

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on January 16, 2008, beginning at 4:00 p.m. in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia; the regular night meeting began at 6:00 p.m. in the same room. The meeting was adjourned from January 9, 2008.

PRESENT: Mr. Lindsay G. Dorrier, Jr., Ms. Ann H. Mallek, Mr. Dennis S. Rooker, Mr. David Slutzky and Ms. Sally H. Thomas.

ABSENT: Mr. Ken C. Boyd.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry W. Davis, Clerk, Ella W. Jordan, Director of Community Development, Mark Graham, and, Director of Planning, V. Wayne Cilimberg.

Agenda Item No. 1. The meeting was called to order at 4:05 p.m., by the Vice-Chairman, Mr. Slutzky.

Agenda Item No. 2. ZMA-2006-009 – 5th Street Avon Center, Work Session.

Mr. Cilimberg said the Board held a work session on this request last November and asked that particular design aspects be addressed. The rezoning is from LI and RA to Planned Development Shopping Center. It would allow up to 468,623 square feet of commercial use. There is also a special use permit for a parking structure as part of this petition. He showed a plan of the proposal on the overhead screen. It shows three major buildings. Bent Creek Road passes through the property between Avon and Fifth Streets. There are also two areas noted for future development which was the location of an old landfill.

Mr. Cilimberg said the applicant has submitted preliminary revisions to the plans that now provide for a number of new concepts.

- The plan shows a change in building and parking locations and circulation, which responds positively to the Board's concerns about reducing the prominence of the parking area in relation to the buildings. The plan provides flexibility in building location and provides pedestrian flow in and out of the shopping center more typical to that of a town center. The revised plan also shows better circulation to town center elements.
- The revised plan now shows a pedestrian connection to the Willoughby subdivision.
- The proposed Bent Creek Parkway, which connects Fifth Street Extended to Avon Street has been slightly relocated to the south of the original proposal in order to bypass a portion of the old landfill where it would not be appropriate to locate a road.
- Structured parking options beyond what the special use permit would allow in this application that could be subject to future applications.

Mr. Cilimberg referred to the drawing on the screen and said it depicts what the Board saw in November and also the newest proposal. It introduces general areas for location of buildings. It presents the potential for frontage lined buildings along the internal street and liner buildings with a terminating building in what is more of a town center design. He pointed out the road as originally located and said it has been moved to the south thus avoiding use of some of the landfill area. The future development site is now all to the north of the Avon Street/Bent Creek Parkway intersection.

Mr. Cilimberg said this is an illustrative plan and demonstrates only one approach to developing under this Application Plan. There are several elements of the Application Plan that could be achieved through that plan. It does not have liner buildings completely along the internal street, but that could happen under a concept based on market demands. There are square footage limitations in total so that would probably involve reducing building area in another location to achieve liner buildings. Included in the Board's packet of materials is an associated document which describes how the different sectors could be developed.

Mr. Cilimberg said the applicant has identified where structured parking could be located in the future. He pointed out a site which is the subject of the special use permit attached to this rezoning request. The applicant has indicated where the pedestrian flow within the development, as well as pedestrian connections outside the development, are located. The pedestrian flow concept provides for good, centrally-located, north-south and east-west access connecting the commercial areas. Improved external connections have also been shown.

Mr. Cilimberg said staff believes the revised plan represents improved conformity to the Neighborhood Model and also supports the concepts requested by the Board. The staff and applicant seek the Board's guidance/suggestions regarding this revised plan. After today's work session, the applicant will need to submit an Application Plan with an associated development framework for final staff review. Then, the applicant will need to submit the final Application Plan and final proffers (one which responds to staff comments) 23 days before the Board's public hearing - a public hearing date needs to be set. He then offered to answer questions.

Mr. Rooker said he asked for traffic generation numbers at the last work session. Mr. Cilimberg said those numbers were in the original project proposal based on square footage.

Mr. Rooker said he did not see those numbers in the materials the Board got for this meeting. He asked if the number was between 12,000 and 15,000 vtpd. Mr. Cilimberg said the Board has a copy of the traffic study which includes all of those generation numbers. They were generated early on. There was a meeting between the applicant, VDOT and County and City staff to discuss the scope of the traffic study. While the applicant has been reorienting buildings, they have kept the maximum square footage shown in that traffic study.

Mr. Rooker asked if it is possible, while the applicant is making his presentation, for staff to get him that information. Mr. Cilimberg said "yes."

Ms. Thomas said she previously asked about an old passage under I-64 that might be connected, mostly for use by bikers. Bikers were excited about this possibility when Biscuit Run was being discussed, and this property is on the other side of their connection. The plan shows a good layout for pedestrians. Also, she previously asked a question about transit and how it is tied in. She wants to be sure the central road is one busses can use and there can be bus stops on that road, not just on the peripheral road. She said this plan is a terrific improvement over the previous plan, and she is delighted with what she sees. Mr. Cilimberg said transit is actually covered in the proffers. As to a connection southward under I-64, he thinks it would connect with what was anticipated in the Biscuit Run rezoning. He does not know that there is a particular design for that connection at this time.

Ms. Thomas said there is a third item she would like to have more information about and that is what is known as rain harvesting. There should be some more sophisticated treatment of the stormwater other than just catching the bad stuff out of the runoff from this development.

Mr. Slutzky asked if other Board members had questions they wanted the applicant to address.

Mr. Rooker said one thing that was discussed previously was the potential for two-story buildings. Does the revised plan allow for two-story buildings? It appears that the applicant is locked in more than they were before. Mr. Cilimberg said the development framework which describes what is in the Application Plan. It allows for 60-foot height maximums. It speaks to how those buildings would line the road and for the potential of a second or even a third floor.

Mr. Dorrier said he wants the applicant to address the pedestrian connection to Willoughby and how it links up. Also, there was a park and ride lot mentioned in the proffers, and he wonders if it will be identified on the map. Mr. Cilimberg said he thinks that would be accommodated within the areas of parking that are shown; the applicant can speak to that.

Mr. Slutzky said the Board previously talked about the road through the landfill site. Suppose it takes a long time to clean up the landfill and a road is built there. Is that road simply not taken over by VDOT and considered a private road so the applicant can open for business? Is the connection to Avon Street not opened until the landfill has been addressed to a point where that road could be deeded to VDOT?

Mr. Cilimberg said the County Attorney's Office has been looking at the proffer language, and that there are a couple of proffers in play on this issue. First, the work plan related to the landfill and what needs to be done as a result of the landfill is the subject of one of the proffers. Second is a proffer for allowance of construction of the road. It is set up so initially the road would be a private connection with stipulations as to how it might be turned over later for public responsibilities.

Mr. Davis said the concept is that the applicant would agree to build the road as a private road initially and hopefully at some point in time the road could be converted into a public road maintained by VDOT. The wording of the proffer needs to be worked out. There are some issues with it. It needs to be clear that until the liability issues are resolved the roadway would not be dedicated to the County. It would not be a public roadway, but would be operated as a private parkway open to the public for its use on a continuous basis.

Mr. Slutzky said he has two issues to mention. Mr. Davis has just spoken to issue number one - the County does not want ownership of a road through a landfill that might represent some liability for the County. If the cleanup takes forever, and if the area of cleanup is so extensive it is not realistic to even build the private connection, would the project have only one way in and out?

Mr. Davis said that issue still needs to be addressed - is occupancy of any of the buildings in the project contingent upon the parkway being completed first?

Mr. Slutzky said staff has addressed the idea that the applicant could build the private parkway and could then get occupancy permits. He is concerned they might build the private parkway and when dealing with the landfill cleanup the parkway might need to be dug up as part of the cleanup. It is extensive enough that the access to Avon Street might need to be closed off. It is an unlikely scenario but he would like the applicant to address this question. He also has a concern about the project being transit friendly, which is a critical issue. Recently the Board has accepted proffers from developers in the way of a contribution to a transit system. That has been done when there was a residential component to the project. He thinks there could be some dollar per square foot proffer that would be a burden on the common area maintenance costs to the commercial tenants. The goal is to subsidize bringing transit to this project. Then, as transit is expanded it is in a sense being funded through a public/private

collaboration. The developer would be the beneficiary of that alternative modality. Ultimately there might not be a need for as many parking spaces if a transit system gets going. He does not remember this being in the original proffers and asked that the developer address his question.

Mr. Davis said the last draft of the proffers addressed the issue of timing to the extent that the road would be built and determined to be safe and convenient for traffic prior to issuance of any certificate of occupancy. As the proffer is currently proposed, the applicant could build the buildings but could not occupy them until the road had been built and determined to be safe and convenient. However, if the road had to be torn up, that issue is not addressed at this time.

Ms. Thomas asked the sewer and water capacity of the project. Even though it is not under the Board's control, she would like to be reassured capacity is available.

Mr. Steve Blaine, representing the applicant, introduced Mr. John Eisen, architect and urban designer with Street Sense who has been working with bond companies, and Mr. Chris Pine, a member of the bond companies, who was at the meeting in November and described some of the vision of the project. Since then, his clients have been working with the urban designer to respond to the comments heard at that meeting and to arrive at the plan shown today. He said Mr. Eisen is an expert in LEED certification and has experience in the methodology for stormwater management that the Board expressed an interest in. A number of constituencies are interested in these types of proffers. The City is interested in maintaining and cleaning up Moores Creek so there are stream mitigation proffers. There are the recent stringent stormwater management criteria that have to be met. In order to get some of the proffer questions off the table, he will point out that they heard the Board's interest in transit and its importance. Proffer 12 in the proffers submitted December 12, 2007, provides for a subsidy for transit based on 20 cents per square foot of commercial space.

Mr. Slutzky asked if that amount adjusts over time.

Mr. Blaine said he believes there is an escalation provision in the proffer. He pointed out that the applicant has addressed that concern through a subsidy. There is a park and ride lot shown on the plan and it includes a transit stop. As to the questions about the timing of the road, Mr. Davis described the concept well. The issue of whether they can ever start is addressed in the proffer that speaks to the DEQ work plan. This road project cannot be started until they present their plan to DEQ who will then sign off on this approach to the road. Feedback from DEQ has already been received which is why they realigned the portion of the road called Bent Creek Parkway to have a minimal engagement with the old landfill area. DEQ said if the road were relocated off of the area where the landfill is the deepest it would be easier. There will be no buildings started until that DEQ plan is approved. Stage 1 is the DEQ work plan as it relates to the road, so they will have to go back and do further landfill mitigation after the road is constructed.

Mr. Slutzky asked if DEQ approving the work plan is the trigger for building the road. No one will know precisely what is in that area or where it goes until the digging begins. The work plan will help the applicant be intelligent in their approach to the project, but when they dig into the landfill there is the possibility of encountering a bigger problem than expected. It does not sound as if any relief has been provided for that possibility.

Mr. Blaine said he does not think there is any relief, but it is specifically addressed now in 1D. It is the County's option as to whether that segment of the road would be maintained as a private road or could be dedicated as a public road. The County will have to determine that the work has been completed in conformance with the work plan. That could be done by the County's qualified consultant saying there is no exposure risk to the public.

Mr. Slutzky said there are two issues. One is the exposure risk to the public, and the other is not having access to Avon Street. The best of all worlds would be to deal with the landfill, and then have the issue closed and the road built. His concern is that if the plan is approved and DEQ says to go forward and a surprise is encountered, the applicant would be required to cleanup the portion of the landfill under which he was going to build the more southerly located road. Then there would be no access to Avon Street, but the applicant would have met the conditions to get a building permit because the work plan itself was the trigger. He hopes the applicant can come back with a trigger that insures the landfill issues will not just be planned, but actually completed, at least as they apply to the section of road where Bent Creek Parkway will be built.

Mr. Blaine agreed the issue should be further addressed in the proffer. He said the applicant has traffic numbers. He asked that Mr. Mike Fenner present those numbers which were contained in the staff's report before the Planning Commission in July, 2007. There has been no increase in density since the traffic analysis was reviewed by VDOT. There was more than one meeting between VDOT and the applicant about this petition. At their last meeting on July 10, they concluded they had satisfied VDOT as to the traffic study and the offsite improvements. At VDOT's suggestion they added in commitments for signal timing at both ends of the road and after that change was made, Mr. Joel DiNunzio signed off on the proffers which include the road connection being called the Bent Creek Parkway. In terms of the two-story buildings, future densification can be addressed through the opportunities for a parking structure. In terms of the trails, they proffered to come up with a plan for those trails as a condition for their site plan. They have proffered a Class "A" trail, but they can do a redundant bicycle trail in that key connection. During the Biscuit Run review it was important to have that link to the urban connection.

Mr. Eisen said he will explain some of the changes made since the last work session. They evaluated the plan from a hierarchical perspective figuring out different zones and areas on the site where

there could be a diversity of retail product type. The market might be more diverse than previously shown. Also, they felt there were some missing lifestyle components to the southern part of the County that would be well-suited on a site of this nature. The site was broken into two components – north and south. They broke the buildings into a variety of scales which would allow the client to have flexibility in the marketplace. He said this plan now addresses some of the concerns expressed by the Board previously.

Mr. Eisen said the Bent Creek Road is the connector road from Fifth Street onto the site. There is a significant rock outcropping there so they created a traffic circle allowing traffic to go both to the north and to the south. A flexible block or modularization was created by breaking down blocks by square footages and parking requirements. The applicant introduced some gateway buildings at certain features throughout the site to create some diversity of retail product type to bring more creativity to the site plan. The applicant also tried to address creating a main street type of lifestyle where there is two-sided retail with a diversity of large format anchors, some junior anchors and in-line and smaller retailers. There are also additional potential buildings if the plan calls for that.

Mr. Eisen said the hierarchy here is large format down to junior anchors down to in-line down to more pedestrian-scaled retailers. They want an environment where there is clustering of uses around public open spaces. They want the ability to capture people so if there were a clustering of restaurants and there was an outdoor café environment, it would be married to other tenant types. They created enough of that in the plan so there is the ability to make those changes. He showed a comparison of this plan with the previous plan and explained the changes referring to locations on the site plan. They need a diverse plan that will allow them to talk with many different types of tenants in the market.

Mr. Eisen said they looked at pedestrian circulation throughout the site. They believe it is a redundant bike circulator as well. While the blue lines on the site plan may only refer to pedestrians, they think they can also accommodate bikes on those pathways. The yellow lines show secondary line work pedestrian passageways between some of the buildings that bring pedestrians from their parking environment into the main street area. They all network into the primary circulator which circulates all the way around the site from north, south, east and west, and also into the public open space system.

Mr. Eisen said if the market responds favorably, there is a chance to do some potential second-story uses, but parking structures would need to be added because of the density of development. The modulars have all been set up to accommodate above-grade surface structure parking garages, and there is one which is potentially below grade because the grade falls off so much it can be tucked under the building without disturbing the landscape. There are two structures which could accommodate additional density in their location. The modulars work; the garages are all based on 60-foot modulars, so they have made sure it courses out within those modulars. Everything has to be modular at this time because they are not yet talking with tenants. They tried to include flexibility in the plan to allow that to happen.

Mr. Rooker said the below-grade parking shown as an alternative in the southeast corner of the property would have to be built during construction of the building. Mr. Eisen said that is correct.

Mr. Rooker asked if that is the intent. Mr. Eisen said they looked at as many alternatives as possible to be prepared for the ultimate tenants.

Mr. Eisen said they have given the Board visualization of projects. The applicant wants to create visual termination points along the pedestrian streets. Having a nice visual terminus would be a good way to create an envelope where people feel safe and secure. In some of the corner elements, the applicant would put in a lot of detail as to finishing and starting buildings to create layers and three-dimensionality beyond simple one-story buildings. They can use some of the volume required because retailers like to have decent ceiling heights; it is hard to make a storefront 20-feet tall. They want to break down the massing as much as possible. He noted what potential retailers, café zones, and sidewalks up against storefronts could look like.

Mr. Eisen pointed out what the backs of the buildings would look like. Service areas would be tucked in tightly, but many patrons would also be parking behind the buildings. There could be a variety of tenant types. He showed a rendering of what a grocery store might look like. They did a massing of the site, and although what he is showing is not one hundred percent architecture at this time, it shows the view looking into the site and the major gateway street he just showed. He noted the possible location of parking and a bus stop. He noted the potential materials and scale of building in a pedestrian-friendly environment. There is a lot of emphasis on pedestrian crosswalks. They will be sensitive to tree spacing and pedestrian lighting, building lighting, making sure the foot candles are at an appropriate level but do not create too much of a bright sky. They will work with the principles of dark skies as much as possible and not disturb the surrounding areas because there is a pristine nighttime environment in this location. He continued by showing some of the other renderings they have done.

Mr. Eisen said he would like to address a couple of points raised by the Board at the previous meeting. There were questions about stormwater and rainwater management. They do many sustainable land development practices in his company and have talked about integrating a variety of products that could reduce the amount of runoff, such as extensive roof systems (light weight tray systems on the roof which are sometimes called “green roofs” but the technical term is “an extensive roof”); subterranean cisterns for collecting rainwater to be used for irrigation and potential water features as amenities on the site; bio-swailes within the parking structure to help filter any of the recharge that will go back into the earth and ultimately into the streambed; light levels; types of materials; etc. While the full detail of the architecture has not begun he has been working with Mr. Pine and his staff trying to promote that type of awareness. They seem to be receptive to making that a key component of the project.

Mr. Eisen said in terms of the two-story nature, he tried to address that with the parking garage layout. It will actually depend on market conditions. If there is the demand, they have the ability to build up to an additional story; the footprint exists and the infrastructure is there. There would be no need to change the road systems or the blocks. There are modulars and proportions that could fit to accommodate additional density should the market so warrant. As to bikes and pedestrians, he thinks there is some redundancy on the plan. As to the pedestrian connection to Willoughby, they showed a line for it on the plan previously, but they also tried to avoid messing with the watershed. They tried to avoid disturbance around that as much as possible, but if it is something the adjacent community and municipality think is of critical importance, you could come up with a suspended bridge system which minimally affects the site, but it is an expensive proposition. However, it is something that could be considered and integrated into the circulation plan.

Mr. Slutzky said it is refreshing to hear the discourse between Mr. Eisen and his client about green roofs, bio-filtration in the parking lots, and rain harvesting, but he would not want to have that conversation and then be presented with a bunch of proffers that are silent on that, the project is built and nothing actually manifests itself in the finished product. It is not an absurdity to want some proffers that address those items. Mr. Eisen has already identified things which can be accomplished and the degree to which that can happen. He asked if other Board members feel the same about this question. He is not suggesting the intent is to obfuscate but he would want to make sure the applicant has "peeled back the onion" on these challenges enough to know that "x", "y" and "z" can be done.

Mr. Eisen said out of the list Mr. Slutzky gave, the applicant has not gotten into details at this stage in the process. They know the best practices and hope they can implement the ones that make the best sense for the site including impervious surfaces and figuring out ways to recharge the earth.

Mr. Slutzky said in terms of mechanics, one of the challenges of allowing more flexibility with the site plan is that it is harder for the applicant to commit to some of the green nuances. There may be ways to put in benchmarks with bio-filtration in the parking lot to which they are obligated.

Mr. Rooker said he thinks that when this petition comes back to the Board for approval there should be proffers with some specificity and some minimal undertaking with respect to those items. Obviously the applicant has an interest in doing something on this site that is environmentally sensitive. But, the Board has to recognize that the applicant could sell the property and only the proffers go with the sale; and none of this discussion would be binding on the property. He thinks that would help the Board when making its decision on this rezoning request.

Mr. Slutzky said he finds the discussion part of this refreshing.

Ms. Thomas said the Board does not want to be told that green roofs were a great idea but none of the buildings were built with sufficient strength to actually hold a green roof.

Mr. Eisen said he faces this everyday, but he has a client here who is committed to implementing and making these practices work on the site.

Mr. Rooker said that some of the things mentioned may be found to not be practical. If that is the case, the Board should be so informed. He does not want a development approved based on some picture the Board has in its mind of the green aspects of the project.

Ms. Mallek asked if either the big box or the larger section closer to I-64 might be multi-story buildings. Mr. Eisen said that condition is found in urban and much denser environments than those in Albemarle County. It all has to do with sales volumes. They have talked with tenants and they tried to influence them, but this market does not have the volume and density necessary to warrant many second-story single tenants. There could be second stories in that area, but he cannot say whether they would be one tenant or multiple tenants. That would be determined at the time of marketing and leasing the project.

Mr. Dorrier asked that Mr. Eisen point out the park and ride area on the map. Mr. Eisen pointed out a location for a bus stop.

Mr. Dorrier asked how many cars the lot would hold. Mr. Eisen said that is still being worked on at this time.

Ms. Thomas said the proffers say there would be a minimum of 12.

Ms. Mallek asked the phases anticipated for the project; in other words, construction of the smaller stores versus the larger stores. Mr. Eisen said the goal is to build the project in its entirety at the same time if possible. That makes more sense because there are economies of scale and practicalities. There could be an occasional pad site coming in a later phase. A believable environment has to be built in order to convince the market this project is authentic. There will be some traditional planning practices, as well as some lifestyle principles in this plan. They need to deliver as much of the gross square footage as possible.

Mr. Rooker said there is no phasing requirement mentioned. Personally, he would be concerned if the south end of the project was built out and that was it. The County could end up with about 200,000 square feet on that side; two big boxes and a parking lot to accommodate them. Mr. Eisen said that is not their intention or their goal. He said from a strategic perspective having the big boxes is what attracts the smaller in-line tenants. The big boxes do a lot of advertising to bring people into their stores. The smaller

in-line tenants and dining facilities are needed in the market today. The applicant knows the co-tenants want to be associated to the anchor.

Mr. Rooker asked if something addressing that question could be included in the proffers. Mr. Eisen said no one can dictate the market.

Mr. Rooker said Mr. Eisen has said they do not want to deliver an incomplete market. It would make no sense to build the south side of this project without building the north side since the north side tenants really pay the freight because of the per square foot charges for the anchor. If it is good economics, it should not be a problem building those economics into the proffers in some way.

Mr. Slutzky said if there were a store such as Target, they would have a symbiosis with the smaller tenants. If the anchor were a Lowe's Store, it might not have so much of a draw on the others. If someone was willing to sign up for a big box, it might not result in a stimulus for the rest of the project to be built. That is his concern.

Mr. Rooker said in the Pantops Shopping Center all of the spaces were built at one time, but some spaces were not leased for some period of time. His worst nightmare is that this project would end up with two big boxes and that's it.

Mr. Pine said he wanted to underline the commitment of both The Bond Company and their local partners, Hunter Craig and Corian Capshaw, to building a project that all can be proud of. People are not coming in from out-of-town who would sell it and then be gone. These people are part of the fabric of this community. He said there is no second person with the expertise that Mr. Eisen has for this type of sustainable development; he is the national leader in this type of development. That is why they are working closely with him. The Bond Company is as carbon neutral as a business. All of their projects are sustainable. The Bond Company has a sustainable fund which they partner with Spencer Abraham, the former Secretary of Energy.

Mr. Pine said they are not casual visitors to this concept. They are committed to it and are comfortable proffering the things which have been talked about. The technical aspects of rainwater harvesting and other things that can be done to mitigate that is something they must work on. It is very detailed and they are comfortable proffering to it, but there are mechanics and science involved in coming up with what they can actually deliver. They want to be sure they can deliver what they promise.

Mr. Slutzky said the Board has demonstrated a willingness to absorb some benchmarks as opposed to firm commitments applicable to a particular building, but what about the phasing of the entire project.

Mr. Pine said there is no phasing. The site costs for this project are so overwhelming they cannot do the project with just two anchors. They are comfortable proffering that it will be built as one phase. He said there might be a pad here or a pad there, but from a conceptual point they are completely fine with that. As to the mechanics of the rainwater harvesting, they will get together after this meeting and try to come up with something they can submit immediately so this request can be on an agenda in February.

Ms. Thomas said she asked a question earlier about public water and sewer capacity.

Mr. Eisen said he will ask Mr. Frank Cox to respond to that question.

Mr. Cox said he thinks Mr. Graham is probably the one in the room who is best suited to answer that question. They hope there will be water and sewer available, and assume that is why they pay taxes.

Ms. Thomas said the costs of water and sewer service are not paid from anyone's taxes.

Mr. Graham said with respect to sewer service, it is the same Rivanna Water & Sewer Authority sewer trunk that was seen with the Biscuit Run petition. The results of the interceptor study are still not available so capacity is not known.

Mr. Rooker said before the applicant can obtain occupancy permits, there must be an agreement with the Albemarle County Service Authority as to how they will hook to the public system.

Mr. Graham said that is correct. With the type of development they have proposed, before final site plans are approved, they have to obtain from RWSA an indication that capacity is available to serve this development. Building permits cannot be issued until there is a demonstration that there is adequate capacity. When RWSA finishes the Moores Creek interceptor study, they will have that information and be able to predict closely the available capacity.

Mr. Slutzky said on Proffer No. 12 related to transit, unlike previous proffers where there was a 20-cent per square foot charge for the commercial tenants and the proffers adjusted over time, this proffer does not adjust over time. That means that in 20 years there is no recognition of inflation, so it will be a declining contribution to the operating budget of the transit system. It probably should be in conformity with previous proffers.

Mr. Rooker said there is some standard language for that proffer.

Mr. Pine said they view the road connector from Avon Street to Fifth Street as a proffer. It is a \$5.0 to \$6.0 million road connection they view as a public benefit. They will put in an escalator for the inflation on the 20 cents, but he thought part of the concept for that was to support them as the ridership grew, not to be an ongoing source of funding for transit. They are fine doing what Mr. Slutzky is asking, but it is a little counter to the question of supporting it as the ridership develops. He said 20 cents over a five-year period would serve that purpose. At some point in time, it should decline in value. He will not quibble with that but it does seem counter to the intent of the proffer.

Mr. Slutzky said that if over time there is expanded transit ridership which reduces the need for parking and potentially frees up space for some additional commercial opportunities, he thinks that becomes a windfall. Also, as transit ridership increases over time, there will be more people coming into the center in addition to what parking can accommodate. If the applicant does not mind doing it, it would be in conformance with what has been approved in the past.

Mr. Rooker said he did not see a five-year sunset in Proffer No. 12.

Mr. Slutzky said he would not want there to be one.

Mr. Rooker asked if anyone had the traffic generation numbers. He said there was mention of a VDOT letter, and the only one he sees is dated February 26, 2007. He asked if that is the one Mr. Cox mentioned.

Mr. Blaine said there was a letter in June of 2007. There was still some question about offsite road improvements. In an E-mail dated July 10 (Attachment "E" to the staff's report of July 24, 2007), Mr. DeNunzio reported to Ms. Grant "I have reviewed the above proffer statement and all previous comments look to be adequately addressed. I have no further comments." That was very much a part of the Planning Commission's work session.

Mr. Cilimberg said that over a year and a half the Planning Commission had several work sessions so there were several transmittals in staff reports. They found one from the Cox Company talking about traffic generation which based on their approach was 13,214 trips generated as compared to the potential of 16,248 trips using some standard VDOT approaches. He said VDOT ultimately accepted the Cox Company's traffic study which led to the identification of what facilities should be proffered. That went through a discussion with the Commission and ultimately that led to VDOT accepting the proffers the Board sees today.

Mr. Rooker said VDOT does not ultimately determine the proffers for transportation. The Board has often worked out proffers with developers which differ from what VDOT recommended. His concern is with the interchange at I-64 and Fifth Street. He is worried about the current status of that interchange with respect to capacity during rush hours; there are several planned improvements to deal with capacity issues. Also, what would the impact of this development be on that interchange in terms of it being over capacity at an "F" level of service? There was some discussion that Bent Creek Parkway would actually remove traffic that otherwise would have been on that interchange. He would like for staff to opine as to whether that is the case and if not, how this intersection will be impacted by the additional traffic from this development.

Mr. Slutzky said he remembers that at the last work session on this petition Mr. Rooker brought this up and several Board members agreed it was important. He thought the Board was to get a report from the applicant addressing that question.

Mr. Blaine said the applicant's response is that the traffic generation figures reflected in the traffic report do not warrant improvements at that interchange. There is some mitigation because of the Bent Creek Parkway. He said this same question was encountered with Biscuit Run. Even if the 20-year build-out was applied with Biscuit Run, which has a two and a half escalation of the background traffic, it was marginal as to whether there would be improvements. They worked out proffers that included cash contributions in Biscuit Run. It was a negotiated compromise, but that was looking at a build-out over 20 years, and all the escalation of background traffic before that became a point of issue. Contrasting that with a center that will be built in 24 months will give nearly that amount of background traffic.

Mr. Rooker said he understands that but wants to understand how the day this center opens it impacts the Fifth Street/I-64 interchange. He is assuming the Bent Creek Parkway is open at that same time so it might reduce significantly the impact on the interchange, but the Board has nothing in its information to make that determination. Apparently there were a number of discussions with staff concerning the traffic impact – between 12,000 and 15,000 vtpd is the number that can be expected. The Board does not know how many of those vehicles will be at that interchange at the same time and how that will affect the level of service there.

Mr. Slutzky said the Bent Creek Parkway may attract some new traffic from Avon Street over to I-64 going to the University.

Mr. Blaine said the applicant needs to address that question. He said VDOT has been the consultant to the County in road improvements and its watchdog. It is not hard to convince VDOT of the need for road improvements as long as someone else is paying for them. They did not recommend this improvement.

Mr. Rooker said there may be good reasons they did not make that recommendation, but he would like to see something other than just a one-line E-mail.

Mr. Mike Fenner, Cox Company, said they developed the traffic impact analysis, two different iterations and an addendum in consultation with VDOT. He said they counted each of the off-ramps on the interstate and allowed for background traffic, then distributed their trips through the a.m. and p.m. hours through the intersections. The level of service (LOS) capacity was acceptable to VDOT. It was LOS "C" for each movement.

Mr. Slutzky said having that information to support the one line conclusion would be helpful for him.

Mr. Fenner said the Bent Creek connector road was not analyzed in terms of it adding, subtracting or impacting the interchange. They just wanted to be sure the interchange functioned correctly at full build-out and they found that it did.

Mr. Rooker said he assumed the traffic model included the Bent Creek Parkway being in place. He would like to have that information soon. Mr. Fenner said staff had that information because it went through the longer Planning Commission process.

Ms. Thomas said she has a question about the bus. When this was discussed at the earlier meeting, the bus route did not go from Avon Street to Fifth Street; it did not go all the way through the center. She asked if the road will be built so that it can go all the way through. Mr. Blaine said "yes."

Ms. Thomas said the Board has been reminded that this project has been discussed for a long time by several different bodies. She wants to be sure none of that work was lost in what is before the Board today. She knows there was a concern about the backs of the buildings being seen by those traveling along I-64, there were to be tree preservation plans, and there has been a lot of conversation about things the Board is not discussing today. She just wants to be sure none of that has been dropped off in the proffers and the plan before the Board today.

Mr. Cilimberg said there are proffers that still need to be completed, but that is still on staff's radar. In its last report to the Board, staff noted that as an outstanding issue from the Planning Commission's meeting that needed to be addressed through the proffers.

Ms. Thomas said she wanted to be sure there was nothing else everybody had agonized over and agreed to as part of getting the plan to the Board – she hopes nothing is being overlooked. Mr. Cilimberg said this work session was set up to focus on the design elements the Board expressed an interest in at the last work session.

Ms. Thomas said the next time the Board sees this petition it will be at a public hearing. Mr. Cilimberg said staff is still following up on all of the other points raised in the report that were not about design *per se*, in order to get those items addressed through the proffers. Staff has not mentioned today all of the other particulars that need to be fixed and finished.

Mr. Slutzky asked what happens next. If the Board has provided significant input for the applicant to digest, where does this go from here?

Mr. Blaine said the applicant would like to go back and address in the proffers the way the Board wants them to provide information, such as on transportation. He has a short list – he thinks staff is the recorder of that list. They need to go back and look at the road proffer and make sure to address the legalities. There is Mr. Slutzky's concern that the center might open and then there is an unforeseen event related to the old landfill. They need to address an escalator in the transit proffer, they need to look at the pedestrian access combination plan and proffer and make sure there will be bike accessibility in the primary areas. His clients have determined that in the combination of LEED proffer and the performance-based proffer (which was borne of the Biscuit Run proffer where they have to maintain a certain percentage of water quality), they could say they will implement a combination of those techniques that Mr. Eisen described including the green roof – they want to go back and design it and not "box themselves in." They do not want to be in conflict with their proffers which say they have to meet LEED certification, have to meet the 80 percent (and the County's Engineering Department not being as versed in the guidelines as their consultants can't see that they meet the threshold using these techniques, so they are double engineering). They want to be sure these engineering techniques will achieve the performance they have also proffered. He thinks that can be worked out, but there are challenges beyond just the engineering they need to do to meet those guidelines.

Mr. Slutzky said in the case of LEED certification, credits can be obtained for putting a geothermal HVAC system in a building. The same amount of credits can be obtained for putting a certain number of bike racks in front of the building, so LEED certification may or may not result in some of the intended ecological benefits. When describing putting a green roof on as much as feasibly possible, when talking about putting some measure of bio-filtration in the parking lot, or when talking about rain harvesting technologies being introduced, the County is not interested in double engineering. It is interested in benchmarking and proffering commitments in some meaningful amount for that work so the Board is favorably inclined toward the project. LEED should not be relied on to take care of everything. LEED is just the symbolic measure of sustainable behavior. While it is the best measure from a certain vantage point, it will not address what the Board is talking about.

Mr. Blaine said they are prepared to go beyond the LEED certification, and are prepared to proffer to particular techniques. He is not prepared to state a percentage for the roofs today.

Mr. Slutzky said across the project the principle should be reflected.

Mr. Eisen said the ISGBC (Green Building Council) does not have a retail tenant specific guideline yet. LEED was set up for office buildings, but there are other guidelines in the industry. Before LEED, the University of Minnesota was the benchmark, and his firm uses that quite a bit. They can bring this project in because they have had more time to work on it, but he wanted the Board to understand that it is hard to score a project of this nature under the LEED guidelines. They are trying to provide smart, sustainable practices that can be documented and are effective.

Mr. Slutzky said he understands they are going to identify a series of affirmative behaviors they believe they can engineer into this project and will not be constrained to do it in a very specific way. He is suggesting that with benchmarks the Board might be satisfied they can achieve what they are trying to do.

Mr. Blaine said rather than trying to suggest percentages now, they need to work with staff first. Since they began this process, he believes that in every instance they have tried to address the design issues raised by the Board members. Specifically, in a proffer dealing with ARB review of the entire shopping center, where the ARB made recommendations, they called them out in terms of the backs of the buildings. Tonight, the Board saw the street sense approach to this perplexing back of the building problem. It can be done, and in an attractive way. That was the last item on his list.

Mr. Davis said there was one other item concerning phasing.

Mr. Blaine said that is not an issue, they will say it will be built "upon a shovel going into the ground."

Mr. Rooker said he thinks the changes in the plan are very positive.

Mr. Slutzky said if there is no further discussion of this item, he will close this part of the meeting.

Mr. Davis said from the staff's perspective, they need to know when this petition will come back to the Board for its public hearing. It could be held on February 13.

Mr. Cilimberg said information regarding the issues raised by the Board tonight, as well as any Application Plan and development framework plan, must now be submitted by the applicant. This information has to be in a form suitable for staff to use in its final review; staff includes not only Planning, but Zoning, the County Attorney's Office and the County Engineer. Even if the applicant furnished the information tomorrow, staff could not complete its work in time to advertise for a meeting in February.

Mr. Tucker said that either March 12 or March 19 would be an acceptable hearing date. Mr. Blaine agreed.

Ms. Thomas said the Board has asked a lot of questions, but she would like to emphasize what was said at the beginning of the meeting. This plan is a tremendous improvement over what was seen at the last work session. It will be an interesting pedestrian place; people will want to walk down that corridor.

Mr. Cilimberg said staff has plenty of time to make sure that traffic information about the interstate interchange is available for the public hearing.

Agenda Item No. 3. Recess.

At 5:28 p.m., **motion** was offered by Ms. Mallek that the Board go into a closed meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (3) to consider the disposition of publicly-held property.

The motion was **seconded** by Mr. Rooker. 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.

ABSENT: Mr. Boyd.

Agenda Item No. 4. Call to Order. The regular meeting was called to order at 6:05 p.m. by the Vice-Chairman, Mr. Slutzky.

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.

Mr. Rooker **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.

ABSENT: Mr. Boyd.

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

Agenda Item No. 7. From the Board: Matters Not Listed on the Agenda.

Ms. Thomas said that last year the Board held public hearings on items related to the Rural Areas section of the Comprehensive Plan. The public hearing filled the Auditorium with people who spoke about the amendments. The Board did not take any action that night and it does not seem to be good to leave those items just hanging. A month or six weeks ago she asked staff to make some suggestions as to what the Board should do to respond to what it heard at that public hearing. She will now make that request official by offering **motion** that the Board place on its January 23, 2008, agenda for further consideration or action, the following ordinances which were deferred by the Board at the conclusion of their public hearings on October 10, 2007:

1. STA-2007-00002, Subdivision Ordinance amendment, with direction to staff to revise the proposed ordinance to provide that the holding period for a family subdivision will be a four-year holding period before and after the subdivision;
2. ZTA-2007-00003, Zoning Ordinance amendment, with direction to staff to revise the ordinance to delete the provisions changing the critical slopes regulations so the ordinance will now only address safe and convenient access for driveways. In addition, staff is directed to revise proposed Section 4.6.6(d) to provide that the safe and convenient access regulations will apply to existing lots unless there is a finding by the County Engineer that development of the lots for the first single-family dwelling applying those regulations would be impracticable; and
3. WPTA-2007-00001, Water Protection Ordinance amendment, with direction to staff to delete the proposed definition of "rural areas" because it is a term that is not used in the ordinance, and to revise proposed Section 17-321 to eliminate the redundancy in subsections (1), (2) and (3) and to simplify the language, this being a non-substantive revision for the purpose of clarity.

Mr. Rooker **seconded** the motion.

Mr. Dorrier asked if these ordinances envision that there will be a waiver of restrictions for good cause shown.

Ms. Thomas suggested the Board discuss that when it discusses the proposals.

Mr. Slutzky said the motion before the Board is just to have these ordinances placed on an agenda for discussion.

Ms. Thomas said the wording on that is the same wording as that presented at the public hearing.

At this time, 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.

ABSENT: Mr. Boyd.

Mr. Cilimberg said in preparation for next week he wonders if there is anything the Board wants staff to address in its presentation. It is too late for a new staff report.

Mr. Rooker asked that copies of the ordinances be sent to the Board members as soon as possible in final form. From his perspective, just a brief introduction of what is before the Board would be helpful, and then staff should be prepared to answer questions. The Board did spend a huge amount of time on these amendments but it just did not take any action.

Mr. Slutzky stated that the motion that introduced this identified a couple of changes from what the Board considered that night. It might be fair in the introduction to review the new version in front of the Board.

Mr. Dorrier asked if the public would have a chance to register their opinion.

Ms. Thomas said they already have done so.

Mr. Rooker said over the years the Board has many times deferred voting on the night of a public hearing and voted at a later meeting after considering the public opinion. He thinks the Board had a six or seven-hour public hearing and he can't imagine there are any opinions that have not been expressed on both sides. This will not include the critical slopes ordinance which was the one that received the most comments.

Mr. Dorrier said if critical slopes are not being included, can building occur on slopes over 16 percent.

Mr. Slutzky responded that is one of the details the Board will be discussing at that meeting. The Board had a public hearing and now there is a suggestion that a somewhat modified version be returned to the Board for consideration. He said a number of boards of supervisors around the Commonwealth routinely take public input at a public hearing and do not act on that matter until they've had some time to digest the comments, consider them and think about it. Sometimes this Board does not do it that way, more often it makes a decision when the folks are there, but in this instance there was a lot of public input and he thinks a number of the Board members did not feel ready to act that night. He thinks Ms. Thomas's motion reflects some evolved thinking so the ordinances will be brought back and discussed. The Board may or may not decide to act at that time.

Mr. Dorrier stated that Mr. Davis usually approves Board ordinances and he gives it guidance on what's legal or not legal. He asked if Mr. Davis needed a copy of this ordinance to review. Mr. Davis said his office has prepared an ordinance that's reflective of what Ms. Thomas has recommended. That ordinance will be available tomorrow for the Board members to review; his office has reviewed it.

Ms. Thomas said that was pursuant to the request she made about six weeks ago.

Mr. Dorrier said he remembers the issues, but does not remember all the comments. He thinks the Board needs to have a summary of those comments.

Mr. Slutzky said everyone heard the input. He thinks that in the Board's discussion next week each member will probably acknowledge what they took away from the public hearing. After he read the Board's packet of materials he was favorably inclined to vote at the end of that public hearing. But, during the public hearing he heard some things that made him re-think his position a little. The Board had a public hearing, and has now been silent so long the public doesn't know what it is doing. The Board will now move forward and either act or not act when it has this question before it next week.

Mr. Rooker said the Board has heard complaints from people when the Board has lengthy public hearings and goes ahead and acts on a petition at one o'clock in the morning. In this case, there was a lengthy public hearing and the Board didn't act. At some point it is incumbent upon the Board to consider those public comments and then act, otherwise the process could go on forever.

Mr. Dorrier said he would like to have a summary of that public hearing because he thinks a new ordinance is being proposed.

Ms. Thomas said there is no new ordinance. These are the ordinances that were subject to that public hearing.

Mr. Slutzky said there is a long history that led to the proposal that was in front of the Board last October. The Board took hours and hours of public comment and then it stopped. Ms. Thomas is suggesting the Board resolve this once and for all. She has suggested something significant by scaling back the scope of the proposals in deference to the public comments heard. He has not made up his mind for sure, but he agrees with Ms. Thomas that the Board needs to decide what it wants to do. Bringing it in front of the Board again to have further discussion and then potentially acting is what the Board owes the public. He asked Mr. Dorrier if he had any reluctance about getting this resolved.

Mr. Dorrier said he has no reluctance in getting it resolved but would like to know what role Planning Staff should play. He thinks staff needs to be able to point out the differences between this ordinance and the one the Board saw before.

Mr. Slutzky agreed with Mr. Dorrier and said the staff's report should focus on what has changed.

Mr. Dorrier also wondered whether or not the Board's actions are legal.

Mr. Rooker said the County Attorney has said it is legal; these ordinances could have been adopted the night of the public hearing, but the Board didn't take a vote. Concerning family subdivision provisions, the Board could have adopted anything from 15 years to one year. What is being proposed now is four years.

Mr. Dorrier asked if the Board was proposing to downzone the land of people on the mountains.

Mr. Slutzky said the Board is not proposing anything like that. All Board members present today voted in favor of the motion to bring the ordinances back in front of the Board. He said it would be helpful for staff to identify in its report the differences before the Board starts a conversation on the ordinances.

Mr. Rooker said the differences are small and technical.

Ms. Mallek said that last week she mentioned adopting a resolution regarding the coal-fired plant in Wise County. She wondered if any Board members would be willing to discuss it tonight, or at another time.

Mr. Rooker said if Ms. Mallek made a motion he would support it tonight.

Ms. Mallek then offered **motion** that the Board adopt the Wise Energy for Virginia Resolution of Support. She said since the Board members had previously received a copy of the resolution she would not read it into the record in deference to time constraints. Mr. Rooker **seconded** the motion.

Ms. Thomas stated that in deference to the public, the resolution has to do with clean air, health of the economy, tourism, air pollution and Virginia Dominion Power's proposed coal-fired power plant in Wise County that would produce 12.5 thousand tons of hazardous air pollution and so forth. She said Albemarle County finds that under present conditions construction of a coal-fired power plant in Wise County is not in the best interest of its citizens.

Mr. Slutzky said there are at least six bills in front of the United States Senate that seek to address greenhouse gas emissions. A subset of those bills deal with coal plant construction. It is possible that Federal law will impact the viability of coal plants built after the legislation passes; possibly in the next couple of years. The Board would not want this plant to sneak in under the radar and end up dumping tons and tons of CO2 emissions. If this plant had been designed in a way that sought to sequester that carbon it might have been different, but this is not a good plant for the Commonwealth of Virginia so this Board has been asked by some folks to reinforce their "drumbeat" about it.

Mr. Dorrier asked what organization is sponsoring this resolution.

Mr. Slutzky responded that there are many of organizations who have weighed in on this issue.

Mr. Rooker said Ms. Mallek brought this up at the Board's last meeting. She had asked the Board to look at it and the Board didn't act at that time. The Board is now bringing back a resolution that was previously presented to it.

At this time, roll was called on the motion, and it carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Boyd.

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

WISE ENERGY FOR VIRGINIA RESOLUTION OF SUPPORT

WHEREAS, clean air is vital to the health and well-being of all of Virginia's citizens, especially our children and senior citizens;

WHEREAS, the natural beauty of the Chesapeake Bay as well as our mountains and forested landscapes is a source of pride and inspiration to the citizens of Virginia and millions of other Americans who visit our Commonwealth every year;

WHEREAS, the health of our agriculture, forestry, and tourism industries as well as our recreational and commercial fisheries are important to the economy of Virginia;

WHEREAS, air pollution degrades our scenery, harms our health, compromises our commercial and recreational fisheries, and damages our streams, forests and farms;

WHEREAS, Dominion's proposed coal-fired power plant in Wise County would produce at least 12,500 tons (25 million pounds) of hazardous air pollution, including nitrogen oxides, an ingredient of smog; sulfur dioxide, a major cause of acid rain; and carbon monoxide, which can pose serious breathing problems for those with respiratory ailments;

WHEREAS, the proposed coal-fired power plant would exacerbate mountaintop removal coal mining in Southwest Virginia, a practice that permanently destroys mountains, forests and headwater streams — treasured and irreplaceable parts of Virginia's natural heritage that provide clean water to communities, harbor a diversity of plants and animals unequalled in other regions of the United States, and enrich the lives of residents and visitors alike;

WHEREAS, Southwest Virginia already suffers from extensive blasting, flooding and water pollution from mountaintop removal, compromising the economy of the region and residents' health and quality of life;

WHEREAS, the proposed coal-fired power plant in Wise County would emit more than 5.3 million tons of carbon dioxide per year, equal to the entire amount of CO2 reductions contained in the Governor's proposal to reduce gasoline usage by 10 percent;

WHEREAS, Virginia is exceptionally vulnerable to global warming. Over 3,300 miles of tidal shoreline is at risk due to sea level rise; our agricultural sector will likely be impacted by shifting seasons and weather patterns; increased heat will exacerbate urban heat-related illness and death by as much as 50 percent, and more;

WHEREAS, Virginia has already contributed its fair share to global warming, with emissions having risen *34 percent between 1990 and 2004, a rate nearly twice the national average*;

WHEREAS, Congress is considering several bills, including the "Warner-Lieberman Act" proposed by Senator John Warner and supported by Senator Jim Webb, to reduce U.S. emissions of global warming pollution;

WHEREAS, federal climate change legislation is likely to be enacted in the near future, and Dominion Virginia Power has failed to consider *any* of the additional costs of greenhouse gas regulation in preparing the economic analyses of its Wise County Power Plant.

WHEREAS, the Attorney General of New York has subpoenaed Dominion Virginia Power over its failure to account for its global warming pollution, noting his concern that "Dominion has not adequately disclosed" to shareholders the "increased financial, regulatory, and litigation risks" associated with building the Wise County coal-fired power plant without any plan to capture and sequester the plant's carbon dioxide emissions;

WHEREAS, Dominion Virginia Power has also failed to account for the rapidly escalating costs of power plant construction that will be passed on to Virginia ratepayers; as stated in a June 2007 report by Standard & Poor's, "capital costs of new [power plant] generation ... have risen substantially over the past three years.";

WHEREAS Governor Kaine's Energy Plan recommends that "Developers of conventional electric generation capacity that would serve and be paid for by Virginia electric customers should be required to show, as part of an application for a Certificate of Public Convenience and Necessity, that the conventional generation is needed after all cost-effective energy-efficiency and conservation actions have been implemented, and that the conventional generation is less expensive than new renewable generation capacity;"

WHEREAS, according to a recently released report of The American Council for an Energy Efficient Economy, Virginia ranks at the bottom of all states, with no spending at all, in utility investments in energy efficiency, per capita; and

WHEREAS, building a new coal-fired power plant costs ratepayers two to five times as much as investments in energy efficiency, causing the Western States Governors' Association to observe that "improving end-use efficiency is the least expensive electricity resource;"

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Albemarle County, Virginia, finds that under present conditions, the construction of a coal-fired power plant in Wise County is not in the best interest of our citizens; and

FURTHER RESOLVED, that the Board of Supervisors respectfully urge the Governor and the General Assembly to join in aggressively promoting the implementation of cost-effective energy efficiency, conservation, and demand-side management programs *before* any coal-fired power plant is built.

Agenda Item No. 8. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Ms. Carmen Rodriguez stated, through an interpreter, that she entered this country legally and has lived in Albemarle County for eight years and is a parishioner at the Church of the Incarnation. She is representing IMPACT tonight. IMPACT works to improve access to rental living spaces. She and her son live in a trailer on Rio Road West. They both work but do not make enough money to rent an apartment which would be more hygienic and larger. The trailers where they live are old and some of them have cockroaches and ants. It is very cold in the winter and warm in the summer because the insulation is not sufficient. She would like to have a more adequate place to live. Her son works in a restaurant and she works as a nanny. These are necessary jobs in this community, but if the community wants to take advantage of their labor then it must offer adequate housing. Her neighbors have the same difficulties she does. She knows there are people, Latino, black or white who suffer with the same problem. There are many children in her neighborhood and it is not an adequate situation for them. She asked that the Board support the work of IMPACT and not forget about people like herself and her son. (Mr. Slutzky noted that a number of people in the audience had stood to show support for her comments.)

Ms. Kim Wilkins said she is also with IMPACT. In the past months representatives of IMPACT have come to Board meetings and shared some of the struggles of those directly affected by the affordable housing crisis in the area. She wants to give the Board another perspective. She is not directly affected by the affordable housing crisis because her family lives in what local realtors call a prestigious community on Pantops Mountain. Her family does not worry about paying the mortgage on time, about going to the doctor when it is necessary, putting food on the table, or sending her son to college. It could be said that her family is living the good life in Albemarle County, but at what cost? Research by IMPACT shows the cost is high. From the poverty report published in November, IMPACT learned that about 20 percent of Albemarle County citizens live below the self-sufficiency standard and 20 percent of children ages five and under live below this standard. From Albemarle County Schools IMPACT learned that 320 children became homeless in the school year 2006-2007. From the TJPDC State of Housing Report, IMPACT learned that there is a deficiency of almost 4,000 units for households earning less than 30 percent of the AMI. The bottom line is that IMPACT has learned that these citizens are struggling to meet their basic needs of food, health and shelter. It is known that when such needs are not met, the stress on the individual, the family and the community has repercussions that are costly. IMPACT knows the affordable housing gap will only get worse. IMPACT strongly encourages the Board to take a lead in addressing the affordable housing crisis in this community by earmarking moneys from specific funding streams for affordable housing in this next budget cycle in order to address the crisis for families earning less than 30 percent of the AMI. IMPACT would like to see the Board take proactive steps to show that

solving this crisis is a priority and consistent with the Board's mission to enhance the well-being and quality of life for all citizens through the provision of the highest level of public service consistent with the prudent use of public funds.

Mr. Neil Williamson said in regard to the rural area protection plan being discussed, based on his calculations, the Board has provided the public only two business days to interact with County staff. He knows this Board generally goes above and beyond any legal requirement to make certain the public has the opportunity to view any legislation it is considering. He asked that the Board consider setting the date to February to allow the public to understand exactly what's going on since there are changes being proposed, as Mr. Slutzky said, which are perhaps less draconian, perhaps less stringent. He thinks it is important for the public to know the exact proposal, and two business days is a challenge for them to get the information they may wish to get. He asked that the Board review many of the facts that came out in the public hearing, one of which he found astounding regarding the scope of the issue of family division. He would welcome the opportunity to have staff verify or deny what was presented by the public; that particular presentation caused him to question the nature of the problem. He knows the Board acted and set a date, but he would ask that it reconsider and look for a February date to further engage the public.

Mr. Slutzky asked if any Board member would like to comment on what has been said by the public tonight.

Ms. Thomas said all of the people from IMPACT have left, but there were two corrections to that poverty report that the Board should somehow get to.

Mr. Rooker said he saw a copy of that at the IMPACT office. He met with representatives of IMPACT only a few days before the E-mail came, so he thought it was wise to forward that on to the Board members.

Mr. Dorrier said Mr. Williamson made a good point in his last comment. He thinks that whatever the outcome on the ordinances, it would be more acceptable to the public if the public felt they had an opportunity to at least study the ordinances before they are passed. If the Board decides at the next meeting that it needs more time, the Board could defer again, but he thinks building good relations with the public is important and the Board needs to make sure the public has time to look at the ordinances.

Mr. Slutzky agreed with Mr. Dorrier but said that was the purpose of the whole process that led up to the seven hour public hearing. The Board may decide during its discussion and deliberations that it will not act at that time. However, he thinks the Board needs to move forward and see where it stands in relation to these ordinances.

Mr. Rooker said they will be on the agenda next week and if the Board decides at that time it needs to defer for another week that can be done.

Mr. Dorrier asked if the public will be allowed to speak.

Mr. Slutzky said the public spoke for seven hours at the public hearing. The ordinances have been adjusted to reflect a lot of the public input. If the Board had acted that night, which is the Board's traditional way of taking action, the Board would have reacted and might well have adopted modified versions precisely identical to what the Board will be considering at the next meeting. The Board just happened to take some time to absorb the public's input and decided as a Board not to act that night after a very long and grueling session so it would be clear-headed and open-minded when it actually brought up the ordinances again. That is what next week's meeting is supposed to do.

Agenda Item No. 9. **Public Hearing:** ZMA-2007-007, McCauley Crossing.

Proposal: Rezone 3.198 acres from R-1 zoning district which allows residential uses and 1 unit per acre to Planned Residential (PRD) zoning district which allows residential (3 - 34 units/acre) mixed with commercial and industrial uses for a total of 30 units.

Proffers: Yes.

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

Entrance Corridor: No.

Location: 3226 Proffit Rd, Earlysville, VA, property on the south side of Proffit Rd approximately 1,000 feet east of US 29 in the Hollymead Community.

Tax Map/Parcel: 32-35.

Magisterial District: Rivanna.

(Notice of this public hearing was advertised in the Daily Progress on December 31, 2007, and January 7, 2008.) **(The applicant has requested deferral of the public hearing until February 13, 2008.)**

Mr. Slutzky said if any member of the public is present tonight to speak about this petition, they should identify themselves at this time, because the Board can allow them to speak tonight, or they can wait until the item is before the Board on the 13th.

No one from the public was present to speak to this item.

Mr. Slutzky asked the process at this time. Mr. Davis said a motion is needed to defer this petition to February 13.

Motion was then offered by Mr. Rooker, **seconded** by Ms. Mallek, to defer **ZMA-2007-007** to February 13, 2008, at the applicant's request.

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.

ABSENT: Mr. Boyd.

Agenda Item No. 10. **Public Hearing:** ZMA-2007-004, Oakleigh Farm.

Proposal: Rezone 8.82 acres from R-6 zoning district which allows residential uses and 6 units/acre to NMD - Neighborhood Model zoning district which allows residential mixed with commercial, service and industrial uses and 3 - 34 units/acre. Proposed number of units is 109 for a density of 12.3 units/acre.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Urban Density Residential – (residential 6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses. Neighborhood 1.

Entrance Corridor: Yes.

Location: 547 Rio Rd West (Rt 631) directly across the street from Woodburn Rd (Rt 659).

Tax Map/Parcel: 45:26A.

Magisterial District: Rio.

(Notice of this public hearing was advertised in the Daily Progress on December 3, 2007, and January 7, 2008.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request was before the Board a month ago and was deferred. It is for a project on Rio Road adjacent to its intersection with Woodburn Road. The request is to rezone nearly nine acres from R-6 Residential to NMD - Neighborhood Model District. The project would provide 109 dwelling units and up to 28,800 square feet of commercial space. He made a PowerPoint presentation of the Application Plan which illustrates the details of building locations, parking, tree areas and open space. There were Planning Commission concerns and other outstanding issues staff noted in its report provided to the Board in December. The Board indicated that those issues should be addressed; the applicant indicated they would do so in the time between then and this public hearing.

Mr. Cilimberg said those issues included impacts on public facilities and how they would be addressed. There is now a proffer concerning that issue consistent with the County's proffer policy. The provision of a buffer along the common property line with Heritage Hall had not been provided at that time. He pointed out the area in question and said the applicant contacted Heritage Hall, but there has been no response; they have not indicated any interest in a buffer. The area at the rear of the Heritage Hall property is wooded at this time; it is not developed. In the future development of Heritage Hall, they could address preservation of some of that area if they feel it is important. There has been no response to questions regarding the possibility of a buffer on this property.

Mr. Cilimberg said the lack of affordable housing units in the project was of concern to the Planning Commission. A proffer acceptable to the Housing Director providing 7.5 percent of those units on site and cash-in-lieu of units for 7.5 percent of the affordable units has been provided. There was also a concern regarding the timing of payment for affordable units. A proffer for payment for each market rate unit prior to issuance of a building permit for any building or block of townhouses containing the market rate units has been provided. He said the Housing Director feels this is an acceptable set of proffers.

Mr. Cilimberg said provision of an easement to the adjoining property has now been guaranteed through an agreement executed between property owners. There was a need to correct wording problems in the proffers and to correct the Code of Development. That has been provided. Tonight he has a new set of proffers that address one more suggestion of the County Attorney's Office. It clarifies how to handle the clause for the escalation of the cash proffer amount. He handed a copy of those proffers to the Board members. He said there are no other changes; the additional language was provided at the request of the County Attorney.

Mr. Cilimberg said ARB comments needed to be addressed, particularly as to tree preservation. There is a proffer to specifically address the ARB's concern. He said staff believes the applicant has addressed all outstanding issues with the possible exception of the provision of affordable units. The Housing Director finds the applicant's proffer for cash-in-lieu of units for half of the units to be acceptable. The Planning Commission recommended that all of the affordable units be physically provided within the project, so there is a difference between what the Commission recommended and what has been proffered. If the Board finds the applicant's proffer regarding the affordable units acceptable, staff recommends approval of the rezoning request inclusive of the Application Plan dated April 30, 2007, revised December 13, 2007, and the Code of Development dated December 13, 2007, and the proffers dated January 16, 2008. He then offered to answer questions.

Mr. Slutzky asked if any Board members had a question for staff. There being none, he asked the applicant to speak.

Ms. Valerie Long said she represents the applicant, Oakleigh Albemarle, LLC. Several members of their rezoning team are also present tonight, particularly Mr. George Ray who is one of the principals of the ownership entity, as well as several representatives of Terra Concepts which is the land planning, engineering and design firm which worked on this project throughout the process. She made a PowerPoint presentation of the Application Plan and said they have addressed all of the concerns of the Planning Commission. There was one issue on which there was a point of difference vis-à-vis the Commission; the difference had to do with the way the affordable housing requirement is being handled. The applicant is providing one-half of the affordable housing units onsite and paying cash for the remainder of those units at the standard rate of \$19,100 per unit.

Mr. Slutzky said in relation to the \$19,100 figure, there was an adjustment built into the Proffer Policy and he wonders when it takes effect.

Mr. Rooker said there is a cost-of-living adjustment in the policy.

Mr. Slutzky said he thinks that same number has been used for a long time.

Mr. Rooker said the number was lower at one time. Mr. Cilimberg said that originally a figure of around \$16,000 was being used. That was adjusted after refiguring what down payment assistance needed to be to meet affordable housing needs and that is when the \$19,100 became the new standard.

Mr. Slutzky said that number is not designed in the policy to change until the Board decides to change it. Mr. Davis said that is correct. There is no escalator attached to that number. In the cash proffers there is an escalator, but it is assumed that those units will either be built or replaced in a short amount of time so the escalator would not amount to a significant amount of extra dollars.

Ms. Long said the proffers now fully comply with the new cash proffer policy. They have incorporated a few additional comments from the Architectural Review Board staff with regard to the bonding of the trees. When they were before the Board in December, the plan showed that they are preserving 39 trees on the property. They are bonding 29 of those trees, proffering a total amount of \$29,000 in cash that can be used as necessary. It is not \$1000 per tree. If one significant tree is lost, the County could call entire the bond at its discretion. They worked with County staff to make certain the length of the bond started at an appropriate time. It starts at a five-year period and at the end of all the work on the site. They are excited about the measures being taken to preserve all of the trees because the trees are the focal point and the most important amenity of the project.

Ms. Long said that at the Board's request last month, they added a proffer to implement enhanced erosion and sediment control measures during the construction process. It is the same proffer that has been used in other projects such as Biscuit Run and Hollymead Towncenter. She said Mr. Cilimberg mentioned the issue with Heritage Hall. They have received no answer from them and take their silence to mean they do not have an interest at this time in a buffer. They will continue to keep the lines of communication open and work with them.

Ms. Long said she has already spoken about affordable housing and hopes the Board will be supportive of the proposal. They worked hard to come up with language to provide enough flexibility to do at least half the units. There is a possibility that there could be more units. For any of the units not provided on the site, they will pay cash in the standard amount.

Ms. Thomas asked what happens if the tree preservation bond starts after the last certificate of occupancy has been issued but trees are killed during the construction process. Ms. Long said they hope that will not happen. They have a very stringent tree protection plan that is part of the Code of Development which includes among other things having a certified arborist onsite before, during and after construction to ensure that every step possible to protect those trees is implemented. If in the unlikely event a tree is lost during construction, they would be happy to apply the bond at that point.

Ms. Thomas said the bond does not take effect until after construction of the project is finished. Ms. Long said it is their intent that the bond be available for use for replacement of any trees that are lost at any time through the end of that period. It was not their intent to limit it and not have it apply. They had input from a variety of different people on how that proffer should read. The formula was a little different at the beginning and then it was suggested that it start at a different time and be longer.

Mr. Rooker said it probably is unlikely that a tree would be completely dead; trees take a while to die. There are very few trees that die within a thirty-day period.

Ms. Thomas said that oak trees are well-known to just die all at once.

Mr. Rooker said they fall over, but he has never seen one die that did not do it over a period of time. However, they can just fall over when they look perfectly healthy. The root balls just come out of the ground.

Ms. Long said that explains how they arrived at the language proffered. Originally there was a two-year period but ARB staff pointed out that it is possible that any damage the trees sustained during construction would not be visible or show up for several years. That is why ARB staff wanted them to extend the period. She asked Mr. Mark Keller, the landscape architect on the project, to speak.

Mr. Slutzky interrupted to say Mr. Davis had something to say.

Mr. Davis said at the time the certificate of occupancy is granted for that building, it has to be in compliance with the site plan. The site plan requires all of those trees to be there, so if a tree is not there the County will require as a condition of the site plan that it be replaced prior to issuance of the certificate of occupancy. The gap comes into play after the certificate of occupancy has been issued.

Mr. Cilimberg said the bonding is to insure that when the applicant is off site and not in the construction process anymore there is a way to get the trees replaced. That can be done during the construction process; that is when the County has leverage.

Mr. Davis said he wanted to correct one thing he said earlier about the escalator clause. There is an escalation clause that applies to the affordable housing amount. He forgot that the County now has a standard clause that applies to all cash proffers. The escalator applies to everything. At one point in time, that was not done, but the language was refined so it applies not only to the impact proffers but also the affordable housing proffers. In proffer No. 3, each amount is addressed, so he was in error when he said that earlier.

Mr. Keller said the term of five years was not intended to imply a start date and an ending date of the bond. Whenever it is issued, it will continue for a period of five years. That five-year timeline starts when construction is over. They did not want it to be construed that they will wait until that time to post the bond. The fact that a tree could still be there, but be dead and still standing, makes it important that they post the bond at the start of construction. The five-year term doesn't begin until construction has been completed. That is the intent of the applicant.

Ms. Long said that concludes her remarks. For clarity on the record, the copy of the Application Plan Mr. Cilimberg showed was slightly out of date. She showed an official copy of the Application Plan, which is part of the Code of Development, and said there are a few minor updates which were an improvement to the building footprints at the request of the ARB. She pointed to two areas on the plan and said they aligned an entrance at one point and added additional landscaping at another point in lieu of some parking spaces. She thanked the Board for its support.

Ms. Mallek said she appreciates their preserving the existing older trees as compared to having replacements which take two generations to get back to the current size. She drove to the site today to make sure she knew where the site is located and it is lovely. She is glad the applicant is working so hard to preserve it.

With no further questions for staff or the applicant, Mr. Slutzky opened the public hearing.

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

Mr. Rooker said he has seen at least three different plans for this property. This is by far the best. He is glad to see the changes that were made between the last meeting and this meeting.

Mr. Slutzky said the Board has given the Planning Commission enough feedback so there is not any ambiguity here. He then offered **motion** to approve ZMA-2007-004, Oakleigh Farm, inclusive of the Application Plan dated 04/30/2007, revised 12/13/2007, the Code of Development dated 12/13/2007, and the Proffers dated 01/16/2008.

Ms. Thomas **seconded** the motion. She said she sent a query to Ms. Long asking if there is any possible way the word "farm" could be removed since it is a rather sick joke that developments are named after the thing they destroy. This development actually is going to save the oak trees and, therefore, she thinks it is proper to call it Oak something, but Oakleigh Farm would be a name of something that no longer exists. The Board does not have the power to do that and the response she got back was that the applicant did in fact plan to just use the Oakleigh name.

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

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

(Note: The proffers are set out in full below.)

PROFFER STATEMENT

Date: January 16, 2008
ZMA#: 2007-00004, Oakleigh Farm
Tax Map and Parcel Number: Tax Map 45, Parcel 26A

8.822 acres to be rezoned from R-6 Residential to Neighborhood Model District (NMD) in accord with the General Development Plan entitled "Rezoning Request for Oakleigh Farm," prepared by Terra Concepts, PC, revised through December 13, 2007 (the "General Development Plan")

Oakleigh Albemarle, LLC, a Virginia limited liability company, is the fee simple owner (the "Owner") of Tax Map 45, Parcel 26A (the "Property") which is the subject of the zoning map amendment application #ZMA 2007-00004 known as "Oakleigh Farm." The Applicant for Oakleigh Farm is also Oakleigh Albemarle, LLC. The Oakleigh Farm community is herein referred to as the "Project."

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, Owner hereby voluntary proffers the conditions listed in this Proffer Statement, which shall be applied to the Property if the rezoning is approved by Albemarle County. These conditions are proffered as part of the rezoning and it is acknowledged that the conditions are reasonable.

1. **Affordable Housing.**

A. **15% Affordable Requirement.** The Owner shall provide a mixture of affordable housing units and cash in lieu of affordable housing units equivalent to fifteen percent (15%) of the total residential dwelling units within the Project (the "15% Affordable Requirement"). The affordable housing mixture shall be comprised as follows:

(i) The Owner shall provide affordable housing dwelling units equal to at least seven and one-half percent (7.5%) of the total residential dwelling units within the Project in the form of for-sale or for-lease affordable dwelling units as described in this paragraph 1 (the "Affordable Dwelling Units" or "Affordable Units"). The Affordable Dwelling Units shall be comprised of one or more of the following unit types: single-family attached housing (townhouses or duplexes), condominiums or single family detached units. The Owner or its successor in interest reserves the right to provide the Affordable Dwelling Units in a variety of ways, utilizing the above mentioned unit types alone or any combination.

(ii) In lieu of each additional affordable dwelling unit that would otherwise be required to meet the remainder of the 15% Affordable Requirement for affordable housing within the Project after the Owner has provided the Affordable Dwelling Units referenced in Paragraph 1(A)(i), the Owner shall make a cash contribution to Albemarle County for the affordable housing program in the amount of Nineteen Thousand One Hundred Dollars (\$19,100) for each such unit or any portion thereof (the "Affordable Housing Cash Proffer") such that the number of Affordable Units and the Affordable Housing Cash Proffer equals the 15% Affordable Requirement as described herein. Any unit for which the Affordable Housing Cash Proffer is contributed as provided herein shall count as an Affordable Dwelling Unit for purposes of this Paragraph 1, but as a market rate unit for purposes of Paragraph 2. The Affordable Housing Cash Proffer shall be allocated among the market rate dwelling units, such that the number of affordable dwelling units or any portion thereof that would otherwise be required to meet the requirements of this Paragraph 1A(ii) and the 15% Affordable Requirement is multiplied by the figure of \$19,100, and that product is then divided by the number of market rate dwelling units within the Project. The resulting amount shall then be paid to the County prior to the issuance of a building permit for any building or block of townhouse units within the Project that contain market rate dwelling units, for each market rate dwelling unit within such building or block of townhouse units, until the 15% Affordable Requirement has been satisfied. If the number of market rate units or Affordable Units changes after the first Affordable Housing Cash Proffer is paid, the per unit Affordable Housing Cash Proffer shall be recalculated and adjusted to assure that the 15% Affordable Requirement is satisfied.

(iii) Each subdivision plat and site plan for land within the Project shall designate the lots or units, as applicable, that will, subject to the terms and conditions of this Paragraph 1, be built as Affordable Dwelling Units, and the aggregate number of such lots or units so designated within each subdivision plat and site plan shall constitute a minimum of seven and one-half percent (7.5%) of the lots or units in such subdivision plat or site plan. Notwithstanding the foregoing, however, the Owner may "carry-over" or "bank" credits for Affordable Units in the event previously built buildings within the Project provided more than 15% Affordable Units, or in the event the Owner has paid the Affordable Housing Cash Proffer for an equivalent number of units ("Affordable Credits"). Any such additional Affordable Credits shall be allocated toward the fifteen percent (15%) minimum for the buildings that remain to be built within the Project.

B. **For-Sale Affordable Units.** The for-sale Affordable Dwelling Units shall be affordable to households with incomes up to eighty percent (80%) of the area median family income (the "Affordable Unit Qualifying Income"), such that the housing costs consisting of principal, interest, real estate taxes, and homeowner's insurance (PITI) do not exceed thirty percent (30%) of the Affordable Unit Qualifying Income, provided, however, that in no event shall the selling price of such affordable units be required to be less than the greater of One Hundred Ninety Thousand Four Hundred Dollars (\$190,400) or sixty-five percent (65%) of the applicable Virginia Housing Development Authority (VHDA) maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced below. The Owner or his successor in interest may at its option facilitate the provision of down payment assistance loans to reduce the out-of-pocket cash requirement costs to the homebuyer, such as, but not limited to a second lien Deed of Trust, so that the resultant first mortgage and housing costs remain at or below the parameters described herein. All financial programs or instruments described herein must be acceptable to the primary mortgage lender. Any second lien Deed of Trust executed as part of this paragraph shall be donated to the County of Albemarle or its designee to be used to address affordable housing. For purposes of calculating the price of the Affordable Dwelling Units, the

value of Seller-paid closing costs shall be excluded from the selling price of such Affordable Dwelling Units.

C. For-Lease Affordable Dwelling Units.

(i) The initial net rent for each for-lease Affordable Unit shall not exceed the then-current and applicable maximum net rent as published by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent Affordable Unit may be increased up to three percent (3%). For purposes of this proffer statement, the term "net rent" means that the rent does not include tenant-paid utilities. The requirement that the rents for such for-lease Affordable Units may not exceed the maximum rents established in this paragraph 1C shall apply for a period of ten (10) years following the date the certificate of occupancy is issued by the County for each for-lease Affordable Unit, or until the units are sold as affordable units as defined by the County's Affordable Housing Policy, whichever comes first (the "Affordable Term").

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

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

D. Notification Period; County Cash Option.

(i) Notification Period. All purchasers of the Affordable Dwelling Units shall be approved by the Albemarle County Office of Housing or its designee. The then-current owner/builder shall provide the County or its designee a period of ninety (90) days to identify and pre-qualify an eligible purchaser for the Affordable Unit(s). The ninety (90) day period shall commence upon written notice from the then-current owner/builder that the Unit(s) is within one hundred twenty (120) days of completion and, that on or before the end of such one hundred twenty (120) day period shall be ready for occupancy. If the County or its designee does not provide a qualified purchaser who executes a contract of purchase during this ninety (90) day period, the then-current owner/builder shall have the right to sell or lease the Unit(s) without any restriction on sales or lease price or income of the purchaser(s), provided, however, that any Unit(s) sold or leased without such restriction shall nevertheless be counted toward the number of Affordable Units required to be provided pursuant to the terms of this proffer. The requirements of this proffer shall apply only to the first sale of each of the Affordable Dwelling Units that are purchased. Nothing herein shall preclude the then-current owner/builder from working with the County Housing Department prior to the start of the notification periods described herein in an effort to identify qualifying purchasers for the Affordable Units.

(ii) County Option for Cash In Lieu of Affordable Units. If at any time prior to the County's approval of any preliminary site plan or subdivision plat for the Property which includes one or more for-sale Affordable Dwelling Units, the Housing Office informs the then-current owner/builder in writing that it may not have a qualified purchaser for one or more of the for-sale Affordable Dwelling Units at the time that the then-current owner/builder expects the units to be completed and that the Housing Office will instead accept a cash contribution to the Housing Office to support affordable housing programs in the amount of Nineteen Thousand One Hundred Dollars (\$19,100) in lieu of each affordable unit(s), then the then-current owner/builder shall pay such cash contribution to the County prior to obtaining a certificate of occupancy for the unit(s) that were originally planned to be Affordable Dwelling Units, and the then-current owner/builder shall have the right to sell the Unit(s) without any restriction on sales price or income of the purchaser(s). For the purposes of this proffer, such Affordable Dwelling Units shall be deemed to have been provided when the subsequent owner/builder provides written notice to the Albemarle County Office of Housing or its designee that the Affordable Unit(s) will be available for sale.

E. Inspections. The County shall have the right, upon reasonable notice and subject to all applicable privacy laws, to periodically inspect the records of the Owner or any successors in interest for the purposes of assuring compliance with this Paragraph 1.

2. Cash for Capital Improvements Program. The Owner shall contribute cash to the County in the following amounts for each dwelling unit constructed within the Property that is not an Affordable Dwelling Unit. The cash contributions shall be used to address the fiscal impacts of development on the County's public facilities and infrastructure (i.e., schools, public safety, libraries, parks and transportation) identified in the County's Capital Improvements Program. The

cash contribution shall be paid prior to issuance of a building permit for each unit in the following amounts:

A. Seventeen Thousand Five Hundred Dollars (\$17,500) for each single family detached dwelling unit that is not an Affordable Dwelling Unit.

B. Eleven Thousand Nine Hundred Dollars (\$11,900) for each single family attached dwelling unit that is not an Affordable Dwelling Unit.

C. Twelve Thousand Four Hundred Dollars (\$12,400) for each multi-family dwelling unit that is not an Affordable Dwelling Unit.

D. Zero Dollars (\$0.00) for each Affordable Dwelling Unit.

3. **Annual Adjustment of Cash Proffers.** Beginning January 1, 2008, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Comparative Cost Multiplier, Regional City Average, Southeast Average, Category C: Masonry Bearing Walls issued by Marshall Valuation Service (a/k/a Marshall & Swift) (the "Index") or the most applicable Marshall & Swift index determined by the County if Marshall & Swift ceases publication of the Index identified herein. In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the preceding calendar year, and the denominator of which shall be the Index as of December 1 in the year preceding the calendar year most recently ended. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

4. **Tree Preservation.** The Owner has submitted as part of the Code of Development for Oakleigh Farm a tree protection plan (the "Tree Plan") for thirty-nine (39) trees within the Project, as shown on the Tree Plan, which specifies tree protection methods and procedures, including fertilizing, tree protection fencing and mulching which shall be complied with during and after development of the Project. Prior to the final site plan approval, the Owner shall submit a bond or other form of surety in the total amount of Twenty-Nine Thousand Dollars (\$29,000). The bond or surety shall be submitted to guaranty the replacement of those trees which are numbered 1, 1A, 2, 3, 4, 4A, 5, 6, 7, 8, 9, 10, 14, 16, 17, 19, 20, 21, 22, 24, 25, 27A, 30, 31, 32, 35, 38, 38A and 44D on the Tree Plan (the "Bonded Trees") in the event that any of the Bonded Trees die within a period of five (5) years after issuance of the last residential Certificate of Occupancy within the Project. The bond or other surety shall be in a form acceptable to the County Engineer and the County Attorney.

5. **Pedestrian Easement.** The Homeowners' Declaration of Covenants and Restrictions for the Project shall contain a provision which grants a public right of pedestrian access over all sidewalks within the Project. This right shall be in perpetuity and the Declaration shall name the County of Albemarle, Virginia as a third-party beneficiary with the express right to enforce the provisions of such public right of access.

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

WITNESS the following duly authorized signatures:

Owner:
OAKLEIGH ALBEMARLE, LLC,
A Virginia Limited Liability Company
By: (Signed) George W. Ray, Jr.
Printed Name: George W. Ray, Jr.
Title: Manager

Agenda Item No. 11. **Public Hearing:** ZMA 2007-015, DTG Dickerson Road.

Proposal: Rezone 2.64 acres from Rural Area (RA) zoning district which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) to Light Industrial zoning district which allows industrial, office, and limited commercial uses (no residential use). No residential units are proposed.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Industrial Service -- warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities and residential (6.01-34 units/acre) in the Community of Hollymead.

Entrance Corridor: No.

Location: Approximately 4500 feet north of the intersection with Airport Road (Rt 649) at 4090 Dickerson Rd (Rt 606) on the west side of Dickerson across from Quail Run in the Community of Hollymead.

Tax Map/Parcel: 32-9J1.

Magisterial District: White Hall.

(Notice of this public hearing was advertised in the Daily Progress on December 31, 2007, and January 7, 2008.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request is to rezone this parcel from RA - Rural Area to LI - Light Industrial so the owner can operate a small roofing business. It has been the location the Woodman of the World Life Insurance office. The site is located on Dickerson Road across from Quail Run north of the Airport and near the University's Research Park. The existing building will continue to be utilized. There is an allowance for a small addition to this building in the proffer. However, it is expected that the applicant will use the building with the existing area of parking which is more than what is necessary but which already exists on site. The property lies in an area designated for industrial use in the Comprehensive Plan. It is also anticipated that the Places29 Plan will again identify this area as industrial. It is across from properties that are zoned industrial. Currently, this property and all adjacent parcels are zoned rural area.

Mr. Cilimberg said there are three proffers, one proffer refers to the Application Plan and provisions for some limited expansion, one proffer says the owner would connect to both public water and sewer when they become available within proximity of this property, and one proffers possible uses on the property - it does not include all of the light industrial by-right uses, only some of them. The applicant's request falls under "contractor's office."

Mr. Cilimberg said staff has noted the need for additional light industrially-zoned property to accommodate this type of use. This property is designated industrial service in the Development Area in the Comprehensive Plan although it is zoned Rural Area. It is appropriate in its location near other light industrial districts and the Airport. Staff found no factors unfavorable to the request. The Planning Commission and staff both recommend approval of the rezoning inclusive of the proffers dated 12/10/07.

Mr. Slutzky said if there were no questions for staff at this time, he would ask the applicant to speak.

Mr. Darren Giacalone said he moved to the County at the end of 1999 from the Washington D.C. area. He has been in the roofing business for 27 years. In August of 2000 he started his company. He rents a little space in the City off of Harris Street, but his company has outgrown the space. He has been looking for over three years for a place the company can call home. Nine of his ten employees live in Albemarle County so he would like for the company to be located in the County. He found this property of about three acres in size with beautiful trees and an existing metal building which contains office spaces, a warehouse space, and is perfect for a contractor, near the Airport. His intent is to leave all of the trees, but at some point in the future, he would want to develop around the trees, keeping them intact. His company works on pitched roofs, so he does not have hot tar kettles. Most of the company's materials are shipped to job sites from the distributor so he does not warehouse a lot of stuff. He proposed putting up a wooden fence because he has two dump trucks and two landscape trailers that would be housed at the back of the building. He and his employees arrive at work at seven o'clock and most are gone from the site by eight o'clock. In the building during the day would be two people who answer calls and see customers. The majority of the time he and his employees are out doing roofing. He hopes the Board supports his request.

Mr. Slutzky opened the public hearing at this time. With no one from the public rising to speak, the public hearing was closed, and the matter put before the Board.

Motion was immediately offered by Ms. Mallek to approve **ZMA-2007-015** inclusive of the proffers dated 12/10/2007. Mr. Rooker **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.

ABSENT: Mr. Boyd.

(Note: The proffers are set out in full below.)

PROFFER FORM

Date of Proffer Signature: 12/10/2007

ZMA: 2007-015

Tax Map 32, Parcel 9J1

2.64 Acres to be rezoned from Rural Areas (RA) to Light Industrial (LI)

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the property, if rezoned with the offered plans approved for development. These conditions are proffered as a part of the requested rezoning and the Owner acknowledges that the conditions are reasonable.

1. The Property shall be developed in accord with the "Zoning Map Amendment Plan," dated October 30, 2007, except that the Owner may expand the existing building by up to 2,000

additional square feet to the rear in order to provide additional storage space for a maximum building size of 6,000 square feet, and may relocate the fenced parking area now shown behind the existing building to the west end of the existing parking lot.

2. The Owner shall connect to public water and sewer within one year after each of these services becomes available either along the Dickerson Road frontage of TMP 32-9J1 or within a public easement adjacent to TMP 32-9J1. Until the applicant has connected to public water and sewer, the use of the Property shall be limited to a single use permitted by Proffer 3.
3. The use of the Property shall be limited to those uses allowed by right under Section 27.2.1 (2), (4), (5), (6), (9), (11), (12), (13), (14), (17), (18) and (19) of the Zoning Ordinance of Albemarle County, Virginia, as that Section is in effect on December 12, 2007, a copy of which is attached hereto as Exhibit A.

Owner/Applicant:
DTG Enterprises LLC

Owner/Applicant's Address:
925 Madison Drive
Earlsville, VA 22936

By: (Signed) Darren P. Giacalone
Darren P. Giacalone

(Signed) Tammy L. Giacalone
Tammy L. Giacalone

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

Mr. Dorrier said he would like to bring up for reconsideration the vote on the three ordinances which was taken earlier in the meeting. He has some reasons that they not be on the agenda next week.

Mr. Rooker said the Board is only proposing that they be on the agenda. The Board did not vote to do anything with those ordinances other than to put them on an agenda.

Mr. Dorrier said there are some good reasons not to do it next week. First, there are only three working days before now and next week in which the public can come in and get the ordinances from the Clerk – Thursday, Friday and Tuesday – Monday is a holiday. Second, Mr. Boyd is not here tonight and he will read about it in the paper and wonder what is happening.

Ms. Thomas said she had actually left him a phone message because she did not want him to just hear about it in the paper, he is out of town.

Mr. Dorrier said that 14,000 properties are affected.

Mr. Rooker said not by these ordinances; the steep slopes ordinance is not a part of this proposal which would substantially reduce the number of parcels affected.

Mr. Dorrier said he can't tell from just looking at this brief summary whether critical slopes are included. Critical slopes are mentioned in one paragraph.

Mr. Rooker said the mention of critical slopes is that they have been taken out.

Mr. Dorrier said another reason not to consider it is that the Planning Commission has not considered these new ordinances.

Ms. Thomas said they are not new ordinances.

Mr. Dorrier said the last reason would be that so many people are affected, there was much heated debate on it, there are property rights versus environmental rights, and it was played up as a big thing in the press. They made it into two different camps, and he thinks that was a misinterpretation. He thinks that if the Board does not allow the public to comment or at least consider the issue with enough time to comment, that whatever happens next week will be taken out of context and be condemned. He does not know how he will vote, but he thinks if the people who are pushing it want to get it approved and on the books, the Board needs to consider putting it in February rather than in January.

Mr. Slutzky asked if Mr. Dorrier is going to make a motion.

Mr. Dorrier said he would make a **motion** to reconsider the vote taken earlier in this meeting to place these ordinances on the agenda for January 23.

There being **no second**, the motion died.

Mr. Slutzky said he would like to say that the spirit of what Mr. Dorrier is speaking about is fine. In point of fact, in this case, after a significant amount of exposure to the public through the process in the Planning Commission, etc., until it finally came before the Board for a public hearing last October, there had been a series of ordinances that had a lot of vetting, a lot of input from the public, and finally brought to a public hearing. The Board heard hours and hours of valuable public input on these ordinances. The public hearing ended, and it would not have been unusual for the Board to have voted up or down on these items. Because it was late and a lot of people in the public had already gone home, the Board

decided to not act that night. Now, the Board is simply recognizing that it has not done anything since that time and the public is entitled to closure on this issue.

Mr. Slutzky said what Ms. Thomas did was merely to make a motion that passed, to go ahead and bring this in front of the Board on next week's meeting so it can react to the public hearing it had last year on these ordinances. In her motion, she took the trouble to actually identify some changes in those ordinances that scaled them back. Whenever an item is brought to a public hearing, the Board is allowed to vote on it at that time or later so long as it does not exceed the extent of the published ordinances. In this case, Ms. Thomas' motion is a scaled-back version of the ordinances the public has already had significant opportunity to comment on. She did that so the revised language reflecting those changes could in fact be available for the public to see when the Board sits and discusses it at next week's meeting.

Mr. Slutzky said he feels confident the Board has done the appropriate thing to take into account public input, and that has been reflected in the motion that passed today. What will be in front of the Board next week is what it had at the end of the public hearing to vote on, slightly modified in reference to the public's input. He is comfortable the Board has benefited from the public's input. The Board will have a discussion at that time. It did not consider moving today to actually vote because Mr. Boyd is not here. It was partly out of deference to that fact that the decision was made to move to bring it on the agenda at a later point.

Mr. Dorrier said this matter was not on the agenda today.

Mr. Slutzky said it did not need to be on the agenda; it was an open item from October that the Board could have voted on today, but decided not to do that.

Mr. Dorrier said the Board does not have the minutes from that meeting.

Mr. Rooker said what Mr. Dorrier is suggesting is a good argument for never having a public hearing and then deferring a decision. What he is suggesting is a process that would never end. There would then have to be another public hearing on the same item that had previously been the subject of a public hearing because someone on the Board may have forgotten what was said at the first public hearing. There is the podcast where anybody can listen to the public hearing comments. What is being done is actually beyond the requirements in the sense that a motion could have been made tonight to approve the ordinances. There is no reason legally that a motion was necessary to put the ordinances on an agenda because a public hearing has already been held and a motion could have been made at anytime to approve the ordinances. To him, what has been done has gone beyond the requirements to put it on the agenda for discussion and action if it is deemed appropriate.

Mr. Dorrier said he would like to change his vote from "yes" to "no" on the motion that passed to put it on agenda for next week.

Mr. Slutzky said as a matter of procedure, there was a motion and all the Board members voted on it, but as chair he will note the fact that Mr. Dorrier has reconsidered his view and made a motion that the Board reconsidered and there was no second. As a matter of process, he thinks these ordinances have to be on the agenda next week, but Mr. Dorrier's displeasure at that is duly noted. He is hopeful that as Mr. Dorrier thinks about this, he will reach the same conclusion that the Board has honored, and gone beyond what would necessarily be required. He thinks that what the Board is doing is putting down in writing what it might have decided through words at the end of that meeting but has now had the benefit of time to think about the public's input. This is better than having acted that night. If the view going forward is that the Board must act in the moment or reopen the process, he is not sure he agrees with Mr. Dorrier at all. But, Mr. Dorrier's disagreement with his earlier vote is noted, and there was no second to his motion, so this will be on the agenda next week. He looks forward to an interesting and lively discussion.

Mr. Dorrier asked Mr. Davis if he can change his vote. Mr. Davis said that technically he cannot change his vote for the motion that was already made, but as Mr. Slutzky indicated his position is duly noted and will be recorded in the minutes.

Mr. Dorrier said he changes his vote for the motion that was already made to "no" not because he is opposed to the substance of the ordinances, but because he is opposed to the process. Mr. Davis said that will be clearly reflected in the minutes.

Mr. Mallek said there may be a journalist who would be able to help the Board get this information out to the public. Mr. Davis said the ordinances themselves will be available tomorrow morning. His office will work with the Clerk to post those on the website with the agenda for next week so they will be available electronically.

Mr. Slutzky asked if it would be possible to have a summary paragraph describing the original ordinances and showing how they have been modified. Mr. Davis said they will not show the change from the prior draft, but Ms. Thomas' motion summarized them, so that can easily be accomplished.

Mr. Slutzky suggested that motion be included in the information posted so the public has the benefit of understanding what the Board is considering.

Mr. Rooker said he will again point out that these items could have been approved by simply making a motion at any Board meeting because the public hearing was closed and no action was taken.

He said the Board is going through a further process step by putting them on an agenda and publicly noticing that.

Mr. Slutzky said he was ready to move that night, so he is glad the Board has had the opportunity to consider public input and will have a slightly modified version of it for consideration next week.

Mr. Davis said there are now two versions of the ordinances. There is the original version that went to public hearing and the version that will reflect the changes directed by Ms. Thomas. Staff's direction at this point is to simply have the latest version as directed by Ms. Thomas available online tomorrow. The background report for the other versions is still available with the October 10th agenda materials. Staff's direction at this point is to modify versions which reflect the original ordinance with the specific changes as directed by Ms. Thomas.

Mr. Slutzky said what is posted for the public's benefit next week should be the new version and Ms. Thomas' motion that articulates the ways in which this new version is somewhat different from the previous version considered at the public hearing. Maybe there should be a statement from the County Attorney's Office indicating the appropriateness of the Board considering a somewhat scaled-back version of an advertised ordinance. He wants the public to be aware that the Board cannot and would not consider something beyond what was advertised. Mr. Davis said that goes without saying.

Mr. Rooker said he does not think public postings are the place for an attorney's opinion. He thinks it is clear that the Board could have acted on these ordinances at any time. They could have been scaled back and acted on the night of the public hearing, or acted on the following week. Certainly there are people who would prefer that they never be brought back for a vote.

Mr. Slutzky said staff should mention that when they introduce the issue next week. He asked if there were other matters to be discussed at this time. No Board member had another matter to be discussed at this time.

Agenda Item No. 13. Adjourn to January 23, 2008, 1:00 p.m.

At 7:21 p.m., there being no further business to come before the Board, **motion** was offered by Mr. Rooker, to adjourn to January 23, 2008, at 12:30 p.m. Ms. Mallek **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.

ABSENT: Mr. Boyd.

Chairman

Approved by the Board of County Supervisors

Date: 12/03/2008

Initials: EWJ
