

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on January 9, 2008, at 9:00 a.m. in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. Ken C. Boyd, Mr. Lindsay G. Dorrier, Jr., Ms. Ann Mallek, Mr. Dennis S. Rooker, Mr. David Slutzky and Ms. Sally H. Thomas. (**Note:** Mr. Boyd, Mr. Dorrier and Ms. Mallek who were elected on November 6, 2007, had taken the oath of office on December 21, 2007.)

ABSENT: None.

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

Agenda Item No. 1. Call to Order. The meeting was called to order at 9:00 a.m. by Mr. Tucker.

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

Agenda Item No. 4. Election of Chairman.

Mr. Tucker said it is his duty this morning to assist the Board with the first agenda item. He then opened the floor for nominations for the office of Chairman for calendar year 2008.

Mr. Rooker offered **motion** that Mr. Ken C. Boyd be reelected as Chairman of the Board for the calendar year 2008. Mr. Slutzky **seconded** the motion.

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

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

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

Mr. Boyd assumed the Chair. He thanked the Board members for giving him the chance to lead the Board for another year. He welcomed Ms. Mallek as a new Board member, saying the Board is pleased to have her as a member. Since he is continuing as Chair, he does not have a lot of things to say about what he plans to do this year. Several Board members have offered suggestions about things he might do differently, and he is open to other suggestions. He looks forward to serving as Chair. He knows there will continue to be issues for the Board to address.

Mr. Boyd then asked for nominations for the office of Vice-Chairman. Ms. Thomas offered **motion** to appoint Mr. David Slutzky as Vice-Chairman. The motion was **seconded** by Mr. Rooker. Roll was called and the motion carried by the following recorded vote:

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

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

Motion was offered by Ms. Thomas, **seconded** by Mr. Rooker, to reappoint Ms. Ella W. Jordan as Clerk to the Board of Supervisors for the Calendar Year 2008 and to reappoint Ms. Meagan Hoy as Senior Deputy Clerk for the same term. Roll was called and the motion carried by the following recorded vote:

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

Agenda Item No. 7. Set Meeting Times, Dates and Places for Calendar Year 2008.

Motion was offered by Ms. Thomas, **seconded** by Mr. Rooker, to set the meeting times, dates and places for Calendar Year 2008 as follows: first Wednesday of the month at 9:00 a.m., second Wednesday of the month at 6:00 p.m., with said meetings to be held in the County Office Building on McIntire Road; the meeting dates for January 2009 will be set for January 7 at 9:00 a.m., and January 14 at 6:00 p.m. Roll was called, and the motion carried by the following recorded vote:

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

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

Motion was offered by Ms. Thomas, **seconded** by Mr. Rooker, to set the dates for hearing zoning text amendments from citizens as follows: September 10 and December 10, 2008, and March 11 and June 10, 2009. Roll was called and the motion carried by the following recorded vote:

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

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

Mr. Boyd said there is one change in the Rules of Procedure that he would like to make note of; the change came from an organizational work session the Board held a couple of weeks ago. This year the Board is changing to the Rules for Small Boards so there are two changes from prior procedures. First is that the chairman will be allowed to make motions.

Mr. Davis passed around a sheet showing the rules for Small Boards. The Board's current Rules of Procedure require a second. That was not proposed to change based on discussions at the organizational meeting. By adopting the small board procedures, the only working change would be that the chair could make a motion if seconds are required. Beyond the "bullet points" shown in the handout, Roberts' Rules of Order would still be applicable under the proposed local rules.

Mr. Slutzky asked if the one change recommended is that the chairman can now make a motion. Mr. Davis said that is correct.

Mr. Rooker said the Board will still use the Rules of Procedure it has used in the past. Mr. Davis said the primary rules will be the Rules of Procedure adopted by the Board, with Roberts' Rules adopted by reference. The rules specifically set forth in the Rules of Procedure are the primary rules which govern how a meeting is conducted.

Mr. Boyd said if the Board so desires, it can continue with the rule of the chair not making a motion. Mr. Davis said that is correct.

Mr. Slutzky said the Board has discussed this change, and he thought it had decided it wanted to adopt this change so the chair can make a motion.

Ms. Thomas said there is one piece in the changes which is a surprise to her and that is taking a vote by a show of hands. That has never been done because it makes it difficult for the Clerk to record what transpires. Mr. Davis said small board procedures do not require that. It is closely akin to when the chair says "is there consent from the Board" and no vote is taken at all. This would be allowed, although under Roberts' Rules that is not permitted. Occasionally this Board acts by consensus and this recognizes that possibility.

Ms. Thomas said supposedly the Board was to actually stand on different occasions. Mr. Davis said he was meaning to talk to the Board members about not standing up when speaking, but he had let that pass.

Mr. Dorrier said he thinks it is good that a motion need not be seconded. Mr. Davis said the rules before the Board specifically override that provision of the small board procedures, and a second will still be required.

Ms. Thomas said she had a question. She is fixated on the fact that the Board will not be able to accept any proffer changes after the public hearing starts. So under (F3) which talks about the public hearing, there is nothing in that section to keep the Board from having public comment before calling it an officially open public hearing which is the only way she can think to get around this rule. Mr. Davis said that may be a technical way to avoid the requirement, but he does not know if that would be viewed as circumventing the rule. Technically, until the public hearing is opened, changes could be made to the proffers.

Ms. Thomas said she does not know that the Board will have to do that, but that was the only way she could think of allowing public comments to be taken seriously. Otherwise, it is either an up or a down vote. This is just for zoning matters and not for usual business. She had a question for Mr. Tucker. Under "Order of Business" it says: "Proffers have to be submitted no later than two business days prior to the County's deadline for submitting the public hearing advertisement to the newspaper." She asked if that is working out with staff. Mr. Tucker said staff does not follow that closely all the time. There are times when it works out that way, but many times there are things the applicant learns after further work with staff, so it is difficult for staff when they are trying to get the petition ready for the Board. He said staff can push more vigorously to enforce that rule better. Sometimes the proffers do come in after a hearing has been advertised.

Ms. Thomas said her question is, if the proffers come in two days before the advertisement, is that enough time? Mr. Tucker said that normally it is the County Attorney's staff that reviews the proffers last. Two days may not be enough time for that office depending on how extensive the proffers are.

Ms. Thomas said this policy can be followed, but it could be necessary for the signed proffers to be submitted more in advance than they are now if that is a problem for staff. Mr. Davis said the intent of

that rule was to have the final documents available so when the first advertisement appeared in the paper, anyone could come in and review those documents. In practice, that rarely happens. Between the Planning Commission meeting and that of the Board there is not a great deal of time. The final proffers and plans on proposals that have issues that are unresolved usually get to staff at the deadline. Planning staff then has to review those documents, the County Attorney's Office has to review those documents, and often there are additional changes required. Staff tries to work those changes out before the Board's meeting which is generally two and a half weeks later. This schedule is not working now. Staff has not found a good solution unless there is additional delay.

Mr. Rooker said he thinks the time period that impacts the process is the time between the Planning Commission meeting and the Board meeting. He said that time could be lengthened by the Board.

Ms. Thomas said that is not before the Board today. Mr. Tucker said he does not think the Board can pick a date which will work all of the time. It depends on the application.

Mr. Slutzky said the Planning Commission may require something the applicant will not do and then the Commission does not support the request. Before it is over, the applicant agrees to do whatever was requested in the beginning. Does the Board want to put a chilling effect on their inclination to be compliant with the request? If the applicant is not allowed to make changes up to the last minute, they may think the Board will support an inferior application.

Mr. Boyd asked Mr. Mark Graham, Director of Community Development, to speak. Mr. Graham said he would like to remind everybody why the policy was created. There were two reasons, the frustration of the public and the Board. The dates were set based on the time staff needed to be able to review the proffers and provide an analysis of the proffers for the Board.

Mr. Rooker said the second part of the policy has been solved. Since the policy was adopted, the Board has voted on a measure where there were significant proffers with technical changes being requested by staff. There were times when the Board got to the public hearing and got an entirely different set of proffers with changes which were not necessarily requested by staff.

At this point, **motion** was offered by Ms. Thomas to adopt the Board's current Rules of Procedure which includes Roberts' Rules of Order for Small Boards. Mr. Rooker said where these rules are in contradiction with the Small Board Rules, the Board's rules will prevail. He then **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

(**Note:** The Rules of Procedure as adopted are set out in full below.)

RULES OF PROCEDURE ALBEMARLE BOARD OF COUNTY SUPERVISORS

A. Officers

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

B. Clerk and Deputy Clerks

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

C. *Meetings*

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

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

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

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

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

D. *Order of Business*

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

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

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

It is the Board's preference that a public hearing should not be advertised until all of the final materials for a zoning application have been received by the County and are available for public review. To achieve this preference, applicants should provide final plans, final codes of development, final proffers, and any other documents deemed necessary by the Director of Community Development, to the County no later than two

business days prior to the County's deadline for submitting the public hearing advertisement to the newspaper. Staff will advise applicants of this date by including it in annual schedules for applications and by providing each applicant a minimum of two weeks advance notice of the deadline.

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

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

E. *Quorum*

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

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

F. *Voting Procedures*

1. *Approval by Motion.* Unless otherwise provided, decisions of the Board shall be made by approval of a majority of the members present and voting on a motion properly made by a member and seconded by another member. Any motion that is not seconded shall not be further considered. The vote on the motion shall be by a voice vote. The Clerk shall record the name of each member voting and how he voted on the motion. If any member abstains from voting on any motion, he shall state his abstention. The abstention will be announced by the Chairman and recorded by the Clerk. A tie vote shall defeat the motion voted upon. (Article VII, Section 7, Virginia Constitution)
2. *Special Voting Requirements.* A recorded affirmative vote of a majority of all elected members of the Board shall be required to approve an ordinance or resolution (1) appropriating money exceeding the sum of \$500; (2) imposing taxes; or (3) authorizing the borrowing of money. (Virginia Code Section 15.2-1428)
3. *Public Hearings.* The Board shall not decide any matter before the Board requiring a public hearing until the public hearing has been held. The Board may, however, at its discretion, defer or continue the holding of a public hearing or consideration of such matter. The procedures for receiving comment from the applicant and the public for public hearings shall be at the discretion of the Board. Unless otherwise decided, the applicant shall be permitted no more than ten minutes to present its application. Following the applicant's presentation, any member of the public shall be permitted no more than three minutes to present public comment. Speakers are limited to one appearance at any public hearing. Following the public comments, the applicant shall be permitted no more than five minutes for a rebuttal presentation.
4. *Motion to Amend.* A motion to amend a motion before the Board, properly seconded, shall be discussed and voted by the Board before any vote is taken on the original motion unless the motion to amend is accepted by both the members making and seconding the original motion. If the motion to amend is approved, the amended motion is then before the Board for its consideration. If the motion to amend is not approved, the original motion is again before the Board for its consideration.
5. *Previous Question.* Discussion of any motion may be terminated by any member moving the "previous question". Upon a proper second, the Chairman shall call for a vote on the motion of the previous question. If approved by a majority of those voting, the Chairman shall immediately call for a vote on the original motion

under consideration. A motion of the previous question shall not be subject to debate and shall take precedence over any other matter.

6. *Motion to Reconsider.* Any decision made by the Board may be reconsidered if a motion to reconsider is made at the same meeting or an adjourned meeting held on the same day at which the matter was decided. The motion to reconsider may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to reconsider, if approved, shall be to place the matter for discussion in the exact position it occupied before it was voted upon.
7. *Motion to Rescind.* Any decision made by the Board, except for zoning map amendments, special use permit decisions, and ordinances, (these exceptions shall only be subject to reconsideration as provided above) may be rescinded by a majority vote of all elected members of the Board. The motion to rescind may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to rescind, if approved, is to nullify the previous decision of the Board. Zoning map amendments, special use permit decisions and ordinances may be rescinded or repealed only upon meeting all the legal requirements necessary for taking action on such matters as if it were a new matter before the Board for consideration.

G. *Amendment of Rules of Procedure*

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

H. *Suspension of Rules of Procedure*

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

- I. Necessary rules of procedure not covered by these Rules of Procedures shall be governed by Robert's Rules of Order's Procedure in Small Boards.

(Adopted 2-15-73; Amended and/or Readopted 9-5-74, 9-18-75; 2-19-76; 1-3-77; 1-4-78; 1-3-79; 1-2-80; 1-7-81; 1-6-82; 1-5-83; 1-3-84; 1-2-85; 1-3-86; 1-7-87; 1-6-88; 1-4-89; 1-2-90; 1-2-91; 1-2-92; 1-6-93; 1-5-94; 1-4-95; 1-3-96; 1-2-97; 1-7-98; 1-6-99; 1-5-2000; 1-3-2001; 1-9-2002; 1-8-2003; 1-7-2004; 1-5-2005; 1-4-2006; 1-3-2007; 1-9-2008)

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

Ms. Thomas said no changes are proposed to this policy, so she will offer a **motion** to readopt the policy. The motion was **seconded** by Mr. Slutzky, roll was called, and the motion carried by the following recorded vote:

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

(**Note:** The Policy on Board and Commissions, as adopted, is set out in full below.)

**ALBEMARLE COUNTY BOARD OF SUPERVISORS
POLICY FOR BOARDS AND COMMISSIONS**

A. CREATION OF NEW BOARDS AND COMMISSIONS

1. On an annual basis the list of active boards and commissions will be purged of all bodies not required by Federal, State, County or other regulations, which have not met at least once during the prior twelve-month period.
2. Whenever possible and appropriate, the functions and activities of boards and commissions will be combined, rather than encouraging the creation of new bodies.
3. Any newly created task force or ad hoc committee which is intended to serve for a limited time period may be comprised of magisterial or at-large members at the discretion of the Board of Supervisors. The appointment process shall follow that adopted in Section B for other magisterial and/or at-large positions.

B. APPOINTMENTS TO BOARDS AND COMMISSIONS

1. All appointments to boards and commissions based upon magisterial district boundaries will be made by the members of the Board of Supervisors. All magisterial positions will be advertised. At the discretion of the supervisor of that district, selected applicants may be interviewed for the position.
2. Prior to each day Board meeting, the Clerk will provide the Board a list of expired terms and vacancies that will occur within the next sixty days. The Board will then advise the Clerk which vacancies to advertise.
3. In an effort to reach as many citizens as possible, notice of boards and commissions with appointment positions available will be published through available venues, such as, but not limited to, the County's website, A-mail, public service announcements and local newspapers. Interested citizens will be provided a brief description of the duties and functions of each board, length of term of the appointment, frequency of meetings, and qualifications necessary to fill the position. An explanation of the appointment process for both magisterial and at-large appointments will also be sent to all applicants.
4. All interested applicants will have a minimum of thirty days from the date of the first notice to complete and return to the Clerk of the Board of Supervisors a detailed application, with the understanding that such application may be released to the public, if requested. No applications will be accepted if they are postmarked after the advertised deadline, however, the Board, at its discretion, may extend the deadline.
5. Once the deadline for accepting applications is reached, the Clerk will distribute all applications received to the members of the Board of Supervisors prior to the day meeting for their review. For magisterial appointments, the Clerk will forward applications as they are received to the supervisor of that district who will then recommend his/her appointment.
6. From the pool of qualified candidates, the Board of Supervisors, at their discretion, may make an appointment without conducting an interview, or may select applicants to interview for the vacant positions. The Clerk will then schedule interviews with applicants to be held during the next day meeting. For magisterial appointments, the decision to interview selected candidates will be determined by the supervisor of that district.
7. All efforts will be made to interview selected applicants and make appointments within ninety days after the application deadline. For designated agency appointments to boards and commissions, the agency will be asked to recommend a person for appointment by the Board of Supervisors.
8. All vacancies will be filled as they occur.
9. All incumbents will be allowed to serve on a board or commission without his/her position being readvertised unless, based on attendance and performance, the chairman of the body or a member of the Board of Supervisors requests the Board of Supervisors to do otherwise.
10. As a condition to assuming office all citizen members of boards and commissions shall file a real estate disclosure form as set forth in the State and Local Government Conflict of Interests Act and thereafter shall file such form annually on or before January 15.
11. If a member of a board or commission does not participate in at least fifty percent of a board's or commission's meetings, the chairman of the body may request that the Board of Supervisors terminate the appointment and refill it during the next scheduled advertising period.

C. ADOPTION

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

(Amended and/or Readopted 01-07-98; 02-12-2005; 01-04-2006; 01-03-2007; 01-09-2008)

Agenda Item No. 11. Proclamation: Vietnam Graffiti Project.

Mr. Boyd read the following proclamation into the record. He said he saw the display this morning, and it is quite interesting. He then presented the proclamation to Art and Lee Beltrone.

“Marking Time: Voyage to Vietnam”

Whereas, the volunteer Vietnam Graffiti Project was founded in 1997 by Albemarle County residents Art and Lee Beltrone of Keswick, after Art Beltrone discovered historic graffiti-inscribed berthing unit canvases aboard the former military troop ship "General Nelson M. Walker" in Virginia's James River Reserve Fleet — also known as the "Ghost Fleet," and the graffiti was left by young American soldiers going to the war in Vietnam during the 1960s; and

Whereas, during subsequent years the couple organized a cadre of volunteers who worked with the Maritime Administration to remove more than 1,000 of the historic rack canvases and other artifacts for preservation which were transferred to museums maintained by the Library of Congress, Smithsonian Institution, Army, Navy, Marine Corps, and state and local repositories throughout the United States, and the Albemarle Charlottesville Historical Society also received a canvas signed by a local soldier; and

Whereas, just prior to the organization's tenth anniversary, the Vietnam Graffiti Project, in partnership with the Virginia Foundation for the Humanities, created the "Marking Time: Voyage to Vietnam" traveling exhibit, which had its premier Albemarle County opening January 7, 2008 at the Albemarle County Office Building and remains on display at the COB through January 11, 2008; and

Whereas, because of its historic relevance, the "Marking Time" exhibit will be shared with other communities throughout the nation following its debut at the County Office Building;

Now, Therefore, Be It Resolved, that the Albemarle County Board of Supervisors expresses its sincere appreciation to Art and Lee Beltrone for their outstanding devotion and dedication to preserving this important collection of artifact history and creating a display that communicates the emotion and experience of young soldiers shipping out to the Vietnam War.

Mr. Beltrone said he and Lee would like to thank the Board for this recognition. He said he would like to recognize all the members of this community who helped make this possible. It was a labor-intensive effort to remove the material from the ship when it was in the James River.

Agenda Item No. 12. From the Board: Matters Not Listed on the Agenda.

Ms. Mallek expressed her appreciation for being able to represent the citizens of the White Hall District. During the next year she will ask the Board to study the Land Use Program, to put Soil Erosion Control guidelines in the Code, and to examine assessment and tax payment procedures. She asks that the Board place on the agenda at a later meeting a resolution concerning the coal plant proposed for Wise County.

Mr. Rooker said the Board members received a mailer from the Charlottesville Marathon. He wants to publicly point out that it has been named one of the top ten marathons in the country by Runners Magazine which is a lofty award.

Ms. Thomas said the Board did a lot of work in the development area in the past year. The Comprehensive Plan was updated concerning the rural areas, but a lot of those things have not yet been put into effect. For herself, during this coming year she will be placing more emphasis on protecting the rural areas. Another issue is that of dark skies which ties into energy conservation. She said there will be an announcement soon about the County Office Building-McIntire and its Energy Star program.

Mr. Slutzky said one of his New Year's resolutions is to be a man of fewer words.

Mr. Dorrier asked when the Board will work on infrastructure needs. Mr. Tucker said infrastructure will be a part of the Five-Year Financial Plan work session on January 23.

Mr. Boyd said one of the most important things the Chair does is to coordinate meetings. This year he would like to work on streamlining the number of items on an agenda, particularly for the evening meetings.

Mr. Slutzky said at the Board's retreat, it had discussed the possibility of having an additional meeting each month. He suggested that on a quarterly basis a third meeting be built into the schedule.

Ms. Thomas said that during the next three months, there are already four meetings scheduled each month. She suggested starting it later in the year.

Mr. Rooker said he thought the Board members had indicated that a third meeting was necessary when the agenda was overloaded. Mr. Tucker said it was discussed as being set on an as-needed basis.

Agenda Item No. 13. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Carl Shaw discussed land prices/values and encouraged the Board to do all it can to reduce land prices (see written materials which were given to the Board and which are on file in the Clerk's Office with the permanent records of the Board of Supervisors).

(Note: Mr. Rooker said there is a problem with the mike at the public's podium, and it needs to be cured. It has been evident since the Board moved into this room.)

Mr. Rex Linville from the Piedmont Environmental Council spoke about the success of land conservation in 2007. This is the success of the community of Albemarle County and not the PEC. PEC does not hold a lot of conservation easements, but it works to educate landowners and their advisors about conservation easements. This year easements were donated to the Virginia Outdoors Foundation, purchased through the ACE Program, and some easements were donated to the Albemarle County Public Recreational Facilities Authority or The Nature Conservancy. He showed a chart depicting the number of easements held (about 6,889 acres) and their location. He thinks a lot of this came about because there were some expanded Federal tax deductions that expired at the end of 2007. PEC is now working at the Federal level on the Farm Bill to see that those expanded Federal income tax deductions are made permanent. That would help keep the trend going. He does not know where this places the County in achieving the 30,000 acre goal. He also commended Mr. Scott Clark of the County's staff for his work in this effort at the end of the year.

Mr. Rooker said with that additional acreage this brings the total to about 72,000 acres of land under conservation easements, which is about 16 percent of land in the County.

Mr. Ben Thompson, representing Luck Stone Corporation, provided an update on the Route 22/250 intersection/realignment and signalization project. He said this project began in the mid '90s as a County initiative. The County approached Luck Stone about relocating its main business entrance to a signalized intersection. At that time, Luck became the major private contributor to this public project. The project fell apart in the late '90s due to a landowner dispute. This prompted the County and Luck to shift the project to VDOT to work through the acquisitions. VDOT has now completed all the design work and completed acquisition, which included property donations from Mr. Lloyd Wood of Shadwell Market, and Luck Stone. All parties are now ready to proceed.

Mr. Thompson said that unfortunately, due to the length of time that has elapsed, once adequate financial contributions will no longer complete the work on these heavily traveled roads. Conservative estimates of the cost now are \$1.2 million. Luck Stone is committed to remaining the major contributor and in an effort to drive costs down will be accepting responsibilities for construction management. In order to keep the project on track and improve safety on an entrance corridor, he is present this morning to request that the County explore opportunities to increase its contribution and continue to move forward. A suggested amount is approximately \$400,000. If all things move forward, construction could begin in May, with completion in October/November.

Mr. Boyd said Mr. Thompson explained the situation to him last week. He had not been aware this was a joint project between the County and Luck Stone with VDOT facilitating engineering designs, etc. It is not a VDOT project. He asked Mr. Thompson to appear today and explain the project to the Board. He said originally there was to be a \$500,000 contribution from Luck Stone, with \$135,000 from the County in proffered dollars from the Glenmore development. That was in 1995 dollars, and everybody knows that is not enough today.

Mr. Thompson said they have worked extensively with Mr. Juan Wade of County staff and he has done a phenomenal job on this project.

Ms. Janie Eckman, speaking on behalf of the IMPACT group, expressed its support for Item 14.1 on the consent agenda. She came to remind the Board that IMPACT supports this proposal. Bus Route 5 currently runs until 7:00 p.m. IMPACT asked for an additional five hours of night service after it was found that the chief reason to extend service hours on this route was to provide access to jobs at the University for employees working the evening shift at the Medical Center and for those working in dining services. Also, many retail stores along Route 29 North have evening shift workers as do two nursing homes and the Doubletree Hotel. A number of refugee families have settled in Charlottesville and many live in apartment complexes along Route 5 and work evening shifts. These shifts end at either 11:00 p.m. or 12:00 a.m. Reliable public transportation is needed for the entry level wage earners. Safety at night is also critical to the many women employed in these positions. IMPACT believes greater social equity and improved access to employment are key objectives of improved transit service. They urge the Board to approve this request for grant funds. She said a large number of the people using public transportation are drawn from households that do not own an automobile. Evening service on Route 5 is needed starting this year.

Mr. David Wayland, a member of the Crozet Community Advisory Council, thanked the Board members for serving the citizens of the County. He said the citizens in the White Hall District, particularly those in White Hall, are encouraged by the election of Ms. Mallek as a Board member. They urge all Board members to continue what it was doing in 2007 to protect the rural areas in their part of the County, and to monitor and keep Crozet in mind when it is making decisions. Many good things are happening in Crozet, particularly in the way of the Streetscape project. He asked that the Board continue the balance between protecting the rural areas and providing controlled growth in the development areas with substantial proffers to go with development. He asserted that for some citizens, last minute changes in proffers do not allow them time to react.

Mr. Jeff Werner of the Piedmont Environmental Council thanked the Board members for having a Comprehensive Plan and policies which allow conservation easements to occur. He taught a class last year related to historic preservation. He showed the students how historic districts in Albemarle County have been a catalyst for land conservation efforts. When looking at a map of the State, you can see a string of historic districts from Orange County to southern Albemarle County. There is a historic district in southern Albemarle, the Coveseville historic district, providing a relationship to these districts. He thanked Ms. Thomas for declaring this the year of the rural area.

Mr. Slutzky said the issue of conservation easements has been mentioned a couple of times today. He is aware that there are sometimes problems with enforcing conservation easements. Recently the Board was made aware of an instance where the way in which the County's ordinance defines "dwelling" has had an impact on the enforcement of an easement. He asked if the Board members would like to have staff make suggestions on what can or cannot be done to fix that problem. He knows that sometimes the problem comes about in the way the easement is drafted, and there are also problems in the way the ordinance is written. If there is a fix available going forward, situations like that might not occur with new conservation easements.

Mr. Rooker said he thought the Board had already asked staff to do that. Mr. Tucker said at the end of December Ms. Thomas made that request, and staff has been working on it since.

Mr. Rooker said he asked that the easement language be redrafted. The Board also talked about the VOF easement form which has been updated a number of times. It specifically addresses the amount of buildings by square footage which are allowed, etc. He thinks the specific problem with the easement is being dealt with by the redrafting of the easement form being used. He remembers that the Board authorized the allocation of some money to the Public Recreational Facilities Authority so they could retain counsel to review the interpretation of their easement. He assumes that will take place and they will take appropriate action based upon the advice they get from counsel.

Ms. Thomas said the Board has to take some action in public to do what Mr. Rooker just said.

Mr. Rooker said he thought the Board decided in closed session to do that.

Ms. Thomas said since the Board is not supposed to discuss what it did in closed session, she has been constrained in public to explain how the Board can say it will have money for that, but the Board has not taken public action yet. That should be done.

Mr. Davis said in response to Mr. Slutzky's specific question about the definition of "dwelling unit", staff is looking at that issue. They have found that not many localities do it much differently than Albemarle, but it is an issue staff is focusing on and will present some options for the Board to look at.

Mr. Slutzky said since it was not discussed in public, he wanted to make sure people knew the Board was trying to address the issue.

Mr. Rooker said he has actually run together the public and the private discussion of this, so he apologizes. If the definition of "dwelling unit" is defined in the easement, you do not have to worry about the Zoning Ordinance definition. Mr. Davis said there are two separate issues, but they do intertwine. In rural preservation easements, which are a creature of the Zoning Ordinance, the ordinance actually says what has to be in that easement and uses the term "dwelling unit." It is complicated, but staff is looking at that definition.

Mr. Neil Williamson of the Free Enterprise Forum thanked County staff, PEC and VOF with regard to conservation easements. He said everyone needs to remember the landowners because these are voluntary easements. There are significant tax benefits to the landowner, but there are huge benefits to the community. He thanked the County for its dedication to this program and the folks for recognizing the concept of extinguishing land development rights and retaining conservation as a real value.

Ms. Brin Potter said she is representing an applicant on an appeal. She asked if the public will be allowed to comment. There are a number of people present from the public and a number of representative agencies. Mr. Boyd said he will allow some comments from the public during that discussion.

Agenda Item No. 14. Consent Agenda. **Motion** was offered by Mr. Rooker, **seconded** by Ms. Thomas, to approve Items 14.1 through 14.7 on the Consent Agenda, and to accept the remaining items for information. Roll was called, and the motion carried by the following recorded vote:

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

Item 14.1. Grant Application to Fund Night Service on CTS for Route 5 in the Route 29 North Corridor.

It was noted in the Executive Summary that during discussions by the Board on allocating an additional \$250,000 for transit service improvements in June 2007, consideration was given to using those

funds to reduce headways (to 30 minutes) on Route 5 or to provide for night service on this same Route. The Board approved using the additional funds to reduce headways on Route 5, but also indicated an interest in participating with CTS in applying for a future grant to assist in funding night service on CTS Route 5 along Route 29 North.

Applications are due in late January for the Federal Transit Administration's Job Access Reverse Commute (JARC) Grant. As the current public transportation provider, CTS would have to apply for the JARC funds. CTS is now in the process of developing a grant application and needs to know if the County still wishes to provide night service on Route 5 and if it will provide the necessary financial commitment (local match) in order to proceed with the application process.

Staff has submitted a budget request for FY '08-09 to request funding for night service on CTS Route 5. The budget proposal is currently under review by the Office of Management and Budget and will be reviewed by the Board during the FY '09 budget process. A final decision on whether to provide night service on Route 5 will be made during the budget process; however, due to the timing for the grant application, County staff and CTS need direction from the Board on its willingness to participate in the grant proposal prior to the Board's review schedule for the upcoming budget.

Route 5 currently runs between Barracks Road Shopping Center and Wal-Mart on roads that parallel Route 29 North. Route 5 has service every 30 minutes and operates 6:15 a.m. to 7:15 p.m. The new night service would extend service to 11:00 p.m. (with service every 30 minutes). CTS estimated that the total cost to provide this service would be approximately \$225,000 per year. If funded, the service would start in August, 2008.

The Job Access Reverse Commute (JARC) grant funds, if awarded, would pay for 50 percent of the cost for the expanded service. CTS is also anticipating that other ongoing Federal and State operating assistance funds and fare revenues from bus riders would cover a portion of the cost for the service. Therefore, if the JARC grant is received and other Federal/State funds remain at the same level, the County's cost for the night service on Route 5 will be approximately \$70,000. County funds will be required to apply for this grant since the service is entirely within the County.

Night service along Route 29 North is recommended in the current Transit Development Plan (TDP) completed in 2006. This initiative will benefit transit dependent residents who work the night shift at the retail/office establishments along Route 29 North. They will benefit by being able to keep and find jobs because they will have safe, reliable, and cost efficient transportation. This route runs through several residential neighborhoods and, therefore, has the potential to serve numerous new riders. The community organization, IMPACT, has also requested that the Board fund this service.

CTS previously provided night service to the general area currently served by Route 5. In 2005, the Board discontinued funding for the night route. At that time, the route was the poorest performing route when compared to other night service routes on a rider per service hour basis, serving only 2.72 riders per service hour in FY '04 based on data provided by CTS. However, it is important to note that the proposed Route 5 night service differs from the eliminated service in that it will provide headways that are more frequent and the night route will be aligned with the current daytime route, both of which are improvements that would be expected to increase ridership.

The estimated cost to the County would be approximately \$70,000 if CTS receives the full grant award and other funding sources remain consistent. A budget request has been submitted as a new strategic initiative for the FY 2008-09 Budget for the total estimated cost for the night service in the County (\$225,000). The County's match would be paid to CTS on a quarterly basis. CTS must re-apply for JARC funds annually.

Staff recommends that the Board join with CTS to apply for the Federal Transit Administration Job Access Reverse Commute (JARC) grant and commit the estimated \$70,000 toward funding of night service on Route 5 in the County.

(Discussion: Mr. Boyd said he did not understand from the language in this application if additional funds will be required. He assumes the \$225,000 in this year's budget has been used paying for the extension of the bus route to the Southwood Mobile Home Park and for increasing the headway times on Route 5. Mr. David Benish, Chief of Planning, said the funding in the budget has been expended. For this upcoming budget, a strategic initiative was submitted to fund this service in case the grant is not awarded. During the budget review process later in the year, there will be full funding included for this service.

Mr. Boyd asked if staff is anticipating keeping that same contribution to transit each year. Mr. Benish said that is correct; this is the additional funding for that additional service in the next fiscal year. The grant covers much of that cost.

Mr. Rooker said \$70,000 would be in addition to the grant. Mr. Benish said "yes."

Mr. Slutzky said when the Board last discussed the budget it was decided to allocate some resources to the Southwood route and the other initiative. Applying for a grant was discussed so it would be less expensive to the County and that the night service could be provided through the grant.

Mr. Boyd said he is in favor, but did not understand how the numbers were working.

Ms. Thomas said the Executive Summary says the County must reapply for these funds annually, so this is a one-time thing. She asked if staff had any idea of the County's chances of receiving this money. Mr. Benish said Mr. Bill Watterson is present if there are questions. He thinks that if funds are available the County would receive re-approval, but there are no guarantees.)

By the recorded vote set out above, the Board supported staff's recommendation to join with CTS to apply for the Federal Transit Administration Job Access Reverse Commute (JARC) grant and commit an estimated \$70,000 toward the funding of night service on Route 5 in the County.

Item 14.2. Community Development Block Grant Fund, Request to set public hearing.

It was noted in the Executive Summary that the Virginia Community Development Block Grant (VCDBG) is a federally-funded grant administered by the Virginia Department of Housing and Community Development (DHCD). Since 1982, the DHCD has provided funding to eligible units of local government (non-entitlement communities only) for projects that address critical community needs, including housing, infrastructure and economic development. Albemarle County has received numerous grants in previous years to support housing and community improvement initiatives.

Approximately \$10.0 million is made available by DHCD annually for competitive grant proposals in the Commonwealth. The VCDBG application process requires that two local public hearings be conducted. The first public hearing is to provide information on eligible activities that may be funded by a CDBG, the amount of funding estimated to be available, and past activities undertaken in Albemarle County with CDBG funds. A follow-up public hearing is required to review any proposed applications. Applications must be submitted by the County, although the proposed activities may be undertaken by other agencies. The second public hearing must take place prior to the application due date of March 26, 2008.

There is no budgetary impact unless or until an application is made and approved for a funded project. Staff requests that the Board set a public hearing for the Community Development Block Grant program for February 6, 2008, to provide information to the public and interested parties regarding the eligible CDBG activities, funding availability, the process for submitting proposals for applications, and past activities undertaken in the County with CDBG funding and to receive public comment on this information.

By the recorded vote set out above, Board set a public hearing for the Community Development Block Grant program for February 6, 2008.

Item 14.3. Resolution to accept road(s) in Copperfield Subdivision into the State Secondary System of Highways.

At the request of Engineering Staff, the Board adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Copperfield Subdivision**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Copperfield Subdivision**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, to the secondary system of state highways, pursuant to §33.1-229 and §33.1-82, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

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

* * *

The road(s) described on Additions Form AM-4.3 is:

- 1) **Copperfield Ridge (State Route 1627)** from the intersection of Reas Ford Road (Route 660) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2555, pages 300-309, with a 50-foot plus right-of-way width, for a length of 0.21 miles.

Total Mileage – 0.21

Item 14.4. Resolution to accept road(s) in Dunlora (Phase 3B) Subdivision into the State Secondary System of Highways.

At the request of Engineering Staff, the Board adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **Dunlora Subdivision, Phase 3B**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Dunlora Subdivision, Phase 3B**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, to the secondary system of state highways, pursuant to §33.1-229 and §33.1-82, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

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

* * *

The road(s) described on Additions Form AM-4.3 is:

- 1) **Shepherds Ridge Road (State Route 1709)** from existing end of state maintenance to the intersection of Townbrook Crossing (Route 1713), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1836, page 184, with a 50-foot plus right-of-way width, for a length of 0.10 miles.
- 2) **Shepherds Ridge Road (State Route 1709)** from the intersection of Townbrook Crossing (Route 1713) to the intersection of Townbrook Crossing (Route 1713), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1836, page 184, with a 50-foot plus right-of-way width, for a length of 0.12 miles.
- 3) **Shepherds Ridge Road (State Route 1709)** from the intersection of Townbrook Crossing (Route 1713) to the end of state maintenance, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1836, page 184, with a 50-foot plus right-of-way width, for a length of 0.05 miles.
- 4) **Townbrook Crossing (State Route 1713)** from the intersection of Shepherds Ridge Road (Route 1709) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1836, page 184, with a 50-foot plus right-of-way width, for a length of 0.06 miles.
- 5) **Townbrook Crossing (State Route 1713)** from the intersection of Shepherds Ridge Road (Route 1709) to the end of state maintenance, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1836, page 184, with a 50-foot plus right-of-way width, for a length of 0.07 miles.

Total Mileage – 0.40

Item 14.5. Resolution to accept road(s) in Bentivar (Phase 2) Subdivision into the State Secondary System of Highways.

At the request of Engineering Staff, the Board adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **Bentivar Subdivision, Phase 2**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, fully incorporated herein by reference, is

shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia;
and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Bentivar Subdivision, Phase 2**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, to the secondary system of state highways, pursuant to §33.1-229 and §33.1-82, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

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

* * *

The road(s) described on Additions Form AM-4.3 is:

- 1) **Bentivar Farm Road (State Route 1064)** from the intersection of Bentivar Drive (Route 1033) to the intersection of Hartland Court (Route 1066), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, pages 284-285, with a 50-foot plus right-of-way width, for a length of 0.26 miles.
- 2) **Bentivar Farm Road (State Route 1064)** from the intersection of Hartland Court (Route 1066) to the intersection of Oak Ridge Court (Route 1067), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, pages 284-285, with a 50-foot plus right-of-way width, for a length of 0.10 miles.
- 3) **Bentivar Farm Road (State Route 1064)** from the intersection of Oak Ridge Court (Route 1067) to the intersection of Walnut Ridge Lane (Route 1077), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, pages 284-285, with a 50-foot plus right-of-way width, for a length of 0.12 miles.
- 4) **Bentivar Farm Road (State Route 1064)** from the intersection of Walnut Ridge Lane (Route 1077) to the intersection of Bentivar Farm Court (Route 1065), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, pages 284-285, with a 50-foot plus right-of-way width, for a length of 0.09 miles.
- 5) **Bentivar Farm Road (State Route 1064)** from the intersection of Bentivar Farm Court (Route 1065) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, pages 284-285, with a 50-foot plus right-of-way width, for a length of 0.15 miles.
- 6) **Hartland Court (State Route 1066)** from the intersection of Bentivar Farm Road (Route 1064) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, page 284, with a 50-foot plus right-of-way width, for a length of 0.18 miles.
- 7) **Oak Ridge Court (State Route 1067)** from the intersection of Bentivar Farm Road (Route 1064) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, page 286, with a 50-foot plus right-of-way width, for a length of 0.09 miles.
- 8) **Bentivar Farm Court (State Route 1065)** from the intersection of Bentivar Farm Road (Route 1064) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, page 285, with a 50-foot plus right-of-way width, for a length of 0.07 miles.
- 9) **Walnut Ridge Lane (State Route 1077)** from the intersection of Bentivar Farm Road (Route 1064) to the intersection of Beech Grove Court (Route 1079), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, pages 287-289, with a 50-foot plus right-of-way width, for a length of 0.08 miles.
- 10) **Walnut Ridge Lane (State Route 1077)** from the intersection of Beech Grove Court (Route 1079) to the intersection of Walnut Ridge Court (Route 1078), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle

County in Deed Book 1666, pages 287-289, with a 50-foot plus right-of-way width, for a length of 0.25 miles.

- 11) **Walnut Ridge Lane (State Route 1077)** from the intersection of Walnut Ridge Court (Route 1078) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, pages 287-289, with a 50-foot plus right-of-way width, for a length of 0.06 miles.
- 12) **Walnut Ridge Court (State Route 1078)** from the intersection of Walnut Ridge Lane (Route 1077) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, pages 288, with a 50-foot plus right-of-way width, for a length of 0.07 miles.
- 13) **Beech Grove Court (State Route 1078)** from the intersection of Walnut Ridge Lane (Route 1077) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1666, pages 287, with a 50-foot plus right-of-way width, for a length of 0.14 miles.

Total Mileage – 1.66

Item 14.6. Resolution to accept road(s) in Foxcroft (Phase 4) Subdivision into the State Secondary System of Highways.

At the request of Engineering Staff, the Board adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **Foxcroft Subdivision, Phase 4**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Foxcroft Subdivision, Phase 4**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, to the secondary system of state highways, pursuant to §33.1-229 and §33.1-82, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

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

* * *

The road(s) described on Additions Form AM-4.3 is:

- 1) **Foxvale Lane (State Route 1141)** from existing end of state maintenance to the intersection of Rolling Valley Court (Route 1052), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1504, page 14, with a 50-foot plus right-of-way width, for a length of 0.06 miles.
- 2) **Foxvale Lane (State Route 1141)** from the intersection of Rolling Valley Court (Route 1052) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1504, page 14, with a 50-foot plus right-of-way width, for a length of 0.14 miles.
- 3) **Rolling Valley Court (State Route 1052)** from the intersection of Foxvale Lane (Route 1141) to the west cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1504, page 14, with a 50-foot plus right-of-way width, for a length of 0.09 miles.
- 4) **Rolling Valley Court (State Route 1052)** from the intersection of Foxvale Lane (Route 1141) to the east cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 1504, page 14, with a 50-foot plus right-of-way width, for a length of 0.05 miles.

Total Mileage – 0.20

Item 14.7. Request to install "Watch for Child Playing" Sign for Stonewood Drive (Route 1034).

It was noted in the Executive Summary that the residents of properties along Stonewood Drive submitted a request to install "Watch for Child Playing" signage on Stonewood Drive which is a cul-de-sac road serving 11 homes. The road is located off of Doctor's Crossing road just north of Stony Point. VDOT requires that the Board adopt a resolution approving the placement of a "Watch for Child Playing" sign before it will install a sign.

The County has developed the criteria for reviewing a "Watch for Child Playing" sign installation request. Staff evaluated this request against these criteria and the request meets three of the four criteria. There are no formal/central child activity attractions on the road. However, given the number of children (eight as noted in the petition) in the neighborhood and the lack of sidewalks, it is staff's opinion that this request for the installation of a "Watch for Child Playing" sign has merit in this location. The cost to install a "Watch for Child Playing" sign is \$125. This cost will be paid from the County's Six Year County Road Maintenance Fund. Staff recommends that the Board adopt the resolution approving the installation of the sign on Stonewood Drive (Route 1034).

(Discussion: Ms. Thomas asked that staff come up with a sunset clause of some kind in order to determine if in five years there are still small children in the neighborhood so the sign is still relevant. Mr. Benish said he will check with VDOT because these signs technically become VDOT property and are part of the right-of-way system and their traffic management. Mr. Tucker said staff could call people in the neighborhood to see if the sign is still necessary. VDOT has to take down the sign and there has to be a work order placed for that.)

By the recorded vote set out above, the Board adopted the following resolution approving the installation of "Watch for Child Playing" signs on Stonewood Drive (Route 1034).

**RESOLUTION TO AUTHORIZE
VIRGINIA DEPARTMENT OF TRANSPORTATION
TO INSTALL WATCH FOR CHILD PLAYING SIGN ON
STONEWOOD DRIVE (ROUTE 1034)**

WHEREAS, the residents of Stonewood Drive are concerned about traffic in their neighborhood and the potential hazard it creates for the numerous children that live and play in the neighborhood; and

WHEREAS, many children live and play on Stonewood Drive and the residents believe that a "Watch for Child Playing" sign would help alleviate some of the safety concerns; and

WHEREAS, the residents of Stonewood Drive have requested that the County take the necessary steps to have a "Watch for Child Playing" sign installed;

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves the community's request for VDOT to install "Watch for Child Playing" sign(s) on Stonewood Drive.

Item 14.8. Copy of letter dated December 10, 2007, from Ronald L. Higgins, AICP, Manager of Zoning Administration, to Robert Linwood Quick, Jr., re: OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS -- Tax Map 121, Parcel 74-B (property of Robert Linwood Quick) Section 10.3.1. – Scottsville Magisterial District, **was received for information.**

Item 14.9. Proffer Management- Quarterly Cash Proffer Activity Report.

It was noted in the Executive Summary that the Board directed staff to provide quarterly reports on cash proffers that show cash proffer revenue and expenditures. On October 3, 2007, staff provided a proffer activity report for FY 2006-2007. This report is the first quarterly report for FY 2007-08 (July-September 2007).

During the first quarter of FY 2007-08, the County received a total of \$130,740.22 in proffered funds. Of these funds, \$56,300 is allocated for specific projects and \$74,440.22 for general Capital Improvement Projects. The County expended \$70,000 in cash proffers this quarter for the Village of Rivanna Master Plan, which was partly funded by the Glenmore rezoning. A more detailed description of the projects, cash proffer amounts and activities are provided on Attachment A (on file).

Recent collaboration between the Office of Management and Budget, the Office of Facilities Development and the Community Development Department significantly streamlined the process for the utilization of cash proffers for Capital Improvement Projects. The Zoning Proffer Planner will continue to interact with these departments and assist in the review of using cash proffer revenue for Capital Improvement Projects. Cash proffers continue to assist with funding the needs of the County to offset the impacts from development.

This report is provided for informational purposes only. Staff, however, requests that the Board provide direction if it desires any changes to the report format that would make the quarterly reports more useful.

(Discussion: Mr. Boyd said staff had asked for suggestions on how to improve this report. He said this report appears to show only what has been expended. He thought the Board would get a report of how much is due, and how much has been expended. He thinks the entire program should be in the quarterly report. Mr. Tucker said he thought staff had provided that information to the Board previously.

Mr. Rooker and Mr. Slutzky agreed.)

This report was received for information only.

Item 14.10. Memorandum dated December 13, 2007, from Amelia McCulley, Zoning Administrator, to the Board of Supervisors, re: Rural Area Subdivisions, **received as follows:**

It was noted in the Executive Summary that at a recent meeting, the Board asked staff to provide information about current Ordinance provisions that allow property to be subdivided without road standards and/or with minimal frontage requirements. These subdivisions are typically approved administratively. As a result of this information, the Board may wish to have a future work session to discuss these provisions and related policy issues.

The current Ordinances (Zoning and Subdivision) allow the following to occur:

1. Subdivisions can be platted in several steps (two or more separately approved and recorded plats) to avoid the requirement of building a road which would be required to meet public road standards or be approved with a private road waiver. Each of these separate subdivision plats qualifies for administrative approval (if there are no required waivers), require no notice to the neighbors, and no Planning Commission approval.

This type of development creates more individual entrances onto the public roads, therefore additional conflict points and opportunities for accidents. In addition, it results in more two-lot shared driveways which have no road construction requirements. Some of these driveways may not provide adequate access for emergency vehicles, thereby detrimentally impacting the provision of police, fire and rescue services to those residents.

- a. What commonly occurs in the first step is an administrative Rural Division creating a lot which meets minimal public road frontage (250 feet) and acreage (5 acres or more). (See Attachment page 1 – on file in the Clerk’s Office.) This step can create one or several new lots (shown as Parcels A and B).
 - b. The next step is a subdivision plat that establishes a shared driveway to serve two lots (A1 and A2, B1 and B2), creating one new lot from each of the Rural Division lots created in the first step. These lots are either divided side-by-side or front-and-back (see #2 for discussion of the latter). The Subdivision Ordinance does not have a specific construction standard for a shared driveway. It only requires a “travelway passable by ordinary passenger vehicles in all but temporary extreme weather conditions.” Confirmation that this road standard is met is typically provided by a note on the plat.
2. Zoning Ordinance Section 4.6.1 (b)(2) facilitates a front-and-back subdivision layout by reducing the road frontage required for a lot at the end of an access easement. It allows a lot (parcel A on page 2 of Attachment A) to reduce its frontage requirement from 150 feet to the width of the access easement. This provision allows the subdivision of property which has limited existing public road frontage. If Section 4.6.1(b)(2) were eliminated, however, staff is concerned that it could result in some extended and perhaps unnecessary roads (to provide the 150 feet of frontage to the back parcel A) without an improved result.

Subdivisions utilizing Section 4.6.1(b)(2) can result in an undesirable pattern of development with a house (on the lot at the end of the easement) almost immediately behind another house (on the front lot). Unless it is planned otherwise, the house in the rear lot may face directly into the back of the house on the front lot.

Two Subdivision Ordinance amendments that could eliminate the Rural Division tactic to avoid road standards and address staff concerns regarding eliminating the Section 4.6.1(b)(2) road frontage reduction are:

1. Require all lots created from an existing parcel to share the same entrance and therefore the same road. This will minimize the number of entrances on existing public roads, thereby reducing conflict points. This will better meet planning and transportation goals. It will also preclude the multi-step subdivision resulting in lots on separate shared driveways without a road standard requirement described in #1.
2. Establish / increase a road standard for a (shared driveway) private street serving two lots. The existing minimum road standard for 3-5 lots could be expanded to include 2-5 lots. This change could arguably improve emergency access by establishing a road construction standard. If this increased standard is not approved, repealing the Section 4.6.1(b)(2) frontage provision may not reduce the number of subdivisions creating two lots on a driveway without an applicable road standard.

Either or both of these potential Subdivision Ordinance amendments can be further discussed with the Board. Alternatively, the Board could pass a resolution of intent to amend the Subdivision Ordinance and staff can proceed with these amendments. There are impacts on the process, applicants and staff that would need to be considered as with any Ordinance amendment.

(Discussion: Mr. Boyd asked if staff plans on moving forward with these amendments. Mr. Tucker said the Board had asked for this information. In order to move forward the Board would need to adopt a resolution of intent.

Mr. Rooker said he would like to see this brought back for action so he would make a **motion** that the appropriate resolution be brought back to the Board in order to cure the problems outlined in the memorandum.

Ms. Thomas agreed with Mr. Boyd that it would be easier to understand the problem with staff "walking the Board through it." Mr. Davis said this would involve a Zoning Ordinance amendment and potentially two amendments to the Subdivision Ordinance. Staff would need to have the Board formally adopt a resolution of intent for the Zoning Ordinance amendment. If the Board wants staff to explain it at a meeting, staff will prepare an explanation.

Mr. Boyd said he thinks that is what should be done before moving forward with the drafting of an ordinance.

Mr. Rooker said he would like to have a resolution of intent come back with the presentation. The Board could adopt it at the end of the process if it wanted to go forward.

Mr. Slutzky said if the Board wants to have a discussion with staff first, he does not oppose that suggestion.

Mr. Rooker said he is prepared to make a motion today to do it, but if other Board members are not comfortable with that, he is willing to wait.

Ms. Thomas said the Board will have just as much explanation which ever way it goes. It will build in an extra month of delay if it waits for the explanation first, so she is supportive of a resolution because it does not say precisely what the Board would do. Mr. Davis said staff has not prepared a resolution of intent for the Board's review today, but can draft one for the next agenda.

Mr. Boyd said he does not want staff to do a lot of work rewriting the ordinance and then find out it is something the Board will not consider. Mr. Tucker said staff had hoped the graphic in the staff's report would be adequate. Staff can show on a piece of paper the issue, and he thinks the Board will quickly understand the issue.

Mr. Boyd suggested this be discussed later today.)

Item 14.11. Letter dated December 10, 2007, from Colonel Brian W. Lauritzen, US Army Installation Commander, to the Honorable Kenneth C. Boyd, re: Draft Finding of No Significant Impact supported by a Draft Environmental Assessment for Expansion of Rivanna Station, Charlottesville, Virginia.

(Discussion: Ms. Thomas said the letter from the Department of the Army received here January 3, 2008, which was dated December 10, 2007, will supposedly set in motion a need to respond to their environmental non impact statement. Staff has formally requested an extension of this and also through DEQ the County has gotten a *defacto* extension. The County's comments can be part of the DEQ comments which give the County until January 25. There have been comments by the public that the County did not know what was going on and in some sense that is correct because this letter was not received until well into January. Comments were supposed to be made by January 9. That was not a good way to carry on communication with the County. Staff is setting upon the right path. There have been many, many frustrations including the fact that the E-mail address given is not correct. The County has not been able to communicate with the Army with the E-mail address that they gave. She thinks the County is on the track of communicating as well as having a date certain for its comments.

Mr. Slutzky asked if staff will address the limited investigation given to the impacts on the Rivanna River at that particular point attributed to soil erosion. Mr. Tucker said the County has submitted to them the County's regulations and requested that they follow those regulations.

Mr. Slutzky said as a matter of policy the County has a higher standard of soil erosion protection than the invoked level of protection the Army is saying they will comply with. What will the County's position be? Will the County ask the Army to honor its policy or let them do less? Mr. Graham said staff is going to ask them to do more. In the assessment they indicated they are interested in low impact development. With the initial project at NGIC the Army made a commitment and obtained a permit from the County for both erosion and sediment control and stormwater management and staff has asked them to make a similar commitment with this project.

Mr. Rooker said he has noticed that with greater frequency the Federal Government sends out communications that are dated, but then are not mailed until 20+ days later. It is just a regular course of business for the Federal Government.

Mr. Boyd said he thinks it has a little to do with Homeland Security. When writing to a Congressman, he was told not to send it through the regular mail because it goes to some offsite place and stays there for a month or so.

Ms. Thomas said it was particularly frustrating that the E-mail bounced back. If all pieces of paper are going to be scrutinized, she asked if there were a fax number that could be used and was told "no.")

Agenda Item No. 15. **Appeal:** ARB-2007-80: Montessori Community School. Final review of a Site Development Plan for Tax Map 78, Parcel 12A. Proposal is to construct a new 5,500 square foot classroom building with associated landscape and site work as Phase I of the schools' proposed expansion.

Ms. Margaret Maliszewski, Planner, said this is an appeal of the Architectural Review Board's (ARB) decision on the first phase of the proposed expansion of the Montessori Community School on Pantops. She said the elementary school building is proposed for the corner of the site at the intersection of Rolkin Road and the Route 250 East Entrance Corridor. The primary issue of the ARB was the architectural design of the elementary school building. There were also a number of other issues that were not resolved at the last ARB meeting including the landscape treatment along the frontages. The "Action Letter" from the ARB's meeting on October 17, 2007, lists all of those issues (16).

Ms. Maliszewski said the Phase I proposal was reviewed by the ARB on three different occasions. She showed a rendering of the design for the elementary school building presented to the ARB in July, 2007. The ARB found significant design issues with this proposal and recommended that the applicant return for a work session. Issues included roof design and general compatibility with the historic buildings of the County. She said the applicant agreed to the work session and it was held in August, 2007. The changes proposed were primarily related to materials but no building or roof form changes had been made. The ARB found that the building was still not compatible with the historic architecture of the County or the existing structure on site.

Ms. Maliszewski said the applicant returned to the ARB in October, 2007 and she showed the design proposed at that meeting. Changes were primarily related to materials and colors, and there were no changes proposed in building or roof form. The ARB found that the building design and other site elements still did not meet their Entrance Corridor Guidelines, so the ARB voted to deny the application for a site plan. The majority of the architectural decisions that resulted in the proposed design for the elementary school were based on the concept of green building. The Entrance Corridor Guidelines do not address green building, but it is possible for a building to be both green and still meet Entrance Corridor Guidelines.

Ms. Maliszewski said that subsequent to this review, staff and two of the ARB members met with the applicant to discuss the project. At that meeting, the applicant presented two alternate designs. Those designs included changes to the roof form and to the windows. Those present at the meeting felt those changes were more in line with the Entrance Corridor Guidelines than the previous designs. Because the Montessori site is a prominent one on the Route 250 East Entrance Corridor, and because the ARB has determined that the proposal does not meet the Entrance Corridor Guidelines, it is recommended that the Supervisors affirm the decision of the ARB as stated in the October 17, 2007, Action Letter (on file in the Clerk's Office with the permanent records of the Board of Supervisors).

Mr. Boyd asked if Board members had questions.

Mr. Rooker said there are a number of attachments to the staff's report which trace the history of this request through the ARB. He understands that Attachment "E" is the most recent response from the ARB, and in that letter it says: "By a vote of 3:0, the ARB unanimously denied the petition as submitted and provided the applicant with the following comments and suggestions for recommended revisions to the proposal." There were 16 different recommendations listed in that letter. He asked if any of the 16 recommendations have been met. Ms. Maliszewski said those were items left outstanding at that review; it is not unusual to have that many outstanding items. The applicant has not submitted anything since that review. Normally, the ARB would approve a request and leave those conditions to staff. In this particular case, the primary issues were the architectural design of the building and the landscaping along the frontages. Those were issues the ARB wanted to come back to them for their review.

Ms. Rooker asked why this petition would not just go back to the ARB with the alternative design that apparently was looked at. He assumes the applicant generated that design. Ms. Maliszewski said the applicant prefers to go with their chosen design, if they can.

Mr. Slutzky said he needs to understand the role of the ARB in this process. In reading the materials, it seems the ARB felt constrained because the Guidelines they operate under do not take into account the objective of promoting green building. They acknowledged that there is a benefit to the community by having green building design, but it was not a variable available for consideration. He asked if the current Guidelines empower the ARB to take into account a corporation's brand identity when they are deciding the aesthetic impact of a building. He often drives by that dreadful blue roof on the CarMax building and wonders why it was allowed; he knows the Board is trying to be differential to corporate branding. Do the Guidelines acknowledge that is an appropriate purpose? Ms. Maliszewski said the Guidelines say corporate branding or the franchise designs need to be revised to meet the Guidelines.

Mr. Boyd asked if that blue roof was a corporate brand. Ms. Maliszewski said that blue roof was not the original blue roof proposed. It was revised and built.

Ms. Thomas asked if the blue roof is better than the original blue roof proposed. Ms. Maliszewski said "yes."

Mr. Slutzky asked if the ARB is actually not supposed to be taking into account brand identity and giving it latitude. Ms. Maliszewski said that is correct.

Mr. Slutzky asked if the ARB works with businesses to allow for what can be tolerated. Why would there be a blue roof of any color when it is so dramatic on that corridor? Ms. Maliszewski said an applicant with a franchise design will often propose their standard design. The ARB reviews what is presented to them and makes recommendations for that design to change to meet their Guidelines. Some results are more successful than others. Mr. Tucker said he was told at one time that Albemarle is one of very few localities that do not have a giant giraffe at Toys'R Us which is obviously branding.

Mr. Slutzky said Albemarle also does not have big golden arches. That is a testimony to the value and benefit to what the ARB does. In this case there is a unique characteristic to this Montessori project. They are trying to be differential to green design standards. It is easier to accomplish this with the building aesthetic being different from the building in the background. Does the Board want to discourage and not approve something that does not match as well as the Board would like it to?

Ms. Thomas said she disagrees that the Board has to take it as an "either, or." She thinks the value of the ARB is not to have some aesthetic sense which is higher or better than that of others, but to make the buildings form a pleasing whole when driving along the entrance corridors. The ARB is charged with looking at everything around a location, and that the community fits together to form a pleasing whole. There is no reason why a rain collection, a rain forest, or use of native materials cannot also fit into the entrance corridor. It is harder, but she thinks the Board should recognize the value of what the entrance corridor in general does, and also encourage the green design. It will always be easier to put down something that is absolutely plain and allows the rain to slope off the roof. It is more of a challenge to make it fit into that urban, very visible site. Although the applicant would prefer that the original design be approved, it seems they have thought about ways to match those two goals.

Mr. Slutzky said he agrees that green should not necessarily trump the purpose of protecting the impact of the corridor aesthetic. He supports the ARB. It has been pointed out to him that the County's entrance corridors look homogenous compared to some of the urban sprawl in other places because of the work of the ARB. When he looked at the drawings provided to the Board he saw the value of changing the color scheme to provide color compatibility with the structure in the background, the building materials, and some of the landscaping details. He sees more compatibility between those structures than the ARB acknowledged, and he does not see these as competing design forms. The pieces he saw were compatible in color; presumably building materials would have some similar affects, but he is not sure he would reach the same conclusion the ARB did. When there is a reasonable balance between the old way of building and the new way, he does not want to be too rigid in applying those principles.

Mr. Boyd suggested the Board hear from the applicant before exploring this matter further.

Mr. Rooker said he would like to say first that the Board should send a message to the ARB that green building is important to the community and it is a factor the Board wants considered.

Mr. Boyd said to the applicant that it is obvious the Board is concerned about environmentally sensitive buildings. The applicant should address why the 16 issues in the Action Letter would make it impossible for the Montessori School to do both.

Ms. Brinn Potter said she is a member of the Board of Trustees of the Montessori Community School. The School recognizes that the ARB guidelines are important to the community. They hope this process can be a clarification for everybody. She said the Board of Supervisors approved their master plan through a special use permit in March, 2007. They tried for approval of their preliminary site plan in July and August of 2007, at which time they introduced a design to the ARB. In deciding on the criteria for their design, they looked at the ARB Guidelines. The Montessori School is dedicated to not only green design and sustainability, but incorporating that into their educational model. They recognize that the process is as important as the product. They had a committee of staff, parents and experts who worked for months on the master design. They felt their design gave them some latitude to look at green design and sustainability. In particular, they could combine contemporary design as well as traditional.

Ms. Potter said they looked at their sanctuary (called that because it is certified as an Audubon sanctuary). They sometimes feel like an oasis on Pantops because they are surrounded by economic development, but they are doing this important and different work. They wanted to hold to their ideals with something as significant as their long-range master plan. They looked at solar orientation and how the wind and the weather and light would be coming into their new building. Because subjectivity is sometimes a curse when dealing with a committee of 12+ people, they wanted to use the requirements for LEED certification. Using LEED for a school develops extra criteria that are rankings for educational settings. It is important because it falls in with the Montessori philosophies of incorporating education as part of design; it is not just about what is created, but what you continue to create.

Ms. Potter said the plan presented to the ARB originally came back to them with a lot of comments and that had an effect on their LEED scoring. In the beginning they had hoped to be in the SILVER level for schools, which is a level above basic certification. The question was how they could

make changes and still maintain LEED certification. They were each trying to change design elements including external surfaces with their ability to stay green in an objective, specific way. As a member of the Board of Trustees there is pressure to watch the economic bottom line. They do not have unlimited resources, so tried to find the most economical way to be green in real terms and at the same time meet the important criteria set forth by the ARB.

Ms. Potter said this is their final proposal. Obviously they did not change the roof design. They are aware of the ARB's wish that it fit with what they see as traditional structures in the area. They could argue that a shed roof is also a traditional structure and is seen often in the area. They recognize that it has a contemporary look, but at the same time they tried to find aesthetic changes that did not compromise the LEED certification. She said they made many changes at each of the phases of the process. They recognize that this appeal may not be appropriate and the Board may not overturn the denial. If they went forward with the designs this Board has not seen but which they are simultaneously working on in the interest of time and money, they would lose their LEED certification for schools. They cannot afford to make other changes and maintain LEED certification; they are trying to fine tune this plan so asked their architect to do many different versions. If they change the shed roof, it will cause them to lose their LEED certification and greatly impact their rainwater harvesting system.

Mr. Rooker asked Ms. Potter if she is an architect. Ms. Potter said she is not. She said their architect is present as is their landscape designer to answer specific questions.

Mr. Rooker said as to the roof design jeopardizing rainwater harvesting, rain is harvested off of pitched roofs all the time. Ms. Potter said the shed roof design provides efficiency because there is no need for a gutter system. Also, the shed roof faces toward the courtyard which allows a visual educational opportunity for the children, adults and members of the community. She said a rainwater harvesting system is possible with a gable roof, but efficiency is lost, the cost increases because they would need to collect rainwater from two places, and they would lose their educational opportunity. She said there is someone present from the TJ Soil & Water Conservation District along with their architect who can give more specific details.

Mr. Rooker asked what change was made in the roofline in the alternative design mentioned earlier. Ms. Potter asked Mr. Neal Deputy, their architect, to answer that question.

Mr. Slutzky said it would be helpful for him if the applicant could say compliance with the Entrance Corridor Guidelines would result in a reduced LEED score and explain the reasons for that statement.

Mr. Deputy said he is the Project Architect for the Montessori School. As to the first question, he put together some alternatives in order to meet with Mr. Wright and Mr. Lebo to flesh out what they thought might be acceptable to help navigate this impasse. He said those designs were not ratified by the Montessori Community School's Board of Directors. As to the second question, he is not a LEED AP architect. They have a LEED AP architect who has done the scoring for the various stages of their submittals – Ms. Shannon Bear. With respect to the roof form, the single sloped roof is the most efficient way to achieve the goals of the School. It speaks to the crux of sustainability and environmental stewardship which is efficiency and the integration of systems. A roof system must speak to the structural system, the special system, the thermal and moisture protection system, the energy management system, along with pedagogical and ideological systems within the school.

Mr. Deputy said this is the most efficient form structurally and is also the most efficient form from a thermal and moisture protection point of view because it requires the least amount of material to build. It requires the least amount of transport and labor. It is able to vent itself naturally along the slope of the roof without attic vents or forced venting which a gable roof would require. It creates overhangs where they are needed - to the south, east and west. A gable system is non-hierarchical with respect to where its overhangs are placed – they would appear out of balance. Finally, it is the least expensive system they can use, but is one that has a basis in Central Virginia historic architecture. He thinks it is the best solution from all points of view. If they lose the roof, they lose LEED points. He said Ms. Bear can speak to that in more detail. It is not only more LEED points, but they would lose a lot of other things as well.

Ms. Boyd said he would like to summarize what Mr. Deputy said which is that the Montessori Board rejected the alternative approach because of economics, the lost educational opportunities and the degradation of the LEED certification. Ms. Potter said her subjective interpretation of this process is that you could put 10 architects in a room and they would argue as to the best solution; she recognizes that the ARB is in place to make the final assessment. She said it is not just about LEED but the position the ARB was put in. The executive summary basically said the ARB commended the School's efforts to build a green and sustainable building, but there are no provisions in their guidelines to allow them to direct or consider a building's sustainability as part of the consideration. She thinks that is why the School needed to come before the Supervisors.

Ms. Potter said the School looked at the County's Comprehensive Plan as a guide. There are some subjective places in the ARB Guidelines; everything does not have to be homogeneous. The reality of the Comprehensive Plan is that it does not to be an overarching document that drives all documents for the County. They would argue that sustainability and green building is part of the Guidelines even though they are not specifically written into the Guidelines. She then showed some pictures showing that there are a variety of rooftops in the Pantops area, and it is challenging to hire an architect and say make things compatible to what is traditional in the area. She offered to answer questions.

Ms. Thomas said part of what seems to be incompatible is the color of red on the building. Ms. Potter said what they intended was to use the natural color of cedar siding. They were asked to make it

brick red, and that was one of the changes they made. It should be the same color as the building already on the property which makes the new building cohesive with the original building on the property.

Ms. Thomas asked if any thought was given to reflecting the unique and interesting windows that still will be seen at the administration building. Ms. Potter said setting a big bank of windows high and offsetting them to allow for maximum light reduces the interior lighting needed. It is not just aesthetic, but they are trying to balance being able to reduce the use of interior fixtures – natural light will be maximized. She said for them it actually came down to roof design and native landscaping. Those were the two “deal breakers.”

Ms. Mallek asked if there is any possibility to have winter cover amongst the native tall things that would deal with the erosion issue during off season. Ms. Potter said that is a question for Mr. Hunter McCaudle who is the landscape designer.

Mr. McCaudle said he is a landscape architect with McKee Carson. They are doing the civil engineering and landscape architecture for the project. The overarching concept for the landscape is to create an outdoor classroom, or living laboratory of native plant species of the Piedmont region of Virginia. They are using multi-textured, multi-layered plants to increase and enhance the Audubon certificate that is currently awarded to the site. That will bring different plant, mammal, insect and bird species back to the area. There are several sewer and water line easements that cross that hillside. They cannot plant large shrubs or trees in those easements. They propose using native warm season grasses for that and planting them in plug form. In the summertime they range from blues and greens and move into the ochres and beiges in the wintertime. They have avoided monoculture planting which is seen across the street at the Rite-Aid Store and at some of the gas stations. They do not feel that would nurture the learning capabilities of the children.

Ms. Mallek asked if there would be any exposed soil in the wintertime. Mr. McCaudle said that is not the intent.

Mr. Rooker said this is not a public hearing. He said the Board has received a plethora of E-mails and there are a number of parents and students from the School present today. He would ask that the Board consider allowing one or two people from that group to speak.

Mr. Boyd said he was just going to suggest that. Ms. Potter said they were going to ask that everyone stand. They have two people present who would like to speak – one is Ms. Garnett Mellon from the TJ Soil & Water Conservation District, as well as Mr. Bill Edgerton from the Oak Hill Fund.

Mr. Rooker said he thinks the Board needs to go through the technical aspects of this petition; people who have expertise are appreciated.

Mr. Boyd said the Board will allow input even though this is not a public input session. He asked that comments be limited, but the Board will hear from anyone who wishes to speak.

Ms. Garnett Mellon said she is with the T.J. Soil & Water Conservation District. One of their charges is to protect water so in recent years they have encouraged rainwater harvesting. This should be an interesting process for the children at the School. There may be rainwater harvesting of this building which may be beyond the scope of the ARB's evaluation. Maybe it is appropriate that the Supervisors oversee this particular piece. She said the School came to the TJS&WCD about a year ago and asked them to write a grant. They wrote the grant to a local, anonymous donor and were awarded over \$20,000 to add to this project so they could have a significant rainwater harvesting system catching 8,000 gallons of water. The roof would be pitched toward the community center of the School so the children could see the process. She said the money has been awarded but there is an issue with the timeframe. Construction has to do with when the grant is completed and whether or not the grantor can be generous enough to offer the money at this time. She said Albemarle has amazing water resources, but the TJS&WCD wants to encourage rainwater harvesting wherever possible.

Mr. Bill Edgerton said he came to urge the Board's serious consideration of the recent denial of the Montessori Community School's certificate of appropriateness. He believes that what the School has designed will be an asset to the community and worthy of the Board's support. He has committed most of his professional career as an architect to promoting green building and sustainable design as important ways of addressing growth-related environmental degradation of the County. Several years ago he closed his private practice to focus all of his efforts on promoting green building and sustainable design in the affordable housing sector.

Mr. Edgerton said that as an Albemarle Planning Commissioner, he was pleased last year at the commitment of the Montessori Community School to incorporate green building and sustainable site design in the proposed expansion. The School not only intends to develop the project as a LEED project, but they hope that both the buildings and the site design will become models of sustainability for the entire community. He understands the School intends to incorporate the importance of sustainable design in their educational curriculum as well as share the model with the community.

Mr. Edgerton said one significant feature of their proposal is the rainwater harvesting system. The proposed system utilizes a single slope shed roof to collect all of the rainwater and then utilize it on site. To do this in the Development Area is significant because it will reduce the need for the School to utilize water from the community's water system. The School is coordinating its efforts with the TJS&WCD who will be constructing the system and monitoring the same. He understands one of the ARB's aesthetic

concerns was the single sloped shed Galvalum roof which was designed to maximize the efficiency of the rainwater collection.

Mr. Edgerton said another key feature of the design that was troublesome to the ARB was the proposed use of native plantings as an integral part of the site design. The utilization of native plantings is the preferred solution because being native the plantings are genetically adapted to this geographic zone and therefore require less maintenance and watering. By restricting the proposed plantings to native species the School will be minimizing the impact on the community water system as well as preventing the inclusion of potentially invasive species. He was troubled by the letter from the ARB when they said they preferred a landscape plan "that will achieve the character suitable to the surrounding urban area." As one of the few properties in the Pantops area not committed to the automobile, he would hope the Board might agree the community would be better served by celebrating the remaining natural environment as the School plan does rather than trying to promote a less desirable urban theme.

Mr. Edgerton said one issue has troubled him about this process because sustainability is covered by the Comprehensive Plan; it was updated just last year. He is troubled that the ARB does not feel it is empowered to consider that. If that is the case, he hopes this discussion will lead to making sure they do consider the Comprehensive Plan when they are reviewing projects.

Mr. Jeff Werner said he is with the Piedmont Environmental Council. For years he had a relationship with the Montessori School and he can say the School and the students value this greatly. He came today to encourage the Supervisors to seek a solution. There are unique characteristics here that need to be embraced. He was a builder at one time and his graduate degree was at the Architecture School. He understands the key problem is with the shed roof which forms the finished ceiling space of the learning room, whereas a hip roof, relative to LEEDs, is an inefficient use of space since it has to be heated and cooled, or it is treated as attic space, so it is unused space. He said hip roofs are funny especially when looking at them subjectively, particularly when looking up a hillside. Architectural elevations are done as if you are floating at a midpoint in space both high and low. He has dealt with people who have looked at roofs and elevations and when he had finished their house they were standing in the driveway saying "I thought I would be able to see my roof." He said that needs to be kept in mind when arguing for a traditional roof that may or may not be evident from certain vantage points. He thinks everybody can work together on this unique situation and find a solution relative to ARB review.

Ms. Amy Gardner said she is a resident of the City, graduated from the School of Architecture at UVA and is a member of the Board of Architectural Review for the City. She has tried to think of historical properties on Pantops Mountain this morning, and can think of only one. It is the former Peter Jefferson home. Whether the ARB likes it or not they have a post-modern sprawl condition on Pantops. A well-designed piece of modern architecture on Pantops would be welcome from the big-box and local development that has overtaken the mountain. She cannot think why a shed roof would be a problem in the context created on the mountain. If she were a member of the ARB she would have found this a welcome project. During the last few years the City has had to mesh many new projects with the Downtown Mall. She urged the Board to consider the presentation and to overturn the ruling of the ARB.

Ms. Candace Smith said she is vice-chairman of the County's ARB. She would like to make it clear that the ARB never said they had an objection to rainwater harvesting, or native plants. They are advocates of the possibility of sustainability, but their charge is to look at aesthetics. They never asked for the building to be barn red, but said that natural wood with a finish would weather irregularly and poorly and look disheveled in the future. The ARB asked the School to come up with alternatives.

Ms. Smith said the applicant has talked about time and money affecting them, and their time and money is being lost because their support system, their professionals, did not follow through when the ARB gave them specific comments and asked for a response. She said the Schools' submittal was incomplete with insufficient information to evaluate. They could not send it on with simple administrative approval. There are often 15 or more items but they are distinct enough that the ARB will understand what the change will result in so they can have staff make sure those changes are on the drawings. She said there was enough information lacking that the ARB could not make a decision on what the building would look like.

Ms. Smith said the planting plan was the same planting plan submitted in July or August; it was never changed, it was handwritten and the ARB had specific questions which were not addressed. She said the discussion today has focused on the building type, but she feels the landscaping has the possibility of creating a terrible eyesore at a prominent intersection of the entrance corridor. A jumble of trees and shrubs were interspersed between what was called "meadow mix." The ARB has never approved meadow mix in the past, and has only its private sources to advise if this is obtainable and feasible. The ARB did not object to it but needed further information. Just saying meadow mix will be put in does not tell the spacing, the quality, or what it will actually look like. Her sources have confirmed that it is not a low-maintenance installation. It requires, at the least, bush-hogging once a year, which is not feasible on this slope and it needs to be maintained at 12 inches, or preferably six inches for the first year, and that requires mowing.

Ms. Smith said meadow mix can mean any variety of plants and grasses and the precise mixes need to be known in order to evaluate what will be seen. The School's landscape architect just said it will be warm season grasses and they will be blowing in the wind and looking nice throughout the year. He then said the canopy species that will move into the site can be accommodated there. The reason for bush-hogging is to keep the weeds and other trees out. If the intention is that it go back to the ailanthus that currently lines Route 250, the ARB needs to know that so it can decide if that is an appropriate appearance. The three dimensional drawing that was given is deceptive and only shows a possible spring

view ten years from now. It does not reveal how poor the site could look or how year-round there would be use of the building. It is not that the ARB will not approve the plan, but it needs additional information. The ARB regularly tells applicants that a particular tree or shrub won't survive in a particular place because of its exposure, or its placement. Most applicants will listen and say "thank you" because they are glad a client will not have to replace a tree regularly.

Ms. Smith said the building's form and finish are not appropriate for that intersection. The ARB, from the beginning, has recommended a change in the form but little changes have been made other than to change the color of the building. The ARB must respond to what can be seen from the entrance corridor. With a building perched at the top of a hill, they know the building's features will be more prominent. As an example, consider the multi-storied Rosewood Retirement building currently under construction behind Target off of Route 29 North. The argument presented to the ARB was that the building would be more than 1,000 feet from the road and much of the building would be background. She has talked with many people who after driving by that building have questions. When a building is placed high on the land, it takes on a greater presence.

Ms. Smith said the footprint of the Montessori School building is twice as long as the existing historic structure, and closer to the entrance corridor. The building will be very visible and needs to be well-finished. A single slope shed roof has been approved for other entrance corridor buildings but it is done in conjunction with the site with views to and from the entrance corridor so it is not that the ARB is opposed to this type of roof. On this hill, one would be staring up at the underbelly of the roof overhang and it does not fit on the site relative to the existing buildings on the site.

Ms. Smith said the argument that the building needs to take this form to be sustainable is not true. The fact that they claim they will lose points by not having a single sloped roof is not true. She is glad that an earlier speaker showed the checklist for LEED. Unfortunately, the LEED word is used as a catch-all. It is a system that is currently in place to evaluate buildings and there are 68 LEED points on new construction that can be obtained; at the most, only one or two of them have anything to do with the aesthetics of a building. Two of those have to do with daylighting and views, so this building is trying to capture more daylight and views, but it does not take advantage of the single slope roof in the way it should to when it has that form.

Ms. Smith referred to the drawing presented to the Board and said the two central images show a sloped roof with windows up high that allow daylighting into a classroom. In this project, the architect said that in the upper portion where the ARB would like to have windows to let daylighting in to justify the single slope roof, he has put the HVAC equipment. Looking at his design, the head of the windows on the low side of the building and the high side of the windows are identical. He has not captured anymore daylight because of the roof form. He could capture the same amount of daylight with a flat roof, a hip roof or a gable roof. He has not raised the windows to capture light which would influence how the ARB looks at it.

Ms. Smith said the middle picture shows a building which the ARB has partially approved. It has the single slope shed roof, and in this case, most of those roofs face the entrance corridor. Conceptually, this is a marvelous design for a classroom and has been used many times in the country. If this was the approach, it would have changed the elevation of that building and added more windows and had a different rhythm and proportion to it. She said the six other images are all LEED certified structures so the form of the building has nothing to do with LEED. LEED cares about many other issues and the points are tallied even as design is begun and construction advances. Enhanced refrigerant management has nothing to do with the look of the building.

Ms. Smith said the ARB feels the building can be used as a teaching tool. It can be a sustainable building, and it can be a green building, but the School has not met the very simple aesthetic requirements of telling the ARB what it will look like, and then having the ARB evaluate it.

Ms. Shannon Barras said she is a local architect and also works as UVA. As the person who did the LEED score card, she would like to make a few points. She said any form of building can be done and achieve LEED through various designs. The changes that would be made would affect water collection. They would lose points for the gray water that would be used for the plumbing. Also, she assumes they would not be gathering quite as much water with the new design. They would lose points with daylight and views. She said it would be nice to have the windows higher. In the current design they chose not to have them go higher based simply on cost. The windows would be smaller through a traditional mimicking of windows, losing daylight and views. They would lose another point if native planting were eliminated. Other points can be gained, but she thinks the correct way to address LEED is by good design and not by purchasing points (there are ways to purchase points). She offered to answer questions about LEED.

Mr. Rooker said there seems to be some misunderstanding. The Board just heard a representative of the ARB say they are not opposed to native plants. Their problem came about because they did not receive a plan showing where the native plants would be placed. Second, he does not understand the statement that a change of the roof design would result in less water collection. Ms. Barras said she does not feel there would be the potential for capturing more water. The same amount could be captured with a change in the roof but it would require two systems or more piping, which they cannot afford. Also, they would be watering the plants from that captured water which they could not do without having enough roof to capture it.

Ms. Thomas asked if the entire roof's amount must be captured in order to get their points. She said there are so many compromises that could be made. One is that they do not need the traditional hip roof in order to have the appearance from the entrance corridor that there is some roof to look at. At some

point a roof either looks bigger than expected, or not as much roof is seen as expected. She thinks that having some downward tilt of the roof for what is totally tilting upward as seen from the entrance corridor would appear to be a hip roof. At first she thought that would not be good because it would cut off the windows, but it was just pointed out that the windows do not go to the very top, therefore the windows would not be shaded with "a bit of a hip." That also would reduce the rain collection by a measurable but small amount. She asked if they have to collect all water from every roof in order to do the rain harvesting. Ms. Barras said she did not think that was the case. They looked at that concept. On this particular building, aesthetically it looked funny, and they did not like it. She does not know the solution.

Mr. McCaudle said he would like to address some of the issues mentioned by Ms. Smith. He said the landscaping became an issue because of the way it would be planted using a diverse mix of planting species incorporating the meadow mix over the easements and not following along the traditional hedgerows and tight rows of tree species like those in front of the gas station. He said the plans they presented show where and how many plant species are on the site, their sizes, their numbers, the meadow mix; it is all incorporated into the site plan. He said everything submitted followed the ARB's checklist. There was never anything that was not submitted when requested.

Ms. Thomas said the picture she gets from the sketch of the best case scenario which was presented in the Board's packet of materials, is of something that is very shaggy and unkempt. She does not know where someone got the idea there had never been appeal of an ARB ruling because there have been appeals filed in the past. Shaggy, as opposed to a kempt appearance, is something other applicants have wanted because they did not want the expense of keeping a hedgerow and trimming same; used car lots do not want a hedgerow because they want to be sure the bumpers of the cars can be seen. Kempt as opposed to shaggy is something that comes before the Board all the time and the Board always picks kempt. She said it is nice that it is an educational feature, but little kids will not be on that steep slope walking amongst those bushes, nor will the School want to encourage mammals on that hillside because it will be enticing them out onto a busy highway. She is not convinced that what has been proposed to the Board is defensible. It does not matter if it is native plant species. She hopes the ARB will go to drought resistant native plant species in their recommendations. She asked if Mr. McCaudle can aesthetically defend what looks like something the Board would not allow in the entrance corridor if it were any other applicant.

Mr. McCaudle asked if Ms. Thomas' definition of "kempt" is "a trimmed hedge." He said there can be a very structured series of plantings, large masses, and sweeps of different types of shrubs and be very kempt which is what they are proposing.

Ms. Thomas said it does not look like that in the sketch. Mr. McCaudle said it is difficult to create a prospective of planting. What they propose is that there would be sweeps and masses of a series of shrubs to bring in diversification of bird, insect and wildlife species. That further enhances the Audubon certification of the site. What would be wrong with having diversification of species and different flowering sequences, and seeing those birds when one is stopped at the stoplight on Route 250? That is why he thinks it is defensible. Why not bring the kids to the top of the hill to look down, or even down to the bottom of the hill where there is a sidewalk so they could look up and see different plant species flowering?

Mr. Paul Wright said he is Chairman of the Architectural Review Board. Most of what he has to say is not about architecture, but about process. He heard comments about the blue roof and what the ARB learned from that proposal. For example, the blue roof on the CarMax, which is right below the School, shows that design can be improved and changed over time. That blue was not on the original submission; it was probably the third. The ARB has learned that if a strange color is to be approved, it should get a very big sample since looking at little samples will fool you. That is why in their new meeting room they insisted on natural lighting because for a long time they were looking at color chips under fluorescent lighting and mistakes were made. They would like to have that decision back, but that is not how it works.

Mr. Wright said the ARB has no opposition to green buildings. The more he studies it the more he realizes that green, sustainability and design can co-exist without any problem. In terms of what the ARB has before it, the ARB does not have the tools in which to balance different competing needs. They do not have any staff that is trained in LEEDs although he knows the County is working toward that. He recommends that as a group the County join the LEED certification if it is determined to be important. Now, they have to take the word of other people, which they do not do for anything else. One applies for LEED certification only after the building has been built. If someone came with a LEED certified building, they would have to make compromises on design and in the end the building would not get LEED certification. At that point, what would the County do since the applicant did what had been promised. He is wondering why LEED certification is only needed in the entrance corridor. If the County wants LEED certification, perhaps it should be required for every building. It is hard to make this a requirement just in the entrance corridors. As a member of Green Counties, Cool Counties, and other initiatives, it would seem that this is almost as important to make this a process that would go through all buildings and, therefore, the ARB would not be involved with LEED certification at all. They could stick to aesthetics and design which is their charge from the Board.

Mr. Boyd said if there was no one else who wished to speak, the Board would discuss this request.

Ms. Thomas said she thought people wanted to stand to show their support of the request. (**Note:** Approximately 40 people stood.)

Mr. Rooker said he does not see how this plan cannot be returned to the ARB. Representatives of the ARB have said they have incomplete information upon which to make an evaluation. This Board charged the ARB with this process of achieving an aesthetic appeal to the entrance corridors, and in their findings 16 different issues were raised. He would find it difficult to say none of those things matter and approve the plan. He is sympathetic to a number of the things raised by the School. First, early on it was said that this Board wants to encourage green building, sustainable design and would like to make certain the ARB takes that into consideration in making its decisions. He thinks sustainability should co-exist with reasonable aesthetics. A variety of aesthetics are in that entrance corridor today. He is confident that if the ARB gets all of the information requested, together with input from this Board on its priorities and what it expects the ARB to consider in its approval process, this can be worked through and completed in a way that accommodates substantially what the School is asking for, but at the same time allows the ARB to complete a reasonable review process with respect to the proposal.

Mr. Slutzky said he agrees with most of what Mr. Rooker said but ends up with a different outcome in his mind. It appears that the people from the Montessori School came before the ARB with their proposal refined and the ARB, with its hands tied with regard to the green building considerations, said they needed more information. The ARB had some foundational issues. Representatives of the School felt there were issues on which they could furnish further information, but there were fundamental issues they could not get beyond. They then decided to come before the Board of Supervisors. In this case there are some fundamental issues of how much primacy the Board wants to give to the objectives of green building and design. In this particular case, which he thinks is unique, he would be comfortable supporting the applicant in their request to overturn the decision of the ARB. He would also say he is not trying to undermine the overall purpose and intent of the ARB, and would be willing to support the applicant's request. He also encourages the ARB to advance their understanding of the technicalities of LEEDs so they can find compromises when there is an inevitable conflict between these competing objectives in a way that is more consistent with the sustainability accords the County has developed.

Mr. Boyd said he thinks there is a "Solomon's choice" involved here. This property is in his district so he has met with people from the Montessori School and has talked with some members of the ARB. He thinks each of these groups may have "drawn a line in the sand" and will not go beyond it. There have been some communication problems between the two. There has also been the idea that they will not give in on a particular point. He is leaning toward sending this request back to the ARB and encourages them to recognize the importance of sustainability. He would like to see the two parties come up with a compromise that can achieve the goals of both. Maybe that is not possible and this Board will have to make the decision. He is not willing to give up the thought that they can come to a compromise.

Mr. Rooker said this is not just a single issue which has been brought to the Board. He said there are 16 things, and he wonders if Mr. Slutzky is willing to overturn the ARB on the requirement "to provide large shade trees along the entrance corridor frontage outside of the electric easement."

Mr. Slutzky said the 16 things before the Board are not discreet items. What is before the Board is a process challenge. They said that the ARB for a litany of reasons decided to reject their request for approval. They are asking the Board if it supports that position. He does not. He thinks the fundamental consideration should be the Board's commitment to the green building element. While a lot of the other things are important, they are nuances compared to that. He thinks the Board needs to send a signal that it is committed to that.

Mr. Rooker said those nuances are required in virtually every application, and are what has made the difference in the entrance corridors. While he agrees with the School's case for a green building and wants to be sure that is accommodated, most of the things listed have nothing to do with the slope of the roof, etc.

Mr. Slutzky asked if ARB approval subjects people to a litany of items that then need to be resolved at staff level. He said the ARB gave clear directions to staff as to their concerns.

Mr. Rooker said if the Board overturned the decision of the ARB with 16 reasons for denial, which of those things could then be put in as conditions.

Ms. Thomas asked that Mr. Davis explain what would happen if the Board approved the denial. Mr. Davis said typically the Board would approve the plan with an itemized list of corrections which would have to be implemented. If the Board simply overturned the ARB's decision, the Board would then have to approve a plan with a set of conditions to address all the issues; staff cannot do that.

Mr. Slutzky asked if the Board could isolate the issues that seem to be the impasse issues and approve the plan subject to the 14 ARB conditions, but take the other two, for example, the roofline.

Mr. Rooker said the roofline is one of the problems. The roofline is not isolated as a specific item. Item No. 1 reads: "Revise the form of the classroom building to be compatible with the forms and features of the significant historic buildings of the County, and particularly the on-site Administration Building." He asked if the only issue is the roofline. Mr. Davis said that was a comment which was intended to create a new draft that would then be reviewed further by the ARB for determination of compatibility.

Mr. Rooker said he does not understand the background of all of these items. He is sympathetic to the School's desires to build a sustainable building and understands their financial resources are not unlimited. He thinks the whole idea of trying to make education a part of their sustainable building is laudable. It is an asset to the community, and the building will be an asset to the community upon

completion. Given the scope of these issues, this Board is not in a position today to go into these conditions and fashion its own conditions without hearing the presentation that led to them. He feels the Board could send this request back to the ARB with some directions.

Ms. Mallek said she would like to echo the diversity that could be offered by a sloped roof. There are many forms that all have admired and lived amongst in the urban and agricultural environment. Perhaps directions could be sent to the ARB to take a little wider view on that issue, and also to bring the parties to the table on the other 14 issues. She did not understand from looking at the pictures that the glass did not go all the way to the ceiling. She thinks the people with the expertise need to get together and figure it out.

Mr. Dorrier said the Board has to decide whether it wants to affirm, reverse or modify in whole or in part the decision of the ARB. He does not think the Board is willing at this time to do any of those things. He somewhat agrees with Mr. Slutzky and Mr. Rooker, even though they are on both sides of the issue, that the plan should go back to the ARB to be worked out. He does not think the Board is in a position to deal with each of the 16 items.

Mr. Boyd asked Mr. Davis if the Board denied the appeal of the Montessori School, what ramifications that would have as opposed to simply saying the Board would not take any action. Mr. Davis said if the Board denied the appeal the School would have to make a new application to the ARB for approval of the project before they could get final site plan approval.

Mr. Boyd said he would like to challenge both groups; he thinks the ARB has heard today that it should give a little bit because the Board wants them to consider sustainability issues. He would encourage the ARB to put this on the fast track because time is money to the School. Obviously, the Board would like to have this matter settled at the ARB level.

Mr. Rooker said if this request comes back to the Board, he would like it to be on a single issue, or two issues. At this time, the Board does not even have the background information that led to the ARB's decision.

Ms. Slutzky said he still feels the Board should overturn the ARB on this particular request. Obviously that is not going to happen. He asked if the Board could sustain the determination of the ARB or would it be better if the Board took no action today and asked both the ARB and applicant to sort this out so the applicant could withdraw its appeal. Process wise what can the Board do?

Mr. Davis said the Board has two options. First, with the consent of the applicant, the request can be referred back to the ARB and it could choose to have further dialogue with the applicant. Second, if the applicant will not consent to that, the Board has to make some decision. He does not think the Board is in a position to do that today, so if that is the posture of the applicant, he would recommend that the Board not make a decision and refer the request back to staff to get input from the ARB and staff in order to have a recommendation on what could be approvable by the Board addressing the issues talked about today. That will require staff and the ARB to have further dialogue with the applicant. He thinks staff would prefer that the applicant consent to having this plan returned to the ARB who is better equipped to handle this type of request.

Mr. Boyd said the applicant has heard the discussion and there does not appear to be support to override the ARB. Ms. Potter said the School's overarching issue has to do with time. That is why they were concerned with the two main issues which are the "big sticking points." When she talked about the roof, she was referring to Item No. 1. That was communicated to them as the primary problem with the form. She does not understand completely what Mr. Boyd said, but if the School consented to go back to the ARB it is consenting to a long timeline that puts them in jeopardy of losing the grant for the rainwater harvesting system and their groundbreaking in terms of school scheduling.

Mr. Rooker said he thinks the shorter process is to go back to the ARB because the Board has asked them to consider this on an expedited basis.

Mr. Boyd said that is what he said.

Mr. Slutzky asked when the ARB could consider this request again. Ms. Maliszewski said the next meeting of the ARB is on January 22, and again on February 4. However, scheduling would depend on staff having the information in time to review it.

Ms. Thomas said she was going to try and give the ARB the consensus of the Board today. Without that kind of guidance, referring it back would not help at all. She will express her own thoughts. She thinks rain harvesting is important. Important to her is the landscaping and how it looks early on, not ten years from now. Although native plants are okay, she does not see that as a learning experience on that slope. Today, she finds it to be ugly because it is hard to get plants to latch onto that soil. She would like careful landscaping, and the educational aspects are less important to her than its appearance because of its prominent location in the community. The window shape and its blocky appearance are not that off-putting because she thinks color of the siding and the landscaping can make the building fit in.

Mr. Slutzky said that captures his views well.

Mr. Boyd said "beauty is in the eye of the beholder" and he thinks that is a lot of what is being looked at on this plan. Personally he does not have a problem with the shed-type roof in that location. He

is not an architect and is not artistic, but that is something he would be willing to see so some of the landscape issues could be dealt with instead.

Mr. Rooker said he thinks there are some compromises concerning the roof issue that would meet both objectives easily. If that is not the case, then he would agree with Ms. Thomas. He said the ARB was formed about 1988 and out of all the things the County has tried to do he thinks the ARB's efforts have made the single most important aesthetic improvement to the community. In the case of the roofline here, he thinks there are some small changes that probably could be made. Green building is at the top of his list of things the County should pursue. If there is no way to achieve the aesthetic look with a green building approach, then he thinks it is a worthwhile trade-off.

Mr. Boyd asked the applicant again if they were willing to have the request referred back to the ARB. Ms. Potter said she appreciates what the Board members are saying. Under the sentiment that the process of going back to the ARB is the common goal of working out this impasse which represents something larger than this project, she will take that leap of faith and remove herself from her fiscal mind and timeframe and consent to the process the Board is proposing.

Mr. Wright said along with the comments to the ARB, the first one is not sufficient in terms of rain harvesting. Both designs have rain harvesting and it would be helpful if the Board could give a little more guidance, it would be easier to translate.

Mr. Slutzky said prior to today the ARB has had no empowerment through the guidance to even take into consideration the ecological benefits of one design versus another. He said there seems to be unanimity on the notion that the Board wants the ARB to modify its charge to reflect that value judgment. Just saying rain harvesting is not sufficient for him. He would like to optimize the sustainable element of building design and he considers that to be a priority that trumps aesthetics. However, he does not want to put the ARB in the position of having to approve things which make no sense from an aesthetic standpoint simply because the applicant can hang their hat on some superior ecological benefit. He asks if that helps Mr. Wright.

Mr. Wright said it does, but in a sense both roof designs allow for rain harvesting. It comes down to the sustainability argument on a peaked roof in terms of two pumping stations. He is also asking if the shed roof is okay or if it is not okay. He does not want to be put in a position where the Board could go back and argue on each side. He wants to do what the Board wants the ARB to do, but wants a reasonable matrix. Some people here think that what the Board just said indicates it wants approval of the shed roof. If that is what the Board wants that is fine, but some people might have also thought that with a peaked roof system you can only do half the rain collection so there is a compromise involved. He thinks it would be helpful if the Board could address that one issue. He has all of the Board's other comments.

Mr. Slutzky said he does not want to compromise the ecological by the aesthetic. For him, if the two are in direct competition, he would favor the more significant ecological benefit over the aesthetic.

Ms. Thomas said a shed roof might have some architectural treatment so it does not look so much like a shed roof. She thinks the majority of the Board members have said a shed roof would be okay if that is what it has to be.

Ms. Smith asked to make a comment. Mr. Boyd said the Board would hear a short comment. Ms. Smith said the ARB did not want to get into the details of the design because it felt that because the report was incomplete, that was a sufficient statement. She said it does not matter if the roof is sloped, vertical or flat. What matters is the footprint that catches the number of rain inches per square foot. The footprint of that building shows a significant amount of other areas beyond the single sloped roof. There is a complete arcade, there are other roofs projecting off, there is a giant classroom (which is something the ARB had concerns about), and another similar portico on the other side which takes up at least as much of the rainwater conditions as the main sloped roof.

Mr. Slutzky said there is cost associated with the piping. Ms. Smith said she does not know if those are piped, but if there is a huge arcade she assumes there is piping. She said the piping is PVC piping which could cost only from \$2,000 to \$10,000 out of a multi-million dollar project. What is gained in a moment is nothing. The piping argument does "not hold water." Looking at the last drawing submitted to the ARB, it shows a classroom projecting out beyond the arcade. They probably lost LEED points because they changed it from a roof garden to a classroom. As a roof garden it would have obtained a tremendous amount of points. The building is not yet finished being designed. It has two small posts supporting thousands of pounds of weight. It shows a beam supporting it. She is concerned about the structure which projects out like a boat over the hillside; the ARB has not received enough information on it.

Mr. Boyd said that is why this Board is saying the ARB has to deal with the question.

Ms. Smith said one single shed roof is not the issue. There are already "bent" roofs in this area, but they are not necessarily visible because they are concealed by bends that go the other way. She said there are several issues about the design that the ARB wanted to address.

Mr. Boyd said the Supervisors cannot get into that kind of detail. That is why it is being sent back to the ARB and the ARB is being encouraged to give in to sustainability issues. Ms. Smith said the ARB appreciates these directions.

Mr. Slutzky said Ms. Smith said a moment ago that having to have redundant collection systems and a more extensive piping system colors his perspective that these are clear directions. He wants it to be clear that he, personally, wants the ARB to pay much more attention in this particular case to the importance of the ecological aspects of the proposal over its aesthetic aspects. He does not think the extra rainwater collection and the extra efficiency should be dismissed. Ms. Smith said she was not discounting it; she said the cost to catch it is minimal.

Mr. Boyd said this debate must be ended.

Ms. Potter said based on Ms. Smith's comments, she feels it is urgent that this Board make a statement on Item 1, the design and form. She feels that if the Board does not make a clarification on that roof design, the whole project will have to be redesigned. In terms of practicality of the School getting somewhere on January 22, both parties need to know whether that redesign has to happen or whether the Board is saying the current form is supportive of the existing surroundings and it meets the Board's standards.

Mr. Boyd said there is a problem with doing that, as the Board just heard, because there are other issues involved. Ms. Potter said she thinks all those other issues can be addressed.

Mr. Rooker said Item 1 in the letter, which deals with the form, etc. of the building, contains things other than the roof. He is not prepared to say the ARB is wrong when he has not even seen a complete proposal that is different. The last proposal to the ARB was incomplete.

Mr. Deputy said he would like to speak to the issue of incompleteness. They have not had a submission rejected for being incomplete. They have never received a comment from the ARB which was not addressed in writing in a detailed fashion. In return, they got comments from the ARB like the Board saw in the letter (revise the form of the building). That gives them little direction and left them to try and read between the lines to understand what the ARB wanted. They were told to stay close to the ARB guidelines; compatibility seems to be an issue. He said the ARB guidelines state that the standard of compatibility can be met through building scale, materials and forms. He said the ARB may not agree with their responses, but they have been diligent and very detailed about how they responded to each issue. He said the 16 points Mr. Rooker mentioned are the same points they addressed in their final presentation. Although they may not have liked the way the School responded, to say the application is incomplete is inaccurate.

Mr. Boyd said this matter will be deferred and the Board is encouraging both sides to try and work out these issues. He does not know how the importance this Board places on sustainability issues can be made any clearer. He asked Mr. Davis if the Board needs to take formal action. Mr. Davis said there should be a motion to the affect that with the applicant's consent this matter is referred back to the ARB for it to reconsider its decision on this plan.

Mr. Boyd said he would so **move**, and ask that it be done as expeditiously as possible. The motion was **seconded** by Mr. Rooker. Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

Mr. David Benish, Chief of Planning, said he wanted to make sure staff had a thorough understanding of the Board's expectations. 1) Rain harvesting is crucial; 2) aesthetic review of this request should not compromise rain harvesting; 3) landscaping along the hillside should have preference toward its appearance as opposed to its educational value; 4) the shed roof design is okay, but the Board is expecting compromises to the extent that those compromises do not impact the ability to have effective rain harvesting; 5) the resulting design and the compromises provided by the ARB should insure that there would be LEED certification; and, 6) in terms of review, staff will review as quickly as possible (there are only two staff people, and there are a lot of submittals). Staff and ARB review of this will probably not be quick, but they will work toward doing it as quickly as possible.

(Note: At 12:08 p.m., the Board recessed and reconvened again at 12:18 p.m.)

Agenda Item No. 16. City, County YMCA Use Agreement.

Mr. Tucker said because the meeting is running behind schedule, staff will skip the full presentation of this item; however, Mr. Kurt Krueger has an item to mention and then the Board can ask questions.

Mr. Krueger said he wanted to be sure it was clear that the period between approval of the use agreement by the County and May 20 is the master planning process the City will use for the active side of the park. It is anticipated that during the process, the City, the County and the YMCA will get together and negotiate the breadth and scope of the aquatics facility in McIntire Park. Also, the YMCA received a message from former Mayor David Brown that Mr. Craig Littlepage is interested in talking about adding a diving component to the facility. There may be an exciting opportunity over the next four months to build an aquatics facility for the community that would have a significantly large diving component and competitive pool component.

Mr. Slutzky said this Use Agreement does not address whether or not the Board will ultimately approve the building of a competitive pool with diving facilities, so by supporting this the County is not obligated to fund the extra 1.2+ million. Mr. Krueger said that is correct.

Mr. Boyd said he gave each Board member a copy of a proposal from the Gators/Stars Organization which is a competitive swimming organization. They are also building a facility, and they might possibly accommodate the competitive swimming needs. This Agreement would commit the Board to the \$2.030 million for the indoor facility at McIntire Park.

Mr. Rooker asked if this is the agreement that was worked out and has now been approved by the City. Mr. Davis said the agreement attached as Exhibit D has under Paragraph 13 a parenthetical that basically says "insert any additional provisions required by the County and agreed to by the City." He said staff did not recommend any additional conditions, but he wanted to point that out for the Board's clarification. If there are no additions staff will remove that parenthetical and after final review of the agreement it would be ready for execution.

Ms. Thomas asked what makes the County's cash contribution (\$2.0+ million) the equivalent of the City's contribution of land. Has anyone evaluated the value of the land the City is proposing to use? There was an alternative proposed which was to use land at PVCC and that land would not have to be paid for. Mr. Krueger said he thinks the County was willing to put in that amount of money to partner with the YMCA when the facility was to be built behind the Monticello Fire Station or even at PVCC. The City has come up with a variety of values for the land at McIntire Park, but it is probably in the range of \$600,000 or higher. The larger the facility and the more land used, the more valuable the piece of property. Because the facility is to serve both the City and the County, it is likely its use will fall along population lines which at this time are 70 percent County and 30 percent City.

Mr. Boyd said as a point of reference, they considered the land to be worth nothing because the County had access to free land, but the location is probably the importance of that amount. Mr. Krueger said McIntire Park provides the opportunity to better serve the public.

Mr. Rooker said the County Parks & Recreation Department said this is a better location for the County than other potential locations. He then offered **motion** to approve the proposed Use Agreement and to authorize the County Executive to execute the agreement on behalf of the County in substantially the same form as provided to the Board, after it has been approved by the County Attorney, with any necessary changes. The motion was **seconded** by Mr. Dorrier.

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

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

NAYS: None.

(**Note:** The Agreement, as signed, is set out in full below.)

THIS GROUND LEASE (hereafter the "Lease") is entered into this 1st day of 15th, 2008 by the **CITY OF CHARLOTTESVILLE** (hereafter the "City") and the **PIEDMONT FAMILY YMCA, INC.**, a charitable non-profit organization authorized to do business in the Commonwealth of Virginia (hereafter "Lessee").

1. Leased Property. The City, as the title holder of the subject property, in consideration of the rents and covenants to be paid and performed by the Lessee, leases to the Lessee and the Lessee leases a portion of the property commonly known as McIntire Park in the City of Charlottesville, being within the area described on Exhibit A, attached hereto and incorporated herein by reference, (hereafter the "Leased Property").

[Note: the specific property subject to this Lease will be approximately 3 – 5 acres and located on the western side of McIntire Park in the area currently used as softball fields. The exact boundaries of the Leased Property will be determined by the City following the completion of a Master Plan for McIntire Park, which the City shall complete by May 20, 2008. The area to be studied for the exact boundaries is shown in Exhibit A. In the event the City has not completed the Master Plan, the boundaries of the Leased Property shall be the area identified on the plat attached hereto as Exhibit C, as per Paragraph 4 below. In no event shall the Leased Property include the existing picnic shelters, playground area, concession/restrooms building, parking areas or baseball fields.]

2. Title to Leased Property. The City represents and warrants to the Lessee that it has the power and authority to execute this Lease and to carry out and perform all covenants to be performed by the City under this Lease.

3. Condition of Leased Property and Lessee's Right of Entry. The Leased Property is currently used as active and passive public recreational areas under the supervision of the City Department of Parks and Recreation. The City makes no representation or warranty as to the condition or suitability of the Leased Property for the intended purpose of this Lease prior to or at the time of the execution of this Lease. Lessee accepts the Leased Property "as is" on the effective date hereof.

Prior to the Commencement Date specified in Paragraph 4, the Lessee shall have the right to enter onto the Leased Property for the purpose of conducting, at Lessee's own risk, cost

and expense, surveys, soil borings, engineering studies and other similar examinations necessary to determine the suitability of the Leased Property for the Lessee's intended use. Lessee shall provide reasonable notice to the City Department of Parks and Recreation prior to entering the property, and shall exercise this right of entry at all times so as not to unreasonably interfere with the normal operation of McIntire Park. If Lessee determines, as a result of its studies, that the Leased Property is not suitable for its intended use, Lessee may terminate this Lease prior to the Commencement Date, and neither party shall have any further rights or obligations hereunder. In the event of such termination Lessee shall, at its own expense, restore the Leased Property to the condition in which it existed prior to any changes made during the course of its studies. Lessee indemnifies and agrees to hold the City harmless and defend the City from all claims for damages to the City or its agents caused by actions of the Lessee in the course of conducting the studies.

4. Term. The initial term of this Lease shall be for a period of forty (40) years, which shall begin on the date specified in the notice from Lessee to the City required below (the "Commencement Date") and continuing thereafter throughout the _____ day of __, 2048. Lessee shall give the City at least sixty (60) days prior written notice of the Commencement Date, which shall be the date it may commence occupancy of the Leased Property, not later than 120 days from the earlier of May 20, 2008 or the date the City completes its Master Plan for McIntire Park. The City agrees to complete such Plan and give notice to the Lessee of the site in McIntire Park on or before May 20, 2008. In the event the City fails to complete such Plan or give such notice, the area identified on the plat attached hereto as Exhibit C shall be designated as the Leased Property without further action on the part of either the City or Lessee.

5. Rent. The Lessee shall pay to the City nominal rent at the rate of \$1.00 per year, the receipt of which is hereby acknowledged.

6. Use. Subject to the Lessee's compliance with all applicable local, state and federal laws and regulations, the City hereby grants permission to the Lessee to occupy the Leased Property for the purposes of constructing and operating a fitness and recreational center with such amenities as are provided for in the Use Agreement (defined in Paragraph 7 below) (hereinafter the "Facility").

7. Purpose. Unless otherwise agreed by the parties, the use of the Facility shall be primarily for the benefit of residents of the City of Charlottesville and Albemarle County, and non-resident members of Lessee. The operation of the Facility, and the conducting of any programs, classes or activities on the Leased Property, shall be in accordance with a "Use Agreement" executed by the parties hereto and the County of Albemarle, which is attached hereto and incorporated herein as Exhibit B. The Use Agreement may be modified from time to time with the approval of all of the parties to the Use Agreement, provided that such modifications are in writing and signed by authorized representatives of all such parties.

8. Construction Commencement and Completion. If construction is not commenced within sixty (60) months of the execution of this Lease, this Lease shall terminate unless an extension of time is requested by the Lessee for good cause and agreed to by the City, such agreement not to be unreasonably withheld. Subject to delays beyond the reasonable control of the Lessee, the Lessee shall substantially complete construction of the Facility and obtain a Certificate of Occupancy within twenty-four (24) months of the beginning of construction, unless an extension of time is requested by the Lessee for good cause and agreed to by the City, such agreement not to be unreasonably withheld. All construction shall be conducted in such a way as to minimize disruption to other activities and uses of McIntire Park outside of the Leased Property. In the event construction materially disrupts operations of the City or other authorized users of McIntire Park outside of the Leased Property, the City may, by written order to the Lessee, require the Lessee to temporarily stop all, or any part, of the construction. Upon completion of construction, Exhibit A shall be replaced with a map showing the exact coordinates for the location of the Facility, in addition to the boundaries of the Leased Property.

9. Quiet Enjoyment. The Lessee, on paying the rent and observing and keeping all covenants, warranties, agreements and conditions of the Lease on its part to be kept, shall quietly have and enjoy the Leased Property and the Facility during the Lease term.

10. Approval of Improvements.

A. No improvements of any kind, including driveways and parking areas, shall be made to the Leased Property unless and until Lessee shall have obtained any and all required local, state and federal governmental approvals and permits, and all such improvements shall be undertaken and constructed in strict compliance with all applicable City, state and federal rules, regulations and laws.

B. The City and the Lessee acknowledge that the Lessee's intended use of the Leased Property may require a rezoning, special use permit or site plan approval for all or any portion of the Leased Property. By its execution of this Lease the City hereby evidences its written consent for Lessee to apply for and seek any and all land use and zoning approvals necessary for the future intended use of the property. The City's consent shall not be construed as a representation that it will grant or approve any particular application submitted by Lessee, which is otherwise within the City's discretion to approve or deny.

C. The Lessee shall, at its own expense, engage licensed architects, engineers and other professionals as necessary to conduct all necessary site evaluations and surveys, to include, but not necessary limited to, public records, easements, utility locations, plat surveys, existing conditions surveys, soils investigations and environmental investigations. The Lessee shall produce for approval design plans and construction documents, to include specifications, site, building, traffic, roadway and parking plans. The preliminary drawings and design plan for the entire Facility shall be approved by the City Council prior to commencement of any construction. Additionally, a site plan must be approved by the City Planning Commission prior to the commencement of any construction. Such approvals by the City Council and the City Planning Commission shall not be unreasonably withheld.

D. The design and exterior appearance of the proposed Facility shall be subject to the approval of the Charlottesville City Council. Prior to the commencement of construction Lessee shall submit to the City Board of Architectural Review ("BAR") a detailed and clear description of the exterior features of the proposed Facility, including but not limited to the general design, arrangement, texture, materials, plantings and colors to be used, and the type of windows, exterior doors, lights, landscaping, parking, signs and other exterior fixtures and appurtenances. The BAR shall, within forty-five (45) days from receipt of a complete submittal make a recommendation to the Charlottesville City Council regarding the appropriateness of the design and appearance of the proposed Facility and if a recommendation is not made, within such time period the application shall be forwarded to City Council for action. Within thirty (30) days of the earlier of (i) receipt of the recommendation of the BAR or (ii) expiration of the review period, the City Council shall approve, approve with conditions or disapprove the proposed exterior design and appearance of the Facility. Such approval by the City Council shall not be unreasonably withheld. The Lessee and the BAR or the City Council, as applicable, may mutually agree to an extension of the time limits set forth in this Paragraph.

E. If Lessee fails to obtain any of the approvals necessary to construct and operate the Facility, following diligent pursuit thereof, the Lessee may terminate this Lease without further obligation, responsibility or duty by either party hereto.

F. The City agrees to grant to Lessee standard easements to and from the Leased Property for any utility lines required to serve the Facility. Lessee shall have a right of access to and from the Leased Property over existing McIntire Park ingresses and egresses.

G. The Lessee shall have the right to place signs on the exterior of the Facility and at such other location at McIntire Park as may be permitted pursuant to the City of Charlottesville zoning ordinance.

H. Upon termination of this Lease for any cause Lessee shall remove, at Lessee's sole expense, any and all improvements made by the Lessee to the Leased Property excepting those made with the consent or approval of the City. The City shall provide thirty (30) days notice of any request to remove such improvements or to elect to keep such improvements as the City's property. In the event of removal Lessee shall be responsible for the restoration of the Leased Property to its prior condition, and if Lessee fails to do so then the City may do so and collect from Lessee the cost thereof.

11. Existing Improvements within the Leased Property. Lessee shall, at its own expense, be responsible for the removal and disposal of any existing structures or improvements on the Leased Property at the time of the execution of this Lease. Lessee shall be under no obligation to replace any improvements removed pursuant to this provision. In lieu of disposal by the Lessee, the City may, in its discretion, retain ownership of any materials, equipment or structures removed by the Lessee. In the event the City elects to retain ownership, any extra cost for removal over and above demolition costs shall be borne by the City.

12. Reservation of Easements. The City reserves to itself, while this Lease is in effect, easements over and for all existing utilities within the Leased Property, including but not limited to water, sanitary sewer, storm water sewer, electrical power and gas. At the option of the City, Lessee shall execute standard deeds of easement granting the City adequate access to any existing utilities within the Leased Property. Any relocation of existing utilities required by construction of the Facility and related improvements shall require the prior approval of the City of Charlottesville, which approval shall not be unreasonably withheld, and shall be accomplished at the sole expense of the Lessee.

13. Existing Recreation or Parking Facilities. All construction shall be performed in a manner so as not to materially reduce or interfere with the City's or the City Parks and Recreation Department's existing recreational or parking amenities located outside of the Leased Property at McIntire Park; provided, however, that the Lessee and the City, through its Department of Parks and Recreation, may agree on certain site or use restrictions during the construction period. The Lessee shall provide reasonable parking and roadway improvements to accommodate the construction and operation of the Facility.

14. Title, Liens. Title to the ground shall remain in the name of the City. Title to the Facility constructed by the Lessee shall be titled in the name of the Lessee, except as otherwise provided herein. The Lessee agrees that the Leased Property and the Facility shall not be encumbered by any mortgage, lien (mechanic's lien, materialmen's lien or other lien), pledge or other encumbrance during the term of the Lease. If any such lien or notice of lien rights shall be

filed with respect to the Leased Property, the Lessee shall immediately take such steps as may be necessary to have such lien released, and shall permit no further work to be performed at the Leased Property until such release has been accomplished.

15. Financial Assurances. Prior to the commencement of any construction in or upon the Leased Property, the Lessee shall have entered into a written contract with a licensed and bonded Class A general contractor and shall have secured a performance bond for the entire amount of the contract, or shall have secured other contractual arrangements reasonably acceptable to the City that provide assurance that the construction will be completed. Additionally, prior to the commencement of construction, the Lessee shall present to the City Manager for his review and concurrence (a) a capital financial plan containing adequate assurance of the Lessee's ability to finance the construction of the Facility and (b) a five-year operational plan and budget that demonstrates adequate assurance that the Lessee will have available funds to support the operational plan for use and maintenance of the Facility. The Lessee acknowledges that the City is under no obligation under this Lease to provide any funding to construct, equip or operate the Facility.

16. Maintenance/Operational Expenses.

A. Upon the date of commencement of construction of the Facility, and continuing throughout the term of the Lease or its termination, whichever first occurs, the Lessee shall, at its own cost and expense, maintain and keep the Leased Property, whether improved or unimproved, in a reasonably clean, attractive condition, and not commit or allow any waste or damage to be committed on or to any portion of the Leased Property. The Lessee shall be responsible for all costs associated with the ongoing maintenance, operation and repair of the Facility, including but not limited to the roof, doors, windows, mechanical, utility and electrical systems, sidewalks, parking areas installed by Lessee, and landscaping. Maintenance, repair and snow removal from joint City – Lessee parking areas shall be as set forth in the joint use agreement for such areas. Lessee further agrees to abide by any duly adopted City policies, present or future, governing the use of pesticides, cleaners, fertilizers or other products at McIntire Park.

B. As part of its maintenance responsibilities Lessee agrees to comply fully with any applicable governmental laws, regulations and ordinances, limiting and regulating the use, occupancy or enjoyment of the Leased Property, and to comply with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code, as supplemented and modified by duly enacted ordinances of the City of Charlottesville.

17. Utilities and Services. The Lessee shall be responsible for and pay all costs and charges for utilities and services in connection with the Lessee's occupancy of the Leased Property including, but not limited to, permits and connection charges for gas, heat, light, water, sewer, power, telephone, cable, internet connection, janitorial, trash removal and other utilities or services. All of the foregoing utilities and services shall be instituted and obligated for in the name of the Lessee, and the City shall have no responsibility whatsoever for the furnishing or cost of the same.

18. Taxes and Assessments. Real property taxes shall not be imposed against the leasehold interest of Lessee if Lessee is exempt from the payment of real property taxes pursuant to Chapter 36 of Title 58.1 of the Code of Virginia (Virginia Code sections 58.1-3600 *et seq.*); provided, however, that real estate taxes on the Lessee's leasehold interest shall become due and payable at any time that Lessee is no longer entitled to a tax exemption under the laws of the Commonwealth of Virginia.

19. [Intentionally Omitted.]

20. Damage or Destruction of the Leased Property. The City shall have no responsibility for any damage caused to the Facility or the Leased Property, except that caused by the negligence or willful misconduct of the City or its employees and agents, to the extent provided by law. The Lessee agrees that all property of every kind and description kept, stored or placed in the Facility shall be at the Lessee's sole risk and hazard and that the City shall not be responsible for any loss or damage to any of such property resulting from fire, explosion, water, steam, gas, electricity, the elements or otherwise, whether or not originating in the Facility and whether or not caused by or from leaks or defects in or breakdown of plumbing, piping, wiring, heating or any other facility, equipment or fixtures or any other similar cause or act.

21. Indemnification. The Lessee shall indemnify, defend and hold the City and its officials, officers and employees harmless from and against any and all liability, loss, claim, suit, damage, charge or expense suffered, sustained, incurred or in any way be subjected to, on account of death of or injury to any person and for damage to, loss of and destruction of any property whatsoever, which arises out of, results from, or is in any way connected with actions taken in the performance of the Lessee's obligations under this Lease, or which occurs as a consequence of any negligence, omission or misconduct of the Lessee and any of its contractors, subcontractors, agents or employees in the performance of the Lessee's obligations under this Lease. The City, to the extent provided by law, shall be responsible for the negligent acts, omissions or misconduct of its agents or employees.

22. Assignment. The Lessee shall have no right to assign, in any manner or fashion, any of the rights, privileges or interests accruing to it under this Lease to any other individual or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld in the event of a proposed assignment to a successor non-profit charitable organization. In the event of assignment, the Lessee shall remain fully liable and responsible for all of the obligations imposed by this Lease unless it is otherwise agreed in writing by the City.

23. Sublease. The Lessee may sublet portions of the Facility subject to approval by the City. The operations of any tenant under such a sublease arrangement must be compatible with the operations of the Lessee and the intent of this Lease. Any sublease will ensure the completion of the proposed construction and continuation of any necessary utilities, maintenance and repairs. Any sublease must incorporate the terms of all contracts and agreements then in existence between the parties in connection with the Facility including the terms of this Lease.

24. Nondiscrimination. During the term of this Lease, the Lessee agrees that it will not discriminate against any person in its membership, programs or employment because of race, religion, color, gender, sexual orientation, national origin, disability, financial circumstances or any other basis prohibited by law.

25. Drug-Free Workplace. During term of this Lease, the Lessee is to provide a drug-free workplace for the Lessee's employees, and to provide notification of this policy to its employees and applicants for employment. For the purposes of this Paragraph, "drug-free workplace" means a workplace where employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the term of this Lease.

26. Insurance. Prior to commencing any construction of the Facility, the Lessee, at its sole cost and expense, shall secure and maintain throughout the term of this Lease, the following insurance coverage:

- (a) **Workers' Compensation Insurance.** The Lessee shall maintain and require all contractors or subcontractors to maintain such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (§65.2-800 et seq.) of Title 65.2 of the Code of Virginia, 1950, as amended.
- (b) **Commercial General Liability Insurance.** The Lessee shall maintain and require all contractors or subcontractors to maintain, per occurrence, the following coverages: \$1,000,000 general aggregate limit (other than products/completed operations); \$1,000,000 aggregate limit products/completed operations; \$1,000,000 personal injury and advertising injury limit liability; \$1,000,000 each occurrence limit; \$100,000 fire damage limit (any one fire); and \$10,000 medical expenses limit (any one person).
- (c) **Fire and Extended Coverages.** The Lessee shall maintain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as "extended coverage," as the same may exist from time to time.

Each insurance policy required by this Paragraph shall be written or endorsed so as to preclude the exercise of the right of subrogation against the City and, with the exception of Workers' Compensation Insurance, shall name the City as an additional insured. Each insurance policy required by this Paragraph also shall be endorsed to include the following clause: Should any of the insurance policies be canceled before the expiration date thereof, the issuing insurance company will endeavor to mail written notice of such cancellation to the City at least 10 days in advance. Upon receipt of any notice, verbal or written, that the said insurance is subject to cancellation, the Lessee shall immediately (within five business days) notify the City. In the event Lessee fails to comply with the requirements of this section, the City shall have the right to require the Lessee to suspend use of the Facility until such time as the requirements of this Paragraph are met.

27. Proof of Insurance. The Lessee shall provide the City with one or more certificate(s) of insurance confirming the insurance required by this Lease. The Workers' Compensation Insurance and Commercial General Liability Insurance certificates shall be provided to the City by the Lessee upon the Commencement Date of this Lease, then again (without demand) on or before the expiration date of any policy and, upon request by the City, on each anniversary of the Commencement Date of this Lease. The Fire and Extended Coverages certificate shall be provided to the City by the Lessee prior to the commencement of construction of the Facility, then again (without demand) on or before the expiration date of any policy and, upon request by the City, on each subsequent anniversary of the Commencement Date of this Lease. Upon demand by the City, Lessee shall furnish copies of the Lessee's insurance policies, together with the required endorsements as provided herein.

28. Annual Report; Financial Records. The Lessee shall prepare an annual report for presentation to the City Manager upon the anniversary of the Commencement Date of this Lease or at such time as otherwise agreed, including an operational plan and budget with at least a five-year projection. In accordance with generally accepted accounting procedures, the Lessee shall

maintain books and records pertaining to the Leased Property and Facility and amounts expended by it in connection with this Lease. Upon request, the City shall be entitled, at its own expense, to obtain an audit of such books and records. Upon receipt of notice that the City desires an audit, the Lessee shall make its books and records available to the City and its auditor(s), and the Lessee shall cooperate with the audit.

29. Default. Each of the following occurrences relative to the Lessee shall constitute default:

- (a) Failure or refusal by the Lessee to make the timely payment of rent or other charges due under this Lease when the same shall become due and payable, provided the City has given the Lessee fifteen (15) days written notice of the same;
- (b) The filing or execution or occurrence of an insolvency proceeding by or against the Lessee; or an assignment for the benefit of creditors; or a petition or other proceeding by or against the Lessee for the appointment of a trustee or a receiver or for the liquidation of any of the Lessee's property; or a proceeding by any governmental authority for the dissolution or liquidation of the Lessee;
- (c) Failure by the Lessee in the performance or compliance with any of the terms, covenants, or conditions provided in this Lease, including provisions of the Use Agreement, which failure continues uncured for a period of sixty (60) days after written notice from the City to the Lessee specifying the items in default; provided, however, if such failure is of a type that is not reasonably capable of being cured within such sixty (60) day period, such sixty (60) day period shall be extended for so long as the Lessee is making diligent efforts to cure such default; or
- (d) Any change in the operation, charter, or ownership of the Lessee (including, but not limited to, loss of Internal Revenue Code 501(c)(3) tax-exempt status) incompatible with the purpose of this Lease, or a change, incompatible with the purpose of this Lease, in the nature of the services provided at the inception of the Lease as set forth more fully in Exhibit B).

In the event of default as defined in this Paragraph, title to the Facility shall revert automatically to the City, and the Lessee shall surrender the Facility as provided in Paragraph 32 and execute all documents deemed necessary by the City to convey title to the Facility.

30. Eminent Domain. In the event of termination due to any taking by eminent domain, partial or total, the City shall be entitled to receive that part of the total condemnation award or compensation for the taking which is equal or attributable to the value of the land taken, and the Lessee shall be entitled to receive the part of the award or compensation which is equal or attributable to the value of the Facility thereupon. If the taking is such that sufficient area remains for the Lessee to continue its normal operations, then the Lease shall terminate as to the part of the premises and Facility so taken, but shall remain in effect with respect to the part of the premises not taken.

31. Termination of Lease.

A. In the event the City chooses not to enter into a renewal of this Lease and not to enter into a new lease allowing continued operation of the Facility by the Lessee on substantially the same conditions, then (i) the City shall provide the Lessee with five years' notice of its intent not to enter into such a renewal or new lease (or shall renew this Lease for a sufficient duration to provide such five years' notice); (ii) the Lessee shall surrender the Facility as provided in Paragraph 32, and transfer title to the City at Lease termination and execute all documents deemed necessary by the City to convey title to the Facility. In the event of such termination or any agreed upon earlier termination of this Lease; the City shall compensate the Lessee in the amount of ninety percent (90%) of fair market value of the Facility as of the time of Lease termination. Nothing in this Paragraph shall be construed as granting the Lessee a lease for a period longer than forty years.

B. To calculate fair market value, the parties shall mutually determine a fair market value for the Facility, which value shall be determined as of the date of the termination of this Lease. If for any reason the parties are unable to agree upon a price, the following procedure shall apply: The City and the Lessee shall each select one qualified individual as an appraiser at each party's own expense. Said two appraisers shall determine the market value of the Facility (without adjustment for the status of the underlying real estate), including any furniture, fixtures and equipment, as of the date of the termination of the Lease, taking into consideration such factors as are generally considered in valuing similar facilities. If said appraisers are unable to mutually agree upon a fair market price for the facility, furniture, fixtures and equipment within thirty (30) days after their appointment, they shall select a third qualified appraiser and the two of the three appraisals closest in value shall be averaged, and that average shall be binding on the parties.

32. Surrender. Upon termination of the Lease, unless the Lease is renewed or a new Lease is granted to the Lessee pursuant to the requirements of state law, and upon payment by the City to Lessee of the amount required under Paragraph 31 above, the Lessee shall quit and surrender to the City the Leased Property and the Facility in good order and condition, except for

ordinary wear and tear, free and clear of any liens or encumbrances, provided that the Lessee shall remove from the premises any personal property belonging to the Lessee (other than furniture, fixtures and equipment) or third parties, which can be so removed without material damage to the Leased Property and the Facility, and at its cost and expense shall repair any damage caused by such removal. Personal property not so removed shall become the property of the City, which may thereafter remove the property and dispose of it. Upon such termination and payment, the City may without further notice enter on, reenter, possess and repossess the Leased Property and the Facility by any necessary means, and may remove the Lessee and all other persons, and may have, hold and enjoy the Leased Property and the Facility and the right to receive all rental and other income of and from the same. The surrender of this Lease shall not work a merger and shall, at the option of the City, terminate all or any existing subleases or may, at the option of the City, operate as an assignment to it of any or all such subleases.

33. Failure to Construct Facility or Abandonment of Use. If the Lessee fails to substantially complete the Facility within the timeframe set forth in Paragraph 8 above, discontinues use of the Facility for the purposes as set forth in this Lease and as more particularly described in Exhibit B for a period of at least six (6) months, or willfully abandons the use of the Facility for a period of at least six (6) months prior to the expiration of the term of the Lease, the Facility shall revert automatically to the City. In such event, the Lessee shall surrender the Facility as provided in Paragraph 32 and transfer title to the City at Lease termination, and execute all documents deemed necessary by the City to convey title to the Facility. Any period of time in which use of the Facility is discontinued or abandoned for the sole purpose of Facility maintenance, casualty repairs or improvements shall not be included in the six month period described in this Paragraph.

34. Right of Entry. At any time during the term of the Lease, the City shall have the right, upon prior notice to the Lessee (except in the event of an emergency), to enter the Leased Property and the Facility at all reasonable times for the purposes of inspecting the Leased Property and the Facility to ensure compliance with the terms of this Lease. Notwithstanding the City's right to inspect the Leased Property, the City shall have no obligation to inspect the same. The City's failure to detect any violation or to notify the Lessee of any violation shall not relieve the Lessee of obligations under the terms of this Lease.

35. Waiver. No failure on the part of the City to enforce any of the terms or conditions set forth in this Lease shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any default or failure to perform by Lessee shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. The acceptance or payment of any rentals, fees and/or charges and/or the performance of all or any part of this Lease, for or during any period(s) following a default or failure to perform by the Lessee, shall not be construed as or deemed to be a waiver by the City of any rights hereunder.

36. Identity of Interest. The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between the Lessee and the City any relationship of principal and agent, partnership or relationship other than that of lessee and lessor.

37. Notice. The City's designated representative to receive all communications, claims and correspondence regarding this Lease is the City Manager, at the following address: P.O. Box 911, Charlottesville, Virginia, 22902. The Lessee's designated representative to receive all communications, claims and correspondence regarding this Lease is its Executive Director/CEO, at the following address: 442 Westfield Road, Charlottesville, VA 22901. Either party may change the designated representative or address for receipt of notices by giving notice to the other party as provided in this Paragraph.

38. Modification or Amendment. Any other modification or amendment of the Lease (other than for an extension or enlargement of the time or territory of the Lease, which is subject to Virginia Code section 15.2-2105) shall be binding only if approved by the Lessee and the City, and evidenced in a writing signed by each.

39. Time of Essence. Unless specifically provided herein to the contrary, in all instances where a party is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood and stipulated that time is of the essence.

40. Cooperation. The City and the Lessee agree to provide any further documentation or cooperate in any way necessary to carry out the basic intent of this Lease.

41. Persons Bound. The covenants, agreements, terms, provisions and conditions of this Lease shall bind and inure to the benefit the respective parties hereto and to their representatives, successors and (where permitted by this Lease) their assigns.

42. Entire Agreement. This Lease, together with the schedules, riders and exhibits, if any, attached, contains the entire agreement between the City and the Lessee. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease.

43. Recording. Any party shall have the right, at its sole cost and expense, to prepare and record a Memorandum of Lease or short form of the lease in recordable form, but excluding detailed provisions of this Lease.

44. Headings. The section headings are for convenience only and shall not be used to explain, modify, simplify, limit, define or aid in determining the meaning or content.

45. Interpretation. In the event of any conflict, discrepancy or inconsistency between this document and any other documents which have been incorporated into this document by reference or made exhibits or attachments hereto, then the provisions set forth within the body of this document shall govern the parties' intent.

46. Severability. In the event that any term, provision or condition of this Lease, or the application thereof to any person or circumstances, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, and the application of any term, provision or condition contained herein to any person or circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

47. Governing Law. This Lease shall be governed, construed and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Lease shall be litigated in the General District or Circuit Court of the City of Charlottesville, Virginia. The party prevailing or substantially prevailing in any such litigation shall be entitled to an award of its attorney's fees from the non-prevailing party.

We agree to be bound by this Lease and its terms and conditions.

LESSOR:
CITY OF CHARLOTTESVILLE
By _____
Gary O'Connell
City Manager

Date _____

LESSEE:
PIEDMONT FAMILY YMCA, INC.

By _____
Kurt J. Krueger
President

Date _____

**USE AGREEMENT
MCINTIRE PARK NON-PROFIT COMMUNITY RECREATION CENTER**

THIS AGREEMENT is entered into this 15th day of 2008, among the **PIEDMONT FAMILY YMCA, INC.** (the "Lessee"), the **CITY OF CHARLOTTESVILLE** (the "City"), and the **COUNTY OF ALBEMARLE** (the "County").

WHEREAS, the City and the Lessee have entered into a Ground Lease dated January 15, 2008, for certain property within McIntire Park in the City of Charlottesville (the "Lease"); and,

WHEREAS, under the terms of the Lease the Lessee will construct and operate a community recreation center on the Leased Premises (the "Facility"); and,

WHEREAS, the County has agreed to make a future capital contribution of \$2,030,000 for construction of the Facility (the "County Capital Contribution"); and,

WHEREAS, the parties hereto desire to enter into an agreement that sets forth the terms, conditions and requirements for the operation of the Facility.

The Parties therefore agree that throughout the term of the Lease the Facility will be operated and managed in accordance with the following:

(1) Lessee Status: Lessee covenants that it, and any authorized or approved assignee or subtenant of Lessee, will operate the Facility as a charitable, non-profit organization.

(2) County Capital Contribution and Facility Components: The County agrees to make the County Capital Contribution and the Lessee agrees to diligently conduct a capital campaign to solicit contributions from private donors to pay for the cost of construction of the Facility. Subject to Paragraph 8 of the Lease, Lessee shall not begin construction until it has secured cash, pledges and a loan commitment sufficient to construct the following components (the "Core Components"):

fitness center
gymnasium (including indoor track)

multi-purpose space (including meeting space)
locker rooms
child watch space
family aquatics center

Lessee desires to raise sufficient contributions, and if successful, intends to add the following additional components (the "Additional Components"):

licensed child care center

(3) Core Functions: Lessee agrees to provide the following programs, functions or activities at the Facility utilizing the Core Components:

(Check if to be provided)

<input checked="" type="checkbox"/>	Youth, teen, adult and senior athletics
<input checked="" type="checkbox"/>	Health, fitness and wellness facilities and programs
<input checked="" type="checkbox"/>	Youth and teen life skill development
<input checked="" type="checkbox"/>	Community and family special events
<input checked="" type="checkbox"/>	Art, culture and enrichment programming
<input checked="" type="checkbox"/>	Environmental education
<input checked="" type="checkbox"/>	Outdoor adventure education
<input checked="" type="checkbox"/>	Therapeutic recreation
<input checked="" type="checkbox"/>	Child Watch
<input checked="" type="checkbox"/>	Instructional / recreational / therapeutic aquatics
<input checked="" type="checkbox"/>	Competitive / recreational / aquatics

Lessee intends to provide the following programs if sufficient funds are raised by it to construct the Additional Components:

Licensed child care

(4) Public Access: The Facility will be open to all residents of the City of Charlottesville and Albemarle County, and any non-resident member of the YMCA. Lessee's service area, as designated by the YMCA of the USA, includes all or portions of the counties of Greene, Nelson, Madison, Fluvanna, Orange and Louisa, and residents within this service area will also have access to the Facility. Lessee shall not discriminate against any person in its membership, programs or employment because of race, religion, color, gender, sexual orientation, national origin, disability, financial circumstances or any other basis prohibited by law.

(5) Relation to McIntire Park: Lessee desires to coordinate with the City's Parks and Recreation Department in the preparation of its master plan for McIntire Park. Integration of the Facility as a component part of the larger McIntire Park will depend in large degree on the outcome of that planning process. Nevertheless, it is anticipated that the Facility can be used to enhance current annual events at McIntire Park such as the Dogwood Festival, Earth Day, and Fourth of July events by holding on such days programs such as family open house activities, helping to coordinate outdoor activities with the Parks and Recreation Department or serving as the focal point for event coordination. Lessee also intends to offer programs and services that will take advantage of McIntire Park's inherent assets. Such programs may include walking programs for fitness for all ages using the trails and in bad weather using the Facility, summer day camps, and nature and environmental programs such as the YMCA's Earth Corps program through which YMCA member volunteers can build and maintain additional walking trails within the Park. Users of the Facility, as part of their overall fitness program, can use these trails, giving participants both an indoor and outdoor experience, and an appreciation of the Park's inherent beauty. The Facility's multi-purpose space could be used for class room space, as a meal site and provide rainy day options in connection with other Parks and Recreation Department programs at the Park. Lessee could also use the Facility in a number of different ways to bring in new events to the community such as a duathlon and other athletic events.

(6) Management of Lessee: Responsibility for the ongoing management and operation of the Facility will be vested in an Executive Director or Chief Executive Officer who will report to a Board of Directors, chaired by a volunteer President, which will function as the policy-making body of the Lessee. The City and the County will each have the right to appoint two members (four members altogether) to the Lessee's Board of Directors. The Lessee agrees to amend its Bylaws to provide that the Directors of the City and the County Parks and Recreation Departments are both invited and expected to attend each and every meeting of the Board of Directors of the Lessee until termination of the Lease. Such Directors, like the Lessee's Executive Director, shall attend such meetings in an advisory capacity and have no vote, nor any liability as directors. Lessee further agrees to actively seek and recruit residents of the City as Board members to more equally balance the residencies of the members of Lessee's Board. All members of the Board, regardless of residency, will be required to be members of the YMCA.

(7) Fee Structure: The membership and fee structure of Lessee at the time of the opening of the Facility is anticipated to be as follows, and shall be subject to change by the Lessee's Board of Directors:

	Anticipated Monthly Membership Rate Upon Opening	Anticipated Non-Member Daily Admission Fee Upon Opening
City/County Resident – Family	\$72.00	\$9.00
City/County Resident – Adult Individual (ages 24-61)	\$48.00	\$6.00
City/County Resident – Senior Individual (62+)	\$43.00	\$5.00
City/County Resident - Young Adult (19-23) Individual	\$30.00	\$4.00
City/County Resident – Teen/High School (ages 14-18)	\$20.00	\$3.00
City/County Resident – Youth (13 and under)	\$18.00	\$3.00

Reasonable membership categories, and membership, daily admission, class and program fees shall be set by the Lessee's Executive Director / Chief Operating Officer, subject to the approval of Lessee's Board of Directors. Lessee understands that there are a number of City residents who currently utilize a punch pass system to allow them to have access to Crow and Smith pools for recreational lap swimming. Lessee agrees to implement a similar system for individual recreational lap swimming in addition to its membership and program fee structure to help transition these individuals to the Facility, which system shall be phased out over a reasonably short period of time based on its actual usage.

(8) Financial Assistance: No resident of the City of Charlottesville or Albemarle County will be denied access or use of the Facility for financial reasons. The Lessee will provide financial aid based on need to any City or County resident wishing to participate as a member of Lessee, or in any class, program or activity conducted at the Facility. The process to determine eligibility for financial aid shall be simple, applicant-friendly, consistently applied and subject to approval by the Lessee's Board of Directors to ensure both (i) the accuracy of the determinations and (ii) convenience to the applicants. Initially, and consistent with the policy of many other YMCA's, Lessee will require applicants for financial assistance to provide it with copies of such person's tax return for the prior year and last two payroll stubs. In the event the applicant does not file a tax return, Lessee will require the applicant to provide it with a letter from a federal or state agency indicating that the applicant is eligible for federal or state assistance.

The Lessee's income criteria for the granting of financial aid for reduced or free admissions or memberships are as follows:

(i) Any individual or family living at or below the established federal poverty level will be eligible for 100% financial assistance.

(ii) Any individual living at or above the median household income for the City of Charlottesville would not ordinarily be eligible for any financial assistance, subject to extenuating circumstances.

(iii) To determine eligibility for financial assistance for families, an additional \$4500 per additional family member is added to the income standards used to determine eligibility.

(iv) The Lessee's Board of Directors will establish a graded scale to determine the level of financial assistance available for those individuals and families whose means lie between the two standards of 100% to 0% assistance eligibility.

These criteria are subject to reasonable modifications from time to time by Lessee's Board of Directors. The Lessee also understands that the federal poverty level is used by the City school system to determine eligibility for certain school benefits and agrees to work with the school administrators to establish a system whereby a common application for financial assistance eligibility can be used.

(9) Hours of Operation: The anticipated hours of operation of the Facility will be as follows, subject to reasonable adjustment by the Lessee's Board of Directors:

Monday – Friday: 6:00 a.m. to 9:00 p.m.
 Saturday: 6:00 a.m. to 4:00 p.m.
 Sunday: 1:00 p.m. to 5:00 p.m.

(10) Community Engagement: Lessee will publicize, and participate in the efforts of the City and the County to publicize, membership benefits, programs, transportation assistance and employment opportunities at the Facility, in order to encourage use of the Facility and participation in programs by the public.

(11) Transportation and Parking: The Lessee desires that the City extend its existing bus line on Rugby Avenue into McIntire Park to serve the Facility. The Lessee will provide additional transportation assistance for programs as is reasonably feasible based upon need, insurance and operating costs and equipment available to it. The City agrees to permit users of the Facility to use the existing parking spaces in McIntire Park. Lessee will construct such additional parking spaces as is reasonably feasible based upon the size and layout of the Leased Property and as may be required by applicable zoning.

(12) Additional Provisions Related to Funding, Access and Use by City and County Residents. In the event the Lease is not renewed or is otherwise terminated, the City agrees to allow access to the Facility to County residents on the same basis in all respects as it allows access to City residents. In the event the City commits on or before May 20, 2008 to a future capital contribution of \$1,250,000 for construction of the family aquatics center, the Lessee agrees

to include at least six (6) 25-yard competitive swimming lanes and a one (1) meter board and diving well and give the Charlottesville High School swim team priority access to those six lanes for practices up to two hours immediately after school classes end during the high school winter swim season, and otherwise subject to the same terms and conditions established by the Lessee with respect to other teams and programs using the pool. The Lessee further agrees that the City may deduct the funds provided by it for this purpose from any amounts owed to Lessee under Paragraph 31.A of the Lease upon termination of the Lease. The City and the Lessee further understand that the County has tentatively set aside \$1,250,000 in its CIP budget for 2012 for a competitive pool at the Facility. The City, County and Lessee agree to negotiate in good faith prior to completion of the City's master plan for the active side of McIntire Park with respect to the building of additional swim lanes and/or a competition pool; provided, however, that in the event no agreement is reached prior to the earlier of completion of such plan or May 20, 2008, the Lessee shall have the right to move forward with construction of the Facility with the components identified in Paragraph (2) above, including in the aquatics center, if the City has committed to make the \$1,250,000 capital contribution as set forth above, at least six lanes, a 1 meter board and diving well. Lessee agrees to work with the City and County to design and implement learn to swim programs for public school students.

(13) Additional Provisions Related to Rights of County With Respect to Lease. Lessee agrees to provide the County Executive with copies of all reports and records provided to the City Manager under Paragraph 28 of the Lease, and the County shall have the same rights to audits and inspections of books and records as are provided to the City under such Paragraph. The County shall have the same right of entry as provided to the City under Paragraph 34 of the Lease. The City and Lessee agree that the Lease may not be modified in any way which lessens or adversely impacts the rights of the County or its residents hereunder.

(14) Modification: This Agreement may only be modified by written amendment executed by authorized individuals on behalf of the Lessee, the City and the County.

WITNESS the following authorized signatures:

PIEDMONT FAMILY YMCA, INC.

By: _____
Kurt J. Krueger, President

CITY OF CHARLOTTESVILLE

By: _____
Gary B. O'Connell, City Manager

COUNTY OF ALBEMARLE

By: _____
Robert W. Tucker, County Executive

Agenda Item No. 17. Rivanna Magisterial District-Emergency Ordinance to change the polling place for the Keswick Precinct.

Mr. Tucker said there was a polling place at the Union Grove Baptist Church for the Keswick Precinct in the Rivanna Magisterial District., but Albemarle County Electoral Board was informed in late November that the foundation of the Church had sustained water damage and the resulting structural problems are forcing the congregation to discontinue using the Church for all purposes until it is rebuilt. The Electoral Board recommended that the polling place be changed to the Zion Hill Baptist Church. The site was visited by staff and then selected over other possible locations. Zion Hill Baptist Church is generally centrally located within the boundaries of the precinct. The Church's social hall, which would be used for elections, is well-suited as a polling place, has better access than other facilities considered, meets ADA requirements, and has good accessible parking for those with disabilities.

Mr. Tucker said an emergency exists because dual presidential primaries will be held on February 12, 2008, and notice requirements for a regular ordinance would not allow the Board to amend the ordinance until its February 6, 2008, meeting. Before the February 12, 2008, primaries, the location of the polling place must be changed by ordinance, the County must submit the polling place change to the United States Department of Justice for review to assure compliance with the Voting Rights Act (expedited review will be requested), and the General Registrar must provide a 15-day notice to the voters in the Keswick Precinct of the polling place change.

Mr. Tucker said State law provides that an emergency ordinance can only be enforced for sixty days. Therefore, it will be necessary for this ordinance to be readopted under the regular notice provisions for ordinances within sixty days. There will be a modest budget impact resulting from sending individual notices to voters in the Keswick Precinct of the polling place change. Staff recommends that the Board adopt the proposed emergency ordinance after receiving comments from the public. Staff also recommends that the Board set a public hearing for its February 6, 2008, meeting to readopt the ordinance.

Mr. Davis said this is not a public hearing, but the Board may take comments if they so desire.

Mr. Boyd asked for comments from the public, but no one was present to speak.

Motion was immediately offered by Mr. Boyd to adopt the following emergency ordinance as presented to the Board and to set a public hearing to readopt the ordinance for its February 6, 2008, meeting. The motion was **seconded** by Ms. Thomas.

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

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

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

ORDINANCE NO. 08-E(1)

**AN EMERGENCY ORDINANCE CHANGING THE POLLING PLACE FOR
THE KESWICK PRECINCT OF THE RIVANNA MAGISTERIAL DISTRICT**

WHEREAS, Virginia Code § 24.2-307 requires that each polling place be established by ordinance; and

WHEREAS, Albemarle County Code § 2-103(C)(4) establishes the Union Grove Baptist Church, 471 Black Cat Road, as the polling place for the Keswick Precinct of the Rivanna Magisterial District; and

WHEREAS, the Union Grove Baptist Church has sustained structural damage and is unable to serve as a polling place for the indeterminate future; and

WHEREAS, the Zion Hill Baptist Church, 802 Zion Hill Road, has very recently agreed to make its buildings available as a polling place; and

WHEREAS, after a polling place is changed by an ordinance adopted by the Board of Supervisors, the County is required to obtain a pre-clearance under the Voting Rights Act from the United States Department of Justice before changing a polling place and, under normal circumstances, such a change would be submitted at least ninety days prior to an election to allow the Department of Justice to review the request and to allow the Albemarle County General Registrar sufficient time to notify voters of the polling place change; and

WHEREAS, the presidential primary elections will be held on February 12, 2008 and there is inadequate time to provide the notice required by Virginia Code § 15.2-1427 before adopting an ordinance changing the polling place, obtaining expedited Department of Justice review, and notifying voters of the polling place change; and

WHEREAS, the Board of Supervisors finds that an emergency exists requiring the adoption of this Ordinance without prior public notice pursuant to Virginia Code § 15.2-1427.

NOW, THEREFORE, BE IT HEREBY ORDAINED THAT:

Section 1. Change of polling place for the Keswick Precinct.

The polling place for the Keswick Precinct of the Rivanna Magisterial District is changed from Union Grove Baptist Church, 471 Black Cat Road to the Zion Hill Baptist Church, 802 Zion Hill Road.

Section 2. Immediate effect; emergency.

This Ordinance shall take effect immediately, being adopted under emergency procedures pursuant to Virginia Code § 15.2-1427, and shall remain in effect not longer than sixty days unless readopted in conformity with the applicable provisions of the Virginia Code.

Agenda Item No. 18. Albemarle County Service Authority/Rivanna Water and Sewer Authority Updates.

Mr. Tucker handed to the Board members a copy of a letter from the Albemarle County Service Authority Executive Director asking that this Board rescind the Declaration of Emergency it adopted on August 16, 2007. Once rescinded, the ACSA will lift the mandatory water conservation requirements for all customers in the Urban, Crozet and Scottsville service areas. A Drought Watch will remain in effect.

Mr. Tucker said if the Board takes action on this item, staff has prepared a resolution referencing well water users. He said Ms. Thomas asked for such a resolution last month.

Mr. Gary Fern, Executive Director, ACSA, said they are prepared to remove the signs which have been posted throughout the County alerting people that there are mandatory restrictions in place at the moment.

Mr. Tucker said he thinks the only thing the Board has to do is have a motion declaring that the water emergency has ended at this time. Mr. Davis said that is correct.

Ms. Thomas said there is a policy in place that says when reservoir levels are up to 95 percent of capacity, the drought emergency will be lifted. She asked if that level has been reached. She is wondering if the policy is being followed. Mr. Tom Frederick, Executive Director, Rivanna Water and Sewer Authority, said the level is at 92 percent. It will probably be at 95 percent by the end of January.

Mr. Slutzky asked if that would be the expected level with or without any significant additional rainfall. Mr. Frederick said if the rate of fill stays at the same pace as at present.

Mr. Rooker said he thought there were an objective standard for declaration of an emergency drought watch or drought warning. Mr. Frederick said this is in line with the policy the RWSA Board considered and adopted a couple of years ago. He is not familiar with the policy just mentioned by Ms. Thomas.

Mr. Rooker said there is a policy with respect to when a drought watch is adopted, and a policy with respect to when a drought warning is adopted. He thought there were specific objective standards in place. How does the declaration of a drought emergency fit with the declaration of a drought watch? Mr. Frederick said a committee, which consisted of staff from RWSA, the ACSA and the City, talked about how to develop a drought policy. They had directions from this Board and Council to come up with an objective criteria and standard. They settled on the terms of "watch", "warning", and "emergency" in order to be compatible to what the Commonwealth of Virginia was beginning to define after 2002. It was also the consensus of that committee that in stepping into a drought there needed to be a period of time allowed for a significant call for voluntary conservation. They settled on one stage for voluntary conservation, and two stages of restrictions. The warning is the first level with the emergency level having more severe restrictions. All three entities came up with the targets for the restrictions. A minimum of five percent is for the warning level, a minimum of twenty percent for the emergency level, and then the two retail agencies decided on the specific steps needed in order to communicate restrictions to the public.

Mr. Davis said the County does not have any independent standards. It is relying on the recommendations of the RWSA and the ACSA. When the Board gets to the point where mandatory restrictions need to be imposed, the State Code requires that before the ACSA can do that this Board must declare there is a water emergency. When they were at the point where they were ready to implement mandatory restrictions to address the drought, the ACSA came to the Board of Supervisors and requested that an emergency be declared. Now they are at the point where their criteria no longer justifies imposing mandatory restrictions, so their recommendation is that the Board left the emergency declaration until such time as the drought returns or conditions are such that mandatory restrictions are necessary.

Mr. Rooker said he wanted to be sure the objective standards were being followed in the request to the Board today. Mr. Fern said he thinks it depended on the modeling they did and the criteria used when going to a drought watch or drought warning, or emergency.

Mr. Rooker said it was not based only on the 95 percent. There was a component that dealt with stream flows, time of year, and other factors. He wants to be sure the action the Board is being asked to take today is based on following that objective criteria.

Mr. Frederick said the criteria in this process are "risk based." That looks at the probabilities for certain conditions in the future which is a change from just saying that when the reservoirs are at level "x" a drought watch, or warning or emergency will be called. The risk-based criteria rely on running a computer model. In the model, current demand can be included or a restricted demand which is a savings of "x" amount, or they can input unrestricted demands which is the basis of historical records. For reservoir levels, they use current data from the existing system. For the probability forecast, they use weather scenarios for every year of record for which there is data.

Mr. Frederick said they took years of records, looked at the probability of all reservoirs being full at the end of April, and used that data to recommend that the warning be changed back to a watch. Until December there was some risk that the reservoirs would not fill up. On December 27 they looked at the records on the Mechum's gauge and everything indicated that the reservoirs would be full by the end of April, so the probability of the reservoirs not refilling is very small. They did not use any criteria that said when the reservoirs are at 95 percent, the warning should be lifted.

Mr. Rooker said this is the first time he has heard about this. Mr. Tucker said these are policies that the RWSA and the ACSA set up.

Ms. Thomas said she does not think the Board heard about these policies previously.

Mr. Rooker said the Board had received something about the prior policies. Those were based on objective criteria, and now they are going to a computer modeling approach which may be fine, but he thinks it would be helpful for the Board to get a written report.

Mr. Boyd asked how the Board members wanted to act on this request.

Mr. Rooker said if this policy has been adopted and the ACSA and RWSA are comfortable with the approach he is willing to act on the request. Before the Board receives another such request, he thinks the Board needs to have a better understanding of what that computer modeling is producing.

Ms. Mallek asked what the recommendations to the public will be for spring from the RWSA. Mr. Fern said the intent is to reinforce that the ACSA is not abandoning drought warnings entirely. They will

be going to a drought watch and that requires that the citizens voluntarily conserve water. He has been discussing this with Ms. Judy Mueller of the City and they will be doing some radio advertising jointly, and there will be advertisements in the newspaper.

Ms. Mallek said the signs posted around the area were helpful.

Ms. Thomas agreed.

Mr. Slutzky suggested that when new signs are printed, a different color scheme be used to make them easier to read.

Ms. Thomas said the new criteria for declaring a drought warning and watch has to do with probability and what will happen in the foreseeable future. She asked if they want the Board to lift the water emergency declaration since that will slow down the ability of the ACSA to put restrictions into place in response to a drought warning. Will this make it more awkward to a return of a drought declaration if the Board lifts today the water emergency? Mr. Fern said it takes some time for the ACSA to get geared up to do advertising, printing signs, etc. Last August when the emergency was declared, it only took them a couple of days to get into the process.

Ms. Thomas said the Board does not meet every week of the month, so it could possibly be a delay of several weeks. Mr. Fern said he did not think there would be a problem.

Mr. Rooker asked if in order for the ACSA to remove the restrictions, the Board has to withdraw the emergency, or can the ACSA just remove the restrictions without that being done.

Mr. Slutzky said there is also another process question. If the public does not see the Board lift the emergency, but the RWSA is saying there is not a near-term risk, it might weaken the credibility of emergency declarations in the future.

Ms. Thomas said she wants people to continue conserving water, so she is not wholeheartedly in support of lifting the emergency.

Mr. Davis said the declaration of an emergency enables them to impose water restrictions. They could rescind their restrictions without rescinding the declaration of emergency. It is solely at the discretion of the ACSA as to whether to have the restrictions or not once the declaration has been made.

Mr. Tucker said the Board may not want to take action on this today, and only adopt the resolution.

Mr. Rooker said he is not overly concerned about it, but just wanted to understand the process and what this action by the Board means. It seems to be more symbolic than anything else because they can remove the restrictions, but they can't impose them again without the Board declaring a state of emergency. Mr. Fern said in this case they feel it has already happened. The City Council rescinded their water restrictions. The ACSA is requesting that this Board rescind the declaration of emergency so it can remove water restrictions.

Motion was then offered by Mr. Rooker to rescind the water emergency declaration made in August, 2007. The motion was **seconded** by Mr. Slutzky. Roll was called, and the motion carried by the following recorded vote:

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

Ms. Thomas then offered **motion** to adopt the following resolution urging citizens on public water and individual wells to continue to voluntarily practice water conservation, adding the words "and consider the probable continuing drought when making landscaping decisions." She thinks people will assume they can go back to planting the things they have planted in the past and watering them. She thinks chances of a drought are too great to continue doing this.

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

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

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

RESOLUTION

Whereas, although the Rivanna Water and Sewer Authority is now predicting that all surface water reservoirs will refill this spring without the need to continue mandatory water restrictions, there remains concern that baseline stream flows and groundwater tables continue to be below normal for this time of year; and

Whereas, while it is not possible to predict next summer's weather with certainty, low groundwater and stream flow during the winter indicates there could be a higher than normal potential for a severe drought next summer; and

Whereas, well water users draw on underground water reserves which flow into streams and feed our drinking water reservoirs and are a resource for the entire community; and

Whereas, excessive use of water from underground can adversely impact an individual's water supply and also downstream supplies; and

Whereas, it is critical for all our citizens to contribute to efforts to conserve water by using voluntary conservation measures that can have a dramatic cumulative effect in reducing demand on our local water resources;

Now, Therefore, Be It Resolved, that the Albemarle County Board of Supervisors wishes to urge all citizens, whether on a public supply or an individual well, to continue to voluntarily practice water conservation, and to consider the probable continuing drought when making landscaping decisions. We urge the RWSA and ACSA to remain diligent in monitoring water conditions throughout 2008 in order to alert the public as early as possible if there is a return to increasing water supply risks.

Mr. Fern said the ACSA will be meeting with landscaping organizations in the community to review the current mandatory water restrictions that apply to landscaping.

Ms. Thomas suggested the ACSA talk with members of the Architectural Review Board (ARB) regarding the type of landscaping that uses the least amount of water. She said they require people to put in certain plants and if they die that is a zoning violation. She wants to be sure they are included in the discussions about landscaping.

Mr. Fern said he would be glad to answer any questions the Board may have about the ACSA.

Mr. Slutzky asked Mr. Fern to call him about the easements for the sewer line extension in Northfields. He understands from his constituents that there is an issue to be resolved, and he will be happy to help with that.

Ms. Thomas said she recently met with people in West Leigh who asked about the tearing up of the road.

Mr. Tucker said that at next month's meeting the Board will have time to talk about projects of the ACSA and the RWSA.

Agenda Item No. 19. Department of Social Services Advisory Board Annual Report.

Mr. Claude Foster, Chair of Social Services Advisory Board, said the Annual Report had been forwarded to the Board members (copy on file in the Clerk's Office with the permanent records of the Board of Supervisors). He said the Advisory Board's goal for FY 2007 was to increase the number of families assisted with childcare subsidies by joining and supporting the statewide coalition to advocate for scholarships to these deserving families, hosting a seminar for numerous local groups on how to carry out this advocacy, and speaking to groups such as the League of Women Voters. The report shows FY 2007 identified critical measures. The Department regularly monitors 35 outcome measures specific to its programs. Thirteen are listed on the "Key Performance Indicators" chart in the report. There are six where the agency did not meet its goals. There is a consistent issue in all of these indicators, and that is a lack of State funding for the State-mandated changes in programs or performance criteria. The Department will continue efforts to achieve these goals in spite of this handicap. Descriptions of the programs offered by the Department are included in the report. Most programs show a growth in caseloads. The Bright Stars Program (his personal favorite) has continued its rate of increase, but one of the real successes of the Department is that it has built a capacity to accept 10 more children immediately.

Mr. Foster said he is proud of the Albemarle County Department of Social Services for winning the Virginia SPQA (United States Senate Productivity and Quality Award). He said the leadership team of the Department had the courage to submit themselves to the scrutiny that comes with applying for such an award. He said there are no better stewards of people's funds in Albemarle than the employees of the Department. In speaking for all of the Social Services Board members, he will say it is an honor to serve on the Board for such a department with such a professional and dedicated staff. He offered to answer questions.

Ms. Thomas said at VACo's meeting, the Governor's wife spoke about one of her passions, which is a concern that children are aging out of foster care without ever having a real family. She told heartrending vignettes of people saying "I never will have a family to go to on Thanksgiving all of my life." She wonders if that is an issue the Board of Social Services is working on.

Ms. Kathy Ralston, Director of Social Services, said their Board is not working on that issue, but staff has worked on it. Under the Foster Care section of the report there is the title "Concurrent Planning" which is a dual goal for children in foster care. Part of the care is to get them and their family to a place

where they can return home, and secondly, to provide permanency. They are also working on returning home and potential adoption. They have a sophisticated, independent living program for older children. She said Charlottesville and Albemarle have been leaders on this in the State. They have children that they are able to follow and encourage to stay in foster care until they are 21 years of age so they can complete either a vocational training program or college. They have been successful in getting some kids into community college, and some into a four-year college.

Mr. Slutzky said although the Department is doing a good job of fulfilling its responsibilities to the disadvantaged in the community, it is short on dollars. He thinks it would be useful to see some report that analyzes by program what the deficit is between what the community needs and actual funding from the Federal and State governments. Illuminating how significant the funding gap is might be valuable for the public to have.

Ms. Ralston said the Department already provides some of that information to the OMB Office, so it could be provided to others.

Mr. Dorrier asked if the Department is working with the IMPACT group. Ms. Ralston said they are not. The Department provided them data when it was requested, but one of their Board members has been a member of IMPACT.

Mr. Rooker said the Federal and State governments set standards, and then do not provide funding for those standards. Actually, the State is not providing the funding needed to take advantage of the Federal match. Albemarle is supplementing the Department to make up State funding in order to take advantage of some of the Federal match, but even then there are shortages.

Ms. Thomas said this is a wonderful report. There are little things in it that she would like to comment about, but there is not time.

Ms. Ralston said Ms. Sonia Jammes of the Department was the lead person putting together the report along with Mr. David Cattell-Gordon.

Agenda Item No. 20. Closed Meeting. At 1:07 p.m., **motion** was offered by Ms. Mallek that the Board adjourn into closed meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to consider appointments to boards, committees and commissions, and under Subsection (7) to consult with legal counsel and staff regarding specific legal matters requiring advice by counsel relating to legal representation and easements. The motion was **seconded** by Mr. Rooker. Roll was called, and the motion carried by the following recorded vote:

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

Agenda Item No. 21. Certify Closed Meeting. The Board reconvened into open session at 2:08 p.m.

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

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

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

Agenda Item No. 22. Boards and Commissions: Vacancies/Appointments.

Mr. Boyd said the meeting is running behind schedule so the Board will not make any appointments at this time, but will return to Closed Session later today, and after that the Board may make appointments.

Agenda Item No. 23a. Transportation Matters: Work Session on the 2008/09-2013/14 Six-Year Secondary Road Plan.

Mr. David Benish, Chief of Planning, said the VDOT Six-Year Secondary Road Plan is reviewed and approved every year. That plan is based on a priority list that the Board of Supervisors reviews for Secondary Road improvements. He will give a shortened PowerPoint presentation in order to help with the timing of this meeting. The priority list is a list of projects that is more extensive than what can be funded over a six-year period of time. Prioritization of projects is reflective of Comprehensive Plan goals for growth management and facilities/infrastructure planning and development. It emphasizes projects located in the Development Areas. It also considers Rural Area improvements, but those improvements are focused on safety type of improvements. The County uses a rating system to help organize the priorities. The rating system looks at location of the projects, capacity ratings, road design deficiencies

and accident reports. County staff works with VDOT staff in establishing and updating the list. Staff also contacts emergency services and the School Transportation Division as well as the Town of Scottsville to identify possible improvements. Scottsville Secondary Road projects are included in the VDOT Secondary Road Plan, so the County prioritizes those improvements. At this time of the year, requests from citizens are also considered.

Mr. Benish said some recommended changes to the Plan are: Route 651 (Free State Road Bridge) has been removed from the priority list since construction of the Belvedere connector road. During review of the Belvedere petition it was recognized that the road might be closed and used for pedestrian and bicycle access only. It is a little early to pursue that closure but there are some logistics involved since it is a railroad bridge; VDOT must be sure that it can retain some control of that bridge to make that happen. That is a planning process that is not incorporated into this review.

Mr. Benish said the Southern Parkway has been maintained as a high priority project and it has been moved ahead of the Old Ivy Road Improvement project.

Mr. Rooker said the Old Ivy Road project has been in the system for a long time, but has never been funded. He said it has 6,900 vtpd which is more than Jarmans Gap Road and it is in an area where a lot of pedestrians/ bicyclists use it. He thinks the Southern Parkway is an important project, but he wonders if it is wise to make that change when there are two connector roads being built on the south side of the County (Avon Center connector and Biscuit Run connector). If those are built, how would that impact the need for the Southern Parkway? He would suggest not making that change until the Board understands better how the traffic pattern will be affected by those planned improvements.

Mr. Dorrier agreed. He thinks it would be wise to hold off on making this change until the Board "gets the lay of the land."

Mr. Boyd asked the basis of that recommendation. Mr. Benish said it is based on a long-time constraint because the railroad overpass has created some impediment to completing that project at the end of Ivy Road. Staff tried to decide, with limited funding, what projects should be pursued. He thinks it is a valid point, because it is far enough down on the list that retaining the old relative order still puts it into the long-term, next project to plan for. Another emerging aspect of this road project is a new request from the University for pedestrian and bicycle improvements on Ivy Road. That could provide for a parallel improvement if that project moves forward. That is a primary road project so is not prioritized on this list. Mr. Rooker made a good point that this change is not urgent this year.

Mr. Benish said there is a question about the Sunset Road Connector and the Southern Parkway, and which of these projects is the most important.

Mr. Rooker said today the argument would probably be for the Sunset Road connector. There is also a proposal for a potential entrance off of Route I-64 which would obviate that need.

Mr. Slutzky said if the County is going forward with the Meadow Creek Parkway, he thinks the Berkmar Road Bridge should appear on the list as No. 5. Just putting it on the priority list does not mean it will be funded, but it might signal to the development community and VDOT that the Board really wants that parallel road system completed.

Ms. Thomas said she would argue to keep the Sunset Road project where it is on the list because she wants to continue enforcing how important that project is to the County when talking with people at the University. The University has said they will not increase the square footage at the Fontaine Research Park until they have agreed where this road will go through their property. The Sunset Road Connector is important because the County has allowed a tremendous amount of multi-student dwelling units in that area.

Mr. Boyd suggested Mr. Benish finish his presentation.

Mr. Benish said he will go through the changes. For Sunset Road staff respected the prior priority, which he thinks was a regional priority between the City and the County to keep the Southern Parkway as an important roadway. Staff recognized that the Sunset Road Connector is important to the County as well as the City. Maybe the MPO should decide which proposal is the most important.

Mr. Slutzky asked if the MPO comments about the ranking of the County's Six-Year Plan just from an informational standpoint, so the new City councilors can weigh in.

Mr. Rooker said these projects go into the MPO's Six-Year Plan and everybody makes comments on them when that occurs. He said the County has to adopt its own Six-Year Plan and he does not want to get into a mode where people who are not familiar with all of the projects at this time might think they are subject to approval by the City.

Mr. Benish said the UN-JAM plan is being updated this year. These are the types of issues that could be discussed with the MPO while this is being done.

Ms. Thomas said she would like to talk about Item No. 22, Reservoir Road. She said the Board talked about this a year ago, but it has not been discussed since. This road will have to be improved somewhat for construction vehicles going to the Ragged Mountain Dam project. A comment was made that it could be a recipient of State Revenue Sharing Funds, but that decision has not been made.

Mr. Slutzky said he thought Mr. Tom Frederick from RWSA spoke to that and said the cost would be put "on the backs of the rate payers." He is not in favor of having it as a higher priority on the list because he thinks the people who will be paying for that facility should pay for it out of those funds. If the Board thought it would like to supplement their efforts beyond what is needed for access by the trucks, it might do that. He asked what Ms. Thomas felt about this suggestion.

Ms. Thomas said she thinks that is fine.

Mr. Benish said that is how staff had addressed the question. They assumed that would not be a VDOT Six-Year Plan public project. Staff did want to recognize it as a project, so did not take it off of the list. He continued by saying the Berkmar Drive Extended Bridge/Road project has been moved to No. 8. He forgot to mention that the Strategic Plan lists the projects to be focused on and completed. Since it takes about 10 years to get a project built, staff focused on the next batch of projects. Berkmar Drive Extended was included even though Places29 has not been adopted at this time so it is not in an official plan. There was a consensus that that parallel road will be a major component of transportation improvements in the area.

Mr. Slutzky said when the MPO discussed this with the members of City Council who had not embraced the Meadow Creek Parkway project, they said the Meadow Creek Parkway will work only if the parallel road network is facilitated. The grade separation at Route 29 and Rio Road is a different issue, but it is not part of the Six-Year Road Plan. As a result of the discussion by the MPO, the Policy Board suggested that the County recognize the importance of the Berkmar Road Extension.

Ms. Mallek said CHART has been talking about this since the beginning of the UN-JAM process.

Mr. Benish said it has been on the inventory list, but it has now been elevated to a second tier high priority. With this, the Northern Free State Project is being deleted (was Phase II of the old Meadow Creek Parkway project) based on preliminary findings of Places29. That parallel road will not be recommended in the next 20 years.

Mr. Benish said the new form change made to the Plan this year was to create a single list of bridge improvements. The Board had seen the list when it looked at the Primary Road Plan priorities. It has not changed significantly except for deleting the Free State Road project from the list. This list would operate like the Unpaved Road Projects. He said staff wanted to acknowledge the Main Street Crozet Project as an important strategic project as well as intersection improvements at Route 29/Hydraulic Road and Route 29/Greenbrier Drive based on work on the 29H/250 and the Places29 studies. Both of these projects are anticipated to be built during redevelopment through significant private contributions, although there may be parts that will need to be constructed by the County. He said the interchange projects will probably be Primary Road projects, but there are wings to them that are Secondary. He said those are staff's recommendations, and the next step is to schedule a public hearing for next month on the proposed Plan.

Mr. Dorrier asked about a walkway/bike path project on Avon Street Extended. Mr. Benish said there is a list of sidewalk projects in the Comprehensive Plan which includes Avon Street. Staff's recommends that all roads in the Development Areas have some type of pedestrian system, sidewalk or pathway.

Mr. Benish said the Planning Commission looked at this Plan on December 4 and provided some comments. They supported Priority Nos. 2 through 11. They said Jarmans Gap Road should be the highest priority, which it is after the Meadow Creek Parkway which is close to going to construction. They said the Board should place more emphasis on roads in the Southern Urban Area, and the Proffit Road priority which was retained on the list because of its condition and its use as access to the Baker-Butler School. The Commission recommended that the Board consider reallocating Rural Unpaved Road funds to Development Area projects with the caveat that projects which address clear safety issues be done. They suggested that density issues in the Rural Areas which contribute to demands for improvements to roads in the Rural Areas be considered as an issue by this Board.

Mr. Benish said the transfer of Unpaved Road Funds is an issue the Board has considered almost every six years. The intent of the VDOT funding is that Unpaved Road Funds are used for unpaved roads, but those funds can be transferred to regular projects, but there is a financial penalty. For every \$150,000 transferred, funds are reduced by the amount of unpaved roads in the County by one mile so in effect it reduces the amount of future funding the County would receive. VDOT can provide information on this change.

Mr. Rooker said he asked Mr. Sumpter about it. Mr. Allan Sumpter, VDOT's Residency Administrator, said at this time, the allocation is about \$15,000 per mile. Over a six-year period, the penalty would amount to about \$180,000. In terms of road work, that amount would cover the cost of one Rural Rustic Road project.

Mr. Slutzky asked if the pavement dollars can be reallocated from rural areas to unpaved roads in the Urban Area and not have a penalty. He used Sunridge Road as an example. Mr. Sumpter said the money could legitimately be used on roadways listed as an unpaved State-maintained road. If the money is taken from an unpaved road and used on any other roadway the penalty would come into play. The urban versus rural designation the County uses will not affect what VDOT calls "unpaved road" money; it applies to any State road number of 600 or greater that is an unpaved road. Mr. Davis said Sunridge Road is not in the State system; it is simply a dedicated right-of-way.

Mr. Slutzky asked if there are other roads that have been accepted into the State system where the paving conditions are such that the money might be used on them thus freeing up money for other purposes. Mr. Benish said if a road is in the State System, the Unpaved Road money can be applied to that road. The Planning Commission's concern was that the vast amount of unpaved road money is used in the Rural Area. He said that Rio Mills Road and Dickerson Road lie on the border of the Development Area so are prioritized at the top of the list. A small part of Reservoir Road is in the Development Area. He is not aware of many roads that have public rights-of-way that could become a part of the State System through County efforts.

Mr. Sumpter said State Code is very plain on this issue. If the County uses this money on any road other than an unpaved road that qualifies in the 200 miles, then the \$250,000 penalty will apply. It has to be a road that is already in the State System.

Mr. Boyd said he is not in favor of this recommendation. Every rural road in his district that has been paved was paved because of safety issues, particularly those involving school buses.

Mr. Slutzky said he understands the safety issues. He has been looking at the requests from the Schools for paving of roads in the area of Routes 668 and 671. He used to live in that area. Right now, if one looks at the number of potential development rights in the County, there is a high concentration of them in that area. He thinks the primary impediment to those development rights being used is that there are dirt roads in the area. None of the people that he knew in the neighborhood wanted to see any of those roads paved. He is sure that the day they are paved, particularly Fox Mountain Road going over the mountain to Route 810, a lot of development will take place along that road. He agrees with the Planning Commission's recommendation to only consider safety concerns and address them in a narrow and limited way. He is sure that paving of these roads would invite development and it would be entirely inconsistent with Comprehensive Plan recommendations.

Ms. Thomas said there is a good example on the list of regular paving priorities; No. 6, Pounding Creek Road. It is a winding, charming unpaved road, but there are developments proposed all along that road, and developers are just waiting for the road to be paved.

Mr. Dorrier asked if there is any possibility of making that road a Rural Rustic Road project instead of a paved road. It would be cheaper.

Ms. Thomas said she does not think that road qualifies. Mr. Sumpter said part of the Rural Rustic Road program requires that the Board indicate that any growth and traffic generated by the land will not increase significantly over the next 10 years. He said the roads which are currently being done as RRR projects are not in areas designated as growth areas.

Mr. Rooker said the County has two regular paving projects that are primarily to service growth areas. Those projects would consume the entire amount of road paving funds for the next five or more years. The Planning Commission's recommendation would not even come into play for seven or more years. Those roads either lie in the growth area or service the growth area.

Mr. Slutzky said the Board has conflicting requests. The Planning Commission has said not to pave in the rural areas because it would stimulate growth, and then there is the School System which for other reasons is asking that a bunch of these roads be paved. He would prefer following what the Commission recommended and have rural paving done in places closest to the growth areas.

Mr. Benish said staff is trying to address the concerns of the Schools through other measures.

Mr. Slutzky said on Route 668 there are places with large trees which shrink the width of the road so it is not safe for a bus to go around a blind curve. There are ways to straighten that road without paving it. He asked if other Board members would be willing to support the recommendation of the Planning Commission.

Mr. Boyd said if there is some way to concentrate road paving around the growth area, he agrees. However, a lot of that paving is occurring through private development. He is not in favor of the County imposing upon itself a penalty for future paving dollars.

Mr. Rooker agreed. He said the regular paving projects indicate a preference for roads that are not in the Rural Area. It does not indicate the extent to which the Board does not want to do Rural Rustic projects, and instead to move that money to projects such as Rio Mills, etc.

Mr. Boyd said he is getting requests for roads which have been brought before the Board many times, such as the short section of Gilbert Station Road. Does he tell his constituents' that roads such as this will not be paved?

Mr. Rooker said he is not saying that, he is just putting the issue on the table. Rather than the Board adopting the Planning Commission's recommendation, it comes down to what the Board is willing to support. He, personally, is not ready to make a decision on the Commission's recommendation.

Mr. Dorrier said that with the amount of money the County receives, not many roads will be paved.

Mr. Rooker said the County has an allocation of \$640,000 for unpaved roads this year. Where does the Board put that money?

Mr. Dorrier asked what length of road could be paved for that amount of money. Does it cost the same for every mile of road? Mr. Sumpter said "no." Roads in the plan such as Doctors Crossing are unpaved road projects which have characteristics that will require specialized construction work throughout the project. A Rural Rustic Road costs about \$180,000 because it is basically the same type of construction on each road. It basically requires the addition of stone, with minimal drainage work, and then surfacing. Construction costs will vary on all of the other roads mentioned.

Mr. Dorrier asked if a road further out in the Rural Area will be less expensive to pave. Mr. Sumpter said "no."

Mr. Rooker said a Rural Rustic Road project does not expand the road, but a regular paving may require acquisition of additional right-of-way, and it might require expansion of the roadbed, so it is an entirely different project. Mr. Sumpter said as to Rio Mills Road, it is a significant road project because there is a curve immediately off of Route 29 that will require substantial work in order to meet acceptable standards.

Mr. Slutzky said he would be happy if the Rio Mills Road project were put on hold. He has been told by the quarry operator that as soon as that road is improved they will have trucks exiting that facility every minute onto Rio Mills up to Earlysville Road and dispersing in various directions. The quarry owner has offered to contribute in some way to the paving of that road. VDOT thought it would be a benefit to the County if that project were made a priority, but there is a better way to solve that problem and that is to have a different roadway go from the quarry to put traffic on Route 29; this would put the traffic through the portions of Places 29 which are not yet resolved. Resources could be allocated to roads that need to move forward, then as Places 29 is finished, and with the possibility of getting proffers in the next couple of years for the area south of Hollymead Towncenter, the County may never need to spend public money to pave that stretch of Rio Mills Road. There is a possibility it will not be a road that goes all the way from Earlysville to Route 29. Would reallocating that money be a problem for VDOT? Mr. Sumpter said placement of that project in the Plan is entirely at the Board's discretion.

Ms. Thomas asked what estimated construction date was advertised. Mr. Sumpter said it was December, 2015. Considering the current amount of funding the County receives, the regular unpaved road projects in the Plan are so significant that it will take several years to get those to construction.

Mr. Rooker said if all of the unpaved road funds were allocated to Dickerson Road for the next three or so years that project could be done. One problem is that if road is "scattered in project pails" and then the costs increase, it will be difficult to complete anything. One approach might be to allocate \$500,000 a year of unpaved road funds to Dickerson Road so it can be done.

Mr. Slutzky said he thinks that is a good policy, but he does not think money should be spent on the top priority on the list.

Mr. Rooker said that project is so expensive it would take \$500,000 for six or seven years, and in the meantime the cost would be increasing.

Mr. Sumpter said it is just a question of where the Board wants to start storing the money. It is up to the Board to decide how it wants to move and then VDOT will adapt to that schedule. On a daily or weekly basis he gets calls about the Rural Rustic type of project. As far as maintenance issues are concerned, they get calls related to gravel roads, traffic signals, etc. He has been reading the staff's reports and other materials trying to find out what the Planning Commission meant by their recommendation. He got the impression that they thought the entire unpaved road program could be stopped. He will mention that in other parts of the State, particularly in Northern Virginia and Loudoun County, there was a stance taken to leave some roads graveled. They have reached a point now where gravel roads are carrying up to 10,000 vtpd. They have to dedicate one crew each day to blade the road, put down dust control and add stone. VDOT's concern would be maintenance of the roadways. There are more variable conditions on gravel roads because they change during the different seasons. Would not paving really mean traffic will not increase on these roads?

Mr. Slutzky said he thinks the Planning Commission was trying to get to "the flip side." The County does not want the roads paved and invite 10,000 cars a day who are coming into town, to use them.

Mr. Rooker said if the State provided adequate money for construction it might slow down maintenance. He thinks the decision now is whether the Board wants to take a project like Dickerson Road and try to dedicate enough money in the plan to get it built before costs escalate further.

Mr. Boyd said he is in favor of that approach. He would like to put together a plan to actually accomplish something rather than just changing the date when the project should start. His major concern about the Planning Commission's recommendation is about a project such as Doctors Crossing. He has talked with the residents in the area many times over the past four years. If the Board now says it will not pave that road because it does not think the issues are great enough to require it, the Board needs to be upfront and straightforward with those people and say the project is being removed from the list because it lies in the Rural Area. It is hard enough to say there is no money for a project. The Board needs to come up with some criteria, and if the project does not meet that criteria not even put the road on the list.

Mr. Rooker said he has questioned how Doctors Crossing is ranked No. 3 yet it has an August 3 advertising date, when projects that are ranked higher have a 2015 advertising date. Mr. Sumpter said that date just has not been changed.

Mr. Rooker said if the projects listed above it are accurate, that puts them in line for a 2016 to 2020 advertising date.

Mr. Boyd said he is aware of that. However, if in reality the Board has a policy which says that because the area is underdeveloped at this time but there are many development rights in the area, than the road will not qualify to be on the paving list. He thinks the Board needs to be upfront with these people, and say that.

Ms. Thomas said she has said that to her constituents many times.

Mr. Slutzky said it might be helpful to get a sense of where development potential lies on one road versus another. Maybe for those roads, the Board should look to be sure it does not have any inadvertent instances where it is proposing to pave a road that will invite development.

Ms. Mallek said there is also the question of prices on projects, the different usages of the roadway, and the traffic counts. Mr. Sumpter said he would like to point out something else. On last year's approved list there were two projects for Rio Mills Road; one has \$611,000 allocated and the other needs an additional \$2.6 million. Also, there is a section of Dickerson Road which shows a balance of \$591,000 with an additional \$1.58 million required. Another section has \$1.0 million previously funded with an additional \$600,000 needed. He said if there is going to be thought given to focusing on one priority, rather than put small amounts and extending the timeframe, some consideration might be given to transferring money from other projects to the ones at the top of the list in order to get them to construction faster.

Mr. Rooker said he does not see an allocation on his list. Mr. Benish said the County's list does not show allocations.

Mr. Tom Foley, Assistant County Executive, said staff can do further analysis based on the comments made today before the public hearing if that is what the Board would like staff to do.

Mr. Boyd said that is a good idea but he thinks there should be another work session before the public hearing in order to see what has been shuffled around.

Mr. Rooker said it would be helpful if staff would bring back one project that meets the criteria the Board has been talking about.

Mr. Boyd said he would really like to see the changes discussed today before holding the public hearing.

Mr. Slutzky said if the Board decides to move the Rio Mills Road projects off of the plan without giving advance notice to the citizens that would not be fair to them.

Mr. Sumpter said part of the driving force for the public hearing comes from VDOT in Richmond. He is under a deadline to get his plan to Richmond. It has to be done by April at the latest, so he is agreeable to moving the public hearing to March.

Mr. Rooker said this is a policy the Board needs to make a decision on in order to instruct staff. Basically the Board has said it wants to get one project done that is on the list, or a couple of projects depending on the amount of money that has been allocated and is just sitting there. The other question is whether the Board wants to continue with the Rural Rustic Road Program. That program impacts the amount of money there will be to allocate here.

Mr. Sumpter said the Board should consider carefully the County's allocation in that fiscal year. That allocation also covers some Rural Rustic Road projects that have been committed to; citizens are expecting them to be built in the next construction cycle. They would be paid from that \$640,000.

Mr. Rooker asked how much of that \$640,000 has been pre-allocated to those roads.

Mr. Foley said that will be part of the report staff will bring to the next meeting.

Mr. Boyd said three of these road projects have been done in his district, and the feedback from the citizens has been tremendous.

Ms. Thomas said she thinks staff should include that type of feedback in its report. She got a comment from one bicyclist and it was not favorable.

Ms. Mallek said she had received comments from some runners. Quite a few people commented that the existing gravel roads are major parts of long distance running.

Mr. Boyd said that is anecdotal. He has talked with runners who say they hate to run on gravel roads.

Mr. Dorrier asked if the Rural Rustic Road projects have been popular with the citizens.

Mr. Rooker said the comments he has heard have been favorable for the projects which have been completed.

Mr. Juan Wade, Transportation Planner, said the Board had asked staff to make a comparison of roads before and after these projects had been completed. Staff chose Gilbert Station Road to do a traffic count before it was recently paved, and another traffic count is scheduled for this spring. He encouraged the Board to wait for those results; he gets a couple of calls a month from residents requesting that their road be paved.

Mr. Slutzky said he does not doubt that there are a lot of people living in the Rural Areas who would like to see their road paved. They also call members of the Board and ask that nothing be done to encourage growth in the Rural Areas because they do not want to see traffic increase on that road. There are competing concerns to take into account. Mr. Wade said if the Board decides to go in that direction, staff will let the public know about this decision.

Ms. Thomas said the Comprehensive Plan, for a very long time, has said that nothing should be done to encourage suburban type of development in the Rural Area. Having a nice paved road is everybody's definition of a suburban type of road. When she sees roads suddenly appear on the list from the public, it makes her cringe because some person has called up, and in order to be responsive, staff puts the road on the list and it does not fit the policy. She thinks the Planning Commission is taking the Board to task for letting that happen. She thinks Mr. Boyd is right; if the Board wants to remind the public that is not the policy there should be a stronger policy statement.

Mr. Slutzky agreed. He also suggested telling the School Board about the inducement to development that paving of roads would imply. He thinks it might be more useful if the School Board furnished a list of roads which could use safety improvements.

Mr. Boyd said people living on Rocky Hollow Road, which was just completed, asked that it be considered because the elementary school bus and the middle school bus almost collided since there was no way to see around the curves. That was a safety issue, and the School Board favored the project. At one time, children had to walk out to the end of the road to catch the bus. Sending school buses into every hollow in the County is promoting growth in the Rural Area even though he knows the School Board is concerned about safety issues.

Mr. Sumpter said from the conversation today, he understands the Board wants VDOT to work with County staff to identify what has been committed to Rural Rustic Road projects in the coming year; they are to look at the priorities for the regular unpaved road projects; and, they are to identify a project that realistically can be put together in a reasonable time and get it to construction.

Mr. Benish said there will be another work session so this conversation can continue. He heard that the Board wants to maintain Old Ivy Road as a strategic priority at its same priority number. For regular unpaved road projects, Rio Mills Road is to be moved down on the list. Based on the way the Criteria Based Rating System works, because it is considered an Urban Area road, it would just "flip-flop." Staff will identify other issues involved in moving into the concept of focusing on unpaved road funding. The public hearing should be at night.

Ms. Mallek said on the potential project list, Page 5, No. 39, it says Route 641, Graves Mills Road at Jacobs Run. She thinks Jacobs Run belongs with the description for Route 743.

Agenda Item No. 23b. Transportation Matters: VDOT Monthly Report/Rural Rustic Road Program Update/Advance Mills Bridge Update.

Mr. Sumpter said he will highlight a couple of things in the Monthly Report. He has talked with Mr. Rooker about railroad bridges. As far as the analysis of Broomley Road, Mr. David Pierce said the bridge was inspected by a consultant who was not sure they had the capability to do that analysis. Mr. Pierce is trying to contact them to see if they have that capability and if they do, they will link Mr. Rooker with the consultants.

Mr. Rooker said when looking at bridges which are categorized as inadequate, the cost is upward of \$4.0 million. He would like to know if anything can be done to strengthen the existing bridge on Broomley Road to enable emergency vehicles to cross the bridge, and the cost of such work. He said that although that bridge is posted for 10 tons, he thinks 14+ tons would be a better rating. He said it is against the law for emergency vehicles to cross the bridge even though it might be able to maintain them. He is trying to find out its real capacity and if there is some way to improve that capacity, and at least solve the problem for emergency vehicles.

Mr. Sumpter said the Advanced Mills temporary bridge project has been submitted to VDOT's Central Office for advertisement. It is on schedule for advertising on January 2; there will be a preview meeting with contractors on February 5. They are moving forward assuming the bids received will be reasonable.

Agenda Item No. 23c. Transportation Matters not listed on the Agenda.

Mr. Dorrier asked that Mr. Sumpter look at Route 630 in Southern Albemarle. It is off of Route 6 and is a mile in length and has been reported to him to be in bad shape.

Mr. Slutzky said he reported a problem to Mr. Sumpter and within 24 hours a sign had been replaced in the Raintree neighborhood.

Mr. Slutzky said heading toward the Airport from Route 29, there is now a sign that explains that one does not get in the right lane to go to the Airport, but to get in the left lane. It is still confusing, and he suggested that there be a sign right before that one with a straight ahead arrow. He thinks that would make it clearer. He wants the roundabouts to work well so there can be more of them.

Ms. Thomas said on Route 250 West the White Gables and Kenridge condominium groups were required by the County to have only one access point (across from Birdwood Golf Course). They are concerned that if they are required to only use that access and the one that is now being used by White Gables before there is a stop light there, it will be more dangerous rather than dividing up the traffic. It is a question of when the stop light is put in correlating with when the County requires the traffic from White Gables to be only right-in, right-out.

Mr. Joel DeNunzio, VDOT Residency Program Manager, said he looked at the plan from 2002, and there was a traffic study with it. It had a signal warrant analysis for the location at the White Gables site, not for Kenridge, and not for the Kappa Sigma property. He spoke with the County Engineer and now it is a right-in, right-out at White Gables, and full access at Kenridge, so they have asked for a revision to the warrant analysis. When that is received, he thinks the signal can be put into place.

Ms. Thomas said at the Northridge medical facility on Route 250 West the University is proposing a new 40-bed hospital on that property. She wants to be sure VDOT "is in the loop" on those discussions. It is right at the edge of the County's rural area so the County will be doing analysis, but she wants to be sure VDOT is in that loop also. Mr. DeNunzio said they got the plan, and he thinks site plan review is tomorrow morning.

Ms. Thomas said on Route 250 West there used to be a "Watch for Deer Sign." It has disappeared. Mr. Sumpter said it can be put back and he asked for the location. Ms. Thomas said it was in-between Verdant Lawn Lane and West Leigh Drive.

Mr. Rooker asked Mr. Sumpter if he will be setting a meeting to discuss Georgetown Road. Mr. Sumpter said "yes."

Ms. Mallek said her constituents are pleased with the second roundabout at the Airport. It seems to function well.

Mr. Boyd said under the "Preliminary Engineering" section of Mr. Sumpter's monthly report on Page 1, it says the Meadow Creek Parkway right-of-way revision with the City has been completed, and offers are ready pending a conference with the City Attorney, County Attorney and Attorney General's Office. Does that mean the project is moving along? What does the Attorney General have to do with it? Mr. Sumpter said this refers to the School property owned by the City, but which is in control of the City School Board. The offer went to the City and they said it should go to the School Board, and the School Board said "no" take it to the City so they had to request an Attorney General's opinion as to who the offer should go to.

Mr. Boyd asked if this is going to delay the project. Mr. Sumpter said although there are still some issues involved, VDOT officially has the advertisement date, but there is a possibility an adjustment will be needed.

Mr. Boyd inquired about the project at the intersection of Route 250 East and Route 22. He said a person from Luck Stone is present this afternoon to talk about what is going on with that project. Does VDOT have a different perspective? Mr. Sumpter said VDOT is authorized on that project to do the engineering and right-of-way phases. That has almost been completed. That is all that is authorized. VDOT is willing to be part of any discussion to try to facilitate any issues.

Mr. Boyd said the problem is that the cost has escalated. He thinks Luck Stone is suggesting that they might raise the amount they would contribute. Is this something that has to be negotiated by the Board? Mr. Sumpter said VDOT has done what they need to do, but is willing to have discussions to see what everybody can do. He will see if there is anything VDOT can do to help out with the traffic light. As far as what is authorized in the Six-Year Plan, VDOT has fulfilled that obligation.

Mr. Boyd said the estimated cost for the County is about \$400,000 and that is a little steep, so he would like to sit down with Luck Stone to see if a compromise can be reached. He does not know where the County would get the funds. He wonders if the County will move forward and "step up to the plate" because it just does not have the money.

Mr. Rooker said there has never been an analysis of how that project would address the safety problem and how important the project is to the County. The project has been on the books for a long time and was going to be constructed almost entirely with funds from Luck Stone. The County was going to contribute about \$125,000 from the Glenmore proffer money. Now the County is being asked to come up with substantially more money, so he thinks the County should look at the importance of the project and see what safety issues it would solve. He asked if the County could apply for safety funds. Mr. Sumpter said if there is safety money that could be applied to VDOT putting in a signal, it would be listed as a separate project. He has just made an initial briefing to his staff about budgetary matters, and all are thinking about the question at this time. The signal cost is estimated at \$225,000. If Luck Stone does the construction, VDOT cannot give them the money to construct it.

Mr. Rooker asked if VDOT could do the signal, while Luck Stone controlled the project. Mr. Sumpter said that is possible.

Mr. Rooker suggested that this project be discussed when it has the next work session on the Secondary Road Plan next month.

Mr. Boyd said he would like a report on safety at that intersection.

Mr. Slutzky said he can see the appropriateness of the County investing in a project like that as an initiative. He would want to know the clear benefit of the project and its cost relative to a whole litany of unfunded things based on the tax rate and the budget proposal.

Mr. Benish said the source of the funds used in the Plan for the County's contribution was the proffer moneys related to Glenmore. Staff will provide that amount at the work session. Mr. Sumpter said he will bring information on the possibility of VDOT funding the signal.

Agenda Item No. 24. **Public Hearing:** Request to amend the Jurisdictional Area Boundary of the Albemarle County Service Authority to provide water and sewer service to Tax Map 56, Parcel 67A (Cohousing Site), and Parcels 67, 67B and 74B, all located in the Crozet Community Development Area. Three Notch'd Road (Route 240). White Hall District. (Notice of this public hearing was advertised in the Daily Progress on December 24 and December 31, 2007.)

Mr. Benish said Blue Ridge Cohousing, LLC, is requesting ACSA Jurisdictional Area designation for Water and Sewer service for a seven-acre parcel (Tax Map 56, Parcel 67A) located on the north side of Three Notch'd Road, Route 240. The property is located within the Crozet Development Area in the White Hall District and is currently designated for Water Only to Existing Structures. The applicant is requesting a Water and Sewer designation to provide service to the proposed Blue Ridge Cohousing project (ZMA-2007-12), which was approved by the Board on November 14, 2007. Staff recommends that the Board approve including Tax Map 56, Parcel 67A, in the ACSA Jurisdictional Area Boundary for Water and Sewer service.

With no questions for staff, Mr. Boyd opened the public hearing. With no one from the public rising to speak, the hearing was closed, and the matter placed before the Board.

Motion was offered by Ms. Mallek, **seconded** by Mr. Rooker, to approve the inclusion of Tax Map 56, Parcels 67A, in the Albemarle County Service Authority's jurisdictional area for water and sewer service. Roll was called, and the motion carried by the following recorded vote:

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

Agenda Item No. 25. **Public Hearing:** SP-2007-0038, Carrsbrook (ATC) Verizon Tier III PWSF.

Proposed: Collocation of a personal wireless service facility on an existing tower.

Zoning Category/General Usage: RA, Rural Areas-EC Entrance Corridor overlay.

Section: 10.2.2(48) Special Use Permit, which allows for Tier III personal wireless facilities in the RA Zoning District.

Comprehensive Plan Land Use/Density: Rural Areas uses in Rural Area 1.

Location: West of U.S. Rt 29N accessed via a gravel drive, approximately 0.15 miles north of Ashwood Boulevard (Rt 1670).

Tax Map/Parcel: 46:15.

Magisterial District: Rio.

(Notice of this public hearing was advertised in the Daily Progress on December 24 and December 31, 2007.)

Mr. Bill Fritz, Planner, presented the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He was assisted by Mr. Gerald Gatobu, Planner, who gave a PowerPoint presentation.

Mr. Fritz said the facility is an existing tower and a special use permit is required because it is the fourth array on an existing tower. This particular tower is located across from the entrance to Forest Lakes South and is accessed by a gravel road that extends approximately 865 feet west from the southbound lane of U.S. Route 29 North approximately 114 feet north of the bridge that crosses over the South Fork of the Rivanna River. There are multiple towers on the site. The tower on which they plan to collocate was previously approved. It has three arrays on it currently at various heights. The Planning Commission reviewed the request and on November 13, 2007, recommended approval by a vote of 5:0:2.

Mr. Fritz said the Commission discussed in detail some of the modifications needed. There are two modifications. The antenna will be mounted in a manner similar to the current antenna. The antennas are not flush-mounted, but in a convention array where there are three sectors. The antennas meet the size requirements of the ordinance. The Planning Commission approved the modification to allow them to use a conventional antenna array as opposed to being flush-mounted. The Commission also approved a modification to grant relief of the requirement that would have required submission of a tree conservation plan. This was done because there are no trees to be removed.

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

Mr. Steve Blaine said he represents Verizon Wireless. He said the staff report is clear and thorough. The recommendations from the Planning Commission would enable the Board to take action in favor of this request. He introduced his client. He said Verizon has only recently been licensed by the FCC to provide direct service to customers in this locale. Until this project is switched on, customers' phones must roam on other carriers and providers. He said Verizon has put together a good team, including some former planners from Albemarle County (Maynard Sipe went back to law school after being a County planner and is now his new law associate; Stephen Waller is one of their zoning consultants). Together they have 17 years of experience with the County, so together with Bill Fritz, Stephen Waller and Jan Sprinkle, they are the experts on the County's Wireless Policy. That is an indication of his client's commitment to understanding and pursuing that policy. There may be matters in the future with a full presentation where he can introduce other members of the team. He offered to answer questions.

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

Mr. Slutzky asked Mr. Davis if he is allowed to vote on this petition since he is a customer of Verizon. Mr. Davis said unless Mr. Slutzky owns more than three percent of Verizon stock, he is okay.

Ms. Thomas said she did not get a cell phone through all the years that the Board was working on this policy because she did not want to have any conflict of interest, not in the law, but in her own mind.

Mr. Rooker said he will not vote in favor of this request. In 2003, a request came to add antennas to the tower and he voted against that; it passed by a 4:2 vote. This tower is the kind of tower that would never be approved today under the current policy. There is an ugly blight existing off of an entrance corridor that is seen by everybody driving down Route 29. The question is whether to add to that blight. He said there are two ways to look at this issue, but he looked at it this way in 2003, and will look at it this way again, so he will not support the petition.

Ms. Thomas said she thinks she was the other vote that did not support the request in 2003. She does not think that adding to ugliness (referred to as "visually intrusive" in the policy) fits with the policy. This tower is visually intrusive, and each time an antenna is added it will be more difficult to have the tower taken down when cell towers are phased out. She sees no reason to do this when there is a very good treetop pole policy that is being successfully used by other cell phone providers.

Mr. Slutzky said he will support the petition. He took those same points of view into consideration, but it was his thinking that if the Board did not approve the petition, Verizon is coming into the market and would request that a compliant tower be located in another location and he would rather have a couple of more antennas on an existing ugly tower than a whole new tower.

Mr. Rooker said the other towers are poles with flush-mounted antennas on them. That is the difference.

Mr. Slutzky said his logic was that this tower is already there, and so he weighed those two things and came up with a different outcome. He then offered **motion** to approve SP-2007-038 subject to the ten conditions recommended by the Planning Commission and the two modifications.

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

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

(**Note:** The conditions of approval are set out in full below with a reference to the two modifications mentioned above.)

1. All work shall be done in general accord with what is described in the applicant's request and site construction plans, entitled "Carrsbrook American Tower Corporation Compound", with a final zoning drawing submittal date of July 19, 2007;

2. The tower shall not be increased in height;
3. The additional array of panel antennas may be attached only as follows:
 - a. All equipment attached to the tower shall be painted to match the color of the tower. The cables extending from the ground equipment may remain black; and
 - b. The antennas shall be set at the minimum distance that is allowed by the mounting equipment, and in no case shall any of the new antennas project from the structure to a distance that is greater than that of the existing antennas;
4. The replacement of dishes and antennas attached to this tower may be approved administratively, provided that the sizing, mounting distances and heights of the replacement equipment are in compliance with these conditions of approval and in accordance with all applicable regulations set forth in Section 5.1.40 of the Zoning Ordinance;
5. With the exception of any safety lighting required by Federal Aviation Administration regulations, outdoor lighting shall be permitted only during maintenance periods; regardless of the lumens emitted, each outdoor luminaire that is not required for safety shall be fully shielded as required by Section 4.17 of the Zoning Ordinance;
6. No existing trees within two hundred (200) feet of the facility shall be removed for the purpose of installing the proposed antennae or any supporting ground equipment;
7. The current owner and any subsequent owners of the tower and its supporting facilities shall submit a report to the Zoning Administrator by July 1 of each year. The report shall identify each personal wireless service provider that uses the facility, including a drawing indicating which equipment, on both the tower and the ground, are associated with each provider;
8. All equipment and antennae from any individual personal wireless service provider shall be disassembled and removed from the site within ninety (90) days of the date its use is discontinued. The entire facility shall be disassembled and removed from the site within ninety (90) days of the date its use for personal wireless service purposes is discontinued. If the Zoning Administrator determines at any time that surety is required to guarantee that the facility will be removed as required, the permittee shall furnish to the Zoning Administrator a certified check, a bond with surety satisfactory to the County, or a letter of credit satisfactory to the County, in an amount sufficient for, and conditioned upon, the removal of the facility. The type of surety guarantee shall be to the satisfaction of the Zoning Administrator and the County Attorney;
9. The tower shall be limited to a total of four (4) vertical arrays of panel antennas. No additional relay, satellite or microwave dish antennas shall be permitted on the tower without an amendment of this special use permit; and
10. The special use permit must be amended to allow either of the three existing arrays of panel antennas to be:
 - a. relocated on the structure;
 - b. modified to increase the number or size of panel antennas; or,
 - c. modified to increase the distance of the panel antennas from the structure.

Modifications:

1. The flush mounting requirements; and
2. The tree modification plan because they are not disturbing any trees.

Agenda Item No. 26. **Public Hearing:** SP-2007-41, Collin Gallahue, Violin Maker.

Proposed: Home Occupation to permit a violin making operation in an accessory structure on a 131 acre property.

Zoning Category/General Usage: RA-Rural Areas: agricultural, forestal and fishery uses; residential density (0.5 unit/acre).

Section: 10.2.2(31) Home Occupation-Class B.

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

Entrance Corridor: No.

Location: 6551 Heards Mountain Rd (Rt 633), Covessville.

Tax Map/Parcel: 97:24.

Magisterial District: Samuel Miller.

(Notice of this public hearing was advertised in the Daily Progress on December 24 and December 31, 2007.)

Mr. Cilimberg presented the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said the applicant has requested a special use permit for a Home Occupation-Class B permit in order to make and sell handcrafted musical instruments that are made on site in an accessory structure. There would be a limited number of instruments made. There would be some sales at the site on Heards Mountain Road. Both staff and the Planning Commission recommend approval of the request subject to three conditions.

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

The applicant, Mr. Colin Gallahue, was present and offered to answer questions.

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

Motion was offered by Ms. Thomas, **seconded** by Mr. Rooker, to approve SP-2007-041 subject to the three conditions recommended. Roll was called and the motion carried by the following recorded vote:

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

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

1. SP-2007-41 is limited to the making, repair, and sales of musical instruments;
2. No employees shall be permitted, without approval of an amendment to this special use permit; and
3. Storage of materials shall be entirely within the accessory building, as shown on Attachment A.

Agenda Item No. 27. **Public Hearing:** SP-2007-044, SPCA Amendment.

Proposed: Special use permit for outside fenced dog exercise areas. No residential units are proposed.

Zoning Category/General Usage: C-1 Commercial-retail sales and service uses; and residential use by special use permit (15 units/acre).

Section: 22.2.2.13, Animal Shelter, uses permitted by special use permit in Commercial district.

Comprehensive Plan Land Use/Density: Transitional - neighborhood-scale commercial uses, offices, townhouses and apartments (6.01-34 units/acre) in Neighborhood 1.

Entrance Corridor: No.

Location: 3355 Berkmar Drive, Charlottesville, VA, approximately 1100 feet north of intersection with Woodbrook Drive.

Tax Map/Parcel: 45-86.

Magisterial District: Rio.

(Notice of this public hearing was advertised in the Daily Progress on December 24 and December 31, 2007.)

Mr. Cilimberg presented the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this is an amendment to an existing special use permit. It would allow for construction of an outside, fenced exercise area for dogs at the facility on Berkmar Drive. It is in an area that the Comprehensive Plan currently considers transitional. A lot of the adjacent zoning is residential, but the real uses occurring in the area are scattered residential, non-residential uses on residential properties, and a number of the properties are owned by VDOT having been acquired as part of a proposed Western Bypass project.

Mr. Cilimberg gave a PowerPoint presentation. He noted a number of areas on the plan which are designated as tree conservation areas. Also proposed are additional screening trees, fencing around the exercise areas, and decorative fencing along Berkmar Drive. Factors favorable to the request are: the proposed dog exercise areas are an appropriate addition to the current facility; the proposed dog exercise areas and the paths will provide a safer and more comfortable environment for staff, volunteers and potential adopters to take care of and interact with the dogs; and, the proposed dog exercise areas have been designed with the surrounding community in mind. There were no unfavorable factors identified.

Mr. Cilimberg said the Planning Commission, at its public hearing, changed a couple of conditions from those originally recommended by staff. The Commission then recommended approval subject to seven conditions. He said staff now recommends some further changes to the conditions of the Commission. The first condition more specifically identifies the area intended for tree conservation, and it would read: "A Tree Conservation Plan shall be submitted for those areas shown as Tree Conservation Areas on the attached plan entitled 'Charlottesville/Albemarle S.P.C.A. ZMA-2000-005, SP-2000-022, revised November 6, 2007'." Condition No. 2 refers to the area of screening on the plan. Originally there was not a condition referencing this. The Commission asked that a condition be included, and in their action they made reference to a double row of trees planted 15-feet on center that would conform to ordinance requirements. In reviewing the location of that area of tree conservation and in consideration of the Commission's concern that there be screening from the S.P.C.A. and the residentially-zoned property to the north, staff noted that VDOT owns that property. In both the current Comprehensive Plan and the draft Places29 Master Plan, that area is shown as non-residential. Considering the limited area available, staff felt that one row of trees as shown on the plan was acceptable and would reflect what the Commission intended to accomplish in this area which is to screen the property from the adjacent property should it develop residentially. Staff does not think it will, but staff recommends that Condition No. 2 read: "At least one row of screening evergreen trees shall be planted 15 feet on center along the north side of the property" and he has added the words "as shown on the attached plan." That will reference specifically the plan provided. Condition No. 3 was not changed (it has been in existence for a while). Condition No. 4 references the plan for the general development of the site.

Mr. Cilimberg said Condition No. 5 is the same as that recommended by the Commission except that staff added the phrase "to be either on a leash if outside the fenced area or contained within a fenced area if not on a leash." That condition would now read: "Animals may be walked and/or exercised outside only between the hours of 8:00 a.m. and 7:00 p.m. While animals are outside, they must be supervised and be either on a leash if outside the fenced area or contained within a fenced area if not on a leash."

Mr. Cilimberg said there was a Condition No. 6 reading: "Uses shall be limited to an animal shelter and a veterinary hospital with associated offices only." Since the Planning Commission's meeting staff of the Zoning Department has said that condition is not necessary as the current special use permit limits the S.P.C.A. to an animal shelter so that original condition is not being recommended for inclusion.

Mr. Cilimberg said Condition No. 6 recommended by staff is Condition No. 7 from the Planning Commission's action and it is about the fencing material. It has just been renumbered and is not changed. He said that several of these conditions all refer to the plan which is the key piece in this request. He said if the Board agrees with staff's recommendations for the six conditions, it will recommend that the Board approve the permit with those conditions attached.

Ms. Thomas asked if "being supervised" in Condition No. 5 means there has to be a person onsite with the dogs. Mr. Cilimberg said staff tried to define supervision in the second sentence of that condition.

Ms. Susan Kogut, Executive Director of the SPCA, said there will be free play without a human person when dogs are in the pen and the dogs will be brought into the facility at night; no animal will be left out after hours.

Ms. Thomas asked about the fencing material. Does staff know for certain what type of materials will be used? Mr. Cilimberg asked Ms. Judy Wiegand, Planner, to answer this question.

Ms. Wiegand said the plan contains a note saying "Fencing materials for fenced exercise areas shall be six-foot high vinyl black chain linked at rear left area and all other fenced areas shall be four-foot high decorative black aluminum. Dog exercise areas shall be six-foot high galvanized steel chain link fencing." She said the fencing is described on the plan.

Mr. Boyd opened the public hearing at this time and asked the applicant to speak.

Ms. Kogut said she is the Executive Director of the S.P.C.A. She thanked County staff for helping them through this process. She said they had one large donor who approached them and said she would like to donate funds to develop dog walking paths in memory of her husband. They went on this project because this lady actually came to the S.P.C.A. to walk her dogs. Other people do the same thing. There are no nice paths now; they are makeshift paths which have just developed over a period of time by people walking on the property. They have some fencing on the property now which was not part of the special use permit previously approved; she did not know this when she began as executive director.

Ms. Kogut said they are going through this process to make what they are doing better, safer for the dog walkers and safer for the public. The decorative fencing being proposed is the same fencing that is directly across the street from their facility at Planet Fun. As to being supervised, dogs will not be left in that area alone. They do not want dogs unsupervised, or to have potential adopters outside that cannot be seen by staff. The people taking dogs out to that area to play would be supervising the dogs all the time. She offered to answer questions.

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

Motion was offered by Mr. Slutzky, **seconded** by Mr. Rooker, to approve SP-2007-0044 subject to the six modified conditions recommended by staff today. Roll was called and the motion carried by the following recorded vote:

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

(**Note:** The conditions, as recommended by staff today, are set out in full below.)

1. A Tree Conservation Plan shall be submitted for those areas shown as Tree Conservation Areas on the attached plan entitled "Charlottesville/Albemarle S.P.C.A. ZMA-2000-005, SP-2000-022, revised November 6, 2007;"
2. At least one (1) row of screening evergreens trees shall be planted fifteen (15) feet on center along the north side of the property as shown on the attached plan entitled "Charlottesville/Albemarle S.P.C.A. ZMA-2000-005, SP-2000-022, revised November 6, 2007;"
3. Fundraising activities and other special events shall not occur unless a zoning clearance has been issued by the Department of Community Development;
4. The site shall be developed in accord with the attached site plan entitled "Charlottesville/Albemarle S.P.C.A. ZMA-2000-005, SP-2000-022, revised November 6, 2007;"
5. Animals may be walked and/or exercised outside only between the hours of 8:00 a.m. and 7:00 p.m. While animals are outside, they must be supervised and be either on a leash if outside the fenced area or contained within a fenced area if not on a leash; and
6. Fencing shall be of the material identified and installed in the locations shown on the plan entitled "Charlottesville/Albemarle S.P.C.A. ZMA-2000-005, SP-2000-022, revised November 6, 2007."

Agenda Item No. 28. **Public Hearing:** SP-2007-048, Mt. Alto Baptist Church Building Addition.

Proposed: Amend SP-2007-16 to allow additional square footage of an approved expansion of church alter area, additional choir space.

Zoning Category/General Usage: RA-Rural Areas: agricultural, forestal and fishery uses; residential density (0.5 unit/acre).

Section: 10.2.2.35, Church building and adjunct cemetery.

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

Entrance Corridor: No.

Location: 4330 Mt. Alto Road, off Howardsville Turnpike, Esmont.

Tax Map/Parcel: 133:16.

Magisterial District: Scottsville.

(Notice of this public hearing was advertised in the Daily Progress on December 24 and December 31, 2007.)

Mr. Cilimberg presented the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request is to amend SP-2007-016 which was approved on June 12, 2007. At that time, the Church requested a 320 square foot expansion of the Church in an area of the property which was not large enough for the expansion. Originally the expansion allowed only an area of 20-feet by 30-feet. The church discovered they needed approximately 450 square feet for the proposed building addition. The area is needed to accommodate the choir, an organ and a study area for the pastor. There will be no additional seating or parking and it will not be visible from adjacent residences.

Mr. Cilimberg then showed a few photos of the property. He said the recommended conditions of approval include a reference to the February 26 plan. It will be limited to a maximum of 500 square feet. It will still have the same maximum amount of seating for the sanctuary. It still references that there is no day care or private school on the site without approval of a separate special use permit. He is making a suggestion today to modify Condition No. 5 to read: "Construction shall commence on or before January 9, 2013," rather than saying it must happen within five years.

Mr. Cilimberg said he is also recommending today that a Condition No. 6 be added reading: "All outdoor lighting associated with the addition shall be full cut-off fixtures." It is a condition the Board has been using recently. He offered to answer questions.

Mr. Slutzky asked if adding this condition means the lighting on the site now is not grandfathered. Mr. Cilimberg said it is referenced as part of site plan approval. In this case, it is a small addition, and he does not believe there is a site plan for the church. Probably there will be a waiver of a site plan. They will be required to bring in a plan to reflect their addition so there could be the lighting which would be examined. Staff did not recommend this because of the limited nature of the condition, and the Commission did not recommend it, but he wanted to mention it because he knows it is something the Board has wanted to accomplish in most rural area development.

Mr. Slutzky asked if there is a way to word it differently by saying that upon any replacement of the existing light fixtures, they be done in a manner which is compliant. Mr. Davis said the Board could say "All outdoor lighting required for the addition shall be required to comply." They will not need a site plan, and they would not have to retrofit any existing lighting, but any new lighting provided would have to be subject to these restrictions.

Mr. Dorrier asked why new lighting should not be required.

Mr. Slutzky said it is a cost burden that might not be warranted with this very modest addition.

Mr. Rooker asked if there is outdoor lighting at the church now.

Mr. Boyd suggested asking the applicant. He opened the public hearing and asked the applicant to speak.

Mr. Lawrence Randolph said he is a trustee with the church. They do have outside lighting now on the backside of the building.

Mr. Boyd asked if the church anticipates putting in any new lighting with this addition. Mr. Randolph said they will replace the existing lighting. Now, they are using floodlights, and they would replace them with the same type of lighting.

Ms. Thomas said the County is trying to cut down on the light that goes into the sky affecting the dark skies. She would like to have full cut-off light fixtures so no light goes up, but all light goes down. Also, a light fixture cannot be aimed at a neighbor.

Mr. Boyd said flood lighting is not that type of lighting.

Mr. Slutzky said it is the fixture containing the bulb that limits where the light beams go.

Ms. Thomas said certain types of floodlighting would not be acceptable. Mr. Randolph said their floodlighting now is pointed down, and that is what they want.

Mr. Dorrier said this church is located in a sort of wilderness. There is nothing around it. Mr. Randolph said there are probably three houses on that road.

Mr. Slutzky asked Mr. Randolph if he would be agreeable to a condition that when the revised lighting is done, it be done in a way that matches this rule being imposed around the County on new things. Mr. Randolph said that would be fine.

Mr. Rooker said the first sentence could say: "All outdoor lighting associated with the addition shall be shielded to reflect light around from abutting properties." The requirement for a lighting plan could be eliminated.

Mr. Cilimberg said he would replace "site plan" with "building permit." There is approval of a building permit, and it could be looked at then, or the sentence could be eliminated entirely.

Mr. Rooker said the Board could just require lighting that is shielded and reflected away from abutting properties. He does not feel a plan is necessary.

Ms. Thomas suggested that it read: "All outdoor lighting associated with the addition shall be with full cut-off fixtures that are arranged or shielded to reflect light away from the abutting properties."

Mr. Slutzky said he would suggest that before the lighting fixtures are installed, the church have an electrician check with the County to see if the fixture is the one recommended by the County.

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

Motion was offered by Mr. Dorrier to approve SP-2007-048 subject to the five conditions stated in the letter of December 21, 2007 addressed to Lawrence Randolph.

Mr. Rooker said he thinks the motion should reference the six conditions shown on the screen today. Mr. Cilimberg said condition No. 6 should simply say: "All outdoor lighting associated with the addition shall be full cut-off fixtures."

Mr. Dorrier agreed to that suggestion as the motion. Mr. Slutzky gave **second**. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

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

1. Special Use Permit 2007-48 shall be developed in general accord with the concept application plan provided by the applicant and received February 26, 2007. However, the Zoning Administrator may approve revisions to the concept application plan to allow compliance with the Zoning Ordinance;
2. The addition shall be limited to a maximum of five hundred (500) square feet;
3. The area of assembly shall be limited to a maximum one hundred seventy-five (175) seat sanctuary; occasional church gatherings beyond the normal capacity of the sanctuary shall be permitted;
4. There shall be no day care center or private school on site without approval of a separate special use permit;
5. Construction of the addition shall commence on or before January 9, 2013, or this special use permit shall expire; and
6. All outdoor lighting associated with the addition shall be full cut-off fixtures.

(Note: At 4:14 p.m. the Board recessed, and reconvened at 4:28 p.m.)

Agenda Item No. 29. Regional Transit Authority (RTA), Work Session.

Mr. Boyd asked Mr. Harrison Rue of the Metropolitan Planning Organization (MPO) of the T.J. Planning District Commission to make the presentation.

Mr. Rue made a PowerPoint presentation (a copy of all materials is on file in the Clerk's Office with the permanent records of the Board of Supervisors). He said they will be sorry to lose Ms. Mallek as a member of the CHART Committee. He said members of this Board attended the session with members of City Council about a year ago last November. This study was started as a result of that meeting, and he thanked the Board for funding it along with the City and the State Division of Public Transit. Before he started he introduced Ms. Melissa Barlow who is the PDC's new Director of Transportation Programs. She has been a member of the Charlottesville and the Louisa Residency Offices with VDOT, and she worked on the first statewide transit plan for DRPT. She is now the lead on the regional transit authority.

Mr. Rue said the agenda for today will be to look at the RTA goals, review the RTA goals and project scope, review project activities, and discuss having a joint Board/County workshop. He wants to seek policy guidance on the next steps (review MPO Policy Board initial guidance on the preferred management and governance and preferred service strategies for an RTA). He said the Regional Transit Vision was reviewed by the Supervisors, adopted and approved; it is to link downtown Charlottesville, UVA

and the Medical Center, Pantops and the Route 29 North Corridor; to provide travel options in the region; to improve routes and choices for underserved communities; to attract choice riders (those who currently drive for most trips); to increase access to medical, employment, tourist, recreation, education, service and retail destinations; to integrate transit fully with other modes, i.e., walking, wheeling, carpooling, driving and regional bus and rail; to help make the area livable for a lifetime; and, to reduce traffic congestion, pollution, energy consumption and personal travel costs.

Mr. Rue said the paperwork today includes a copy of the consultant's Scope Task List (Number 1). There are highlighted elements of the things done in each of the reports. They are half way through the report on Regional Transit Management and Governance. After the proposed work session with City Council, they will complete the details after they know which of the options the governing bodies want to move forward. They have basically finished with Regional Transit Service and Operations (Number 2). As to Number 3 – Regional Transit Cost Estimation and Funding, and Number 4 – Regional Transit Authority Plan and Recommendations, the consultant and the Transit Tech Team need more guidance from the Board and Council.

Mr. Rue said Identifying Transit Potential started about a year ago when they showed the Board a map showing four key destinations (employment and activity centers). That information was given to the consultant who upgraded it looking at eight elements. In the report there are individual maps and tables for all eight. He said the Composite Index identifies the areas highlighted on the map in the packet. There is a significant amount of moderate transit potential within the close-in urban growth boundary, south toward Biscuit Run, Pantops, up Route 29 North, and around the Airport.

Mr. Rue said in looking at Potential Service Strategies there is the baseline and four options. At the MPO Policy Board's recommendation, they have come up with an Option 4-A (see Figure A1 in the packet). He said these options were not intended to be incremental; each one adds to the other. The MPO Policy Board felt that Option 1 (new local service in Albemarle County) and Option 2 (new local service plus creation of a transit center at Barracks Road Shopping Center and a new cross town route) did not do enough to deliver on the Vision. They suggest that focus be put only on Option 3 (new local service, Barracks Road Transit Center, high frequency Route 29 truck route and local circulators) and Option 4 (new local service, Barracks Road Transit Center, Bus Rapid Transit and local circulators). They added an Option 4-A to be sure they reinforced the Pantops to Route 29 loop without having to go downtown first (Pantops – 29 North service plus UTS routes). City Councilors who are members of the MPO Board wanted to be sure that potential restructuring of City routes and improvements to increase service in the City was included.

Mr. Rue said the potential for Bus Rapid Transit is very real, particularly along the Route 29 Corridor, as well as the potential for streetcars in some locations. This is not the time to think about particular technology, but to look at the potential level of routes.

Mr. Rue said he had included several sheets entitled Potential Service Strategies which show a balance of the amount invested by the County and the City in each of Options 2, 3, and 4. He said this report hones in on real numbers, so the governance strategies show there is a need to look at other revenue options, and that will require legislative approval. He said the baseline operating costs show an expenditure of almost \$6.0 million per year in the region. That includes routes in the County and the City. In terms of operation, Option 4 is more than incremental, but less than double baseline costs. Capital Costs call for serious dollars, particularly when looking at street improvements for a VRT system (the routes are very long). He said all of these details are in the report.

Mr. Rue said when thinking about Management and Governance, if Option 1 were chosen, a new governance structure might not be needed since incremental items in Option 1 could work. If Options 3 and 4 were chosen, considering the investment by the City and the County, a new governance structure might be considered. He has talked with Mr. Davis who looked at some of the consultant's recommendations about the other non-RTA options.

Mr. Rooker asked that Mr. Rue go back to the chart pertaining to costs. Although the \$10.9 million shown for Option 3 is a doubling of transit expense in the community, the County's percentage if there were no outside participation would go up to about \$5.0 million a year. There is no indication there will be a substantial increase in State operating expense funding to help offset that cost. Mr. Rue said that is a reasonable assumption. At some point, the Board will have to decide how much money should be put into transit, and depending on the amount it is willing to invest, the best approach. As the Board members study the reports, they have to decide how much they are willing to put into transit possibly starting next year. If the County puts \$5.0 million a year into transit, then Options 3 and 4 are possibilities. There is also additional capital expense; some of that expense may be borne by Federal dollars. The chart shows Option 4 at a cost between \$31.8 million and \$123.0 million.

Mr. Rooker asked if there has been any determination as to how much of that might be borne by the Federal government. Mr. Rue said not yet. He suggested looking at Option No. 3 and Option No. 4 in the Technical Report. They do not plan on doing that level of detail unless there is a willingness on the part of the Board to consider that and then the report will be finished as directed by the Board.

Mr. Slutzky said he would like to clarify something. He asked the current budget of the CTS and how much the County spends per year versus what Option No. 4 would cost per year. Mr. Rue said he will have to look in the report to find the answer to that question.

Ms. Mallek asked the amount of money that could be flexed from inter-transit.

Mr. Tom Foley said staff has done some analysis based on these reports. The net increase from the credits the County would get from Federal and State revenues for Options 3 and 4 is about a \$2.3 million increase to the County based on the formulas. There are no capital funds in that number. Whether there would be that much additional Federal revenue to pay for the buses is a question which has not been discussed with them yet.

Mr. Slutzky said this is in an early stage in mapping out those costs. Mr. Rue said there are two main parts. One is the buying of the buses and there are different costs depending on the type of bus picked. This has the potential of getting some highly competitive grants. At this time more money is going into transit in the country. They believe the needed dollars to improve the roadway for transit operations may be potentially fundable by primary road funding. Although those dollars are limited, they are less limited than transit dollars. If a good job is done designing the improvements to Route 29 and Route 250 they may be able to get some double duty funds. It will still be a big number.

Mr. Rooker said that would only be needed if the VRT is done. Mr. Rue said that is correct. The capital costs under Option No. 3 are based on an "enhanced bus" which might be similar to the buses now running. They are already meeting with VDOT's manager for this area about signal improvements and he expressed a desire to attend the transit meetings because VDOT wants to improve their system.

Mr. Slutzky said the cost of Option 4 would be split somehow between the City and the County. Hopefully, a significant part of that cost would be available through Federal moneys. Then, in the organizational aspects of this there is the potential to charge either a gas tax (if enabling legislation were granted) or a service district funding mechanism. There are a number of ways to fund this independent of the normal funding tools.

Ms. Thomas noted a chart on Page 29 of the report about what is being used in Northern Virginia to fund some of their transit. She would like that chart put together with what came out of the Dennis Rooker/Leigh Middleditch group to see which of those things have already been considered for this area. She knows that is not what is being discussed today, but she thinks it is a good direction to consider. Mr. Rue agreed. He has already mentioned that to a couple of the citizens from that group who asked to be included in the process.

Mr. Rue said the next part of his presentation concerns Management and Governance. It is based on the following goals: stable and predictable funding; an institutional structure that works; each participant has control over services offered for its jurisdiction; and, costs and revenues are allocated fairly. He said they also had people conduct interviews of the Board members and there were common themes: the RTA should be comprised of at least the City and the County; UVA and JAUNT; and, if UVA is not an initial member, there should be an option for future inclusion. In the way of local control, each participating member should have a high degree of control over services provided to its constituents. In the way of cost-sharing, it should be equitable among RTA partners based on levels of service provided in each area.

Mr. Rooker asked if it has been determined that JAUNT could be integrated into this without them losing their Federal funding. Mr. Rue said that is being worked through in the options.

Mr. Rooker asked if Ms. Shaunesey is comfortable with the area having an RTA and JAUNT interacting with that in some way. Mr. Rue said "yes."

Mr. Rooker said JAUNT provides services that a transit system probably will never provide in the outlying areas of the County. Their funding needs to remain intact through this. Mr. Rue said he thinks Ms. Shaunesey is in favor of proceeding but is concerned about JAUNT's role and there being no impact on service to the rural counties. As routes are extended in the City and into the urban areas of the County, JAUNT is then obligated to provide their service free around those areas, and that has a financial impact which is being added in.

Mr. Rue said in term of Financing, most people interviewed said the City and the County could likely increase funding for transit; if a dedicated funding source is developed, a sales tax on gasoline would be preferable; and, State and Federal subsidies should be shared equitably between the City and the County.

Mr. Rue said there were differing opinions about Composition of a Board, such as: size of the board, relative representation among participating members, should stakeholders be included on the board, and should members be elected or appointed.

Mr. Rue said there were six Organizational Possibilities provided by the consultant. A couple of them are more feasible than the consultant said, so he is waiting for comments from Mr. Davis. Mr. Davis said he does not think No. 3 and No. 4 accurately reflect the Joint Exercise of Powers. The service district concept probably needs to be clarified since he does not think it accurately reflects what Virginia law provides. Mr. Rue said this will be clarified and the information sent to the consultants who are also working for Fredericksburg. This area might want to be "walking in tandem" with Fredericksburg. He does not think it changes the current recommendation, but if enabling legislation is not granted, it might allow a little more flexibility.

Mr. Rue said in reviewing the governance structures, there is only one entity that does what is wanted. He referred to Table 1: Summary of Institutional Options, Policy Level Representation for UVA and JAUNT only works under the legislatively-enabled RTA. As to the potential for new funding sources, it

is possible to use property taxes under a service district. Whether it is a new source, and not current property taxes, is the real issue.

Mr. Rue said the Policy Board asked them to present the following questions to the Board and get some feedback. 1) Significant investment, expansion, enhancement and reorganization of existing transit service should focus on Options 3 and 4, plus Option 4A. 2) The RTA governance structure should allow for future inclusion of UVA, the Thomas Jefferson Foundation and JAUNT, and existing revenues should be maximized to include potential mechanisms for generating new revenues. 3) The only option that does both of those seems to be the legislatively-enabled RTA.

Mr. Slutzky said there is no gas tax under the RTA. Mr. Rue said that is correct. Mr. Davis said the RTA is a blank slate.

Mr. Rooker said as part of the package, gas tax authority could be requested to fund the RTA.

Mr. Slutzky said he thinks that is the main reason the Policy Board went with the RTA.

Mr. Rue said in terms of preparation for a joint workshop they need to know if the Policy Board's guidance is on track, other than Mr. Davis' detailed review of the report, is there a need to go back and review the other Management and Governance options at this time or should there be focus on how to move ahead with an RTA. Should workshop time be spent on reviewing the more incremental service options or should there be more focus on costs, etc. for the full system?

Mr. Slutzky said he thinks it was the sense of the MPO Policy Board that there should be no attempt to get legislative intervention this Legislative Session but take the year to map out a plan, get support for that plan, and then start lobbying so next Session the request might be presented to the Legislature.

Mr. Boyd suggested getting feedback from Mr. David Blount, Legislative Liaison, on this suggestion. Mr. Rue said they have done that. He also contacted the local Senator and he is willing to do it, but the general guidance from the VRTP is that this would probably not be successful unless the City and the County stepped up and say it will be done. In going for an RTA, funding sources must be specified.

Mr. Boyd said considering the makeup of the General Assembly now, would they be giving gas taxing authority to districts like this. He has heard that some representatives do not think this type of authority should have been given to the two localities that have it. Mr. Rue said it will not be easily done, and it will not be given to this region alone.

Mr. Rue said recently it was announced that there is a Federal Transit Authority Public Participation Grant, and as part of that they will be conducting surveys. In six or more months, they will have information on what the public in the local area thinks.

Mr. Dorrier asked if that is to set up Park and Ride locations. Mr. Rue said "yes." In a couple of reports, there are specific suggestions for location of improved park and ride services.

Mr. Boyd said he has not had time to study the whole document, but has skimmed the contents. He asked if there are any goals and objectives to be had from this investment. Personally, he needs a goals-oriented system if this money is spent. Mr. Rue said when the Federal Transit Administration is investing in a rail line or something similar, they require detailed studies that prove there will be a certain amount of ridership based on the density. That is out of scale for the type of transit system being done here. In reality, it is hard to do that model. Before investing in a multi-dollar system, as part of that study there would be more modeling to prove it is worth the investment.

Mr. Slutzky said there are data suggesting that at certain densities of population there will be a certain response to an effective transit system. Much of that dynamic may change when the national agenda focuses on reducing greenhouse gas emissions, and there might be Federal mandates to do so. He said there are a few areas of high, predicted responsive to transit based on current models which will change over the next few years. If gasoline gets very expensive and greenhouse gas reduction becomes a national priority, it is not unreasonable to anticipate a significant investment in transit that might help subsidize an RTA.

Mr. Boyd said he can appreciate that a lot of things might happen in the future that might impact it. Even if the area could not come up with an expected goal to reach, it could say that in order for this to be cost-effective it should be accomplished in the next couple of years. An exit strategy could be built into the plan in the event it did not work. There is a need to explain to the public what is being done; there needs to be more specifics.

Mr. Rue said he thinks that information could be included in the final report. This starts with a Vision specifying certain things. It does not have a lot of measurables. The Vision is to provide increased options for people who are either lower income or disabled, etc. Those particular locations are mapped already.

Mr. Boyd asked if the public opinion survey will be taken with major employers because congestion occurs during hours when people are going to and from work.

Ms. Thomas said only 20 percent of trips are actually by those commuting to work. Where people are going in the community has to be discovered.

Mr. Rue said by the time this is implemented, there will be new data from the origin and destination study for the new model which VDOT is rebuilding now. They have a group employed to do this and they are aggressively looking at how to change VDOT's model to measure potential walk and bike trips. Work on Places29 is being plugged into this new model, but it will not be used for another two or more years. There is a swarm of potential science trying to solve this problem at both the Federal and the State level.

Ms. Mallek said when the County began the ACE Program, there were few applicants. Last year, there were more applications than could be funded because a sense of realness had been achieved. She thinks it will take a while for people to feel this commitment is being made so they can change their transportation style. Often, it is painful to make those adjustments. If people think it would only be for a year or two, they would probably not make the attempt. She hopes a plan can be devised that all can commit to; she thinks it will take a time to have monstrous ridership.

Mr. Rooker suggested that everybody read carefully Tasks 2a and 2c, supportive corridors and studies. In that section the corridors Mr. Rue referred to are listed. The densities needed to support a feasible transit system are pointed out. One of the studies concluded that neighborhoods with fewer than 12 to 16 dwelling units per acre have a marked increase in automobile trips and a decrease in the economic feasibility of bus service, so they recommend 12 to 20 units per acres for frequent bus service with less than 20 minute headways. Another study showed that seven to 15 dwelling units per acre was needed to support a good transit system with reasonable head times. Our consultant concluded that four units per acre were needed in order to make the transit work here. This area does not have that density anywhere. He thinks that everybody supports the idea of transit, but needs to be sure that what is being done has a chance of working. The best opportunity for success is the one to invest in. He asked that everybody read through that information. There are maps and employment density figures included. The County does not have the employment density that is recommended for a good transit system to work. There is traffic congestion which is a good thing for transit. Will the Board go into this with the idea that it will support a substantial increase in transit funding based upon legislation enabling some additional funding mechanism or is the Board willing to do it anyway and fund it from property taxes? Either way it is incumbent upon the Board to think through whether it is the system which is the best design for success in the community.

Mr. Slutzky said both he and Mr. Rooker represent the Board on the MPO so have an ongoing dialogue about this question. If Mr. Rooker is right that established models would make one skeptical that people in this region will likely get people out of their car and into a bus, there are two variables that might make it work here. One is the Federal focus on greenhouse gas emission reduction because that will imply subsidies. There are many bills pending before the U.S. Senate would apply an 80 percent reduction in greenhouse emissions by 2050.

Mr. Rooker said if outside funds can be received, this is less of a gamble for the Board.

Mr. Slutzky said he had mentioned one other thing. The cost of fuel will likely go up to a point where existing models for the density of population that makes a system viable changes. A third factor that has not been talked about is the fact that 20 percent of the people living in the County are at or below the poverty level income and the number is worse for the City. There are a potential number of riders in the Urban Area that the Board may want to subsidize their transit options. Also, one strategy that has legitimacy is to build a transit system in increments. Over time, you try to make it achieve a certain critical mass of effectiveness so it starts to attract choice riders. An alternative model, which is one he has advocated for, would be to build an optimal system for the riders, instead of adding to existing routes that are not necessarily reflective of an optimal pattern. He said the routes today largely reflect the City's belief that the center of the metropolitan universe is the traditional downtown area. It is probably third on the list of destinations, after the University/Medical Center and Route 29 North. Routes need to be redefined around where people actually go (the County cannot do that when the City defines where they will put the transit center). The City decides how to operate their bus system and then they ask the County where it would like to fund a route. There is a risk in creating a joint regional transit authority with the City. A system that optimizes all the movements that will occur should be planned. Density is low given the traditional models, but he believes circumstances will intervene to make the Board look like geniuses in ten years when there is a system already mapped out with infrastructure and funding mechanisms in place. He said that is a gamble the Board will have to take.

Mr. Rooker said he is more an incrementalist in expanding transit except if the Board feels it can get additional funding sources to make the gamble more palatable, it then becomes less of a gamble for the local taxpayers. There may be Federal funding available in the future for smaller communities. He thinks it is good to have everything "on the table" so no one is surprised.

Ms. Thomas said a few years ago some local people went to Portland, Oregon, to look at its public transit system. They did certain things almost 20 years ago that are finally paying off, basically placing zoning around some transit stations that did not cause any change in land use for 15 or more years. Things don't happen fast, but there are good examples in Northern Virginia in the way of the differences between Fairfax and Arlington. Fairfax chose to be a suburban type of situation and looks more like what Albemarle will look like. Arlington chose a different route, and Albemarle could not mimic it because there is no metro running underground.

Mr. Dorrier asked if this is about bus transit, not streetcars or rail. Mr. Rue said they are not recommending choosing any particular technology at this time. On particular routes they are talking about expanding bus service with technology and potentially having new vehicles which are called "bus rapid transit". They have identified three places where a streetcar loop could work. The Downtown area to Barracks Road is one where they think there is a potential over time for what is called a "shopper's trolley" linking Seminole Trail Shopping Center to the Fashion Square Shopping Center area with a trolley that would link up with the bus system. That would happen over time and only if significant private investors were interested. Every consultant report they have looked at going back a number of years said there is not the density here that is necessary for a light rail system going up the Route 29 North Corridor.

Mr. Boyd said in looking at the information on the screen, he thinks Mr. Rue is asking for guidance in setting up a joint meeting with the City.

Mr. Slutzky said the MPO Policy Board envisions at least establishing the Regional Transit Authority as early as possible. It would help form a unified body and help to get out of the circumstances of having a monopoly service provider. It is an awkward arrangement now, so part of the thinking of the Policy Board is to get the governance in place and then it may be possible to leverage subsequent resources.

Mr. Boyd asked Mr. Rue if he had the information he needed for the joint work session. Mr. Rue said "yes."

Mr. Rooker said he thinks the answer to the question on the screen "Do we need to review other M&G options in detail at a joint workshop, or focus on RTA specifics?" is that everybody is focused on the RTA.

Mr. Dorrier said he supports it. He thinks Mr. Rooker and Mr. Slutzky should be congratulated on their work with the MPO.

Mr. Boyd thanked Mr. Rue for the presentation.

At this time, Mr. Tucker suggested the Board return to discussion of Item 14.10, on the Consent Agenda, Memorandum dated December 13, 2007, from Amelia McCulley, Zoning Administrator, to the Board of Supervisors, re: Rural Area Subdivisions.

Mr. Bill Fritz was present to address questions from the Board. He said that at this time, staff has an issue of what they call "the Albemarle two step" which is where an existing parcel fronts on a public street in the Rural Areas. Example 1 is: A subdivision request is submitted, two lots are created and both lots contain five acres with 250 feet of road frontage. This is a rural division which is done administratively. Example 2 is: Then Lot A is subdivided into Lot A-1 and A-2 served by a new private street. This is approved administratively. The only standard for the new private street is that it provide reasonable access. It most likely will be a gravel driveway. At the same time, or immediately after, Lot B is submitted to divide it into a two-lot subdivision.

Mr. Boyd asked if other than the road frontage issue, do these development lots exist or are they creating development lots by this scheme? Mr. Fritz said the parent parcel that existed was a parent parcel on December 10, 1980, and it had development rights which are being utilized without having to go through any Planning Commission review.

Mr. Rooker said the County requires review of a new four-lot subdivision. What is happening here allows people to get around that review, and also there is the question of road standards. Mr. Fritz said Lot A is done and then Lot B. He then showed a rendering of the subdivision of this property. Mr. Davis said this procedure avoids street standards and also avoids what most people would consider any frontage on a road for Lots A-2 and B-2.

Mr. Fritz said the ordinance today permits exactly what is shown on the rendering, but it must be done in multiple steps. If this subdivision was submitted in a single step it would require Planning Commission action, and a couple of waivers, and also private street approval. Staff believes a change which is fairly straightforward could be made to the ordinance simply requiring that all these lots access a single point of access onto the public street. There would be the same number of lots on a single street and the internal street would have to be reviewed by the Commission if it were a private street, otherwise it would have to be a public street or built to a private street standard and have a maintenance agreement, etc. Mr. Davis said it would have to be a public street unless it got waivers. Mr. Fritz said even if the Commission authorized it as a private street, it would still be built to a higher standard than the two private streets shown on the screen now.

Mr. Slutzky asked if the configuration is what is normal for a four-lot subdivision. Is there any basis for denying the application? Mr. Fritz said what is shown on the screen is what staff approves on a regular basis.

Mr. Boyd asked how often this is happening. Mr. Fritz said it is frequent.

Mr. Slutzky asked the benefit of requiring the applicant to come before the Planning Commission if the Commission cannot say "no." Mr. Fritz said it does not affect the number of lots that could be created. Theoretically, because there is an internal street which has to be built to a higher standard it could have some sort of dampening affect on the desire to develop the property. The street shown on the

screen would have to meet commercial sight distance standards, whereas for what there is now, there are just two private entrances.

Mr. Rooker said there is a reason not to allow four lots to be subdivided in the manner shown. At this time, people can come in and file one plan, and come in the next day and file a second plan and do something they could not do if they tried to subdivide the property all at one time.

Mr. Slutzky said the change seems like a "no-brainer."

Mr. Fritz said staff can prepare a Resolution of Intent for the change. There is a second thing he needs to mention. Right now the ordinance states that for the parcel at the rear, its frontage is considered the full width of the easement. He showed a rendering of what a lot would look like if the ordinance were changed to say it had to be greater. In this kind of situation they would simply plat the additional 150 feet, but there is no bonding requirement for a two-lot subdivision and, in reality, a street may not get built so it would still look like the rendering. If the full 150 feet of frontage was required, they would probably still build a house, and the driveway would just come in at a different angle.

Mr. Boyd asked what would be gained by making this change. Mr. Fritz said that is a question that was asked of staff. He does not know that anything would be gained by simply requiring the 150 feet of frontage to be platted onto the adjacent property. It is fairly easy to do. Numerous other sections of the ordinance would have to be changed in order to require that the street be built, and a bond would have to be posted which would require a substantial increase in staff resources.

Ms. Mallek asked if what is proposed would be a driveway standard or a private street standard. Mr. Fritz said it would basically be a driveway standard for a two-lot subdivision. He said for a cul-de-sac situation there is a different provision that says it can be reduced down to the minimum that VDOT will allow, or 50 feet.

Mr. Slutzky asked if Mr. Fritz is saying this is not worth pursuing. Mr. Fritz said he is simply advising the Board what the ordinance says. Numerous sections would have to be changed to require that the road be built within the easement, and the access taken from the end of the easement. It would be difficult to write, but it can be done.

Mr. Davis said the real issue is the standard for a private street. The County has a minimal access standard which is really just a driveway for a private street for two lots. That private street could be required to meet a higher standard. That would increase the public safety aspect by having fire truck access.

Mr. Slutzky asked if that would be hard to write. Mr. Davis said "no."

Mr. Slutzky asked why the County would not do that because that makes sense.

Mr. Boyd asked if that enhances the reason to build in a fire service district.

Mr. Slutzky said it would have a nominal affect on most two-lot subdivisions, but mostly it would just make a safer access point.

Mr. Rooker said what is being discussed is something different than what Mr. Fritz pointed out. Staff is talking about requiring that instead of the road being just a driveway, it should actually meet private road standards. That is a different issue than what is shown on the diagram on the screen.

Mr. Dorrier asked if there would be a road maintenance agreement required. Mr. Fritz said "yes." But, the road standard is merely reasonable access by motor vehicle in all but the extremes of weather, i.e., a driveway. There is no minimum width, no maximum grade, etc.

Mr. Dorrier asked if it has to be asphalt. Mr. Fritz said "no", it can be gravel.

Ms. Mallek asked about drainage. Mr. Fritz said for a two-lot subdivision under the current ordinance, drainage is not addressed. It is simply reasonable access, and the surveyor simply puts a note on the plat that in his opinion the easement provided would allow for the establishment of a reasonable access.

Mr. Slutzky asked if a more extensive excavation is needed in order for a private road to access the second lot, or can the private road requirement include provisions for erosion and sediment control, etc. Mr. Fritz said the County can almost always require some erosion and sediment plan because it will be over the 10,000 square feet requirement in the ordinance. But, that gets back to the issue of what are now called "agreements in lieu of a plan."

Mr. Davis said there is the issue of whether the County actually requires them to construct a road. Staff is presently discussing how this should or should not happen. Traditionally, the County has not required people to build this private road if they had an existing driveway or a private access easement through Lot B to get to Lot A. This road could be just a paper road and never be constructed. Mr. Fritz said staff has situations where they are trying to decide where to put a house when there is an existing house on Parcel B and the configuration of the driveway. At what point does the County require the closure of that point and the construction of the new entrance. That is not addressed by the current ordinance.

Mr. Davis said there are instances where a driveway that goes to House B might be extended back to a house site on Parcel A and a road is never built at all.

Mr. Slutzky said if the Board is sympathetic to exploring each of these separately, maybe the staff could draft some specific language to be considered. Mr. Fritz said based on the Board's conversation this morning, staff wanted some directions. Staff can draft a resolution of intent for consideration at the next meeting.

Mr. Slutzky asked about question No. 2.

Ms. Thomas said she thought it was described in No. 2 in the memo to the Board in the sense of requiring the standard that is now required for three to five lots to also be required if there were only two lots. Unless that is what is being discussed, would the road have to be built as opposed to having some other accessway? Mr. Davis said if it were increased to a private street standard, the County would have to make sure the road was built and bonded unless it was built prior to platting so it would be an actual street.

Mr. Rooker said in talking with staff, a huge amount of development in the Rural Area is just like this example. It is the "Albemarle two step", four lots, etc. What the County ends up with is a lot of development which is haphazard with little regulation over it, so there are multiple accesses into the properties because the County does not require that the street ever be built. Then there are driveways off of driveways. It results in very bad planning.

Mr. Dorrier asked if there is a slope limitation on this private street. Mr. Fritz said if the County required it to be a private street meeting some design standard the answer would be "yes."

Mr. Slutzky asked if any other Board members are interested in pursuing this, specifically including the private road standard and that it would have to be built as a condition of platting.

Mr. Rooker asked Mr. Davis if the private road standard were required, if that would automatically require that the road be built. Mr. Davis said he thinks so.

Mr. Rooker said nothing is gained by having a plat for a private road unless it is built. Mr. Davis said all lots would have to be accessed by the private streets that are required for the platting.

Mr. Boyd said he is not sold on this second idea. The first idea he fully supports, but this appears to be a little "over legislation."

Mr. Slutzky said that is fair, but asked if Mr. Boyd would mind having this come back to the Board for further consideration.

Mr. Boyd said "not at all."

Mr. Fritz said staff can bring back recommended language in a short period of time.

Mr. Slutzky asked if the Board needed to adopt a resolution today concerning the first idea. Mr. Davis said it is something staff can draft and place on a consent agenda for adoption.

(Not Docketed) At this time, Mr. Boyd said the Board needed to return to closed meeting.

At 5:37 p.m., **motion** was offered by Ms. Mallek that the Board adjourn into closed meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to consider appointments to boards, committees and commissions. The motion was **seconded** by Mr. Slutzky. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

Agenda Item No. 21. Certify Closed Session. The Board reconvened into open session at 6:35 p.m.

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

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

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

NAYS: None.

At this time, the Board returned to consideration of Agenda Item No. 22. Boards and Commissions: Vacancies/Appointments, which had been skipped earlier in the meeting.

Motion was offered by Mr. Slutzky:

To appoint Mr. Thomas Loach as a member of the Albemarle County Planning Commission to represent the White Hall District with said term to expire on December 31, 2011.

To appoint Ms. Linda Porterfield as a member of the Albemarle County Planning Commission to represent the Scottsville District with said term to expire on December 31, 2011.

To reappoint Mr. Calvin Morris as a member of the Albemarle County Planning Commission to represent the Rivanna District with said term to expire on December 31, 2011.

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

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

Motion was offered by Mr. Slutzky:

To reappoint Ms. Marcia Joseph as the At-Large member of the Albemarle County Planning Commission with said term to expire on December 31, 2009. The motion was seconded by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

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

Motion was offered by Mr. Slutzky:

To reappoint Mr. Lincoln Lewis to the Board of Social Services representing the Rivanna District with said term to expire on December 31, 2011.

To reappoint Mr. Claude Foster to the Board of Social Services representing the White Hall District with said term to expire on December 31, 2011.

To reappoint Mr. Calvin Morris to the CHART Advisory Committee with said term to expire on December 31, 2010.

To appoint Mr. David Paulson to the Housing Committee with said term to expire on December 31, 2008.

To appoint Mr. Clyde Gouldman to the Region Ten Community Services Board with said term to expire on December 31, 2008.

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

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

Mr. Boyd announced that as the Chairman's appointee he is reappointing Mr. Alan Culbertson to the Charlottesville Area Community Foundation Governing Board with said term to expire on December 31, 2010.

Mr. Slutzky said he would **move** that Board members serve on various committees as follows. When Mr. Rooker asked if a motion were needed to approve the continued participation of Board members on other committees, Mr. Davis said that in the past the Board had actually reappointed Board members to those committees, but since there is no term limit, it is not necessary.

Mr. Slutzky said he would restate his **motion** to say:

Mr. Boyd shall be appointed to serve on the following committees:

Charlottesville/Albemarle/UVA Planning and Coordination Council
Policy Committee (PACC);
Darden Towe Memorial Park Committee;
Eastern Connector Alignment Study Committee;
Fiscal Impact Advisory Committee; and newly appointed to:
CIP Oversight Committee, and
Albemarle County Fire/Rescue Advisory Board.

Mr. Dorrier is to continue his appointments to:

Audit Committee;
Jail Authority;
Lewis and Clarke Exploratory Center Board;
Police Department Citizens Advisory Committee;
Rivanna River Basin Commission; and newly appointed to:
CIP Oversight Committee.

Mr. Rooker shall be reappointed to the:

Audit Committee
Charlottesville/Albemarle/UVA Planning and Coordination Council
Policy Committee (PACC);
Metropolitan Planning Organization; and newly appointed to:
High Growth Coalition.

Mr. Slutzky shall continue to be appointed to:

Affordable Housing Task Force;
Agricultural and Forestal Advisory Committee;
Darden Towe Memorial Park Committee;
Hazardous Materials Local Emergency Planning Committee;
Metropolitan Planning Organization; and
Safer Chemical Committee.

Ms. Thomas shall be reappointed to:

Building Committee;
High Growth Coalition;
Historic Preservation Committee;
Lewis and Clarke Exploratory Center Board;
Rivanna River Base Commission; and
Thomas Jefferson Planning District Commission.

Ms. Mallek shall be appointed to serve on the:

Albemarle County Fire/Rescue Advisory Board;
Building Committee;
Piedmont Workforce Network Council;
Thomas Jefferson Planning District Commission; and
ACE Committee.

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

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

Agenda Item No. 30. From the Board: Matters Not Listed on the Agenda.

Ms. Thomas said the TJPDC appreciates the work County staff did putting together a report on the County's proffer system. Each month the Commission will be discussing a new item; she thinks a lot will be learned about what the outlying counties do.

Agenda Item No. 31. Adjourn to January 14, 2007, 4:30 p.m., Room 235, for Joint Meeting with School Board.

With no further business to come before the Board, at 6:42 p.m. Mr. Rooker **moved** to adjourn this meeting until 4:30 p.m. on January 14, 2008. The motion was **seconded** by Mr. Slutzky. Roll was called, and the motion passed by the following recorded vote:

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

Chairman

Approved by the
Board of County
Supervisors

Date: EWJ

Initials: 05/14/2008