

A meeting of the Board of Supervisors of Albemarle County, Virginia, was held on August 8, 2007, at 2:00 p.m., in the Lane Auditorium in the County Office Building on McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry W. Davis, Director of Community Development, Mark Graham, Chief of Planning, David Benish, Clerk, Ella W. Jordan, and Senior Deputy Clerk, Meagan Hoy.

Agenda Item No. 1. The meeting was called to order at 2:01 p.m., by the Chairman, Mr. Boyd.

Agenda Item No. 2. **Work Session:** ZMA-2005-015 and SP-2005-027. Hollymead Town Center Area A-1 and ZMA-2007-001. Hollymead Town Center Area A-2.

Ms. Elaine Echols, Principle Planner, reported that the Board met on June 13 to discuss Hollymead Town Center area A-1, and the Planning Commission recently took action on area A-2. She presented a visual depiction of the location of both areas. Ms. Echols explained that in the original proposal, the plan for A-1 was to rezone 31 acres from RA to PDMC with 278,000 square feet of retail, exterior buildings designed to line the streets, public space, a trailhead for the greenway, a pedestrian system, and drive-through windows for a bank. She noted that area A-2 was a rezoning of approximately 45 acres from three different zoning districts – C-1, Neighborhood Model, and PDMC all to Neighborhood Model district. Ms. Echols explained that it has a residential component that makes it different from A-1, with 1,222 dwelling units and commercial offices up to 368,700 square feet including an 80,000 square foot hotel. She said that this is a true mix of residential, retail, and light industrial, with a proffer of open space in a greenway to the County as well as \$500 per unit for public recreational needs, three acres for a recycling center in the CIP, a proffer for 20 percent affordable housing to provide units, a proffer of two public transit stops, phasing of commercial with residential, and cash proffers for those units.

Ms. Echols stated that when the Commission recommended approval, it was with an expectation that cash proffers would be increased to meet Board expectations; a phasing, erosion and sediment control proffer would be similar to A-1; mixed use buildings would be LEED certified; removal of the cash buyout in the affordable housing proffer; completion of Meeting Street and Town Center Drive within a year of approval of rezoning; and all other minor changes to the development plan including proffers that have been identified by staff and verbally agreed to by the applicant.

Ms. Echols said that the items for discussion today would be phasing and the value of the cash proffers in A-2, noting that the Board has expressed concern about commercial activity happening before residential construction in A-1. She stated that the applicant has declined to provide any proffers related to that but has done phasing for A-2 where he would provide 100 units before getting a building permit for commercial, and he would provide 600 residential units before getting a building permit for more than 200,000 square feet. Ms. Echols noted that the cash proffer expectation is another major issue and one that is concerning the applicant partially because the expectations changed mid-stream.

Ms. Echols reported that with 1,222 units, the applicant is proposing that 20 percent of them are affordable – for 978 market-rate units; that would be \$12,054,200 as the cash proffer expectation. She said that in the proffers prepared for the Planning Commission, the applicant has expressed a desire to get credit for a sanitary sewer line extension, which happened in 1992; Route 29 infrastructure improvements from Area B; and credit for it being a mixed-use development in Neighborhood Model design, and for LEED. Ms. Echols stated that those are very important issues for the Board to deal with in terms of credits, and the applicant has not provided any changes for the cash proffer amount. She offered to clarify any issues the Board may have with A-1 or A-2, and she encouraged them to discuss how they would like to give credit for infrastructure contributions already in place.

Mr. J. P. Williamson addressed the Board on behalf of the applicant, HM Acquisition LLC, and he asked if they wanted to discuss those issues separately or together.

Mr. Boyd responded that he could discuss them together.

Mr. Williamson explained that the Town Center master plan does contemplate mixed-use, and the applicant offered to proffer significant movement on the residential as they were building non-residential in the area designated as mixed-use. He clarified that residential construction is going on in Hollymead, at Abingdon Place and Area C, with people already living in the Town Center. Mr. Williamson said that Abingdon Place has built about 60 to 70 of their units and have about 20 residents already on-site. He noted that they are building one mixed-use building in Area C, and there are townhouses that are already going up, with 15 to 20 townhouses.

Mr. Williamson reported that the bulk of the retail, such as live/work space and boutique shops, support a neighborhood and not a retail center, and the other two areas in A-2 have no stand-alone retail. He emphasized that they are committing significant capital to support the whole project, so there is an incentive to move quickly with the A-1 area, adding that the applicant does not feel that the intent of the master plan is to tie development to phasing.

Mr. Rooker asked if the phasing issue could be discussed now.

Mr. Boyd agreed.

Mr. Rooker stated that he does not feel a huge amount more of commercial is needed before there is residential in this particular location as the whole concept of a mixed-use center is just that, and he does not want to tie them together as that could yield a large shopping center and no residential.

Mr. Boyd said that would be taking it out of the market demand.

Mr. Rooker replied that this was always viewed as the Town Center area of Hollymead, that would have residential closely integrated with it, and was the most attractive from a community standpoint. He emphasized that there does need to be some market sensitivity, but in North Pointe and Old Trail there was a phasing plan established. Mr. Rooker said given all the commercial that is already out there, it would be wise to make certain that as a part of this the County get some residential built at the same time or out in front of some of the commercial.

Mr. Boyd asked if the commercial activity going on in the other side would suffice.

Mr. Rooker responded that is not readily accessible from the residential area, and he would like to see a phasing plan that incorporates A-1 and A-2.

Mr. Boyd commented that the County is three or four years before the Comprehensive Plan can be amended, and market plans change which creates havoc for people who are trying to locate houses or stores here.

Mr. Williamson said that no single user has the ability to proceed with a project, but it works better in A-2 because the buildings themselves are mixed. He stated that they have made the decision not to proceed with retail until some residential is built there, but there is a fundamental problem in tying it into A-1.

Mr. Rooker stated that he would be willing to approve A-2 with the right set of proffers, but not A-1 because of the reasons stated.

Mr. Slutzky said that he struggled with this for a while because of the desire to have a balance between commercial and residential. He commented that there is a hope that market forces will drive development, but he is convinced that these projects are reasonable as stand-alone items.

Mr. Rooker noted that everyone supported phasing at North Pointe. He further noted that the developer at that time indicated that the parcels would have different owners, and he expressed concern about having a huge commercial area with no residential.

Mr. Slutzky replied that he would hate to see that outcome, but he is comfortable trusting the market to determine that. He added that he would be comfortable approving each of them with no interconnection for phasing.

Mr. Dorrier agreed, and he asked if the applicant is doing everything that staff requested.

Mr. Williamson responded that the first reaction from the Planning Commission on the plan was not positive, and the applicant has worked on bringing the development into compliance with the Neighborhood Model for design, interconnectivity, Main Street, and park. He emphasized that there are residents in Hollymead Town Center now, and this applicant has spent two years trying to get this project built. Mr. Williamson reported that the buildings will be an integrated work-force type housing development with a variety of housing types, and the message they want to deliver to the market is that the project is moving forward.

Mr. Wyant clarified that they are not asking for a commercial building permit until 100 residential units are built first in A-2.

Mr. Rooker noted that the applicant could build out 278,000 square feet of commercial in A-1 and not move forward with A-2 at all, adding that the affordable housing would not move forward at all until A-2 moves forward.

Ms. Thomas said that she would like for there to be a connection between the building of the residential units and the commercial. She noted that they would be doing the community a disservice if a large retail building is established before any residential units are occupied.

Mr. Slutzky asked how it would be a disservice if the market determined that a retail establishment went up first.

Ms. Thomas replied that she does not perceive the area as needing more regional retail attractors, and VDOT is picking up less and less infrastructure which means that retail construction is even more of a burden. She said that she thinks that residential is most important, and it is sort of traditionally suspect that people that have both retail and residential will go ahead and build the retail first.

Mr. Rooker emphasized that there are no cash proffers or affordable housing until A-2 is built.

Mr. Wyant said that he is inclined to let the market dictate.

Mr. Williamson noted that there is no timeframe set for the construction of either; they would operate as independent rezoning. He said that this is in addition to a regional center; you do not have the same number of duplicative trips as retail tenants tend to get multiple shopping done in the same spot. Mr. Williamson emphasized that the infrastructure for roads and sewer is in place, and this will generate significant tax dollars. He said it is a problematic issue to try to tie the two together.

Mr. Boyd asked if it would be to their advantage to let A-2 sit for years.

Mr. Williamson replied that that would actually put them at a significant economic disadvantage, and even more so if the two are tied together. He emphasized that Hollymead Town Center is under construction, and Albemarle Place is moving forward, so they just want to build this soon.

Mr. Rooker asked what the timing of the proffer was for Dickerson Road when the Board originally approved the rezoning of Area C.

Mr. Graham replied that there are two separate proffers for Area B that should be noted: Town Center Drive, which called for the road to be built or bonded for completion within three years of approval of rezoning and the applicant did bond it last year but has not built it; and Meeting Street, which is between Town Center Drive in Area C on the north side, which was supposed to be completed by last June but was not and that has generated a zoning violation.

Mr. Rooker stated that there is a lesson there that the roads should be required to be built, and from now on he would like to not see that alternative in proffers.

Mr. Wyant asked if there were staff delays that caused that issue.

Mr. Williamson said that they have agreed in proffers to tie it to construction. He noted that with Meeting Street, only half of it is subject to a proffer so the applicant has been working with staff to come up with a design so that it will look differently than what was proffered with Area B.

Mr. Rooker said that he was specifically concerned with Town Center Drive connecting back to Dickerson Road to provide another entrance into this area.

Mr. Williamson replied that they have bonded the road to its new urban standard, which was not required by the proffer, and he added that the extended design is different than what was originally planned. He said that the design approval must go through VDOT, and the applicant is committed to build within a definitive period of time.

Ms. Echols stated that the applicant agreed to include in the next set of proffers that both streets, Town Center Drive and Meeting Street, would be finished within one year of the rezoning.

Mr. Rooker said that he just does not want to end up with a disagreement a year from now about when that was supposed to be completed and by whom as it is not in the proffers now.

Mr. Graham responded that the way to address that would be to stipulate that the applicant does not get building permits until the road is done instead of saying they have to complete it within a year.

Mr. Davis noted that there are several measures that could be taken, such as injunctions, but it is not a very practical way to proceed as there are numerous owners. He said that the practical way is to have improvements that are essential to be built before building permits are issued or rely on the fact that they are bonded and can be required to be done. Mr. Davis stated that requiring bonding and construction is a heavy burden on staff, but he does not really know another way to do it.

Mr. Graham mentioned that the proffer for Meeting Street called for a two-lane section.

Mr. Davis added that there were a lot of private disputes the County was not involved in.

Mr. Rooker said that he is satisfied with what he has heard to this point, and if the proffer comes back as anticipated by staff there needs to be certainty about when the roads would be completed and an enforcement mechanism to ensure that takes place.

Mr. Williamson responded that the directives from staff have been much less ambiguous.

Mr. Wyant stated that the County needs to be definitive about what it expects in terms of design and timing.

Mr. Dorrier asked if the applicant has been working with the Albemarle County Service Authority on an agreement.

Mr. Williamson replied that they have met together several times related to capacity, and by the September meeting there will be an agreement in place. He added that the full build-out capacity is being addressed with the service authority right now.

Mr. Rooker commented that he would like these to be approved at the same time so the development can be integrated.

Mr. Williamson emphasized that his goal is to have a rezoning approval when he comes before the Board in September.

Mr. Boyd said that the question remains as to whether the Board would approve one without the other.

Mr. Slutzky commented that he would be inclined to vote on them together.

Mr. Williamson said that the applicant still has some work to do on A-2, and they may come to resolution on one before the other. He noted that the Board has approved separate rezoning like this in the past.

Mr. Rooker noted that there will be separate votes and public hearings anyway.

Mr. Williamson commented that the cash proffer issue is difficult because Hollymead was master planned in 2001, and all the rezonings came in at different times. He said that as a result, they are faced with a situation where the infrastructure and other items that were part of the CPA are in, and they submitted their first proffer application in 2005/2006. Mr. Williamson stated that they proffered all infrastructure identified as needed to provide support for the project, including cash proffers on a per-unit basis. He noted the applicant has amended that four times through feedback from staff and the Board and only recently have they been faced with a \$12 million addition to that. Mr. Williamson said that the goal has been to work with staff on that amount, and the applicant presented a case that shows the project is unique to this process and should be given consideration for some of the items that are already a part of this.

Mr. Williamson said that the way the staff is applying the proffer, a developer only gets credit for offsets if they build the maximum number of units. He thinks you need to set your cash proffer, and then set the offsets. Mr. Williamson added that other residential units in this same development proffered on average \$2,500 per unit, and now the County is asking for \$12,400 per unit. He said the impact that you're creating with the proffer policy is that the only way to offset that impact is primarily to build bigger.

Mr. Rooker commented that every developer is facing that issue.

Mr. Williamson responded that this is different because the infrastructure was already paid for by the developer for the Master Plan.

Mr. Rooker said that it was always up to the developer, and as far as Route 29 improvements, those are along the road in front of the development so they are not offsite.

Mr. Williamson replied that they extend in front of parts of the development that are not part of this application, and he needs guidance on writing the proffers.

Mr. Rooker suggested that the Board have an opportunity to discuss the items so that they can give him some guidance.

Mr. Williamson said that the applicant agrees with most of the requirements, but where he is having issue is the credit for offsite road improvements and the water/sewer. He noted that he agrees with the expansion of Meeting Street and Town Center Drive, but in concept they agree with that. Mr. Williamson added that the green building credit increases costs, but it is something they would be willing to try to do. He stated that the focus of their difference of opinion relates to offsite, such as the Route 29 improvements which are mandated by VDOT as part of servicing the full build-out. Mr. Williamson added that it is not really up to the County to compensate the developer for the water/sewer line.

Mr. Rooker stated that he would not support credits for offsite improvements that may have been done by prior applicants for other parcels in the area for this particular application.

Mr. Graham noted that it is important to recognize that VDOT would have required those improvements along Route 29 if this had been done as a by-right rezoning and VDOT was going to require that a third lane be built 1,000 feet each side of the Timberwood and Town Center intersections. He added that the policy has been to give credits for improvements above and beyond those normally required for by-right projects.

Mr. Rooker added that the property is currently zoned for seven residential units, and this takes it to 1,228 units and 290,000 square feet of commercial property. He commented that if credits are given for every extraneous thing a developer does, that would make the County's proffer policy fall apart.

Mr. Slutzky asked how the Board felt about these credits.

Mr. Dorrier responded that he would want to consider them on a case by case basis, and they should not just be ignored.

Mr. Boyd asked what the applicant was expecting in credit.

Mr. Williamson replied that they were looking for \$2 million, commenting that the actual infrastructure improvements on the site exceeded \$11 million, and this is a different project than any others that will come before them as it relates to the proffer policy.

Mr. Slutzky commented that if the County considers some kind of concession, he does not want to set a precedent by giving credits for what would have already have to be built to accommodate the by-right use.

Mr. Rooker said that he does not want to go down that road or he would vote against virtually every rezoning because it is completely contrary to the policy this Board established for cash proffers.

Mr. Wyant agreed, stating that proffers are supposed to address impact to the public, and if there is something that benefits the public that should be considered.

Mr. Williamson said that he did not want to negotiate piece by piece, but they have to figure out a direction to take. He noted that he is hopeful that the Board will consider the project in total.

Mr. Slutzky noted that the issues seem to be credit for LEED, credit for other improvements that took place before the rezoning, and the question of how the offset credits get calculated, the way the applicant is suggesting or the way staff has proposed.

Ms. Thomas mentioned that there are several items noted in the staff report where they do not feel the Neighborhood Model principles have been met.

Mr. Slutzky responded that that was an earlier draft.

Mr. Davis added that one issue not addressed in the staff report is the affordable housing proffer, and the timeframe for that set at five years was not acceptable to the Board in another recent rezoning.

Mr. Williamson said that he is hoping to incorporate that into the conversations related to this application.

Mr. Slutzky stated that the rental units should be for 15 years, and with purchased units there should be some deed restrictions or an independent entity could be created that would buy those units back.

Mr. Davis noted that in the NGIC rezoning one week ago, ten years was deemed appropriate.

Mr. Boyd said that the developer did voluntarily agree to that.

Mr. Davis responded that staff did not think that five years was adequate, and the Board agreed with that contention.

Mr. Boyd commented that he is concerned about how those units are privately maintained with a rent ceiling that might preclude improvements and lead to deterioration.

Mr. Slutzky said that HUD will not give a voucher to a unit that is not kept up, adding that the applicant seems willing to work with the County.

Mr. Williamson stated that the density of this development is allowing the developer more flexibility.

Mr. Slutzky asked about credit LEED certification.

Ms. Thomas said that LEED will likely become the industry standard within a few years, and she is concerned about giving credit for every LEED-certified building. She asked if there was a timing parameter that could be imposed for LEED buildings.

Mr. Rooker noted that Belvedere would have all Energy Star units, and the larger buildings would be LEED certified. He said that the County would be taken entirely outside of its policies if the cash proffer amounts are raided when they are supposed to go to schools and transportation. Mr. Rooker said the market is going to require it soon; there is an increased value of the building. He added that giving credits for things that are not immediately calculable is a huge undertaking, and it is going to be impossible to monitor proffers.

Mr. Williamson said that their concept was to get a percentage credit for any market-rate residential unit that is built as LEED to offset the \$12,400 proffer amount. He said they are trying to figure a way, in the face of this cash proffer, that they can do things to create the same environment that they had anticipated before there was a \$10,000 check per unit.

Mr. Dorrier commented that the Board is looking for incentives and not a coercive approach.

Mr. Rooker said that the developer can do whatever he wants.

Mr. Slutzky stated that perhaps a discount for LEED buildings that are constructed within a certain timeframe could get credit as Ms. Thomas suggested.

Mr. Davis emphasized that staff envisions proffers as offsetting impacts on public/infrastructure needs, so giving credit for LEED takes away from addressing those impacts.

Mr. Slutzky replied that some of the LEED-certified items are impact-reducing activities.

Mr. Davis said that if those impacts can be demonstrated, then that can be considered, but it is difficult for staff to assess those.

In response to Ms. Thomas' question about anything staff is still concerned about, Ms. Echols said that most remaining issues are small and can be addressed verbally. She explained that the affordable housing question was whether the applicant could provide money or units, and the applicant wants to provide units so that has been resolved.

Ms. Thomas said that the staff report laid out some good things, and she expects those concerns to be met.

Mr. Wyant added that there should be credit for LEED, but it should contain a sunset clause.

Mr. Rooker suggested a two percent of the cash proffer amount for residential building permits pulled over the next five years that are for LEED certified construction, adding that everyone is doing Energy Star now.

Mr. Wyant agreed.

Mr. Slutzky also agreed.

Mr. Graham said that a building would not be certified at the time of building permit, but it would be at the time of inspection.

Mr. Williamson said that accruing credits is a more likely scenario.

Mr. Graham noted that that would be very complicated.

Mr. Davis emphasized that every time property is transferred there is a different owner, and the proffers run with the owners of the property.

Mr. Rooker expressed concern that whatever the Board decides, it should not further burden staff.

Mr. Williamson said that he has enough information to move forward. He noted that it makes sense to have every project get credit upon completion of the things that were the offset, and every time a building permit was pulled a developer would know how much to pay for the permit.

Ms. Thomas commented that for master planning purposes the County would want a higher number of units.

Mr. Williamson responded that statement is not supported by the Board's policy, and he suggested that this be discussed as part of the larger discussion on proffer policies.

Mr. Davis said that staff wants a per-unit dollar amount based on a calculated amount of credits, and they do not want to see them set forth in a proffer.

Mr. Boyd stated that if the anticipated number of units is not built, then that will not work.

Mr. Williamson said that there has to be some flexibility in size and units so a plan does not have to be amended every time it is brought before the Board.

Mr. Slutzky said that staff would have some leeway, but a per-unit amount needs to be imposed as a fixed-dollar expectation for a given development.

Ms. Thomas commented that if fewer units are being built, then less money is going towards the proffers.

Mr. Williamson responded that the County is limiting the application of the offset credit but is maximizing the per-unit amount.

Mr. Rooker said that he understands the argument, but he does not agree with it.

Mr. Williamson replied that he has to get some dialogue going as the County has not ironed all this out yet.

Mr. Dorrier agreed.

Mr. Boyd agreed that this is one of the first Neighborhood Model developments under the new proffer policy.

Ms. Thomas noted that this development is going to be a walkable community, and she appreciates the form of the project.

Mr. Davis commented that substantial work needs to be done on these proffers, and in order for it to be advertised for the September meeting, the County has eight days to review.

Mr. Williamson responded that he could have them done by then.

Mr. Davis said that would be a tight timeframe for staff as there are several other pressing issues.

Mr. Williamson stated that it would not take long to get this back to the Board.

Ms. Thomas commented that the timeframe is impossible.

Mr. Davis clarified that planning staff is going to have to review the plans and the proffers, provide comments to the County attorney, who will review them for final form and content, and then the applicant will have to make changes before it can be advertised.

Mr. Tucker noted that it is scheduled for September 12th, and the applicant may need to do better than eight days if he does not want it delayed.

Mr. Williamson said that he needs to do some hard work on his end with the owners to better articulate the issue with proffers. He said it is not a small thing that the Board has asked.

(Note: The Board took a brief recess, and then reconvened.)

Agenda Item No. 3. **Work Session:** ZMA-2005-17. Biscuit Run.

Ms. Claudette Grant, Senior Planner, reported that the applicant proposes rezoning 828 acres from R-1 and R-2 residential to Neighborhood Model district, and approximately 3,001 residential units and a neighborhood center with commercial, office, and community uses are proposed. She said that the property is located between the east side of Old Lynchburg Road and the west side of Route 20, adjacent and to the south of the Mill Creek subdivision, and adjacent to the intersection of Avon Street Extended and Route 20, and it includes 981 Old Lynchburg Road.

Ms. Grant said that a work session was held on July 11th with the Board, and several outstanding substantive matters were discussed and the Board gave direction at that time. She made a correction to the staff report related to housing assessments as they relate to the City (ten cents per hundred dollars, not ten percent as stated). Ms. Grant said that the Board still had many unanswered questions, and staff has received and answered them. She stated that staff recommends that the Board give some direction so the applicant has the opportunity to respond with appropriate language and revisions to the proffers, the code of development, and the application plan before the public hearing.

The applicant's representative, Steve Blaine, addressed the Board. He said that \$30,858,341 is the value of offsite and capital improvements – either constructing or giving in-kind – plus the cash proffers. Mr. Blaine commented that additional proffered items such as LEED and transportation improvements have not been sought as credits, but they will bring the proffers to over \$40 million. He noted that this number is based on ten percent of total build-out, with those units having to be built as LEED certified, and the developer suggests having a minimum threshold of ten percent to address that.

Mr. Rooker commented that the credit he is assuming of \$9,375 per unit for LEED certification is way in excess of what the Board just talked about, that is, two percent of the cash proffer amount.

Mr. Blaine noted that this presentation was prepared before that discussion. He added that there are also transit-oriented proffers that bring them much closer to offsetting improvements, \$2.3 million sought. Mr. Blaine further added that they agreed to construct the Mill Creek connector with a unit value totaling about \$300,000. He said that the developer would agree to pay for every single family dwelling unit in excess of the \$650, which is another \$5,300. Mr. Blaine emphasized that their total proffer obligation would be \$54,250,000 minus the credit for affordable housing.

Mr. Rooker replied that the County has not been charging the proffered amount against affordable units built, and if a developer elects to build non-affordable units but paid in lieu of cash those are not taken out for purposes of computing cash proffers. He emphasized that the cash proffers are ultimately based upon the number of non-affordable units built in the development.

Mr. Blaine noted that the developer is obligated to build 15 percent of affordable units, with \$19,100 as the cash proffer amount, and he submits that that would provide a huge disincentive for that cash to go to projects such as Habitat for Humanity.

Mr. Slutzky said that the Board said that the \$19,100 to down payment assistance was to satisfy the 15 percent affordable housing obligation and not the proffer obligation.

Mr. Rooker agreed, adding that the proffer obligation was based on the total non-affordable units in the development.

Mr. Blaine responded that that creates a disincentive for the cash and encourages the affordable units to be put on site.

Mr. Slutzky confirmed that that is indeed the preference.

Mr. Rooker said that there is no disagreement in giving credit for the \$19,100 if the developer has an agreement with Habitat for affordable housing, but that does not mean the cash proffer obligation is reduced.

Mr. Blaine stated that the additional \$5,300 generates another \$11 million, which still results in the same surplus if the full credit is received.

Mr. Graham noted that staff is not recommending a two percent credit for LEED, and he feels that it should be totally outside of the cash proffer policy not earning a credit. He added that the cash proffer policy is to address five specific impacts of a development and not all possible impacts.

Mr. Slutzky commented that the logic was that some LEED elements would offset some of the transportation impacts.

Mr. Graham said that staff has said that that benefit needs to be quantified or it becomes a very subjective matter. He added that there is a lot of support for transit, but previously transit was viewed as reducing the need for other transportation improvements and that needs to be demonstrated.

Mr. Rooker emphasized that some of the transportation items would be expected anyway with a development and should not necessarily garner proffer credit.

Mr. Graham also said that the Mill Creek Connector could have been required with a by-right subdivision.

Mr. Rooker commented that what is happening here is a developer is saying "I'll do these things; the County, you're basically going to pay for it."

Mr. Blaine replied that the homeowners would pay to fund a private transit system. He explained that there are no other projects that have offered this type of system, which they are valuing at \$2.1 million, and that cost is being passed onto the homeowner.

Mr. Rooker commented that the County would essentially be paying for that.

Mr. Slutzky stated that if they are seeking credit, that is the equivalent of asking the County to pay for it.

Mr. Boyd asked if that transit system would help take people off the roads.

Mr. Slutzky replied that if it is purely an amenity to the project, he is less sympathetic to the idea of giving credit for it.

Mr. Rooker commented that the County's cash proffer policy is what should be considered here, and just because a developer meets it, it does not mean his project should be approved. He stated that when the developer is asking the County to pay for those things by reducing cash proffers, he is less sympathetic to the application.

Mr. Dorrier said that the proffers are initiated by the developers and not required by the County.

Mr. Rooker agreed, adding that the cash proffer policy is looking for contributions to public infrastructure, and the County needs to be careful to give credit for things that the developer wants to do internally in his development.

Mr. Slutzky emphasized that this is not a gift, but an offset to the impacts a development will bring.

Mr. Boyd noted that there is not a formal proffer policy.

Mr. Wyant commented that if a developer does not pay for it, the County will have to, and a credit is coming from some other source of funding.

Mr. Blaine mentioned that Chesterfield considers additional contributions from developers.

Mr. Graham clarified that Chesterfield only credits improvements when they make a determination that that contribution is more valuable than receiving cash from the County.

Mr. Rooker commented that the applicant is seeking additional things to get credit for, and they are not necessarily on the list of items the Board had agreed to consider as offsets.

Mr. Boyd asked about the credit for LEED certification.

Mr. Rooker responded that the last work session had a two percent credit for LEED to be taken off the cash proffer amount for that unit.

Ms. Thomas said that she does not feel that should be a large credit, and it should not become a burdensome calculation for staff.

Mr. Slutzky stated that having bike racks and other amenities that reduce car transportation would be examples of items that could get credit through LEED.

Mr. Blaine mentioned that there is a cash contribution of \$1 million for transit operating costs as well as a private transit system from Biscuit Run to downtown.

Mr. Slutzky noted that there has also been discussion of subsidizing a public route between Biscuit Run and the City.

Mr. Blaine said that the applicant would do that, but the proffer is being voluntarily made.

Mr. Slutzky commented that a private system is an amenity to the development, but a public transit system provides a larger community benefit.

Mr. Rooker said that he does not like the idea of proffers coming in and telling the County how they will spend CIP money and some of the items help the developer better market the houses. He added that transit stops should not get credit as the internal design should be transit-ready because of its size.

Mr. Dorrier said that this development is going to appeal to the elderly and to make it functional, there should be some transit.

Mr. Slutzky responded that should be there, but the question is whether or not there should be credit given to the developer simply for putting in that amenity.

Mr. Rooker clarified that the developer is taking that \$2 million out of the cash proffer amount.

Mr. Slutzky stated if that money is going to create a private system, it is not appropriate to give offset credit, but if they are investing in the regional transit system to support bus service to downtown, then that should get credit.

Ms. Thomas commented that the homeowner contributions to this system are appropriate.

Mr. Wyant agreed that he would support a public system.

Mr. Rooker said that a new development of this size has encouraged the Board to require transit stops as part of the internal design, but they have not been giving credit just for doing that. He emphasized that having a private transit system internal to a development is essentially a marketing tool.

Ms. Thomas noted that this is a very impacted area and having transit be a major way of commuting is going to be crucial to keep traffic flowing.

Mr. Blaine stated that this project was started before the proffer policy was in place, and they built consensus for the project by addressing specific concerns such as transportation. He added that they have tried to do something unique and innovative by offering the transit system and not giving credit for that is providing a disincentive to developers.

Mr. Rooker replied that the Board already considered items to get credit for, and a private transit system will be a nice amenity but not something to earn proffer offsets.

Mr. Graham commented that if the homeowners there stop paying for the transit system, the County has an obligation to serve each one with a zoning violation.

Mr. Blaine suggested paying the money to the County and having them provide a transit system.

Mr. Slutzky said that large-scale developments through homeowners associations should generate funding for their own transit system.

Mr. Rooker responded that there is no way to enforce that.

Mr. Davis said that you can set up a system, but if the homeowners chose not to support it, the County would have to enforce it.

Mr. Rooker added that a private transit service is a great idea, but it is not something that necessarily garners credit.

Mr. Slutzky commented that he thought the applicant was providing funds for a bus route from the development to downtown.

Mr. Dorrier noted that it does not have to be decided right now and could just be added to the cash proffer request list.

Ms. Thomas said that she is still concerned about enforcement, adding that homeowners associations are finding it too expensive to operate so they are dropping regulations.

Mr. Graham added that the County is still obligated to enforce these things.

Mr. Slutzky suggested that the original \$1 million be proffered toward the Regional Transit Authority, plus the dollar value of the transit system for authority operating expenses.

Mr. Blaine replied that the easiest way to avoid the risk would be to give the County the cash up-front, on a per-unit basis. He said that collapsing the cash proffers into per-unit contributions would be acceptable to the applicant.

Mr. Rooker reiterated that he does not agree with giving credit for all of these items, and this money ultimately has to be paid out for capital purposes.

Mr. Davis clarified that the County is not legally limited to capital, but the cash proffer policy for the County does focus on capital and not operating.

Mr. Rooker said that from an administrative standpoint the best protocol would be getting the cash and deciding how to spend it.

Mr. Dorrier expressed concern about having those contributions and not earmarking them to offset the impacts of this particular development.

Mr. Rooker cited the Avinity project as an example of the County getting a lump sum and deciding how to allocate that to capital projects.

Ms. Thomas asked what would happen if that does not offset the impacts of the development, given the transportation studies that add up to an amount that is far greater than what is proposed.

Mr. Rooker responded that is going to be true for every development.

Ms. Thomas added that we should not delude ourselves, much less the public that the allocations would actually offset the impacts.

Mr. Rooker replied that is an argument for a larger cash proffer amount, and impact fees might make the proffer amounts more adequate.

Mr. Slutzky said that he expected the \$1 million proffer to be up-front for creation of the Regional Transit Authority.

Mr. Blaine stated that there has not been any other project that comes close to providing the increase in going from 1,400 by-right units to 3,100 units that furthers the Neighborhood Model.

Mr. Slutzky replied that the previous application had seven by-right units and plans to build over 1,200 units.

Mr. Rooker clarified that project has \$12 million in proffers.

Mr. Blaine noted that VDOT had recommended \$28 million for widening, and the applicant has broken down the road into two distinct sections and assigned costs accordingly. He said that the cost of frontage improvements along Route 20 is about \$5.5 million, and the applicant is not seeking credit for that. Mr. Blaine said that the applicant is offering \$7.3 million in additional cash over and above the other improvements.

Mr. Graham said that Mr. Wade could confirm whether staff has analyzed those amounts.

Mr. Dorrier asked if this widening was for four-lanes or two-lanes.

Mr. Blaine replied that this considers four lanes, and it is uncertain as to whether the public wants the road widened.

Mr. Wade stated that staff wants further clarification as the applicant is requesting a \$5.5 million reduction.

Mr. Joel DeNunzio of VDOT said that the applicant is considering that from the \$28 million, and their traffic study indicated that four lanes are needed anyway. He explained that the total estimate includes their frontage improvements but if they are reduced you get \$23 million, with offsite improvements add a \$10 million fee, making the difference \$3 million between staff and applicant estimates along Route 20.

Mr. Blaine commented that VDOT is not saying that this project is causing the need for these improvements, so that \$10 million could be taken off the top. He stated that he does not understand why this continues to come up as it was reconciled at the Planning Commission level.

Mr. Rooker said that this demonstrates that growth does not really pay for itself, and the County is looking at this analysis as if there was no credit for monies expected to be received from VDOT or the federal government for these road projects. He said the County's cash proffer policy was intended to try

to compensate for transportation as well as other things, and absent adequate state and federal money, the County is still left short.

Mr. Boyd responded that the cash proffer policy takes into consideration the County's contribution to road improvements. He said that the LEED policy established for the previous application should be allowable as well as some credit for the transit system, but it seems the Board does not agree that some of the other items should get credit.

Ms. Thomas added that the Mill Creek Connector had a "T" in Biscuit Run, and the way it is currently designed, it is a slip ramp from Biscuit Run into Mill Creek. She noted that the "T" never reappeared, and she said she would like an explanation as to why that could or could not be done. Ms. Thomas acknowledged that might not be ready the minute Biscuit Run's ground is broken, but she would like some timeframe to be established. She also said that Hillsdale Drive and the road within Old Trail should be used as lessons in the Biscuit Run example, adding that she would like the Biscuit Run road to be a boulevard with a median strip with the width and capability of being four lanes even though originally it may be two lanes with parking.

Mr. Blaine said that staff is recommending a two-lane divided section with parking on both sides, and this would allow a future accommodation to make the road four lanes. He said that within the town center, the applicant would like to have the geometrics tighter to create a better sense of space. Mr. Blaine added that the "T" intersection could be accommodated as well, and the neighborhood may say they prefer the design proposed by the consultant.

Ms. Thomas replied that the fewer houses impacted in Mill Creek, the better. She did not know that it was an either/or.

Mr. Wyant said that there are amenities in the communities, and residents want to be able to move between neighborhoods.

Mr. Boyd added that he would rather leave it up to the Mill Creek community to make that decision.

Mr. Blaine responded that they will build the "T" if that is preferred.

Mr. Rooker noted that it is really up to the County to decide the design.

Mr. Dorrier mentioned that Mill Creek is 100 percent against it.

Mr. Rooker emphasized that there has never been a neighborhood in favor of connection.

Ms. Thomas added that it could be designed to be more acceptable to residents.

Mr. Rooker said that more people from Mill Creek will want to get into Biscuit Run than the reverse.

Mr. Graham explained that the phasing plan does not really address environmental impacts as it does not limit the size of disturbance. He added that limiting the time of disturbance and addressing the impacts is the most you can do. Mr. Graham said that six months is likely too low, but he has not worked with the applicant on a reasonable number yet. He explained that the best protocol is to get in and get out as quickly as possible. Mr. Graham stated that you can have areas that would be under a building permit and might take longer than that time period. He noted that staff wants to see permanent stabilization installed, either the sod down or topsoil, seed, and mulch on there with fertilizer, when they are finished grading.

Mr. Rooker commented that there was concern that the town center did not have a north/south orientation, and he suggested that the County try to get at least 75 percent of buildings facing the east/west spine road. He added that they are looking to get at least the majority, and the applicant seems to want an east/west positioning.

Mr. Blaine agreed, adding that that is their intent. He said they have been working with Morgan Butler of the Southern Environmental Law Center on codes. Mr. Blaine emphasized that they want to relegate the parking and not put the buildings on Route 20.

Mr. Rooker said that the plan shows at least two-thirds of the buildings facing east/west.

Mr. Blaine stated that the designers envision Avon Street becoming a main road into Biscuit Run and lessening the impact on the other roads.

Ms. Thomas emphasized that it is very important to pin down who is responsible for what as the ownership will change over the years. She is assuming that there is a way for all the lawyers to work that out.

Mr. Dorrier said that he would be happy to work with staff and Mr. Blaine on these issues.

Mr. Wyant commented that the Regional Transit Authority needs to include the University of Virginia since many people leaving developments like this are traveling into the University.

Mr. Boyd agreed, stating that he is inclined to give credit for a private transit system.

Mr. Rooker said that the private transit system would likely do more to mitigate the impacts of this development than adding a regular bus route.

Ms. Thomas noted that the UVA connection would do the commuter trips, but there are going to be a lot of other trips.

Mr. Rooker commented that his concern is who makes the decision about allocation of transit funds.

Mr. Slutzky replied that money should go into the Regional Transit Authority, but if that is never created, then it would revert to the County.

Mr. Wade said that staff supports the VDOT letter of May 15th, which indicates a \$10.5 million applicant cost.

Mr. Davis commented that application is set for a September 12th public hearing, so the proffers would need to be finalized within the next week, which is a challenge for staff and might not be realistic at this point.

Board members agreed that it would be unlikely that the item would be ready by that date.

Mr. Graham said that the applicant could submit the plans and proffers, but his concern is that there are too many issues still open so the Board might be in the position of having a public hearing that acts as a work session.

Mr. Blaine commented that he does not see a lot of outstanding issues.

Mr. Davis stated that the proffer policy envisioned that a project would be decided at the Planning Commission level with the plans being in final form by the time they go to the Board.

Mr. Boyd replied, "I've never seen a project come through like that."

Mr. Blaine said that the policy adopted in July changed everything.

Mr. Davis responded that the proffer policy was not designed to address Biscuit Run and North Pointe-type projects but rather regular proposals.

Mr. Slutzky commented that it does not seem that the proffer policy has been particularly easy for these two projects.

Mr. Graham added that there would likely be changes to the proffers before the next meeting to discuss them.

Mr. Rooker said that if it is going to be the October date, then the applicant and staff should circulate the revised proffers in time for the Board to review them.

Mr. Tucker suggested that the Board could hold a public hearing at another date, perhaps a week or so later than the originally planned September 12th meeting.

Mr. Davis noted that staff could try to get it done by the earlier date, but that would likely create a scenario similar to the one that Mr. Graham mentioned, with the hearing acting more like a work session.

Agenda Item No. 4. Recess.

At 5:45 p.m., the Board recessed.

Agenda Item No. 5. The meeting was called back to order at 6:04 p.m., by the Chairman, Mr. Boyd.

Agenda Item No. 6. Pledge of Allegiance.

Agenda Item No. 7. Moment of Silence.

Agenda Item No. 8. Recognition.

Item No. 8a. Proclamation recognizing August 26, 2007 as Women's Equality Day.

Mr. Boyd read a proclamation acknowledging August 26, 2007 as Women's Equality Day in recognition of men and women working for a more equitable community. He presented a certificate to Ann Eddins of the Charlottesville Chapter of the National Organization of Women.

Ms. Eddins thanked the Board, adding that she hopes they will adopt the entire proclamation at some point in the future.

WOMEN'S EQUALITY DAY

WHEREAS, many decades of efforts by women and men were required to give women the right to vote; and

WHEREAS, citizens must always be willing to work to assure that the laws and policies in the Commonwealth of Virginia, the United States of America, and this County do not unjustly discriminate against females, and any other group; and

WHEREAS, unjust treatment based on views of inequality is often subtle; and

WHEREAS, it is appropriate for this County to recognize a day that commemorates the passage of the 19th Amendment to the Constitution of the United States, the amendment that gave the right of suffrage to American women;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia, does hereby proclaim

August 26, 2007

as

WOMEN'S EQUALITY DAY

in remembrance of all those women and men who have worked to develop a more equitable community that acknowledges both the real similarities and the important differences between women and men.

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

Mr. Wyant asked about the water plan that has gone to the regulatory agency.

Mr. Tucker replied that there would be a presentation in the next few weeks, but there is not final approval for the plan yet. The Rivanna Water and Sewer Authority is working on scheduling a meeting of this Board, City Council and Rivanna Board to receive a presentation.

Mr. Graham reported that the Planning Commission held a public hearing on the rural area ordinance amendments, and there were about 37 speakers with 30 or so opposed or concerned. He said that at the end of the hearing, the Commission deferred the item to spend some more time on it and have scheduled an August 21st work session. Mr. Graham said that there was concern among Commissioners that they might not have time to forward recommendations in time for the Board's September 19th public hearing. He said that if they recommended going forward with changes, that would work, but if they need to see it again the Board will not have time.

Mr. Tucker noted that some of the Commissioners were absent at that meeting.

Mr. Boyd said that it is important that they not rush the issue.

Mr. Slutzky replied that he does not want to rush them, but he also does not want them to drag their feet.

Mr. Graham mentioned that the Commission wants to get this off the table as quickly as possible.

Ms. Thomas said that there is heightened concern about bridges, especially Free Bridge. She suggested Allan Sumpter provide Board members with a report on all bridges statewide.

Mr. Tucker stated that Butch Davies sent out some emails regarding bridges statewide, and there was only one in this area that merited concern. He will forward the information to the Board.

Mr. Rooker commented that there is work being done on the bridge that crosses Route 250 into Flordon, over the railroad tracks. He said that the work should be finished August 9th. He noted that there has been concern from residents about the weight limits on the bridge in its current condition. Mr. Rooker said he has forwarded that information to VDOT and is anticipating their reply.

Mr. Boyd said he received a telephone call from Jamie Spence indicating that the first affordable housing project done under the County's proffer policy has been completed. There are nine more being closed on in the near future. Mr. Spence would like to come before the Board and inform them about the process.

Mr. Rooker said it would be a good idea, stating that his experience would be worth hearing.

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

There were no other matters.

Agenda Item No. 11. Consent Agenda.

Mr. Rooker **moved** to approve Item 11.1 (as read) and Item 11.2 on the Consent Agenda, and to accept the remaining item for information. 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.

Item No. 11.1. Approval of Minutes: September 6 and December 6, 2006; January 3, January 10, March 14 and May 9, 2007.

Mr. Boyd, Mr. Dorrier, and Ms. Thomas asked to pull their minutes.

Mr. Wyant said he had some typographic corrections he has turned into the Clerk.

By the recorded vote, set out above, the minutes of December 6, 2006 and May 9, 2007 were approved.

Item No. 11.2. Fiscal Year 2008 Performance Contract between Region Ten and the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services (VDMHMRSAS).

It was noted in the Executive Summary that each year, Region Ten and other Community Services Boards (CSBs) throughout the Commonwealth of Virginia enter into Performance Agreements with the Virginia Department of Mental Health, Mental Retardation & Substance Abuse Services (VDMHMRSAS) for the delivery of these services in their respective communities. Although Region Ten is the primary signatory to this agreement, federal and state regulations require that the local governing bodies establishing a CSB approve these contracts for the CSB to be eligible to receive state-controlled funds for these services.

Annual Performance Contracts between the VDMHMRSAS and CSBs delineate the responsibilities of the Commonwealth and the CSBs for the delivery of mental health, mental retardation and substance abuse services in their respective service areas. In addition, the contracts describe sources of funding for the CSB, stipulate requirements for compliance with federal regulations, establish performance measures, as well as procedures for administering these standards, and describe general terms and conditions for its administration. Though the County of Albemarle is not a party to this contract, Virginia Code § 37.2-508(D) requires that the local governing bodies establishing a CSB approve these contracts for the CSB to be eligible to receive state-controlled funds for these services. Staff has reviewed the proposed Contract and found no terms adverse to the County.

The County's FY08 appropriation for Region Ten totals \$566,276. Of this amount, \$450,627 is identified as "comprehensive services," including outpatient, case management, emergency, day support, residential, prevention and early intervention services for mental health, mental retardation, and substance use disorders and prevention. The balance of funding (\$115,649) represents the County's share of local programs funded by the City and County such as the Mohr Center, jail services, children services, and child's early intervention grant.

Recognizing the important services provided by Region Ten to the citizens of Albemarle County, as well as the requirements of the Code of Virginia for Region Ten to execute its FY08 Performance Contract with the VDMHMRSAS, it is recommended that the Board of Supervisors approve this Contract.

By the recorded vote set out above, the Board approved the Fiscal Year 2008 Performance Contract between Region Ten and the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services (VDMHMRSAS).

Item No. 11.3. Copy of letter dated July 16, 2007, from Ronald L. Higgins, Manager of Zoning Administration, to Lori H. Schweller, Esq., c/o LeClair Ryan, *re: OFFICIAL DETERMINATION OF PARCELS* – Tax Map 43, Parcel 40A (Property of Jeffrey F. & Corinne S. Buckalew) Section 10.3.1. – Jack Jouett Magisterial District, **was received for information.**

Agenda Item No. 12. **PUBLIC HEARING** to consider granting to the Virginia Department of Transportation (VDOT) a permanent drainage easement in Walnut Creek Park. (Advertised in the *Daily Progress* on July 20 and August 1, 2007.)

Mr. Tucker read from the Executive Summary that the Virginia Department of Transportation (VDOT) has advised that a pipe under Old Lynchburg Road near Walnut Creek Park is in need of repair. VDOT is requesting a permanent drainage easement from the surrounding property owners, including the County, to acquire the necessary property rights to make the improvements.

Virginia Code § 15.2-1800 requires that the Board hold a public hearing prior to conveying an interest in County-owned real property. The proposed 15-foot-wide permanent drainage easement would extend 50 feet back from Old Lynchburg Road on County-owned Tax Map Parcel Number 100-35. The proposed easement is well-removed from Walnut Creek Lake and the other public facilities at the Park, and would have no adverse impact on either of them. The County would have no responsibility for constructing or maintaining any drainage improvements. Staff has reviewed the request and has determined it will not have any adverse impacts on the County's use of the property.

It was noted in the Executive Summary that there is no budget impact.

Mr. Tucker said after the public hearing, staff recommends that the Board adopt the attached resolution to authorize the County Executive to sign the deed of easement on behalf of the County.

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

At this time, Ms. Thomas **moved** to adopt the proposed resolution to authorize the County Executive to sign the deed of easement on behalf of the County. 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.

**RESOLUTION TO AUTHORIZE
CONVEYANCE OF DRAINAGE EASEMENT
ALONG WALNUT CREEK TO VDOT**

WHEREAS, the County of Albemarle owns a certain parcel of land, known as Tax Map Parcel 100-35, where Old Lynchburg Road crosses Walnut Creek; and

WHEREAS, the Virginia Department of Transportation ("VDOT") has requested a drainage easement along Walnut Creek to replace an existing pipe under Old Lynchburg Road; and

WHEREAS, the terms of the proposed Deed do not obligate the County to construct or maintain any improvements; and

WHEREAS, the proposed drainage easement would have no adverse impact on Walnut Creek Lake or any other facility at Walnut Creek Park.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle County Board of Supervisors hereby authorizes the County Executive to execute on behalf of the County of Albemarle, Virginia, a Deed and any other document(s) necessary to convey a drainage easement along Walnut Creek to the Virginia Department of Transportation.

* * * * *

TAX MAP #100-35

RW-203
Revised 4/05
UPC

**PREPARED BY VDOT
UNDER SUPERVISION OF THE
OFFICE OF THE ATTORNEY GENERAL**

Exempted from recordation taxes
and fees under Sections 58.1-811 (A)(3),
58.1-811 (C)(5), 58.1-3315, 25.1-418,
42.1-70, 17.1-266, and 17.1-279 (E)

THIS DEED, made this 13th day of August, 2007, by and between the COUNTY OF ALBEMARLE, VIRGINIA, Grantor, and the COMMONWEALTH OF VIRGINIA, Grantee,

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid, and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor doth hereby grant and convey to the Grantee the perpetual right and easement to construct, operate and maintain a drainage ditch for the purpose of draining State Highway Route 631, in Scottsville Magisterial District, in the County of Albemarle, Virginia, upon and across the lands and property of the Grantor adjacent to the road, and including the right of egress and ingress to same. The drainage easement is located and marked in GREEN on a copy of a sketch attached hereto as a part hereof and recorded simultaneously herewith in the State Highway Plat Book _____, Page _____.

It is agreed between the parties hereto that the Grantee and its agents shall have the right to inspect the drainage ditch and to cut and clear all undergrowth and other obstructions in and along the drainage ditch or adjacent thereto that may in any way in danger or interfere with the proper use of the same.

The Grantor by the execution of this instrument acknowledges that the plans for the aforesaid route as they affect its property have been fully explained to it or to its authorized representative.

The Grantor covenants and agrees for itself, its heirs, successors and assigns that it has been made aware of its right to receive just compensation for the easement herein conveyed, and that the considerations aforementioned and paid to it shall be in lieu of any and all claims to compensation and damages, if any, by reason of the location, construction, operation and maintenance of the drainage ditch.

WITNESS the following signatures and seals:

GRANTOR:

COUNTY OF ALBEMARLE, VIRGINIA

By: _____

Robert W. Tucker, Jr.

Its: County Executive

GRANTEE:

COMMONWEALTH OF VIRGINIA

By: _____

Its: _____

Agenda Item No. 13. **PUBLIC HEARING:** PROJECT: ZMA-2004-018. Fontana Phase 4C (Signs #37,45). PROPOSAL: Rezone 17.146 acres from RA Rural Areas which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre), R-4 Residential zoning district (4 units/acre) and R-1 Residential zoning district (1 unit/acre) to R-4 Residential zoning district which allows residential uses at 4 units per acre for 34 dwelling units at a gross density of 1.98 units/acre. PROFFERS: Yes EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses in Neighborhood 3 – Pantops ENTRANCE CORRIDOR: No. LOCATION: At the intersection of Fontana Drive (Rt. 1765) and Via Florence approximately 0.5 miles from the intersection of Fontana Drive and Stony Point Road (Route 20 North) TAX MAP/PARCEL: 78E-A. MAGISTERIAL DISTRICT: Rivanna. (Advertised in the *Daily Progress* on July 23 and July 30, 2007.)

Mr. Benish reported that this is a proposal to rezone approximately 17 acres from RA to R-1, and R-4 to R-4 with a proffered plan. He explained that the rezoning consists of 34 single-family lots on 17 acres, with a density of just under two dwelling units per acre, and the property is located in the Pantops Development Area with recommendations of three to six dwelling units per acre. Mr. Benish noted that the property is located in the Rivanna Magisterial District, and it received designations in 1994 with contemplation of an intensive development similar to Fontana, a lower-density development for future plans, and an RA area because of limited water availability that has been alleviated now.

Mr. Benish noted that the Planning Commission did not recommend approval, listing six reasons including consistency with the Neighborhood Model and lower density than called for in the Land Use Plan, although it was consistent with other Fontana development. He said that they also cited issues with offsite drainage improvements and other improvements within Fontana not being completed as well as Monticello view shed issues and concerns about the cross-section of Fontana Drive from Route 20 to the terminus of the road. Mr. Benish said that many of the issues have been addressed, and the applicant has now proffered all improvements in other phases of development within Fontana to be completed prior to submittal and approval of a grading plan for erosion and sedimentation control measures. He added that there may be ways that the Zoning Administrator requires stabilization through erosion control measures although some of the sections can not really be required to be upgraded.

Mr. Benish said that the trails were established on subdivision plats as improvements to be made so there is a requirement to implement them as shown on the plans.

Ms. Thomas added that they were shown to prospective homeowners on plats as part of the value or expectations for that subdivision although they were not proffered per se.

Mr. Benish said that the proffer ensures that those improvements get completed prior to any other Fontana development. He explained that Ms. McCulley has been trying to enforce those improvements shown on the subdivision plats, although they do not dictate a weighty standard. Mr. Benish noted that the later phases do require a standard of development related to grading and paving.

Ms. Thomas commented that people were led to believe there would be a trail system.

Mr. Benish agreed.

Mr. Rooker said that those improvements would be picked up before development goes forward on this parcel.

Mr. Benish confirmed this, adding that the maintenance of trails is up to the homeowners association, but there were fairly limited standards established early-on.

Mr. Benish reported that the proffers call for conformity to a particular plan, overlot grading, trees on site, cash proffers in lieu of affordable housing, and cash proffers to meet the proffer policy. He said that the remaining substantive issue is the amount of the cash proffers. Mr. Benish also added that pedestrian paths, building colors, and Monticello view shed issues have been addressed. He confirmed that the primary issue is the cash proffer policy as it relates to by-right development, as the amount was supposed to be based on the total number of units. Mr. Benish noted that in this case the proffers are based on 25 units minus the nine by-right units. He said that staff cannot recommend approval at this

time because of the shortfall in proffer amounts. Mr. Benish clarified some typographical items in the staff report as well as language that is no longer necessary because of changes in legislation.

Mr. Benish said that the concept plan shows the same note used for Cascadia, which requires dedication of right of way and interconnection.

Mr. Boyd asked for clarification of what road that is. Mr. Benish replied that road runs toward Montessori School.

Ms. Thomas said that it would be helpful to have a larger area shown on a map so there is some context.

Mr. Benish showed where the existing Fontana development is, as well as Montessori and Cascadia. He noted the location of the interconnecting road into Cascadia as well as Verona Drive, which goes into Luxor. Mr. Benish explained that Fontana Drive also serves the Lakeridge development, which is property that is recently approved for development to the north.

In response to Mr. Boyd's question about Fontana Drive, Mr. Benish said it would be curb and gutter with sidewalks on both sides and a treed lawn into Lakeside, and it would also pick up a rural section based on the original Fontana approval. He stated that staff had determined that it would be difficult to retrofit a cross-section with the new sections of Fontana, adding that the topography is a steep incline that results in a lot of cut and fill on adjacent lots. Mr. Benish said that with that rural section, the drainage would need to be changed to be picked up with inverts in specific locations and that might mean more grading on lots.

Mr. Boyd commented that some of those lots might even need retaining walls.

Mr. Benish said he would not be surprised although staff has not looked at this in that level of detail. He stated that the applicant has not addressed this in this application, noting that a roadway would be going from a rural section into a side-walked road. Mr. Benish added that staff has felt it is better to get some of the road with some of the improvements than nothing at all, adding that without a completed pedestrian system there is a disconnect.

Ms. Thomas said that the trail system does not connect with the roads and sidewalks.

Mr. Benish explained that the Commission requested curb and gutter to provide pedestrian accommodations, and that is the standard typically applied for urban development. He added that the attachment B shows the cross-sections with five-foot sidewalks and six-foot tree lawns. Mr. Benish said that given the topography, pedestrian access should be accommodated in the long run as part of the road cross-section as opposed to off-road trails. He said that the Planning Commission had concerns about offsite drainage, but the County engineer has reviewed the plans and is comfortable with the plan given an urban section design.

Mr. Boyd commented that he is eager to hear from the public what they think of this type of design as other developments nearby would have this type of road system.

At this time the Chairman opened the public hearing.

The applicant's representative, Steve Driver, of Terra Engineering and Land Solutions, addressed the Board. Mr. Driver explained that the applicant has been working extensively to address Commission concerns, and is proposing a full urban road section for Fontana Drive Extended including curb and gutter on both sides of the road, a planting strip for trees and sidewalks on both sides, and a cross-section that matches what is proposed for Lakeridge. He said that the road was originally proposed as rural, but staff requested urban section to match Lakeridge's and Cascadia's road design aspects. Mr. Driver noted that the applicant has agreed to provide an offsite pipe system extension from the eleven lots in the eastern corner of the development to bring the drainage to the rear of the lots at the end of the cul-de-sac at the end of Florence via underground pipe per County drainage standards.

Mr. Driver stated that the applicant has also agreed to complete all phases with bonds being released by the County prior to submitting application for a grading permit for Phase 4-C, including pedestrian pathway work in the previous phases. He added that the applicant has agreed to provide architectural standards regarding the view shed, building facades, and ten-foot width on all the Phase 4-C pedestrian pathways. Mr. Driver said that the only other item was retrofitting the road standards to the existing Fontana Drive, and the applicant did not offer to make these changes because of the difficulty in retrofitting an urban section to a rural section. He said that the road met VDOT and County standards at the time, noting that the right of way for Fontana is 50 feet, with the current standard at 57 feet. Mr. Driver stated that access to private lots would become a pretty significant issue.

Mr. Driver added that the cash proffers for affordable housing and public services could be answered by the applicant, and approval of this petition would provide the link between Cascadia and Lakeridge.

Mr. Boyd commented that he would like the applicant to proffer the appropriate amount for affordable housing and the total number of units being requested.

The applicant, Mr. A. M. Nichols, agreed to change the proffer amount to \$595,000 as well as \$95,500 for affordable housing. He explained that Dominion Virginia Power allowed an easement for two

lots, lots 38 and 39, but he also needs to get an easement from Dr. Hurt. Mr. Nichols also explained that Ashcroft has agreed to give an easement and Avemore on the very right-hand side of the entry. He added that the pedestrian pathway is a work in progress. Mr. Nichols noted that he needs to get those easements and that is reflected in his proffers.

Ms. Thomas asked about the disconnect between the trail system and the new sidewalks.

Mr. Nichols responded that the pedestrian pathways are in rural section but the curb, gutter, and sidewalk on the Fontana Drive extension will connect with Cascadia and will connect on the upper right hand side with Lakeridge. He explained that the Ashcroft homeowners will also be able to use the pathway.

Ms. Thomas explained that she is concerned about the sidewalks connecting with the rural cross-section, and she noted that the trail system within the former development could be connected to the new sidewalk system.

Mr. Driver noted that any pedestrian pathways built within a public right of way must meet VDOT standards and other than that they would have to be outside of the right of way. He said that the applicant worked with staff to move the pathway out of the right of way.

Mr. Benish asked about any possible connection to link the sidewalks to the trails.

Mr. Driver replied that there are two lots there, so a trail would need to go in the right of way or an easement would need to be obtained from those two property owners.

Ms. Sharon Baiocco addressed the Board on behalf of the Fontana Homeowners Association. She stated that the pedestrian trailways are a constant problem as the County has decided that sidewalks are desirable in urban areas. Ms. Baiocco added that pedestrian paths were traditionally a substitute for sidewalks. She noted that her trail was started in November then finished in the spring, but it has now eroded dramatically. Ms. Baiocco said that not requiring a standard has been a serious problem, and the pedestrian paths are now becoming an eyesore and are dangerous and detracting from property values. She presented pictures of the paths, noting that there are many children in the neighborhood who use the roads because the paths are not standard and are now deeply rutted. Ms. Baiocco said that the standard should be like the Monticello Trail path, which has eight inches of stone versus the two and a half inches of stone with the Fontana paths. She added that adding this many more houses is not what we bargained for nor did Fontana residents vote in favor of a connection to Cascadia.

Ms. Nancy Grable addressed the Board, noting that some of the trails end on one of the rural roads, and there is at least one incident where the trail ends in someone's garden. She also said that the rural roads in Fontana have caused concern because they are narrow and must carry school busses, and now more traffic is going to be put on these roads from developments with a more urban atmosphere.

Ms. Thomas asked what the homeowners' assumption is as to who would maintain the trails. Ms. Grable replied that she assumes the trails would be made good, but she does not know who would do that.

Mr. Rooker asked staff for clarification as to maintenance of those trails.

Mr. Benish said that the homeowners association usually takes care of them.

Mr. Lewis Martin, representing Mr. Nichols, said that the Fontana covenants and restrictions stipulate it is the homeowners association's responsibility to maintain those trails.

Mr. Benish stated that he does not know if those pictures shown demonstrate that the trails have not met the expected standard, as some sections do require a sub-base and surfacing and some sections do not.

Mr. Davis said that a lot of the improvements were bonded.

Ms. Vickie Valente addressed the Board, noting that the trails end in rip raps and continue onto the other side with no bridges across. She said that it is very dangerous. She sees all sorts of issues there. Ms. Valente added that lots of people walk to the pool and tennis courts, and having people driving through the area at 35 plus miles per hour could create serious problems.

Ms. Patty Williams addressed the Board, stating that once the trails are complete, the homeowners association has to maintain them. She expressed concern about liability for that. Ms. Williams emphasized that the trails are dangerous and not in good shape at all, and there is no place for people in wheelchairs or kids on bikes.

Mr. Slutzky said that it seems a potential disaster is being created here, with country roads and more urban roads together with strollers being pushed because residents can not get on the trails. He asked if it would be possible to work with the applicant to adhere to standards that make the trails functional so that the entire network would work.

Mr. Benish responded that Phases III and IV have more stringent standards for compacted sub-grade trails and paving of roads over seven percent grade, but for Phases I and II the only standards that can be found are those on the plans that call for five-foot mowed paths, with no grade requirements.

Mr. Davis said that there is no way to require a condition for those offsite trail improvements, but the developer could voluntarily proffer that if he could work within the existing easement area. He noted that one of the impacts to be considered would be how it impacts adjacent property and whether the increase in density creates pedestrian and traffic safety issues, and one way to do that may be improving the trails.

Mr. Rooker stated that in order for him to vote for approval, the trails need to be brought to a standard that complies with what was originally offered. He noted that Fontana Drive goes to Route 20 with no pedestrian facilities and is not a safe place to walk as it does not meet reasonable standards. Mr. Rooker said that to approve the additional density, the residents, both current and future, need a safe place to walk.

Mr. Boyd noted that there is a proffer there already to complete the trail system through the older neighborhoods, and the County would like to see that proffer extended to meet those standards.

Mr. Davis mentioned that there are things that can be done to make it more workable, although the paths may not be able to meet the larger widths because of right of way issues.

Mr. Rooker commented that the concern seems to be the condition of the surface of the paths, more so than the width.

Mr. Benish cautioned that some of the trails may just not be developable because of the nature of the topography.

Ms. Thomas said that the Rivanna Trails people have installed stairways, although that is not the preferred method of design. She said that the old standards were inadequate, and that brings into question the rationale of bringing the trails up to those standards when all of them could be brought up to an explicit standard of today.

Mr. Rooker stated that is what he thought staff was trying to do.

Mr. Benish clarified that the Phase I and II standard is fairly limited, but the Board could accept a proffer to bring those up to the higher standard required of Phases III and IV.

Mr. Rooker added that they are talking about a new proffer.

Mr. Benish noted that there are limitations to what can be done within easement areas, and alternative sites for paths might need to be identified through field work and evaluation. He added that it may require property owners' agreement to make those adjustments.

Mr. Davis said that to address a new cash proffer amount, it would have to be re-advertised for another public hearing. He explained that an amended proffer would also require the application to be re-advertised for another public hearing.

Mr. Boyd expressed concern that the connecting road through Cascadia is opposed by residents, and he asked for clarification of what that road would be.

Mr. Davis replied that in Cascadia there were no proffers for the connection, but the Code of Development showed reservation of right of way up to the property line of Fontana and said it would be improved at the request of the County. He explained that the Subdivision Ordinance requires that those improvements be made in both Cascadia and Fontana once the plats are approved unless a waiver is requested and approved by the Planning Commission. Mr. Davis said that the expectation is that there will be an interconnection here. It has been reserved in Cascadia and would be required in this subdivision.

Mr. Rooker asked if the traffic would be taken off and spread out instead of going through the existing neighborhood.

Mr. Boyd said that the Cascadia connection was established after Fontana.

Mr. Davis emphasized that staff believes traffic would be taken off of Fontana as people in the new section would divert to Cascadia because it is a better road.

Mr. Rooker mentioned that this is required for the subdivision.

Mr. Davis explained that Cascadia has a requirement to provide that connection, and the ordinance does require that interconnection, with each development building up to their property line. He said that under the Subdivision Ordinance, they would have to build or bond it at the time of platting.

Mr. Benish said that this plan allows for use of the road for emergency purposes until the subdivision is built, and at that point the interconnection is required.

Mr. Boyd said that traffic would go into Fontana (Franklin Drive) to get to work, and this would create a real safety situation unless there is a signal put in front of Cascadia.

Mr. Rooker stated that if there is enough traffic, they will get a light.

Mr. Boyd said they will all go through Fontana.

Mr. Rooker responded that he would be surprised if people chose that route, as he had an office at Pantops for 25 years.

Mr. Boyd said that he has lived in Key West for 26 years, and the Pantops situation would encourage people to cut through Fontana.

Mr. Tucker noted that it might be difficult, once again, to get this back in time for September.

Mr. Davis stated that if a proffer for the pathway is going to be on the table, then staff and engineering need to weigh in on that prior to the proffer being written. He also said that the Board could defer the item, unless the applicant does not want to amend the proffers.

Mr. Driver said that the applicant is willing to bring the pedestrian path standards in Phase I and II up to the standards of Phase III and IV. He asked if it would be possible for the Board to approve the rezoning with that as a note on the plat.

Mr. Davis replied that the law requires re-advertising of a public hearing to accept the proffer changes.

(Note: At this time, the applicant and his attorney stepped out of the meeting to discuss how to proceed.)

Mr. Martin, representing Mr. Nichols, said that the applicant is requesting deferral.

Mr. Davis stated that once there are final proffers and plans, the item would be re-advertised 20 days prior to public hearing.

Mr. Rooker then **moved** to indefinitely defer ZMA 2004-018 Fontana Phase IV-C. Mr. Slutzky **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.

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

Ms. Thomas said that she attended the High Growth Coalition meeting, which had over 300 people, which included information on new state law requiring an urban development center to be specified and expected to absorb growth in the next 20 years. She said that impact fees were discussed as well. She commented that the County could create an impact fee for the rural area as the designated urban development area could be excluded, but the fee would only be collected on new lots so perhaps not much money would be made. Ms. Thomas said that this might be a way to level the playing field between rural and urban development.

Mr. Davis said that Planning staff would need to address this further, and there are challenges in how the impact fee legislation is being interpreted. He explained that the terminology in the statute stipulates that the lots charged the impact fees benefit from the transportation improvement plan that the fees are based upon, so the road projects would need to be identified that benefit the rural area lots. Mr. Davis said that already subdivided lots would escape the impact fee, but other lots, even family subdivisions, would be subject to the fees. He stated that there would need to be much analysis done on which projects to include, but if the road improvements are not done within 15 years the money would have to be returned.

Mr. Davis said that Mr. Tom Foley wants to discuss this with the Board in October, and it does require serious examination by Planning staff for road projects for feasibility. He mentioned that Chesterfield is going with one large transportation district, with several logical east/west connectors named in the network. Mr. Davis explained that Albemarle is a little more challenged because of the size of the County, and the Board would need to decide what would be included.

Mr. Boyd commented that he would rather discuss this in-depth at a future date.

Mr. Davis noted that VaCo is still working out issues with the impact fees, and perhaps he could bring it back in the Fall.

Mr. Boyd agreed that more thoughtful discussion be put into the deliberations.

Mr. Slutzky agreed that Mr. Davis and Planning staff should come back to the Board with more information in the future.

Mr. Tucker noted that he and Mr. Foley have been working on revenue alternatives, and this is just one of those.

Mr. Rooker said that the growth area seems to be too large to qualify.

Mr. Davis clarified that the growth area needs to accommodate development in the next 20 years, so it would need to be reduced to focus just on areas that accommodate growth. He said that the concern is that entire counties not be included for impact fees but instead what is anticipated to be developed.

Mr. Wyant expressed an interest in seeing how long it takes for rezonings to get approved from the time they are applied for.

Mr. Tucker responded that it is difficult to track that because of the applicants' own deferrals, and the wrong impression can be given if a proposal takes a long time.

Mr. Slutzky said that it would only be helpful to see how long the County had the item.

Mr. Boyd stated that perhaps it would be worth tracking on large projects.

Mr. Rooker said that Albemarle Place was approved six years ago, and much of that was due to delays on the part of the applicant.

Mr. Boyd said that the Development Review Task Force recommended having an electronic journal kept to keep track of progress.

Mr. Wyant reported that he and Mr. Dan Eggleston were working on a system to evaluate the cost of fire and rescue trips, and it will hopefully be developed in time for the budgeting process.

Mr. Slutzky reported that the Safer Chemical Committee, which is comprised of staff members from the schools and the County, will bring forward a recommendation to the Board by the end of the year on the use of chemicals on County property, and staff is starting to get comfortable with the notion of using alternatives to toxic substances.

Mr. Rooker noted that Mr. Pat Mullaney had brought forth an interim policy which has put a moratorium on chemical use.

Ms. Thomas said that she attended the groundbreaking of a conference center at the Boar's Head, and there would be breakout rooms included in the design to make the facility more appealing to outside users.

Agenda Item No. 15. Adjourn. At 8:07 p.m., with no further business to come before the Board, the meeting was adjourned.

Chairman

Approved by the Board of County Supervisors

Date: 03/19/2008

Initials: EWJ
