An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on June 13, 2007, at 2:30 p.m. in the Lane Auditorium, County Office Building on McIntire Road, Charlottesville, Virginia. This meeting was adjourned from June 6, 2007. The regular night meeting began at 6:00 p.m. in the Lane Auditorium of the County Office Building.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., Assistant County Executive, Thomas Foley, Assistant County Executive, Bryan Elliott, County Attorney, Larry W. Davis, County Planner, V. Wayne Cilimberg, and Clerk, Ella W. Carey.

Agenda Item No. 1. The meeting was called to order at 2:35 p.m., by the Chairman, Mr. Boyd.

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Agenda Item No. 2. Report on pesticides, herbicides and cleaners on County property, Pat Mullaney.

Mr. Pat Mullaney, Director of Parks and Recreation, addressed the Board, stating that the County has discontinued the routine use of all synthetic chemical pesticides and the use of all traditional chemical cleaners in favor of the green-seal certified cleaners with the ultimate goal of moving towards products with no synthetic chemicals. He stated that these may be used for special applications only when no suitable alternatives can be found, with unanimous approval for their department committee. Mr. Mullaney said that the Director of Parks and Recreation may approve the use of alternatives in situations requiring an immediate response to protect the public or to prevent significant property damage. He stated that it is their intent to have this policy in effect until an ultimate County policy is developed, and if that does not occur they would reevaluate their departmental policy based on what they have learned in the interim. Mr. Mullaney said that no action is being required by the Board at this time, and Mr. Tucker would be working with the School Superintendent to form a workgroup to consider a County policy.

Mr. Boyd commented that this came up several months ago when some chemicals were put down on some elementary school fields and had not put up a sign indicating they were used. He asked if there would be signs in the event they had to be used at any time in the future.

Mr. Mullaney responded that that has been the policy, and it would be done in the future as well.

Mr. Slutzky asked under what circumstances toxic compounds might be used.

Mr. Mullaney replied that they might be used in situations where a yellow jackets' nest is found near a playground and a park manager might have to act quickly. He said if we can find a non-toxic alterative, we are going to use a non-toxic alternative. Mr. Mullaney said that it is a longer range process to convert all products to natural products if there were none to begin with.

Mr. Rooker commented that Mr. Slutzky speaks for the Board when he says that they would only like harmful materials to be used when it is a last resort and there is some immediacy to the situation. He added that signs should be put up, as Mr. Boyd says, and those locations should be avoided until the chemicals dissipate.

Mr. Slutzky stated that he would not want to leave it to the discretion of the staff, and he would be most comfortable if Mr. Mullaney was informed prior to the use of chemicals.

Mr. Mullaney responded that is the intent of the policy, and if he is not available the Deputy Director could step in.

Mr. Slutzky offered his assistance if necessary as he has some expertise in this area.

Mr. Wyant noted that there is research that goes on at Virginia Tech, and perhaps they could be helpful in this process.

Mr. Tucker added that the Extension Service is the arm of Tech, and they have up to date information.

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Agenda Item No. 3. **Work Session:** FY 2008-2013 Capital Improvements Program (CIP).

Mr. Foley said that this is part of the discussion on the 2008-2012 CIP. He noted that the most recent discussion covered three projects that the Board had asked for more information on prior to adopting the FY 08 budget: a recycling center, school office storage warehouse, and the Pantops fire and rescue station. Mr. Foley said that today they would focus on the remaining projects that the Board identified in years two through five of the CIP, adding that this coming year would be an adjustment year.

Mr. Foley stated that they want to review the budget, capital projects, and the final funding plan for the CIP. He noted that the General Fund Transfer funds the CIP, and the change in the tax rate has reduced the total amount over five years by $3.3 million and the amount of surplus from previous fiscal years that was going to be transferred into the CIP to help fund it has also been reduced. Mr. Foley

emphasized that the tax rate reduction also impacted the County in the current fiscal year so some of the transfer monies have been used to cover the shortfall, reducing the transfer by about $4 million. He said that in total, the reduction to the CIP was $7.4 million over five years.

Mr. Foley said that there is not an alarming situation here, and revenues often come in stronger than anticipated and projects tend to shift as well. He noted that the County is still in a good position financially, and the reserve balances in the budget are very strong. Mr. Foley said that the County could also increase borrowing, and shifting some projects to financing would not put the Board's policies in any danger.

Mr. Foley introduced Deputy Fire Chief John Oprandy to discuss the Ivy fire and rescue station. Chief Oprandy addressed the Board, noting that research supports the decision to construct an Ivy station, which will provide basic service to development areas west of the City, achieves a higher quality of service than what is currently provided by the City in terms of emergency medical care, and addresses service needs in Ivy. He mentioned that Ivy is unique in its population density and its dependence on municipal water. Chief Oprandy said that when the City contract ends in the year 2010, there will be the need to provide the basic level of service to the development area west of the City, including the Crozet development area. He said that during the period studied, there were approximately 700 calls for service in the area this station will serve. Chief Oprandy noted that there were another 200 calls the station would respond to in order to assist the Crozet volunteer fire department as a component of the primary response.

Chief Oprandy said that three or four hundred of these were within the boundaries of the development area, and they are currently covered by the City as primary respondents, supplemented by Crozet and Seminole. He stated that advanced life support first response is currently not provided to the area this station will serve; all other development areas receive that from an ALS engine or plans are in place to do so. Chief Oprandy said that this station will also provide this level of support to the Crozet development area where Western Albemarle Rescue Squad provides all the ALS service at this time. He said that the need for Ivy has been previously identified, and only 76 percent of the calls at this time are answered within 13 minutes to that area, and an engine arrives within 18 minutes, 90 percent of the time.

Chief Oprandy said that currently, Ivy homeowners are experiencing the worst possible rating from the Insurance Service Office (ISO), despite the fact that a good portion of the town is protected by a municipal water supply system. He noted that this is due to the fact that there is no station located within five miles of that area, adding that the new station will result in lower insurance rates and more choices of carriers. Chief Oprandy said that State Farm will not insure a home that does not have a fire station within six miles. He noted that research shows homeowners will save up to 50 percent on insurance rates, and annual insurance savings would be approximately $700. Chief Oprandy said that analysis shows approximately 575 buildings are served by the hydrant system but lack the required fire station, so annual insurance savings will total $400,000.

Chief Oprandy reported that a station near Ivy and Brumley Road accomplishes the following: the development area will be covered within a five-minute response time, and the Ivy area served by an existing hydrant system will be within five miles of the station. He said that staff recommends delaying construction from FY 10-11 to FY 11-12, and there are potential opportunities to seek proffered or donated land, but there will need to be time to explore them. Chief Oprandy added that there are other special timelines that will make a delayed timeframe more advantageous.

Chief Oprandy reported that in order to address the needs in the Ivy service area, staff is recommending establishing a temporary station while they work through the development issues. He said that the benefits of a temporary station are ensuring improved service, meeting timing for the City contract expiring, and providing the desired level of service. Chief Oprandy said that staff has been exploring the idea with third-party developers, but they are real early in the process of those discussions.

Chief Oprandy said that the financial impact is not significant as there is a slight increase in FY 08-12 capital project costs, which increase from $5.7 to $5.8 million largely due to the engine cost being moved up on year. He said that it pushes the construction of a permanent station out one year from FY 11 to FY 12 and delays purchase of an ambulance and tanker as well, but there would not be significant change in the operating impact over that same five-year period.

Mr. Boyd noted that there is a huge operating expense involved in opening two new fire stations, and it would be helpful to see those numbers. He stated that he understands there would be a cost savings as there would not need to be a contract with the City for Pantops and Ivy.

Chief Oprandy said that there is a $600,000 budget item that would go away, but he acknowledged that there would be an impact on staff.

Mr. Slutzky asked if any part of the growth area would be less served if the station were put here instead of nearby areas in the development areas that would improve response times.

Chief Oprandy replied that the basic level of service is dependent upon locating a station where it can still assist Crozet. He said that the station plans to have an ambulance housed once the permanent facility is constructed.

Ms. Thomas noted that an aging population increases the need for EMS response.

Mr. Rooker commented that the County has allowed more density in Ivy than in other parts of the rural area. He agreed with Mr. Boyd that it would be helpful to have information on operating costs, especially when the Pantops station is considered.

Mr. Wyant noted that these stations are providing an ambulance that has not been there before. He asked if a structure fire could be responded to with a pumper from another station.

Mr. Rooker added that once a presence is established, there should be a mailer to households in the area that informs them of possible insurance savings.

Mr. Slutzky said that mailer should also be mailed to all the insurance brokers in town.

Chief Oprandy said that resources are pulled from at least three and sometimes four stations in order to put enough apparatus on the road. He said he thinks that these stations that they are building now, won't show all the brush trucks and cars and vehicles and tankers. They will rely on that specialized equipment to come from those outlying stations that already exist to provide that basic level of service close and then rely on the outlying stations to provide the rest of that complement.

Mr. Dorrier asked why the station is referred to as a substation.

Chief Oprandy replied that the station is smaller, and it relies on apparatus from other stations.

Mr. Boyd pointed out that the temporary station for Pantops is already budgeted for FY 07-08.

Mr. Tucker said it is important to know that as a truck is being ordered.

Mr. Rooker stated that he would like to go back and look at the budget implications, given the Pantops and Ivy stations.

Mr. Boyd agreed.

Mr. Foley said that the retreat this fall is going to look at items such as fire stations and their operating impacts so that staff has some clear direction as to where the Board wants to go. He confirmed that the engine for Pantops could be used for Ivy.

Mr. Rooker said that the Pantops decision should be reviewed to see if that engine could be shared.

Mr. Breeden pointed out that the original budget did have a schedule that includes operating costs.

Mr. Foley said that if a change was made at Pantops, that engine could be moved to Ivy, and the budget would remain the same.

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Mr. Bryan Elliott addressed the Board, noting that the Public Safety Training facility, the Northern County Library, and YMCA pool proposal would be covered in his report.

Mr. Elliott said that the Public Safety Training facility is scheduled for FY09, and a total of $2.27 million is allocated in CIP funding for this project. He said that some of those funds were allocated in previous CIPs, and the work includes planning, site study, and phased development of the facility. Mr. Elliott said that the top priorities for that project are construction of a six to nine lane firearms range as well as a fire rescue burn building, and the overall objective is to provide police and fire personnel with a facility that meets their long-term training needs as well as volunteers in the system.

Mr. Elliott reported that they are in the consultant selection phase, and they are poised to enter into a contract for the preliminary planning phase of the project. He added that they are recommending that the Board authorize staff to proceed with the planning and site study phase in FY 08, and develop a more detailed cost estimate and actual phasing scope to bring it back for the FY 09 budget process. Mr. Elliott reminded the Board of the County police's memo stating their need and the letter of support from the Fire & Rescue Advisory Board.

Ms. Thomas asked if the City was still being included in plans to use the facility.

Mr. Elliott responded that the City has indicated that they do not have funding in their CIP for this nor do they plan to.

Mr. Foley noted that the County had hoped to have a partnership with the City and worked hard on that, but they pulled back.

Ms. Thomas said that she could not think of a place in the County where this could be. She said that she does not have a lot of enthusiasm for this project unless that can be figured out first.

Mr. Elliott stated that the first phase is to make that evaluation with police, fire, and individuals within the community. He noted that the City fire department currently utilizes the facility near the regional jail, and police use the same facility that the County does. Mr. Elliott said that the City prefers that their

staff be on duty so that they can be close to response areas when they are training. He added that he did not know where University police were trained.

Mr. Tucker noted that there would need to be another site found for the training area next to the joint security complex because the regional jail will likely expand in the near future.

Mr. Elliott mentioned that there has been $984,000 previously allocated for the training facility project and put away for this work.

Ms. Thomas said that there could be a fire training facility without a firing range as she is not convinced that the current training facility needs to be changed.

Mr. Tucker stated that there may need to be an indoor training facility instead, but there are concerns there with lead emissions.

Mr. Boyd asked why a consultant was needed to do a location study.

Mr. Elliott responded that the price for that was $75,000 and that RFP was based on a joint City-County facility. He said that scope of work could be reviewed and modified if need be, but the idea was to come up with a master plan for public safety training facilities.

Mr. Rooker replied that a phased analysis would be best, and the County should talk to the University and other law enforcement agencies to see if they would participate and help fund it.

Mr. Wyant commented that it is likely that this might need to be an indoor facility, noting Nelson County's experience with their range.

Mr. Elliott responded that could be considered in the analysis and planning phase.

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Mr. Elliott also reported on the Northern Albemarle Library facility, slated for FY 11, changed from the previous CIP to reduce the number of libraries from two to one, with a 30,000 square foot facility for that year, based on agreed-upon library space sizing standards. He noted that this would reduce CIP costs from $27.4 million to $16.5 million and would be financed with debt so the savings would result in a lower debt-service payment to the County over the years. Mr. Elliott noted that this has been reviewed by the library, and they are in support of this change.

Mr. Boyd noted that there are two proffered sites. He stated that he has not seen justification for the Forest Lakes South entrance site.

Mr. Foley responded that there have been maps provided about the service area coverage, and there is a library standard of a six mile radius, which covers up to Greene County and back down into the City in that location.

Mr. Boyd commented that he thought the library would be a free-standing facility, not necessarily in a town center.

Mr. Tucker said that the County is not looking to fund this until 2010. He added that it is not just the area in the north, but the area not covered in the south by Albemarle Square.

Mr. Slutzky added that he is concerned about making an investment in libraries as they may become dinosaurs, although he understands the functions they provide. He emphasized that there are dramatic changes in the way information is being accessed by people, and he does not want to assume that just because the Library Committee has recommended one, the County will automatically fund that. Mr. Slutzky also said that there is $17.9 million in the CIP over the next five years for libraries, compared to local transportation improvement project allocations of $10 million.

Mr. Foley noted that the Comprehensive Plan and Community Facilities Plan are what drive these recommendations, so perhaps different standards need to be worked out before the Oversight Committee begins their work in a few months.

Mr. Rooker said that they need to be careful in assuming the need for libraries will decrease, noting that predictions for reduced paper usage and book sales did not materialize.

Mr. Boyd responded that perhaps Comprehensive Plan decisions were made in a vacuum, based solely on population, and they may want to discuss these items again in a more relative fashion.

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Mr. Elliott addressed the Board, presenting information on the YMCA competitive pool, programmed for FY12, a project that already had some money allocated to it.

Mr. Pat Mullaney addressed the Board, stating that in November 2005 the Board authorized staff to develop plans for a YMCA County partnership for a full service YMCA and then committed $2030,000 towards that effort subject to a final partnership agreement. He said that the planned first stage included a warm water pool, a large fitness center, gymnasium, sport facilities, but not a competitive pool. Mr. Mullaney noted that at the 2005 meeting several Board members expressed interest in having a competitive pool available for high school teams. He stated the competitive pool was slated as a second

phase initially dependent on how much money was raised, and this request is the follow-up to that. Mr. Mullaney reported that YMCA officials do not think they will have enough funding to complete the competitive pool in the first phase and estimated that to do so would require an additional $1.25 million which is roughly half the cost of a competitive pool.

Mr. Slutzky asked where it was going to be built.

Mr. Kurt Krueger of the YMCA responded that they are working with the City to try to get a space in a central location in the City which would be ideal to serve both City and County residents, but the preference is to be in McIntire Park on the developed side of the park where the picnic shelters are now, across from the softball fields. He noted that the Perry Foundation grant requires them to have a ground lease by September 30th of 2007 and break ground by July 1st of next year. Mr. Krueger noted that the McIntire site and the Piedmont site are roughly equivalent according to engineers, and in terms of construction costs the facility would be $200 a square foot for a 70,000 square foot facility. He also noted that there are possibilities to get in-kind contributions.

Mr. Boyd said that he wonders if it makes sense to put both the competitive pool and recreational pool in the same building.

Mr. Krueger responded that it makes more sense to build the pools next to one another because you can use a shared equipment room, shared pumping, and filtering mechanism which generates cost savings.

Mr. Mullaney said that the YMCA is interested in the warm water recreational pool because that is what most residents are interested in, and it is hard to meet operating expenses for a competitive pool without the elements in place to draw people in. He cited the results of a local survey that showed a recreational pool as the second most wanted facility, and a competitive pool ranked 14th.

Mr. Rooker stated that this does not have to be decided now.

Mr. Krueger said that it would help in the rest of the YMCA's fundraising, and it would also help encourage a match from the City.

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Mr. Foley reported that the Court renovations project is out significantly in the CIP as the FY 09 portion is for a minimal amount of study, and the other project will follow that. He noted that the Levy Building renovation is for a combined General District Court facility with the City. Mr. Foley stated that it is scheduled after completion of the Juvenile and Domestic Relations Court, and it will probably shift even more because that project has. He said that the renovation is for about 8,600 square feet and 21,000 square feet of additional space. Mr. Foley added that there is a study that has been funded that is not underway yet because of the continued delays on the Juvenile Court project, but that will help to bring more information back to the Board on the needs and so forth. He explained that after people are moved into the new facility, there will have to be some renovations in the old General District Court building. Mr. Foley said that perhaps that space would become a Circuit Court room as there is a general shortage of space.

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Regarding transportation improvements, Mr. Foley said that there is about $2.8 for appropriations, and the recommended five years adds $10.6 million to that. He noted that there is a list of projects that some money has been designated for, up to this point, and a lot of it is unallocated for specific projects. Mr. Foley stated that the Lickinghole Bridge is a transportation project identified, but allocations for future master plans and regional projects are less defined. He said that staff would like some direction as to how quickly they should move on Eastern Avenue in Crozet.

Ms. Thomas said that perhaps the Board needs to be more specific and ramp up this section of the CIP given that there are proffers being given for some of these projects.

Mr. Foley replied that the proffer policy was based on more than what is showing here. He noted that it also included the scenario for completion of the master plans as discussed last year during the fall retreat, and a significant number of transportation projects had come up, totaling about $40 million. Mr. Foley said that some adjustments to the CIP would need to be considered. He explained that there is some capacity to take on more debt in this fund, and adjustments would need to be made accordingly.

Mr. Boyd emphasized that this is a key issue that needs more time to be discussed.

Mr. Foley noted that there would be discussion at the Board's retreat on both capital and operating, especially related to transportation. He said that when master plans are completed, items are being put in the CIP, but if that is not how the Board wants to do things staff will change that protocol.

Mr. Rooker said that the Board has identified specific projects in discussions of the transportation plan, such as Meadow Creek Parkway, Jarman's Gap, and Georgetown Road, so it is more continuing with that process and then assigning costs based on that estimate.

Mr. Foley reported that there is $1.8 million set aside for the Neighborhood Plan, and $5.2 million over the five year period set aside.

Mr. Rooker suggested sitting down with State Farm and asking them to contribute to the sidewalk project along State Farm Boulevard as their employees are the primary users of that route.

Mr. Boyd said that he had an upcoming meeting with State Farm and would mention it then.

Mr. Foley presented information on projects that are non-essential according to financing, such as the Crozet Library, as they are often paid for with cash. He emphasized that there would have to be some borrowing on non-essential as there is not enough cash to pay for all of those projects identified. Mr. Foley emphasized that this is well within the 70-30 debt ratio formula, and throughout this process the second library has been eliminated, the Pantops station has been reduced in scope, and a temporary strategy has been adopted for Pantops as well as Ivy. He emphasized that the CIP is in good shape, although the reserve balance is not as strong as the County would like it to be. Mr. Foley noted that staff is not recommending borrowing yet for the Crozet Library as some adjustments will likely make that feasible without financing.

Mr. Foley then introduced Mr. Bill Letteri, the newly hired Director, Office of Facilities Development, who would be working on CIP projects with the County.

At this time, Mr. Rooker **moved** to adopt the FY 2008-2012 CIP plan as revised, with the understanding that the Pantops Fire Station would be reviewed more thoroughly. Mr. Wyant **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

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(**Note:** The Board recessed at 4:08 p.m., and reconvened at 4:14 p.m.)

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Agenda Item No. 4. **JOINT MEETING WITH PLANNING COMMISSION**

PLANNING COMMISSION MEMBERS PRESENT: Mr. Jon Cannon, Mr. William Edgerton, Ms. Marcia Joseph, Mr. Calvin Morris and Mr. Duane Zobrist.

ABSENT: Mr. William Craddock and Mr. Eric Strucko.

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Item No. 4a. **Work Session:** Housing Committee Recommendations Regarding Affordable Housing.

The following Executive Summary was forwarded to the Board:

On June 1, 2005, the Board of Supervisors adopted Resolutions of Intent to amend the County Zoning Ordinance as well as the Comprehensive Plan to reflect the recommendations of the Albemarle County Housing Committee for implementation of the County's Affordable Housing Policy. The Resolutions resolved to:

1. Amend density bonus regulations in the Zoning Ordinance to allow a 100% increase in density with one-half of the additional units being affordable.
2. Establish the basis for calculating the number of affordable dwelling units to be proffered based on the additional dwelling units allowed after the rezoning.
3. Establish a formula for calculating the cash or cash-equivalent proffers for a rezoning in lieu of proffering the recommended number of affordable dwelling units.

Subsequent to the adoption of the resolution, the Planning Commission, in consultation with staff and representatives from the Housing Committee conducted a series of work sessions and one public hearing to consider the recommendations.

August 2, 2005 – work session to present the three recommendations
October 11, 2005 – work session on the three recommendations
January 31, 2006 – work session limited to discussion of the density bonus proposal
August 15, 2006 – public hearing on the density bonus (revision to the Zoning Ordinance)
August 29, 2006 – work session to provide the Commissioners information on housing issues and existing initiatives
October 24, 2006 - work session to get input from developers/builders and the real estate community

Based on the level of work and input received to date on these initiatives, the Office of Housing and the Housing Committee are recommending that the density bonus zoning text amendment and the amendment to the County's Affordable Housing Policy proceed as recommended below.

The recommendations that follow were developed through work with the ad-hoc Affordable Housing Policy Advisory Committee and the Board-appointed Housing Committee. A number of interest groups were represented in the discussions including developers, lenders, and nonprofit housing providers/agencies. The focus of the work was the development of implementation strategies/guidelines for the Affordable Housing Policy. The groups provided staff direction on the three issues noted in the "Background" section of this summary.

During the discussions, the issue of initial and long-term affordability was brought forward; therefore, a fourth recommendation is included in the following set of proposals. While the concept of retaining long-term affordability in the housing stock created through the policy is desirable, there does not appear to be any means for the County to enforce any long-term affordability provision unless this is addressed in a developer's proffer.

**1. Density Bonus**

The current density bonus provision in the Zoning Ordinance allows for an increase in units of up to 30% but requires that all of the additional units be affordable. The provision sets maximum sales prices and maximum rents but does not address eligibility of owners/occupants.

***Should the Zoning Ordinance be amended to continue to allow a density bonus, but require that only one-half of the additional units qualify as affordable housing? Should the Zoning Ordinance be amended to add eligibility requirements for purchasers and tenants?***

*The Housing Committee recommends retaining the 30% density bonus but requiring only one-half of the additional units be affordable as defined by the County's Affordable Housing Policy. In addition, the Committee recommends adding language that limits ownership and occupancy to those households at or below 80% of the area median income.*

**2. Calculating the number of affordable units (NOTE:** The following recommendation differs from proposal 2 included in the Background section of this summary. A new resolution of intent may be necessary prior to proceeding. The proposed sliding scale is a result of discussions with the Board during work sessions on North Pointe.)

The Neighborhood Model seeks a mixture of housing types and affordability. In many of the rezoning requests that include affordable housing proffers, 15% of the units are affordable (<$191,000) and the projected market price for the other units is often in excess of $300,000, creating a gap in the availability of what is described as "workforce housing" or moderately-priced housing. In addition to the gap in moderately-priced units, there is also a portion of the population that may desire to be homeowners but cannot afford the "affordable units". Approximately sixty percent (60%) of housing counseling clients would require units selling for under $160,000.

***Should the Affordable Housing Policy be amended to allow credits for the provision of housing available to households having other income levels?***

*The Housing Committee recommends the following scale for calculating credit toward the affordable housing goals by recognizing housing at various price ranges providing additional flexibility to developers. To preserve the intent of producing affordable housing, at least 50% of the units proffered must be at or below 65% of the VHDA limit.*

| Credit Factor | % VHDA Limit | Current Selling Price | % AMI |
|---|---|---|---|
| .5 | 85% | $249,800 | 110% |
| .75 | 75% | $220,400 | 100% |
| 1.0 | 65% | $191,000 | 80% |
| 1.25 | 55% | $161,600 | 70% |
| 1.5 | 45% | $132,255 | 60% |
| 1.75 | 35% | $102,865 | 50% |

**3. Cash or cash equivalent Proffers**

***Should the Affordable Housing Policy be amended to further define "comparable contributions"?***

*The Housing Committee has recommended that a reasonable cash proffer be defined as an amount needed to provide a 10% down payment on an affordable unit. With affordability proposed to be defined at 65% of VHDA's maximum sales price for first-time homebuyer programs, it is recommended that reasonable "comparable contributions" in lieu of an affordable unit be defined as up to 6.5% of the same index, which is currently $19,100.*

**4. Promoting initial and long-term affordability**

***Can the affordability goals be met with housing units that have an affordable selling price or an affordable appraised value?***

*At least two developments that proffered affordable units have since indicated that their units will be appraised at levels significantly higher than the proffered sales price. Thus, the units are not affordable although the developer/builder is providing an affordable opportunity to the first purchaser by subsidizing the sale. The Housing Committee believes that the intent of the Affordable Housing Policy is to* ***increase the supply of affordable housing.*** *Therefore the Housing Committee recommends using appraised value rather than selling price in determining whether a unit meets the County's goals. The Committee further recommends that units appraised for not more than 5% above the defined affordable price should be considered as meeting the intent of the policy without any further action required.*

***Should credit towards meeting the Policy goals be given for units that appraise for an amount higher than the defined affordable selling price but sell at or below the affordable selling price?***
*The Housing Committee recommends that housing units appraised for an amount greater than 105% of the affordable sales price but not exceeding 120% of the affordable sales price be considered as meeting the Policy goals if:*

*A. The sales price is equal to the appraised value with a "net price" to the purchaser in an amount that is at or below the defined affordable sales price,* ***and***

*B. The builder*
*i) places a deed restriction on the property in a manner that limits future sales prices so that the unit will remain affordable, or*
*ii) takes back a junior deed of trust for the difference between the appraised value and the defined affordable sales price, assigns that deed of trust to the County, and restricts those funds to be used by the County for affordable housing.*

The Housing Committee and staff recommend that the Board of Supervisors approve the Housing Committee recommendations for amending the density bonus provisions in the Zoning Ordinance and the Affordable Housing Policy in the Comprehensive Plan and direct staff to prepare the necessary amendments and set a public hearing by the Planning Commission by August 15, 2007.

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Mr. Elliott reported that staff is before the Board today to ask for support of four recommendations from the Albemarle County Housing Committee to modify the County's Comprehensive Plan and Zoning Ordinance and to establish an affordable housing policy. He also asked for the Board to adopt a timeline to implement these proposals. He recognized David Paulson, Chair and other members of the Committee for developing the recommendations. Mr. Elliott also recognized the Planning Commission for their work sessions and public hearing over the past several months.

Mr. Elliott said this afternoon staff will offer a snapshot of the results of the current affordable housing policy and other initiatives of the County's affordable housing partners. He said that he would like to solicit comments, observations, insights and guidance on these recommendations. Mr. Elliott said that approximately 625 units have been proffered through rezoning requests since adoption of this policy in 2005, with up to $1 million in cash pledged to the County with $355,000 received to date. Avon Park will have nine units this fall, and another 600 units and $2.5 million cash are possible in the County.

Mr. Elliott noted that AHIP is pursuing a rezoning request near Rio Road that could bring another 90 affordable units online, and the Piedmont Housing Alliance continues to effectively utilize the County's annual allocation to nurture units. He also noted that Habitat for Humanity is seeking to redevelop the Southwood Mobile Home Park.

Mr. Rooker asked him to explain the 90 units on Rio Road.

Mr. Elliott responded that is the Treesdale development, and it has been to one Planning Commission work session.

Mr. Ron White, Albemarle County Director of Housing, addressed the Board. He said that it would be a family development, and it will probably be owned by a limited corporation with AHIP as general partner. He noted that tax credits will be needed to execute that project.

Mr. Boyd asked if this would be in the 50 percent range.

Mr. White replied that typically it would be 50 percent to 60 percent, but if the County put more money in, it could go down a bit.

Mr. White reported that the Committee would like to revise the Zoning Ordinance to amend the current density bonus provision; the Board has already done a resolution of intent to move forward with this, and the Planning Commission has had several work sessions. He also said they recommend amending the Affordable Housing Policy in the Comp Plan to include a sliding scale for a variety of housing types and price points, defining comparable contribution and clarifying goals for promoting initial and long-term affordability. Mr. White noted that everyone has had difficulty putting the policy into action with the limited clarity and detail in the policy, and these revisions will help resolve that.

Mr. White said that the current density bonus provides a 30 percent allowance for density if the developer includes affordable housing; the requirement is that all of those units have to be affordable so only a few developers have used this so far. The Committee's concern is that the bonus contains no restrictions or occupancy limitation so once the house is built at a price point, anyone could purchase or occupy those units. He said that the proposal is to retain the 30 percent density bonus, with half of the units required to be affordable; there would be language in zoning that would require the housing office to approve and monitor occupancy, targeting families at the 80 percent poverty benchmark.

Mr. Rooker commented that this definitely needs to be changed to be a tool that can actually be used, and it is not widely known that this is available. He noted that this is an excellent idea to get additional affordable housing built and target the right families.

Ms. Thomas asked if the problem is that the developers are just not using density bonuses in general.

Mr. White responded that the Policy Advisory Committee, which included developers, felt that requiring 100 percent affordable units was a drawback. He said that one thing in the policy was to amend the existing density bonus.

Mr. Rooker mentioned that some of these measures are done on a trial and error basis, and if it does not work it can be altered in the future.

Ms. Joseph said that they asked for a density bonus for Cedar Hill mobile homes and the developer used it for that low-income housing. Mr. White said that Parkview at Pantops used a density bonus, and there was one use about four years ago to create a non-conforming lot.

Mr. Boyd commented that he is in favor of moving forward, but a formula needs to be clarified.

Mr. Wyant noted that two projects in Crozet had the density bonus as a major point of discussion.

Mr. Rooker added that you do not have to have a rezoning for this to apply, and this would probably only arise when there was not a rezoning.

Mr. Edgerton said he would like some assurance that is the way it would work, as he does not want to reduce the 15 percent as specified in the Comp Plan.

Mr. White replied that he is looking at this as by-right, and the rezoning requirement would remain 15 percent.

Mr. Rooker said that in Crozet there were specific provisions in the master plan that brought this discussion into play as there were different CT areas there.

Mr. Davis emphasized that the density bonus would apply to by-right development, and this would only address existing zoning where they want to do more than is allowed by-right. He said that if a proffer placed a maximum number of units, it would have to be amended to accommodate more. Mr. Davis said that if the maximum density was 100 homes, a 30 percent bonus would mean they could build 130 homes, and half of the additional 30 would have to be affordable.

Mr. Edgerton said that he wants to make sure the affordable targets the 80 percent or less.

Mr. White replied that it is intended as such to be truly affordable units.

At this time, Mr. Rooker **moved** to approve the Housing Committee recommendations for amending the density bonus provisions in the Zoning Ordinance and the Affordable Housing Policy in the Comprehensive Plan, and directed staff to prepare the necessary amendments and set a public hearing by the Planning Commission. Mr. Wyant **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Mr. Davis noted that staff has to draft an ordinance that the Planning Commission can consider.

Mr. White presented information on a proposed sliding scale. He noted that the County was asked to consider workforce housing when reviewing North Pointe, targeting families with an annual household income of $60,000 to $75,000. He noted that a pretty large gap was found between affordable and the regular cost of many homes. Mr. White said that the idea for a sliding scale would provide some credit of half to one and three- quarter units to give an incentive, with a caveat that at least half of the proffered units under the sliding scale would have to meet the affordability requirement of $191,000 or less. He clarified that at least 50 percent of the proffered units would have to be at the 80 percent level.

Mr. Slutzky commented that he would be supportive of giving these credits as long as the units are actually going to be affordable; if there is a proffer of an affordable rental unit for five years that then converts to a market rate, then that is unacceptable. He would prefer a longer-term commitment to the affordability, including requirements for deed restrictions that keep units affordable upon resale.

Mr. Rooker agreed with the limitations on time, and he agreed there needs to be a mechanism such as deed restriction and/or second deed of trust to keep those units affordable.

Mr. Edgerton expressed concern that this is cutting into the 15 percent commitment made through the Comp. Plan, but he acknowledged that workforce housing needs to be addressed. He said that he would like to see an additional percentage that would deal with workforce housing rather than cutting into affordable housing. Mr. Edgerton emphasized that the commitment is really being dropped to seven and a half percent, and he does not want to see that reduction.

Ms. Thomas agreed, noting a recent newspaper article that showed salaries for certain occupations would mean that seven and a half percent of the houses would be $191,000 or less; 15 percent would be at $250,000; and the rest would be a size the market can bear. She said she does not think that that's responding to the affordable housing crisis nearly as well as sticking straight with the 15 percent requirement for the person at 80 percent or below.

Mr. Slutzky noted that there are a lot of people living in other counties because there is obviously not enough workforce housing.

Mr. Edgerton responded that there seems to be a never-ending supply of people who can come into the County and pay a higher price, and as long as the market supports that, that will be the high end.

Mr. Slutzky said that the developers have a choice, and there needs to be an incentive for them.

Mr. Edgerton agreed, but he added he does not want to borrow from the low-income 15 percent. He said the need for that has only increased over the years.

Mr. Slutzky suggested having one-third of the 15 percent in the lowest range, another five percent in the middle section, and another five percent in the upper range.

Ms. Joseph noted that this is by-right.

Mr. Rooker replied that this would only be required on rezonings.

Mr. Paulson said that the genesis of the sliding scale was that the 15 percent tends to end up at the 80 percent level, so having a scale that targets below that is wise. He noted that from a market standpoint it could be a compromise to not have the full 15 percent if there is a commitment to do lower units.

Mr. Dorrier noted that on his visit to Chapel Hill, he and Ms. Thomas visited an affordable housing complex that was supported by a revolving trust fund system where they would actually buy houses back from people. He said that this system seemed to work very well according to realtors in that area.

Mr. Edgerton said that he is pursuing this, and a consultant is coming in July to begin the process.

Mr. Davis explained that enabling legislation allows for voluntary density increases in exchange for affordable housing, but beyond that there is no legislation to allow government to mandate affordable housing.

Mr. Rooker asked what mechanisms would be available to have houses remain affordable for a longer period of time through use of a trust fund or some other tool.

Mr. Davis replied that there is some question under Virginia law about how proffers can be mandated, and what Mr. Edgerton is proposing is on the cutting edge. He noted that the deed restriction concept has practical limitations as lenders do not like them. Mr. Davis said that the trust fund concept can work, but it does not necessarily keep the unit affordable.

Mr. Rooker commented that at least it keeps funds assigned to affordable housing, and money is built in before it is even sold.

Mr. Wyant noted that many people do not feel that $191,000 is affordable as he has heard a lot of complaints from constituents.

Mr. Rooker said that he supports adopting this from the 80 percent down, but there does not seem to be consensus to adopt the top part of it.

Mr. Edgerton said that they would need to bump up the 15 percent as it would be robbing to include workforce housing as part of this, so an additional requirement would actually be needed.

Mr. Rooker commented that he would like to consider putting forth the scale of 80 percent down to encourage building units at the lower tier.

Mr. White asked if the incentive of the points is enough.

Mr. Slutzky replied that he would like for the 15 percent to be split across different ranges.

Mr. Boyd said that is a different question.

Mr. Rooker stated that Mr. Slutzky's proposal might not take into account several market factors, and he disagreed that the policy is not working. He said that the County has received 600 plus units with about that many more coming forth in the near future. He said we need to deal with the issue of [whether they are] going to be affordable. Mr. Rooker noted that the policy has just been adopted four or five years ago, and what has been done is adopting concrete strategies and putting them in place.

Mr. Slutzky said that he would recommend putting a deed restriction in to keep the units affordable after they are sold.

Ms. Thomas wondered about having more credit given for houses that are very affordable in order to provide some incentive to build less expensive homes.

Mr. Rooker said that he is prepared to accept what the Housing Committee recommended from 80 percent down, and the Planning Commission will be looking at this again.

Mr. Edgerton commented that at some point he would like to see something in the Comp Plan to encourage workforce housing without taking away from the affordable housing, and the idea of the sliding scale was to deal with that gap.

Ms. Thomas clarified that they are looking for guidance from the Housing Committee on how to achieve that.

Mr. Paulson said that they would like to get the affordable housing program accomplished before they move onto dealing with workforce housing. He agreed that the Committee would look at the issue.

Mr. White said that the Housing Committee has recommended further definition of comparable contribution to specify an amount that is equal to providing ten percent of the purchase price of an affordable unit to allow the contribution to be pegged to the affordable housing price and be aligned with the down payment assistance program, which is currently $19,100.

Mr. Rooker said that he is in favor of going to that level and establishing a formula for that basis, but it may need to be fine-tuned if the units are not offered up. He added that this is a different discussion than the proffer policy and what cash proffer amounts are credited for. He said that he was not in favor of giving credit for meeting the affordable housing policies.

Mr. Paulson said that the Housing Committee feels strongly that a discounted unit that falls off its original price should not be counted as it is automatically going to be affordable.

Mr. White said that everything that they are doing is impacted by the market. He said that the other important factor is that there is very little they can do unless they are putting money into the development of the unit or down payment assistance; the proffer system is the mechanism to leverage affordable units.

Mr. Rooker asked if the second deed of trust approach would work without the County's investment.

Mr. Davis replied that if a developer voluntarily proffers a second deed of trust for affordable housing, but he knows of no examples of that.

Mr. Boyd commented that is going to be very tricky in working with lenders.

Mr. Rooker said that it would be subordinate to the primary loan.

Ms. Thomas noted that it would be difficult to design a unit that ends up being worth more and then essentially penalizing the developer.

Mr. Slutzky asked how it would retain its affordable housing status.

Ms. Thomas replied that it does not solve that problem.

Mr. Slutzky said that a deed restriction would help solve that problem.

Mr. White stated that the developer would have to proffer the deed restrictions. He said that the County would comment on those proposals and then the restrictions would be passed onto the builder and eventually the purchaser, but there are problems in the financing industry. He said that this is the only way he knows to ensure affordability, but it has a number of unresolved issues including whether a developer would be willing to proffer a restriction. Mr. White stated that a purchaser might not be eligible then for VHDA and FHA loans, and it might be a very lengthy process.

Mr. Boyd encouraged the Board to come to some decision on how to deal with what is proposed today.

Mr. White said that the Resolution of Intent for Item #1 is already done.

Mr. Davis stated that the Board has not yet adopted the Resolution of Intent to amend the Comp Plan and the question is whether they want to adopt it piecemeal now or wait until there is more consensus on the other issues.

Mr. White asked the Board to help the Committee gauge whether the intent of the policy is to increase affordable housing stock. He said that he is not sure that $240,000 units sold in the $191,000 price range meets the policy even though those have been accepted in the past as affordable units.

Mr. Boyd said that the Board does not want to penalize the developer if a property appreciates beyond the affordable range.

Mr. Rooker said that the fourth recommendation is not really accepted, and the five-year proffers for affordable units are not long enough in his opinion. He added that there is nothing in the Comp Plan to address this.

Mr. Boyd replied that he has an issue with long-term rent control and that needs to be discussed further.

Mr. White said that the density bonus has the five-year provision in it so when it comes back to the Planning Commission it can be discussed further.

Mr. Slutzky said that he supports 30 years.

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Agenda Item No. 5. Recess.

At 5:33 p.m., **motion** was offered by Mr. Slutzky, **seconded** by Mr. Rooker, that the Board adjourn into closed session pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to conduct an administrative evaluation; and, under Subsection (7) to consult with legal counsel and staff regarding specific matters requiring legal advice relating to an interjurisdictional agreement.

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

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

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Agenda Item No. 6. The meeting was called to order at 6:04 p.m., by the Chairman, Mr. Boyd.

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**NonAgenda.** Certify Closed Session. Mr. Slutzky **moved** that the Board certify by a recorded vote that to the best of each Board member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed session were heard, discussed, or considered in the closed session. Ms. Thomas **seconded** the motion, which passed by the following recorded vote:

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

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Agenda Item No. 7. Pledge of Allegiance.
Agenda Item No. 8. Moment of Silence.

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Agenda Item No. 9. From the Board: Matters Not Listed on the Agenda.

There were no matters.

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Agenda Item No. 10. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Ms. Lillie Williams addressed the Board on behalf of the African-American Festival and Chihamba. She stated that the 18th Annual Cultural Arts Festival is a celebration of rich heritage and the contributions of African-Americans to the community. She noted that the festival attracts 1,500 to 2,000 people of diverse cultures, mainly African-American, and would be held this year in Charlottesville and Albemarle on July 28, 2007. Ms. Williams said that this year's theme is "Fabrics of the Community: Celebrating the Heritage, Health, and Home." She noted that the County has provided booth space in the past for employee recruitment and general information, and a portion of the County's total contribution is assigned to scholarships. Ms. Williams said that the County receives publicity and recognition for their support, but this year the County decided not to sponsor the event. She asked the Board to reconsider its support of $2,000. Ms. Williams also noted that Ms. Karen Waters, Mr. Max Yabona, and Ms. Nana Gahrety were present.

Mr. Rooker asked how scholarships are given. Ms. Williams said that the amount of the scholarship is dependent on the amount of the support. She said that scholarships are given to youth who have been accepted to an accredited college. Ms. Williams noted that last year they provided $300 a piece to three students.

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Agenda Item No. 11. Consent Agenda. **Motion** was offered by Ms. Thomas, **seconded** by Mr. Wyant, to approve Items 11.1 to 11.5 on the consent agenda and to accept the remaining items as information. Roll was called, and the motion passed by the recorded vote which follows:

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

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Item No. 11.1. **ZMA-2007-0001. Hollymead Town Center Area A-2.** Cancel public hearing.

In a memorandum dated June 5, 2007 from Sean Dougherty, Department of Community Development, to Ella Carey, Clerk, it states that upon reviewing the applicant's materials submitted for a Planning Commission hearing for the Hollymead Town Center Area A-2 rezoning, staff determined that additional work was required from the applicant before staff could recommend approval. At that time, the applicant agreed to defer their May 25, 2007 hearing scheduled with the Planning Commission. The applicant's inability to maintain that date and receive a recommendation from the Commission has caused

them to be unable to maintain the June 13, 2007 Board date originally anticipated for this request.

**By the above recorded vote, the Board cancelled the public hearing scheduled for June 13th on ZMA-2007-0001 – Hollymead Town Center Area A-2.**

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Item No. 11.2. **CPA-2005-009. Southern Urban Area B Study Amendment and CPA-2005-005. Granger Tract CPA.** Cancel public hearing and reschedule for August 1, 2007.

In a memorandum dated June 5, 2007 from David Benish, Chief of Planning, to the Board of Supervisors, it states that the above noted item has been rescheduled to the August 1st, 2007 Board of Supervisors meeting in order to allow staff to complete outstanding work on the proposed amendment language and to better meet the schedule of the applicant's consultant.

**By the above recorded vote, the Board cancelled the public hearing scheduled for June 13th on CPA-2005-009 – Southern Urban Area B Study Amendment and CPA-2005-005. Granger Tract and rescheduled for August 1, 2007.**

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Item No. 11.3. Request to abandon unused right-of-way of State Route 683 (Shelton Mill Road). Samuel Miller Dist.

The executive summary states that Mr. and Mrs. Jeffrey and Tammie Shifflett have requested that the County abandon an old right-of-way on Shelton Mill Road (Route 683). Virginia Code § 33.1-164 authorizes the Board of Supervisors to adopt a resolution declaring an old road not in the secondary system to be abandoned when it has been altered and a new road which serves the same citizens is constructed. When Shelton Mill Road was realigned to eliminate a sharp curve, the old right-of-way was never abandoned by the County. After exhaustive research, staff could not determine when the road was realigned and improvements were made, and could find no evidence of the Board taking action to abandon this road. VDOT could find no evidence of making improvements to or abandoning this road since they took it into the secondary system in 1932 as a prescriptive right-of-way. If the old road is abandoned, the ownership of the underlying property remains with the Vieilles. The right-of-way proposed for abandonment is adjacent to property owned by Mr. and Mrs. Jean and Catherine Vieille. Mr. and Mrs. Shifflett would like to purchase the 2.824 acre area proposed for abandonment from the Vieilles to construct a home (Attachment C (copy on file) is an aerial of the Vieilles property-outlined in red). Without this additional land, the Shiffletts will not meet set back requirements for a home site.

The current alignment of Shelton Mill Road has been in use for many years by the public. When this new alignment was completed many years ago it served the same purpose and properties as the old alignment. Staff has not been able to identify any other public use or purpose for the old right-of-way. Although a public hearing is not required under Virginia Code § 33.1-164, the Board of Supervisors may receive comments from the public. Staff mailed a notice to each adjacent property owner along Shelton Mill Road notifying them of the proposed abandonment. Staff received one comment requesting that the old right-of-way be converted to a pedestrian trail. This request was forwarded for comment to Pat Mullaney, Director of the Department of Parks and Recreation. Mr. Mullaney did not recommend that the right-of-way become a County Parks and Recreation facility "because of [its] limited length and accessibility outside of the immediate area."

There is no budget impact to the County associated with this request.

Staff recommends that the Board adopt the attached resolution (Attachment D) abandoning the public right-of-way for the old alignment of Shelton Mill Road (Route 683).

**By the above recorded vote, the Board adopted the following resolution abandoning the public right-of-way for the old alignment of Route 683:**

**RESOLUTION ABANDONING A PORTION OF STATE ROUTE 683**
**(Virginia Code § 33.1-164)**

**WHEREAS,** State Route 683 was realigned and a new road was constructed that circumvented a portion of the old State Route 683 alignment (the "old road") which is described as follows:

> All that certain road and right-of-way situated in the Samuel Miller District of the County of Albemarle, Virginia, lying approximately one mile southeast of Brownsville. Beginning with a common property corner of Ethel R. Pugh and Jean and Catherine Vieille in center of State Route 683 at intersection of old road and State Route 683, approximately 210 feet south of driveway of Jean and Catherine Vieille. Thence in a southerly direction for approximately 1283 feet along old properties of Ethel R. Pugh and Bettie Ann Stanerson to the point of intersection of old road and State Route 683; and

**WHEREAS**, the old road is not in the secondary system of state highways; and

**WHEREAS,** the new road serves the same citizens as the old road identified to be abandoned and the old road no longer serves a public need.

**NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors abandons the portion of old State Route 683 described above, pursuant to Virginia Code § 33.1-164; and

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

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Item No. 11.4. Virginia Department of Education Pre-School Pilot Grant Submission for FY2008.

The executive summary states that the Governor's Start Strong Council is proposing to expand access to high quality pre-school for Virginia's four-year-olds. With a $2.6 million allocation from the General Assembly, the Council is establishing one-year pilot programs in several communities for FY 2008. To be eligible, pilot communities were required to provide a written Scope of Services, budget form, and budget narrative by May 31, 2007. The Department of Social Services and the School Division worked together to develop the required documentation and submitted it by the deadline date, with the caveat that $32,000 in required local matching funds were still being pursued. Albemarle County was determined eligible for one of the eleven pilots, and has been selected as a pilot pending our ability to obtain the required local match for funding. The department was notified of the pilot in March, after the local budget process, and has been pursuing private funding for the match, but without success. If the County provides the required $32,000 local match, the County will receive $80,312 in state grant funds to run its one-year pilot program in this community.

The Albemarle County Public Schools and the Department of Social Services have a long history of effective collaboration in providing pre-school services to four-year-olds in the Bright Stars program. Currently seven Bright Stars classrooms serve 112 County children in six county elementary schools. The Governor's Pre-school pilot programs give eligible localities the opportunity to further expand their programs and the number of children served. Locally, staff is proposing adding another pre-school classroom at Cale Elementary, which would serve a total of 16 additional children: eight traditional at-risk children and eight tuition-paying children. This "mixed" classroom will represent innovative strategies both in identifying a new revenue stream and in group interaction and educational strategies. In addition, staff plans to serve several additional children by placing them in a local private or non-profit pre-school environment (specifically, the Bright Beginnings Pre-School Program). (See Attachment A: Scope of Services).

This expansion of the Bright Stars program would be funded by a combination of pilot grant funds, Virginia Pre-school Initiative (VPI) funds, local matching funds and in-kind contributions from the schools. This grant opportunity did not come to the attention of the Board of Supervisors during the County budget process because staff was waiting for definitive word regarding eligibility and state funding. The major obstacle at this time is sufficient funds to meet local match requirements.

The Department of Social Services proposes using surplus savings of $32,000 from its FY 2007 budget as the required local match for its FY 08 proposal. In response, the County would receive a state grant of $80,312. Together, a combination of grant funds, VPI funds, private funds, and (if approved) local government funds would be used to hire the new personnel required for this project, including a classroom teacher, teacher's aide, and Bright Stars Family Coordinator (social worker). The project would generate additional revenues to serve more at-risk children by developing a private-public partnership. (See Attachment C: Budget; and Attachment C: Budget Narrative.-on file in Clerk's office) Continuation of this pilot program after the first year will be dependent on additional appropriations from the General Assembly. It is unknown at this time whether the Governor and General Assembly will propose and approve additional funds for continuing or expanding the pre-school pilot programs beyond FY2008.

Staff recommends that the Board authorize the allocation of $32,000 in surplus General Funds resulting from savings in the Department of Social Services' FY 2007 budget to provide the necessary local matching funds required to participate in the FY08 Virginia Department of Education Pre-School Pilot Initiative. If approved, the Board will be asked to appropriate the funds for program expenditures in FY 2008.

**By the above recorded vote, the Board authorized the allocation of $32,000 in surplus General Funds resulting from savings in the Department of Social Services' FY 2007 budget to provide the necessary local matching funds required to participate in the FY08 Virginia Department of Education Pre-School Pilot Initiative.**

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Item No. 11.5. Cancel July 18, 2007, Board of Supervisors' meeting.

**By the above recorded vote, the Board cancelled the July 18, 2007 Board of Supervisors' meeting.**

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Item No. 11.6. Copy of letter dated May 23, 2007, from Mr. William D. Fritz, Chief of Zoning, to Mr. Cliff Kavanaugh, ***re: OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS --*** **Tax Map 118, Parcel 8-Scottsville District (Property of Victor I and Audur V. Kugajevsky)** ***Section 10.3.1*****, was received for information**

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Agenda Item No. 12. **Staff Update** and to receive **public comments** on Cismont Zoning Violation (TMP 65-20), an illegal junkyard located on Campbell Road in the Cismont area of Albemarle County.

Ms. Amelia McCulley, Zoning Administrator, addressed the Board to present an update on the cleanup around the site. She introduced Mr. Ed Liggett from the Department of Environmental Quality. Ms. McCulley reported that the purpose of her report is to provide the Board with an update and to obtain the Board's decision as to whether the County should undertake the remaining surface cleanup project. She said that the Board last heard the case on February 8, 2006, at which time staff reported the property was 50 percent cleaned up; well testing was done the next month and examined by the state labs with no contaminants found in the onsite well water.

Ms. McCulley noted that the property owners continue to clean up the property, and on December 1st, staff and the owner signed an agreement that the cleanup would be complete on June 1st or the County could pursue the cleanup. She noted that the deadline was not met, and given the winter there were several weeks that would have allowed for an extension. Ms. McCulley said that staff estimate is that the site is 90 percent cleaned up, and it was only 50 percent cleaned up last time it was before the Board; preliminary cleanup cost estimates are $250,000.

Ms. McCulley reported that the County has not contracted to clean up property to abate a zoning violation. She noted that there have been three cases where they have: two of them have involved health or safety hazards, and the third was a chronic case with an uncooperative violator. She said that this case could establish a precedent if the County undertakes the remaining cleanup. Ms. McCulley said that staff recommends allowing the property owners to continue to clean up the remaining ten percent. She said that in the event that the Board agrees, staff will continue to do onsite inspections and continue with public communications. Ms. McCulley noted that a new initiative would be having the owners provide a report on how much tonnage is removed from the property each month.

Ms. McCulley said that if the owners cease making progress, staff would return to the Board with a new recommendation. She presented pictures from before and currently, noting that the property owners continue to be cooperative throughout the process and that is not always the case. She said that they have also had more materials removed from this property than any other property including other trash and junkyard violations; from January 2005 through June 2007, they have removed over 467,000 pounds, or 233 tons of metals, from this property.

Mr. Boyd clarified that this is not a public hearing, but he would allow some public comments.

Mr. Slutzky asked if the remaining materials are expensive to take away.

Ms. McCulley responded that it is a whole lot of metal, but the earlier removal was easier because it was more concentrated in its locations.

Mr. Liggett reported that there is a split oversight with the case: County zoning (for waste removal) and DEQ (for environmental sampling). He mentioned that an environmental sampling plan had been done, but the owners did not feel they could afford to pay it, explaining that the Virginia solid waste management regulations stipulate that the director can ask for environmental confirmation sampling after the removal. Mr. Liggett stated that the DEQ always gives responsible parties the ability to demonstrate whether or not they can pay, and these owners have filled out the paperwork to get the exemption, which is currently being analyzed by DEQ's central office.

He reported that there is an estimated cost of $10,000 needed for subsurface and surface investigative sampling work, and if the owners are found to be able to pay DEQ would work out a plan with them. Mr. Liggett noted that there is an emergency fund that covers those costs if the owner is not able to pay, and there is a subfund that allows the director to use monies on a limited basis for the purpose of environmental investigation. He added that until the ability to pay analysis comes in, it will not be known how this will be handled, and with public funds a different (higher) standard must be met. Mr. Liggett also said that it is possible to get partial funding from the owner, and the Virginia Environmental Emergency Response Fund (VEERF) is available for any environmental emergency or investigation. He emphasized that VEERF is used for emergency purposes, so there must be something revealed in the analysis to merit that, and the site in question would likely just go on a list of contaminated sites.

Mr. Wyant asked if DEQ made suggestions on how to remedy problems uncovered in data collection.

Mr. Liggett replied that if the investigative phase shows that there are non-emergency situations, there would be discussions going forward. He noted, however, that if there is no ability to pay, there would be no further action taken on it.

Mr. Slutzky commented that he is hopeful that if the homeowner can not do sampling then the DEQ will provide the $10,000 for the sampling.

At this time the Chairman invited public comment.

Ms. Pat Napoleon addressed the Board, stating that there has been no firm advocacy from leaders for necessary comprehensive sampling as they allowed a DEQ downgrade in the sampling plan for this site. She said that Mr. Pascarella of DEQ had previously presented a more detailed sampling plan before this Board. Ms. Napoleon stated that appropriate surface cleanup has not taken place void of clutter visible from others' property lines, and the DEQ has produced two separate assessment plans wherein they have pointed to serious concerns related to two horrific fires including a major tire fire. She encouraged the Board to advocate for the people of Cismont.

Dr. R.A. Johnson addressed the Board, stating that he would like to know the timeframe the owners will have to complete the cleanup of this dump. He asked if what they are currently seeing is a true picture of the dump now. He asked if there will be any runoff into the wells. He also asked how long has the dump been in the process of being cleaned up. Dr. Johnson asked if any African-American wells had been tested in the community, and he asked if this owner had ever been given a permit to operate this dump. Dr. Johnson wondered where all the trash came from.

Ms. Kate Bailey addressed the Board, noting that the County gets irritated when citizens pester them about this issue, and Ms. Napoleon has been the go-between. Ms. Bailey said that their patience is wearing thin, and she asked audience members to stand in support of stronger cleanup efforts. She stated that there are several leaking oil tanks in the Cismont area, and the DEQ has jumped all over these even though there has been no evidence in the well water. Ms. Bailey commented that the progress the Gardners have made has been remarkable, and the Board and County need to spend the money on testing and remediation, not cleanup.

Mr. Jim Ballheim addressed the Board, stating that he hopes they could understand the DEQ representative better than he could. Mr. Ballheim said that the staff report was disheartening, and the County seems to be tiptoeing around a serious issue: operating a junkyard as a zoning violation and not adhering to the cleanup plan. He emphasized that the expenditure is a no-brainer, and the County does have some responsibility as they let the dump continue for so long.

Mr. Eric Wilke, an attorney representing the Gardners, addressed the Board. Mr. Wilke said that he feels it is important to look at the issues they are dealing with, a DEQ issue and a zoning issue, and they need to be bifurcated. He emphasized that the Gardners have been cooperative and have provided the DEQ with everything asked for, but the real focus of this discussion tonight is related to zoning. Mr. Wilke said that three dumpsters of this has been municipal solid waste, and the remainder has been recyclable metals, with 90 percent cleaned up. He noted that there would be a dangerous precedent set if the Board funds $10,000 for the sampling, and the Gardners have made remarkable progress with the site.

Mr. Wilke said that all the neighbors' concerns seem to be focused on the issue that is not the issue of this meeting, which is zoning and not hazardous waste.

Mr. Jeff Werner of PEC addressed the Board, stating that this Southwest Mountains area is extremely important to the PEC, as few other areas in Virginia have such a high concentration of privately protected land. Mr. Werner said that he understands the situation at the site is complicated, and he understands that DEQ is involved. He urged the County to commit to cleanup and periodic monitoring of surface and groundwater resources in the vicinity of this site. He noted that the February 8th staff report states that there was no evidence of actively leaking containers, but this does not mean there was no leakage, only that what might have been in those containers may have already leaked out. Mr. Werner said that the PEC urges the County to be advocates for a long-term monitoring protocol for the offsite water resources near this site to ensure that what may have leaked into the soil does not in the future result in contamination that future landowners are unaware of.

Mr. Slutzky said that the DEQ has come out and made recommendations. He assured the public that it has been valuable for them to come out and speak with DEQ present at the meeting so they will be responsive to concerns and get the sampling done quickly.

Mr. Rooker added that there have been two types of testing discussed, well testing and soil testing, and at the last meeting well testing was primarily discussed.

Ms. McCulley explained that right after the fire, County fire and rescue was very involved. She noted that one of the officers received training and sampled three area wells, from the Gardner's property also, and the full screen of metals and pesticides was done. She said that it came back with normal levels, and no elevated levels in anything.

Mr. Rooker asked if DEQ went in today, could they get adequate soil testing.

Mr. Liggett responded that they may be able to do sampling the way the site is today, but the critical issue is ability to pay and that is close to being determined.

Mr. Rooker commented that the quicker this can be resolved, the better.

Mr. Liggett replied that the DEQ is aware of the uncertainty and anxiety created by that, but they have to go with what they know and right now nothing is suggesting the need for an emergency track.

Mr. Wyant noted that he has done soil and water testing, and the ten percent to be removed is probably about 50 plus tons. He said that he did not see any hazardous materials on the site. He added that it could be three or four feet down which needs to be tested in the soil.

Ms. Thomas asked if there was anything the County could do to move the process along more quickly.

Mr. Liggett said that the Board expressing concern would not be counterproductive in any way, but his base instinct would tell him that if the Gardners can not pay, the Board should urge the DEQ to be as flexible with freeing up the public monies as possible.

Mr. Boyd emphasized that if the Board could move this along more quickly, they could prepare a letter as soon as possible.

Mr. Rooker commented that there was one site in his district that took years and several court actions to clean up, and there seems to be significant progress with the Gardner site cleanup.

Mr. Boyd suggested that the Board endorse another six months as a finalized deadline for getting this cleaned up and monitor the tonnage removal to ensure there is not a slacking off so that it keeps the pace. He added that he is not in favor of spending $250,000 to do a blitz cleanup.

Mr. Rooker said that the only way the County should pay for this is if it is offset by a lien on the property, and it should not come from taxpayer dollars.

Mr. Wyant commented that he does not want to spend months getting to corrective action.

Ms. McCulley mentioned that some of the materials may not be measured in the same way, and staff will need to keep a close watch on what is being removed.

Mr. Rooker asked that Ms. McCulley provide answers to Dr. Johnson's questions.

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Agenda Item No. 13. **APPEAL: SUB-2006-375, Ashcroft West – Preliminary: Private Street Waiver Request:** Request for re-approval of a preliminary plat to allow the creation of 28 new lots. The property is described as a portion of Tax Map 78 - Parcel 57, which contains 253.7 acres zoned R-1 (Residential), RA (Rural Areas) and PRD (Planned Residential Development) adjacent to the Franklin, Ashcroft, Fontana, and the proposed Lakeridge subdivisions. This site is located in the Rivanna Magisterial on the PRD portion of the parcel and proposed access is from the east through the Ashcroft subdivision. The Comprehensive Plan designates this property as being split between Neighborhood Density in Development Areas Neighborhood 3 and Rural Area 2.

Mr. David Pennock, Planner, reported that this is an appeal of the Planning Commission's denial of a private street waiver request for the proposed Ashcroft West subdivision, a 28-lot subdivision in the Rivanna Magesterial District, and the property was rezoned to PRD in 1979. He explained that the subdivision was going to be accessed by the road running through Ashcroft, but in 1988 the conditions of the approval of that zoning were amended in order to discuss a new proposed access from the rear through Bache Lane in the Franklin subdivision, then amended again in 1995 to restore the access to the Ashcroft road. Mr. Pennock said the request for private street authorization and PRD request was granted by the Planning Commission in 2005, and a nearly identical request was submitted to the Commission in 2006 and went before them in May of 2007. He emphasized that three points in the application include: streets providing access to this point are private streets; to have this approved as a public street would require improvements of those to a public standard; and the environmental degradation to the property, which shows the difference in earthwork would be 93 percent less for a private street than one to public standard. Mr. Pennock said, therefore, staff believes that the general welfare would be better served by a private street in this location. He noted that on May 1st, the Planning Commission denied this request.

Mr. Cilimberg explained that the Planning Commission cited concern about the location of this street in a rural area and saw the possibility for redesign to minimize the environmental impact difference between a public and private road. He reported that their motion for denial passed 5-0.

Mr. Rooker asked how much of this property is in the growth area and how much is in the rural area.

Mr. Pennock explained that the boundary between the two areas is at the 600-foot contour line so almost 90 acres is in the rural areas with the remainder in the development area, including the Lake Ridge subdivision of 104 lots.

Mr. Davis pointed out that this property is zoned PRD and not rural areas.

Mr. Pennock noted that it would be all but impossible to approve a PRD zoning like this today.

Mr. Rooker said that you can not connect a public road with a private road so in order to do this you would have to require that the applicant improve the entire road to public road standards, and that can not be required because it is an offsite improvement. He emphasized that based on the advice, there is no legal basis for denial.

Mr. Slutzky commented that he is not sure why the Board can not determine it is inconsistent with the Comp. Plan and, therefore, not approved.

Mr. Davis said that if this were are a rezoning or special use permit case, the Board would have that latitude. He said, however, that in this case it has to be evaluated whether it meets the zoning ordinance and subdivision ordinance, and zoning has established that they can develop the property as it is zoned now. Mr. Davis said that in this situation, the subdivisions that surround this property have been granted private roads, and if the private road is denied here there is a reasonable argument that the use of the property is so restricted there would be no reasonable use of the property.

Mr. Slutzky asked if the road plan was a factor in approval.

Mr. Davis replied that it probably was not because the private road systems in the other development effectively prohibited putting a public road in this development. He emphasized that the Board rezoned the property and amended the original application.

Ms. Thomas asked if they could go through Lake Ridge.

Mr. Davis replied that zoning does not allow access there, only through Franklin and Ashcroft.

Mr. Rooker noted that the Planning Commission decision seems to be based on their desire to not have this type of development in this location, but this applicant could only build a public road by having the County require him to do offsite improvements that legally they cannot demand.

Ms. McCulley recalled that the developer wanted to put public roads in Ashcroft, but they could not convince the local residency to accept mountainous terrain standards.

Mr. Rooker then **moved** for approval of the waiver to allow a private street for SUB-2006-375 for the reasons stated within the executive summary, and based on the findings set forth in Albemarle County Code § 14-234. He expressed his reluctance for this approval, but he noted the legal constraints on the Board. Mr. Wyant **seconded** the motion.

Ms. Thomas said that she would abstain from voting as she cannot support this application regardless of the County's legal obligations. She noted that this is right on the ridge, and there could not be a more obvious ridgetop development.

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

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

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Agenda Item No. 14. **PUBLIC HEARING: <u>PROJECT: ZMA-2006-005, Avinity (Sign #75).</u>** **PROPOSAL:** Rezone approximately 9.5 acres from R-1 Residential (1 unit/acre) to PRD Planned Residential Development (3-34 units per acre with limited commercial use) for a maximum of 124 units at a density of 13.26 units/acre, with proffers. LOCATION: Avon Street Extended (Route 742) approx. 1/2 mile south of intersection with Mill Creek Drive. TAX MAP/PARCEL: TMP 91-14, 90-35J, 90-35K, 90-35I. MAGISTERIAL DISTRICT: Scottsville. (Advertised in the *Daily Progress* on May 28 and June 4, 2007.)

Mr. Cilimberg reported that this application is for 48 townhouses and 76 condos off of Avon Street to the south with proffers for 15 percent affordable housing. He also reported that the Board had determined that they are supportive of this plan and deferred action to allow the applicant to bring back information on the true value of proffers. He said that since that April 11th public hearing the applicant has amended their proffers and is providing $11,900 for each market rate unit, all of which are proposed as townhouses or condos to meet their recent intent regarding cash proffers. He said that there would be a manual adjustment made based on the Marshall & Swift building cost index. Mr. Cilimberg said that based on the Board's indications, staff recommends approval inclusive of the proffers dated June 1, 2007 and the application plan dated March 27, 2007.

Mr. Rooker said that everyone had felt that this application was approved of in form, but there was more clarification needed on cash proffers and the developer has met this obligation with his revised plan. He stated that he could support it at this point.

Ms. Valerie Long addressed the Board and indicated that the proffers for the market rate units increased significantly, adding approximately $1 million to the total project cost.

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

Mr. Dorrier **moved** for approval of ZMA 2006-005 subject to acceptance of the applicant's proffers and the amended application plan. Mr. Wyant **seconded** the motion.

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

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

**PROFFER FORM**

**"AVINITY"**

Original Proffer **x**
Amended Proffer
(Amendment #:

Date: 6/1/2007
ZMA #: 2006-005

Tax Map and Parcel Number(s): 91-14, 90-35I, 90-35J, & 90-35K
Owner: Avon Properties, LLC

**9.33 Acres to be rezoned from R-1 to PRD**
**in accordance with plan entitled**
**"Rezoning Request Avinity Albemarle County, Virginia"**
**prepared by Terra Concepts and last revised on March 28, 2007**

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

1. AFFORDABLE HOUSING
The Owner shall provide the equivalent of nineteen (19) residential dwelling units as "affordable units" for sale or lease. The nineteen (19) units shall be comprised of one or more of the following unit types: single-family attached housing (townhouses) or condominiums. The Owner or his successor in interest reserves the right to achieve the nineteen (19) equivalent affordable units in a variety of ways, utilizing the above mentioned unit types alone or in combination as outlined below.

A) For-Sale Affordable Units – Affordable units shall be affordable to households with incomes less than eighty percent (80%) of the area median family income (the "Affordable Unit Qualifying Income"), such that the housing costs consisting of principal, interest, real estate taxes, and homeowner's insurance (PITI) do not exceed thirty percent (30%) of the Affordable Unit Qualifying Income, provided, however, that in no event shall the selling price of such affordable units be required to be less than the greater of One Hundred Ninety Thousand Four Hundred Dollars ($190,400) or sixty-five percent (65%) of the applicable Virginia Housing Development Authority (VHDA) maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced below. The Owner or his successor in interest may at its option provide down payment assistance or soft seconds (silent second mortgages) to reduce the costs to the homebuyer, so that the resultant first mortgage and housing costs remain at, or below, the parameters described above. All financial programs or instruments described above must be acceptable to the primary mortgage lender. Any Soft second (silent second mortgage) executed as part of the affordable housing proffer shall be donated to a local fund designated by the Albemarle County Office of Housing. Each dwelling unit qualifying under these parameters counts as one (1) affordable unit.

B) For-Lease Affordable Units – For a period of five (5) years following the date the certificate of occupancy is issued by the County for each for-lease affordable unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the "Affordable Term"), such units shall be leased to households with incomes less than the Affordable Unit Qualifying Income. No for-lease affordable unit may be counted more than once towards the number of for-lease affordable dwelling units required by this Section 1.

(i) Definition of For-Lease Affordable Units – Paragraph 1 shall mean that the gross lease amount including tenant paid utilities shall not exceed one-hundred twenty (120%) percent of the fair market value of rentals published by the Department of Housing and Urban Development.

(ii) Conveyance of Interest – All deeds conveying any interest in the for-lease affordable units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this Section 1(B). In addition, all contracts pertaining to a conveyance of any for-lease affordable unit, or any part thereof, during the Affordable Term, shall contain a complete and full disclosure of the restrictions and controls established by this Section 1(B). Prior to the conveyance of any interest in any for-lease affordable unit during the Affordable Term, the then-current owner shall notify the County in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this Section 1(B)(i) and 1(B)(ii) have been satisfied.

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

C) Each subdivision plat and site plan for the land within the Property which includes affordable or other price-restricted units shall designate the lots or units that will be subject to the terms and conditions of this proffer. Prior to the issuance of the thirty-sixth (36th) building permit for a market rate dwelling unit within the Property, the then-current owner/builder shall obtain certificates of occupancy for six (6) affordable dwelling units within the Property. Prior to the issuance of the seventy-first (71st) building permit for a market rate dwelling unit within the Property, the then-current owner/builder shall obtain certificates of occupancy for six (6) additional (for a total of twelve (12)) affordable dwelling units within the Property. Prior to the issuance of the final building permit for a market rate dwelling unit with the Property, the Owner shall obtain certificates of occupancy for all of the affordable dwelling units within the Property.

D) All purchasers of the affordable units shall be approved by the Albemarle County Office of Housing or its designee. The then-current owner/builder shall provide the County or its designee a period of ninety (90) days to identify and pre-qualify an eligible purchaser for the affordable unit(s). The ninety (90) day period shall commence upon written notice from the then-current owner/builder that the unit(s) is within one hundred twenty (120) days of completion and, that on or before the end of such one hundred twenty (120) day period shall be ready for occupancy. If the County or its designee does not provide a qualified purchaser who executes a contract of purchase during this ninety (90) day period, the then-current owner/builder shall have the right to sell the unit(s) without any restriction on sales price or income of the purchaser(s), provided, however, that any unit(s) sold without such restriction shall nevertheless be counted toward the number of affordable units required to be provided pursuant to the terms of this proffer. The requirements of this proffer shall apply only to the first sale of each of the affordable units that are purchased. If at any time prior to the County's approval of any preliminary site plan or subdivision plat for the Property which includes one or more for-sale affordable units, the Housing Office informs the then-current owner/builder in writing that it may not have a qualified purchaser for one or more of the for-sale affordable units at the time that the then-current owner/builder expects the units to be completed and that the Housing Office will instead accept a cash contribution to the Housing Office to support affordable housing programs in the amount of Sixteen thousand five hundred dollars ($16,500) in lieu of each affordable unit(s), then the then-current owner/builder shall pay such cash contribution to the Housing Office prior to obtaining a certificate of occupancy for the unit(s) that were originally planned to be affordable units, and the then-current owner/builder shall have the right to sell the unit(s) without any restriction on sales price or income of the purchaser(s). If the cash contribution has not been exhausted by the Housing Office for the stated purpose within five (5) years of the date it was contributed, all unexpended funds shall be refunded to the party that contributed the funds. For the purposes of this proffer, such affordable dwelling units shall be deemed to have been provided when the subsequent owner/builder provides written notice to the Albemarle County Office of Housing or its designee that the unit(s) will be available for sale.

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

2. CASH PROFFER

A) The Owner shall contribute $11,900 cash to the County for each market rate unit constructed within the Property for the purpose of mitigating impacts from the development. The cash contribution shall be used for schools, libraries, fire, rescue, parks or any other public use serving Neighborhoods 4 & 5 as identified in the County's Capital Improvements Program. The cash contribution shall be paid in increments of $11,900 cash for each market rate unit prior to or at the time of issuance of the building permit for each unit. If this cash contribution has not been exhausted by the County for the stated purpose within five (5) years of the date of the last contribution, all unexpended funds shall be refunded to the Owner.

B) Annual Adjustment of Cash Proffers. Beginning January 1, 2009, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Marshall and Swift Building Cost Index (the "MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended, and the denominator of which shall be the MSI as of December 1 in the preceding calendar year. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

3. PAVEMENT

In conjunction with improvements approved with the subdivision plat or site plan which establishes lots 22-28, the Owners shall construct a 6-foot wide asphalt trail consisting of 4 inches of 21B sub base material and 2 inches of SMA-2 asphalt, applied as a seamless coat, or other specification approved by the County Engineer. The trail shall be constructed in the location shown of the application plan or other location approved by the Building Services Director for Albemarle County

Schools. If the Albemarle County School Board determines that the asphalt path is not necessary or desirable to serve Cale Elementary School, then the Owner shall be relieved of this proffer.

The Owner shall construct a new driveway to provide access to TMP 90-35L in the location shown on the application plan. The new driveway shall originate from the proposed main entry drive into the proposed development and not from Avon Street. The standards for constructing the driveway shall be 6 inches of 21B sub base material and 2 inches of SMA-2 asphalt, applied as a seamless coat. Improvements will tie into the adjacent owner's on-site improvements at the locations that improvements exist at the property boundary. Construction of the new driveway will be completed at the same time as the construction of the main entrance road improvements into the development. Until such time as the new driveway is completed, access to the adjoining property will continue to be from the existing "shared" gravel driveway. Construction traffic for the development shall use a separate, temporary construction entrance as shown on a sketch entitled, "Avinity Temporary Construction Access Scenario", dated 1-22-07, a copy of which sketch is attached hereto as Exhibit A.

4. FENCING
The Owner or his successors or assigns shall construct a fence along the joint property line of the subject site and the school property from Avon Street to the asphalt trail. The fence shall be constructed of wood, metal, PVC, other materials or a combination of materials approved by the Building Services Director for Albemarle County Schools, and shall be completed in conjunction with the improvements required for the first subdivision plat or site plan for the development. If at any time the Building Services Director for Albemarle County Schools notifies the Owner(s) that dogs owned by those residing in the development have become a nuisance on school property, the fence shall be extended to the rear property line of the Property by the Owner(s) or his successors or assigns.

Owner of TMP 91-14, 90-35J & 90-35K:

Avon Properties, LLC,
a Virginia limited liability company

By: River Bend Management, Inc.,
a Virginia corporation, and Manager
By: (Signed) Andrew J. Dondero
Andrew J. Dondero, Vice President/CFO
Date: 06/04/2007

Owner of TMP 90-35I:
(Signed) Donna M. Jordan 06/04/2007
Donna M. Jordan (f/k/a Donna M. Hill) Date

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(**NonAgenda.** At 7:34 p.m., the Board took a recess, and reconvened at 7:42 p.m.)

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Agenda Item No. 15. **PUBLIC HEARING: PROJECT: ZMA-2001-008, Rivanna Village at Glenmore (Signs #16,17,19,20,21). PROPOSAL:** Rezone approx 93 acres from RA -- Rural Areas which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) residential (3-34 units/acre) with limited commercial uses and PRD Planned Residential District which allows residential (3-34 units/acre) with limited commercial uses to NMD Neighborhood Model District which allows residential (3-34 units/acre) mixed with commercial, service and industrial uses. A maximum of 521 dwellings is proposed with an overall gross density of 5.6 units/acre. LOCATION: Intersection of Glenmore Way and Route 250 East. TAX MAP/PARCEL: a 4.583 acre portion of Tax Map 93A1, Parcel 1 and a 0.741 acre portion of Tax Map 93A1-1 zoned Glenmore PRD; Tax Map 93A1, Parcels 2, 3 & 4; Tax Map 80, Parcel 46, 46A, 46C, 46D, 46E, 50,and 55A all zoned RA Rural Areas; and Tax Map 79 parcel 25A also zoned PRD. MAGISTERIAL DISTRICT: Scottsville. (Advertised in the *Daily Progress* on May 28 and June 4, 2007.)

Ms. Elaine Echols, Planner, presented a modified set of proffers. She noted that there was a mistake by staff in the number of properties encompassed in the proffers, but there is no advertising problem with the oversight.

Ms. Echols noted that this was part of a rezoning proposal in 2001 along with a Comprehensive Plan Amendment and Zoning Text Amendment. She said the project has progressed over the years and is now ready for public hearing. She noted that this involves several properties up for rezoning, most of which is community service designation for the Village of Rivanna development area. She stated that the general development plan for this district has evolved into a positive example of what the fixed uses would be and optional uses would be. Ms. Echols said that the revised plan has the main entry coming from Route 250 instead of Glenmore Way, and there are commitments for single family detached residences where they abut single family detached except in the southernmost part.

Ms. Echols noted that the most important features are: the range of residential units, from 348 to 521; a minimum of 56,000 square feet of non-residential; and a maximum 125,000 square feet of non-residential not including the fire station. She emphasized that the uses are commercial, office, civic, and recreational, and the park is proposed as a community park. She said that the CPA was approved in May

2002, and larger buildings initially constituted the center of the development but staff and Glenmore residents wanted the revisions.

Ms. Echols reported that there have been five worksessions before the Planning Commission's public hearing on March 13th. She also reported that there have been six years of work with the public and the applicant, and the Planning Commission recommended approval of the rezoning. She noted that there were a number of issues that have now been resolved: commitment from the fire stations for easements for sidewalk and stormwater reconstruction; public versus private streets in relation to VDOT; whether the streetscapes wanted could be obtained; architectural standards; and Monticello. Ms. Echols mentioned that all those issues were resolved at the meeting, and the Commission wanted commitments made so that the area next to Route 250 could be reviewed by the ARB. She also said that the Housing Director could accept cash. She said that the applicant had to limit the accessory type units to 30 percent, and restrictions for structured parking could be created.

Ms. Echols asked the applicant to address transit but did not provide any guidance, so the applicant describes the property as "transit-ready." She said that at the perimeter of the development, there has been concern about the relationship of these houses to the new more compact single-family detached product. She mentioned that there are some existing trees, and the applicant has indicated his desire to preserve as much existing vegetation as possible or replace it to provide adequate screening. Ms. Echols noted that the neighbors felt that the screening would take place. She explained that the proffers are now in an approvable form.

Ms. Echols said that staff finds this to be an excellent example of a Neighborhood Model development, and it includes a park that will be provided for the eastern part of the County. She noted that the proposal will provide proffers that offset its calculated cash impacts. She indicated that the Planning Commission approved all the waivers that did not require Board approval, and there are 14 waivers or modifications recommended to promote a better design. Ms. Echols stated that staff recommends approval with the proffers, the General Plan of Development and Code of Development, waivers in Exhibit E, and resolution in Exhibit C.

In response to Mr. Dorrier's question about roads up to a public standard, Ms. Echols said that the applicant requested from the Planning Commission private roads for the entire development, and the Commission said that they would prefer private roads except for the roads to the fire station and public park but only if they would work to get the desired streetscape. She added that the applicant has been providing a minimum density of four dwelling units per acre.

Mr. Dorrier asked about the reference to community. Mr. Cilimberg explained that term is used because of the community service designation, and there was actually discussion on whether it should have a neighborhood designation with the possibility of having more commercial area. Mr. Cilimberg indicated that this proposal is somewhere in between neighborhood service and community service.

Mr. Rooker noted that at the time, developers said that the Neighborhood Model would not work so one came forward with a plan that ended up including some of those elements.

Mr. Wyant discussed setbacks and expressed concern about approving waivers for a particular development that impacts adjacent parcels. He is concerned about the perimeter or parcels that surround the development. He mentioned an application that came to the Board several years ago whereby the applicant was impacted and could not do what they wanted to do.

Mr. Davis responded that the setbacks on the adjacent property would be less than what it would be prior to the rezoning, and that situation would not be applicable in this particular proposal.

Mr. Cilimberg said if the concern is what the adjacent properties can do on their lots because of this approval, their setbacks remain the same. Their relationship to the property line for setback continues to be the same.

Mr. Slutzky pointed out that the applicant has offered just over the minimum of what the lowest number of units would yield in terms of impacts, and he hopes that future developers do not interpret that as a cue to offer the lower end of the range.

The Chairman opened the public hearing.

Mr. Don Franco, representing Glenmore Associates, addressed the Board. He explained that what is presented was developed by Will Rieley and has had significant input from the public and County staff. Mr. Franco said that the plan represents consensus among all parties that was reached over the last six years. He added that the cash value of the proffers, if they were followed strictly from the Board's policy, would be about $6 million. Mr. Franco said that the range is smaller than that $6 million, and they are offering what is right in the middle.

Mr. Rooker asked for clarification of what they are crediting themselves for in the cash proffers.

Mr. Franco said that the original park concept was 27 acres, but since it ended up smaller the developer is buying back the land at $340,000; $2.6 million is for park improvements; 40 percent of total wetland mitigation impacts are represented; and the Route 250 right of way is also included.

Mr. Rooker said that they are crediting $1.664 million for mitigation in the park.

Mr. Franco agreed, stating that they had a proposal for the permitting process to get through that which costs $125,000.

Mr. Rooker asked if there would be $1.7 million of stream mitigation requirements without the development itself as parkland does not usually generate a requirement for mitigation.

Mr. Graham replied that it depends on how the project is approached as the developer has planned this development with a park that the staff, applicant, and public took a lot of time to come to agreement on.

Mr. Rooker said that simply giving the 18 acres of land for a park would require no mitigation.

Mr. Graham emphasized that the need for wetland mitigation has arisen because of the disturbance to create the park.

Mr. Franco noted that this includes disturbance to streams within the park because of the creation of the park. He added that their preference would be to create the park and give them credit along the way rather than providing a number now that is too low.

Mr. Franco said that the right of way on Route 250 would not be required at this time so that is being proffered as well. He also said that they are providing affordable housing by estimating the number of units and unit types to come up with a cash proffer value. Mr. Franco noted that they are providing sanitary sewer to the fire company as well as frontage proffered and a stormwater basin. He reported that the roads have been widened to provide on-street parking for the park so that it did not have to be created within the park. Mr. Franco said that they also used a credit for the Neighborhood Model development using Steve Allshouse's report that showed number of trips generated per unit.

In response to Mr. Slutzky's question, Mr. Franco said that a single-family detached unit ordinarily generates ten vehicle trips per day, but the Neighborhood Model reduces that to seven.

Mr. Cilimberg confirmed that Mr. Allshouse's numbers used the standard VDOT number of ten.

Mr. Robert Crouch addressed the Board, stating that he appreciates the contribution of right of way along Route 250, and he also thanked Ms. Echols for her work.

Ms. Carol Milks addressed the Board, stating that she owns property in the MacGruder subdivision which is north of this proposed development. Ms. Milks commented that she is concerned about the loss of natural screening between her neighborhood and the new one. She said that the 20-foot deep landscaping strip proposed with a double row of evergreens is the absolute minimum necessary. Ms. Milks also requested that the developers consider her neighborhood when they are clearing the area so that it is more environmentally friendly than the burning done with Glenmore. She asked that a stormwater management system be considered that is safe and attractive.

Mr. George Hall addressed the Board, stating that he will be building a home at Glenmore. He said that he is satisfied with the development, but is concerned with the community services designation. Mr. Hall said that he assisted with a Glenmore property owner survey that received 44 percent response rate, and 90 percent of respondents said that they want neighborhood services and not community services designation. He noted that the Planning Commission had ensured they would handle it in the master planning process, but it does not seem right to wait a year to deal with that.

Mr. Carl Huebner addressed the Board, stating that he is also a Glenmore resident who is concerned about the land use designation. He noted that the CPA submitted by Rivanna Village last year, and the Board decided not to consider it but instead treat it as public input. Mr. Huebner said that residents of Glenmore are overwhelmingly in favor of the neighborhood service designation rather than the community service designation. He indicated that staff had suggested waiting for the master planning process that will begin later this month, but Mr. Huebner asked that the Board confirm the neighborhood services designation now.

Ms. Carolyn Grow of Glenmore addressed the Board, stating that considerable community effort has gone into the park, and residents want assurance that the park will proceed as presented. Ms. Grow commented that if changes are made to the conceptual plan noted under the Code of Development, residents would like to be notified so that they can have input.

Ms. Carol Curran of Glenmore addressed the Board, stating that implementation of Rivanna Village Neighborhood Model is threatened by VDOT's position on public utilities under public streets. Ms. Curran said that Rivanna Village is supposed to have a Williamsburg style, and it is frustrating that the utilities issue is just now surfacing.

Mr. Thomas Grzymala of Glenmore addressed the Board, stating that the gridlock he experienced in Northern Virginia was primarily the result of poor planning. Mr. Grzymala said that the minimum density of 348 units in Rivanna Village would require utilities to be buried but that is not consistent with VDOT policies. He said that VDOT easements cannot be fulfilled under the current plan, and that means the roads will have to be obtained by private dollars. Mr. Grymala noted that it may be difficult to find buyers who will have to maintain the roads, especially affordable housing buyers. He urged the Board not to "sweep the issue under the rug" and assume it will take care of itself.

Mr. Josh Levitt addressed the Board, stating that he lives in Glenmore. He thanked the Board for the opportunity to speak, and he expressed concern about the minimum density of four units per acre in this development. Mr. Levitt said that he moved here in 2000 because of the attractiveness of the area. He commented that Mr. Kessler's product is very well done. Mr. Levitt said that his sole concern is related to the minimum density, and the developer should be given flexibility under the Neighborhood Model.

Ms. Betsy Gohdes-Baten addressed the Board, stating that this is the first time a density minimum not related to commercial development has been recommended by the Planning Commission. Ms. Baten noted that requiring a minimum density sets a very dangerous precedent because the Commission is only charged with providing recommendations and not with setting policy.

Mr. Steve Fey addressed the Board, stating that he is a Glenmore resident. He said that the County needs to communicate to VDOT that Route 250 needs to be funded now, and the prioritization has not yet been established. Mr. Fey emphasized that the additional residents generated by Rivanna Village would further impact the road.

Ms. Alexandra Fey addressed the Board, stating that her concern is the proximity of the road to the equestrian riding ring and the inherent safety issues of that juxtaposition. She thanked the Board for the border of trees, but any attempt to enhance the buffer zone would help mitigate the impacts of construction.

Mr. Rooker said that he is not certain that the requirement for minimum density is appropriate, but the County can legally accept a proffer that offers that.

Ms. Thomas commented that this is not dense development, and she finds it encouraging that there is a minimum tied in with the Code of Development.

Mr. Franco noted that the applicant is happy with the plan as submitted, and the private road situation is a separate issue. He said the density will add stories to those buildings.

Mr. Rooker said that the private versus public street issue has been dealt with for many years, noting that the Neighborhood Model is not always consistent with VDOT's policies.

Ms. Thomas asked about the General Assembly's work with VDOT on subdivision road standards and the utilities issue.

Mr. Graham responded that the last time this arose, he was told that the Committee was working with six months, but it took two years to bring revised regulations forward. He said that they did include the provision for utilities in the street. He said, however, that there is not agreement among VDOT and the service authorities on how to do them; hence, there are no design guidelines. Mr. Graham noted that his concern is with streets that would connect to adjoining properties, and staff feels that those should be public streets. He further noted that internal streets are not a concern.

Mr. Rooker added that part of the dilemma has been with the VDOT standards.

Mr. Graham emphasized that he has continued to work on this issue.

Mr. Rooker mentioned that a private group may maintain the roads better than VDOT, given the funding situation.

Mr. Franco added that the core issue with public utilities is Virginia Power, and if they are in the right of way VDOT may ask that they be moved if the roads are widened. He said that the chances are small that the road would be widened in this situation, but utilities do not want to be in the right of way so houses would be pushed back into a suburban sprawl style. Mr. Franco stated that the only way to solve the issue is to present actual plans and to get Board endorsement that the form is more important than whether the roads are public or private.

Mr. Davis commented that approving this zoning does more to support the Neighborhood Model designation than a change in the Comprehensive Plan. He said Zoning trumps the Comp Plan.

Mr. Rooker noted that there is a limit of 125,000 square feet of commercial.

Mr. Cilimberg said that there would be different designations used in the master planning process, not neighborhood and community service.

In response to Mr. Wyant's question about waivers, Mr. Graham explained that nothing approved with this rezoning waives any requirements, and the applicant will have to conform to stormwater management policies when they come forward with a site plan or subdivision plan. Mr. Graham said that the County typically requires that water coming onto the property is being caught and not backing onto other property.

Ms. Thomas asked for some clarification of the term "transit-ready."

Mr. Franco explained that the loop coming off of Glenmore way provides an opportunity for a bus route, and there is also a big parking lot to create a bus shuttle station.

Mr. Dorrier asked what age group would be targeted with this development.

Mr. Franco said that the multi-family units would likely appeal to an older clientele whereas the single family units would attract young professionals.

Mr. Cilimberg mentioned that there is also walkability with this development as many stops are within a quarter mile of residences.

Ms. Thomas asked about conformity to the dark skies policy.

Mr. Franco replied that there would be cutoff lighting within the development but would spread out further within to provide safety for pedestrians.

Ms. Thomas asked about the CDA within the proffers.

Mr. Franco responded that the CDA is a carry-over from previous plans, and they did not include the credits for it.

Ms. Thomas asked about the timing/phasing of affordable units.

Mr. Franco replied that they have written in the requirement that there would be no less than 15 percent affordable housing approved with any site plan or subdivision plat, and each block has between ten percent to 30 percent affordable units.

Ms. Thomas asked about the capacity of Glenmore's sewage treatment plant or if it would have to be enlarged.

Mr. Franco responded that the there is an agreement that any upgrades are the responsibility of Glenmore Associates, and it would be dealt with by the residents who create the need as opposed to the existing residents.

Ms. Thomas asked about approval of roof colors from Monticello as part of an effort to minimize visual impacts.

Mr. Franco replied that Monticello had concerns with Block C, and they are now satisfied with what is planned.

Mr. Rooker commented that VDOT analysis recommended expansion to four lanes, and the allocated cost to this development would be $7.2 million. He emphasized that these proffers fall way short as the developer is claiming credit of $4 million for the park. Mr. Rooker said that Mr. Mullaney indicated he would rather have the 18-acre park fully approved instead of the 27-acres already proffered by Glenmore, but Mr. Mullaney might not agree to that with the $4 million cost. He noted that the development is well done and meets many requirements of the Neighborhood Model, but it does not really meet proffer requirements. Mr. Rooker added that he does not think it would be appropriate to approve a development after adoption of $19,100 per unit for affordable housing. He said he thinks they are far short of meeting those numbers.

Mr. Boyd commented that it would be difficult to apply that figure to this development as the policy has just been decided. He also commented on the reluctance to accept the park proffer.

Mr. Rooker said that without this development even going forward, there is a 27-acre park proffered. He noted that the trade is reasonable with the 18-acre park, and a credit of $4 million is not appropriate. He also noted that there is a per-unit credit that can not be determined because the exact number of units is unknown.

Mr. Slutzky stated that he is comfortable moving forward when he weighs everything on balance, but he added that the credit situation would be dealt with next week for future developments.

Mr. Dorrier said that this is an excellent example of having the private sector work with government.

Comparing it to the Avinity project, Mr. Rooker responded that it is a well done plan, but the applicant could offer more in cash proffers. He said it falls far short of our policy.

Mr. Boyd said that this applicant has tried to match the $17,500 figure.

Mr. Rooker stated that the right of way should be credited, and the unit credits here would be $10,000 per unit.

Mr. Slutzky commented that he is willing to accept these credits as the applicant presents them.

Mr. Rooker emphasized that the Board has never had a worksession on this application, and it would be a mistake to establish a precedent to accept representations that non-cash proffers are worth a certain value without some staff analysis of this. He added that he finds it difficult to believe that park costs would be over $4 million.

Mr. Slutzky replied that most of that are mitigation costs.

Mr. Rooker said that he would want to ensure that those were related to park development.

Mr. Cilimberg explained that staff did discuss the $2.5 million in park improvements, and Mr. Mullaney seemed comfortable with that amount. He further explained that the mitigation was not addressed, and it is difficult to estimate mitigation costs. He added that they are comfortable with the values of the land as it is not a one to one swap for the 27 acres and the 18 acres. Mr. Cilimberg noted that he cannot say whether the wetland mitigation figure is accurate.

Mr. Graham commented that the Board is struggling with the same issues on this application as staff did. He said we do not have the answers for yet. He also said that the wetlands mitigation number is a pretty conservative number.

Mr. Rooker said that he does not want to be in a situation where the proffer values are found to be too low.

Mr. Slutzky emphasized that the Board must use what policies it currently has in place, and it should be equally committed to returning overpayment for proffers.

Mr. Rooker noted that the $7.5 million in transportation impacts will not be given to the County, and the Board has decided to use a cash proffer policy that uses averages based upon a fiscal impact model and the CIP. He said that the per unit cash proffers could be increased through differential if they are determined to be too low.

Mr. Boyd said that he agrees with Mr. Slutzky on the proffer value issue.

Mr. Dorrier commented that the applicant has been dealing with this for years and has gone a long way to provide adequate proffers.

Mr. Dorrier **moved** to approve ZMA 2001-008, subject to acceptance of the applicant's proffers, General Plan of Development and Code of Development. Mr. Slutzky **seconded** the motion.

Ms. Thomas agreed that she would like to ensure that the proffer values are adequate, especially for road improvements along Route 250.

Mr. Rooker said that he would be willing to accept the motion if it included language in the proffer that would recapture for the public differential given for credit between the park and what is actually being given.

Mr. Slutzky replied that he does not want to make the applicant be delayed any further, and the Board would have the opportunity to work on the proffer policy at next week's worksession.

Mr. Rooker said that the Board has not been dealing with it for six years, just for the last couple hours, and he does not want to support it without more assurance that the proffer values are adequate.

Mr. Boyd stated that while he agrees with Mr. Rooker in philosophy, the Board must act based on what they have in place today.

Mr. Rooker said that he is concerned that they are not going to get near that average if it were approved today.

Ms. Thomas commented that this is likely the last development to be reviewed under the old policies, and this application was originally presented when the County just wanted to get something out of the developer.

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

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

**RIVANNA VILLAGE APPROVAL DOCUMENTS**

**PROFFER STATEMENT**
**RIVANNA VILLAGE**
**Amendment #: [ ]**

| | |
|---|---|
| **Date:** | 6/13/07 |
| **ZMA #:** | 2001-08 (Initialed MC/PBK) |
| **Tax Map Parcel #:** | 79-25A, 80-46, 80-46A, 80-46C, 80-46D, 80-46E, 80-50, 80-51, ~~80-55A,~~ 93-A1-1 (two portions thereof), 93-A1-2, 93-A1-3, and 93-A1-4 |
| **Existing Zoning:** | PRD, Planned Residential Development and RA, Rural Areas |
| **Proposed Zoning**: | NMD, Neighborhood Model District in accordance with the Code of Development (titled Rivanna Village at Glenmore, prepared by The Cox Company, dated February 5, 2007) and the General Plan of Development (Exhibits D- O of the Code of Development). |
| **Total Land Area**: | 94.47 acres |

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed herein below which shall be applied to Rivanna Village (herein after the

"Property") if the Zoning Map Amendment (hereinafter "ZMA") is approved by the County of Albemarle (the "County"). These conditions are proffered as a part of the requested ZMA and it is agreed that: (1) the ZMA itself gives rise to the need for the conditions, and (2) such conditions have a reasonable relation to the rezoning requested.

The term "Owner" as referenced herein shall mean the owner of record and successors in interest of (Initialed MC/PBK) parcels 79-25A, 80-46, 80-46A, 80-46C, 80-46D, 80-46E, 80-50, ~~80-51,~~ 80-55A, 93-A1-1 (two portions thereof), 93-A1-3, and 93-A1-4. Parcel 93-A1-2 is not subject to the terms, conditions and obligations imposed by these proffers.

The headings of the proffers and conditions set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provisions of the proffers.

1. **Community Development Authority Participation:** In order to mitigate impacts from this development, the Owner shall, upon request by the County (such request to be made by the County within 90 days of ZMA approval), petition for and consent to any lot or unit (as the case may be) designated in the General Plan of Development for non-residential uses to participate in a Community Development Authority ("CDA") established pursuant to Section 15.2-5152, et seq. of the Code of Virginia ("Code").

   The CDA, if created, will be created for the purpose of implementing transportation improvements located along Route 250 East between the Property and the Interstate 64 interchange to the west. In the event that a lot or building, as designated in the final and approved General Plan of Development, contains both residential and non-residential units, only the non-residential units shall participate in the CDA.

2. **Cash Proffer for Capital Improvements:** In order to mitigate impacts from this development, the Owner shall contribute cash for each market rate residential unit constructed within the Property to Albemarle County for the stated purpose of either funding traffic improvement projects within or immediately adjacent to the Village of Rivanna as identified in the County's Capital Improvements Program or school projects at Stone-Robinson Elementary School, Burley Middle School, and Monticello High School as identified in the County School's Capital Improvements Program.

   The cash contributions shall be at the following rates: $3,500 for each single family detached unit, $3,000 for each townhouse unit and $2,500 for each multifamily unit. Single family detached units paying cash in lieu of an affordable unit as provided in Proffer 9, Carriage Houses and other affordable dwellings as defined in the Code of Development shall be exempted from this proffer. The cash contribution shall be paid at the time of the issuance of the building permit for such residential dwelling unit.

   If the cash contribution has not been exhausted by the County for the stated purposes within ten (10) years from the date of the issuance of the last residential building permit within Rivanna Village, all unexpended funds shall be applied to fund for any public project or program serving the Village of Rivanna.

   Annual Adjustment of Cash Proffers.

   Beginning January 1, 2009, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Marshall and Swift Building Cost Index ("MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended, and the denominator of which shall be the MSI as of December 1 in the preceding calendar year. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

3. **Route 250 and Eastern Entrance Improvements:** In order to mitigate traffic impacts, the Owner shall either construct left and right turn lanes on Route 250 at the eastern entrance to the Property or bond these improvements prior to approval of the first site plan or subdivision plat for the development.

   The Owner shall install the traffic signalization required by the Virginia Department of Transportation ("VDOT") at the intersection of Route 250 for the eastern entrance to the Property at such point in time that VDOT traffic signalization warrants are met and VDOT requests the installation of such signal, provided that such request from VDOT is made prior to the completion of Rivanna Village, which for the purposes of this paragraph shall be deemed to be the later of (i) the date of approval and recordation of the subdivision plat creating individual residential lots in the final block permitting residential lots or (ii) the date of final site plan approval for the final undeveloped block within the Property.

4. **Route 250 and Glenmore Way Improvements:** In order to mitigate traffic impacts, the Owner shall install any traffic signalization required by VDOT at the existing intersection of Route 250 and Glenmore Way at such point in time that VDOT traffic signalization warrants are met and VDOT requests the installation of such signal provided that such request from VDOT is made prior to the

completion of Rivanna Village, which for the purposes of this paragraph shall be deemed to be the later of (i) the date of approval and recordation of the subdivision plat creating individual residential lots in the final blocks permitting residential lots or (ii) the date of final site plan approval for the final undeveloped block within the Property.

5. **Construction of Steamer Drive Improvements:** The Owner's obligation to construct the improvements on TMP 93-A1-2 (Block F), including the sidewalk and pedestrian pathway, shall be deemed satisfied when construction is complete or if the owners of TMP 93-A1-2 do not grant the required easements or other interests in the land so as to permit the construction and maintenance of such improvements prior to County approval of the final site plan or subdivision plat for the lands immediately adjacent to these improvements. Failure of the owners of TMP 93-A1-2 to grant the required easements shall not relieve the Owner of the obligation to provide stormwater management for Blocks C & G and, if the required easements are not provided, alternative stormwater management (to be consistent with the stormwater requirements for the overall project) will be provided which does not compromise the design of Blocks C & G.

6. **Construction and Dedication of Parks and Recreation Improvements:** In order to mitigate impacts on existing public facilities, the Owner, at its expense, shall, at the request of the County, engineer, construct, and dedicate in fee simple to the County a park comprised of the land and improvements in Block I. Requirements for Block I and the improvements to be constructed in Block I are set forth in the Code of Development.

   Provisions for the park shall be included with the first phase of the development. For the purposes of this proffer, "provisions" shall mean that the Block I parcel shall be platted with the initial plat for Rivanna Village. The park improvements described in the Code of Development shall be built or bonded prior to the issuance of the Certificate of Occupancy for the 174th residential unit within the Property.

   The Owner shall dedicate the park to the County upon completion of the improvements or earlier upon request of the County. If dedicated prior to completion of the required improvements, the responsibility for implementation of this proffer shall run with the residue of the Property. The Owner and the County acknowledge that the County may assume responsibility for maintenance for completed portions of the park prior to dedication. The Owner and the County further acknowledge that the Owner proffers the park subject to the County passing a resolution concurrent with ZMA approval, whereby proffer number 2 of ZMA-79-016 is deemed satisfied.

7. **Route 250 Landscape Buffer and Right of Way Dedication:** In order to establish a landscaped buffer along the Route 250 entrance corridor and accommodate potential future improvements to Route 250, the Owner shall establish a minimum ninety (90) foot reservation zone and landscape strip along Route 250 as shown on the General Plan of Development, the use and maintenance of which is described in the Code of Development. The first seventy (70) feet of the reservation zone and landscape strip immediately adjacent to Route 250 shall be reserved for public use and dedicated upon the request of the County.

   After dedication and until the subject regional transportation improvements are funded for construction, the Owner shall, at the request of the County, maintain the reservation zone and landscape strip until requested by the County to no longer do so; provided, however, during the period of Owner maintenance, the Owner shall enjoy the right of exclusive use of the reservation zone and landscape strip for purposes of landscaped open space, signage, utilities and/or other purposes described in the Code of Development. Upon being requested by the County to forego maintenance of the reservation zone and landscape strip, the Owner shall cease all use of the reservation zone and landscape strip and remove, to the extent requested by the County, all improvements constructed or installed by the Owner within the reservation zone and landscape strip.

8. **Landscape Strip Along Glenmore Way:** In order to mitigate impacts to Glenmore Way, the Owner shall provide a minimum fifty (50) foot landscape strip along Glenmore Way as shown on the General Plan of Development and regulated by the Code of Development.

9. **Affordable Housing:** In order to mitigate community impacts from the rising cost of housing, the Owner shall provide a minimum of 15% of the residential units as affordable. The affordable housing may be provided by constructing "for-sale" residential units, "for-rent" residential units and carriage houses, or payment of $16,500 in lieu of a required unit. The terms and conditions regulating the timing and distribution of the affordable units within Rivanna Village are set forth in the Code of Development.

The undersigned Owner hereby proffers that the use and development of the Property shall be in conformance with the proffers and conditions herein above, and these proffers shall supersede all other proffers and conditions made prior hereto.

**GLENMORE ASSOCIATES LIMITED PARTNERSHIP**
A Virginia Limited Partnership

BY: The Frank A. Kessler Declaration of Trust dated
November 18, 1996, as amended, General Partner

BY: (Signed) Peggy B. Kessler 06/11/07
Peggy B. Kessler Successor Trustee Date

BY: (Signed) Michael D. Comer 06/11/07
Michael D. Comer Successor Trustee Date

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Mr. Dorrier then **moved** to approve the Waivers and Modifications as set forth in Exhibit E. Mr. Rooker **seconded** the motion.

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

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

**Waivers and Modifications**
FOR RIVANNA VILLAGE AT GLENMORE
BOARD OF SUPERVISORS PUBLIC HEARING JUNE 13, 2007

The following waivers have been requested for the project and recommended to the Board for approval by the Planning Commission. Waivers which do not require Board of Supervisors' approval have been removed from the list that went to the Planning Commission. The section from the Zoning Ordinance is referenced as well as the *requested change in language.* Staff's recommendation follows the requested change.

**Waivers to Zoning Ordinance, Chapter 18, Section 4**

***4.6.3.a. LOTS, YARDS ADJACENT TO STREETS, ALLEYS, AND SHARED DRIVEWAYS:***

The ordinance requirement is as follows:

Lots and yards adjacent to streets, alleys and shared driveways are subject to the following:

a. Front yards of the depth required in the district shall be provided across the full width of the lot adjacent to the public street or private road. The depth of a required front yard shall be measured from the right-of-way line of the public street or private road so that the building line is equidistant from the public street or private road right-of-way at all points. Areas in parking bays shall not be considered as part of the public street or private road for purposes of determining front yard setback. In addition, if a shared driveway traverses a front yard, each primary structure also shall be located at least ten (10) feet from the edge of the shared driveway easement; if a shared driveway is concurrent with the shared lot line of the lots served by the shared driveway, each primary structure also shall be located at least six (6) feet from the edge of the shared driveway easement. (Amended 7-1-81, 2-6-02)

The applicant has asked that the last portion of the requirement be modified to say*, "if a shared driveway is concurrent with the shared lot line of the lots served by the shared driveway, each primary structure also shall be located at least* ***three (3)*** *feet from the edge of the shared driveway easement."*

Staff comment: Because of the compact development proposed including very shallow setbacks for side and rear yards, 3 feet is viewed as acceptable and staff recommends approval.

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**4.11.1 COVERED PORCHES, BALCONIES, CHIMNEYS AND LIKE FEATURES**

The ordinance requirement is as follows:

Covered porches, balconies, chimneys, eaves and like architectural features may project not more than four (4) feet into any required yard; provided that no such feature shall be located closer than six (6) feet to any lot line. (Amended 9-9-92)

The applicant has requested that this section be modified to say, "*Covered porches, balconies, chimneys, eaves and like architectural features* ***may project into any required yard****; provided that no such feature shall be located closer than* ***three (3)*** *feet to any lot line."*

Staff Comment: Staff supports this request because it complements the other setback requests to provide for compact development.

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**4.11.2 STRUCTURES IN REQUIRED YARDS**

The ordinance requirements are as follows:

No portion of any accessory structure shall be permitted in any required yard; except as herein expressly provided. (Amended 3-18-81)

**4.11.2.1 ACCESSORY STRUCTURES**

No structure shall be permitted in an easement in a way that adversely affects the easement. Accessory structures shall be erected no closer than six (6) feet to adjacent lot lines or, in the case of an alley easement or right-of-way or shared driveway easement, no closer than three (3) feet to the edge of the alley easement or right-of-way or the shared driveway easement. The director of planning and community development may authorize an accessory structure to be located closer to the edge of an alley easement or right-of-way if the director determines that, based upon the written recommendation of the county engineer, the proposed design incorporates features that assure public safety and welfare. The county engineer shall consider the provision of adequate access to required onsite parking and/or garages, unimpeded vehicular circulation along the alley, an adequate clear zone along the alley, and other safety issues deemed appropriate for the conditions. (Amended 1-1-83, 2-6-02)

The applicant has requested that this section be modified to allow for the following: addition: **"*In front and corner yards, accessory structure setbacks shall be the same as the established build-to line for that Building Block. In side yards, accessory structure setbacks shall be three (3) feet, except with garages and carports, where the side setback shall be zero (0) feet.*"**

Staff comment: Staff supports this request to allow for attached garages at the property line and recommends approval.

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**4.12.9 STREET AND ALLEY PARKING**

The ordinance requirement is:

Street and alley parking may be provided as follows:

a. Street parking consists of parking spaces located in a public or private right-of way. Each parking space that is in a public or private right-of-way abutting the lot shall count as a parking space for the purpose of meeting the minimum parking space requirements in sections 4.12.6 and 4.12.7. Each parking space shall be on a paved area abutting the travelway, and if the parking space is in a public right-of-way it shall not be prohibited by the Virginia Department of Transportation.

The applicant has requested that the last sentence be modified to say, "*Each parking space shall be on a paved area **within five hundred (500) feet of** the travelway or public right-of-way."*

Staff Comment: Although this request requires that staff keep track of all parking areas adjacent to the street in terms of which uses may claim on-street parking, it is acceptable. Staff recommends that it be approved.

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**4.12.13 LOADING AREAS**

The ordinance requirements are as follows:

Off-street loading areas shall be provided as follows:

a. Loading spaces shall be provided on the same lot with the use to which it is appurtenant and shall be adjacent to the structure it serves.

The applicant has requested the following change, "a. ***Except in Block E, l****oading spaces shall be provided on the same lot with the use to which it is appurtenant and shall be adjacent to the structure it serves. **In Block E, determination of loading space requirements shall be based on gross leaseable square footage for the Block and loading spaces shall be dispersed through out Block E in a logical fashion."***

e. Each site plan that depicts a commercial or industrial building of four thousand (4,000) gross square feet or more shall provide a dumpster pad that does not impede any required parking or loading spaces, nor any pedestrian or vehicular circulation aisles.

The applicant requests that this requirement be modified to say that, "*Each site plan that depicts a commercial or industrial building of four thousand (4,000) gross square feet or more shall provide a dumpster pad **within the block** that does not impede any required parking or loading spaces, nor any pedestrian or vehicular circulation aisles."*

Staff Comment: Zoning staff can accommodate these requests and recommends approval because it allows for loading and dumpster uses in Block E to be considered on the whole rather than as individual unrelated uses.

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**4.12.6 MINIMUM NUMBER OF REQUIRED PARKING SPACES FOR SCHEDULED USES**

Section 4.12.6. provides the schedule of parking requirements for each use. The applicant has requested that *the individual uses in Block E not be subject to the parking schedule; rather, that the minimum number of parking spaces for non-residential uses shall be based 4.75 spaces per 1,000 gross leasable square feet for the total square footage within the Block E. Also, garage parking shall count towards the minimum parking requirements.*

Staff Comment: The Zoning Division generally approves of the first part of this request, but has recommended a more restrictive waiver to ensure that sufficient parking exists for each of the uses as they are begin. Staff recommends approval of use of the shopping center parking standard; however, each site plan would have to provide sufficient parking for the use until it reaches the threshold that allows for 4.75 spaces per 1,000 square feet. At that point, the entire block will be considered as a shopping center use and individual uses will not need to provide parking for each use. Staff recommends approval as follows:

*When the SDP's are reviewed, the parking will be considered proportional to the size of the development proposed together with what exists. In other words, if during the rezoning it is determined that the nonresidential blocks can be calculated at 4.75 spaces per 1000sfgla, but the 1st SDP comes in with only 10,000sfgla, that site plan will be required to show the parking at 5.5 spaces per 1000sfgla. Later when a 2nd SDP is submitted and more square footage is added to the block, the parking generator will be reduced to include both the existing and what is proposed on that SDP.*

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**4.15.5 SIGNS AUTHORIZED BY SPECIAL USE PERMIT**

The Zoning Ordinance requires the following:

Except as provided in subsection (D), electric message signs, off-site signs, and signs in public rights-of-way may be authorized only by special use permit, as provided herein:

a. *Circumstances under which signs may be authorized*. The signs may be authorized only under the following circumstances:

*1.* *Off-site signs*. Off-site signs may be authorized by special use permit within any zoning district.

The applicant would like to be able to have off-site signage located within the development that relates to uses or locations of buildings within the development, without having to get a special use permit. The language would be modified as follows: *"Off-site signs. Off-site* ***advertising and directional*** *signs* ***are allowed by-right in Rivanna Village at Glenmore provided that the uses to which the signs relate are located solely within the Rivanna Village at Glenmore development. This waiver does not apply to signs that are visible from Route 250 East and Glenmore Way."***

Staff comment: Staff recognizes that signage internal to the development is different than signage in areas for which there is no plan of development, such as in areas zoned C-1 or HC. Also, the applicant recognizes that, within the Entrance Corridor, the ARB has purview over decisions related to signage. Staff does not have problems with the request and recommends approval because the modification would not affect the ARB's ability to issue a Certificate of Appropriateness for signs visible from the Entrance Corridor.

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3. *Signs in public rights-of-way*. Signs in public rights-of-way; provided: (1) the subdivision or planned development to which the sign pertains abuts the public right-of-way; (2) the sign is either a subdivision sign or a sign identifying a planned development authorized by sections 19.0, 20.0, 25.0, 25A, and 29.0; (3) the freestanding sign regulations, other than setback regulations, applicable to the lot with the use to which the sign pertains shall apply; and (4) if the sign is located within an entrance corridor overlay district, a certificate of appropriateness is issued by the architectural review board.

The applicant would like to be able to have the ability to put a sign in the public right-of-way or have parts of a sign project into a public right-of-way if VDOT approves it and if it poses no threat to public safety. The applicant would like the following modification:

3. *Signs in public rights-of-way. Signs in public rights-of-way* ***are permitted without special use permit in Rivanna Village at Glenmore****; provided: (1) the subdivision or planned development to which the sign pertains abuts the public right-of-way;* ***(2) all VDOT standards and regulations are met;*** *(3)* ***the County Engineer has determined that an adequate clear zone for pedestrian traffic can be maintained on the sidewalks. An adequate pedestrian clear zone shall be defined as a reasonably straight path paralleling the road way that is a minimum of five (5) feet wide and seven (7) high); application of this requirement pertains to signs located in the right-of-way as if these signs were on the parcel or parcels to which they are immediately adjacent;*** *and (4) if the sign is located within an entrance corridor overlay district, a certificate of appropriateness is issued by the architectural review board.*

Staff Comment: Because Rivanna Village at Glenmore is a fully-contained development with an area similar to a "downtown" where canopy and awning signs in the right-of-way (over the sidewalk) typically occur, staff supports the request. Staff notes that nothing in this waiver is intended to negate any of the other requirements of Section 4.15 for signs.

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4.15.11 REGULATIONS APPLICABLE IN THE PUD AND NMD ZONING DISTRICTS

The Zoning Ordinance contains a table to which the following section applies:

The following regulations pertaining to the number of signs permitted per lot or establishment, the sign area, sign height, and setback requirements shall apply to each sign for which a sign permit is required within the Planned Unit Development (PUD) and Neighborhood Model (NMD) zoning districts:

The applicant would like all of the sign setbacks in this section waived as long as the County Engineer determines that the location would not compromise public health, safety, or welfare. The setbacks for each kind of sign are 5 feet, except for wall signs that share the setback of the building to which they are attached.

The following waiver language is proposed: "***In the Rivanna Village at Glenmore development the setback requirements of Section 4.5.11 do not apply provided that the County Engineer has determined that the proposed sign location would not compromise public health, safety, or welfare."***

Staff Comment: Staff supports this waiver in recognition that the development is self-contained and that alternatives may be available that do not compromise safety.

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**4.16 RECREATION REGULATIONS**

The Zoning Ordinance contains this requirement:

Developed recreational area(s) shall be provided for every development of thirty (30) units or more equal to or exceeding four (4) dwelling units per acre, except for single-family and two family dwellings developed on conventional lots. (Added 3-5-86)

More specific requirements are as follows:

**4.16.2 MINIMUM FACILITIES**

The following facilities shall be provided within the recreational area:

4.16.2.1 One (1) tot lot shall be provided for the first thirty (30) units and for each additional fifty (50) units and shall contain equipment which provides an amenity equivalent to:

One (1) swing (four (4) seats)
One (1) slide
Two (2) climbers
One (1) buckabout or whirl
Two (2) benches.

Substitutions of equipment or facilities may be approved by the director of planning and community development, provided they offer a recreational amenity equivalent to the facilities listed above, and are appropriate to the needs of the occupants. Each tot lot shall consist of at least two thousand (2,000) square feet and shall be fenced, where determined necessary by the director of planning and community development, to provide a safe environment for young children.

4.16.2.2 One-half (1/2) court for basketball shall be provided for each one hundred (100) units, consisting of a thirty (30) foot by thirty (30) foot area of four (4) inch 21-A base and one and one half (1 1/2) inches bituminous concrete surface, and a basketball backboard and net installed at regulation height.

4.16.3.3 Recreational facilities shall be completed when fifty (50) percent of the units have received certificates of occupancy.

The applicant would like to request that the requirement for these requirements to be waived because of the public park improvements being provided within the development which are different but are in excess of these requirements and because proffers for the park contain phasing which ensures that the park improvements will be constructed first in the development.

Staff Comment: Staff supports the applicant's request to waiver the specific requirements of Sections 4.16, and 4.16.3.3. because the Code of Development contains park improvements in excess of those required for residential developments and because the proffers contain more restrictive phasing requirements.

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**4.17.4 LIGHTING STANDARDS**

The Zoning Ordinance requires:

The following standards shall apply to each outdoor luminaire:

b. Each parcel, except those containing only one or more single-family detached dwellings, shall comply with the following: (Added 10-17-01)

1. The spillover of lighting from luminaires onto public roads and property in residential or rural areas zoning districts shall not exceed one-half (½) foot candle. A spillover shall be measured horizontally and vertically at the property line or edge of right-of-way or easement, whichever is closer to the light source.
2. All outdoor lighting, regardless of the amount of lumens, shall be arranged or shielded to reflect light away from adjoining residential districts and away from adjacent roads.

The applicant would like to allow for spillover on the internal streets within the development to promote greater pedestrian activity at night. The proposed modification would read: 1. ***Except for street lights internal to the development of Rivanna Village at Glenmore, t****he spillover of lighting from luminaires onto public roads and property in residential or rural areas zoning districts shall not exceed one-half (½) foot candle. A spillover shall be measured horizontally and vertically at the property line or edge of right-of-way or easement, whichever is closer to the light source.* ***For street lights permitted within Rivanna Village at Glenmore, VDOT standards shall be used to regulate public streets within the development. In addition, spillover along public streets internal to the development of Rivanna Village at Glenmore shall not exceed ½foot-candle at the edge of the vehicle travelway which is the area between the parked cars and the travelway.***

2. **Except for street lights internal to the development of Rivanna Village at Glenmore, a**ll outdoor lighting, regardless of the amount of lumens, shall be arranged or shielded to reflect light away from adjoining residential districts and away from adjacent roads.

Staff Comment: Staff recommends approval of this waiver to encourage pedestrian activity at night in the mixed-use area.

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**Waivers to Zoning Ordinance, Chapter 18, Section 5**

**5.1.16 SWIMMING, GOLF, TENNIS CLUBS**

The Zoning Ordinance requires the following:

Each swimming, golf or tennis club shall be subject to the following:

a. The swimming pool, including the apron, filtering and pumping equipment, and any buildings, shall be at least seventy-five (75) feet from the nearest property line and at least one hundred twenty-five (125) feet from any existing dwelling on an adjoining property, except that, where the lot upon which it is located abuts land in a commercial or industrial district, the pool may be constructed no less than twenty-five (25) feet from the nearest property line of such land in a commercial or industrial district;
b. When the lot on which any such pool is located abuts the rear or side line of, or is across the street from, any residential district, a substantial, sightly wall, fence, or shrubbery shall be erected or planted, so as to screen effectively said pool from view from the nearest property in such residential district;
c. **(Repealed 6-14-00)**
d. The board of supervisors may, for the protection of the health, safety, morals and general welfare of the community, require such additional conditions as it deems necessary, including but not limited to provisions for additional fencing and/or planting or other landscaping, additional setback from property lines, additional parking space, location and arrangement of lighting, and other reasonable requirements;
e. Provision for concessions for the serving of food, refreshments or entertainment for club members and guests may be permitted under special use permit procedures.

The applicant requests different setbacks because a swimming and tennis club would be located wholly within the development. The requested variation reads: *"Each swimming, golf or tennis club shall be subject to the following:*

*a. The swimming pool, including the apron, filtering and pumping equipment, and any buildings, shall be at least* ***one hundred seventy-five feet*** *(****175****) feet from* ***the closest property*** *line* ***that abuts the boundary of the Rivanna Village at Glenmore development*** *and at least* ***thirty*** *(****30****) feet from any* ***residential dwelling*** *b. When the lot on which any such pool is located abuts the rear or side line of, or is across the street from, any residential district, a substantial, sightly wall, fence, or shrubbery shall be erected or planted, so as to screen effectively said pool from view from the nearest property in such residential district;*

*d.* ***Standards for swimming and tennis clubs are contained in the Rivanna Village at Glenmore Code of Development.***

e. Provision for concessions for the serving of food, refreshments or entertainment for club members and guests ***are regulated in the Rivanna Village at Glenmore Code of Development."***

Staff Comment: Staff recommends approval of this waiver as the swim club is intended for the residents of the development and would provide adequate protection for nearby residences.

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**Waivers to Zoning Ordinance, Chapter 18, Section 32**

**32.7.9.6 STREET TREES**

The Zoning Ordinance requires that

c. Street trees shall be planted with even spacing in a row adjacent to the public street right-of-way.

The applicant has requested that street trees be allowed to be planted within or adjacent to the public street right-of-way as follows, *"Street trees shall be planted with even spacing in a row* ***within or*** *adjacent to the public street right-of-way…"*

Staff Comment: The Neighborhood Model supports trees adjacent to the street which would necessitate that their placement be allowed within the public right-of-way. Staff recommends approval of the waiver.

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**32.7.9.8 SCREENING**

The Zoning Ordinance says the following:

The following requirements shall apply to screening:

c. Screening shall be required in the following instances:

1. Commercial and industrial uses shall be screened from adjacent residential and rural areas districts. (32.8.6.3.a, 7-10-85)
2. Parking lots consisting of four (4) spaces or more shall be screened from adjacent residential and rural areas districts. (32.8.6.3.b, 7-10-85; Amended 5-1-87)
3. Objectionable features including, but not limited to, the following uses shall be screened from adjacent residential and rural areas districts and public streets:
   - loading areas
   - refuse areas
   - storage yards
   - detention ponds
   - recreational facilities determined to be of objectionable character by the agent other than children's play areas where visibility is necessary or passive recreation areas where visibility is desirable.

The applicant would like to modify these requirements for clarification and to use the land within Rivanna Village at Glenmore more efficiently to provide density. The modification would read,

*"1.* ***Within Rivanna Village at Glenmore, commercial and other non-residential uses shall not be required to be screened from adjacent residential uses."***

*2. Parking lots consisting of four (4) spaces or more shall be* ***buffered*** *from adjacent* ***residential properties and public and private streets by use of a three (3) foot hedge, an opaque wall or fence of three (3) feet in height, or other features designed to reduce the visibility of parking lots from the street, adjacent residential uses or rural area districts. Vegetation provided to meet this requirement shall not be counted toward the interior landscaping requirement in Section 32 of the Zoning Ordinance.***

*3. Objectionable features including, but not limited to, the following uses shall be screened from adjacent residential and rural areas districts and public streets:*
*- loading areas*
*- refuse areas*
*- storage yards*
*- detention ponds*
*- recreational facilities determined to be of objectionable character by the agent other than children's play areas where visibility is necessary or passive recreation areas where visibility is desirable* ***through use of a hedge, opaque wall or fence at least one (1) foot taller than the highest part of the objectionable feature but no taller than six (6) feet***

***4. The agent may require screening of any use, or portion thereof, upon determination that the use would otherwise have a negative visual impact on a property listed on the Virginia Historic Landmarks Register."***

Staff Comment: Because of the internal orientation of the development, staff supports the alternative measures requested for screening and buffering of parking and objectionable features and recommends approval within the development. It does not recommend approval between the development and adjoining properties.

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Mr. Dorrier **moved** to adopt the resolution as attached in Exhibit C. Mr. Rooker **seconded** the motion.

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

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

**RESOLUTION**

**WHEREAS,** Proffer 2 of ZMA 1999-016 (Glenmore), originally accepted as a proffer for the rezoning of Glenmore in ZMA 1990-019, states that, upon the request of the County made prior to April 12, 2010, the owner, Glenmore Associates, will donate approximately 27 acres of land to the County or its designee for a public school or other public use facilities as the County may select, together with an appropriate right of way; and

**WHEREAS,** because the County has not requested that Glenmore Associates donate the land as described hereinabove, Proffer 2 of ZMA 1999-016 has not yet been satisfied; and

**WHEREAS,** Proffer 6 of ZMA 2001-008 (Rivanna Village at Glenmore) states that one of the owners, Glenmore Associates, will at its expense and at the request of the County, engineer, construct, and dedicate in fee simple to the County a park comprising approximately 18 acres, which will be platted with the first plat for Rivanna Village at Glenmore, and all of the park improvements described in the Code of Development will be built or bonded prior to the issuance of the Certificate of Occupancy for the 174th residential unit within Rivanna Village; and

**WHEREAS,** the County desires the park proffered in Proffer 6 of ZMA 2001-008 to serve the residents of Albemarle County; and

**WHEREAS,** the land referred to in Proffer 2 of ZMA 1999-016 is part of the land rezoned under ZMA 2001-08 and, as a result of such rezoning, the land offered by Proffer 2 of ZMA 1999-016 is no longer available for public facilities uses.

**NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors finds that the land and improvements proffered in Proffer 6 of ZMA 2001-008 provide the public facilities envisioned by Proffer 2 of ZMA 1999-016 and that such land and improvements are deemed to satisfy Proffer 2 of ZMA 1999-016 to at least an equivalent degree; and

**BE IT FURTHER RESOLVED** that neither Glenmore Associates nor its successors nor assigns shall have any further obligation with respect to Proffer 2 of ZMA 1999-016.

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Agenda Item No. 16. **PUBLIC HEARING: ZMA-2005-015. Hollymead Town Center Area A-1 (Signs #15,51,53,73): PROPOSAL:** Rezone 31 acres from RA - Rural Areas (agricultural, forestal, and fishery uses; residential density (0.5 unit/acre)) to PDMC - Planned District Mixed Commercial (large-scale commercial uses; and residential by special use permit (15 units/ acre)) to allow for 278,000 square feet of office retail. LOCATION: Tax Map 32, parcels 42A, 42C, a portion of Tax Map 32, parcel 44, a portion of Tax Map 32, parcel 45, and Tax Map 46, parcel 5, located to the south of the southern entrance to the Hollymead Town Center (Town Center Drive) and north of Powell Creek along Route 29 North. MAGISTERIAL DISTRICT: Rio. The Comprehensive Plan's Town Center designation is accompanied with the "Conceptual Master Plan & Design Guidelines for the Hollymead Town Center". (Advertised in the *Daily Progress* on May 28 and June 4, 2007.)

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Agenda Item No. 17. **PUBLIC HEARING: SP-2005-027. Hollymead Town Center Area A - Drive Up Window for Bank (Signs #15,51,53,73): PROPOSAL:** Drive-up banking facility with three lanes. ZONING CATEGORY/GENERAL USAGE: A rezoning application has been submitted to rezone these parcels from RA - Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) to PD-MC Planned Development Mixed Commercial (large-scale commercial uses; and residential by special use permit 15 units/ acre). LOCATION: Inside the Hollymead Town Center, along Town Center Drive (Southern entrance to Hollymead Town Center) approximately 300 feet from Route 29 North. TAX MAP/PARCEL: A portion of Tax Map 32, Parcel 42A (exact location on file in the Department of Community Development) and a portion of Tax Map 32, Parcel 42C (exact location on file in the Department of Community Development) equaling .5 acres. MAGISTERIAL DISTRICT: Rio. (Advertised in the *Daily Progress* on May 28 and June 4, 2007.)

Mr. Cilimberg explained that this request is for development of one of the remaining two areas in Hollymead Town Center, noting its location on a map and its proximity to the detention pond. He explained that the area proposed also includes a separate area to come before the Board in September. Mr. Cilimberg said that the A-1 proposal is for a rezoning from RA to PDMC, with 278,000 square feet of retail with 88,500 square feet in the large store. He indicated that there is also a trailhead and greenway plan.

Mr. Cilimberg mentioned that staff found favorable factors to this application: funds for transportation including public transit, a plaza, a greenway and trailhead dedication, and commercial buildings to a Leed core & shelf standard. He explained that this site would otherwise remain in a negative visual impact because of the grading involved, and there is a possibility for infill in the future. Mr. Cilimberg said that staff found this proposal to include commercial that would add more commercial to the current 1.5 million square feet that is not yet built out including Albemarle Place.

Mr. Cilimberg said that the ARB did not have sufficient information to determine the relationship of the landscaping along Route 29 to the power lines, and thus was unable to make recommendation on the rezoning. He said they did, however, provide a list of items needed to meet ARB design guidelines that could be addressed at the site plan stage at which time they would have authority to make approval. Mr. Cilimberg emphasized that the main concern is keeping vegetation away from the power lines.

In response to Mr. Rooker's question about burying the power lines, Mr. Cilimberg explained that the ARB does not have authority to require that.

Mr. Cilimberg said that the Planning Commission's expectations included widening Meeting Street south of Town Center Drive, disturbance of no more than 70 percent of the site during development of the property, and adequate planting strips along the roads. He indicated that staff has recommended approval of the rezoning and the drive-through with three conditions.

Mr. Slutzky commented that if there is ever to be a bridge over the Rivanna River, there will come a point where there is a road built with Berkmar on the other end, but no bridge. He added that there should in the future be some kind of proffer that provides funding for the bridge.

Mr. Cilimberg responded that historically, the purpose of creating a Community Development Authority was to provide adequate funding for transportation.

Mr. Davis said that the CDA is not the vehicle that would really work in this situation and is a carryover from earlier approvals; the vehicle that would work would be a service district. He added that implementing the CDAs now would be quite difficult despite the proffers that have been granted along Route 29.

Mr. Slutzky expressed concern about approval of commercial that precedes the residential without some correlation between the two. He also said that the $50,000 allocation per year for transportation shuts down after nine years, and he is not sure why the tenants should be off the hook and shift the burden to taxpayers.

Mr. Slutzky also expressed concern that stormwater be mitigated properly, given the risk of offsite stormwater flows.

Ms. Thomas said that the erosion and sediment control plan is higher than required by law, and she asked Mr. Graham to explain.

Mr. Graham replied that one interpretation might yield that impression, but the first sentence in the proffer would hold them to the maximum practicable erosion control measures.

Ms. Thomas said that seems to give the developer an easy out.

Mr. Davis said that the Zoning Administrator would determine the maximum practicable, adding that he is a little bit troubled by the wording of the second sentence.

Mr. Graham commented that there is a loophole in the law, and staff has tried to require stabilization of the site when part of it reaches grade, not the whole thing.

In response to Mr. Boyd's question, Mr. Graham said that this would drain into Powell Creek. Mr. Graham said that the applicant could be required to dredge, and staff could set a higher standard.

Mr. Davis said that the requirements addressed in A-F should be simply additional requirements to the maximum extent practicable.

Ms. Thomas commented that the problems there have been the "worst scar" on the County.

Mr. Wyant suggested having a specific required acreage for disturbance.

Mr. Graham agreed, adding that having a timeframe for that disturbance would also help. He pointed out in the development plan that they are building it all at one time, and if the Board wants to restrict that then they can. Mr. Graham stated that staff believes this language gives them authority to require measures that are reasonable and appropriate to ensure a high level of protection.

Mr. Rooker said that this language does not seem to give discretion.

Mr. Davis agreed, stating that the language should be more clear.

Mr. Slutzky stated that if the item is deferred, he would like to see the language clarified.

Mr. Rooker noted that the Planning Commission's approval indicated that A-2 should be presented along with A-1 to show both the commercial and the residential. He emphasized that this should move along expeditiously as a mixed-use development, and he is concerned about approving a big commercial development that is not mixed use.

Mr. Boyd said that there is residential development currently operating, and he noted that the amount of money generated from commercial tax revenue has been declining.

Mr. Slutzky stated that there are several different issues at play here, and this application is for a mixed-use development so they should be linked. He said for this particular project, he wants the balance of the development to unfold the way we actually said to the public and the way we described in our master planning process that we intended to do.

Mr. Rooker said that the two applications ought to come to the Board together as recommended by the Commission and staff, and he would like to see some phasing with the commercial and residential. He stated that he would also like for some additional work to be done on the proffers.

Mr. Boyd commented that he is not as sold on the phasing concept, even with the Neighborhood Model.

Mr. Slutzky said that it would be fair to the applicant for the Board to have the discussion as to the timing of the commercial and residential components of the development.

Mr. Rooker said that the existing residential is not mixed-use at all, and it is very difficult for use by pedestrians trying to access the commercial.

Mr. Boyd commented that it is not fair to promote residential if the demand is for commercial.

Mr. Slutzky said that was what was done with North Pointe, adding that he would like to see the residential happen quickly to balance out the 85,000 square foot big box.

Mr. Rooker stated that under the transportation improvement proffer, he wants something that requires the applicant to pay for the light under the Route 29 synchronized signalization system. He also agreed with Mr. Slutzky that some contribution needs to be made toward the bridge and that is not likely to get funded by the current funding sources in the near future. Mr. Rooker also emphasized that it is not fair to stick all the costs of that bridge on the last development at the end of the line.

Mr. Boyd agreed that work needs to be done on the bridge matter, but Places 29 had recommended a parallel road from the UVA Research Park to this side of the river.

Mr. Slutzky recalled that the Places 29 discussion had included a parallel road that would jump over the river and tie into the Free State Connector to the Meadowcreek Parkway.

Public comment was invited.

Mr. J.P. Williamson addressed the Board on behalf of the applicant. He explained that he has been involved with the process for two years, including significant work with the staff and several worksessions with the Planning Commission. Mr. Williamson said that the separation of A-1 and A-2 is not of the applicant's making, and they are responding to the market. He stated that he would work to come back to the Board with a vision of both sections, but the applicant has moved forward with significant proffers that exceed the impact of the development, specifically, the four lanes at Meeting Street to anticipate 30,000 trips per day that are not generated by this site. Mr. Williamson emphasized that the plan for A-2 includes 600,000 square feet of non-residential and not necessarily commercial, including hotel and office, and live/work space, and the bulk is in mixed-use buildings.

Mr. Rooker commented that is why it would be helpful to see both A-1 and A-2 together.

Mr. Williamson noted that the market cost for delays is significant, but he understands why it is desired to view them together. He said that the soonest he could get back on the calendar was September.

Mr. Boyd suggested having a separate worksession before then so that they then can be further along when the item comes up again.

Mr. Williamson agreed.

Ms. Thomas expressed concern that the soil is not stabilized at all right now, and she wondered if that could be done in the meantime.

Mr. Williamson replied that they have a seven-acre sediment trap, and the site could definitely look better. He noted that the area for A-1 was mass graded as part of the site before his involvement,

and there is additional grading that will take place. He said that they have hydro-seeded the site several times, but it is hard to get it to take because of the compactness of the topsoil.

Mr. Cilimberg said that the Planning Commission's review of A-2 would take place July 24th.

Mr. Tucker said that the Board work session could take place on August 8th.

Mr. Moran Butler addressed the Board on behalf of the Southern Environmental Law Center, commending staff and the applicant on the improvements made to this proposal. He said that his first concern is phasing. Mr. Butler said that the retail has gotten way out ahead of the residential, and approval tonight would have 70 percent of the commercial approved with only 20 percent of the residential approved for Hollymead Town Center. He commented that this is the third proposal that has had the same language related to the erosion control measures, and it seems that this could be changed easily to make it clear that the County is making the call.

Mr. Williamson said that they hoped to bring them forward in September since there is another item scheduled for that date.

Mr. Rooker **moved** to defer ZMA-2005-015 and SP-2005-027 to a work session on August 8, and requested that the rezonings for Area A-1 and Area A-2 (ZMA-2007-01) come to the Board together. Mr. Wyant **seconded** the motion.

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

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

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Agenda Item No. 18. From the Board: Committee Reports.

There were none.

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Agenda Item No. 19. Adjourn to June 20, 2007, 2:00 p.m. At 10:53 p.m. there being no further business to come before the Board, Mr. Wyant **moved** to adjourn to June 20, 2007, at 1:00 p.m. Mr. Rooker **seconded** the motion.

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

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

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Chairman

Approved by Board
Date: 12/05/2007
Initials: EWJ