

A meeting of the Board of Supervisors of Albemarle County, Virginia, was held on February 13, 2008, beginning at 2:30 p.m. in the Lane Auditorium, County Office Building on McIntire Road, Charlottesville, Virginia; this meeting was adjourned from February 6, 2008. The regular night meeting began at 6:00 p.m. in the same room.

PRESENT: Mr. Kenneth C. Boyd, Mr. Lindsay G. Dorrier, Jr., Ms. Ann H. 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, and Senior Deputy Clerk, Meagan Hoy.

Agenda Item No. 1. Call to Order. The meeting was called to order at 2:31 p.m., by the Chairman, Mr. Boyd.

Agenda Item No. 2. Hollymead Towncenter Area A – Discussion of requirement that all landowners in the planned district consent to a rezoning.

Mr. Boyd asked Ms. Amelia McCulley, Zoning Administrator, to lead the discussion.

Ms. McCulley explained that the purpose of this presentation is to explain and summarize the issues and then discuss some of the options available to this applicant. She said there has been confusion about this issue, so she will clarify the situation. She did not find that all property owners' signatures are necessary for all zoning amendments to all planned districts. Any decision would be made on a case-by-case basis. The facts of a proposal would be weighed against current approval of an Application Plan and its Code of Development. It is possible for property owners to receive administrative approval of minor variations to planned districts without going through a rezoning process. It is possible for minor rezonings (those which do not materially affect other planned district properties) to be proposed by only the subject property owner. In this particular case, based on the facts of the approved planned district and its Code of Development, it is a material change. Therefore, State law and the County Zoning Ordinance both require that all property owners consent to the rezoning application.

Ms. McCulley said there are three issues involved. First, it is the applicant's position that a hotel use is already permitted, but it is staff's position that a change from retail to hotel on that block is a change in use. Second, there is no dispute that there would be a proposed increase in the maximum building area from 55,000 to 95,000 square feet. Third, there is an increase in the proposed building height from three to four stories for this block. This is a material change because it is an increase in building area by 72 percent. In staff's opinion it would change the intensity of uses within the planned district, and could impact traffic generation and traffic patterns. The increase in building height would impact other properties and the intended nature of development for this area of the planned district. That is explained in detail in a memorandum distributed at the last meeting when this matter was discussed.

Ms. McCulley said there are several options available to the applicant that would be more in keeping with the existing zoning approval or changing it so it is only a minor variation that could be administratively approved and not require all owners' consent. In the event the applicant chooses to proceed with the current proposal, he can appeal the decision of the Zoning Administrator to the Board of Zoning Appeals asking that her decision be overturned so that the consent of all property owners is not necessary. She said the applicant has another option he would like to propose to the Board today.

Mr. Boyd asked if this is new territory because of the County's planned development areas. Are there other examples of where this kind of thing might have been done in the past?

Ms. McCulley said there are many planned developments already approved and the County receives requests for more of them all of the time. Some of the changes requested in the past have been minor. There was a request for a change in setbacks within a certain section of an entire planned district. That was permitted by just getting the signatures of the owners in that section. Proposals were limited to just a particular block or section that did not have an impact on other sections of the entire district. She said it is very common that staff approves minor variations. In the Belvedere development they sought five or more variations that could be approved administratively because they were within ordinance language.

Mr. Boyd asked if an example of that would be what was done with the SOCA Association in Belvedere. Ms. McCulley said that was an example.

Mr. Boyd asked if that request was ultimately approved administratively. Ms. McCulley said requests to change the location of the recreation area and the uses within certain blocks were approved administratively.

Mr. Dorrier asked if certain criteria require that all owners sign off on the change versus not requiring it. Ms. McCulley said it has to be a change that would impact the intensity of the use or the character of development. Staff looks at the Application Plan and reads the Code of Development for that project; it then determines if the request is for a departure from the intention for that area and whether it is a far-reaching impact or limited to just that section being proposed for change. Some major increases in square footages could affect the location of some buildings, affect traffic generation and have an impact on the transportation network.

Mr. Dorrier asked if this is a discretionary decision of the Zoning Administrator. Ms. McCulley said it is; she considers input from the planner who was the lead on the project, and she typically consults with the County Attorney's Office before making a decision.

Mr. Dorrier asked if in this instance Ms. McCulley had decided a hotel would be a change in the character of the area. Ms. McCulley said it involves more than a hotel use; it is an increase in building area by 72 percent and an increase in building height from three to four stories.

Mr. Rooker said he thinks the determination made was correct. If someone is an owner in a planned development and goes in with other property owners to rezone a property according to the planned development, they have a vested interest in seeing that the plan is followed. Even if you think someone should be able to change his plans, this plan was filed as a unified plan and all property owners have a right to see the plan reasonably executed or join in to a change if all agree the change should be made. It can sometimes impose a hardship on a particular property owner to get everyone's signature, but on the other hand, they all joined together to agree to a specific plan and that is what was approved.

Mr. Boyd said he would let the applicant speak at this time.

Mr. Simon Stapleton, a representative of Hollymead Corner, LLC, said they are a small group of people who live and work in the County. They are not professional developers. As to Mr. Rooker's comment, as a single owner they initially submitted an application for rezoning. They were then informed that the signatures of all adjoining property owners in Block C were required. They obtained those signatures and filed them with the County. Then, ownership transferred on one of the lots in the block. The new owner of the block post-application is objecting to this change although as of last week there was no written objection on file. That is the current status of the request.

Mr. Stapleton said Hollymead Corner, LLC, understands the Board is not here today to address the merits of their application. He wants to mention a couple of the highlights of their application in order to put things in context. There was a question regarding whether requiring all signatures is a new procedure. He thinks it is important for the Board to decide on this procedure because if these signatures are required it will affect all future planned developments.

Mr. Rooker said he understands State law requires this procedure. Mr. Davis said Virginia state law requires that all owners of property being rezoned must be a signatory to the zoning application process. It specifies that at any time prior to action by the Board, any property owner can withdraw his consent to the rezoning of his property and at that point in time, all processes must stop. As to the issue of the property owner originally consenting and then changing ownership, he has by State law an absolute right to withdraw consent to the rezoning and at that point the County is obligated to stop processing the application.

Mr. Rooker said he wanted the applicant to understand this is not something that is discretionary with the Board. It is a matter of State law.

Mr. Boyd said what this group is proposing is not a zoning.

Mr. Rooker said it is a zoning request.

Mr. Slutzky said the public needs to understand that the reference Mr. Davis just made was not in the memorandum so it is not in the Board's packet that is on the website. There is actually affirmative law in Virginia that requires the County, at the point of withdrawal by one of the parties, to stop processing the application. Mr. Davis said the County Zoning Ordinance section is referenced in the memo, but he did not reference the State Code section.

Mr. Dorrier said Ms. McCulley issued a discretionary opinion and he wonders if that was wrong.

Mr. Slutzky asked if the materiality issue is the only matter that is discretionary. Mr. Davis said the Zoning Administrator is charged with administering the Zoning Ordinance and making determinations. She has an obligation to correctly administer the Zoning Ordinance. She looked at the facts, made an informed opinion, conferred with the County Attorney's Office, and then issued an opinion. As she has pointed out, someone can disagree with her opinion. State law sets this up to allow any party who disagrees with that determination to appeal it to the Board of Zoning Appeals. The BZA has to follow the law as well; if they believe the Zoning Administrator made an incorrect decision based on the law, they can overturn that decision and the BZA's opinion can then be appealed to the Circuit Court. At this time, Ms. McCulley has made a determination so this is before the Board today only as a matter of interest.

Mr. Boyd asked the applicant to finish his presentation.

Mr. Stapleton said their attorney studied both the State Code and the County Code and it is his opinion that this is not a cut and dry situation. He does not believe the application has to be withdrawn, frozen or put on hold. He has informed them that there is nowhere in the County Code where the word "signature" appears. The County Code does not require specifically that all applicants sign and then, as suggested in the County Attorney's memo, right up until the moment the Board hears the application, any owner may withdraw their signature. The wording in the County Code is that the applicant withdraw the request. Their attorney is of the opinion that he and the other owners are the applicants and not the owner who purchased prior to the application being filed and accepted by the County. He thinks there is a question as to what the Code says because it does not specifically call for signatures.

Mr. Rooker asked if the applicant for the change is not the owner of the property to be changed. He can understand the applicant saying that in the initial application there were a group of applicants and a group of applicants applied for a change. If he owned property and was part of a group of people seeking a zoning change of some kind, he would want the right to withdraw up until the time the proposal was decided. He would not cede that right to any one person who owned another piece of property in that collective group. He understands what the applicant has said, but people whose property is part of a property change have the right to watch what is going on, participate and decide whether they ultimately want that change to be made.

Mr. Slutzky said the applicant has asserted that their counsel advised them that the County's Ordinance does not specifically mandate that the County cease application of the process at a certain point. He asked if it is the State Code which requires that upon withdrawal of approval by one of the parties, the County cease processing the application because it is a State statute. Mr. Davis said it is actually required by the County's ordinance as well.

Mr. Stapleton said there is a difference of legal opinion. It might help if he went back and addressed the change itself. He explained that the applicants maintain that the piece of property they own (Block 1C in Hollymead), may have a hotel use by right. He has the Code of Development with him and within that block there are actually six properties of six lots, and one shows a hotel use by right. It is not a change in that regard. This is not an application for a change of use.

Mr. Stapleton said his second point is that under their current Code of Development the proposed hotel would be 617 feet high and that is same height allowed under that Code, so the material change is to the square footage. In their application they propose to reduce the high density retail square footage in exchange for hotel square footage which is at a lower density. There is a traffic study as part of their application. It shows that the hotel usage is a lower density than the original suggested retail usage.

Mr. Rooker asked if Mr. Stapleton is disagreeing with the slide presented earlier that showed the difference in the permitted square footage before and after the change. Mr. Stapleton said he does not disagree as to the square footage, but does disagree with the change of usage and the allowed height. As part of the rezoning they have requested additional square footage by switching it from a higher use to a lower density.

Mr. Stapleton said that in a memo from the County it says that if they have a three or four-story building, with that increase in height it will affect the neighbors behind the building. They plan to take advantage of the topology of the land which rises from Route 29 up to the back of the development. A hotel would not impact the neighbors behind it because the height would be no more than currently allowed. This would simply increase the density.

Mr. Stapleton said they recognize the County's Neighborhood Model District, and believe their application addresses those issues since there would be less density. The f.a.r. (floor area ratio) would be of a medium density and they would be reducing empty pavement so it would not look like a parking lot, there would be more under roof. This would increase the f.a.r. and enable hotel guests to walk around the town center as the mixed commercial use envisions. It would lower traffic patterns and lower the impact on the whole development. He argued that the hotel use would provide more tax dollars to the County than a retail usage. This mixed use would be in the heart of the town center and would free up an additional 43 parking spaces which could be available for use by their neighbors.

Mr. Stapleton said he knows the Board is not going to decide on the merits of the application today, but he asked that they address the issue of the signing by co-owners. They believe the proposed process suggested by staff is not workable and would create an administrative burden in that initial owners would be required to sign off on the application, and then every time there was a change in ownership, each residential lot owner would have to sign the new application. They do not believe that is workable and is not what the State statute or the County Code intended. Under those circumstances, they ask that the Board direct staff to allow their application to continue while the issue of the co-applicants is resolved. He said it is possible for the Board itself to adopt this application.

Ms. Mallek said she was troubled by the illusion that there would be hundreds of residential houses having control over something in the commercial section. She asked if there is only a limited area involved and if they are all commercial properties.

An unidentified person from the back of the room said that that was not correct.

Ms. Mallek asked if all of the properties in Block C are spread over the entire area.

This unidentified gentleman came to the microphone and said there are townhouses in the area, as yet unsold. It is possible that in a few areas something else could be suggested for one of the blocks that makes sense and everybody agrees to it and signs. Then, a homeowner could decide they didn't want to sign on. They might not like a restaurant that serves alcohol or don't like the brand of restaurant and they withdraw their signature from the application after the process has been going on for a year. Everyone realizes that development of any kind takes a long time. In their case, somebody from out-of-town bought a parcel after all of the owners agreed to the change. This owner has no interest in developing that parcel, wants to "flip it", and does not want to be involved in the legalities.

Mr. Slutzky asked Mr. Davis if it was true that a subsequent residential property owner could withdraw approval. Mr. Davis said it is possible. People who are entering into these types of

developments should have a contractual reservation of rights that obligates people to consent to these matters if that is a concern for the development community.

Mr. Slutzky said there was an assertion that every time there was a new owner their signature would have to be obtained. He asked if it is actually the opposite. The new owner would have to assert by proactively withdrawing the consent, otherwise it would still move forward as if there was consent.

The unidentified gentleman said that as the applicant, they would not know until the day of the hearing where they stood.

Mr. Slutzky said that is clearly an inherent characteristic of a planned use development; that makes it likely to remain as was originally proposed with rare exceptions in terms of material changes.

Mr. Rooker said people buy into an area expecting to get basically what the plan provides for. As he understands it, the Board is legally constrained with respect to what it can and cannot do in terms of altering the process for a rezoning. The question as to whether or not this is a material change is a decision for the Zoning Administrator to make. The Zoning Administrator has made a decision and the applicant has a right to appeal that decision to the Board of Zoning Appeals and ultimately to the Circuit Court. He said there is a process set out for making changes. The reference to the brand of restaurant and whether or not they sold alcohol would not be considered by the Zoning Department as a major change that would require consent of all landowners. What is being discussed today is a decision based upon a substantial increase (70 percent increase) in square footage on the parcel and the traffic ramifications of that, etc. Some could disagree with that decision and there is a process for testing that decision.

Mr. Boyd agreed with what Mr. Rooker has said, but the applicant wonders whether they can move forward with the process under the assumption that they will eventually get this last person to sign so they do not have to wait until that is resolved.

Mr. Slutzky said State law requires that the County stop the process when the signatures are not obtained.

Mr. Boyd said that was his question. Does the law require the County to stop the process now and not continue it? Mr. Davis said if a property owner whose signature is required has withdrawn their consent to the process then the County does not have a valid application.

Mr. Boyd asked if there has been that withdrawal. Mr. Davis said that is his understanding.

Mr. Slutzky said he thinks that is a critical point. The applicant has suggested that the County does not have in writing a withdrawal of consent. He asked if that is an accurate statement or does the County have a withdrawal of consent in writing? Ms. McCulley said something was submitted yesterday, but she has not read that letter. She understood the purpose of what they intend to submit; their lawyer has talked to County staff about a written withdrawal of consent.

Mr. Slutzky asked if they had told Ms. McCulley verbally that they were going to submit a written withdrawal of consent. Ms. McCulley said "yes."

Mr. Slutzky said as to the issue of materiality, Ms. McCulley has said she understands the height is the same as that in the Code of Development, and that the use of hotel is permitted by right so the only material change is the increase in square footage. Is the applicant's characterization accurate? Ms. McCulley said it is her position that their Code of Development restricts the building's height to three stories and the applicant is proposing four stories. Staff took the applicant at his word in the submittal that there was an increase in height so the applicant would need to get that approved as a change from the Code.

Mr. Slutzky asked if the applicant proposed to dig down in order to get that extra building mass, if that narrow issue would have been okay with staff. Ms. McCulley said it is possible they could construct four stories, but it would be below ground to the extent that it would only be counted as three stories.

Mr. Slutzky asked if the use "hotel" was already permitted. The applicant has suggested they have the right to switch the use to hotel. He thought the information in the Board's packet today suggested otherwise. Ms. McCulley said she would have to ask Ms. Elaine Echols who is more familiar with this development. It was her initial understanding that a hotel use was not permitted, but staff showed her something this afternoon in the Code of Development that indicates that a hotel use is permitted in several blocks of the development.

Mr. Slutzky said the other substantive point is that the applicant is asking to significantly increase the square footage of commercial development. He has been confused by what has been said. He asked if this is actually a situation where square footage of one type is being traded for square footage of another type, or is this talking about increasing the total square footage of the commercial space. Ms. McCulley said it would increase the total square footage of commercial space both for this block and for the allowable square footage for the entire planned district.

Mr. Slutzky said if the other two issues suddenly went away, there would still be an arguably substantial one about the material change. He thinks that on that alone Ms. McCulley would have made a discretionary decision that it would require unanimity of support. Ms. McCulley said that is right. That alone could constitute a material change.

Mr. Boyd thanked Ms. McCulley for her presentation. He said that clearly the Board's hands are tied. This has just been an informational meeting. He wondered whether the applicant could move forward with the request, but Ms. McCulley has said they cannot because there is a formal request to withdraw their approval. Mr. Davis said it would not be a legal application so under the County's ordinance requirements there would be no application process at that point.

Mr. Boyd asked if anyone thinks this question should prompt the Board to look at the ordinance or does this really have nothing to do with the County's ordinance at all. Mr. Davis said it is really a matter of State law.

Mr. Boyd said the applicant is hearing that this is something for the Board of Zoning Appeals or they need to get that final landowner to okay the change. It does not look like the Board can do anything.

Mr. Slutzky said this is a document that basically is the recalcitrant property owner withdrawing their consent. The value of this exercise is that the Board has had an opportunity to express, for the public's consideration, its view that it is protective of the principle of the planned use development and all the attendant consequences of going into such a thing.

Ms. Mallek said she would not be in favor of this request going forward unless "all their ducks are in a row", because it takes staff time and is something that just does not need to be done.

Ms. Thomas said sometimes material change can definitely be for the better so it is not as if the Board wants to handicap a material change. To her, it sounds as if in this case it would be better, but it is still a material change that all landowners should be together on.

The unidentified gentleman came to the microphone again and asked what will happen when there is a commercial development with a sophisticated problem that needs to be resolved. He gave the Biscuit Run development as an example because it has hundreds of lots. By the time all the phasing is done, maybe in ten years, there may be some better use than what was contemplated today. The County is now saying that one citizen, who does not understand the issues or may even have a grievance, can stop all of that process. An applicant could go through the process for a year and then the day of the hearing this one citizen could decide that he or she doesn't want to get involved after all. For instance, what if there was a death and the executor said they could not get involved. That is where he has a problem, because they could withdraw their consent at that moment.

Mr. Boyd said the problem is that the applicant is talking to the wrong people; they need to be talking to the State Legislators because this is a State law.

Mr. Slutzky said he thinks the developer would have been wise to build into the homeowners' association declarations provisions that in a sense take that right from the individual property owners invested in the single body that represents all of their interests, so they are dealing in a more practical way with the larger stakeholders. That obviates the opportunity for an individual property owner with a single-family residential dwelling to mess up "the forward march" toward a better outcome. That option is already available to the developer so it is not a problem.

The conversation ended at this time.

Agenda Item No. 3. Economic Development Policy: Work Session.

Ms. Susan Stimart, Business Development Facilitator, said she will speak about some of the key indicators that have changed since the Economic Development Policy was adopted in 1995. She explained that VEC (Virginia Employment Commission) data shows that employment by industry has changed since 1995. The retail trade has moved into the number two slot behind government. Manufacturing, which was previously number two, has dropped down to six percent of Albemarle County's employment base. Manufacturing has had the most significant decline, close to five percent per year according to average annual growth calculations. Health care is between eight and nine percent of the employment base, but is growing steadily. There is strong growth in professional and technical services. Government/Federal is skewed by the new NGIC base (National Ground Intelligence Center); it is still a very small portion of the employment base, but is experiencing fast average annual growth.

Ms. Thomas said she thinks that should be recognized in the body of the County's Economic Development Policy. Even though it is a small sector, it is growing.

Ms. Stimart said there has been a major change in the availability of land for light industrial activities. Light Industrial (LI) is a challenging name; it is in areas where the County allows bio-technical activity, warehousing and distribution, etc. She said someone inquired about a timber processing operation the other day – they want to harvest wood locally and by processing it locally create a form of sustainable development similar to the business model of an operation in southeast Virginia called "The Appalachian Sustainable Development." They were challenged by the County's zoning in that they can only operate out of the heavy industrial(HI) zoning district, and there are only two or three parcels available. There is a lack of both LI and HI properties. LI also speaks to areas where some home-based businesses can expand; staff is seeing pressures from those businesses as they grow and need additional employees in the rural area which is in conflict with zoning regulations.

Ms. Stimart said the other important indicator came from the 2002 agricultural census. It shows that there has been a net loss among all farming activity revenues. However, certain sectors are doing

quite well. The GRAPE report for 2006 shows that Albemarle County is number one in the State for grape production and that is encouraging.

Mr. Boyd said he wondered about that when he saw that agricultural income was down. He asked if grape production falls into that category. Ms. Stimart said grape production is accounted for in this report. It is also important to recognize that the agricultural census was conducted just previous to 2002 and that year there were drought conditions which affected all agricultural crops.

Mr. Boyd said there have been tremendous strides in the winery business since then. He asked if bottling operations and sales of wine are included in the report or is it just grape production itself. Ms. Stimart said it is only the grape production aspect.

Mr. Slutzky said there seems to have been an uptick in the number of farms, but not in actual acreage. He asked if a farm with a hundred acres in hay counts as a farm. Ms. Stimart said "yes."

Mr. Slutzky asked if somebody had subdivided that land into two 50-acre farms if that could account for the increase in number, but it is the net acreage that is really relevant. Ms. Stimart said that was right.

Ms. Stimart said the Board may recall that the Economic Development Policy has one goal - to maintain a strong and sustainable economy, benefiting County citizens and existing businesses, support of the County's growth management policy consistent with other Comprehensive Plans, taking into consideration other regional economic development efforts, and speaking to other counties in the region. This policy has six objectives and 31 strategies.

Ms. Stimart said staff today would like to recommend that the Board move forward by accepting the updated data. Also, it needs to look at three areas for priority consideration: increasing light industrial land for local business expansion, workforce development with an emphasis on emerging business segments, (those small businesses that are outgrowing their space in the rural areas), and thirdly, enhancing the economic viability of the rural economy emphasizing those segments that protect the rural character. She then offered to answer questions.

Mr. Rooker said it was mentioned that bio-technology was one use permitted in light industrial and there are only 111 acres in light industrial. That use is permitted in other zones also. For example, in the University Research Park bio-technology operations would be allowed and also in the Fontaine Research Park. Mr. Davis said in planned developments like that those uses can be permitted and are in those instances.

Ms. Stimart said there must be a relationship with the University to locate in the University Research Parks, and sometimes that can be an impediment.

Mr. Rooker said that was at the University's choice and is not required under the County's PUD. In fact, some of the operations they sought to locate there do not really have a nexus to the University. In talking with the real estate folks, they have gone back and forth in their own minds on whether that is desirable.

Mr. Dorrier asked how much land is in the heavy industrial use category. Ms. Stimart said it is less than 20 acres. Mr. Tucker said some of that land is in use now so it is not all vacant.

Mr. Boyd said he had a couple of comments to make. In the Executive Summary under item number one where it refers to "increasing available land", he would like to insert for practical purposes the words "affordable land." He thinks one of the problems with the County's light industrial land is that there is not enough and that none of it is affordable to somebody really wanting to use it for a light industrial use. He, personally, would not be opposed to thinking about having a County industrial park. Several counties and cities have put in industrial parks by purchasing the land and making it available for the tax revenues they would get from the businesses who located there. He does not know what the numbers look like for such a facility, but would like to pursue the idea if any other Board member has an interest.

Mr. Dorrier said Mr. George Ray recently came before the Board because he had a problem with industrial land.

Mr. Slutzky said part of that problem was caused by the Board rezoning light industrial properties over time to something else. That applicant had purchased the land, perhaps speculatively, under the assumption that they would be able to get a rezoning. In that case there were good reasons why the Board made the decision to go along, but it is a "Catch 22" situation.

Mr. Boyd said one of the problems in the economy now is that the generation of jobs in the whole country is in small business, and small businesses cannot afford to buy light industrial property in the growth areas. He does not know if it makes sense for Albemarle County to purchase land and make it available at a reasonable price to generate tax revenues; other counties have done this. Mr. Davis said that is the function of the industrial development authority for that locality. They actually own and market that property. It is usually done in localities which are marketing economic opportunities in their county. Where localities aggressively seek manufacturing jobs, their IDA's will purchase manufacturing parcels, put in infrastructure and use that as a tool to locate people into the county.

Mr. Rooker said there are a number of such parks in southwest Virginia where he grew up. Normally, this is done in high unemployment areas which are actively trying to find a way to bring in manufacturing jobs to lower their unemployment rate.

Mr. Boyd said in Albemarle a lot of these small business people are operating in the rural areas. Since he has been on the Board, he knows of cases where people said they would have liked to find some reasonably-priced industrial properties so they could keep their business in Albemarle, but instead moved out of the County. That means Albemarle is losing that business tax, property taxes, and everything else.

Mr. Tucker said that 10 or 15 years ago the issue of having the County purchase land was raised. People who owned vacant industrial land were concerned that they would be in competition with the County and it would undercut them selling their properties. That is another reason why the County backed off of that idea.

Mr. Slutzky said the County has had low unemployment for many years. To expect this Board to create a body of land to use to bring new manufacturing jobs to the market would not make sense if there were not the labor pool to support it. He is more interested in knowing why the County has lost several employers. Was it because they did not have light industrial land to which they could expand their facilities? If that was the finding, there may be a problem protecting the existing employment base. Are these companies leaving for reasons that have nothing to do with the availability of LI land? He asked if Ms. Stimart had a sense about the major job losses in the last five years.

Ms. Stimart said there were Comdial and ConAgra and others which were typical of the business cycles seen nationwide. NAFTA happened, and some operations moved to cheaper areas with cheaper labor pools. For some the choice was to grow outside of the County and leave, while others have been firmly committed to staying in the area but are finding real challenges to doing that. That is especially true for smaller operations that are growing out of their zoning status in the rural areas. There are home operations also that want to hire more employees; where do they go?

Mr. Boyd said that is the group of people about which he is concerned. He is not so interested in attracting more people to come to the County as he is about having a place where new businesses can locate. Many people are starting their own small businesses, but there is no place for these people to locate.

Mr. Rooker said he thinks the Board has to decide what kind of development it wants in Albemarle County. Does the Board want to encourage low-price manufacturing jobs or encourage high-priced technology-oriented and medically-oriented jobs, etc.? He said the University has two research parks and land for a third one whenever they want to do it. On one of the prior screens, the slide showed the two biggest areas in terms of percentage job growth has been in technology-related jobs at 10.1 percent, and government-related jobs at 16 percent. It also showed eleven professional technology services at 11.4 percent. Instead of manufacturing jobs, he would prefer jobs that train residents to break into higher paid jobs and to foster the kind of companies that provide those jobs. The connection with the University, the spin-offs, the technology, etc. does that. He said in the Scottsdale, Arizona, industrial park they put parameters in place as to the kinds of businesses allowed to come into the area. One of their restrictions was that they did not want jobs that paid less than \$50,000 a year and they have had tremendous growth in that area in that category.

Mr. Rooker said recently the Board had a request for a rezoning of property for light industrial on land near the Airport. How can the County fight the law of supply and demand? Localities that have industrial parks have high unemployment rates and low land prices. It is easy for their industrial development authority to go out in the middle of a cow pasture and buy 300 acres of land, put in some roads, run water to the land, and call it an industrial park. In Albemarle the difficulty is that it is already fairly well developed, so the cost of land is high.

Ms. Mallek said there are some facilities in transition in the County. She has been told that Avionics is moving, but local businesses are already expressing an interest in the facility. There are places such as the Murray Plant, which has partial use in it now, but some of that building is still empty. She does not think it is something government needs to do anything about.

Mr. Dorrier said he thinks the TJPED and the Chamber of Commerce should weigh in on this issue. Staff mentioned that there are three trends occurring - industrial use, workforce development and the agricultural economy. He thinks TJPED and the Chamber could give this Board some advice or guidance so it can make a sound decision.

Mr. Slutzky said if there is only a two-percent unemployment rate, attracting manufacturing jobs to the County does not seem like a good idea. It is unrealistic, as Mr. Rooker pointed out, because of land costs and so forth. There are two groups needing attention now – one is an existing organically growing business which needs an expansion location. The Board has discussed the poverty problem in Albemarle County; 20 percent of its citizens live at or below what the County defines as poverty. It is tempting to try and supplement the economic condition with different forms of government support. The ideal way is to position those folks for better employment so they can take care of their own needs more effectively. It sounds like the workforce employment element is really the crux of how to improve that element of the challenge. Trying to make sure existing companies have appropriate places into which they can expand might continue to be a challenge. He asked Ms. Stimart if she thinks workforce development is the area the County should focus on, or should it be more worried about protecting existing expanding businesses?

Ms. Stimart said both protecting existing expanding businesses and workforce training are of concern. There are things the County can do in connection with the Governor's initiatives to address workforce training.

Mr. Rooker said Piedmont Community College does a tremendous job in that area. They design programs specifically for employers in this area. Now there is also the Joint Workforce Development Center which will be a one-stop place where people can get an introduction to programs that might be of assistance to them.

Mr. Rooker said he would like to mention some history about the Comdial situation. At one time Comdial was PackTel; it changed hands several times. That property was and still is zoned light industrial. When Comdial left because they were on the verge of bankruptcy; they virtually shut down all of their operations. They could not be competitive with things being produced abroad. That building sat vacant for a long time. He does not think they ever found a light industrial user to take over and use that building. Finally, they divided up the building into mostly office spaces.

Ms. Thomas asked if there is anything local government can do to help these former manufacturing buildings that are now largely empty or being used for something that is not light industrial. Is the Board doing anything wrong or what could it be doing differently? Ms. Stimart said in her experience these types of facilities experience environmental impacts and environmental degradation. Some of these sites need to be remediated and that carries a high price tag which drives up the price.

Ms. Thomas said Comdial is an example of land that was zoned right, and she does not think that plant had any environmental issues. Ms. Stimart said it did not have environmental issues, but its location on Route 29 put it at a high price point. It is not an ideal industrial site because of its proximity to the City of Charlottesville, and it certainly is prime real estate.

Mr. Lane Bonner, from Grubb & Ellis, an industrial realtor, said he has been involved in every major industrial transaction in Albemarle County including Comdial, Avionics, ConAgra, and Quick Files. He said the Comdial property, the Cooper Industries building in Earlysville, Badger and Avionics are all light industrial uses, but are now being used as office space and warehousing that needs to be near the commercial center of downtown. No jobs are being created; the facilities are being used for needed storage. He said a major problem is that those sites are not conducive to manufacturing because they are either too big or too open. Smaller sites for plumbers and HVAC businesses are needed – they are all moving to Zion Crossroads and Greene County. That pollutes the air because traffic has to go back and forth, and then these businesses then charge higher rates. He thinks there are incentives the County might give these people, maybe in the way of reduced setbacks. He knows all of the manufacturing jobs are going outside of the area while warehousing is staying here.

Mr. Dorrier asked if an industrial park would be an incubator for small businesses. Mr. Bonner said the Board keeps talking about technology jobs, but he thinks there are other jobs it should worry about.

Mr. Rooker said Mr. Bonner mentioned air-conditioning people and those in service industries. Mr. Bonner said he worries about the service industry, but there are 10,000 square foot users that are not high-tech and they provide good jobs, too. There are no 10,000 square foot sites available because they are either too big or too expensive.

Ms. Mallek asked if a facility like Badger could be divided into condo-like spaces. Mr. Bonner said Badger could be used that way because it actually has a narrow footprint. The individual buying that building is actually considering that idea.

Ms. Mallek asked if that idea is in progress. Mr. Bonner said that buyer already has a waiting list of individuals who want to buy condos. He could sell that space four times. He said most of the footprints mentioned earlier are so big it would be impracticable to cut them up.

Mr. Slutzky said he is curious as to whether or not anyone has looked at service industry occupants as an ultimate use for the Jefferson School in the City. Mr. Bonner said the City has a lot of such uses on Allied Street, and he does not think they are going to change the Jefferson School building into that type of use.

Ms. Mallek said it is a historical/cultural thing. Keystone is the one that comes to her mind because there are a slew of places on every block there. Mr. Bonner said the City has done a great job with that. In his opinion they are running out of land. The other problem is that industrial zoning allows office space, so the highest and best use is nearly always office. He cannot remember any major new warehouse in Charlottesville in the last 10 years, or any industrial building that is outside of an industrial park in Albemarle County.

Mr. Rooker said it is really an issue of supply and demand. There is a big demand for office space and people are willing to pay more for that space. He asked the square foot price that an HVAC service company would pay. Mr. Bonner said he is not sure that supply and demand is the appropriate word. An HVAC guy might only be able to pay \$100,000 an acre while an office space guy might pay \$500,000 an acre or more.

Mr. Rooker said the Board could consider not allowing offices in a light industrial zone; that would protect property for that use. Mr. Bonner said that would help, but it is hard to downzone a property.

Mr. Boyd said Mr. Bonner mentioned what he was talking about originally. The Board's intent is to bring in high tech jobs, but a lot of the local people who used to work at Comdial could not be a microbiologist but probably would be a good landscaper or painter and might create a business but there is nowhere for them to locate. That is what the Board needs to focus on. Ms. Stimart said that is where the workforce training program comes into play. There are some good programs supporting the Small Business Development Center, and there are programs at PVCC. There may be some things the Board could do to help these groups.

Mr. Slutzky said these individuals need a place to work once they are trained.

Mr. Boyd said he agrees with Mr. Bonner. He has heard a lot of stories about people moving out of the County. Mr. Bonner said he was told today that 50 zoning violations a month are found because people have dump trucks and are basically using their houses as their offices in order to service needs. He said 50 violations a month probably disturbs the rural area because at every corner there is something that should not be there.

Mr. Boyd said he would transition into the second item he had on his list. Under Objective No. 3, Strategy No. 3, it talks about measuring the County's accomplishments and economic development against strategic questions. He does not see a lot of strategies in this document, but it clearly outlines measurable objectives the Board wants to do. If the Board is going to work on this part of the Comprehensive Plan, he would like to see measurable things set out; things which should be achieved with a time limitation noted.

Mr. Dorrier said that he does not think the Board can do this topic justice in just two hours.

Ms. Thomas said the Board usually decides what the problems are before deciding on strategies to solve them. She said Mr. Slutzky mentioned that given the County's low unemployment rate, the Board needs to zero in on the problems. She thinks the lack of light industrial land and land for service type industries identifies a problem. She favors the Board coming up with some strategies to tackle the problem, if it can. But, to have a typical economic development policy that says the County wants to bring in more industry and beef up its image in the world as a great manufacturing site is not the way Albemarle County has ever done its comprehensive planning. She said Albemarle County has a very healthy economy, in spite of recent pinches, so the Board needs to see which areas are less than ideal. Personally, she wants to spend some of the Board's time on Item # 3, which is agricultural. She thinks the best way to make sure this County maintains its farms, forests and rural areas is to make them a place where people can make money there so they do not have to turn their land into subdivisions. That is an identified problem, and it showed on the charts presented today. She is pretty happy with the general direction this is taking.

Ms. Mallek said her comment is also on Item No. 3. That is an economy in transition. Certainly some of the high value uses, such as wineries, are doing well. The number of farms is increasing because many small operators are trying to capture some of these new niche markets. There are several different inter-governmental projects going on now, one in combination with JABA, the University and the Community Food Project. They will get some student research as to the perceived obstacles to success. But she has occasionally heard (at the Farm Bureau and other places) of governmental type obstacles. She has challenged these stakeholders to be specific about the things they would suggest the Board to think about. She said country crossroads, small shops, farm stands, etc. are going to be of a higher value in the future.

Mr. Rooker said he would like to look at some of the uses the County permits in the light industrial zone. Areas are regularly converted to office, retail and other things that are not really intended uses for that zone.

Mr. Boyd said the County has a low unemployment rate and even though jobs are increasing, the poverty level is not changing. The Board needs to think about that segment of the community which would be better served with higher service paying jobs.

Mr. Rooker said when looking at statistics on land availability, the County should not ignore what is available in the City of Charlottesville. All areas of the County are generally more accessible from the City than from any other area of the County. It would be helpful to understand what the City has in terms of places for HVAC operators, equipment dealers, etc., and whether or not there is excess space or a lack of space. Ms. Stimart said she gets calls from folks in the City who are trying to expand. She then asks her colleagues in the City if there is something they can do to help them with their expansion plans. Even though the trend is pushing in the other way, it is still something important to look into.

Mr. Slutzky said the market in the City is a bit tighter than in the County. His business has grown over the past eight years and each time they had to move they had to find a new location. At one point they moved into the City to take advantage of a Federal Program where they had to be in a certain kind of district. They had a huge challenge trying to find available land to grow into that meets that narrow requirement. They would probably move into the County if it was not for that because land is cheaper and office space is cheaper as a general rule.

Mr. Tucker said staff has gotten some thoughts from the Board today. This meeting is running out of time so it would be helpful if this discussion could be continued at a later date. If the Board wants additional information, that would come to the Board for discussion one more time before sending it to the Planning Commission.

Mr. Dorrier said the Board has not heard from the people on the Workforce Development Committee. He believes Ms. Mallek was appointed to that committee.

Ms. Mallek said she is on that committee and has only been to one meeting. Ms. Stimart said Ms. Valerie Palmountain is at this meeting if anyone has questions for her.

Mr. Boyd said the Board has given staff some direction, but there is obviously more work that needs to be done.

Ms. Thomas said the old Blue Ridge Hospital site contains a lot of little buildings that are just being allowed to crumble into dust. They would be great for small service businesses to use in the next ten years. The University says they are not going to use that site for the next ten years and it would keep historic preservation "chugging along." She thinks it is worth asking the University if they have ever considered some uses for those buildings

With no further questions for staff, Mr. Boyd thanked Ms. Stimart for her presentation.

Agenda Item No. 4. Preliminary Budget Overview - Local Government: Work Session.

Mr. Tucker said he today he will provide the Board and the public with a preliminary overview of staff's recommended budget for Fiscal Year 2009 including: budget goals and highlights, major budget drivers, with a focus on revenues and expenditures. There will be numerous opportunities for the Board and the public to review and comment on the budget information over the next two months. At the end of his presentation he will take questions from Board members.

Mr. Tucker then went over in detail the budget calendar which will be followed during this process. On April 9 the Board will be asked to adopt the budget and set the tax rates for 2008. He said everyone is aware there is a downturn in the housing market. It is impacting the local economy as well as other communities across Virginia and nationwide. This budget is responsive to current economic conditions, while still focusing on Albemarle County's essential services. The Board will have to make some challenging budget choices. He will begin the presentation by giving an overview of the goals that shaped this budget; these are the goals the Board endorsed during its recent Five-Year Financial Plan update.

Mr. Tucker said staff attempted to fund obligations and commitments, things such as the Revenue-Sharing Agreement with the City, the Jail agencies, and all other agencies to which the County is committed. Also, essential services supported are in order to make progress toward Strategic Plan Goals. Also maintained are: Competitive Compensation goals; essential Public Safety Improvements; and the County's Capital Program. Staff attempted to maintain the County's strong financial standing, as reflected in its AAA Bond Rating, the allocation to the School Division of 60 percent of property taxes, and balanced this proposed budget within available revenues.

Mr. Tucker said these goals have been met with varying degrees of success. He will highlight several critical elements that staff feels are particularly important. First, most of the mandated growth in obligations and commitments has been funded through reductions in other operational areas. However, in order to meet these obligations and still balance the budget within available revenues, significant cuts were made in expenditures. Second, even in challenging financial times Local Government has a fundamental responsibility to provide for the health, safety and basic well-being of the residents of the community. This budget focuses available resources, including minimum new revenues, on continuing the delivery of essential services to the citizens. Third, it is imperative that financial stewardship focus on efficiency and achieving the desired results. This proposed budget incorporates reform and efficiency efforts which will be focused on during the years ahead. Finally, this budget is balanced within available revenues and was built using the current real property tax rate of \$0.68/\$100.

Mr. Tucker said several significant items drive the costs in this proposed budget. One of those drivers is the School Division Funding Agreement; the 60/40 split of property taxes has been maintained. There is an increase in Obligated Expenditures, primarily in School Debt, the Regional Jail and the City/County Revenue Sharing Agreement. There is a significant reduction in Federal Funding for Social Services, which is slightly offset by State increases, but most of it is made up by an increase in the local share. Priority Public Safety Improvements, i.e. firefighters for a fire station on Pantops and additional Police Officers, as well as a market salary increase of 3.35 percent are included. Staff responded to these major drivers with a number of adjustments in order to bring forward a budget that is balanced within available revenues. The 13 frozen employee positions from the current fiscal year continue to be frozen. Staff has furnished the Board some information about the process it will use to unfreeze some of these positions from time to time

Mr. Tucker said staff proposes a one-cent reduction in the transfer of General Fund revenues to the Capital Improvement Program (CIP). The reduction will not affect the CIP through FY '2012. Staff is also looking at the Capital Transfer Policy as well as the Debt-to-Equity Ratio. Operational savings and efficiencies resulting from the review of current programs and services (an example is the dollar value savings of four eliminated or reorganized positions), is in this budget. The Computer Replacement Cycle has been extended from three to five years. There are changes in the Vehicle Replacement Policy. There is reliance on the \$1.0 million additional revenues from implementation of the new EMS Revenue Recovery Fees - the Board confirmed this program several times this past year as an alternative revenue source to reduce reliance on real estate taxes. He said Mr. Richard Wiggins, Director of Finance, will now review proposed revenues for this budget.

Mr. Wiggins gave a PowerPoint presentation. The first slide showed that the total of all County funds for the proposed FY 2009 budget is \$331.4 million, an increase of \$26.0 million, or 8.5 percent, over the budget approved for FY 2008. There are six categories of revenues that make up this total. First, property taxes show a slight decrease of \$100,000.00 or 0.1 percent from the 2008 appropriation at the \$0.68/\$100 real estate tax rate. Other Local Revenue increases by \$3.9 million, 6.1 percent, which is partially attributed to the proposed \$1.0 million increase from EMS fees. State Revenue is increasing by \$2.3 million to a total of \$76.8 million, which is a 3.1 percent primarily in School and Social Services funding. The General Assembly is still discussing the State budget so this figure could change.

Mr. Wiggins said Federal Revenue is going down primarily in Social Services reimbursements by approximately \$1.0 million or 6.7 percent. Use of the Fund Balance shows a big percentage increase of 140.8 percent, up to \$2.4 million. This is primarily associated with funding from the Fund Balance of \$1.0 million in the Capital Budget for FY 2009. Finally, Bond Proceeds show a significant increase of \$19.5 million, 125.0 percent in 2009. Of the total \$26.0 million increase, \$19.5 million of that is related to Bond Proceeds that fund a significant increase in the Schools Capital Budget that is recommended in FY 2009. These bond proceeds will come from the VPSA sale in the late fall.

Ms. Thomas asked Mr. Wiggins to explain the Fund Balance one more time. Mr. Wiggins said the Fund Balance increases 140.8 percent. One million dollars of the \$1.4 million increase is created by what is being budgeted from the Fund Balance to fund the Capital Program in FY 2009 that was not funded in FY 2008. There was no use of the Fund Balance in 2008 for the Capital Budget, but they are using \$1.0 million in FY 2009.

Mr. Slutzky said he does not understand that as well as he should. He asked if that is to offset the reduction of the two percent commitment to the CIP. Mr. Wiggins said "no." A decision was made when the budget was being put together to use an anticipated \$1.0 million from savings on the expenditure side in the current fiscal year. County Policy is to take 60 percent of those savings and roll that amount into the Fund Balance. Staff is just budgeting an anticipated \$1.0 million being transferred in 2009.

Mr. Wiggins said the next slide shows some more specific General Fund revenues. Total General Fund Revenues recommended for FY 2009 are \$221.1 million. That is an increase of \$2.0 million from the FY 2008 appropriation, which is a 0.9 percent increase. General Property Taxes show a slight decrease. Other Local Taxes show a slight increase of 2.7 percent. Other Local Revenue includes the \$1.0 million EMS fee which is the major driver for the \$1.4 million or 25.0 percent increase. State Revenue shows additional funding for Social Services, a decrease in Federal Revenue related to the Social Services reimbursement, a slight increase in Transfers, and a slight increase in the use of the Fund Balance. The General Fund Balance is being used to fund one-time capital purchases related to the two additional public safety officers recommended in the budget, also four new police officers and the Pantops Fire Station.

Mr. Slutzky asked if the savings pulled from the Fund Balance are associated with delayed projects as opposed to projects that came in a price lower than budgeted for. Mr. Wiggins said this is the General Fund Balance, not the Capital Fund Balance.

Mr. Slutzky asked why those balances were there. Mr. Wiggins said the General Fund has a healthy Fund Balance accumulated over the years due to expenditure savings. Those funds are not all transferred to the Capital Fund; only 60 percent is actually transferred to Capital.

Mr. Wiggins said the next slide highlights major revenues associated with the General Fund budget. He reiterated that this budget was built using the \$0.68/\$100 real property tax rate. Real estate revenues for FY 2008 show the actual impact of the reassessment and new construction on the recently completed reassessment. In 2008, there was actually a 0.25 percent decline in reassessment values of properties that were on the rolls in FY 2007. New construction in FY 2008 went up 1.63 percent in value; they are estimating a slight decrease in the value of existing property in FY 2009 primarily in residential values by 0.6 percent. An increase of 0.1 percent in value of new construction is projected for FY 2009.

Mr. Slutzky said he had a question about the 0.6 percent assumption. When the reassessment took place in 2007 the real estate market was unsteady. He asked if staff assumed that between today and a year from now there will be only a nominal decline in assessed value for real property. Mr. Wiggins said the 0.6 percent decrease assumes approximately a 0.2 percent decline in residential values from January, 2008 to January, 2009.

Mr. Slutzky said last year, an optimistic assumption was made about the state of the real estate economy. Now the County has a budget gap that needs to be filled. He is worried that may happen again next year. There are many economic analyses that project the possibility of a 10+ percent decline nationally in the value of real estate assets over the next year or two. Albemarle County might have a better market than some places, but having staff assume a 0.2 percent decline across existing properties seems optimistic to him.

Mr. Tom Foley, Assistant County Executive, said staff extensively reviewed this question. A combination of what they have seen this year, and what they are projecting for next year, would total about 5.5 percent so they have captured that between the two fiscal years. There may be 10 percent declines in other communities, but the market in Albemarle County has not responded as negatively. Commercial values are not dropping as significantly. He thinks it is important to put that in perspective because staff spent a lot of time on the question. Things could get worse, but staff and some of the people who look at the County's economic data are tagging a 5.5 percent decline in residential properties

which lie in the Development Area; this is comparable to declines seen in other places. Values on commercial, etc. are not projected to decline that much, and typically they have not. Staff broke down every class of property and did a projection on each one; this is the cumulative effect of the analysis.

Mr. Slutzky asked if real estate values in the rural areas roughly equal residential development values in the growth area so that approximately 50 percent of the revenue pool is split between the two. He asked what happens if the impact is 0.5 percent for this year alone, instead of what has been projected. He wanted to know how big of a risk it is to accept staff's assumption. Mr. Foley said staff can run the scenario at a percent and say if it is one, two or three and then they can be added up in total.

Mr. Slutzky said for each additional percent of decline in the real estate value of existing properties he would like to see what that would translate into. In terms of the gap, how many cents would that be on a hundred dollars? Mr. Foley said staff could look at that in terms of Development Area residential properties, because the others are moving at a much different rate in terms of decline.

Mr. Slutzky asked if Rural Area residential properties are declining at a slower rate. Mr. Foley said historically they have. The reassessment just completed rejected that those properties would decline by more than they have this past year.

Mr. Slutzky asked if staff would run the figures and show what every one percent of that equation would be. Mr. Wiggins said it is approximately \$1.2 to \$1.3 million for each percentage change.

Mr. Rooker said he has talked with a number of people who sell homes in the Rural Area and they have seen offering prices drop by 15 or 20 percent in the last six or so months. Houses that sold in the past for \$1.2 million are now being offered at a little below \$1.0 million. The County has never caught up with fair market value in terms of its reassessment because values were going up more rapidly than the County was assessing them. Now the County has reached the point where declines are going to be felt in assessments.

Mr. Slutzky said the Assessor has to look at real sales. Now, some inventory has seen measurable drops in offer price but that does not mean it will be reflected in the numbers next year. He is assuming staff has taken that into account. Mr. Foley said if properties do not actually sell and owners pull them off of the market, the value has not really declined if the market then starts to recover. Staff has had many discussions about that as well.

Mr. Slutzky said if there is a foreclosure, and a property is sold at a significant discount off its fair market value, that distorts it the other way. Mr. Foley said projections are difficult to make these days. Staff feels they are in a reasonable place now, but it is prudent to look at what would happen if it goes down another percent or two.

Mr. Boyd said the Board needs to get back to the original schedule for today before getting into too many philosophical questions.

Mr. Wiggins said the next highlight is the proposed EMS Revenue Recovery Program of \$1.0 million. During the past year or so, the Board has confirmed several times that this is a user fee for services to reduce reliance on real estate taxes.

Mr. Slutzky asked if staff is absolutely confident the \$1.0 million in EMS Revenue is still available to the County. Mr. Tucker said staff will be talking about that later this evening.

Mr. Wiggins then showed a chart, a linear depiction or historical representation, of some of the major General Fund revenues he has mentioned. As to real estate revenue, a slight decline is expected in FY 2009. A slight increase is projected in Other Local Revenues and Other Property Revenues.

Mr. Wiggins said the chart shows that State Revenues are basically flat. There is a slight decrease in Federal Revenues. As to Other Local taxes, there is a decrease in sales tax, but business license fees, utility taxes, food and beverage taxes and the transit occupancy tax all show slight increases. He said he would now turn to Ms. Laura Vinzant, Budget Analyst, who will be discussing expenditure projections.

Ms. Vinzant said she will begin by showing total proposed expenditures including the General Fund, the School Fund, the Capital Fund, Debt Service Fund and Special Funds. The total budget is up \$26.0 million to \$331.4 million, which is an 8.5 percent increase. There are three main components of the total budget. The first, and largest component of the budget, is in Capital projects. It is basically increasing due to three new renovation and addition projects for the Schools which are being funded by VPSA Bonds. That increase is 69.5 percent up to \$49.1 million for Capital Projects. The City/County Revenue Sharing Agreement is the next largest component increasing to \$13.6 million, or a 3.2 percent increase over FY 2008.

Ms. Vinzant said the third component is the Operating portion of the budget which is up to \$268.7 million, a \$5.5 million increase, a little over two percent from FY 2008. Operating is further divided into two sections, Schools and Local Government. Each one of those has three components as well; one is the General funds for the Schools and Local Government, each also has Special Funds, and Debt Service Funds. General Government is increasing \$1.9 million, 2.0 percent, and the subtotal for the Schools is an increase of \$3.6 million or 2.1 percent.

Mr. Rooker asked if the Self-sustaining category for the Schools is funded by fees generated at the School level. Ms. Vinzant said the Schools have fees and some grant funds; the Cafeteria category is the biggest portion.

Mr. Rooker asked if the Schools are planning to raise their fees. Ms. Vinzant said she did not have any details on that.

Mr. Rooker said the Schools have budgeted an increase of 8.6 percent in that area so they must be presuming they are going to raise Cafeteria fees and other fees by \$1.3 million next year.

Ms. Vinzant then showed a slide outlining functional areas. In March, staff will provide the Board details by functional area but she will mention just a few areas today. First, Public Safety is increasing \$1.3 million or 4.7 percent. This is the only funding for previously not funded items. They are related to the twelve new firefighter positions for a Pantops Fire Station and the four new Police Officers. Public Works is also increasing by \$200,000.00 which is a 4.7 percent increase. This reflects the County's commitment to the management of Capital Programs and the growth in the Facilities Development Office. The Community Development Division is decreasing by 3.6 percent due primarily to the vacant positions that have been frozen.

Ms. Vinzant said staff has a process in place to evaluate vacancies as they occur and shift funds accordingly. The location of the frozen positions will shift as new vacancies occur, so they may not always show in Community Development. She said she would highlight some of the things which are driving the expenditures of Local Government. The market salary increase of 3.35 percent was maintained; that equates to a \$1.2 million increase in the budget.

Mr. Slutzky asked if that percentage was something staff and the Schools agreed on as a salary rate, or is it just for Local Government. Mr. Tucker said the Schools have included in their budget for their classified employees a 3.35 percent increase and maintained a four percent increase for teachers.

Ms. Vinzant said Health Insurance is increasing by eight percent; Dental Insurance increased by six percent, so the combination of the two caused an increase of \$280,000.00. Department Operations overall were limited to an average of a two percent increase. Later in the budget process, the increase for departments was brought down so that operational expenses for departments are now essentially flat. For agencies the increase is four percent overall, which equates to a \$725,000.00 increase. Of this, \$534,000.00 is an increase to the Regional Jail, which is a 19 percent increase.

Mr. Boyd asked if that was brought about by anticipated additional inmates. Ms. Vinzant said it was based on the formula. Mr. Tucker said the formula is inmate-based.

Ms. Vinzant said to meet the costs of the items she just mentioned, a couple of things had to be done. There are 13 frozen positions in the budget. Another four positions (an equivalent of 3.5 FTE's) were eliminated through reorganization which resulted in a reduction of \$300,000.00. As to Vehicle Replacement, the number of vehicles to be replaced has been reduced and the Fund Balance of the Vehicle Replacement Fund used to reduce the 2009 impact by \$340,000.00. Other reductions total \$160,000.00. Staff does not anticipate that any of this will impact the current level of service. Finally, only a few minor departmental capital purchases have been approved for things such as furniture, small equipment, and things that are typically replaced as needed. The only part of that expenditure remaining in the budget is for some ongoing public safety items such as ammunition for the Police Department.

Ms. Vinzant said another expenditure driver in the budget is the City/County Revenue Sharing Agreement at a \$422,000.00 or 3.2 percent increase over FY 2008.

Mr. Dorrier asked the total amount that will be paid to the City. Ms. Vinzant said the total is \$13.6 million. Mr. Tucker said that amount is low compared to other years. In FY 2010 the County will be hit with the increase in the County's real estate assessments from last year which will be significant.

Ms. Vinzant said the Transfer to School Operations from the General Fund is going up \$922,000.00, which is slightly less than 1.0 percent. This transfer still leaves the School Board's request under-funded by \$1.3 million. One way staff was able to provide them with that amount of money was by decreasing the Transfer to the CIP by one penny. That will also provide additional funding from the 40 percent split for Local Government needs. It will decrease the Transfer to Capital and Debt by \$835,000.00 or 3.2 percent. Staff does not anticipate any impact on projects currently in the County's five-year CIP as a result of a reduction in the Transfer to Capital and Debt.

Ms. Vinzant said that lastly, there is the category of Contingencies and Other. A \$300,000.00 Board Reserve has been maintained in the 2009 budget and also a \$244,000.00 Reserve for merit pay increases and reclassifications. The bulk of this amount is for the Merit Program which follows the Board's strategy of providing pay for performance. It equates to approximately 0.7 percent above the market increase of 3.35 percent and it is distributed to departments after the merit scores are determined.

Ms. Vinzant said that outlines all of the major drivers in the budget. Now, she will briefly address requests that were not funded beyond current levels, but for which additional funding was requested. In the Board's five-year planning process, the Board identified three items that they would like to see in future budgets; Transit, Affordable Housing and Environmental Initiatives. This proposed budget does not include anything additional in that category. There is \$70,000.00 funded for the matching grant for night service on Route 5 for CTS. There is also \$250,000.00 for affordable housing.

Ms. Vinzant said she will outline some of the items requested by County departments. One of those is the Bright Stars Program; the request was to continue a second classroom at Cale Elementary School. That classroom is actually operational in the current year funded by a grant which will not continue into FY 2009.

Mr. Slutzky asked if this grant was accepted with the expectation that it would not continue. Did the State assume the County would pick up the costs after the first year? Mr. Tucker said staff knew it probably could end this year. He said Mr. Brian Wheeler, Chair of the School Board, is present. He might have a number on that.

Mr. Wheeler said it was a pilot program at Cale Elementary funded through State revenues with some support from the Schools. In the current year, the School Board allocated about \$74,000.00 total in local funding. To continue the program into FY 2009, its total cost was expected to be \$118,000.00.

Mr. Rooker asked if that would be the cost to continue the second classroom of that program without any State subsidies. Mr. Wheeler said that is correct. The initial classroom would remain so the burden would fall on County Schools and Local Government to pickup the costs.

Ms. Vinzant said the next slide lists new initiatives requested by County departments that require additional study. The County has a strong history of supporting Volunteer Initiatives (including volunteer fire and rescue departments and recruitment and retention initiatives). Support for the Volunteer Fire and Rescue Departments totaled \$10.0 million between FY 2004 and FY 2007. There is interest in supporting effective retention and recruitment measures. Before staff can make an informed recommendation about this initiative, it needs to assess the potential effectiveness of meeting recruitment and retention goals.

Mr. Tucker said he will summarize the presentation. This budget proposal strives to meet the County's established goals to the fullest extent possible, but the budget is balanced within available revenues with the focus being on maintaining essential services. A number of initiatives were left unfunded but they have been outlined for further review and consideration during the Board's work sessions. Because there are a lot of details to discuss, staff has scheduled up to five work sessions and three public input sessions over the next two months. He asked if there anything the Board members did not understand during the presentation that needs to be clarified.

Ms. Thomas said there needs to be discussion about the recommendation to take one penny from the CIP transfer and how it may affect the CIP. Mr. Tucker said he will give the Board more information later regarding the entire policy.

Ms. Thomas said there were several things that affected the County's AAA rating and in her mind that was always part of it. Mr. Tucker said staff is checking to be sure it would not affect that rating. The staff will also give some information concerning the debt to equity ratio.

Mr. Dorrier said staff has said it expects to collect \$1.0 million in additional revenues from the proposed EMS Recovery fees. He asked if that was an assumption or was it based on some hard evidence. Mr. Tucker said the Board will be discussing that later today.

Mr. Rooker said it would be helpful to have that information sooner than later. One million dollars in revenue is included in this proposed budget, and he wonders to what degree of certainty that amount will be there. Mr. Tucker said that will be discussed later this evening.

Mr. Rooker said he questions whether the County can move ahead with the fire and rescue expansions in the budget. The Board would essentially be saying it is better to hire 16 new public safety people next year rather than unfreezing the positions that are currently frozen. Along with plans for fire and rescue the County has core functions to consider. On page 32 of the materials sent out for this meeting today there is a list of frozen positions with notations as to whether they are core functions. From the standpoint of good governance, the Board has to make sure the County functions properly and that strategies adopted in the Comprehensive Plan are addressed. Decisions by the Board about expanding fire and rescue and hiring four police officers every year were made at a time when the revenue picture was a lot different. He feels the Board should think about committing to increasing hiring in those areas as opposed to dealing with frozen core positions that were evidently felt necessary in previous years.

Mr. Slutzky said he wanted to take issue with the term "initiatives." The word implies that it is something starting now, something being added on. These initiatives are commitments the Board made which have been in the Comprehensive Plan for years. In his introductory language, Mr. Tucker said that all commitments have been funded so he takes issue with that statement because he does not think commitments made when the Comprehensive Plan was adopted, are being funded. Even though those commitments were made based on certain revenue expectations, they were made. If a 68¢ tax rate results in the need to cut back on all of these things, the Board has to figure out which ones should be cut. The Board decided previously that there is a need for certain staffing to meet expectations for public safety. He said Mr. Rooker was right because if he has to choose between those and frozen positions, he may or may not decide to fund one and not the other. As to the police officer positions, there are objective standards that make it clear the County is below expectations.

Mr. Slutzky said Community Development has taken a lot of hits in this freeze exercise. There are no objective standards for how much staffing is required for that department although about 70 percent of what the Board does is talk about issues that need support from that department. His problem is that it is assumed that the Board has no choice but to keep the real property tax rate the same and

decide which initiatives (they are actually commitments the Board has made), it will back off from. The Board may decide to keep the tax rate the same and it may decide to lower the tax rate, but he does not want the public to think the Board has fulfilled its commitments. If the Board is not able to fulfill the commitments it made, it may want to go back to its strategic goals and redefine those commitments. He is skeptical that the framing of this budget is an accurate reflection of what a serious financial crisis the County has. The Board has difficult decisions to make; some of them might be to do without things people really want. However, if the Board makes those decisions out of deference to maintaining the same tax rate, he wants the public to understand the Board is changing its standards and backing off of earlier commitments.

Mr. Tucker said budgeting is about setting priorities. Priorities are probably different among everyone who is sitting at the table at this meeting. This is only the start of the process and the Board will discuss how to set priorities based on what everyone agrees to.

Mr. Slutzky said as this is characterized for the public, he wants to be sure it is called what it is. He is not taking issue with a budget proposal that is tied to the previous year's tax rate. He wants to make sure that what the Board is doing is not mischaracterized. The public will believe the Board is meeting all of its commitments, and he does not think this particular budget does that. He is not faulting Mr. Tucker, but he is saying that is the economic reality the Board has to confront this year.

Mr. Tucker said if the Board chooses not to fund the firefighters or the additional police officers where there are standards and commitments, then the Board is not meeting that commitment either.

Mr. Slutzky said he is not interested in backing off of either of the public safety increases because the County is still behind the curve on expectations. An expectation that eventually there will be a five-minute response time in the growth areas for fire/rescue has been created. There is a commitment to have one police officer for each 1,500 residents. These things have been established as benchmarks, just as the standards for schools say there will be a world-class education system. If the Board backs off of those commitments, he wants to be sure the public knows there are fiscal reasons for not fulfilling those commitments.

Ms. Mallek asked about the Seminole Trail Fire/Rescue Department staffing that was not funded. The request was for assistance during the day hours of 6:00 a.m. to 6:00 p.m. Mr. Tucker said that was correct. This is another request staff thinks needs further study. With the imminent opening of the new Hollymead Fire Station, staff is not sure Seminole's call level will not be reduced.

Mr. Boyd said this budget proposal compares everything to last year's appropriated budget, and does not show any changes that may have been made during the year. He would like to get the revised figures and would like to have that comparison available to all Board members. Also, he is not sure where a change in philosophy from pay-as-you-go projects to financed projects fits into this budget. He wants to have a discussion about the reserves. He said Mr. Slutzky asked earlier what would happen if the assessed value of property is off; he thinks there are reserves for that type of thing, but it needs to be discussed.

Ms. Thomas said when she was on the radio recently she said the Board was going to discuss core services and enhancements. When she looks at the list of funded and unfunded initiatives, it is hard to say what is needed and what is not needed. The Board has had many five-year planning meetings that seem to have disappeared in this budget. In these discussions she wants the decisions made during those five-year planning discussions to be recognized and a decision made. Mr. Tucker said staff tried to follow the Five-year Financial Plan.

Mr. Boyd said that will end this session today.

Agenda Item No. 5. Recess.

Mr. Tucker said the Board needs to have a closed session during the supper break.

Mr. Boyd asked for a motion. At 4:52 p.m., Ms. Mallek **moved** that the Board go into a closed meeting pursuant to Section 2.2-3711(A) of the Code of Virginia, under Subsection (7) to consult with legal counsel and staff regarding specific matters requiring legal advice relating to an inter-jurisdictional agreement; and, under Subsection (7) to consult with legal counsel and staff regarding legal matters requiring legal advice relating to the negotiation of an agreement related to public safety services.

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

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

Agenda Item No. 6. Call to Order. The meeting was called back to order at 6:14 p.m., by the Chairman, Mr. Boyd.

Agenda Item No. 7. Pledge of Allegiance.
Agenda Item No. 8. Moment of Silence.

Not Docketed: Mr. Davis reminded the Chairman that a motion is needed at this time to reconvene from the Closed Meeting.

Ms. Mallek **moved** 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.

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

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

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

Ms. Mallek said she would like for everyone to begin thinking about the burning of trees and construction debris in the growth area. It is becoming a real problem for many urban neighborhoods. Also, in the rural area there has been a fire burning on her route home, off of Woodlands Road, for 12 days. It is a hole in the ground which is just smoldering away. She wants to discuss this issue with the Board members later.

Mr. Slutzky said he is interested in exploring the prohibition of burns in the growth areas. Before he became a Board member he knows there were a couple of big fires that created huge problems for folks.

Ms. Mallek said there are alternatives to burning. Many contractors have stump grinders. There are all sorts of alternatives for disposition of materials that are more ecological and health wise friendly.

Mr. Rooker said at its last meeting the Board adopted the extension of the perennial stream ordinance. The issue of stream crossings and the current interpretation being provided by staff with respect to those stream crossings was mentioned. A number of people are alarmed by the current interpretation which basically seems to prohibit stream crossings entirely. He does not think that is the way the ordinance had been interpreted over the years. Just in a short period of time that interpretation has changed. He does not disagree with staff's current literal reading of the ordinance. Certainly "reasonable use" can be interpreted to mean different things. He thinks the ordinance should be amended to make it clear the Board is not downzoning the entire rural area *de facto* by virtue of the changed interpretation of the stream ordinance. He supports the environmental measures passed a couple of weeks ago, but he does not think this was something imbedded in those ordinances. This has to do with an interpretation of the existing ordinance.

Mr. Rooker said he does not think that somebody with a 500-acre piece of property which has a perennial stream at the beginning of it should suddenly be told there is virtually no use of that property under the current interpretation except to allow cows to graze. He thinks the ordinance should be amended to make it clear how stream crossings are permitted and what type of mitigation is required. He said the County Attorney has drafted a proposed ordinance and he would like to have it put on the schedule for consideration.

Mr. Davis said his office did a quick ordinance amendment to try to capture what Mr. Rooker requested. The proposed ordinance would make an interpretation that stream crossings with a mitigation plan could be approved if they met the mitigation requirements for any development that is permitted by the underlying zoning. The amendment to Section 17-321(4) would attempt to capture that in a way that would not be ambiguous. Under Section 17-322 there appeared to be an opportunity to incorporate some of the Chesapeake Bay Act Guidance on what should be included in a Mitigation Plan. There has been an attempt to clarify some of the mitigation requirements which the Engineering Department can address. Those requirements have not been fully vetted by staff. Some tweaking of mitigation standards may be needed. If the Board's direction is to change the interpretation to allow stream crossings for the underlying development, this language is probably the language staff would recommend.

Mr. Boyd asked if this would change the interpretation back to what it had been previously. Mr. Davis said from what staff has discovered, plans have been approved basically under this interpretation for a number of years when it had not been submitted to the Engineering Department for its review.

Mr. Rooker said he has practiced law in this area for 31 years and he does not recall the interpretation that is now being put on this as the interpretation that has been put on it in the past. He does not think there has been an interpretation of the ordinance that said if someone had a small stream at the beginning of their property they could not put a house on it or could not exercise the underlying development rights. Apparently there has been an inconsistent treatment of some plans. He thinks the Board should straighten this out as quickly as possible, but he certainly does not speak for the whole Board and others may have different thoughts.

Mr. Boyd said he agrees. He would like to change the ordinance to the interpretation that was made for many years in the past. He asked that this be brought back to the Board as soon as legally possible.

Mr. Slutzky said he values the purpose of clarifying what is meant by "appropriate mitigation." Unless that is clear to the public, it is unfair to the public. He wants the standard of mitigation to be absolute; erosion materials should be prevented from getting into the water.

Ms. Thomas said a residential use with its accompanying impervious surface is always worse than what was originally on the other side of the creek. She would like the Board to consider mitigating for that impact if the Board is going to hold to the purposes for which the stream buffer ordinance was passed. She does not want the Board to do something that wipes out what good was done in that passage. She would like some creative thinking about how mitigation is required for impervious surfaces and not just the crossing of streams.

Mr. Davis said staff has been told that generally there is no opportunity on these sites to do the mitigation on the property itself. In some situations, restoration might be required of stream banks. Mitigation plans approved over the years simply required shoring up and re-vegetating what could be re-vegetated around the crossing without an opportunity for 3:1 or 4:1 mitigation onsite.

Mr. Slutzky said with "404" Permits there are ways that mitigation can be transferred from one spot to another. If the Board honors Ms. Thomas' request, it may have to develop some kind of a mechanism for offsite mitigation outcomes. Mr. Davis said he is not sure the County has the enabling authority to do that; he believes that authority is given to the Corps of Engineers.

Mr. Rooker said the Board accomplished a great deal by putting stream buffers in effect to prevent building within those stream buffers throughout the County. Albemarle probably has one of the best stream ordinances in the State. But, he does not know of any place in the State that interprets their ordinance to say someone can not cross a stream. He would be in favor of looking into potentially downzoning the rural area if there are four people on the Board who are of that same mind. He is not in favor of what he considers to be a significantly unfair selective downzoning of the rural area. He does not think that is an interpretation of an existing ordinance.

Ms. Thomas said she realizes that is Mr. Rooker's interpretation, but it is not hers. She does not think the Board needs to get into all of that now. She said Mr. Mark Graham has been trying to say something to the Board, but they have not let him do so.

Mr. Graham said he was going to respond to what Mr. Davis said. Since this ordinance went into effect in 1998, staff has learned that mitigation plans are an imperfect mechanism. It is rare that an impact is mitigated at the crossing. Often the stream buffer is a wooded area and a road is put through it; there is no opportunity on the property to mitigate. The remainder of the stream buffer is already wooded, is already established and more harm than good would be done by trying to do something there. The net impact is that there is some lessening of the value of the stream. There is also the issue of maintaining the stream bed as much as possible. This is where the Corps requires buried box culverts or bridges to span the stream in order to maintain the streambed. That is an expensive solution for property owners. A driveway standard was also passed that says fire and rescue vehicles have to get through. If a bridge were required, it would have to be able to support a fire truck. The point is: mitigation is seldom a perfect mechanism as far as mitigating impacts as the result of a stream crossing.

Mr. Rooker asked what impacts the stream more, a hundred cattle or a stream crossing after it's stabilized? Mr. Graham said staff has expressed to the Board several times that agricultural uses create more harm to streams than that created by residential uses.

Mr. Rooker asked if under State law the County could require buffering from agricultural. Mr. Graham said it can. Under the Chesapeake Bay Act there is more that can be done with agricultural land.

Mr. Dorrier asked if the ordinance presented by Mr. Davis deals with streams and not intermittent streams.

Mr. Rooker said it deals with any kind of stream.

Mr. Dorrier asked if that is for both intermittent and running streams. Mr. Davis answered "yes" and said that in the rural areas now the ordinance requires a buffer area for both perennial and intermittent streams. Prior to the Board's vote last week, part of the County already had that requirement, but now the entire rural area has that requirement.

Mr. Dorrier said he does not see the word "intermittent" in the ordinance. Mr. Davis said this section does not deal with the nature of the stream; it just deals with the buffer which is established by the other section.

Mr. Rooker said this is a proposal to allow stream crossings under the right circumstances. It is in keeping with the way the ordinance has been interpreted for years.

Mr. Dorrier asked if a stream is not running, if a bridge would still be required.

Mr. Rooker said that is the case now and that is not being changed. What the Board is doing is allowing both the intermittent and perennial streams to be crossed as long as there is appropriate mitigation.

Mr. Slutzky said for the record, like Mr. Rooker, he is comfortable in protecting the rural areas and ecological systems by pursuing a downzoning. If this interpretation by staff were tantamount to a downzoning, he would rather do it through the formal process of obtaining public input and then take that action. He would not want to do it through a casual interpretation of an ordinance. He is supportive of Mr. Rooker's objective of clarifying that point. If the Board decided to pursue a downzoning and get this over and done, this would become moot.

Mr. Rooker said it would not necessarily become moot because there would still be crossing issues. The question is whether all the Board members are comfortable with having this ordinance revision brought back.

The Board members expressed consensus by voice.

Mr. Slutzky said when this ordinance comes back to the Board it would be helpful to him to know whether there are any opportunities to transfer mitigation behaviors to an offsite location. Also, if it is not enabled, it would be helpful to know that also.

Ms. Mallek asked if the County can provide guidelines for what is expected. She thinks the more things that can be written down about standards the better. Mr. Graham said there is written guidance now in the Standards Manual. Once a decision is made about a crossing, it gets into the impacts for the particular crossing and what is necessary to mitigate those impacts. It comes down to a case-by-case evaluation.

Mr. Davis said staff can have this ordinance ready for the Board in March. If the Board wants additional research done that would take additional staff time before it would be ready for adoption. In the meantime Mr. Graham has expressed a strict interpretation of what "reasonable" means, basing it on a taking standard which is supportable within the words of the ordinance. "Reasonableness" could also be interpreted to use something other than the taking standard such as the use of the property and whether or not the underlying rights of the property owner would be impacted by that interpretation. For instance, if someone had development rights on the other side of the stream and they could reasonably subdivide and meet all the ordinance requirements, would it be reasonable to require a mitigation plan so they could develop on the other side of the stream. He asked if there is a consensus of the Board to express the intent of the ordinance adopted in 1998, or whether the Board wants Mr. Graham to continue interpreting the ordinance the way he has stated he will until it is amended.

Mr. Dorrier said he thinks the ordinance is unfair to landowners of large properties who are prevented from putting one house on the property for their children because they have to cross a stream to get to that house. It is over restrictive and he does not think that was not the intent when the ordinance was passed in 1998.

Mr. Slutzky said he thinks the Board should continue with Mr. Graham's interpretation until the Board has an opportunity to review and evaluate all of the variables. He does not want to create more uncertainty and confusion and he would not be entirely comfortable in the short term solving it that way. He would rather have an active discussion about the merits of amending the ordinance as proposed.

Mr. Boyd asked if the Board could simply bring this issue back to the Board for discussion as an agenda item and then set a date for a public hearing. That would be the normal process.

Mr. Rooker said if the Board can come to a consensus it can simply say the ordinance should be interpreted in line with the proposed ordinance. The ordinance can be read two different ways; the way it will be clarified or as Mr. Graham has been reading it. There has been a long period of time during which it has not been given the reading it is now being given. This makes him somewhat uncomfortable because the rules are being changed. If the Board wants this to come back without directing staff to provide a more liberal interpretation of the ordinance, he thinks it should be done quickly. It is unfair to people who do not understand exactly their rights.

Mr. Davis said he has been told by staff there is one pending application for a mitigation plan which cannot be approved under the current interpretation. There is also at least one property owner who wants to submit a plan to determine development rights and he wants a more casual interpretation.

Mr. Slutzky said both of these requests are for rural area development opportunities that the Board would be delaying a couple months until it has the opportunity to air the details of the ordinance. He has a bias in favor of not scrambling to accommodate more rural area development. If, after the Board discusses what staff provides and it wants to change the interpretation, even though there will be some process steps before taking action the Board could make that near term change.

Mr. Rooker he would like to do that because obviously there is a consensus to do that.

Ms. Thomas said she thinks the current interpretation fits the Board's objectives in the Comprehensive Plan so she would not want it to casually redirect staff at this point. However, she is certainly willing to have a discussion about changing the ordinance.

Ms. Thomas said she attended the last ACE Committee meeting in place of Ms. Mallek. She said they have a good group of new applicants for the upcoming year. It is exciting to see that this program is getting good applicants who are real family farmers.

Ms. Thomas said she had been to Richmond on a couple of matters. They met with the High Growth Coalition and discussed Senate Bill 768 which passed the Senate yesterday. All of the Senators in Albemarle County's immediate geographical area voted against it, but it squeaked through anyway. This is a major surprise because everyone thought it was "greased" and it would go sailing through. In fact it went through 19:21. Now it goes to the House. It is important that the Board members speak up and also speak to their constituents and point out that if the proffer system is "torpedoed" and replaced with a very constricted, possibly unusable impact fee system, the County would have failed to get the \$25.0 million out of \$41.0 million on the Biscuit Run project. If that had been the case, the Board may not have approved that rezoning. There are many people who have something to lose if the proffer system is lost.

Mr. Rooker said he thinks there was one draft where it could have been interpreted to mean that prior rezonings would come under the impact fee if they had not filed their subdivision plans yet as opposed to their prior proffers. No one knows what will happen when the Senate and House get to the crossover section and conferencing, etc.

Mr. Boyd said he got a letter today dated February 5, 2008, from the IMPACT group regarding its upcoming assembly on March 10, 2008, at 6:30 p.m. Once again they have asked the Board members to participate. There is a Board meeting scheduled on that night.

Mr. Slutzky said he talked with the Clerk about the agenda for that night and he thinks that any of those items could be moved to the Board's meeting on March 12. The real question is whether the Board members want to participate in IMPACT's meeting.

Mr. Boyd said if the Board was able to make those arrangements it would have to go back to the interpretation from last year; if nothing has changed since then this would constitute the convening of a Board meeting and the Board decided not to do that a year ago.

Mr. Davis said it would depend on how the meeting is proposed to take place. If more than two Board members were to attend the meeting, and if there is participation by any Board members, that constitutes a meeting of the Board of Supervisors. The Board would need to adjourn a meeting to that date, or call a special meeting in order to participate in that manner.

Mr. Slutzky said the Board could do that. Mr. Davis said that can be done, but last year the Board struggled with setting a precedent by doing that.

Mr. Boyd said he has met with individual IMPACT members and it is his understanding they have made some minor changes in procedure since last year. Board members would not be sequestered prior to the meeting. Both members of the Board and City Council would be given two minutes to talk before a question is asked, but IMPACT would want a "yes" or "no" answer regarding its request for affordable housing funds.

Mr. Dorrier said he thinks all City Council members attended and participated during the IMPACT meeting last year. He thinks it will look like the Board is trying to duck its responsibility on some issues if it decides not to attend.

Mr. Boyd said the Board would need to convene a meeting at the IMPACT meeting.

Mr. Slutzky said he is comfortable with shifting the agenda items from the meeting scheduled for that Monday night and adding them to the meeting on Wednesday, March 12. He would like to comply with IMPACT's request.

Mr. Boyd asked how many other groups the Board will do this with in the future.

Mr. Slutzky said he is only interested in doing it with this one group at this time. If some other group has a persuasive argument in the future, he would consider it on its merits.

Mr. Rooker said to him it is not a matter of whether or not the Board agrees with the underlying goals of the IMPACT group. He has met with members of IMPACT numerous times and shared information with them; they have made changes in their format which he believes will be productive. Personally, he would not hesitate to attend their meeting; however, he does not think it is a good precedent to let other groups set an agenda for a Board meeting, in effect calling a Board meeting at their request. He thinks there will be groups in the future who want to do the same thing and the Board may or may not agree with their goals or underlying strategies. If only two members attended, he would attend, but he does not think it is wise to start having Board meetings called at the request of third party groups.

Mr. Rooker said this third party group will be setting the agenda and basically asking the Board members to make decisions on matters that could involve millions of dollars of tax money, with no staff report, with no interaction between Board members, and without hearing from the public. What this group has put together is not a public hearing where people who might not agree with their agenda can get up and speak. This group is asking the Board to allocate funds in the County's budget. He sympathizes with

and is interested in their cause, but if the Board gets into a mode where it is called out to give "yes" or "no" responses on budget items in isolation, he thinks that is a big process mistake. He has no problem with individually attending this meeting, but he does not think it is wise to have public Board meetings take place in that kind of a setting.

Ms. Thomas asked Mr. Davis under what conditions the Board can attend this meeting. She knows what the Board did last year and it was pretty awkward, although IMPACT members did not "boo" as four members of the Board left the room. They were very courteous. She is concerned that if four members of the Board say "yes" to something at this meeting, it will be the same as making a public decision when it should only make such decisions at a regular Board meeting with a balanced audience and so forth. She hates the idea that the Board will not attend. She would prefer that the Board members attend and answer questions as individuals. She asked if that is absolutely something that cannot be done because of the Conflict of Interests Law.

Mr. Davis said the statute has been interpreted to place the restriction of the act on the bodies. If three or more Board members are in attendance for the purpose of discussion or partaking in County business, that is a meeting. It simply requires the Board to adjourn to that date or call a special meeting for that date. If a question is posed to a Board member, that person can say their answer is a personal viewpoint; since there would be no motion before the Board, no action would be taken by the member expressing his/her opinion. If four Board members answered in the same way, because there is no motion before the Board, no action is being taken but some people might construe that as a decision of the Board.

Mr. Slutzky asked if the Board convened a meeting there, would it be allowed to operate as an open public meeting. There will be hundreds of people in the room who want to express their sentiments on certain issues. He asked if the Board members could go to this meeting, and open it up as a public hearing of the Albemarle County Board of Supervisors, hear all the things they have to say during the course of the meeting, and close the public hearing. The Board would not have acted on anything, but would have taken public comment on issues of interest to the Board. Mr. Davis said the Board could do that if IMPACT cared to share the facility with the Board so it could have its meeting.

Mr. Rooker said that would be a Board meeting and not an IMPACT meeting.

Mr. Slutzky asked if the Board could officially say it was opening a public hearing and let the agenda play out as IMPACT purposes. In the course of the evening the Board could hear what the public has to say. It would be a format different from what the Board normally uses.

Mr. Rooker said it is not a public hearing. IMPACT does not ask the public to come forward and weigh in on a subject the way the Board does. They have a predetermined meeting with a predetermined number of speakers established in advance of the meeting. He can see a scenario where the Board might participate, but he does not want the Board to go in pretending it is a Board public hearing because it will not be one.

Mr. Slutzky said Mr. Rooker's description is a lot like what the Board does. The Board has people come with a designated representative who speaks using a prepared conversation; then, other folks who are sympathetic with that view stand up. This signals to the Board a will from the public toward a certain outcome. It sounds like it is pretty much the same thing with a little bit of a tweak to the format.

Ms. Thomas said the difference is that they do expect a commitment from the Board members. The Board would have to say it is not making a commitment, and if they would be happy with that, that is a way to proceed.

Mr. Slutzky said last year he said he was willing to support something, but he acknowledged that it is not up to just him. There are six Board members and they would be taking more input before a final decision was made. He is not able to make a final budget decision this early in the budget discourse, but he would not be uncomfortable with giving them that hedge commitment.

Mr. Dorrier said the Board can meet anywhere in Albemarle County it wants to. All the Board has to do is to declare a public hearing and a meeting.

Mr. Boyd said the big difference is that this is not a Board meeting. He wanted to know who would call the Board's meeting to order, and who would be conducting the business of the Board.

Mr. Slutzky said IMPACT would be chairing the meeting.

Mr. Rooker said that makes it an IMPACT meeting.

Mr. Boyd said it would be an IMPACT meeting and not a meeting of this Board.

Mr. Dorrier said they could also weigh in and open the meeting.

Mr. Boyd said the eleven people (six Board members and five City Council members) would have to do that within the two-minute timeframe; each will only be given a two-minute time slot to speak, and then will be given a "yes" or "no" question to answer.

Mr. Slutzky asked if under the Open Meeting Act the Board is allowed to do what he has described - convene there, open a public hearing, let the agenda set by IMPACT drive the meeting, and then close the meeting.

Mr. Davis said when there are three or more Board members present for the purpose of conducting County business it is a meeting, whatever the location. The Board can wave its rules about how to open a meeting, close a meeting, or any of those things, so the answer would be "yes." To get back to Ms. Thomas's question, no action is taken by the Board unless there is a motion and a second under the Board's rules. The motion must then be voted on by a majority of the members on the Board present. An individual expressing an individual position on an issue is not an official action. A motion and a second must be made in order to take any action. The answer to Mr. Slutzky's question is "yes", the Board can have a public meeting if it chooses to do so and it has permission to be at that location, and can do it in the way it wants to do it.

Mr. Slutzky said he would make a pledge, in advance, to neither make a motion nor second any motion because it would be inconsistent with the Board's normal practice. He asked how other Board members felt about the options.

Ms. Mallek asked if the meeting would have to be advertised. Mr. Davis said if the Board adjourns to that date, it would not require additional public notice. If a special meeting were called, there are notice requirements set out in the State Code and in the Board's Rules of Procedure.

Ms. Mallek asked if minutes must be taken. Mr. Davis said minutes would be required.

Mr. Boyd said he keeps coming back to the purpose of this meeting. He will state right now that he supports affordable housing issues. He cannot consider taking \$500,000.00 from some other group without the type of conservations the Board has in its budget input sessions. If that would suffice, someone can tell them that for him without him having to attend that meeting. What is the purpose of the Board members standing up in front of a bunch of people to say they cannot say "yes" or "no" conditionally? He thinks all the Board members would support that initiative.

Mr. Slutzky said he wants to go to this meeting in order to hear what they have to say and feel the vibe in the room. He wants to know how intensely committed these folks are.

Mr. Boyd asked how many people would really be coming up for three-minute conversations.

Mr. Slutzky said last year he could feel the room. There was a serious commitment and interest in the things that group was asking for.

Mr. Boyd said Mr. Slutzky can get that without being asked that question.

Mr. Rooker said a lot of the individuals who are IMPACT members will attend only this meeting all year. Some of the issues IMPACT is dealing with are complex and require more than a two-minute discussion in order to properly educate the people who are in the room for the first time. He has met and talked with members of IMPACT for more than an hour and the discussion was good. This year Board members will have only two minutes to speak, which is actually better than last year where the format was like a game show. There were statements made that "God will send the fire down to destroy the City" when they did not get a positive answer from Mayor David Brown. There is also the issue of melding of church and State somewhat.

Mr. Slutzky said this is a healthy dialogue. The church and State issue is a particular area of interest and concern to him. He thinks of this group as a public voice. He does not personally relate to them through the context of their religious orientation, although it is clearly an aggregation of religious organizations.

Mr. Rooker said the meeting was run somewhat as a religious meeting last year and his church actually participated.

Mr. Slutzky said when he met with IMPACT members recently he told them they have a process challenge. They are asking the Board to put a certain amount of money into a certain purpose and are neither telling the Board where to take the money from nor are they articulating a willingness to support an increase in taxes. He will use his two minutes to say that for IMPACT to come and say "gimme" without saying where the money is to come from does not have much meaning for him. This back and forth dialogue between elected officials and the community may be enriched so that next year they get better at providing the Board with constructive input. It might be a positive thing for the Board to share with them the limitations on what they are trying to do.

Mr. Boyd said if the Board went, listened and was not posed questions, it would not be a discussion and the Board would not have to conduct it as a meeting. Mr. Davis said if the Board members are present just as observers and do not participate at all it is not a violation of the Act since the Board is not there for the purpose of transacting business.

Mr. Boyd said the Board could feel the "vibe", hear the input, do all the things Mr. Slutzky wants to do, but not have it be a meeting that is presented by somebody else. Their whole idea is to get Board members on the record as saying "yes" or "no." That is all IMPACT wants.

Mr. Slutzky said he thinks there are two questions in front of the Board. The first is whether the Board will agree to reschedule the currently scheduled Monday night meeting to that Wednesday so the members who want to participate can do so.

Mr. Rooker asked about the schedule for the Monday and Wednesday night meetings. Mr. Tucker said the only item scheduled for March 10 is a work session on the Six-Year Highway Plan. The agenda for March 12 only has a public hearing on the Fifth Street-Avon Street Center petition.

Mr. Dorrier said he supports attending the IMPACT meeting.

Mr. Rooker said there are obviously some Board members who want to attend the meeting. He is in favor of combining the two meetings so that can take place.

Mr. Slutzky asked how everyone feels about having two Board members attend, such as was done last year, with the other Board members being in the audience, or should there be a Board meeting where all attend and participate.

Mr. Rooker said that decision can be made immediately prior to the IMPACT meeting. In other words, somebody could make a motion to adjourn and reconvene at that location and time if a majority of the members vote "yes" that would happen. Mr. Tucker said if a majority of the Board members attend that meeting they would need to vote to adjourn from that meeting to March 12.

Ms. Mallek asked if the Board should ask the IMPACT folks how this idea meshes with what they have planned for the meeting so there is not confusion that night.

Mr. Boyd said if the Board members went, simply listened to what they had to say and got the feeling of the people in attendance, that is different from being up on the stage and being asked questions for a "yes" or "no" answer. He likes Mr. Rooker's idea of bringing this up at the time of a motion for adjourning.

Mr. Slutzky said he thinks it would be nice to get it resolved today if that is possible.

Ms. Thomas commented that Mr. Davis' face is showing displeasure; she asked what he was thinking. Mr. Davis said he will restate the same thing that was said last year. If any Board member participates, and three of the Board members are present, they are probably in violation of the Open Meeting Act unless it is a meeting of the Board. If three Board members go to observe, and then any one of them participates in the meeting, then there is a meeting.

Mr. Rooker said the legal advice they received on this matter last year was that if the observers left before the discussion started it was not a meeting. Mr. Davis said if they left before the discussion started, then there would not be a meeting.

Mr. Rooker said that is what happened last year. His question is about the Board potentially adjourning to this forum. He does not think the Board can vote tonight to adjourn a future meeting to a future date.

Mr. Slutzky said he thinks the Board could agree it is going to do that.

Mr. Dorrier said it was a little awkward last year, because he was one of the people who left the room. He felt as if he was leaving in the middle of the game. He wanted to hear what the other people were going to say.

Mr. Rooker said he thinks the Board will make it possible for whoever wants to attend to do so. There will have to be a motion at the last Board meeting before that date to adjourn that meeting to March 10, and if a majority votes "yes", it will happen.

Mr. Slutzky said that is fair enough. As a cautionary observation though, if three of the Board members want to go and there are not enough votes to convene a meeting, that would be unfortunate.

Mr. Boyd closed this portion of the meeting at this time.

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

Ms. Susan Brenner said she is from IMPACT. Last year's IMPACT gathering was the group's first such meeting. They were happy with the results, but as an organization they are committed to learning and responding to all of the needs of the community. The IMPACT Board of Directors formed a "Process" Committee to collect feedback about the process so a number of changes have been made to address some of the concerns expressed last year.

Ms. Brenner said all proposals are being developed in dialogue with the decision makers both in the County and in the City. The decision makers will be briefed in advance about IMPACT's proposals. Those decision makers will have full information on the process and the agenda for March 10. IMPACT hopes all City Council members and Board of Supervisor members will be seated on stage; each will have two minutes to speak on either the Affordable Housing issue or the Dental Care issue. At the conclusion of each speaker's remarks, the IMPACT Chair will ask specific questions seeking clear "yes" or "no" answers. If they do not get a clear "yes" or "no", they will inform that person that they hear a "no".

Ms. Brenner said IMPACT understands this is not an official vote, rather an indication of a particular decision maker's position. Everyone, including the IMPACT presenters, will be held to an established time limit. In light of concerns about the Freedom of Information Act, well ahead of the March 10 meeting, they have informed the Mayor of the Charlottesville City Council and the Chair of the Albemarle County Board of Supervisors that IMPACT would like all of them to be present at this large public gathering at U-Hall on March 10. They continue the commitment they had last year to an open equitable process. IMPACT knows the Board of Supervisors shares their concerns about making this a livable County for all its citizens.

Mr. Tom Twomey said he wanted to respond to Mr. Rooker's statement. It is true that not everybody comes to IMPACT's final meeting, but recently they had 600 individuals attend a preliminary meeting. They continually communicate with their congregations. The vast majority of their members know what the issues are and the background of those issues. In the past, a variety of ways have been used to hear the voice of the people. IMPACT is going about this in a very polite and peaceful way. IMPACT is a large organization with over 28 member congregations participating; it has a board, a research committee, a finance committee, etc. He has worked with their housing research group and they start each meeting with a prayer. They like to remind themselves that everyone they meet is doing the best they can given their resources and the challenges they face. There is a housing crisis in this community which is a huge challenge for all. He recently talked to the liaison for homeless children in Albemarle County schools and was told that 320 children became homeless last year. Everyone needs to join together so important aspects of the community do not become liabilities. He asked that the Board members join IMPACT on March 10.

Mr. Eugene Rader said he has been a resident of Albemarle County for almost 35 years. During that time, he has seen the changes that have taken place in the County, some of them beneficial, and others less desirable. He has been involved with IMPACT for the last year. IMPACT is concerned about the lack of affordable housing in the Charlottesville/Albemarle area. In the 2003-2004 Albemarle School year 84 children became homeless. In the 2006-2007 School year that number increased to 320 children. Something is wrong. On March 10, IMPACT will be meeting at U-Hall with approximately 2,000 area citizens present. Everyone will hear testimonies, research reports and some proposals. He urges each Board member to be present to express his/her stance on affordable housing. He thanked the Board for this opportunity to speak and said he was looking forward to seeing each Board member in March.

Mr. Rooker said he wanted to say something before the next speaker comes forward. The question of how each Board member feels about affordable housing is a difficult question to address in just two minutes. Albemarle County is one of only a few counties in Virginia that actually has an Affordable Housing Plan which is embodied in its Comprehensive Plan. That Affordable Housing Goal requires that 15 percent of the rezoning units be built as either affordable housing units or that a comparable cash contribution is made to the affordable housing fund. Two projects in the County in the last seven years have been selected as the best Affordable Housing projects in the State. This Board has spent many hours discussing affordable housing and is very committed to that cause.

Mr. Morgan Butler, Southern Environmental Law Center, said he wanted to commend the Board on its recent adoption of the Cool Counties Declaration and its pledge to reduce both community and government greenhouse gas emissions by 80 percent by the year 2050. In addition to the obvious environmental benefit of cutting emissions, taking the initiative to begin now will give the County a head start when reductions become mandatory. In light of this pledge, he wanted to provide each of the Board members with a copy of the report SELC published recently detailing the critical link between climate change and land use and transportation patterns.

Mr. Butler said this report explores the interconnected relationship between sprawl, transportation, affordable housing and climate change. It outlines some promising areas for policy reform, both at the statewide level in Virginia and in localities. It points out that transportation accounts for over 40 percent of the carbon-dioxide emissions in Virginia. Sprawl is a major contributor to these high levels of transportation emissions and not only does sprawl result in the release of greenhouse gases through increased driving, but it also destroys the varied natural resources that help capture CO2.

Mr. Butler said the County deserves credit for taking a number of steps to help combat sprawl and climate change, including its efforts to promote more compact mixed-used neighborhoods that offer alternatives to solo driving and to guide growth closer to where infrastructure already exists rather than letting growth be dispersed throughout the rural areas. Their report discusses the need for localities to continually revise and update programs and it outlines a number of steps the County could consider to curb greenhouse gas emissions. He hopes the Board will find the report useful.

Mr. Jeff Werner, Piedmont Environmental Council, wished to speak about the situation with the Advance Mills Historic District. He does not have any problem with the disposition of the bridge or the plan for the old bridge. He has talked with Mr. Mark Holmet at VDHR (Virginia Department of Historic Resources) and knows they have offered comments. There are two issues. One of them is - what does it mean to be a contributing structure? Second - what is necessary for review of a VDOT project? He knows a lot of people say it is not really an old bridge, or an historic bridge, but that fact has already been determined. This is a historic district both on the National and State Registers. It is the whole landscape and the bridge is a contributing structure. According to Mr. Holmet, as with other eligible or listed sites,

there is no distinction between contributing and individually eligible or listed resources, so they are subject to this review.

Mr. Werner said another thing has been misunderstood; if VDOT does this, then they can get past the NEEPA Review in Section 106, which are the Federal level reviews. He handed to the Board some information about State corollaries; even if it was just VDOT's action on this bridge or on anything that would touch the right-of-way within the historic district (he referred to a memorandum agreement that was taken from VDOT's website), they are obligated to make contact with DEQ and VDHR to see if there are any concerns. VDHR might say the bridge is in a historic district and DEQ might state concerns as well. There are no subjective criteria in this, they are obligated to contact these agencies and at least initiate that first phone call.

Mr. Werner said he understands the complications with the Federal agencies involved because it elevates it to Section 106 and NEEPA, and he thinks the hope is that they can be combined into one. He has been troubled by this whole portrayal that if it gets decoupled from Federal dollars, then VDOT can do something without the necessary reviews. That is just not the case. He is not arguing to preserve the bridge, or save the bridge, or change the bridge, but it is the integrity of the historic district as a whole. It is not just that little bridge, it is not just a building, it is the whole thing and VDOT is obligated to contact these State agencies for a project that is proposed in it. He hopes the information he handed out proves to be helpful the next time VDOT tries to tell the Board it is somebody else's fault for not doing something.

Agenda Item No. 11. Consent Agenda. Ms. Thomas **moved** for approval of the consent agenda. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Item 11.1. ZMA-2007-007, McCauley Crossing (Sign #66).

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

Proffers: Yes.

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

Entrance Corridor: No.

Location: 3226 Proffit Rd, Earlysville, VA, 22911, property is on the south side of Proffit Rd, approximately 1,000 feet east of US 29 in the Hollymead Community.

Tax Map/Parcel: 32-35.

Magisterial District: Rivanna.

The applicant has requested that this public hearing be deferred to April 9, 2008.

The request to defer this public hearing until April 9, 2008, was approved by the vote set out above.

Agenda Item No. 12. **Public Hearing** to consider granting an easement to Hurt Investment Company across property owned by the County known as Peyton Drive located on Tax Map 61W, immediately south of Tax Map Parcel 61W-03-6A1. This easement is necessary for the construction and maintenance of sanitary sewer lines by Hurt Investment Company on its property at Tax Map Parcel 61W-03-6A1. (Notice of this public hearing was advertised on February 4, 2008.)

Mr. Tucker said Hurt Investment Company is constructing a building on Greenbrier Drive near the intersection of Commonwealth Drive. They need to connect a four-inch sanitary sewer lateral from the new building to the main sewer. They have asked the County to grant them a 20-foot easement into a portion of Peyton Drive to allow the lateral to connect to the Peyton Drive sewer main. Virginia Code Section 15.2-1800 requires that the Board hold a public hearing prior to conveying any interest in County-owned real estate. Because of the noted problems connecting the lateral to Greenbrier Drive sewer main, the County and Albemarle County Service Authority staff advised Hurt Investment to pursue extending the lateral to the Peyton Drive sewer main. This easement will not affect the ability of Peyton Drive to be accepted into the State System of Secondary Highways.

Mr. Tucker said staff recommends that at the conclusion of the public hearing, the Board approve the proposed easement and authorize the County Executive to sign the Deed of Easement on behalf of the County.

Mr. Boyd said if there were no questions for Mr. Tucker, he would open the public hearing. He asked the applicant to speak first.

Mr. Steve Melton, a representative from Hurt Investment Company, offered to answer questions.

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

Mr. Rooker **moved** that the Board approve the following easement and authorize the County Executive to sign the deed of easement on behalf of the County. Mr. Slutzky **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

(Note: The Deed of Easement, as approved, is set out in full below.)

Tax Map 61W (Peyton Drive right-of-way)

This deed is exempt from taxation under Virginia Code §§ 58.1-811(A)(3) and 58.1-811(C)(4).

DEED OF EASEMENT

THIS DEED OF EASEMENT, is made and entered into on this _____ day of _____, 2008, by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, Grantor, hereinafter referred to as the "County," and the **HURT INVESTMENT COMPANY**, a Virginia corporation, Grantee, whose address is 195 Riverbend Drive, Charlottesville, Virginia, 22911, hereinafter referred to as the "Grantee."

WITNESSETH:

That for and in consideration of the sum of One Dollar (\$1.00), cash in hand paid, receipt of which is hereby acknowledged, the County does hereby GRANT and CONVEY with SPECIAL WARRANTY to the Grantee, subject to the terms and conditions set forth herein, a sewer line lateral easement and right-of-way (hereinafter, the "Easement") to construct, install, maintain, repair, replace and extend a sewer line lateral consisting of pipes and appurtenances thereto, over, under and across the real property of the County known as Peyton Drive in Albemarle County, Virginia, and more particularly described as follows:

A sewer line lateral easement in the public right-of-way known as Peyton Drive, located off of Greenbrier Drive in Albemarle County, Virginia, as shown on the plat prepared by Dominion Development Resources, LLC, entitled "Plat Showing New 20' Private Lateral Easement In The Closed Right-Of-Way Of Peyton Drive, Albemarle County, Virginia", dated September 4, 2007, (the "Plat"), identified as "New 20' Private Lateral Easement."

Reference is made to the Plat, a copy of which is attached hereto (on file) to be recorded herewith, for the exact location and dimensions of the sewer line lateral easement hereby granted and the property over which the Easement crosses.

This Easement shall be subject to the following:

1. Location of Improvements. The Grantee shall construct, install, maintain, repair, replace and extend improvements (hereinafter, the "Improvements") only within the Easement. The Improvements shall be underground.
2. Right to Enter; Ingress and Egress. The Grantee shall have the right to enter upon the Easement for the purpose of installing, constructing, maintaining, repairing, replacing and extending the Improvements within the Easement. The Grantee also shall have the right of ingress and egress thereto as reasonably necessary to construct, install, maintain, repair, replace and extend the Improvements. If the Grantee is unable to reasonably exercise the right of ingress and egress over the Peyton Drive right-of-way, the Grantee shall have the right of ingress and egress over the property of the County, if any, adjacent to the right-of-way.
3. Excavation and Restoration. Whenever it is necessary to excavate earth within the Easement, the Grantee shall backfill the excavation in a timely, proper and workmanlike manner so as to restore the surface conditions to the same condition as they were prior to excavation, including the restoration of all paved surfaces that were damaged or disturbed as part of the excavation.
4. Vegetation and Obstructions. The Grantee may cut any trees, brush and shrubbery, remove obstructions, and take other similar action reasonably necessary to provide economical and safe installation, operation and maintenance of the Improvements. The Grantee shall replace or reimburse the County for the cost of replacing or repairing any County-owned trees, brush, shrubbery or obstructions that are removed or otherwise damaged in the installation, operation and maintenance of the Improvements.
5. Ownership of Improvements. The Improvements shall be the property of the Grantee.
6. Indemnification and Hold Harmless. The Grantee shall at all times indemnify and save harmless the Grantor, its employees, agents, officers, assigns, and successors in interest from any claim whatsoever arising from Grantee's exercise of rights or privileges stated herein.
7. Obligations of the Grantee if and when Peyton Drive is Proposed for Acceptance or is Accepted into the State-Maintained or Other Publicly-Maintained Street System. If and when

the segment of Peyton Drive in which the Easement lies is proposed for acceptance or is accepted into the state-maintained or other publicly-maintained system of highways, the Grantee shall comply with the following:

a. Permits. The Grantee shall obtain all permits required by the Virginia Department of Transportation (hereinafter, "VDOT") or such other public entity that becomes responsible for the maintenance of Peyton Drive (hereinafter, "such other public entity") to authorize the Improvements to exist or remain within the Peyton Drive right-of-way (hereinafter, the "Permits") and shall comply with all applicable requirements of VDOT or such other public entity.

b. Acts Required of Grantee to Assure Acceptance of Peyton Drive into State-Maintained or Publicly-Maintained System. Until the Grantee quitclaims its interest in the Easement to VDOT, such other public entity, or the County as required in conjunction with the acceptance of Peyton Drive into the state-maintained or other publicly-maintained system, the Grantee, at its sole expense, shall, promptly alter, change, adjust, relocate or remove the Improvements from the Peyton Drive right-of-way if VDOT or such other public entity determines that such alteration, change, adjustment, relocation or removal is required in order for VDOT or such other public entity to accept Peyton Drive into the system. Neither the County, VDOT, nor such other public entity shall be responsible or liable to the Grantee or its successors or assigns for any costs associated with such alteration, change, adjustment, relocation or removal of the then-existing Improvements. In addition, neither the County, VDOT, nor such other public entity shall be obligated to compensate or reimburse the Grantee or its successors or assigns for any increased or decreased cost or value associated with either the Improvements or Peyton Drive resulting from such alteration, change, adjustment, relocation or removal.

c. Continuing Obligations of Grantee to the County. After VDOT or such other public entity has issued the required Permits, the Grantee shall be subject to the following conditions, notwithstanding any quitclaim of its interests to VDOT or such other public entity, and these conditions shall be continuing obligations of the Grantee:

1. The Grantee, to the extent authorized by law, shall at all times indemnify and save harmless the County, its employees, agents, officers, assigns, and successors in interest from any claim whatsoever arising from the Grantee's exercise of rights or privileges stated herein.

2. In the event that the County or such other public entity becomes responsible for the maintenance of Peyton Drive and the County or such other public entity requires, for its purposes, that the Grantee alter, change, adjust, or relocate the Improvements, across or under Peyton Drive, the cost to alter, change, adjust, or relocate the Improvements shall be the sole responsibility of the Grantee. Neither the County nor such other public entity shall be responsible or liable to the Grantee or its successors or assigns for any costs associated with altering, changing, adjusting or relocating the then-existing Improvements as may be required herein. In addition, neither the County nor such other public entity shall be obligated to compensate or reimburse the Grantee or its successors or assigns for any increased or decreased cost or value associated with either the Improvements resulting from such alteration, change, adjustment or relocation.

8. Covenants Running with the Land. The terms and conditions set forth herein shall be covenants running with the land.

The County, acting by and through its County Executive, duly authorized by action of the Albemarle County Board of Supervisors on February 13, 2008, does hereby convey the interest in real estate made by this deed.

By its acceptance and recordation of this Deed of Easement, the Grantee acknowledges that it, its successors and assigns, shall be bound by the terms herein.

WITNESS the following signatures.

GRANTOR:

COUNTY OF ALBEMARLE, VIRGINIA

By: _____

Robert W. Tucker, Jr., County Executive

GRANTEE:

HURT INVESTMENT COMPANY

By: _____

Name: _____

Title: _____

Agenda Item No. 13. **Public Hearing:** SP-2007-047, Graceworks Expansion (Signs #1 & 56).

Proposed: Amend SP-2001-24 to expand after school care from 2 days/week to 4 days/week; increase enrollment (max 10 per day); on three parcels with total of 58.469 acres.

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

Section: 10.2.2(5) Private Schools.

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

Entrance Corridor: No.

Location: 1040 Owensville Road (Route 678) west of Andrew Lane.

Tax Map/Parcels: 58-82; 58-76B; 58-77.

Magisterial District: Samuel Miller.

(Notice of this public hearing was advertised in the Daily Progress on January 28 and February 4, 2008.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this petition is for expansion of an existing after-school program located off of Owensville Road. There are three parcels under the ownership of this applicant that are subject to the special use permit. Currently 15 children can be enrolled in the program and can attend two days a week. This special use permit, based on the Planning Commission's recommendation, would allow 10 children at any time four days a week. The applicant has now requested 14 children. That is based on the number of children they can carry in the van used to bring them to the site.

Mr. Cilimberg said there was a Schematic Concept Plan initially submitted by the applicant and the Planning Commission asked that it be included as part of the special use permit. The Board has been furnished with a copy of a detailed plan showing how the applicant sees farm operations and agricultural activities which also take place on the property. In the staff's report it was noted that these two plans need to be combined so everything is noted in one document that can be referenced. There are probably a couple of changes in the specifics of both this plan and that for the agricultural activities that would be a result of that final plan. He then showed a rendering of the general property where the after-school activities would take place. It notes some of the structures in the area of the after-school program on the farm.

Mr. Cilimberg said concern has been expressed about erosion activities on the site. Staff attempted to address that concern through a condition. At the Planning Commission's public hearing the applicant said these activities are in association with farming and agricultural activities and are not part of the school activities. The Commission acknowledged that if they are not a part of the school activities they should not be part of the conditions placed on the school, but instead there should be a condition that detailed through a plan their after-school activities versus other activities onsite.

Mr. Cilimberg said staff found favorable findings as follows: there is a community service being provided by this expanded operation; it would not compromise the integrity of the community or the rural area; and, there are no additional structures proposed. One factor of concern was the land disturbance that has resulted in stream sedimentation. The Planning Commission addressed in Condition No. 6 how future activities should be taken care of and also the potential for erosion and sediment control needs in those activities. That condition requires provision of a Schematic Concept Plan in a form acceptable showing existing and proposed locations of improvements and the activity areas of the school, plus the existing and proposed locations of agricultural activities not related to the school including agricultural ponds, lakes, dams and roads.

Mr. Cilimberg said those activities shall be in general accord with the plan and the Zoning Administrator may approve revisions to the plan to allow compliance with the Zoning Ordinance. Based on that plan staff will know when any new activity takes place and whether it is associated with the after-school program - that could kick in a requirement for E&S measures versus what would be agricultural as identified on the plan. This recommendation did include allowing 10 children on the site at any time; staff has now noted the applicant's request for 14 children and it feels that maximum number is acceptable. Should the Board agree, there would be a new Condition No. 1 stating "A maximum number of 14 children shall be allowed on the site at any time." He offered to answer questions.

Mr. Boyd said he is curious about Condition No. 2 which refers to adult supervision. He asked if there are Virginia State Standards covering that number. He asked why the Planning Commission felt it necessary to add that condition. Mr. Cilimberg said this condition carried over from the prior approval.

Mr. Boyd said if there were no more questions for staff, he would open the public hearing and asked the applicant to speak.

Mr. Joe Simpson, attorney and friend, was present on behalf of the Bakers. With respect to the request for approval of 14 children, it is his understanding that the number of children in the program on any given day will not change. The only change is that instead of two days per week it will be four days with the same number of children on the property as are on the property now. Because the plan for the school has already been submitted along with the farm plan, he does not think that Condition No. 6 is necessary. If the Board is going to implement Condition No. 6, he would suggest that the first sentence end with "areas of the school" and not include "and the existing and proposed locations of the agricultural activities not related to the school including agricultural ponds, lakes, dams and roads." He said having that condition as part of the special use permit would make the by-right agricultural activities conditioned and restrictive which would be inappropriate and not consistent with the ordinance.

Ms. Julie Baker said she is the director and founder of Graceworks. It has worked with disadvantaged children for almost seven years. They hope to expand their operation in order to serve more children. Graceworks would like to begin serving kids out of trailer parks such as the one on Rio Road across from the Rock Store. These trailer parks are basically substandard housing and these kids do not have any place to go after school that is positive. Graceworks' mission is to try and provide these

children with outdoor and other experiences. Farm experiences are only part of what these children will do; for instance, this week the kids will be taking swimming lessons at ACAC. Everyone at Graceworks believes that getting these children some outside experiences is important because they do not usually have them. Ms. Baker offered to answer questions.

Mr. Boyd asked what age group this program serves. Ms. Baker says she tries to work with third through fifth graders.

Mr. Boyd said she is providing more of a day-care program than an after-school program. Ms. Baker said was correct.

Ms. Thomas asked if more children are enrolled than there on the grounds at any one time. She wondered if 14 is an okay number. Ms. Baker said they usually have 10 kids at a time. Recently they had a boy in the program who moved away creating an opening. She was working with two school guidance counselors and both placed a child in the program so they ended up with 11 children. However, since their van can accommodate 14 children, she would like to be able to take children into the program if there is the need.

Mr. Slutzky asked if 14 is enough. Ms. Baker said 14 is enough at this time. Because their van holds 15, she would like to be able to take 14 if they are put into the program.

Mr. Boyd said he had a question about the three adult supervisors. He asked if they had put that restriction on themselves. Ms. Baker said she is not sure. She does not think it was a Federal law, but was something they planned on doing.

Mr. Rooker said he does not know why this is an issue at all. This is a land use decision, not a decision about how they operate their school.

Ms. Thomas said she did not think it was something that had to do with the County. Ms. Baker said the County's after-school program has one adult supervisor for every ten children, so Graceworks is much smaller.

Mr. Rooker asked if having only three adult supervisors creates any problems for them. Ms. Baker said it does not.

Mr. Boyd asked if they would be out of compliance with the condition if one person on staff was sick one day. Ms. Baker said in that case they would try to put a substitute in or get a volunteer.

Mr. Rooker said again he was not sure why that should be a part of this approval because this is a land use decision and not a decision about how they operate their school.

Ms. Mallek said Mr. Simpson had mentioned deleting Condition No. 6 and separating the uses of the farm and the children's activities. She wondered where all of this description came from. Ms. Baker said at the Planning Commission meeting there was discussion about Graceworks itself and exactly what they do. The hearing was more based on what they had done as individuals on their land. Some people were upset because of some of the things they have done as individuals. She wanted to make it clear that Graceworks is separate from what she and her husband do as individuals on their land. She said all of the photographs in the staff's presentation were of land that Graceworks does not use. It is important to note that Graceworks does some farming activities, but they are small compared to the hundreds of hours she spends with these children. If people are unhappy with something they have done personally they should address that personally, but not use the after-school program to get at something else. As a matter of principle, Graceworks is not doing farm work. There was previously discussion at a Board of Supervisors' meeting that if the children picked an apple from the farm land that would mean Graceworks was using the land. As she has said, they spend only about an hour on the property doing things that could be called farming activities.

Mr. Slutzky asked if staff had concerns about some of the activities that have occurred on the residential side of this property. Is staff saying the owners of this property have not been good stewards of the land? Because the Board has this application in front of it, is there a tool that can be used to transcend the owner's by-right circumstance and make them do what they should be doing? Mr. Cilimberg said staff's concern was about activities that had impacted, environmentally, the land. When this initially was before the Board, the special use permit condition concerned the requirement for an E&S plan for anything in the future. The applicant said some of the problems that occurred on the property were tied to the after-school program when they had nothing to do with the after-school program. There are other activities associated with their use of the property for farming and agriculture. The Planning Commission accepted the applicant's position. It said to replace staff's recommended condition with one which identifies what is associated with the school versus what is part of their normal agricultural activity; therefore, in the future, if there is land-disturbing activity, staff will know what it is related to.

Mr. Slutzky asked if the things being done by the owners of the property independent of their relationship with the school are problematic and things the County does not want to see happen. Mr. Cilimberg said if the activities are agricultural in nature they do not fall under the County's E&S controls. The initial recommendation was to address that by placing a condition on the special use permit, but it was noted at the Planning Commission's hearing that it would be an improper condition because this special use permit only concerns the school.

Ms. Thomas said when the Planning Commission was considering this petition, there was no way for it to look at agricultural soil-disturbing activities and say they needed to do something better. The Board has now passed an erosion impact area ordinance with the Stream Buffer Ordinance, so there is a way now of declaring an erosion impact area. The Board can apply standards demanding that they deal with the erosion problem. She said the applicant might want assurance that what is school is not going to be regarded as agriculture and is separate from some erosion impact edict and activities. She did not understand Condition No. 6 and had to call staff to ask its meaning. When she got the explanation that it was separating school uses from agricultural uses, she thought it sounded like something that was useful all the way around.

Mr. Rooker said a good reason for having this condition, whether or not it ends with the word "school", is because it says the location of the improvements and activities shall be in general accord with the plan. Without having that wording in the condition, there would be no plan to compare the improvements to. He thinks a plan is necessary. This is a useful condition in order to prohibit improvements not contemplated when the special use permit was approved. Mr. Cilimberg said the owners have submitted a plan but staff has not determined that it is acceptable. He talked to Ms. Joan McDowell, Planner, about one activity in this plan for basketball. That activity is proposed for a parcel that is not part of the special use permit. The applicant did not include it in their application so that is why staff cannot say this plan is acceptable now. That is why the condition is written as it is.

Mr. Slutzky said it sounds like the condition is not particularly harmful and it gives some protection to the County. He asked if there is any reason for the Board to withdraw it or are the Board members fine with leaving Condition No. 6 in the conditions. Mr. Simpson said with respect to Condition No. 6, the idea that the plan show where the school activities will take place is not a problem. The problem with Condition No. 6 is that it goes on to say that "for any proposed agricultural activities or uses" but those are by-right uses so to require the applicant to lay out proposed agricultural activities violates the ordinance.

Mr. Rooker said he agrees. He thinks there should to be a period after the word "school".

Ms. Thomas said the condition should then include the sentences which follow that period.

Mr. Rooker said that is correct, the condition should include everything else. Mr. Simpson said the following sentences are fine, only the part that refers to agricultural activities is not.

Mr. Slutzky said he does not have a problem with Condition No. 2. He bets it was connected to the original permit because their neighbors were concerned about a bunch of kids running around without adult supervision, and that would be considered a land use issue. He does not mind dropping the number down to two adults, just in case they have some absenteeism. If there is some State or Federal requirement, they will want to comply with that anyway.

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

Ms. Thomas immediately **moved** for approval of SP-2007-047, Graceworks, subject to the conditions recommended by the Planning Commission, but making the following changes: Change Condition No. 1 to read: "A maximum of 14 children shall be allowed on the site at any time." Change Condition No. 2 to read: "A minimum of two adults shall supervise the children at all times." Change Condition No. 6 to read: "Within thirty (30) days after the date of approval of Special Use Permit 2007-00047, the applicant shall submit a schematic concept plan of the property (the "Plan") in a form acceptable to the Director of Planning that shows the existing and proposed locations of the improvements and activity areas of the school. The improvements, scale and location of the improvements and activity areas authorized by Special Use Permit 2007-00047 shall be in general accord with the Plan. However, the Zoning Administrator may approve revisions to the Plan to allow compliance with the Zoning Ordinance."

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

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

NAYS: None.

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

1. A maximum of fourteen (14) children shall be allowed on the site at any time;
2. A minimum of two (2) adults shall supervise the children at all times;
3. The children shall be transported to and from the property as a group. The pick up and drop off of individual children shall not be permitted except for medical, family and weather-related emergencies;
4. The days of operation shall be limited to four (4) days per week, Monday through Thursday, and the hours of operation shall be limited to 2:30 P.M. to 5:30 P.M. on the days of operation;
5. Expansion of the facilities for the private school shall require an amendment to this special use permit; and
6. Within thirty (30) days after the date of approval of Special Use Permit 2007-00047, the applicant shall submit a schematic concept plan of the property (the "Plan") in a form acceptable to the Director of Planning that shows the existing and proposed locations of the improvements and activity areas of the school. The improvements, scale and location of the improvements and activity areas authorized by Special Use Permit 2007-00047 shall be in

general accord with the Plan. However, the Zoning Administrator may approve revisions to the Plan to allow compliance with the Zoning Ordinance.

(Not Docketed: Mr. Rooker said that earlier today the Board talked about stream crossings and agricultural activities. He said Mr. Mark Graham has told the Board it could limit agricultural activities in stream areas. The Board has consistently been operating under the impression that it has significant limitations over the curtailment of agricultural activities. At some point he would like for the County Attorney to provide the Board with something in writing as to present limitations as to the Board's ability to require erosion and sediment control plans, require stream buffer protections, etc. with respect to agricultural activities.

Ms. Thomas said at that same meeting, the Board might ask for a presentation by the Soil and Water Conservation District Director. That organization has a successful record in Albemarle County. The difficulty of the people who just left is that they are trying to do farming activities in the midst of a residential area. They are being watched by a hundred eyes so everything they do is noticed and criticized. She is not saying the critics are not right; some activities have led to terrible erosion problems. This is an example of what happens when residential and agricultural are side by side. It does not work and this is a real example of the ways it does not work.

Ms. Mallek said that is why it is good that agriculture had standing as the priority activity.

Mr. Slutzky said that is true unless the agricultural activity is disruptive of the integrity of ecological systems, which may be the basis of some of the neighbors' extra scrutiny.

Ms. Thomas said it is, but it is because somebody is out there at midnight and they do not know about it.

Mr. Boyd said even though he appreciates this discussion, there are still public hearings to be conducted, and people are waiting to be heard.

Agenda Item No. 14. **Public Hearing:** SP-2007-050, Carters Mountain (ATC) - Verizon Tier III PWSF (Signs #75 & 80).

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

Zoning Category/General Usage: RA, Rural Areas; Mountain Overlay District.

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

Comprehensive Plan - Land Use: Rural Area uses in Rural Area 4.

Location: Carters Mountain Trail approximately 1 mile south of the intersection with Thomas Jefferson Parkway (Route 53).

Tax Map/Parcel: 91-28.

Magisterial District: Scottsville.

(Notice of this public hearing was advertised in the Daily Progress on January 28 and February 4, 2008.)

Mr. Bill Fritz, Chief of Current Development, summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this is a request to locate additional antenna for a personal wireless service facility on a tower that currently exists in the orchard on top of Carters Mountain. It is an existing 270-foot tower; this request includes a proposal to modify the provisions of the ordinance so they do not have to paint the antenna the same color as the tower and to not flush-mount the antenna. The applicant would like to use an array antenna (he showed an example on the screen).

Mr. Slutzky asked if that works better. Mr. Fritz said it allows the users more flexibility. They would be able to use different antenna and it is their preferred method of attachment. This request involves the construction of an additional storage building. Also, they do not want to submit a Tree Conservation Plan, and staff supports that request for obvious reasons. He showed a slide of the Site Plan, which indicates the location of the tower, the existing structures, and the location of the additional construction. The existing tower is 270 feet tall and the new antennas would be located at the 220 foot height (Note: the Staff report noted it was at 170 feet but it is actually at 220 feet). The Planning Commission heard this request and recommended approval by a unanimous vote.

Mr. Fritz said the Planning Commission also supported the three modifications as well.

1. Modification of the flush-mounting requirements in order to allow the installation of a full sectored antenna array.
2. Modification of the requirement to paint the antennas to match the existing structure because the tower's colors are not discernible from views that are off of the property.
3. Modification of the requirements for a tree conservation plan as no additional land disturbance is being proposed.

Ms. Thomas asked the applicant's objection to painting the array a color to match the pole. Mr. Fritz said that he would let the applicant answer that question. Staff supported the request because at the distance from any point where it can be seen the color will not make a difference.

Mr. Boyd said if there were no other questions for staff, he would open the public hearing and ask the applicant to speak first.

Mr. Steve Blaine said he is representing Verizon along with several members of their zoning team. He said the staff's report and the Planning Commission's recommendations provide sufficient findings for the Board to approve the special use permit. As to question about painting, he believes that is their preference because it would be impossible to see the antenna array from locations off of the property. But, if it is the Board's preference, they will paint the antenna array a color that matches that segment of the tower. The original special use permit approved for this tower expressly anticipated that there would be collocations on the tower. The applicant feels this application meets the intent of the County's Wireless Policy to use collocation opportunities. Lastly, they are proposing a functional equivalent to the Nextel array. He offered to answer questions.

Mr. Slutzky said painting it does not change its effectiveness and it is not a huge cost. Does the applicant just not want to be bothered? Mr. Blaine said it is an added cost and they felt it was not needed, but if there is a strong preference, it can be painted.

Mr. Slutzky said he thought there might have been a technical reason. He does not think it is necessary. Mr. Blaine said painting has to be maintained since paint will peel or chip at some point.

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

Mr. Dorrier immediately **moved** to approve SP-2007-050, Carters Mountain Verizon Tier III PWSF, subject to the conditions recommended by the Planning Commission.

Ms. Thomas asked if Mr. Dorrier wanted to add a condition that the array be painted to match the section of the tower where it will be located.

Mr. Dorrier said he does not want such a condition.

Mr. Davis said two actions need to be taken. The first is the approval of the special use permit with the recommended three conditions. The other action, which could be included in the same motion, is to also approve the modifications which deal with the color issue that Ms. Thomas just mentioned. The modification would allow it not to be the same color.

Mr. Dorrier said he wanted to add to his **motion** approval of the three modifications.

Mr. Rooker asked if there could be separate motions. Mr. Davis said if anyone cares to vote on them differently, there should be, but if everyone is in agreement, it could all be in one motion.

Ms. Thomas said she would like for the colors to be the same. She thinks the photograph showed that marginally it does make a difference.

Mr. Davis said if that is the case it should be handled with separate motions. The first motion, the one Mr. Dorrier made, is for approval of the special use permit with the three conditions recommended. If there is a second motion it would be taken up separately.

Mr. Boyd asked if there was a second to Mr. Dorrier's motion. David Slutzky **seconded** the motion.

Roll was called on Mr. Dorrier's motion, and the motion carried by the following recorded vote:

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

NAYS: Mr. Rooker.

(Mr. Rooker said he is going to vote against this petition for the same reason he voted against the tower on Route 29 last week. He said it is a non-conforming tower in a highly visible spot. Also, there will be an array of antenna not flush-mounted which is what the policy requires.)

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

1. All work shall be done in general accord with what is described in the applicant's request and site construction plans, entitled "Carters Mountain Crown Orchard property, with a final zoning drawing submittal date of 09/17/2007;
2. Additional antennae installation on this tower will require a special use permit; and
3. The facility will have only one (1) outdoor light fixture (that complies with the County's lighting requirements) attached to the proposed shelter to be used by Verizon's technical operations staff only when night-time maintenance is necessary.

Mr. Davis said the Board now needs to take action on the request for three modifications to the policy. It can be done in one motion or the Board can vote on each individually.

Mr. Boyd asked if the members want to vote on these modifications individually. He favors voting on them individually.

Mr. Dorrier then **moved** that the Board approve a modification of Subsection 5.1.40(C)(3): Modification of the flush-mounting requirements to allow the installation of a full sectored antenna array.

Ms. Thomas said since she voted against something similar to this not long ago, she will point out that this facility is in a tower farm so it is less visible than the location the Board previously voted on; she does not mind having the array.

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

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

Mr. Dorrier then **moved** that the Board approve modification of Subsection 5.1.40(c)(4)&(5): Modification of the requirements for a Tree Conservation Plan, as no additional land disturbance is proposed.

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

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

Mr. Dorrier **moved** that the Board approve modification of Subsection 5.1.40(c)(3): Modification of the requirement to paint the antennas to match the existing structure.

Mr. Rooker asked if the motion approves their request so they are not required to paint to match the color of the tower.

Mr. Slutzky asked if voting "yes" means the applicant will not have to paint the antenna.

Mr. Rooker said voting "yes" actually means "no."

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

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

Agenda Item No. 15. **Public Hearing:** SP-2007-051, Peacock (Weber Property) - Verizon Wireless PSWF (Sign #82).

Proposed: Installation of a personal wireless facility with a 100-foot tall treetop monopole tower.
Zoning Category/ General Usage: RA - Rural Areas; EC - Entrance Corridor Overlay.
Section: 10.2.2(48), Special Use Permit, which allows for Tier III personal wireless facilities.
Comprehensive Plan - Land Use: Rural Area in Rural Area 3.
Location: On Dry Bridge Road (Rt 708) between I-64 and Dick Woods Road (Rt 637).
Tax Map/Parcel: 07300-00-00-031D0, contains 10.31 acres.
Magisterial District: Samuel Miller.

(Notice of this public hearing was advertised in the Daily Progress on January 28 and February 4, 2008.)

Mr. Fritz summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request is for a personal wireless facility located on Dry Bridge Road (Route 708) just south of I-64. This request would qualify as a Tier II facility because the proposal is to construct a tower not more than ten feet taller than the tallest tree within 25 feet. However, because there are existing facilities on the property within 200 feet, it falls into a Tier III category which requires that the Board approve a special use permit, otherwise, it could have been approved by the Planning Commission. This will be the fourth facility within 200 feet. The facility is located at the northern end of the property (he referred to the map on the screen and noted the structure already in place which houses the electronics).

Mr. Boyd asked if there was a balloon test. Mr. Fritz said there was. He showed some photographs of the balloon test and explained what was observed in that test. He noted that I-64 could be seen in the background. There is a structure currently on the property, but the applicant will be building another structure in which to locate some additional equipment.

Ms. Thomas asked why they were talking about 10 feet instead of seven feet above the highest tree. Mr. Fritz said the applicant requested 10 feet. The ordinance allows for the requested 10 feet, and it can be approved at 10 feet above as a Tier II facility if the applicant demonstrates that there is no substantial difference in visibility between seven and 10 feet. That was why the applicant picked 10 feet; they were trying to keep it in the Tier II realm.

Mr. Fritz said the Planning Commission unanimously recommended approval of this petition. He noted that staff originally recommended four conditions of approval, but during the Commission's meeting staff noted that Condition No. 2 and Condition No. 3 were not necessary; the Commission then recommended approval of the petition with only two conditions. Those conditions are not necessary because Section 5.1.40 of the Zoning Ordinance applies; this request would have to comply with that section making those conditions redundant. He offered to answer questions.

Mr. Rooker asked the height limitation on the other three towers. Mr. Fritz said he does not think that was in the report, but he believes the first one is at 10 feet, but he will get the answer to that question.

Ms. Thomas said the towers are most visible from a piece of private property in the area, so staff did not go up there and take a photograph. That is why she is asking about the seven feet as opposed to the 10 feet. Also, anyone driving on Dry Bridge Road can see the ground equipment in the wooden building. She told the applicant for that particular tower that they should make it look like a horse run-in shed so it would match the rural setting. A metal ground equipment building would look out of place. When a motion is made she will want to include a farm type of structure to enclose the ground equipment. She is not sure how to word such a condition. Mr. Fritz said Condition No. 2 was intended to address that issue and is part of the plans submitted to staff. The applicant submitted plans entitled "Equipment Camouflage Building Renderings."

Mr. Rooker asked the meaning of PWSF. Mr. Fritz said that stands for Personal Wireless Service Facility.

Mr. Rooker asked if the equipment is included in that term. Mr. Fritz said a Personal Wireless Service Facility is treated as everything from the State road to the top of the tower. It is the accessways, the utilities, the shed, the structure, and the antennas, about everything.

Mr. Rooker asked if when it says it would be installed as shown on the plans if that refers to the plans included in the application package. Mr. Fritz said "yes."

Mr. Boyd said if there were no further questions for staff, he would open the public hearing and ask the applicant to speak first.

Mr. Steve Blaine, representing Verizon Wireless, said it is important to their service objective to reach 10 feet above the reference tree. The reason is that part of the signal attenuation could be interrupted by tree limbs or tree canopy. Some previously approved facilities are now old enough that trees are getting taller so the bottom of the antenna panels is just above or a little below some of the foliage. Through field investigation they are trying to achieve something which makes no material difference. Where staff agrees there is no material difference, it can then meet both Verizon's coverage objectives and the County's objective of trying to mitigate visibility. In terms of the balloon test, from most vantage points visibility is not material, and that is the case here.

Mr. Blaine said in terms of the facility that encompasses the equipment, it is more visible than the antenna itself. Included in the packet are some elevations showing how the standard stock equipment shed can actually be "accessorized" with wooden or hardy plank panels to replicate a farm run-in structure. The other option would be to actually build a false structure around the standard equipment shed but that would result in a larger building. In order to achieve the farm look they recommend accessorizing the standard structure. In the Board's packet today there is a section called "Equipment Camouflage Building Renderings" which can be referenced in a motion. He said it can be painted almost any color. He then offered to answer questions.

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

Ms. Thomas immediately **moved** for approval of SP-2007-051, Peacock (Weber Property) - Verizon Wireless PWSF with a slight modification to Condition No. 2 that "installation shall be installed as shown on the plans as approved by County staff including Equipment Camouflage."

Mr. Rooker **seconded** the motion. He asked Mr. Fritz if he had found anything that indicated the height of the other towers. Mr. Fritz said he had not.

Mr. Rooker said he will not object to this petition, but would like to know the height of the other towers. The standard is seven feet so the exception is supposed to be 10 feet based upon a showing which he thinks has been made. He wants to make certain the Planning Commission has not just changed the standard. Recently, it seems the Board has seen several of these requests come forward at 10 feet. There was some debate about the last one at 10 feet. Mr. Fritz said the Commission is currently discussing the requests for 10 feet versus seven feet.

Ms. Thomas said the Board fought long and hard to get that seven feet. Mr. Fritz said the Planning Commission has tentatively scheduled a work session on April 22 to go over the Personal Wireless Service Facility. He does not think any of the present members of the Commission were members when this policy was adopted.

Ms. Thomas asked that staff make sure the Board knows about that meeting because some members of this Board were not Board members at that time as well.

Mr. Davis said as concerns the building, he asked if Ms. Thomas had a preference as to Front Elevation "A" or Front Elevation "B."

Mr. Rooker said Front Elevation "B" is the smaller one.

Mr. Davis said "A" is the smaller while "B" is the one that shows the structure built around "A." He said if it is not specified, staff could determine what is consistent with the plans.

Ms. Thomas said she prefers the smaller but she also hates to tie people down if it ends up not working. She was going to say "including equipment camouflage in a farm appropriate building." Mr. Davis said as they have submitted the plans that could be "A" or "B."

Ms. Thomas suggested the words "small farm appropriate building."

Mr. Rooker said he would **second** the revision to the motion. 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. The tower height shall not exceed ten (10) feet AMSL more than the AMSL height of the reference tree; and
2. The PWSF be installed as shown on plans approved by County staff, including equipment camouflage in a small farm appropriate building.

Agenda Item No. 16. From the Board - Matters Not Listed on the Agenda.

Mr. Rooker said he thinks everyone got a copy of the memorandum from Mr. Butch Davies about the status of State transportation funding. He said nearly \$700.0 million will be removed from transportation funding based upon the determination about the abusive driver fee legislation and some other changes in funding. This means that Albemarle County's transportation funding is going to be further curtailed.

Agenda Item No. 17. Adjourn to February 20, 2008.

At 8:25 p.m., with no further matters to come before the Board tonight, Mr. Rooker offered **motion** to adjourn this meeting until 1:00 p.m. on February 20, 2008. Mr. Slutzky **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Chairman

Approved by the Board of County Supervisors

Date: 01/14/2009

Initials: EWJ
