

A meeting of the Board of Supervisors of Albemarle County, Virginia, was held on September 12, 2007, at 6:00 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, Director of Planning, Wayne Cilimberg, and Clerk, Ella W. Jordan, and Senior Deputy Clerk, Meagan Hoy.

Agenda Item No. 1. The meeting was called to order at 6:02 p.m., by the Chairman, Mr. Boyd.

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

Agenda Item No. 4a. Recognition. Charlottesville Cardinals Wheelchair Basketball Team.

Mr. Boyd read and presented the following recognition to Brandon Rush and Penny Dotson, members of the Charlottesville Cardinals Wheelchair Basketball Team:

On behalf of the Albemarle County Board of Supervisors and local government, we would like to honor and recognize

The Charlottesville Cardinals Wheelchair Basketball Teams

Whereas the Charlottesville Cardinals Wheelchair Basketball team was formed in the early 1980's by six local athletes to provide athletes with disabilities an opportunity for exercise and competitive recreation; and

Whereas since its formation, over 250 area athletes have participated with the Cardinals and have performed in front of over 25,000 people across the U. S. and Canada; and

Whereas the Cardinals field three highly competitive teams, with their Division II squad being ranked as high as second in the nation this past season and making it to the Final Four of the National Championships before losing in overtime; and the Division III team finished the season ranked ninth in the country; and

Whereas the Cardinals lineup includes men and women, young and old, who are committed to the mission of "eliminating attitudinal barriers towards people with disabilities by energetically demonstrating their abilities rather than their disabilities";

Now, Therefore, Be, It Resolved, that the Board of Supervisors of Albemarle County, Virginia, hereby recognizes the Charlottesville Cardinals Wheelchair Basketball teams for being a championship organization but, also, in bringing to the forefront and educating the community on the abilities of people with disabilities.

Agenda Item No. 5. From the Board: Matters Not Listed on the Agenda.

Mr. Slutzky mentioned Item 7.2.1 (Passenger Rail Resolution) and said since funding is expected to be in the range of no more than \$5,000 - \$10,000, he is willing to support the original resolution that was presented last week.

Mr. Boyd said that he had suggested removing the references to funding because he is concerned about committing funds, and at the time he did not know how much money was involved. He is willing to accept the original language that was proposed but is still leery of making promises that funding is forthcoming. He wants to make sure that it is understood that this is not a promise that the Board will provide funding.

Other Board members also indicated their support for the resolution.

Mr. Tucker commented that the previously-requested changes were made, but the consent agenda could be approved with a motion to approve the original language that was submitted in the resolution.

Mr. Rooker related that a constituent had provided some interesting statistics on water usage in the area. He said that, since the drought alert and warnings were implemented, community water usage has fallen an average of five percent per day, which is probably not as much as had been hoped. He stated that there is a lot of misinformation about water usage in the community. He said it is helpful for people to understand that the County is an area that stores its water and uses its water from storage; in

times of adequate rainfall, there is excess flow into the reservoirs, most of which goes downstream. Mr. Rooker noted that about 97 percent of the water that comes into the South Fork Reservoir typically goes downstream when there is adequate and normal rainfall, but there has been an almost identical amount of water going into the reservoirs as is used by the public in the recent months of drought. He said that there is not so much of a deficit in that regard, and the reservoirs are full or close to full in most cases, but it leaves very little room to allow water to go downstream.

Mr. Rooker noted that the Board previously had some discussions regarding affordable housing and workforce housing, and an applicant made a proposal in which workforce housing was defined as between \$190,000 and \$300,000. Mr. Rooker said he asked a realtor to give him the number of listings in the area that are less than \$300,000. He said that 517 of 1,403 properties listed for sale were less than \$300,000; 220 of those were detached, and 328 were in the County. Mr. Rooker commented that these were helpful statistics.

Mr. Wyant followed up on Mr. Rooker's comments regarding water usage. He noted that Crozet usage has decreased approximately 30 gallons per person. He stated that there are ways to calculate how much conservation has been done, and he has been monitoring this statistic.

Ms. Thomas reported that she recently attended a quarterly meeting of the Environmental Study Committee. The Committee found that the City's streetlights are a major source of pollution because they use a lot of electricity, and electricity generation in Virginia is a coal-burning situation for the most part. She offered to provide Board members with information on the Committee's secure website, where they are discussing how to make the City more energy-efficient.

Agenda Item No. 6. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Peter Wurzer gave a slide presentation regarding growth in the County. He said that the County population has grown 11 percent from 2000 to 2007, about 1.5 percent per year. He stated that the average tax for the average home increased from \$1,110 in 2000 to \$2,264 in 2007, which is a 104 percent increase, with an average increase of 10.7 percent per year. He said that the County government's operating budget increased 76 percent (8.4 percent annually), while the School Division increased 61 percent (7.1 percent annually), with total operating expenditures increasing 61 percent (7.1 percent annually). He said that County staffing, excluding the School Division, has increased from about 500 in 2000 to 632 currently. He noted that the 27 percent increase in staffing was almost three times the 11 percent population increase over this time period. Excluding fire and police staffing, County staff increased 21 percent, from 334 to 402, in comparison to the 11 percent population increase, while school enrollment over this period increased two percent.

Mr. Wurzer stated that he sees several budget challenges, such as the projected shortfall in State revenue. He asked what is going to happen to the educational budget, as the County currently receives \$45 million per year from the State for education. Mr. Wurzer said that the City "protection payment" will probably go up to \$4 million in 2008-09, and that cost is 1.3 percent of the total 2007-08 budget. He asked how the County would handle the infrastructure investment for transportation, schools, and water when real growth comes. He said the real estate tax well is running dry; at the 10 percent annual rate of increase, taxes are doubling every seven years. A house at \$2,400 would equal \$9,000 per year by 2021, and this rate of increase cannot continue. He stated that the County needs aggressive top-down budget targets, resources to do a thorough activities analysis, and more scrutiny of FTE deployment. He commented that he is surprised that there is no master set of organization charts showing the reporting of relationships and span of management. He suggested that the County explore savings opportunities by sharing services with neighboring governments, such as fire training and rarely-used SWAT teams and hostage negotiation teams, and by ensuring meaningful KPIs for all departments and people, and tying salary increases to performance. Mr. Wurzer said that the County should stay on the cutting edge of proffers policy enactment by looking at it monthly rather than just every year and finding out what other localities are doing. He also encouraged development of a more rational tax increase methodology, taking into account inflation, growth, payments to the City of Charlottesville, and looking at what things it can bear.

Mr. Paul Grady addressed the Board. He stated that he lives just outside the Crozet growth area. He asked Board members to reconsider the 29H250 Study as they delve into the components of Places29. He stated that the 29H250 Study performed four years ago was developed before funding was received for the Meadow Creek Parkway Interchange. He said that the first fatal flaw of the study was that it was not conceived to find a way to remove the stoplight at Hydraulic Road and the Route 250 Bypass. He then outlined the three options presented in the 29H250 Study: Option A sent all traffic down Hydraulic Road on grade, Option B sent through traffic down Emmet Street, and Option C created an elevated expressway down Hydraulic Road with a two-lane Hydraulic north of the expressway on grade for local traffic. He stated that the second fatal flaw of the study was that it did not give Option C any extra credit for eliminating the stoplight at Hydraulic and the Route 250 Bypass. Mr. Grady said that he had submitted countless ideas for improving Option C at various public meetings, but this option received no further development. He explained that the consultants recommended Option B, which destroys two blocks of Emmet Street, requires the rebuilding of the Barracks Road interchange, and still leaves the stoplight at Hydraulic and the Route 250 Bypass, the third fatal flaw of the study. He commented that the study was fixed to make Option C lose, and various public bodies held no public hearings on the study,

yet the Virginia General Assembly passed legislation allowing proffered money from Albemarle Place to be used on the "quick fix" right-turn lane from Emmet Street onto the Route 250 Bypass. He encouraged reopening the 29H250 Study and further developing Option C before any money is spent on the "quick fix", which might prevent adequate funding for an interchange at Hydraulic and the Route 250 Bypass and eliminating the last stoplight.

Ms. Meredith Richards, Chairman of CvilleRail, thanked Mr. Slutzky for helping to clarify what her organization is requesting in its resolution. She also thanked Mr. Boyd for his comments on the resolution. She stated that CvilleRail would appreciate it if the Board would adopt the original resolution, as the other jurisdictions in the Piedmont Rail Coalition are being asked to do. She said that they may come back in January to request matching funds in the range of \$5,000 to \$10,000. Ms. Richards explained that there is some consideration at the State level that the 30 percent match requirement might be rescinded in cases of passenger rail proposals involving a public entity, as the match was intended to be a private-sector contribution to expenditures on privately-owned tracks. She thanked the Board for its consideration.

Agenda Item No. 7. Consent Agenda. Mr. Slutzky offered **motion, seconded** by Mr. Wyant, to approve Items 7.1 through 7.2.1 (as amended) and to accept the remaining items for information. (**Note:** Discussions are included with the individual items.) Roll was called, and the motion carried by the following recorded vote:

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

Item No. 7.1. Approval of Minutes: August 2, 2006; April 11 and May 2, 2007.

Mr. Wyant had read the minutes of August 2, 2006, pages 1-39 (ending at Item #16), and found them to be in order.

Mr. Boyd had read the minutes of April 11, 2007 and found them to be in order.

Mr. Slutzky had read the minutes of May 2, 2007 and found them to be in order.

The minutes were approved by the above-recorded vote.

Item No. 7.2. Resolution of the Industrial Development Authority authorizing the issuance of revenue bonds, pursuant to the Industrial Development and Revenue Bond Act, in an amount not to exceed \$21,000,000 for the Jefferson Scholars Foundation.

(Mr. Slutzky commented that people in the historic preservation community have raised concerns that these monies will be spent developing a site which may include the razing of a substantial historic relic of greater importance than the typical property. He suggested asking staff to compile information on the historic preservation value of the structure, so that the Board could consider writing a letter to the University, the City, or the Jefferson Scholars Foundation expressing concern about the historic preservation aspects of the property.

Mr. Boyd said he did not object to this, but it was his understanding that no decision had been made regarding the building, and the bond was the only matter under the Board's consideration.

Mr. Davis noted that this property is located in the City and would be subject to the City's zoning. This matter could be evaluated by City Council during its consideration of the bond issuance. He said he was not sure whether the County has traditionally gotten involved in projects in the City.

Mr. Rooker stated he had no problem with getting additional information, but he was unsure whether the Board should comment on projects in the City. He said it would be interesting to get a report on the historic features of the building, but he did not want to impose a burden on staff.

Mr. Boyd suggested making an inquiry to see if the City is addressing the issue.

Mr. Tucker commented that City staff is going through the process to determine the building's significance, and a report could be obtained.

Ms. Thomas asked Board members how they would have felt if the City had commented on similar issues in the County.

Mr. Slutzky said the City has weighed in on Biscuit Run and other projects in the County's purview, and he did not think it was inappropriate for there to be a productive dialogue as long as the Board was not placing conditions on the resolution.

Mr. Rooker agreed with getting a copy of the City's historic information on the property as a matter of interest.

Ms. Thomas noted that the Board had already voted affirmatively on the resolution. She said she was interested in the particular architect, but she did not see what the Board could do other than attaching a statement to the resolution noting its interest in the fact that this is a historic building and encouraging the City to do the right thing.

Mr. Rooker stated that he did not have enough information to determine what the right thing is, but preliminary information from Preservation Piedmont was interesting. He noted that the issue could be raised again after Board members review the City staff report.

Mr. Boyd agreed that no other action should be taken at this time.)

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

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

WHEREAS, Jefferson Scholars Foundation (the "Foundation"), a Virginia not-for-profit corporation, has requested the Industrial Development Authority of Albemarle County, Virginia (the "Authority"), to issue its revenue bonds (the "Bonds"), pursuant to the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act"), to finance the acquisition, construction and equipping of a new administrative office for the Foundation and its Jefferson Fellows Center (the "Project") to be located in the City of Charlottesville, Virginia (the "City"); and

WHEREAS, on June 12, 2007, in accordance with the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and Section 15.2-4906 of the Act, the Authority held a public hearing and adopted an inducement resolution approving the issuance of the Bonds; and

WHEREAS, the Foundation has requested that the Authority increase the amount of Bonds from \$18,000,000 to \$21,000,000, and by resolution dated September 11, 2007 (the "Second Authority Resolution"), the Authority has agreed to do so; and

WHEREAS, Section 147(f) of the Internal Revenue Code, as amended (the "Code"), and Section 15.2-4906 of the Act require that the governmental unit on behalf of which the Authority will issue the Bonds approve the issuance of such Bonds and by resolution dated July 11, 2007, the Board of Supervisors (the "Board") of Albemarle County, Virginia, has done so; and

WHEREAS, the Foundation has requested the Board to approve the increase of the amount of Bonds to comply with Section 15.2-4906 of the Act and Section 147(f) of the Code; and

WHEREAS, a copy of the Authority's resolution of September 11, 2007, approving increase of the amount of Bonds, a record of the public hearing and a fiscal impact statement with respect to the issuance of the Bonds have been filed with the Board; and

WHEREAS, the Authority has recommended that the Board approve the increase of the amount of Bonds to comply with Section 147(f) of the Code and Section 15.2-4906 of the Act.

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

1. The Board hereby approves the increase of the amount of Bonds from \$18,000,000 to \$21,000,000, as required by Section 147(f) of the Code and Section 15.2-4906 of the Act.

2. The approval of the issuance of the Bonds does not constitute an endorsement of the Bonds or the creditworthiness of the Foundation. The Bonds shall provide that neither Albemarle County, Virginia, nor the Authority shall be obligated to pay the Bonds or the interest thereon or other costs incident thereto except from revenues and moneys pledged therefor, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia, Albemarle County, Virginia, or the Authority shall be pledged thereto.

3. All acts and doings of the officers and members of the Board that are in conformity with the purposes and intent of this resolution shall be, and the same hereby are, in all respects approved and confirmed.

4. This resolution shall take effect immediately upon its adoption.

Item No. 7.2.1. Resolution of Support for Market Study of Enhanced Passenger Rail in the U.S. 29 "Piedmont" Corridor.

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

**RESOLUTION OF SUPPORT FOR A MARKET STUDY OF
ENHANCED PASSENGER RAIL IN THE U.S. 29 "PIEDMONT" CORRIDOR**

WHEREAS a growing population and a burgeoning commercial explosion have helped to expand Virginia's prosperous economy, but they have also helped to create steadily worsening problems of congestion and accessibility in its major transportation corridors; and

WHEREAS among Virginia's major transportation corridors, U. S. 29 North, or the "Piedmont Corridor," represents a vital and heavily used north-south travel route between Washington, DC and Danville that serves many counties and cities in the Piedmont region of the Commonwealth; and

WHEREAS the counties of Albemarle, Greene, Madison, Orange, Culpeper, Nelson, Amherst, Campbell, Pittsylvania, Fauquier and Prince William and the cities of Danville, Lynchburg and Charlottesville have a vital interest in providing their citizens with an efficient and affordable transportation alternative to access the population and commercial centers of Northern Virginia, the District of Columbia and the Northeast; and

WHEREAS enhanced passenger rail service in the Piedmont Corridor could be an important part of the solution to the problems of congestion, safety and environmental stresses caused by the fast increasing population in the areas adjacent to U.S. 29, I-66 and I-95; and

WHEREAS the economies of the cities and counties of the Piedmont Corridor would greatly benefit from greater accessibility by rail that could accommodate tourists, students, business persons and others who travel on U.S. 29 to and from Northern Virginia and the District of Columbia; and

WHEREAS communities along the corridor between Danville and Washington, DC make heavy use of the services provided by Amtrak, and the limited frequency and capacity of these trains do not adequately meet the needs of most travelers who could use this passenger rail alternative. With 20 weekly Amtrak trains, ridership is higher per scheduled train at Charlottesville's Main Street Station than that at either the Richmond or Newport News stations; and

WHEREAS with expanded passenger rail services we believe that substantial numbers of travelers would use these services, reducing the demands placed on overcrowded highways and fuel consumption, while helping to reduce the emissions that contribute to global warming; and

WHEREAS the potential ridership and the accompanying economic and environmental benefits of enhanced passenger rail service in the Piedmont Corridor between Danville, Lynchburg, Charlottesville and Washington, DC has not yet received the attention of the Virginia Rail Advisory Board and the Commonwealth Transportation Board that we believe is merited; and

WHEREAS sound market research will provide a basis for determining the potential use, costs and benefits that will accrue to the citizens of Albemarle, Greene, Madison, Orange, Culpeper, Nelson, Amherst, Campbell, Pittsylvania, Fauquier and Prince William counties and the cities of Danville, Lynchburg and Charlottesville from enhanced passenger rail service;

NOW, THEREFORE, BE IT RESOLVED THAT the Albemarle County Board of Supervisors joins the Piedmont Rail Coalition in requesting that a market study of the nature and demand for passenger rail service in the aforementioned corridor be conducted; and

BE IT FURTHER RESOLVED THAT the Albemarle County Board of Supervisors strongly supports the application to the Commonwealth of Virginia to fund a valid and comprehensive survey of citizens throughout this corridor, and understands that such funding may require a local match by participating jurisdictions; and

FURTHER RESOLVED THAT, upon approval of such funding by the Commonwealth of Virginia, or at such time as it becomes necessary, the Albemarle County Board of Supervisors will entertain a request to financially participate in any required local match.

Item No. 7.3. Copy of draft 2008 Thomas Jefferson Planning District Legislative Program, **was received for information.**

Item No. 7.4. Copy of Application of Appalachian Power Company to revise its fuel factor pursuant to §56-249.6 of the Code of Virginia, VA.S.C.C. Case No. PUE-2007-00067, **was received for information.**

Item No. 7.5. Copy of Application of Appalachian Power Company for a rate adjustment clause pursuant to §56-585.1 of the Code of Virginia, VA.S.C.C. Case No. PUE-2007-00068, **was received for information.**

Item No. 7.6. Copy of Application of Appalachian Power Company for an adjustment to capped electric rates pursuant to §56-582(B) (vi) of the Code of Virginia, VA.S.C.C. Case No. PUE-2007-00069, **was received for information.**

Item No. 7.7. Copy of resolution, adopted by the Crozet Community Advisory Council, in support of retaining the porch on the La Cocina del Sol/Modern Barber building in Crozet, along with petition (on file in Clerk's office) with 1,771 signatures, in support of same, **was received for information.**

(Mr. Wyant noted the 1,771 signatures in support of saving the porch. He said that the conditions of dealing with VDOT have been discussed, but it is of utmost importance to the people of Crozet to save that porch.)

Item No. 7.8. Revised 2007 First Quarter and 2007 Second Quarter Building Reports Including New Building Permit Types, as prepared by the Department of Community Development, Office of Geographic Data Services, **was received for information.**

The report indicates that during the first quarter of 2007, 324 building permits were issued for 324 dwelling units. There were no permits issued for mobile homes in existing parks. There were 80 permits issued for the conversion of an apartment to a condominium.

The report indicates that during the second quarter of 2007, 180 building permits were issued for 270 dwelling units. There was one permit issued for a mobile home in an existing park, at an exchange rate of \$2,500 for a total of \$2,500. There was one permit issued for the conversion of an apartment to a condominium.

(Mr. Slutzky said the report talks about the amount of development in the development areas versus the rural areas since 1999 on a quarterly basis. Mr. Slutzky commented that he found it interesting that, over the last three years, 2004-2006, an average of 43 percent of residential building permits were in the rural area, where development activity should not be occurring according to the Comp Plan. It is encouraging that, for the first six months of this year, only 16 percent of residential building permits were issued in the rural area. He said people have correctly pointed out that the County has had a problem with a lot of development in rural areas, but maybe some of the Board's policies in the last few years are starting to be reflected.)

Agenda Item No. 8. **Public Hearing:** Proposed issuance of general obligation school bonds of Albemarle County in the estimated maximum principal amount of \$11,930,000. The purpose of the proposed bonds is to finance capital projects for public schools. (Notice of this public hearing was advertised in the *Daily Progress* on August 27, 2007 and September 3, 2007).

Mr. Tucker summarized the following executive summary which states that the FY 2007/08 Capital Improvement Budget was approved with the intent to issue approximately \$11,930,000 in bonds through the Virginia Public School Authority (VPSA) for the following projects:

AHS Addition/Renovation	\$900,000
Brownsville Elementary Renovations	\$859,000
Greer Elementary Renovations	\$840,000
Gymnasium HVAC & Lighting	\$1,195,000
Maintenance Projects	\$7,636,000
Vehicle Maintenance Facility Addition	\$500,000
Total	\$11,930,000

A Resolution authorizing the application to VPSA was adopted by the School Board on August 9, 2007. The attached Resolution authorizes issuance of the bonds not to exceed \$11,930,000, the sale of the bonds to VPSA, and approves as to form the Bond Sale Agreement and details relating to the Bonds.

The FY08 CIP and Debt Service budgets anticipated the issuance of \$11,930,000 in bonds for the above referenced projects.

Mr. Tucker said, after the public hearing, staff recommends approval of the attached Resolution to authorize the issuance of bonds in the maximum principal amount of \$11,930,000 to finance certain capital improvements for the County's public schools.

Mr. Boyd commented that it would be helpful to have information on the impact of the bonds on operating costs. Mr. Tucker said that the information could be provided and may have been discussed during review of the operating budget. Mr. Tucker noted that maintenance projects constitute the vast majority of the expenditures.

Mr. Rooker stated that these projects were all approved as part of the CIP.

Mr. Boyd said he was not questioning the approval of the projects, but he would like the additional information, as debt service is a huge part of the County's budget.

Mr. Rooker remarked that the Five-Year Business Plan included debt service on projects over the next two years, so the operating effect should not be a surprise. Board members agreed that it would be helpful to include specific information on debt service obligations in future requests of this type.

Mr. Boyd opened the public hearing. There being no one from the public to speak on this matter, the public hearing was closed.

Motion was then offered by Mr. Rooker, **seconded** by Mr. Wyant, to adopt the following resolution to authorize the issuance of bonds in the maximum principal amount of \$11,930,000 to finance certain capital improvements for the County's public schools. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

**RESOLUTION AUTHORIZING THE ISSUANCE OF
GENERAL OBLIGATION SCHOOL BONDS, SERIES 2007A,
OF THE COUNTY OF ALBEMARLE, VIRGINIA,
IN A PRINCIPAL AMOUNT NOT TO EXCEED \$11,930,000
TO BE SOLD TO THE VIRGINIA PUBLIC SCHOOL AUTHORITY
AND PROVIDING FOR THE FORM AND DETAILS THEREOF**

WHEREAS, the Board of Supervisors (the "Board") of the County of Albemarle, Virginia (the "County"), has determined that it is necessary and expedient to borrow a principal amount not to exceed \$11,930,000 and to issue its general obligation school bonds for the purpose of financing certain capital projects for school purposes; and

WHEREAS, the County has held a public hearing, duly noticed, on September 12, 2007, on the issuance of the Bonds (as hereinafter defined) in accordance with the requirements of Section 15.2-2606, Code of Virginia 1950, as amended (the "Virginia Code"); and

WHEREAS, the School Board of the County has, by resolution adopted on August 9, 2007, requested the Board to authorize the issuance of the Bonds and consented to the issuance of the Bonds; and

WHEREAS, the Bond Sale Agreement (as hereinafter defined) shall indicate that \$11,930,000 is the amount of proceeds requested (the "Proceeds Requested") from the Virginia Public School Authority (the "VPSA") in connection with the sale of the Bonds; and

WHEREAS, VPSA's objective is to pay the County a purchase price for the Bonds which, in VPSA's judgment, reflects the Bonds' market value (the "VPSA Purchase Price Objective"), taking into consideration such factors as the amortization schedule the County has requested for the Bonds relative to the amortization schedules requested by other localities, the purchase price to be received by VPSA for its bonds and other market conditions relating to the sale of VPSA's bonds; and

WHEREAS, such factors may result in the Bonds having a purchase price other than par and consequently (i) the County may have to issue a principal amount of Bonds that is less than the Proceeds Requested in order to receive an amount of proceeds that is substantially equal to the Proceeds Requested, or (ii) if the maximum authorized principal amount of the Bonds set forth in Section 1 below does not exceed the Proceeds Requested by at least the amount of any discount, the purchase price to be paid to the County, given the VPSA Purchase Price Objective and market conditions, will be less than the Proceeds Requested.

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

1. Authorization of Bonds and Use of Proceeds. The Board hereby determines that it is advisable to contract a debt and issue and sell its general obligation school bonds in an aggregate principal amount not to exceed \$11,930,000 (the "Bonds") for the purpose of financing certain capital projects for school purposes as described in Exhibit B. The Board hereby authorizes the issuance and sale of the Bonds in the form and upon the terms established pursuant to this Resolution.

2. Sale of the Bonds. It is determined to be in the best interest of the County to accept the offer of VPSA to purchase from the County, and to sell to VPSA, the Bonds at a price, determined by VPSA to be fair and accepted by the Chairman of the Board and the County Executive, either of whom may act that is substantially equal to the Proceeds Requested, except that the Bonds may be sold for a purchase price not lower than 95% of the Proceeds Requested if issuing the Bonds in the maximum principal amount authorized by Section 1 of this Resolution is insufficient, given the VPSA Purchase Price Objective and market conditions, to generate an amount of proceeds substantially equal to the Proceeds Requested. The Chairman of the Board and the County Executive, either of whom may act, and such

other officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to enter into a Bond Sale Agreement dated September 28, 2007 (the "Bond Sale Agreement"), with VPSA providing for the sale of the Bonds to VPSA. The Bond Sale Agreement shall be in substantially the form submitted to the Board at this meeting, which form is hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officer executing the Bond Sale Agreement, his execution to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

3. Details of the Bonds. The Bonds shall be dated the date of issuance and delivery of the Bonds; shall be designated "General Obligation School Bonds, Series 2007A"; shall bear interest from the date of delivery thereof payable semi-annually on each January 15 and July 15 beginning July 15, 2008 (each an "Interest Payment Date"), at the rates established in accordance with Section 4 of this Resolution; and shall mature on July 15 in the years (each a "Principal Payment Date") and in the amounts set forth on Schedule I attached hereto (the "Principal Installments"), subject to the provisions of Section 4 of this Resolution.

4. Interest Rates and Principal Installments. The County Executive is hereby authorized and directed to accept the interest rates on the Bonds established by VPSA, provided that each interest rate shall be ten one-hundredths of one percent (0.10%) over the interest rate to be paid by VPSA for the corresponding principal payment date of the bonds to be issued by VPSA (the "VPSA Bonds"), a portion of the proceeds of which will be used to purchase the Bonds, and provided further that the true interest cost of the Bonds does not exceed five and fifty one-hundredths percent (5.50 %) per annum. The Interest Payment Dates and the Principal Installments are subject to change at the request of VPSA. The County Executive is hereby authorized and directed to accept changes in the Interest Payment Dates and the Principal Installments at the request of VPSA, provided that the aggregate principal amount of the Bonds shall not exceed the amount authorized by this Resolution and provided further that the final maturity of the Bonds occurs no later than December 31, 2027. The execution and delivery of the Bonds as described in Section 8 hereof shall conclusively evidence such interest rates established by VPSA and Interest Payment Dates and the Principal Installments requested by VPSA as having been accepted by the County Executive as authorized by this Resolution.

5. Form of the Bonds. The Bonds shall be initially in the form of a single, temporary typewritten bond substantially in the form attached hereto as Exhibit A.

6. Payment; Paying Agent and Bond Registrar. The following provisions shall apply to the Bonds:

(a) For as long as VPSA is the registered owner of the Bonds, all payments of principal, premium, if any, and interest on the Bonds shall be made in immediately available funds to VPSA at, or before 11:00 a.m. on the applicable Interest Payment Date, Principal Payment Date or date fixed for prepayment or redemption, or if such date is not a business day for Virginia banks or for the Commonwealth of Virginia, then at or before 11:00 a.m. on the business day next preceding such Interest Payment Date, Principal Payment Date or date fixed for prepayment or redemption.

(b) All overdue payments of principal and, to the extent permitted by law, interest shall bear interest at the applicable interest rate or rates on the Bonds.

(c) SunTrust Bank (or any successor entity), Richmond, Virginia, is designated as bond registrar and paying agent for the Bonds (the "Bond Registrar"). The County may, in its sole discretion, replace at any time the Bond Registrar with another qualified bank or trust company as successor Bond Registrar.

7. Prepayment or Redemption. The Principal Installments of the Bonds held by VPSA coming due on or before July 15, 2017, and the definitive Bonds for which the Bonds held by VPSA may be exchanged that mature on or before July 15, 2017, are not subject to prepayment or redemption prior to their stated maturities. The Principal Installments of the Bonds held by VPSA coming due after July 15, 2017, and the definitive bonds for which the Bonds held by VPSA may be exchanged that mature after July 15, 2017, are subject to prepayment or redemption at the option of the County prior to their stated maturities in whole or in part, on any date on or after July 15, 2017, upon payment of the prepayment or redemption prices (expressed as percentages of Principal Installments to be prepaid or the principal amount of the Bonds to be redeemed) set forth below plus accrued interest to the date set for prepayment or redemption:

<u>Dates</u>	<u>Prices</u>
July 15, 2017, through July 14, 2018	101%
July 15, 2018, through July 14, 2019	100½
July 15, 2019, and thereafter	100

Provided, however, that the Bonds shall not be subject to prepayment or redemption prior to their stated maturities as described above without first obtaining the written consent of VPSA or the registered owner of the Bonds. Notice of any such prepayment or redemption shall be given by the Bond Registrar to the registered owner by registered mail not more than ninety (90) and not less than sixty (60) days before the date fixed for prepayment or redemption.

8. **Execution of the Bonds.** The Chairman or Vice Chairman of the Board, either of whom may act, and the Clerk of the Board or any Deputy Clerk, either of whom may act, are authorized and directed to execute and deliver the Bonds and to affix the seal of the County thereto.

9. **Pledge of Full Faith and Credit.** For the prompt payment of the principal of and premium, if any, and the interest on the Bonds as the same shall become due, the full faith and credit of the County are hereby irrevocably pledged, and in each year while any of the Bonds shall be outstanding there shall be levied and collected in accordance with law an annual ad valorem tax upon all taxable property in the County subject to local taxation sufficient in amount to provide for the payment of the principal of and premium, if any, and the interest on the Bonds as such principal, premium, if any, and interest shall become due, which tax shall be without limitation as to rate or amount and in addition to all other taxes authorized to be levied in the County to the extent other funds of the County are not lawfully available and appropriated for such purpose.

10. **Use of Proceeds Certificate and Certificate as to Arbitrage.** The Chairman of the Board, the County Executive and such other officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to execute a Certificate as to Arbitrage and a Use of Proceeds Certificate, each setting forth the expected use and investment of the proceeds of the Bonds and containing such covenants as may be necessary in order to show compliance with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and applicable regulations relating to the exclusion from gross income of interest on the Bonds and on the VPSA Bonds. The Board covenants on behalf of the County that (i) the proceeds from the issuance and sale of the Bonds will be invested and expended as set forth in such Certificate as to Arbitrage and such Use of Proceeds Certificate and that the County shall comply with the other covenants and representations contained therein and (ii) the County shall comply with the provisions of the Code so that interest on the Bonds and on the VPSA Bonds will remain excludable from gross income for Federal income tax purposes.

11. **State Non-Arbitrage Program; Proceeds Agreement.** The Board hereby determines that it is in the best interests of the County to authorize and direct the Director of Finance to participate in the State Non-Arbitrage Program in connection with the Bonds. The Chairman of the Board, the County Executive and such officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to execute and deliver a Proceeds Agreement with respect to the deposit and investment of proceeds of the Bonds by and among the County, the other participants in the sale of the VPSA Bonds, VPSA, the investment manager and the depository, substantially in the form submitted to the Board at this meeting, which form is hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officer executing such Proceeds Agreement, his execution to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

12. **Continuing Disclosure Agreement.** The Chairman of the Board, the County Executive and such other officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to execute a Continuing Disclosure Agreement, substantially in the form attached as Appendix F to the Bond Sale Agreement, setting forth the reports and notices to be filed by the County and containing such covenants as may be necessary in order to show compliance with the provisions of the Securities and Exchange Commission Rule 15c2-12, under the Securities Exchange Act of 1934, as amended, and directed to make all filings required by Section 3 of the Bond Sale Agreement should the County be determined by VPSA to be a MOP (as defined in the Continuing Disclosure Agreement).

13. **Filing of Resolution.** The appropriate officers or agents of the County are hereby authorized and directed to cause a certified copy of this Resolution to be filed with the Circuit Court of the County.

14. **Further Actions.** The members of the Board and all officers, employees and agents of the County are hereby authorized to take such action as they or any one of them may consider necessary or desirable in connection with the issuance and sale of the Bonds and any such action previously taken is hereby ratified and confirmed.

15. **Effective Date.** This Resolution shall take effect immediately.

Agenda Item No. 9. **Public Hearing:** CPA-2004-002. Pantops Master Plan. Proposed amendments that would modify the Land Use Plan section of the Albemarle County Comprehensive Plan for neighborhood 3 (Pantops) with new land use policies, guidelines, recommendations, goals & strategies for future development within the Pantops Development Area, which includes an amendment to the boundary of Neighborhood 3 (Pantops) to remove a parcel (Wheeler Property, approx. 77 acres, Tax Map 62 Parcel 31). The amendment will include a guide that identifies the purpose & major findings & recommendations resulting from the Pantops master plan study; provide strategies for implementing the proposed Pantops master plan, including strategies for transportation, parks and recreation, illustrated on the map entitled "Pantops Master Plan Green Infrastructure", redevelopment, funding improvements, & for implementing the plan; & provide guidelines for the form of development within the Pantops development area through narratives, maps, and illustrations. This amendment also will establish new comprehensive plan land use designations (Urban Mixed Use, Employment Mixed Use, Commercial Mixed Use, Institutional, Parks, and Green Space) for the Pantops development area & change existing designations throughout the Pantops development area, as shown on the map entitled " Pantops Master Plan: Framework Plan (Land Use). (Notice of this public hearing was advertised in the *Daily Progress* on August 27, 2007 and September 3, 2007).

Mr. David Benish, Chief of Planning, summarized the executive summary which states that this public hearing is to receive public comment on the proposed Pantops Master Plan. The Board previously reviewed the proposed Plan at a work session on August 1, 2007.

The Pantops Master Plan process has been underway since July 2003. During spring and summer of 2006 preliminary draft master plan elements were discussed with the public and Planning Commission in four meetings. These draft elements included public input themes and preliminary recommendations, a proposed Framework Map (Land Use), a proposed Green Infrastructure Map, and a proposed Transportation Map. Based on the Planning Commission's direction during the summer work sessions, the Pantops Master Plan document was drafted by staff and revisions were made to the Framework and Green Infrastructure Maps. Similar to the series of meetings held in spring/summer 2006, additional work sessions were conducted with the Planning Commission in November 2006 to review the Pantops Master Plan draft, in a chapter by chapter process. The Commission made further recommended changes to the master plan and a public hearing was held with the Commission on April 3, 2007. The Commission held an additional work session on June 5, 2007 and recommended the attached draft master plan for the Board's consideration. The draft Pantops Master Plan, reflecting the Commission's final recommendations and including the full appendix, is provided as Attachment B.

With few exceptions, the major recommendations and goals of the master plan have not changed since the initial re-launch of the master plan process with the public last spring, but have been elaborated on in the text and further refined. Based on work with the Planning Commission, stakeholders, County Departments, and public comments since spring 2006, the Pantops Master Plan Draft has been developed.

There are several notable revisions the Planning Commission made following the public hearing and subsequent work session this June. The draft plan no longer includes a change in the Development Area boundaries for Pantops, which previously included removal of the Wheeler Property at the time of public hearing. The recommended Plan before the Board of Supervisors also no longer includes a recommendation for the relocation of Hansen's Mountain Road through Glenorchy.

Since the Board's previous work session on the Plan in August, staff has received a request from the property owners of a parcel located just outside the existing Pantops Development Area boundary to have the property included within the Pantops Development Area (see Attachment A). The Vermillion's have requested that Tax Map 60, Parcel 28A, located on the east side of Route 20, and just north of Broadus Memorial Baptist Church, be included in the Development Area. No particular land use has been requested by the property owners. Staff and the Commission have not previously reviewed this proposed change/expansion to the Development Area boundary. In fact, throughout most of the Plan development process, the objective in this area was to reduce the amount of the Development Area along Route 20 to protect the visual and historic character of the Route 20 corridor and surrounding area (designated Entrance Corridor, State Scenic Byway, "Journey through Hallowed Ground" Route and Southwest Mountain Historic District). This was reflected in staff's recommendation to remove the Wheeler property from the Development Area. This site contains Franklin Farm Complex, a site of potential historic significance, which is identified on the Green Infrastructure Map at the end of Chapter 5 and behind page 35 of the draft master plan. Staff would not recommend expanding the boundary of the Development Area at this time.

Mr. Benish reiterated that the purpose of this public hearing is to receive public comment on the proposed Pantops Master Plan. The Board may choose to act on the Plan or schedule a future work session(s) for further review and discussion of the plan.

Mr. Benish noted that Board members have received comments from the Southern Environmental Law Center with several recommendations on the Plan and the suggestion to consider property in the City as joint parkland.

Ms. Thomas asked Mr. Benish to point out the location of the old circus grounds on the map. Mr. Benish indicated a property in the floodplain area.

Mr. Dorrier asked how many acres are involved in placing the Vermillions' property in the Development Area. Mr. Benish stated that the applicant was present and could provide that information. Mr. Boyd said that the property was 25 acres. Mr. Benish noted that the Wheeler property was 77 acres.

Mr. Boyd asked if the Vermillions' property was excluded because of its historic nature, noting that the Franklin Subdivision was the boundary line everywhere else. Mr. Benish indicated the area of the Franklin Subdivision, commenting that the physical boundary used in most places was a stream valley, which has been used as a boundary for a number of years.

Mr. Slutzky asked if, when staff was considering the Wheeler property, consideration given to the protective impact for both the Rivanna River and the Route 20 Corridor, and was deference given to the property owner's request to retain the property in the Master Plan.

Mr. Rooker noted that staff recommended removal.

Mr. Benish explained that, in the public comment process, one of the key points heard was the value of protecting what was left of the rural character of the Pantops Development Area, and wooded pasture areas and mountain vistas were very important to them. When they looked at opportunities to do that, they took a focus to Route 20, which is a historic route and a scenic route and provides for a vista to the Blue Ridge Mountain areas. Mr. Benish said the boundary of the Development Area was creating

one-sided development on Route 20, a road that they would prefer not to have to upgrade beyond the common east-west boundary near Cascadia. Looking at what the community wanted to achieve and a relative cost-benefit comparison to developing that area, staff felt like it was an opportunity to delete this property from the Development Area. Mr. Benish said that staff had understood that the property owner was interested in such an opportunity to do that, as well; but as they moved through the process, they found that the property owner was concerned about being deleted. Staff proposed compromise language to the Planning Commission which would leave the property in with a note that it might be an option for deletion in the future, but the Commission did not feel that this sort of in-between measure was the best choice. Mr. Benish said that several Commission members mentioned that the County has limited development areas, and even minimal reduction to a development area can be a cost to the growth management policy in the long term.

Mr. Slutzky asked if the potential impact of development of that parcel on the Rivanna River due to sediment control issues was a factor in the staff's original recommendation to take it out.

Mr. Benish said that was not a major factor, as the impacts were more broad-reaching and focused on visual impacts and traffic impacts. He stated that urban development on the Rivanna River would have an impact, and one of the other recommendations in the Plan is to address the condition and character of the Rivanna River, so the deletion was a positive benefit to that.

Mr. Slutzky commented that it seems that, during the master planning process, there is dynamic tension in drawing the correct boundaries while not expanding or shrinking the growth area beyond the original five percent in order to ensure there is sufficient capacity to accommodate what growth is likely to occur over the next 20 years. He asked why, if the Vermillions wish to include their property which is located in a place that might make more sense, given the factors that gave rise to the staff recommendation to withdraw the Wheeler property, are the Vermillions being excluded to protect keeping a piece of land in the growth area that may not make as much sense to have in it. He said that property owners' wishes are being weighed appropriately, but they should be weighed ultimately against the objective of the master planning process, which is to get it right for the good of the community as a whole. While taking the requests of the property owners into account, the boundaries must be drawn on a rational basis. Mr. Slutzky asked if there was some argument for including the Vermillion property and removing the Wheeler property.

Ms. Thomas said there is mention in the Pantops Plan of one creek that is still in fairly good condition, while others are degraded. She asked if that is the creek that goes by the Vermillion property and ends up in Darden Towe Park.

Mr. Benish said this condition may refer to the upper reaches of the stream only, but he would have to come back and confirm. He noted that the application was received fairly late, without time for full scrutiny, and the Commission has not had a chance to look at the Vermillion proposal. The staff report contains information on how the general area has been viewed in the past, but staff has not looked at this particular proposal in great detail.

Mr. Wyant agreed with Mr. Slutzky and Ms. Thomas's comments regarding stream protection and voiced concern regarding the master planning process.

Ms. Thomas quoted the stream reference on page 33 of the Plan: "an unnamed intermittent tributary to the Rivanna that flows northwest from Ashcroft and eventually through Darden Towe Park. The stream was given a high priority for protection. The assessment recommends that the stream corridor should be preserved to provide access to natural refuge and trails in the proximity to development." She asked if that is the stream in question.

Mr. Benish said that he believes that is the stream valley but he does not know whether that quality extends all the way or is limited to the upper reaches.

Mr. Dorrier asked if the parcels are located next to the George Rogers Clark birthplace. Mr. Benish replied that the Wheeler property is nearby. Mr. Dorrier asked if that had any impact on deciding whether to include the property in the growth area. Mr. Benish indicated that the historic character of the properties was one of the factors in the staff recommendation.

Mr. Rooker agreed with previous comments and favored getting a staff report that would include discussion of the Vermillion property and whether it would make sense to include that in the growth area. Looking at the physical characteristics of the property and staff's original recommendation, he did not see a strong basis for leaving the Wheeler property in the growth area, noting its proximity to the river, its historic aspects, its location adjoining the park on one side and rural property on another, and staff discussion of not wanting to improve Route 20 given the historic nature of the route further north.

Ms. Thomas referenced an earlier apartment development on the Rivanna. She asked if further development of the river corridor is a recommendation of the Plan. She noted that a City resident recommended City/County participation. She has been pleased with how the Master Plan in general respects the river and talks about the river. She asked if there are plans for anything more in detail about the river corridor.

Mr. Benish stated that there is a recommendation in the implementation component that calls for a study of the river corridor, the intent of which is to get a better sense of how to treat adjacent developments and how to orient developments of more appropriate uses within the concepts of the already-approved Master Plan. He said there is a pretty good plan for the greenway itself, but the other

issue that has been brought up is stream protection and how to address stormwater runoff and stream protection measures through redevelopment of the properties. That study could evaluate those components, because there are some complexities with protecting the stream while providing the outfalls to where the water naturally wants to go.

Ms. Thomas stated that one of her interests that has come up through the public hearings is a bicycle and pedestrian river crossing that would help commuters get to downtown Charlottesville without it being a road or without bikers having to get on major roads. She said this could be raised during future discussions of the river corridor, but it is one of the few ideas that does not appear in the Master Plan that seems like an answer to several issues, both to get more access to the trails along the river for pleasure and to help commuters get into town without going over roads.

Mr. Rooker commented that this part of the Plan would be a good place to include some of the language requested by SELC. He agreed with SELC's recommendation to collaborate with the City and its neighborhoods on development of a plan for the river corridor.

Mr. Slutzky commented that the transit discussion on page 43 notes the relevance of collaborating with the City and CTS but specifically stipulates that the ultimate goal is 30-minute headways for service to Pantops. He suggested that the language be modified to not be numeric specific but to state the intent of the best possible headways that can be obtained as a practical matter.

Ms. Thomas suggested stating that new development should be "transit supportive" rather than "transit ready".

Mr. Boyd stated that, in the instance of the Vermillion and Wheeler properties, he was inclined to respect the property rights of individuals, but he recognized that a line must be drawn somewhere. He asked if staff could report on the Vermillion property before the Board approves the overall Plan.

Mr. Tucker stated that staff would report on both the Vermillion and Wheeler properties for consideration.

Mr. Davis stated that, if the Vermillion property was not included in the consideration by the Planning Commission that would have to go back to the Planning Commission for its recommendation before any action on that parcel by the Board. He noted the Wheeler property was included in the Planning Commission's deliberations, so the Board could amend the Plan with regards to that property without sending that back.

Ms. Thomas commented that she would not consider that addition if it borders one of the better urban streams in the entire infrastructure. She asked if staff could answer that question. She stated that she would hate to have everything go back through the Planning Commission if Board members share her disinclination to include this parcel if it contains one of the more pristine urban streams.

Mr. Slutzky repeated the request for a staff report on the Vermillion and Wheeler parcels, and any other that staff deems appropriate for consideration, with respect to the issue of where to draw the boundaries based on the original criteria for inclusion in the Development Area. He asked for a recommendation on any ecological considerations the Board should address.

Mr. Boyd stated that he would like to open the public hearing before the Board makes any concrete decisions, noting that Mr. Vermillion might be able to provide information on the stream.

Mr. Wyant commented that in Crozet a boundary line adjustment was made before the Master Plan was approved; for consistency's sake, he would like to see this handled in the same manner.

Ms. Thomas and Mr. Boyd noted that the boundary was adjusted at the same time as the Crozet Master Plan was adopted.

Mr. Rooker commented that the Board may do the same thing with Places29 based on some of the conversations.

Mr. Boyd then opened the public hearing.

Mr. Jack Vermillion addressed the Board. He stated that the reason the Franklin property was not put in the growth area originally was because at that time they felt it was best left in agriculture. They requested that the County leave them out, and the County accommodated their request. Mr. Vermillion said that the situation has changed, as the County has surrounded them with development, including Cascadia, Franklin, and the apartments; that is one of the reasons they have reconsidered and are asking to have this change made. He stated that Franklin has considerable historic value that is being threatened. He and his wife now feel it would be better to have the property in the growth area and the County would be able to control it. Mr. Vermillion said that the creek, which is not on the property but drains along the side between their property and Broadus Memorial Church, is severely impacted by the growth upstream and the recent deforestation of the Cason property, resulting in significant sediment. Mr. Vermillion said that his property drains to the front with no effect on the main creek. He asked if the Board has any questions for him that were not addressed in his letter. He commented that a lot of development area in Cason Hollow has limited access except through an easement over his property, the church's, or Mr. Dean's, with a pipestem that goes into Franklin. Mr. Vermillion stated that there would have to be new development where that road is coming from to give them road access. He repeated that they would like to be included in the development area.

Mr. Dorrier asked Mr. Vermillion how many acres he owns fully. Mr. Vermillion replied that he owns 25 acres. Mr. Dorrier asked if he is including the whole parcel. Mr. Vermillion answered affirmatively.

Mr. Rooker asked if that is a single tax map parcel. Mr. Vermillion replied affirmatively, noting that Franklin originally went to the bend in the river, where the apartments are located.

Mr. Dorrier asked Mr. Vermillion if he had said that he originally had the option to put this property in the Development Area.

Mr. Vermillion said that the County originally put them in it and they asked to be removed, but that was a long time ago. He said this has worked out well so far, as they have no plans to develop anything, but they are trying to think about the future.

Mr. Andrew Dracopoli addressed the Board on behalf of Worrell Land and Development Co., which is developing Peter Jefferson Place. He commented that they sent a comprehensive letter to the Planning Commission for its public hearing, noting their objection to the staff's recommendation that Peter Jefferson Place should become more urbanized. Mr. Dracopoli said that, as a result of their comments, staff made it clear that the existing Master Plan is not to be affected by this framework plan but still maintains the goal that Peter Jefferson Place ultimately becomes more urbanized with infill. His first objection was that the owners do not want to do that and, secondly, he attended all the meetings where this was discussed and did not hear any public comment in favor of more urbanization at Peter Jefferson Place. He said that most comments expressed regret that the property had to be developed but appreciated that the development would include considerable open space, green space, and landscaping. He commented that the Board runs the risk of generating a lot of skepticism in the public if the public expresses its opinion and the Board does something different. He said the Neighborhood Three Study Committee recommended in the early 1990s that there be no retail development on the north side of Route 250 until past the Montessori school property, but the Eckerd was built despite vigorous public complaints, and it is an eyesore. He does not want to repeat that with Peter Jefferson Place. Mr. Dracopoli reiterated that Peter Jefferson Place should be left the way it is without any recommendation for more urbanized development of the property.

Mr. Richard Spurzem stated that he wanted to update the Board on Gazebo Plaza, an important part of the Pantops Master Plan. He said that, after 30 years of ownership by at least five different developers, this property will soon be under construction. Mr. Spurzem explained that Gazebo Plaza is a 183,000 square foot shopping center that now has all the necessary final approvals. He displayed the approved site plan, noting that they have obtained approval from the Service Authority for water and sewer, from RWSA for sewer capacity, from DEQ for affecting wetlands, and from the Corps of Engineers. He said that they also obtained final approval from VDOT after making required changes to the plans, including closing the left turn lane from Route 250 East onto Hansen's Mountain Road, closing the crossover there, and installing "No U-Turn" signs at Peter Jefferson Parkway and at the onramp to eastbound I-64. Mr. Spurzem stated that, because the County took a hard line on this plan and allowed no flexibility in changing the placement of the shopping center or the parking lot, some of the retaining walls are 60 feet in height. He commented that a plan that makes the connection between Hansen's Mountain and a VDOT road in Glenorchy would allow minor modifications to the shopping center plan and require only a little bit of one-foot retaining walls, while this plan has seven-tenths of a mile of retaining walls, some 60 feet tall. Mr. Spurzem stated that VDOT would like this connection to be made, it is part of the Route 250 East corridor study, it solves a current safety problem that is unrelated to the shopping center, and he would like to see the Board put it back in the plan.

Mr. Ron Dimberg, of 105 Viewmont Court in the Glenorchy community, stated that he would like some clarification. He said that they learned early in the summer that the Planning Commission had deleted the entrance into Gazebo Plaza through Viewmont Court and East Haven from the Master Plan. This has been repeated here this evening and yet, now there is a request that it be reinstated. Mr. Dimberg asked where this issue stands. He said that Glenorchy is the oldest residential community on Pantops, and documents pertaining to development in Albemarle County contain repeated references to maintaining the integrity of these residential communities and not jeopardizing the lifestyle of people in these established communities. He commented that this entrance into Gazebo Plaza, which is nothing more than an entrance into a private development at the expense of a residential community, would destroy the integrity of the community. He urged the Board to take that into account when making its final decisions.

Mr. Paul Beyer, of R.L. Beyer Construction, stated that he thinks the Glenorchy connection should be reinstated into the Master Plan. He represents Ashcroft; approximately 160 families currently use Hansen's Mountain Road in Ashcroft, and another 110 houses will be added to Hansen's Mountain Road. Mr. Beyer said that currently the traffic connection, where it intersects Route 250, is a safety hazard, and the potential traffic problem is looming and will get worse. He and his neighbors in Ashcroft would like to see a lot more information on Gazebo Place, but the Glenorchy connection is pretty much the only traffic solution for Ashcroft and its neighbors, and for that reason it needs to be in the Master Plan. He realizes that does not obligate the connection to be built, and he is sensitive to the concerns of Glenorchy residents, but he thinks any plan that does not recognize this very large issue would defeat the purpose of having a long-term plan. Mr. Beyer noted that the connector road is on VDOT's long-term plan, and he thinks the road should be strongly considered and added back into the Master Plan.

Ms. Clara Belle Wheeler addressed the Board, stating that she is the current land steward for the Wheeler property. She said the property is about 77 acres; it is currently a cattle farm, and a couple of families live there. She has previously addressed the subject of personal property rights and real estate

rights before the Board and the Planning Commission. She stated that Mr. Slutzky is not her representative, and to propose a change in the property rights or the land use for her property without contacting her is unconscionable. She commented that the property rights for the people who live in that area should be the concern of the people who live on the land, and those people should be consulted. She said she stands in firm support for Glenorchy residents, and to put a highway through their subdivision so somebody can go to yet another shopping center is deplorable and unconscionable. Ms. Wheeler said that she hopes her property will always be a farm, and she is very much a steward of the land, the forest, and the river, but she does not know what tomorrow will bring. She would like to be able to build additional houses on her property, if necessary. She asked the Board not to change the property rights or the rural urban designation. She said that she knows she can take care of that property, but she does not know what somebody else will do.

There being no one else from the public who wished to speak, Mr. Boyd closed the public hearing.

Mr. Slutzky stated that he wanted to echo Ms. Wheeler's comments that she has been a fabulous steward of her land, and he is confident that she would continue to do so, but as to the issue of who he represents, he thinks his role is to represent everyone in Albemarle County and no one property owner. The way he interprets his role is that he has to weigh individual property rights, which he does take very seriously, relative to the benefits and impacts on the entire County. He has not made up his mind on the issue of whether to include the Vermillion property in the Pantops master-planned area or whether to remove the Wheeler property; he was trying to raise the question for staff as to what would be the appropriate criteria for the Board to consider in reaching that decision, and he is hopeful that the Board, as a group, will reach the right decision for the benefit of everyone in Albemarle County.

Mr. Boyd noted that it is not the Board's policy to get into a dialogue with every speaker, so that is why he did not answer Mr. Dimberg's question. He said there is no change in the status for Glenorchy right now, but that does not mean that it cannot be reconsidered by the Board. He commented that just because people come up and ask for something does not mean that it always gets done. He repeated that there is no change in status, and the recommendation from the Planning Commission still stands as it was presented.

Mr. Rooker clarified that the Master Plan does not change the zoning for any individual property, no matter how these designations appear. He stated that the Wheeler property is zoned rural right now; it would have to be rezoned to change its use, and no one is talking about rezoning anyone's property. Mr. Rooker emphasized that the Master Plan is a long-term plan of contemplated land uses that does not change the current zoning of property.

In reference to comments about Gazebo Place, Mr. Rooker remarked that from the public standpoint it is important to understand that he does not think this Board supports the use of the property for a shopping center. He does not think anyone has expressed the opinion that they feel it is the best use for that property in the community. The property was involved in a court case because a special use permit for its use was denied by the County. He believes that the property was zoned before 1980 for a shopping center. He said the Board does not have the power to change the existing zoning for that property, which allows by-right the shopping center that is being proposed; it is not a discretionary decision of the Board.

Mr. Boyd asked where to go from here with the Plan, as the Board has identified a couple of things for staff to look at.

Mr. Benish said he would discuss with the County Attorney whether they need to go back to the Planning Commission, first, so that they bring it back to the Board in proper form. He clarified that the Board wants staff to provide an evaluation of including the Vermillion and Wheeler properties within the Development Area and the impacts of that. Staff will also bring additional information on the condition and value of adjacent stream areas, provide alternate language to incorporate SELC recommendations into the implementation section of the plan, and eliminate the specific reference to the 30-minute headways for the transit recommendation. Mr. Benish noted that, at the work session, the Board brought up the potential of discussing the framework plan implementation component and the priority phasing component.

Ms. Thomas noted staff's question regarding whether the Board wants to go with VDOT's proposal for Route 250 or with public input that is based on wanting pedestrians to be able to cross that road, which means not making it an eight-lane road or whatever VDOT is considering. She thinks it is fair of staff to ask the Board to discuss this and not just adopt the Master Plan, because it sits there as a conflict within the Plan.

Mr. Rooker said the Plan, as he understands it, recommends that Route 250 be no more than six lanes and that there be a planted median where possible. The Board would need to decide to change the recommendation if it wishes to do so.

Mr. Benish said there is a dynamic with what VDOT, in their primary system, may want the County to do, but the Plan is structured to minimize the width and not to exceed six lanes; three in each direction.

Mr. Boyd asked what VDOT's plan calls for.

Mr. Benish said that prior VDOT planning work on the corridor had indicated the need for eight lanes in this area. VDOT has been involved with this Plan and is aware that this is a constrained recommendation from what it has previously proposed. VDOT has not definitively said that it is unworkable, but models have shown the potential need for more than six lanes. Mr. Benish noted that other transportation planning processes in place, including the Eastern Connector, may continue to shed light on what needs to be done in this corridor.

Mr. Slutzky noted that, no matter what the Board ultimately adopts, the Board is obligated by Virginia law to revisit master plans every five years. If the Board goes with the more conservative road path that the public clearly wants, there would be an opportunity to make adjustments in future. Mr. Slutzky asked if other members of the Board would favor the smaller, more pedestrian-friendly road scale.

Ms. Thomas said that the framework of this plan does provide some alternative routes, and she thinks those are important. The alternatives also may be opposed by various landowners. She said that, for example, if Martha Jefferson does not want any urbanizing in their area, they have to recognize that people that work for them are going to be traveling long distances to get to work, so various employee transportation systems are going to have to be worked out. She is appreciative that they were the first entity to proffer money for a transit system. She believes this is generally going to be an area with a lot of lower-paid workers, all the more reason for more public transit and bicycling options. She would like to include employees in sections of the Master Plan referring to customer access, because customers may not take public transit to the hardware store, but employees will. She said it is a slight nuance, but it would remind people why options are necessary.

Mr. Slutzky asked if a speaker's admonishment that the public views urbanization of Peter Jefferson Place as a bad idea was an accurate characterization. He asked if there are still persuasive reasons for staff to recommend otherwise, if in fact the public was overwhelmingly against it.

Mr. Benish explained that he thought the intent of the language and the intent of the Plan was to address what Mr. Dracopoli requested, which was to reflect that the Plan called for development in this area in accordance with the adopted plan for the Peter Jefferson Place development. Some Commissioners still believe there should be a long-term vision, maybe beyond 20 years, that recognizes that there could be changes in the area. Therefore, language was included that suggested urbanization could be appropriate, and language that tried to ensure that over the course of this Plan it was not the intent to change what had already been approved in the area. Staff can go back and look to make sure there was no misinformation or confusion about the message in that area, but the Planning Commission asked staff to make the Plan consistent with what the public had said, which was that this is seen as a well-liked model in terms of the open space around the developed buildings.

Mr. Boyd said that it was the overwhelming reaction of people in those meetings that Peter Jefferson Place was one of the best developments on Pantops Mountain. He noted that the hospital is also concerned about that higher-density long-term designation, and they are planning to be there beyond a 20-year horizon. He is inclined to support eliminating that type of high-density language which he believes is more in line with public input.

Mr. Rooker noted that there may also be private covenants in place that prevent this property from being urbanized, and he thinks the Board has to realistically reflect what has already been adopted and put in place.

Mr. Benish said they can do that; staff was trying to leave options open for property owners to take advantage of that opportunity in the long term, but it certainly was not the emphasis of the Commission or the public.

Mr. Boyd said he strongly believes that the individual requests of property owners should be upheld, unless that somehow infringes on either the ecological system or an adjacent property. He would like to see the Board honor the requests of the Wheelers and Vermillions, unless there is compelling or significant reasons not to do so, such as a stream that is going to be affected.

Mr. Rooker stated that there is no underlying property right interest in a comprehensive plan designation, as it is not zoning for the property.

Mr. Boyd expressed disagreement, as the Board is regulating a plan for the property.

Mr. Rooker reiterated that the Plan does not change anyone's current zoning. It may change the ability to rezone the property in the future, but there is no underlying property right interest in that. He noted that there is a lot of property in the Master Plan growth area that is actually zoned rural, and a property owner must apply to initiate a rezoning.

Mr. Boyd noted that the Master Plan is used as a guideline for the location of development. He believes the property owners were very genuine in their comments that they have been and will continue to be stewards of the land, and he believes that people should have some degree of say in how their property is designated. He understands that the property is not being rezoned.

Mr. Slutzky stated that he does not disagree with the importance of taking into consideration the individual property owners, and that dialogue is occurring in Places29 where some of the property owners are weighing in rather strongly in their views about the County's land use plans, but the master planning process is ultimately about developing a plan for the next 20 years for how the Board thinks the patterns of development should most logically unfold. By doing that planning, they can accommodate those plans.

of development with transportation infrastructure and other infrastructure; if they do not plan accordingly, haphazard development results. Mr. Slutzky stated that, while individual property rights are clearly at issue, so is the overall purpose of this master planning exercise, which is to be forward-thinking. He does not want to signal to staff that there is a consensus view that the Plan should be inordinately constrained by any individual's requests, although they clearly need to be considered.

Mr. Boyd said that he made a personal comment and recognized that it was not a consensus. He is willing to listen to any compelling reasons.

Mr. Benish stated that staff will provide the criteria used, and the pros and cons, thereof, to the Board and potentially the Commission. He asked for the Board's direction on the Hansen's Mountain Road connection, as the Planning Commission recommended deletion of that roadway.

Mr. Rooker said he would like that to be brought back so that the Board can understand the ramifications of what a decision one way or the other means.

Mr. Boyd asked if all other possibilities for that intersection have been exhausted.

Mr. Rooker commented that he does not know that there is a good decision here to be made, but the Board needs to understand what happens to traffic coming off of Hansen's Mountain if that crossover is closed. He noted that it would require some drivers to make a U-turn beyond I-64 and come back. It would be helpful to get an understanding of the existing traffic in the corridor, the level of service, and how this might impact the level of service.

Ms. Thomas commented that given there were so few people participating in this public hearing shows a vote of confidence in the process and in the staff, because there have been hundreds of people who have participated. She attended some of the meetings, and it was an impressive group of citizens who cared about their community and came up with a plan. She thought the Eckerd was probably a 5-1 vote where no one in the public reminded the Board that a promise had been made. She encouraged citizens not to take the Master Plan for granted, but to come to the public hearings and remind the Board of it.

Mr. Wyant inquired regarding the issue of phasing.

Mr. Boyd asked if that was a separate discussion.

Mr. Benish said that phasing is part of the implementation chapter, with a general statement about the approach to priority-setting for public investment into this area. There are strategic areas where public funds will be focused, and there is a reference to how that might be used in land use decision making. He said this is the first attempt to do that, originating from a Board request earlier this year. Mr. Benish asked if the Board needed any additional information for further discussion of the issue.

Mr. Boyd recommended a work session or further discussion on the issue, as this is the first plan with phasing recommendations.

Mr. Rooker agreed that it should come back for discussion with the other information. He said there is a specific section, not mandatory language, about where public investment should be emphasized to spur the Master Plan to take place in a reasonable order.

Mr. Boyd asked if an overview of phasing could be included in the staff report.

Mr. Benish requested clarification on what staff should provide, other than time at the work session to answer questions on this section.

Mr. Wyant said it ties in with road, water, and sewer infrastructure; they have to be cautious in how they develop this Master Plan if services cannot be provided there.

Mr. Slutzky stated that he previously expressed concern about this concept of phasing the development areas whereas prior discussions suggested that they would not only prioritize the implementation of infrastructure but also prioritize which areas and which order they would allow development to occur. The latter part concerned him, and he does not see that reflected in this implementation proposal, which seems to focus more on planning for infrastructure implementation. He suggested that, as the Board goes through this exercise with other master-planned areas such as Places29, it discusses whether the consensus is to prioritize infrastructure only, versus other things.

Mr. Dorrier asked if the Board was making the decision that it would build infrastructure before it enacted the Master Plan. He said they need to decide which comes first.

Mr. Rooker said that this plan contemplates that infrastructure will be built as the area develops according to the Master Plan; hopefully, infrastructure will be provided through public and private investment as development takes place.

Ms. Thomas said that the statement on page 61 embodies it nicely and seems like a good idea to her.

Mr. Tucker stated that the Board had recognized a lot of significant items to discuss. He recommended that the Board schedule a work session and then decide what needs to go to the Planning Commission and whether another public hearing would be necessary.

Mr. Boyd concurred that the matter should come back to the Board for a report before it goes to the Commission. He asked that they plan to spend some time on the implementation section.

There was no further discussion on this item at this time.

(Note: The next three agenda items were heard together.)

Agenda Item No. 10. **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. MAGISTERIAL DISTRICT: Rio. The Comprehensive Plan's Town Center designation is accompanied with the "Conceptual Master Plan & Design Guidelines for the Hollymead Town Center". (Notice of this public hearing was advertised in the *Daily Progress* on August 27, 2007 and September 3, 2007).

Agenda Item No. 11. **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). MAGISTERIAL DISTRICT: Rio. (Notice of this public hearing was advertised in the *Daily Progress* on August 27, 2007 and September 3, 2007).

Agenda Item No. 12. **Public Hearing:** ZMA-2007-001. Hollymead Town Center Area A-2 (Signs #93,94). PROPOSAL: Rezone approximately 45 acres from RA zoning district which allows agricultural, forestal, and fishery uses, residential density (0.5 unit/acre); and to rezone approximately .5 acres from C-1 Commercial which allows retail sales and service uses, and residential use by special use permit (15 units/acre); and to rezone approximately .4 acres from NMD Neighborhood Model District zoning district which allows residential (3-34 units/acre) mixed with commercial, service and industrial uses; and to rezone approximately 3,000 square feet from PD-MC Planned Development Mixed Commercial which allows large-scale commercial uses, and residential by special use permit (15 units/ acre); to NMD Neighborhood Model District zoning district which allows residential (3-34 units/acre) mixed with commercial, service and industrial uses. The application proposes up to 1,258 dwelling units. PROFFERS: Yes. MAGISTERIAL DISTRICT: Rio. (Notice of this public hearing was advertised in the *Daily Progress* on August 27, 2007 and September 3, 2007).

Mr. Cilimberg gave a presentation summarizing the proposal to rezone Area A-1 for 278,000 square feet of retail, one large store, and smaller retail stores, with a special use permit request for a bank drive-through. Proffers included phasing road improvements, cash for a regional transportation study that could be used towards Places29, a transit stop and operating expenses in the amount of \$50,000 per year for the first ten years, the potential of a CDA if requested by the County, elevated measures for erosion and sediment control, greenway dedication, and LEED commitments. Mr. Cilimberg noted changes to the proffers since the September 4, 2007, work session. They have verified the wording related to the Willow Glen connection being provided off of Town Center Drive. Staff has left open the location of that connection with some flexibility for appropriate location at the time Willow Glen is developed. A proffer to build Town Center Drive west and Meeting Street north as part of this project would allow the Hollymead Town Center Area B owner to be relieved of the responsibility. The streets have been partially constructed but not accepted by the State or the County at this time; they are bonded. Through the proffer being provided with this project and Area A-2, the responsibility to complete the roads would fall with these two projects and would no longer be necessary for the Hollymead Town Center Area B development.

In response to an inquiry by Mr. Rooker, Mr. Cilimberg explained that the Area B owner would be relieved by a subsequent resolution of the Board to address their proffer requirements from their original approval. It is an outstanding matter with Area B currently and the Area A-1 and A-2 developer is proffering to take over that obligation.

Mr. Davis noted that this action would not amend the other proffer at this time; that would be a separate decision by the Board.

Mr. Boyd stated that, if the new owner goes ahead and fulfils that obligation, then it is considered fulfilled.

Mr. Cilimberg stated that the proffer commits the Area A owner to complete these roads within a year. He said that credits were noted for Meeting Street, which would be oversized as compared to requirements to meet needs identified through Places29. Staff recommends approval of the zoning map amendment inclusive of proffers dated September 12, 2007, and an application plan dated May 23, 2007. Staff also recommends approval of the special use permit with one condition.

Mr. Cilimberg then gave a presentation summarizing the proposal to rezone Area A-2. He commented that, in Planning's view, this is the "true heart" of this project that was anticipated from the approval of the Comprehensive Plan Amendment by the Board several years ago. He listed the current zoning designations included in the proposed rezoning to Neighborhood Model District to accommodate a little over 1,200 dwelling units at a gross density of 26 dwelling units per acre, incorporating mixed housing type and mixed use, with a non-residential component of almost 370,000 square feet of retail, office, and hotel. Proffers include 20 percent affordable housing, phased road improvements, two transit stops, a commitment to build public improvements valued at about \$12,000 per unit (based on lump sum basis of developing those improvements up to the 150th unit, and after that \$11,900 per townhouse and \$12,400 per apartment per unit), greenway and pocket park, a recycling center or community facility, an elevated level of erosion and sediment control, LEED commitments, phasing of residential with commercial, a connection to Willow Glen, and the opportunity for a CDA should the Board choose to have that. Mr. Cilimberg noted that proffer changes since the September 4, 2007, work session were similar to those for Area A-1, addressing mainly technical aspects. Staff also recommended approval of the zoning map amendment with proffers dated September 12, 2007, the Code of Development dated September 12, 2007, the General Development Plan dated August 31, 2007, and the waivers included in the staff report and recommended by the Planning Commission.

Mr. Boyd asked if the elevated level of erosion and sediment control is now required in all projects. Mr. Cilimberg indicated that the County is trying to achieve these higher levels in all projects.

Mr. Glenn Brooks, County Engineer, referenced proffer 7B, which states that the owner shall provide additional erosion and sediment controls to achieve a sediment removal rate of 80 percent for the property.

Mr. Boyd asked if there is a plan for how that will be accomplished, as he wants to make sure that what happened with the earlier phases, particularly the impact on downstream lakes, does not reoccur.

Mr. Brooks stated that having a plan up front is a step ahead of what happened in the earlier project. The current land disturbance was based on permits using fill and waste areas, agricultural exemptions, and various other ways around an actual development plan. He said erosion control would be improved with added measures using both technology and redundancy, such as sediment basins, doubling perimeter diversions in sensitive areas to get more protection, or limiting the area disturbed at one time or the time it is disturbed to prevent land laying open for very long periods of time. Mr. Brooks commented that the proffer is written very general, so they can try a number of these things.

Mr. Boyd asked if the proffers give the County the authority to enforce these higher standards. He said the problem before was that the developer was doing everything up to the standards that are required, which were at 60 percent.

Mr. Davis stated this is a proffered plan requirement that would be approved as part of the erosion and sediment control plan, which would be enforceable. Mr. Davis suggested that Mr. Brooks also speak to proffer 7C.

Mr. Brooks explained that proffer 7C attempts to limit the amount of time the property is left open in a disturbed state, and that again is something new that the County is trying. Shorter time limits decrease the possibility of a major thunderstorm that will exceed the design requirements and cause significant siltation. The other issue is the amount of land that is disturbed in order to make the project work, and there is a lot of cut and fill on a typical project like this to get flat grades on a rolling site. He stated that it helps to limit the amount of land and the time of exposure, and limiting the time of exposure is probably the more effective route right now.

Ms. Thomas inquired regarding proffer 9C, which requires revegetation within nine months after the start of grading under any erosion and sediment control permit. She said that nine months sounded like "forever" to her.

Mr. Brooks agreed that nine months is a long time, but not so long in comparison to the existing project, which has been open for three or four years, or to Pantops Mountain, which was open for ten years. State legislation as written is difficult to enforce because it bases its time limits on when the project is disturbed; and, whenever a contractor disturbs the site, the clock starts again. This proffer tries to prevent that sort of repetition from happening, so that the contractor has nine months to finish from when the County issues the permit to start work.

Mr. Rooker asked if it is nine months from the start of grading, not from the date of permit issuance. Mr. Brooks indicated that the start of grading is when the erosion control permit would be issued.

Mr. Davis stated that the key is permanent vegetation. He said that erosion and sediment control measures that reduce the amount of erosion would be in place, as required by a typical plan, but the additional proffer is the commitment to install permanent vegetation within that nine month period, or an extension, if granted by the program manager.

Mr. Wyant said that temporary stabilization is usually required after seven days of non-disturbance. He asked if that requirement would still be in place.

Mr. Brooks said that is State law and still in effect.

Mr. Wyant said that temporary seeding is required after seven days of non-activity, and other measures help in case that has not had a chance to establish, but in the end they must have permanence within nine months of when they initiate grading.

Mr. Boyd commented that there is a difference between seeding and vegetation, and a property can be seeded a number of times but not produce vegetation.

Mr. Wyant said that it is a timing issue, but there are seed mixtures that do work; there is a better chance of making that happen with a plan in place.

Ms. Thomas inquired regarding the requirement for a removal rate of 80 percent "to the maximum extent practicable". She expressed concern that words like "practicable" open up the possibility of someone saying it is just not practical to do. She asked if staff is comfortable that what is "practicable as determined by County's Program Authority" is enough to get the very best.

Mr. Brooks replied that he is comfortable with that.

Mr. Davis stated that "practicable" has a legal application which takes into account reasonableness, but the proffer indicates it is determined by the County, so they are comfortable in weighing what is practicable and requiring that to be put in place.

Mr. Wyant asked how 80 percent removal of sediment is determined and if sampling will be done. He said field sampling results can vary.

Mr. Brooks said they will try to design methods where they can reasonably anticipate 80 percent removal based on the design, but a sample may be requested if there are still complaints.

Mr. Boyd stated that he is concerned about further harm to downstream lakes. He is relying on the proffers to make sure that sediment removal is better than in the past.

Mr. Brooks stated that it will be better than in the past, but there are no guarantees, as a lot depends on the weather.

Mr. Rooker noted that the area is not currently stabilized.

Mr. Brooks said that is true, and the owner is under notice.

Mr. Rooker asked if runoff is occurring from that area today that is not being handled to the extent of the 80 percent limit that would be imposed once they start grading anew on the site. Mr. Brooks answered affirmatively.

Mr. Boyd asked if the County immediately has the authority to step up those erosion control measures if this project gets approved.

Mr. Brooks said that the rezoning is under consideration now, and there would be a couple more steps before an actual erosion control and grading plan and permit; then it would be a question of what area is covered by the new permit. He remarked that it would be cleaner if they stopped the permits that are open at this time, but right now they are operating under those existing permits.

Mr. Rooker stated that the wording seems to say that authority exists immediately following the rezoning. He said that the County could require those measures to be put in place after the rezoning with the proffer.

Mr. Davis agreed with that interpretation.

Mr. Wyant said that rezoning does not initiate the vegetation paragraph, but it does allow the County to require sediment traps and basins to be put in place as soon as the rezoning is approved.

Mr. Rooker asked if the permanent vegetation for erosion control purposes must be consistent with the plantings required by the ARB plan approved for the property.

Mr. Davis said that permanent vegetation is a term of art in the erosion and sediment control. If the permanent vegetation required by the ARB was something that would not make sense at the time of the permanent stabilization, they probably would not be required to do that out of sync with the plan.

Mr. Cilimberg said that should not be done prematurely.

Mr. Rooker stated that he wanted to know the definition of permanent vegetation and if it takes into account the ARB required planting for this property.

Mr. Davis explained that permanent vegetation is a term to which the erosion control regulation speaks, and this is different than what the common definition might be.

Mr. Brooks said it would satisfy the erosion control law just to use the permanent seeding spec, which has more perennials and fewer annuals.

Mr. Slutzky noted that the Board is particularly sensitive to this. He said that staff has done a fabulous job of negotiating a set of proffers with this applicant that gets to the root of the challenge of protecting the water during the process of construction and minimizing the detrimental impact even with vast land disturbances.

Ms. Thomas remarked that she hopes there are no major changes in the proffers the Board just received. She said that earlier comments mentioned the need for an agreement between the applicant and the Service Authority before the rezoning could be recommended, as the Service Authority has determined that sufficient capacity for the A-2 development does not exist. She stated that the Board cannot move forward unless this has been addressed.

Mr. Davis stated that he had a conversation today with the attorney for the Service Authority. He said Gary Fern may be able to speak to that agreement, but he does not believe that an agreement has been put in place. Mr. Davis thought that ACSA's position is that an agreement is not necessary to be in place at this time and could be addressed as the project moves forward.

Mr. Gary Fern, Executive Director of the Albemarle County Service Authority, said he could agree with the first part of the statement but not the second. They have had discussions with the applicant and proposed an agreement, but a signed agreement has not been received, so he cannot assure the Board that there is capacity for A-2 within the Airport trunk sewer.

Mr. Rooker asked if A-2 would require more water and sewer capacity than A-1 because of the number of residential units. Mr. Fern replied that A-2 certainly requires more sewer capacity than A-1.

Mr. Rooker asked if there would be one agreement encompassing both areas or separate agreements for each area. Mr. Fern said that only Area A-2 is considered in the agreement. There is sufficient capacity for A-1.

Mr. Cilimberg said the applicant may also want to speak to that issue, as he understands they may be bringing something soon.

Mr. Rooker asked if both water capacity and sewer capacity are at issue with respect to A-2. Mr. Fern confirmed that only sewer capacity is at issue.

Mr. Slutzky asked what constraints exist if there is no agreement between the Service Authority and the applicant. Mr. Fern said they could begin construction, and at some point the Service Authority would say there is not sufficient capacity and not issue any more water meters. At that point development would stop.

Mr. Rooker asked if they could not get occupancy permits. Mr. Fern said that is correct.

Mr. Slutzky commented that there is still practical protection against overloading the capacity of the system if they do move forward without the agreement.

Mr. Fern concurred. He said the Service Authority has within its purview to stop issuing water meters when it feels that there is not sufficient capacity.

Mr. Wyant asked if meters are not issued until water and sewer requirements are both met. He noted that water generates most of the sewage. Mr. Fern said that is correct.

Ms. Thomas referenced the sink hole and crumbling infrastructure. She asked if the Service Authority is working with this applicant on any agreement to play a role in funding for crumbling infrastructure since it is such a large project. Mr. Fern said the agreement only relates to the Airport trunk sewer.

Ms. Thomas asked if that was sewer that caused the sink hole. Mr. Fern said that the pipe that caused the sink hole was actually a storm drain pipe, not a sanitary sewer pipe or a water pipe.

Mr. Cilimberg commented that, as a public water and sewer provider, the Service Authority has more powers than counties in Virginia to stop development for lack of adequate facilities and to impose what amount to impact fees, which in this case are connection fees, towards necessary improvements. He said that the agreement is an additional measure to assure that for the future.

Ms. Thomas noted that the Service Authority can also raise the rates for everyone who is already on its water and sewer services. She remarked that the public seems to think the Board has some ability to affect that, which of course it does not. She said the public is not happy with the thought that existing water and sewage disposal users will be paying for the capacity and the repairs caused by new users.

Mr. Fern noted that the Service Authority is allowed to raise water rates, but it cannot raise sewer rates without a public hearing and a public process.

Mr. Rooker asked if that also applies to hookup rates. Mr. Fern replied the Service Authority has public hearings for all rate adjustments, be it water, sewer, or connection charges.

Mr. Rooker noted the question of the balance between hookup rates and usage rates and whether the hookup rates are sufficient to make reasonable contributions to the cost of the infrastructure that results from the growth that has taken place.

Mr. Fern said the Service Authority is currently discussing the percentage between user fees and connection charges, as well as how to fund improvements to aging infrastructure.

Mr. Rooker said he hopes that discussion will take place sooner rather than later, it is in the minds of everyone in the County right now.

Mr. Slutzky asked at what percentage of capacity the development would be shut down. Mr. Fern said the Service Authority uses 80 percent as a guide.

Mr. Slutzky requested confirmation that as a matter of policy no more meters will be issued when the Service Authority feels that the level of development has caused a flow rate that is about 80 percent of capacity, and therefore no more building permits can be obtained until an agreement is in place, the funding is there, and the infrastructure gets built.

Mr. Fern said that an agreement does not necessarily need to be in place until the Service Authority and its CIP decide to upgrade that particular sewer, or until they say they want to continue their development.

Mr. Rooker inquired regarding infrastructure beyond what is in Albemarle County. Mr. Fern stated that it goes to the Rivanna Water Sewer Authority's interceptor system, and he has requested capacity certification from RWSA for this project.

Mr. Rooker asked if RWSA has provided that certification. Mr. Fern said RWSA has not responded.

Mr. Rooker commented that the overall capacity of the system downstream toward the plant is an ongoing issue right now. Mr. Fern explained that it is actually a question that gets asked any time there is flow greater than 40,000 gallons per day for any development.

Mr. Rooker asked when the last 40,000-plus application was granted. Mr. Fern indicated that Gazebo Plaza was the last one.

Mr. Wyant asked if meters would be denied if RWSA was unable to provide this certification. Mr. Fern said that is correct.

Mr. Slutzky noted that the applicant must still complete the proffered infrastructure even if sewer capacity runs out first, as some of the transportation infrastructure was on a time-specific basis and not tied to build-out.

Mr. Davis noted that the proffer addresses the delivery schedule for the infrastructure improvements, and they would be bound by that.

Mr. Rooker asked if the requirements are time-based and not unit-based. Mr. Davis affirmed that the significant ones are time-based.

Mr. Davis addressed Ms. Thomas's question on the changes to the proffers. He said that only a few changes were made, at the request of staff. He explained that in Area A-1, proffer 1D, paragraph 2 was amended to clarify the location and design and construction of Town Center Drive so that it matched the description in Hollymead Town Center A-2 proffers; there was a similar change in the A-1 proffer 2A. He said that a paragraph was added at the end of proffer 1 stating when the proffer 1D road improvements are deemed completed. In both sets of proffers, the proffer regarding LEED standards was amended to add a requirement for additional certification at the time of the CO that the building has actually been built to those LEED plans.

Ms. Thomas asked if the LEED standards should be tied down to a particular date of July 2006. She asked if LEED would be a constantly-evolving standard

Mr. Davis explained that, when this proffer was discussed, people wanted some clarity regarding the standard to which they might be held; this was the best applicable standard that could be found at the time.

Mr. Graham commented that this proffer raised a lot of questions, as there may not be a LEED standard ten years from now. They assume that the U.S. Green Building Council will still exist and will have standards, but they cannot be certain. Mr. Graham noted the difficulties in committing to something that evolves over time.

Ms. Thomas asked if the applicant would prefer that the requirement be date-specific.

Mr. Graham replied that the applicant would prefer that. He said it was not an enormous concern for staff; in committing to this standard, they know what they are getting at this point in time. He said they may be giving up a little bit if there is a stricter standard in the future, but it is hard to predict.

Mr. Boyd asked if the applicant would like to come forward.

Mr. J. P. Williamson addressed the Board on behalf of HM Acquisition Group, the owner of both Area A-1 and A-2 at Hollymead Town Center. He thanked the staff and County attorneys for working with them diligently over the last 30 days. He said they have negotiated an agreement with ACSA and are

prepared to sign it; however, the potential upgrades affect more than this project, and a better plan may evolve that incorporates adjacent properties. Mr. Williamson stated that the development community has been made aware that there are obligations related to water and sewer capacity that they must meet to obtain occupancy permits and building permits, and that is a risk they take as they move forward in development.

Mr. Rooker asked if there are capacity problems with respect to servicing A-2 as the system exists today.

Mr. Williamson explained that two different sewer lines will serve A-2. He said that the system now operates at less than 20 percent capacity. He said that the issue comes as they build out and expand the whole market and the whole region to full capacity, and at some point there will be a need to upgrade the system. He stated that they are trying to be proactive now to come up with the ultimate solution for build-out, and that is what they are discussing with the Service Authority.

Mr. Wyant asked if that includes other potential development in the area.

Mr. Williamson said that the Service Authority reviews all proposed rezonings and some of the Comp Plan. There is a list of projects coming into that sewer system, and capacity will be used as those are developed. He remarked that they are engaged in forward discussions regarding the right and proper way to upgrade these facilities, and they are taking on some of that responsibility.

Mr. Williamson provided two other clarifications related to proffers. He said that there is a proffer for Meeting Street and Town Center Drive to Dickerson that were obligations of Area B, but the proffers are not for the roads that ultimately need to be built, so they proffered the road that needed to be built for Meeting Street. He said that Meeting Street is already built with two travel lanes and a connection that could be opened, but the proffer extends beyond the original Area B proffer to include a 10-foot median, two travel lanes in each direction, sidewalks, and bike paths. He explained that they did the same thing on Town Center Drive, as their proffer extends beyond one travel lane in each direction in a rural section. He noted that the original proffer did not include curb and gutter, sidewalk, or street trees. He stated that they have proffered that and beyond; they bonded that road with a \$1,800,000 performance bond for that road in its ultimate design, in advance of the zoning. He said that is the reason there is some redundancy in the proffers, as they piggybacked on the original proffers and extended what they are building.

Mr. Williamson stated that they tried to develop a project that adhered to principles of the Neighborhood Model and created the Town Center that was envisioned in 2001 when the Master Plan was adopted. He said they have spent two years refining the layout for a pedestrian standpoint, integrating more of the office, live/work, and retail space into the residential. He said that 100 percent of residential units are within a half-mile of live/work space, which is the definition of a walkable community and density where infrastructure exists. Mr. Williamson said this density enables things like proffering 20 percent affordable housing without credit. In regards to the LEED designation, he feels the market is responding well to being a better steward of the environment, and it is a good thing to do. He commented that he hopes these kinds of proffers become somewhat of a standard in the County. He said they inherited a sediment and erosion control issue that they have been trying to work through, and they are hopeful that with this rezoning they now are in a position to work with staff on the design standpoint to come up with a solution to that. He stated that they are trying to be sensitive to the history of the project but still move forward in a manner that everyone will be comfortable with.

Mr. Rooker asked what assurance there is that A-2 will go forward. He noted that the applicant did not want to incorporate cross-parcel phasing when it was previously suggested. His concern is that A-2 is the center of the Town Center, and something the Board envisioned when it changed the Comprehensive Plan. He asked for assurance that A-2 will move forward expeditiously, so there is not just further development on Route 29 with nothing in the Town Center.

Mr. Williamson stated that he understands the concern, and they have tried to proffer a lot of the obligations up front. He cannot economically recover his investment in the infrastructure, the property, and the two years spent working through this process with just A-1; he must move forward with the entire project. He is in the business of trying to create economic return for his firm and his investors, and he cannot do that if A-2 does not move forward to completion. He noted that they have already bonded the roads and are building the roads proffered with A-1 to serve the whole development. By proffering parks, greenway, and transit, he has tried to express his intent to move forward with the entire project.

As there were no further questions for the applicant, Mr. Boyd opened the public hearing.

Mr. Jim Grace, representing the Boards of Directors of the Forest Lakes Community Association and the Hollymead Citizens Association, presented a lake sediment study commissioned by the associations. He said the study was broken down into recent (the last three to four years) and earlier (the prior 35 years) sediments. The results of the study indicate a ratio of recent sediment to earlier sediment of 2.2 to 1. Mr. Grace said that, at the rate of sedimentation prior to Hollymead Town Center, the current level of sedimentation would not have been reached until 2080. If they continue to get the type and rate of sediment they are getting now, they will lose 30 to 35 percent of the water area of Lake Hollymead in four to five years. Mr. Grace urged the Board of Supervisors to immediately address this in reviews of Hollymead Town Center and any adjacent areas in the Lake Hollymead watershed. He said that Lake Hollymead serves as a regional lake for that entire area. He commented that he heard a lot of things about increased erosion and sedimentation control but no specifics, and this developer has owned the property for several years but has done nothing recently. He asked why something is not being done about this area now if they are sincere about improving the erosion control standards.

Mr. Rooker asked when the picture provided by Mr. Grace was taken.

Mr. Grace stated that the picture was dated 2006, but they believe it is from the first six months of 2005 based on the amount of development in the middle part. He said that obviously things have improved, particularly on the northern end of the development, but it still looks pretty bad.

Mr. Grace commented that there was a regional holding pond planned in the early days of planning this project; somewhere, probably because it was impractical, that went away, and their lake ends up being the regional holding facility. He noted the size of the lake in the picture compared to the tiny holding ponds around the development. Mr. Grace related a request from both boards of directors that the Supervisors aggressively seek an adequate, equitable solution to the cost of maintaining that lake, as it is not fair to the residents of Hollymead and Forest Lakes to absorb that cost.

Mr. Morgan Butler addressed the Board on behalf of the Southern Environmental Law Center. He commented that the design of the A-2 proposals is one of the better examples of mixed-use, pedestrian-oriented design to come before the Board over the past few years. He expressed concern that both A-1 and A-2 are currently denuded and have been in that state for years. He said the proffers are an improvement in that they would require any areas for which an erosion and sediment control plan is submitted to be permanently revegetated within nine months of plan approval, but a 1,200 residential unit site is likely to be built out over phases; the erosion and sediment control plan will cover only a portion of the site, leaving the rest of the site in its denuded condition because the nine month requirement will not apply to it. Mr. Butler asked if there is some way to ensure that the entire site will be permanently vegetated, including the portion not covered by the first erosion and sediment control plan. He said that may require current erosion and sediment control plans to be closed so those areas can be permanently vegetated before the development moves forward. He understands that, if it gets to a point where sewer capacity is an issue, the issuance of water meters can be stopped until the developer or residents agree to pay the additional amount to upgrade that wastewater component. He noted the risk that the developer may decide not to pay the additional fee for those upgrades, thereby preventing these great pedestrian, mixed-use plans from building out the way they worked to get it to look.

There being no one else from the public who wished to speak, Mr. Boyd closed the public hearing. Mr. Boyd then asked the applicant if he would like to address any of the comments from the public.

Mr. Williamson said that new connections generate revenue for the Service Authority to continue to upgrade and expand the system, and they are talking about a funding program where they commit to specific upgrades in advance of that problem. He thinks that is exactly what ACSA is trying to do with the development community.

Mr. Rooker asked if the funding program Mr. Williamson referenced would be in the agreement he signs.

Mr. Williamson responded that right now this line is at 17 percent capacity, and it can serve significant amounts of water and sewer that generate fees for the Service Authority on an existing line; in theory, those fees are being generated to help them fund the CIP. Mr. Williamson said that, in addition to providing users for ACSA's capacity, they are discussing an agreement to help upgrade those facilities. He commented that the development pays for it twice in essence, as the people coming in to live and work in an area that already has infrastructure are paying some fee, and they are additionally paying to assist in the effort of those upgrades.

Mr. Williamson commented that they are sensitive to erosion sediment and erosion control issues, and this step would move this project forward in a situation where everyone will accept the landscape. He said the existing sediment and erosion control plan was put in place primarily to build Meeting Street and Town Center Drive, there are no grading activities going on outside of those areas of existing disturbance, and they fully intend to try to comply with these increased proffer measures as the project moves forward. He added that, while they cannot correct the history of the project, they certainly can play a better role moving forward in the completion and build-out sensitive to these issues.

Mr. Boyd commented that one of the biggest complaints is the condition of the "moonscape". He asked what the applicant plans to do to correct that situation as soon as possible.

Mr. Williamson replied that he intends to build the plan and convert the sediment basin to a stormwater pond. He noted that there is a three-acre sediment pond that collects runoff. There are issues related to the region, such as the sinkhole under Route 29, and that sediment is in the system. Mr. Williamson stated that the issue with sediment control is not necessarily 100 percent related to Hollymead; they do have sediment and erosion control measures on site, with inspections, and they are in the process of putting down sod at the request of the County in areas where they could not get seeding to take. He said that, in response to these issues, they are now trying to set in place a sediment and erosion control program that far exceeds that which is required, because they are sensitive to the unique requirements of this project.

Mr. Wyant asked if the applicant will put in erosion control measures and seeding on those areas that exist out there today if the rezoning is approved.

Mr. Williamson said this is correct. The sediment and erosion control plan in place now is specific to the roads because they are under a timeframe to build and complete the roads, and a permit was necessary to do that. Mr. Williamson related that they have already met with the County about additional

stormwater basins and other measures, and this rezoning would allow them to move forward with that on a project-wide basis.

Mr. Wyant commented that the applicant's onus is to stabilize the "moonbasin" if it is going to sit as it is. He said that the erosion control plan would apply to places with grading, but with this approval they plan on doing that stabilization.

Mr. Rooker noted that a previous speaker raised the issue that an area can be opened without really affecting what has to be done in the area around it. He asked if anything in paragraph 7 requires vegetation of the entire site within any period of time, or just areas that get opened for grading. He said that the public is asking when this area will no longer look like a "moonscape".

Mr. Davis replied that the erosion and sediment control plan has requirements for temporary stabilization after seven days of disturbed area. He said the County is attempting to require that under the current plan, but the developer has been unsuccessful in getting grass to grow. He noted that the County is pursuing enforcement of that.

Mr. Rooker asked if this applied to the land that is the subject of this rezoning.

Mr. Davis confirmed that this is on the land subject to this rezoning. He explained that under this proffer the County will be able to require additional measures in an attempt to reduce the amount of erosion that is leaving the site, while under proffer 7C the County will require that permanent vegetation be in place nine months after the permit has been executed and grading has taken place under any new plan that is granted.

Mr. Rooker questioned whether a permit can be issued for just a small area, leaving everything else in its current state. He asked if this anticipated a situation where an area the size of a football could be open for permit purposes with grading and stabilization, and in four years the two-thirds of the property may still be unplanted and unvegetated.

Mr. Davis replied that he thinks the project area is going to have to be large enough in order to deal with erosion control measures that the County is going to require.

Mr. Williamson stated that the only reason there is an existing sediment and erosion control plan is because there are limits of disturbance for the road. He said there were be additional sediment and erosion control plans specific to the site plan. He cannot foresee a scenario where he would come in with a site plan the size of a football field. Mr. Williamson said he plans to come in with site plans for larger areas of the project, accompanied by sediment and erosion control plans that exceed the current standards due to this proffer.

Mr. Slutzky inquired regarding deadlines for completion of items such as the road stormwater retention basin.

Mr. Williamson replied that there is a regional stormwater pond on the site as designed. This serves as a sediment basin now and it does not convert to a stormwater pond until they complete stabilization and build-out of the site. Mr. Williamson said that agreement already exists in the County, and all the parties at Hollymead are parties to it.

Mr. Rooker asked Mr. Fern to speak further regarding the sewer situation. Mr. Rooker asked what upgrade is necessary if the applicant is correct that the pipes serving this area are only operating at 17 percent of capacity.

Mr. Fern responded that he was unsure where the 17 percent or 20 percent figures originated. He said the Service Authority is currently evaluating flow in that particular trunk sewer with flow meters, and the trunk sewer would be sufficient to handle the development that would be allowed in the area should this area not be rezoned. Mr. Fern noted that the industrial and agricultural uses were intended in this area when the Airport trunk sewer was designed, and that is not what is being proposed in this development. He commented that the applicant's statement that they are going to pay for it twice is not entirely true, as the fact that the property is being rezoned causes the need for an upgrade.

Mr. Rooker asked if there would be assurance that the upgrade will be in place ahead of any demand for that upgrade. Mr. Fern replied affirmatively. He noted that previous agreements state that, when it reaches an 80 percent point, the developer is required to come up with the funds, do the engineering, and do the construction to have the upgrades in place before the Service Authority will issue water meters, so that the upgrades will be in place before the wastewater flow gets there.

Mr. Slutzky asked if, absent an agreement, the Service Authority can still impose the 80 percent rule and decide to shut down access to building permits. Mr. Fern confirmed that the Service Authority would do that.

Mr. Davis noted that the Service Authority has to approve that there is capacity for developments being proposed at the site plan level, so that will be analyzed even before a building permit is issued.

Mr. Rooker expressed concern regarding downstream capacity, such as the issue that has arisen with Albemarle Place.

Mr. Fern explained that is the reason ACSA requests capacity certification checks from RWSA regarding its interceptors and the treatment plant.

Mr. Rooker noted that ACSA has not received that certification for this project. He asked if certification is usually obtained before or after a rezoning. Mr. Pete Gorman, ACSA engineer, said they currently do that before a rezoning, as Rivanna wants that information as soon as possible.

Mr. Fern stated that the request has been made, but Rivanna has not replied because they currently are going through an interceptor study.

Mr. Rooker asked when a report is expected. Mr. Fern replied that he has been told that that study is going to be available later this fall.

Mr. Rooker asked if certification for this project could not be obtained until that study is completed. Mr. Fern said that was potentially the case, but he could not speak for when Rivanna provide the certification.

Mr. Slutzky remarked that Mr. Fern seems to not necessarily refute the argument that there is 17 to 20 percent current utilization. He asked for a sense of what the current level of utilization is, absent data from the flow meters.

Mr. Gorman replied that they use not just current consumption but also projected numbers. He believes the developer is just using the consumption numbers where meters are now.

Mr. Wyant noted that there are some other proposed development areas. He asked if those would be accounted for in the design of the new line. Mr. Fern replied that the Service Authority may pay for an over sizing of that pipe if another development is going to be coming on line.

Mr. Wyant asked if this developer could be paying for future expansion or use that may occur upstream. Mr. Fern replied that the potential does exist, only because pipes are certain diameters.

Mr. Rooker asked if ACSA's capacity issues are as bad as capacity issues in the Rivanna system. Mr. Fern said he could not speak to that, as he did not know the interceptor study results for Rivanna.

Mr. Dorrier asked if a minimum number of hookups are required to make the cost of the pipe work. Mr. Fern explained that within certain developments when they are doing a new sewer system in a residential area they will look at how many people want to connect, but in the case of this type of development, the developer is actually paying to put the sewers in at cost.

Mr. Boyd then asked for comments from Board members.

Ms. Thomas commented that they might not be as concerned about the water and sewer if this were a mediocre plan where they did not care whether it is built out. She stated that it is a good plan that has a lot of good elements, but it is a good plan because it is all there, not because one big box and one apartment building might get built and then stop. She expressed concern that a less-than-desirable area would be built on if they reach that 80 percent capacity figure and decide not to do the rest of the plan. That is why she is concerned that there not be some sort of bolus payment that arrives at 80 percent of capacity, because that might be the point at which the developer decides not to do the rest. Ms. Thomas stated that she wants the hookup fee to be adequate to cover this infrastructure and not have some kind of point in which everything may come to a halt. She commented that that is fine for a threat but in fact would not be good land use planning.

Mr. Boyd asked if the reason the Service Authority does not have the hook up agreement is because the applicant has not responded or because Rivanna Water and Sewer has not responded. Mr. Fern replied that an agreement has been proposed to the applicant, and they have sat and discussed the actual agreement, but a signed agreement has not been received from the applicant.

Mr. Williamson stated that they are in agreement on the agreement, but over the last two weeks he has been asked to facilitate a discussion with an adjacent project. He said that they held off on returning the agreement after hearing at the Willow Glen work session that the agreement is not a requirement for rezoning. He is in discussions with an adjacent owner to come up with an arrangement for everyone in the region to do this together. Mr. Williamson again said he has submitted the signed agreement to the County, but they were trying to come up with a scenario where the adjacent property also participates.

Mr. Tucker asked for confirmation that an agreement with Mr. Williamson was necessary before ACSA can approve the site plan. Mr. Fern responded that they certainly will want to have an agreement in place when they review the site plan.

Mr. Tucker noted that would be the next step if this approval moves forward.

Mr. Slutzky inquired whether they have the authority to not approve the site plan without a signed agreement.

Mr. Davis confirmed that the site plan would not be approved if there is not adequate capacity in the sewer system, because this development is required to hook to public water and sewer. There needs to be capacity for the development in the site plan for the Service Authority to sign off on it.

Mr. Slutzky remarked that it sounds like the necessary protections exist.

Mr. Rooker noted that they must have the certification from Rivanna by that point, or the site plan would not get approved.

Mr. Wyant commented that erosion control is critical, and he likes the point that it goes in effect with the rezoning. He characterized this as a statement from the County that it expects erosion control on this project, and they need to get rid of this eyesore and implement stabilization. He supports moving ahead and approving this.

Mr. Rooker noted that Forest Lakes has addressed the Board several times about the pond situation there. He asked if any sediment would be expected to leave this site and go into that pond once the system is in place that is required by the proffers.

Mr. Graham explained that the current situation is designed to the state minimum standards, which typically mean that about 60 percent of the sediment is captured; that means 40 percent is leaving the site and going down into Lake Hollymead, which is immediately downstream of there. He said that proffer 7B says that if this is approved, tomorrow morning the County is working with the applicant to determine the maximum extent practicable. He noted that the County will try to try to get them to totally stabilize the site, and the owner is actually under order right now to do so and should be seeding and mulching.

Mr. Rooker asked if the County can make certain that is done before any additional activity takes place. Mr. Graham replied that proffer 7B gives the County that ability and says it must be done to the maximum extent practicable.

Mr. Rooker asked Mr. Graham if he intends to do that. Mr. Graham replied affirmatively.

Mr. Slutzky asked if the County would not have that leverage if the rezoning is not approved.

Mr. Boyd stated that, to answer Mr. Rooker's original question, there is still going to be sediment that flows into Lake Hollymead. He said he has been discussing this issue with Mr. Graham for a while. He noted that there have been a number of petitions from Forest Lakes and Hollymead homeowners associations about their regional lake that is serving as a regional sediment control lake. He said he has heard that there was previously some intent for the County to eventually acquire that lake as a regional retention basin.

Mr. Graham stated that he found a mention in the County's stormwater master plan that the existing Lake Hollymead could become a regional stormwater facility. He noted that Mr. Grace earlier referred to a new regional basin in Powell Creek on the west side of Route 29 to serve the whole development; this was proposed at the time of the Comprehensive Plan Amendment for Hollymead Town Center. Mr. Graham explained that the wetlands and stream permitting with the Corps of Engineers changed, and the County was informed that it could not get a permit to build such a facility in the stream. He noted that Lake Hollymead could not be built today, as it is not something for which the Corps of Engineers would approve a permit.

Mr. Boyd asked that this issue come back to the Board, as he strongly believes that the homeowners are being stuck with the bill for a regional retention pond, and they are in real danger of losing a lot of that pond in the very near future if the consultant's report is accurate. He commented that this was not the way it was planned or wanted, but they are the collector for all the sediment in the region.

Mr. Rooker remarked that this is a maintenance issue of dredging to restore capacity. Mr. Rooker asked if it would be feasible for this applicant to proffer some kind of ongoing contribution to the maintenance of the pond, since he is going to contribute to the sediment in that pond and increase the rate of the sedimentation.

Mr. Boyd expressed concern about adding this kind of proffer at the last minute, given that there have been a lot of people preceding this and given that the development of Hollymead caused the problem. He said this was sort of dumping it on the last guy that showed up.

Mr. Slutzky noted that the applicant is actually putting in a higher standard of erosion and sediment control than preceding developers.

Mr. Boyd concurred that the applicant is doing a lot more than what anyone else prior to him has done.

Mr. Rooker pointed out that the issue was not raised when other pieces of property developed out there, but it has been raised continuously since the grading started taking place on Hollymead. He commented that it would have been wise to perhaps require everyone out there to make a contribution to the maintenance of this pond so that the burden did not fall on Forest Lakes. Mr. Rooker suggested an agreement where this applicant would make some kind of an ongoing contribution toward the maintenance of the pond, noting that contributions could be sought from other applicants during any future rezonings in that area where they will be putting sediment into that pond.

Mr. Slutzky recollected that there was some discussion about a recommendation to the Hollymead community to do benchmarking of the sedimentation of their pond at the start of Hollymead Town Center, and they chose not to do it. He said that they are now getting the equivalent of benchmarking because they are doing the scientific studies to support the prior-term sedimentation relative to the near-term, but he wanted to make sure the issue was previously raised by staff.

Mr. Graham indicated that was correct. Staff saw this as a potential issue once Hollymead was going forward, and it turned out to be an issue.

Mr. Slutzky commented that the Board will have to consider whether or not to take over the responsibility of maintaining that pond.

Mr. Boyd noted that he did not intend to raise this as a point of discussion tonight, but rather to see if there is any interest in bringing it back.

Mr. Rooker remarked that he has an interest in seeing that the parties that contribute to the sediment in that pond pay something for its ongoing maintenance.

Mr. Wyant commented that this is a difficult thing to determine. He noted that the last 20 percent is very fine stuff, and it creates cloudy-looking water but is not a lot of weight or particles. He asked how to determine a contribution for that, as 20 percent does have a significant impact on aquatic organisms. He said there is also a huge amount of soil that has washed out from under Route 29, so they would have to distinguish how much damage is by the different parties. He stated that he agrees with Mr. Rooker but does not know how to determine the impact.

Mr. Boyd noted that the soil from Route 29 actually went into Arbor Lake, which is a different lake, and VDOT did come down and dredge that as a result.

Mr. Graham stated that the amount that came from the sinkhole is miniscule compared to the sedimentation at Lake Hollymead. The consultant for the Forest Lakes study noted that he could make no determination on how much sediment came from which place at what time. Mr. Graham commented that there is no way to say what amount of dirt came from Hollymead Town Center versus coming from the airport versus coming from Airport Road construction.

Mr. Rooker stated that, where the County does have a regional stormwater basin, the people who contribute to it are required to pay for its maintenance. He said the County does not necessarily have a scientific determination of exactly how much sediment each property contributes, but an estimate is made based upon the watershed area that is going to drain to that facility and the area of land involved. He thought the same kind of estimate could be made here.

Mr. Slutzky suggested the option to create a service district for the entire Hollymead area, take over ownership of the pond, and have the service district fund the cleaning. He proposes this as a more equitable solution than placing the entire cost on this applicant.

Mr. Rooker asked if that proposal was realistic.

Mr. Davis explained that, if boundaries can be defined for a service area that is contributing to that, the Board by ordinance can define that area and impose a reasonable fee to address the need for whatever public service is required within that service area. He noted that the County would have to have an ownership interest in the pond; public funds could not be expended on a private facility.

Mr. Boyd said there are problems with the necessary easements.

Mr. Rooker stated it is in question whether or not that easement would ever take place.

Mr. Boyd reiterated that he was just checking to see if the Board is interested in further discussion of the issue, not as part of this particular project.

Mr. Dorrier asked if the Board could work with the Service Authority to have this fee imposed on the customers.

Mr. Rooker replied that the Service Authority could not that.

Mr. Boyd stated that would not have any jurisdiction other than stormwater management

Mr. Davis clarified that the Service Authority currently does not have this authority; it is something within the Act that the Service Authority could have, but it has never been set up or designed for that purpose in Albemarle County.

Mr. Rooker inquired as to the status of road improvements if one of the areas is approved and the other is not. Mr. Davis replied that road improvements are proffered as part of A-1 and part of the existing rezoned Areas B and C.

Ms. Elaine Echols, Principal Planner, added that there are two sets of road improvements for Area A-1. Those that need to be done within one year that are also echoed in the A-2 proffers, and the rest of A-1 road improvements are within two years.

Mr. Rooker asked where they would be left with respect to roads if only A-2 were approved. Mr. Davis responded that would leave only the road improvements that were previously proffered by Areas B and C, which are the major connections.

Mr. Cilimberg explained that there is partial construction of Meeting Street in this area, as it is not required under Area B to be built to the full requirement, and A-2 would build it to the full necessary cross-section. He noted that Town Center Drive from the circle west as a rural cross-section was also a requirement in Area B, but it will be built as an urban section as part of A-2. He said that Meeting Street headed towards the outside location is part of A-1.

Mr. Rooker inquired as to Town Center Drive going out to Route 29. Mr. Cilimberg indicated on the map where partial construction was required as part of Area B, but he could not speak to the requirement for Town Center Drive from here back to the circle.

Mr. Rooker noted that part of his concern was to be certain that A-2 would be built, as A-1 is more commercial development on Route 29 by itself. He remarked that it is the combination of the two that makes this an appealing plan. He said he tried to argue for some kind of phasing to make sure they happen together, but there was not enough support for that. He would support this with an assurance that both phases would be built in some kind of simultaneous way, but there is no such assurance. He noted that A-1 has no problem with sewer; the issue with sewer is A-2, which is the heart and soul of this plan. He pointed out that this has been presented to the Board as a single plan, but in fact it could be executed in two different timeframes entirely.

Mr. Slutzky noted road improvements that would not be made if the Board supports A-2 only. He commented that, in the context of the master planning process for Places29, they are trying to give vitality to the parallel road network; they would be missing a critical piece of that network without A-1. He stated that was his concern with turning down A-1 as long as the Board thinks that A-1 and A-2 collectively are a good project, which he does.

Ms. Thomas expressed interest in having this applicant make a contribution towards addressing downstream sediment. She said that, if a service district is formed at some time in the future, a person living in an apartment or a businessperson renting one of the buildings is not going to see how he contributed to that cost, because most of it will happen during construction. She appreciated the work on stormwater management, and she is sorry that this idea was not proposed earlier to the applicant, but she wants to know how to deal with the impact of 20 percent of the sediment going downstream.

Mr. Rooker stated that the Board should get a recommendation from staff about a reasonable contribution by this property owner on an ongoing basis to the maintenance of the pond. He said the future creation of a service district would obviate the proffer, but that is a separate and much bigger decision. He expressed concern about having this vague idea of a service district, as this has been proposed for other issues but was not done. Mr. Rooker stated that is he is skeptical of saying this applicant should contribute nothing because a service district might be created in the future, when they do know the details of how that would be accomplished. He said he would be inclined to support this application if it had a reasonable contribution to the maintenance of that pond, as it unfairly imposes an issue on Forest Lakes. He is also concerned about the timing of the projects, though there probably is a good economic argument that it would be difficult for the applicant to do all the improvements without going forward with both parts of the project. Mr. Rooker reiterated that steps should be taken to provide relief to the Forest Lakes property owners.

Mr. Slutzky agreed that attention should be focused on the deleterious impacts that these erosion problems create for water systems. He said the County needs to be much more proactive in trying to address these issues, but one of the qualities of this particular project is that it goes beyond the norm by a good bit. He stated that the status quo has a far greater adverse impact in terms of sedimentation than approving this plan, based on its significant additional controls. Mr. Slutzky commented that he was also concerned about adding such a condition at the eleventh hour. He acknowledged that the problem must be addressed, but he would not withhold support for this application based on this one issue.

Mr. Rooker commented that there is nothing that prevents the applicant from taking a deferral and coming back with a proffer that would equitably address this situation. He stated that these are probably the best possible erosion control measures, as Mr. Graham said the cost of trying to implement anything past 80 percent far exceeds the results. Even with the maximum erosion and sediment control measures that can be put in place in a reasonable manner, there is going to be additional sediment that comes off the property as a result of the disturbance, and at least 20 percent of it will go downstream and into this pond, perhaps on a continual basis. Mr. Rooker remarked that they are not talking about trying to impose a huge economic cost on this applicant, but rather a fair contribution toward a problem that somebody else is paying for right now.

Mr. Slutzky restated his agreement that the problem should be addressed, but he would prefer to focus on finding a way for everyone who is contributing to the problem to pay for it, not just this one applicant.

Mr. Rooker said it would only be fair to release this applicant from any proffer if and when an alternate solution is implemented, but he thinks they will have imposed another unreasonable burden on the homeowners if it that solution is never put in place.

Mr. Dorrier stated that he would be willing to approve A-1 and A-2 with some contribution from the applicant for the removal.

Mr. Rooker noted that there was no proffered contribution by the applicant at this point

Mr. Wyant commented that anytime anyone does any disturbance that drains into this it will create sediment, and there may be contributions from future development even if the pond is cleaned now. He said that the sediment pond will not become a stormwater facility until construction is complete, although there are requirements to maintain and clean the sediment pond. He stated that he is trying to figure out how to determine the damage, because the ultimate cleanout may be ten years down the road, and other projects may contribute to silt problems.

Mr. Rooker replied that staff may come back and say that \$20,000 a year is a reasonable amount of money, which is perhaps a small amount of money with respect to this project but may be a fairly large amount of money with respect to the Forest Lakes homeowners association. He does not know what that number is going to be, but the County does the same kind of analysis for a regional stormwater facility. Mr. Rooker noted that he was not sure if Lake Hollymead could qualify as such a facility.

Mr. Wyant stated that the County may look at the number of acres disturbed for regional sediment basins, but it takes more analysis to determine the amount of damage.

Mr. Slutzky commented that holding up this applicant may not address the broader problem.

Mr. Boyd repeated his commitment to finding a solution to assist the homeowners in those areas.

Ms. Thomas noted that this cost will fall on either the homeowners or the taxpayers.

Mr. Slutzky replied that, with a service district in communities that contributed to the sedimentation, the taxpayers who are carrying the cost burden are also the taxpayers who in a sense were contributing to it. He said that, if instead the expectation of the value of that damage is superimposed on the developer on the front end, the developer will then pass it along in an elevated price to those homeowners; the people who are the beneficiaries of the development will pay for it either way. He would prefer the problem be addressed comprehensively and not in what he fears might be an inequitable way on this particular project.

Mr. Rooker commented that he does not see it as inequitable to require an applicant to contribute some kind of pro rata share toward the maintenance of a facility that is impacted, until or unless the time comes when there may be a regional service district.

Mr. Boyd expressed concern that this would be a "band-aid" approach that may not provide enough money to solve the problem. He would prefer a comprehensive plan that is designed to fix the entire problem.

Ms. Thomas queried whether Board members would be willing to face all the people in the whole watershed who do not want to have this extra fee, if they are not willing to face down the one developer in this rezoning.

Mr. Boyd replied that it is not a matter facing down anybody, but rather of solving problems logistically.

Ms. Thomas stated that she was just suggesting that it would be a lot harder to impose an area-wide fee on everybody. She noted that a rezoning is an appropriate time to think about the impacts and ways that these can be mitigated.

Mr. Boyd asked if stormwater management districts were a strategy that was coming back to the Board for discussion. Mr. Tucker confirmed that the strategy was under consideration but not necessarily tied to this.

Mr. Boyd noted that the Board has previously discussed this issue, and extensive proposals were put forward.

Mr. Slutzky asked if staff had a methodology in mind for how to assess this developer's pro rata portion.

Mr. Cilimberg indicated that he was unsure how this would be assessed. He noted that Mr. Davis raised the point of a proffer being used for a private facility, and he did not know whether a proffer could be constructed that would allow the monies received through the public entity to be used on a private facility.

Mr. Davis stated that tax dollars or money proffered to the County that would have to be appropriated probably could not be used for a private facility. He said that any proffer would have to be directed to the homeowners association rather than to the County.

Mr. Rooker asked if that is legal. Mr. Davis confirmed that is legal under Virginia law.

Mr. Graham commented that the problem with the service district is that it requires the downstream facility to be a public facility. He said that Forest Lakes has been unable to get its property owners to agree to an easement that would allow that to become a public facility. He noted that the County cannot create a service district that can repair the facility if it is private.

Mr. Rooker proposed that the methodology for determining reasonable contributions to a facility might be based upon the watershed drainage area and land use.

Mr. Graham stated that they may find that Hollymead Town Center is actually not that sizeable of a share compared to the overall watershed area.

Mr. Rooker replied that at least there would be a determination and whatever contribution was reasonable would be made, and there would be a basis to address the issue if it occurs again.

Mr. Tucker stated that the Board was at a point to either defer until October 3 or consider approval.

Mr. Boyd asked the applicant to address this issue.

Mr. Williamson stated that deferring again is not an option, as every time he comes before the Board there is a deferral for a new issue. He expressed his willingness to meet with the County and the adjacent property owners off-line to come up with a program to address those concerns. Mr. Williamson noted that he will be back for site plan and other approvals, so he would be held to his commitment to work with staff on that issue, but he feels that it is important now to show that the project has support. He said that he hears good things about design and comfort level with the proffers, so he would like to move forward and build this center, and he thinks tonight is an appropriate time to start that process.

Mr. Rooker asked if the applicant would commit to making an equitable contribution to that homeowners association to help maintain that pond.

Mr. Williamson replied that he would need to know what the number is for ongoing maintenance as it relates to the watershed, as they are 78 acres and the watershed served by the pond may include hundreds of acres. He said that they can commit to ongoing maintenance if they are getting the benefit of that pond, but it would be harder to commit to an unknown cost in terms of the pond's status now versus the entire thirty years. He affirmed that they would consider an equitable contribution, which means everyone contributes.

Mr. Dorrier commented that the applicant is in good faith and trying to work with the County.

Mr. Davis emphasized that an agreement would be between the Forest Lakes homeowners association and the developer, as the facility that needs to be maintained is not a public facility.

Mr. Slutzky commented that the Board must work towards a strategy for addressing the sedimentation burdens both in this particular case and a little more broadly.

Mr. Davis noted that four matters are before the Board. Proffers dated September 11, 2007, and signed September 12, 2007, are applicable to ZMA-2005-015, and with an associated application plan because it is a PDMC district.

At this time, Mr. Slutzky **moved** to approve ZMA-2005-015, Hollymead Town Center Area A-1, subject to acceptance of the applicant's proffers dated September 11, 2007, and signed September 12, 2007, and Application Plan (on file in Clerk's office) dated May 23, 2007. Mr. Dorrier **seconded** the motion.

Mr. Rooker stated that he would vote in favor of this application based upon the applicant's verbal commitment to participate with the Forest Lakes homeowners association in trying to make some reasonable contribution to dealing with that issue, although he would have preferred that it be a proffer. He commented that the two plans in combination are good plans. He thinks the applicant will be economically compelled to build out both sections within a reasonable period of time, which is imperative. He said that the "moonscape" issue, which is an aesthetic eyesore for the community, would be more quickly if this plan gets underway. He noted that staff has assured the Board that planting of the whole site could be required at some point to stabilize the site, and they have very good plan going forward once grading starts. Mr. Rooker commented that, on the balance of things, it is better to go ahead and approve the plan, although he would have liked to go further with respect to the Hollymead pond.

Mr. Boyd remarked that he would vote for this for this for a lot of the same reasons. He had a previous conversation regarding some voluntary contributions to help the Hollymead area, and he is committed to getting that done somehow. He stated that he wants to do something about the 40 percent erosion that is flowing into that lake every day, and he thinks that stabilizing the area and then setting the bar a lot higher at 80 percent will help the people in Forest Lakes and Hollymead right now.

Ms. Thomas commented that this plan is a significant improvement. She said she was shocked when she learned that all the sediment and erosion control measures and catchment basins only capture 60 percent, so to move it up to 80 percent is significant. She is proud of the Board and the applicant for going in that direction.

Mr. Rooker stated that there are a lot of good things in the plan, such as the LEED certification and green buildings, and 20 percent affordable housing is beyond anything they have seen so far in the County.

Mr. Boyd commented that he has always had trouble with these applications because he was not on the Board when it was first approved, so he sometimes gets lost in the references to various areas

because he does not know what was originally proposed, but he thinks that this will be the thing that will culminate together what the previous Board envisioned for this site. He said the Board needs to move forward with getting it done.

Mr. Wyant stated that he would vote in favor of the application. He has heard a lot in his four years on the Board about the erosion control and the damage downstream. He said that he spent a lot of time in that field in his career, and he thinks that 80 percent is difficult to accomplish. He noted that it has been an education process in how the sewer and connectors work and how the infrastructure is being managed by the Service Authority. Mr. Wyant said that he likes those positive things about this plan and the mix of the two sections, so he is in favor of this.

Mr. Slutzky remarked that he is in agreement with previous comments. He would have liked this issue to have been raised a lot earlier in the process, rather than at the eleventh hour, so they would have had the benefit of being able to hold the applicant accountable. He said that they might want to look to future applicants earlier in the pipeline to address the soil erosion component beyond the 80 percent, and try to get the 80 percent whenever possible. He noted that this proposal includes 20 percent affordable housing, rather than the required 15 percent, which is an extremely important benefit. He reiterated that the additional section of the parallel road that is a vital part of the success of the Places29 Master Plan is an extremely valuable proffer to the County. He said that, for those reasons and in spite of the imperfections that the project does have, he thinks it is a good project and he will be supporting it.

Mr. Dorrier commented that the applicant has a good plan, and he thinks the 20 percent affordable housing is definitely a step in the right direction.

Mr. Davis noted that the 20 percent affordable housing is actually in the A-2 proffers.

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

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

NAYS: None.

PROFFER FORM

Date: September 11, 2007

ZMA #: ZMA 2005-015 Hollymead Town Center Area A-1

Tax Map Parcel Numbers: 32-42A, 32-42C, 32-44 (portion), 46-5, and 32-45 (portion)

31 Acres to be rezoned from RA to PD-MC

Tax Map Parcel Numbers: 32-42A, 32-42C, 32-44 (portion), 46-5, and 32-45 (portion), comprising approximately 31 acres are subject to rezoning application ZMA 2005-015 and to this Proffer Statement (the "Property"). The Property is described with more particularity on a plan entitled "ZMA Application Plan for PD-MC Portion of Hollymead Town Center – Service Area A- Block A1" hereafter referred to as "the Project", prepared by Dominion Development Resources LLC, dated March 13, 2006 (revised May 23, 2007), and attached hereto as **Exhibit A** (the "Application Plan"). The Owner of the Property is HM Acquisition Group, LLC; a Virginia limited liability company (the "Owner").

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property to Planned Development Mixed Commercial (PD-MC) as requested, the Owner shall develop the Property in accord with the following proffers pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. These conditions are voluntarily proffered as part of the requested rezoning, and the Owner acknowledges that the conditions are reasonable. If rezoning application ZMA 2005-015 is denied, these proffers shall immediately be null and void and of no further force and effect.

1. **Road Improvements** - To the extent not currently completed, the Owner shall design, construct and dedicate to public use for acceptance by VDOT, the following:

The road improvements listed herein shall be constructed in accordance with road plans submitted by the Owner and approved by the Virginia Department of Transportation ("VDOT"). All of the foregoing improvements shall be constructed to VDOT design standards pursuant to detailed plans agreed to between the Owner, the County and VDOT. Except for Meeting Street and Town Center Drive as indicated in D. below, the road plans will be submitted to VDOT and the County with the first site plan or subdivision plat, and will be constructed and accepted by VDOT within two years from the date of approval of the first site plan or subdivision plat, except as described in paragraph D. below:

- A. A continuous right turn lane on Route 29 southbound from the intersection of Town Center Drive to the southern boundary of Area A.
- B. Meeting Street from the intersection of Town Center Drive to the southern boundary of the Property.
- C. An entrance to Route 29 southbound (right in / right out only) in the area to the south of building B, as shown on the Application Plan.

- D. Within one (1) year after the date of approval of this rezoning, the following streets shall be completed:
- Meeting Street from the intersection of Town Center Drive to the northern boundary of Area A. Meeting Street will have two northbound and two southbound travel lanes, one northbound and one southbound bicycle lane. Initially, one lane in each direction may be utilized as on-street parking.
 - Town Center Drive (previously Access Road A) from the eastern edge of the NMD zoning boundary at the intersection of Meeting Street to its intersection with State Route 606, also known as Dickerson Road. This section of Town Center Drive shall be constructed to accommodate two travel lanes, with a cross section approved by the County and VDOT in a minimum 60-foot wide right-of-way.

For purposes of this Proffer D., construction of each street shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the owner has obtained from the County Engineer a written determination that the street is safe and convenient for traffic.

2. **Regional Transportation Study** - The Owner shall contribute \$59,000.00 cash to the County or VDOT for the purposes of funding a regional transportation study for the Route 29 corridor. The \$59,000.00 cash contribution shall be made, prior to the first site plan approval for Area A-1.

3. **Public Transit Stop Construction** - The Owner shall construct one public transit stop within Hollymead Town Center Area A-1. The location of the public transit stop shall be identified on the approved Application Plan and retained in the County files. The location shall be approved by the Director of Planning, prior to approval of the first subdivision plat or site plan for Hollymead Town Center Area A-1. Construction of the public transit stop shall occur in conjunction with improvements for the first site plan or the public street plans which include the area for the transportation stop. The design of the public transit stop shall be subject to approval by VDOT and the County Engineer, and shall include no less than 200 square feet of paved surface and two benches.

4. **Public Transit Operating Expenses** - Within thirty days after demand by the County after public transportation service is provided to the Project, the Owner shall contribute \$50,000 cash to the County to be used for operating expenses relating to such service, and shall contribute \$50,000 cash to the County each year thereafter for a period of nine (9) additional years, such that the cash contributed to the County pursuant to this Proffer 4, shall total Five Hundred Thousand Dollars (\$500,000). The cash contribution in years two through ten shall be paid by the anniversary date of the first contribution.

5. **Intersection Analysis** - The Owner shall submit an analysis of the Conner Drive and Town Center Drive intersection with the first site plan for the Project. The analysis shall be prepared by a qualified traffic engineer for the purpose of determining when the intersection would need to be signalized. The analysis should take a five (5) year projection to determine, based on the submitted site plan, when the intersection would require a signal. The analysis shall be submitted for review and approval by the County Engineer. If that analysis concludes the need for the intersection to be signalized within the five (5) year projection period, the Owner shall pay for the cost of the signal and synchronization when VDOT determines the signal is needed.

6. **Community Development Authority** - Upon the request of the County, the Owner shall petition for and consent to a Community Development Authority ("CDA") established pursuant to Section 15.2-5152, et seq. of the Code of Virginia ("Code") to be created for the purpose of financing, funding, planning, establishing, constructing, reconstructing, enlarging, extending, or maintaining (except to the extent VDOT maintains any public improvements) Route 29, and roads and other improvements associated therewith.

7. **Critical Slopes, Erosion and Sediment Control and Stormwater Management**

- A. Critical Slopes. The Owner shall apply for critical slope waivers for any roads located in critical slopes governed by § 18-4.2 *et seq.* of the Albemarle County Code.
- B. Erosion and Sediment Control. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional erosion and sediment controls to achieve a sediment removal rate of eighty percent (80%) for the Property. (As a reference, current regulatory structural measures achieve a 60% optimal removal rate.)
- C. Revegetation. Within nine (9) months after the start of grading under any erosion and sediment control permit, permanent vegetation shall be installed on all the denuded areas, except for areas the Program Authority determines are otherwise permanently stabilized or are under construction with an approved building permit. A three (3) month extension for the installation of permanent vegetation may be granted by the Program Authority due to special circumstances including but not limited to weather conditions.
- D. Stormwater. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional stormwater management to achieve a removal rate 20% better than would otherwise be required by the Water Protection

Ordinance (Albemarle County Code § 17-100 *et seq.*) up to a maximum of an eighty percent (80%) removal rate for each phase.

8. **Greenway Dedication** - The Owner shall dedicate in fee simple a minimum 4.5 acre "Greenway" to Albemarle County. The land to be dedicated as the Greenway is identified on the Application Plan as "*Greenway Area dedication to Albemarle County*", and shall include all flood plain area along Powell Creek. The Owner shall complete the improvements shown on the Application Plan and shall dedicate the Greenway to the County at the time of the first site plan or subdivision plat approval. The Owner shall be responsible for the cost of a survey and preparing the deed to convey the Greenway to the County.

9. **Greenway Connection** - Upon the request of the County, the Owner shall contribute \$50,000 cash to the County to provide pedestrian access to and costs for a signalized, at-grade pedestrian crossing across Route 29 to connect Hollymead Town Center with Hollymead Drive. The final location and construction elements for the trail shall be determined by the Director of Parks and Recreation in consultation with the County Engineer. The location for the at-grade crossing and signal shall be determined by the County Engineer in consultation with the Director of Parks and Recreation and VDOT.

10. **LEED Standards for Core and Shell Development** - The Owner shall cause the commercial buildings in the Project to be designed and constructed to meet minimum standards for certification (twenty-three (23) credit points) under LEED Green Building Rating System for Core and Shell Development as set forth in the U.S. Green Building Rating System, Version 2.0, July 2006. Prior to the issuance of a building permit, the Owner shall submit a certification from a LEED certified architect to the Director of Community Development that the buildings meet LEED standards. Before the Owner requests that a certificate of occupancy for any building for which a licensed architect rendered such a certificate, the Owner shall submit to the County's Director of Community Development a written statement from the architect that the building was built to the plans on which the certificate was based.

11. **Additional Public Space** - The Owner shall construct a plaza area, as identified as "Plaza Amenity" on the Application Plan, within the Project of no less than 5,000 square feet for the purpose of public gathering and passive outdoor recreation. The plaza shall contain areas of permanent outdoor seating, a water feature, and landscaping, the design and construction which shall be subject to final site plan review and subject to the satisfaction of the Director of Planning.

WITNESS the following signature:

HM ACQUISITION GROUP, LLC

By: HM Capital Group, LLC, Manager

By: Octagon Partners, LLC, Authorized Agent

By: (Signed) J. P. Williamson
Manager

Mr. Cilimberg noted that staff also recommends approval of SP-2005-027 with one condition.

Mr. Slutzky offered **motion** to approve SP-2005-027, subject to the one condition recommended by the Planning Commission. Mr. Dorrier **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

(Note: the condition of approval is set out below:)

1. There shall be no more than three (3) drive-in windows (lanes) including any to be used for an ATM.

Mr. Davis noted that proffers dated September 10, 2007, and signed September 12, 2007, are applicable to ZMA-2007-001.

Mr. Slutzky then offered **motion** to approve ZMA-2007-001 subject to acceptance of the applicant's Proffers dated September 10, 2007, the Code of Development dated September 12, 2007, General Development Plan (on file in Clerk's office) dated August 31, 2007. Mr. Dorrier **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

PROFFER FORM

Date: September 10, 2007

ZMA #: ZMA 2007-001 Hollymead Town Center Area A-2

Tax Map Parcel Numbers: 32-50, 32-45, 32-46 and 32-44 (portion)

44.5 Acres to be rezoned from RA to NMD

In conjunction with the General Development Plan entitled, "ZMA Application Plan for NMD Portion of

Hollymead Town Center Area A-2 dated March 13, 2006 (revised August 31, 2007) and Hollymead Town Center Area A-2 MA 2007-001 Rezoning Application Neighborhood Model District and Code of Development dated September 12, 2007

Tax Map Parcel Numbers: 32-50, 32-45, 32-46 and 32-44 (portion), comprising 44.5 acres are subject to rezoning application ZMA 2007-0001 and to this Proffer Statement (the "Property"). The Property is described with more particularity on a plan entitled, ZMA Application plan for NMD Portion of Hollymead Town Center – Area A-2, dated March 13, 2006 (revised August 31, 2007), and attached hereto as **Exhibit A** (the "General Development Plan"). The Owner of the Property is HM Acquisition Group, LLC, a Virginia limited liability company (the "Owner").

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property to Neighborhood Model District (NMD) as requested, the Owner shall develop the Property in accord with the following proffers pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. These conditions are voluntarily proffered as part of the requested rezoning, and the Owner acknowledges that the conditions are reasonable. If rezoning application ZMA 2007-001 is denied, these proffers shall immediately be null and void and of no further force and effect.

1. **Affordable Housing.** The Owner shall provide affordable housing equal to twenty percent (20%) of the total residential units constructed on the Property, in the form of for-sale condominiums and townhouses, and for-rent condominiums, townhouses, apartments and accessory units. At least 40% of the affordable units will be in the form of for sale condominiums and townhouses. Each subdivision plat and site plan for land within the Property shall designate the lots or units, as applicable, that will, subject to the terms and conditions of this proffer, incorporate affordable units as described herein, and the aggregate number of such lots or units designated for affordable units within each subdivision plat and site plan shall constitute a minimum of twenty percent (20%) of the lots in such subdivision plat or site plan.

The Owner may "carry-over" or "bank" credits for affordable units in the event an individual subdivision plat or site plan designates affordable units that in the aggregate exceed the twenty percent (20%) minimum for such subdivision plat or site plan, and such additional affordable units may be allocated toward the twenty percent (20%) minimum on any future subdivision plat or site plan, provided however, that the maximum number of affordable units that may be carried over or banked shall not exceed twenty percent (20%) of the total units on any subdivision plat or site plan.

The Owner shall convey the responsibility of initially constructing the affordable units to the subsequent owners of lots within the Property. With the written approval of the County's Subdivision Agent, the Owner or its successors may revise which lots and unit-types are designated on the subdivision plat or site plan that will contain affordable units as provided under this proffer; provided that the number of the lots so designated shall not be reduced. The actual owner at the proposed time of construction shall offer units affordable to households with incomes less than eighty percent (80%) of the area median income such that housing costs consisting of principal, interest, real estate taxes and homeowners insurance (PITI) do not exceed thirty percent (30%) of the gross household income.

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 successors 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 the County of Albemarle (the "County") or its designee to be used to address affordable housing. Each dwelling unit qualifying under these parameters counts as one (1) affordable unit.

B. **For-Rent Affordable Units.**

(1) **Rental Rates.** The initial net rent for each for-rent affordable unit shall not exceed the then-current and applicable maximum net rent rate as published by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent affordable unit may be increased up to three percent (3%). For purposes of this proffer statement, the term "net rent" means that the rent does not include tenant-paid utilities. The requirement that the rents for such for-rent affordable units may not exceed the maximum rents established in this Proffer 1B shall apply for a period of ten (10) years following the date the certificate of occupancy is issued by the County for each for-rent 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").

(2) **Conveyance of Interest.** All deeds conveying any interest in the for-rent affordable units during the Affordable Term shall contain language reciting that such unit is subject to the

terms of this Proffer 2. In addition, all contracts pertaining to a conveyance of any for-rent 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 Proffer 1B. At least thirty (30) days prior to the conveyance of any interest (other than for the securing of a mortgage or deed of trust) in any for-rent 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 Proffer 1B(2) have been satisfied.

(3) **Reporting Rental Rates.** During the Affordable Term, within thirty (30) days of each rental or lease term for each for-rent affordable unit, the then-current owner shall provide to the Albemarle County Housing Office a copy of the rental or lease agreement for each such unit rented that shows the rental rate for such unit and the term of the rental or lease agreement. In addition, during the Affordable Term, the then-current owner shall provide to the County, if requested, any reports, copies of rental or lease agreements, or other data pertaining to rental rates as the County may reasonably require.

2. **Road Improvements.** Within one (1) year after approval of this rezoning, the following streets shall be completed:

A. Meeting Street from the intersection of Town Center Drive to the northern boundary of Area A. Meeting Street will have two northbound and two southbound travel lanes, one northbound and one southbound bicycle lane. Initially, one lane in each direction may be utilized as on-street parking

B. Town Center Drive (Previously Access Road A) from the Eastern edge of the NMD zoning boundary at the intersection of Meeting Street to its intersection with State Route 606, also known as Dickerson Road. This section of Town Center Drive shall be constructed to accommodate two travel lanes, with a cross section approved by the county and VDOT in a minimum 60-foot wide right-of-way.

For purposes of this Proffer 2., construction of each street shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the owner has obtained from the County Engineer a written determination that the street is safe and convenient for traffic.

The road improvements listed herein shall be constructed in accordance with the NMD Code of Development as approved as part of ZMA-07-0001, and with road plans submitted by the Owner and approved by the Virginia Department of Transportation ("VDOT").

3. **Public Transit Stop Construction.** The Owner shall construct two public transit stops within Hollymead Town Center Area A-2. The location of the public transit stops shall be identified on the approved General Development Plan and retained in the County files. The locations shall be approved by the Director of Planning prior to approval of the first subdivision plat or site plan for Hollymead Town Center Area A-2. Construction of the public transit stops shall occur in conjunction with improvements for the subdivision plat or site plan or the public street plans which include the area for the transit stops. The design of each public transit stop shall be subject to approval by VDOT and the County Engineer, and shall include no less than 200 square feet of paved surface and two benches.

4. **Cash Proffer.** Beginning with the 151st Market Rate unit, the Owner shall contribute cash on a per dwelling unit basis for the purposes of funding Berkmar Drive Extended, other County infrastructure, transportation, public safety, school, parks and library improvements. The cash contributions shall be: \$12,400 cash for each attached/townhouse/condominium dwelling unit, other than an affordable dwelling unit ("Market Rate Unit"), and \$11,900 cash for each multifamily/apartment dwelling unit other than an affordable dwelling unit ("Market Rate Unit"). Such cash contribution shall be paid at the time of the issuance of the building permit for each new unit.

Beginning January 1, 2008, 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 Comparative Cost Multiplier, Regional City Average, Southeast Average, Category C: Masonry Bearing Walls issued by Marshall Valuation Service (a/k/a Marshall and Swift) (the "Index") or the most applicable Marshall & Swift index determined by the County if Marshall & Swift cease publication of the Index identified herein. 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 Index as of December 1 in the year preceding the calendar year most recently ended, and the denominator of which shall be the Index 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.

5. **Greenway.** The Owner shall dedicate in fee simple a minimum 7.6 acre "greenway" to Albemarle County for public use. The dedication is identified on the Application Plan as "*Greenway Area dedication to Albemarle County*", and shall include a strip of land that runs along Powell Creek with a minimum width of 50 feet on the each side of Powell Creek, subject to the limitations of the Property boundary. The dedicated area will also include all flood plain area along Powell Creek within the Property boundary. The Owner shall complete the improvements shown on the General Development Plan and shall dedicate the Powell Creek Greenway to the County at the time of the first site plan or subdivision plat approval. After it is dedicated to public use, the Greenway Area shall continue to be included in the total area of open space and amenities within the Property. If the Greenway is not dedicated by

subdivision plat, the Owner shall be responsible for the cost of a survey and preparing the deed to convey the Greenway to the County

6. **Pocket Park.** In conjunction with the subdivision plat or site plan that includes the land described in this Proffer 6, the Owner shall establish an approximately 10,000 square foot pocket park (the "Pocket Park"), located on the northern edge of Block B-1 fronting Town Center Drive as shown on the General Development Plan, and shall include all such improvements, landscaping and other features identified in the Code of Development. The Pocket Park shall be included in the total area of open space and amenities within the Property. The subdivision plat or site plan shall include a note stating that the Pocket Park is reserved for future dedication to the County of Albemarle and, upon the request of the County, the Owner shall dedicate in fee simple the Pocket Park to the County. If the Pocket Park is not dedicated by subdivision plat, the Owner shall pay the costs of surveying the Pocket Park, preparing one or more plats thereof and preparing and recording one or more deeds of dedication.

7. **Recycling Center or Other Community Facility.** Upon the request of the County, the Owner shall dedicate in fee simple a two (2) acre parcel of land for use by the County or its designee as a Recycling Center, or other community facility identified in the CIP, to be located in an area most appropriate for such use as agreed by the County and the Owner. If the land for the Recycling Center or Community Facility is not dedicated by subdivision plat, the Owner shall pay the costs of surveying the land, preparing one or more plats thereof and preparing and recording one or more deeds of dedication.

8. **Recreational Facilities.** The Owner shall contribute \$500.00 cash per residential unit, to be paid at the time of issuance of each building permit, for the purpose of funding the expansion or new development of regional outdoor recreational facilities as determined by the County Parks and Recreation Department.

9. Critical Slopes, Erosion and Sediment Control and Stormwater Management.

E. **Critical Slopes.** The Owner shall apply for critical slope waivers for any roads located in critical slopes governed by § 18-4.2 *et seq.* of the Albemarle County Code.

F. **Erosion and Sediment Control.** The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional erosion and sediment controls to achieve a sediment removal rate of eighty percent (80%) for the Property. (As a reference, current regulatory structural measures achieve a 60% optimal removal rate.)

G. **Revegetation.** Within nine (9) months after the start of grading under any erosion and sediment control permit, permanent vegetation shall be installed on all the denuded areas, except for areas the Program Authority determines are otherwise permanently stabilized or are under construction with an approved building permit. A three (3) month extension for the installation of permanent vegetation may be granted by the Program Authority due to special circumstances including but not limited to weather conditions.

H. **Stormwater.** The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional stormwater management to achieve a removal rate 20% better than would otherwise be required by the Water Protection Ordinance (Albemarle County Code § 17-100 *et seq.*) up to a maximum of an eighty percent (80%) removal rate for each phase.

10. **LEED Standards for Core and Shell Development.** The Owner shall cause the commercial and mixed-use buildings in the Project to be designed and constructed to meet minimum standards for certification (twenty-three (23) credit points) under LEED Green Building Rating System for Core and Shell Development as set forth in the U.S. Green Building Rating System, Version 2.0, July 2006. Prior to the issuance of a building permit the Owner shall submit a certification from the LEED certified architect to the Director of Community Development that the building plan meets LEED standards. Before the Owner requests that a certificate of occupancy for any building for which a licensed architect rendered such a certificate, the Owner shall submit to the County's Director of Community Development a written statement from the architect that the building was built to the plans on which the certificate was based.

11. **Phasing Plan.** Prior to the issuance by the County of a building permit that would authorize the construction of any square feet of gross floor area (aggregate) of commercial and office gross floor area within the Property, building permits shall have been issued by the County for at least 100 dwelling units. Prior to issuance by the County of a building permit that would authorize the construction of more than 200,000 square feet of gross floor area (aggregate) of commercial and office gross floor area within the Property, building permits shall have been issued by the County for at least 600 dwelling units.

12. **Willow Glen Connection.** Upon the request of the County, the Owner shall dedicate for public use a public right-of-way determined to be appropriate by VDOT and the County Engineer, extending from Town Center Drive to the Property's boundary with the proposed Willow Glen development, as shown on the General Development Plan and within Block C6 as shown on the Block Plan (the "Willow Glen Connection"). Upon the request of the County, the Owner shall grant all necessary drainage easements required for the Willow Glen Connection and all temporary construction easements to appropriate parties, including the developer of the proposed Willow Glen development, to allow the construction of the Willow Glen Connection. Approval of the County Engineer and the Owner for the location of the connection to Willow Glen may be shifted from the area shown in the General Development Plan to a more suitable

location to both the Owner and the County which still provides access from Willow Glen to Town Center Drive.

13. **Community Development Authority.** Upon the request of the County, Owner shall petition for and consent to a Community Development Authority (“CDA”) established pursuant to Section 15.2-5152, et seq. of the Code of Virginia (“Code”) to be created, excluding residential property within the Property, for the purpose of financing, funding, planning, establishing, constructing, reconstructing, enlarging, extending, or maintaining (except to the extent VDOT maintains any public improvements) Route 29, and roads and other improvements associated therewith.

WITNESS the following signature:

HM ACQUISITION GROUP, LLC

By: HM Capital Group, LLC, Manager

By: Octagon Partners, LLC, Authorized Agent

By: (Signed) J. P. Williamson
Manager

Mr. Slutzky then offered **motion** to approve the waiver requests as recommended by the Planning Commission. Mr. Dorrier **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

Waiver Requests

HM Acquisition Group LLC, (“Applicant”), owners of Hollymead Town Center – Area A (ZMA-05-0015) submits this request for 16 waivers or modifications of the Zoning Ordinance. Sections of the ordinance have been copied into the report for the Commissioner’s reference. The language from the Zoning Ordinance will be found in italics, with the Applicants request with reference to the Code of Development in bold.

1. SECTION 4.11.1 COVERED PORCHES, BALCONIES, CHIMNEYS AND LIKE FEATURES

4.11.1 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 request is to allow for the following features to extend beyond the build-to line in the front of houses up to five (5) feet with a one (1) foot minimum distance setback from the right-of-way: porches, porch stairs, decks, balconies, bay windows, entrance stoops, planters, chimneys, and other similar structures. Alternate standards are contained in The Code of Development (*Built Form Standards – Lot and Building Height Regulations, Section 3, page 20*).

2. SECTION 4.12.6 MINIMUM NUMBER OF REQUIRED PARKING SPACES FOR SCHEDULED USES

4.12.6 Except when alternative parking is approved as provided in section 4.12.8, the following schedule shall apply to determine the number of required off-street parking spaces to be provided in a particular situation. If a particular use is not scheduled, then section 4.12.7 shall apply.

The request is to allow the application of the parking schedule for shopping centers (200,000 – 600,000 sq. ft.), 4.5 spaces per 1,000 square feet gross leasable floor area, to be the standard schedule for all non-residential square footage in the NMD as per Table H in the Code of Development.

3. SECTION 4.12.9 STREET AND ALLEY PARKING

4.12.9 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.*

This section mandates that required on-street parking must abut the property it serves. The waiver request of Section 4.12.9 in accordance with Section 8.2 is to allow the use of on-street parking and alley parking to support the more compact Neighborhood Model format. Waiving this section would allow for parking that may not abut the lot toward which on-street parking counts. In a “pedestrian friendly” community this would allow for a more compact arrangement of buildings in any given area. The Code of Development (Parking Standards, Section 4, page 32) illustrates an alternative standard.

4. SECTION 4.12.13 LOADING AREAS (a, c, & e)

- 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.
- c. Loading spaces shall be provided in addition to and exclusive of any parking requirement on the basis of: (1) one (1) space for the first eight thousand (8,000) square feet of retail gross leasable area, plus one (1) space for each additional twenty-thousand (20,000) square feet of retail gross leasable area; (2) one (1) space for the first eight thousand (8,000) square feet of office space plus one (1) space for each additional twenty thousand (20,000) square feet of office space; or (3) one (1) space for the first ten thousand (10,000) square feet of industrial floor area plus one (1) space for each additional twenty thousand (20,000) square feet of industrial floor area.
- 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.

A waiver of this section would provide non-residential uses in a more traditional or new urbanist development form. In the Code of Development (Section 4, page 34) illustrates an alternative standard.

5. SECTION 4.15.5.A.1: OFF-SITE SIGNS

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

The applicant would like to allow for directory signs containing two or more businesses off-site from the lot where the business is located but within Hollymead Town Center. All other regulations for off-site signs shall apply to the district. The maximum size of off-site signs shall not exceed 24 square feet and such freestanding signage shall not exceed 12 feet in height without a special use permit. The Code of Development (Section 5, page 35) establishes an alternative standard.

6. SECTION 4.15.5.A.3: SIGNS IN PUBLIC RIGHTS-OF-WAY.

A.3 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 Code of Development (Section 5, page 35) establishes an alternative standard for signs to be permitted in public right of ways per County Engineer and VDOT approval

7. SECTION 4.15.11 – SIGNAGE SETBACKS

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:

Sign Type	Number of Signs Allowed	Sign Area (Maximum)	Sign Height (Maximum)	Sign Setback (Minimum)
Directory	1 or more per establishment, as authorized by zoning administrator	24 square feet, aggregated	6 feet	5 feet
Freestanding	1 per street frontage, or 2 per entrance, per lot with 100 or more feet of continuous street frontage plus 1 per lot if the lot is greater than 4 acres and has more than 1 approved entrance on its frontage	24 square feet, aggregated: if more than 1 sign, no single sign shall exceed 12 square feet	12 feet	5 feet
Projecting	1 per street frontage	24 square feet	30 feet, but not to exceed the top of the fascia or mansard	Not applicable
Temporary	1 per street frontage per establishment	24 square feet	12 feet, if freestanding sign; 20 feet, if wall sign, but not to exceed the top of the fascia or mansard	5 feet

Wall	as calculated pursuant to section 4.15.20	1 sf per 1 linear foot of establishment structure frontage, not to exceed 32 sf if residential wall sign, or 100 sf if non residential wall sign	20 feet, but not to exceed the top of the fascia or mansard	Same as that applicable to structure
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This section applies a five-foot setback from the right of way for signs. Such restrictions may conflict with the Neighborhood Model streetscape design. In addition, all right of ways in Area A will have a six-foot planting strip and five-foot sidewalk and will extend at least one foot beyond the sidewalk. Therefore signage would be at least 12 feet from any curb. As per The Code of Development (Section 5, page 35) we request that the setbacks established for signs from the right-of-way be reduced so long as the location is approved by VDOT and the County Engineer.

RECREATION REGULATIONS (SECTION 4.16.2 AND 4.16.3.3)

8. SECTION 4.16.2

This section applies standard regulations for recreational amenities for various development forms and density. Due to its length, this section has not copied it into the body of this report.

The Code of Development (Section 2, pages 15) is specific as to where, how large, and what fixtures will be included in the amenity and open space areas. This includes a central plaza, a linear park, a greenway, series of pocket parks, trails, and a clubhouse with a pool. Waiving 4.16.2 eliminates any potential and unforeseen conflicts between the minimum recreational facilities established in this section and the standards established in the Code of Development.

9. SECTION 4.17.4.B.1 (LIGHTING) STANDARDS

4.17.4.B.1 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 luminaries onto public roads and property in residential or rural areas zoning districts shall not exceed one-half (1/2) 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. (Amended 10-17-01).*

The Code of Development (Section 5, page 35) establishes street lighting standards, as well as modifications where deemed necessary. We request that this section be waived because it does not support a more compact development form required by the Neighborhood Model within the Hollymead Town Center.

10. SECTION 5.1.16 SWIMMING, GOLF, TENNIS CLUBS

5.1.16 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 required distance identified in this section for the location of neighboring lots (75 feet) would dictate a more suburban development for the club. We request that this section be waived because it does not support a more compact development form required by the Neighborhood Model. The club will be located close to neighboring residential lots as an integral neighborhood feature, however will not be located within 125 feet of any existing property line not associated with Area A2. Further, we would like to allow for concessions to be allowed without a special use permit.

11. SECTION 8.5.1.D.6 APPLICATIONS AND DOCUMENTS TO BE SUBMITTED (TRIP GENERATION FIGURES)

The applicant requests to waive this requirement. A traffic impact analysis has been conducted as part of the Hollymead Town Center Master Plan and Places 29 traffic modeling.

12. SECTION 21.7.2 & 3 MINIMUM YARD REQUIREMENTS

21.7.2 Adjacent to residential and rural areas districts: No portion of any structure, excluding signs, shall be located closer than fifty (50) feet to any residential or rural areas district. (Amended 7-10-85: 7-9-92)

21.7.3 Buffer Zone adjacent to residential and rural areas districts: No construction activity including grading or clearing of vegetation shall occur closer than twenty (20) feet to any residential or rural areas district. Screening shall be provided as required in section 32.7.9 (Amended 9-9-92)

A waiver of these sections is requested to address the presence of a small parcel of land zoned RA which is part of Area B located on the west side, and abutting Block D of Area A-2 Neighborhood Model District. It is also requested where Blocks A-1 and B-3 abut TMP 32-51 and TMP 46-4.

13. SECTION 32.7.9.8 SCREENING

32.7.9.8 The following requirements shall apply to screening:

- a. *When required, screening shall consist of a planting strip, existing vegetation, a slightly opaque wall or fence, or combination thereof, to the reasonable satisfaction of the agent. Where only vegetative screening is provided, such screening strip shall not be less than twenty (20) feet in depth. Vegetative screening shall consist of a double staggered row of evergreen trees planted fifteen (15) feet on center, or a double staggered row of evergreen shrubs planted ten (10) feet on center. Alternate methods of vegetative screening may be approved by the agent. Where a fence or wall is provided, it shall be a minimum of six (6) feet in height and plantings may be required at intervals along such fence or wall. (32.8.6.1, 7-10-85; Amended 5-1-87)*
- b. *Screening of parking lots shall not be counted toward the interior landscaping requirement. When screening is required along the frontage of public streets, the agent shall determine if the street tree requirement has been met. (32.8.6.2, 7-10-85)*
- 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. (32.8.6.3.c.5, 7-10-85; Amended 5-1-87)*
 4. *Double frontage residential lots shall be screened between the rear of the residences and the public right-of-way when deemed appropriate by the agent. (32.8.6.3.d, 7-10-85; Amended 5-1-87)*
 5. *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. (32.8.6.3.f, 7-10-85; Amended 5-1-87)*

We request that screening requirements be replaced with the standards in the Code of Development (Section 5, page 36). For all other objectionable features internal to the site, screening will be dictated by standards established by the developer, but not included in the Code of Development.

(At 9:54 p.m., the Board recessed, and the reconvened at 10:15 p.m.)

(Note: For the benefit of the public who was present, Mr. Boyd noted that the applicant has requested deferral of ZMA-2006-009 (Agenda Item #14) to October 3rd for a work session.)

Agenda Item No. 13. **Public Hearing:** ZMA 2005-00017. Biscuit Run. PROPOSAL: Rezone approximately 828 acres from R-1 Residential (1 unit/acre), and R-2 Residential (2 units/acre) Districts to NMD Neighborhood Model District which allows residential (3 - 34 units/acre) mixed with commercial, service and industrial uses. Number proposed residential units: maximum 3,100. A maximum of 150,000 square feet of Commercial uses are proposed also. PROFFERS: Yes. MAGISTERIAL DISTRICT: Scottsville. (Notice of this public hearing was advertised in the *Daily Progress* on August 27, 2007 and September 3, 2007).

Mr. Cilimberg reported that this plan has undergone a few modifications since the Board's August 8th, 2007 work session. The buffer that was already planned has been widened as a preservation area near Mill Creek South and is currently shown as having a 200 foot minimum. He stated that the applicant is not asking that the LEED proffers be credited against their proffer obligations. The developers are providing for 15 percent affordable units on their property. The connector road in the design is planned as a "T" intersection into Mill Creek South. As in the past, it has been discussed that this connector road will

not be constructed until it is deemed necessary by the Board of Supervisors. Until this time, it will be used as a pedestrian and emergency road.

Mr. Cilimberg spoke about the new cash proffer for a stream monitoring station and a new cash proffer for a new Boys and Girls Club facility at Southwood Mobile Home Park. He referred to a list, which was handed out by Mr. Graham, in which the values determined for the project are in comparison to the expectations in proffers that address impacts to capital facilities. Mr. Cilimberg said that these establish what the applicant and staff have estimated in value, and the differences in a few areas. The outstanding questions relate to proffer 7E, which is a permanent transit service provided privately by the developer for the project, the previous \$1,000,000 for Habitat for Humanity, and the future improvements to Old Lynchburg Road.

Mr. Graham stated that staff believes that there are two issues with proffer 7E; the first being they are not sure how effective this proffer will be. He noted that there is also a question regarding what kind of private transit service will satisfy the proffer. For example, someone could take a minivan and travel through the project once in the morning and once in the afternoon, and say they have satisfied the proffer. His concern is that it is a complex proffer and the staff will find it difficult to administer. There is a potential conflict built into the process in that there is an assessment that has to be paid. If a homeowner does not pay the assessment, beyond a zoning violation for Biscuit Run, he conceivably would be filing a lien against the property owner for the assessment. He does not see a benefit with this proffer. He would prefer to see the value of credit that the developer has agreed upon and divide it among the 2,635 market rate units and adjust proffer 15 to account for that.

Mr. Rooker said he feels there has been good effort in this plan and he understands the reason for interest in this proffer. He believes that when staff has the chance to think through this plan, that staff would realize it would be almost impossible to administer. Mr. Rooker said that if the Board wants to accept the proffer funds and ultimately devote money to transit they should make that decision at an appropriate time. His other concern is that the future residents of Biscuit Run would receive a minimal level of transit service. The residents would wonder why other communities, such as Hollymead and Pantops, are not paying home owners association dues to finance their transit. He also questioned whether or not these contributions would continue to be made for any length of time.

Mr. Slutzky said that he understands the concern the staff may have on the subject of collecting every "nickel" in the proffer. This is an excellent proffer because it is the first time that the County would have home owner association members committed to transit. He believes that if the Board is going to embark on an effort to try and get residents off the roads and into a transit system, they will find an increasing number of homeowner associations willing to participate in the funding of transit for their own development. He realizes that this is a most unusual proffer but he imagines that resident's would be more likely to take advantage of the transit system if they are already paying for it through their homeowner association fees.

However, Mr. Slutzky said he believes it is plausible that some resident's may disagree with paying \$5. It is a potential problem if it turns into a "homeowner's rebellion." Mr. Slutzky stated that this is a creative way for the County to encourage transit ridership and have a sustainable payment strategy for transit service in the community.

Mr. Rooker asked if the residents would still have to pay a transit fee to get on the bus even though they have already paid their homeowners association dues.

Mr. Slutzky said that he is not sure if there would be an additional fee, but if there is the residents would have to pay it. He thinks this is a unique opportunity for the County to get transit riders and it is set up in a way that if it does not work out, the service can be stopped, and would go away. He does not know why the people in the community would want to get into their cars and drive if they have good transit service.

Mr. Boyd asked Mr. Graham if he is concerned with what would happen in the event the homeowners association failed or decided not to pay. What would staff do then?

Mr. Graham said that is one of his biggest concerns. The "what if" question concerns him. If 100 people refuse to pay the fee, this would be an actual zoning violation. He questioned how many residents it would take in order for staff to enforce the policy. There is also the possibility of this proffer changing, and having to get all the property owners (potentially 2,000) to agree to the change.

As an example, Mr. Slutzky referenced the North Pointe development. There are about ten sedimentation basins throughout the property and the maintenance is the responsibility of the homeowners association. Every month the homeowners association is paying an assessment, a portion of which is attributable to the maintenance of the basins. If the homeowners decided they did not want to pay for the dredging of those sedimentation basins because they did not see them as being in their interest, what would happen?

Mr. Graham said staff built into the Water Protection Ordinance a mechanism for property owners to turn the basins over to the County for ownership and maintenance, specifically because they had circumstances where the property owners did not maintain the facilities. Eventually the County inherited the facility.

Mr. Slutzky said if the homeowners do not want to have bus service, they will get that across to the Board and the County can stop it. He thinks it is far more likely they will pay the fee and ride the bus,

with guaranteed service coming to their homes daily to alleviate the need to have a car. He personally wants to see the transit system thrive.

Mr. Wyant said the homeowners association is responsible for paying the \$5 monthly fee to the County. How they collect that fee is up to them.

Mr. Rooker commented that the homeowners association is not a party to the proffers. The proffers run with the property owner.

Mr. Graham said he is also concerned about potential staff time needed for administering this proffer versus the value of the proffer.

Mr. Slutzky reiterated that the County has a means for enforcing proffers. This really is a part of their homeowners' association fees.

Mr. Boyd asked what is done if people decide they won't pay their homeowners' association dues.

Mr. Davis responded that it is a covenant, and homeowners' association covenants usually provide the mechanism for how they would enforce them. Under State law, they could place a lien against the property or get a judgment against the homeowner.

Mr. Rooker said that he is not sure what kind of guarantee to provide transit is being made by the County. What happens if the County provides transit and there is almost no ridership. Do we continue to collect the \$5 monthly fee and spend \$300,000 to \$400,000 per year to provide the routes?

Mr. Slutzky stated that he would like to take a chance on this because he believes that not only will this transit be well received in the community, but it is also an innovative way to get funding for the operating budget for a bus route that will engage homeowners into using transit.

Mr. Dorrier said that he feels that the transit system should be the responsible party when it comes to money collection.

Mr. Rooker does not believe this proffer will work that way because the Board does not have any authority to direct the money from the homeowners association to another entity. The money has to first come to the County.

Mr. Davis said this proffer is structured such that the homeowners association is responsible for collecting the \$5 fee. They are responsible for providing private transit until public transit is provided and once public transit is provided, they are responsible on a semi-annual basis of turning over the assessed money collected from the homeowners to the County to provide funding for public transit. If the homeowners association does not follow through with that, the County would have an action against the homeowners association. In reality the homeowners association is the property owners, so to enforce the proffer, the County would be enforcing it against property owners. It would be action against potentially 3,100 households.

Mr. Boyd said that since the Board was reviewing the issues individually, he would allow the applicant to speak.

Mr. Steve Blaine, representing the applicant, stated that before the County would go out after an individual homeowner they would have the right to exercise an option, under this proffer, to have the homeowners associations pay whatever accumulated funds have been collected thus far, and have an obligation to continue to pay to the County funds for public transit. This has worked in other areas of the State. There is a State Supreme Court case which shows that counties have the cause of action to enforce this type of proffer against a homeowners association. Mr. Blaine said that he realizes that this is a new thing being done but that it has been proven to work in other areas.

Mr. Boyd said he agrees with Mr. Slutzky, and this is an innovative attempt to give people the incentive to using public transportation. He believes that it is worth the risk. He envisions that the homeowners who must pay the \$5 are going to take advantage of the transit.

Mr. Wyant said he also agrees with Mr. Boyd and Mr. Slutzky. The County needs to try new ways of getting people out of their automobiles. There is a mass area involved with Biscuit Run, Mill Creek, and Lake Reynovia where this type of service is critical. The Board needs to look at the bigger picture.

Mr. Dorrier said that he supports the transit service and the collection of the fees by the homeowners associations. He believes that due to the fact that the fee is so minimal, there will not be any problem collecting it because traditionally homeowners' fees are more expensive. Mr. Dorrier said he does believe however, that they should work on improving the language in the proffers.

Ms. Thomas stated that she would hate to give this up because having transit for the community rather than having a bus run through it is the key to making this development work. She said that she wonders if because the homeowners will be paying a fee, if a compromise could be reached in which the riders would not have to pay an additional sum in order to use this service. Generally, she does not like to support something that staff sees as a potential problem, but she is in favor of this proffer as written.

Mr. Rooker said there are at least four Board members in support of the proffer and this proffer is not a reason that would cause him not to support the development.

Mr. Graham said the second issue is that there is a cash proffer credit for something outside of the proffers. He notes that the \$1 million that has been mentioned is not actually in the proffers. This amount is contained in a separate agreement for acquisition of right of way, which is between Habitat for Humanity and the applicant so that they can build the east-west connector. Mr. Graham believes that this east-west connector is an essential part of this rezoning and if this part of the plan did not exist, he could not imagine staff recommending approval of this rezoning. The applicant could have put the east-west connector further south through their property, but the problem is that the applicant would have had to do more improvements to South Fifth Street/Old Lynchburg Road and possibly spent much more money making the necessary improvements. The real question for staff was did the Board consider this an appropriate credit against the cash proffer policy recognizing this as outside of the proffers and part of a road that is an essential part of this development?

Mr. Rooker asked if the applicant did not purchase the right-of-way and Habitat came in with a plan to rezone the property, would the County require a connection and dedication of right-of-way. Mr. Graham responded, "yes". Mr. Rooker asked if because it is possible that it would be a long time before Habitat would come to the Board with a rezoning request to make this connection, the County would have to take the property through eminent domain? Mr. Graham said that is correct. Mr. Rooker asked if the value put on the acreage is reasonable with respect to the right-of-way. Mr. Graham replied, "yes". He does not think the value is the question. The question is that it is falling outside of the proffers and part of a roadway that is necessary for this to be a favorable development.

Ms. Thomas said that she wonders if this is telling that Board that they are going to be putting aside \$1 million for that piece of transportation for that year because anything we take out of the cash proffer item is essentially earmarking part of the cash proffer. She thinks that it is a good idea for staff to ask "is this what we want to do with the \$1 million of the proffer money?" Ms. Thomas stated that this is \$1 million less than they have in the CIP and she is supportive with doing it this way.

Mr. Dorrier said that in fact there is \$1 million for affordable housing and because Habitat is in the habit of creating housing for the needy it is a step in the right direction for the Board to support this.

Mr. Slutzky stated that he thinks in this instance this earmark is appropriate and that he is comfortable with giving credit for it.

Mr. Rooker said that there is a significant value in being able to have the money paid upfront, and this is one of the reasons he believes that this is a reasonable proffer.

Mr. Wyant and Mr. Boyd also expressed their support.

Mr. Slutzky added that the Board is being guaranteed this connection against the possibility that they might not get it for a long time.

Mr. Graham said the third issue has to do with whether a credit is appropriate for road improvements in the City. The question is recognizing that the cash proffer policy captures transportation impacts that are in the CIP and/or Master Plans, and does not include improvements in the City. This is an impact above and beyond what we are currently capturing in our cash proffer policy. With that being said, proffer 16 gives a future Board the option to decide if that is the best way to address those impacts by giving the escrowed funds to the City or some other appropriate use to address impacts associated with Biscuit Run.

Mr. Slutzky stated that he believes the County is bringing about a substantial impact on the City and he thinks that credit should be given.

Mr. Rooker said that he agrees that the Board should try and address impacts on the City and County. He would like to go on record saying that the money needs to go where it is intended to go, and that is to the City for impacted roads (primarily Old Lynchburg Road area).

Mr. Graham said that is an important point in the way the proffer is worded. The distributions from the escrow account are made at the direction of the Board at some future date as the monies are collected.

Mr. Davis commented that the escrow agent can only release the funds to the City upon instructions that it be used for that purpose in the City as indicated by Mr. Rooker.

Board members confirmed that the proffer was acceptable.

Mr. Graham commented on the administrative burden to staff these proffers will bring. This is probably the most complicated set of proffers that staff is going to be administering. He believes that with a project of this size and concern, it requires special attention. He added that if staff is seeing a shift in the complexity of proffers in this direction, he may have to come back to the Board to either reduce the staff's work plan, or to look at increasing staff because this rezoning is going to put a much larger burden on staff than any other rezoning that has been done recently.

Mr. Cilimberg summarized that with the Board's acceptance of what the applicant has offered as additional credit against the \$41,150,000 impact of the project, the project result is a \$17 surplus; or one

penny per unit. With this being the case and in consideration of the expectations and recommendations of the Planning Commission and the Board from their work sessions staff recommends approval of the zoning map amendment, the Application Plan, Code of Development, and waivers for parking and loading study and lot layout.

Mr. Davis said that the proffer draft that he handed out is in a format that shows the changes that occurred since the Board received its packet of information. They are basically clarifications of existing language, legal change in ownership of part of the parcels that have been changed into LLC's, proffer signatures, and other basic clarifications conforming to the proffer policy.

Mr. Rooker asked if staff is comfortable with these proffers as submitted. Mr. Davis said staff spent a lot of time on the proffers in the past few weeks, the applicant worked in great cooperation with staff, and he believes they have a document that is in a form acceptable to the Board.

Mr. Boyd asked the applicant to come forward at this time.

Mr. Hunter Craig, the applicant, said that this plan is the result of a tremendous amount of work and hundreds of meetings over the last two years. From the start they met with every interested constituent group including Southwood Mobile Home Park, Homeowner Association's of Mill Creek South, Mill Creek North, Lake Reynovia, and Mosby Mountain, Scottsville Town Council, Piedmont Environmental Council, Southern Environmental Law Center, The Covenant School, Virginia Polo, and others. They did a number of things to address concerns raised by these organizations and the residents along Old Lynchburg Road. They listened to everything that everyone said. He believes that this will become the "gold standard" for a neighborhood model plan. He thinks this plan will further the Board's policy to direct growth in the growth area and restrict growth in the rural areas. He also wants to stop growth in the rural area and plans to meet with the Sierra Club and others to discuss how this can be discouraged. In his opinion Biscuit Run is a great plan and they are trying to exceed expectations. Mr. Craig then asked Ms. Beth Hessler of Torti Gallas & Partners, Inc., to discuss the key elements of this plan.

Ms. Hessler said she participated in the development of the Neighborhood Model with the County a few of years ago. She has provided Board members with a handout that illustrates the current plan and demonstrates some of the touch points of the Neighborhood Model principles. The handout highlights where the developer's plan meets and exceeds the principles. They believe this is an excellent plan, would be an excellent place to live, and is an excellent example of what the neighborhood model was set out to do. It mixes commercial and residential uses within the same neighborhood. It provides a mix of housing types, from single family homes to apartments to accommodate different levels of affordability within the residential area of a communal neighborhood. The most important element of the neighborhood model and how it applies to Biscuit Run is the overarching concept of walkability; 90 percent of the homes within the development are within five blocks of transit stops, the amenities, neighborhood shops, and a variety of open spaces. The streets and sidewalks are designed to be pleasant for travel either by car or by foot. There are miles of trails within the project that goes on to connect directly into the larger Rivanna trail system. This plan utilizes an alley system of parking cars within residential neighborhoods and camouflages parking within the blocks within the commercial areas to make that walkability more available and more pleasant to be part of. She is proud to present this plan as it realizes the vision for walkability and embodies the goals of the Neighborhood Model.

There being no questions from Board members for the applicant, Mr. Boyd opened the public hearing.

Mr. John Cruickshank, representing the Piedmont Group of the Sierra Club, said they have been collecting signatures on a petition to the Board requesting to conduct an environmental impact analysis which should be used in making a decision on the Biscuit Run rezoning request. The petition, signed by 956 individuals, reads as follows:

"The Biscuit Run development, if built, will add thousands of new residences and new commercial spaces in the Scottsville District of Albemarle County. Biscuit Run would increase traffic and air pollution, lower water quality, and reduce wildlife habitat in surrounding rural areas. However, the full affects of building this development on surrounding natural systems have been little studied. We, the undersigned, living in Albemarle County and the City of Charlottesville, urge the Albemarle County Board of Supervisors to conduct a full analysis of the impact of the proposed Biscuit Run development on surrounding rural areas before making a decision on the rezoning of this property. We urge that the Biscuit Run proposal be approved only if it can be shown that the project will maintain and or elevate the quality of life for existing residents and only if it can be shown to be consistent with the commitments to environmental protection and sustainability would occur widely in Albemarle County planning and policy documents. We feel that this type of analysis should be done on all major types of developments in the future and we would like you to being with Biscuit Run."

Mr. Scott Walk, the current President of the Mill Creek South Homeowners Association, said that he had a couple of concerns about how this development will impact life in their neighborhood and the community at large because it will abut their neighborhood to the south. He said that one of his main concerns was with the connector road issue and he was pleased to hear that as of now this road will not be built and will be used as a pedestrian bicycle path and an emergency access road. He asked for the Board to follow that recommendation because if it were to be open to regular vehicular traffic it would tremendously impact the Mill Creek neighborhood in a negative way. Mr. Walk said that this would exacerbate traffic issues on Avon Street. He would like for the Board to take the stand that the only way that this connector road would be opened for regular traffic is if the Mill Creek Board and neighborhood

wants it. He believes that the only circumstance in which their Board would want that to happen is if the proposed school in Biscuit Run served the Mill Creek children. The other issue of concern is the proposed buffer between Biscuit Run and Mill Creek. The residents are encouraged that Biscuit Run is proposing a 200 foot buffer but he is concerned with the language in the proffer. After stating that the buffer will be 200 feet in width, it states "to the extent practicable the buffer will be left in its present state to preserve the natural features of the land unless necessary grading, utility installation and erosion and sediment control requirements dictate otherwise". He is concerned with the idea of utility installation being contained within that 200 foot buffer. That buffer could turn into a utility corridor. Mr. Walk urged the Board to keep abreast of that issue and prevent any greater disturbance in that buffer area. He asked the Board to be diligent in considering whatever foreseeable ramifications may occur in actions they take, and be cautious in their deliberations.

Ms. Audrey Dannenberg, a resident of the City of Charlottesville, said that she would like to persuade the Board of Supervisors to require an environmental impact study prior to giving approval to the Biscuit Run rezoning request. She stated that it would be irresponsible and shortsighted of local government to allow development without knowing what impact it would have on water supply, air pollution from increased traffic and runoff into the streams on the property. She commented that by setting a precedent with the Biscuit Run property and requiring an environmental impact study, this would become standard operating procedure before approving all potential developments. She asked for the Board of Supervisors to make sure they look at all prospective outcomes, both negative and positive, before it is too late.

Mrs. Barbara Cruickshank, a resident of Earlysville, said she is campaigning for the Board to require an environmental impact study on the proposal in order to understand the impact this development will have on our air quality and the health of all citizens. There are many unknowns. She has a copy of the 2007 American Lung Association State of the Air Report for Virginia. Although ozone levels have improved there are still many areas in Virginia that are receiving a failing grade. More troubling in this report is the particle pollution which is the most problematic for the health of the citizens. There is an ominous tread upward in all areas of the eastern part of the United States of particle ozone, and the number of areas that have received an "F" grade have doubled in just one year. This is a serious issue. According to Tom Jenkins, Richmond office of the Department of Environmental Quality, particle pollution is produced by industry, machines, truck and car emissions, and diesel engines in particular. All of these are a part of Biscuit Run and a big danger to the citizens.

Mr. Jack Marshall, speaking on behalf of the 300 members of Advocates for Sustainable Albemarle Population (ASAP), said the Biscuit Run development appears destined to be approved. ASAP believes this would be a mistake. This development represents wishful thinking more so than critical thinking. Wishful thinking comforts us with the assurance that the growth we see around us is ultimately good for the County. Critical thinking would challenge that belief suggesting instead that a thoughtful community should ask if the pace of relentless development, including Biscuit Run, is consistent with the County's claim that it seeks sustainability. Wishful thinking argues that Biscuit Run's 3,000 residential units in the urban area will protect the County's rural area from growth. Critical thinking asks for the evidence more than just in the past few months for this increasingly dubious premise. Wishful thinking presumes residents in growth areas are content with population densities planned a quarter century ago. Critical thinking might revisit these proposed densities in growth areas. Wishful thinking assumes the merits and impacts of a single development can be assessed essentially in isolation. Critical thinking recognizes that each development is reviewed in the context of other developments, both existing and in the pipeline, and urges the recalculation of the cumulative long term costs and benefits to the County. Wishful thinking, in the absence of a comprehensive environmental impact statement and with only a partial estimate of the demands for needed infrastructure, lulls us into believing that the developer's relatively modest proffers offset all of the long term environmental and financial costs. Critical thinking might force us to see that a big chunk of these costs will be borne largely by current taxpayers and future generations. Wishful thinking paints a picture of Biscuit Run harmoniously integrated with the City and the County. Critical thinking leads us to the observation that the biggest development in Albemarle County's history will change the very character of our community and asks how to help those of us who are here now. ASAP's point is that in looking at the Board's decision about Biscuit Run, critical thinking can help frame questions relative to decisions the Board will make about other proposed developments in the coming months and years. For example, how can we better understand each development's long term costs and benefits to our County in the context of the cumulative impact of all County growth? On the long haul are our rural areas really protected by attracting growth in designated urban areas and if not, why maintain the high density in these growth areas? Finally, and most important, what size community do we want? Are we obliged to accept each proposed development put before us, or are we working to a size and scale community that we have thoughtfully defined?

The next person was Ms. Jackie Lombardo, who was not present.

Mr. David Robinson, Treasurer of Mill Creek South Homeowners Association, said the connected community model makes sense to disburse traffic flow across a broader number of roads and reduce dependency on main arteries. However, the asymmetry of the two neighborhoods are beyond reason and fails the community it aims to improve. From a practical perspective, it does more harm than good to connect the two communities. It is a unanimous feeling among residents that the connector road is unwanted and will decrease the quality of life for the residents. The Homeowners Association Board recently went door to door and there was not a single resident who was in favor of the proposed connector road. However, these residents were in favor of it being used as a pedestrian path. The Mill Creek residents believe that it would increase the quality of life for the new Biscuit Run residents by putting their needs ahead of the well established residents. The connector road turns the affected portion of Stony Creek Drive into a thoroughfare usable by at least a quarter of the homes in Biscuit Run. The

entire Mill Creek neighborhood is only 200 homes. In the best case scenario, that would be over a 300 percent increase in traffic through their neighborhood. Mill Creek South and Stony Creek were not built with this large addition in mind. About two years ago, the County built pedestrian sidewalk access connecting Mill Creek South to Lake Reynovia and Mill Creek North; walkers, joggers, bicyclists, parents with young children and dogs, travel on the asphalt to Stony Creek to get to the pedestrian trail. With the current traffic load there is enough distance between cars on either side to allow drivers to give pedestrians a wide berth. The safety zone would be substantially reduced with such an increase in traffic flow. The result will be a less pedestrian friendly neighborhood. Biscuit Run has had the benefit of planning for a large amount of traffic and growth; Mill Creek has not.

Mr. Tom Olivier, a resident of the Scottsville District and a member of the Sierra Club, said he supports the Sierra Club's request that an analysis of the environmental impact be done before a decision is made regarding the proposed rezoning. He believes Biscuit Run should be approved only if it maintains or enhances the quality of life of existing residents and is consistent with Albemarle County's many commitments to protect the environment. For the most part large residential developments degrade streams and surrounding terrestrial habit, add to air pollution, increase traffic, place more demands on water supplies, and adds cost to local governments. Years ago among land use planners and decisions-makers, a prevailing view seemed to be that if a development was proposed for a site in a designated development area and if the site plan was well done with roads, water and sewer supply adequate, there were scare reasons to deny approval. He noted that the applicant has revised the proposal extensively during the County's review process, addressing many concerns originally made by the Planning Commission. The applicant has also worked extensively with nearby neighbors to address their concerns; this is commendable. However, we know that large developments have impacts on natural resources beyond their immediate boundaries and adjoining parcels. There are negative wide impacts of large developments that site design cannot prevent. Today with more and more people living within less and less open space, we should also ask whether the proposed large development is compatible with sustained existence of our community and natural resources in which we depend. Without an analysis, we do not know. The Code of Virginia states that in zoning matters localities may consider "the trends of growth are changed, the current and future requirements of the community as determined by population and economic or other studies". Mr. Olivier urged that Albemarle County begin requiring environmental impact studies for all proposed large developments, starting with Biscuit Run.

Ms. Shirley Napps, a resident of the City of Charlottesville, said that she also would like to request an environmental impact study before the Biscuit Run development can go forward. She said that she is particularly concerned with the Board paying attention to the air quality issue. Albemarle County, compared to other cities and counties nationwide, is 80 percent worse in terms of carbon monoxide, 70 percent worse for nitrogen oxides, 50 percent worse for particulate matter, 60 percent worse for sulfur dioxide and 70 percent worse for organic compounds. Cars and trucks are responsible for over half of all those pollutants. She would love for mass transit to work but she does not think it will. This development will add 3,000 houses with 6,000 or more cars. People are not going to want to take the bus to and from the City for work and then come back to take their car for grocery shopping. Most people she knows do some kind of shopping every day. With the additional 6,000 cars plus that Biscuit Run would bring, also comes a large additional amount of air pollution.

Mr. Roger Shickedantz, who lives a quarter mile north of the intersection of Avon Street and Route 20 South, said he has met with Mr. Dorrier and Planning Commissioners in the past. He and his neighbors are very concerned with the prospect of widening Route 20 from Biscuit Run to Route 53. The concerns they have deal with the scenic and historic character of the corridor, the entry corridor to Monticello, safety along the road and having to enter a four lane road. The residents of this area already believe that the posted speed on this road is too fast and widening the road will make it even faster. They understand that VDOT suggested a four-lane divided highway and they are concerned with decreasing the width of their property for travel lanes, shoulders and bike lanes. It is likely they will not have front yards. They are also concerned about decreasing their quality of life and their property values. He said that there are other solutions to this problem besides just widening Route 20, such as Old Lynchburg Road and Avon Street. He asked the Board to research these other options before accepting the proffers and making concrete decisions.

Ms. Wren Olivier, a resident of the Scottsville District, said there have been many changes in the last 50 years in this community; a lot are good, a lot are not so good. Many people think that we have now reached the point where the not so good changes outweigh the good ones. Ms. Oliver believes that Biscuit Run proposal is in the category. She is having a hard time understanding why we need 3000 additional homes with roughly 10,000 new residents in our community when it clearly will not benefit us. This development would cause much more desecration of our environment, more traffic and more noise. We barely have a sufficient amount of water for our current residents, as evident by the communities' mandatory water restrictions. She said that it is not a good enough reason to approve Biscuit Run because it is a nice development with nice proffers from the developer. Ms. Olivier stated that it is the responsibility of the Board to determine what is best for our community as a whole. She urged the Board to not make a decision until an environmental impact analysis has been undertaken.

The next person was Mr. Michael Wheelwright, who was not present.

Mr. Charlie Armstrong, a resident of Maymont Court (his property adjoins the Biscuit Run development on the north side) said that he was asked to represent not just himself but his neighbors, as well. He has visited the type of development Biscuit Run is trying to emulate (King Farm in Maryland, Meadowmont in North Carolina and Southern Village in North Carolina); these are neighborhood model communities. All three of the communities are fairly mature and they work. The issue before the Board

this evening is not whether it wants development in this growth area, but whether it wants this development rather than the by-right alternative. He said this proposal is preferable to by-right development. This developer has a right to develop without any of the proffers; no 400 acre park, no connector road, no off-site road improvements, no school site, no affordable housing. He and the three neighbors he is speaking on behalf of prefer this proposal to the by-right alternative. Mr. Armstrong asked for the Board to vote "yes" on this issue tonight.

Mr. Lyndon Estes, a resident of 5th Street Extended and Harris Road, said if it was his personal preference between this development and nothing, he would not choose a big development at all. He is generally not supportive of large scale development. He understands that there is no choice whether growth is going to happen and so he proposes that the current proposal be adopted instead of it becoming a by-right development. A by-right development has the potential of being a piece-meal development extending over the entire 1,200+ acres. The alternative plan is a much higher density of 3100 units confined to 830 acres with the \$40 million in proffers. Although the higher density development does offer the potential for significant environmental impacts and possibly some other community issues, he believes it is smarter growth, and preferable in terms of land conservation. He supports the proposal.

Ms. Amanda Armstrong, a resident on Maymount Court, said that while she is not in favor of any development on this scale, she is here to speak in favor of this project which offers a tremendous amount of amenities to the community as a whole. The alternative, which would be by-right, offers none of these things. The mixed-use, mixed density neighborhood model and green spaces offer a balance for the south end of town that is currently not there. They will be able to walk on permanently dedicated greenway trails to a school site, shopping center, 400 acre park, and miles of hiking trails. She believes this to be a tremendous asset to our community and should not be ignored. Because of the proffers and continuous greenways, she encouraged the Board not to ignore that and vote "yes" to the proposal.

Ms. Lola Fatoyinbo, homeowner and resident in the 5th Street area, said that she would prefer the development would not be done but is glad to see it being done the right way. She has been impressed by efforts to make Biscuit Run a well organized neighborhood with mixed level housing, a school site and allocation of large expanses of land to conservation areas, trails and parks. She believes this neighborhood would be a great benefit to the Charlottesville community.

Mr. Kevin Fletcher, a resident of the Scottsville District, asked the Board not to approve this project as of now. He believes that there is a need for the environmental impact study. If that had been done before the Hollymead development was approved, we would not be having the problem with runoff, silt and its affect on the neighbors. He is also concerned about the effect this will have on the infrastructure, especially Route 20. He believes that Route 20 is congested and dangerous, and there has been no proper planning on how to handle the growth. Route 20 is a funnel for traffic for three other counties, and he is concerned that no planning has gone into the future of that, except for some stop lights. He is concerned about sewer for this development. The Board should wait for the report by the Rivanna Water and Sewer Authority to know exactly their capacity percentage. Lastly, the Board needs to listen to staff's concern that additional staff may be needed to enforce the proffers.

Mr. Morgan Butler, attorney from the Southern Environmental Law Center, said that the success of the counties effort to manage growth will be determined by their ability to guide new development into the areas that have been designated for it. Mr. Butler stated that strategy depends on creating attractive growth area communities and making sure that new development mitigates its' impacts. Biscuit Run is by far the largest rezoning request Albemarle County has ever seen and because of this it will affect this community in ways which are beyond the scope of any proffer policy. There is no doubt that since it was first submitted major improvements have been made to this proposed project. SELC commends the applicant for working to recognize and respond to a number of specific concerns from the community. For example, six months ago, the proffers did not mention transit. Now, we see \$1 million contribution to help the County expand its transit service as well as a creative effort to make sure a private shuttle serves the development until public service can be established. The rural area boundary along the southern part of the site will be reinforced by a 400 acre park. The applicant has also made a number of improvements to the Code of Development that will foster the pedestrian oriented-type of neighborhood center that is vital to the success of the growth areas. SELC appreciates the applicant meeting with them to explore that issue. There are still major concerns however about the two waste water agreements. As they read the agreement that relates to the Biscuit Run trunk sewer, it puts the entire cost of the sewer line upgrade on the developer of that phase of the project that causes the sewer line to exceed 80 percent capacity. SELC is concerned that an arrangement such as this will work to discourage the full build out of the site as proposed because once the capacity of the sewer line reaches 80 percent, no developer will want to build the next phase of this project and incur the cost of the upgrade. This plan is the result of a lot of hard work and it works best if it is built out in its entirety. Secondly, SELC remains concerned with the agreement that relates to the Moores Creek interceptor which is unenforceable, and does not include RWSA, the entity that owns and maintains that line. Finally, the erosion and sediment control proffers already serve as a precedent. SELC continues to think there should be at least some reasonable limit on the overall acreage of this 830 acre site that can be diluted at any one time so that we do not set ourselves up for a water quality disaster during a big storm event. In summary, SELC wishes to commend the applicant's willingness to meet with the community to address certain concerns and the strong efforts made to mitigate some of the larger impacts. They also want to praise County staff for the improvements they have worked on to bring about in this project. It is a good project but they believe there are a few significant issues that, if not properly addressed now, will resurface in the future. SELC encourages the Board to address those issues and to keep the broader implications in mind as it reviews projects in the future.

Mr. Mark Gebhardt, a professional engineer and property owner along Route 20 across from Biscuit Run, said that Mr. Craig has not approached any of the residents across the street to see how they are feeling. Mr. Craig has given the public opinion that he is the "true" developer. Mr. Gebhardt said he believes that Mr. Craig is the "front guy", the local personality trusted by the community, but represented by a corporation yet to be identified. He uses the word "we" frequently but has not identified who that "we" is. The community would like to know who the party is that Mr. Craig is representing. He is opposed to the rezoning based on the technical merits of the proposal: 1) cost for water treatment and sufficient water supply are not identified; 2) cost for sewage treatment has not been identified; 3) analysis for the number of students, costs for school construction and operating costs are speculative and extremely low; 4) and he questions the neighborhood model plan. When he met with the Planning Commission, he was told there was one other community they were aware of that used the Plan. As a former Traffic Engineer, he believes that the traffic analysis is filled with flaws. In their traffic analysis, the applicant used the 2,000 Highway Capacity Manual published by the Transportation Research Board, as their methodology, which defines capacity as the "maximum allowable rate at which persons or vehicles can reasonably be expected to traverse a point or uniform section of a land roadway during a given time period". Three of the sections studied were at the times of 12:00 a.m., 12:00 p.m., and 5:00 a.m. Those are not the peak times traffic should be studied. This traffic report is silent on sight distance. The developers are minimizing the risk to minimize their costs which speaks volumes about their true intentions. He is at a loss on why the County is going forward on this risky multi-million dollar venture.

Ms. Lynne Beegle, a resident of Brookhill Farm (directly across from Biscuit Run on Route 20 South) since 1969, stated that she is strongly opposed to the rezoning. The beauty of rural living will be lost if commercial zoning is allowed. They already have convenient commercial zones in the area – the downtown mall and Pantops is less than ten miles. The developers have suggested phasing the commercial development which will delay the benefits from the proffers. Increased traffic on Route 20 South is a safety issue. It's not safe now. They have had a rise in traffic accidents on their property. The majority of the traffic for this development is claiming to use Old Lynchburg Road/5th Street Extended; however, the development is starting with the commercial phase which will have access to Route 20 South. That translates to a lot of traffic with no improvements to Route 20. She suggested that if Biscuit Run is going to be developed, that it be done as a by-right use. She asked the Board not to "sell out Albemarle County" and to vote "no" regarding the rezoning.

Mr. Charles Beegle said he also lives directly across the road from the proposed development. He expressed strong opposition to the Biscuit Run development. Most of his concerns have already been stated. The Board needs to consider the historical homes located in the general vicinity before they make any decisions, and consider what this decision will do to the history.

Mr. Ron Sykes, currently the Head Master of The Covenant School, said the developers have been responsive to their concerns. He believes that Biscuit Run developers will be complimentary to their campus. He hopes that all development in the County can be as responsive as Biscuit Run.

Ms. Nini Almy, a resident of 1766 Stony Creek Drive, thanked the Board, Planning Commission and developers for listening to and responding to their concerns, especially the concern about the paved connector. She then referred to language regarding the buffer in the newest proposal. The language states that the Mill Creek South buffer will be provided and maintained between Biscuit Run and Mill Creek South subdivision as generally shown on the General Development Plan. This buffer shall be a minimum of 200 feet in width to the extent practicable; the buffer will be left in its present state to preserve the natural features of the land unless necessary grading, utility installation and erosion and sediment control requirements dictate otherwise. That language leaves open the possibility that the buffer might not be maintained in the preservation area as originally envisioned. When they talked to the developers, their assurance was that this strip of land would not be disturbed by utilities, in other words, it would be a preservation area rather than a conservation area. They were also assured that the buffer would be 300 feet in width instead of 200 feet. The residents hope these assurances will be honored and that the proposal will be revised to reflect these specific promises.

Mr. Peter Clark said he represents the homeowners in the little appendix on the southwest side of the property. They have been appreciative of the efforts of Mr. Craig and his staff in working with and cooperating with them, in listening to their requests, and following through on many of their requests. Specifically, the developers will provide sewer and water to their properties as part of the development, and they have agreed to give them access from the back of their properties to the road they are building to accommodate their needs, and will add some buffer areas to the north and south ends of the property. He commended the developers for their work. He and his neighbors are happy to become part of the Biscuit Run community. This development will add a lot to their lives, yet maintain some of their rural characteristics. Mr. Clark added that maybe this should end any further development south into the rural area.

Mr. Forrest Marshall said he supports this project. In fact his farm abuts this property; the rear end of his farm crosses the property and a portion of one of the sides. He has lived on his property for over a quarter century. He has turned down many offers for his property from developers who want to develop it. During his lifetime, his property will remain a cattle farm. His reason for support is that he knows this property will be developed whether it's by this plan, a by-right plan, or some other developer. He has wondered for a number of years what kind of development is going on the property. Mr. Craig has worked with him and informed him of the changes as they have occurred. He is personally delighted that there will be a park in the back of his property. If he was on the Board at this time, he would also vote for the proposal because the Board knows what it will get with these proffers as opposed to what it would get by-right.

Ms. Jeanne Chase, a resident of 223 Old Lynchburg Road, asked the Board to include one more step in the planning process. She is currently looking at over 5,000 vehicles that go past her front door on a daily basis and she believes this development will come after the current volume of cars her neighborhood is experiencing. She asked that the Board, with the legislators, support as a priority the Sunset Avenue/Fontaine Avenue connector which would help take the high volume of cars off their residential street which is a neighborhood street.

Mr. Overton McGehee, from the Charlottesville Area Habitat for Humanity, stated that his comments relate to how the Biscuit Run plan affects Southwood Mobile Home Park. He said that Habitat recently purchased this mobile home park with the intention of redeveloping it into a higher density locale, making it a mixed income living area and including affordable housing for those who are residing there at this time. He thanked Mr. Craig for their efforts to partnership with Habitat and Southwood in a variety of ways. He also thanked County staff and Supervisors for their attention to this matter. The part of this development that affects Southwood is the proposed connector road from Route 20 through Biscuit Run and Southwood to Old Lynchburg Road. The developers have offered \$1 million for the easement through Southwood and also offered to build a portion of the road that runs through Southwood. This would be a significant savings for Southwood when they redevelop the property. More importantly, it would connect Biscuit Run and Southwood so that they feel more like one community instead of two isolated neighborhoods. They do see advantages to cash proffers for affordable housing; they can be used by nonprofits to reach families with much lower incomes, and can be used so that the investment in affordable housing is recycled for generations. They also recognize there are arguments for proffering affordable housing on site. In this case the developers have chosen to proffer on site affordable housing and they respect their decision. He added that this connector road will be the main street for Biscuit Run and Southwood. Fifteen years from now people driving from the east will pass nice houses, townhouses and condominiums in Biscuit Run; then they will pass nice houses, townhouses and condominiums in Southwood. Some of the homes in Southwood will be smaller than those in Biscuit Run but they will be valuable to the community. Because of this connector road Southwood residents and Biscuit Run residents will be more likely to interact in the neighborhood, park, grocery store, day care centers and at school. This road will connect these two neighborhoods, and we as a community will be stronger for that connection.

Ms. Pat Vance, a current resident on Stony Creek Drive in Mill Creek South, urged the Board to keep asking all the questions that they have because they do not have all of the information as of yet. They do not have all the information from VDOT; they do not have all the answers to the infrastructure questions. She thinks that the excitement over the proffers is very tempting and makes her look forward to picking out a place to live in Biscuit Run, but her enthusiasm is tempered because she is a taxpayer. While we see the growth, she questions what the cost is for the infrastructure and whether we will really be able to afford it. A comment was made by a Commissioner that the school in the Biscuit Run Subdivision would not address the needs of the children who live in the subdivision. There is no information about the middle and high schools. She is skeptical, but again, asked Board members to ask questions.

Mr. Tim Hess, a concerned citizen and an area business owner, stated that the demand for homes and not the developer is the driving force for growth. Planning such as the Biscuit Run development model provides many of the elements suggested by the Sierra Club's change to sprawl; i.e., modification of streetscapes, non-vehicular access, trail systems and parks. Biscuit Run provides 63 percent of parks and open space, 773 acres of the 1,230 acres. Planners suggest that once you get to six or seven units an acre, two positive things happen: first, less travel by mechanical means, and second, decrease in automobile and increase in trips by transit. He said that if growth of this area is inevitable, Biscuit Run and the smartgrowth model is a good decision.

Ms. Jane Gatewood, a homeowner in the Scottsville District, said that many of the people who live in the Scottsville area do not use Route 20 as a commuter route. People from her neighborhood typically go to Route 620, Jefferson Madison Parkway, to Route 53, and come into Charlottesville from that direction. It is a northern entry point. She is concerned about the amount of commercial property that will be accessible to Route 20. Route 20 is already a very hazardous road to travel on and when an increased amount of traffic becomes an issue it will become even more treacherous. Ms. Gatewood asked the Board to remember that the long term implications are going to be much greater than the short term ones found in the studies being done. In regards to the Hardware River watershed, it is a natural treasure that does not get the respect it deserves; it will be affected by this development.

Mr. Ernie Reed, a high school teacher and a City resident, said he had a number of students who had questions, but due to the late hour, they had to leave. He had one student to ask him to explain what a proffer is and another student asked what is going to happen to the wildlife. He is concerned about the externalities of this development on the City of Charlottesville. He believes that the proffer of \$1.5 million towards transportation is a drop in the bucket in terms of the negative effects the development will have on infrastructure and will have on Charlottesville. In terms of a development, however, he believes that there is still an immense amount of thought that should go into this plan such as decentralized energy and really reducing the quantity of single occupancy vehicles. A plan that increases air quality, improves water quality, reduces needed infrastructure, enhances habitat and produces more opportunities is one that should be approved. Unless it is a more livable community, the developer should be told "no".

Mr. Bruce Lavin, a property owner in North Garden, asked if there is a real need for additional growth. One of his main concerns about this plan is that it seems to him the most important part of the discussions is money. This is very disheartening to him as a citizen because there are so many other things about this proposed plan to look at besides the monetary aspects. He asked the Board to reconsider what is evidently approval for this proposal.

Ms. Jennifer Conner, a City resident, high school teacher, and Director of the Community Bike Program, asked if this is the way they want to make important decisions about the future of the City and County, late at night, after many hours of deliberations. She does not know how it is possible to take in all of these comments and think critically in this situation. She questions this process, and if it is really open to everyone who wanted to be here to speak, like the students who had to leave. She also bicycles to work and to places she wants to go whether in the County or the City. She thinks that it is unrealistic to think that people in a 3,000 unit development will not all have cars and drive them everywhere. Three years ago she sat in a room with Steve Blaine, Charlie Armstrong, and other developers, and heard about how wonderful development was going to be in their neighborhood. That development destroyed the integrity of the neighborhood; the woods were stripped bare; the streams filled with sediment, springs buried, etc. She believes this development will ruin the quality of life of the current residents. She asked for the Board to listen to all of the information before making any major decision.

Ms. Clara Belle Wheeler stated that the situation that has been discussed at this meeting has been one of environmental impact. The land on Route 29 North at Hollymead was raped, pillaged and left open and soiled. Most of the discussion was about the sediment and runoff and the environmental impact, yet more people are going to be crammed onto that space. Nothing was said about clean water, rainwater, or drinking water. The community already does not have enough water for the current residents, as seen by the water restrictions. It is bad enough that someone wanted to develop 1000 residential units in Southern Albemarle; now the proposal is to triple that number of units. We do not know how many cars or people would be coming to this community and there is no way to know what the environmental impact would be. She hopes the Board will not turn its head when a lot of money is waived in its face. Ms. Wheeler urged the Board to address the water needs and think about our entire community.

At this time, the Chairman closed the public hearing, and asked the applicant if he had any final comments.

Mr. Craig said concern was mentioned by residents of Mill Creek South regarding language relating to the buffers, specifically utilities within the buffer and grading; that is not a proffer in the Code of Development. The applicant has agreed to delete that language from the Code of Development, and prohibit any utilities from within that 200 foot buffer and any grading within that 200 foot buffer.

(Note: At 12:22 p.m., the Chairman called a recess. The Board reconvened at 12:28 p.m.)

Mr. Boyd asked if Board members wanted to engage in a discussion or if everyone was too tired.

Ms. Thomas stated that this is the culmination of a long process of many weeks and many months of conversations and public meetings. She appreciates the petition signers and she recognized many of the names. She mentioned the Board's earlier discussion about the zoning decision made on Gazebo Place. The new names on the proffers should give Board members some pause because whomever the names, they serve to remind us that we do not know who we will be dealing with in the coming months and years on the project, and also there will be separate pieces of property owned by different people. She has been concerned about whom the owner is that has to carry out each of the proffers, and how that will be done. It emphasizes how it will be an ongoing complicated challenge for staff with the proffers. Her main concern is with the water and sewer agreements, even though they are the aspects of this project that are most out of the Board's hands. She hopes the Board has made the point that they have real reason to be concerned about anything that causes a big payment to be due on the 80 percentile figure because that might be the point at which the whole proposal stops in its tracks; which then means that it will not be the development Board members think it will be. The Board does not control what the water and sewer authorities do.

Ms. Thomas said she is usually regarded as a person who is most concerned about and opposed to growth. Since the beginning she has been determined to make this development one she could vote for because it did have the possibility of being the neighborhood model development that we have wanted it to be. If the neighborhood model has any value, it is particularly here that it has value because the people who are going to occupy this land are going to be living somewhere in Albemarle County and it is a well proven fact that per person there is more degradation of the environment with sprawl development than there is with a compact development. To the average person, having this amount of people out across the country side might look better, but there is more air and water quality impact from that type of development than there is from a compact development of this sort. She is particularly delighted with the way that the greenway was a frame work from the beginning. This has a green superstructure that is a good basic framework of green infrastructure. She is still concerned with how much raw land can be open at any particular time and that is the one question she has of staff.

Mr. Graham said staff focused on the idea that there are two elements to consider, which are how large of a disturbance there will be and how long the disturbance occurs. They have been trying to focus their energy on limiting the time that the disturbance can go on. He believes that to be the real problem at Hollymead in that the prior property owner was taking longer than he should have to get the site graded and closed up. He thinks the timing has done that with this proffer. He also thinks that the maximum practical standard is going to help with the remaining concerns about making sure they are controlling how much of the sediment gets off the site. Mr. Graham reiterated that this is not a perfect solution and unfortunately there will be some sediment that will leave the property. He believes that they are doing as much as can be reasonably expected to try and control that.

Mr. Wyant asked Mr. Graham's view on over lot grading. It appears that that has been elevated somewhat to help with grading. Mr. Graham commented that the language has become a standard proffer.

Mr. Slutzky asked about the proposal of modifying the Code of Development to preclude the disruptions of the buffers and if he believes that is something that can be easily accomplished or is that a condition that the Board would need to put on it.

Mr. Graham said that this would need to be a condition and that the Board would have to note that as part of the approval. He does not have a problem with the changes recommended by the applicant as it seems to address the citizens concerns. However, you always wonder if there is a circumstance where it might actually end up having some adverse impacts that we have not considered as of yet.

Mr. Slutzky recommended stating that we would like to see as little disruption as possible and not impose on the developers to actually change the condition. Mr. Cilimberg said it already states that and there is re-planting required with native species.

Mr. Graham said he appreciates the applicants attempting to address the citizen's concerns. Mr. Slutzky said he agrees, but does not want to do something that might constrain us later. Mr. Graham said there is a small probability that it would have an adverse impact.

Ms. Thomas said that regarding the connector road, she has mentioned a couple of times that she would like to see it be a "T" intersection. The way it is currently designed it would be a "T" intersection at both ends. She believes that this is a great improvement in the sense that at some point the Mill Creek homeowners are going to decide or not decide that they want that road opened. It is not a definition of an easy way out for anyone but could be an easy way in for the school, commercial area and park when it is something that the neighborhood wants.

Mr. Rooker stated that the neighborhood has indicated in a letter and also with the speaker tonight that they do not want the vehicular connection made until such time that the neighborhood either asks for it or the school is built and children in that neighborhood are assigned to that school. To him that is a good point at which to make a connection. The Board can respect the neighborhood's request and also accomplish a connection at the appropriate time.

Mr. Slutzky said that it might be an appropriate action for this Board, if everyone agrees, to make a statement for the record that it is the Board's intent that the road not be opened up until such time that the school is open for students who live there or the neighborhood association is supportive of opening the road. This statement will not be legally binding but is a signal to future Board that this is what the current Board had in mind when we agreed to have the connection set up that way. Mr. Slutzky asked if the other Board members thought that this is a reasonable way to "give some teeth" to the concerns of the neighborhood.

Mr. Rooker stated that the request can certainly be respected. He believes that the only way the Board can do this is the way it is presently done in the proffers, and that it is up to the County to ultimately make the decision. He believes that the proposal made by the neighborhood association is a good one.

Mr. Slutzky said that he believes that the Board should each indicate their agreement with this so that there is a 6-0 unofficial sentiment sent to future Boards for when they go back and try to figure out what was meant tonight.

Mr. Boyd stated that this will be easy for him to do because he feels that way about all inter-connections.

Mr. Wyant also agreed.

Mr. Dorrier commented that he has wrestled with this issue for sometime now because a part of him would like to keep Albemarle County the way it has always been while another part says that change is occurring and we need to prepare for change. He has been familiar with that land most of his life. Some changes have occurred all through these years and are still occurring. He thinks that Mr. Marshall summed it up best by saying that he did not want the change to occur but he realizes that it is coming and the best way to prepare for it is to accept a neighborhood model development rather than a by-right development. You get to set controls with the proffers and hopefully it will all work out, but maybe not, but that is the chance you take. He feels comfortable with the developer because Mr. Craig is a local person. He thinks that Mr. Craig will treat the land with respect and will do the very best he can to make this development one we can all be really proud of.

Mr. Dorrier said that he still has concerns with the traffic on Route 20, Avon Street and Old Lynchburg Road but he realizes that we are going to have problems because that is a part of growing and developing. He does not know how to deal with all the problems. He would like to work with Mr. Craig to try and come up with some way to manage the additional cars. The Board knows that VDOT will not be ahead of the curve, and it is probably up to the County to come up with a plan of action. He suggests working together with the developer to help bring about the changes that will occur. He thinks Mr. and Mrs. Beegle, along with their farm, are going to be directly affected and he would like to find some way to either cope with or solve that problem.

Mr. Dorrier said this development represents a new day for Albemarle County and it is the first real neighborhood development that has a potential for being a great development in this County. This is

a large tract of land and it has so many challenges. This plan has more greenspace than most plans. He thinks that we have potential to have something that we can all be proud of. The buildout is going to be ten to twenty years so there is time to work with the plan. The staff has to be flexible to adapt to transit and to other things that they may not be familiar with. He believes this is a great opportunity for Albemarle County and this Board to take a leadership role while working with the developer to produce a first rate product. Mr. Dorrier said he will support approval of the rezoning of Biscuit Run.

Mr. Rooker said that there is a perception that this is a one night process while, in fact, this process has been going on for the last two years. There have been a number of meetings involving the Board and many meetings of the Planning Commission, and a number of changes from the first time this proposal was brought to the Board and tonight. Over this period of time the big issues have been dealt with which is why most of this conversation has been about proffers and money. There were only about twelve to fifteen issues that came out of the Board's last meeting which are the items staff addressed tonight. There have been a number of statements at this meeting made about protecting the environment and one of the suggestions was an environmental impact study. To his knowledge no community in Virginia has the legal authority to require any developer to do an environmental impact study.

Mr. Rooker said that he has been a strong supporter of protecting natural resources in this community for years. In fact, he has probably supported every important environmental cause that has come before the County. He has strongly advocated development in the growth areas, which is five percent of the County, when they are well-planned, provide for pedestrian friendly mixed use neighborhoods and have the added benefit of reducing car trips. This idea of the neighborhood model was strongly supported by the environmental community including many members of the Sierra Club. The reason is that you end up in a situation where you preserve a large part of the County and you produce mixed use developments that reduce car trips. In this case, here is a development that has approximately 700 acres in open space. Currently the County has about 1,500 people a year who become residents and generally speaking this Board has not been strong on spending tax payer dollars to bring more people to the County. In fact, the City spends more on economic development than the County. The University of Virginia is expanding, State Farm is expanding and NGIC is expanding. The question is not whether they are going to come here but where are these people going to live. Most of the people move to the County because they want to live here. We need to keep in mind the acreage these people would consume in the rural areas. In terms of car trips, if people are disbursed, the trips are 15 miles instead of one or two miles, or maybe no miles when they can walk. When the neighborhood model was coming along, citizens came and said that no developer would ever propose to do this because you cannot sell this kind of development in Albemarle County. The County has gotten by that. Development proposals coming forward are more like this. We need to keep in mind that development in the rural areas is a matter of right and there are about 40,000 development rights in the rural areas that can be exercised.

Mr. Rooker said that at this meeting there has been discussion about water resources and there is an approved plan to significantly increase the water capacity within the community, looking into a 50 year time horizon. This plan is supported by all of the environmental groups in the community, which is very important because many communities have adopted water plans that were not supported by the environmental groups that ultimately resulted in litigation.

Mr. Rooker said a rezoning decision involves a decision to ultimately change the potential use of this land. In this case, the Comprehensive Plan contemplates that this kind of development would occur at this location in the growth area. We cannot ignore what can be done there as a matter of by-right because that is the alternative. The alternative is not that this property would stay just like it is and unfortunately it will eventually be developed. This property could have 1,000 to 1,400 units built by-right which is the alternative. The alternative would mean that we get no proffers, no connector roads, no transit proffers, no 400 acre park, no school site, no miles of greenway trails, no sidewalks, bicycle paths, numerous transit-type proposals including transit stops and money for transit, no park and ride lots, etc. Mr. Rooker stated that these are the things in which the County is looking for in order to reduce environmental impacts from developments. He said that these are the very things that the environmental community has supported. At the last Board meeting, Board members engaged in some battles with the developer over what things would receive credits for proffers. At the end of the day the County got \$5 or \$6 million and questioned as to whether they would be credited. Ultimately those things were taken out and the County is getting its full proffers that it started looking for in developments. He thinks that he voted against six of the last night rezoning requests because he did not perceive that there was an adequate contribution to the public infrastructure. With Biscuit Run, he believes that the community is getting a sufficient contribution to the public infrastructure.

Mr. Rooker said that there is in fact no perfect development but he believes that this development is as good as any that this Board has seen. Mr. Rooker said that this development will not create growth but it will be accommodating some growth that is coming to the community over the next 15 to 20 years. If it is not accommodated here it will be accommodated somewhere else that may not be as nearly as good for our community as this will be. Having spent a lot of time on this and going through a lot of details on the proffers, he is prepared to support this rezoning.

Mr. Slutzky stated that what Mr. Rooker said captured the essence of why he is very enthusiastic about this project. He thinks that the developers need to be particularly commended in the following way. From the beginning Mr. Craig and his team have been very sincere and very proactive in reaching out to the community and stakeholders and saying "what do you want, why and how can I make this better" and then taking those comments and reflecting them consistently throughout this evolving process of coming up with a plan that was ultimately brought to this Board. This kind of public participation is of particular value to this community because it allows all of us to weigh in on the project. It has been a long process of formal public participation through the Planning Commission's public hearings and informal public

participation. He hopes in the future other developers will learn from this experience and realize when this kind of participation is done they end up with a favorable outcome. He pleaded with the developer to be particularly aggressive in providing transit proffers. The County wanted park and ride lots and bus stops, but also wanted the layout of the project to make it possible for residents to walk to the transit facilities and it was done that way. The kind of forward thinking that that was shown in this design is phenomenal. He wants the public to understand that Biscuit Run is a poster child of how development can make its way through the local government process and provide value to the community.

Mr. Rooker said that if this was developed as a by-right, you would more than likely end up with 1,000 "McMansion's" on cul-de-sacs scattered all across the property which is the most common form of suburban development. The by-right development would end up excluding the Southwood neighborhood. Many developers would look at Southwood and say they need to build a development that keeps these people out, a development that creates exclusivity and "protects" this development from one that is primarily affordable housing for lower income families. However, with these developers we see an incorporation of that community into this proposed new community and it creates a situation where Southwood residents have access to all the facilities within Biscuit Run and that is one of the best parts of this plan.

Mr. Wyant said that he believes this proposal has raised the bar for future projects. He likes the public private partnership and believes this is the way to make a nice community. He stated that at tonight's meeting the Board has raised the level on erosion control and other environmental aspects. He believes that other developers are going to have to rise to this standard. He appreciates all the efforts that have gone into this project.

Ms. Thomas said that the point about erosion control shows what happens when the community gets upset about an issue.

Mr. Boyd said he can agree with what has been said by his colleagues. With regard to some comments made by several individuals, this process has been going on for over two years. This is very different from the initial plan that was originally proposed. He thinks that the developers have done an excellent job in listening to the community and they have worked towards a compromise that can meet the needs of everyone. He agreed that this is not the perfect project but it is probably one of the best ones that the Board has seen in a very long time. He expects great things to happen because they have tried their best to meet the community needs. He asked if there was a motion.

At this time, Mr. Dorrier **moved** to approve ZMA-2005-00017 inclusive of the applicant's proffers dated September 10, 2007 and signed September 11, 2007, Application Plan dated August 31, 2007, and Code of Development dated August 31, 2007, and waivers for parking and loading study, and lot layout. Mr. Slutzky **seconded** the motion.

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

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

PROFFER STATEMENT BISCUIT RUN

Date: January 3, 2006 (last revised September 10, 2007)
ZMA #: ZMA-2005-017 Biscuit Run (formerly known as Fox Ridge)
Tax Map Parcel Numbers: 90-5, 90-6D (portion), 90-17D, 90A-3, 90A1-1, 90A1-1E, 90A-1A and 90A-1B

The Property described with more particularity on plat of Thomas B. Lincoln Land Surveyor, Inc., dated April 17, 2007, Revised May 29, 2007, entitled, "Map Showing Area to be Rezoned Tax Map 90 Parcels 5 and 17D Tax Map 90A Parcels 1A, 1B and 3 Tax Map 90A1 Parcels 1 and 1E and a Portion of Tax Map 90 Parcel 6D Property Belonging to Forest Lodge LLC Lying Between State Routes 20 and 631 Scottsville District Albemarle County, Virginia," comprising approximately 827.5 acres and also described in the records of the County of Albemarle as Tax Map Parcel Numbers 90-5, 90-6D (portion), 90-17D, 90A-3, 90A1-1, 90A1-1E, 90A-1A and 90A-1B (the "Property") is subject to rezoning application ZMA-2005-017 and to this Proffer Statement. The Owners of the Property are Forest Lodge, LLC, a Virginia limited liability company, Yancey-Hardtimes, LLC, a Virginia limited liability company, and Muffin Trodding, LLC, a Virginia limited liability company, their successors and assigns (collectively, the "Owner").

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property from the R1 and R2 Districts to the Neighborhood Model District as requested, the Owner shall develop the Property in accord with the following proffered development conditions (each, a "Proffer," and collectively, the "Proffers"), which the Owner acknowledges are reasonable, pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. If rezoning application ZMA 2005-017 is denied, these proffers shall immediately be null and void and of no force and effect.

This Proffer Statement shall relate to the General Development Plan entitled "Biscuit Run Neighborhood Model District General Development Plan for a Zoning Map Amendment ZMA-2005-017"

prepared by Collins Engineering, containing 10 sheets, dated September 26, 2005, last revised August 31, 2007 (the "GDP") and to the Biscuit Run Neighborhood Model District Code of Development dated August 31, 2007 (the "COD").

As used throughout these Proffers, the following capitalized terms shall have the following meanings:

"Design Standards Manual" shall refer to the Albemarle County Design Standards Manual, as amended from time to time.

"Owners' Association" shall refer collectively to one or more responsible property owners' associations to be created by the Owner for the purpose of, *inter alia*, maintaining common areas within Biscuit Run.

"Neighborhoods 4 and 5" shall refer to Neighborhoods 4 and 5 as depicted on the Albemarle County – Virginia, Land Use Plan, Map O, 2015 Land Use Plan, Adopted June 1996, Amended October 2001.

"Phase of Development" or "Phase" shall have the meaning set forth on p. 47 of the COD. Under no circumstances shall the recordation of subdivision plats creating an approximately five-acre parcel containing the existing Breeden residence and an approximately 31-acre parcel containing the curtilage of the Breeden residence and the immediately-adjacent acreage in Block 11 (the "Breeden Land"), be deemed to commence a Phase or to trigger the obligations of any Proffer hereunder. Any further subdivision of the Breeden Land shall be subject to compliance with these Proffers.

"First Residential Building Permit" shall mean the building permit issued for the first residential dwelling unit within the Property; excluding, however, any building permit for a dwelling located within the Breeden Land.

1. **Greenway Dedication and Parks.** The Owner shall provide the following greenway, trails, parks, green space and district park:

A. **Greenway Trail.** Upon the request of Albemarle County (the "County"), but not earlier than the County's approval of a master plan for the Greenway, the Owner shall dedicate to the County for public use, either in fee simple or, at the County's option, as one or more easements, no less than One Hundred Twenty (120) acres in greenway area as shown on Sheet 5 of the GDP (the "Greenway"), subject to necessary easements for completion of the Owner's construction and maintenance obligations under this Proffer 1A. Before the date of issuance of the First Residential Building Permit, the Owner shall prepare (at the Owner's sole expense) and submit for approval a master plan for the Greenway to the County's Parks and Recreation Department identifying the improvements to be constructed by the Owner within the Greenway, which shall include, at minimum, a path constructed in accordance with the Detail for Trailway Design and the notes on Sheet 5 of the GDP and reasonable and necessary foot bridges, boardwalks, signage, benches and pet waste disposal stations (the "Greenway Master Plan").

Before the building permit for the first dwelling in any Phase containing any portion of the Greenway is issued, the Owner shall design, construct and install a trail and associated improvements on the portion of the Greenway located within such Phase in substantial accordance with the Greenway Master Plan, all at the Owner's sole expense. The Owner may, with the express written consent of the County's Parks and Recreation Department, maintain in accordance with the standards set forth in the Greenway Master Plan any portion of the Greenway that has been previously dedicated to public use. If the Greenway is dedicated by one or more subdivision plats, each such subdivision plat shall depict the Greenway and bear a notation that the Greenway is dedicated for public use. If, at the time the County requests dedication of the Greenway, any part of the Greenway has not been dedicated by subdivision plat, the Owner shall pay the costs of surveying the Greenway, preparing one or more plats thereof and preparing and recording one or more deeds of dedication.

B. **Off-Site Extension of Greenway Trail.** Upon the County's approval of construction drawings for the improvements described in this Proffer 1B, but not earlier than the date of issuance of the First Residential Building Permit, the Owner shall construct an extension of the trail described in Proffer 1A from the northern boundary of the Property along Biscuit Run Creek to Interstate 64 in the general location shown on Sheet 4A of the GDP as "Off-Site Trailways" (the "Extension Trail"). The Extension Trail shall be constructed to the same standards described in the Greenway Master Plan. The Owner's obligations under this Proffer 1B shall be contingent on the provision, without cost to the Owner, of adequate right-of-way and easements as necessary for the Extension Trail to be constructed and maintained; provided, however, that the Owner shall cooperate with the County to obtain, without cost to the Owner, such right-of-way and easements. Notwithstanding the foregoing, the Owner may, at its sole option exercised at any time, satisfy this Proffer 1B by paying to the County the cost of construction of the Extension Trail, up to a maximum of One Hundred Thousand Dollars (\$100,000.00), in lieu of constructing the Extension Trail. In the event the Owner has not previously elected to provide cash in lieu of construction, and right-of-way and easements for the Extension Trail have not been provided within ten (10) years after the date of issuance of the First Residential Building Permit, then at such time the Owner shall provide a cash contribution to the County in the amount of One Hundred Thousand Dollars (\$100,000.00) for use toward funding parks and recreation improvements located within the boundaries of Neighborhoods 4 and 5, which contribution shall fully satisfy this Proffer 1B.

C. **Perimeter Trail.** The Owner shall construct a perimeter trail throughout the Property in general accord with the location depicted on Sheet 5 of the GDP as "Trailway" (the "Perimeter Trail") in

accordance with the terms of this Proffer 1C. Before the building permit for the first dwelling in any Phase containing any portion of the Perimeter Trail is issued, the Owner shall design, construct, install and convey to the Owners' Association the portion of the Perimeter Trail located within such Phase, including any portion of the Perimeter Trail located immediately outside such Phase and connecting to another Phase, in substantial accordance with the minimum standards provided for a Class B – type 1 primitive nature trail in Section 7H of the Design Standards Manual. The Perimeter Trail shall be maintained by the Owners' Association.

D. Parks. The Owner shall provide not less than forty-three (43) acres in parks open to the public throughout the Property in general accord with the locations shown on Sheet 5 of the GDP as Parks (each a "Park," and collectively the "Parks"). Each Park shall be designed and constructed in conjunction with the approval of any final subdivision plat or site plan for lots that are adjacent to such Park. For the purposes of this Proffer 1D, the term "adjacent" shall refer to land located within the Property abutting or immediately across the street or road from a Park, as shown on the final subdivision plat or site plan of such land. The construction of each Park shall be substantially completed, as conclusively evidenced by the installation of all landscaping and amenities or the posting of a bond or other surety for the installation of such landscaping and amenities in an amount determined to be appropriate by the County's Subdivision Agent and in a form determined to be acceptable by the County Attorney. Parks shall be conveyed to and maintained by the Owners' Association. The Owner shall pay the costs of subdividing and conveying the Parks to the Owners' Association.

E. Other Green Space. The Owner shall provide other green space on the Property in the locations shown on Sheet 5 of the GDP as "Buffers" and "Passive Recreation Areas." Each portion of the Buffers and Passive Recreation Areas shall be conveyed to the Owners' Association in conjunction with the approval of any final subdivision plat or site plan for lots that are adjacent to such Buffers or Passive Recreation Areas. For the purposes of this Proffer 1E, the term "adjacent" shall refer to land located within the Property abutting or immediately across the street or road from any Buffers or Passive Recreation Areas, as shown on the final subdivision plat of such land. The conveyance of each portion of the Buffers or Passive Recreation Areas shall be completed prior to the issuance of building permits for eighty percent (80%) of the adjacent residential lots. Buffers and Passive Recreation Areas shall be conveyed to and maintained by the Owners' Association. The Owner shall pay the costs of subdividing and conveying the Buffers and Passive Recreation Areas to the Owners' Association.

F. District Park. The Owner shall provide a district park (the "District Park") adjacent to the Property as follows:

(1) Dedication of Land. Upon the request of the County, but in no event earlier than five (5) years after issuance of the First Residential Building Permit, the Owner shall dedicate to the County or its designee, by General Warranty Deed without consideration, fee simple marketable title to land for a public park of not less than Four Hundred Two (402) acres identified on Sheet 3 of the GDP as "Proposed District Park 402.6 AC." The Owner shall concurrently dedicate such right-of-way for road and utility service to the District Park as reasonably determined to be appropriate by the County Engineer. The Owner shall also be responsible for constructing roads to the District Park boundary in accordance with Proffer 1F(3). The Owner shall pay the costs of subdividing and dedicating the District Park to the County.

(2) Cash Contribution. Upon the request of the County, but in no event earlier than five (5) years after issuance of the First Residential Building Permit, the Owner shall make a cash contribution to the County in the amount of Two Hundred Thousand Dollars (\$200,000.00) for the purpose of funding a master plan for the District Park (the "Park Master Plan"). If the Park Master Plan is completed for less than Two Hundred Thousand Dollars (\$200,000.00), any remaining funds may be retained by the County and used to fund parks and recreation projects, facilities and improvements within the District Park. If such cash contribution is not expended for the Park Master Plan within ten (10) years after the date of the contribution, then all unexpended funds may be used toward funding parks and recreation improvements located within the boundaries of Neighborhoods 4 and 5.

(3) Road/Trail Link. The Owner shall design and construct a link between the Mill Creek South neighborhood and the District Park consisting of (i) a trail over the right-of-way described in Proffer 6D built to the standard set forth on Sheet 5 of the GDP, (ii) a trail that continues southward from the trail described in subsection (i) to the northern boundary of the District Park built to the standard of a Class B – type 1 primitive nature trail as set forth in Section 7H of the Design Standards Manual (the trails described in (i) and (ii) hereof collectively referred to as the "Linking Trail"), and (iii) a road segment or segments within the Property linking the southern end of the Mill Creek South Connection Road (as such term is defined in Proffer 6D) to the District Park, including construction of a stream crossing permitting access to the District Park, in the locations and to the standards (including pedestrian and bicycle accommodations) shown on Sheet 4 of the GDP (the "Linking Road"). The Linking Trail shall be constructed by the Owner prior to issuance of the building permit for the first dwelling within Phase A, but not later than five (5) years after issuance of the First Residential Building Permit. Within five (5) years after issuance of the First Residential Building Permit, the Owner shall design, complete construction, bond and dedicate to public use the Linking Road. For purposes of this Proffer 1F(3), construction of the Linking Road shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the Owner has obtained from the County Engineer a written determination that the Linking Road is safe and convenient for traffic.

G. Championship Field. Upon the request of the County, but not earlier than five (5) years after the date of issuance of the First Residential Building Permit, the Owner shall dedicate to the County or its designee, by General Warranty Deed without consideration, fee simple marketable title to land for

public playing fields consisting of no less than three (3) acres substantially in the location shown on Sheet 5 of the GDP as "Championship Field." The Owner shall pay the costs of subdividing and dedicating the Championship Field to the County.

H. Cash Proffer for Stream Monitoring Station. Upon the request of Albemarle County, but not earlier than the date of issuance of the First Residential Building Permit, the Owner shall contribute to the County or its designee cash in the amount of Thirty Thousand Dollars (\$30,000.00) for the purpose of defraying the cost of installing and maintaining a long-term flow and sediment monitoring station within the Greenway, as such term is defined in Proffer 1A. If such cash contribution is not expended for the purpose provided in this Proffer 1H within ten (10) years after the date of the contribution, then all unexpended funds may be used toward funding parks and recreation improvements located within the boundaries of Neighborhoods 4 and 5.

2. Affordable Housing. The Owner shall provide affordable housing, as defined in this Proffer 2, equal to fifteen percent (15%) of the total residential units constructed on the Property, in the form of for-sale condominiums and townhouses, and/or for-rent condominiums, townhouses, apartments and accessory units. If the Owner elects at its sole option to provide affordable for-sale single family detached units, such units shall be applied toward the 15% requirement. The Owner shall convey the responsibility of initially constructing and selling the affordable units to any subsequent owner or developer of the Property (or any portion thereof), and such subsequent owner(s) and/or developer(s) shall succeed to the duties of the Owner under this Proffer 2, and the term "Owner" shall refer to such subsequent owner(s) and/or developer(s), as applicable.

A. For-Sale Units. At least forty percent (40%) of the total affordable housing dwelling units provided to satisfy this Proffer 2 shall be for-sale units; provided that such forty percent (40%) requirement shall apply to the Project as a whole and not to individual site plans and subdivision plats.

(1) Affordability; Credit Thresholds. For the purposes of this Proffer 2A, "affordable housing" shall mean units affordable to households with incomes less than eighty percent (80%) of the area median income (as determined from time to time by the Albemarle County Office of Housing) such that housing costs consisting of principal, interest, real estate taxes and homeowners insurance (PITI) do not exceed thirty percent (30%) of the gross household income; provided, however, that in no event shall the selling price for such affordable units be more than sixty-five percent (65%) of the applicable Virginia Housing Development Authority (VHDA) maximum sales price/loan limit for first-time homebuyer programs at the beginning of the 180-day period referenced in Proffer 2A(2) hereof (the "VHDA Limit").

(2) Sale of Affordable Units. All purchasers of the for-sale affordable units shall be approved by the Albemarle County Housing Office or its designee (the "Housing Office"). At the proposed time of construction of any affordable unit, the Owner shall provide the Housing Office a period of one hundred eighty (180) days to identify and approve an eligible purchaser for such affordable unit. The 180-day qualification period shall commence upon written notice from the Owner to the Housing Office of the approximate date the unit is expected to receive a certificate of occupancy from the County (the "Notice"). Such Notice shall be given no more than ninety (90) days prior to the expected issuance of the certificate of occupancy, and the 180-day approval period shall extend no less than ninety (90) days after the issuance of the certificate of occupancy. Nothing in this Proffer 2(A)(2) shall prohibit the Housing Office from providing the Owner with information on income eligibility sufficient for the Owner to identify eligible purchasers of affordable units for approval by the Housing Office. If, prior to the end of the 180-day qualification period, (i) the Housing Office fails to approve a qualified purchaser, or (ii) a qualified purchaser fails to execute a purchase contract for an affordable unit, then, in either case, the Owner shall have the right to sell the unit without any restriction on sales price or income of the purchaser(s), and such unit shall be counted toward the satisfaction of this Proffer 2A. This Proffer 2A shall apply only to the first sale of each of the for-sale affordable units.

B. For-Rent Units. No more than thirty percent (30%) of the total affordable housing dwelling units provided to satisfy this Proffer 2 may be for-rent apartments, and no more than thirty percent (30%) of the affordable housing dwelling units provided to satisfy this Proffer 2 may be accessory units; provided, in any case, that such thirty percent (30%) limits shall apply to the Project as a whole and not to individual site plans and subdivision plats. For purposes of this Proffer 2B, "accessory units" shall include, without limitation, Accessory Apartments as defined in Albemarle County Code § 18-3.1, as regulated by the Albemarle County Code § 18-5.1.34, and any unit within a two-family dwelling as a two-family dwelling is defined in the Virginia Uniform Statewide Building Code.

(1) Affordability; Rental Rates. For the purposes of this Proffer 2B, "affordable housing" shall mean rental units for which the initial net rent does not exceed the then-current and applicable maximum net rent rate for an affordable housing unit as published by the Housing Office; provided that, in each subsequent calendar year, the monthly net rent for each for-rent affordable unit may be increased up to three percent (3%). For purposes of this Proffer 2B, the term "net rent" means that the rent does not include tenant-paid utility costs.

(2) Term. The requirement that the rents for such for-rent affordable units may not exceed the maximum rents established in this Proffer 2B shall apply for a period of ten (10) years following the date the certificate of occupancy is issued by Albemarle County for each for-rent 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").

(3) **Conveyance of Interest.** All instruments conveying any interest in the for-rent affordable units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this Proffer 2B. In addition, all contracts pertaining to a conveyance of any for-rent affordable unit, or any part thereof, during the Affordable Term shall contain a complete disclosure of the restrictions and controls established by this Proffer 2B. At least thirty (30) days prior to the conveyance of any interest (other than for the securing of a mortgage or deed of trust) in any for-rent affordable unit during the Affordable Term, the then-current owner shall notify the Albemarle County Chief of Housing in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this Proffer 2B(3) have been satisfied.

(4) **Reporting Rental Rates.** During the Affordable Term, within thirty (30) days after the commencement of the lease term for each for-rent affordable unit, the Owner shall provide to the Housing Office a copy of the lease agreement for each such unit rented that shows the rental rate for such unit and the term of the lease. In addition, during the Affordable Term, the Owner shall provide to Albemarle County, if requested, any reports, copies of lease agreements, or other data pertaining to rental rates as Albemarle County may reasonably require.

C. **Verification on Site Plans and Subdivision Plats.** Each subdivision plat and site plan for land within the Property (except for subdivisions that either (i) do not create lots or units for individual residential occupancy but rather divide the Property into large tracts to be further subdivided and developed by another party, or (ii) contain only for-sale single family detached units, unless the Owner elects to provide affordable single family detached units in such subdivision) shall identify the lots and/or units that will constitute affordable housing. The total number of such lots or units designated for affordable units within each subdivision plat and site plan shall constitute a minimum of fifteen percent (15%) of the lots and units in such subdivision plat or site plan. Notwithstanding the foregoing, however, up to an additional fifteen percent (15%) affordable units on any site plan or subdivision plat which are in excess of the fifteen percent (15%) minimum required may be "banked," or carried forward for credit on future site plans and subdivision plats.

D. **Phasing of Affordable Housing Units.** Before the Owner applies for a building permit for the 501st, 1,001st, 1,501st, 2,001st, 2,501st and 3,001st dwelling units on the Property (each, a "Milestone"), the Owner shall, in each case, have offered for sale or rent as provided in Proffers 2A and 2B, respectively, a minimum of fifty (50) affordable housing units since the immediately previous Milestone (if any) was reached. Building permits issued for dwellings within the Breeden Land shall not be included in the calculation of any Milestone.

3. **Learning Center Site.** Within twenty-four (24) months after request by the County, but in no event earlier than five (5) years after the date of issuance of the First Residential Building Permit, the Owner shall dedicate to the County or its designee, by General Warranty Deed without consideration, fee simple marketable title to a parcel of land for a public learning center or elementary school site of not less than twelve (12) acres abutting a publicly-dedicated right-of-way, as shown on Sheet 2 of the GDP and labeled "Learning Center", together with appropriate right-of-way for utility service to the Learning Center (the "Learning Center Site"). The Owner shall cause the Learning Center Site to be graded and compacted to a minimum of 95% compaction as measured by a standard Proctor test with suitable material for building construction as certified by a professional engineer and as approved by the County Engineer to establish a fully graded pad site to accommodate an elementary school. The grading shall also comply with all other applicable County grading requirements and specifications so that it may be used as a public school site (i.e., so that it is a "pad ready" school site), as determined by the County Engineer. The Owner may grade the Learning Center Site either in conjunction with construction of the Connector Road described in Proffer 6C below or at such later time as may be specified by the County. The Owner shall prepare a subdivision plat or site plan for the Learning Center Site that shall reflect sidewalks at the perimeter of the Learning Center Site which shall be installed by the Owner within six (6) months after the County's request therefor, but in no event earlier than five (5) years after the date of issuance of the First Residential Building Permit. The Owner shall provide all utilities, including, without limitation, water, sewer, natural gas, electricity, cable, telephone and other communications, to the boundary of the Learning Center Site, and establish storm water management facilities on the Property for use by the Learning Center Site so that no permanent storm water management facilities will be required on the Learning Center Site. The storm water management facilities shall be appropriately sized, as reasonably determined by the County's program authority, to accommodate storm water from the Learning Center Site at its full buildout. Dedication of the Learning Center Site shall include easements across the Owner's land for access to and use of such storm water management facilities, temporary easements as necessary for constructing the Learning Center and temporary easements necessary to allow storm water management facilities to be redesigned and enlarged, if necessary, to accommodate storm water from the Learning Center Site. The Learning Center Site may be used as an elementary school site, but if the County determines that the Learning Center Site will not be used as an elementary school site, it shall be used by the County for educational or recreational purposes serving both the Biscuit Run community and the region, which may include but is not limited to use as a community park (in which case the Owner shall not be obligated to grade the site).

4. **Overlot Grading Plan.** The Owner shall submit with the application for each subdivision plat of lots for use as single family detached or single family attached dwellings on the Property an overlot grading plan meeting the requirements of this Proffer 4 (hereinafter, the "Grading Plan"). The Grading Plan shall show existing topographic features to be considered in the development of the proposed subdivision and proposed final grades. The Grading Plan shall be approved by the County Engineer prior to final approval of the associated subdivision plat. The subdivision lots shall be graded as shown on the approved Grading Plan. No certificate of occupancy shall be issued for any dwelling on a lot where the

County Engineer has determined the lot is not graded consistent with the approved Grading Plan. Each Grading Plan shall satisfy the following:

A. The Grading Plan shall show all proposed streets, building sites, surface drainage, driveways, trails, and other features the County Engineer determines are needed to verify that the Grading Plan satisfies the requirements of this Proffer 4.

B. The Grading Plan shall be drawn to a scale not greater than one (1) inch equals fifty (50) feet.

C. All proposed grading shall be shown with contour intervals not greater than two (2) feet. All concentrated surface drainage over lots shall be clearly shown with the proposed grading. All proposed grading shall be designed to assure that surface drainage can provide adequate protection from the flooding of dwellings in the event a storm sewer fails.

D. Graded slopes on lots proposed to be planted with turf grasses (lawns) shall not exceed a gradient of three (3) feet of horizontal distance for each one (1) foot of vertical rise or fall (3:1). Steeper slopes shall be vegetated with low maintenance vegetation as determined to be appropriate by the Program Authority, as such term is defined in § 17-104(37) of the Albemarle County Code (the "Program Authority") in its approval of an erosion and sediment control plan for the land disturbing activity. These steeper slopes shall not exceed a gradient of two (2) feet of horizontal distance for each one (1) foot of vertical rise or fall (2:1), unless the County Engineer finds that the grading recommendations for steeper slopes have adequately addressed the impacts.

E. Surface drainage may flow across up to three (3) lots before being collected in a storm sewer or directed to a drainage way outside of the lots.

F. No surface drainage across a residential lot shall have more than one-half (1/2) acre of land draining to it.

G. All drainage from streets shall be carried across lots in a storm sewer to a point beyond the rear of the building site.

H. The Grading Plan shall demonstrate that driveways to lots will not be steeper than twenty (20) percent unless certified by an engineer that the driveway at the proposed steepness would be safe and convenient for vehicles (including emergency vehicles) to use the driveway, and shall include grading transitions at the street that the agent determines will allow passenger vehicles to avoid scraping the vehicle body on the driveway or the street. Additionally, the driveway grading shall provide an area in front of the proposed garage, or, where no garage is proposed, an area for vehicle parking, that is not less than eighteen (18) feet in length that will be graded no steeper than eight (8) percent.

I. The Grading Plan shall demonstrate that, for any dwelling not served by a front stair, an area at least ten (10) feet in width (or to the lot line if it is less than (10) feet) abutting the façade of the proposed structure that faces the street and provides pedestrian access to adjacent public sidewalks, has grades no steeper than ten percent (10%). This graded area also shall extend from the entrance of the dwelling to the driveways or walkways connecting the dwelling to the street.

J. Any requirement of this Proffer 4 may be waived by the County Engineer by submitting a waiver request with the preliminary subdivision plat. If such a request is made, it shall include: (i) a justification for the request contained in a certified engineer's report; (ii) a vicinity map showing a larger street network at a scale no smaller than one (1) inch equals six hundred (600) feet; (iii) a conceptual plan at a scale no smaller than one (1) inch equals two hundred (200) feet showing surveyed boundaries of the property; (iv) topography of the property at five (5) foot intervals for the property being subdivided and on abutting lands to a distance of five hundred (500) feet from the boundary line or a lesser distance determined to be sufficient by the County Engineer; (v) the locations of streams, stream buffers, steep slopes, floodplains, known wetlands; and (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable. In reviewing a waiver request, the County Engineer shall consider whether the alternative proposed by the Owner satisfies the purpose of the requirement to be waived to at least an equivalent degree. In approving a waiver, the County Engineer shall find that compliance with the requirement of this Proffer 4 for which a waiver is requested would not forward the purposes of the County's Subdivision and Water Protection Ordinances or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the Property, and to the land adjacent thereto.

K. The Owner may request that a Grading Plan be amended at any time. All amendments shall be subject to review and approval by of the County Engineer.

5. **Critical Slopes, Erosion and Sediment Control and Stormwater Management.**

A. Critical Slopes. The Owner shall apply for critical slope waivers for any roads located in critical slopes governed by § 18-4.2 *et seq.* of the Albemarle County Code.

B. Erosion and Sediment Control. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional erosion and sediment controls to achieve a sediment removal rate of eighty percent (80%) for the Property. (As a reference, current regulatory structural measures achieve a 60% optimal removal rate.)

C. Revegetation. Within nine (9) months after the start of grading under any erosion and sediment control permit, permanent vegetation shall be installed on all denuded areas, except for areas the Program Authority determines are otherwise permanently stabilized or are under construction with an approved building permit. A three (3) month extension for installation of permanent vegetation may be granted by the Program Authority due to special circumstances including but not limited to weather conditions.

D. Stormwater Management. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional stormwater management to achieve a removal rate 20% better than would otherwise be required by the Water Protection Ordinance (Albemarle County Code § 17-100 *et seq.*), up to a maximum of eighty percent (80%) removal rate for each Phase.

6. Transportation Improvements.

A. Off-Site Traffic Signals. Upon determination by the Virginia Department of Transportation ("VDOT"), based on one or more traffic signal warrant analyses, that the following traffic signals are warranted, the Owner shall proceed to design and install the warranted traffic signals (including necessary and related improvements to the intersection) at each of the following two (2) intersections in Albemarle County in accordance with the terms of this Proffer 6A: (i) 5th Street Extended and Sunset Avenue, shown as (4) on Exhibit A attached hereto, and (ii) Scottsville Road (Rt. 20) and Avon Street Extended, shown as (5) on Exhibit B attached hereto. Within ninety (90) days after receipt of the warrant analyses supporting the signal improvements, the Owner shall submit proposed traffic signal designs for the warranted traffic signals to VDOT. The Owner shall then install the traffic signals within six (6) months after approval by VDOT of the designs for the traffic signals. In the event all contingencies to this Proffer 6A have not been satisfied within twenty (20) years after the date of the issuance of the first residential building permit within the Property then this Proffer 6A shall expire and Owner shall have no further obligation to make this Proffer 6A.

B. Off-Site Turn Lanes. At the northern intersection of 5th Street and the Interstate 64 ramps in Albemarle County shown as (1) on Exhibit A attached hereto, the Owner shall construct one southbound right turn lane (turning from southbound 5th Street onto the westbound I-64 entrance ramp) and one westbound right turn lane (turning from the westbound I-64 exit ramp onto northbound 5th Street), in accordance with the terms of this Proffer 6B. In addition, at the southern intersection of 5th Street and the Interstate 64 ramps shown as (2) on Exhibit A, the Owner shall construct one northbound right turn lane (turning from northbound 5th Street onto the eastbound I-64 entrance ramp) and one eastbound right turn lane (turning from the eastbound I-64 exit ramp onto 5th Street southbound), in accordance with the terms of this Proffer 6B. The locations of the proffered lanes are shown on Exhibit A for reference. The Owner's obligations to construct the turn lanes provided in this Proffer 6B shall be contingent on provision by VDOT of appropriate right-of-way for such lanes. The design of all turn lanes shall be subject to prior approval by VDOT. In the event all contingencies to this Proffer 6B have not been satisfied within twenty (20) years after the date of the issuance of the first residential building permit within the Property then this Proffer 6B shall expire and Owner shall have no further obligation to make this Proffer 6B.

C. Connector Road; Southwood Contribution. Within ten (10) years after approval of ZMA 2005-017 or before issuance of the 500th residential building permit within the Property, whichever first occurs, the Owner shall design, complete construction, bond and dedicate to public use a connecting road between Scottsville Road (Rt. 20) and Old Lynchburg Road, including one (1) stream crossing, in the location and to the standards (including pedestrian and bicycle accommodations) shown on Sheet 4 of the GDP and described in the COD (the "Connector Road"), including the dedication of related drainage, slope and utility easements. For purposes of this Proffer 6C, construction of the Connector Road shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the Owner has obtained from the County Engineer a written determination that the Connector Road is safe and convenient for traffic. Street and parking lane widths for the Connector Road may be reduced if allowed by VDOT and approved by the County Director of Community Development. As part of its obligations under this Proffer 6C, the Owner shall be responsible for acquisition of necessary right-of-way between the Property and Old Lynchburg Road through the Southwood Mobile Home Park (the "Southwood Section"). The design of the Southwood Section shall be coordinated with the County and the owner of the Southwood Mobile Home Park and subject to prior approval by VDOT.

D. Mill Creek South Connection. Upon demand of the County, but no earlier than the issuance of the First Residential Building Permit, the Owner shall dedicate right-of-way sufficient for one (1) future vehicular connection from the pedestrian and street network within the Property to the common boundary with the Mill Creek South neighborhood, generally in the location and dimensions depicted on Sheet 4 of the GDP and p. 26 of the COD as Road K and Section Type IX, respectively (the "Mill Creek South Connection"). At the time such right-of-way is dedicated to the County (and notwithstanding the schedule provided in Proffer 1F(3) for construction of the remainder of the Linking Trail), the Owner shall also grade the area of the Mill Creek South Connection consistent with a future 30' curb-to-curb roadway with sidewalks and planting strips and construct that portion of the Linking Trail located within the area of the Mill Creek South Connection. Such right-of-way may be used for bicycle, pedestrian and emergency access to the Property until such time as the Albemarle County Board of Supervisors determines vehicular connection is required. Contingent on the provision, without cost to the Owner, of adequate off-site right-of-way and easements as necessary for construction and maintenance of a vehicular connection extending from the Property's common boundary with the Mill Creek South neighborhood generally northward to Stoney Creek Drive, and upon the request of the Albemarle County Board of Supervisors, but in no event earlier than the issuance of the First Residential Building Permit, the Owner shall construct a vehicular connection from the Property's internal street network over the Mill Creek South

Connection and extending to Stoney Creek Drive, to the standards and on a schedule approved by the Albemarle County Board of Supervisors; provided, however, that such vehicular connection shall be posted as open only to passenger vehicles and not to construction traffic. In the event all contingencies to this Proffer 6D have not been satisfied within twenty-five (25) years after the issuance of the First Residential Building Permit, then this Proffer 6D shall expire and Owner shall have no further obligation to make this Proffer 6D.

E. ITS Improvements. The Owner shall contribute cash in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) to an escrow agent approved by the County to be held by the escrow agent for the purpose of funding communication and signal timing improvements at locations to be agreed upon by the County and the City of Charlottesville. The cash contribution shall be made within twelve (12) months after recordation of the first subdivision plat creating lots or units for individual residential occupancy within the Property. Funds held in escrow in accordance with this Proffer 6E shall be released from time to time upon instruction by the Albemarle County Board of Supervisors either (i) to the City or its designee for the purposes provided herein or (ii) to the County or its designee for such purposes as the Albemarle County Board of Supervisors may set forth in its instruction. If the cash contribution provided in this Proffer 6E has not been exhausted by the County for the stated purpose within ten (10) years after the date of the issuance of the first residential building permit within the Property, then all unexpended funds may be used towards funding any improvements listed on the County's adopted capital improvement program or other adopted County plan or priority list and located within the boundaries of Neighborhoods 4 and 5.

F. Frontage Improvements. Contemporaneously with, and as part of, frontage improvements along Scottsville Road (Rt. 20) and Old Lynchburg Road required in connection with any subdivision plat or site plan for the Property, the Owner shall construct such turn lanes and improvements to the horizontal alignment, vertical alignment and cross-section of Scottsville Road (Rt. 20) and Old Lynchburg Road as reasonably necessary to provide safe and convenient access to Biscuit Run; provided, however, that the Owner's responsibility under this Proffer 6E shall be limited to the extent of the Property's frontage only. Improvements constructed in accordance with this Proffer 6F shall be designed and constructed to applicable VDOT standards, including, without limitation, VDOT's Geometric Design Standard for a Rural Collector road (GS-3) and VDOT's Geometric Design Standard for a Rural Minor Arterial road (GS-2), as such standards may be amended from time to time. Within ten (10) years after approval of ZMA 2005-017, before issuance of the 500th residential building permit within the Property, or by the date of completion of construction of the Connector Road as described in Proffer 6C, whichever first occurs, the Owner shall design, complete construction, bond and dedicate to public use Street AA, which runs generally parallel to Scottsville Road (Rt. 20), as described on Sheet 4 of the GDP and p. 27 of the COD. For purposes of this Proffer 6F, construction of Street AA shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the Owner has obtained from the County Engineer a written determination that the Street AA is safe and convenient for traffic.

G. Stream Crossings. The Owner shall construct three (3) stream crossings in the locations shown on Sheet 4 of the GDP (the "Stream Crossings"). The Stream Crossings shall be designed and constructed to span the stream and adjacent floodway. The stream crossing located on the east-west connector road shall be constructed within the time provided in Proffer 6C for completion of construction of the Connector Road. The stream crossing providing access to the District Park shall be constructed within the time provided in Proffer 1F(3) for completion of construction of the Linking Road. The remaining stream crossing shall be constructed at the time the adjacent roadway is constructed but in no case later than the time provided in Proffer 6C for completion of the Connector Road.

7. Transit.

A. Cash Contribution. The Owner shall contribute cash in the amount of One Million Dollars (\$1,000,000.00) to the County or its designee (which may include a regional transit authority) to be used for capital and/or operating expenses related to the extension of public transit service to the Property and its surrounding area. Such cash contribution may also be used towards the formation, capitalization and operation of a regional transit authority whose service area includes the Property. The cash contribution shall be made to the County or its designee within twelve (12) months after recordation of the first subdivision plat creating lots or units for individual residential occupancy within the Property. If the cash contribution provided in this Proffer 7A has not been exhausted by the County for the stated purposes within eighteen (18) months after the date of the issuance of the first residential building permit within the Property, then all unexpended funds may be retained by the County for any public purpose.

B. Transit Stops. The Owner shall construct six (6) public transit stops, including design, construction and dedication of related improvements such as turnoffs, benches, shelters and lighting, all substantially in accordance with Sheet 4A of the GDP and the COD, modified as determined to be necessary by the County Department of Community Development to facilitate efficient transit service to the Property. One of the transit stops may, at the County's option, include a "kiss and ride" facility consisting of no less than eight (8) temporary parking spaces for the discharge and retrieval of transit passengers by private vehicles together with a sheltered passenger waiting area and bus pull-off. Construction and dedication to public use of each transit stop shall occur in conjunction with the construction and dedication of the road section on which such stop is located, and the construction of all transit stops located along the Connector Road shall be completed within the time provided in Proffer 6C for completion of construction of the Connector Road.

C. Park and Ride Lot. The Owner shall provide a paved parking area on the Property consisting of no less than twenty (20) spaces within Block 2 (as shown on Sheet 2 of the GDP) for

temporary use by commuters accessing transit, trails or carpools (the "Park and Ride Lot"). Construction of the Park and Ride Lot shall occur in conjunction with the construction and dedication of the adjacent road section or, if the Park and Ride Lot is constructed within a parking area for another use (e.g., a grocery store), then the Park and Ride Lot shall be constructed in conjunction with such use; provided, however, that the Park and Ride Lot shall be constructed no later than the date of completion of the Connector Road, as described in Proffer 6C.

D. **Car Sharing Service.** The Owner shall provide three (3) parking spaces on the Property for location of car sharing vehicles (e.g., Zipcar vehicles), the locations of which shall be determined in cooperation with the County Department of Community Development and provided in conjunction with the construction and dedication of the adjacent road section; provided, however, that such parking spaces shall be constructed no later than the date of completion of the Connector Road, as described in Proffer 6C.

E. **Permanent Transit Service.** The Owner shall provide transit service between the Property, the University of Virginia and the City of Charlottesville Downtown Transit Station at 615 East Water Street, and such other locations as may be determined by the Owners' Association in accordance with this Proffer 7E. The transit service shall commence as a private transit service no later than the date of issuance of the building permit for the five hundredth (500th) dwelling on the Property, shall run during weekday morning and evening commuting hours (at a minimum), and shall continue for ten (10) years or until the earlier provision of public transit service (by a regional transit authority or otherwise) to the Property. Routes and timing of the transit service provided hereunder, as well as any proposed use of the City of Charlottesville Downtown Transit Station, shall be coordinated with Charlottesville Transit Service. Funding for the transit service described in this Proffer 7E shall be provided through assessments administered by the Owners' Association of Five Dollars (\$5.00) per residential unit per month and Twenty Cents (\$0.20) per square foot of commercial space per year, each increased whenever, and at the same rate as, the Owners' Association's regular assessment is increased (the "Transit Assessment"). At any time, at the County's option, all Transit Assessments, along with any unused Transit Assessment funds accumulated by the Association, shall be directed to a regional transit authority or other governmental authority operating public transit service with service to the Property, at which time the Owners' Association's responsibility hereunder to operate any private transit service shall cease. In such event, and for so long as public transit service is provided to the Property, the Owner's Association shall semi-annually pay over the aggregate amount of the Transit Assessment assessed to the operator of such public transit service for use toward capital and/or operating expenses of such transit system, but not for maintenance expenses except as permitted by Va. Code § 15.2-2303A, as amended. Within sixty (60) days after the close of the second and fourth quarters of each calendar year throughout the period the Owners' Association collects the Transit Assessment, the Owners' Association shall provide to the County Director of Community Development a written report listing the current Transit Assessment amount, the number of residential units and amount of commercial square footage assessed, and the amount of the Transit Assessment actually collected. The terms of this Proffer 7E shall be incorporated into the governing documents of the Owners Association, which documents shall further authorize the County Director of Community Development to file, perfect and enforce the lien provided in Va. Code § 55-516 against the owner of any lot or parcel within the Property who fails to pay the Transit Assessment. The remedy provided in this Proffer 7E shall be in addition to, and not in lieu of, the County's rights and remedies at law or in equity for noncompliance with the terms of these Proffers.

8. **Phasing of Retail Development.** Prior to the issuance of a building permit for the five hundredth (500th) dwelling within the Property, the aggregate gross retail space within the Property shall not exceed seventy-five thousand (75,000) square feet. Prior to the issuance of a building permit for the one thousandth (1,000th) dwelling within the Property, the aggregate retail space within the Property shall not exceed one hundred twenty-five thousand (125,000) square feet. "Retail space" as used in this Proffer 8 shall not be deemed to include any office space or health, wellness and fitness facilities.

9. **Library Contribution.** No later than the issuance of the five hundredth (500th) building permit within the Property, the Owner shall contribute cash in the amount of Five Hundred Thousand Dollars (\$500,000.00) to the County to be used toward construction of a new regional library branch serving the Property, or toward improvements to one or more existing regional library facilities serving the Property. If the cash contribution provided in this Proffer 9 has not been exhausted by the County for the stated purposes within ten (10) years after the date of the issuance of the first residential building permit within the Property, the County may use the funds towards funding any improvements listed on the County's adopted capital improvement program and located within the boundaries of Neighborhoods 4 and 5.

10. **Historic Preservation.** Prior to commencing land disturbance within any area depicted in red on Exhibit C hereto (collectively, the "Potential Resource Sites"), the following investigations shall be made as indicated: (a) for Potential Resource Sites labeled as "Phase I Survey" on Exhibit C, systematic shovel testing of low relief landforms with archeological potential that will be impacted by the proposed development, and (b) for Potential Resource Sites labeled as "Archeological Reconnaissance" on Exhibit C, pedestrian survey and visual inspection of various crossings and shovel testing when determined necessary by the archeologists conducting the investigation. Each such investigation shall comply with the standards and procedures set forth in Exhibit D hereto. In addition, in the event that any human remains are encountered in the course of conducting any investigation in accordance with this Proffer 10, no land disturbance shall proceed in the affected area until delivery of evidence to the County that all applicable regulations regarding the disturbance or removal of such remains have been complied with, or that avoidance can be achieved. The Owner shall provide evidence to the County's Director of Planning that the individual supervising the investigations required by this Proffer 10 is a qualified archeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. The Owner shall provide all reports generated by investigations conducted in accordance with this Proffer 10

to the County's Director of Planning, and the Owner shall obtain from the Director written confirmation that the investigations were made in conformance with Exhibits C and D hereto, and shall incorporate any approved treatment plans into the development plans for the Property and adhere to such treatment plans during all clearing, grading and construction activities on the Property.

11. **Green Building.**

A. **Residential.** Not less than ten percent (10%) of the dwellings constructed on the Property shall be rated a minimum of "Certified" under the U.S. Green Building Council's *LEED for Homes Pilot Rating System*, Version 1.11a (January 2007) or the *LEED-NC Green Building Rating System for New Construction and Major Renovations*, Version 2.2 (October 2005), as applicable (collectively, the "LEED Compliant Dwellings"). Prior to issuance of building permits for the 1001st, 1501st, 2001st, 2501st and 3001st dwellings on the Property, the Owner shall, in each case, provide copies of LEED certificates to the County's Director of Community Development evidencing that a minimum of ten percent (10%) of dwellings constructed on the Property to date are certified as LEED Compliant Dwellings.

B. **Commercial.** Not less than fifty thousand (50,000) square feet of the commercial square footage located within Block 2 as shown on Sheet 2 of the GDP ("Block 2") shall be rated a minimum of "Certified" (or demonstrated to the County's Director of Community Development's satisfaction to be eligible to receive such certification) under the *LEED-NC Green Building Rating System for New Construction and Major Renovations*, Version 2.2 (October 2005) or the *LEED Green Building Rating System for Core & Shell Development*, Version 2.0 (July 2006), as applicable (collectively, the "LEED Compliant Commercial Space"). Prior to issuance of the building permit for any proposed LEED Compliant Commercial Space, the Owner shall provide to the County Director of Community Development the opinion of a licensed architect that such space, if constructed in accordance with the building plans, is designed to achieve the minimum "Certified" rating provided in this Proffer 11B. Before the Owner requests that a certificate of occupancy for any building for which a licensed architect rendered such an opinion, the Owner shall submit to the County's Director of Community Development a written statement from the architect that the building was built to the plans on which the opinion was based.

12. **Fire and Rescue.** No later than the date of issuance of the building permit for the five hundredth (500th) dwelling within the Property, the Owner shall contribute to the County cash in the amount of Eight Hundred Seventy-Five Thousand Dollars (\$875,000.00) to be used toward the purchase of one or more fire engines, ambulances or other needed fire or rescue equipment serving the Property and its surrounding area. If the cash contribution provided in this Proffer 12 has not been exhausted by the County for the stated purposes within ten (10) years after the date of the issuance of the three thousandth (3,000th) certificate of occupancy within the Property, then all unexpended funds may be used towards funding any improvements listed on the County's adopted capital improvement program and located within the boundaries of Neighborhoods 4 and 5.

13. **Annual Adjustment of Cash Proffers.** Beginning January 1, 2008, the amount of each cash contribution required herein, including any aggregate maximum contribution, shall be adjusted annually until paid to reflect the increase, if any, in the Comparative Cost Multiplier, Regional City Average, Southeast Average, Category C: Masonry Bearing Walls issued by Marshall Valuation Service (a/k/a Marshall & Swift) (the "Index") or the most applicable Marshall & Swift index determined by the County if publication of the specific index referenced herein is discontinued. The adjusted cash contribution in any year shall equal the sum of (x) the cash contribution for the preceding year and (y) the product of the cash contribution for the preceding year and the difference between the Index for the first quarter of the current year and the Index for the first quarter of the immediately-preceding year. For each cash contribution that is paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year. In no event shall adjustment of any cash amount in accordance with this Proffer 13 decrease such amount below the dollar amount originally proffered herein.

14. **Landscape Plan for Entrance Corridor Buffers.** Prior to approval of the first final site plan within Block 2 or Block 3 as depicted on Sheet 2 of the GDP (the "Eastern Blocks"), a landscape plan meeting the requirements of County Code §§ 18-32.7.9.4 and 18-30.6.4 and reflecting the general intent of the Buffers set out on page 40 of the COD (the "Landscape Plan") shall be submitted for review and approval to the County Architectural Review Board (the "ARB") for the portions of the Buffers shown on Sheet 5 of the GDP that abut Scottsville Road (Rt. 20). Prior to approval of the first final site plan within Block 10, Block 15 or Block 16 as depicted on Sheet 2 of the GDP (the "Western Blocks"), a Landscape Plan shall be submitted for review and approval to the ARB for the portions of the Buffers shown on Sheet 5 of the GDP that abut Old Lynchburg Road. Receipt of a certificate of appropriateness from the ARB shall be a condition of final site plan approval for the first site plan within the Eastern Blocks and the Western Blocks, respectively. The Owner shall install landscaping in accordance with the approved Landscaping Plans within one (1) year after issuance of the certificate of appropriateness for the applicable Landscape Plan. The Owner shall be responsible for maintaining the landscaping provided in the approved Landscaping Plans until such time as the Buffers are conveyed to the Owners' Association, whereupon the Owners' Association shall be responsible for all maintenance of the landscaping.

15. **Cash Fund Contribution for Capital Improvements.** For each dwelling constructed on the Property, the Owner shall contribute to the County, as a condition of building permit issuance, cash in the amount of Five Thousand Four and 88/100 Dollars (\$5,004.88), up to an aggregate maximum contribution of Thirteen Million One Hundred Eighty-Seven Thousand Eight Hundred Fifty-Eight and 80/100 Dollars (\$13,187,858.80) (the "Cash Fund Contribution"), which may be used toward funding of any capital improvements as determined by the County, including, without limitation: (i) widening of Scottsville Road (Rt. 20); (ii) signal improvements at Avon Street and Southern Parkway; (iii) signal improvements on Old Lynchburg Road at State Route 631 and 5th Street; (iv) installation of signals at Scottsville Road (Rt. 20)

and I-64; (v) lane addition on Old Lynchburg Road at the intersection of Old Lynchburg Road and Country Green Road; (vi) lane addition on Old Lynchburg Road at the intersection of Old Lynchburg Road and Mountainwood Road; (vii) lane addition on Scottsville Road (Rt. 20) at the intersection of Scottsville Road (Rt. 20) and PVCC; (viii) lane addition and bridge expansion on 5th Street at the intersection of I-64 and 5th Street; (ix) bicycle lanes on Old Lynchburg Road (2-lane section), and/or on Scottsville Road (Rt. 20) and Avon Street; (x) spot improvements for Scottsville Road (Rt. 20) and Old Lynchburg Road; (xi) construction of a Fontaine/Sunset Connector as contemplated in the "Southern Urban Area B Study Final Report" dated September 10, 2004; (xii) design and construction of one or more soccer, lacrosse or other playing fields at the Championship Field, as defined in Proffer 1G; or (xii) construction of District Park facilities. Any portion of the cash contribution provided in this Proffer 15 received after an improvement to which such funds may be directed hereunder is complete may be used toward repayment of any borrowed funds used to pay for such improvement or, if none, then toward funding any improvements listed on the County's adopted capital improvement program and located within the boundaries of Neighborhoods 4 and 5. The cash contributions provided in this Proffer 15 shall not be made on units of affordable housing, as such term is defined in Proffer 2.

16. **Cash Proffer for Improvements to Old Lynchburg Road (City Section).** For each dwelling constructed on the Property, the Owner shall contribute to an escrow agent approved by the County, as a condition of building permit issuance, cash in the amount of Five Hundred Eighty-Eight and 24/100 Dollars (\$588.24), up to an aggregate maximum contribution of One Million Five Hundred Fifty Thousand Dollars (\$1,550,000.00), to be held by the escrow agent in escrow for the purpose of funding construction of improvements to Old Lynchburg Road within the City of Charlottesville. Funds held in escrow in accordance with this Proffer 16 shall be released from time to time upon instruction by the Albemarle County Board of Supervisors either (i) to the City or its designee for the purposes provided herein or (ii) to the County or its designee for such purposes as the Albemarle County Board of Supervisors may set forth in its instruction. If the cash contribution provided in this Proffer 16 is not expended within ten (10) years after the date of the issuance of the three thousandth (3,000th) certificate of occupancy within the Property, then all unexpended funds may be used toward funding any improvements listed on the County's adopted capital improvement program and located within the boundaries of Neighborhoods 4 and 5. Any portion of the cash contribution provided in this Proffer 16 received after an improvement to which such funds may be directed hereunder is complete may be used toward repayment of any borrowed funds used to pay for such improvement or, if none, then toward funding any improvements listed on the County's adopted capital improvements program and located within the boundaries of Neighborhoods 4 and 5. The cash contributions provided in this Proffer 16 shall not be made on units of affordable housing, as such term is defined in Proffer 2.

17. **Cash Proffer for Additional Single-Family Detached Dwellings.** As a condition of the issuance of each building permit for a single family detached dwelling unit ("SFD Unit") requested after the issuance of the building permit for the six hundred fiftieth (650th) SFD Unit on the Property, the Owner shall contribute cash in the amount of Five Thousand Three Hundred Fifty Dollars (\$5,350.00) to the County for use towards funding any improvements listed on the County's adopted capital improvements program and located within the boundaries of Neighborhoods 4 and 5. Likewise, upon the issuance of each building permit for a single family attached, townhouse or multifamily dwelling unit ("SFA/TH/MF Unit") requested after the issuance of the two thousand four hundred fiftieth (2,450th) SFA/TH/MF Unit on the Property, the County shall credit the Owner the amount of Five Thousand Three Hundred Fifty Dollars (\$5,350.00) against the cash proffers for such unit otherwise owed in accordance with these Proffers. Notwithstanding the foregoing, in no event shall the County be required to refund any cash proffer payment to the Owner in the event that a credit under this Proffer 17 is due. Credits hereinunder may be carried forward for future units governed by these Proffers. The cash contributions and credits provided in this Proffer 17 shall not be made on units of affordable housing, as such term is defined in Proffer 2.

18. **Cash Proffer for Boys & Girls Club Facility at Southwood.** Upon demand of the County, but no earlier than the date of recordation of the second subdivision plat creating lots or units for individual residential occupancy within the Property, the Owner shall contribute to the County or its designee cash in the amount of Fifty Thousand Dollars (\$50,000.00) to be used toward the expansion of the Boys & Girls Club's Southwood Unit facility (and/or the hours, programming and services of such facility) within the Southwood Mobile Home Park community. If the cash contribution provided in this Proffer 18 has not been exhausted by the County for the stated purposes within ten (10) years after the date of the issuance of the three thousandth (3,000th) certificate of occupancy within the Property, then all unexpended funds may be used towards funding any improvements listed on the County's adopted capital improvement program and located within the boundaries of Neighborhoods 4 and 5.

Attachments:

- Exhibit A – Diagram showing proffered signals and turn lanes on OLR/64 and Sunset
- Exhibit B – Diagram showing proffered signal at Avon/Rt. 20
- Exhibit C – Dutton Associates historic resource map
- Exhibit D – Dutton Associates proposal

(Note: Listed below are the two waivers and modifications to the Zoning Ordinance requirements:

- Waiver for parking and loading study, and
- Waiver for lot layout

(Note: Ms. Thomas left the meeting at 1:04 a.m.)

(**Note:** The next two agenda items were discussed together.)

Agenda Item No. 14. **Public Hearing:** ZMA-2006-009. 5th Street Avon Center (Signs #48,67& 68). PROPOSAL: Rezone 86.895 acres from LI - Light Industrial zoning district which allows industrial, office, and limited commercial uses (no residential use) to PD-SC - Planned Development Shopping Center zoning district which allows shopping centers, retail sales and service uses; and residential by special use permit (15 units/acre) Approx. 476,355 sq ft of commercial uses. PROFFERS: Yes. MAGISTERIAL DISTRICT: Scottsville. (Notice of this public hearing was advertised in the *Daily Progress* on August 27, 2007 and September 3, 2007).

Agenda Item No. 15. **Public Hearing:** SP-2007-004. 5th Street Avon Center Parking Structure (Signs #78,81,91). PROPOSAL: Parking Structure. ZONING CATEGORY/GENERAL USAGE: LI - Light Industrial - industrial, office, and limited commercial uses (no residential use). MAGISTERIAL DISTRICT: Scottsville. (Notice of this public hearing was advertised in the *Daily Progress* on August 27, 2007 and September 3, 2007).

Mr. Tucker noted that the Board received a letter dated September 10, 2007, from Mr. Steven W. Blaine, LeClair Ryan, on behalf of New Era Properties, LLC and Avon Holdings, LLC, requesting deferral of the public hearing for ZMA-2006-009 to allow a work session for October and re-advertisement of a public hearing in November.

Mr. Slutzky **moved** to defer ZMA-2006-009 and SP-2007-004 to November 7, 2007 for a work session. Mr. Rooker **seconded** the motion.

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

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

NAYS: None.

ABSENT: Ms. Thomas.

(**Note:** Mr. Cilimberg suggested taking the next two items up together, with the Board taking separate actions.)

Agenda Item No. 16. **Public Hearing:** AFD-2007-002. Hardware renewal. An ordinance to review and renewal of section 3-214, Hardware Agricultural and Forestal District, of Division 2, Districts, of Article II, Districts of Statewide Significance, of Chapter 3, Agricultural and Forestal Districts, of the Albemarle County. (Notice of this public hearing was advertised in the *Daily Progress* on August 27, 2007 and September 3, 2007).

Agenda Item No. 17. **Public Hearing:** AFD-2007-003. Nortonville renewal. An ordinance to review and renewal of section 3-307, Nortonville Agricultural and Forestal District, of Division 2, Districts, of Article II, Districts of Statewide Significance, of Chapter 3, Agricultural and Forestal Districts, of the Albemarle County. (Notice of this public hearing was advertised in the *Daily Progress* on August 27, 2007 and September 3, 2007).

Mr. Cilimberg said that the Hardware District involves some removals and some additions. Unfortunately, the County will be losing a fair amount of property in the district. Mr. Cilimberg stated that this had been approximately a 4,000 acre district and it is going to be reduced to a little over 2,900 acres in size. He then referred to the maps of the location noting the requested withdrawals and renewals. Since the Planning Commission meeting two other properties asked to be included. The result is that the Hardware Agricultural District has a net loss in acreage of 1,060.79 acres from its current size.

Mr. Cilimberg said that for the Nortonville District there is no change, but it would be renewed for a ten year period rather than the prior eight year period. The Board has a recommendation from the Planning Commission for the approval of renewal of both districts. Although the Planning Commission did not see some of the additions to the Hardware District, he believes they would encourage the Board to accept the additions as part of the renewal.

There being no questions for Mr. Cilimberg from Board members, Mr. Boyd opened the public hearing on AFD-2007-002 - Hardware renewal and AFD-2007-003 - Nortonville renewal.

No members of the public wished to speak, and Mr. Boyd closed the public hearings.

Mr. Rooker **moved** approval of AFD-2007-002, Hardware Agricultural and Forestal District renewal, as presented. Mr. Wyant **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Ms. Thomas.

(The adopted ordinance is set out below:)

ORDINANCE NO. 07-03(2)

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, AGRICULTURAL AND FORESTAL DISTRICTS, ARTICLE II, DISTRICTS OF STATEWIDE SIGNIFICANCE, DIVISION 2, DISTRICTS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 3, Agricultural and Forestal Districts, Article II, Districts of Statewide Significance, Division 2, Districts, of the Code of the County of Albemarle, Virginia, is hereby amended and reordained as follows:

By Amending:

Sec. 3-214 Hardware Agricultural and Forestal District.

Chapter 3. Agricultural and Forestal Districts

Article II. Districts of Statewide Significance

Division 2. Districts

Sec. 3-214 Hardware Agricultural and Forestal District.

The district known as the "Hardware Agricultural and Forestal District" consists of the following described properties: Tax map 73, parcels 38, 39C, 41A, 41B1, 41B2, 42, 42A, 43, 44; tax map 74, parcels 26, 28; tax map 86, parcels 14, 16A, 16C, 16D, 16E, 16F, 27; tax map 87, parcels 10, 13A, 13E (part consisting of 89.186 acres); tax map 88, parcels 2A, 3V, 6A, 20A, 20B, 20C, 20D, 20F, 23, 23E, 23F, 24, 24A, 26B, 29, 40, 42; tax map 99, parcels 29, 52. This district, created on November 4, 1987 for not more than ten years and last reviewed on September 12, 2007, shall next be reviewed prior to September 12, 2017.

(Code 1988, § 2.1-4(h); Ord. No. 98-A(1), 8-5-98; Ord. 00-3(2), 7-12-00; Ord. 07-3(2), 9-12-07)

Mr. Rooker then **moved** approval of AFD-2007-003, Nortonville Agricultural and Forestal District renewal, as presented. Mr. Wyant **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Ms. Thomas.

(The adopted ordinance is set out below:)

ORDINANCE NO. 07-03(3)

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, AGRICULTURAL AND FORESTAL DISTRICTS, ARTICLE III, DISTRICTS OF LOCAL SIGNIFICANCE, DIVISION 2, DISTRICTS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 3, Agricultural and Forestal Districts, Article III, Districts of Local Significance, Division 2, Districts, of the Code of the County of Albemarle, Virginia, is hereby amended and reordained as follows:

By Amending:

Sec. 3-307 Nortonville Local Agricultural and Forestal District.

Chapter 3. Agricultural and Forestal Districts

Article III. Districts of Local Significance

Division 2. Districts

Sec. 3-307 Nortonville Local Agricultural and Forestal District.

The district known as the "Nortonville Local Agricultural and Forestal District" consists of the following described properties: Tax map 8, parcels 26, 26B and 28 (part consisting of 2 acres). This district, created on October 6, 1999 for a period of 8 years, since amended to continue for not more than 10 years and last reviewed on September 12, 2007, shall next be reviewed prior to September 12, 2017.

(Ord. 99-3(5); 10-6-99; Ord. 07-3(3), 9-12-07)

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

Mr. Boyd said that the Board decided to participate in the joint task force on affordable housing with City Council, and they need to appoint someone to represent the Board on the task force. Mr. Slutzky expressed an interest to serve.

Mr. Rooker **moved** to appoint David Slutzky to serve as the Board of Supervisors representative on the Joint City/County Task Force on Affordable Housing. Mr. Wyant **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Ms. Thomas.

Agenda Item No. 25. Adjourn.

At 1:10 a.m., with no further business to come before the Board, Mr. Rooker offered **motion, seconded** by Mr. Wyant, to adjourn the meeting to September 28, 2007, 9:00 a.m., at Zehmer Hall. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Ms. Thomas.

Chairman

Approved by the Board of County Supervisors

Date: 05/07/2008

Initials: EWJ
