$400,000 over what had been budgeted in FY '06, so an additional \$400,000 had to be added to bring it up to the cost; this proposed budget will add another \$200,000 to the program for FY '08. She emphasized that it was not reflected in the FY '07 budget, so the whole amount has to be increased for FY '08.

Ms. White said that after considering all of the new commitments, there will be approximately \$1.8 million left in available revenues.

Ms. White said she would like to explain about increases for the outside agencies that Ms. Thomas asked about. She explained that the overall baseline increase would be six percent. This was discussed last year, and the Budget Review Committee agreed with the City to reflect overall operating costs for the departments. The reason why the CCF agencies are lower is because some of them reduced their requests and a sliding scale rating system is used so excellent programs get a higher amount of eight percent, good programs get the baseline increase of six percent, fair programs get level funding, and some of the poorer programs will have reduced funding of three and one-half percent. Two new programs the Committee looked at funding are a restorative justice program for OAR and the other is a United Way program working to provide additional services to Hispanic families. No decision has been made about those programs yet. The total for all of that is about a 5.5 percent increase for a total of \$57,000.

Mr. Boyd asked where the six percent figure came from. Ms. White said County operations have been kept to about two percent with personnel costs and compensation at about four percent.

Mr. Boyd asked if that is being tracked with what is spent for Local Government. Mr. Tucker said this is what the Board asked staff to do.

Mr. Boyd asked when that was done. Ms. White said it was talked about last year. Some City representatives were trying to come up with a fair increase and to give them the same increase that Local Government gave to its operations.

Mr. Boyd said he remembers the Board discussed coming up with some formula. Ms. White said this is only a proposal at this point.

Ms. White said the City/County agency baseline increase is six percent, while the increase for the Regional Health Department and Region 10 is slightly higher for a number of reasons. She added that there are several new programs which are being looked at for funding, but no decisions have been made at this time. These programs include the Alliance for Community Choice in Transportation, a group which promotes bicycling, walking and alternatives modes of transportation such as carpooling; expanded programs at the Regional Library; Piedmont Housing Alliance has a new outreach program which they have been using in Southwood with the Hispanic population; and, there is Zona Latino which is educational programming on Channel 16.

Mr. Boyd said the School Division has a number of outreach programs to address that issue. He asked if these programs overlap. Ms. White said these are additional programs.

Ms. Thomas said the group called Crescendo Juntas brings together people from the School System, the County, and the City with other social service agencies to try and make sure there's not an overlap. Ms. White said the group has been led by PHA, but it brings in a lot of the different service organizations and tries to coordinate them.

Mr. Rooker said the Alliance for Community Choice in Transportation and the Library programs account for a large part of that expenditure; those are things to which the Schools make no contribution.

Ms. White said the last item and the one in which there is a significant increase is the additional \$1.0 million for joint public safety operations which includes the ECC at a 23.7 percent increase (those additional dollars are for additional maintenance costs for the 800 MHz system).

Mr. Boyd asked when that increase would finally level off. He said that over the last three years there has been more and more money spent on that. Mr. Tucker responded that this amount wasn't earmarked in the budget, but the 800 MHz system pulled down a \$6.0 million Federal grant so some money was saved. There are some tweaks that have to be made to the system that will mean some additional costs for areas that need better service. After this year, costs should level off in terms of the 800 MHz system.

Ms. White said expenses for the Juvenile Detention Facility increased by almost 12 percent based on increased usage, and the Regional Jail costs have increased by 28 percent, which was not anticipated. It is a \$630,000 increase because of increased usage; the projection for next year is about 43 percent of the population.

Mr. Boyd said that last year there was a decrease in the reimbursement from the State. He asked if that will continue next year. Mr. Tucker said the State is not reducing their share further unless something happens during this General Assembly Session. He said the County is doing more and more in the way of public safety. If additional police officers are added there is the opportunity to do a better job in the way of arrests. He said the increased prison population is a reflection of the job law enforcement is doing, but the number fluctuates from 36 percent to 45 percent.

Ms. White said these requests were just received recently, so staff is still looking at ways to bring the costs down.

Mr. Rooker said the increase for the Regional Jail is huge. He asked how much of that is due to increased inmate days and how much is an increase in the per diem of the County's contribution. Ms. White said the County can't do anything about usage, but may be able to address the per diem costs.

Mr. Tucker said that last year the Jail Board approved a pay plan increase to be phased in over two or three years. This is the second year of that plan; the increase won't level off from that cost initiative until a year from now. He said the Jail is above capacity, but there is no State funding available for expansion until the Jail is 150 percent over capacity. The State is moving forward with construction of some new jails around the State, and that will reduce the need to expand the Regional Jail as quickly as the Jail Board thought. He said the Jail is holding about 100 to 110 inmates that are the responsibility of the State. If the State had space for them, they should take these inmates, but the State leaves them here and takes only a few every month. That reflects on employee costs.

Mr. Boyd asked what percentage of the inmates is State responsible. Mr. Tucker said it is about 20 percent of the total population.

Mr. Rooker asked if those prisoners would be going to prisons and not jails. Mr. Tucker said that is correct.

Mr. Dorrier said there are some Federal inmates at the Jail. Mr. Tucker said the Jail has cut back on that number because of the lack of space. When there are Federal inmates, the Jail actually makes money from reimbursements. Part of the expansion would be for work-release type inmates so it would be a low security facility. The Jail Board has looked at a site and thinks it could be located on-site.

Ms. White said the total of these commitments for Local Government is \$7.8 million; committed expenditures are \$2.7 million; other new expenditures are \$2.32 million out of the \$7.8 million. The total expenditures are \$5.96 million, and that leaves a balance \$1.8 million in preliminary available revenues. She said staff will talk about strategic initiatives in relationship to that \$1.8 million, but would first like to explain the five-year forecast so the Board can see the impact of the preliminary budget numbers on the long-term five-year outlook.

Ms. Laura Vinzant, Senior Budget Analyst, presented information on the revenues and expenditures which are driving the Five-Year Forecast model. She said revenue assumptions are largely unchanged since November, 2006 and continue to maintain the 74-cent real property tax rate. Reassessment rates are essentially unchanged, with new construction remaining at four percent annually. The revenue projections in the model have been adjusted to incorporate the new \$500,000 which was mentioned earlier.

Ms. Vinzant said the assumptions continue to split the new local tax revenues with the Schools on a 60/40 basis. As the Board saw in November, the annual compensation increases would be five percent in FY '08, and 4.75 percent in the out years including the market increase, merit increase, and any other increases for reclassifications. In November the model showed a ten percent increase annually in health

insurance, but the increase has gone down to seven percent annually. That is what the model now projects. She said that other benefits maintain their current rates.

Ms. Vinzant said there was a two percent department baseline operations increase in the model in November and staff was able to maintain that assumption. The agency increases have changed significantly. In November there was a five percent annual increase in the model. Currently the model is showing a 23 percent increase in FY '08 for the joint public safety agencies, and then an eight percent increase has been assumed for the out years. She said staff does not expect a big increase for the 800 MHz system in the future so the 23 percent would not be maintained over the whole year; that amount has been dropped back. For the other agencies it shows an eight percent increase for FY '08. That incorporates the six percent baseline plus the extra programs which staff is still considering for funding to get to the whole eight percent. That was dropped back to six percent for the years FY '09 through FY '12. She said the model continues to fund four new police officers annually which is the same assumption shown in November and it also allocates two cents to Capital and Debt each year.

Mr. Wyant asked how many years the Board has committed to adding four officers. Mr. Tucker said the County needs to increase the number of officers in response to population demand in order to attain the standard the Board set as the number of officers per population.

Mr. Rooker commented that a standard was set in the Comprehensive Plan a number of years ago – 1.5 officers per thousand population and it has been difficult for the County to get to that number. He said that standard has not been reevaluated, but it is at the low end of what other communities provide - which is closer to 1.75 to 2.00.

Ms. Vinzant said other changes have been made to the model since November. The CIP operating impacts presented in November were based on the CIP approved last fiscal year. These have been updated to reflect the new CIP. There were no significant changes. The major additions which Ms. White noted earlier total about \$2.3 million.

Ms. Vinzant said for baseline revenues over expenditures, the model does not include the operating impact of CIP projects or any new initiatives. She noted a chart which indicates that in FY '08 projected revenues drop by about \$2.5 million, and that has a cumulative impact on the out years. When CIP operating impacts are added it drops the figure even further. In November the County was anticipating a \$4.3 million balance in FY '08, and now that is expected to be \$1.9 million in revenues over expenditures. That goes up to about \$5.0 million in 2012. She said the final scenario the Board saw in November made an assumption of adding \$2.0 million in initiatives each year. In November there was still a \$2.0 million balance in FY '08. There was no real deficit until FY '12, but the impact of the new things added puts the County into a deficit in FY '09. She said they are using that \$1.8 million which is available in FY '08 and an additional \$2.0 million in initiatives each year. Staff does not want to project deficits, so the next slide assumes that in the years 2009 through 2012 there are no initiatives at all. This leaves a very small surplus in 2008, a \$1.0 million deficit in 2009, and then "back in the good" in 2010 through 2012.

Ms. Vinzant said that \$1.0 million is something that needs to be addressed. He said the new Pantops Fire Station is showing a full year's impact in 2009. There may be some adjustments that can be made with that station. Additional revenues could be secured to address this, and also look at the \$1.8 million assumed in initiatives in 2008.

Ms. White said to use for strategic initiatives at this time there is the \$1.8 million in non-committed revenues. The Board saw the five-year forecast and the implications of funding the \$1.8 million which is all of the recurring initiatives. No decision has been made as to whether to allocate all of it at this point. Staff would like to have input from the Board on this question. She showed a slide indicating that department requests total \$4.5 million – department initiatives submitted can either address a goal from the Strategic Plan, workload or growth in service issues, or an initiative to provide better customer service. She said the Board was furnished a revised sheet showing a list of initiatives; it has been revised due to removal of a Pantops initiative of about \$500,000 to begin temporary transportation service at the end of the fiscal year. It has been determined now that the service will not start until July 1, 2008. She said the initiatives on the list were first ranked as to priority by criteria by the OMB Office, and then reviewed by the Leadership Council and changes were made. She added that the County Executive's office has not made any final decisions on these.

Mr. Slutzky said that on the list there are 3.5 FTE's and then 4 FTE's shown under Police. He asked about the additional 3.5. Ms. White said that is an initiative submitted by the Police Department to try and get ahead.

Mr. Boyd said that does not include the four that are already in the budget. Mr. Tucker said four is what the Board would normally do, and the 3.5 is a new initiative.

Ms. White said staff will move to the next slide to focus this discussion while the Board reviews the list. Staff did not want to send a lot of information about the requests, but instead to get some input from the Board about strategic initiatives. There are four questions staff wanted to ask. 1) Does this list reflect the Board's priorities? 2) Are there initiatives on the list that should be moved up in priority? 3) Are there any initiatives being considered that should not be funded? 4) Are there any initiatives that require more information from staff prior to the budget work sessions? She said staff wants input on these initiatives, but no final decisions are made until the budget work sessions. She asked if these overall priorities reflect the Board's priorities.

Mr. Slutzky said a lot of the discussion last week centered on initiatives and ideas the Board is interested in pursuing, many of which relate to the Community Development Department and its staff. He said the Board has discussed how to "cover all of those bases." One option is to not do everything on this list. Another option is to get some outside funding through grants. Another option is to increase staff in Community Development to accomplish the many things the Board feels are priorities. In looking at this list he wonders if the Community Development Department is under-funded relative to the Board's dialogue about this department over the past year. He said a lot of things on the list are necessary even though they don't require a lot of discourse. He wondered if that is an area the Board might ask staff to "beef up" or provide some placeholder for.

Ms. Thomas asked if this is essentially a position (on the bottom of the list below the line) to deal with the things in the five-year work plan the Board has talked about, things which are already on the work plan. Mr. Tucker said the rural areas support person (which is above the line) would handle a lot of things Mr. Graham has anticipated in the five-year work program. He said some of the things above the line would be covered in the five-year program, but not everything.

Ms. Thomas said she thought the rural areas support person would act like a marketing specialist. Mr. Graham commented that staff is looking for a consultant to help assist with the additional initiatives in five-year work plan.

Mr. Boyd said it is difficult to go through the list and decide which item should stay and which should not without having more details.

Mr. Rooker said what is missing here is the information necessary on which to base priorities. He thinks the Board's highest priority is to pass a budget that is fiscally responsible for the coming year as well as the out years. He said that every major capital expenditure has a recurring operational expense and all of the strategic initiatives have recurring expenses. At the end of the five-year projections is a balance which includes no new initiatives assuming the Board adopts the initiatives that are shown above the line in this proposal? When the Board adopted the annual reassessment procedure it said it would not treat the increased revenue the first year as "found" money. He felt that meant the Board would not raise taxes, or it might even lower taxes based upon how the budget looked. With what the Board is seeing he does not think it would be prudent to adopt \$1.8 million in new initiatives based upon the projections going forward.

Mr. Dorrier said he would like to tie this in with the Citizens' Satisfaction Survey. The citizens are at the 90 percent level on some things, and down around 55 percent on others. He thinks funds should be targeted toward those areas where help is needed.

Mr. Rooker agreed.

Mr. Wyant said for initiatives he would like to see the FTE's and also the consultant that goes along with them. He said the projections look like they are \$2.4 million off from what was seen in November. He asked the reason for this. Ms. White said there are the additional, unexpected costs.

Mr. Tucker said \$2.3 million additional was not anticipated in November for various agencies. At that time there was not a budget for the Jail, Juvenile Detention, the Living Wage, the Rivanna Solid Waste Authority contribution, or CSA. He said staff did not have knowledge of all of those things in November so the projection was higher; now that they know it is \$2.3 million it has been reduced.

Mr. Wyant said he agrees with Mr. Rooker that if there is that much uncertainty in just two months, then a couple of years from now the uncertainty will be greater. He thinks the charts presented today might be meaningless if there are so many variables; the County might not be able to project that far ahead. Ms. White said there are a lot of very general assumptions in the model. The County is always getting a new mandate or loss of Federal or State funds. Something always occurs that is not in the projections.

Mr. Boyd said that goes along with what Mr. Rooker said, the Board should not spend every penny every year, and new initiatives should not use all future dollars.

Mr. Slutzky said there may be points useful to mention even if they can't be quantified. An expenditure in one area now might imply a savings in another area.

Mr. Boyd asked that Ms. White continue with the presentation since the time allotted today for discussing this item is drawing to a close.

Ms. White said what staff heard on the first question is that the Board needs to look at the \$1.8 million and Community Development work plan issues. On the second question, staff would like some directions as to what items the Board supports funding, and any items they do not wish to support.

Mr. Dorrier said if the County wants an increase in conservation easements, he thinks that is a step in the right direction.

Mr. Boyd said that is an additional expense.

Mr. Rooker emphasized that the Board doesn't have to have new initiatives every year. There are ongoing initiatives that add to the budget. Paying people fairly and keeping up with market is a long-term initiative. He does not think the Board has to develop a lot of new initiatives every year.

Mr. Tucker said there have been times in past years when no new initiatives were added because there were no funds for them. Also, the County did not provide what the market said was needed for salaries. When looking at what revenues will be doing over the next five years, those are things to worry about. He said staff can provide the Board with additional information about items shown in the charts. If the Board wants staff to take the \$3.5 million out of this proposal, it needs to know that today, if possible.

Mr. Boyd said no matter what the Board decides, he believes it has said to leave that \$3.5 million out. He thinks it should be excluded at the beginning of the budget process which does not mean it cannot be added back in later.

Mr. Rooker said that was his understanding.

Ms. Thomas said there are no strategic initiative priorities if it is excluded. Also, another \$1.5 million will be taken out somehow.

Mr. Tucker presented a slide that showed the impact of taking out the \$3.5 million – Schools would be reduced by about \$1.8 million, Capital by about \$300,000, and Local Government by about \$1.2 million.

Mr. Rooker said the Board is talking about reducing the amount of the increase, not a reduction over the prior year. He emphasized that the \$3.5 million came about due to the shift to annual reassessments.

Mr. Slutzky said staff would be presenting the litany of unfunded requests later. Also, staff has assumed that the tax rate will be unchanged. He said there are a lot of ways to address the other items. He agrees with the other Board members that the budget process should begin minus the \$3.5 million.

Mr. Boyd said that is very clear, but he wants to emphasize what Mr. Rooker said that a lot of attention needs to be paid to the out years.

Mr. Tucker said what affected this is the number of expenditures staff did not anticipate from November to now. When staff showed the Board these figures in November, it did not anticipate a deficit until 2012. That has changed significantly based on these numbers.

Mr. Rooker said there are four items over which the County has no control; there is almost a \$1.0 million increase in public safety operations that was not anticipated, and there is CSA which is \$600,000 over what was budgeted last year.

Mr. Boyd said the Board needs to take a recess before its meeting with the Planning Commission. (**Note:** At 3:04 p.m. the Board took a brief recess.)

Agenda Item No. 2b. **Work Session:** Mountain Overlay and Rural Areas Resource Protection (continued from December 13, 2006).

Present for a Joint Work Session with the Planning Commission were Commission members: Mr. William "Pete" Craddock, Mr. William "Bill" Edgerton, Ms. Marcia Joseph, Chairman, Mr. Calvin Morris, Mr. Eric Strucko, and Mr. Duane Zobrist. Mr. Jon Cannon and Ms. Julia Monteith were absent.

Ms. Joseph called the Planning Commission to order.

Mr. Boyd said Ms. Joseph had asked for a few minutes to explain the intent of the Committee behind its MOD recommendations. She emphasized to him that there will be a mechanism for modification or variance requests.

Ms. Joseph noted that Mr. Jon Cannon is not present to make the presentation but she will give an overview of the Committee's thoughts on this issue. This information is taken from Mr. Cannon's statement. First, she reminded the members that there is an opportunity for a waiver or modification for any of the requirements. If this becomes ordinance language or if someone wants to cross critical slopes or cross over a stream, there will be some mechanism for modification or a variance request.

Ms. Joseph said the first concept concerning critical slopes was to restrict construction of roads and driveways on slopes equal to or greater than 25 percent. The goals that would be accomplished by this restriction are many. The goals identified by the Commission were protecting headwater streams, water quantity and quality, and the public drinking water reservoir capacity. It would also protect public safety and ensure that those who build houses and live in the mountains can be adequately served and protected from fire and other hazards by allowing fire & rescue personnel access to those homes, and to be sure they were safe also. The goals were also to: protect scenic qualities and cultural and other historic resources; reduce human impacts of development on biological diversity; preserve properties and values within and outside of the MOD; protect agricultural and forestal soils and uses; and, protect scenic qualities and cultural and other historic resources. All of these goals would be accomplished under the critical slopes provision. There is currently a critical slopes requirement in the ordinance, but this new one would add driveways and roads which are not currently part of the critical slopes provisions.

Ms. Joseph said the next aspect was to require land-disturbing activities exceeding 2,500 square feet to have an erosion and sediment control plan. Under this the goals have to do with water, headwater

streams, water quantity and quality, public drinking water reservoir capacity, and protection of agricultural/forestral soils which would be indicated on the erosion and sediment control plan, protect the scenic qualities and cultural/other historic resources, and reduce human impacts of development on biological diversity. She said the other aspect is to require a 200-foot stream buffer instead of a 100-foot stream buffer for the same goals stipulated above.

Ms. Joseph said the next requirement would be height restrictions to 35 feet below the crest, the highest point of the mountains in the overlay district. She said the goals there would be to preserve properties and their values within and outside the MOD and protect scenic qualities and cultural and other historic resources. The next aspect the committee is promoting is safe access for fire and rescue vehicles – the goals are to protect the public safety and ensure that those who build houses in the mountains can be adequately served and protected from fire and other hazards. She said Mr. Craddock was a member of that committee. She asked him to speak.

Mr. Craddock said the Committee was appointed by the Board in 2003 with the mission of crafting an acceptable and effective ordinance to protect mountain resources and implement the Mountain Protection Plan, which is a section of the Comprehensive Plan adopted in 1998. He said the Committee had a diverse membership so it was asked to use a consensus process. There were 13 members who met from April, 2004 to April, 2006 and had many different people “wearing many different hats.” He said the first two meetings of the Committee were similar to the Americans and the Vietnamese arguing about the size, the color and the shape of the negotiating table in Paris back in the 1970s. It did not look like they would go very far, but as they had more meetings things started to come together, and with the consensus of the group they were able to get through the process.

Mr. Boyd said that was a good background for this discussion today. He said Mr. David Benish would proceed now with the staff’s presentation.

Mr. Benish, Chief of Planning, reported that at the work session on December 13 the Board agreed to review the MOD framework and determine which components it could support, and then look at the provisions of the MOD to see which might be applicable to the remainder of the rural areas. He said staff understood the Board has reached a general consensus on the following components: they supported the critical slope provision to restrict roads and driveways across 25 percent slopes; they supported requiring erosion and sedimentation control plans as proposed under the MOD concept; and they supported stream buffers being set at 200 feet within the MOD area. Also, the Board came to a consensus that safe access to buildings for emergency vehicles was an important component and should be considered in the MOD process.

Mr. Benish said there was confusion on the part of Board members about the preliminary and final platting process. He said he would give a brief overview of that process which will be important for all to understand the next step in applying the critical slopes provisions and the erosion control to the rest of the rural area.

Mr. Benish referred to a preliminary site plan (a drawing) for a subdivision that would fall within the MOD, being in the rural areas. He said a lot of information is provided on a site plan such as, topography, critical slopes, road and right-of-way locations, existing road locations, setbacks and building sites. Floodplains and streams would also be shown if they existed on a property, along with the buffers associated with the streams. He said a building site is 30,000 square feet outside of critical slopes and floodplains and stream buffers. It also needs to have area adequate for two septic fields and a useable dimension of a 5:1 ratio for the building site. If there is a good idea of where the building site will be located and its relationship to the road and the critical features of the site, the preliminary site plan is approved. He then showed a rendering of a final site plan. When approved, it is signed and used as part of the building permit submittal process. Typically the location for the building site will be drawn or traced on the plan so the building inspectors can locate it and ensure that it is consistent with setbacks.

Mr. Rooker asked if the preliminary plan no longer has a legal effect once the final plan is approved. Mr. Benish said the preliminary plan has no relevance at that point, the final plan governs.

Mr. Rooker asked if the location of the lot on the preliminary plan is not locked in. Mr. Benish said it should be locked in with the final based on what the preliminary plan said.

Mr. Davis commented that the purpose of the preliminary plat is to demonstrate that there is a potential building site, but even after it’s platted, if a developer or landowner can demonstrate that they can meet all zoning requirements and put the building location someplace else, they can do that. They are not restricted by the preliminary plat to that particular building site.

Mr. Rooker asked if they have to go back and do another preliminary plan. Mr. Davis said they would have to satisfy the Zoning Administrator at the time they get a zoning clearance that the site they propose to build on meets all Zoning Ordinance requirements.

Mr. Rooker said if the final plan does not show critical slopes, how would you know where the building site could be located? Mr. Davis said the preliminary would show where critical slopes are so that preliminary plan could be referenced to determine where the critical slopes are located. He said that is where the Building staff and the Zoning Department, at the time of the building permit application, have trouble determining a lot of those specifics.

Mr. Wyant commented that the way he reads this proposal, even if only one corner of a parcel is in the MOD, it involves the entire parcel. Mr. Benish said in the case of "split parcels" details will have to be worked out during drafting of the actual ordinance.

Mr. Rooker asked for clarification of the intent in the event a situation occurred similar to what Mr. Wyant mentioned. Mr. Davis said he understands the Committee recommended that if any portion of the parcel were in the MOD, the entire parcel would be treated as a MOD, but he is not sure that was given a lot of consideration by staff. Mr. Benish said he thinks the Commission's concerns were more of the reverse, that a majority of property were in the MOD and a portion were out, and they did not want to imply that a large segment of a property would be exempt if it fell into the district. He is not sure the Commission went into that in any depth.

Ms. Thomas said if a piece of property with possible building sites was not above the MOD line, it was a goal to encourage the owner to build below the line. There was a provision recommended that long-held lots should be allowed to have one house. But, for many lots this is where the clustering proposal came in. Given that the purpose was not to encourage development, if the owner wanted to develop all of his development rights, most of those lots could not be above the MOD line. The whole piece of property would have to be included in what was being looked at.

Mr. Wyant said the County has standards for roads built on steep slopes. He knows requests for such roads have been turned down. In essence, the County is controlling the grade on the road and the road would have to be built to a certain standard. Mr. Benish said the sample shown on the drawing is a case where there is an issue with a driveway built for a lot at the top of the property. When looking at a split parcel, this is an example of where a portion would be in the MOD and a portion would be out of the MOD. The design of that road and its impact within the overlay district would be considered, i.e., the level of clearing, the safe access, and the impacts of that development, particularly given that the approval of the subdivision called for that lot to be built with the other lots shown. He added that this public road has VDOT standards related to rolling terrain, etc.

Mr. Rooker said it does not appear they would have been required to build anywhere near where the original lot was shown. Mr. Benish noted that the building site is close to the cul-de-sac and the lot configuration changed from the preliminary plan to the final plan.

Mr. Boyd asked if Mr. Benish was showing this plan as an example of where it was not done correctly because they were allowed to build high on the property under current provisions. Mr. Benish said the road and driveway through critical slopes could not have been prevented. The issue of a building site is one that needs to be improved. Technically, the requirements do not permit building on critical slopes, but the County has difficulty enforcing that measure. Construction of the road on critical slopes is new. Using the MOD requirements, an erosion control plan would have been required with enough detail to pinpoint the building sites and how and where the road would be constructed.

Mr. Wyant asked if the County uses a grade standard for the road. Mr. Benish said the example he showed is of a driveway. There is no standard for driveways.

Mr. Rooker said he thought the Board decided at the last meeting to include driveways.

Mr. Wyant said he has some concerns about these MOD recommendations. He said critical slopes are of concern, and the ability to build houses/roads on them. It affects the environment tremendously, but the issue with the drawing shown is that the site is close to a critical slope area. He said the issue is how to get to the site if the developer is allowed to do so.

Mr. Mark Graham, Director of Community Development, said this drawing shows that where the house was built was a legal building site. It meets the County's definition for a building site, but the road and driveway – while meeting the grade requirements – require much greater clearing and grading. That is why switchbacks are shown on the drawing.

Mr. Wyant said in the report it talks about the building of roads in 1980. A lot of those were logging roads and have very steep grades. He asked if those roads can still be used to get to the top of the mountain to build a house. Mr. Benish said for a single home on a lot of record as of 1980, they could. For other roadways, he does not think that type of road could be converted for residential use. It was to allow for that one exception during that one period of time. He said on the drawing there is an area shown which may or may not meet the requirements of a building site. That is the only area that does not have critical slopes on the upper part of the mountain. He did not do an analysis to see if it meets building site requirements. The better of the sites, while it is very steep, is an area that is exclusive of critical slopes.

Mr. Dorrier asked if the new ordinance would prevent the road from being built. Mr. Benish said in this case, it most likely would prevent that.

Mr. Wyant asked what type of road could be built under this new ordinance. The ordinance mentions impervious, paved or gravel, and he said the County defines gravel as impervious. He hopes it is not down to dirt. Mr. Benish said he does not think there is a change in road standards. In looking at safe and convenient access, staff may look at issues with surface.

Mr. Edgerton asked if there a question about the difference between driveways and roads.

Mr. Wyant said under "stream buffers" it says there will be "no hard-surface or impermeable surface roads including gravel on compacted base or driveways permitted in this area." To him that excludes all roads. He does not want people to have dirt roads considering the grades being dealt with.

Mr. Rooker said that is only in the stream buffers. There was no stream shown on the drawing today.

Mr. Boyd asked if Mr. Benish could finish his presentation before going into a real discussion of this issue.

Mr. Benish said what remains to be discussed regarding application of regulations within the MOD are height restrictions and waiver modifications. Under height restrictions, the MOD proposal was not to change the maximum height requirements under the rural area, which is 35 feet. The intent was that no building within the ridge area could exceed 35 feet or the height of the adjacent crest along the ridgeline area. He said this is the one provision in the proposed ordinance that has an aesthetic and visibility base to it. The committee recognized that under this ordinance some of the better building sites were either going to be at the lower elevations of the MOD or possibly the upper elevations of the MOD. Homes that were going to be located where the mountains flattened off at the ridge area might impact visibility if they were required to sit on the crest requiring clearing of trees and being sky-lighted against the backdrop of the sky. The idea was to keep the buildings consistent with the height of the crest of the slope.

Mr. Wyant said he believes the definition of "crest" would put the houses right on the top where they are not wanted – close to the ridgeline. If there were a plateau area, a house could be built on the top. Was that the intent of the recommendation?

Mr. Craddock said the Committee discussed a situation where there might be a plateau on top of the mountain and a building would not be seen from the valley; they just did not want anything to be above 35 feet so there would be no sky-lighting.

Mr. Wyant said he may have misunderstood the intent because as he reads the recommendation, it is the reverse. That is why he was concerned.

Mr. Slutzky said he is confused. As he reads the recommendation, even if there were a flat spot on the ridge, the building site would have to be about 70 feet lower in order to allow the height of the building to stay below the top of the ridge. He thinks this might force construction of the home into more sensitive terrain. Taking that into consideration versus the aesthetic impact, he is not sure this is the right priority.

Mr. Benish reminded the Board that the next item is a waiver and modification provision. This might be a component that is right for a waiver and modification. If the building site is a lawful building site and because of the uniqueness of the terrain, there may be some provisions for waivers which would allow for the best building site to be used yet minimizing and still allowing some impact.

Mr. Slutzky said an applicant might not want to apply for a waiver and choose to build on a slope to stay off of the ridge top. The County is encouraging them to disturb more sensitive soils on a more significant slope than if they were forced to the top of the ridge even though there might be an aesthetic consideration for people in the valley looking up. What about the ecological implications of directing the development to occur on the hillside?

Mr. Rooker agreed, stating that often it is the buildings built on the sides of the mountain that are more visible than those built on the plateau at the top.

Ms. Joseph said that's why there is a waiver and modification process. If it makes more sense to build on the top and there are ways to mitigate, that is the reason for the waiver and modification aspects.

Mr. Wyant said the definition in the recommendation for the ridgeline is 100 feet within the crest or 250 feet horizontal of the crest. That is at the uppermost part of the ridge, and yet it says that no building within the ridge shall be permitted to exceed 35 feet or to exceed the height of the adjacent crest.

Mr. Slutzky said they would be required to get permission to build on the top of the ridge where it would actually be less disruptive.

Ms. Joseph said the granting of a waiver would be easy at that point because it would be less disruptive.

Mr. Slutzky said this would force them to ask for an easy waiver when it might be preferable to have them build on the flattop in the first place instead of building on the hillside.

Mr. Dorrier said no road will be allowed on the critical slopes going up to the flattop. How would you get up there?

Ms. Thomas said no house will be allowed on a critical slope, so if there is a place that you can get to without a critical slope being traversed and it is lower, it is less sensitive because it is not on a critical slope or on the top of the mountain. At this time, you cannot exceed that 35-foot height limitation, but even a well-placed house could break the skyline. It may be that the top is flat and there is already a

road in place; that is the best place and if you can prove you are doing less damage, the next topic is how to get that waiver.

Mr. Rooker asked how easy it would be to determine what the crest is that applies to a particular site if this were in the ordinance. Mr. Benish said the mapping identifies the ridge areas, and this particular provision is intended to apply to that area adjacent to the building site. The intent of this provision of the ordinance would make it easy to determine what that's measured against.

Mr. Rooker said for a typical building preliminary plan there is no context showing the surrounding ridgelines, etc. Does the County have the mapping that would make that determination easy? Mr. Benish said staff has done work on the ridgeline areas, but they would have to be defined. There is a way in place that would measure this particular provision.

Mr. Rooker said he would not want this to go forward without requiring information to verify it. Mr. Benish said the information necessary would be some site development information showing topography, the finished floor elevations, and the building heights, so the proposed development of the site could be gauged against the crest.

Mr. Rooker said the crest is often not on the property, but beyond it. If you are talking about not breaking that crest by 35 feet, that is a precise number. The site plans he has seen over the years did not provide the context in which you could identify what the crest is that might apply to a particular building site. He does not want the County to get into something that becomes incredibly complex.

Mr. Benish said in working through the ordinance staff has to insure that they get the right information in order to do this measurement. He can't guarantee that this will be simple. In terms of evaluating where the crest is, he believes staff can get the information necessary to do that measurement.

Mr. Wyant said the County has U.S.G.S. quads so they give the crest, the valleys, and everything else needed to get the measurements. Mr. Benish said the most critical thing in making a determination is establishing the finished floor elevation.

Mr. Rooker said when he read this in the past he had difficulty understanding what the crest is that would apply to a particular lot. If the crest is a quarter mile away, is that what applies? Mr. Benish said the committee intended to clarify that by saying "adjacent." It would have to be looked at on a case-by-case basis to see how complex that adjacency would be. Maybe for the benefit of this regulation there is some complexity to it. If that is a concern, staff can monitor that. If the complexity is not worth the value gained, staff can monitor it and see how complicated it will be.

Mr. Slutzky asked if the property had a logging road built before 1980 and that road leads to the flat top of the ridge (everything else being in critical slopes), can he use that road to access his building site, but because of the height restriction he can't build at the top of the ridge unless he asks for a waiver. Mr. Benish responded that the lot would have needed to have been on record prior to 1980.

Mr. Slutzky asked if he had one other building site on his parcel but it is down the hill, will he be granted that waiver. Does he only get a waiver if there is no other building option? Mr. Benish said the intent of those provisions was to allow existing properties to have one home in the ridge top area or in areas that have been otherwise constrained by the most recent ordinance. That would need to be considered in the waiver provisions. He thinks the intent was to allow that to take place.

Mr. Slutzky said at the public hearing last year, a lot of the input was centered on that issue. It sounds as if what the Committee recommended would address a lot of the concerns with respect to this building opportunity. Mr. Benish replied that the Committee's intent was to allow some limited "trophy homes," but also allow some level of development particularly for existing lots. He added that in terms of the height restriction, that intent would have to be taken into consideration with the application of this regulation.

Mr. Boyd said he has been thinking about the next step the Board needs to take. He asked for an executive recap of items brought up by Board members and Commission members.

Mr. Rooker said it is important to remember that there is a 35-foot limit on building heights in the rural area today, but that is just in relationship to the ridgeline or crest. He supports virtually everything in the draft ordinance but is somewhat skeptical of that provision if the applicant meets all the other requirements with respect to critical slopes, driveways, etc. He wonders if that should be an additional factor. He thinks that getting a waiver would be a time-consuming process as it will likely be a complex determination.

Mr. Boyd said he thought Mr. Rooker was asking how to define the adjacent crest and how to deal with that regarding waivers.

Ms. Thomas asked if it would be helpful to see the Mountain Overlay District and the way the ridge area is already defined. It is just a mathematical definition.

Mr. Slutzky asked if a baseline map defining the ridgelines could be available.

Ms. Thomas said "yes."

Mr. Rooker said the difficulty is in determining the adjacent crest ridgeline that applies to a particular lot. He does not know how precise the numbers are.

Ms. Thomas said this second committee was encouraged to see how much better the measurements are with the GIS system. The first committee was actually out working with colored pencils on contours. She thinks this conversation would go better if everybody saw the maps and that the ridgelines are defined quite dramatically.

Mr. Slutzky said he is not skeptical about his ultimate support of the MOD, he just thinks there is a technical issue that staff needs to pay attention to.

Mr. Rooker said there are a number of components to what the Board is doing. Mr. Benish agreed that there would be additional staff time needed to monitor this and work out the calculations, and the ordinance would have to define how the height measurement in relation to the crest is established. The components needed to do it are pretty straightforward.

Mr. Benish continued with his presentation. He explained that waiver provisions are part of the ordinance now. It was the Committee's intent that there be waiver provisions as part of this ordinance. Also, there were two components the Committee felt were important; making waivers administrative in order to make it simpler to work through them with applicants. Also, the waivers and modifications would be granted upon a finding that the alternatives proposed met the intent of the ordinance to an equivalent or greater degree. He added that the MOD provisions put forth to the Board clearly indicate that the application of the ordinance may result in loss of development potential; also, the waiver provisions weren't intended to go against the intent of the ordinance where some of that potential may have been lost. The intent is to allow for equivalent or better design that meets the intent of the ordinance. He said the clearest example he can give of this is the discussion about the driveway through the critical slopes to get to a building site that is a lawful building site at the ridge. If there is no alternative to building a road outside of critical slopes there was no intent to grant a waiver for a road through critical slopes. If there is a location for a roadway completely out of critical slopes, but there is another alternative that may impact a portion of critical slopes, but for other reasons it meets the intent of the ordinance better, there is some benefit to a marginal impact to that critical slope – that's the purpose of the waiver. He added that the waiver was not necessarily intended to recoup development that may have been lost because the property could not be developed due to ordinance regulations.

Mr. Slutzky asked if a waiver can be granted if extraordinary mitigation strategies are proposed. Mr. Benish said those are the types of measures that are expected to meet the waiver requirements of the ordinance.

Mr. Slutzky asked if the critical criteria would be set out in the ordinance in order to help staff in the future interpret its intent. Mr. Benish said from a planner's perspective, an ordinance outlines the intent for those regulations. The waiver provisions should allow for the process and expectations that would allow something different than the basic requirements called for in the ordinance to meet that intent. That is the art of crafting those waivers. He said it is clear the MOD Committee wanted those waivers there, but the consensus of the Committee was not to use waivers to recoup lost development potential. He wanted that to be clear as this discussion of waivers took place.

Ms. Thomas said there is already a section in the current ordinance that talks about modification or waiver. It says that if you can prove you meet the purpose of the ordinance better by what is proposed and if you are not degrading the site that should be considered by the entity giving the waiver. It does not use the word "mitigation" which might be something the Board would want to change. Basically it already sets out that there is a provision for waiver or modification. One of the decisions to be made is who should give the waiver or modification. There was a lot of feeling that people who own land in the mountain area did not want their neighbors going to the Planning Commission and speaking against them. There was a preference for having that decision made by a staff member rather than the Commission.

Mr. Rooker asked if anybody disagrees that it should be administrative rather than a Commission process.

Mr. Dorrier said he thinks the Board needs more information about it.

Mr. Rooker asked Mr. Dorrier if he is against the administrative waiver.

Mr. Dorrier said he needs more information; he has questions about it. First, is it allowed in any other part of the Zoning Ordinance? Mr. Benish said there are a number of waivers throughout the ordinance, and some are administrative and some require Commission review.

Mr. Dorrier asked if they are subjective decisions. Mr. Benish said "no." They are based on criteria and measures for evaluating that waiver. It is just that it can be done administratively without action by a governing body.

Mr. Rooker said it is a lot less expensive if the applicant doesn't have to go before a body and make a presentation. An appeals process could be provided for, but even the Commission cannot make discretionary decisions, their decisions must be based on objective criteria.

Mr. Dorrier said he thinks it should be doable by someone without a lawyer. Something that is fair needs to be provided for all. If it were all put in the hands of the Zoning Administrator that would give too much power to that person.

Mr. Slutzky said if the administrative decision is for approval of a waiver, there is no reason why anyone would want to make an appeal. The only issue for an appeal would be to create an opportunity for somebody who felt the judgment or discretion exercised by staff was a little too harsh, and that their application should have been granted a waiver. That might be an argument for allowing an appeals process. Mr. Benish said he believes all of the administrative waiver provisions have an appeals process.

Ms. Joseph asked if she were a neighbor and did not like the decision, could she then appeal it to the Planning Commission.

Mr. Rooker said he does not think a non property owner can appeal the decision. Legally, that is the way it generally works.

Mr. Wyant said he does not know of a better way to do it. He often hears criticism about waivers. He has thought about the best way to handle these waivers. Doing them administratively is less costly to the applicant. Right now, he would stick with the current process, but maybe use a citizen board.

Mr. Rooker said if the applicant asks for an administrative waiver and it is granted, that is the end. If they do not get the waiver, who can they appeal to? The Planning Commission is an existing body that is there for the purpose of handling these types of requests. Mr. Davis said the only bodies that are enabled to hear an administrative appeal could be either the Planning Commission if that's provided for in the Zoning Ordinance, and if is not provided for in the Zoning Ordinance, for the Zoning Administrator's opinion an appeal can be brought to the BZA on an interpretation of the criteria. He does not think the Board could create a new citizen committee to hear appeals. It would have to be the Planning Commission, or the BZA or the Board of Supervisors. Mr. Davis said that is the approach Albemarle County has traditionally taken in crafting waiver progressions in the Subdivision Ordinance and the Zoning Ordinance.

Mr. Boyd asked if it could be appealed again if it were turned down by the Planning Commission. Mr. Davis said currently the waiver provisions are set up for an appeal to the Commission, and then it could be appealed further to the Board of Supervisors if the applicant were denied by the Commission. This could be setup the same way. If someone is granted the waiver by the Commission, then there is no need to appeal it to the Board.

Mr. Zobrist said at the end of the last session with the Board, there was a discussion about conservation easements. If another layer of administration is added it will probably eliminate a lot of people who were interested in conservation easements. From a legal standpoint, a property owner would have to decide what he can do by-right in order to get his appraisal to a point where administrative discretion in the process detracts from the appraisal. For example, VDOT has lost the County a lot of conservation easements due to its rules that must be complied with. This will probably affect a lot of properties in the mountains that might be available for easements. When a mountain overlay district is put on the property, it will most likely push those properties out of the easement possibility in the future.

Mr. Zobrist said the County did well last year in obtaining easements. Albemarle County has more land in easements for its size than any other county in the state. This needs to be thought through to see how these mountain regulations would affect that. He thinks administrative regulations can stop the by-right and detract from the value; someone might think that due to the impediments, it is not worth the effort to put the land in an easement.

Mr. Davis said the greatest impact on value would be the number of lots created, and not their location. To the extent that there is uncertainty as to the actual lots that can be created, that can affect value.

Ms. Thomas said a group came and addressed the Planning Commission regarding the impact of the mountain overlay district on easements. According to the minutes of that meeting, the conclusion was that conservation easements are one means to the goal of minimizing damage from development, but they are not themselves the overriding goal.

Mr. Slutzky said if an applicant wanted to maximize appraisal value, they would demonstrate what could or could not be done with the property. That information could be used to support a higher appraisal. He does not think that is a bar to those parcels going into a conservation easement; it is just another process step imposed on those parcels in the mountains.

Mr. Rooker said more than the cost is the difference between the before and after appraisal costs, and whether there are incentives available. Virtually everything that is done might eliminate a development right. The County has extreme setback requirements, so if the County is afraid to protect the environment because someday the value of a conservation easement might be reduced, it would end up being stymied. He said the whole valuation issue is complex. Sometimes a reduction from five to one carries almost as much value as a reduction from 20 to one. He does not think you get a proportionate reduction in the loss of value necessarily directly related to the number of development rights.

Mr. Slutzky said he would argue that even the opposite might be true. By reducing the number of development opportunities in the MOD, it might actually increase the value of the land because people do not buy land because of development rights, but because it is beautiful, pristine rural land. He thinks

development rights might be a disamenity in the value, but the market will determine that when the appraisals come in.

Mr. Benish said staff talked with major easement organizations – VOF, PEC, and the Nature Conservancy – regarding the impact of phasing and clustering, and their conclusion was that conservation easements and regulations are all tools to a goal or an objective of resource protection. The effect of each on those tools has to be balanced. He added that Ms. Sherry Buttrick from VOF and Mr. Jeff Werner from PEC were on the MOD Committee so had an opportunity to consider impacts on easement programs.

Mr. Benish said there is recognition that there will be waiver provisions - the intent with the waiver provisions is to make them more administrative. Staff is aware there is concern about having an appeals process embedded within any administrative process. He said that has been the practice in the County.

Mr. Benish continued by saying the second “leg” of this was a recommendation by the Committee to consider guidelines for the future rural clustering provisions of the Subdivision Ordinance. The Board has already made a decision about those provisions, and because of the present situation with the State Code, it would be difficult to change any provisions to the County’s current RPD without risking the advantages of that program. This regulatory measure was decided with the decision on clustering.

Mr. Slutzky asked if the existing, voluntary clustering option is sufficient to satisfy that part of the MOD. Mr. Benish said with the MOD, the Committee was making a hopeful assumption that there would be a mandatory clustering provision in place. They were saying there were certain expectations for the MOD for that mandatory cluster. They wanted the preservation tract to include all the ridge area on a site, as much of the MOD as possible, and design concepts that orient development away from the resources trying to be protected. He said a lot of those principles are in the RPD now, although the RPD program itself is voluntary and no adjustment can be made in the program. Any adjustments made in the RPD would jeopardize its standing against the current ordinance.

Mr. Benish said in the MOD recommendations there was a “leg” that called for and made some assumptions that there be a mandatory clustering option allowing development in the MODs to be clustered away from the resources in the MOD. That mandatory provision isn’t moving forward so the optional provisions in the ordinance would have to be used as best as possible.

Mr. Rooker said clustering would have been mandated if an ordinance had been approved. A lot of people supported a combination of phasing and clustering, but when phasing was turned down by this Board, he did not support clustering as a stand-alone mandatory option because it eliminated the discretionary aspects in the current ordinance. It would have made development in the rural area easier and generally more visible.

Mr. Boyd asked if Mr. Rooker was saying that clustering should not be considered as part of the MOD because of the way the State law reads. Mr. Benish said clustering is just a provision of the MOD Committee’s recommendation to the Board. There really is no way it can be implemented at this time.

Mr. Rooker said it is still an option for someone developing a subdivision in the rural area, including the mountain area.

Ms. Thomas said there is already such a subdivision near Rosemont. Mr. Benish said there have been several, and some have been in the mountain area.

Mr. Wyant said he knows there is a new definition for “subdivide”, but when he sees the word subdivision, he thinks of there being two or more houses. He asked if this recommendation addresses that situation, or just single houses. Mr. Benish said “subdivision” refers to any division of land.

Mr. Wyant said if he did not want to divide any land but wanted to build his house on the mountain top, how would this apply? Mr. Benish replied that there is an exception for lots divided before 1980 and implementation of the Zoning Ordinance, but once the ordinance was in effect that was not permissible.

Mr. Rooker added that even today in order to build that house, you have to demonstrate that you have a 30,000 square foot site that isn’t on critical slopes, and which satisfies stream setback requirements.

Mr. Wyant asked what would be added to that. Mr. Davis said if there were an existing lot and someone wanted to build a house under current regulations, driveways would be exempted from the critical slopes provisions. In what is proposed the driveway would be exempt so long as it is necessary to locate the first house on an existing lot. This ordinance may require that other locations be considered so as to minimize the amount of critical slopes disturbed in order to locate that first house.

Mr. Wyant asked if once there is a driveway a second house could be built using that same driveway. Mr. Davis said under the proposed regulations, the first driveway or road under that circumstance, could not be used for an additional lot unless it could otherwise meet all the regulations.

Ms. Thomas said there was sympathy among Committee members for the family that had owned the property for a long time and had a dream house on the top in their mind. There was not a lot of

sentiment for someone who had just bought the land, or someone who had held it for a long time but wanted to use all of the development rights on the top of the mountain.

Mr. Boyd asked if he had a house on the top with a driveway which might not be conforming but which had been in place for years, and he wanted to build a house for a family member nearby, if he could not use that same driveway that would basically prevent that person from having a family subdivision. Mr. Benish said he would read the critical slopes provision from the recommendation: It says "No residential construction or related road or driveway construction except for the improvement of a road or driveway that existed on the date of the ordinance would be permitted on critical slopes. This ban on construction would apply to roads built for forestry, agriculture and horticultural purposes, and neither would this ban apply for lots of record on or before 1980 in order to establish the first single residence provided that no alternate can be provided." It does allude to the ability to use certain types of existing roads. He said if there is an alternate site that is viable for the roadway, you should be pursuing a site not in critical slopes.

Ms. Thomas said a developer actually developed a family subdivision at the top of the mountain specifically to get around the first mountain overlay district committee in its operations, so there is some cynicism about the family subdivision at the top of the mountain. She is just reflecting the sentiment of the Committee. Everyone present has the ability to have different sentiments. Since there is that clearly visible example in the County the recommendation does not say "except for family subdivisions."

Mr. Boyd said he thought Mr. Davis said the Board could not distinguish subdivisions by family as opposed to non-family. Mr. Davis said he previously told the Board that the Subdivision Ordinance makes provisions for road access (which can be less for a family subdivision than a regular subdivision). However, under the Zoning Ordinance, the County cannot establish a different lot size based on family status. From a zoning standpoint there is no enabling authority to treat family subdivisions differently than any other subdivision for purposes of access.

Mr. Boyd said he does not share the thought that because there are abusers the County should shut down the system.

Ms. Thomas said what the Committee was trying to do was make everybody play by the same rules.

Mr. Rooker said there have been changes discussed to the family provisions in the Subdivision Ordinance. If the ordinance tightened up what qualified as a family subdivision, holding periods, etc, it might make things look better.

Ms. Thomas said this is something that was done after the first MOD Committee made its recommendations. Mr. Benish said the discussion of family divisions was part of phasing and clustering, so since it "went away" he does not remember if staff has gotten guidance on any changes to the family provisions. He knows it is in the work program.

Mr. Edgerton said speaking directly to Mr. Boyd's question, he thinks the current family subdivision provisions would allow what has been suggested. Currently one is allowed to access a family subdivision lot off of an existing driveway without any permission from anybody. He said Mr. Boyd talked about a house on a piece of land in which he lived and the access is by a road that would not qualify because it goes through critical slopes now. That road could not be built to build a first house, but if you are already there and wanted to cut off a lot for a family member, you would be able to access that lot off of that same driveway. Mr. Davis said under the current ordinance one additional lot could be created with a shared driveway. Under what was proposed by the Committee, if the driveway existed prior to the date of the adoption of the Mountain Overlay District, you could access it for one additional lot off of that shared driveway.

Mr. Wyant said he would use that same example. If he lived there and the road was built prior to 1980 and he wanted to have a family subdivision, could it be done by this same ordinance? Mr. Davis said if the house and the driveway were built after the MOD was adopted, you could not do it. If the house and the driveway existed prior to the date of the adoption of the ordinance, you could do one family subdivision lot.

Mr. Slutzky asked if the Board could choose to add an additional clause for family subdivisions. From what Ms. Thomas said he understands that was not the intent of the MOD Committee. However if the Board decided that was what it needed to do before it was willing to support the rest of the ordinance, it sounds like that is an option.

Mr. Rooker said the Board could maintain the current provisions with respect to access for family subdivisions. Mr. Davis said the Board has some flexibility as to how it would deal with the access issue.

Mr. Rooker said he would only support that if the Board revisited the family provisions in the Subdivision Ordinance itself. He thinks there was and still is room for abuse. He does not like the idea of doing things because some people abuse an ordinance. If the Board can close off the potential abuses, it might look at being somewhat more lenient in how to apply this ordinance.

Mr. Boyd said he does not think the Board wants to go too far the other way. Mr. Davis said that under the current County ordinance, there is no requirement that one own the property for any length of time, and the property cannot be transferred to anyone other than a qualifying family member for two

years after a family subdivision has been created. Under enabling authority, someone can be required to own the property for 15 years prior and not transfer it to a non-qualifying family member for 15 years after.

Mr. Rooker said that is the outer limit. Mr. Davis said Albemarle has a very minimal requirement currently for family subdivisions as compared to what is enabled.

Mr. Slutzky asked if the Board wants staff to give some feedback about modifying the existing family subdivision requirements in a manner consistent with what has already been discussed such as the five-year standard, and provide some element in the MOD ordinance that addresses the need for that.

Mr. Boyd said from his standpoint, he thinks the Board needs to address the family subdivision at the same time.

Mr. Slutzky said there was a lot of public input on this issue at the last hearing.

Mr. Rooker agreed. He said if the road is already there, no additional environmental degradation would occur from the building of the road itself. Then there is the question of degradation with respect to the building site. He does not think the family subdivision exempts the lots from the building site requirements. That is true today. He thinks a combination of the two would deal with a number of the situations mentioned at the public hearing, and might allow the ordinance to move forward.

Mr. Benish said he would like to move on to discuss and determine which of the proposed provisions in the MOD outline of regulations the Board would want staff to pursue for possible implementation for the remainder of the rural areas. He said the first item on the list pertains to critical slopes.

Mr. Dorrier said he agrees that roads and driveways should be prohibited from disturbing critical slopes, but if access is cut off from a flat piece of land on the top or side of the mountain preventing a person from getting to that site, the County is in effect taking away that person's property. Mr. Benish said that is one of the aspects of the potential implication to strict application of these regulations. Under the development requirements that would be put into place with this ordinance and because of the resources being protected (critical slopes and buffer areas), there may be implications on the development potential of some properties unless other reasonable access is available which meets the provisions of the ordinance. He said that is true with any regulation that sets parameters. Building lots today that do not have 30,000 square foot building sites are not developable lots. There are non-conformity issues here, but generally you get as many lots as you have building sites. That is the potential implication of these regulations.

Mr. Wyant asked about the language "possible reduction of building potential." He said one can't build on critical slopes today, so he would like an explanation. Mr. Benish said what may be impacted would be the application of the critical slope provisions for roads and driveways. If reasonable access cannot be found outside of the critical slope areas for access to buildable sites, that property may not be developable except for one house in the MOD.

Mr. Wyant asked if it would be acceptable under these MOD regulations to get an easement from another parcel. He has been looking at topo maps, and a lot of existing roads run along the ridges, so he could start at the bottom of Sugar Hollow (as an example) and end up on the highest point of the mountain and not be on a critical slope because the road runs along the ridge and gradually goes up to the top.

Mr. Slutzky asked if that would be an easement on an existing road.

Mr. Wyant said it is an existing trail, but that is a way to access the plateau on the top. Mr. Benish said under the strict outline of the ordinance that is probably not the case. He thinks the application for access to that lot would apply to whatever has been determined to be the access for that lot, be it onsite or offsite. He said the ordinance might be crafted in such a way as to allow for that flexibility. There is no ordinance crafted at this time, but he thinks the intent of the MOD speaks to the access to that site, whether the access is completely on this site, or an easement on an adjacent property.

Mr. Davis said under current regulations, for every lot there must be frontage on a public or private street, and this would not change that requirement. In order to plat a second lot, it would have to have frontage on a public or private street and could not have frontage just on a shared driveway or a path or an old route. There might be access to that lot that way if it made more sense, but you would still have to have frontage on a public or private street.

Mr. Wyant said that is the way it has always been, but he is talking about just access to that lot. If he could get access from an adjoining property, that would get by the critical slope issue with a driveway. He asked if that can be done under these recommendations.

Mr. Slutzky asked if the frontage of the lot were down the hill where it could not be accessed because of a critical slope, can that back route be used. Mr. Davis said that could be possible. But a new lot could not be created that did not have frontage on a public or private street, except for a family subdivision.

Mr. Rooker said that is true under the current ordinance.

Mr. Edgerton said the only real significant difference with critical slopes from what is in effect today, is that today you could build a driveway or a road on a critical slope in the rural area. If this condition was applied across the entire rural areas, the critical slopes would be protected from roads and driveways. Right now a house cannot be built on a critical slope, but you can build the driveway to that house across the critical slope. He said that as a Commissioner he is constantly frustrated when plats show a legitimate building site off of the critical slopes, but all of the critical slopes on the parcel have to be destroyed to get to it. He hopes this is applied because he thinks it is an important issue. Mr. Benish said if the MOD were strictly applied, there would be one exception for one house.

Mr. Wyant asked what Mr. Benish was saying when he referred to "one exception." Mr. Benish said the MOD allows one exception for one home on an existing lot.

Mr. Wyant asked if they can go across the critical slope to get to that first house.

Mr. Edgerton said that protects the property so the property is not totally undevelopable.

Mr. Rooker said he thinks the exception for the MOD should be applied throughout the rural areas. There would basically be just the one ordinance that would apply in all rural areas. Mr. Benish said one value of applying this rural area wide would be uniformity in the rural area applications of the ordinance. If you wanted to have that one development potential available in the MOD to render some development potential, he thinks the Board would want to do the same in the rural areas.

Mr. Wyant said he would be more inclined to support that when the Board deals with the whole rural area. He would rather have a different type of discussion than what is happening today. What does the Board want to allow within critical slopes countywide? He said someone might argue something different and convince him to go back to this, but he does not like the MOD because it singles that out, but if the Board does it, it applies to the entire County.

Mr. Edgerton said this is particularly relevant to the County where the major water supply is totally dependent on surface water runoff. This would protect the watersheds.

Mr. Wyant said he agrees with that also.

Mr. Slutzky said he would be willing to do it for just the MOD but would prefer to do it for the entire rural area. He thinks it is an appropriate protection of the ecological systems which is the underlying reason behind this proposal. He thinks it is sound and well done. He echoes Mr. Edgerton's comments with regard to applying this generally. If the rest of the Board members think they would support the same protections that came out of the MOD Committee if they were applied to the entire rural area, he thinks the Board might determine that today.

Mr. Boyd asked if Mr. Slutzky was suggesting applying the critical slopes protections to driveways, because protection is already there for roads.

Mr. Slutzky said "yes" with all the exceptions built into the MOD.

Mr. Edgerton said it is not presently there for roads and driveways. Mr. Benish said it is there for building sites, but is difficult to enforce. It is not there for roads and driveways.

Mr. Wyant said if a driveway is put on a critical slope a lot of water is generated and a lot of erosion. He said the County's erosion and control plans do not satisfy that. It is also hard to maintain such a driveway.

Mr. Dorrier asked what percentage of the County is in critical slopes. Mr. Benish said about 22 percent of the County is in critical slopes, and the vast majority of them are in the proposed mountain overlay district, but not all.

Mr. Slutzky said some of the slopes outside of the MOD are in conservation easements. Mr. Benish said that is true. He said the ordinance intended that building sites for those would not be developable. He said there is a work program item to deal with critical slopes in a broader sense; part of it is how to apply those regulations in the development area.

Mr. Boyd said he would like to remind everybody at this time, that the Board will have to conclude this conversation soon because it needs to have a recess before the night meeting begins.

Mr. Benish said he will be less wordy and move on to discussing erosion and sedimentation control. He said that at this time there is a requirement for E&S plans for 10,000 square feet of disturbance. The MOD proposed 2,500 square feet and there was the issue of "agreements in lieu" of plans. The problem with that idea is the lack of detail and data that is critical and necessary if critical slope provisions will be applied. In terms of applying erosion and sedimentation control, staff concluded there is not a significant environmental benefit to reducing to 2,500 square feet, but for enforcement of the critical slope provisions and for safe access requiring plans will be important.

Mr. Rooker said he understands that could be done without any change in the ordinance; it is just a policy decision.

Mr. Slutzky said he thought the Board had directed staff to go ahead and implement that change in policy. Mr. Benish said the Board was speaking specifically of the MOD at that time. This discussion would be the application of that change.

Mr. Boyd said he does not remember directing staff to do anything.

Mr. Rooker said he does not believe the Board made a decision on it. He has had many complaints from people near rural area subdivisions because it creates erosion problems, flooding on neighboring properties, etc. because a plan is not required by the County. This "agreement in lieu" of plans does not require the detail necessary to enforce things which are already on the books.

Ms. Thomas said if the Board is serious about what it just reached a consensus on, that is, protection of critical slopes is important throughout the County so logically there has to be a plan in place of an agreement otherwise there will be something on the books that staff would not be able to enforce.

Mr. Wyant stated that instead of a plan, he would rather have a requirement for a silt fence around the property prior to work beginning on the disturbed area, and when the grading gets to a certain point, they should be required to seed. He thinks this should apply to homes as well as other areas. Plans are required for work on steep slopes because an engineer or someone has to come up with an innovative way to keep the land from eroding. He thinks all homes being build should be required to have a silt fence around the property.

Mr. Mark Graham, Director of Community Development, said the applicant is required to have that even with an agreement and it has to be done before any grading is started. He said there definitely are violations and staff stops them as soon as it finds them. The real issue is that with an agreement there is no way to know whether they are building a driveway on a critical slope because there's nothing that shows existing topography or proposed grading. Staff would be catching them after the disturbance is done, and trying to rectify it.

Mr. Wyant said that is the alignment of the road or driveway so the County would know where it is in relation to the critical slope. Mr. Graham said staff would not know if they were on critical slopes or not without a plan.

Mr. Wyant said he was thinking about putting the fence around the house but if it is put down and is not staked out, the person grading the road might just run it across the critical slope. He asked if that is the difficulty being experienced now. Mr. Graham said nobody is doing any kind of plan now. They just look to see where they want to put the house, and put it there, and after the fact they try to figure out a way to get a driveway to the house.

Mr. Slutzky said they could put it on a 20 degree slope, which is not technically a critical slope, and create an erosion issue. Without an E&S plan, staff does not know there is an erosion issue so it cannot force them to put the house in the right place. Mr. Graham said staff will have no way of verifying there is a road which would allow a fire truck to get to that house unless there is a plan at the front-end of the building permit process.

Mr. Slutzky asked if the E&S plan addresses all of these needs, and is there any reason not to require the plan. Mr. Graham said it is just a mechanism to get the grading plan. The E&S measures will typically still be just a silt fence and a construction entrance. The plan gives a way to verify that the critical slopes are being honored.

Mr. Slutzky asked if anybody disagreed with staff's recommendation that E&S plans would be required throughout the rural area for 10,000 square feet and not just limited to the MOD. Mr. Benish said that would be the one distinction for the MOD.

Mr. Rooker said that is a policy decision, so if there is a consensus today on that, staff can go ahead and implement it.

Mr. Dorrier asked if this will require that an engineer draw the plan. Mr. Benish it does not require an engineer, but it is noted in the staff's report that this will have staffing implications.

Mr. Dorrier asked what it will require of staff. Mr. Graham said it can be expensive. A lot of the builders have had to do this, and it is typically from a few hundred to a thousand dollars to do an E&S plan assuming the topography is available already. He said most of the County's topography is available to the builders so they use it to do these plans.

Mr. Edgerton suggested that it might actually take less staff time because there would be a plan to look at as opposed to just a vague agreement. There would be something to measure the activity against. Mr. Graham said there would be some savings because staff would catch things before they became problems. He cannot quantify the amount of savings. In the end, he thinks it would take more staff time to review these plans and come up with the fixes.

Mr. Boyd said rather than just saying there is a consensus to change a policy, he would rather have the staff bring back something in writing which also addressed budget issues.

Mr. Benish said the last big issue is related to stream buffer requirements. He said there was a lengthy discussion about this at the previous meeting. The Water Protection Ordinance requires 100-foot

buffers on intermittent or perennial streams in the watershed area and 100-foot buffers on perennial streams in the rest of the rural areas. The MOD proposes 200-foot buffers on perennial and intermittent streams. Staff's conclusion is that while there is some benefit for that increase it is not significant and would be difficult to justify in the remainder of the rural areas, but applying the 100-foot buffer to intermittent and perennial streams would be beneficial to water resource protection and also provide some uniformity in application and regulation.

Mr. Slutzky asked if staff felt the 200-foot buffer was justified in the MOD. Mr. Benish said it is justified given the particular character and resources in the MOD, but becomes less justifiable in the rural areas overall.

Mr. Dorrier asked how hard it is to identify perennial and intermittent streams. Mr. Benish said they are all mapped, so that is not a real change in practice, but would cover more area.

Mr. Rooker said if a plan were done, these streams would be shown on that plan.

Mr. Wyant said they are shown on the U.S.G.S. maps. Mr. Graham said the County has them identified further within the County's GIS. That information is available to everybody.

Mr. Boyd asked if there is a way to know the number of acres that would be impacted by this. Mr. Graham said using the GIS staff could determine that number.

Ms. Thomas said that is noted in the staff report.

Mr. Wyant said that would only be for the building. Mr. Graham said the buffer can be shown on the lot, but it's the disturbance of the buffer that is an issue.

Ms. Thomas said given what the Board saw last month in the Stream Watch Report about the impact of development on anything greater than one house for 40 acres, she thinks the buffers would go a long way to taking care of the impact. It still allows residential development but keeps it off of the most critical areas. She would support the 200 feet in the mountain area overlay. From what has been said today, she thinks the Board is edging toward not having a mountain overlay district. If there is anything left to the mountain overlay district, she thinks the Board can justify having the 200-foot buffers in the places where streams begin and the land tends to be steeper. Down in the floodplain areas and the lower lands, she does not think it is justified. She is happy to go to 200-foot buffers all around the County, but if there is anything left to the MOD, she hopes the Board will consider having the wider buffer in the mountain area.

Mr. Slutzky said he would like to echo Ms. Thomas' comments on both counts. He likes the MOD for those reasons.

Mr. Wyant said with critical slopes nothing can be done in those areas anyway, so it would not be 200 feet, but whatever width there is all the way across. You can't build in a critical slope. He thinks this is overkill. He is concerned about perennial streams. He looks for consistency and ease of application, and 200 feet does not necessarily guarantee anything better than 100 feet. If the Board does that in the water supply area, why not do it throughout the County?

Mr. Edgerton said he welcomes Ms. Thomas' comments because the presentation by the Stream Watch people is still fresh in his mind as to how challenged the major streams in Albemarle County are now. He said does not believe it would be justified to go to 200 feet countywide. He asked if that is something the Stream Watch people should weigh in on. He thinks they might have a different opinion. Mr. Benish said staff can look further at the recommendation.

Mr. Edgerton said from an environmental point of view, there is a significant problem with all of the streams. Ms. Thomas made the point that it would be mandatory on the steeper slopes in the higher elevations where the streams begin. At the lower elevations, and even with some of the floodplains, to protect an additional 100 feet could only improve the water quality of all streams. He does not believe it would challenge the development opportunities of properties. These are areas where houses should not be built, and it does not mean there cannot be a lot there, you just don't put the house next to the stream, but a minimum of 200 feet away, and you don't put a septic field there. That seems logical, but sometimes logic does not prevail when it comes to siting a house.

Mr. Slutzky said he thinks what Mr. Edgerton said is of critical importance, so he encourages staff to talk with the Stream Watch people. If they support staff's recommendation that the 200-foot buffer off of the critical slopes is not as important as the 100-foot buffer on both the perennial and intermittent streams, he still suggests that staff provide the 100-foot buffer throughout the rural area. Obviously, some have strong inclinations to create a MOD if for no other reason than because of the need to have the 200-foot setbacks on the streams on the critical slopes. He said the 100-foot buffer could be extended to the intermittent streams without having to go through all of the same process steps needed to create the MOD. He suggests that the Board move ahead with the 100 additional feet unless Stream Watch makes a persuasive case that the 200 feet makes sense.

Mr. Boyd asked if Mr. Slutzky was saying the 200 foot buffers on streams would be the only unique feature of the MOD.

Mr. Slutzky said that is correct.

Mr. Boyd said the rest of the items that are surviving are general in nature.

Mr. Rooker said it would be helpful to bifurcate that because creating the MOD is a rezoning of all the parcels in the MOD. That is a much more labor-intensive process than changing some of the ordinances to apply generally throughout the rural area. He hopes that if there is a consensus to make some of these changes throughout the rural area, then go ahead and do it. The Board can look at what's left and decide whether it makes sense to go forward with rezoning all of this property in the MOD and creating a separate zoning district as a separate matter. He said that is the most labor-intensive part of this whole thing for staff.

Mr. Slutzky said he would still be interested in pursuing that because he is concerned particularly about the headwaters, and he would not want this excellent work throughout the rural area to make the Board feel it does not need to pursue protecting those streams with a wider buffer.

Ms. Thomas said the Rivanna River Basin Commission has not had its first meeting yet, but staff is assuming the issue they will focus on is sediment erosion going into the Rivanna River. That group might know some science-based reasons as to how the sediment is getting into the river, although it might be a year or more before they could comment. She said no matter what they find out, the 100-foot buffer will be valuable. There is a lot of consensus on that in the scientific and environmental world.

Mr. Boyd said that is another reason why Mr. Rooker thought the Board might move forward without rezoning now. It would not preclude that from coming back.

Mr. Wyant said how an intermittent stream is defined is important. From the top of the mountain, water has to drain downward in some sort of ditch; when does that become an intermittent stream. Some of that activity could be detrimental. Mr. Benish said he has heard that staff should move forward with 100-foot buffers on intermittent streams in the rural areas countywide, and then look further into the benefit of 200-foot buffers with other groups who have expertise, and then bring back information to the Board.

Mr. Boyd said everybody needs to agree on what is being talked about. He thinks the Board wants a report summarizing all of the things discussed today. It seems that a MOD will not be part of that report, but he would like to see a report on everything else decided today. Mr. Benish said staff has enough information to give the Board a summary of the directives today.

At this time, Ms. Joseph adjourned the Planning Commission meeting.

Mr. Boyd said before the Board breaks for supper, Mr. Tucker wants to clarify a point about the Board's discussion of the budget earlier today.

Mr. Tucker said for the media's benefit and for podcasting, he would like to make one clarification. Since the School Board will be meeting soon on its budget, he wants the Board to remember that all of the information he shared with them today about revenues is preliminary. Staff is still finalizing the reassessment numbers; they will be finished in the next few weeks because the notices have to be mailed by the end of January. He said the number shared with the School Board will be an unofficial number. Staff will set aside the \$3.5 million, but he wants more time to finalize the reassessment number before he gives the final number to the School Board.

Agenda Item No. 3. At 5:20 p.m., the Board recessed.

Agenda Item No. 4. Call to Order. Mr. Boyd called the meeting to order at 6:00 p.m.

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

Agenda Item No. 7. Matters from the Public not listed on the Agenda.

Mr. Jay Willer, Government Affairs Coordinator for the Blue Ridge Homebuilders Association, addressed the Board, stating that the BRHA is the lead association in the state of Virginia for encouraging voluntary green residential building through the Earthcraft program – which has been endorsed by the Governor. He explained that Earthcraft is a region-specific set of criteria for green residential building, covering site plans, design of the home, materials, appliances, etc., and at the end of the process an Earthcraft inspector is brought in to certify the building meets the standards for a green, efficient home. Next Thursday they are holding a training session in Earthcraft techniques, and three members of Albemarle County's building inspection staff are planning to attend.

Mr. Joe Jones, President of the Albemarle County Farm Bureau, addressed the Board. He explained that before the meeting he presented a memo and a copy of the Crozet Gazette to the Board. Recently the Farm Bureau did a survey regarding land use taxation. They tried to keep it simple with just a few questions – Do you refer to your property as agricultural or forestal land? Do you know how long

your property has been enrolled? Do you feel that land use assessment over the past 30 years has kept a lot of rural land from being developed? Would higher taxes as a result of loss of land use rates influence you? He said that 84 percent of the respondents said they would sell some or all of their property if land use taxation as a policy were extinguished, adding that a lot of the County is still rural.

Mr. Rex Linville of the Piedmont Environmental Council addressed the Board, presenting a letter of support from a number of organizations around the state asking members of the General Assembly to support the Governor's conservation plans in his biennial budget – the American Farmland Trust, the Chesapeake Bay Foundation, the Farm Bureau of Virginia, the Nature Conservancy, PEC, Virginia Forever, and smaller groups. He said that \$13.7 million is being requested for the Virginia Land Conservation Fund, the largest single allocation ever to this program; and, \$950,000 to the Virginia Outdoors Foundation for their stewardship, monitoring and easement work. He said that as of 2006, easements in Albemarle County totaled 5,650 acres being protected; about 94,000 acres have been subdivided in the rural area since 1979.

Mr. Jeff Werner of PEC addressed the Board and presented a check for \$5,000 to help with the historic survey in Crozet. He said that several years ago a Crozet resident contacted him about getting historic designation for the downtown part of Crozet; that study would cost about \$10,000. He indicated that the idea was "put on the back burner" because of the master planning, but Ms. Susan Steimart suggested it be reinitiated with PEC and the County partnering. He said historic preservation is a critical element of any community and as Crozet transforms into a suburban town, it's important that its past be recorded and its historic sites inventoried. He emphasized that historic preservation is not just about homes of famous people, but about daily life. He said they discussed the proposed power line that threatens private and public lands, and threatens to cut through one of the highest concentrations of privately protected lands in the U.S. He added that the PEC has launched a new campaign called "Enlighten Virginia" to mobilize citizens to reduce energy consumption. The first step is to get people to change their incandescent light bulbs to compact fluorescent, and Nature Neutral, Martin's Hardware, and Crozet Hardware have all agreed to sell them.

Mr. John Martin referenced Item 8.3 on the Consent Agenda. He said the County's legal staff has provided excellent counsel related to the Charlottesville Area Community Foundation item, and he thinks the \$300,000 should be returned to the Foundation per its request. He said tax-exempt non-profit organizations play an important role in the life of the community, but even the appearance of irregularities serves to erode the public trust.

Agenda Item No. 8. Consent Agenda. Mr. Slutzky **moved** for approval of Items 8.1 through 8.4 on the Consent Agenda, and to accept Item 8.5 as information. 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.

Item 8.1. Resolution accepting FY 2004-05 and FY 2005-06 landowners' offers to sell conservation easements.

Acceptance of FY 2004-05 landowners' offers to sell a conservation easement – It was noted in the Executive Summary that on July 5, 2006, the Board approved the appraisals for the FY 2004-05 applications and approved extending invitations to submit offers to sell easements to those properties. On November 1, 2006, the Board formally accepted offers submitted by three applicants from this six-applicant class (Vieille, Boyle and Donnelly). The remaining three applicants (Metcalf/South, Davey and Rock Mills Land Trust) had not yet submitted their offers to sell easements to the County. Since the November meeting, Metcalf/South and Davey have submitted their offers to the County. ACE regulations require each landowner who desires to sell a conservation easement to submit a written offer to the County to sell the easement for a fixed price, determined by an appraisal and subject to an adjustment based on adjusted gross income. The easement is also subject to the terms and conditions contained in a proposed deed of easement negotiated by the parties. If the Board accepts the offer the regulations also require that it must do so in writing and only after an action by the Board authorizing acceptance. The Board is not required to accept an offer to sell a conservation easement. Either the Albemarle County Public Recreational Facilities Authority ("PRFA") or the Virginia Outdoors Foundation ("VOF") may be co-holders of the easements. Staff expects to receive an offer from the remaining applicant in this class (Rock Mills Land Trust) later this month.

Acceptance of FY 2005-06 landowners' offers to sell a conservation easement – On November 1, 2006, the Board approved the appraisals for the FY 2005-06 applications and approved extending invitations to submit offers to sell easements to those properties. Thus far, three applicants (Motley, Fields and Huckleberry Hills Farm) have officially submitted their offers to the County. Staff expects to receive offers from the other two applicants in this class later this month.

Acceptance of FY 2004-05 landowners' offers to sell a conservation easement - From the Round 5 (FY 2004-05) applicant pool, the County recently received offers to sell conservation easements from Metcalf/South and Davey. These easements will be co-held by the County and the Public Recreational Facilities Authority (PRFA).

Owner	Tax Map-Parcel Number	Price	Co-holder	DR's Eliminated
Metcalfe/South	TM 97, Parcel 24A (145.710 acres)	\$150,000	PRFA	7
Davey	TM 112, Parcel 5 (271.740 acres)	\$516,000	PRFA	14
	<u>TM 112, Parcel 15B (22.490 acres)</u>			
	Total (294.230 acres)			

These easements will provide the following conservation values: 1) elimination of 21 development rights; 2) over 10,000 feet of road frontage on a Virginia Byway; 3) approximately 10,000 feet of stream/river frontage protected by riparian forest buffers; and, 4) 439.94 acres of permanently protected land.

Acceptance of FY 2005-06 landowners' offers to sell a conservation easement - From the Round 6 (FY 2005-06) applicant pool, the County recently received offers to sell conservation easements from Motley, Fields and Huckleberry Hills Farm. Two other applicants from this pool (Chester, and Hook) have not yet submitted offers to sell conservation easements to the County. Offers to sell are anticipated from these applicants once they have adequately assessed the County's invitation to submit an offer and accepted the exact terms and conditions of the deed of easement.

Owner	Tax Map-Parcel Number	Price	Co-holder	DR's Eliminated
Motley	TM 66, Parcel 3 (36.600 acres)	\$100,000	PRFA	1
Fields	TM 81, Parcel 48 (110.810 acres)	\$275,000	PRFA	9
Huckleberry Hills Farm	TM 19, Parcel 1(A) (181.320 acres)	\$263,550	PRFA	13
	TM 19, Parcel 1(B) (17.750 acres)			
	TM 19, Parcel 1(C) (4.980 acres)			
	TM 19, Parcel 1(D) (14.690 acres)			
	<u>TM 19, Parcel 4 (18.910 acres)</u>			
	Total (237.650 acres)			

The Motley, Fields and Huckleberry Hills Farm easements will provide the following conservation values: 1) elimination of 23 development rights; 2) over 1,000 feet of road frontage on a Virginia Byway; 3) over 5,600 feet of common boundary with other properties currently protected by easement; and 4) 385.06 acres of permanently protected land.

For the first four years of the ACE program in which the County acquired easements on 16 properties and protected 3,759 acres, the County's net cost was approximately \$3,125,737 out of the County's budgeted funds of \$3,872,500. Although a portion of unspent funds can be attributed to attrition (approved applicants withdrawing or not making offers to sell), \$357,933 was leveraged from outside contributions and additional savings were realized from adjustments of easement value from the income grid. If the County acquires easements on all 11 applicants from FY 2004-05 and FY 2005-06 as currently valued, the County will have acquired easements on 27 properties and protected 5,497 acres at a cost of up to \$6,012,099. The County's budgeted funds of \$5,872,500 for that period combined with additional funding from outside contributions (\$489,433) will cover the cost.

Funding for the purchase of conservation easements from both applicant classes comes from the CIP-Planning-Conservation budget (line-item 9010-81010-580409) and the CIP-Tourism-Conservation budget (line-item #9010-72030-580416), a budget previously approved by the Board to fund ACE properties with "tourism value".

The following recommendations are provided for action by the Board:

1) Adopt a Resolution accepting FY 2004-05 applicants' offers (from Metcalfe/South and Davey) to sell a conservation easement to the County for the price specified and subject to the terms and conditions contained in the proposed deed of easement, and authorize the County Executive to sign the final deed of easement for each property.

2) Adopt a Resolution accepting FY 2005-06 applicants' offers (from Motley, Fields and Huckleberry Hills Farm) to sell a conservation easement to the County for the prices specified and subject to the terms and conditions contained in the proposed deeds of easement, and authorize the County Executive to sign the final deed of easement for each property.

By the recorded vote set out above, the Board adopted the resolution accepting FY 2004-05 applicants' offers (from Metcalfe/South and Davey) to sell a conservation easement to the County for the price specified and subject to the terms and conditions contained in the proposed deed of easement, and to also authorize the County Executive to sign the final deed of easement for each property.

RESOLUTION ACCEPTING OFFER TO SELL
 A CONSERVATION EASEMENT UNDER THE ACE PROGRAM

WHEREAS, the County has received an offer to sell a conservation easement under the ACE Program from the owner(s) of the following properties:

Davey	TM 112, Parcel 15 (271.740 acres)
	<u>TM 112, Parcel 15B (22.490 acres)</u>
	Total (294.230 acres)

Metcalfe/South	TM 97, Parcel 24A (145.710 acres)
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WHEREAS, the owner(s) offered to sell a conservation easement on the respective properties to the County for a fixed purchase price, subject to terms and conditions set forth in the proposed deed of easement enclosed with the County's invitation to offer to sell, subject to any further revisions deemed necessary by the County Attorney and agreed to by the owner.

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors hereby accepts the offer to sell a conservation easement for each of the properties described above, and authorizes the County Executive to execute all documents necessary for completing the acquisitions.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby directs the County Attorney to send copies of this resolution to the owner(s) of the properties identified herein, or their contact persons.

By the recorded vote set out above, the Board adopted the resolution accepting FY 2005-006 applicants' offers (from Motley, Fields and Huckleberry Hills Farm) to sell a conservation easement to the County, for the prices specified and subject to the terms and conditions contained in the proposed deeds of easement, and to authorize the County Executive to sign the final deed of easement for each property.

**RESOLUTION ACCEPTING OFFER TO SELL
A CONSERVATION EASEMENT UNDER THE ACE PROGRAM**

WHEREAS, the County has received an offer to sell a conservation easement under the ACE Program from the owner(s) of the following properties:

Motley	TM 66, Parcel 3	(36.600 acres)
Fields	TM 81, Parcel 48	(110.810 acres)
Huckleberry Hill Farm	TM 19, Parcel 1(A)	(181.320 acres)
	TM 19, Parcel 1(B)	(17.750 acres)
	TM 19, Parcel 1(C)	(4.980 acres)
	TM 19, Parcel 1(D)	(14.690 acres)
	TM 19, Parcel 4	(18.910 acres)
Total		(237.650 acres)

WHEREAS, the owner(s) offered to sell a conservation easement on the respective properties to the County for a fixed purchase price, subject to terms and conditions set forth in the proposed deed of easement enclosed with the County's invitation to offer to sell, subject to any further revisions deemed necessary by the County Attorney and agreed to by the owner.

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors hereby accepts the offer to sell a conservation easement for each of the properties described above, and authorizes the County Executive to execute all documents necessary for completing the acquisitions.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby directs the County Attorney to send copies of this resolution to the owner(s) of the properties identified herein, or their contact persons.

(Discussion: Mr. Boyd said, in the future, the Board should get a cash flow analysis with these reports. Staff has indicated this will not be a problem.)

Item 8.2. Resolution to modify the existing entrance to White Gables to a right-in, right-out only entrance.

It was noted in the Executive Summary that White Gables and Kenridge are adjacent new residential developments located on Route 250 West, across from the Birdwood Golf Course. Both developments are required by conditions of their respective Special Use Permits to build a private road connection to their mutual property line, thus creating a connector road between the two developments that would allow shared use of access points to Route 250. Both developments are in the process of developing this connector road.

A Special Use Permit condition for the White Gables development states, in part, that: *Should a consolidated entrance be located at a point west of the White Gables property in the future, an access easement shall be provided on the property for traffic from the National Legal Research Group property (Tax Map 60, Parcel 25) across the White Gables property, and this access shall be reserved on the final subdivision plat/site plan.... In the event that such consolidated entrance is provided, either the Virginia Department of Transportation ("VDOT") or the County's Director of Engineering may require the applicant to close the existing entrance shown on the Conceptual Plan, convert it to a right in/right out only entrance/exit, or require that other modifications be made to the entrance.*

The entrance to the Kenridge development (to the west of White Gables) is now under construction and will function as the consolidated entrance for the two developments. As noted in the above condition, the acting County Engineer, Mark Graham, or VDOT may determine the disposition of

the existing White Gables entrance. The County Engineer is recommending that the existing White Gables entrance be converted to a right-in/right-out only entrance/exit. The Route 250 West Task Force indicated it's supported for this design, as well. Staff believes a right-in/right-out only access at White Gables will help with the traffic flow in this area along Route 250 West. Because this modification will impact a state maintained road, VDOT must approve the design concept. Staff has provided a draft resolution requesting that VDOT support and implement this conversion of the existing White Gables entrance. The applicant will be responsible for all cost associated with the entrance modification.

Staff recommends that the Board adopt the resolution requesting that VDOT approve an entrance permit for a right-in/right-out only entrance and exit for the existing entrance to the White Gables development.

By the recorded vote set out above, the Board adopted a resolution requesting that VDOT approve an entrance permit for a right-in/right-out only entrance and exit for the existing entrance to the White Gables development.

RESOLUTION REQUESTING THAT THE VIRGINIA DEPARTMENT OF
TRANSPORTATION APPROVE AN ENTRANCE PERMIT FOR A
RIGHT-IN/RIGHT-OUT ONLY ENTRANCE AND EXIT DESIGN FOR
THE EXISTING ENTRANCE TO THE WHITE GABLES DEVELOPMENT

WHEREAS, the White Gables development (Tax Map 60, Parcels 26 and 27A) is located on Route 250 West and it has an existing entrance (hereinafter, the "Existing Entrance") that preceded the approval of the White Gables development; and

WHEREAS, one of the conditions of approval of the special use permit for the White Gables development provides that if a consolidated entrance is established that will provide an entrance from Route 250 West to both the White Gables development and the development to the west (now known as the Kenridge development), either the Virginia Department of Transportation or the County Engineer could require the White Gables developer to close the Existing Entrance, convert it to a right-in/right-out only entrance and exit, or require that other modifications be made to the Existing Entrance; and

WHEREAS, a consolidated entrance as described herein has been constructed in conjunction with the Kenridge development; and

WHEREAS, the County Engineer recommends that the Existing Entrance be converted to a right-in/right-out only entrance and exit.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors requests the Virginia Department of Transportation approve an entrance permit for a right-in/right-out only entrance and exit design for the Existing Entrance to the White Gables development.

Item 8.3. Charlottesville Area Community Foundation Refund Request.

It was noted in the Executive Summary that the owners of the North Pointe Development proffered that they would cause \$300,000 to be contributed to the County for the Albemarle Housing Initiative Fund within 60 days after the date of the approval of the rezoning to be used to promote affordable housing. At the request of Mr. Rotgin, in October of 2006 the Charlottesville Area Community Foundation (hereafter "CACF") provided a \$300,000 grant to the County for this purpose. The intent of the grant to be the means to satisfy the proffer was verified by the County and the grant was accepted to satisfy the North Pointe proffer.

On December 22, 2006, Mr. Rotgin forwarded another check to the County in the amount of \$300,000 with a request that the North Pointe affordable housing proffer be funded by this new check and requested that the \$300,000 grant previously accepted to satisfy the proffer be returned to the CACF.

On January 4, 2007, the CACF requested that its \$300,000 grant to the County be returned to it because the North Pointe owners had provided alternative funds to satisfy the North Pointe proffer for affordable housing. The County auditors advised that the proper procedure to return the funds to CACF is for the Board to authorize the refund and then appropriate funds for that purpose. The North Pointe affordable housing proffer has now been satisfied independent of the CACF grant by receipt of the \$300,000 from the owners of the North Pointe Development.

The refund of the CACF grant will have no budget impact because the funds have been replaced by the owners of the North Pointe Development to satisfy the North Pointe proffer. Staff recommends that the Board appropriate and authorize the return of \$300,000 to CACF previously received by the County from CACF as a grant for the purpose of providing affordable housing in satisfaction of the North Pointe proffer.

By the recorded vote set out above, the Board authorized the return of \$300,000 to the Charlottesville Albemarle Community Foundation (CACF) previously received by the County from CACF as a grant for the purpose of providing affordable housing in satisfaction of the North Pointe proffer, and approved the following Resolution of Appropriation:

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2007-051
 DATE: 01/10/07
 EXPLANATION: North Pointe Proffer

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER	
							DEBIT	CREDIT
2	8538	18938	189924	North Pointe Proffer Revenue	J2	300,000.00		
1	8538	92010	580312	Proffer Refund	J1	300,000.00		
	8538		0501	Est. Revenue			300,000.00	
			0701	Appropriation				300,000.00
TOTAL						600,000.00	300,000.00	300,000.00

Item 8.4. Resolution of Support – Lewis and Clark Enhancement Grant Application (deferred from January 3, 2007).

It was noted in the Executive Summary that on January 3, 2007, the Board was asked to adopt a Resolution to support the application by the Lewis and Clark Exploratory Center for a grant from the Virginia Department of Transportation Enhancement Program. The Board deferred action and requested that the County Attorney determine if use of funds that might be obtained by a grant from this program might jeopardize future road construction projects that might require displacement of improvements funded by the grant.

The County Attorney has determined that the application for the VDOT Enhancement Program by the Lewis and Clark Exploratory Center requires the County to be responsible for accepting the grant from VDOT. In addition, the County must assure VDOT that a 20 percent match will be paid, that the project will meet all VDOT requirements, and that the County will reimburse VDOT for any costs expended by VDOT if the project is not completed. A resolution adopted by the Board providing these assurances must be received by VDOT prior to VDOT being able to consider approval of the Enhancement Program application. If the application is approved, VDOT will require that the County enter into an agreement with VDOT making these assurances legally binding. The County could require in a separate agreement with the Lewis and Clark Exploratory Center that it assume all of the County responsibilities under the Enhancement Grant and hold the County harmless from any liabilities created by the County's acceptance of the Enhancement Program grant.

Acceptance and use of the Enhancement Program grant for the Lewis and Clark Exploratory Center does not prohibit a future Board or VDOT from approving a highway project that would displace improvements funded by this grant. However, the County would be required to reimburse the VDOT Enhancement Program for the cost of any funded improvements that are displaced. The amount of money the County would be required to repay would depend on the value of the improvements at the time the improvements were displaced. If the original improvements had depreciated in value at the time of the displacement, the amount required to be repaid may be reduced. It is possible that the County could require the Lewis and Clark Exploratory Center to be responsible for reimbursing the County for such a repayment but it will be difficult to assure that the Lewis and Clark Exploratory Center will have the future financial ability to do so.

Because the Lewis and Clark Exploratory Center is located on existing parkland, under existing Federal law any use of that property for a future highway funded by Federal Highway funds will require a Section 4(f) compliance review. The Section 4(f) compliance requires the preservation of public park and recreation lands, wildlife and waterfowl refuges, and historic sites unless it is proven that there is no prudent and feasible alternative to using that land, and the project includes all possible planning to minimize any harm to those uses of the land. The determination of Section 4(f) compliance is made by VDOT in consultation with the Federal Highway Agency during the environmental review required for a future highway project. Under existing law, the location of a highway project through the Darden Towe Park may be difficult with or without additional improvements to the Lewis and Clark Exploratory Center.

The County Attorney prepared a revised Resolution for the Board's consideration. This Resolution indicates the Board's support for the Enhancement Program application and provides the necessary County assurances, discussed above, that are required by VDOT. The VDOT deadline for receiving this Resolution for consideration in the current application cycle is January 11, 2007.

Assuming the County requires the Lewis and Clark Exploratory Center to enter into an agreement with the County to be responsible for all the obligations and costs created by the Enhancement Program grant, the only budget impact would be the costs of the County Attorney's Office and other staff in creating and administering the County agreement with VDOT to accept the grant, if awarded, and the cost of creating and administering the pass-through agreement between the County and the Lewis and Clark Exploratory Center. There is a risk that the County could be responsible for repaying all or part of the \$300,000 grant if the improvements funded by the grant are displaced by a future project.

If the Board supports the application for the VDOT Enhancement Program grant requested by the Lewis and Clark Exploratory Center, staff recommends adopting the Resolution drafted by the County Attorney.

(Discussion: Mr. Boyd noted that the Lewis & Clark Enhancement Grant information seems to imply that the County could be liable for this entire grant.

(Mr. Davis explained that the County has to be the contracting party with VDOT if a grant is awarded, so ultimately VDOT would hold the County responsible if any repayment were required either

during or after the project. He said the County would require the Lewis & Clark Center to enter into a separate agreement with the County that would make them responsible for any liabilities the County might assume in this process. This application essentially gets it before VDOT and decisions on whether the County would accept the money could be determined after the grant has been awarded.)

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

RESOLUTION

WHEREAS, the Lewis and Clark Exploratory Center of Virginia (LCEC) is an educational center for visitors of all ages commemorating the Lewis and Clark Expedition; and

WHEREAS, the County of Albemarle and the City of Charlottesville have demonstrated their support of LCEC's mission by granting a long-term lease of land in Darden Towe Park, participation by the City Parks and Recreation Department in the boatbuilding program for youths, donation of office space by Albemarle County, and participation by area schools in LCEC programs; and

WHEREAS, the LCEC has applied for \$300,000.00 in Transportation Enhancement Funds from the Virginia Department of Transportation which, when combined with other grant funds, will be used to construct a 2,500 square foot visitor's center, develop a system of interpretive hiking trails, and create a ferry boat crossing to allow pedestrian passage across the Rivanna River to the greenbelt trails in Pen Park; and

WHEREAS, the Board of Supervisors strongly supports the educational mission of the Lewis and Clark Exploratory Center, and values the LCEC as an important community resource; and

WHEREAS, the Board of Supervisors strongly supports the grant application made by the Lewis and Clark Exploratory Center of Virginia for \$300,000.00 in Transportation Enhancement Funds from the Virginia Department of Transportation; and

WHEREAS, in accordance with Commonwealth Transportation Board construction allocation procedures, it is necessary that a request by resolution be received from the Board of Supervisors before the Virginia Department of Transportation can program a transportation enhancement project in the County of Albemarle.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia, hereby requests that the Commonwealth Transportation Board establish a project for the Lewis and Clark Exploratory Center.

BE IT FURTHER RESOLVED, that the County hereby agrees to pay a minimum of 20 percent of the total cost for planning and design, right of way, and construction of this project, and that, if the County subsequently elects to cancel this project, the County hereby agrees to reimburse the Virginia Department of Transportation for the total amount of costs expended by the Department through the date the Department is notified of such cancellation.

Item 8.5. Copy of letter dated December 29, 2006, from John Shepherd, Manager of Zoning Administration, to Tom Gale, Roudabush, Gale & Assoc., Inc., re: OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS -- Tax Map 70, Parcels 37E & 37N-White Hall District (Property of Murray Investment Group LLC – Highland Ridge Farm Series) Section 10.3.1, **received as information.**

Agenda Item No. 9. **Public Hearing:** SP-2006-020, First Christian Church (Signs #74, 77). Proposed: New church on 15-acre parcel with seating for 306 persons, (eventual expansion to 650 persons), rooms for youth/community events, church office, and outdoor pavilions for church activities.

Zoning Category/General Usage: RA--Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre); EC Entrance Corridor Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access.

Section: 10.2.2.35 Church building and adjunct cemetery.

Comprehensive Plan Land Use/Density: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/density (.5 unit/acre).

Entrance Corridor: Yes.

Location: Northeast corner of Richmond Road (US Rt 250) and Keswick Road (Rt 731).

Tax Map/Parcel: 79-24A.

Magisterial District: Scottsville.

(Notice of this public hearing was advertised in the Daily Progress on December 25, 2006, and January 1, 2007.)

Mr. Gilimberg reported that this proposal would provide for a new church on a 15-acre parcel, which would seat 306 people with additional rooms for youth and community events, church office, and outdoor pavilions for church activities generally. The property is located to the north of Route 250 East and just to the east of its intersection with Route 731. He pointed out the parcel on a map and described

its topography including how the building would be located on the site. He said staff identified favorable factors to the request including that VDOT and the County Engineer are satisfied the entrance design is adequate to accommodate the traffic generated by the proposal. A church on this parcel would provide a community meeting place and opportunities for residents to take part in local community life.

Mr. Cilimberg noted that one unfavorable factor is that construction of the church would require clearing of parts of this wooded site. Recommended conditions are intended to reduce the visual and environmental impacts of this clearing by controlling its extent and location. He added that originally the boundary of no disturbance was actually closer to the proposed church, but the location for the septic field was going to be in the middle of the disturbed area so they moved the tree line out so the septic field could also be moved.

Mr. Cilimberg said staff and the Planning Commission have both recommended approval, with the nine conditions that are included in the staff report.

Ms. Thomas said the next agenda item for Kappa Sigma requires use of bollard type lights in place of pole lights whenever possible and use of only full cutoff fixtures. She asked why such conditions were not applied to this petition. The only lighting requirement for this church is that all outdoor lighting be arranged or shielded to reflect light away from the abutting properties. That does not provide the same protection for the nighttime sky as full cutoffs and bollards. There is a church in her district where the Board required bollards which is low lighting which lights the path you are on but does not light the air above you. She asked if it would be possible to have that same condition in this case and also have some regularization of conditions. She has received a letter from the Charlottesville Astronomical Society that is concerned about light pollution in the rural area.

Mr. Cilimberg said the condition associated with Kappa Sigma was actually a condition from their original approval to reflect the level of outdoor activity occurring there. If felt appropriate, he thinks a similar condition could be used here and in other cases.

Mr. Rooker said that for the Kappa Sigma petition, it is Condition No. 2 and he thinks that Items "A", "B", "D" and "E" might be the kinds of things that could be generalized for applications of this kind in the rural areas. From the applicant's standpoint it says: "Lighting of the site shall be limited as follows: a. Light levels at the property lines shall be no greater than 0.3 foot candles; b. No flood lighting of the building is permitted; d. Utilize bollard type lights in place of pole lights whenever possible. Use only full cutoff fixtures; e. Site and building illumination shall be limited to the satisfaction of the ARB."

Mr. Rooker said this particular site is subject to ARB approval also. He thinks Ms. Thomas made a good point. It would be nice if there were a general condition which the Board applied to larger-scaled projects in the rural areas.

Mr. Wyant said he thought that traditionally a half foot candle power had been used at the property's boundaries. For the sake of consistency, instead of using 0.3 candle power he would use a half foot candle power. Mr. Davis said that requirement is on top of what is already required by the Lighting Ordinance which has other restrictions.

Mr. Boyd asked if the Lighting Ordinance talks about the light onto adjacent properties. Mr. Davis said he believes it is 0.5, and he is not sure why it is 0.3 in the conditions for Kappa Sigma.

Mr. Boyd said if some of these things are already required, the Board does not have to add it a condition.

Mr. Rooker asked if it is clear that the cutoff lighting ordinance applies to churches. Mr. Davis said "yes."

Mr. Rooker asked if that part of this condition is somewhat irrelevant or redundant. In the Kappa Sigma petition there is a condition which says "Utilize bollard-type lights in place of pole lights whenever possible, and use only full cutoff fixtures." That is redundant. Mr. Davis said referring to full cutoff fixtures is redundant.

Ms. Thomas asked if that is required of churches. Mr. Cilimberg said the requirement is for the emission of lights at a certain level. This particular condition does not restrict it to only those lights. It says to use bollard type lights in place of pole lights, and use only full cutoff fixtures. Whether there is the limit in the lighting provisions, full cutoff would still be used.

Ms. Thomas said she knows there is a precedent because of the church on Garth Road where the Board required the bollard lights.

Mr. Davis said what Mr. Cilimberg said was correct. The Lighting Ordinance applies to lamps which emit 3,000 or more lumens, so the condition would apply to any size light even if it was less than 3,000 lumens.

Mr. Boyd asked if it applies to churches. Mr. Davis said "yes." It applies to any use that requires a site plan.

Mr. Wyant asked if there is mention of the half-foot candle power on a public road and adjacent parcels. Mr. Davis said the ordinance says "the spillover lighting shall not exceed one-half foot candle."

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

Ms. Valerie Andress from Michie-Carson, the applicant's representative, addressed the Board. She said since a lighting plan is not required for approval of the special use permit, no lighting plan has been done for this request. She knows it is not the intent of the church to put "Wal-Mart" style lights on their property. Looking over the list she was handed for the Kappa Sigma project, she sees nothing the church would object to, but without looking at all the criteria she is hesitant to agree to anything on their behalf.

Mr. Barry Creasy, a member of the church's relocation team, said they have not done a lighting plan. He said he came tonight to talk about the church itself. He said this is a downtown Charlottesville church at this time. They are not new; the church was founded in 1835. The church has a long reputation of being involved in its community. It is currently located in an historic district and it has been in compliance with historic regulations so it knows about the need to have a certain type of lighting. That would not cause a great issue for them.

Mr. Dorrier asked the size of the church's congregation. Mr. Creasy said they average an attendance of about 100 each Sunday.

Mr. Dorrier asked if they would be willing to look into the lighting situation even if it is not required. Mr. Creasy said "yes."

Mr. Boyd asked if Ms. Thomas feels the Lighting Ordinance is sufficient to address her concern.

Ms. Thomas said she does not feel the Lighting Ordinance is sufficient since it only applies to lights of a certain lumen power. That allows a lot of lesser lights which adds up. She thinks what was recommended for Kappa Sigma are sensible requirements that should also be required of this church. That would be her recommendation, but it is not a proffer situation where the Board can ask for a proffer. These are conditions on a special use permit.

Ms. Andress said she understands it is not a proffer situation, but it was unexpected. She doesn't have a sense of what 0.3-foot candles are, but it doesn't seem that the requirements are unreasonable. She said Mr. Creasy had mentioned that they thought the church would need full cutoff lights. They want the church to be a part of its community.

Mr. Boyd said the church could ask for a deferral tonight in order to have time to think about the lighting. He thinks the Board may be inclined to include that in the special use permit conditions.

Mr. Creasy said he has no problem with that being added to the special use permit conditions.

Mr. Wyant said the church will have to furnish a photometric plan later so the Board should decide on what it is asking for. Mr. Davis said if the Board imposes conditions, they would be conditions above what the Lighting Ordinance generally requires. They would be addressing the impacts of a use that is in the rural area. He said most developments the Lighting Ordinance applies to are site plans and most would occur in the development area. Primarily the Lighting Ordinance was designed to address issues in the development area. This is different because the property is located in the rural areas. It is within the Board's discretion to address the impacts that would be above what is normally expected by development in the rural area. If the conditions are imposed, they will be required at the site plan stage.

Mr. Dorrier asked if this will cost the church more.

Mr. Rooker said he does not think it would cost more.

Mr. Dorrier said he thinks Mr. Creasy said he will accept it as a condition. Mr. Creasy said "yes."

Mr. Dorrier said Ms. Andress said she would not. Ms. Andress said she did not want to accept on behalf of the church. Mr. Creasy is the ultimate consultant.

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

Mr. Dorrier immediately **moved** for approval of SP-02006-020, First Christian Church, with all of the conditions recommended by the Planning Commission and set out in their letter dated December 8, 2006, adding Condition No. 10 reading: "Utilize bollard-type lights instead of pole lights whenever possible along with full cutoff fixtures."

Mr. Davis suggested that Condition No. 6 be amended to state: "The lighting of the site shall be limited as follows: a) Light levels at the property line shall be no greater than 0.3-foot candles; b) no floodlighting of the building is permitted; c) utilize bollard-type lights in place of pole lights whenever possible and use only full cutoff fixtures; d) site and building illumination shall be limited to the satisfaction of the ARB; and, e) all outdoor lighting shall be arranged or shielded to reflect light away from the abutting properties."

Mr. Wyant said he would like to seek consistency throughout by using a half-foot candle instead of a 0.3. Mr. Cilimberg said that does not need to be a condition.

Mr. Davis said he believes 0.3 was used a condition because they wanted to be more sensitive in the rural area than they are under general conditions in the Lighting Ordinance. He said there was a purpose behind the 0.3 on the Kappa Sigma application, but is not sure there has been a similar analysis of the church site. In the Kappa Sigma application, that is a condition which has been in place on the special use permit for some time.

Mr. Wyant said the reason he likes to have a number in case of a dispute. Mr. Davis said the special use permit gives the ability to focus on the particular needs of that site. That is why he thinks the number was different. He thinks it was intentional, but it is at the discretion of the Board.

Ms. Thomas said the number is 0.3.

Mr. Wyant said he wanted the 0.5, but at least to have a number in there.

Mr. Boyd said there is a motion on the floor which includes the 0.3.

Mr. Rooker asked if Mr. Dorrier would incorporate that into his motion.

Mr. Dorrier agreed to make that amendment to his **motion**. Mr. Wyant gave **second** to the motion.

Mr. Rooker said he just wanted to be sure that the number in the motion was 0.3.

Mr. Boyd asked for a roll call at this time, 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.

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

1. The church's improvements and the scale and location of the improvements shall be developed in general accord with the conceptual plan entitled "First Christian Church," prepared by McKee Carson, and dated 11-14-2006L;
2. The area of assembly shall be limited to a maximum three hundred six (306)-seat sanctuary;
3. No grading or tree removal shall take place within the area marked "area not to be disturbed" on the conceptual plan or within the seventy-five (75)-foot setback adjacent to Route 250 East;
4. No erosion and sedimentation control plan nor building permit shall be approved for the area marked "area not to be disturbed" without prior approval of a tree conservation plan complying with section 32.7.9.4 of the Zoning Ordinance;
5. All parking setbacks and undisturbed buffers required by Zoning Ordinance section 21.7, Minimum Yard Requirements, shall apply if this use is developed;
6. Lighting of the site shall be limited as follows:
 - a. Light levels at the property lines shall be no greater than 0.3 foot candles;
 - b. No flood lighting of the building is permitted;
 - c. Utilize bollard type lights in place of pole lights whenever possible. Use only full cutoff fixtures;
 - d. Site and building illumination shall be limited to the satisfaction of the ARB; and
 - e. All outdoor lighting shall be arranged or shielded to reflect light away from the abutting properties.
7. The existing prescriptive right-of-way along this parcel's Keswick Road (Route 731) frontage shall be replaced with a public right-of-way at least twenty-five (25) feet wide and dedicated to public use;
8. There shall be no day care center or private school on site without approval of a separate special use permit; and
9. If the use, structure, or activity for which this special use permit is issued is not commenced within sixty (60) months after the permit is issued, the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate.

Agenda Item No. 10. **Public Hearing:** ZMA-2006-018, Forest Ridge Lots 1 & 22 Amendment (Signs # 81, 82).

Proposed: Rezone 9.9 acres from property zoned R-10 (10 units/acre) with proffers to reduce reserved right-of-way, provide utility easement, and allow building setbacks. Currently has 38 duplex units, rezoning would permit 4 more.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Property designated Urban Density Residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses in Development Area.

Entrance Corridor: No.

Location: Property is located on southeast and southwest corners of Proffit Road/Moubry Lane intersection, approximately 1800 feet east of US 29 in Hollymead Development Area.

Tax Map/Parcel: TMP 46B4-03, Parcels 1, 22, B, and C.

Magisterial District: Rivanna.

(Notice of this public hearing was advertised in the Daily Progress on December 25, 2006, and January 1, 2007.)

Mr. Cilimberg said on January 22, 1992, the Board approved a Zoning Map Amendment with Proffers (ZMA-1991-08) that permitted development of Forest Ridge, a residential community of duplex units along Moubry Lane. There were four proffers included in this ZMA. Proffer No. 3 was dedication of a 30-foot strip along Proffit Road (State Route 649) and a reservation of an additional 30-foot strip for future road improvements by the County or the Virginia Department of Transportation (VDOT). Proffer No. 4 was an agreement to reserve up to nine feet beyond the 30-foot dedication and the 30-foot reservation for construction of a bike path. Proffer No. 4 does not specify who will own or construct the bike path.

Mr. Cilimberg said the purpose of ZMA-2006-018 is to alter Proffers 3 and 4 in a manner that will allow construction of the final two duplexes, one on Lot 1 and the other on Lot 22. Lots 1 and 22 are the last two lots in the development; they are corner lots but they do not have sufficient room for the required 25-foot setback on their Proffit Road frontage, but have the 25-foot setback on Moubry Lane. The applicant would like to modify Proffers 3 and 4 to allow six feet of the reserved 30 feet to be combined with the nine-foot bike lane into a 15-foot bike path and landscape easement (open space). If this 15-foot strip is open space, the applicant will be able to meet the 10-foot side setback from the open space and the 25-foot setback from the Proffit Road right-of-way. The new open space will be maintained by the Forest Ridge Homeowners Association.

Mr. Cilimberg said the issue is a potential impact on future improvements to Proffit Road. He is not sure of the ultimate design of those improvements or their location so losing of the six feet limits the room available for those improvements. He said there is no Proffit Road improvement project funded or planned at this time.

Mr. Cilimberg said staff found a favorable factor in that this approval would enable a developer to complete the project as allowed under the original rezoning, but the unfavorable factor would be the deletion of six feet of reserved right-of-way for Proffit Road, reducing any flexibility the County and VDOT might need to ensure good design for its widening, and a potential bike path is more appropriately located in the Proffit Road right-of-way than in open space or an easement on private property.

Mr. Cilimberg said because of those unfavorable factors staff did not recommend approval and the Planning Commission supported that recommendation, so this request comes to the Board recommended for denial. He said staff had noted in its report the particular changes needed in the proffers if this request were approved. Mr. Cilimberg handed to the Board members a copy of the applicant's amended proffer in the event the Board agrees to grant approval of this request. It has been reviewed and accepted by staff and the County Attorney. He said Mr. Jack Kelsey will discuss with the Board how these changes might relate to widening of the road in the future.

Mr. Jack Kelsey, County Engineer, said the specific area of concern was a turn-lane area between Moubry Lane and Springfield Road. The intersection design is such that a certain amount of stacking would be necessary to accommodate left turns while drivers wait for openings in approaching traffic to allow them to turn left. There is about 170 feet available for the stacking of vehicles between those two intersections, which would allow for five or six vehicles and still allow enough space between those two groups of vehicles to allow for other vehicles to transition into that shared turn-lane.

Mr. Kelsey said the amount of traffic using Proffit Road in the future is not known at this time. Projections are being made in Places29. Also, the Eastern Connector Study must determine where the Eastern Connector will tie in. If it should tie into Proffit Road, what will that do to the traffic counts? When there is more traffic on the road, there is a need for longer stacking lanes. The worst-case scenario would be a need for more than six stacking spaces. If that happened, then dual left-turn lanes would be needed for Moubry and another for Springfield. That would cause longer transitions on either side. He said the width of the improvements fit snugly within the limits of the proposed reduced right-of-way the applicant is proposing. He does not know what drainage improvements would be needed on either side. If the road remains as a rural section, there would be shoulders and ditches needed which pushes the limits of the right-of-way. If the road ended up being a curb and gutter section, there would still be drainage structures to deal with. Another thing to consider is grading. Nothing will be known until there is a final design. Additional right-of-way would be required. Since there is already a reservation in place it shouldn't be reduced until its known what's needed.

Mr. Slutzky asked if it were decided that the Eastern Connector would flow through Proffit Road, is there sufficient right-of-way in place now, or would there be the possibility of having to condemn these two new properties. Mr. Kelsey said on this property, between what has already been dedicated and what has been reserved, there is probably enough land.

Rather than making the landowner wait until the County knows what will be done with the road, Mr. Slutzky asked if it would be possible to waive the setback requirement, let the developer build the buildings, and preserve the right-of-way with the knowledge that if the County uses all of the right-of-way, he will not have as much setback. Mr. Cilimberg said the Planning staff talked to the Zoning Department and there would be a variance necessary to do that. It was Zoning's opinion that they couldn't identify a hardship associated with a variance. Mr. Davis said a variance would have to be granted by the Board of Zoning Appeals. Under the rules associated with variances, it would not qualify.

Mr. Rooker asked if the inability to use a lot because of a reserved right-of-way qualifies as a hardship. Mr. Davis said it is a "self-created" situation which is not eligible for a variance. They proffered and created the lots knowing the restriction was in place.

Mr. Rooker said at the time this was approved it should have been clear that the setback problem existed. Mr. Cilimberg said the application of setbacks has not changed since this zoning was approved.

Mr. Rooker said they showed lots which apparently could not be built on. Mr. Cilimberg said they showed lots with the accommodation for dwellings. The decision, in part, is the size of the dwelling which determines how close the dwelling is placed to the road. In that zoning action nothing located buildings on this property showing they were too close to the public right-of-way.

Mr. Rooker asked if they could move the buildings on the lot six feet or are they compressed on both sides. If they had that option in the beginning, why do they not have that option now?

Ms. Thomas referred to a picture Mr. Kelsey had shown noting how the road might be designed. She could not see the bike trail on that rendering. Mr. Kelsey said it did not show on that rendering. It shows the bike lanes in the streets.

Ms. Thomas asked where the bike lane would have been located in the original plan. Mr. Kelsey indicated on the rendering where it would be located.

Mr. Cilimberg said Mr. Kelsey had included the design of a bike lane in the cross section. He didn't include an additional bike path separated from the road, which would have been accommodated under the original rezoning and which can still be accommodated under the change to the proffer, but it would be accommodated over private open space, rather than over public property.

Mr. Boyd asked if the concern is not due to safety, but a matter of how it would be maintained. Mr. Cilimberg said it would be part of a longer bike path, so it would be the maintenance of that path across their property which would be in a private easement rather than public property.

Mr. Boyd asked how many feet that would be. Is it a large distance? Mr. Cilimberg responded that it would probably be a couple of hundred feet.

Mr. Boyd asked if it would be the responsibility of a homeowners' association to maintain that part of the bike lane. Mr. Cilimberg said it could be in the private space, or it could be an easement to the County so it could be maintained by the County. Mr. Davis said that is possible.

Mr. Wyant asked if the County does not usually want these bike lanes in the state's right-of-way. Mr. Cilimberg said "yes."

Mr. Wyant said things are much easier to enforce if they are consistent. If the Board keeps changing back and forth, it is a problem for staff and everybody else. Mr. Cilimberg said that is one reason for staff's recommendation. It did not want to have this bike path provided through this area outside of a public right-of-way.

Mr. Wyant said the cross-section in the staff's report shows the travel lane, a center turn lane, a bike lane and a turn lane coming into the property, plus there is additional space. There is not a lot of grade through this area so fill or cut will not take much of the right-of-way; there will be a surplus of property even with the difference. If there were a two-foot difference, it would only go out four feet to catch that kind of cut; it is not a lot of space. He thinks the cross-section shown to the Board is reasonable.

Mr. Rooker said he understands there is a difference in the amount of roadway between what they are proposing and what was reserved in the original proffer. This road could become a four-lane section through this area. Mr. Kelsey said if these two intersections grew much farther apart, the left turn movements would not be as much of an issue. Because they are so close together, it limits the number of vehicles that can sit in a stacking lane.

Mr. Wyant asked if most of the traffic would be coming from Route 29. Mr. Kelsey said that is where the Eastern Connector comes into play. If that Eastern Connector is tied into Proffit Road, that would change the dynamics of the traffic movement. There could be more commute traffic using that portion of the roadway than is happening now.

Mr. Wyant said he never envisioned the Eastern Connector going out that far.

Mr. Boyd said he did not either. Mr. Kelsey said the consultants are looking from Proffit Road to a point closer to the City at Rio Road to determine the best alternatives or locations for the connector.

Mr. Wyant mentioned the proposed roundabout on Proffit Road for traffic from the North Pointe development. He asked if North Pointe is only one-quarter of a mile north on Route 29. Mr. Cilimberg said the applicant had shown on his plans an area that might include that roundabout.

Mr. Boyd said he would like to involve the applicant in this conversation, so opened the public hearing at this time.

Mr. Kirk Hughes, Kirk Hughes Associates, addressed the Board. He said there has been an inconsistency in what's been required of development along Proffit Road. At the time of the original rezoning a parcel in Forest Lakes was rezoned and dedicated to the public. It is a 30-foot section on their side of the road which is now in the ownership of Albemarle County. Forest Lakes also dedicated 30 feet from the centerline on their side of the road. When the church to the west was developed, they were asked for an additional 18 feet. None of this matches up on either side. He said the grade between Forest Ridge and Springfield is at the grade of the surrounding intersections. In his opinion, in any design to improve that road the vertical section will not change much because of the intersections and the way the land lays. There will not be a need to raise the road.

Mr. Hughes showed their conceptual plan for the road improvements; it shows a roundabout. Their road section is shown as a typical section for a portion of the road (three lanes, turn lane in the middle, a bike lane on both sides). This all falls within 30-feet of the existing center of the road. The portion across their property has been dedicated. There could be three lanes.

Mr. Rooker said the County Engineer has said there may need to have room for four lanes because of the turning movements. Mr. Hughes gave as an example Rio Road coming into town past Fountain Court. He said it has five lanes with two bike lanes, curb and gutter, sidewalk, and the right-of-way width along there is 90 feet, which is 45 feet from the centerline of the road; that accommodates all of the turns along that road. His proposal is to accommodate enough room for 54 feet.

Mr. Rooker asked if that includes nine feet for the bicycle path. Mr. Hughes said "yes." They are showing two bike paths that are in the road section itself. He thinks there is a difference between a bike path and a bike lane. They are showing two bike lanes. He is not sure whether when this proposal was before the Board in 1994 it was referred to as a bike path or a bike lane. Ultimately all of the designs in an urban section say bike lane.

Mr. Dorrier asked if a bike path is 15 feet and a bike lane is 12 feet. Mr. Hughes said a turn lane is 12 feet and a bike lane on the plan at their entrance is shown as five feet.

Mr. Rooker asked if there is there any reason why the building cannot be moved if the setback is from the building. Mr. Hughes said the builder customized the building for this lot to fit the 25-foot setback. At the time the builder presented a plan to start construction, everybody thought it was 10 feet; when they applied for the building permit they were told it was a 25-foot setback to the right-of-way. That was when the builder came to him and asked what could be done. He came to the County and was told that because of the issue about hardship it would take a change in the proffer.

Mr. Rooker said he does not understand why in the remaining space the builder cannot build a duplex that satisfied the setback requirements. Mr. Hughes said the duplex would go on the lot centered.

Mr. Rooker asked if it could not be moved a little off center since this only involves six feet.

Mr. Sam Craig, the builder, said they custom designed a plan for that lot because they assumed a ten-foot setback. Once they found that the interpretation was for a 25-foot setback, they realized the building they custom-designed for the lot wouldn't fit. He said they could redesign again and create a building that would fit, but they don't think it would be as attractive or as marketable.

Mr. Slutzky said he would like a clarification. Does Mr. Hughes think County staff is misinterpreting the ordinance? Mr. Hughes said the plat that was originally signed has the three lines showing the setback and it says "side setbacks are ten feet." Mr. Cilimberg said that is standard language.

Mr. Hughes said the ordinance has definitions on size, so maybe he interpreted the setback to be 10 feet and the real setback was 25 feet.

Mr. Slutzky said if the setback was 25 feet all along, it was just a misunderstanding on the part of the applicant. Mr. Cilimberg said Mr. Craig brought up a good point. Zoning has said that when there are two public road frontages, one is a side setback in terms of the construction of the dwelling. In terms of its relationship to public right-of-way, it is considered another front setback. In reality, when the lot is on a corner there are two front setbacks. He thinks Mr. Craig said they were viewing that as a side setback because it was the side of the house.

Mr. Davis said that has been clearly and consistently applied in the Zoning Ordinance. In this situation, there is a 25-foot setback on the plat.

Mr. Wyant said a side setback is shown on a plat. He asked if it was noted on the plat what was required for the public right-of-way. Mr. Davis said he does not think a setback was shown for this lot. It addressed side setbacks as 10 feet and front setbacks as 25 feet, but on a corner lot there are two front setbacks.

Mr. Slutzky said the applicant has mentioned that it is not known at this time if the Eastern Connector will go through that area or not. The ultimate road section is not known, but the applicant said this particular road could be built from the midpoint to the applicant's property making the adjustment the County wants. What is the likelihood there would ever need to be more than that section? If an Eastern Connector were built, is the Rio Road example likely to be insufficient for that purpose? Mr. Kelsey responded that only enough room could be provided for five or six cars to stack for left turn movements

and that is minimal. The rough traffic figures for Proffit Road in 2025 are between 8,000 and 8,500 vtpd. The more vehicles traveling on a road, the more stacking space is needed for the left turns.

Mr. Slutzky said the applicant has said they could provide their half of a 90-foot width for that road. Would that 90-foot width not be enough? Mr. Kelsey said that was his concern when he drew his conceptual section on the plan. When putting the travel lanes and the bike lanes in the street that adds to the width and drainage facilities. Because it is a rural section, there must be room for shoulders and ditches. Everything fits tightly within the right-of-way.

Mr. Slutzky asked if there is the potential that 90 feet would be insufficient.

Mr. Rooker commented that he doesn't think there are 90 feet. Mr. Kelsey said with the existing dedication and the 30-foot reservation, he thinks everything could probably fit within that 90 feet.

Mr. Boyd asked how many feet are on the other side. Mr. Kelsey said he does not know if right-of-way has been dedicated on the north side of the centerline. Mr. Cilimberg said that over time right-of-way has been dedicated as part of developments taking place on Proffit Road. A lot of the right-of-way was in prescriptive easements, so staff does not know what is on the other side or what easement exists for where the road sits. When a new project is done through there, all of the prescriptive easements will have to be done away with and right-of-way acquired to accommodate the improvement. There is one other distinguishing factor to this. In addition to the plan Mr. Kelsey drew up and the one Mr. Hughes showed (including the cross-section of bike lanes and turn lanes and travelways) this particular original proffer allowed for a bike path, which is a whole separate facility that the County would want in public right-of-way, but it is not in existence on something like the Rio Road example. He said it may or may not be incorporated in Proffit Road in the future, but as an example, that concept was incorporated into the Meadow Creek Parkway, which will have bike lanes plus a separate bike path. It is not known whether that will happen on Proffit Road because the design has never been done. If it is a concept the Board wants to continue to reserve the opportunity for, that is not even shown in these plans.

Mr. Boyd said assuming the Eastern Connector followed that route, this six feet would be a very minor problem compared to a one-lane railroad bridge and the width of easement along Proffit Road. He is just trying to put into perspective how big a problem the six feet really is for something the Board does not know would ever be built. He said the people who live along that road now do not want it to ever be built.

Mr. Wyant asked the width of a bike lane. Mr. Kelsey said it depends on whether it is on a rural section or adjacent to a gutter pan. Adjacent to a gutter pan it is four feet; if you're adjacent to a curb with no gutter pan or edge of pavement on a rural road it's five feet.

Mr. Wyant said with bike lanes on both sides of the road that would be 10 feet, and the lanes are usually 12 feet. Mr. Hughes said eleven feet is what is seen in most urban sections now. He showed a rendering of their intersection using curb and gutter. They have allowed for bike lanes on both sides, plus a five-foot sidewalk. There are still 11 feet remaining on their side of the road so bike paths could be put in if needed. He said the interesting thing is that all are looking at only one side of this road. Is the other side of the road going to be 54 feet also? He said that in 45 feet a road like Rio Road could be accommodated. His experience in doing land development, road design and location surveys, and right-of-way surveys is that the centerline of Proffit Road will not deviate through this section more than one foot either way. Beyond this about a half mile there will be some real design issues. Anything designed through there will be a public road built with public funds, so right-of-way will need to be acquired. What he is saying is that with 54 feet most of the wish list should be accommodated without taking all the right-of-way.

Mr. Rooker said the County already has this right-of-way; it was proffered. The question is whether to give back right-of-way that has been obtained in a proffer. The County does not know if there is 45 feet on the other side from the center going in the other direction; it is unlikely that there is. More of these improvements might need to be made on the south side of the road just because there is already the right-of-way. He assumes that whoever lives in those locations is not going to want the road expanded into their yard. He thinks it's generally unwise to start giving back right-of-way when it is not known what's going to happen there in the future.

Mr. Boyd asked if Mr. Rooker would apply that same principle to the Western Bypass. It is not something that has not been talked about.

Mr. Rooker said if the State decides to abandon that project, he assumes they will sell it back and get the most money possible for use on other projects. In this case, this is an existing road where there may be future plans for the road and there is existing right-of-way. The County has that right-of-way and the question is whether to abandon it. He said staff has recommended against it. The Planning Commission unanimously recommended against it. Could all of the potential improvements be fit into the existing right-of-way? It might be possible, but the Engineering staff is saying it is not a good idea to give up this right-of-way because no one can predict whether it will be needed.

Mr. Dorrier asked how long it is going to take for Proffit Road to be improved. He thought it was improved once with the new bridge.

Ms. Thomas said Proffit Road has been in the Six-Year Plan since Baker-Butler Elementary School was built.

Mr. Boyd said he thought that project was dropped. Mr. Cilimberg said it is not funded. It is on the priority list.

Mr. Dorrier said the improvement to Baker-Butler School would include this whole stretch. He asked if the applicant just wanted to know what he had to do immediately.

Mr. Hughes said the typical section the County built for the School is the one they are proposing. He said when the County engineered its project it did not take 60 feet off of one side. Saying 60 feet assumes that road is going to jog over to accommodate it so right-of-way does not have to be acquired on the other side. That is not a realistic approach. The road is going to stay generally at the centerline. The County has adequate right-of-way that's already been dedicated, so the question now concerns what's been proffered and reserved. That is not the County's right-of-way until it demands it. It is his opinion that the County will not take all of that right-of-way, but will only demand a portion of it to build whatever the ultimate section is. There will be a strip of property that remains with the homeowners' association.

Mr. Rooker said he understands what Mr. Hughes is saying, but the problem is that there is a difference between what he is saying and what staff has recommended. Mr. Hughes said he has a more realistic approach of showing what is going on. The fact is that there has not been consistency along the road on either side. Typically there should be consistency throughout and be a design to reserve and dedicate to.

At this time, Mr. Boyd asked if any member of the public wished to speak to this request.

Mr. Jeff Werner, representing the Piedmont Environmental Council, addressed the Board. He is not going to speak about Mr. Hughes proposal, but he wants to say he was alarmed to hear the Eastern Connector mentioned several times tonight. PEC has long feared the objective of some has been to either create an Eastern Connector on Proffit Road or as he has predicted, up on Watts Passage. He said the PEC, the Sierra Club, the Southern Environmental Law Center and the Albemarle Supervisors spent years fighting a Western Bypass because it was outside of the growth area, among other reasons. He showed on a map the Southwest Mountains Rural Historic District, easements of various types, the Proffit Historic District. He said Charles Martin had adamantly said he would never support widening the Proffit Road Bridge. Even talking about roads that are 20 or more years in the future is dangerous. He is concerned. If the Board is contemplating it, he suggested they look at his map which shows a lot of easements in this general area. He said if VDOT hears that the Board is talking about a road, they may not allow easements to be considered in that area. He said this is a troubling revelation. He said if the Board is even going to think out loud about an Eastern Connector on Proffit Road, the PEC and others are going to have to fight that as vigorously, if not more so, than they did the Western Bypass. They are very protective of the Southwest Mountains Rural Historic District.

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

Mr. Rooker said the County has a plan to improve Proffit Road from Route 29 to the Baker-Butler Elementary school regardless of an Eastern Connector. He understands this route is being studied as one of a potential number of routes for an Eastern Connector. If staff could tell him the profile that might be built when Proffit Road is improved would never require the utilization of this right-of-way, he would probably be okay. But, he does not think it would be wise to give up right-of-way that may be needed to build improvements which are actually scheduled in a Six-Year Plan. If something happens in the General Assembly and money becomes available, this could be a high priority project.

Mr. Boyd said he had some of the same thoughts. When a building spec was put together for this particular lot it was done in good faith. There was a 10-foot setback for it, so it's unfortunate that it's turned out this way. He is trying to weigh two different engineering opinions about what could be built there. From what little he knows about road engineering, he will agree that when there is a road in place it will probably not be moved too much, and it would probably be built from the center so he will support the request before the Board.

Mr. Slutzky said if the Board approves the applicant's request and later needed some of those feet back that would mean there would be less of a setback for the structure. He asked if the structure would have to come down. Mr. Cilimberg said "no."

Mr. Slutzky asked if the applicant had the option of revising their proffer to give back right-of-way sufficient to solve their setback problem, but giving the County the option to reacquire it at a \$1.00 if needed so the County would not have to pay money for it. That would solve their setback problem now. Mr. Davis said "no." Under the existing ordinance, the only time that lot could have a setback reduced from the 25 feet would be if the County condemned the property. This Board cannot commit a future Board to condemnation and if they sold it, it would violate the Zoning Ordinance, and that could not be done.

Mr. Slutzky asked if this Board could determine that the standard of hardship has been met even though it might not typically be applied to a situation like this. Mr. Davis said that is not a decision for the Board. It is State law that applies to the Board of Zoning Appeals, and that is a separate entity.

Mr. Rooker said the applicant can build on this lot with the existing setback. Mr. Davis said he would just have to build a house that fits the lot.

Mr. Boyd said the applicant has indicated it will not work.

Ms. Thomas said it could be a single home instead of a duplex.

Mr. Rooker said when he looks at the overhead on the structure he does not see a lot of difference between the width of that remaining lot and the width of the other lots in the subdivision. The corner lots are deeper to start with, so even the reduced lot looks to him to be about the same size as the other lots. He said when staff showed where the existing right-of-way is, and if you look at the width of the lot that is left after the setback, it is not a lot different than the existing lots.

Mr. Boyd said the useable surface is not as much because there is 15 feet more setback required. Mr. Craig said the buildings are about the same.

Mr. Rooker said this is an existing subdivision. He said that Lot 1 is 110 feet, 50 inches; he wondered if that is the depth of that lot from the setback. Mr. Craig suggested looking at Lot 22. He said as it gets closer to Proffit Road, the depth of the lot is not as great so instead of building a house which is as deep front to back a house had to be designed that went further left to right.

Mr. Rooker said that is not true of Lot 1. It widens out as it gets close to Proffit Road. Mr. Craig said it was a similar concept where they had to custom design.

Mr. Wyant said the lots appear to be the same square footage. He asked if that is correct. Are the lots about 9,800 square feet each? Mr. Craig said they had to go wider on Lot 22 and Lot 1.

Mr. Dorrier suggested County staff meet with VDOT and come up with a design for that roadway.

Mr. Boyd asked if Mr. Craig met with the Highway Department. Mr. Craig responded that VDOT approved their proposal.

Mr. Rooker asked if that approval was based on the entrance, or based on giving up right-of-way. Did they actually look at the project that might be designed through there and said they would not need the right-of-way. Mr. Craig said that is correct.

Ms. Thomas noted that a copy of the letter is in the Board's packet. They are not talking about future development of the road, but about the present situation.

Mr. Dorrier said it could be 30 years before that road is improved.

Mr. Boyd asked Mr. Cilimberg about the letter. Mr. Cilimberg said comments in the letter were exclusively related to what would be part of a potential improvement exclusive of a bike path. They acknowledge that the bike path would not be in the public right-of-way.

Mr. Boyd said that is because they will be building bike lanes. Mr. Cilimberg said they will build bike lanes and include those in right-of-way, but if there were a separate bike path the County would want it in the public right-of-way. They acknowledged that it was acceptable to them that it not be in the public right-of-way.

Mr. Rooker said he does not read the letter as a rousing endorsement of the proposal.

Mr. Boyd said he thinks it is an indication that what they are proposing is doable and VDOT believes it is doable.

Mr. Rooker said it is stated in the letter that "Hopefully this will allow VDOT to relocate the utilities without additional easements."

Mr. Wyant said if they were using 12-foot lanes and 10-foot bike lanes that would be 84 feet. Taking off ten feet for two five-foot bike lanes on each side, there could be still be five 12-foot lanes with a center lane, leaving 14 feet to make a cut and fill on both sides with curb and gutter.

Mr. Rooker asked about the utilities.

Mr. Wyant said utilities can be put beneath sidewalks, they have not had dedicated utility strips. He said electric and telephone usually run down the edge of the right-of-way. He thinks it is a doable situation. Also, as far as the Eastern Connector is concerned, those easements will probably cause major headaches if that connection is ever made. He then offered **motion** to approve ZMA-2006-018 as proposed by the applicant subject to the revised proffers dated January 10, 2007.

Mr. Davis noted that County staff worked with Mr. Craig to get the proffers in order.

Mr. Dorrier then **seconded** the motion.

Ms. Thomas said she thinks that when the Board approved North Pointe it agreed there would be widespread offsite traffic impacts from such a large development. The Board was able to get the applicant take care of immediate problems, particularly on Route 29. She apologized for not bringing a traffic count for North Pointe, but said there is no way to ignore the fact that the Board has put a large traffic creator into this neighborhood. She would be inclined to approve the applicant's request, but not with that large traffic generator next door.

Mr. Boyd said if the County had been able to work out the mechanics of a CDA with the developer of North Pointe, there would have been an opportunity to have those improvements built because he thinks the developer of North Pointe was willing to run the road further. The Board chose not to do that, and even though the traffic will be created there, there is no way to design a road, or a way to deal with it; that doesn't change this particular situation. He thinks they've got a workable design for it with the space that's there.

Mr. Dorrier said he thinks a bike path will actually make it safer in that area for bikes to coexist with cars. He will vote for it for that reason.

Mr. Wyant said when the Proffit Road Bridge was repaired without adding additional lanes, it helped provide some traffic calming. He hopes that in the future it will discourage traffic from going that way and bikes will be able to ride safely on the road.

Mr. Slutzky said this is a tough decision for him. He is inclined to vote for it. As much as he concurs with Mr. Rooker's aversion to giving back something the County might need, and given the fact that these are not lots that could not be built on with some reconfiguration of structures, he still can't fathom that the County will need that extra few feet of right-of-way in the future. By supporting this application, he does not think he will do anything that costs the County a nickel more.

Mr. Rooker said both staff and the Planning Commission recommended against it for that very reason.

With no further discussion, Mr. Boyd called for a roll call. The motion **passed** by the following recorded vote:

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

(Note: The proffers, as amended January 10, 2007, are set out in full below.)

Original Proffer _____
Amended Proffer X
(Amendment # 1)

PROFFER FORM

Date: January 10, 2007

ZMA # 2006-018

Tax Map and Parcel Number(s) 046B4-03-00-00100, 046B3-03-02200, 046B4-03-00-000B0, 046B4-03-00-000C0

9.9 Acres to be rezoned from R-10 to R-10

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner, or its duly authorized agent, hereby voluntarily proffers the conditions listed below which shall be applied to the property, if rezoned. These conditions are proffered as a part of the requested rezoning and it is agreed that: (1) the rezoning itself gives rise to the need for the conditions; and (2) such conditions have a reasonable relation to the rezoning request. These proffers amend those accepted in conjunction with ZMA # 91-08.

1. Any plan submitted for review to Albemarle County after rezoning will honor a minimum fifty (50) foot building setback buffer (utility construction is not restricted) from the existing drainage swale at the rear of Parcel 29N; the buffer will exceed fifty (50) feet from the print where contour 498 leaves the fifty (50) foot buffer, and follow contour 498 to the western property line, in order to protect critical slopes in the buffer area. A topographic and boundary sketch dated November 22, 1991 is attached hereto for visual clarification.
2. Any plan submitted to Albemarle County after rezoning will include areas reserved for construction of connecting internal roads with fifty (50) foot rights-of-way to adjacent properties, with the exception of Forest Lakes' townhouses, for future access as the County may deem necessary. The Owner shall not be obligated for the cost of construction of such connecting internal roads.
3. Upon the request of Albemarle County, the Owner shall dedicate to public use for improvements to State Route 649 the twenty-four (24) foot strip adjacent to State Route 649 (Proffit Road) identified as "24' Dedicated to Future Road Right of Way" on the "Sketch Showing Option 1 Forest Ridge Parcel 'A' and 'B'" attached hereto. The deed of dedication shall be in a form acceptable to the County. The Owner shall bear the expense of preparing the deed, the survey, and the plat required to accompany the deed of dedication.
4. Upon the request of Albemarle County and in conjunction with the dedication provided in Proffer 3, the Owner shall grant an easement to the County over the fifteen (15) foot strip identified as "15' Bike Path and Landscape Easement (Open Space)" on the "Sketch Showing Option 1 Forest Ridge Parcel 'A' and 'B'" attached hereto. The deed of easement shall expressly allow the County or its designee to establish and maintain a shared bike/pedestrian path, landscaping, and utilities

therein. The deed of easement also shall grant a public right of passage over the eased lands, and grant rights of ingress and egress to the County and its designees to establish and maintain the path, landscaping and utilities. The granted rights shall be in perpetuity. The deed of easement shall be in a form acceptable to the County. The Owner shall bear the expense of the survey and the plat required to accompany the deed of easement. The Owner shall not be obligated for the costs of constructing or maintaining the path, landscaping or utilities.

Craig Builders of Albemarle, Inc.

(Signed) Sam Craig

Signature of Owner

Title: President/Owner

Sam Craig

Printed Name of Owner

01/10/2007

Date

#78). Agenda Item No. 11. SP 2006-021 Kappa Sigma International Headquarters Amendment (Sign

Proposed: Request to modify SP-03-91 (6.14 acres) (reconfigure grass stabilized parking and include future improvements, such as picnic pavilions, maintenance building and recreational areas).

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

Section: 13.2.2 (2) and 5.1.02 fraternal clubs.

Comprehensive Plan Land Use/Density: Urban Density Residential-residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses. Neighborhood 4.

Entrance Corridor: Yes.

Location: 1612 Scottsville Rd (Rt 20) approx 1 mile south of Mill Creek Drive.

Tax Map/Parcel: 91/16 and 91/16D.

Magisterial District: Scottsville.

(Notice of this public hearing was advertised in the Daily Progress on December 25, 2006, and January 1, 2007.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said approval of this special use permit will modify their original approval. He said the property is located on a rural section of Route 20 approximately two miles south of Charlottesville. Surrounding properties are occupied by single-family homes on large parcels. The site is currently being developed with a building which is under construction and will be the international headquarters for the Kappa Sigma fraternity organization. The request is for a modification to the existing special use permit by reconfiguring the grass-stabilized parking and making improvements to the site including picnic pavilions, a maintenance building and recreational areas.

Mr. Cilimberg said staff identified the following factors favorable to this application: 1) This is a relatively low impact use to a residential area; 2) It provides pedestrian connections at the front of the site; and, 3) The building and uses can provide a neighborhood center to the surrounding community. Staff also identified the following factors unfavorable to this application: Recreational uses could have elevated noise levels at times. The recommendation from staff and the Commission is for approval. He said it was noted that there needed to be a revision to the plan presented to the Commission in the way of some notes; that has been done since the Commission meeting.

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

Mr. Lance Koth, the civil engineer consultant who assisted with preparation of the application offered to answer questions.

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

Mr. Dorrier immediately **moved** for approval of SP-2006-021 subject to the conditions recommended by the Commission. 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.

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

1. The Kappa Sigma improvements and the scale and location of the improvements shall be developed in general accord with the plan (Illustration A) entitled Kappa Sigma Fraternity International Headquarters, prepared by Glave & Holmes Associates and dated September 20, 2006, revised December 11, 2006;
2. Lighting of the site shall be limited as follows:
 - a. Light levels at the property lines shall be no greater than 0.3 foot candles;
 - b. No flood lighting of the building is permitted;
 - c. Only the parking lot north of the building shall be allowed pole lights;
 - d. Utilize bollard type lights in place of pole lights whenever possible. Use only full cutoff fixtures;
 - e. Site and building illumination shall be limited to the satisfaction of the ARB; and

- f. The lighting for any recreational facility may only be inside the picnic pavilions. Lighting shall be excluded from other recreational areas;
3. Final site plans shall show a reservation, or provide a note, for future vehicular and pedestrian connections to adjacent parcels to the north and south;
4. A pedestrian connection from the future pedestrian/bike pathway on Route 20 into the site shall be constructed with the site improvements. The pedestrian path (from Route 20 to the building and aligned along the travelway as shown on the revised application plan, dated September 20, 2006, revised December 11, 2006) shall be constructed in accordance with Chapter 6 of the Design Standards Manual;
5. A right turn and taper shall be constructed at the entrance in Route 20 to the satisfaction of VDOT;
6. Landscaping shall be provided to limit the impact of the storm water area on the Entrance Corridor to the satisfaction of the ARB;
7. The applicant shall construct public water service to the site via extension of the existing Albemarle County Service Authority water line located on the west side of Route 20 and public sewer service via extension of the existing Albemarle County Service Authority sewer line located along route 20 and the Cow Branch Creek, generally as provided in the report entitled, *Preliminary Engineering Report Water and Sewer Facilities for Kappa Sigma Headquarters by Draper Aden Associates, dated march 30, 2004*;
8. A plat to combine the parcels shall be submitted concurrent with the amended site plan submittal or an SP will be required; and
9. All grass parking areas shall be "Grasspave" unless a product deemed equivalent is approved by the county engineer and the amended site plan shall include "Grasspave" manufacturers material specifications, requirements for installation, provisions for watering (ex. sprinkler system, etc.), and maintenance requirements (ex. fertilizing, watering, mowing, etc.) to the satisfaction of the county engineer.

Agenda Item No. 12. Committee Reports and Other Matters from the Board not listed on the Agenda

Ms. Thomas commented that it was interesting to get a report from the Farm Bureau concerning land use taxation. A few weeks ago she found that when somebody buys land in Albemarle County and that is already enrolled in the land use taxation program, they receive a letter from the County's Finance Department telling them how they can keep their land under land use taxation, and stating the various categories, but the letter does not include any of the provisions that must be met in order to keep the land in land use taxation. There are little things involved like fighting noxious weeds (such as Johnson Grass in this area). There are also regulations on the number of cattle that must be on the land if the land is in agriculture. There are a number of requirements that some other counties put out to landowners with some regularity – some counties require reapplication each year. She does not recommend that, but when land is changing hands, and a letter is already being sent, she would like for staff to amend the letter so it says what must be done to meet the requirements for land use taxation. The letter as written is fine from the Finance Department's point of view, but it is not fine for the landowner.

Mr. Wyant said once something is drafted, he would like to see the letter. Owners don't always understand what is required and expected of them.

Ms. Thomas asked if support of land conservation funding should be added to the legislative packet. Mr. Davis replied that in the legislative package there is already a general provision that supports this, but it certainly is acceptable to adopt a more specific resolution. He thinks staff and the Legislators have general directions from the Board.

Mr. Rooker suggested that it might be helpful to have a letter from the Chairman of the Board expressing support in lieu of a separate resolution.

Mr. Wyant said last month he worked with two families on easements. During budget time he said the County should do more to advertise the ACE Program. He said there are a lot of programs available. He noted that the owner of a huge farm is considering entering into an agreement with ACE, and it will be a good example for others to see.

Mr. Rooker noted that the Board had allocated \$10,000 during the last budget session to work with the easement groups in the community. He wondered if anything had been done with that money so far.

Ms. Thomas said Ms. Lee Catlin held a meeting. One suggestion she received from a middle-income family for a gift easement, not the ACE Program, is that assistance be given in the way of hiring a surveyor, etc.; perhaps help in defraying that cost would encourage more participation.

Mr. Rooker said he just did an easement for a client. It is a long process, and can be expensive. Perhaps the Board might make funds available to assist parties who are interested in pursuing an easement but are dissuaded from doing so by the cost. He said it could be based on income-testing similar to that used for the ACE Program. Mr. Davis said there is no enabling authority which allows the County to give funds to a private landowner for that purpose.

Mr. Rooker asked if the County could pay expenses for an easement from which there would be a public benefit. Mr. Davis said as part of the ACE program there is money paid for the easements that

helps compensate people for those expenses. There are other ways it could be done, such as through a third-party 501(C)(3) type of organization. Generally a county cannot provide money to a private landowner unless it is in exchange for something the public receives.

Mr. Rooker asked if money could be provided to VOF to use within Albemarle County to assist landowners in paying the expenses of the easement process. Mr. Davis replied that VOF is a public entity but may not be a 501(C)(3) entity. There are other entities where that could be arranged.

Mr. Rooker said this is Ms. Thomas' idea, but he would suggest that the Board ask staff to talk with VOF and PEC and find out if they are having difficulty with the easement process because of the expense involved. Maybe there is some way the Board could assist in solving that problem. If they say it is not a problem, there is no reason to spend public money.

Mr. Cilimberg said Ms. Joan McDowell is going to meet with easement interests soon. Staff wanted to talk with them about the easements obtained last calendar year in the County.

Mr. Boyd said the Board is interested in facilitating as many easements as possible, so would like to know if there are things the Board can do to help with the process.

Mr. Slutzky distributed to the Board members a copy of a bill that was introduced yesterday by Del. David Toscano at his request related to refining existing TDR enabling legislation to make it more flexible for the County to decide how to implement such a program. He said one issue related to the definition of "development rights" is addressed by this piece of legislation. He said the current definition is: "A development right means permitted uses and density of development that would be allowed on ascending property under any local zoning ordinance on the date an application is submitted pursuant to this article." Under the proposed bill, language saying "... unless otherwise defined in an ordinance adopted pursuant to this statute" would be added. It would give the local government a little more flexibility in defining the development right. For example, if after a downzoning development rights were rendered not usable, but the Board still wanted them to be available for transfer, this legislation would make that possible.

Mr. Slutzky said when he talked with Mr. Toscano he said he would be happy to promote this legislation but he wanted to make sure the entire Board was behind it. Mr. Slutzky said he hopes the Board supports it, so he drafted a resolution he would like for the Board to pass. He then read his resolution to the other Board members ending with a statement that the Board expresses its support of any effort by the General Assembly to increase the opportunities for local governments to implement effective TDR programs including, but not limited to, such modifications to the existing enabling legislation reflected in H.B. 2003, a draft of which is attached hereto. He said if the Board is comfortable with that wording, he hopes the resolution can be passed unanimously so Del. Toscano can use it.

Mr. Boyd said he thinks this is a decision the Board made previously. It agreed to support legislation on this subject.

Ms. Thomas noted that she is aware of another piece of TDR legislation submitted and she wants to make sure this resolution does not commit the Board to supporting something that might be awkward for it to support. Mr. Davis said the only other TDR resolution he is aware of is a bill being worked on by VML and VACo which was intended to amend the legislation to allow transfer of development rights from counties to cities if a local government agreement were entered into and approved by the Commission for Local Government. He said that bill has a component that would address this issue as well; it is slightly more restrictive in its language. He thinks that bill will be introduced. There are other interests in amending the TDR bill from the development community, but he has not seen that bill.

Mr. Rooker said he thought the Board had included in its legislative package the idea of trying to make existing TDR legislation more flexible. What Mr. Slutzky presented just adds a clause to the existing statute to provide additional flexibility. He sees it as beneficial to counties statewide to have more flexibility rather than less flexibility. This does not commit the Board to support any particular plan of TDRs in Albemarle County. He supports the proposed amendment.

Mr. Wyant and Mr. Dorrier both agreed.

Mr. Slutzky then **moved** to adopt the resolution he had read into the record. Mr. Rooker **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.

(Note: The resolution, as adopted, is set out in full below.)

RESOLUTION OF SUPPORT FOR HB 2503
REGARDING TRANSFER OF DEVELOPMENT RIGHTS (TDR)
ENABLING LEGISLATION

WHEREAS, the County of Albemarle's citizens have overwhelmingly indicated that they support measures designed to reduce the amount of development that occurs in our Rural Areas; and

WHEREAS, the County of Albemarle has endeavored to adopt a range of policies and regulations intended to protect the economic, cultural, and natural resources of Albemarle County's Rural Areas; and

WHEREAS, the Virginia General Assembly in 2006 enacted enabling legislation allowing local governments to establish Transferable Development Rights programs that would make it possible for development to occur in a more desirable manner; and

WHEREAS, the aforementioned TDR enabling legislation included certain language that may limit Albemarle County's opportunities to implement a successful TDR program;

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby expresses its support of any effort by the General Assembly to increase the opportunities for local governments to implement effective TDR programs, including but not limited to such modifications of the existing enabling legislation reflected in HB 2503, a draft of which is attached hereto.

Mr. Rooker noted that he and Mr. Boyd met with representatives from the City on the current transit rates. That group – which also included Mr. Kevin Lynch, Mr. Bill Watterson and Mr. Tom Foley – reached an agreement on a formula. One of the primary issues with transit over the years has been to make certain there was a consistent formula for how the County would be charged for transit by the City. The implementation of that would enable the Board to make decisions about expanding transit with some confidence that the next year the method of payment for transit would be the same. That group came to an understanding of what that formula would be. City and County staff members are working to formalize it. In the absence of a regional transit authority, it is a necessity for the Board to expand transit and when making those decisions to have some confidence in what the County would be charged.

Mr. Rooker said that at an earlier meeting concerning the Mountain Protection Ordinance, the Board discussed having some communication go to people filing for site plan approval or for a building permit in the mountain overlay areas, stating things the Board would like to have them consider, even if they would not be requirements. He asked that the Board reach a consensus and get staff to work on that idea.

Mr. Slutzky felt it was a good idea. He asked if it should be more general than just the Mountain Overlay area and include the entire rural area.

Mr. Boyd said it does not look like the Board is going to establish a Mountain Overlay area.

Mr. Rooker said there are areas designated in the Comprehensive Plan as mountain protection areas. There are some things that are particular to the mountains that might be a little different.

Mr. Boyd asked if the Board had set aside funds for this purpose.

Mr. Wyant agreed it would be a good idea for people to know that in advance of applying for a permit.

Mr. Boyd asked if Mr. Rooker was thinking about a brochure.

Mr. Rooker said "yes."

Mr. Boyd said he thinks it is a good idea.

Ms. Thomas said it could be like another brochure she had received called "The State of the Chesapeake Forests." It talks eloquently about the importance of the forests which is not identical, but is very similar to the mountains here.

Mr. Rooker suggested the information be sent to the building and real estate community.

Mr. Wyant said he has been thinking about the 800 names on the petition concerning the east side of Route 29. He said he uses Berkmar Drive a lot and he would like for the Board to direct the Planning Commission to consider extending that road. There is a developer who is willing to help the County with transportation and improve Route 29. He thinks there is a small section on Route 29 that needs to be three-laned. He then **moved** that the Board ask the Planning Commission to look at the Berkmar Drive Extension on the north side of the Rivanna River, related to an application south of the Hollymead Town Center.

Ms. Thomas said that roadway is part of the Places29 Study. Mr. Cilimberg emphasized that this is being studied as part of Places29.

Mr. Boyd said the people who are willing to put up \$12.0 million for road improvements along Route 29 and build a good portion of Berkmar Drive Extended are getting tired of this and are "going to move away from this project." He thinks to ask them to wait another year or more on top of the two years they have been waiting will cause the money to go away. He said the Board is a deliberative group, but he thinks that sometimes it needs to seize the opportunity. He thinks that to ask these people to put off

that proposal for another year would make it go away. He thinks that whether it is removing it from Places29 or taking it off hold, the process will probably run parallel with Places29. He has been to every meeting on Places29, and he has never seen Berkmar Drive as a preferred option or endorsed by the people at the charrettes. He does not think it will be removed from Places29.

Mr. Boyd said that about a year and a half ago, the Planning Commission put this developer's request on hold. Mr. Cilimberg clarified that they added the area being sought for addition to that part of the development area and incorporated it into the Places29 Study. It is being evaluated for an additional area to be included as part of the study.

Mr. Boyd said what the Board is hearing is that the project needs to be moved along and in order to do that it has to be pulled out of Places29 and put it back on a separate track.

Ms. Thomas asked if Mr. Boyd is saying that someone has offered to build the bridge across the river.

Mr. Boyd said he did not say that. He does not know what they are offering because the Board won't let them bring anything forward.

Ms. Thomas said if they want to build that bridge, they can certainly bring their request forward.

Mr. Boyd said that is not what he is saying will happen, but they are interested in some rezoning to facilitate more improvements on Route 29 and to build a portion of Berkmar Drive Extended.

Mr. Rooker said as a matter of process, it is "very ill advised to bring these kinds of things up at the end of a meeting under 'Other Matters from the Board not on the Agenda' to try to get some rush vote on something we have no staff report on that is a huge decision."

Mr. Boyd said it is a decision to simply put something on the table. It is not a decision for any other purpose.

Mr. Rooker said Mr. Boyd is talking about something for which he has not seen a proposal.

Mr. Boyd said it will not be seen unless the staff allows it to be filed.

Mr. Rooker asked if Mr. Boyd was suggesting that the Board vote to instruct staff to take something out of the 29H-250 Study that nobody on the Board has seen and accelerate it without ever seeing what the proposal is. What Mr. Boyd is really talking about is a decision to expand the growth area and take in some of what is today rural area. That is a big decision.

Mr. Boyd said he knows that and he is not asking that the Board make that decision.

Mr. Rooker said the Board would be talking about rezoning property. When talking about transportation improvements, the Board does not even know what's going to be recommended by way of the improvements through that area. He thinks this particular developer has come before this Board a number of times and said "you have to do this right now or I am gonna go away." He does not think this property will become any less valuable two years from now than it is today. With the amount of commercial that's already been approved in that area he does not think the timing for this property's development is today. There are a number of areas where no building has taken place in that development, areas that have not been approved but which are in the process of rezoning. He does not see the rush. He has never seen any indication from that developer, even casually, that he would build that bridge, which is a \$20.0 to \$30.0 million improvement. What he has talking about doing is building a road through his land based upon getting it rezoned to a much higher use than it is today which would increase its values by millions. The Board does not know whether the traffic generated from that would actually overwhelm any proposed improvements he put on the table.

Mr. Dorrier said the proposal is to let the Planning Commission deal with it.

Mr. Boyd said that is right.

Mr. Dorrier said he thinks they should deal with it so he will **second** Mr. Wyant's motion.

Mr. Slutzky said before voting he will offer a couple of his thoughts on this matter. He has shared with that developer his view that if there is not a bridge, Berkmar Drive continued and Route 29 widened, he has no incentive to be supportive of development in that tract of land. He would have limited interest in expanding the growth area even if there were an offset in some other area of the County without those particular improvements being proffered (particularly the bridge). From what he has heard casually, it seems there may be a possibility of getting that bridge at least partially funded and these road improvements done, but there may be a limited window of time. He understands that threat has been used before on more than one occasion. He asked if the Places29 exercise has reached the point where there will be consolidation of the three alternatives and those alternatives brought to the Board for review. How long would it be before the Board knew the appropriate use of this property? If the Board were to free this project to move forward toward the Planning Commission, how much time would that take?

Mr. Cilimberg said for what might ultimately be proposed in this area, there will need to be a Comprehensive Plan change and a rezoning.

Mr. Slutzky asked how long that would take. Mr. Cilimberg said typically staff has looked at such projects for a year or longer in terms of going through an analysis, holding work sessions, a Planning Commission public hearing, then holding a Board of Supervisors' public hearing. For Crozet, the Board decided that once there was the framework plan for Crozet with which they felt comfortable, they would consider rezonings. He said that would be an alternative approach in this case.

Mr. Slutzky said the Board has done a few in the last several months which are in the Places29 area. Mr. Cilimberg said staff knows of a rezoning applied for in an area within the development area; it is an addition to the development area which is a different situation.

Mr. Slutzky asked if that property is both in and out of the development area. Mr. Cilimberg said "yes."

Mr. Rooker emphasized that the difference here is that this matter would require a Comprehensive Plan Amendment.

Mr. Boyd said he is not saying the County should or should not do it. He does not believe the Board should run the risk of not having it come to this Board and lose the opportunity for much needed transportation dollars. He just wants to get it into the process. If the Places29 process was not ongoing, this situation might have been completed a year or more ago.

Mr. Rooker asked that decisions like this not be brought up under "Other Matters" at the end of an agenda. It appears to him that what is happening tonight, and it has happened over the last month or so, is that several Board members talk to each other about an item that some may consider to be major decision, and then at the end of a meeting a motion is made to approve significant issues that are not on the agenda. He thinks that is improper procedure. He said that under "Other Matters from the Board not on the Agenda" the Board might talk about something like this and talk about putting it on an agenda for a thorough discussion. The idea of bringing up significant things at the end of the meeting under "Other Matters" that apparently a couple of Board members have chatted to each other about and feel they may get the votes behind the scenes, he thinks is improper, it should not be done, and he thinks the Board is going down a bad road.

Mr. Wyant said he brought it up because of transportation issues. He wants to see the plan the developer is proposing. If the road doesn't meet the County's need, is it worth going through the CPA process?

Ms. Thomas asked why the developer can't show Mr. Wyant his plan with a bridge in it.

Mr. Boyd said he doesn't think that bridge would be in the plan.

Ms. Thomas said she is not interested if the bridge is not in the plan. That is what Berkmar Drive Extended is, another bridge. She said Charlottesville is a community surrounded by a river and there are too few bridges. If the Board is not talking about a bridge, then it is really not talking about Berkmar Drive Extended. You would be going onto 29 and then back off of 29 which is already happening with the Hollymead Towncenter. She said Berkmar Drive Extended is a bridge. If there is someone who is saying they will help the County "right up to the water's edge", they are not really talking about Berkmar Drive Extended.

Mr. Boyd said he would like to address Mr. Rooker's question. He said the Board does not normally hold a public hearing on an agenda item because someone wants to bring a zoning text amendment before the Planning Commission. That is all he is talking about. He is saying there is an individual who is seeking to be "unclogged" from the County's system of not being able to present his plan. Nobody knows what his plan is at this time because "we" won't let it move forward.

Mr. Rooker asked for the definition of "we". He said it has not been brought to the Board.

Mr. Boyd said it is probably the Planning Commission. The Commission put this developer on hold a year and a half ago.

Mr. Rooker said Mr. Boyd is asking the Board to make a decision to second-guess the Planning Commission and direct them to take some action with respect to a plan the Board has not even seen. He said if Mr. Boyd wants to bring it before the Board to discuss and decide whether or not it should be accelerated, he would suggest it go on an agenda and there be a staff report, and it not be done on the spur of the moment without a staff report.

Mr. Boyd asked if Mr. Rooker was asking that the application be brought to the Board first.

Mr. Rooker said he is suggesting that if Mr. Boyd wants this Board to take an action directing the Planning Commission to do something with respect to a particular plan, that ought to be a public agenda item and it be discussed. He said Mr. Boyd is talking about proposals regarding the spending of dollars on a plan the Board has never seen. He said Mr. Boyd is acting on his own based on anecdotal information that has not been brought before this Board.

Mr. Boyd said normally the Board discusses anything someone wants to bring up. The people present tonight all came wanting this Board to pass some action. The Board did not require them to put their proposal before the Board before it went to the Planning Commission.

Mr. Rooker said the Board did not direct the Planning Commission in those cases; they went through the normal process. Mr. Boyd has suggested that the Board ignore the process and direct the Planning Commission to do something. He is saying that if the Board is going to take that extraordinary action, it should be put on an agenda, and a staff report written so the Board knows what it is voting on.

Mr. Slutzky said he is confused. He said that apparently there is a plan that has been put on hold by the Planning Commission. He asked if there is a complete hold on all applications within the master planning areas, or only the really big ones. What made this one be on hold versus the one at the corner of Rio Road and Route 29 that came before the Board recently?

Mr. Cilimberg said staff had an application for a Comprehensive Plan Amendment for this area. It was taken to the Planning Commission. Staff's recommendation was that the amendment be incorporated within the Places29 Study. It involved an extra area that would not have otherwise been looked at in the Places29 Study. The Commission agreed that was the proper course; incorporate the consideration of this additional area in the Places29 Study rather than having a separate Comprehensive Plan amendment process occur. That was the Commission's decision. Staff could have brought that to the Board as their decision, but staff did not have any specific development plans and a rezoning application in hand at that time.

Mr. Wyant asked if the Board has to do a Comprehensive Plan amendment after the Places29 Study is completed. Mr. Cilimberg said "yes." That is why the Commission made the decision they did. They felt the Comprehensive Plan was going to be addressed in that area through the Places29 Study and felt it was best to incorporate this particular application as part of that.

Mr. Slutzky asked if under any of the different scenarios brought forward for Places29, this land would remain in the rural area. Mr. Cilimberg said in one of the three scenarios it remains primarily rural.

Mr. Boyd asked if Berkmar Drive Extended would still run through that property. Mr. Cilimberg said "yes."

Mr. Boyd said that VDOT or the County would then have to pay for that road. Mr. Cilimberg said there were two other scenarios that had extensions of the development area that would incorporate some or all of this land.

Mr. Rooker said if that property is ever developed, whoever develops it will build the road through it. He doesn't think there has ever been a proposal where the main road was something the developer did not propose building. He doesn't see this as any kind of extraordinary offer. Somebody is going to build the road through their land to get it rezoned.

Mr. Boyd said there may be someone in the next 20 years who wants to build on that property. He asked if Mr. Rooker wants to take that chance because he is afraid to let this move through the normal process. He added that this would have been through the process were it not for the Places29 Study.

Mr. Rooker asked the big public benefit of a dead-end road that comes from Hollymead Towncenter toward the river (dead-ending at the river or near there), going only through the land of a private developer.

Mr. Boyd said the County would not have to build that portion.

Mr. Rooker said the County does not have to build that road. It is only the development of the property that makes the road necessary.

Mr. Boyd asked why the County is doing Places29 and why is it drawing all the roads into the plan. If the Board does not think it is an appropriate road, it needs to tell Places29 to take that road out of the plan because it makes no sense.

Mr. Rooker said his point is not whether this is a good or bad decision, but if the Board is going to deliberate this and try to make some decision, it needs to be brought up as an agenda item, with a staff report.

Mr. Boyd said he understands the Planning Commission asked this developer to hold off until January, 2006 because that was when they felt they would be far enough along with Places29 to do it. Now, it is January, 2007 and it will probably be January of 2008 before Places29 comes to the Board. How much longer can the Board expect the community to wait on the County to finish the Places29 project?

Mr. Cilimberg said he would like to offer a couple of thoughts. He thinks one approach would be for the property owner or whoever is looking to develop this land, to provide information to the County and the consultant in the Places29 study. He is not aware that they've done that. Staff has talked with other developers about what they plan to do with their land. The Commission did not ask them not to provide that information as part of Places29. If they have a plan, it should be shown to staff so it can be shared with the consultant and looked at in terms of the recommendations that will part of Places29.

Mr. Boyd said he thinks the consultants met with them and all of the other developers along Route 29. Mr. Cilimberg asked if the developer had shown the consultants their plan.

Mr. Boyd said he does not know because has no idea of what's going on. Basically, the County will not let the developer bring forward his plans.

Mr. Rooker said he thinks it would be wise to find out the answer to these questions before this Board votes on a motion.

Mr. Boyd asked if Mr. Rooker wants it to come to this Board before taking it to the Commission.

Mr. Rooker said Mr. Boyd just said he doesn't know any of these things, yet he is willing to propose a motion directing the Planning Commission to do something.

Mr. Boyd said just "to take the hold off of this project." That is all he is doing. Mr. Cilimberg said there is nothing that prevents this property owner from making an application for a rezoning if he wants to do so. The County would have to accept that application, but it would an application for a rezoning without the support of a Comprehensive Plan amendment. If there is interest in getting some development proposal for consideration, that does it. If there is information like that, and staff has not seen it, he thinks it would be good to have it as part of Places29. He said just asking the Planning Commission to move ahead on a separate Comprehensive Plan amendment in this area in and of itself isn't going to speed a thing up. A Comprehensive Plan change considered separately from Places29 by the Planning Commission is not going to move any faster than Places29.

Mr. Wyant said he hasn't heard anything from the developer about a bridge.

Mr. Slutzky said for him to support moving forward with the project in advance of Places29, he would need to know whether or not there is a bridge. There has been a lot of conversation about widening Route 29, and a lot of conversation about extending the road on the western side of the parcel, but there is a high community purpose to be served by having that bridge exist that he would be interested in hearing about it. He would not mind this moving forward in a hurry if the developer "has a bridge up his sleeve." Short of that, he does not know that there's as much incentive to jump ahead of the February stage of the Places29 Study.

Mr. Wyant agreed.

Mr. Boyd said he takes exception with some of the things Mr. Rooker said. He has been trying to get this project on the table for consideration for a year or more. It is not something that has just come up, or something that just happened. He said the County cannot put people off forever based on the master planning process. In the beginning, the Board said it would not put all projects on hold because of that process. This is not something that just came up tonight and it has never been talked about before and that nobody knows about. Everybody knows what it is and who the developer is.

Ms. Thomas said she has never seen anything about it.

Mr. Boyd said she can't see anything until it is accepted by the staff and then goes through the process with the Planning Commission.

Mr. Rooker said there is a purpose to that process. What Mr. Boyd is suggesting is that this Board treat this project differently from other projects. If this Board wants to consider something of that magnitude, he thinks the process should be that there be a staff report, the Board needs to deliberate over it, and hear public comments, if necessary. What Mr. Boyd is suggesting is that the Board second guess the decision of the Planning Commission based upon a couple of anecdotal statements about a plan that most of the Board members have never even seen.

Mr. Boyd said he has not seen a plan either. He said there isn't any plan. There is a Comprehensive Plan Amendment proposal that's been put on hold by the Planning Commission for over a year and a half. That's all he knows about it. He thinks that logjam needs to be undone because he has heard that they no longer want to do it.

Mr. Rooker said the Board really needs to be in a hurry here because "it only has about 3.0 million square feet of unbuilt commercial space" out there today.

Mr. Boyd said he doesn't care about the commercial. If the Board can get needed road and transportation dollars proffered, he is willing to listen to what they have to say. He does not want to say "come back in a couple of years" and in the meantime have these people walk away.

Mr. Rooker said at this point Mr. Boyd is describing a developer who is interested in building a dead-end road to serves his property. He does not see that as a great public benefit. He is certainly willing to hear more about it, and perhaps it could be put on an agenda and brought back to the Board for further discussion.

Mr. Tucker said there seems to be a lot of speculation today about what the proposal is. He said the Board might invite the applicant to appear before it and present his proposal so it would have an opportunity to ascertain his intentions about the road. He thinks a bridge is the key; otherwise, Berkmar Drive does not extend anywhere. He said it is an expensive project, and maybe it cannot be done by one person.

Mr. Boyd said there is much more than that involved. The Board is going to disrupt an entire neighborhood by running parallel roads through Forest Lakes because the opportunity to use those private dollars to build a parallel road will go away if there is inaction by the County's system.

Ms. Thomas said she strongly resists Mr. Boyd's characterization.

Mr. Tucker said Mr. Cilimberg was saying that a portion of the land from the river northward is designated as rural area still. It is mainly floodplain. Then it picks up the Hollymead growth area and not all of that is the type of zoning this applicant wants. He could apply for a rezoning of that property. The County may be far enough along with Places29 that the kind of density and zoning that will be recommended for that area is already known. The land that is still outside of the Hollymead growth area would either require a Comprehensive Plan Amendment or wait until Places29 is completed. Places29 shows that area to be upgraded as part of the growth area. He said the Board may want to talk with the developer before it asks the Planning Commission to move the application forward. He said staff does not know how long it will take the Commission and the Board to finish Places29. The Board has heard different anecdotal information about what this applicant is proposing. One way to get information is to invite him to a meeting.

Mr. Rooker said the developer can come to any meeting and explain the situation. The Board could then hear it firsthand.

Mr. Slutzky suggested the developer might be included on a regular agenda if he is talking about doing serious road or bridge improvements.

Mr. Tucker said he has not heard that a bridge is part of this developer's proposal.

Mr. Wyant said the developer has to determine how long it would take for a Comprehensive Plan Amendment to be completed, or if it would be easier to wait until Places29 has been completed.

Mr. Rooker explained that with the Hollymead Towncenter development, there was an applicant who had land that was zoned industrial. He wanted to build a hotel – there were 20 acres in the growth area and 20 acres that were not in the growth area. He had a plan for 40 acres of property. The Planning Commission took that under advisement and said it made no sense to make a spot change in the Comprehensive Plan. The County needed a broader plan. Over a period of time, the Commission studied what made sense to do in that area, and ultimately the Plan was changed for an area that was about 180 acres. In effect, it was the first effort at master planning through a more detailed Comprehensive Plan and a larger area. That process took four or five years and the Board ended up approving it; that process ended up producing a good plan for the area. What is being talked about today is all together different. That is what is going on with Places29 which is a combined land use and transportation plan for that area.

Mr. Rooker agreed with Mr. Tucker that the Board could direct the Planning Commission to take up a Comprehensive Plan change in this area, and it probably would not occur as quickly as Places29 is going to conclude. But, if a Board member really wants to push that, he thinks the Board owes it to the community to put it on an agenda, let people come in and weigh in on it, with the developer coming in as well. He thinks it should be on an agenda, there should be a staff report, and the applicant should come in and give his thoughts.

Mr. Boyd said if Places29 is going to be a Comprehensive Plan amendment, and if this developer has met with the people from Places29, the Board might put this whole thing back into the hands of the Places29 process. Is it possible that when the Board gets its final report on Places29, it would include the Comprehensive Plan change this person needs in order to facilitate his next steps.

Mr. Cilimberg said Places29 will include that area studied and there will be a recommendation from the Planning Commission to the Board as to what to do with the area. The Board may or may not agree with what's proposed, but what the Board decides will amend the Plan.

Mr. Boyd said his concern was not to wait another year to start the process of a Comprehensive Plan Amendment. He said Mr. Cilimberg is saying that might not be the case if part of the recommendation for Places29 includes some development in that area. Mr. Cilimberg said the County wouldn't want to consider a separate Comprehensive Plan Amendment for that area, after just finishing Places29.

Ms. Thomas said adopting Place29 will be a Comprehensive Plan Amendment.

Mr. Boyd said that was his concern; this would become a separate Comprehensive Plan Amendment immediately following Places29. Mr. Cilimberg said he would not advise that it be treated that way. He emphasized the importance of finding out as much as possible about this proposal while Places29 is being completed so it can be considered and included in whatever form the Planning Commission forwards to the Board for adoption. He has not talked to the applicant, so thinks the bigger issue may be the rezoning process. A Comprehensive Plan Amendment only sets the expectation and the rezoning process sets the entitlement. He guesses they have some anxiety about when they might realistically be able to make an application to rezone this area and get a favorable response. A lot of that will be based on what change will be proposed for that area.

Mr. Tucker said it might be helpful to ask the developer if what is being proposed in Places 29 is comparable to what he visions. If it is, it is a waste of his time to bring it forward now.

Mr. Boyd said it sounds as though the Board should not direct the Planning Commission to do something, but instead direct the Places29 people to listen to the landowners in the area they are designing. If he was one of those planners he would talk to sizeable landowners and ask them what they want to do with their property. He thinks the developer has plans and ideas that he might share with somebody if they asked him to do so.

Mr. Cilimberg said he will ask his staff what Places29 shows on this property, and even take the initiative to contact the owner and ask him to talk with the consultant about his proposal. He is not sure what information has been shared up to this point.

Mr. Wyant asked if that is the same approach used for Pantops. Mr. Cilimberg said it was done for Crozet.

Mr. Rooker said there has not been a landowner yet that has been shy in coming forward to say what they wanted to do with their property. He said what people say they want to do with their property in the master plan could become a benchmark. He thinks it is important to hear from them, but when there is property that is not in the growth area, it is a different story when the property is in the rural area. He said the Board has been meeting now for seven hours and he does not think this discussion is going to conclude tonight. He asked that this discussion be suspended now or it be put on an agenda for discussion at another meeting, or someone could make a motion to do something.

Mr. Wyant asked if the Planning staff is going to contact the developer.

Mr. Boyd said he just wants to give the developer an audience. All this developer is trying to do is have an audience to say what he wants to do. It is this developer's impression that the County is saying to come back next year.

Mr. Rooker said these are just anecdotal stories about what the developer has said or not said. He has not heard any of this before.

Mr. Boyd said he can't make decisions based on personalities. He sees an opportunity for the County to get significant transportation dollars. He said the Board is looking under every rock to find transportation dollars. If it believes in public-private partnerships, then there will have to be a trade-off because the Board will not get people gifting money to build roads. He said it is late and he has one other item to talk about.

Mr. Davis said a motion was made and seconded earlier. Mr. Wyant would need to withdraw his motion.

Mr. Wyant then **withdrew** his **motion** because of what had been said today.

Mr. Dorrier then **withdrew** his **second** to the motion.

Mr. Boyd said the Board talked today about staff presenting a recap of what was decided today on the MOD. Before staff undertakes a large amount of work rewriting the ordinances, he asked if the Board would like to hold another public hearing on the new concept; the concept has changed a lot. He would like to have some feedback from the public on this newly designed program.

Mr. Dorrier said if the Board can work out language for its ideas that could be put out when the work is done.

Mr. Rooker agreed.

Mr. Boyd asked if the Board members would agree to a conceptual public hearing.

Mr. Cilimberg said staff can provide a recap of what the Board agreed to today and also suggest the steps necessary to pursue amendment and adoption of the ordinance if that is what the Board wants to do. He said the ordinance amendments themselves are fairly minimal, but the public notification would be the large task. Once staff provides that information to the Board, it can decide if it wants to hold a public hearing.

Mr. Rooker said he understands there is not a massive amount of work involved in what the Board discussed today. If the Board decides to create a separate MOD, that is separate from the general rural area things discussed today. In some cases they would require just a change in policy.

Mr. Boyd said he would like to have some public input before exerting a lot of staff time to be sure the community is comfortable with the direction in which the Board is headed. He said Mr. Cilimberg's suggestion is good.

Ms. Thomas said the Board could hold a hypothetical public hearing. She thinks all Board members know what the public will say. There will be people who are annoyed at the Board because it has not been done already. There will be the people who are really angry because they have always thought of themselves as sitting on a million dollars and they think that whatever is proposed will jeopardize that. There will be the sad story by somebody whose handicapped granddaughter has always

dreamed of having something the Board will keep her from having. If the Board members cannot withstand that, it is probably a good idea to go through that thought process in public and say "I could not say that our rural areas, our water quality, our forests, our critical slopes, our soil, our water and the reservoir are valuable enough for me to withstand the kind of public input we are going to get if we do anything in the rural area." She said if the Board members can't withstand a few individuals "getting unhappy with you by what is being proposed" then she thinks Mr. Boyd is right in suggesting that the Board vote right away and not waste staff's time.

Mr. Boyd said he feels a little differently. There are few times somebody is not mad at him for something. He understands that is part of the job, but he also learns from the public. He does not think there is an unintelligent public that can't bring the Board new ideas and new thoughts. That is what he looks for in a public hearing, not an emotional plea that will sway him from doing the right thing. He wants to hear different ideas. The Board does not have all the ideas, and the staff does not have all the ideas. Sometimes the public presents good points. That is what he wants to hear.

Mr. Slutzky said the Board then plans to wait until it hears from staff.

Mr. Rooker said he thinks everybody agreed with what Mr. Cilimberg said.

Agenda Item No. 13. Adjourn.

At 9:08 p.m., with no further business to come before the Board, the meeting was adjourned.

Chairman

Approved by the Board of County Supervisors

Date: 09/05/2007

Initials: EWJ
