

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on February 6, 2008, at 9:00 a.m., in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 9:04 a.m., by the Chairman, Mr. Rooker.

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

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Agenda Item No. 4. Resolution of Appreciation: Max Kennedy.

Mr. Boyd said Mr. Kennedy began as a member of the Board of Zoning Appeals on September 21, 1976. For the majority of his time as a member he served as Chairman of the BZA. He worked with at least five zoning administrators. He is a soft spoken person and as a lawyer is able to bring to the table legal issues involved in decision-making. Mr. Boyd then read the following Certificate of Appreciation into the record and presented same to Mr. Kennedy.

This Certificate of Appreciation is presented to Max Kennedy in recognition of his valuable contributions to the Board of Zoning Appeals since September 1976. We as a community are strengthened and uplifted by those who step forward to volunteer their services in support of improving the quality of life of our residents. We offer our sincere appreciation to Max for his dedication and commitment in preserving the quality and beauty Albemarle County.

Mr. Kennedy thanked the Board for the resolution saying it had been a short 31 years of service and fun.

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

Ms. Thomas said the Railroad Industry (in particular, Norfolk Southern) is planning to expand the amount of freight it carries on its trains. The lines that run through Albemarle could create greater volumes of noise and impact many areas of the County where people might want to have a say although Albemarle is not directly involved in decision-making. If the railroad has applied for State funding, there is a State policy saying local government should be alerted to the decision-making process. She suggested writing a letter to the head of Virginia Rail and Public Transportation asking that Albemarle be involved in their discussions. The letter should refer to relevant sections of the County's Comprehensive Plan.

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Ms. Thomas said Senate Bill 768 would drastically reduce or wipe out the proffer system as the Board knows it; the proffer enabling legislation has been changed so part of the system only went into effect this past July. She suggested the Board express strong opposition to passage of the proposed bill.

Mr. Boyd asked if any Board members disagreed with that suggestion.

Mr. Rooker said he sent a personal e-mail to the legislators, not as a Board member. He pointed out that if this had been in place when the Board approved the Biscuit Run development, it would have cost the County about \$25.0 million in capital funds for infrastructure improvements. It is a devastating bill for higher growth localities that have to build infrastructure to keep up with growth issues. The senator who drafted and sponsored the bill (Watkins) was a big recipient of money from developers in his last campaign. On the Democratic side, the democratic senator who is strongly interested in the bill has been a big recipient of money from developers over the years, and has "carried their water" on many bills. He thinks the developers see the downturn in the economy as an opportunity to get something done that they have been trying to get done for a long time, i.e., to severely limit the amount they have to contribute to pay for growth where it occurs.

Mr. Dorrier said it was said the County would benefit to the amount of about \$41.0 million including credits from Biscuit Run. He asked if Mr. Rooker was indicating that \$25.0 million of that amount would have been "lopped off."

Mr. Rooker said the bill has gone through about five iterations and each time it gets worse. It started out with a twenty-cent grantor tax in order to make it revenue neutral to localities. The realtors lobbied against that provision and got that it removed from the bill. The answer is "yes." Instead of the proffers being \$41.0 million, they would have been closer to \$16.0 million.

Mr. Boyd said he had also made some personal telephone calls to oppose this bill.

Ms. Mallek said several people will be going to the Legislature tomorrow to meet with the area's senators and delegates. If it is the will of the Board, this can be conveyed directly to them.

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Mr. Rooker said he has had a number of people speak to him about the train issue mentioned by Ms. Thomas. They would like the train not to speed up until it gets further out Route 250 West past Ednam and Farmington. There have been a number of complaints about noise impacts. He said there is a dilemma because most people think it is a good idea to put more freight on the rails and get it off of the roads, but that impacts the people who own property near the rails. He is not asking that the Board do anything, although at a future date he may ask that a letter be sent to CSX (Buckingham Branch operating the train through that area) and he would like to get some understanding of the Board's authority in controlling the speed of trains; such authority has been granted to cities.

Ms. Mallek said she would like to know if there is any connection between acceleration and noise that is appreciable over any distance. She said the freight schedule seems to be more powerful in the formula than passenger rail.

Mr. Rooker said a number of people had brought it to his attention and he asked that the Board look into it. He would like to get some understanding of the Board's authority in the way of controlling the speed of trains.

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Mr. Rooker said in the article that ran in the Daily Progress on Friday, February 1, 2008, titled "Higher Tax Rate for Albemarle? Where the Board Stands Today", he was misquoted. The question asked of Board members was: "Given the revenue picture, should the County increase its tax rate of \$0.68 per \$100 of assessed value." Under his name it said "yes". That was not the question he was asked. When the reporter asked him that question he had said it was too early to tell because the Board had not yet received a budget from the County Executive. Then he was asked if he would consider raising taxes, and to that question he answered "yes." The Progress ran a clarification the next day on Page 2 at the bottom of the page. He wanted to clarify for the Board members his position. He did receive a letter of apology from Jeremy Borden who admitted that he had made a mistake.

Ms. Mallek said she thought it was interesting that all six Board members basically said the same thing in different phrases, but they chose to characterize people in three different ways.

Mr. Boyd said he could have complained about his "no" vote just as Mr. Rooker had complained about his "yes."

Mr. Rooker said the article was interesting because Mr. Boyd's "no" vote did not reflect what he said. He thinks the reporter was trying to get a "yes" or "no" answer to a question and when people did not answer "yes" or "no" he altered the question a little and ended up with a variety of answers.

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Ms. Mallek said this afternoon she would like to find out how the Advanced Mills Bridge project can move forward after the Board hears from the Highway Department.

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Ms. Mallek suggested the Board take another look at the report of the Development Review Task Force in order to consider some of its recommendations. She thinks some things will be mentioned in the "Gateway Appeal" today which might not have happened if changes had been made in procedure in order to clarify the development process.

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Ms. Mallek said she is researching the issue of burying asphalt rubble in the rural areas of the County. Apparently there was a change in the Zoning Ordinance in 2002 to allow this as an acceptable policy. Farm owners are allowed to receive money in exchange for people dumping torn up parking lots in their fields and then covering them over. She said this leaves a disaster for the next landowner or for the owner fifty years from now. In the research she has done, there is a market for this asphalt. Even the local paving companies would like to have this material because they are reprocessing and selling it as fast as they can get it. They grind it up and put it right back on the road. She would like to have a discussion and reevaluate the scientific information that was used to change the policy.

Mr. Boyd asked if there is a great deal of this happening.

Ms. Mallek said that apparently there is some. She has learned that surrounding counties do not allow this practice. Albemarle is also getting asphalt from other counties dumped here. It seems to be allowing something that is just creating a problem.

Mr. Slutzky asked how the change came about.

Ms. Mallek said it was apparently at the request of a project.

Mr. Slutzky asked if this is a policy issue or an ordinance change done at the request of an applicant. Mr. Tucker said he is surprised that if the asphalt companies are reprocessing why they have not reached out to people who are digging up the asphalt.

Mr. Rooker said it makes no sense that they would dump the asphalt if they can sell it.

Ms. Mallek said it may be the difference in convenience and dollars.

Mr. Slutzky said there is other construction waste that people are putting in the ground.

Mr. Rooker said in the past DEQ took the position that asphalt is inert material and not subject to migration.

Ms. Mallek said the paving people are concerned about the petroleum by-products in the asphalt.

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Mr. Boyd said he as received a letter from one of his constituents regarding barking dogs. This subject has come up several times in the past and he would like to know if the Board members are interested in taking another look at a barking dog ordinance.

Ms. Thomas said she knows people can be driven to absolute distraction by a dog that barks all night.

Mr. Boyd said this person made some good suggestions in his letter.

Mr. Davis said this problem has been addressed by previous Boards. The last time there was a lengthy public hearing, but the Board declined to adopt a barking dog ordinance. Other localities have adopted such ordinances with various degrees of success, but it is a controversial issue. The last time this was discussed staff created an information guide to give people suggesting ways to resolve barking dog problems without County intervention. That was helpful in a lot of situations. Often, it is neighbor versus neighbor, and other issues are involved. It would be a time-consuming issue.

Mr. Slutzky said he did not get a copy of that letter. He has been dealing with a barking dog problem in his district for the past eight months, one which has caused neighbors to put their houses on the market. The homeowner had 30 dogs. The Zoning Department issued notices of violation so the issue has been studied intensely. It would have been helpful to have some measure of control available for the County to intervene, so he would be interested in reopening the discussion.

Ms. Thomas said the middle ground that occurred to her was that through a friendship she was able to get the SPCA involved, and this letter suggests the SPCA regards incessant barking as an indication of animal cruelty.

Mr. Slutzky said the SPCA was very helpful in the situation he just described.

Ms. Thomas said she wonders if the Board could first ask the SPCA if there is something they could do if a change were made in the Dog Ordinance. Rather than having staff do a study right now, ask the SPCA for advice. She assumes the SPCA was not able to solve the problem described by Mr. Slutzky.

Mr. Slutzky said they tried. He does not disagree that it would be helpful to have the SPCA's input if the Board goes forward and deliberates this issue, but he would find it useful to have a report on the experience of other counties.

Mr. Rooker said he is in favor. It becomes a quality of life issue for a lot of people. He said the Board member serving his district at the time a barking dog ordinance was being considered actually received several death threats during that time. People take this seriously, on both sides of the issue.

Mr. Boyd said he would like to have some research on what has been successful in other areas. He thinks the problems are isolated instances. When constituents take the time to write to the Board, he thinks the Board needs to respond.

Mr. Slutzky said in the instance where the person had 30 dogs, they were actually taking in dogs which would have been destroyed by surrounding counties if they had not been given shelter. She had an honorable purpose, but it was a good purpose in the wrong place. These are difficult decisions to move forward with.

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

Mr. Bill Morrow discussed an application for rezoning made in September, 2007. The application was made, accepted and reviewed by Planning. After its submission they were informed that because they were in a Planned Development they needed everyone in the planned development to be a co-applicant on the application. They got signatures as requested and submitted them to the County. On January 8 they were informed that their hearing was scheduled for last evening. After that date they were informed that a sale had taken place in that planned development so they needed that landowner to be a co-applicant on the application as well. The new buyer is a corporation from out-of-town who bought the property with no intention of developing it, but will "flip it" to somebody else. Since it is under contract, they were advised by their counsel that the liability issues are such that they should never sign a co-application to a zoning to which they will have no involvement henceforth.

Mr. Morrow said their development is now stalled, the situation is on hold, their hearing has been canceled, and until the signatures are acquired, their development has come to a stop. He said this Board

touts the wisdom of mixed-use as being the blueprint of the future. He said that 500 landowners and 20+ commercial property owners all have to be co-applicants in order to just have an application accepted. This means a public hearing in a public forum is now denied any applicant for any type of rezoning. This is not in the Code, it is not in statute, it is not even written down. He asked that the Board review this policy. If the Board thinks it is a prudent policy, he would ask that the Board adopt it and put it in the Code. If it's a bad policy he would suggest that it be cut out of the procedure.

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Mr. Paul Brockman asked if there will be an opportunity for citizens to make comments on the Gateway application.

Mr. Boyd said he will allow comments at that time.

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Mr. Slutzky said he would like to hear comments on Mr. Morrow's comments from Mr. Davis.

Mr. Davis said the Zoning Administrator has prepared a comprehensive memorandum to the Board on Mr. Morrow's situation. It was distributed late yesterday by E-mail to the Board members.

Mr. Slutzky said the public might like to know what was in that memorandum. Mr. Davis said the issue is not as simplistic as Mr. Morrow would lead the Board to believe. It would require a more detailed discussion than the Board has time for right now. It is an issue that basically does not require all the signatures for every matter, only for those which materially affect the planned community. This particular application is requesting a significant change in the Code of Development, to which all the property owners are bound. That is the whole essence of a Planned Development. These matters are reviewed by staff on a case-by-case basis to determine if it has a material impact on the Code of Development and the community. It is grounded in State law which requires all affected property owners to be an applicant for any rezoning, and in this instance, originally all the property owners were applicants. Under State law any property owner has an absolute right to withdraw their consent to a rezoning up until the Board of Supervisors considers the matter. When the property changed hands, the new owner indicated they were withdrawing their consent and that stopped the application until all required signatures are in place. That is the essence of the situation. More analysis is provided in the memorandum he mentioned earlier.

Mr. Boyd asked if Mr. Davis will provide that memorandum to Mr. Morrow. Mr. Davis said it is available to Mr. Morrow.

Mr. Boyd said since he had not had time to read the memorandum, and since this issue has been going on for sometime, he asked if the Board would consent to having it placed on the agenda for discussion next week.

Ms. Thomas said her computer E-mail was open until eleven o'clock last night, and she had not received the memorandum by then.

Mr. Rooker asked if Mr. Davis had indicated that minor changes would not require this same process. Mr. Davis said that is correct. It is a case-by-case analysis as to what is a material change to the planned community

Mr. Rooker asked the change being proposed. Mr. Davis said the change would allow an intensification of the development by allowing a hotel, and a hotel is not allowed at this time. That would change density, parking and other factors which are significant to the planned development.

Mr. Slutzky said if the issue of materiality is determined by staff, is there any process whereby an applicant can go to the Planning Commission and appeal that administrative determination. Mr. Davis said there is no process to appeal it to the Commission. It would be a Zoning Administrator determination, so they would have the same appeal rights as any other such determination has.

Mr. Boyd noted for the applicant that the Board will discuss this again next week.

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Agenda Item No. 7. Consent Agenda. **Motion** was offered by Ms. Thomas to approve Items 7.1 through 7.4 on the Consent Agenda, but in Item 7.1, the revenue listed in Appropriation 2008-047 from the Stony Point Fire Company be pulled, and to accept the remaining items for information. Mr. Davis said since this is revenue and there must be a balanced budget, the expenditures will need to be decreased by the same amount or \$17,980 be taken out of the Fund Balance (Board Reserve) to balance the budget. That adjustment will have to be made as well.

Mr. Boyd asked if this has been expensed. Mr. Davis said some revenue will be needed to balance the appropriation so that will need to come from the Fund Balance.

Mr. Boyd asked what the \$17,980 was applied to in terms of expenses. Mr. Davis said someone else will need to explain.

Ms. Laura Vinzant, Senior Budget Analyst, said everything on this particular appropriation was already a budgeted project. This revenue would have taken the place of something that had been budgeted using revenue from the Fund Balance. Funds from the Fund Balance will then be used to balance this appropriation instead of funds from Stony Point.

Ms. Thomas said that will be a part of her **motion**. Mr. Rooker then gave **second**. Roll was called and the motion carried by the following recorded vote:

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

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Item 7.1. Requested FY 2008 Appropriations.

It was noted in the Executive Summary that the Code of Virginia stipulates that any locality may amend its budget to adjust the aggregate amount to be appropriated during the fiscal year as shown in the currently adopted budget. However, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The total of this requested FY 2008 appropriation is \$1,364,798.32. A budget amendment public hearing will be required if future additional cumulative appropriations exceed one percent of the currently adopted budget.

This request involves the approval of seven new FY 2008 appropriations as follows:

- Appropriation No. 2008-045 in the amount of \$14,226.00 for the FY '07 State Criminal Alien Assistance Program;
- Appropriation No. 2008-046 totaling \$177,168.32 for donations and grants to various school and school capital projects;
- Appropriation No. 2008-047 recognizing \$1,094,709 in other revenue sources proffers, grant, and recovered costs in the Capital Improvements Fund and reducing the anticipated General Government borrowing and use of CIP Fund Balance;
- Appropriation No. 2008-048 appropriating \$17,806.00 in grant revenue for Local Government's share of the Preschool Program at Red Hill;
- Appropriation No. 2008-049 for a Click-It-or-Ticket grant to the Sheriff's Department in the amount of \$1,500.00;
- Appropriation No. 2008-050 totaling \$48,500.00 for the Emergency Communications Center; and
- Appropriation No. 2008-051 in the amount of \$10,889.00 for additional grant funding for the Community Corrections program.

A detailed description of these appropriations is provided on Attachment A. Staff recommends approval of the budget amendment in the amount of \$1,364,798.32 and the approval of the FY 2008 Appropriations No. 2008-045, No. 2008-046, No. 2008-047, No. 2008-048, No. 2008-049, No. 2008-050 and No. 2008-051.

#### **Attachment A**

Appropriation No. 2008-045, \$14,226.00. Revenue Source: Federal Revenue, \$ 14,226.00. The State Criminal Alien Assistance Program (SCAAP) reimburses localities for compensation expenses incurred by correctional officers supervising aliens in local and regional jail facilities. Reimbursement is given to localities even though the expenses are incurred by the correctional facility. The County of Albemarle is scheduled to receive \$14,226.00 for FY '07. This amount will be forwarded to the Albemarle-Charlottesville Regional Jail to reimburse it for its expenses.

Appropriation No. 2008-046, \$177,168.32. Revenue Source: Local Revenue (Donations) \$78,072.00; Local Revenue (Grant) \$42,354.00; State Revenue \$56,742.32. At its meeting on December 6, 2007, the School Board approved the following appropriations:

- National Board Certification is an extensive year-long assessment of actual teaching practice based upon high and rigorous standards established by the National Board for Professional Teaching Standards (NBPTS). Through this process, teachers document their subject matter knowledge; provide evidence that they know how to teach their subjects to students most effectively; and, demonstrate their ability to manage and measure student learning. In our School Division, we have 12 teachers that meet these standards: Catherine S. Coffman, Patricia P. Harder, Natasha A. Heny, Tim P. Howeth, Mary Beth Kooken, Dolores W. Reinhold, Chandler E. Sansing, Marjorie W. Shepherd, Thomas F. Sutliff, Wendy L. Eckerle, Catherine A. Meaney and Denise A. Collado. In recognition of this achievement, the Department of Education issues that National Board Incentive Bonus Payments to these teachers. In past years, payments were made directly by the State to the teachers. This year, the funds, totaling \$34,492.32, were electronically transferred to our Division to be disbursed to our teachers.
- Brownsville Elementary School received a donation in the amount of \$12,900.00 from the Brownsville PTO. It has been requested that the funds are specifically for educational and recreational supplies for all teachers at Brownsville Elementary School.
- Henley Middle School received a donation in the amount of \$3,580.00 from the Parent and Teacher Support Organization at Henley. This donation is to facilitate a part-time teacher for their At-Risk Program and a part-time teacher for their Library Night.

- Henley Middle School received a donation in the amount of \$39,204.00 from the Henley Middle School PATSO. The donation is to be used to help fund the replacement of the Henley Playground.

At its meeting on January 10, 2008, the School Board approved the following appropriations:

- Jack Jouett Middle School received a donation in the amount of \$500.00. The donor has requested that this donation be made in the name of Mark Jacobs. The donor also requests that this contribution be used for the library at Jack Jouett Middle School.
- Cale Elementary School received two donations. Jeff Adams donated \$500.00 and an organization that would like to remain anonymous matched his donation with \$500.00. The donors request that these donations must be used exclusively for public, charitable purposes to support the Paul H. Cale Elementary School Parent Teacher Organization.
- Western Albemarle High School received a donation in the amount of \$10,000.00 from Mr. and Mrs. Schuler. This donation is to go towards the educational needs at Western Albemarle High School.
- Woodbrook Elementary School received a donation in the amount of \$100.00 from Nancy B. Anderson. The donor has requested that this money be used for the Ann Watson Bookroom at Woodbrook Elementary School.
- V. L. Murray Elementary School received a donation in the amount of \$3,000.00 from an anonymous donor. The donor requested that this donation be used to purchase technology equipment for Murray Elementary.
- Western Albemarle High School received two donations. The Huntley Foundation donated \$1,000.00 and the Robert Earl McConnell Foundation donated \$6,500.00. Both of these donors have requested that their donations go towards the Rowing Club at Western Albemarle High School.
- Albemarle High School received a donation in the amount of \$288.00 from Joseph Barnes. The donor requested that this donation be used to purchase pre-stamped envelopes for fundraising mailings for the African American Studies Club.
- The Virginia Museum of Fine Arts has awarded Red Hill Elementary School a grant in the amount of \$1,354.00. This grant will assist with funding the Kid Pan Alley Project. Through this project the children will learn about songwriting.
- State Farm Insurance Company awarded Agnor Hurt Elementary School a grant in the amount of \$25,000.00. This grant will fund the Mobile Classroom Project, The Do Drop In Bus. This is an Albemarle County School bus that is equipped as if it were a classroom. The goal of the program is to improve the academic performance of students through extending the time available to learn. State Farm has provided this funding annually for the past several years.
- The Virginia Commission for the Arts has made grant awards to several elementary schools. Touring Grants were made to Broadus Wood in the amount of \$3,250.00, Brownsville in the amount of \$4,750.00, Cale in the amount of \$4,750.00, Greer in the amount of \$4,750.00 and Red Hill in the amount of \$4,750.00. This grant will assist with funding of the Kid Pan Alley Project at each school. Through this project the children will learn about songwriting.
- The National Radio Astronomy Observatory (NRAO) has awarded Albemarle County Public Schools with a grant in the amount of \$16,000.00. These funds will be used to support the district's participation in the "For Inspiration and Recognition of Science and Technology (FIRST)" LEGO League and Tech Challenge, which are both a part of an international robotics program that strives to ignite enthusiasm for discovery, science, and technology among young people of ages 9 to 18. This grant will fund up to eight FIRST LEGO League teams and as many as three FIRST Tech Challenge teams. These students will research and solve real-world problems, present their research and solutions; and, build an autonomous robot using engineering concepts.

Appropriation No. 2008-047, \$1,094,709.00. Revenue Source: Local Funds (Recovered Costs) \$17,980.00; Local Revenue (Proffers) \$675,729.00; State Revenue (Grant) \$401,000.00. Since the original appropriation of the FY '08 Capital Improvements budget, the following additional revenue sources have been identified. These additional sources will reduce the planned Local Government borrowing \$955,850.00 and the use of \$138,859.00 from the CIP Fund Balance. The schedule below identifies the revenue source, amount, and project it is associated with.

<u>Revenue Source Description</u>	<u>Capital Project</u>	<u>Amount</u>
Fire Company Repayment	Stony Point Building Improve.	\$ 17,980.00
VNDIA Grant	Hollymead Fire Station	401,000.00
Hollymead Area C Proffer	Hollymead Fire Station	102,138.00
Hollymead Area D Proffer	Hollymead Fire Station	452,712.00
Avon Park Proffer	Avon Street Sidewalks	61,718.00

Wickham Pond Proffer	Crozet Streetscapes Phase 1	59,161.00
	Total	\$1,094,709.00

Appropriation No. 2008-048, \$17,806.00. Revenue Source: State Revenue (Grant) \$17,806.00.  
Albemarle County received grant funds from the Virginia Department of Education in FY '07 with a commitment to increase the number of at-risk four year olds served in the Virginia Preschool Initiative (VPI) within the County beginning in FY '08. The program has been expanded to serve eight additional VPI students at the Red Hill Elementary School. The cost of the Red Hill program is shared with the County Schools. Local Government's share of the program is two-thirds the cost of the teacher assistant for the program. This amount is funded by grant revenues and no local match is required.

Appropriation No. 2008-049, \$1,500.00. Revenue Source: State Revenue (Grant) \$1,500.00.  
The Department of Motor Vehicles has awarded the Albemarle County Sheriff's Office a grant in the amount of \$1,500.00 to assist in overtime for the national "Click It or Ticket" campaign.

Appropriation No. 2008-050, \$48,500.00. Revenue Source: ECC Fund Balance \$48,500.00. At its meeting on November 20, 2007, the Emergency Communications Center (ECC) Management Board approved the use of ECC Fund Balance for the following:

- \$20,000.00 to replace all of the carpet within the Emergency Communications Center. This cost includes the removal of existing carpet and the cost to elevate each of the operational consoles while the carpet is being removed and replaced.
- \$28,500.00 to fund the purchase of an additional vehicle for ECC. This vehicle, which will be four-wheel drive, will be used to access the public safety radio communications tower facilities under ECC's control and responsibility. In addition, the vehicle will be available during normal working hours for ECC staff to travel to meetings, training and other such needs. The funding will cover the cost of the vehicle, 800 MHz radio, and operating costs for FY '08.

Appropriation No. 2008-051, \$10,889.00. Revenue Source: State Revenue (Grant) \$10,889.00.  
The Department of Criminal Justice Services has awarded the County \$10,889.00 in additional funding for the Community Corrections Grant. This grant, administered by Offender Aid & Restoration, provides local probation services, community corrections, and related components in nine-jurisdiction areas. The original grant award, in the amount of \$720,698.00, was appropriated as a part of the FY '08 budget process.

**(Discussion:** Ms. Thomas said she noticed that the "Click It or Ticket" grant is going to the Sheriff's Department. She asked if the deputies do traffic stops. Mr. Tucker said they have the authority to do them, but are not proactively doing so. Mr. Davis said they participated in the initiatives last summer where they did speed traps on Route 29 South. He is not familiar with their programs, but they have the authority to do this. In some traffic safety initiatives they have joined with the Police Department and with the State Police in being a part of the initiatives.

Mr. Boyd said on Appropriation No. 2008-047, fire company repayment from the Stony Point Company for building improvements, there was a timing issue involved. He and Ms. Mallek met with the Stony Point Board representatives. The contract was written to say the first payment was due in July, but the work was delayed and has not been done. They are taking money out of their operating funds for work which has not been done yet. He asked if this can be refunded to them until after the work is actually done.

Mr. Bryan Elliott, Assistant County Executive, said there is language in the contract which addresses when that allocation is made. The contract was approved by the Board.

Mr. Boyd said the contract said the first payment was due July 1, but that was under the assumption that the work would be done. Mr. Elliott said a contract amendment would be necessary if the Board would like to make a change, but at this time the language is specific.

Mr. Slutzky asked the nature of the problem.

Mr. Boyd said he does not know if this will impact their operations. Mr. Elliott said he does not know of any financial strife the department is under because of that \$17,000 allocation being taken out. It is a question of timing. The contract was signed over a year ago when it was assumed the project would be designed and bid and the work would occur in the first quarter.

Mr. Boyd asked if it could be taken off of this appropriation until the Board can make a determination.

Ms. Mallek said it would seem to be fairer to say that when the work is completed, the payment schedule should begin. If that can be done, she would like to be sure it is done.

Mr. Boyd suggested that staff check with the Fire Company to see if this has adversely impacted their operating funds.)

**By the recorded vote set out above, the Board approved the budget amendment in the amount of \$1,364,798.32 and Appropriation Nos. 2008-045, 2008-046, 2008-047 (adjusting the**

**\$17,980 for Stony Point Building Improvement by swapping the revenue funding source), 2008-048, 2008-049, 2008-050 and 2008-051, as follows:**

COUNTY OF ALBEMARLE  
 APPROPRIATION NO. 2008-045  
 DATE: 2/06/08  
 EXPLANATION: FY '07 STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
2	1000	33000	330085	Fed Rev-SCAAP	J2	14,226.00		
1	1000	33020	700002	Regional Jail	J1	14,226.00		
		1000	0501	Est. Revenue			14,226.00	
			0701	Appropriation				14,226.00
TOTAL						28,452.00	14,226.00	14,226.00

COUNTY OF ALBEMARLE  
 APPROPRIATION NO. 2008-046  
 DATE: 02/06/08  
 EXPLANATION: Education Donations and Grants and School CIP Donation  
 School Board Meeting: 12/6/2007 and 01/10/2008

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
2	2000	18100	181109	Donation	J2	16,480.00		
2	2000	24000	240218	Nat'l Brd Cert Stip-St	J2	34,492.32		
2	9000	18100	181152	Donation-Henley PTO	J2	39,204.00		
1	2100	61101	160120	Stipend	J1	32,041.16		
1	2100	61101	210000	Fica	J1	2,451.16		
1	2100	61101	601300	Ed/Rec Supplies	J1	12,900.00		
1	2100	61101	134100	PT Teacher Aide	J1	3,325.60		
1	2100	61101	210000	Fica	J1	254.40		
1	9000	60252	800986	Henley - Plygnd Imp	J1	39,204.00		
	2000		0501	Est. Revenue			50,972.32	
			0701	Appropriation				50,972.32
	9000		0501	Est. Revenue			39,204.00	
			0701	Appropriation				39,204.00
2	2000	18100	181109	Donation	J2	22,388.00		
2	3104	18000	181247	Rev-St Farm Grant	J2	25,000.00		
2	3104	18000	189900	Revenue	J2	1,354.00		
2	3104	18000	189900	Revenue	J2	16,000.00		
2	3104	24000	240295	Rev-Touring Gr	J2	19,000.00		
2	3104	24000	240369	Rev-Touring Gr Bw	J2	3,250.00		
1	2212	61411	800200	Furn/Fixtures-New	J1	100.00		
1	2214	61101	601300	Ed/Rec Supplies	J1	1,000.00		
1	2215	61101	800700	Data Prssg-New	J1	3,000.00		
1	2253	61101	601200	Books/Subscrip	J1	500.00		
1	2301	61411	520100	Postal Service	J1	288.00		
1	2302	61101	601300	Ed/Rec Supplies	J1	10,000.00		
1	2302	61105	800100	Mach/Equip-New	J1	7,500.00		
1	3104	60201	312500	Prof Service - Instr	J1	3,250.00		
1	3104	60202	312500	Prof Service - Instr	J1	4,750.00		
1	3104	60204	312500	Prof Service - Instr	J1	4,750.00		
1	3104	60207	312500	Prof Service - Instr	J1	4,750.00		
1	3104	60214	312500	Prof Service - Instr	J1	4,750.00		
1	3104	60215	132100	Pt/Wages-Teacher	J1	21,000.00		
1	3104	60215	210000	FICA	J1	1,606.50		
1	3104	60215	601300	Instructional Supp	J1	2,393.50		
1	3104	61101	152100	Sub/Wages-Tchr	J1	464.00		
1	3104	61101	210000	FICA	J1	36.00		
1	3104	61101	312500	Prof Svc - Instr	J1	1,354.00		
1	3104	61101	580100	Dues & Mmbrshp	J1	1,000.00		
1	3104	61101	601300	Ed/Rec Supplies	J1	14,500.00		
	2000		0501	Est. Revenue			22,388.00	
			0701	Appropriation				22,388.00
	3104		0501	Est. Revenue			64,604.00	
			0701	Appropriation				64,604.00
Total						354,336.64	177,168.32	177,168.32

COUNTY OF ALBEMARLE  
 APPROPRIATION NO. 2008-047  
 DATE: 02/06/08  
 EXPLANATION: To recognize other CIP revenue sources  
 Hollymead Fire Station - Hollymead Area C and D Proffers and VNDIA Grant (\$955,850)  
 Crozet Phase II Streetscapes - Wickham Pond Proffer (\$59,161)  
 Avon Sidewalk Project - Avon Park Proffer (\$61,718)

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
2	9010	24000	240309	VNDIA Grant	J2	401,000.00		
2	9010	51000	512046	Hollymead Area C Proffer	J2	102,138.00		
2	9010	51000	512053	Hollymead Area D Proffer	J2	452,712.00		
2	9010	51000	512055	Avon Park Proffer	J2	61,718.00		
2	9010	51000	512056	Wickham Pond Proffer	J2	59,161.00		
2	9010	51000	510100	Appropriation - F/B	J2	-120,879.00		
2	9010	41000	410500	Loan Proceeds	J2	-955,850.00		
2	8527	15000	150101	Hollymead C- Interest	J2	2,084.94		
2	8527	51000	510100	Hollymead C- Approp F/B	J2	100,053.06		
1	8527	93010	930010	Hollymead C-Transfer to CIP	J1	102,138.00		
2	8528	15000	150101	Hollymead D-Interest	J2	9,010.33		
2	8528	18918	189911	Hollymead D-Proffer Revenue	J2	62,073.78		
2	8528	51000	510100	Hollymead D-Approp F/B	J2	381,627.89		
1	8528	93010	930010	Hollymead D-Transfer to CIP	J1	452,712.00		
2	8534	15000	150101	Avon Park-Interest	J2	1,259.84		

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2	8534	51000	510100	Avon Park-Approp F/B	J2	60,458.16			
1	8534	93010	930010	Avon Park-Transfer to CIP	J1	61,718.00			
2	8540	15000	150101	Wickham Pond-Interest	J2	1,171.94			
2	8540	18940	189911	Wickham Pond-Proff Revenue	J2	25,806.48			
2	8540	51000	510100	Wickham Pond-Approp F/B	J2	32,182.58			
1	8540	93010	930010	Wickham Pond-Trsf to CIP	J1	59,161.00			
	8527		501	Est. Revenue			102,138.00		
			701	Appropriation				102,138.00	
	8528		501	Est. Revenue		452,712.00			
			701	Appropriation				452,712.00	
	8534		501	Est. Revenue		61,718.00			
			701	Appropriation				61,718.00	
	8540		501	Est. Revenue		59,161.00			
			701	Appropriation				59,161.00	
						TOTAL	1,351,458.00	675,729.00	675,729.00

COUNTY OF ALBEMARLE  
 APPROPRIATION NO. 2008-048  
 DATE: 02/06/08  
 EXPLANATION: Red Hill Preschool Program

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER		
							DEBIT	CREDIT	
2	1553	24000	240283	Bright Stars 4 Yr Old Pgm	J2	17,806.00			
1	1553	61155	114100	Salaries - Teacher Aide	J1	10,666.00			
1	1553	61155	210000	FICA	J1	816.00			
1	1553	61155	221000	VRS	J1	1,916.00			
1	1553	61155	231000	Health Insurance	J1	4,123.00			
1	1553	61155	232000	Dental Insurance	J1	152.00			
1	1553	61155	240000	Group Life	J1	107.00			
1	1553	61155	270000	Worker's Compensation	J1	26.00			
	1553		0501	Est. Revenue			17,806.00		
			0701	Appropriation				17,806.00	
						TOTAL	35,612.00	17,806.00	17,806.00

COUNTY OF ALBEMARLE  
 APPROPRIATION NO. 2008-049  
 DATE: 02/06/08  
 EXPLANATION: Sheriff's Department - Click It or Ticket It Grant

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER		
							DEBIT	CREDIT	
2	1509	33000	330011	Federal Revenue	J2	1,500.00			
1	1509	21070	120000	Overtime	J1	1,385.25			
1	1509	21070	210000	FICA	J1	114.75			
	1509		0501	Est. Revenue			1,500.00		
			0701	Appropriation				1,500.00	
						TOTAL	3,000.00	1,500.00	1,500.00

COUNTY OF ALBEMARLE  
 APPROPRIATION NO. 2008-050  
 DATE: 02/06/08  
 EXPLANATION: Management Board Meeting 11/20/2007

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER		
							DEBIT	CREDIT	
2	4100	51000	510100	Appropriation - F/B	J2	48,500.00			
1	4100	31041	312210	Contract Services	J1	20,000.00			
1	4100	31041	530900	Auto Insurance		1,200.00			
1	4100	31041	600800	Vehicle Fuel		1,990.00			
1	4100	31041	800500	Motor Vehicle		22,110.00			
1	4100	31041	800700	ADP Equipment		3,200.00			
	4100		0501	Est. Revenue			48,500.00		
			0701	Appropriation				48,500.00	
						TOTAL	97,000.00	48,500.00	48,500.00

COUNTY OF ALBEMARLE  
 APPROPRIATION NO. 2008-051  
 DATE: 02/06/08  
 EXPLANATION: Community Corrections Grant - Additional Grant Funding

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER		
							DEBIT	CREDIT	
2	1520	24000	240440	State Revenue	J2	10,889.00			
1	1520	29406	566120	Offender Aid & Restoration	J1	10,889.00			
	1520		0501	Est. Revenue			10,889.00		
			0701	Appropriation				10,889.00	
						TOTAL	21,778.00	10,889.00	10,889.00

Item 7.2. Resolution to accept road(s) in Foxchase Subdivision into the State Secondary System of Highways.

**At the request of the County's Engineering Department, the Board adopted the following resolution:**

### R E S O L U T I O N

**WHEREAS**, the street(s) in **Foxchase Subdivision**, as described on the attached Additions Form AM-4.3 dated **February 6, 2008**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Foxchase Subdivision**, as described on the attached Additions Form AM-4.3 dated **February 6, 2008**, to the secondary system of state highways, pursuant to §33.1-229 and §33.1-82, Code of Virginia, and the Department's Subdivision Street Requirements; and

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

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

\* \* \*

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

- 1) **Foxdale Lane (State Route 1850)** from the intersection of Route 250 to the intersection of Lenox Hill Road (Route 1851), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2503, page 656, with a 50-foot plus right-of-way width, for a length of 0.22 miles.
- 2) **Foxdale Lane (State Route 1850)** from the intersection of Lenox Hill Road (Route 1851) to the intersection of Bedford Park Road (Route 1852), as shown on plat recorded in the office of the Clerk of Circuit Court of the Albemarle County in Deed Book 2503, page 656, with a 50-foot plus right-of-way width, for a length of 0.07 miles.
- 3) **Foxdale Lane (State Route 1850)** from the intersection of Bedford Park Road (Route 1852) to the intersection of Ellington Bend (Route 1853), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2503, page 656, with a 50-foot plus right-of-way width, for a length of 0.10 miles.
- 4) **Foxdale Lane (State Route 1850)** from the intersection Ellington Bend (Route 1853) to the intersection of Carlyle Place (Route 1854), as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2503, page 656, with a 50-foot plus right-of-way width, for a length of 0.09 miles.
- 5) **Lenox Hill Road (State Route 1851)** from the intersection Foxdale Lane (Route 1850) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2503, page 656, with a 40-foot plus right-of-way width, for a length of 0.24 miles.
- 6) **Bedford Park Road (State Route 1852)** from the intersection Foxdale Lane (Route 1850) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2503, page 656, with a 40-foot plus right-of-way width, for a length of 0.09 miles.
- 7) **Ellington Bend (State Route 1853)** from the intersection Foxdale Lane (Route 1850) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2503, page 656, with a 40-foot plus right-of-way width, for a length of 0.09 miles.
- 8) **Carlyle Place (State Route 1854)** from the intersection Foxdale Lane (Route 1850) to the west cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 2503, page 656, with a 40-foot plus right-of-way width, for a length of 0.04 miles.

Total Mileage – 0.94

Item 7.3. Federal Low-Income Housing Tax Credits.

It was noted in the Executive Summary that Federal Low-Income Housing Tax Credits, administered by the Virginia Housing Development Authority (VHDA), can provide a significant amount of equity financing for affordable rental developments. The credits are allocated by VHDA through a competitive process which is based on a point system that includes project readiness, feasibility and local support. VHDA is required by the Internal Revenue Code to provide localities with an opportunity to comment on any developments under consideration for tax credits. The three attached letters of support (Attachments A-C), if signed, would provide 50 points to each applicant. A letter that does not provide support or opposition would provide 25 points and a letter stating that the development is inconsistent with zoning or land use regulations would provide no points.

One of the adopted strategies in the County's Affordable Housing Policy is to support applications for and the allocation of federal low-income housing tax credits. The County has been notified by VHDA that three applicants submitted letters of intent to apply for tax credits for developments in Albemarle County. All developments are currently zoned for the proposed activities. Following is a brief description of three proposed developments in Albemarle County that have notified VHDA of their intent to apply for 2008 Federal Low-Income Housing Tax Credits. All projects are required to restrict the occupancy to households with incomes at or below 60 percent of the area median income.

Appleton Apartments, currently known as Wilton Farms Apartments, is a proposed acquisition/rehab of 143 units of affordable rental housing located on Wilton Farm Road just off Route 20 North. The existing garden-style apartments will be sold to the Virginia Non-Profit Coalition and will undergo exterior renovations including a new roof, siding and windows. The units will also receive new appliances and HVAC equipment.

Crozet Meadows is a 28-unit rental development for lower-income elderly tenants in Crozet owned by Jordan Development Corporation. The owners are proposing to sell the property to a Limited Partnership which will include Jordan Development and the Piedmont Housing Alliance. The proposal includes rehabilitation of the existing units and development of 38 new units of affordable rental housing. The Board approved similar support for this project last year although it was not awarded tax credits. The Board also adopted a resolution last year committing up to eight Housing Choice Vouchers to the development.

Treesdale Park is a 90-unit development proposed by the Albemarle Housing Improvement Program (AHIP) to be located on East Rio Road. The proposed project will consist of three, three-story buildings of 30 units each and a separate community building. AHIP has requested that the County provide financial support for this project. One means of providing financial support is through the commitment of Housing Choice Vouchers. HUD regulations allow for the commitment of up to 20 percent of allocated vouchers to be project-based vouchers. Currently the County's Housing Choice Vouchers (HCV) Annual Plan states that we will use up to 15 percent but a revision will be proposed to the next Annual Plan to be submitted to HUD in April that will allow the maximum commitment. All commitments of Housing Choice Vouchers to be used with specific projects are conditioned on continued funding from HUD. A resolution is attached for the Board's consideration and adoption.

There is no budget impact in providing support for the allocation of federal low-income housing tax credits to the three developments. The resolution to commit up to 21 Housing Choice Vouchers to the proposed Treesdale Park development will not impact the County's general fund budget as the vouchers are funded by the U.S Department of Housing and Urban Development (HUD).

Staff recommends that the Board of Supervisors indicate its support for the three applicants seeking federal low-income housing tax credits and authorize the County Executive to sign the letters of support for inclusion in the respective applications. Furthermore, staff recommends that the Board adopt the resolution to commit up to 21 Housing Choice Vouchers to the Treesdale Park development provided:

- a. HUD approves the County's Housing Choice Voucher Annual Plan to allow up to 20 percent of allocated vouchers be used for project-based assistance, and;
- b. HUD continues to provide sufficient funding to meet this commitment.

**By the vote set out above, the Board supported the three applicants seeking federal low-income housing tax credits, and authorized the County Executive to sign the letters of support for inclusion in the respective applications, and adopted the following resolution to commit up to 21 Housing Choice Vouchers to the Treesdale Park development provided: a. HUD approves the County's Housing Choice Voucher Annual Plan to allow up to 20 percent of allocated vouchers be used for project-based assistance; and, b. HUD continues to provide sufficient funding to meet this commitment.**

#### RESOLUTION

**WHEREAS**, the County of Albemarle is committed to ensuring that safe, decent, affordable, and accessible housing is available for all residents; and

**WHEREAS**, the County of Albemarle is committed to improving the livability of all neighborhoods and access to support services by residents; and

**WHEREAS**, The County of Albemarle is committed to preserving existing and promoting the development of new affordable housing stock; and

**WHEREAS**, the Albemarle Housing Improvement Program through Treesdale, LP, is applying for Federal Housing Tax Credits to develop 90 units of rental housing located on East Rio Road and known as Treesdale Park; and

**WHEREAS**, all proposed units in the development will be restricted to households with incomes at or below 60% of the area median income; and

**WHEREAS**, the Albemarle County Office of Housing proposes the use of Housing Choice Vouchers to provide project-based assistance for up to 21 of the proposed housing units with household incomes limited to those families at or below 40% of the area median income;

**NOW, THEREFORE, BE IT RESOLVED** that the County of Albemarle supports the commitment of up to 21 project-based vouchers for rental housing located on East Rio Road and known as Treesdale Park to provide rental assistance for households with incomes at or below 40% AMI contingent upon U. S. Department of Housing and Urban Development (HUD) approval of the County's Housing Choice Voucher Annual Plan to allow up to 20% of allocated vouchers to be used for project-based assistance and contingent upon HUD providing sufficient funding to meet this commitment.

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Item 7.4. Resolutions of Intent to amend the Zoning Ordinance and Subdivision Ordinance requirements for roads associated with subdivisions and frontage for newly created lots.

It was noted in the Executive Summary that at the January 9, 2008, Board meeting, the Board received a memo from Amelia McCulley, Zoning Administrator, outlining ways that property has been subdivided without using road standards and/or having inadequate road frontage. As a result of that information, the Board instructed staff to prepare two Resolutions of Intent to modify County ordinances to correct these problems.

A Resolution of Intent for the Subdivision Ordinance would amend the Subdivision Ordinance to increase the minimum design and construction standards for private streets serving two lots to the standards that currently apply to private streets serving three to five lots. It would also require that all lots created from the subdivision of an existing parcel share the same entrance to an existing public or private street. This addresses the issue of two-lot subdivisions where there is no road standard and corrects the process nicknamed the "Albemarle Two Step" which has been used to avoid constructing road improvements.

A second Resolution of Intent for the Zoning Ordinance would amend the Zoning Ordinance to amend the lot frontage requirements to avoid back and front subdivisions where the only road frontage is effectively the driveway serving the lot. It was noted at the January 9 Board meeting that there may be difficulty in crafting an ordinance amendment to close this loophole, but this resolution would give staff direction to further study this issue and provide possible solutions. Staff recommends adoption of the Resolutions.

**By the recorded vote set out above, the Board adopted the following two Resolutions of Intent:**

#### **RESOLUTION OF INTENT**

**WHEREAS**, subdivision regulations should assure the orderly subdivision and development of land and promote the public health, safety, convenience and welfare of citizens; and

**WHEREAS**, the orderly subdivision and development of land includes requiring a subdivider to lay out and construct streets in accordance with appropriate state and local standards to relieve the public of the burden that would otherwise exist, to assure that streets are properly designed and constructed for anticipated traffic, and to promote public safety and minimize traffic conflicts with existing streets; and

**WHEREAS**, current County subdivision regulations allow these purposes to be circumvented by allowing a parcel to be subdivided into multiple two-lot subdivisions that result in lots being created without being served by streets meeting public street design and construction standards or reviewed for approval by the Planning Commission under Albemarle County Code § 14-232 *et seq.*; and

**WHEREAS**, current County subdivision regulations also allow these purposes to be circumvented by allowing the ultimate subdivision of a parcel to have multiple entrances onto existing public streets, thereby creating additional conflict points and opportunities for accidents; and

**WHEREAS**, in order to better achieve the purposes of subdivision regulation and to eliminate the potential for circumvention of those purposes, it is desired to amend the Subdivision Ordinance to increase the minimum design and construction standards for private streets serving two lots to the standards that currently apply to private streets serving three to five lots, and to

require that all lots created from the subdivision of an existing parcel share the same entrance to an existing public or private street.

**NOW, THEREFORE, BE IT RESOLVED THAT** for purposes of public necessity, convenience, general welfare and good land development practices, the Board of Supervisors hereby adopts a resolution of intent to amend Albemarle County Code §§ 14-404, 14-412, 14-434 and any other regulations of the Subdivision Ordinance deemed appropriate to achieve the purposes described herein.

**BE IT FURTHER RESOLVED THAT** the Planning Commission shall hold a public hearing on the subdivision text amendment proposed by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

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#### RESOLUTION OF INTENT

**WHEREAS**, zoning district regulations establish minimum frontage requirements for lots on public and private streets; and

**WHEREAS**, Zoning Ordinance § 4.6.1(b)(2) provides an exception to the minimum frontage requirements established for the applicable zoning district by allowing the frontage of lots served by an access easement to be reduced to the width of the access easement; and

**WHEREAS**, by allowing reduced frontage, Zoning Ordinance § 4.6.1(b)(2) facilitates front-and-back subdivision lot configurations and allows the subdivision of parcels that have very limited existing street frontage; and

**WHEREAS**, front-and-back subdivisions whose back lot meets only the frontage requirements of Zoning Ordinance § 4.6.1(b)(2) result in an undesirable pattern of development; and

**WHEREAS**, the elimination of the exception allowed by Zoning Ordinance § 4.6.1(b)(2) will not, in and of itself, eliminate front-and-back subdivision lot configurations because an access easement or right-of-way could be extended into the back lot to provide the full frontage otherwise required by the district regulations; the elimination of the exception will, however, be effective in conjunction with proposed amendments to the Subdivision Ordinance identified in a separate resolution of intent adopted this same date; and

**WHEREAS**, in order to facilitate the creation of a convenient, attractive and harmonious community, it is desired to amend the Zoning Ordinance to delete the exception provided by Zoning Ordinance § 4.6.1(b)(2) when a lot is served by an access easement.

**NOW, THEREFORE, BE IT RESOLVED THAT** for purposes of public necessity, convenience, general welfare and good land development practices, the Board of Supervisors hereby adopts a resolution of intent to amend Zoning Ordinance § 4.6.1 and any other regulations of the Zoning Ordinance deemed appropriate to achieve the purposes described herein.

**BE IT FURTHER RESOLVED THAT** the Planning Commission shall hold a public hearing on the zoning text amendment proposed by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

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Item 7.5. Board-to-Board, Monthly Communications Report from School Board, School Board Chairman, **was received as information as follows:**

A monthly communications report from the Albemarle County School Board to the Albemarle County Board of Supervisors

**Meeting with the Legislators:** On December 7th, the School Board hosted a meeting with local Legislators. The discussion was an update of the meeting held August 31st and included Composite Index/Cost of Competing and Standards of Quality Funding. Based on the discussion with legislators, Delegate Bell and Delegate Toscano felt that it would be more appropriate to address the composite index piece for Albemarle County due to the revenue sharing agreement with the City of Charlottesville rather than look at adding Albemarle County to cost-to-compete adjustments.

**Annual Progress Report:** At its December 13 meeting the Board was presented the Annual Progress Report. The Annual Progress Report contains data and information on the Division's progress in meeting Strategic Goals and Board/Superintendent Priorities by providing updated status on identified outcome measures associated with the goals and priorities.

**Superintendent's Funding Request Presentation:** On December 19<sup>th</sup>, Dr. Moran presented her two-year funding request for FY2009 and FY2010 to the School Board. Since the presentation the School Board has been holding Budget Work Sessions to focus on the departments within the budget as well as any new initiatives that the Superintendent put forth in her recommendation. The School Board held its Public Hearing on Tuesday, January 29<sup>th</sup> in the new Monticello High School Auditorium.

**Election of Officers and Appointments:** At its January 10 meeting, the Board elected Brian Wheeler as Chairman and Diantha McKeel as Vice-Chairman. The Board also made appointments to the PREP and CATEC Boards and established meeting times, places and dates for 2008.

**Resource Utilization Study:** In July, the School Board contracted with the Commonwealth Educational Policy Institute (CEPI) at Virginia Commonwealth University to conduct a resource utilization study of the school division. The results of the study were presented by Dr. Boshier, CEPI Executive Director, at the December 6 Board meeting where he focused on 19 key issues. The Board reviewed with the staff the 19 recommendations on December 13. The Superintendent received input from leadership staff during the week of January 2 to assist with formulation of next steps to improve the organization's efficiency and effectiveness. At its January 10 meeting, only 10 business days following the Board's work session, the School Board received staff recommendations and provided direction regarding which short-term and long-term actions to pursue with details about which future budgets should be impacted. Board of Supervisors members received a copy of the report.

**Telephone Town Hall:** On Wednesday, January 16 the School Board had their first Telephone Town Hall meeting. The hour-long Telephone Town Hall focused on the school division budget development process for the 2008-09 school year. The event reached a total of 16,775 households successfully. Of that number: 3,885 accepted the call (joined the conference), 4,792 opted-out of the call (answered the phone but hung up before joining the conference) and 8,098 received a message on their answering machines. The Telephone Town Hall is part of the School Board's efforts to build public understanding of the budget development process and increase public participation.

**February Meetings:** The School Board will hold its Regular Board meeting on February 14, 2008, its Regular Work Session on February 28, 2008 and its Special Budget Work Sessions on February 5 and 7, 2008. In addition a student conduct meeting is scheduled for Monday, February 25<sup>th</sup>.

**(Discussion:** Ms. Thomas said there has now been some experience in this building with doing something unusual, which is telephoning every household that has a land line and asking if they wanted to participate in a conference Telephone Town Hall Public Hearing. Apparently that worked, so it is something she would like to keep in mind for getting input on the budget, or other items of public interest. She knows Mr. Slutzky does not have a land line.

Mr. Slutzky said if one looked at the demographic distribution of the people who do not have land lines to their homes he would caution the Board to not narrow public discourse to those people who are an older population. He said that people under the age of 28 seldom have a land line today. There is a down side to this procedure.

Ms. Thomas said a consultant has said that every time they checked with people who do not have a land line, the results and opinions received were the same.

Mr. Slutzky said he is skeptical.

Ms. Thomas said she understands that if people know about it they can call in, but the County can't call them.

Mr. Slutzky said public outreach would have to take place through different media forms to that constituency just to make sure they are represented evenly.

Ms. Mallek said having a variety of ways for people to express their opinions is a way to raise the level of participation.)

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Item 7.6. Copy of letter dated December 12, 2007, from William D. Fritz, AICP, Chief of Zoning, to J. Alden English, re: LOD-2007-00033, OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS -- Tax Map 51, Parcel 24A (property of Thomas B. Merrick IV and Judith Merrick, Daniel D. Merrick and Sharon Merrick, W. Gordon Merrick and Sandra Merrick, & Randolph V. Merrick and Caroline Merrick) – Rivanna Magisterial District, **was received as information.**

**(Discussion:** Mr. Boyd asked if other Board members had noted the number of determination letters on the agenda.

Ms. Thomas said she would like to know how much each of these official determinations cost, what the fee is for the determination and if that fee covers the cost. She was approached by a constituent who wanted to get such a determination but was told he did not fit the policy of who got a determination because it was just idol curiosity on his part. She also does not know what that policy is. She can tell just by reading the letters that there is a lot of research involved.

Mr. Rooker asked what information is required of the applicant. Mr. Davis said the applicant is asked to provide a lot of information that has to be verified and analyzed. There is no absolute requirement as to what has to be submitted. In the Rural Areas the biggest problem is that there are a lot of historic deeds and a lot of transactions transpired before either subdivision regulations or zoning

occurred. It is tricky to work through that history to determine which parcels were of record on December 10, 1980.

Mr. Slutzky asked if that work is expensive and can the cost be recovered. Mr. Mark Graham said it was identified in the fee study presented to the Board last year. He thinks the average cost of this determination is over \$1,000.

Mr. Slutzky asked if the County has the ability to recover that fee. Mr. Graham said he understands that technically the County is not required to provide this determination. It is just a service that has been provided.

Mr. Rooker asked if the County could require the applicant to provide detailed information establishing the parcels. Mr. Davis said the County could require title searches and legal determinations. It is an essential part of a lot of processes. It is essential in order to determine rural subdivision rights. It is an essential part of the ACE Program because it is important in determining the value of the lots. Not just large developers are applicants in these matters. Because the County's Zoning Ordinance relies on this determination, the Board's policy in the past has been to make it easy for people to determine their rights, but it is complicated. If the Board decides property owners should pay the cost, it will need to be applied the same to all owners. That makes it more difficult from a policy perspective as to what cost should be recovered in a particular application.

Mr. Slutzky asked if it is more costly if there are multiple parcels and many development rights. Mr. Davis said the complications sometimes are not dependent on how much land there is, but the number of historical parcels.

Mr. Slutzky said the Comprehensive Plan does not encourage subdivision of rural properties so if there is an increased cost associated with proving there is a right to do something the Comprehensive Plan does not encourage, he does not find that to be a undue hardship. If the County has any interest in pursuing transferable development rights, it would be useful to address this issue now instead of adding that into the discussion later. To the extent the Assessor's Office chooses not to place any value on development rights they have no way of knowing how many development rights are on a parcel. It is possible that after going through this exercise of determination, it could arguably make an owner susceptible to an increase in their tax bill. If the Board is going to look at strategies for protecting the County's ecological systems in the Rural Area and reinforce the intent of the Comprehensive Plan in the next couple of years, there is a risk of having a flood of people come in to get a determination before that occurs. He is interested in accelerating the process and wonders if it would require a public hearing and an ordinance change. Is it simply a policy issue to make it a requirement that an applicant pay the cost to the County, and perhaps shift some of the labor burden onto the applicant?

Mr. Davis said the County Code currently has a fee that is associated with an application for development rights. In order to change that fee, it would require an amendment of the Zoning Ordinance. If specific requirements were put on that application, that should also be a part of the Zoning Ordinance.

Mr. Slutzky said he would be interested in moving forward with this quickly.

Ms. Mallek asked if the County can have a tiered fee structure. Mr. Davis said that is possible as long as there is a reasonable basis for the difference in fees. Mr. Graham said if an applicant asks for this determination for the purpose of a subdivision or creating a conservation easement, staff cannot distinguish between the two applications and would charge the same fee and go through the same process.

Ms. Mallek said the ACE Program provides all of the legal and appraisal work for applicants. Mr. Graham said easement programs outside of the ACE Program net more acreage in conservation easements in the County than the ACE Program.

Ms. Mallek asked if a landowner has to provide their own appraisal for the ACPRFA (Public Recreational Facilities) Program. Mr. Graham said a determination of development rights has to be made.

Mr. Boyd asked if Mr. Graham was saying the County could not differentiate between the two as to the fee structure. Mr. Davis said that often it is not known why someone is asking for this determination. If someone said they were doing it for a certain program, a distinction could be made based on that statement. After someone knows their development rights, they could decide not to put the land in an easement program. That is difficult criteria on which to base a fee.

Ms. Mallek asked if there is a way legally to add the cost of the determination to their easement value if they go through the program and receive funds for their development rights so they could recover that cost in the same way the State credits for land use. Mr. Davis said the ACE Ordinance specifically sets out recoverable costs; that ordinance would have to be amended in order to do that.

Mr. Boyd said in the essence of time the Board might ask staff to get it some additional information.

Mr. Rooker said he is in favor of trying to make the fee more in relation to the existing cost.

Mr. Slutzky said he would like to know how many applicants ask for a determination, what percentage of them ultimately put land into conservation easement versus those who do not.

Mr. Rooker said he thinks it would not be a high percentage.)

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Item 7.7. Copy of letter dated December 12, 2007, from William D. Fritz, AICP, Chief of Zoning, to J. Alden English, re: LOD-2007-00035, OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS -- Tax Map 57, Parcel 73A (property of J. Ramsey Martin) – Samuel Miller Magisterial District, **was received as information.**

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Item 7.8. Copy of letter dated December 12, 2007, from William D. Fritz, AICP, Chief of Zoning, to J. Alden English, re: LOD-2007-00036, OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS -- Tax Map 57, Parcel 73C2 (property of J. Ramsey Martin) – Samuel Miller Magisterial District, **was received as information.**

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Item 7.9. Copy of letter dated December 12, 2007, from William D. Fritz, AICP, Chief of Zoning, to J. Alden English, re: LOD-2007-00037, OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS -- Tax Map 57, Parcel 73B (property of J. Ramsey Martin) – Samuel Miller Magisterial District, **was received as information.**

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Item 7.10. Copy of letter dated January 3, 2008, from Ronald L. Higgins, AICP, Chief of Zoning, to Yates Carr Garnett, re: LOD-2007-00040, OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS -- Tax Map 44, Parcels 4J & 4K (property of C. Mercer Garnett Jr. Trust Agreement – Yates Carr Garnett Trustee) – White Hall Magisterial District, **was received as information.**

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Item 7.11. Copy of letter dated January 3, 2008, from Ronald L. Higgins, AICP, Chief of Zoning, to Oden L. Cornwell, re: LOD-2007-00045, OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS -- Tax Map 134, Parcel 7A (property of Oden L. Cornwell, Jr.) – Scottsville Magisterial District, **was received as information.**

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Item 7.12. Copy of letter dated January 3, 2008, from Ronald L. Higgins, AICP, Chief of Zoning, to Peter Duntell, re: LOD-2007-00046, OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS -- Tax Map 99, Parcels 36C & 38 (property of Peter Duntell) – Samuel Miller Magisterial District, **was received as information.**

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Item 7.13. Copy of letter dated January 3, 2008, from Ronald L. Higgins, AICP, Chief of Zoning, to Marcia D. Fallon, re: LOD-2007-00047, OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS -- Tax Map 113, Parcels 5, 5A & 6A (property of Marcia D. Fallon) – Scottsville Magisterial District, **was received as information.**

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Item 7.14. Copy of letter dated January 3, 2008, from Ronald L. Higgins, AICP, Chief of Zoning, to Barbara Joan Ford or David J. Ford or James Ford, re: LOD-2007-00048, OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS -- Tax Map 6, Parcel 21 (property of Barbara Joan Ford or David J. Ford or James Ford) White Hall Magisterial District, **was received as information.**

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Item 7.15. Copy of letter dated January 3, 2008, from Ronald L. Higgins, AICP, Chief of Zoning, to Vincent L. & Stephanie J. Jones, re: OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS -- Tax Map 87, Parcel 44 (property of Vincent L. & Stephanie J. Jones) – Samuel Miller Magisterial District, **was received as information.**

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Item 7.16. Copy of letter dated January 3, 2008, from Ronald L. Higgins, AICP, Chief of Zoning, to John D. Griffin, Esquire, re: OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS -- Tax Map 70, Parcel 47A & Tax Map 84, Parcel 28B (property of Charles B. & Pamela Fitzgerald) – White Hall Magisterial District, **was received as information.**

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Item 7.17. FY 2008 Second Quarter Financial Report, **was received as information as follows:**

It was noted in the Executive Summary that this Quarterly Financial Report provides information on the County's General Fund operations and Fund Balance as of December 31, 2007. The Financial Report includes a bar chart that compares fiscal year revenue and expenditure data with the prior year.

**A. Attachment A – General Fund Quarterly Financial Report (in millions):**

1. Revenues: The Department of Finance estimates that General Fund revenues, transfers, and use of fund balance will be \$6.828 million (3.1%) less than appropriations of \$221.634 million. Indicators suggest that the economic expansion will continue to slow as the housing and credit crunch remain influential. Final revenues may vary from estimates due to continued market uncertainty.

- a. Real Estate tax revenues are estimated to be \$3.317 million (3.0%) less than appropriations. The Budget was prepared prior to the impact of the housing crunch becoming known. It was based on an estimated 2008 reassessment rate of 5.0% and 2007 new construction of \$668.328 million. The actual 2008 reassessment rate is 0.14% and 2007 new construction was \$291.072 million.
  - b. Personal Property tax revenues are estimated to be \$1.015 million (4.8%) less than appropriations. The decrease is attributed to a sales shift from high dollar fuel inefficient to lower dollar fuel efficient vehicles, average used vehicle sale prices falling faster than prior year comparable vehicle sales, and an actual decrease in new vehicle unit sales from prior years.
  - c. Delinquent Property tax revenues are estimated to be \$0.284 million (29.4%) less than appropriations. The decrease is being experienced in both real estate and personal property collections.
  - d. Sales tax revenues are estimated to be \$1.100 million (7.5%) less than appropriations. Actual collections for July through November are slightly less than FY07 for the same period. Indicators for December sales tax revenues to be received in February point to continued reduced collections reflecting the weakening of the national and state economies. The impact of the rapid increase in gift card sales is unknown at this time.
  - e. Business License revenues are estimated to exceed appropriation by \$0.467 million (4.8%). Business licenses are based on prior calendar year gross receipts. Due to the one year lag in recognition, the County is now realizing an increase in license fees from when market conditions were stronger.
  - f. Other Local tax revenues are estimated to be \$0.128 million (1.1%) less than appropriations. The decrease is primarily attributed to decreased local recordation and seller tax collections related to the housing and credit crunch.
  - g. Federal revenues are estimated to be \$1.336 million (24.4%) less than appropriations. The decrease is primarily attributed to decreased federal reimbursement for public assistance. There will be a related decrease in local expenditures. Economically sensitive expenditures for food stamps, TANF, and Medicaid are administered by the state.
  - h. Other categories are estimated to vary less than \$0.100 million from appropriations.
2. Expenditures: Total expenditures, including transfers, are within appropriate levels, 44.3%, for the first six months.
- a. Departmental expenditures are estimated to be \$2.223 million (2.7%) less than appropriations. The decrease is primarily attributed to decreased public assistance expenses. Additional estimated departmental expenditure reductions are due to the elimination of 3 positions, freezing of 14 vacant positions, and reduced total rewards funding.
  - b. Non-departmental expenditures are estimated to be \$0.100 million (0.7%) less than appropriations. The decrease is due to an anticipated reduction in reserve and other County-wide spending.
  - c. Transfers are estimated to be \$3.482 million (2.8%) less than appropriations. The decrease is due to:
    - i. \$3.001 million reduction in the School Division transfer resulting from reduced local tax collections; and
    - ii. \$0.482 adjustment in debt service resulting from a prior year adjustment.
3. Revised Revenues less Expenditures:
- a. Revenues are projected to be \$1.021 million less than estimate expenditures.
  - b. Fund Balance available February 06, 2008 is \$1.254 million. This is after an estimated \$1.690 million transfer to the CIP fund based on expenditure savings in FY07.
  - c. Projected End-of-Year Available Funds is \$0.232 million. It is important to note that these figures are assuming the savings from the frozen/deleted positions and decreased public assistance expenses only. Staff is aggressively pursuing additional saving opportunities and is confident that, by the end of FY08, actual revenues will exceed expenditures.
- B. **Attachment B – General Fund Budget Comparison Report:** The bar-chart report tracks changes in revenue and expenditure changes over time.
- a. Revenues in all categories except Federal, Transfers, and Use of Fund Balance show positive growth over FY07.
  - b. Expenditures in all categories except Non-School Transfers are expected to increase over FY07.

**C. Attachment C – General Fund Balance Report:** The report indicates that the County:

- a. Has an audited FY '07 Fund Balance of \$18.314 million at June 30, 2007,
- b. Appropriated \$2.370 million for FY '08 projects,
- c. Has remaining FY '07 Fund Balance of \$15.944 million at December 31, 2007,
- d. Reserved \$13.000 million for cash flow purposes,
- e. Has a Preliminary \$1.690 million CIP transfer commitment, and
- f. Has Unobligated Funds Available of \$1.254 million at February 06, 2008.

This Financial Report is based on audited financial data for FY '07 and the first six months of operations for FY '08. Staff will utilize this data as the basis for the FY '09 Budget. It is important to remember that any change in the County's real estate tax rate will impact both the FY '08 and FY '09 real estate tax revenues. Staff estimates that each one cent increase in the 2008 real estate tax rate will increase FY '08 revenues by \$788,149 (including real estate, public service, and mobile homes) and FY '09 revenues by \$1,608,235 (including 2008 new construction). This Financial Report has been prepared for your information. **No action is required.**

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Agenda Item No. 8. **Appeal:** SDP-2007-048, Crozet Gateway Final Site Plan. Request final site plan approval for the construction of two (2) buildings for commercial and office use on 1.99 acres zoned HC Highway Commercial and EC Entrance Corridor. This request includes a request for a waiver in order to allow shared parking within the site. The property, described as Tax Map 56, Parcels 32 and 32A are located in the Whitehall Magisterial District in the northeast corner of the intersection of Route 240 (Brownsville Road) and Route 250 (Rockfish Gap Turnpike). This is currently the site of a convenience store. The Comprehensive Plan designates this property as Crozet Community.

Mr. Bill Fritz, Chief of Current Development, made the presentation. He said this is appealed from the Planning Commission who was hearing it on an appeal from a determination of the Deputy Zoning Administrator. The issue is that a preliminary site plan was approved for a piece of property at the intersection of Routes 250 and 240 which included a condition stating "The preliminary site plan for this project was approved with the following note on the plan. 'The parking requirements will be finalized at the final site plan stage when the building footprint and design has been finalized. The building outline and area shown hereon is approximate. The final building outline and area will not exceed the totals shown hereon'." He showed an aerial photo of the property.

Mr. Fritz said the applicant then submitted a final site plan which showed 99 parking spaces. With the mix of uses proposed along with some storage, the total number of parking spaces required by the County's Ordinance was 120. The Zoning Ordinance includes provisions which allow the Zoning Administrator to reduce the number of required parking spaces by either a) authorizing shared parking, or b) simply reducing the total number of required parking spaces. The applicant applied to have the parking reduced under both of those scenarios. A reduction in parking was authorized from 120 down to 118 parking spaces, saying the storage proposed for the property would be shared with the office space so did not need to have its own parking. Not enough dissimilar hours between the retail and the commercial were found to authorize shared parking between the retail and the commercial.

Mr. Fritz said the applicant submitted information indicating the County's parking standards are excessive, and a different parking standard should be applied for the commercial and the office. Staff reviewed that information and declined to grant the reduction. This decision was based on the fact that the County's Ordinance has a specific parking standard for the uses proposed; that the parking standard the applicant proposed is not clear or more definitive than the ordinance requirements. The applicant submitted some work by the Urban Land Institute and it is part of the Board's packet tonight. Zoning staff felt that was more appropriate for a zoning text amendment than it was for a reduction in parking because staff would not be able to differentiate this request from any other request for commercial or office.

Mr. Rooker asked if the Planning Commission had the authority to grant a waiver based on a staff decision that the parking requirements were excessive. Mr. Davis said there is a specific standard in the ordinance for granting a waiver. The basic waiver standard is that the public health, safety and welfare would be equally served by the reduced number of parking spaces; criteria that allow the Zoning administrator in consultation with the County Engineer to make that determination is set out in the ordinance.

Mr. Rooker said the health, safety and welfare category is fairly broad. Would that give staff the ability to make an individual determination that the shared parking was not applicable in this case? Mr. Davis said there are a number of factors set out in the ordinance that staff can consider in making the determination. After consideration of those factors, there is still the general consideration as to whether it serves the general health, safety and welfare criteria.

Mr. Rooker asked if the factors are objective factors.

Mr. Davis suggested Mr. Fritz list those factors. Mr. Fritz said staff looked at three factors. One was the shared parking, another was the nature of the use proposed by the applicant, and third, would a reduction serve the public purpose to a greater degree. He listed the criteria used for this review, and said that in addition staff looks at whether there would be an adequate area on site to provide the required parking should the reduced parking standard be determined at a later date to be insufficient. He then showed a diagram of the parking and travel areas on the property. It shows that there is no additional area on site should the parking reduction from 118 spaces down to 99 not prove to be adequate. That was another reason why staff could not make a finding that a reduction was appropriate.

Mr. Slutzky asked if surrounding parcels will be developed so there would be other opportunities for additional sharing. Mr. Fritz said staff does not expect the area to develop significantly as a commercial area. Another factor to consider is whether the parking can be added, and if traffic reduction situations are occurring in the area such as pedestrian access and public transportation. The answer to both questions is "no."

Mr. Slutzky said the Board has discussed expansion of public transit. He thinks it is reasonable to anticipate that in the future there might be a lot of traffic entering this center and if there is a problem with parking it is likely there would be some transit option there to mitigate the situation. Mr. Fritz said that is something this Board might consider, but because it is not in place now, staff did not consider that.

Mr. Slutzky asked if Mr. Fritz thinks it would be reasonable for the Board to consider allowing for the shared parking use in the utilized standards. Mr. Fritz said he will say the same thing he told the Planning Commission; parking is an art, not a science. ULI has one standard. ITE has a different standard. The County standard is different from both of those in some cases, and in some cases they match. Every jurisdiction determines for itself the appropriate level of parking. That was done by Albemarle after holding lengthy public hearings when the parking study was done. He cannot say whether 188 or 99 is the appropriate number. The applicant has given the Board some good information from ULI which tends to indicate that a lower standard is appropriate. It is staff's opinion that the question would best be answered through a zoning text amendment, not through an administrative parking reduction process.

Ms. Thomas said the Board is totally limited in its ability to do that in this instance.

Ms. Mallek said if bus service were extended to Crozet, it would go right by this center.

Ms. Thomas said the applicant needs to provide a bus pull-out or something. This is a situation which can only be reached by car. ULI has been leading the way in rebuilding shopping centers and she has read a lot about ULI and what they want to see in shopping centers; however, this is a very suburban, ordinary location which can only be accessed by car.

Mr. Slutzky said because of its relative isolation, some of the draw synergies which occur in an actively commercialized district are not present here. On the practical side, he cannot imagine this parking lot ever filling up even if built out.

Mr. Rooker said he has seen four or five centers in the last few years that are similar to this one and their parking lots are full all of the time. If the right kinds of tenants go into the center, it will be full.

Ms. Mallek said she would like someone to address the apparent inconsistency with the amount of land on this lot being set aside for shrubbery as opposed to the Clover Lawn development. She drove around both places and looked and wondered if this is a place where some middle ground can be found. The dumpster area has a very wide bush screen and a fence around it, so there is redundant screening which takes up parking spaces. She asked that the applicant address the history of the project; this property has been commercial since the 1970s so it is an historic country crossroads market, something which she personally values. She compares this proposal to Whites Market in Earlysville which has a very large grocery store and all sorts of offices and a Post Office around it, and understands that by today's standards it would not "fly", but it works well and it is never full except for the Fourth of July Parade. In this case she hopes for some middle ground.

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

Mr. Sam Saunders said he is a civil engineer with the Timmons Group and is representing the applicant. They are present to ask this Board to approve their site plan, particularly the shared parking request. He said the project has by-right zoning. The plan was turned in to the County in August, 2006, that plan showed the shared parking. They understood that the building square footages would be tweaked a bit during the process, but the shared parking was part of the project from the beginning. They believe that building extra parking and its environmental impacts are negative pieces to over-parking the shopping center. They believe the arguments put forth from ULI are reasonable; they used the 1999 ULI book. They agree with the characterization that this will be a neighborhood center. Ninety-nine parking spaces are shown although ordinance requirements are for 118 spaces which is a 16 percent reduction.

Mr. Saunders said he would like to outline some of the history of this request. The site plan was reviewed by County staff in August, 2006. His client and staff went to the staff review meeting and they got no feedback that shared parking would not work, everything was good. The calculations were on the plan, and that note was added, but they understood the note had to do with the final building design. Based on staff's recommendation, his client hired an architect who started work with the Architectural Review Board. Requirements were put on that they felt went too far, and it took extensive time and money just getting all staff comments. At the same time, his client adjusted his business operation because he thought the site plan would go through. In June, 2007 they got the certificate from the ARB which they needed in order to go forward with final site plan submittal. They got a "nod" from staff that the final site plan could be submitted. Immediately they were informed that they did not have a critical slopes waiver, but in looking at their files, they found the slopes waiver had been submitted in September, 2006 and never acted on. They did that through the Planning Commission who approved it in July, 2007.

Mr. Saunders said that in June, 2007 they got comments on their final plan that they needed to submit a waiver and justification for the shared parking which shocked them because they thought the

issue was settled. They prepared the documentation based on the ULI shared parking book and submitted that to staff. In August, 2007 they got a letter saying that was denied. There were a number of meetings with staff, and in late September they gave up some square footage by converting some office space to storage in the way of a compromise and that was also denied. That is how they got to this point in the process. To reduce square footage more would hurt the economic viability of the project. They believe they presented a reasonable and workable scenario for shared parking. Mr. Yousef and his family intend to keep this project, not "flip it." It is part of their family legacy so they will be sure it works right.

Mr. Saunders said those are the main points he wanted to make. He asked that the Board look favorably on this request. They think it will work. He then offered to answer questions.

Ms. Thomas said a few years ago she was involved with the Rio Hill Shopping Center trying to get them to give up parking spaces for a Park & Ride lot. The tenants were all in agreement, but the mortgage holders would not allow them to reduce the number of parking spaces. She asked if all of that worked out on this request. Mr. Saunders said that is his understanding. One of the hardships is that they had it all worked out, but since the plan was delayed some of those things have to be updated. He said they have not gotten any comments from their financiers that there is not enough parking.

Mr. Dorrier said he wanted to check on a procedure. Was the parking issue brought up initially? Mr. Saunders said it was brought up in August, 2006, when the plan was under review. He understands a note was put on the plan, but the request for shared parking has been in the plan from the beginning.

Mr. Rooker asked the normal amount of time a shared parking request is entertained. Mr. Fritz said typically it is done during preliminary site plan review and completed prior to approval of that plan. In this case, that was not done.

Mr. Saunders said at this time they are not specifying any particular type of retail. With the delay in the project, they have not been able to get their leases lined up. They are using the retail and office general categories on the plan.

Mr. Rooker said there is a different requirement for retail and office uses. Mr. Fritz said the method he is describing is the normal method used by staff.

Mr. Rooker said when the parking ordinance was revised ceilings were put on parking requirements because arguments usually went toward requesting more parking than the County felt was needed. He said ULI standards were looked at when redoing that ordinance.

Mr. Slutzky asked if transit were put into this area, how practical would it be in the current plan to provide for a pull-over for a bus. Mr. Saunders said they have not looked at the idea yet. His concern would be whether the bus came on site and needed a space to stop, or whether it stopped out on the road.

Ms. Mallek said she cannot tell from the map if there is adequate setback on the road to have the bus pull out. Mr. Saunders said if it were in the road right-of-way that would be a different scenario. He knows the property is not as walkable as some other areas, but walkability and transit were not in their minds knowing they are not to fruition yet.

Ms. Thomas said this is not the best site for transit.

Ms. Mallek said she has seen plans for things nearby that will be easily walkable to this site, but they are not on the ground now.

Mr. Boyd said the applicant had said the ARB restrictions were greater than they had thought. He said Ms. Mallek had asked if there were a trade-off in the size of shrubs, etc. Is there room for a compromise? If less landscaping were required, would it leave more room for parking? Mr. Saunders said they felt more landscaping was being required than for other projects. They are trying to get greater setbacks on the frontage, and maybe if there were not so much required around the dumpster, they could get more spaces.

Mr. Rooker asked if a sidewalk is planned for the road. Mr. Fritz said "no."

Ms. Mallek said Crozet Avenue might have a sidewalk at some point in the future as projects are built further toward Crozet.

Mr. Rooker said if the County had planned a sidewalk along that side of Crozet Avenue the County would want to get that as part of this project as opposed to hoping there will be money for it in the future. If there is no plan for a sidewalk along Crozet Avenue, he does not know how this applicant could be required to build a sidewalk that is not even planned to connect to a future sidewalk.

Mr. Cilimberg said he thought the question had to do with Route 250. He said Crozet Avenue is shown in the Master Plan with a cross-section design. Ultimately, if it were ever improved all the way there could be a sidewalk, but it is not in any plans for improvement. Route 250 does not show that because a buffer (green space) is shown throughout Crozet – it was supposed to be the transition to the Rural Area. Crozet Avenue (Route 240), if it is ever improved, which it will be in the "downtown" area, it could have a sidewalk.

Mr. Slutzky asked if Mr. Cilimberg was saying it would be prudent to require that as a condition of allowing for the shared parking. Mr. Cilimberg said he does not know how that "plays in" to a requirement on a site plan. This is not a rezoning.

Mr. Slutzky asked if the Board can approve a site plan with conditions. Mr. Davis said sidewalks on his property could be a condition of the site plan, but the Board could not require off-site improvements. Mr. Boyd said one person from the public had asked to speak. He invited him to come forward.

Mr. Paul Brockman said he is a resident of the Samuel Miller District. The back side of his house, which is the view side, overlooks Crozet. He has had a longstanding interest in Master Planning for Crozet. He attended most of the meetings on the plan and never heard any concern expressed by any resident of the area about the zoning on this property, nor by any County staff member. As far as the public is concerned, the property is as it has been zoned for over 30 years, Highway Commercial. Other than being an interested neighbor, he listed some of his past experiences such as being past co-chairman of the Virginia Municipal League. He became acquainted with this project about five years ago and was involved with it for a time when a company in the commercial mortgage business was looking at financing it. It is a marginally-viable project at the present time. To put more restrictions on it will bring its viability into question. In the time in which this project has been before the County, Clover Lawn has been approved and is nearing completion. The commercial development in Old Trail has been rezoned, approved and is under construction. The Blue Ridge Shopping Center has been reviewed, approved and has broken ground. Mr. Yousef is still waiting; it has been a horror story. He said the Board is dealing with a human being who owns his property, who is not asking developers to develop the property for him, and is trying to get approval to go ahead. He said the ULI standards are well developed based on nationwide reviews. If the Board thinks there is an issue with parking, the Board should ask the Commission and Planning staff to review it again and come back with further recommendations. Otherwise, he thinks those who vote to approve this project will say small developers and individual property owners still have a place with a commercial project. Those who vote against will be understood to have said "development is an exclusive province of the major developers."

Mr. Adnin Yousef said he and his family started with this project back in 1978. He met with Mr. Benjamin Dick who was the Zoning Administrator at that time and explained what he wanted to do with the property. He was told the property had been Highway Commercial since 1947 and he could have a development on that corner any time he wanted. In 2002 Ms. Susan Thomas, Senior Planner, contacted him and said the County would like to use his property as a model for the Crozet Master Plan. Ms. Thomas and Mr. Fritz sent him to speak with Sophie and Thomas Wultz with Nelson & Burke. Those people designed a plan the County would look in favor of as to setback and parking requirements. That was a promise issued to him by Ms. Susan Thomas and Mr. Fritz. They then went to the County with his engineering company, Timmons Group. Those people made a plan based on by-right development. They applied for and handed in that by-right plan dated July 20, 2006, to the County and requested a parking waiver. The Planning Department had the chance to review the plan.

Mr. Yousef said they went to the preliminary hearing and at that time there were six different applications. In the room were about 65 people, and those people listened to the conversation between he and Mr. David Pennock. Mr. Pennock was working for Mr. Fritz. Mr. Yousef said his plan was approved, and Mr. Pennock said the only thing to worry about was the ARB approval, "as far as we are concerned, you are approved." With the shared parking on the plan, Mr. Pennock handed Mr. Yousef a letter from the County addressed to his engineer which says "if you meet these requirements, you will be approved. Your biggest problem is the ARB." Mr. Yousef said the letter contained three different dates he had to appear before the Planning Commission and the Board of Supervisors and Mr. Pennock said not to worry about that because he had already been approved, that is just the way the process goes if you are refused here. They went to the ARB and on that first day he was told he should have come to them first. He feels he is the victim of a power struggle with the staff. All of his statements can be verified by either witnesses or a letter. That staff member said he should have come to the ARB first, and he said he would work with them, but not to make it too expensive on him. The reply was "if you can't afford it, you should sell it to somebody else who can afford to develop the corner."

Mr. Yousef said before the October meeting with the ARB in 2006, he was working in his store when a lady walked in and asked him if he knew the owner was going to throw him out of the store. She said she was with the ARB and could help him; he then advised her that he was the owner. He then went through six months of hard times with the ARB. At one of the meetings, Mr. Snow was very upset with her insulting comments to Mr. Yousef that he could not be trusted with landscaping. When the plan was done for the Clover Lawn Shopping Center, the developer was asked to put screening around the dumpsters, but they asked him to also put screening behind the screen. His original plan had 107 parking spaces, but he ended up with 99 spaces because the ARB added so many trees to the plan. Grates were required around the trees and that took even more spaces. He said it took four months for the County to issue his certificate of appropriateness after that. In May 2007, the County sent an official E-mail to his engineer saying they would put his project on a fast track to finish, but they did not have a slopes waiver. His engineer said the waiver was requested in September, 2006. The County had no record of it. His engineer gave staff a copy of the request. A slope waiver was granted in June, 2007, nearly a year after making application.

Mr. Yousef said the first time they heard about a parking waiver was when Mr. Pennock sent a letter saying they could be approved for the waiver but would have to give the County justification. Why wait ten months to ask for this information when he had already spent money on the engineer? After his conversation with Mr. Pennock in August, 2006 he initiated closing his business. He has lost almost \$600,000 to date. He has spent almost \$100,000 in engineering. Why wait until the last moment? He paid his taxes so a County employee could tell him whether he is doing right or wrong. Why was he not

informed in July, 2006 that the building did not have enough parking? He would have made that adjustment. In the beginning, he said he would develop the property by-right. Now, a year and a half later he is told that it is not big enough. In the meantime, he lost a contract with UVA Health Services for \$140,000 a year for 25 years. It went to his competition next door at Clover Lawn. In May, 2007, he was contacted by a real estate company who asked to buy his project. He was told to either take the deal or he would never be able to develop the corner. This man was named Andrew Benetti and he wanted to buy the property. Yesterday, one of the largest developers in the County came to him and said since he was not willing to sell the property, he would lease the property for 99 years and he would take care of the County and get the project approved. This is intimidation and it is not right. He is asking for justice from the Board.

Mr. Yousef said Mr. Fritz tried to cover up a mistake the County made back in August, 2006. He is not going to pay the price for that. If he had been told at that time that the project was too big and did not have enough parking, he would have adjusted it. Why did the County wait until he had closed his business? This has imprisoned him for the last two years in his place. He is not doing any business but is afraid to close his doors for fear that the clock will start ticking and after two years his property would become nonconforming and his zoning would be taken away. In 1992 they tried to downzone his property. He is just asking for justice. He is building this project for him and his wife's retirement and their legacy. His son will operate it. They ask for a good future and the American dream. He asked that the Board approve his development.

Mr. Dorrier said he noticed in the requirements that there need to be alternative solutions to off-street parking, and further that the applicant can provide incentives for transportation modes other than cars. He wonders if Mr. Yousef would be willing to come up with a plan to encourage more bicycles to come to his parking area and set up an incentive for his employees to use bicycles and pedestrian ways to get there. Would he integrate a bicycle rack in the parking area? Mr. Yousef said "yes", he is willing to do that. He said he has been going through this for the past 18 months and there have been no objections to the plan from his neighbors or the community of Crozet. The only opposition he had was from County staff because they did not get what they wanted. Then he has opposition from some big developers because they want to rob him of his rights. He said there is no one present this morning that is opposed.

Mr. Slutzky asked that Mr. Yousef send him by E-mail or a telephone conversation more about his experience with the ARB. There have been some stern allegations about the ARB and he would be interested in learning more about them. Mr. Yousef said Mr. Snow can confirm what he has said. He said Ms. Candace Smith said a lot in the ARB meetings and he suggested that those transcripts be read. When she came to his business she tried to embroil him to go in opposition of the plan because she did not realize he was the landowner. She was underhanded. He said the Board needs an ethics committee so the staff and public would be afraid to do what they did to him. He was asked after the Planning Commission meeting, by these two people here, if there any other alternatives. They wanted him to make the whole corner as office. They were not opposing the building. Everybody said it was fine. He was approved by all entities except Mr. Fritz. He opposes it. Why? He thinks it is unethical for Mr. Fritz and Mrs. Fritz to work on one project. He and his wife are the two people opposed to his project.

Mr. Rooker said without speaking to the delays that occurred with the application for a critical slopes waiver and the delay that occurred about the shared parking issue, he has not heard anything to indicate that staff members present today, Mr. Fritz and Ms. McCulley, have done anything in an unethical manner. They are charged with enforcing the ordinance and making recommendations based on what the ordinance says. The parking provided does not meet the ordinance requirements. They pointed out that the Planning Commission and the Board have the ability to grant the waiver. Given all the facts and circumstances, he thinks the waiver makes sense. He is ready to support it, but he does not see that Mr. Fritz or Ms. McCulley have done anything unethical or improper in the process of this application. He does apologize to the applicant for any delays that may have been caused in the event something was not taken up at the proper time, if that occurred.

Mr. Slutzky said as he read the record, Mr. Fritz did advise that the Planning Commission had the authority to make the decision. He is very concerned about some of the things he heard about the ARB. He has heard nothing that impugns the credibility of the Planning Department. He does share Mr. Rooker's sentiment that the County owes Mr. Yousef an apology.

Mr. Boyd said there is one other citizen who would like to speak.

Mr. Don Franco said he is a resident of Albemarle County and is a professional developer. He does a lot of things to balance stated policies, regulatory requirements, public input and economics. He was asked by Mr. Yousef and his design team to meet with them in the Fall of last year. He looked at their project. He assured Mr. Yousef that despite his experience he does not think it had been personal. He had not been singled out by the County, and it was not personal between him and individual staff members. The issues Mr. Yousef has with the process are the same issues he has with projects. He has looked at the project which is borderline and he does not think it can give up any more square footage if it is going to be viable. He said the project is urban in nature, but the square footage looked for here is below what ULI would allow to be on that site. The standard suburban rule of thumb would be about 20,000 square feet, and Mr. Yousef has less than 30,000 square feet. With ULI fully executed 30,000 to 40,000 square foot would be the maximum that could be put on that site. He takes exception to what staff said about approaching this as a zoning text amendment. There is a willing applicant who would set some standards, experiment and let the market dictate whether it will work or not. The County has this opportunity as opposed to having to change requirements for the whole County with a ZTA.

Mr. Dorrier said if the Board can approve a waiver for reduction of parking and then encourage additional modes of transportation, it would be in compliance with what the Board is seeking.

Mr. Cilimberg said in answer to the question about the Crozet Master Plan, he wants to correct the record. He said the section of Route 240 adjacent to the property is designated the same as Route 250 as a scenic byway and tree buffer area. A greenway connection is shown in this area. Ultimately, it is hoped there can be an off-road trail or path rather than a sidewalk in this area and that is the only thing anticipated on Route 240.

**Motion** was then offered by Ms. Mallek to approve the waiver request for SDP-2007-048, Crozet Gateway Center, to allow shared parking, a reduction in the required number of parking spaces to 99, the addition of a bike rack, and to approve the final site plan subject to the conditions set out in the staff's report.

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

Mr. Slutzky asked Mr. Davis if the motion is correct. Mr. Davis said the waiver contains a condition for the bike rack. What is before the Board is the final site plan with the conditions recommended by the Planning Commission which are on Attachment "A", Page 5, of the staff's report and a request for a waiver.

Ms. Thomas said she is glad the Board is talking about bicycles, referred to as "bicycle encouragement." A bike rack is all that can be said, but encouraging people with bikes to use this facility is what she will "hang her hat on." She thinks the Board is making a mistake to let this suburban parking lot be inadequate in size. She is concerned about the personal challenges that have been made because when the Board sets up policies, it sets up the staff to be unpopular. In this case, lost papers are not forgivable, but adhering to the Board's standard for parking is forgivable and is the reason the policy exists.

Ms. Mallek encouraged the Board to bring back the recommendations of the Development Review Task Force in order to set out more straightforward procedures so this type of thing does not happen again.

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

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

Waivers:

1. to allow shared parking;
2. to allow a reduction in the required number of parking spaces to 99; and
3. to allow the addition of the bike rack.

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Conditions of Approval - SDP-2007-048 - Crozet Gateway Final Site Plan

1. The Current Development Division shall not accept submittal of the final site plan for signature until tentative final approvals for the following conditions have been obtained. The final site plan shall not be signed until the following conditions have been met:
  - a. Current Development Planner approval to include:
    - i. A conservation checklist (available on Community Development website) shall be added to the plan and signed by owner; and
    - ii. Parking counts, areas for each use, and impervious area calculations must be updated to reflect any modifications to parking or layout.
  - b. Current Development Engineer approval to include:
    - i. The plan is acceptable as shown. Bond amounts for Erosion and Sediment Control and Stormwater Management are available and must be posted.
  - c. Please provide evidence of Albemarle County Service Authority approval.
  - d. Virginia Department of Transportation approval to include:
    - i. The applicant must address the comments issued by AJ Hamidi on November 9, 2007.

Mr. Boyd said the plan is approved. He will not repeat what the other Board members have said because he thinks the problem does not lie with the staff, but with the process. He apologized that it has taken Mr. Yousef so long to get to this point.

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Agenda Item No. 9. FY 2006-2007 Comprehensive Annual Financial Report (CAFR).

Mr. Richard Wiggins, Director of Finance, was present to present the report. He said the report was prepared by County staff led by Mr. Ed Koonce and Ms. Ann Murray from the Accounting Division, and Robinson Farmer Cox Associates, led by Mr. Wes Clark and Mr. Randy Jones. His report contains detailed information about the County's financial activity for the Fiscal Year ended June 30, 2007. The

report was presented to the County's Audit Committee on December 17, 2007, and it recommended acceptance of the report. He asked that the Board accept the report.

Ms. Thomas said she would like some assurance that the depreciation issue mentioned is being taken care of. Mr. Wiggins said the way fixed assets are depreciated is a longstanding issue. The Access Albemarle (the new financial management system) system that will hopefully be coming on line in the near future will provide automation for the fixed asset system of records.

Mr. Boyd said he has watched this particular item and other items which have been postponed for years pending the new accounting system. Further delay of implementing that system should not be used as an excuse.

Mr. Rooker said in the Introductory Report it talks about several projects which have been approved in the County and he does not know how they are chosen to be mentioned. Projects such as Albemarle Place and North Pointe are not included and are larger projects with more of an impact than the ones mentioned. What Ms. Thomas mentioned was not just fixed asset depreciation, but an issue about works in progress, a separate issue mentioned in the Auditor's Letter. It relates to depreciation, but it is different than the Access Albemarle issue.

Ms. Mallek asked for a definition of "liquid property taxes." Mr. Wiggins said that is actually part of the General Fund Quarterly Financial Report. Right now the Finance Department is bringing in delinquent taxes at a reduced rate from what was anticipated. First cycle billings went out in December, and delinquent collections have been less than anticipated. They are assuming the taxes will be collected, but so far what has been collected in delinquencies is less than anticipated.

Mr. Rooker said in the cover letter of December 15, 2007, from Robinson Farmer Cox, under "Capital Assets" there is a sentence reading: "Depreciation that is taken on these non-depreciable items is not removed from the Excel Workbook which requires that a large reconciling item be included in the financial statements, etc." He asked if that is what Mr. Wiggins was responding to a minute ago. Mr. Wiggins said "yes."

Mr. Rooker then **moved** to accept the FY 2006-2007 Comprehensive Annual Financial Report (CAFR) as presented. The motion was **seconded** by Ms. Thomas. Roll was called, and the motion carried by the following recorded vote:

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

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Agenda Item No. 10. Climate Change Protection/Cool Counties, Participation.

Ms. Sarah Temple, Environmental Manager, was present to make a report on the progress which has been made toward internal environmental management initiatives with a focus on climate change protection. This is a new program for the County and it would be good to get a green light from the Board on the staff's recommendations.

Ms. Temple said staff has begun implementation of an environmental management system (EMS). The cornerstone of this system is the Environmental Management Policy signed by Mr. Tucker in 2004. The major tenets of that policy are: a commitment to complying with Federal, State and local environmental initiatives; going above and beyond complying with these regulations into the realm of proactive pollution prevention initiatives; and, to continue environmental improvement. Eventually this EMS will be county-wide, but it is being implemented on a part-by-part basis (fence line approach). This means departments are implementing the EMS on an individual basis. Because EMS implementation is a detailed process it would be difficult to do it all at once.

Ms. Temple said General Services is the first department in the implementation process. The second department will be Parks & Recreation. These were chosen to be first because they have the biggest potential environmental impact as to daily operations; chemical management, underground storage tank management, asbestos, indoor air quality, etc. All of the day-to-day operations and activities that could have an adverse impact on the environment are being ranked based on criteria derived by a team. They will develop a list of the most significant aspects in order to prioritize their efforts. They will develop goals (objectives and targets) around these lists and also standard operating procedures. She said EMS has strong regulator support. The Virginia Department of Environmental Quality has developed a program entirely devoted to recognizing and rewarding organizations that have implemented EMS – it is called the Virginia Environmental Excellent Program Review. Albemarle will be participating in the program and there are many benefits in the way of reduced permit fees, networking and recognition.

Ms. Temple showed the Board a rendering of the EMS logo. One of the biggest goals of the current EMS is energy conservation. Albemarle partnered with Energy Star in December of 2006. An energy management team was then formed and it set a goal of reducing overall energy consumption from Local Government buildings by 30 percent by 2012. This translates into about six percent a year from 2007. Energy Star's portfolio management software is being used to track energy use and measure reduction efforts. Staff has been able to measure a combined 11.1 percent reduction in energy use since the baseline year of 2005.

Mr. Slutzky asked if the 11.1 percent takes into account both what has been added as well as what has been taken away.

Ms. Temple said "yes." Staff believes part of that came about from the green roof on the County Office Building on McIntire Road. Also, this last fall over 75 occupancy sensors were installed in the building, and since then a dramatic reduction has been seen.

Mr. Rooker asked if that was done for lighting purposes.

Ms. Temple said "yes." Those sensors have been put into every storage closet, every bathroom, common areas such as lunch rooms and meeting rooms, and other high use areas to insure that lights are turned off eventually. It has made a big difference.

Mr. Boyd asked if staff has been able to track the financial impact of that.

Ms. Temple said the portfolio management software system allows her to input both the amount of bills and consumption figures. This system also gives each building a benchmarking score that is based on the EPA/Energy Star score system. It compares Albemarle's buildings to buildings across the country of similar use and square footage. The building is given a score and if it is 75 or above, that is an efficient building. COB McIntire just went above the score of 75 so is now eligible to earn an Energy Star label for the building.

Ms. Temple said buildings are one of the biggest polluters of green house gas emissions. Anything that can be done to lower energy consumption in the buildings will help with the greater climate change initiative.

Mr. Slutzky said it has been said that buildings represent 40 percent of greenhouse gas; that is a huge percentage.

Ms. Temple said on December 5, 2007, the Board adopted the U.S. Cool Counties Stabilization Declaration which states that the County will reduce its greenhouse gas emissions by 80 percent by 2050 from both government operations and within the community. There is growing scientific consensus that climate change is happening because of the increasing use of fossil fuels and the production of methane. Buildings account for 40 percent of energy use globally and that is a big problem. Scientifically, there are already naturally occurring greenhouse gases on the level where people live and breathe; carbon dioxide and methane are examples. These molecules are loosely bound and absorb heat more easily than other molecules. While some of the solar heat is reflected off of the earth's surface a lot of that heat still comes through. The presence of more greenhouse molecules allows more heat to be absorbed and that warms the earth.

Ms. Temple said generally speaking there are two approaches to addressing the issue. One is to change the way the County operates in-house by changing its practices. Second is to work with the community, the residential and industrial sectors to influence them to change their practices. She recommends using the five milestone guide put forth by the International Council for Local Environmental Initiatives (ICLEI). This is an organization which is committed to working with cities and counties to help them become more sustainable. They have developed preeminent climate change software that allows cities and counties to track greenhouse gas reduction efforts. Albemarle joined ICLEI and downloaded that software and started the first step of conducting a baseline emissions inventory. Second is to set a target for greenhouse gas reduction. Third will be to establish a local action plan and implement same. Fourth will be to enter into a phase where the County will assess, report and modify the plan.

Ms. Temple said a baseline emissions inventory is needed to get data to compare future reduction efforts against. Secondly, the baseline inventory will give an idea of problem areas. She recommends that 2000 be used as the base year because the data from that year is accessible and defensible. She said the Kyoto Protocol encourages countries to reduce their emissions below 1990 levels but that data would be difficult to get. The 2000 data can be obtained easily and is far enough in the past that some checkpoint year can be examined.

Mr. Boyd asked how staff will go about establishing a baseline from eight years ago. What criteria are used? Ms. Temple said the baseline inventory basically looks at all greenhouse gas emissions from the County both internally in government operations and in the community. This will be a complex and long process. In-house information is easier to get; getting information from the community is more challenging. She said the General Services Department has hired an intern to start this process, but it could take from six months to a year to get the data.

Mr. Boyd said he would like to meet with Ms. Temple and discuss what goes into the calculations for the baseline data. He is curious as to why staff wants to go back so far when the County was not as active in energy conservation as it is now. Ms. Temple said staff felt 2000 was a good year and is recent enough to give a good idea about what the County was doing in that year. Staff also wants to examine a checkpoint year of 2005 or 2006 to see how much emissions were lowered during that time period.

Ms. Mallek asked if there is a Citizen's Survey component of that baseline. Does staff have information about employment and where people live in order to get an estimate of their commutes? Ms. Temple said staff is working on that now. The process has already been initiated, and staff feels it can be completed using existing staff.

Ms. Temple said the next logical step is to set a reduction target. There is already a built-in target with Cool Counties of reducing emissions by 80 percent by the year 2050. That is an annual average of about two percent. ICLEI recommends that interim targets also be set in 15-year increments so there are more immediate goals on which to focus. Generally, before cities and counties begin this stage they

create a task force. It would be somewhat like the City's Sustainability Council, but would be more focused on this initiative. This would allow sufficient community input and sector specific input.

Mr. Boyd asked why interim targets are not just an extension of the two-percent per year. Ms. Temple said that is an option. Mr. Boyd said he thinks it would be far less costly than putting together a task force.

Mr. Rooker said a task force is not proposed just for the purpose of setting the targets.

Mr. Boyd said he understands that. He was looking at some of the projected numbers and it is a multi-million dollar project over the next five years. Ms. Temple said that number was based on what the cities surveyed had budgeted. It does not mean Albemarle will have to budget that much.

Mr. Slutzky said he would remind everybody that there are six bills presently pending before the U.S. Senate that would require the United States as a country to reduce greenhouse gas emissions by 80 percent by the year 2050. If buildings produce 40 percent of the greenhouse gas emissions, buildings are entirely in the purview of local governments to regulate. Similarly, the location of buildings impacts vehicle miles traveled and that accounts for a substantial portion of greenhouse gas emissions and that is land use which is also a local government issue. He thinks the Feds will give the County a big check for transit and other options to achieve those goals. He thinks the County will have to do this for good reasons and there will be a cost associated with it, but having the inventory in place will put the County in a better position to achieve those objectives than other municipalities.

Mr. Boyd said he does not personally feel the County needs to design itself around potential legislation coming out of Washington. The County is already doing a number of things on the list. A lot of those things are common sense issues which were recognized years ago. It does not take a task force to say there should be mixed-use neighborhoods.

Mr. Rooker said it may make more sense in the first five years to average more than the two-percent a year because things can be done that are not expensive but which have a great impact. He would like to take advantage of the wealth of talent and expertise in the community to help with this objective. Also, normally a community task force works free of charge.

Mr. Boyd said that generally a task force has a tendency to demand and need a lot of staff support. Ms. Temple said staff would be involved if there were a task force. This is recommended to insure there is sufficient community input. Organizations such as the Thomas Jefferson Planning District Commission would be interested in helping.

Mr. Boyd said that Ms. Temple should continue with her presentation.

Ms. Temple said the third step would be to, with the task force, develop a local action plan. Generally, that plan is broken into categories such as: land use planning, transportation, energy efficiency, green power, green building, recycling, education and outreach. These things are usually in the form of incentives, but could be in the form of ordinances.

Mr. Boyd said he thinks the categories listed are things which the County is already doing except for green power and incentives. Do all of these things just need to be coordinated? Ms. Temple said there has been a lot of progress in government operations but there can continue to be increased progress. Some of these categories represent initiatives to encourage the community to change as well.

Mr. Slutzky said the County may have "put its foot into the water", but other communities have done a lot of things that a task force might identify to stimulate outcomes not entirely under the control of the County. The City has initiated a tax strategy to reward people for making private investments to green their buildings. He thinks this exercise will yield a lot of fruit beyond the nice things that have been done already. If one thinks of this as internalizing the cost that will have to be paid in indirect ways, it is a bargain to move forward with this exercise.

Ms. Mallek said it will position the County to be ready to receive matching funds from elsewhere as it has with the ACE Program. Because ACE was one of few programs actually operating, the County was able to benefit tremendously from those funds last year.

Mr. Boyd said he is not opposed if new things can be identified, but he does not want to "double do" work that is already being done. As an example, there has been a consultant working on the question of recycling, so he does not think that needs to be redone by yet another group.

Mr. Rooker said that is true of just about everything on the list.

Ms. Thomas said one example is a "no idling policy for fleet vehicles." When she saw that suggestion, she immediately thought of the School System. She asked Ms. Temple if she is working with them. Ms. Temple said "yes." Her counterpart, Ms. Lindsay Check, has been a great help. Staff wants the School System's baseline inventory piece.

Ms. Thomas said school buildings are the County's main buildings. Ms. Temple said there are 26+ buildings in the School System. They are already working on an "anti-idling policy" for the School Division. There is already a good aggressive comprehensive plan in place. Some of the things outlined in that plan need to be pursued. Since her time is limited for presenting the timeline in detail, she would like to give the Board a general idea of the small steps that can be accomplished: 1) Baseline emissions

inventory – staff should be able to complete it by the end of August. 2) Long-range budget – the budget will depend on what is identified in the Local Action Plan and the specific projects and programs chosen to move forward with. This can begin with additional staff; she added staff in the report for five years because she is personally handling all of the other environmental in-house initiatives.

Ms. Temple said she would leave the Board with one thought. It is often said that climate change and global warming are insurmountable issues, but tackling these problems on a global scale is merely the sum of communities proactively pursuing this initiative at the local level.

Mr. Slutzky said that Attachment “D” to the staff’s report indicated there were budget details attached and there were not any. Also, it said research had been done on six localities, and he would like to know the names of those localities. He has worked closely with Ms. Temple and Ms. Sarah Check on getting rid of toxic materials, and he just wants to say that the County is lucky to have core expertise and motivation among staff.

Mr. Rooker said he thinks approval is needed for the Implementation Plan, Attachment “B”, to the staff’s report. Mr. Tucker said that is correct. He said Ms. Temple has a lot of energy and has done a great job for the County; it is fortunate to have her in this position.

Mr. Rooker then **moved** approval of the implementation of a climate protection program by pursuing the plan outlined in the Discussion Section of the Staff’s Report and in Attachment B thereof – Proposed Strategy and Timeline. The motion was **seconded** by Mr. Slutzky.

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

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

NAYS: None.

(**Note:** The Proposed Strategy and Timeline are set out below.)

### **Proposed Strategy and Timeline**

#### **A Proposed Strategy and Timetable**

As discussed in the Executive Summary, staff recommends that the County follow the milestones outlined in ICLEI’s “5 Milestone Process”, which are also consistent with the Cool Counties Policies and Programs Template: 1) conduct a baseline greenhouse gas emissions inventory, 2) set an emissions reduction target for both the community and government operations, based on inventory information, 3) develop a Local Action Plan to reduce emissions and achieve the set target, 4) pursue implementation of the Local Action Plan, and, 5) monitor and report results to interested parties and stakeholders.

- **Milestone 1: Conduct a Baseline Emissions Inventory**

A baseline emissions inventory serves as a reference against which to measure our emission reduction in tons of greenhouse gas emissions. A baseline analysis will reveal which activities in the County (community and government operations) are causing the greenhouse gas emissions (e.g. transportation, building operation, etc.) as well as the quantity that each of the activities is contributing. In this way, the emissions inventory analysis aids in prioritizing areas and activities of focus for the development of the Local Action Plan. The inventory is broken down into Community and Government sectors. The former includes residential, commercial and industrial emissions, whereas the latter includes emissions from public schools, government buildings and fleet.

#### Baseline Year

The Kyoto Protocol called for reduction of emissions by industrialized countries by an average of 5.3% reduction below 1990 levels by 2012. Considering the difficulty of accessing accurate records of community and government utility use, etc., from the year 1990, staff recommends the County use a baseline year of 2000. This is consistent with the methodology the City of Charlottesville is using in its analysis, which is important if the City and County should decide to collaborate on a Local Action Plan in the future.

#### Interim Year

Staff recommends that the County also collect greenhouse gas emissions data for an interim year, 2006, in order provide a measure for emissions growth over the six-year period, and also to examine what, if any, impact our governmental operations-related sustainability efforts (e.g. ENERGY STAR, hybrid fleet vehicles, etc.) have made on lowering emissions in the six-year period. This information may then be useful with setting a realistic Interim Target and Target.

- **Milestone 2: Set a Target for Greenhouse Gas Reduction**

By participating in Cool Counties, the County has pledged to achieve a long-range target of reducing greenhouse gas emissions by 80% by 2050, an annual average of two percent. However, ICLEI advises that localities with long-range targets generally also establish interim targets (e.g. every five years) so that more immediate goals can be set and tracked. Most localities have chosen a ten to twenty-year timeframe for their forecast or interim target year.

Often times at this stage, a locality will elect to establish a County-wide Task Force or Citizen's Advisory Committee consisting of representatives from key sectors (Transportation, Commercial, Industrial, Public, County government) to manage all of the following milestones by examining the inventory data and establishing both reduction targets and work on developing a Local Action Plan. The County may want to consider working with the City of Charlottesville to form a combined Task Force, as climate change is a regional issue and it may be beneficial for the City and County to combine some of their climate protection efforts.

- **Milestone 3: Establish a Local Action Plan**  
 This involves establishing a detailed Action Plan, including the policies, programs, and projects that local governments take to meet their emission reduction targets by the target year. A sample Local Action Plan is included as Attachment D, and examples of policies, programs and projects that other localities have implemented as part of their Local Action Plans are provided in Attachment C.
- **Milestone 4: Implement the Local Action Plan**  
 This stage involves implementing the policies, programs and projects outlined in the Local Action Plan. This stage will be ongoing as new "interim targets" are set, and will involve multiple sectors and groups, including the Countywide Task Force, if/when established, working to achieve this milestone. ICLEI recommends updating the Clean Air Climate Protection (CACP) software every two to three years with current emissions data to check on emission reduction progress and to ensure that new data (e.g. census) and information on new developments are added if/when appropriate.
- **Milestone 5: Assess, Report and Modify Local Action Plan**  
 This includes ongoing periodic review, progress assessment and public reporting until the target year, and beyond. This process as mentioned above is typically managed by the County-wide Task Force.

**Estimated Timeline for Albemarle County**

A proposed, estimated timetable for achieving these milestones is as follows:

Milestone	Start Date	Complete Date	Completed By
<b>Milestone 1:</b> Conduct Baseline Emissions Inventory	January 15, 2008	August 31, 2008	General Services Dept.
<b>Milestone 2:</b> Set a Target (and establish Task Force)	October 1, 2008	December 31, 2008	Staff, Board of Supervisors, Task Force
<b>Milestone 3:</b> Establish Local Action Plan	January 15, 2009	May 31, 2009	Task Force
<b>Milestone 4:</b> Implement Local Action Plan	June 1, 2009	Ongoing	Task Force, Various Sectors, Groups, Staff
<b>Milestone 5:</b> Assess, Report, and Modify Local Action Plan	June 1, 2010	Ongoing	Task Force, Board of Supervisors, Staff

**Agenda Item No. 11. Status report on the Historic Crozet Streetscape Enhancement Project.**

Mr. Jack Kelsey, Transportation Engineer, Office of Facilities Development, was present to present the report on the Crozet Historic Streetscape Project. He said this project was envisioned in the Crozet Master Plan as an essential step in achieving the goals of the "Downtown" Crozet area. It was divided into two phases. First, the streetscape improvements at the intersection of Crozet Avenue and Three Notch'd Road have now been completed. Phase Two is taking those same improvements and continuing them from the railroad overpass to Tabor Street. The same streetscape elements will be incorporated utilizing the same materials, same style and same colors for consistency. The consultant team composed of Kimley-Horn and Associates, Inc. and Community Planning and Design have assisted through the community involvement process, and generated the conceptual preliminary design plans. There was an initial "kick-off" meeting with the Crozet community, a number of meetings with business property owners, and a couple of community meetings to review the consultant's concept plan.

Mr. Kelsey said a presentation was made to the Architectural Review Board and a work session held with the Planning Commission. Favorable results came from both of those meetings. The preliminary design plan has been submitted to VDOT to make sure they approve of everything shown on the plan. Today, staff will describe to the Board:

1. How the Community's involvement has helped shape the Streetscape Plan;
2. The current Conceptual Streetscape Plan, cross-sections, details and vision for the streetscape; and
3. Address comments and questions from the Board.

Mr. Kelsey then introduced Mr. Bryan Peters from Kimley-Horn. Mr. Peters said he is the project manager for Kimley-Horn and Associates from Richmond. They specialize in developing streetscapes for municipalities. He introduced Mr. Bruno Carvello who is the landscape architect, Mr. Ken Schwartz who is heading up community planning and activities with the business owners; and, Ms. Bea Wilkerson who is responsible for the graphics in the presentation. He then made a PowerPoint presentation.

Mr. Peters said they reached out to the people who use Crozet Avenue and specifically the people who will be impacted the most, business owners in the area; to redevelop and set the stage for future growth it does no good to drive out the current businesses during construction. It is no good to have an

historic enhancement project if the resources in the community are not valued. He said their conceptual outreach activities have been completed as far as talking about what the plan should look like. They will be developing the design further working with VDOT and the County. This summer they will be negotiating with property owners to obtain dedicated right-of-way. He then introduced Mr. Ken Schwartz to talk about how the Master Plan and the Phase Two Streetscape Plan go together.

Mr. Schwartz said he was asked to join the team for this project because of Kimley-Horn's commitment to the principles of the Crozet Master Plan and the desire for a robust outreach process with the community. Since Mr. Peters has already mentioned the top two goals, he will emphasize the Natural Resources piece. The streetscape strategy is evolving an innovative approach to dealing with the environmental opportunities of a new improved Crozet Avenue. A lot of the project is about balancing transportation needs for the community; vehicular, pedestrian, bicyclists, trucks, etc. Providing safety for pedestrians and encouraging pedestrian and bicycle use within downtown Crozet is the first step. The present historic village street in Crozet does make this easy. The public process has been extensive; it has influenced every step of the design. There were numerous meetings held with all concerned parties. One example that came from one of the first community meetings was a desire for bicycle interconnections as much as possible within historic Crozet so they incorporated a connection from Jarmans Gap Road through the new Main Street along Crozet Avenue for that segment of a "Z" or "L". He said the Crozet community has been involved and been willing to give of their time and ideas to make this the best project possible.

Mr. Carvello said he would talk about the actual design of the project. He showed on the screen the schematic master plan for the alignment of the streetscape project. Preserving history has been a major element and keeping "this porch right here" was one of the elements they used to align the streetscape. They wanted an ample sidewalk in front of it, and then a street which meets VDOT requirements. It opens up on Main Street with a small but necessary turn lane for the future Main Street. He pointed out the eastern part of the project which represents a 20-foot alleyway currently platted, but in its physical form does not exist in its entirety. They plan to make it a usable alleyway to access properties from the rear as well as for service vehicles, and bicycle and pedestrian movement. He showed some vignette sketches they did. Mr. Carvello said they also talked extensively with individual property owners and residents around the property. In several cases they devised plans or options for their properties because the alignment shown would encroach 12 to 14 feet in some instances. They want to be sure they do what is best for the community in general, but also what is best for their businesses and their interests. The schematic master plan went through several additional public formation steps before it became a more refined master plan (he showed a copy of that on the screen). He then showed a cross-section on the northern part of the project and explained what it contains. A short question and answer session followed.

Mr. Peters said they submitted last week the Crozet Avenue portion (Enhancement Grant portion) of the project, which is for all of the improvements on Crozet Avenue itself. That was submitted to all County agencies for review as well as to VDOT. Today, he brought with him the second portion of the project, which is the Main Street portion. Because of VDOT funding issues it is broken into two projects, but is actually one overall project. This completes the 30 percent design portion of the project, and in about 30 days they should receive comments from County agencies, as well as VDOT. At that time they can sit down and talk about any major issues that come up during the review. If there is consensus at that time, this summer they will move forward and submit the actual finished design plans for the project. At that time, the project will be almost ready to bid. In early fall they will submit the final set of documents. That will take some time because of the Enhancement Grant funding. Because of Davis-Bacon bidding requirements and the paperwork involved, there are many requirements between them, the County and VDOT. Construction should start this winter or early in 2009. Even though the project is only about 1,000 feet in length, the project must be phased in a way that it does not disturb the area too much. They will be looking at some other streetscape projects in the area that have not gone so well during the construction phase. They want to create a partnership between the County and the public. They have a meeting scheduled this fall with business owners to talk about how to maintain pedestrian and vehicular access to those businesses. They want to respect Crozet's history and keep that portion into the streetscape plans, and continue the dialogue monthly. He then offered to answer questions.

Mr. Slutzky said with respect to the right-of-way issue, have any recalcitrant owners been identified or is there likely to be a good collaboration with the process. Mr. Peters said he thinks there will be good collaboration. They hinted that it would be nice if right-of-way was donated but some owners were more receptive to that idea than others. They have not found any owner who will not give the right-of-way. With reference to the Tabor Presbyterian Church, there is a process they have to work through with the church structure, but basically they were told the County would have to buy the right-of-way because it is a revenue source to the church. Crozet Avenue is a prescriptive right-of-way situation which goes back to when VDOT was formed in the 1930s. The Byrd Act said VDOT owns 30 feet, 15 feet left and right of center on all paved roads, so there is only 30 feet and that is not enough to do any of the improvements the way they want to do them.

Ms. Thomas said different people regard certain things as historic, and others can't see the beauty in them. There was a wall that was of concern to people. She asked how that is being handled. Mr. Peters said he has seen some photos of the stone wall and has talked with some people with the historic group. It is about two feet tall and was built when materials and labor were cheaper. They have committed to put back some type of wall much like in Phase One, which is not just a concrete ugly, white VDOT-style wall. They will use cultured stone. When using VDOT money they have to do a NEPA document to prove they are not negatively impacting any historic resources. They believe the wall will not be counted as one. In certain areas, such as the Tabor Presbyterian Church and adjacent residential areas, the vertical elevation would require that a wall be constructed anyway. It could mean recycling the

wall that is in place now, and it could be very costly. They believe they have some more cost-effective options which will achieve the same thing.

Mr. Boyd said it is noted that the cost of this project will be covered by the CIP. He asked if it is in that plan now. What is the total cost of this project? Mr. Tucker said he does not know the total cost at this time, but the cost is covered by the CIP.

Mr. Boyd said he would like to know the amount because the Board has received criticism for not putting money into infrastructure. This will be a huge investment in infrastructure in Crozet. Mr. Kelsey said he does not have that exact figure with him, but he believes it is a total of \$2.4 million.

Mr. Boyd said his point is that this Board does take a lot into account in the way of infrastructure but is sometimes also criticized.

Mr. Rooker said there are two Enhancement Grants which are part of the funding. He asked if any of those funds have been received. Mr. Kelsey said a total of \$300,000 which will go toward construction.

Mr. Rooker said if the Board is taking a presentation to Culpeper to the VDOT Highway Hearing, it would be a good idea to invite Mr. Butch Davies to sit in because he was instrumental in helping the County get the grants. The County may need another grant to complete something else in the Crozet area. Mr. Davies should be kept informed of how those dollars are being spent. He thinks the plan is quite impressive.

Ms. Mallek said she learned while going door-to-door in the Orchard Road area that it is being used as a cut-through for large trucks. She knows this construction project will exacerbate that activity and she is glad it is being phased and alternative routes will be publicized.

Ms. Thomas said she has been impressed with how the Crozet community listens intently, participates, and then really expects to get back exactly what they have been told. Deviating from that gives the Board and County a bad name. She said having the Harris House come down when the expectation was that there would be a chance for people to salvage it has generated a great deal of E-mail about what happened.

Mr. Schwartz said they are aware of the sensitivities with respect to the Harris property in particular. No demolition has begun on that project. They continue to have a dialogue with both the Historic Resource Group and some of the individual members, including Mr. Meeks. They want to be sure he is well aware of their intentions prior to proceeding with that demolition. He has asked his staff to provide a full detail of the discussions which have happened the last two or three weeks. There are some issues regarding the disposition of the salvage material. They need to have a procurement process which is fair.

Ms. Mallek said she does not know where the doors came from that have been outside in the rain, but if there is going to be a process where people can buy the materials in the house, that process needs to be made public. Mr. Schwartz said they are properly storing the doors on site with plastic protecting them from the weather. If they will have to be stored outside for a long time, they may look for a storage area where they can be put indoors.

Mr. Tucker said there is some potential lead paint, etc., so they had to be careful in terms of who can roam around in the house.

Ms. Mallek said she understands that the citizenry cannot be allowed to just "stomp around" on the property.

Mr. Schwartz said the involvement with the County on the Harris House does tie into the streetscape project because they show that tearing down the Harris House goes along with DHR reviewing the impacts of the project. DHR has marked the Harris and Amato parcels for demolition for the future library.

Mr. Boyd thanked all for the presentation today.

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Agenda Item No. 12. Closed Session.

At 12:03 p.m., Ms. Mallek offered **motion** that the Board go into closed session pursuant to Section 2.2-3711A of the Code of Virginia under Subsection (1) to consider appointments to boards, committees, and commissions; under Subsection (3) to consider the acquisition of real property necessary for a public safety facility; and, under Subsection (7) to discuss with legal counsel and staff specific legal matters regarding a conservation easement.

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

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

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Agenda Item No. 13. Certify Closed Session. At 2:04 p.m., the Board reconvened into open session.

**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 session were heard, discussed or considered in the closed session.

The motion was **seconded** by Ms. Thomas. Roll was called, and the motion passed by the following recorded vote:

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

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Agenda Item No. 14. Boards and Commissions: Appointments.

**Motion** was offered by Mr. Slutzky to:

Appoint Mr. A. Bruce Dotson to the Acquisition of Conservation Easements Committee (ACE) with said term to expire August 1, 2008.

Appoint Mr. Naresh Naran to the Charlottesville-Albemarle Convention & Visitors Bureau (Seat 9) with said term to expire June 30, 2008.

Appoint Mr. Jeffery Greer as the joint City/County Chair of the Rivanna Solid Waste Authority Citizens Advisory Committee with said term to expire December 31, 2009.

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, Ms. Thomas and Mr. Boyd.  
NAYS: None.

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Agenda Item No. 15a. Transportation Matters: VDOT Monthly Report/ Advance Mills Bridge Update, and Agenda Item No. 15b. Transportation Matters not listed on the Agenda, **were heard concurrently**.

Mr. Allen Sumpter, Residency Administrator, said he would begin his presentation with the normal monthly report. He said VDOT has received preliminary information from the traffic study at the entrance to Glenmore. He believes they will be able to work with the County and the developer to move forward with installation of a traffic light on Route 250 East at that location.

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Mr. Sumpter told Mr. Rooker that he will set up a meeting concerning Georgetown Road to bring him up-to-date on the status of that road project. He has met with staff from the County's Facilities Management Division and they have identified some communication issues to work on. VDOT now has enough information about the plans so they can begin looking at specific impacts to properties along that road for a normal contemporary design.

Mr. Tucker asked if there will be a need for a significant amount of right-of-way for the project. Mr. Sumpter said there are several parcels which will be impacted, but he does not know the exact number. There are a couple of complicated drainage issues on a road that ends in a cul-de-sac and an existing drainageway in that area. A sidewalk has been discussed for this project, but when adding concrete it contributes to runoff so there will need to be adjustments for that.

Mr. Rooker said the project now is totally on the west side of the road; there will be no construction on the east side of the road. The scale of the project was reduced to try and get it built with the money available. There may be a need for right-of-way in some spots on the east side.

Mr. Tucker asked if VDOT has people ready to go out and get the right-of-way. Right-of-way has been mentioned as the one factor that could hold up the project. Mr. Sumpter said the project has turned out to be more of a contemporary design than what was anticipated originally.

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Mr. Rooker said that approximately a mile down Old Garth Road (21 Curves), there is a sink hole starting to develop. That road is dark and unlit, so that is beginning to be a danger. Mr. Sumpter said VDOT believes there is a sinking pipe associated with that problem; he will bring back a status report.

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Mr. Slutzky said on Rio Road (Route 631) at the Waldorf School entrance, VDOT reviewed it and did not recommend a crosswalk or pedestrian crossing be installed until a sidewalk or trail is installed. He would like to know how much sidewalk might be needed before that can take place. Mr. Sumpter said one thing that is needed is a handicap accessible landing and some kind of a reasonable connection to go safely beyond that point.

Mr. Slutzky said people would be going to Pen Park, but they would not walk along Rio Road; they would cross the street and keep walking. Mr. Sumpter said as to pedestrian requirements, ADA requirements must make sure a person can reasonably get past that point. One side of the road has a sidewalk and the other side has nothing tying into it. He will set up an appointment to go and visit the location.

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Mr. Dorrier said Route 713 in the Keene area has a lot of traffic and is like a washboard, it might need some work.

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Mr. Slutzky thanked Mr. Sumpter for taking care of a request regarding a problem at the front of the Post Office on Route 29 North.

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Ms. Thomas said she talked previously about the traffic light which is to be installed on Route 250 West when White Gables and Kenridge finish their crossroad. The neighbors have expressed concern that they will be forced to use that intersection before the light is installed making it a dangerous situation.

Mr. Mark Graham said VDOT needs an updated traffic signal warrant analysis and the developer is working on that now. The County has informally told the White Gables people that they do not need to convert their entrance into a right-in/right-out facility (it is a planned, bonded improvement) until the traffic signal warrants are known.

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Ms. Thomas said that earlier today the Board was talking about things the County will be doing in the future to save energy. One of the issues was whether to install street and traffic lights of a low energy requirement. She asked if VDOT as an organization is going in that direction or what the County can expect. Mr. Sumpter said he will have to check and get some information on the latest technology; he is not sure how going green fits in.

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Mr. Boyd said Mr. Sumpter had indicated that there was a meeting recently with representatives from Luck Stone to discuss the Routes 250/22 project and he thought there would be some information available today

Mr. Sumpter said there was a meeting, but he would let Mr. David Benish explain.

Mr. Benish said there has been a meeting with Luck Stone and VDOT representatives to try and resolve some of the issues involved with spending County funds on the project. Staff is looking into what funding might be available to contribute to the project. It is also looking at the question of the County's ability to contribute to that project when it will be constructed as a private project. There are procurement issues involved which staff feels have been resolved, but some of that needs to be finalized.

Mr. Boyd said Luck Stone was going to put the project out for bids. He asked if that has happened. Mr. Sumpter said they have not released to VDOT any information about bidders or bids. They did say they have been getting quotes and answering questions from bidders. They are concerned about moving forward as close to the timeframe originally projected so it can be worked into the schedule of bidders in their summer work program.

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Mr. Boyd said last month it was said there may be some delays in the schedule for the Meadow Creek Parkway project. He asked if it is still on schedule for a spring advertisement date, with construction in the fall. Mr. Sumpter said there are some things that could change that date, but that has not happened at this time.

Mr. Boyd asked if there is an update on the question the City submitted to the State Attorney General about who can sign for the easement needed. Mr. Sumpter said there was a meeting recently to discuss the possibility of VDOT obtaining a right-of-entry so it can proceed with utility relocations. He has not heard the result of that meeting.

Mr. Boyd asked if VDOT has signed easements for the City's part of the project, as opposed to the City School Board's part. Mr. Sumpter said they only have the signature for the CA-TECH part, not for the other parts controlled by the City.

Mr. Rooker said City Council has approved granting of the necessary easement. He asked if that easement has been submitted to the City for signature. Mr. Quinten Elliott said the issue is whether the City or the School Board has ownership of the School property. The City Attorney believes that even though it is deeded in the name of the City, since the School has been using it, it will require VDOT to work with the Schools to get rights to that property. VDOT has asked them to say how to move forward with looking at different options, some of which may lead to where VDOT does not need to get the property. If the property were turned into parkland and left in the City's name, maybe VDOT will not have to do all of the things it is looking at. They are looking at exchanges of right-of-way as part of the interchange project. The City was supposed to get back to VDOT. He will be sure that VDOT's Preliminary Engineering Manager contacts the City to see if they have any updates on those discussions.

Mr. Rooker asked if there is an area of land involved where VDOT needs an easement from the City for use of property that is not School related. Mr. Elliott said that area is on the other side of Melbourne Road and the City will maintain that land so it does not need to change ownership. They have been able to work that out without any purchase or changing of deeds. He knows the City has some concerns about how VDOT approaches this.

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Mr. Sumpter said he is ready to talk about the Advance Mills Bridge. He said the semi-annual inspection last year revealed structural deficiencies. As a result, the bridge was closed in April, 2007. Prior to this time, VDOT had been striving to honor a request from the previous Board in the late 1990s to keep the bridge open using the best possible maintenance methods. Unfortunately, the bridge finally reached a condition where this was no longer possible. Due to its design features, major rehabilitation was not feasible from an engineering and cost aspect. The existing bridge is listed as a factor in the designated historic district for the Advance Mills area. After considering public safety, access for emergency vehicles, school bus traffic, and detours, the Board in August, 2007 requested that VDOT pursue the installation of a temporary structure to reopen the river crossing until a permanent bridge can be built.

Mr. Sumpter said because the bridge is located in an historic district, the Virginia Department of Historic Resources was asked to review the plan to remove the existing bridge and place a temporary structure. Following that review, the Federal Highway Administration issued a decision in late October, 2007 that the temporary bridge structure had independent utility and they granted VDOT permission to remove the existing bridge and install the temporary structure. The temporary bridge project was scheduled for advertisement in January, 2008. In mid-January VDOT was contacted by the FHWA expressing concerns about whether the temporary bridge could be considered as a separate project, or whether it should be included with the permanent replacement project for the purposes of an environmental review. They also questioned the existing detour of Durrett Ridge Road.

Mr. Sumpter said VDOT continues to work with FHWA to address the questions they raised. While those discussions are ongoing, VDOT has decided that the temporary project should be withdrawn from the advertisement schedule. Without knowing the outcome of the discussions, they felt the contractor should not incur the expense of preparing bids for the project. He said many of the discussions last fall centered on why FHWA's interpretation about separation of the temporary and permanent projects was needed. The replacement project involves Federal participation regarding funding. In order to receive this funding, they must adhere to requirements outlined in the National Environmental Protection Act which includes the Section 4f document talked about in the past. Failure to follow the law and regulations that are a part of that act could jeopardize Federal funding.

Mr. Sumpter said at this point VDOT will look at what can be done in the short-term and the long-term aspects of the project. Their staff is working to provide FHWA information associated with the concerns including detour alternatives in addition to Durrett Ridge Road. They are looking at the feasibility of doing heavy maintenance work along the roadway including upgrades to the bridge on this route to accommodate legal loads. If FHWA's final conclusion is that the temporary and permanent bridge be considered together for the purposes of environmental review, VDOT will pursue options to accelerate the permanent bridge project in order to restore service across the river as soon as possible. If they have to go through the full environmental review process for the temporary bridge that will take many months to complete. They will need to decide if it is cost and time feasible to put in a temporary bridge for a short period of time.

Mr. Sumpter said VDOT is discussing reducing the scope of the project to basically being a bridge replacement project with minor improvements to the approaches. The alternatives presented at the Citizen's Information Meeting last fall were based on meeting normal design requirements and addressing the other weight-restricted bridge nearby. A benefit of reducing the scope is that it would provide some reduction in time in the environmental review process by reducing the amount of field work, i.e. archeological reviews, etc. associated with any possible new alignment. His office is working to get the appropriate VDOT officials to the site to discuss design issues associated with a reduced scope. If that concept goes forward, it might be possible to use a design-build contract which would allow a contractor to come in and begin work as parts of the project are being designed. A preliminary analysis of using that type of concept indicated the possibility of beginning permanent construction of a bridge in 2009.

Mr. Sumpter said that is a summary of the events that have occurred and VDOT's actions. They have discussed this with members of the community. He has talked with Ms. Mallek. He will try to keep the Board and the community informed of any developments. He said they have not received a final decision from FHWA regarding whether these two projects should be tied together.

Mr. Rooker asked when that decision might be forthcoming. Mr. Sumpter said it is anticipated in the near future.

Mr. Slutzky asked what would happen if the permanent bridge project were abandoned. Could the temporary bridge project move forward? Mr. Sumpter said that is a possibility.

Mr. Slutzky asked if a temporary bridge were in place, could the Board then decide it might want a permanent bridge some where else. Mr. Sumpter said by doing so, the possibility of Federal funding to construct a permanent bridge is eliminated.

Mr. Slutzky asked why that would happen. Mr. Sumpter said it is because the project had not gone through the environmental review process necessary to determine all the adverse effects to the historic district.

Mr. Slutzky asked if this project were bifurcated into two separate worlds, could the Board today have a temporary bridge put into place without having to do any additional NEPA requirements.

Ms. Mallek said that last fall the DHR did their analysis for the temporary bridge.

Mr. Slutzky said it is then a process question. Could the temporary bridge be built and then as a new project build the permanent bridge? Mr. Sumpter said the only way VDOT could proceed doing it in the manner described would be if VDOT said it would never seek Federal funding on a permanent bridge.

Mr. Slutzky asked why the Federal funding would not be allowed for the permanent bridge. Mr. Sumpter said that is because VDOT never went through the process to consider whether its actions would have an adverse impact to the historic district.

Mr. Slutzky asked if the act of putting up the temporary bridge is an act that triggers some access to future Federal funds. Mr. Sumpter said if the final decision is that replacing this bridge becomes a wholesale project that includes removal of the existing structure, it ties it together and there is a need to go through the environmental process.

Mr. Rooker said if removal of the existing bridge is the problem, it would seem FHWA would recognize they have already looked at this. He thinks it would be difficult at this time to say take down the existing bridge and put in a temporary structure, and then five years from now request a permanent bridge.

Mr. Slutzky asked what would happen if the proposed temporary bridge did not involve being in the water; suppose a longer span was constructed which did not rest on the existing piers. Suppose the structure was removed, but the piers were not disturbed and the new structure did not rest on top of those piers. What would have been done that triggered the need for the requirement?

Mr. Rooker asked if Mr. Slutzky was assuming the existing bridge would be left in place as is.

Mr. Slutzky said the piers would be left in place, but the top structure would be taken down. Mr. Sumpter said the superstructure becomes a component of the entire aspect of the review.

Ms. Mallek said DHR said they had signed off on that.

Mr. Slutzky said he was confused. Does VDOT have permission to take it down now? Mr. Sumpter said that is based on input from the FHWA separating the two.

Ms. Mallek said she is bewildered as to how they get away with changing the rules almost at the end of the process when VDOT and the Board have done everything they have been asked to do.

Mr. Slutzky said he wants to be sure he understands what has occurred. He would like to know if process-wise permission has been granted to build the temporary bridge. Mr. Sumpter said that was granted based on input from the FHWA.

Mr. Slutzky asked if they have now said the temporary bridge component itself triggers a NEPA obligation or are they saying it is a separate undertaking. Mr. Sumpter said if that is the final conclusion of their re-review of this issue, then they will be connected together.

Mr. Elliott said VDOT has already started the process. FHWA is aware of what is going on with the project. VDOT could not change directions if it wanted to. As long as VDOT was using State funds it was able to avoid the NEPA process. Once they made the decision that the two projects could not be separated NEPA came into effect.

Mr. Slutzky asked if that is the decision or whether it is still being discussed. Mr. Elliott said that is where they are headed; they do not feel VDOT can actually separate these two projects versus their original thought that they were different. As long as VDOT used State money on the temporary bridge when they were separated, then NEPA did not play into effect.

Mr. Slutzky said with this new determination that appears to be imminent, what if the Board said it is not worth it to wait for a permanent bridge so it would abandon the permanent bridge solution. There would then be a span to repair; could a temporary bridge be put in that is a permanent bridge that does not get down into the water. What obligation does the County have to continue to link these two together? Mr. Elliott said they are already aware of what is going on.

Mr. Slutzky said there is a problem now where people cannot get across the water and the County does not want to wait until they change their mind so it will just give up on the permanent bridge solution and put in a temporary bridge because it is needed. He asked if Mr. Elliott was saying that cannot be done. Mr. Elliott said from the State perspective he is not sure VDOT would support taking that approach. One key factor for VDOT to even consider the temporary bridge was because it was assured it would not be a permanent solution. They also have to consider value-added costs and other things that might cause prices to escalate.

Mr. Slutzky said the Board has another layer of concern which is a near-term crisis because there is currently no usable bridge. Does the Board have other options available to it?. Will VDOT not support construction of a temporary bridge structure that could be moved to another location and used again because it might not be funded out of the originally intended funds? There is already money that could be used to pay for a temporary bridge if the permanent project were abandoned. Mr. Elliott said those funds are Federal funds; VDOT has no State funds available for a temporary bridge.

Mr. Slutzky asked what would happen if the Board figured out a way to pay for the temporary bridge. Mr. Elliott said it is between \$1.0 and \$1.2 million.

Mr. Slutzky asked if the Board chose to abandon the permanent bridge and move forward with a temporary bridge structure, are there any impediments to doing that? Would VDOT object to doing that if the County could fund it somehow? Mr. Elliott said VDOT will be looking for a permanent solution. He is not sure VDOT would want to recognize a temporary bridge as a permanent solution.

Mr. Rooker said Mr. Slutzky needs to understand that this is a State road. It is their road, and their bridge.

Mr. Slutzky said he understands that, but the Board has been told anecdotally that bridge structures are designed to last 50 years. What about putting in a structure knowing it is not designed for 80 years, calling it a solution and moving on? Mr. Elliott said there is a lot of maintenance required by those temporary structures so VDOT would have to continue to expend funds to maintain a temporary bridge.

Mr. Slutzky said he understands that same argument was talked about before, and the manufacturer optimistically characterizing their product suggested that the ongoing maintenance costs were not that much different, it is really the decking. It could be designed in such a way to choose not to put a layer over it and the decking would suffice for 50 years without much maintenance. Has VDOT actually looked at that option? Mr. Elliott said VDOT has looked at that but there would need to be increased inspections. They do not see it as a viable solution. As far as VDOT is concerned, the viable solution is to put in a permanent structure.

Mr. Rooker said Mr. Slutzky raised a lot of issues about temporary bridges when this was discussed earlier, and he also raised the same issue about the bridge on Broomley Road. At the VDOT level, based on their analysis of the cost of maintenance, etc., that option appears to be a "no-go." VDOT is not prepared to participate in funding a temporary bridge with the idea that it will be there for 50 years or so. Mr. Sumpter said there is another component of this bridge issue. In previous meetings when Mr. David Pearce was present, what the Board talked about is totally superstructure. The Board asked VDOT to look at setting the bridge back on the existing piers, but they could not make that work.

Mr. Slutzky said that was due to the fact that VDOT had to do right-of-way acquisition and it was comparing that scenario to the permanent bridge made the Board back off. Mr. Sumpter said there are existing substructure components such as the abutments which are associated with supporting the temporary structure. That is one of the real concerns about the temporary bridge being a long-term solution.

Mr. Slutzky said the river could be spanned easily without setting anything on those abutments. Mr. Sumpter said the issue with that idea is that it changes the entire characteristics of the roadways and there is need for additional right-of-way.

Ms. Mallek said a landowner told her he had already agreed to donate the right-of-way for the temporary bridge.

Mr. Slutzky said that is why he is perplexed. Mr. Sumpter said once VDOT goes through the process of getting the right-of-way and making the design adjustments necessary to do what Mr. Slutzky is suggesting, the timeframe is extended to the point that VDOT could go through the process of putting in a permanent bridge.

Mr. Slutzky asked how soon VDOT could get a permanent bridge constructed. Mr. Sumpter said if VDOT were able to get the design/build concept he just explained advertised next year, it would take 12 to 18 months to get it completed.

Mr. Slutzky said that would be over two years, so if right-of-way were donated quickly, how quickly could a temporary bridge be put across where it did not rest on the abutments and went a further distance. Mr. Elliott said to just have the bridge rest on the earth there would still need to be some sort of support or the bridge would eventually settle into the earth. Some sort of abutments would have to be built beyond where the current abutments are located. VDOT would have to design those abutments and there would be environmental and archeological concerns because this is an historic area. To pursue the temporary bridge with the thought process Mr. Slutzky is using would place the project into next year. VDOT could start construction of a permanent bridge at the same time.

Mr. Slutzky said he wants to understand what Mr. Elliott just said. If a temporary bridge is done, but there is disturbance of the ground on either side of the river, NEPA would come into play because of historic conditions and archeological conditions. There would be a delay problem to comply with NEPA of some six to 12 months, but for the permanent bridge construction could start in the summer. Mr. Elliott said it is not NEPA that is the worry, they would still be using State funds and there are State environmental regulations that must be met.

Mr. Slutzky said if the FHA is now saying the two bridges have to be co-mingled as one project and they have to comply with NEPA, can all of that be done before this summer and then go forward with the schedule. Mr. Elliott said if VDOT went strictly with replacing the bridge at the current location, they could save time in the environmental process because they would not have to evaluate multiple locations.

Mr. Slutzky asked if VDOT could be to the design phase by summer. Mr. Elliott said everything they would have to do for the temporary bridge they would have to do for the permanent bridge. The difference is that a temporary bridge could be in place a year quicker than a permanent bridge but the temporary bridge would have to be torn out later and that could disrupt traffic again. The issue is when it becomes feasible to look at a temporary solution versus a permanent solution.

Mr. Slutzky said that is a persuasive argument. He has a lot of people asking why a bridge cannot be put up, and he wants to be sure he understands that the Federal Government has changed its mind and there is no choice.

Ms. Mallek said it is possible that if the right person spoke to the Federal Government they might change their mind again, so she would like to talk about the RFP. She has been told VDOT chose not to let the RFP feeling it was not fair to the business people when it was not absolutely certain the job would be offered. To her, that is a loss of months in the event the Federal Government decides not to let VDOT go ahead with the project. She would rather have those bids prepared so this could get back on schedule. It makes a big difference to the people living in that area; they want this project to go forward in some way.

Mr. Slutzky said a disclaimer could be included in the RFP saying that is a possibility.

Ms. Mallek said these business people do bids all the time. Compared to the unfairness to the citizens and the risks they undergo every day, she does not think that is a balanced approach. She would be happy to meet with the people who made this decision and try to persuade them because she does not think this is right.

Mr. Slutzky asked if VDOT would put out an RFP putting bidders on notice that the project might not happen.

Mr. Rooker asked why there would be a chance it would not happen. Is Mr. Slutzky talking about the bid on the permanent bridge?

Ms. Mallek said she is talking about the bid VDOT was supposed to let on January 29 on the temporary bridge. Those plans have not changed except for the veiled threat and telephone call that has come from Washington or somewhere which says this cannot be done.

Mr. Slutzky said if they change their mind because somebody picked up the telephone and yelled at them, maybe somebody else can yell at them and they will go back to where they were before.

Ms. Mallek said she does not want to lose time if that happens, and if it does not happen then she does not think anything has been hurt. She knows that there are some citizens present today, and they were told yesterday that they could speak.

Mr. Slutzky asked if that is an option for VDOT. Mr. Elliott said he will pass that request to VDOT's Chief Engineer.

Mr. Rooker asked if anybody knows what gave rise to this sudden change of mind. Mr. Elliott said he does not know.

Mr. Rooker asked if there is anything in the record showing that somebody sent anything to FHWA. Mr. Elliott said they asked for additional information about the detour and the information VDOT sent about that detour made them change their mind.

Ms. Thomas said what they are saying is that the road that will have to be used for a detour is not a safe road now, therefore they won't let the bridge be built. That is one of the more ridiculous things the Board has heard. Mr. Elliott said he understands the comments.

Ms. Thomas asked if VDOT has the money for this project. She was just reading a report that said bridge needs in Virginia are about three and a quarter billion dollars. Mr. Elliott said that is another consideration for VDOT. What will this project cost? He understands the concerns of each individual community, but when looking at it from a statewide perspective and when it would cost \$1.0+ million for a temporary bridge and \$4.0 million for a replacement bridge that is a significant amount of money. Compare that to the low water bridge on Route 605 where VDOT is unable to go in and take the deck off and replace the steel beams and put that back in place for \$50,000. That money would allow him to address a lot of small bridge repairs in the Culpeper District.

Mr. Rooker said there is no question that the money for the permanent bridge is available. Mr. Elliott said that is true. When talking about a temporary bridge being in place for three or more years before VDOT can get the permanent bridge in place it makes economic sense. At what point does the whole process of temporary versus permanent become economically feasible.

Mr. Slutzky asked why the design/build concept was considered and then rejected initially. Mr. Elliott said VDOT had also proposed getting around the small bridge on Route 641 and the sharp curve with this project so both areas could be done at the same time. If the primary purpose is to get traffic back

and forth across the river that piece could be taken out and then a true design/build project could be done and the bridge put in place much quicker and it would provide better service. That would reduce the environmental issues.

Mr. Boyd said he thinks there are some members of the public present who would like to speak.

Mr. Chip Newland from the Advance Mills Homeowners Association said they appreciate the fact that Mr. Elliott and Mr. Sumpter have worked with them on this matter. Nothing he will say today is a reflection on anything they have done. They went through this process in good faith. There were interested party meetings and community meetings which VDOT sponsored. They got a letter on October 29 from the Federal Highway Administration saying "knock yourself out, go ahead and put a temporary bridge in." Mr. Elliott got the \$1.2 million, the RFP was to go out on January 29, but on January 28 somebody from the FHA called VDOT and said "we might reconsider this." VDOT does not have anything in writing. There is no rationale as to why it might be reconsidered. When the Homeowners talked to the FHA, they referred to the letter and said nothing had been received saying to stop the project, and they said "oh well." Mr. Newland asked the nature of the legislation being used for the rationale to change your mind, or that they show case law and administrative law, and they said they had none of that. It had to do with the fact that they decided, based upon worries about the detour, that it is inadequate and with an adequate detour there cannot be a temporary bridge. They did say there is case law; their chief counsel had looked at two cases. He asked that they send a copy of that case law and they did; the Homeowners have had it reviewed by a number of lawyers, and there is nothing in it that addresses adequate/inadequate detours. He saw nothing that they reviewed that would make them reverse their decision. This whole situation is now in limbo. He and the HOA will be going to Richmond tomorrow to meet with people from the FHWA. They have talked with Congressman Goode's office and he is working on it as well. At this point they do not understand what is going on, but to just give up and move ahead because somebody called VDOT is not good for the people in the area. There was a school bus accident last week, and a person almost died last week because the ambulance could not get to them for an hour. When does the public good prevail over any kind of bureaucratic prevarication? He is confused.

Ms. Mary Kastacheck, President of the Advanced Mills Homeowners' Association, thanked Mr. Elliott and Mr. Sumpter for all of their help in trying to find a solution to this situation. She said a bridge is needed for emergency services purposes. She sent a letter to the Board last week about Durrett Ridge Road and how dangerous it is. She said everybody is responsible for this situation by not looking into the future when the bridge might have to be closed. She thinks the solution is to support the HOA and Ms. Mallek when she goes to Richmond tomorrow to talk to Delegates and the FHWA. She asked that the Board adopt a resolution requesting them to change their mind and separate the temporary bridge and the permanent bridge so the 500+ citizens she is representing don't have to wait until 2011.

Ms. Katherine Banks thanked VDOT for their work although there is still no bridge. The closing of the bridge has affected her church since a lot of their members come from Earlysville. Their membership has dropped and put a financial strain on the church. She asked the Board to help them through this hardship so they can get their members back to church.

Mr. Newland said there was a meeting of the Steering Committee of their group of 540 people on Sunday. They decided to tell the FHA tomorrow that they want a written statement of FHWA's current position. If they do not reverse their position, this group has decided it will raise money and formally appeal their decision. A temporary bridge is needed for the safety of the community. They have no faith that a permanent bridge can be in place until at least the beginning of 2011. They have worked for a whole year in good faith with the understanding last October 29 that it would be open in April. Now it is being pushed out two and one-half years for no reason that they can see. They will ask for a reason in writing and if it is not compelling, they will appeal the decision.

Mr. Slutzky said he appreciates the fact that the County is clearly collaborating with VDOT in this instance against the folks in Washington. He said VDOT has done everything imaginable to try and get a solution to the problem.

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Agenda Item No. 16. Albemarle County Service Authority/Rivanna Water and Sewer Authority, Updates by.

Mr. Tom Frederick, Executive Director, Rivanna Water & Sewer Authority, said that last Sunday the Sugar Hollow Reservoir started spilling for the first time since last summer. There was some good rain on Friday and that helped considerably. He said the Ragged Mountain Reservoir is still 1.8 feet down, but it will fill. They have kept Ragged Mountain lower for a couple of reasons. They wanted to be sure water is moving through the old Sugar Hollow pipeline when the temperatures are below freezing so no break occurs because of freezing water, and they also wanted to be sure that Sugar Hollow spills before Ragged Mountain so that water is not lost while still trying to fill Sugar Hollow. He said it looks like Beaver Creek Reservoir will be full very soon. It was at 0.2 feet low this morning. That puts the RWSA in a position where within 35 to 40 days all reservoirs will be full. That is ahead of projections, so things have improved since the last time he was at a Board meeting.

Mr. Gary Fern, Executive Director, Albemarle County Service Authority, said he had been asked to give an update on ACSA projects. He said they have met with Edens and Avant, the newest developer of Albemarle Place, and they are working on water and sewer within the development itself. He said ACSA has met with them and the City in discussing a sewer that would go from that development to the new Meadow Creek Interceptor. Currently there are negotiations between Edens and Avant and Pepsi-Cola Company because that is where the route of that line might go.

Mr. Rooker asked if they will have to wait for an upgrade of interceptor facilities before being allowed to tie into the sewer lines. Based on the schedule they have discussed, Mr. Fern said it would be December, 2009 before the Meadow Creek Interceptor is in place and they can have their sewer lines in place and connected.

Mr. Fern said another project is the Meadow Creek Drainage Basin. Currently, ACSA has hired O'Brien & Gear, Engineers, to begin an infiltration inflow study. It will include evaluating 1,300 manholes and about 40 miles of sewer within the drainage basin itself. It is a three phase project at a cost of \$0.5 million. Phase One is underway and should be completed this spring. The intent of the study is to determine and prioritize projects which would remove infiltration inflow in the basin in order to leave more capacity in the Meadow Creek Interceptor.

Mr. Boyd asked if ACSA is able to do that study without increasing rates. Mr. Fern said it is part of their CIP Program, so it is built into the rates.

Ms. Thomas asked if ACSA knows how much rates will be impacted by the study. She knows RWSA just put out their CIP with a figure saying how it will affect their wholesale rate. Does ACSA know what its increase will be independent of that? Mr. Fern said they do not have that figure at this time. They are currently working on their 2009 CIP.

Mr. Rooker said the ACSA has a CIP for its own projects. Then there is the cost of amortizing RWSA projects which will result in a rate increase to ACSA from the RWSA. He heard some potential information about rate increases which will result from what RWSA will be passing to ACSA in the form of higher rates to amortize its projects. He asked if there is anything definitive on that at this time. Mr. Fern said there are three components. There is what is coming from RWSA, ACSA's CIP, and ACSA's operating budget. They are in the middle of their budget process at this time.

Ms. Thomas said when Mr. Frederick was speaking to the RWSA Board at its last meeting, she thought he was fairly brave by chastising his Board and all of the Supervisors because a lot of infrastructure needs have not been met in the past. They are now playing catch up. She asked if Mr. Fern can say that with this infill study, etc. the ACSA is keeping on top of the aging infrastructure. Mr. Fern said ACSA, RWSA, and the City are moving forward to address the problem of aging infrastructure. Will they still have aging infrastructure in five years, maybe, but with what they are doing currently he thinks they are moving in the right direction. The ACSA's CIP was increased considerably last year just to begin to address some of those issues.

Ms. Thomas said "just beginning to address" does not make her confident. At the end of five years, will all of the infrastructure be in good condition given the fact that some things will still be 15 years old? Mr. Fern said they are addressing the wastewater treatment plant, they are addressing the major interceptors and the collection systems, so from the sewer side of things, they are addressing what is needed. They will have to look at how much that will cost and whether it can be done in five years. They are still waiting to hear the total effect of the interceptor study, so he cannot answer the question in its entirety.

Mr. Frederick said to be honest in answering the question, they are learning a lot through the comprehensive sewer study which should be finished within a year. He does not expect to say in five years that everything has been done. He thinks it will be a ten to 15 year endeavor. They are trying to set priorities in order to get the most important things done first. The Meadow Creek Interceptor is the No. 1 priority in the RWSA system. It is out of capacity and in failing condition largely because Meadow Creek itself has moved since the pipeline was built. The stream is undermining the foundation of the pipeline in some locations. After that, they have identified some places on the Rivanna Interceptor that need attention. The Schenks Branch Interceptor that serves only the City and its downtown area and the Albemarle/Berkeley Interceptor will get attention as will the Crozet Interceptor and the Powell Creek Interceptor, but they cannot all be done at one time. There is a multi-year plan to address these issues.

Mr. Rooker said the increase in wholesale rates was mentioned earlier. He asked what that increase will be. Mr. Frederick said the figure they released last week was about a six-percent per year increase in wholesale rates for debt service on the CIP. They have not yet finished their operating budget for next year, but he expects that for sewer in the operating budget the wholesale rate will be higher than the six percent because they must take into account the increase in cost of utilities, labor, fuel, etc. He said there are things on the operating side to do with the Moores Creek Treatment Plant that have not been addressed in the past. Within the next couple of weeks they will have a figure to release on what that number should be.

Mr. Mallek asked if the expected ratepayer effects are smaller than anticipated, would RWSA consider doing the South Fork Rivanna to Ragged Mountain pipeline simultaneously with the dam raising in order to get the project underway sooner. Mr. Frederick said the RWSA has actually run that number, but he does not have it today. They have tough decisions to make right now and need to provide alternatives so the right decisions can be made.

Mr. Slutzky asked if there might be delays in order to save near-term costs. Mr. Frederick said they are looking at it from multiple perspectives. He said that just before he came to work at RWSA, its engineering staff consisted of only two people. They are now as many as nine people, and it is possible there is a need for more staff. Keeping the public involved, updated, and holding public meetings takes time and effort on the part of staff. He needs to be careful that they don't take on too many projects at one time.

Ms. Mallek said a lot of years were spent working on a different reservoir which ended up being cancelled because of changes in Wetlands Regulations. She would hate to see that happen because the pipeline was not pursued as quickly as possible under today's rules. Mr. Frederick said that is an excellent point. The two big issues in the water protection permit for the Ragged Mountain Reservoir where Federal and State environmental rules apply are the dam and reservoir itself, and to a lesser extent, the South Fork Rivanna pipeline. The permits will be issued for a 15-year period. If the decision is to phase construction of the pipeline, RWSA believes it should be built within the 15-year permit timeframe.

Ms. Mallek asked if as the water flow hits at the various impoundments will there be any changes in the spring months for putting water into the Moormans River. Mr. Frederick said the draft permit which they hope will become final soon, contained conditions about stream flow releases. The conditions in it are conditions RWSA developed in collaboration with The Nature Conservancy based on three and one-half years of scientific research. It is an innovative model as to how to balance human needs and stream flow needs.

Ms. Mallek said the release now is 0.4 million gallons and the river is dry. Mr. Frederick said there are three phases to the permit. The permit allows a minimum of 0.4 million gallons per day or natural inflow from the date the permit is issued until the new Ragged Mountain Reservoir is at 30 percent full. Then the trigger goes up and a higher level of stream flow releases tied to the natural inflow must be provided. Once the pipeline is built, it goes up again. When the Reservoir is complete, 80 percent of the total benefits of the 50-year project to the Moormans River will kick in and then when the pipeline is built approximately 20 percent additional which carries it up to natural inflow 99+ percent of the time except in severe drought.

Ms. Mallek asked if during the spring when water is overflowing all of the impoundments the inflow stream is increased temporarily to the benefit of the ecology. Mr. Frederick said they do a couple of things above and beyond the RWSA Board's policy or DEQ requirements. He said RWSA is sensitive to avoiding transferring water from Sugar Hollow to Ragged Mountain to have it spill over Ragged Mountain when it could be instead in the Moormans River. Also, they are in the process of designing an additional tap on the pipeline just below the Sugar Hollow Reservoir that will allow them to increase downstream flows when it is determined it is not a risk to the water supply. The tap is being designed now. Today that tap cannot be increased above 400,000 gpd, but in the near future that will be allowed. They have promised the RWSA Board that the water supply will not be put at risk to the public.

Ms. Mallek asked about the original 1920s Sugar Hollow concrete dam. Will it be removed to get rid of the hot water that collects at the foot of the dam now? Mr. Frederick said there is a stilling basin at the base of the Sugar Hollow Dam (a mandate of Dam Safety Requirements); there is a well at the base of the dam so that when the flow comes over the spillway, the velocity is dissipated before it moves so it does not erode the stream itself. They checked into this question and found that they cannot remove that legally without permission from Virginia Dam Safety and it will not grant that permission.

Ms. Mallek said it really affects the temperature of the water. Mr. Frederick said that last week they discussed the design of the new tap. They discussed the possibility of turning that so it goes into that spilling area and that would help to moderate the temperature. They will be checking into that further.

Mr. Tucker said he had just gotten a memo from Mr. Frederick in which it is stated: "The impact on the urban water rate (if that pipeline is added) would be seven percent per year for the City and 11.7 percent for the ACSA for each of the next five years instead of 1.3 percent for the City and 2.5 percent for the ACSA."

Ms. Thomas asked how that compares to the six percent just mentioned.

Mr. Rooker said he heard earlier that the 1.3 percent and the 2.5 percent numbers included amortization of the water supply plan with a dam. Mr. Frederick said the six percent is the urban wastewater side. The figure Mr. Tucker gave is for water only.

Mr. Boyd asked if anybody had another question.

Ms. Thomas said she appreciates these conversations. She asked if during the next report from Mr. Frederick, the odor control evaluations could be part of the presentation. It turns out that the septage taken to the Moores Creek STP is a major part of what is causing the odor. It affects the process along the way. There are to be a number of changes in the treatment itself and then that raises the price. She said there are people who live in the rural area who might have their septic tanks pumped more often than they do, so she would be interested in what the impact will be on the receiving of septage. Mr. Tucker said Mr. Frederick made that request to him last year. There is no way RWSA can recover that in the water rates in the urban area. It is more of a County responsibility because it is the rural area that causes it. He has asked staff to add it into the CIP in 2009 or 2010. It will not be fully funded; the County will probably have to fund debt service for that expense.

Mr. Rooker asked about the ACSA charging a fee that would amortize the cost. Mr. Tucker said they do. Haulers also pay a fee which is increased almost every year. He thinks Ms. Thomas is worried that if the cost becomes too excessive, people will not have their septic systems pumped out very often. Mr. Frederick said that everything RWSA is planning to do is based on the plant continuing to accept septage. It is no surprise that one came to the top of the list of things which are creating odors. It carries throughout the plant when there is septage discharge. That is why changes need to be made to the extent

the County is willing to fund RWSA's debt service on that portion of their cost so they do not pass along an increase in the fee to the haulers. This is one of the few areas where the RWSA charges a retail rate.

Mr. Rooker said the Board has talked about a stormwater utility. He asked if there is any reason why this should not be included within that as a cost of the utility.

Mr. Boyd asked if that could be done.

Mr. Rooker said there was a complaint that rural people were not benefiting at all from the utility. Mr. Davis said what can be charged under the utility is limited by statute. He does not believe it is an identified cost that could be charged for a stormwater utility. It could be for a service district.

Mr. Slutzky asked if it is an option to require that people properly maintain their rural septic systems and if they fail to do so, impose a fine. Mr. Davis said the Board has the authority to require people to pump out their septic tanks on a five-year basis but that has not been implemented in Albemarle. Legally, people could be required to do it, but tracking that would be the challenge.

Mr. Boyd thanked Mr. Fern and Mr. Frederick for their reports today.

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Agenda Item No. 17. **Public Hearing:** Virginia Community Development Block Grant Program. (Notice of this public hearing was advertised in the Daily Progress on January 21 and January 28, 2008.)

Mr. Ron White, Housing Director, was present. He said that each year the Virginia Department of Housing and Community Development (DHCD) puts out their competitive application for community development block grants. In Albemarle, applications are normally submitted for projects which are undertaken by some nonprofit organizations. They require localities that submit applications to hold two public hearings; the first public hearing is to provide information on eligible activities that may be funded by CDBG, the amount of funding estimated to be available, past activities undertaken with CDBG funds and to receive public comment on this information. The follow-up public hearing is held in order to consider proposed project applications and this must take place prior to the application due date of March 26, 2008.

Mr. White said DHCD has estimated that about \$10.0 million will be available for competitive activities this year. Activities should benefit low- and moderate-income persons, prevent slums and blight, or address urgent community needs. Eligible activities include economic development, housing rehabilitation, housing production, community facilities and community service facilities. He said Albemarle County has been successful in receiving a number of CDBG awards over the years, the most recent being a grant to construct a community center at Whitewood Village Apartments, now known as Parks Edge Apartments. The center was completed in September, 2004 and is the site for after-school programs conducted by the YMCA, financial literacy classes, GED classes and employment counseling/assistance. Prior to this project, CDBG funds were awarded for a comprehensive community improvement initiative for the Porters Road/Yancey School neighborhood. This \$770,000 CDBG award leveraged over \$2.0 million in other public and private funds to rehabilitate 28 houses, demolish 13 dilapidated houses, construct five new houses, and create a community park and community center.

Mr. White said they have set up a process for applications this year. The Office is asking applicants to submit a notice of intent to the Office of Housing no later than February 12, 2008. This will allow time to discuss potential applications with the Housing Committee at its meeting on February 14 and then have a completed application delivered electronically so it can be submitted with an Executive Summary for the Board's meeting. Finally on March 15, 2008, the completed applications in hard copy should be in the Office so they will be available for a public hearing on March 19.

Mr. White said interest has been shown by the Albemarle Housing Improvement Program to request up to \$700,000 for the design and construction of on-site infrastructure for its proposed Treedale Park project on Rio Road. On the agenda this morning was a request that this project be approved for a low-income housing tax credit. This project will provide 90 units of affordable rental housing. There has been some interest in Crozet Meadows which would be the rehabilitation of 28 existing rental units for seniors along with construction of 38 new units although nothing definitive has been received from them yet on the amount or the type of activity they plan to undertake.

Mr. White asked that the Board hold a public hearing to receive input from the public on potential community development and housing needs, and also to set a second public hearing to review any proposed applications on March 19, 2008.

At this time, Mr. Boyd opened the public hearing and asked that interested parties speak. With no one coming forward to speak, the hearing was closed and the matter placed before the Board.

Mr. Rooker offered **motion** to set a public hearing for Wednesday, March 19, 2008, for the second required public hearing to review any proposed application. The motion was **seconded** by Ms. Mallek. Roll was called and the motion carried by the following recorded vote:

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

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Agenda Item No. 18. **Public Hearing:** Elections – Rivanna Magisterial District – Ordinance to change the polling place for the Keswick Precinct. (Notice of this public hearing was advertised in the Daily Progress on January 21 and January 28, 2008.)

Mr. Tucker said the Board adopted an emergency ordinance on January 9, 2008, changing the polling place for the Keswick Precinct in the Rivanna Magisterial District from the Union Grove Baptist Church to the Zion Hill Baptist Church. Union Grove Baptist Church is no longer available as a polling place because it is undergoing structural repairs. The emergency ordinance was necessary to establish the polling place needed for the February primaries and to meet all mandated voting procedures. Because an emergency ordinance is valid for only 60 days, an ordinance must be adopted after notice to the public to make the polling place change permanent. When the Board adopted the emergency ordinance, it set February 6, 2008, as the date for the public hearing to consider adoption of that ordinance.

Mr. Tucker said the State Board of Elections has approved the emergency polling place change and staff submitted the polling place change to the United States Department of Justice for review to assure compliance with Section 5 of the Voting Rights Act (expedited review was requested). The Registrar's Office has begun planning for the new polling place and providing timely notice of the polling place change to the registered voters in the Keswick Precinct. Staff recommends that the Board adopt the advertised ordinance after holding a public hearing.

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

**Motion** was then offered by Mr. Boyd, **seconded** by Mr. Dorrier, to adopt the following ordinance. Roll was called, and the motion carried by the following recorded vote:

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

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

#### **ORDINANCE NO. 08-2(1)**

AN ORDINANCE TO AMEND CHAPTER 2, ADMINISTRATION, ARTICLE I, ELECTIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 2, Administration, Article I, Elections, is hereby amended and reordained as follows:

**By Amending:**

Sec. 2-103 Rivanna Magisterial District

#### **Chapter 2. Administration**

##### **Article I. Elections**

#### **Sec. 2-103 Rivanna Magisterial District.**

The Rivanna Magisterial District shall be bounded, and contain voting precincts and polling places, as follows:

A. *Description of district:* Beginning at the intersection of Interstate 64 and the Albemarle/Fluvanna County line; then northeast along the Albemarle/Fluvanna County line to its intersection with the Albemarle/Louisa County line; then northeast along the Albemarle/Louisa County line to its intersection with the Albemarle/Orange County line; then west along the Albemarle/Orange County line to its intersection with the Albemarle/Greene County line; then west along the Albemarle/Greene County line to its intersection with Seminole Trail (U.S. Route 29); then southwest on Seminole Trail to its intersection with Dickerson Lane (State Route 763); then west on Dickerson Lane to its intersection with Dickerson Road (State Route 606); then south on Dickerson Road to its intersection with the North Fork Rivanna River; then southeast along the North Fork Rivanna River to its intersection with Seminole Trail (U.S. Route 29); then south along Seminole Trail to its intersection with the South Fork Rivanna River; then meandering southeast along the South Fork Rivanna River to its confluence with the North Fork Rivanna River and Rivanna River; then meandering southeast along the Rivanna River to its intersection with Interstate 64; then following Interstate 64 east to its intersection with the Albemarle/Fluvanna County line, the point of origin.

B. *Voting precincts:* The district shall be divided into five (5) voting precincts, as described herein:

1. *Burnley Precinct:* Beginning at the intersection of Seminole Trail (U.S. Route 29) and the Albemarle/Greene County line; then southeast along the Albemarle/Greene County line to its intersection with the Albemarle/Orange County line; then southeast along the Albemarle/Orange County line to its intersection with the Southern Railway right-of-way; then southwest along the Southern Railway right-of-way to its intersection with the North Fork Rivanna River; then meandering northwest along the North Fork Rivanna River to its intersection with

Dickerson Road (State Route 606); then northeast on Dickerson Road to its intersection with Dickerson Lane (State Route 763); then east on Dickerson Lane to Seminole Trail (U.S. Route 29); then north on Seminole Trail to its intersection with the Albemarle/Greene County line, the point of origin.

2. *Free Bridge Precinct:* Beginning at the confluence of the Rivanna River and Redbud Creek; then east with Redbud Creek to its origin near the ridge of Wolfpit Mountain of the Southwest Mountain range; then southwest with the ridge line of the Southwest Mountain range to its intersection with the origin of Barn Branch; then southeast with Barn Branch to its intersection with Interstate 64; then west on Interstate 64 to its intersection with the Rivanna River; then meandering northwest with the Rivanna River to its confluence with Redbud Creek, the point of origin.

3. *Hollymead Precinct:* Beginning at the intersection of the Southern Railroad right-of-way and the South Fork Rivanna River; then meandering northwest with the South Fork Rivanna River to its intersection with Seminole Trail (U.S. Route 29); then north on Seminole Trail to its intersection with the North Fork Rivanna River; then meandering southeast along the North Fork Rivanna River to its intersection with the Southern Railroad right-of-way; then southwest with the Southern Railroad right-of-way to its intersection with the South Fork Rivanna River, the point of origin.

4. *Keswick Precinct:* Beginning at the intersection of the Albemarle/Orange/Louisa County line; then southwest with the Albemarle/Louisa County line to its intersection with the Albemarle/Fluvanna County line; then southwest with the Albemarle/Fluvanna County line to its intersection with Interstate 64; then west on Interstate 64 to its intersection with Barn Branch; then northwest with Barn Branch to its origin near the ridge of the Southwest Mountain range; then northeast with the ridge line of the Southwest Mountain Range to its intersection with the Albemarle/Orange County line; then east with the Albemarle/Orange County line to its intersection with the Albemarle/Orange/ Louisa County line, the point of origin.

5. *Stony Point Precinct:* Beginning at the intersection of the South Fork Rivanna River and the Southern Railroad right-of-way; then meandering southeast to its confluence with the North Fork Rivanna River and Rivanna River; then meandering south along the Rivanna River to its confluence with Redbud Creek; then east with Redbud Creek to its origin near the ridge of Wolfpit Mountain of the Southwest Mountain range; then northeast with the ridgeline of the Southwest Mountain range to its intersection with the Albemarle/Orange County line; then west with the Albemarle/Orange County line to its intersection with the Southern Railroad right-of-way; then southwest with the Southern Railroad right-of-way to its intersection with the South Fork Rivanna River, the point of origin.

C. *Polling places:* Each voting precinct shall have a polling place at the location identified below:

1. *Burnley Precinct:* Northridge Community Church of the Nazarene, 5100 Dickerson Road.
2. *Free Bridge Precinct:* Elk's Lodge Hall, 389 Elk Drive.
3. *Hollymead Precinct:* Hollymead Elementary School, 2775 Powell Creek Drive.
4. *Keswick Precinct:* Zion Hill Baptist Church, 802 Zion Hill Road.
5. *Stony Point Precinct:* Stony Point Elementary School, 3893 Stony Point Road.

(8-19-71, § 1; 9-5-72; 7-15-81; Code 1988, § 6-1; 5-15-91; Ord. 95-6(1), 1-11-95; Ord. 98-A(1), 8-5-98, § 2-100(3), § 2-103; Ord. 01-2(1), 5-9-01; Ord. 02-2(4), 7-3-02; Ord. 08-2(1), 2-6-08)

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Agenda Item No. 19. **Public Hearing:** SP-2007-045, Flow Automotive Sales and Display (Sign #17).

Proposed: Expansion of the Flow Volkswagen-Audi-Mazda outdoor automobile sales and display parking areas in the Entrance Corridor.

Zoning Category/General Usage: HC - Highway Commercial - commercial and service uses and residential use by Special Use Permit (15 units/acre); EC - Entrance Corridor Overlay District - overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access.

Section: 30.6.3.2 (b) which allows for outdoor storage, display and/or sales visible from an EC street in the EC Entrance Corridor zoning overlay district.

Comprehensive Plan Land Use/Density: Regional Service - regional-scale retail, wholesale, business and/or employment centers, and residential (6.01-34 units/acre).

Entrance Corridor: Yes.

Location: 1307-09 and 1313 Richmond Road, south side of Route 250 East, approximately 1060' east of Riverbend Drive.

Tax Map/Parcel: 78/15E and 78/15D.

Magisterial District: Rivanna.

(Notice of this public hearing was published in the Daily Progress on January 21 and January 28, 2008.)

Mr. Cilimberg presented the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request is for outdoor storage and display on Route 250 East at the Flow Auto location. The essence of the request is for approval of the display areas shown (on a PowerPoint presentation). The proposal includes the addition of 71 vehicle display spaces on Parcel 15E with associated landscaping, lighting and related site improvements. The proposal has been to the Architectural Review Board and is being addressed through extensive landscaping. Following the ARB's review, staff found several factors favorable to the request including the by-right use in the area, and the ARB's recommended conditions. Also, no detrimental impacts are expected if the recommendations of the ARB are followed. No detrimental factors were identified by staff. There are a number of automobile dealerships in this area with outdoor display.

Mr. Cilimberg said the Planning Commission, at its meeting on January 15, 2008, unanimously recommended approval of SP-2007-0045, subject to five conditions primarily reflecting the recommendations of the ARB.

Ms. Mallek asked if the entrances to the property will remain the same. Mr. Cilimberg suggested the applicant address that question.

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

Mr. Scott Collins, Collins Engineering, said he is the engineer on this project. He thanked staff for their help with the project. He offered to answer questions, saying the staff report is thorough, and they agree with the Planning Commission's recommendation. As to the entrances, there are three at this time, but they will be closing one and combining it with the entrance in the middle of the property. There is a full turn lane across the entire property in the event Route 250 is widened in the future. That lane is built now in front of the Flow Auto properties.

Mr. Slutzky asked if the existing lights in the lot are full cutoff lights. Mr. Collins said they are all being replaced and will all be full cutoff.

Mr. Cheff Yarborough, president of the Flow Motor Group, said he would like to thank everybody for what they have done, and ask that the Board look at their plan favorably. They have spent hours and money on this plan in the hope of improving how people get in and out of the lot. They want to do business in Albemarle County and Charlottesville, and he thanked the Board for their consideration.

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

Mr. Boyd said he would **move** that the Board approve SP-2007-0045 subject to the five conditions recommended by the Planning Commission. 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, Ms. Thomas and Mr. Boyd.

NAYS: None.

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

1. Vehicles shall not be elevated anywhere on site;
2. Vehicles shall be displayed only in areas indicated for display shown on the plan entitled "Flow Automotives", identified as Sheet 3, prepared by Collins Engineering, with revision date of 12/18/07. Display parking shall be only in designated striped parking spaces, as identified on this plan. No parking shall occur in travelways;
3. Final site plan approval is subject to ARB approval of the lighting plan (submitted with the site plan). Maximum light levels on site shall not exceed thirty (30) footcandles;
4. Final site plan approval is subject to ARB approval of the landscape plan (submitted with the site plan). Landscaping shown on the plan will be required to be in excess of the minimum requirements of ARB guidelines and/or the Zoning Ordinance to compensate for the negative visual impact of the proposed use, including but not limited to the use of larger caliper trees, additional evergreen shrubs and continuous interior planting islands; and
5. Final site plan approval is subject to the recordation of easements for ingress/egress and for the installation, maintenance and use of planter islands and landscaping on adjacent parcels (Tax Map 78, Parcels 15, 15D and 15E).

**(Note:** At 3:50 p.m., the Board recessed. The meeting was called back to order at 4:02 p.m. with Mr. Rooker returning at 4:04 p.m. and Mr. Tucker returning at 4:05 p.m.)

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Agenda Item No. 20. Community Development Work Program, Work Session.

Mr. Mark Graham said the purpose of this work session is to seek the Board's agreement on revisions to the work program of the Community Development Department for the remainder of FY 2007-08 and to establish priorities for the Department's FY 2008-09 work program. Since the current work

program was approved last June, it has become apparent a change is required due to changes in available staff resources and Board member requests to consider revised priorities. Also, a decision is needed on whether the fee increases which have been discussed would be an appropriate means of funding some frozen positions in order to expand the work program.

Mr. Graham said some people have questioned why the work load is not down since requests for building permits is down. He said Community Development issues permits and then has the enforcement of those permits. There are zoning enforcement issues. Ministerial items are site plans and subdivisions. Legislative are things such as rezonings and special use permits. There are also the ARB, GDS, Comprehensive Plan, and the work program. Typically the resources available to dedicate to the work program are those left after all of the other things have been addressed.

Mr. Graham said he would first discuss the permits, administrative and legislative items. These are the items that typically change when the economy slows down. He showed a graph on the screen and referred to the building permit workload (Building Inspections Division) which shows that the work load at this time is at about 75 percent of the expected baseline figure. Similarly with the Zoning Division (an activity related to new development), there is also a drop-off in the workload. As to the legislative workload, there is no clear trend, but for the last year the average number of special use permit applications has been fairly flat, as have applications for zoning map amendments. However, both still tend to be a little higher than the baseline figure.

Mr. Boyd asked if Mr. Graham was indicating that there had been no change in staffing since 2004. Mr. Graham said as far as the number of reviewers in these functions, there has been no change in legislative reviews since then. In 2005, 2006 and early 2007 there were peak years which stressed staff. The year 2004 was used as a baseline primarily due to the activity in that year compared to a 10-year historical trend, it appears to be as close to an average year as could be found.

Mr. Graham said on the ministerial side (subdivisions and site plans) it was hard to pick out a trend. Overall, the trend as far as subdivisions is dropping. In the way of site plans, there has been an upward trend over the last part of the year. Last month there were 20 applications where in a normal month the number is 10. If these two items are combined, it shows that the workload is staying fairly high.

Mr. Boyd asked if these numbers have been broken down into commercial site plans and residential site plans. Mr. Graham said they are all shown together. Anecdotally, residential site plans were seen the first part of the year but not in the second half. He said the bottom is falling out of the condo market, so no one is trying to develop condos anymore. Overall, what is being seen is a jump in commercial activity. When all of these are put together and you look at the current workload, there is about a 25 percent drop in permits while the rest of it is staying about the same.

Mr. Graham said the Department has 84 budgeted positions – only 10 to 12 percent of their time is available to work on the Work Program. They are now at 77 positions, so their ability to work on the Work Program is shrinking. For this current year's work, their priorities are: Completion of a draft Places29 Master Plan, continuation of work on a Village of Rivanna Master Plan, completion of the Country Stores strategy from the Rural Areas Plan, to begin work on the subdivision and lot frontage requirements from the resolution of intent adopted this morning, and updating the Utilities section of the Comprehensive Plan to accommodate RWSA's Water Supply Plan. Next would be an update of the Economic Development section of the Comprehensive Plan. Beyond this, staff plans to complete work this year on the Crozet Downtown District and part of the Neighborhood Model zoning changes.

Mr. Boyd asked if the amount of time staff allots to this activity is accounted for in infrastructure costs. Mr. Graham said that is being looked at, but staff has never kept time sheets. They are looking at some sort of time tracking system in order to better understand the use of staff time. Mr. Boyd said he thinks that would help the Board in its decision-making process.

Mr. Dorrier said developers have said it sometimes takes years to get a plan through the Planning Office, the Planning Commission and the Board of Supervisors. At one time, staff was going to work on streamlining the system. He asked if there had been any progress on that process. Mr. Graham said the Development Review Task Force recommendations are included on the work list. A number of things have happened since those recommendations were received. One of those had to do with the Proffer Policy which the Board adopted last October. There has been work with the Planning Commission on administrative waivers, and last night resolutions of intent for that were passed. Staff is trying to schedule a work session after the budget cycle is completed with the ARB, the Planning Commission and the Board to look at issues related to streamlining applications.

Mr. Boyd said he hopes staff will include in that work session a discussion of the responsibilities of the various groups. Mr. Graham said that will be part of the meeting. There have been a number of private road appeals recently, so the question is whether the Board might consider itself somewhat of an appeals court. When the Board remands an appeal back to the Planning Commission it might give the Commission some guidance as to what it is looking for so the number of those appeals could be reduced. What he has described is probably the limit of what staff can accomplish during the remainder of this fiscal year.

Mr. Boyd said the Pantops Master Plan has not been finished but it does not appear on the list. Mr. Graham said trying to find a time when the Board can begin its work has been the issue. It is now scheduled for a meeting in March.

Mr. Rooker asked if it should still be listed under "master plans." Mr. Graham said that is correct.

Mr. Rooker asked if there were things in the recommendations of the Development Review Task Force that would save staff time if implemented. Mr. Graham said administrative waivers were intended to reduce staff time. One other thing which is being worked on internally is a strategy for more detailed guidance for site plans and subdivisions. Hopefully, applicants will use it to make a better first submission.

Ms. Mallek said during those Task Force meetings there was a lot of talk about improved checklists and making sure to delineate thoroughly all the categories of information that applicants need before coming to the County.

Mr. Boyd said one of those had to do with Engineering review and the Board was disappointed with the results. Mr. Graham said there will be another update on that in March and he thinks the Board will be even more disappointed. The Alternative Engineering Review provided a very detailed checklist on what was required with submissions for certain site plans and road plans. The idea was if the engineer went through that checklist, made sure everything on that list had been verified, and certified that it had been done, the County could go ahead and sign off on the plan. They found that few engineers are using that checklist and over the last couple of months several plans have been submitted where they certified that everything was done according to the checklist, but when staff verified it, it clearly had not been looked at.

Ms. Mallek said she thinks they should pay again and start over. The sooner the County stops people who have not complied and sends them back to square one, the sooner they will get trained. Several people have said they used the expedited review and thought it was great. It was a lot of work the first time, but they thought it would be more to their benefit and that of the County later. Some of that reduced number may be due to the fact that not much development is going on now.

Mr. Graham said staff is going to talk to the Board about fees in the near future. The current fee structure does not recognize that if someone takes three or more submissions to get their plan right, it costs them no more than someone who gets it right the first time.

Mr. Boyd said for the benefit of the people who were not a part of that Task Force, they discussed at length people pushing through engineering work and leaving it to the County to catch all the mistakes. It was noted that the County is doing a lot of work for these people.

Mr. Graham said for the next fiscal year he would like to get a sense of priorities. He showed a slide listing staff's recommended priority list. They looked at the Board's Strategic Plan to help make the list. First is to complete master plans, i.e. Places29, Village of Rivanna, Pantops, start the Southern Urban Area Plan and then implementation of adopted master plans. In prior years, they had indicated that an additional planner would be needed for implementation of the Places29 Master Plan, but they are not continuing with that request because they recognize the situation with the budget. The Department will be struggling trying to balance resources. It will have to be decided whether to dedicate resources to implementation of the approved master plans or to go ahead and work on the next master plan.

Mr. Boyd said he does not think there are a lot of citizens pushing to have the Southern Urban Area master plan completed.

Ms. Thomas said the Board receives a lot of criticism for waiting until after development has taken place in an area before starting on a master plan. In theory it is always better to have the master plan in place before intensive development occurs.

Mr. Boyd asked if when the final master plan is delivered to the Board, it will have a realistic implementation timetable. Mr. Graham said Crozet was not good as to the timeframe; there is a timetable included with the implementation table. The Pantops Master Plan has a fairly detailed implementation for the short-term.

Mr. Graham said the next priority is additional Rural Area Strategies. Staff is not sure where the Board wants to go with this. To be considered are Crossroads communities, land uses, etc.

Mr. Rooker said the Board does not have the list of Rural Area Strategies before it today, but part of this is the Land Use Taxation Program which he thinks the Board should consider sooner rather than later. If the Board is contemplating changes in the Land Use program, it should go ahead and discuss it soon. The Board said it was going to appoint a committee to make recommendations as to how the Land Use program might be changed. He said there is a huge amount of revenue lost to the community in the form of land use. It may be a good investment, but there may be some things that would stem the tide of some of that revenue loss. He said the County does not receive in taxation from property in land use an amount that is equivalent to what the County has to pay the City for that land in the form of Revenue-Sharing. The ten cents the County pays the City is more than the County collects on land under the Land Use Taxation Program. He said the last time the Board looked at this there was about \$17.0 million of tax either deferred or lost depending on whether or not some of it is recaptured. He does not think the amount recaptured is a significant amount. It is a huge revenue item and there may be some changes that could be made that would be fair and also reduce somewhat the loss.

Mr. Slutzky said in addition to the revenue part of that discussion, there is the purpose aspect of it. If the reason for the land use tax break is to discourage use of rural properties, there may be a more effective way to obtain that outcome with a revision to the program.

Ms. Thomas said the purpose is to encourage farming. One of the things that came out of the Rural Area Plan was not just to look at Land Use Taxation, but to look at ways of encouraging farming.

That is why the agricultural position, which has now been frozen, existed. Maybe a committee could take the place of a staff person in figuring out what could best be done. About 15 years ago there was a committee which looked at what is needed to make agriculture and forestry more viable in the community. She knows a list of things was put together after the Board adopted the Rural Areas part of the Comprehensive Plan. Maybe the Board should hold a work session and give staff some guidance as to what it would like to have done. She is not willing to drop that list of things which were adopted in principle.

Mr. Tucker said the issue of revalidation for properties in the Land Use Program will be an agenda item for the Board soon so it can be implemented with the new land use year.

Mr. Rooker said he thinks there is land in the program which no longer qualifies just because there has not been a revalidation process. He does not know if a committee should be appointed to study this program, or if there are changes recommended under the current statute.

Mr. Dorrier said the Board could look at conservation easements and try to come up with more incentives to encourage them.

Ms. Mallek said she thinks revalidation would be an important step to take. Just sending out a form for people to fill out will sort out where places are not functioning according to what is expected. She said her property has not been updated since 1982. She hopes the Farm Bureau and other groups will help the County if a landowner loses a tenant. One of the biggest problems has been with widows who did not know how to find tenants to come in and keep the land farmed. She does not want a situation where these people might be removed from the program without the County giving them all the assistance it can so their land can stay in the program productively. There is a benefit to having the open land farmed, and one way to look at the reduced fee is the lack of services required for that land. She thinks revalidation is a good way to start because it will help to raise the confidence of citizens that the investment they are making is valid.

Ms. Thomas said there was a letter sent out about five years ago, and it received a lot of good comments because people did not realize what they should be doing.

Mr. Slutzky said land should not just be in forestry, but they should have a forestry management plan. He thinks the Board members are interested in taking the term "Rural Area Strategies" and giving it new life. Since the purpose of today's session is not to flesh this out, maybe staff should bring recommendations for discussion at another meeting.

Mr. Boyd said staff should bring back the list mentioned by Ms. Thomas and start from there.

Mr. Rooker agreed. He brought up the Land Use Taxation Program because the Board has discussed it many times, and it is a huge revenue area. It is a sum of money which is greater than the County pays the City each year.

Mr. Boyd said he would also rank it with areas that may not be classified as rural such as stormwater management, utilities, districts, fees, which all fall under the same department. Are they more important than looking at land use? He thinks all of the issues need to be discussed and prioritized for staff.

Mr. Rooker said there are several ways to approach the Land Use Taxation program. He said the Comprehensive Plan contemplates appointment of a committee. He does not know if that should be done. The Board might have a work session so it understands available options. If there are only three or so options for changing the plan, there is no need to appoint a committee to spend a year to say this.

Mr. Slutzky suggested the Board hold a "public moment" and ask for feedback rather than spend time with a committee.

Mr. Rooker said he would suggest holding a one-hour work session on land use so the Board might know the cost and the options available under the statute. Before amending the Land Use Tax Ordinance, the Board would take substantial input from the public. He would like the Board to hold a work session so someone can explain the various parameters.

Mr. Graham said he would like to propose that staff send to the Board members a list of the Strategies in the Rural Area Plan. The individual members might respond to staff on items of interest and the work session could then be set on that initial direction.

Mr. Boyd said he thinks it should not be limited to just the rural areas. If staff has urban area issues it is working on, it should be on the list.

Mr. Rooker said this conversation came up with respect to the Rural Area Strategies.

Ms. Thomas said when she looked at the revised Work Plan (Attachment B to the staff report) she was alarmed at the things which are being postponed. Some are in the Development Area; there are critical slopes regulations, the ARB Entrance Corridor Design Guidelines, Historic Preservation, Natural Heritage, green buildings, the contractor's storage zoning text amendment, and lighting regulations. To her, this is an alarming document. Since revenues are short, everything she thought was to be done is being stopped, including Strategic Planning sessions.

Mr. Slutzky said he thinks the public wants the Board to provide all sorts of services and also cut their taxes. The Board is saying to Community Development that all of these things are important, but then the Board does not support them with the necessary funding.

Ms. Thomas said this is a good reality check. With present resources, things are just not being done.

Mr. Rooker said he agrees with Ms. Thomas in some ways. The Board wants to do things which have been implemented under the current Strategies and Goals. There was a good presentation earlier today on carbon emissions and the environmental programs being done in the County. That is a new thing. The master plans are new things; they are not in existence. He agrees that there are a lot of things not being done which the Board would like to have done if there were more resources. He said there are a number of things which are initiative-related which are being done.

Mr. Graham said the last category to be discussed is "Other Initiatives." One thing which the Board discussed earlier today related to fees; if the bill currently in the Legislature is passed, by July, 2009 there will have to be a program in place because proffers end at that date. That is something where somebody else might direct the County's priorities.

Mr. Rooker said he agrees. He asked the time-consuming aspect of the zoning text amendment related to "contractor's storage yard." Mr. Graham said the issue is recognizing that the change in the ordinance may take a lot of existing business operations and tell them that any change in their use will require a special use permit. Staff will sit down with Ms. Thomas and explain the issues to see if it can get some guidance as to the interest in this thing.

Mr. Rooker said if after looking at it Ms. Thomas decides she does not want to pursue it, it could be removed from the list. If not, it does not seem to be something that should take a lot of time to do.

Mr. Graham said the last thing he wanted to discuss is the idea that there will be a work session on fees in April. Those fee changes could free up positions that are currently funded or have a large part of their funding through tax support, and have it based on fees. The planner positions might be able to be shifted up faster and be thawed to allow more resources for that work program.

Mr. Graham said the recommendations in the Executive Summary are to revise the current Work Program as proposed and to establish priorities for the FY '08-09 Work Program as proposed. The Board has said it would like to have more input on Rural Area Strategies and staff will do that. Finally, advise staff whether or not revised fees should be considered as an acceptable way to accelerate the funding of the frozen positions. He offered to answer questions.

Mr. Boyd said he hopes Mr. Graham has clear directions from the conversation this afternoon. Mr. Graham said he has enough to work with.

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Agenda Item No. 21. From the Board: Matters Not Listed on the Agenda.

Ms. Thomas suggested the Board members attend a meeting of the League of Women Voters on February 26 at noon. She said Mr. Frederick will be discussing upgrade of the sewage treatment plant and Ms. Lauren Hildebrand will talk about inflow and infiltration to the system. It is what happens when sewer pipes are not leaking outward, but leak inward. That means the system gets more stormwater which has to go to the sewage treatment plant and be treated like sewage and that increases problems with the plant.

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Mr. Tucker said staff has additional information regarding the land acquisition matter discussed during the closed session today. If the Board would like to consider that information during the supper break, the Board will need to hold another closed session.

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Mr. Boyd said he had one thing to mention before adjourning into closed session. He thinks everybody got a note from Mr. Tucker about the Budget Review Task Force that he is putting together. He thinks it is a good idea.

Mr. Rooker said he did not understand what it is for. He asked if this is the task force the Board talked about to put objective criteria in place for establishing a tax rate. Mr. Tucker said it will first look at the entire budget process. They will not look at a line item budget. Because staff was late getting into it, he does not know if it would help to get it together in the next month. The idea might work better for next fiscal year.

Mr. Rooker asked if there are two different things being talked about. There was clearly a consensus of Board members for establishment of a committee for the purpose of considering an objective criteria approach to setting tax rates. Mr. Tucker said that can be done.

Mr. Rooker said if that is the case, he hopes there will be a School Board member on the committee. There may be some other categories that should be represented on the committee as well as some community people.

Mr. Boyd pointed out that this is the County Executive's committee, not a Board-appointed committee.

Mr. Rooker said he is fine with the committee being appointed that way; he just wanted to understand the expectation of that committee's work.

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**Not Docketed:** Closed Meeting. At 4:50 p.m. motion was offered by Ms. Mallek that the Board adjourn into closed meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (3) to consider the acquisition of real property necessary for a public safety facility. 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, Ms. Thomas and Mr. Boyd.  
NAYS: None.

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Agenda Item No. 22. Call to Order. The Board reconvened into open session at 6:05 p.m. and the meeting was immediately called back to order by Mr. Boyd.

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**Not Docketed: Motion** was immediately offered by Ms. Mallek that the Board certify by a recorded vote that to the best of each Board member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed or considered in the closed meeting.

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

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

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(**Note:** the following three public hearings were held concurrently. There public hearings were continued from earlier meetings and had not been readvertised.)

Agenda Item No. 23a. **Public Hearing:** WPTA-2007-001. Water Protection Ordinance; applicability of erosion impact area; agreements in lieu of plans; stream buffers on other rural land.

Agenda Item No. 23b. **Public Hearing:** ZTA-2007-003. Zoning Ordinance; safe and convenient access.

Agenda Item No. 23c. **Public Hearing:** STA-2007-002. Subdivision Ordinance; family divisions; contour intervals; individual lot grading.

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Mr. Cilimberg gave an updated PowerPoint presentation (There was no executive summary prepared for this meeting). He said existing provisions in the Water Protection Ordinance differentiate between water supply protection areas and other rural areas in terms of the one hundred foot stream buffers. In the water supply protection areas it covers primarily all perennial and intermittent streams whereas in other rural areas it covers just perennial streams. That is the biggest difference. The proposal would have in ALL rural areas the one hundred foot stream buffer on both sides of all perennial and intermittent streams. The remaining non-tidal wetlands and the distance from the water supply protection impoundments would remain as the ordinance currently exists. There is also a change in the definition of perennial streams to give more specificity where there would not be just a solid blue line on the USGS maps, but also could be based on the guidance provided by the published options of CBLAD (Chesapeake Bay Local Assistance Department).

Mr. Cilimberg said as to Critical Slopes and Safe and Convenient Access regulations, when the public hearing was held last fall, driveways were restricted across critical slopes. That is no longer being considered. The Safe and Convenient Access provisions are still proposed and would apply to all new dwelling units. There would be an appeal to the County Engineer for waiver decisions for driveway grades that could go to the Planning Commission. It also would not apply to establishing the first single-family dwelling unit on an existing lot if the County Engineer determined that requirements would practically prohibit that development.

Mr. Cilimberg said as to Family Divisions, there have been a number of different considerations. What was before the Board previously from the Planning Commission had a cumulative 15 years ownership by family before and after, with a minimum of five years after, but the Board is now considering four years before and four years after the division takes place. The history of this came from the earlier Mountain Protection Ordinance recommendations and generally was not to address any current abuses, but was a provision proposed in anticipation of abuse from other ordinance changes. Staff provided the Board with a list of comparable counties as to their requirements for family divisions.

Mr. Cilimberg said the Planning Commission recommended approval of all of these amendments in 2007, and the Board's consideration today remains consistent with those recommendations. He offered to answer questions.

Mr. Boyd said there is a question about the new interpretation of stream crossings or driveways near streams. Staff is now denying that capability based on a new interpretation of the rule. He asked for an explanation.

Mr. Graham said staff had been applying the ordinance this way, but during the time when the Community Development Department was being formed, with changes in personnel and responsibilities this "fell through the cracks" and staff started allowing some of these to happen. He just found out about it last fall and confirmed with the County Attorney that the old interpretation was the correct one. It has nothing to do with the ordinance amendments that are proposed, but with the existing ordinance and how it is enforced. He said it is set out in Section 17.3.21 and the words on the page are very clear. It is not something on which staff has discretion.

Mr. Boyd said there seems to be a question about the interpretation of "practicable use or reasonable use" that staff has determined means only one single-family. Mr. Graham said the authority for the stream buffer section comes through the Chesapeake Bay Preservation Act. Referring back to those regulations, you can see that when they talk about where a locality may give modifications or waivers with respect to disturbance of protected resource protection areas (stream buffers), it uses that same type of language. It talks about a single use and the utilities associated with that use. He is confident the County is consistent with State law and the way it is interpreted is the proper way to do so.

Mr. Boyd said if land susceptible to the stream buffer ordinance is greatly increased, it will be a significant issue for a lot of people, particularly if in the future no mitigation of a stream will be allowed in order for a crossing for more than one home. He thinks that needs to be considered since the Board will be adding 15.6 square miles of buffers if it adopts that ordinance.

Mr. Rooker asked if somebody can appeal that decision if they do not like the interpretation. Mr. Graham said technically they can appeal it to the Supervisors, but the way he reads the ordinance, the Board has no more latitude than the program authority in the administration of this section. Mr. Davis said there is not a waiver provision that is applicable to that.

Mr. Boyd said what he is saying is that if the amount of land subject to these stream setbacks is greatly expanded, that will take quite a bit of land away from people. He asked if a family subdivision could be done under that premise. Mr. Davis said "no."

Mr. Boyd said a stream crossing or driveway within this expanded buffer area will be of critical importance to people who may want to build a home for a family member, based on this new interpretation. Mr. Davis said he does not think it is a new interpretation. From staff's perspective it is the correct interpretation of the ordinance. If there is an existing building site that does not require the crossing of a stream buffer, then that building site must be utilized. If that creates a reasonable use of the property, then the crossing of the stream buffer is not permitted under the ordinance for a residential building site.

Mr. Boyd said after the first site was used, a second site would not be allowed. Mr. Davis said that is correct.

Mr. Boyd asked if that was true for a family subdivision request. Mr. Davis said that is correct.

Mr. Rooker said that is the interpretation applied now throughout the part of the County that has stream buffers in place. It also applies to perennial streams everywhere. Mr. Graham said it applies everywhere in the County now for perennial streams.

Mr. Boyd said what the Board heard was that staff had been routinely approving these requests for a long time. After the buffers were expanded in the watershed areas, people did not recognize the impact there would be because they had been allowed to cross those perennial streams with mitigation measures. The impact had not been felt until the last couple of months. Mr. Graham said some people might have that impression. It had applied previously, but with changes in positions and personnel, it just fell through the cracks.

Mr. Rooker asked how long it was applied the way it is now being applied and how long a period of time was it not applied correctly. Mr. Graham said in Community Development it was applied that way for three years. When it was in the Engineering Department and Public Works, it was applied the way he described it.

Mr. Slutzky said there is nothing in the ordinance before the Board tonight that speaks directly to this issue. Mr. Graham said that is correct.

Mr. Slutzky said that issue, which the Board may want to tackle at another time, is not on point with the three ordinances before the Board tonight.

Mr. Boyd said when the Board adopted the revised ordinance to include intermittent streams in the watershed areas it was done in the timeframe Mr. Graham mentioned. If someone crossed an intermittent stream since that ordinance was adopted a year or so ago, they would not have felt the impact of it because they were able to build that second residence if they wanted to. Mr. Davis said the intermittent streams in the watershed have always been a part of the ordinance. The only change the Board made was to add the part of the watershed in the northern part of the County to that watershed protection area so for that small part of the County which was added, Mr. Boyd's point is correct. Otherwise, the rest of

the watershed in the rural area has had that intermittent stream prohibition since 1998 and it had been applied under Mr. Graham's interpretation, except for part of the last three years.

Mr. Boyd said there is a discrepancy in that because the public can demonstrate when it was applied prior to that time.

Mr. Dorrier said there are three areas of distance from the streams in the ordinance; 100 feet, 50 feet and 25 feet. He asked the distinction being made with the 100 feet. Mr. Graham said it goes back to the Chesapeake Bay Preservation Act when the State set up the enabling authority for local governments. The 100-foot buffer is the expectation set by the State. Their regulations allow for a modification for uses down to 50 feet when it is creating a hardship. The 25 feet has to do with agriculture and row crops. That is the only agriculture where a stream buffer is regulated. That was a conscious decision by a prior Board. They wanted to allow that flexibility for row crops.

Mr. Slutzky said there are a lot of rural landowners in the community who see themselves as good stewards of the land. He wants to be sure everybody understands the purpose of what is being proposed tonight. Mr. Graham said property owners who are farming or practicing forestry are not regulated now, with the exception of the row crops which are restricted within 25 feet of the stream. No other agricultural and forestry uses are regulated. They still will not be regulated. What the ordinance amendment says is that if people will no longer be maintaining that stewardship of the property, but are going to divide, develop or sell off lots, at that time the County wants to create those buffers and assure the buffers will be maintained for stream protection. At that point, it is an intensification of use. Under Section 3.17 the ordinance clearly speaks to development and that is when the stream buffers need to be protected. There are many purposes for the ordinance. The Chesapeake Bay people see that by maintaining those stream buffers stream bank erosion will be reduced, and viable eco-systems will be created along the streams. The main benefit the Bay Program speaks to is the health of the rivers and the Bay.

Mr. Boyd said he has been doing some research and the science on it says it depends on the type of vegetation along the stream. If there were a forested area and a 50-foot buffer, putting in another 50 feet would not be as harmful. What he read in the EPA report is that slopes have something to do with it, the type of vegetation, and there are two things this deals with, sediment and nutrients. In some cases, localities vary the allowance for stream buffers depending on the vegetation.

Mr. Rooker read the following from the U.S. Fish and Wildlife Service. "A 100-foot wide buffer strip of forest and grass can reduce sediment by 97 percent, nitrogen by 80 percent and phosphorous by 77 percent. As the buffer width increases, the buffer provides greater benefits. As seen on the table below a 30-foot buffer provides minimal service. At 50 feet the buffer meets minimum water quality protection recommendations and you get some aquatic habitat benefits. For effective water quality and aquatic habitat protection, a buffer width of 100 feet is needed." He said there is a reason why the Chesapeake Bay Act established the 100-foot buffer as a standard. It is based on good scientific evidence. It does not mean there are not unique circumstances in which a buffer width should not be increased or decreased. There would have to be a very complex ordinance and incredible enforcement to have an ordinance that varied the width based upon the vegetation throughout the County and varied the buffer width based upon the slopes. There is not good slope information on all properties throughout the County at this time. He does not think many jurisdictions have found it feasible to have a buffer protection program that is malleable depending on numerous criteria. What has been done generally is what was done with the Chesapeake Bay Act which required that all counties east of I-95 have a 100-foot buffer on intermittent streams with wider buffers on perennial streams.

Mr. Boyd said he is not going to argue science with Mr. Rooker, but he can talk about the riparian buffer width vegetation cover in the EPA report Ms. Thomas provided to him. There is a chart in that report indicating 25 feet in certain circumstances is sufficient. He just wonders if the Board should give some thought to building into these ordinances variance provisions when there are mitigating circumstances. There are none in the ordinance in relation to a second dwelling.

Ms. Mallek referred to Page 4 and said it looks like it may be included. She read "Types of development which may be allowed" and said there are modifications to the buffers allowed depending on the circumstances.

Mr. Boyd said that is true for the first single-family dwelling, but staff just said that for the next one it will be denied and there is nothing the Board or anybody can do about it. Mr. Davis said the provisions under 17-321, paragraphs 1 through 5 of the Erosion Control Ordinance, deal with reductions of the width of the stream buffers under certain circumstances. Paragraph 6 is the issue that was talked about earlier, crossing stream buffers. Crossing of the stream buffer is only allowed if there is any reasonable building site that does not require you to cross the stream buffer. The other circumstances vary depending on what you want to place within the stream buffer, but there are circumstances when that buffer can be reduced to 50 feet or encroached upon if necessary to address those circumstances.

Mr. Boyd said that is only for the first single-family dwelling, not for a family subdivision. Mr. Davis said the reductions in the buffer do not necessarily apply to just one single-family dwelling. The crossing of the buffer has that limitation, but the criteria for a reduction in the buffer does not apply in any other reduction paragraphs.

Mr. Boyd said he would now open the meeting for public comment.

Mr. Hank Martin asked that people in the audience who had submitted questions to County staff indicate so by raising their hands. Then he asked that they indicate whether they had received answers to

those questions. He said he had not received an adequate answer to his question. He said the human factor has been lost in this debate when debating slopes and streams. He said a number of people have shared their stories with him, and he then recited a few examples. He thinks this is a taking of land for the protection of the environment or some other grand purpose. He asked how the people will be compensated. He understands their taxes will continue to go up and the County has offered no assurances of what will happen. He suggested that as these statistics are debated the human factor not be forgotten.

Mr. Morgan Butler said he is speaking on behalf of the Southern Environmental Law Center. He will speak only about two provisions that find their genesis in the Mountain Overlay District Committee's original proposal; stream buffers and safe and convenient access. That committee met for two years and included members with diverse County interests who in April, 2006 offered their proposal. Since then, there has been an effort to find a fair balance between the environment and property values. The Planning Commission recommended one version to the Board in the summer of 2006, and then offered a scaled-back version a year later. Tonight, this is the sixth time this proposal has come before the Board. At about every stage of the process, the original proposal has been cut back and watered down in an effort to accommodate concerns about property values. Of the five original categories of protection proposed, only two remain. The provisions designed to protect the County's most fragile slopes from roads and driveways are the latest casualty. Although the two remaining categories were expanded to cover all of the rural area rather than just certain elevations within it, they have been weakened in other respects. Finding the right balance between environmental protection and property values is a difficult task and requires compromise. After nearly two years of chipping away at the original MOD recommendations, cutting back on buffer width, adding new waivers and even dropping certain provisions outright, they are afraid that if the provisions are weakened any further, there will be nothing left to vote on. The SELC urges the Board to adopt the Water Protection and Safe Access changes tonight.

Mr. John Munchmeyer said he is speaking for the Jefferson Area Libertarians. He encourages the Board to vote against the proposed legislation. The changes are based on dubious intentions. The driveway and stream buffer issues are being pushed under the guise of public safety, but he feels this is really about limiting growth. It is not the first time that people with an agenda have disguised proposals. If the Board is against growth, just say so. Second, he does not think the proposals are necessary. These ordinance changes have been proposed and rejected over and over again for the last ten years. Even if the premise of growth is accepted as being a bad thing, the thinking is still flawed. Growth is happening in the County's mandated Growth Areas, not in the Rural Areas. The best course of action is to leave these people alone. While there is currently not a lot of growth in the rural areas, there may be in the future. The reason for this is not too much freedom, but too much government. Some people are forced into a situation where they must subdivide, or divide and sell a piece of land to pay the fast growing, ever increasing property taxes. When this ability is taken away as proposed in these ordinance changes, they will have no other choice but to sell the whole property, possibly to developers who know how to get around these ordinances. Private property owners are the best stewards of the land. To those who support these ordinances, realize that rural landowners are their best allies. Big government is promulgating unforeseen side effects that run contrary to those sought. Passing this legislation will further exacerbate this situation by turning allies into enemies. Why not try dialogue with landowners, or persuasion of ideas instead of laying down the heavy hammer of government. If it is bad for people to sell part of their land, it would be more effective to find ways to reverse the massive tax increases of the past decade alleviating the impetus for this supposed problem. He said this is the United States of America and property rights are the cornerstone of liberty and the republic. Those who came before us did not fight and give their lives so that Albemarle County could control property to the minutest detail. The citizens do not need the County to be their nanny telling how and where to build driveways. He said these ordinances should not be adopted because they are based on dubious intentions, are not necessary, will have the opposite effect, and are not congruent with the principles of the United States of America.

Mr. Ron Kerber said he thinks the Board should know whether those speaking own land in the County. It is easy to tell other people what they can do with their property. He does not like to be told what to do with his property when he does a good job taking care of it. He lives on 263 acres in the Stony Point area which he has owned for ten years. He has had property in the area for 18 years. He came here from Michigan where they were regulated and taxed. Until the last hearing on these ordinances he had never attended any County meeting. He was appalled at the Board's lack of appreciation for rural property rights. At that meeting a woman gave a PowerPoint presentation showing that current family division rights are not a problem. She showed how poorly staff had advised the Board, and yet it is proceeding with an eight-year versus two-year regulation. He thinks logic is not working. Four years before a division is not necessary, and he feels four years after a division is onerous. He noticed that staff has said it is not a problem now, but could be in the future. Since it is not a problem now, the Board does not need to act on it. What if a party dies in that four years or there is a divorce or a bankruptcy? What would be done with a property that is restricted from sale for four years? The change in the intermittent stream buffer will have many negative consequences for him. He has much property that would be affected by letting staff tell him where a house can be built on one of his parcels. If he has a parcel with no view, but has another parcel with a big view of the Blue Ridge Mountains, the ordinance will not allow him to cross that stream buffer to get to a desirable building site. He asked who is looking at this from the rural perspective as opposed to looking at it from the perspective of an urban dweller or suburbanite. He does think the rural community has a voice in the County any longer. He asked that the Board consider their property rights.

Ms. Ellen Popkin said they own 238 acres in the Stony Point area. If the Board feels it must pass these ordinances regarding the family subdivision ordinance, she would request that the Board consider a grandfather clause, or new property owners only clause, especially since they have determined this is to protect future abuse only.

Mr. Lonnie Murray said he has lived in the County his entire life; his parents still live in the County. His family has been farm owners for over a hundred years. He lives in the Batesville area. Stream buffers are in effect in his area and he has witnessed violations over the years with stream quality declining, and destruction of wetlands. He has actually seen these things occur under the current ordinance, even in protected areas. He does not think it is necessarily the rural farm owners that are the problem. All must think in terms of the next generations. There is no way to guarantee that the next person who owns the land will be a good steward. He would like to see these ordinances passed.

Mr. John Cruickshank said he lives in Earlysville and is speaking as a representative of the Piedmont Group of the Sierra Club which has about 1200 members in Central Virginia. He said the Sierra Club urges each Board member to vote in favor of the proposed rural area ordinances on stream buffers, driveway standards and family subdivisions. He said protection of stream buffers will benefit the health of County waterways and help restore the health of the Chesapeake Bay. Extending the 100-foot buffer to all rural areas in the County makes excellent sense. Setting standards that limit the slopes and curvature of driveways in rural areas will reduce erosion and facilitate access for emergency vehicles. The proposal to require families to own their land four years prior to a family subdivision and four years after a family subdivision is more than reasonable. It will discourage the resale of these lots for non-family development while still respecting the rights of property owners. He asked that the Board support all three of the ordinances. He then thanked the Board for joining the Cool Counties Program. He said a good way to reduce greenhouse gasses and improve overall air quality is to pass laws that restrict the unnecessary idling of motor vehicles and open air burning in the County. The pollutants that come from these sources endanger the health of all, particularly those who suffer from respiratory ailments. He is sure the Board members are aware that one out of every 16 students in the County schools is afflicted with asthma. Those who feel there is nothing wrong with the air should spend just one day in an elementary school nurses' office. He said the people of Albemarle have rights. They have the right to clean air, waterways free of pollution and sedimentation, and the protection of the natural landscape. He is confident the Board will take the necessary steps to protect the rights of all.

Mr. Tom Olivier said he and his wife live in the Scottsville District. They raise sheep on the farm that she grew up on. They will be affected on their farm by this ordinance, but both support adoption of these ordinances. He is also a member of the Executive Committee of the Sierra Club. He is the Piedmont Group Conservation Chair, and he supports the statement just presented by their chairman, Mr. Cruickshank. He would like to offer some temporal perspective on what is before the Board tonight regarding stream buffers. He first spoke at a public hearing in the County in 1991 when the County was considering adoption of a water resource protection ordinance enabled by the recently passed Chesapeake Bay Act. He had read about the ordinance in the newspaper where it was characterized as controversial. His colleagues in agriculture were making wild claims about what this would do to their ability to farm their properties. As a biologist he knew that stream buffers were extremely important, so he decided to check out exactly what was contained in the ordinance. He came to the County Office Building and read the text of the ordinance. He thought it was really good so he came to a public hearing for the first time and spoke expressing support for the ordinance. There was much railing that evening by rural landowners predicting all sorts of dire consequences. In fact, the Board adopted the ordinance that night and in the 17 years since, it has been a great credit to the County. He thinks the ordinances before the Board tonight are good and are needed. He hopes the Board will adopt them this evening.

Mr. David Hamilton congratulated the Board on its work to reconcile the competing interests. If all parties are slightly depressed and exhausted, it probably means the Board has done its job as a deliberative body. He asked that the Board consider one additional item. At the end of the proposed Zoning Ordinance Amendment in Section 4.6.6.d it allows the requirement to be waived on an existing parcel if the County Engineer determines that compliance would be an impediment to practical development. He appreciates the issue of property owners' rights in this waiver, but he would suggest that a comparable waiver be available for owners attempting to minimize land disturbance. He said Mr. Cilimberg had said this is no longer a slope reduction measure, in fact with a big enough bulldozer a 16 percent driveway could be built. For owners who are attempting to do the right thing with regard to construction of driveways, allowing staff to make a determination would be appropriate. They already evaluate private road proposals under standards evaluating volume of disturbed land versus a non-compliant scheme. Since this is no longer related to slope protection, but its DNA is from that slope protection proposal, he thinks the Board should consider a measure to be sure nothing worse is done because of this requirement.

Mr. Jay Willer said he is the Director of the Blue Ridge Homebuilders' Association. He said there is probably no one in the room tonight who questions the usefulness of stream buffers. The proper role of County Government in that process is the question before the Board tonight. If the width of the Auditorium is 100 feet wide, the width of the buffers in question is not the width of the room, but twice that width because it applies to both sides of the creek. He said Mr. Graham pointed out that it will affect 414 miles of stream, or 15.5 square miles of land, 10,000 acres. That is about 1.5 times the size of the entire City of Charlottesville. It is one-half the size of the County's designated growth area, a huge tract of land. At the beginning of the meeting, the difficulty of creating an ordinance that manages buffers properly was mentioned. Sadly, the bottom line in the discussion was that the County could not find a better way to write an ordinance, not whether the ordinance could be dropped altogether and let the property owners with the guidance of the County address their own land. He thanked the Board for "walking away from discussion" of critical slopes, but he thinks the question of a 16 degree slope is still troublesome. It is a very shallow slope, and he is surprised that the environmental groups are not talking about some of the excess cut and fill on 16 degree slopes will cause. Also, this is supposed to be about safe and convenient access with the driving force being that emergency vehicles cannot get up more than a 16 percent slope. Earlier this week he asked County staff how many roads in the County have a length of road that has a 16 percent slope, and they did not have an answer, and VDOT also did not have an answer. He thinks most

people coming to this meeting tonight drove on a road with sections of more than 16 percent slopes. At the time existing roads were built, that was not a requirement. If emergency vehicles cannot get up that slope, they cannot get up his driveway and could not get to his house.

Mr. Fred Shackelford said he lives at Stony Point. He opposes all of the amendments, but will focus his comments on the access amendment. For eight years he was a member of the Stony Point Volunteer Company. He has driven fire trucks and in all of that time he does not remember a case when they were not able to reach a house because the driveway was too steep. He thinks the 16 percent grade limit is more restrictive than necessary to insure safe access by emergency vehicles. According to a member of County staff, the rear entrance to this building from Preston Avenue is at 20 percent. Anyone who drives on it knows that it is not unsafe. Just looking around, it is obvious that there are many other streets which are steeper than that access ramp. Look at some of the streets in the Franklin or Ashcroft subdivisions. Are they unsafe? If so, why do these amendments apply only to the rural areas? If the Board adopts an access amendment that is as restrictive as 16 or 20 percent, it is obvious that the real purpose is not safety, but to curtail property rights. Some people choose to live in subdivisions with restrictive covenants where they must go to a homeowners association to get permission to paint their house an unusual color or to put a storage shed in their back yard. That is their choice, but many people chose to live in rural areas so they can make their own decisions. Supporters of these amendments contend they are for the common good, and will protect the general public. If that is true, the general public should share the cost of these amendments instead of putting it all on the landowners whose property rights will be diminished. Proponents of these amendments say the rural areas have to be protected, but who will protect him and other rural residents from the folks who want to take away their property rights.

Mr. Jack Marshall said he was speaking on behalf of the 300 members of Advocates for a Sustainable Albemarle Population (ASAP). He has 100 mountainous acres in the County. He said ASAP's support of these amendments is premised on detailed environmental reasons that have been well stated by staff and others. He said there is a larger issue which those speaking both for and against these amendments are addressing even if unintentionally. The Board's vote on this will reflect a position on intergenerational justice. He said twenty-first century Americans are not good at postponing gratification. If they care about what is left to future residents of the County they can't have everything they want today. In a civilized society a community understands the meaning of sustainability; there are a lot of sacrifices that all reluctantly agree to enforce upon ourselves. The amendments under consideration will tighten land use regulations a little and limit individual freedom in modest ways. That is the cost of being responsible stewards of a glorious county that should be passed undiminished to future generations. The members of ASAP believe these three revised amendments to the ordinances represent a fair and thoughtful compromise between the demands of today and the responsibilities for the future. Please vote "yes."

Mr. Stuart Kessler said he has owned rural land for 26 years. It is in pristine condition, and he does not feel he is being rewarded for being a good steward of the land, but feels betrayed and punished for being stupid. He thinks there are good intentions here, but there should be a slide of what happened on Route 29 with the new growth area without looking at what has happened in other localities. He does not see any difference between that and Fairfax County, other than they have Whiteman's and Albemarle has Target. Suddenly, there are thousands of homes and we don't want anymore, so we will attack the people who have been good stewards of the rural land. A woman gave a PowerPoint presentation at the Board's meeting in October using information from County records showing there were single digits of homes in family subdivisions that were sold to outsiders. Every Board member at the time seemed stunned. He thought someone in County administration was going to look at her facts. He asked if anybody had an answer because that is what the public was told at the time. What happens to someone who is sick? There is a recession coming up and there will be other situations like that. Those situations have to be dealt with. Before the Board acts, the citizens need to have an answer to "Are you killing flies with a sledge hammer?"

Ms. Shirley Napps said what she heard tonight is that there needs to be mitigation available to people who own rural land so the family farm property owners are not unduly penalized, but the water supply is also protected. She lived in New Hampshire and built a house on a lakefront property. The required setback was 75 feet from the water. When she built, she realized that the land around the lake was unstable and the house probably should not be that close, so she put it 125 feet away. She had neighbors who not only built at 75 feet, but they also cut down every piece of vegetation between them and the lake. She said there is something similar here. There are people who take good care of the land, and there are people who abuse it. What is needed is protection for those who are good stewards from those who are not. That is where this type of ordinance comes into action. She does not know if it would be done fairly, but thinks that is what is being looked at.

Mr. Charles McRaven said they own land in northwest Albemarle that is crisscrossed with streams. Those streams run very clear. For almost 60 years he has been in the construction and restoration business, and they have always provided erosion control. With proper erosion control something could be 10 feet from the stream and it could run perfectly clear. With poor erosion control you could be 500 feet away and when it rains the stream would turn brown. Those who own land do not want to see the Board take away their right to use that land or their right to leave the land to their children. There are ordinances about erosion control. He has worked for years with soil engineers and they can stop erosion. He said there are so many streams on their property that if they were to leave land to their children, they would have land they could not build on, or land where they could put a driveway. Their birthright will be denied as far as using the land. He said with reasonable restrictions, soil conservation and erosion control, there is no reason to prohibit use of the land. No one gave them the land. They

worked for it and paid for it. Future generations have rights and those rights should not be abridged at this time.

Ms. Jerry McCormick-Ray said she lives near White Hall in a mountainous area with a lot of critical slopes. She wants to express her support of these ordinances. They are critically important and will not have that much affect on people's private uses if they are really stewards of the land. She said private preferences need to yield to the public good. There will be trouble with the environment if the land is not taken care of now. The water systems are clearly being affected because they cannot contain all of the sediment and the sewage and things which are flowing in from unprotected water systems. She said under the Chesapeake Bay Act, it will cost more than \$19.0 billion to try and clean it up. Many states have agreed this is a problem and have agreed to clean it up. Albemarle is not helping if some protection is not passed. Locally, the reservoirs and water streams are brown. There is a need to protect the watershed system. She lives in an area with steep slopes that is forested. There is more than a 100-foot buffer on a stream which flows into Albemarle Lake. The area has been cleared and a road put in for a house to be built. The road was cleared last summer and a lot of the vegetation was removed before any safeguards were put in. The house has not been built yet, but torrential rains last summer poured sediment into their stream, through the buffer areas. She said their streams were red with brown mud filling up the stream and spreading it out. It is now settled down and the water looks good. When there is another big rain, all of that will be mobilized and eventually seep into the reservoir. That is what the reservoir systems are facing. If no effort is taken to protect the watershed system, everyone will be in trouble. She urged the Board to pass these ordinances. They will not have a major affect on property owners if people care about the personal protection of the watershed system and the future. Private preference needs to yield to public shared interests.

Mr. Carleton Ray said he is speaking as a scientist, a rural landowner and a member of the Mountain Overlay Protection (MOD) Committee. He assumes common sense and attention to historic scientific findings persuaded the Board to drop the proposed Water Protection and Zoning ordinances. Many recognize that the ordinances before the Board tonight are watered down versions of those originally proposed unanimously by the MOD Committee. For stream buffers and critical slopes the Board unanimously endorsed the recommendations of the Planning Commission. What can now be said? First, it is evident that even if these standards were to be applied and enforced throughout the County, water and sedimentation problems would not be solved and would increase with development. Second, consider where most of the sediment originates now, from farms, lawns, oat fields and along roadsides where critical slopes have been created and considerable bare soil exists. Even with these ordinances in place, solutions for sedimentation and clean water, as well as the County's obligation to the Chesapeake Bay, will not have been met. How can the County meet future requirements and the exorbitant costs which are inevitable? Now, most former floodplains, both large and small, have become sediment filled terraces with incised channels highly subject to sediment suspension. This means that restoration of many of them will eventually be necessary. Meanwhile, the best that can be done is with acceptable and scientifically supportable ordinances which are now before the Board. He quotes from a magazine article which concluded that a minimum 100-foot buffer is the best for stream protection. He recommended that the Board implement these ordinances as the first step and then plan for future involvement and improvements.

Mr. Philip Nelson said he will speak in opposition to the expanded buffer proposal. He said Albemarle County already has a stream buffer ordinance. It protects 1,700 miles of continuous streams; this number came from the County's website. That is roughly the distance between Albemarle and Texas. The amount of land represented by those stream buffers is 41,000 acres. The proposal tonight is to expand that number; another 10,000 acres would be added. In his opinion, the wording of the expansion totally changes the nature of the program. It changes the program from clean definitions (looking at a map to see what streams are shown) to "soft and fuzzy bureaucratic" (call a bureaucrat) definitions. The ordinance would add 400 miles of intermittent streams. There is nothing in the ordinance defining an intermittent stream. It gets worse because this expansion "muddies up" the existing definition of streams on the map by saying "or as determined by the program authority after making a site evaluation." He is opposed to allowing an unelected County administrator to determine the value of another 10,000 acres of Albemarle land. To do site evaluations there will be a need for more administrators, more staff, more office space, and more cars. The Board is already having budget problems so he thinks they would need another tax increase to support this additional expansion. This expansion of the stream buffer program is a blank check, and he thinks it must be rejected.

Ms. Elizabeth Murray said she owns property and lives in the County. She commends the Board for its hard work on these ordinances and she urges their passage. She does have some concerns about the Water Protection Ordinance, particularly "walking away from" the critical slopes provisions. It seems there are many ways to get around protecting the steep slopes of the watershed and there have been many disturbances on those steep banks. She urges the Board to be diligent about future wording of this ordinance to be sure it is tight enough not to allow this to happen as often as it has been happening. She suggested that the responsibility for the care of the watersheds rests with all on both public and private land.

Ms. Robbie Savage said she is the director of the Rivanna Conservation Society and came to reiterate the position they shared with the Board last October, and again urge the passage of the intermittent stream provisions. She said intermittent streams are an invaluable natural resource and play a critical role in the overall health of stream systems because they often represent the headwaters, which Albemarle is to the Chesapeake Bay, throughout the river network. During storms, intermittent streams can contribute large volumes of sediment and erosion throughout the watersheds that go directly over time into the Chesapeake Bay. Buffers along streams can reduce these threats by keeping stream banks from eroding and trapping the sediments before they reach the streams. Buffers also reduce the severity of

floods by slowing the waters before they reach the floodplain and riparian areas. She said it is the view of the Rivanna Conservation Society that this is an important proposal. It amounts to a simple and straightforward change in the County's existing stream buffer ordinance resulting in an increased number of intermittent streams that have protection. They need the County's protection and they urge the Board to pass these ordinances.

Mr. Steven Peters said the reward being talked about for the stewards of the land, and the pictures which were shown, is basically just further restrictions. Under the old rules, these people should have divided their land ten years ago. He thinks a lot of people will be looking at doing that, and feels that those who can divide will do so. He thinks there will be a flurry of additional development when people see what can happen. The way these restrictions are written, there are several people who will not do conservation easements because when the land is evaluated they will not get enough tax credits to do it. There has been concern expressed about the streambed, but now a farmer can run cattle through it, tractors through it, or basically whatever he wants to do. In certain instances, that will be left in perpetuity by the way the rules are written. If someone has 200 acres and has an intermittent stream and 195 acres is on one side and five acres is on the other, as long as he farms it and messes up the stream he is okay. If he wants to build a house on the other side, he can't do it. That seems absurd. If the Board wants to save the streams, it should allow mitigation. If the important issue is the streams, he would like a Board member to tell him why 4:5 or 10:1 mitigation cannot be allowed. Why does the County not want that?

Mr. Corky Shackelford said he is a lifelong resident of farmland at Stony Point. He appreciates the modifications that have been made in these proposals since last fall, but wishes they went further. He would like to address what he sees as a seriously flawed approach to governmental management. If the purpose of these amendments is conservation of natural resources, it could be done more effectively and efficiently by current best management practices for roads, streams and wetlands. If the real purpose is simply to limit growth by making construction more difficult or impracticable he thinks a more equitable and straightforward approach would be to offer compensation of loss of development potential. The cost of these amendments is evident. Wider and more gently sloping roads will require longer driveways, disturb more soil and increase erosion. The resulting increased cost of home construction will make for less affordable housing. He thinks the proposed rules are based on assumptions carried to an extreme. Runoff from properly managed driveways is unlikely to impact watercourses as significantly as does natural erosion from major stream banks. It is apparently assumed that those who own large acreages are waiting expectantly to develop their properties at the first opportunity without regard to environmental concerns. He is not, but does not want to see the value of his holdings reduced because of executive fear. The value of the land is enhanced by division rights even when it is sold as a single unit for continued farm or estate use. There are fairer ways to manage property if it must be managed. He understands that currently the State Legislature is considering a bill to permit banking of development rights at the local level. This is a program that could reduce development at no cost to taxpayers. More could be done for the undeveloped rural areas by supporting agriculture and other land uses which naturally and productively protect the environment. Don't burden the citizens with regulations which infringe on personal freedoms and property. There have been references tonight about future generations and he would like to leave his with a society that is free of government intervention.

Mr. Jeff Werner from the Piedmont Environmental Council spoke next. He said that since 2001 there have been 14 meetings of the Rural Area Work Group, 30+ meetings of the Mountain Protection Committee, 23 work sessions and hearings by the Board of Supervisors, 24 Planning Commission work sessions and hearings and eight open house meetings for the public to attend on rural area issues. He served on the Rural Area Focus Group and the Mountain Protection Committee and he thinks their efforts deserve a decision. Those two committees were composed of members as diverse as the community can provide. Although he is not happy with a lot of what has been taken out of their recommended provisions, he knows a consensus of the members was necessary. The question before the Board tonight is whether it will implement the stated policies of a plan that was unanimously adopted. He has talked to many residents and knows that more than 100 sent the Board E-mails about these ordinances. People are tired of the Board adopting policies which it appears they have no intention of ever implementing. It is amazing how the Comprehensive Plan is used to argue why a Growth Area project must be approved, and then the Rural Area Plan is treated with such little respect relative to implementing it. The Board has failed to implement phasing, clustering, revisions to family subdivisions, steep slopes changes, stream buffer changes, mountain protection, all of which came out of the Rural Area Plan. If the Board does not adopt these things tonight, he asks that the Board state what in that plan it will implement.

Mr. Carl Tinder said he farms on 3,700 acres throughout the County. He is a lifelong resident of the County. At the public hearing in October it was brought to the attention of all that the County has no standards for driveway erosion control or standards for driveway construction. It would be a simple solution to tie some standard for construction to the building permit and have it regulated in that manner versus adopting these ordinances. Management would be a better solution than an ordinance which restricts landowners' rights. These ordinances are counterproductive. One requires stream buffering to protect the water systems, but causes longer driveways to be constructed to get around the buffers. He is concerned about the definition of a perennial stream and suggests that the Corps of Engineers' definition of a blue line stream be used. That definition is "set in stone" and is not subject to a subjective personal opinion. Furthermore, if Best Management Practices were implemented, a lot of problems would be solved. The three ordinances proposed are solutions looking for problems. Going back to the October hearing, a citizen provided information showing that the family subdivision is not a problem and this change would serve no purpose other than to further restrict family division rights.

Mr. Joe Jones said he is a resident of the White Hall area. He was there 30 years before zoning was enacted and has been there 37+ years since. Since zoning was enacted there have been constant changes and additions putting further restrictions on property. As to the family subdivision part being

considered, he is concerned about what is not underlined and due for a change tonight, but in Paragraph "B" he read: "No lot created by the family subdivision, including the residue, may be transferred, etc...." If he gave a child some acreage and the rest of his land were restricted for the next four years, he could become ill the week, or he might want to sell what is left and go to the Bahamas. He does not think the County should have the right to restrict his use of the residue. If you gave a child stocks and bonds, does the County say you could not sell any other stocks and bonds for four years? Because his asset is his land, he resents the Board putting that restriction on him. He can live with the four-year restriction on the parcel because that seems to be a minor problem in the County. He asked that the Board not include "residue" in Paragraph "B".

Ms. Wren Dawson-Olivier said she lives in southern Albemarle in the Scottsville District. She lives on a farm that her grandfather founded over 150 years ago. As her husband has already said, these ordinances would affect what they are able to do with their property. But, she applauds these ordinances and urges the Board to support them. Several Board members have said that protecting the rural area is a high priority and this is an opportunity for the Board to do that. She encourages the Board to vote "yes" on these ordinances.

Mr. Roger Ray said he does not believe the provisions for family divisions and driveways are broken so do not need to be fixed. He is in favor of the new buffer in the Water Protection Ordinance. He is equally in favor of the protection of property rights but now there is a conflict between that stream buffer and property rights. He said Mr. Graham spoke about previous regulations and how they had been applied. He said Mr. Graham is extremely busy and is short-handed and he does not believe he had time to thoroughly research what has happened with the stream buffers since its enactment in 1998. He thinks it can be proven by looking at the maps he handed to the Board, and through his research into deeds and court documents, that the stream buffer crossings were routinely and consistently approved for roads and driveways across streams from the enactment of the ordinance up until some three or four months ago. Mr. Ray said he gave the Board a package of seven plats that created 30 +/- subdivision lots the people in his firm were able to remember and go to their files and find information about. If he thoroughly researched his files, he believes he could find evidence of dozens of subdivisions done since enactment of this ordinance that allowed roads within a stream buffer. If they went to the Courthouse and researched the same issues, he believes there would be dozens of plats with probably hundreds of lots created. He sent a letter to the Board asking that they explain to property owners what "reasonable use" of their land is. Of all the people he talked to, not one understood the term "reasonable use." He supports this additional buffer, but only if the Board allows mitigation on a 5:1 ratio.

Mr. Dole Bishop said he sent many E-mails to Board members over the past several weeks, but has not gotten a meaningful response from any of them or from any staff member. He has about seven acres of land and is concerned about the driveway regulation since it would limit the grade of a driveway to a new house to 16 percent. Sixteen percent is only nine degrees, four feet of rise in 25 feet. That is not a big slope in the County. The reason for this was given as safe and reasonable access for fire and rescue vehicles. How many existing driveways out of the thousands built with no grade limit have been responsible for injury or property damage. He has received no data on the risk from the Board, staff or firefighters. He has found that mature automatic chain technology is available which can be retrofitted onto existing vehicles, but only a few of Albemarle's units are so equipped. He said this was not discussed by the Board at all as a mitigating measure. If driveway grades are a problem, all vehicles should have them. He called Greene, Nelson and Augusta counties and found that they have no grade restrictions. He thought a governing body would have its staff research and use hard data to analyze risks and alternatives and pros and cons of any new law. Last fall, 14,000 landowners got a notice in the mail saying that their existing lots would be exempt from the 16 percent regulations. No "ifs", no "ands", no "buts". Now the proposed ordinance provides an exemption, only if it is impracticable to meet the grade standard. "Impracticable" means impossible. He thought the County would be obligated to send another mailing to these folks. He was told by the County Attorney this afternoon that there is a legal loophole; because none of this relates to zoning density another letter is not required. He said some people need a steeper driveway path in order to site their house properly. Under these ordinances the County could force them to move either the house or the driveway or both. The proposed amendment essentially forces you to prove the driveway is safe and any plan you come up with could be rejected. He thinks it is clear the intent is to make it more difficult and expensive to build in Albemarle County. He urged the Board to reject these ordinances, or at least include a grandfather clause.

Mr. William Mayo said he owns 116 acres in Earlysville. He came to listen, but at the start of the meeting stream mitigation plans and how they impact land division was mentioned. They have been trying to divide their property for estate purposes for a year and a half all following suggestions by planning groups and all kinds of people. Things were going along fine until November. On November 6 they received a letter from a senior planner saying that all of their divisions were fine, but there had to be some modifications pertaining to a plat. The plat was revised and resubmitted and for the first time somebody asked for a mitigation plan. They had never been asked for one. Subsequent to that they got a letter from Mr. Shepherd saying that if they submitted a stream mitigation plan and it was accepted, "we will approve the subdivision" which allowed them to cross a stream on the property. They scrambled before Christmas to get it done. It was confirmed in January by Mr. Fritz that all they had to do was submit a stream mitigation plan and if that was acceptable, the division would be approved. He understands this fell through the cracks and reappeared in the fall. This thing that reappeared has cost them thousands of dollars and it would appear that it is all for naught because they are trying to do what the County said to do, and it has just fallen apart. His assumption this evening was that this happens every now and then, and "we don't care about the little people." He is one of those little people and he has spent thousands of dollars to try to accomplish something that he had been told to do by the County, and then tonight he learned that it was all for naught, the County made a mistake.

Ms. Cynthia Nath said she lives in the rural area on land she owns just across the street from the growth area. The Comprehensive Plan was put together to deal with a community that is both the growth area and the rural area. She will echo the comments about North Pointe. Instead of saying that every development coming into the growth area must be approved, she thought the idea was to create a balance between the two areas; that is what makes a community. When she got her notice saying she had a critical slope on her property, she looked into it. She understood there were "tree huggers" and "property rights zealots" that all came together and looked at everything and decided this was the right thing to do for the community, that would protect Albemarle County for today and the future. She may not like the fact that down the street from her property there is a plan to put in 30 units on three acres, but it is in the growth area. She said everybody needs to do what is necessary to protect the community. She asked that the Board support these measures.

Mr. David Mitchell said he is one of the evil developers. He will talk about mitigation of stream crossings and stream buffers. He is also an engineer and a builder and they know how to build things the right way and cross streams the right way to do mitigation. He knows that at times there are people who don't do that, but those who do it correctly should not be punished and restricted from building houses for people in the County just because of a "few bad apples." Mitigation is reasonable and something the County should consider seriously. He thinks the true intent is to stop development in the rural areas, and he really does not have a problem with that, but this is not the way to do it. The best way to do it is through TDRs. That way the County could harness the private sector's money and move those development rights closer to infrastructure, the roads and the schools so the impact would be less on the rural area. He said the Board is doing this with private money because the County clearly does not have the money to buy all of those development rights, and the County should compensate these people for the only thing they own, their land. Believe it or not, their land is valued based on the development rights on that land. That is the best way to protect the rural areas, not arbitrary 100-foot buffers.

Ms. Deanna Noland said she owns 40 acres in northern Albemarle County which she and her husband purchased two years ago. For the six years before that they owned a quarter of an acre in the County in a development. They decided to invest in the land and in the beauty of Albemarle. She has two children and would like to be able to pass the land to these children so she is concerned about the family division rights. If something should happen when her children are in college, and all of their money were tied up in the land, they would not be able to stay stewards of the land because those children needed to stay in college and yet they would have to wait for four years. She researched the 10,000 acres the additional intermittent stream regulation is adding. She thinks it needs to imply that with proper engineering the acres that cannot be accessed by any sort of driveways crossing them, could actually be safely crossed and those properties still protected. It should say mitigation is the way to get there so the property is still valuable and people will still want to hold onto and protect their property.

Mr. Eddie Gibson said he is a lifelong resident of Albemarle County. He is opposed to all of these amendments because the Board is basically telling everybody they can't do anything with the land they have owned for generations. It is the same thing as when the Federal Government took the land for the Park. That is not right. He thinks the development areas are the ones causing the problems. He knows about the Reservoir and all that. It seems that everything concerns the Reservoir. He suggested looking at Sugar Hollow Reservoir where there is nothing above it, but it has filled up also. How is that any different from the South Fork Reservoir? There are a lot of houses being built in the growth areas because it does not seem to affect the Reservoir. When all these clusters of houses are built, that is what causes the most problems. The people who live in the rural areas are not causing the problems the County is going after. He thinks it is wrong to impose restrictions that take people's property rights away. He said he would like to submit an amendment for the lot access requirements (he handed a paper to the Board).

Mr. Neil Williamson of the Free Enterprise Forum said he served on the Rural Areas Focus Group. He also attended most of the Mountaintop Committee meetings. One topic discussed at length by the Rural Area Focus Group and which was also part of the discussion by the Mountaintop group was the idea of having a lot, and having an opportunity to build on the lot you own. That concept is preserved in the ordinance as written. He thinks it could be done with mitigation. He continues to think of parcels that are constrained by an intermittent stream that must be crossed that may have a secluded housing site that provides great benefit, but the ordinance says "impracticable" which is a very strong word. He thinks the idea of waivers rather than appeals may prove to be a better approach. Buying a lot and building a house where it should be sited is important. Providing mitigation to any stream degradation that may be caused by crossing that stream is a reasonable and rational approach to dealing with that issue.

With no other member of the public rising to speak, Mr. Boyd said that would conclude the public comment section of this matter. He asked if Board members had comments.

Mr. Dorrier said last week a constituent told him he wanted to give some land to his heirs but could not build on the property which contains a couple of hundred acres because a creek crossed the land. They talked with Roger Ray who said that just three months ago they began to hear from the County that you could not build on your property if you had a creek running through it. Mr. Dorrier said that was the first time he had heard this. For heirs to be precluded from getting property because of a County ordinance is not what the Board intended. He thinks the Board had the best of intentions, and the Board has been pitted as being property rights advocates or environmentalists. He said someone can be a bad property rights person and rape the land and destroy it, or can be a good property rights person and take care of it and give it as a legacy to their children. If you own property and pay for it with your blood and sweat and tears and have your whole wealth tied up in it, it is emotionally a part of you. He said government is only as good as the people involved and he thinks the intentions here are good, but the ordinance is still flawed. The Board needs to take it "back to the factory." He does not think it is broken

but there is a need to deal with the runoff and the intermittent streams. If people are going to be protected from runoff, there should be an ordinance that deals with a creek or stream that is flowing, not intermittent. The Chesapeake Bay people have good intentions, but the Board needs to consider whether it is really applicable to Albemarle County. He thinks the mitigation aspects of this ordinance leave a lot to be desired. It puts the landowner in a position like the man who spoke and said he had spent thousands of dollars. Why should a landowner have to spend thousands of dollars to determine whether his land qualifies for a legacy for his children? Until that is straight, the ordinance is broken and needs to be fixed. He understands what Roger Ray said; there may need to be some protection from the runoff going into the streams, but that can be done through other methods such as erosion control. While the Board is on the right track, this is still flawed and he will vote against it.

Mr. Slutzky said when these ordinances were on the agenda last October, he came to that hearing with his mind fairly made up that he would support them. He heard a number of things that evening that made him reconsider his interest in supporting some aspects of those ordinances. He was less comfortable with the critical slopes ordinance. People raised concerns about the family subdivision provisions that he had not thought of, so when the public hearing was over he had rethought the issue. Before the Board tonight are three significantly different ordinances; they are not as aggressive in the aggregate.

Mr. Slutzky said he ran for election as a Board member because he was concerned about protection of the ecology of the rural areas. He recognized early on that protecting the ecology of the community would often bump up against property rights. In the stream buffer ordinance they bump up against each other hard. He has publicly said he would be comfortable with downzoning the entire rural area for the purpose of protecting it from further development activity. Also, he is sensitive to the fact that doing so would step on people's property rights. He explored an approach to protecting the rural area through downzoning that provided for development rights to be retired/ sold through some sort of a market mechanism; that is what the reference to TDRs is. There has been such legislation adopted, and there is more legislation being considered in this year's General Assembly session. Over the next several years it is reasonable to expect that the County will examine the idea of developing a TDR program.

Mr. Slutzky said that tonight he is convinced he has to support each of these ordinances in the form in which they are before the Board. He thinks it has to be done to protect the rural areas from, in the case of stream buffers, the soil erosion consequence of development activities. If at a later date the County decides to implement a TDR Program, he will propose that the start date for those development rights retired as a result of the downzoning go back to tonight; that means that if there are any development rights that are lost to property owners as a result of what is done tonight, assuming the ordinances are passed, he would encourage the County to include any of those in the eligible development rights that could be sold in any kind of a transferable development rights program implemented later. Most of this refers to the stream buffer ordinance.

Mr. Slutzky said he vacillated about whether he was enthusiastic about the 16 percent slope in the "safe" ordinance. Since the last meeting he has talked with the fire marshal and become convinced that the 16 percent grade is a reasonable number. He is comfortable supporting it as proposed. He does not think 20 or 25 percent would be that different. If somebody came forward and said he could mitigate and wanted to build some small stretch of road at a higher grade, that option is available. He is comfortable deferring to staff to address that.

Mr. Slutzky said he is amazed by the number of people who communicated with him privately with respect to family subdivisions asking how the County could take away their right to give land to their children. He told them that is not what is contemplated. If someone has the right to subdivide their land now, they can subdivide it and give or sell a parcel to their children. This family subdivision provision does not apply to all instances where someone might give land to their children; it only applies to a situation where they could not otherwise do it because of some restriction on the land. It is a relatively narrow instance where there would actually be a family subdivision that would have to be done under this ordinance. In those situations the holding pattern of four years on the front, and four years on the back end is not unduly harsh.

Mr. Slutzky said that originally he was concerned about comments at the public hearing in October when people questioned how they could get a loan. They were talking about the ten-year restriction on the back end at the time. He talked with a number of lenders in the community and they said it is not a bar to getting a loan; it is not a factor they take into account. He does not think having to wait four years is a hardship for anyone in this room tonight. He does not think any of them intend to subdivide their land and give it to a child so the child can make a quick buck on the resale of that land. He is comfortable with the four years on the front end and four years on the back end; at the present time it is only two years on the back end.

Mr. Slutzky said he is going to support each of these ordinances in their present form. He does not think they are perfect and they are not as protective from an ecological standpoint as he wishes they could be. He thinks they are reasonable, fair and balanced and if the Board has the opportunity at some future date to develop a TDR program, he will advocate for including any property rights that someone can demonstrate were actually taken off of their land as a result of the ordinance passed tonight.

Ms. Thomas said the ordinances before the Board tonight have been changed by the public input received. The chairman of the Mountain Overlay District Committee said the committee would work by consensus, so they pounded out some things by consensus and reached an agreement. That gave her faith the community has a lot of underlying agreement even though they do not all agree on things. She said there is already a safe and convenient access requirement in the County, so it adds little to what has

to be done when someone gets a building permit. This new requirements says that safe and convenient access must be shown at the point of determining that this is a parcel. For the building permit now, it is a 20 percent grade. She has done a lot of research into the meaning of a 16 percent grade. She found that Thomas Jefferson kept the grades up to Monticello at five percent, and that the grade up to Brown's Mountain is 14 percent. It is hard to find such a road in the County. Some thought the road up Afton Mountain was that steep but in fact it is only about a six percent grade. There are concerns not based on the kind of slope actually being talked about. She said no one wants a road the fire trucks cannot get up. She thinks it is a worthy change to make for the purposes stated.

Ms. Thomas said that the Board has said that intermittent streams are important. They are the ones that have the most direct contact with the land and the erosion that takes place there. The real decision before the Board is whether intermittent streams in the rural areas that are not now affected by that law should be protected. Even with the impacts this may have, she thinks the Board's responsibility lies in protecting the waterway and that the intermittent streams are the most important. She could live with taking buffers off of some of the deep cut creeks because the buffers do not have as much affect on those as on the shallow ones.

Mr. Thomas said as to the family subdivision ordinance, it is a compromise. The Board listened when people said 15 years was far too long. Also, the Board is not talking about what someone can do with their land. Essentially, building substandard roads is the main reason people go through the family subdivision process. If they want to give something of value to their kids, they would not do it through that process anyway but would do a regular subdivision. She will support these three ordinances.

Mr. Rooker said everything being considered tonight is directly out of the Comprehensive Plan and the various sections the Board unanimously adopted. He said one speaker tonight mentioned that there are a lot of goals and strategies in that Plan that are meaningless if they never turn into action. Since he has been involved with the Planning Commission and Board of Supervisors he does not remember any measures that have ever had more discussion and public comment than these have and they have been substantially reduced in scope as a result of that public comment. With regard to family subdivisions, they are optional under state law. Every county does not have a family subdivision ordinance. That means Albemarle County allows something by ordinance that is not mandated by State law. The family subdivision does not enable someone to divide their property any easier than going through other subdivision means. Actually, a subdivision where one additional lot is created is easier to do without going through the family subdivision regulations. There is a rural subdivision measure in the County's ordinance. The only thing the family subdivision enables is the subdivision of lots on substandard roads. He agrees with Ms. Thomas. If someone wants to leave something of value to their heirs and wants to do it through subdividing they are better off to go through a standard subdivision process. There has been concern expressed about the recipient having to hold the land for four years. In the normal subdivision process, they do not have to hold the property for four years.

Mr. Rooker said safe and convenient access is recommended in the Comprehensive Plan. He has driven through the Rocky Mountains many times and the maximum grade on I-70 is seven percent. There are probably few places in this area that have slopes in excess of ten percent. The stream ordinance is in place in half of the County today. He has not seen it have any particular impact on reducing property values. He asked the Assessor's Office to provide him with the average acreage value of vacant land presently covered by the ordinance as compared to land that is not covered. For the land presently covered by the ordinance, the average per acre value is about \$16,000. For the land presently not covered by the ordinance, the average per acre value is about \$10,700. The land the Board is talking about extending this regulation to has a sixty percent greater value. The Comprehensive Plan does not contain anything suggesting every hypothetical development right be preserved in the rural areas. He thinks the Board should be mindful of property rights, but the goals and strategies in the rural area have to do with protecting natural resources, open spaces and farmland. One speaker said the term "intermittent stream" is not defined in the ordinances. In fact it is defined. "Perennial stream" is also defined in the ordinances.

Mr. Rooker said one thing that should probably be brought back before this Board is the idea of mitigation. He thinks some good points were made about mitigation. The County needs to look into how the ordinance is being applied with respect to accesses. It needs to look at an option that might include a 3:1 or 4:1 mitigation effort as suggested by Mr. Ray. But, what is before the Board tonight is the extension of an existing ordinance. He thinks the Board should pass these ordinances tonight in their present form, and his suggestion be looked at in the near future.

Ms. Mallek said she learned a lot by speaking with many people and listening to comments from the October hearing and more recently. She had a question about the family division and death in the family. She understands there is already an allowance for an earlier sale. Mr. Davis said that upon death, the land can be transferred to the heirs of the property, or under operation of the law if it is necessary to dispose of the property because of a legal reason.

Ms. Mallek asked if anything ordered by a court can be done. Mr. Davis said that is correct.

Mr. Boyd asked if settlement of estate taxes is a legal reason to sell a part of the property. Mr. Davis said only if it is necessary for the executor to finish the disposition of the property in the estate.

Ms. Mallek said with all of the alternatives that people can use in the subdivision process, she is confident that she is supporting the four and four year division for the family subdivision. Many people said earlier that a normal planning horizon is more like five years when the previous Board was talking about the 15 years, so she thinks this falls within that better planning horizon.

Ms. Mallek said as to the stream buffer issue, she is one of those people who have been farming in the western part of the County since 1980 under existing rules. There was great confusion earlier about what would be done to farmers and many people called her. When she asked where they lived and was told that it was the White Hall District, she told them they were already covered. They were relieved to find out that what they had been doing all of the time could be continued, they would be able to pasture and have no fencing requirement and there would be no inference with agriculture. The County does not want people building structures in those buffers which would wash down into someone else's property or cause further damage. She is concerned about the mitigation issue. She spoke about this in October saying more construction guidelines and fewer requirements for waivers is her preference. She would rather have people know ahead of time what the plan is. She is not keen on changing the rules in the middle of the process. She has a concern about how the Board can help people who are already in the process of going through something. If someone has been working through months of estate planning, is there any option to give 30 days or something for these processes to be finished? Mr. Davis said there is an implementation provision in these ordinances. For any application submitted prior to today, yesterday's rule would apply provided it is brought to a conclusion within four months. Anyone who has something in the process today that is approved within the four months would be operating under the prior rules.

Ms. Mallek asked if "process" means consultation with staff. Mr. Davis said an application would have to have been filed.

Ms. Mallek said that is not exactly what she was asking for.

Mr. Rooker said several people called about that after the public hearing in October. There has been a significant amount of time between October and now to file.

Ms. Mallek said she was comforted when she studied all the wording and it talked about the fact that the driveways for existing lots were exempted from the requirements that the County get the best performance possible based on the site. She supports that and plans to support all three of the ordinances. She was surprised when she learned that the main access road to Wintergreen is 14 percent. That is a road she has struggled up in many types of vehicles. She thinks the County will be able to cope with short distances of that, especially with the possibility of smaller sections being steeper.

Mr. Boyd said at everyone of these public hearing he has learned something new. What he learned tonight leads him to be opposed to these ordinances in their present form. All of those other times, these initiatives were defeated, voted down, except in October when no vote was taken. They keep coming back in revised and better forms. Some people would call it watered down, but he thinks the Board listened to the property owners. There are several things which are still problematic for him. Under the family subdivision, there is still a question about the residual piece of property. If Mr. Jones is correct, the way the statute reads now, if he owned a large track and wanted to give a small piece of it to a child, he would be held to the same four-year period with the residual piece of property as they are now. That may be a little over restrictive.

Mr. Boyd said the 16 percent slope does not bother him that much. He has talked with people in the building business and it is not a problem for them because they would do switchbacks, cut and fill and create more havoc with the slope because they can afford to do that. He thinks that is an unintended consequence of including this restriction in the ordinance. He said "reasonable use of the property" bothers him. What he said tonight is that the Board will put a lot more property (9,000 acres) into an area which will be restricted by what can be done within a stream buffer. The way these ordinances are written, the interpretation of staff and the attorneys is that there can be no mitigation. It is fine to say the Board can address that later, but he would rather get these things right the first time. He thinks these ordinances are still not correct although they are well-intended, but he thinks there will be unintended consequences by taking away people's property rights and he cannot support something like that.

Mr. Rooker said there is one thing he would like to correct. These measures have never been voted down, none of them. This Board voted unanimously to extend the same intermittent stream ordinance to the northwest section of the County several months ago. The Board has simply never voted.

Mr. Boyd said he was talking about the original Mountaintop Ordinance six or eight years ago.

Mr. Rooker said no vote was ever taken on it.

Mr. Boyd asked about the Mountain Overlay Ordinance when the Board met at Burley Middle School.

Mr. Slutzky said only phasing and clustering were addressed.

Mr. Rooker said the public deserves to have a vote on this one way or the other. He is finally pleased the Board has gotten to the point where it is going to take a vote.

Mr. Boyd said there were not enough votes the last time to get it passed. No one on the Board who was in favor of adopting the ordinances was willing to make a motion to do so.

Mr. Slutzky said phasing and clustering were voted on, but failed 3:3. These ordinances were in front of the Board for the first time last October. Several members of the Board, in response to that public hearing, suggested modifying those proposals before taking a vote, and that is what is before the Board tonight.

Mr. Dorrier said he cannot understand why the Board would be willing to leave the mitigation process unchanged when people are spending thousands of dollars to find out what is going on. He thinks that should be the key thing in place before passing an ordinance like this.

Mr. Rooker said the ordinance is already in place. There is a perennial stream ordinance that affects all parts of the County. There is an intermittent stream ordinance that affects half of the County, and the issue about mitigation is an issue in the existing ordinance. The question which has been raised about whether it should be addressed is a good one, but he thinks it needs to come back to the Board with recommendations by staff. There should be some deliberation on that issue by itself, not as a "knee jerk reaction" the first time the Board hears about it. He thinks everybody has an interest in having that brought back relatively quickly so the Board can deal with it.

Mr. Boyd asked about the status of a residual piece of property for someone who gave a small section of land to someone in the family.

Mr. Rooker said he thinks that issue is worth looking at, but is an issue that was raised for the first time tonight. It is in the existing ordinance, it is not a change that is proposed so that should be brought back with a recommendation from staff.

Mr. Rooker asked Ms. Thomas if she would like to make a motion.

Ms. Thomas asked if there should be three separate motions. Mr. Davis said "yes."

Ms. Thomas then offered **motion** to adopt An Ordinance to Amend Chapter 17, Water Protection, of the Code of the County of Albemarle, Virginia, by Amending Article I, General, Article II, Erosion And Sediment Control, and Article III, Stormwater Management and Water Quality by amending Sec. 17-104, Definitions, Sec. 17-200, Applicability, Sec. 17-317, Duty to retain or establish stream buffer, and Sec. 17-321, Types of development which may be allowed in stream buffer by program authority.

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

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

NAYS: Mr. Dorrier and Mr. Boyd.

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

#### **ORDINANCE NO. 08-17(1)**

AN ORDINANCE TO AMEND CHAPTER 17, WATER PROTECTION, OF THE CODE OF THE COUNTY OF ALEMARLE, VIRGINIA, BY AMENDING ARTICLE I, GENERAL, ARTICLE II, EROSION AND SEDIMENT CONTROL, AND ARTICLE III, STORMWATER MANAGEMENT AND WATER QUALITY

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 17, Water Protection, Article I, General, Article II, Erosion and Sediment Control, and Article III, Stormwater management and water quality, are amended and reordained as follows:

#### **By Amending:**

Sec. 17-104	Definitions
Sec. 17-200	Applicability
Sec. 17-317	Duty to retain or establish stream buffer
Sec. 17-321	Types of development which may be allowed in stream buffer by program authority

### **Chapter 17. Water Protection**

#### **Article I. General**

#### **Sec. 17-104 Definitions.**

The following definitions shall apply in the interpretation and implementation of this chapter:

(32) *Perennial stream*. The term "perennial stream" means any stream that is depicted as a continuous blue line on the most recent United States Geological Survey 7.5 minute topographic quadrangle maps (scale 1:24,000) or which is determined by the program authority to be perennial following a site-specific evaluation using the guidance entitled "Determinations of Water Bodies with Perennial Flow," dated September 2003, issued by the Chesapeake Bay Local Assistance Department. This definition shall not apply to streams within a development area or area of infill and redevelopment that have been piped or converted legally and intentionally into stormwater conveyance channels such that the stream does not resemble or maintain the characteristics of a natural stream channel, as determined by the program authority.

## Article II. Erosion and Sediment Control

### Sec. 17-200 Applicability.

This article shall apply to any land disturbing activity as provided herein:

A. Except as provided in paragraph (B), each owner shall comply with the requirements of this article:

1. prior to engaging in any land disturbing activity, or allowing any land disturbing activity to occur, on his property;
2. at all times during such land disturbing activity until it is completed, including all times when the land disturbing activity is performed by a contractor engaged in construction work;
3. when notified by the program authority that an erosion impact area exists on his land, and the notice requires the owner to submit an erosion and sediment control plan in order to control erosion and sedimentation; and
4. for the prior construction of an agricultural road, when the owner submits a preliminary or final plat, preliminary or final site plan, an application for a zoning map amendment to a non-agricultural zoning district, or an application for a special use permit for a use or activity not directly related to agriculture for the lot on which the agricultural road is located or serves, if both: (i) the plat, plan or application was submitted within twenty-four (24) months after construction of the agricultural road began; and (ii) the program authority determines that the dimensions and alignment of the agricultural road substantially correspond to the dimensions and alignment of a road proposed on the plat, plan or any document submitted as part of an application.

B. This article shall not apply to the following activities:

1. individual home gardens, landscaping, repair and maintenance work;
2. individual service connections;
3. installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk; provided that the land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;
4. septic tank lines or drainage fields, unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;
5. surface or deep mining;
6. exploration or drilling for oil and gas, including the well site, roads, feeder lines and off-site disposal areas;
7. tilling, planting or harvesting of agricultural, horticultural or forest crops, livestock feed operations or products, or related engineering operations including, but not limited to, construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation. This exception shall not apply to: (i) the harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Virginia Code §§ 10.1-1100 et seq. or is converted to bona fide agricultural or improved pasture uses as described in Virginia Code § 10.1-1163(B), in which case such person shall comply with the provisions of this article when grading, excavating, or filling; (ii) a land disturbing activity related to the construction of farm structures, including but not limited to agricultural structures or roads not associated with tilling, planting and harvesting; and (iii) the construction of roads other than agricultural roads;
8. the construction of agricultural roads, except as provided in paragraph (A)(4);
9. repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
10. installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; and
11. emergency work to protect life, limb or property, and emergency repairs; provided that if the land disturbing activity would have required an approved erosion and sediment control plan if the activity was not an emergency, the land area shall be shaped and stabilized in accordance with the requirements of the program authority.

C. Any activity that is otherwise exempt from this article under paragraph (B) shall become subject to this article if the program administrator determines that an erosion impact area exists on the subject property as provided in section 17-202.

(§ 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-8, 2-11-98; Code 1988, §§ 7-3, 19.3-8; Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08)

**State law reference**--Va. Code §§ 10.1-560, 10.1-562, 10.1-563.

### **Article III. Stormwater management and water quality**

#### **Sec. 17-317 Duty to retain or establish stream buffer.**

Except as provided in section 17-319, any land subject to this article and each stormwater management/BMP plan shall provide for stream buffers for the purposes of retarding runoff, preventing erosion, filtering nonpoint source pollution from runoff, moderating stream temperature, and providing for the ecological integrity of stream corridors and networks, as provided herein:

A. If the development is located within a development area or an area of infill and redevelopment, stream buffers shall be retained if present and established where they do not exist on any lands subject to this article containing perennial streams, and/or nontidal wetlands contiguous to these streams. The stream buffer shall be no less than one hundred (100) feet wide on each side of such perennial streams and contiguous nontidal wetlands, measured horizontally from the edge of the nontidal wetlands, or the top of the stream bank if no wetlands exist.

B. If the development is located within a water supply protection area or other rural land, stream buffers shall be retained if present and established where they do not exist on any lands subject to this article containing perennial or intermittent streams, nontidal wetlands contiguous to these streams, and flood plains. The stream buffer shall extend to whichever of the following is wider: (i) one hundred (100) feet on each side of perennial or intermittent streams and contiguous nontidal wetlands, measured horizontally from the edge of the nontidal wetlands, or the top of the stream bank if no wetlands exist; or (ii) the limits of the flood plain. The stream buffer shall be no less than two hundred (200) horizontal feet wide from the flood plain of any public water supply impoundment.

C. On agricultural lands used for crop land, whether located in a development area, an area of infill and redevelopment, a water supply protection area or other rural land, the stream buffer shall include all perennial streams, non-tidal wetlands contiguous with these streams, and a twenty-five (25) foot buffer, measured horizontally from the edge of contiguous non-tidal wetlands, or the top of the stream bank if no wetlands exist. On these lands, the stream buffer shall be managed to prevent concentrated flows of surface water from breaching the buffer area. Each owner of crop land with a stream buffer shall have developed by the Thomas Jefferson Soil and Water Conservation District a soil and water conservation plan, or a component thereof, which shall be based on an assessment of existing conservation practices of the crop land.

D. Each stream buffer shall be maintained and incorporated into the design of the land development to the fullest extent possible.

E. Except for the activities pertaining to the management of a stream buffer identified in section 17-318, the types of development authorized in a stream buffer identified in section 17-320, and the additional types of development which may be allowed in a stream buffer identified in section 17-321, no indigenous vegetation within the stream buffer shall be disturbed or removed, regardless of the size of the area affected.

(§ 19.3-41, 2-11-98; § 19.2-8, 6-19-91; Code 1988, §§ 19.2-8, 19.3-41; Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08)

**State law reference**--Va. Code § 10.1-2108.

#### **Sec. 17-321 Types of development which may be allowed in stream buffer by program authority.**

Development in a stream buffer may be authorized by the program authority in the circumstances described below, provided that a mitigation plan is submitted to, and approved, by the program authority pursuant to section 17-322:

1. on a lot which is located within a development area but is not within a water supply protection area: within the fifty (50) horizontal feet of stream buffer that is the most landward (furthest from the stream);

2. on a lot which is located within a water supply protection area or other rural land: within the fifty (50) horizontal feet of stream buffer that is the most landward, but only for stormwater conveyance channels or other necessary infrastructure, and only if such development is determined by the program authority to be necessary to allow a reasonable use of the lot. In all cases under this paragraph, the building site and the sewage disposal system shall be located outside of the stream buffer;

3. on a lot on which the development in the stream buffer will consist of a lake, pond, or ecological/wetland restoration project;

4. on a lot on which the development in the stream buffer will consist of the construction and maintenance of a driveway or roadway, and the program authority determines that the stream buffer would prohibit reasonable access to a portion of the lot which is necessary for the owner to have a reasonable use of the lot;

5. on a lot which was of record prior to the date of adoption of this chapter, on which the development in the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal systems, and the program authority determines that the stream buffer would prohibit the practicable development of such facilities or systems. Any such sewage disposal system must comply with all applicable state laws; and

6. on a lot which was of record prior to the date of adoption of this chapter, if the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or to allow redevelopment as permitted in the underlying zoning district.

(§ 19.3-45, 2-11-98; § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-8, 19.3-45; Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08)

**State law reference**--Va. Code § 10.1-2108.

This ordinance shall be effective on and after February 6, 2008, provided, however, that any subdivision plat, site plan or application for a building permit submitted on or before February 5, 2008, and approved on or before June 6, 2008, may be approved under the applicable regulations in effect on February 5, 2008.

**Motion** was then offered by Mr. Rooker to adopt An Ordinance to Amend Chapter 18, Zoning, Article II, Basic Regulations, of the Code of the County of Albemarle, Virginia by amending Sec. 4.6.6, Lot Access Requirements. The motion was **seconded** by Mr. Slutzky. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: Mr. Dorrier and Mr. Boyd.

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

#### **ORDINANCE NO. 08-18(1)**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE II, BASIC REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article II, Basic Regulations, is hereby amended and reordained as follows:

#### **By Amending:**

#### **Sec. 4.6.6 Lot access requirements**

#### **Chapter 18. Zoning**

#### **Article 2. Basic Regulations**

#### **Sec. 4.6.6 Lot access requirements**

Vehicular access on a lot shall be provided as follows:

- a. In all zoning districts, a structure requiring a permit under the Uniform Statewide Building Code may be established only on a lot having frontage on a public or private street as authorized by the subdivision ordinance, except that this requirement shall not apply to lots lacking such frontage on the effective date of this chapter.
- b. In the rural areas zoning district, in addition to the requirements in subsection (a) and in order to provide public safety vehicles with safe and reasonable access to a new dwelling unit on a lot, each driveway that will serve a new dwelling unit: (1) shall not exceed a sixteen (16) percent grade; (2) shall have a travelway that is at least ten (10) feet in width; (3) shall extend to within fifty (50) feet of each dwelling unit on the lot; and (4) shall include a rectangular zone superjacent to the driveway that is clear of all obstructions, including any structures and vegetation, that is at least ten (10) feet in width and fourteen (14) feet in height. The landowner shall demonstrate to the satisfaction of the county engineer that the driveway will meet the requirements of this subsection before a building permit is issued.
- c. Notwithstanding the requirements of subsection (b), the county engineer, with the recommendation of the fire marshal, may authorize a driveway having a grade that exceeds sixteen (16) percent if the landowner demonstrates to the satisfaction of the county engineer and the fire marshal that public safety vehicles would be able to access

the dwelling unit even though the grade may exceed sixteen (16) percent. In considering a waiver request, the county engineer and the fire marshal shall consider: (1) the length of the segment of the driveway that would exceed sixteen (16) percent; (2) whether the segment that would exceed sixteen (16) percent would require the public safety vehicle to travel uphill towards the dwelling unit; (3) whether fire suppression equipment such as sprinklers would be installed within the dwelling unit; and (4) whether the dwelling unit is within fifty (50) feet of a public or private street. In authorizing such a grade, the county engineer may impose reasonable conditions to assure that the public safety vehicles may access the dwelling unit including, but not limited to, a condition limiting the maximum length any segment of the driveway may exceed sixteen (16) percent.

1. The landowner may appeal the disapproval of a waiver under subsection (c), or the approval of a waiver with conditions objectionable to the landowner, to the commission. The appeal shall be in writing and be filed with the department of community development within ten (10) days after the date of the county engineer's and the fire marshal's decision. In reviewing a waiver request, the commission may approve or disapprove the waiver based upon the applicable factors in subsection (c), amend any condition imposed by the county engineer and fire marshal, and impose any conditions it deems necessary to assure that public safety vehicles may access the dwelling unit. In so doing, the commission shall give due consideration to the recommendations of the county engineer and the fire marshal. In addition, the commission may consider such other evidence as it deems necessary for a proper review of the waiver request.
  2. The landowner may appeal the decision of the commission to the board of supervisors under the same procedure and subject to the same standards as an appeal to the commission set forth herein.
- d. Any lot which was lawfully a lot of record on the effective date of subsection (b) shall be exempt from the requirements of that subsection for the establishment of the first single-family detached dwelling unit on the lot if the county engineer determines that those requirements would prohibit the practicable development of the lot for that first single-family detached dwelling unit.

(§ 4.6.6, 12-10-80; 5-21-86; Ord. 98-A(1), 8-5-98; Ord. 08-18(1), 2-6-08)

This ordinance shall be effective on and after February 6, 2008, provided, however, that any application for a building permit submitted on or before February 5, 2008, and approved on or before June 6, 2008, may be approved under the applicable regulations in effect on February 5, 2008.

Mr. Rooker then **moved** to adopt An Ordinance to Amend Chapter 14, Subdivision of Land, and Article II, Administration and Procedure, of the Code of the County of Albemarle, Virginia by amending Sec. 14-212, Family Subdivisions; conditions of approval, and Sec. 14-302, Contents of preliminary plat.

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

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

NAYS: Mr. Dorrier and Mr. Boyd.

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

#### **ORDINANCE NO. 08-14(1)**

#### **AN ORDINANCE TO AMEND CHAPTER 14, SUBDIVISION OF LAND, AND ARTICLE II, ADMINISTRATION AND PROCEDURE, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA**

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 14, Subdivision of Land, and Article II, Administration and Procedure, is hereby amended and reordained as follows:

#### **By Amending:**

Sec. 14-212 Family subdivisions; conditions of approval

Sec. 14-302 Contents of preliminary plat

#### **Chapter 14. Subdivision of Land**

#### **Article II. Administration and Procedure**

#### **Division 3. Procedures for Rural Subdivisions, Family Subdivisions, Boundary Line Adjustments, Vacations and Easement Plats**

**Sec. 14-212 Family subdivisions; conditions of approval**

Each approval of a plat for a family subdivision shall be subject to the following conditions:

- A. No lot may be created by family subdivision unless it has been owned by the current owner or a member of his or her immediate family for at least four (4) consecutive years immediately preceding the date the family subdivision plat is submitted under section 14-210.
- B. No lot created by the family subdivision, including the residue, may be transferred, except by devise, descent or operation of law, to a person other than an eligible member of the immediate family of the subdivider, for a period of four (4) years after the date of recordation of the plat, except for purposes of securing any purchase money and/or construction loan, including a bona fide refinancing, or if the lending institution requires in writing that the spouse of the member of the immediate family be a co-grantee and co-owner of the lot. The subdivider shall place a restrictive covenant on the lots created by the family subdivision prohibiting the transfer of the lots so created to a person who is not a member of the immediate family for the retention period after the date of recordation. The restrictive covenant shall be subject to review and approval by the county attorney before it is recorded. If the lot created is conveyed back to the grantor during the retention period, it shall be recombined with the parent lot within six (6) months after such conveyance and no building permits shall be issued for the lots until they are recombined.
- C. The entrance of the principal means of access for each lot onto any public street shall comply with Virginia Department of Transportation standards and be approved by the Virginia Department of Transportation.
- D. The following note shall be added to each plat for a family subdivision: "No lot shown on this family subdivision plat may be sold or conveyed to a person other than an eligible 'member of the immediate family,' as that term is defined in Chapter 14 of the Albemarle County Code, for a period of four (4) years after the date of recordation of this plat except as authorized by section 14-212(A) of the Albemarle County Code. If any lot created by the recordation of this plat is conveyed back to the grantor during the four (4) year period, it shall be recombined with the parent lot within six (6) months after such conveyance."

(9-5-96, 1-3-96, 4-13-88, 12-21-83, 10-17-79, 8-28-74; 1988 Code, § 18-57; Ord. 98-A(1), 7-15-98; Ord. 05-14(1), 4-20-05, effective 6-20-05; Ord. 08-14(1), 2-6-08)

**State law reference--**Va. Code §§ 15.2-2244(C), 15.2-2244.1.

**Article III. Subdivision Plat Requirements and Documents to be Submitted**

**Division 1. Plat Requirements**

**Sec. 14-302 Contents of preliminary plat.**

A preliminary plat shall contain the following information:

- A. A preliminary plat shall contain the following information, which must be included in order for a preliminary plat to be deemed complete under section 14-216(B):
1. *Name of subdivision.* The title under which the subdivision is proposed to be recorded. The title shall not duplicate or be a homonym of an existing or reserved subdivision name within the county, the City of Charlottesville, or the Town of Scottsville, except if the subdivision is an extension of an existing subdivision.
  2. *Vicinity map.* A map at a scale of one (1) inch equal to two thousand (2,000) feet showing the property and its relationship with adjoining land and streets, its relationship with landmarks in the area and, if the subdivision is a phased subdivision, all other phases of the subdivision for which a final plat has been approved, in detail adequate to describe the location of the property without field review.
  3. *Existing or platted streets.* The location, width and names of all existing or platted streets and all other rights-of-way.
  4. *Private easements.* The location and dimensions of all existing and proposed private easements. Existing easements shall be labeled with the deed book and page number and the name of the owner of record.
  5. *Public easements.* The location and dimensions of all existing and proposed public easements outside of a street right-of-way. Existing easements shall be labeled with the deed book and page number and the name of the public owner of record. Proposed easements shall be labeled as "dedicated to public use."
  6. *Alleys and shared driveways.* The location and dimensions of all easements for alleys and shared driveways.

7. *Existing and departing lot lines.* If the property consists of more than one existing lot, then the identification of the existing lots and their outlines, which shall be indicated by dashed lines; and, the location of departing lot lines of abutting lots.

8. *Proposed lots.* The number, approximate dimensions, and area of each proposed lot.

9. *Building sites on proposed lots.* The location, area and dimensions of a building site on each proposed lot complying with the requirements of section 4.2 of the zoning ordinance. The plat shall also contain the following note: "Parcel [letter or number] and the residue of Tax Map/Parcel [numbers] each contain a building site that complies with section 4.2.1 of the Albemarle County Zoning Ordinance."

10. *Right of further division of proposed lots.* The number of lots, as assigned by the subdivider, into which each proposed lot may be further divided by right pursuant to section 10.3.1 of the zoning ordinance, if applicable. The plat shall also contain the following note: "Parcel [letter or number] is assigned [number] development rights and may/may not be further divided and when further divided these rights shall not comprise more than [number] acres. The residue of Tax Map/Parcel [numbers] is retaining [number] development rights and when further divided it shall not consist of more than [number] acres."

11. *Instrument creating property proposed for subdivision.* The deed book and page number of the instrument whereby the property was created, as recorded in the office of the clerk of the circuit court of the county.

12. *Topography.* Existing topography at the time of plat submittal at up to twenty [20] percent slope, with a contour interval that is not greater than the interval on aerial topography available from the county. The source of topography, including survey date and name of the licensed professional or a statement that topography data provided by the county was used. Proposed grading, with a contour interval equal to the intervals of the existing topography, supplemented where necessary by spot elevations; areas of the site where existing slopes are twenty-five (25) percent or greater. Existing topography for the entire site with sufficient offsite topography to describe prominent and pertinent offsite features and physical characteristics, but in no case less than fifty (50) feet outside of the site unless otherwise approved by the agent. For property in the rural areas zoning district, the proposed grading shall show all grading on each proposed lot, including access, clearing and all other lot improvements.

13. *Proposed facilities.* The location of proposed water and sewer lines and related improvements; proposed drainage and stormwater management facilities and related improvements.

14. *Land to be dedicated in fee or reserved.* The location, acreage, and current owner of all land intended to be dedicated in fee or reserved for public use, or to be reserved in a deed for the common use of lot owners in the subdivision.

15. *Identification of all owners and certain interest holders.* The names and addresses of each owner of record and holders of any easements affecting the property.

B. A preliminary plat shall also contain the following information, provided that the preliminary plat shall not be deemed incomplete for purposes of section 14-216(B) if it does not include this information in the initial plat submittal:

1. *General information.* The date of drawing, including the date of the last revision, the number of sheets, the north point, and the scale. If true north is used, the method of determination shall be shown.

2. *Name of plat preparer.* The name of the person who prepared the plat.

3. *Public areas, facilities or uses.* The location of all areas shown in the comprehensive plan as proposed sites for public areas, facilities or uses, as described in Virginia Code § 15.2-2232, which are located wholly or in part within the property.

4. *Places of burial.* The location of any grave, object or structure marking a place of burial located on the property.

5. *Zoning classification.* The zoning classification of the property, including all applicable zoning overlay districts, proffers, special use permits and variances.

6. *Tax map and parcel number.* The county tax map and parcel number of the property.

7. *Reservoir watershed; agricultural-forestal district.* A notation as to whether the land is within an Albemarle County and/or City of Charlottesville water supply watershed or an agricultural-forestal district.

8. *Yards.* The location of all yards required by this chapter and the zoning ordinance, which may be shown graphically or described in a note on the plat.

9. *Flood plain.* The location of any part of the property within the flood hazard overlay district, as set forth in section 30.3 of the zoning ordinance.

10. *Stream buffers.* The location of stream buffers required by section 17-317 of the water protection ordinance, with the following note: "The stream buffer(s) shown hereon shall be managed in accordance with the Albemarle County Water Protection Ordinance."

(9-5-96, 2-4-81, 8-28-74; 1988 Code, § 18-52; Ord. 98-A(1), 8-5-98; Ord. 05-14(1), 4-20-05, effective 6-20-05; Ord. 08-14(1), 2-6-08)

**State law reference**--Va. Code §§ 15.2-2241(1), 15.2-2258, 15.2-2262.

This ordinance shall be effective on and after February 6, 2008, provided, however, that any subdivision plat submitted on or before February 5, 2008, and approved on or before June 6, 2008, may be approved under the applicable regulations in effect on February 5, 2008.

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Agenda Item No. 24. Adjourn to February 11, 2008, 11:30 a.m., Joint Meeting with Charlottesville City Council.

At 8:30 p.m., with no further business to come before the Board, **motion** was offered by Mr. Rooker to adjourn this meeting until February 11 at 11:30 a.m. at the offices of the Martha Jefferson Outpatient Treatment Center on Pantops. Mr. Boyd **seconded** the motion, which passed by the following recorded vote:

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

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Chairman

Approved by the Board of County Supervisors
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Date: 07/02/2008
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Initials: EWJ
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