

Meetings of the Board of Supervisors of Albemarle County, Virginia, were held on, May 14, 2008, with the adjourned meeting beginning at 3:30 p.m. (adjourned from May 7, 2008), and the regular night meeting beginning at 6:00 p.m. in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 3:30 p.m. by the Chairman, Mr. Boyd. He said it is not usually the Board's tradition to have a Moment of Silence before a work session, but he will break with that tradition today. If during the Moment of Silence you choose to take that time for prayer, he would ask that Sidney Nicole Aichs, the young lady lost in a tragic accident on Route 29 North last Friday, be considered.

Agenda Item No. 2. Land Use Taxation (Land Use Deferral) Program, Discussion of.

Mr. Tom Foley, Assistant County Executive, said consideration of this item had been accelerated. It was originally in the Work Plan of the Community Development Department for later in 2008, but at the Board's request it was brought forward for discussion now. In 2001 the Board discussed whether to implement revalidation of the program in order to eliminate potential abuse, but no decision was made at that time. Since then, the subject has been discussed on three different occasions, but there was no decision at any of those times to proceed with revalidation.

Mr. Foley said it is important to point out that reviewing the Program is identified as a priority in both the Comprehensive Plan and the Strategic Plan (it is a key Rural Area strategy priority by 2010 in the Strategic Plan). He said staff would like to clarify the Board's objectives about this program. Is it interested in improving the quality of the program by eliminating potential abuse, which could be done through revalidation? Is the Board interested in reevaluating the program overall to consider changes to the eligibility requirements for land in the program? With current work plans staff is in a position to implement revalidation; however, a committee process to review the overall program would require considerable staff effort and resources. Those are the two critical issues which need to be considered today.

Mr. Foley said staff suggests the Board proceed with revalidation which is consistent with previous discussions by the Board. It shows that the current program is serving its intended purpose. Staff is prepared to bring a full review of revalidation back to the Board at another meeting in the near future. It also recommends that the Board consider other changes to the program overall and also consider potential formation of a committee after it assesses the impact revalidation might have on the program itself.

Mr. Foley said the two questions today are: 1) should the County move forward at this time in studying potential changes to the current Land Use Taxation Program? 2) Should the County establish an ongoing revalidation process as a regular part of the Land Use Taxation Program? He said staff realizes there are lots of different ways to change the program. The primary issue is whether the Board wants to consider changing the program or just revalidate the program that is in place.

Mr. Boyd said before beginning the discussion he has heard that there were problems with the County's website over the weekend. He is afraid citizens might not have been able to look at the materials furnished to the Board. He said Mr. Foley has "thrown it back into the Board's court." Where does the Board go from here?

Mr. Dorrier said he had a question. It has been mentioned that there are potential abuses. How many abuses has the County actually found since the program was implemented? Mr. Foley said the County has never done a revalidation to look for abuses.

Mr. Rooker said without a revalidation it is almost impossible to make that determination. He said the Board has talked about revalidation, but he would like to know what that process would entail, and how long it would take.

Mr. Bruce Woodzell, County Assessor, said for the revalidation, a form would be sent to all citizens enrolled in the program, and they would probably be given 90 days to get the forms back to the County. That form would ask for pertinent information about how the property is being used on an annual basis. If there were questions about the use of properties, those properties might be visited. He said when the County was doing the biennial reassessment, the assessors were on the property every other year. Now that the reassessment is being done on an annual basis, and with the limitation of staff, the assessors are not on the property every year. As to documentation, the owner would be required to furnish a tax return or an affidavit, or a lease agreement, anything that would document use. Specifically, this would be for the use of open land and agricultural land. During visits, assessors have found situations where it was felt the standards of the program were not being met. In those cases, the office usually sent a letter asking the owner to discuss their situation with the assessors. If necessary, they were usually given some time to clean up and rectify the property to the required standard and from that point, staff

worked with them for a year to make sure they met the standard. If after a year they were not, that land was removed from the program.

Mr. Dorrier asked if there is a committee that helps with that decision. Mr. Woodzell said if the use was questioned, the committee would go out and meet the taxpayer on the property and verify the use. He has not used them to visit properties that may be questionable. They were used as a review committee after staff had decided the property was not satisfying standards.

Mr. Dorrier said it seems the program is working pretty well now and abuses are not seen because the County has not brought any charges against anybody. Mr. Woodzell said if a parcel is found that the assessors feel is being abused and they can verify that it does not meet the standards, they meet with the taxpayer. Since staff does not visit every parcel every year, there could be situations where parcels do not meet the standards, so the owners need to be questioned and the parcels may need to be withdrawn from the program.

Mr. Boyd asked if in the years when the assessors visited sites if many abuses were found. Mr. Woodzell said there were not a lot. There were letters written to the people who had vacant and neglected land saying it did not qualify for the program. They were asked for evidence of use, and usually replied that they were trying to do what the law required.

Ms. Mallek asked if there is follow-up by staff or if only return of the form is required. Mr. Woodzell said a letter is sent, photographs are taken and if a reply is not received, the property owner is notified that the land is being removed from the program for a specific reason and is asked to contact the office. The office waits 30 days and if there is no reply, they send out a roll-back tax bill.

Ms. Mallek said if there are only a few who do not respond are they also contacted by telephone. Mr. Woodzell said they use any avenue available to get people involved.

Mr. Rooker said he understands that land which goes into permanent conservation easements is no longer considered to be in land use for the purpose of the statistics which were just handed to the Board (on file in the Clerk's Office). Mr. Woodzell said that is correct.

Mr. Rooker said those numbers may have changed due to land moving into conservation easements. Mr. Woodzell said that is correct. He said the acreages were adjusted for land that came out of the Land Use Program for any reason.

Mr. Rooker asked if the value of the property was reduced to that of the SLEAC (State Land Evaluation Advisory Committee) value. Mr. Woodzell said if the land could qualify for land use on the date of the easement, they would receive the same value as if they were still in the program. The house site would be assessed at fair market value. The use value would be assigned to any additional acreage.

Mr. Rooker said he wanted everybody to understand that the numbers provided do not include properties that are in conservation easements.

Mr. Boyd told members of the public present today that the Board has a breakdown for the number of parcels and their acreages in the Land Use Program in 2001 compared to 2008. What Mr. Rooker's reference is to the fact that there has been a reduction in the number of parcels in land use.

Mr. Rooker said he thinks there are two parts to this question. One is whether the system can be improved so the County is sure the people requesting land use taxation meet qualifications. The Board discussed revalidation for that purpose. He thinks it is a good idea and feels a motion could be made to go to revalidation and get that part of the discussion behind the Board.

Ms. Thomas said she would like to see the form and a written version of the process that would be used before telling staff to proceed. She was at a Farm Bureau meeting last night and it was pointed out that both Augusta and Fluvanna counties have forms which seem to be reasonable.

Mr. Rooker said he is suggesting that the Board direct staff to go ahead with the process of putting into effect revalidation for the upcoming year.

Mr. Boyd asked if this suggestion would go to a public hearing.

Mr. Rooker asked if there is a reason to hold a public hearing. Members of staff (or people in the audience) said "yes." He said that is fine if it is an issue of public importance from the standpoint of the forms mailed out.

Mr. Boyd said the form that Augusta County uses seems to be clear. He thinks their questionnaire may be of interest. Mr. Foley said if the Board decides to move forward, in the near future staff will bring back information on the whole process, the forms, and whether a hearing is needed.

Ms. Thomas said there is a question about deadlines. What happens if someone misses a deadline? Does that merely put someone into a period where they get special attention, but may have to pay a fine? Are they totally cut off from the program and have to pay the five-year roll-back tax? She does not want to put people in that type of situation.

Mr. Boyd said the Augusta form calls for a receipt for any type of crops. What about the years when they could not cut hay because of a drought situation and there was nothing to cut? He said the

County would want to make sure any process allowed for that type of thing. He has heard there is a lot of bartering between farmers and that is not money changing hands, but producing crops with somebody else harvesting the crops.

Ms. Thomas said it was brought to her attention that about two-thirds of the land being talked about is in forestry. That is probably not true in Augusta County.

Mr. Slutzky said he thinks there is a consensus that staff present a revalidation form and a process for revalidation. When that information is provided to the Board, he thinks there will be good reason to hold a public hearing because it is an important issue affecting a lot of property owners. He will make a **motion** to direct staff to bring both of those elements back to the Board for its consideration and for a public hearing so it can receive public comments before taking any action on this matter.

The motion was **seconded** by Ms. Mallek.

Mr. Dorrier said he thinks the Board of Supervisors should design the process.

Ms. Mallek said she would like for the Board to be provided with a draft document that it could change to suit itself.

Mr. Slutzky said the suggestion is that the Board obtain feedback from the public before any decision is made.

Ms. Thomas said that by taking this step she is not saying there have been lots of abuses which have not been caught, but with going to the annual assessment the County will not be taking an actual look at property except every four years. That is too long a period of time.

Mr. Slutzky said he doubts there is much abuse. Some people may not understand the technical aspects of what they are required to do to be eligible, but they could do those things if they understood them.

Ms. Thomas said she would like to have more agricultural activity in the County. She thinks there are people with land who could be renting that land and liming their fields and putting up fences and it could be used, whereas today it is just sitting there.

Ms. Mallek said she thinks one benefit of revalidation is that the public at large will get a greater education on what the farmer's life is like, and also the benefits the community as a whole receives from what the farmers do.

At this point in the meeting, Mr. Boyd asked for a roll call on the motion. The motion passed by the following recorded vote:

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

Mr. Boyd asked if there are other issues the Board members would like to discuss.

Ms. Mallek said because there are often lots of parcels that constitute a farm, she would like to have information on the number of families or family groups involved in the program.

Mr. Slutzky said he asked that question of staff and was told that there are 3,121 landowners of parcels in land use in this year.

Ms. Mallek said when looking at the 6,000 acres per year going to easements, it is easy to understand how the numbers have gone down in the program.

Mr. Rooker said the primary reason for consideration is that this year the total amount of reduced taxation on land use property is almost \$19.0 million which does not include property in conservation easements. Adding that land back in would show that over 60 percent of the land in the County gets land use rate taxation. Part of the concern is that the County pays the City of Charlottesville more on that land under the Revenue Sharing Agreement than is collected in taxes. That program is costing the County nearly \$20.0 million a year so the question is what the County gets for the \$20.0 million a year of often lost taxation? He thinks most agree with the numerous purposes of land use, one being to help people retain land in open space, agricultural use and forestry land, etc. There are a number of people who are concerned about the loss of revenue and whether or not the County is getting what it is paying for in terms of satisfying goals, and if the goal is to keep land open, etc. then the Board needs to be sure the plan is reasonably tailored to achieve those goals. He does not believe there is anybody on the Board who wants to end the Land Use Taxation Program. But, he thinks the Board wants to be sure it is in place in a way that reasonably serves the purposes ascribed to it.

Mr. Slutzky said he does not want to eliminate the program. He thinks it provides a value to the community even at a loss of revenue. To him the program is to motivate property owners in the rural areas to preserve the use of their property in its natural state. There is an aspect of the program as the County presently implements it that causes him concern. There are property owners who use their land for agricultural purposes, have done so for generations, and expect to do so into the future. He wants them to have that commitment to their land honored. There are other people in the County who

purchased parcels of land that are now in the Land Use Tax Program, and there are development rights on that land in the rural area which they intend to use at some point in the future. The vast majority of citizens do not want development to occur in the rural areas. His concern about the current approach to land use taxation is that the County unintentionally subsidizes those individuals by making their holding costs for the land significantly cheaper on an annual basis until they sell the land and take the economic gain from the property. Even with the five-year rollback, they basically have their investment subsidized by the citizens of the County for a period of time. That is compliant with the form of land use tax the County is using but he is not sure he wants to continue to support.

Mr. Slutzky said there are aspects of the program that need to be assessed, considered and discussed in the community. Many people are concerned about the pressure on the County to raise property taxes. People who pay those property taxes need to know they are getting their fair share out of County programs. He will recommend that the Board go forward with what is set out in the Comprehensive Plan, with the expectation that the Board would convene a committee to make recommendations with respect to the Land Use Taxation Program. One idea that is intriguing to him is that if there are property owners who are willing to put their land in conservation easements they would be entitled to have land use taxation available to them forever. However, for people holding onto their land who are being subsidized, the committee would look to see if that land should remain in the program. If the Board decides to convene a committee, which would require staff support, he would recommend that there be a series of public hearings to discuss any ideas coming from that committee before any changes would be made to the Land Use Taxation Ordinance. He would like to know if the other Board members are interested in convening such a committee.

Mr. Boyd said he has said before that this is not something the Board needs to take the community through. He does not think the program is broken. He thinks the program is very beneficial to preserving land use. In reply to what the County has gotten for the program, there are 283,546 acres of land in open space or agricultural use. To him that is worth the \$19.0 million. If the Board convenes a committee, he thinks it will end up with unintended consequences. That is something he is not willing to move forward with. He does not want to drag the community through what he feels would be a gut wrenching discussion about the pros and cons of how the program would be tweaked and then find there is limited abuse of the program.

Mr. Slutzky said Mr. Boyd had stated an assumption that the reason why these acres are in their current use is because they are in the Land Use Taxation Program. He does not know if that assumption is true. He knows people who own tracts of land and have no choice but to use them as they currently do; they have no more development rights or anything more they can do with the land but to leave it in its current form, and they are benefiting from this significantly reduced tax rate as a motivator for what they have to do anyway. He is not sure that is what the County wants to capture with the program.

Mr. Slutzky said there are aspects of the program which clearly work to the benefit of the community particularly in the case of farming. When farmers have land and can barely make a living in the present economy, if they had a significantly higher tax burden it "would put some of them under." The Board can't let that situation happen. The Land Use Taxation Program needs to continue for that reason, but the circumstances to which the program is attached are what he would like to see a committee assess and the community discuss. There are a lot of people in the urban area who have expressed strong resentment to him that the County continues to give the benefit of land use taxation to people, and he has argued back that there is a value in it.

Mr. Boyd said people in the land use program pay full taxes on their homes and two acres of land. That is the part that requires services such as police and social services. There is no difference if a person lives on a third of an acre in Forest Lakes who pays taxes on their house and their third of an acre. The extra land in land use is not a burden to the taxpayers. If somebody says they are not in favor because somebody has open space which is not generating the need for social services or emergency services, they are paying for their house and two acres, so they are paying for the education of their kids at full value. He does not believe open space should be taxed at the same rate.

Mr. Slutzky said an economist would argue that when there is a hundred acre parcel of land with a house on it and that land draws fewer services from the County, the lower services provided are reflected in the purchase price of that land. Fewer amenities reduce the price of the land as a whole. That is why an acre of land in the rural area is priced significantly less than an acre of land in an urbanized area. That means the assessment of that 100-acre tract of land inclusive of the house and the two acres of land it sits on as well as the remaining 98 acres has already taken into account the lower provision of services to that house. On top of that to add an additional tax reduction is arguably double dipping. The County chose to do that because it is trying to motivate behavior on the part of rural area property owner to continue to use land as rural land, particularly for the agricultural sector. He does not agree with Mr. Boyd.

Mr. Boyd said Mr. Slutzky has argued at other times that putting land in conservation easements, which permanently takes it out of use, does not devalue the property, but yet he is saying that open land is not worth as much. He asked if Mr. Slutzky is now agreeing there is a devaluation of the land.

Mr. Slutzky said if you take the entirety of the rural area of the County and a significant portion of the landowners choose to put their land in conservation easements, the aggregate effect of that voluntary downzoning would be an increase in land values in the rural area. The property owners would actually have more value in their land, but if the County maintains land use tax for those property owners they will not have to pay the tax burden.

Mr. Boyd said he thinks there are different economists who would not agree with Mr. Slutzky. He thinks this is something that has been vetted. The Board saw the reports in 2001 and 2005 and there was a discussion and Board members at that time decided not to do anything. He is not burning with a desire to try and go after the people sitting out here in the Auditorium today to take them off of land use in order to get more money into the County's coffers.

Mr. Rooker said he does not think that is what Mr. Slutzky has said.

Mr. Boyd said they would be affected.

Mr. Rooker said he received an E-mail from somebody which said "Land use deferral will cost us \$18.8 million in 2008. Land Use parcels cost us \$2.6 million in Revenue-Sharing to the City for 2008. At best, only three percent of the County's population benefits from land use deferral. What do the remaining 97 percent get from land use? Why should 97 percent of the population subsidize three percent?"

Mr. Boyd said he disagrees that they are being subsidized.

Mr. Rooker said he could agree or not agree, but there are a significant number of citizens that feel that way.

Mr. Boyd asked if those people know that these people are paying for their homes and two acres of land at full land value.

Mr. Rooker said all they are talking about are the statistics of land in actual land use. They are not talking about the part of the County including rural areas that pay full taxation on a particular parcel because it contains a house. He said those are the sentiments of a number of people in the County. They have come to speak to the Board.

Mr. Dorrier said he thinks the sentiments of this Board should be to support farmers and open space.

Mr. Rooker said he does not disagree, but instead of talking about a committee, talk about the report, included in the packet today, which sets out options for land use.

Mr. Slutzky said that report did not include what he just said.

Mr. Rooker said there are a limited set of options that can be made to the plan. Staff made a report outlining the major ones available. He does not think it would be wise to appoint a committee and have it spend one-plus years "dancing around" the four or five options available and the Board might not act or take their recommendations into consideration. There are limited options and the Board should decide if it wants to take any of them to a public hearing. One of the options would allow property to remain in land use if it is an agricultural district, if it is in a conservation easement, or if the property owner enters into an agreement not to develop the property for a period of four to ten years. If significant tax benefits are given for keeping property undeveloped, a commitment by the property owner to keep that property undeveloped for some period of time seems not to be unreasonable.

Mr. Boyd asked if property which has been owned for ten years would be grandfathered.

Mr. Rooker said if the property were in an agricultural district or a conservation easement, it would not make any difference. If that were put into place, they would sign an agreement not to develop their property for a set period of time.

Mr. Boyd asked if someone whose family had owned their property for 200 years would have to show that he was the conservator of the property. He does not think that is fair.

Mr. Rooker asked if Mr. Boyd was saying that if a developer bought the property and put two cows on it and held it for two years and got land use for those two years, that the land use for the two years before he developed the land would be a wise community investment.

Mr. Boyd said he is saying that person has "paid his dues" already by holding the property for a hundred or more years.

Mr. Rooker said that is something the Board might want to consider. Those are details that have to be worked out.

Ms. Mallek said there are restrictions that will apply to all of these things. To her, the basic information the Board needs before considering this step is what can be learned from revalidation. There are a lot of questions the Board does not have the answer to now. The revalidation process will help to educate the public, both those using the land use program and those who are not. One thing that has not been included is the extra cost to the County if parcels came out of land use and were developed. The Board needs to know that cost.

Mr. Slutzky said what he described earlier would make it possible for most of the land in land use to remain in the program at the discretion of the property owner. They could decide to put their land in conservation easements; it would not have to be a VOF easement. It could be a simple easement held by the County that says they give up future development rights so there are no constraints on agricultural

activities on the property. He asked Mr. Boyd why he was suggesting that the Board delay looking at Mr. Rooker's proposal until after the revalidation exercise.

Mr. Boyd said no one knows if there is wide spread abuse of the program.

Mr. Slutzky said he does not think there is much abuse at all.

Mr. Boyd said if there is not widespread abuse why does the Board want to say this is a bad program that needs to be changed?

Mr. Slutzky said he does not think many citizens, if any, are inadvertently failing to comply with the terms of the land use act that the County has now. He is questioning whether the actual program is well-designed for its intended purpose. He thinks the rules in place now are the optimal ones for achieving the purpose of protecting agricultural land for a long period of time. It is the short-term subsidy of speculative investment that he wants to get rid of. For people who own land in the rural area and who want to have it remain rural forever and are willing to put it into a conservation easement, he thinks there should be a land use tax forever.

Mr. Boyd said a conservation easement is an irrevocable decision that is forever. He thinks that should be left to individual choice. The County should not "use a stick" to force a property owner into making that choice.

Mr. Slutzky said he is proposing that it be entirely up to citizens to make that choice.

Mr. Boyd said the only way small farmers survive is by using the land use program.

Mr. Slutzky said they would have the opportunity to participate in the program permanently if they were to agree. If a farmer fully intends to keep the land in land use and to use it for agricultural purposes for generations, they are not the people he is worried about. It is the people who own land with the intent of selling it later to a developer that concerns him.

Mr. Boyd said he does not think there are many people who are contemplating that action. He thinks people want to keep that option open if they need it later for medical bills, etc. They have invested in their land and do not want to part with it, but recognize that realities of life may force them into a situation where they might have to sell off an acre or two, or just provide land for a family member.

Mr. Slutzky asked what Mr. Boyd says to his growth area constituents when they say they feel unduly burdened with their tax obligations in the face of the land use tax.

Mr. Boyd said he has had only a few constituents say something to him. He just went through a campaign and people did not tell him they were worried that people farming in the rural areas are taking advantage of their tax dollars.

Ms. Thomas said one reason this has come up for discussion is because of that \$19.0 million figure. It looks big because it is harder and harder to be a farmer in this county. The group from VPI that looks at crop values, but does not look at cattle or horses, says land in Albemarle County is not worth much because not much alfalfa, potatoes, corn or soy beans are produced. That is not something that should create envy because it shows how hard it is to be a farmer in Albemarle according to that statewide group. In as much as people are upset that they are carrying other folks with their taxes, she understands why someone would look at that \$19.0 million and say it is a lot of money. She thinks the envy is misplaced because it is amazing that there are people who still farm. In the Rural Areas part of the Comprehensive Plan it states that the County wants a staff person to help with marketing and market changes to help increase that low figure. One way to close the gap would be to make farming more productive or pay better rather than attacking it as a matter of envy.

Ms. Thomas said it is important to realize that two-thirds of the land in the taxation program is in forests. The more she learns about water quality, the more she values the forests for what they do for water quality. Cutting them up into smaller and smaller parcels is most damaging to water quality and the ecology. She said the public sees the big house in the middle of a big farm and they are envious. They suggest they are carrying a tax burden for that house and land. She does not think the Board will be able to deal with that kind of envy in any program it puts together. The question comes down to whether there are legitimate things about the land use program in effect today. She has been on some of the committees mentioned that went on for years and years. She also hates to put a bunch of citizens together in a committee. Because that is part of the Rural Areas part of the Comprehensive Plan she had thought that is what should be done. She would like to hear more about Mr. Rooker's idea that the Board look at the suggestions in front of it and then have a public hearing and do it without a committee.

Mr. Rooker said he had not taken a position on any of the suggestions yet. There are options between Mr. Boyd's position and Mr. Slutzky's position.

Ms. Thomas said in response to Mr. Slutzky, it is State law that if the land is in a conservation easement, it is automatically in land use. Even if the Board did away with the Land Use Taxation Program, that is the landowners one guarantee. Mr. Davis said State law is set up so if a land use program is in place, and a property that would otherwise qualify for land use is placed in a conservation easement, then by law that property is assessed at the land use value. If the property would not otherwise qualify for land use, or if the County did not have a land use program in place, State law would require that the property be assessed at fair market value recognizing that the conservation easement has a value that

is subtracted from the value of the property that would otherwise have that higher value. That is an important distinction on how under State law conservation easements are assessed.

Mr. Rooker said part of the value of having property in conservation easements is that they are taxed at the land use value. Under the City/County Revenue-Sharing Agreement, the County does not pay an artificial rate to the City on that property.

Mr. Slutzky said the Revenue-Sharing Agreement is based on the lower value in the case of conservation easement property, and the higher value in the case of property in the land use taxation program.

Ms. Thomas said Ms. Opal David did a lot of research on this and during the Revenue-Sharing Agreement discussions she asked how you could be paying on net and collecting on gross. She said Ms. David was shushed and told that was the way it was arranged with the City. That is exactly what is being talked about now.

Mr. Boyd said he does not feel that farmers should be asked to pay today for what was an ill-conceived plan 24 years ago. The County made a deal that was not a good deal, and because of that rural area residents have to pay for it.

Mr. Slutzky clarified that he is saying, and Mr. Rooker was also trying to get across, that to the extent the Land Use Taxation Program is in place to achieve a purpose (this is unrelated to the Revenue-Sharing Program with Charlottesville) the question is whether it is worth looking to see if the current program actually is the optimal one for achieving that purpose or might the Board modify it in some way to make its purpose more effective. He hopes everybody who has their property in land use puts that property in conservation easements and continues to be in land use.

Mr. Boyd said he does not think that is practical.

Mr. Slutzky said it will not happen because there are people in the County who own their land with the expectation of being able to develop it.

Mr. Boyd said he thinks they do not want to tie up the land for future generations.

Mr. Rooker said there are many grounds to that. One was the option that property owners in agricultural districts who would agree to sign an agreement not to develop for some period of time between four and ten years would qualify. That is not a forever commitment. Whether or not the Board provides that option is up to the Board. He does not want to appoint a committee which works for a year and a half and makes a recommendation and then the Board does not act on it. He thinks the Board has limited options it can look at. If the current mood of the Board is to do nothing, then the Board should just say so.

Mr. Boyd said he would favor just doing revalidation.

Mr. Rooker said there are three options today. One is to appoint a committee; another option is for the Board to decide amongst the options laid out by staff; and, the Board can have a discussion to see if there is consensus to consider any option at all.

Mr. Slutzky said if the Board so decided, there would be a significant amount of public input obtained before taking any action.

Mr. Dorrier said 90 other localities in Virginia have a land use program. It is working throughout the State of Virginia.

Mr. Slutzky said those counties do not have a program like that in Albemarle; they have different versions.

Mr. Rooker said there are 43 counties in the State that allow land use like that in Albemarle with four uses.

Mr. Dorrier said it is a popular program. It works well in the County and the citizens support it and farmers need it. It may mean the difference between bankruptcy and a viable farm. He thinks the Board needs to support it wholeheartedly because there has been no evidence that it has been abused.

Mr. Rooker said the purpose of looking at whether to change the plan has nothing to do with abuse. It has to do with whether the plan is structured in the optimal way to achieve the purpose of the plan. The revalidation issue is geared toward ferreting out abuse.

Mr. Dorrier said it has not been proven that the program is broken yet. He does not think it has been shown that it is even near being broken.

Mr. Rooker said it does not have to be broken. The County is spending about \$19.0 million a year and the question is whether it is serving the purpose the Board wants the program to serve, or should it be changed in some way to more align it with its purpose. If the Board today wants to say the plan should not be changed in anyway at all, the Board should just say that. He said there are other communities which do their land use programs differently. If there are three Board members who think the options should not be studied, there is no reason to go on with this discussion.

Mr. Boyd said staff has "a lot on their plate" already. The Board has to decide whether this is a high enough priority to take precedence over other issues in Community Development's Work Plan.

Mr. Slutzky said if the Board makes a decision to go forward, it should tackle separately the question of how to provide staff support. Where would the funding come from? First, the Board should decide whether it wants to do it, and, secondly, if it did, how would it pay for it. He and Mr. Rooker have said it should be looked at, whereas Mr. Boyd and Mr. Dorrier do not want to look at it, but leave it as it is.

Mr. Boyd said he is not in favor of moving past validation until the results of revalidation are known.

Ms. Thomas said that some years ago, staff gave the Board six options. One was to have periodic revalidation and she thinks all Board members have now agreed to do that. Another option was to have a sliding scale rollback which is very complex. She would have to be talked into that because it appears to take more staff time than revenues which would be realized.

Mr. Rooker agreed.

Mr. Slutzky said he does not think that was designed for the situation in Albemarle.

Ms. Thomas said another option was ongoing review of parcels in the Land Use Taxation Program by a County staff person devoted solely to assuring program compliance. That is apparently what Nelson County does, so it is not an unheard of move. She would not do that until the revalidation had been done for a few years. Another option was to eliminate all categories of use value taxation so only those properties in ag-forestral districts or conservation easements would get land use taxation.

Mr. Rooker said that is a third component.

Ms. Thomas said that Options 1 and 2 end up being the same thing although they are called different things.

(Note: Option 1 from the 2001 staff report is "Eliminate all categories of use value taxation" the result being that only eligible land that meets the SLEAC criteria within agricultural/forestral districts would qualify for land use.

(Note: Option 2 from that same report is "Use value taxation for Open Space classification only" the result being that this option would eliminate use value taxation for agricultural, forestal and horticultural classifications and allow only the open space designation.

(Based on a 1989 amendment in use-value taxation law, a locality may authorize use-value for open space only. This option could achieve a similar effect as Option 1, which would eliminate use value except for eligible parcels within the agricultural/forestral districts. It may also encourage property owners to grant an easement to a public body in return for the benefit of use value taxation and the assurance that the property will be preserved as open space.

(If this option is chosen, the property must meet one of the following three requirements: 1) be within an agricultural, a forestal, or an agricultural/forestral district; 2) be subject to a recorded perpetual easement that is held by a public body, and promotes the open space use classification; 3) be subject to a recorded commitment entered into by the landowners with the local governing body not to change the use to a non-qualifying use for a time period stated in the commitment of not less than four years or more than ten years. The withdrawal procedures for this commitment are similar to those of the ag/forestral districts.)

Mr. Rooker said open space can be defined as being subject to a recorded commitment entered into by the landowner and local government not to change the use to a non-qualifying use for a period of time stated in the commitment for not less than four years or more than ten years.

Ms. Thomas said that is like an ag-forestral district, but the property does not have to be contiguous to another property in an ag-forestral district. It is a contract with county government to put the same time limit on the property, but the land is not officially in an ag-forestral district.

Mr. Slutzky said there is another option that is slightly different which he has talked with Mr. Davis about that was not brought forward by staff. Any landowner in the rural area with a property of five acres or greater that is able to put their land in a conservation easement can be qualified for open space use. That is another option.

Ms. Thomas said conversation easements put a significant maintenance burden on the holder of the easement, whether that is the county or someone else. It is not free to the taxpayer to have a lot of property in conservation easements.

Mr. Slutzky said that is not always the case. For example, the County has enabling legislation which allows it to create a particular conservation easement program where it is the easement holder; the only condition would be that the land not be used for commercial purposes or developed for residential units. The maintenance of that property would require that County staff not issue a building permit on the parcel, so maintenance would not be significant.

Mr. Davis said the County is an eligible holder under the Open Space Land Use Act, so any property that would be subject to a conservation easement would have to meet the minimum requirements of that Act. The Board could elucidate on those requirements, such as consistency with the Comprehensive Plan, conservation of land, and other factors that are minimum requirements. There are other legal considerations as to whether or not it is a qualified easement for Federal Income Tax or State Income Tax purposes, whether or not the County is a qualified holder of those easements by doing the enforcement Ms. Thomas referenced. It is more complicated, but the County is eligible to be a holder of an easement that would qualify land for land use taxation.

Mr. Davis said the option Mr. Slutzky and Mr. Rooker referred to is a single category of land use taxation which would be Open Space. Under State law, once that is done, it must be uniformly applied under the regulations from SLEAC like open space taxation is applied in any other county in Virginia. Within that criteria there are three ways to qualify. One is to be in a qualified conservation easement, in an ag-forestral district (Allowing an ag-forestral district is a discretionary decision of the board of supervisors), and the third option is a standard commitment agreement produced by the State. The County would have to use an agreement which is substantively in alignment with the agreement the state has. It would basically be a personal ag-forestral district where the restrictions are similar to what an ag-forestral district would do to a property. Instead, this would be an individual agreement. A couple of those agreements are in effect in the County at this time for properties that otherwise would not have qualified under open space without that agreement. The agreement is required by law to closely mirror the one that SLEAC has produced for use statewide.

Mr. Boyd asked if it covers some of the open space tracts the County has now. Mr. Davis said "no." Particular specialized properties qualify for open space under that agreement.

Ms. Thomas said she remembers the last time the County sent letters to landowners. People said they had land partly in woods and they used to have cows underneath them, but that is not wanted anymore so they asked what could be done. It turned out that the open space category is exactly what they could do, so it gave them a way to stay in the program.

Ms. Mallek asked if Albemarle's ag-forestral districts still allow properties to be divided into subdivisions with 21-acre parcels. Mr. Davis said they do.

Mr. Slutzky said that is possible if the property owner used a conservation easement.

Mr. Davis said there are two different things being discussed. What Ms. Mallek is talking about is that by general rule property in an ag-forestral district cannot have a more intensified use of the property. An exception is that by-right there can be agricultural uses of the property. In the County's ordinance there is a specific provision that would allow the owner to divide the property into 21-acre lots. It could not be divided into lots smaller than 21-acres while it was in an ag-forestral district. People whose land is in an ag-forestral district who want smaller lots must wait until it is timely for them to reapply for an ag-forestral district and at that time remove the portion of the land they want in smaller lots.

Mr. Slutzky asked if the Board chose to have open space and conservation easements only, would the 21-acre subdivision option go away if the conservation easements were restrictive. Mr. Davis said under the conservation easement option that Mr. Slutzky referenced, it would depend on the terms of that easement, but all of those easements would have to be voluntarily given.

Ms. Mallek asked if the County is allowed to have a different category for family subdivisions. Mr. Davis said it is possible in a conservation easement that it could be allowed as long as it met the minimum standards to qualify as open space. Some lots could be allowed in some circumstances depending on the nature of the property.

Mr. Slutzky said it sounds like there are some permutations of the open space that could satisfy what he was suggesting and also could address what Mr. Rooker was suggesting.

Mr. Boyd said the only thing he has heard this afternoon that might be a compromise for him was Ms. Mallek's comment that the Board go ahead and get the revalidation in place and then after a couple of years there would be better data available on the program.

Mr. Slutzky said it is clear that Mr. Boyd is not interested in looking at the land use program at this time. The question is whether a sufficient number of the other Board members are interested in doing so.

Mr. Rooker said he had one other question about the option of allowing individual agreements not to develop for a given period of time which would allow people to put land that otherwise would not qualify into the land use program. Under that option, can the 21-acre rule be put into place? Could it be made similar to the ag-forestral district approach? Mr. Davis said he thinks that is possible. He thinks the agreement has similar language to that of the ag-forestral district language about intensification of uses.

Mr. Boyd asked if this option would hold the landowner harmless as to cost. Will there be a cost for a survey, or for lawyers, or for an agreement?

Mr. Rooker said those kinds of things are not imposed on people who join an ag-forestral district. They do have to sign an agreement to be in the district.

Mr. Boyd said the Board would be requiring them to do something legal and maybe something survey wise, etc. to qualify when now they can simply apply.

Mr. Rooker said they are not talking about a survey, but the landowner would have to sign an agreement in a form provided by the County. At this point, he is not saying he supports or does not support any of the options, but this was the only option that made a lot of sense beyond revalidation.

Mr. Slutzky said he is sure he wants to keep land use tax in some form because he feels it is imperative in some circumstances. He wants to examine when to apply it and when not to apply it. Should the program be maintained in its present form or does the Board want to look at alternative strategies for achieving the same purpose?

Mr. Boyd said he disagrees.

Ms. Thomas asked if staff could put Option 2 on the screen so the public would know what is being discussed. Mr. Foley said staff is not able to do that today.

Mr. Rooker said he thinks the Board should either take a vote or go through the options one by one and get a consensus one way or the other.

Mr. Boyd said he thinks the Board has discussed this enough for today.

Ms. Thomas said it appears to her the Board will consider Option 2, will leave the program without any changes except for revalidation, will not constitute a committee, will ask staff to flesh out Option 2, and will then hold a public hearing on that option. She asked if that is what Mr. Rooker and Mr. Slutzky are suggesting.

Mr. Slutzky said he could agree with the committee approach, but as Mr. Rooker said, there are not a lot of options to discuss. A lot of time could be spent analyzing the pros and cons and the Board should probably look at them. If there is interest in moving forward then hold a public hearing. However, if after looking at them, there is not enough support to go further, just call it a day.

Ms. Thomas said a lot of the e-mails she got contained good suggestions but many of those suggestions are not possible under enabling legislation. She came to the meeting today thinking the Board would agree to establish a committee so it could take advantage of the people in the community because they always come up with good ideas.

Ms. Mallek asked about holding a work session so the Board could receive general information and allow the public to speak. She said revalidation is her first choice. She is not in favor of requiring conservation easements mainly because some people do not have the ability to make that choice and costs are significant unless the landowner can qualify for the State refund program for the surveys, etc. She said her property has been in an ag-forestal district for 18 years and it was easily done. It is something the County can make work for the citizens without cost, but she thinks there is administrative cost to the County and the Board would need to know what that cost is. If it can also incorporate the same provisions that are currently available in an ag-forestal district with the 21-acre family division option, the Board might find some middle ground. It is her goal to get a good exchange of ideas so everybody can understand all sides. If the Board cannot find middle ground that is better supported, then leaving the program be is what the Board should do.

Mr. Boyd said he wants to clarify something. He said it sounds as though Ms. Mallek is not in favor of stopping with revalidation but that she wants to move forward with a further study.

Ms. Mallek said she is happy to have another meeting where the Board could discuss this further. She would rather not do the two-year committee and would rather the Board agree on something in the next meeting or so. She thinks it is worth having the discussion because there is information the farming community can give the Board which could help.

Mr. Rooker said he thinks the Board needs to look at the general concept of an option and decide whether or not to take that forward to a public hearing. If the Board decided to move forward with amendments, an ordinance would have to be drafted and a public hearing held. Mr. Davis said the Land Use Taxation Ordinance is a codified ordinance and it now allows all of the categories. If the Board were going to reduce those categories to just land use under Option 2, or no categories except an ag-forestal district under Option 1, that would require amendment of the ordinance.

Mr. Rooker said he does not support that. To him, the only option that makes sense is the one that allows agreements. Mr. Davis said the only difference between Option 1 and Option 2 is that under Option 1, agricultural property and forestal property in an ag-forestal district would qualify for land use; under Option 2 those categories would be eliminated and all land would have to qualify as open space which could include agricultural and forestal property, but those classes would be eliminated.

Mr. Rooker asked the functional difference between the two for the landowner. Would fewer people qualify under one of those categories than under the other category?

Mr. Boyd said he thinks this conversation is moving toward that second work session. What he would like to do is establish now whether the Board is going to have that session. Mr. Foley said staff needs a clarification as to the information the Board is requesting for that work session.

Mr. Rooker said it sounds like the Board needs to understand the differences between Option 1 and Option 2. The way Mr. Davis has described them, he thinks they are pretty much the same.

Ms. Thomas said she has not figured out the difference between Option 1 and Option 2. She thinks the Board should hold a public hearing and a work session and get some fleshing out of Option 2. She would rather look at Option 2 or no changes at all. If the Board just leaves this meeting saying it is looking at the Land Use Taxation Program that will not help the community focus their comments. She thinks the Board is really looking at Option 2.

Ms. Mallek said if the Board looks at Option 1 and eliminates all categories, that does away with the land use value for conservation easements. This is important because the people who have put their land in easements did it with the understanding that they have that value. The Virginia Outdoors Foundation told her that eight land use categories have to be available.

Mr. Davis said he would explain the difference between Option 1 and Option 2. Right now if an agricultural piece of property is not in an ag-forestal district it can still qualify for land use taxation. If the agricultural and forestal categories were eliminated, property not in an ag-forestal district that now has land use taxation would have to qualify under open space. The only way to do that would be to join an ag-forestal district, or put the land under a permanent conservation easement, or enter into the four to ten-year agreement Mr. Rooker referred to. Those properties that are now in agricultural and forestal use would have to go through an additional step in order to qualify. Secondly, under the current ordinance, in order to qualify for open space use, there must be a minimum of 20 acres. For agricultural use, land can currently qualify with as small as five acres. The County would have the option to reduce the current requirement for 20 acres for open space to five acres which is the state minimum. That is the only criteria in Albemarle's program that exceeds the State minimum. Everything else in the program utilizes every option available under state law to allow people to qualify for land use.

Ms. Thomas asked about Option 2. How does what Mr. Davis just said differ from Option 2? Mr. Davis said in Option 2 if the agricultural and forestal categories were eliminated and the only category left was open space, in order to qualify property it would have to be in an ag-forestal district, or under a permanent conservation easement, or be subject to the four to ten-year commitment by agreement.

Mr. Boyd asked if the land that has been in the program could be grandfathered, or would the owner have to start all over again.

Mr. Rooker said they would have to sign an agreement. Mr. Davis said the program has to be uniformly applied under state regulations, so in order for the land to qualify under open space, one of those three things would have to be done.

Mr. Slutzky said if the land was put into an ag-forestal district just a year ago, there would be nine more years for it to be in land use tax. Mr. Davis said if the ag-forestal districts are left as they are now, land in those ag-forestal districts would qualify using the same criteria without any further action. Option 1 simply encourages people to join ag-forestal districts. Option 2 requires people to either join ag-forestal districts or qualify their property as open space, but Option 1 would allow that as well.

Ms. Thomas said Mr. Davis had still not given the difference between the two options.

Mr. Rooker said it sounds like Option 2 covers what is needed. It has the most flexibility.

Ms. Thomas said she thinks there is agreement that there will be further analysis of Option 2, but there is no thought of totally doing away with land use taxation. The options in front of the Board are to do just the verification, which all have agreed to do, or something stricter, but the strictest it can be is the thing called Option 2. She is not committed to doing Option 2, but if the Board wants a broader public discussion that would be the delineation of what is being discussed.

Mr. Slutzky said he would like to suggest that staff put the information on the County's website as soon as possible if the Board decides to go forward with this. Mr. Tucker said staff would like to separate the discussion about the revalidation and Option 2. He thinks it might be confusing to combine the two so he would like to post the information about revalidation before adding in Option 2.

Mr. Rooker agreed.

Mr. Slutzky agreed, but said he thinks they should both be on the website fairly quickly.

Mr. Boyd said he would like to establish that this is not an unanimous consent.

Mr. Slutzky asked if the Board should take a vote to see if there is a consensus to move forward with the land use tax program beyond revalidation.

Mr. Rooker said he would **move** that the Board do what Ms. Thomas just proposed. Mr. Slutzky said he would **second** that motion.

Mr. Boyd asked for a clarification of Ms. Thomas' suggestion.

Ms. Thomas said it is to consider the thing in the agenda materials called Option 2; look at the implications, effect, advantages and disadvantages. Then the Board will be able to say to members of the public who are critical of land use taxation that it has looked at the program and the best possible option

for changing it, and made a decision. She is inclined to say she will not go with Option 2, but she thinks it is the most reasonable one for the Board to look at. She thinks there is enough concern in the community about the program that the Board should have a discussion of the alternatives.

Ms. Mallek said it would be helpful for the public to think about Option 2 and how it might affect their individual circumstances. She finds that looking at something the way it might affect you personally is helpful.

Mr. Boyd asked why the Board would want them to do that.

Ms. Mallek said she would appreciate hearing what individuals think.

Mr. Boyd said he has clearly heard from those affected that they are not interested in changing the program at all.

Ms. Thomas said she has had calls from farmers who do not like to see abuses of this program. It is not entirely people who are outside of the program looking in, but some people in the program who have come up with ideas. Option 2 is one that is brought to her attention every year.

Mr. Dorrier said he is in favor of revalidation, but is not in favor of opening up the program for change because he thinks the program is working the way it is intended to work. Until this conversation came up, there really had not been any controversy about the program.

Ms. Mallek said she thinks there has been controversy but the Board has not had it in the right format to learn from it. She wants to have one education meeting and learn from it in a productive way, so she will vote for the motion.

Mr. Boyd said he obviously will not vote for it because he sees no clear indication that there is a serious problem. He thinks it will create work for staff and will take time to hold meetings, and the Board has a lot of other things it needs to work on.

Mr. Rooker said he is suggesting that this matter come back to the Board for one more work session with additional information from staff on these options. After that discussion, he thinks the Board should vote on whether it wants to have this matter presented at a public hearing.

Mr. Slutzky said that is also his expectation.

Mr. Boyd asked that roll be called on the motion. Roll was called, and the motion **carried** by the following recorded vote:

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

NAYS: Mr. Boyd and Mr. Dorrier.

Ms. Mallek asked if staff knew when work could begin on the revalidation. Mr. Tucker said a final proposal should be on the Board's agenda in June. He said most counties have a revalidation program. Staff will look at as many as it can. The information about Option 2 will be on the website as soon as a problem with software has been resolved.

Agenda Item No. 3. Recess. At 5:01 p.m. the Board recessed.

Agenda Item No. 4. Call to Order. The meeting was called back to order at 6:05 p.m.

Agenda Item No. 5. Pledge of Allegiance.

Agenda Item No. 6. Moment of Silence. Mr. Boyd said if anyone chooses to pray during this time, he would suggest that all consider Sidney Nickel Aichs, a young lady from the Forest Lakes area who died in an automobile accident last Friday.

(Not Docketed) Ms. Mallek offered **motion** to appoint Ms. Jessica Mauzy to the Crozet Citizens' Advisory Council. The motion was **seconded** by Mr. Slutzky. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

Agenda Item No. 7. Recognition: Business Appreciation Week.

Ms. Susan Stimart, Business Development Facilitator, said as part of the focus on Virginia's Business Appreciation Week, she would encourage the Board to recognize and celebrate the Commonwealth of Virginia for being the best state for business in the nation as noted by Forbes and CNBC. A recent study found that local businesses buy more goods and services locally and employ more

people locally per unit of sales. As a way of highlighting the possibilities being seen in local small business success stories, she has invited three local, small business owners to attend this meeting tonight. Each represents a position and important direction for business in Albemarle County. She then introduced Mr. Brett Wilson, owner of Horse & Buggy, the largest local crop and food distributor.

Mr. Wilson thanked Ms. Stimart and County staff for recognizing what they do. It is also nice to be thanked by local politicians. They are thanked everyday by their customers. There are a host of people who have decided they would like to eat foods grown within 100 miles of Charlottesville. The challenges for feeding people in the County are plenty. They buy most of their food in the Shenandoah Valley. One of the reasons food production in Albemarle County is not financially viable is due to real estate prices. Everyone is faced with trying to protect the agricultural heritage of the County so all of the land is not turned into shopping malls, etc. Another challenge is due to feeding institutions like the UVA dining halls. They have found that families like to prepare the foods they get, but chefs work in a different manner. They have to get the time to prepare real whole foods.

Ms. Stimart then recognized Mr. John Meggs, owner of Nature Neutral which offers local wood products in support of sustainable forestry and harvesting practices.

Mr. Meggs thanked the Board for recognizing them as a small business. They are glad to be a part of the County and to help it to become more sustainable. His company is in its fifth year of business. They have a wide variety of building products and like to use local and regional sources for materials. They have worked with some cooperatives around the region that are actually helping to manage the forests and the taking of lumber and allowing that to help the co-op members maintain the land and make money in a sustainable way. He said that over the last five years they drew on the Small Business Council which helped them with some critical issues as the business has grown. He asked for the Board's continued support of small businesses like his.

Ms. Stimart introduced Mr. Tom Thorpe of Afton Scientific, a member of the Bio-Technology or "Life Sciences" community.

Mr. Thorpe said Afton Scientific is a small pharmaceutical facility which makes sterile injectible products for customers generally involved in new drug development. They are unique in that all of their customers are located outside of the State of Virginia; many are even outside of the United States. Currently, they have 21 employees. Today, members of the British version of the Food and Drug Administration were at the facility to certify it for exporting to England. Something that is important to his customers is the training of employees. This company takes advantage of the Virginia Department of Business Assistance' Jobs Investment Program to train new staff and help existing staff achieve career-ladder opportunities. Afton also participates in the Charlottesville Business Council's Technology Tour – a local program aimed at helping high school students better understand high-tech career options. They just purchased a 30,000 square foot building which is a five time expansion for their business. He invited all to visit the facility.

Mr. Boyd said that is three excellent examples of the active business community in the County.

Ms. Mallek said that at a meeting last week, the sustainability person from the Valley said that if every household in Virginia spent \$10.00 a week on locally grown food, it would bring in \$1.68 billion a year to the state. That is a way everyone can do a little something which would make a big difference.

Agenda Item No. 8. From the Board: Matters Not Listed on the Agenda.

Ms. Mallek said in February the Board discussed erosion impact areas. She would like to know how these will be implemented.

Ms. Mallek suggested that to increase the number of dog licenses sold, renewal notices should be mailed with the tax bills.

Ms. Mallek requested that staff reinstitute the Development Activity Report which was stopped in 2003. Mr. Cilimberg said that was the annual report staff used to issue. Some information on subdivisions and site plans would need to be brought current in order to publish the report. It is being worked on.

Mr. Rooker mentioned that Delegate David Toscano has been appointed to the Joint House/Senate Subcommittee that will work on developing land use tools. He is soliciting input on things the County would like the subcommittee to review. He suggested that someone from the County might come and speak to the subcommittee. Mr. Rooker said the Board might like to consider doing the same thing with regard to land use taxation legislation. For example, if the Board felt a ten-year rollback might be better it could be requested because he does not believe it is allowed now.

Mr. Davis said legislation allows only a five-year rollback now. Longer rollback periods have been looked at but have not found favor with the legislators, but it could be requested again.

Mr. Rooker said this is an opportunity the Board should take advantage of.

Mr. Slutzky asked if Mr. Rooker is suggesting that Board members give staff feedback on any ideas they might have.

Mr. Rooker said if specific things have come up over the years a list of those things should be created. Mr. Davis said staff could compile a list of things which have been deleted from legislation in the last five years.

Mr. Rooker said Governor Kaine has announced a transportation funding plan and is holding several public meetings at locations around the State. A meeting is scheduled to be held in Staunton on May 22 at 4:00 p.m., at Mary Baldwin College. Does the Board want to have someone attend that meeting and speak, and if so, what should they say? He said this plan does not raise the gas tax. It gets revenue from a variety of sources, some of which have little relationship to transportation. Someone could go and speak generally about projects that are stalled for lack of funding.

Mr. Boyd said if someone goes they should speak in general terms. They could request a sustainable income stream for transportation. He does not think there is time to put together a plan as a Board.

Ms. Thomas said the MPO has put together a plan. She suggested picking the top ten items that will not be funded. That plan is something the community spent a lot of time prioritizing. It would not be something new or something not supported by the public.

Mr. Rooker said pointing out the realism of projects affected, and those which are not being done because transportation funds are so scarce, would be a good idea. For example, widening of Route 29 to six lanes from Polo Grounds Road to Hollymead Towncenter to improve the road for safety purposes has now been taken out of the State plan. If three or four projects like that could be explained, that would be a good approach. He suggested that either Mr. Boyd or Mr. Slutzky attend that meeting.

Mr. Boyd said he thinks it is a good idea, and asked that staff draft some "talking" points.

Mr. Slutzky mentioned the recent tragic accident on Route 29 North near Forest Lakes. He said several people have suggested that the speed limit in that area be lowered to 45 mph for the short term. He thinks if there is unanimity among Board members staff should write VDOT and request that the speed limit be dropped as soon as possible.

Mr. Boyd commented that he has been in touch with Mr. Allan Sumpter who is convening an engineering review of the intersection and he will bring some recommendations to the Board in the near future. They are also working on setting up a "town hall" meeting with the Forest Lakes Homeowners Association.

Agenda Item No. 9. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Ms. Megan Jetton, Ms. Erin Wise-Ackenbom, Mr. Paul Wellen, Ms. Virginia Rovnyak, Ms. Heather Peck and Ms. Grace Matijasic, representing the Monticello High School Student Peace Alliance, asked the Board to adopt a resolution supporting the creation of a U.S. Department of Peace and Non-Violence.

Mr. Boyd read a letter from the Board in support of the concepts of peace and nonviolence. He said the Board is responsible for matters specific to this community; it has been the Board's practice as a body not to adopt formal positions on issues that are outside of its area of jurisdiction, so it will not officially adopt the requested resolution.

Mr. Brian Walden, a farmer and resident of the Samuel Miller District, commented on the County's Land Use Taxation Program. He is trying to establish his farm so it is difficult to make an income at the moment from farming. To enable him to do that and for his family to retain the land, he needs the Land Use Tax Program to be retained without any drastic change. He agrees with revalidation feeling it is no threat to anybody who is truthful on their application. He showed a map on which he had noted where all of the dwellings in the County had been built. Most of the new developments in Crozet are located on the ridgeline of the prime soils. He said if that agricultural soil is lost, it is gone forever. It is a finite resource which cannot be brought back, so he is asking that when recommendations are made as to how to evaluate what is useful and what is not, soil should be at the top of that list. If the Board incorporated the ecosystems, the soils and the forests into any justification as to how to value the land, everybody would be pleased and it would satisfy everybody's needs.

Agenda Item No. 10. Consent Agenda. **Motion** was offered by Ms. Thomas, **seconded** by Mr. Rooker, to approve the consent agenda. Roll was called, and the motion carried by the following recorded vote:

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

Item 10.1. Approval of Minutes: January 9, 2008.

Mr. Dorrier said he had read the minutes of January 9, 2008, and found them to be in order.

Ms. Mallek had read the minutes of January 9, 2008, and found them to be in order.

By the recorded vote set out above, the minutes of January 9, 2008, were approved as presented.

Item 10.2. JAUNT Stockholders' Meeting and Appointment of Proxy.

It was noted that for the upcoming JAUNT Annual Stakeholders' meeting to be held on Wednesday, July 16, 2008, the appointment of a proxy to vote the County's shares at the meeting is required. It was recommended that the Board appoint, for the length of his term, Juandiego Wade, one of the County's JAUNT Board members to act as proxy for the County of Albemarle.

(Discussion: Ms. Thomas said she is on a panel next week talking about improving the customer's transit experience. She has learned that in Buckingham County people are fighting over the seats they offer on the commuter bus to Charlottesville. In fact, people have called in and cancelled another person's seat so they could get a seat.)

By the vote set out above, the Board appointed Mr. Juandiego Wade to act as proxy on the JAUNT Board of Directors for the County of Albemarle through September 30, 2008.

(Note: Mr. Boyd said he wanted to announce that on Saturday, May 31, 2008, at 9:00 a.m. there will be a dedication of the new fishing pier at Mint Springs Park.)

(Note: Agenda Item No. 11 and Agenda Item No. 12 were heard concurrently.)

Agenda Item No. 11. **Public Hearing:** SP-2007-054, SOCA Synthetic Fields near Belvedere.

Proposed: Soccer Field and associated parking and spectator seating adjacent to Belvedere and accessory building near soccer fields in the floodplain.

Zoning Category/General Usage: R-4 (4 units/acre).

Section: Section 15.2.2.4 of the Zoning Ordinance which allows athletic facilities for fill in the R-4 District.

Comprehensive Plan Land Use/Density: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses in Neighborhood 2.

Entrance Corridor: No.

Location: At the northern end of Belvedere Drive off of East Rio Road.

Tax Map/Parcel: Portion of 62A3-1 and 62-2A.

Magisterial District: Rivanna.

(Notice of this public hearing was published in the Daily Progress on April 28 and May 5, 2008.)

Agenda Item No. 12. **Public Hearing:** SP-2007-058, SOCA Soccer Fields at Belvedere.

Proposed: Floodplain disturbance for 5 soccer fields.

Zoning Category/General Usage: R-4 (4 units/acre) and Neighborhood Model District (residential (3 - 34 units/acre) mixed with commercial, service and industrial uses; FH Flood Hazard Overlay District - agricultural, recreational and utility location uses which will not pose a danger to life or property in the event of a flood.

Section: Section 30.3.5.2.2.3 of the Zoning Ordinance which allows for fill in the floodplain.

Comprehensive Plan Land Use/Density: Neighborhood Density Residential – residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses in Neighborhood 2.

Entrance Corridor: No.

Location: Adjacent to south bank of the South Fork Rivanna River at the northern end of Belvedere Drive which is off of East Rio Road.

Tax Map/Parcel: Portions of 62-2C, 62A3-1 and 62-2B.

Magisterial District: Rivanna.

(Notice of this public hearing was published in the Daily Progress on April 28 and May 5, 2008.)

Mr. Cilimberg said he has two presentations. As to SP-2007-054 for SOCA Synthetic Fields near Belvedere, he pointed out its location on a map. The facility is in an area on the north side of Belvedere in a Neighborhood Model District zone, an area zoned for residential use in the Comprehensive Plan. The request is for an all-weather turf field, two mini-soccer fields, a support facility and associated parking. This would provide a community-oriented, community-wide athletic facility and serve both Belvedere and other parts of the County. It would be located within the designated development area, and would augment recreational facilities already planned for Belvedere and the general area.

Mr. Cilimberg said staff had noted some areas of concern, mainly: the scale is greater than would typically be expected in neighborhood density areas; public streets currently planned in Belvedere are not

wide enough to accommodate parking for the facility but there is a condition to address this concern; timing of the public streets is not tied down but a condition is provided to address that; and, access for pedestrians from the end of the existing public street to the facility had not been proposed when staff was reviewing this request (there is now a condition to address this).

Mr. Cilimberg said the Planning Commission, by a vote of 7:0, recommended approval of SP-2007-07-54 subject to 10 conditions.

Mr. Boyd asked if these fields are to be lighted. Mr. Cilimberg said that will occur only at such time as County ordinances are changed to allow the type of lighting the applicant needs. There is a zoning text amendment in process to make a change in that ordinance. The applicant hopes to utilize that amendment to provide for the lighting they would use.

Mr. Cilimberg said as to SP-2007-058, SOCA Soccer Fields at Belvedere, they are in the floodplain and he then noted that location on a map. The request is for five soccer fields and associated parking out of the floodplain. There is an all-purpose building proposed and a driveway that comes down to the site. The driveway will actually use what has been shown as the alignment for a future North Free State Road or Meadow Creek Parkway until such time as that alignment is established as a public road. He said there should be no impact on neighboring properties from this special use permit and no increase in flood levels resulting from construction of the fields or the access road. He said the Planning Commission also recommended approval of this permit subject to seven conditions. He offered to answer questions.

Mr. Boyd said he would open the public hearing at this time, and ask the applicant to speak.

Mr. Bill Mueller said he is the Executive Director of SOCA. He asked those people present in support of these applications to stand (about 35 people stood). He is speaking for the SOCA Organization and the Belvedere Project Team. This proposal is a dramatic improvement over the proposal presented to the Board about a year ago which was not approved. They understood the message that night was that the project was in the wrong location. The Board made a statement saying it would assist SOCA in finding a suitable location. County Parks & Recreation staff was charged with assisting them in their search. They found the perfect partners in the Belvedere community and the Stonehaus Group. The project is located in the designated growth area and it will be available to more members of the community. He thanked all the members of the Board for their support, particularly Mr. Slutzky and Mr. Boyd for attending the early meetings to help them find a suitable location. He said all the conditions before the Board tonight are agreeable to the SOCA/Belvedere Team. He requested approval of their requests tonight and offered to answer questions.

Mr. Rooker asked what facilities will be on site when building is completed. Mr. Mueller said there are three component pieces: the arena and adjacent offices are on the village green; there is an indoor arena; and, the all weather field will be located a few blocks further along. The natural grass fields are in the floodplain.

Mr. Rooker asked the size of the building. Mr. Mueller said it will be 39,000 square feet.

Mr. Slutzky asked if there is a net gain in the number of fields. Mr. Mueller said "yes." He said last year's proposal did not include the additional natural grass fields because they were adjacent to existing fields. They will retain the existing South Fork Park and further develop the fields in the floodplain.

Ms. Mallek asked whether it will be possible to have adults use the fields at times when SOCA is not using them. Mr. Mueller said they run an adult program so there will be adult users of these facilities. In times when SOCA is not using the facilities they will allow neighborhood use and to other users.

Mr. Slutzky said he appreciates the way the SOCA group took the Board's rejection last year and moved forward to find a different solution. He appreciates the Belvedere folks "raising their hands" to provide this solution. This is a fabulous outcome to the whole process.

Mr. Clark Coleman said he is a resident of Forest Lakes. He said not all locations within the designated growth areas are good for athletic facilities because of traffic concerns. Nobody has yet moved into a home in Belvedere, so nobody will be surprised at having this facility located there. This is also a centralized location which should minimize car trips. As to the overall scale of the project, if the fields are not congregated together it will increase car trips. There is a need for a facility like this that is centrally located. He does not think there is a more ideal location for this facility.

Mr. Don Mathes said he lives in Dunlora which is adjacent to Belvedere. The neighbors and himself and all children are in favor of this project. He has heard no concerns about lighting or the potential traffic, which is a very big plus. This will allow them to walk or bike to a centrally located all-weather facility, especially in the wintertime.

Ms. Noelle Klein said she is in favor of the project. She was involved last year and heard numerous residents give speeches about why they did not want such facilities in their back yards. It is now in her back yard and she is excited about the project. She supports the project, its locale, and the design of the fields. She asked the Board to support the project.

Ms. Heidi White said she lives in the County and is the mother of two and a neighbor to the Belvedere development. A year ago she supported SOCA's South Fork expansion project. That project

was not approved but she is encouraged by the offer made by Stonehaus. She asked that the Board approve SOCA's request for special use permits. She believes the fields will complement existing green space and enhance and add value to all surrounding neighborhoods.

Mr. Patrick Grant said he spoke last year and was disappointed by the outcome at the time. This proposal seems to be in an ideal location. People who move into the neighborhood will know what they are getting into. There is a need for playing fields in the County. He lives in Still Meadows and this proposal is appealing because his kids can walk or ride their bikes to these fields. He has no concerns with lights, traffic or parking and is delighted to have this facility in his back yard. He encourages the Board to support the request.

Ms. JoAnn Pinkerton said she lives out toward Ivy so it is not in her back yard, but she is totally thrilled that there might be a place to put this program. In addition to the coaching and competitive play at all levels and all ages, almost all really good varsity players have come through the SOCA program. As a SOCA family member she is behind this request. It is a great program and a great location.

Mr. Bob Forsyth said SOCA helps overcome an epidemic in the community. He and his wife volunteer at Hollymead School and there is a growing obesity problem in the schools. SOCA has a grand program to help young people and adults. As to any costs, this program falls on the backs of SOCA and Stonehaus and not the taxpayers. The facility will lie in a designated growth area and not bring more traffic on that road. Lighting is not an issue because the community is already embracing the facility. They need lighting because in the month of May alone they have tryouts five nights a week. He said Henry Ford said "coming together is a beginning, keeping together is progress, and working together is success."

Mr. Rick Natali said he has been a member of SOCA since moving into this neighborhood. He has been a coach, a parent and a member of its Board of Directors. He currently serves as president. He thanked those who have helped SOCA over the past year look for a suitable location and to publicly thank Stonehaus for its donation of land.

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

Ms. Thomas said that later tonight the Board will be talking about fill in the floodplain and the County Engineer did not support that request. She does not see anything in this staff report that there is a problem with such fill. Mr. Cilimberg said there is a difference in the scale and significance of the fill activity related to this use, versus what will be seen later tonight. This fill is fairly marginal since it is creating SOCA fields in the floodplain as opposed to creating building sites.

Ms. Mallek said she was on site last week and could see how close the Dunlora subdivision is. She asked if there will be a walking trail or any kind of connection in the center of the Belvedere neighborhood connecting to this neighborhood pedestrian-wise. Mr. Cilimberg said the Belvedere project in total has sidewalks throughout it. The condition added in No. 4 was to make sure that system made a connection into this facility.

Motion was then offered by Mr. Slutzky to approve SP-2007-054 subject to the ten conditions recommended by the Planning Commission and staff. He said he lives in the neighborhood immediately across the railroad tracks and not one person has voiced any concern about lights or noise. He does not think there will be any resistance once this facility is built.

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

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

(**Note:** The conditions of approval for SP-2007-054. SOCA Synthetic Fields near Belvedere, are set out in full below.)

1. The location of the synthetic field shall be in general accord with the conceptual plan entitled, "Belvedere – SOCA Special Use Permit: All Weather Synthetic Turf Field", and dated March 28, 2008;
2. Public streets which provide access to the synthetic field and to the parking area shall be constructed prior to use of the field;
3. Public streets which provide on-street parking to accommodate parking requirements for the synthetic field shall be a minimum of thirty-two (32) feet in width or other width as may be required by the County Engineer and approved as a variation by the Director of Planning;
4. Pedestrian access shall be provided from the end of Belvedere Boulevard to the synthetic field in accordance with the Albemarle County Design Manual standards for permanent paths;
5. In conjunction with its review and approval of a site plan or subdivision plat that pertains to or includes TMP-062A3-00-00-00100, the County may require that Belvedere Boulevard be extended to provide public street access to TMP-06200-00-00-002A0;
6. The applicant shall demonstrate as a condition of final site plan approval that the on-site parking provided for the use, including on-site on-street parking, is adequate for the proposed use;

7. The hours of use for organized activities and events are limited to the time between 8:00 a.m. and 9:30 p.m.;
8. The applicant shall pay five (5) percent of the cost of a signal at Belvedere Blvd and Rio Road/Meadow Creek Parkway upon demand of the County or VDOT;
9. The proposed route of the Meadow Creek Parkway or its other manifestation to be designated on the site plan consistent with the alignment that is shown on the conceptual plan entitled, "Belvedere – SOCA Special User Permit: All Weather Synthetic Turf Field", and dated March 28, 2008; and
10. If the use or structure is not commenced by May 14, 2013, this special use permit shall be deemed abandoned and the authority granted by this permit shall be terminated.

Mr. Slutzky next **moved** to approve SP-2007-058 subject to the seven conditions recommended by the Planning Commission and staff. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

(**Note:** The conditions of approval for SP-2007-058, SOCA Soccer Fields at Belvedere, are set out in full below.)

1. The fill in the floodplain shall be as shown generally on the plan entitled, "Belvedere SOCA Special Use Permit: Flood Plain Fields" prepared by McKee Carson and last dated March 25, 2008;
2. If required by the Federal Emergency Management Agency (FEMA), the applicant shall obtain a map revision, letter of revision, or letter of amendment. The County Engineer shall be copied on all correspondence related to changes to the floodplain;
3. Army Corp of Engineers, Virginia Department of Environmental Quality, and other necessary state and federal agency approvals must be obtained prior to issuance of grading permits;
4. Natural Resources Manager approval of a stream buffer mitigation plan prior to the issuance of a grading permit prior to placement of any fill in the floodplain, and County approval of an erosion and sediment control plan prior to the issuance of a grading permit for placement of any fill in the floodplain;
5. The seven hundred (700) feet long section of dry-stone wall bounding the inner edge of the floodplain west and northwest of the proposed floodplain fields as identified in the *Phase I Archaeological Survey and Geoarchaeological Investigation in Two Portions of the Belvedere Development Property, Albemarle County, Virginia*, dated February 6, 2008, shall be retained and preserved. The wall shall be clearly identified and labeled on the plan of development. The fifty (50) feet at the northern end of the wall may be disturbed for the proposed road construction as currently illustrated on the plan. The stone that is disturbed by the road construction shall be used to repair remaining portions of the wall or to extend the wall at its south end. A plan detailing the proposed reuse of the stone shall be submitted for review and is subject to the approval of the Director of Planning prior to the commencement of road construction. Methods for protecting the remaining wall during construction and for preserving the remaining wall following construction shall be submitted for review and are subject to the approval of the Director of Planning prior to the commencement of road construction;
6. Additional archaeological testing, as recommended in the *Phase I Archaeological Survey and Geoarchaeological Investigation in Two Portions of the Belvedere Development Property, Albemarle County, Virginia*, dated February 6, 2008, shall be conducted to more fully assess the extent of cultural resources in Area B of the Belvedere project area. Based on the findings of this additional testing, additional archaeological studies and/or treatments may be required. The additional testing shall be conducted by a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. Additional studies required as a result of the findings of the testing shall be completed prior to disturbance of the site. Treatments required as a result of the findings of the testing shall be outlined in a treatment plan that is subject to approval of the Director of Planning; and
7. Construction of the fields and parking lot shall commence on or before May 14, 2016, or this special use permit shall be deemed abandoned and the authority granted hereunder shall thereupon terminate.

Agenda Item No. 13. **Public Hearing:** SP-2007-059, John Cann Boat Dock (Sign #2).

Proposed: Private boat dock on the South Fork Rivanna Reservoir.

Zoning Category/General Usage: RA--Rural Areas: agricultural, forestal and fishery uses; residential density (0.5 unit/acre); FH--Flood Hazard overlay to provide safety and protection from flooding.

Section: 30.3.05.2.1(2) Water Related Uses within the Floodway.

Comprehensive Plan Land Use/Density: Rural Area 1 - preserve and protect agricultural, forestal, open space and natural, historic and scenic resources/density (.5 unit/acre).

Entrance Corridor: No.

Location: Dock to be placed at west side of the Reservoir approximately 1.3 miles upstream of the Earlysville Road (Route 743) bridge crossing. Dock to serve Cann property (TMP 45-3A1).

Tax Map/Parcel: 44-12V.
Magisterial District: Rio.

(Notice of this public hearing was published in the Daily Progress on April 28 and May 5, 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 the proposal is to allow a floating boat dock in the Flood Hazard Overlay District of the South Fork Rivanna Reservoir to serve the adjacent John Cann property. He showed a picture of the dock that will be installed if this permit is approved. There will be no direct impact on the reservoir or neighboring properties and no increase in flood levels. The facility is supported by the City of Charlottesville as well as the Rivanna Water & Sewer Authority.

Mr. Cilimberg said the applicant had proposed a fixed deck attached to the boat dock which staff did not support, and that is addressed by a condition. Staff noted the potential for proliferation of boat docks on a drinking water supply reservoir. That is a matter which needs to be addressed as part of staff's continuing work on the Natural Resources & Cultural Assets section of the Comprehensive Plan.

Mr. Rooker said he assumes it has been decided that that principle is not being violated.

Mr. Cilimberg said that is not a concern at this time. He said the Planning Commission recommended approval subject to three conditions. The first is that there shall be no lighting within proximity to the reservoir. The others are related to vegetation and earth disturbance and no other structures shall be constructed within that stream buffer.

Ms. Thomas asked if that condition takes care of the objection to the fixed deck. Mr. Cilimberg said "yes." He said the natural stairs that come down from the property above are not precluded by the condition, only the construction of new stairs.

Ms. Mallek asked if there are any cutoff features or low lighting requirements in this circumstance. Mr. Cilimberg said that is not covered in the conditions. They only address lighting within 25 horizontal feet of the reservoir. Beyond that, it is less of a relationship to the dock, but more on the residential property itself. He said the Board has at times placed a standard condition on rural special use permits, but the wording of that standard condition is problematic for the Zoning Administrator. He talked with her today, and if the Board is interested in including a further condition, he can offer a suggestion.

Ms. Mallek said she had a call from a neighbor of this property, and they asked whether lights will be left on and wondered if any lights could be required to have a motion sensor or a time turnoff. From reading the Commission's minutes it seemed to her there were going to be a string of lights down to that dock. Mr. Cilimberg said this is a standard condition which has been used for properties next to the reservoir just to be sure lighting is not directed toward the reservoir.

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

Mr. Jack Cann said he will answer any questions. As to lighting, he has no intention of putting lighting down there. He would be happy to change that 25 feet to 200 feet if the Board should so desire.

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

Ms. Thomas said she wants to be sure any approval follows the Board's principle of what is allowed on the reservoir. She asked if this type of dock has been approved previously.

Ms. Tamara Ambler, Natural Resource Manager, said that docks have been approved in the past. The example Mr. Cilimberg showed was one installed about a year ago.

Motion by then offered by Mr. Slutzky to approve SP-2007-059 subject to the three conditions recommended by the Planning Commission and staff. The motion was **seconded** by Mr. Rooker. Roll was called, and the motion carried by the following recorded vote:

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

(**Note:** The conditions of approval for SP-2007-059, John Cann Boat Dock, are set out in full below.)

1. There shall be no lighting within twenty-five (25) horizontal feet of the Reservoir, measured from the elevation of normal pool, which is Elevation 382 (North American Vertical Datum of 1988);
 2. There shall be no removal of vegetation or earth disturbance within the two hundred (200) foot stream buffer associated with the installation of the boat dock. The stream buffer is measured from the edge of the floodplain, which is Elevation 391 (NAVD 1988); and
 3. There shall be no other structures, such as decking or stairs, constructed in the two hundred (200) foot stream buffer.
-

Agenda Item No. 14. **Public Hearing:** SP-2007-061, Western Albemarle High School Rowing Club Dock (Sign #20).

Proposed: Public boat dock on the Beaver Creek Reservoir.

Zoning Category/General Usage: RA--Rural Areas: agricultural, forestal and fishery uses; residential density (0.5 unit/acre); FH--Flood Hazard overlay to provide safety and protection from flooding.

Section: 30.3.05.2.1(2) Water Related Uses within the Floodway.

Comprehensive Plan Land Use/Density: Rural Area 3 - preserve and protect agricultural, forestal, open space and natural, historic and scenic resources/density (.5 unit/acre).

Entrance Corridor: No.

Location: Dock to be placed at east side of the Reservoir adjacent to the Beaver Creek Park entrance road, off of Browns Gap Turnpike (Route 680).

Tax Map/Parcel: 57-4.

Magisterial District: White Hall.

(Notice of this public hearing was published in the Daily Progress on April 28 and May 5, 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. The request is for a floating dock to serve uses for the Western Albemarle Rowing Club and the public. The Club is now using private property for access to Beaver Creek Reservoir. He showed a picture of the existing fixed pier and boat ramp which the public uses. Proposed access would be on an inlet within the park. He said staff found no unfavorable factors to the request. They did find some factors which are favorable: there would be no impact on the water supply or neighboring properties; there would be no increase in flood level; and, the request is supported by the County Parks and Recreation Department and the School Board. The Planning Commission did recommend approval subject to four conditions.

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

The applicant had no comments.

Mr. Charles Griner said he lives adjacent to the Park. He enjoys hearing the rowers. He knows where the boats are presently stored on the private property, but asked where they will be stored in relation to the new dock. Mr. Cilimberg said he understands there is a separate storage facility they will be pursuing. It is not part of this request.

Mr. Bob Crickenberger from the Parks & Recreation Department said the Club is proposing to build a boathouse storage area just up the hill from the proposed boat dock. That request has not gone through the process yet.

Ms. Mallek asked if parking will be in the existing park lot. Mr. Cilimberg said "yes."

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

Motion was offered by Ms. Mallek to approve SP-2007-061 subject to the four conditions recommended by the Planning Commission. The motion was **seconded** by Ms. Thomas. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

(**Note:** The conditions of approval for SP-2007-061, Western Albemarle High School Rowing Club Dock, are set out in full below.)

1. There shall be no removal of vegetation or earth disturbance within the two hundred (200) foot stream buffer associated with the installation of the boat dock. The stream buffer is measured from the edge of the floodplain, which is approximated to be Elevation 545 (North American Vertical Datum of 1988);
2. There shall be no other structures, such as decking or stairs, constructed in the two hundred (200) foot stream buffer;
3. There shall be a memorandum of understanding or agreement between the Albemarle County Parks and Recreation Department and the Albemarle County School Board that addresses public use of the boat dock; and
4. A stable and pervious pedestrian access reviewed and approved by the Director of the Department of Parks and Recreation shall be constructed and maintained from the closest paved parking area to the new boat dock.

Agenda Item No. 15. **Public Hearing:** SP-2007-062, Southwood Community Center Expansion (Signs #24 & 26).

Proposed: The Boys and Girls Club will use the former store space for up to 80 youth members. Improve basketball court, playfield/yard, surface of lot in front of building and the façade of existing building.

Zoning Category/General Usage: R-2 Residential (2 units/acre).

Sections: 14.2.2 .1 and 5.1.04 Community center.

Comprehensive Plan Land Use/Density: Neighborhood Density Residential-residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses.

Entrance Corridor: Yes.

Location: Southwood Mobile Home Park. Northeast corner of the intersection of Hickory Street and Bitternut Lane. Hickory Street approximately 2,100 feet from the intersection of Old Lynchburg Road and Hickory Street.

Tax Map/Parcel: 90A1-1D.

Magisterial District: Scottsville.

(Notice of this public hearing was published in the Daily Progress on April 28 and May 5, 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 will be the conversion of what was a neighborhood store to a Boys' & Girls' Club facility for up to 80 members. There will be improvements to the associated recreational facilities as well as the façade of the existing building. He then showed a picture of the plan for the facility. He said it will provide much needed comprehensive youth development services in the Southwood Mobile Home Park and the surrounding area. It will provide a community meeting space for Southwood and the renovations will enhance the site. There are no factors unfavorable to the request. Both staff and the Planning Commission recommend approval of the request subject to two conditions.

Ms. Thomas asked if there are any provisions for a bus stop at the facility. Mr. Cilimberg said there is no condition for any enhancement to an existing bus stop or shelter.

Mr. Slutzky asked about fundraising for the project. Mr. Cilimberg said he had no information on that.

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

Mr. Clark Gathright of Daggett-Grigg Architects said he has enjoyed working with the Boys' & Girls' Club and Habitat for Humanity as well as County staff while bringing this project together. He introduced Mr. Jeff Mitchell, a board member with the Boys' and Girls' Club, who will answer questions.

Mr. Mitchell said they were pledged \$50,000 from the County with the condition that prior to receiving those funds they had to raise \$200,000. They have been successful in raising and collecting all of that \$200,000. A request has been formally submitted to the County for the pledge of \$50,000.

Mr. Dorrier asked where the children who will be using this facility will come from. Mr. Mitchell said a significant number come from the Southwood neighborhood. At this time they are constrained in the present space so are turning kids away and a lot of them are from the immediate neighborhood. Another big issue is that teens walk away when they see a facility full of younger kids. They want their own space.

Mr. Slutzky asked if the budget for the structure and the rest of the improvements is about \$250,000. Mr. Mitchell said that is correct.

Mr. Slutzky asked about the facility. Mr. Gathright said he does not know if there is an easy way to break down the costs because a lot of the work on the structure is being done on behalf of Habitat. The Boys' & Girls' Club is going from 645 square feet to 1,700 square feet all within the existing building.

Mr. Mitchell said a good portion of their budget is allocated to the outside of the facility in the way of a court and an adjacent playing field.

Mr. Gathright said they also propose to provide a completely accessible site from the parking lot into the building. At this time, every door into the building has about a three-inch step so a lot of ADA improvements are required.

Mr. Boyd said he has visited the site, and he congratulates the Club for the work being done there.

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

Motion was immediately offered by Mr. Dorrier to approve SP-2007-062 subject to the two conditions recommended by the Planning Commission. The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

(**Note:** The conditions of approval for SP-2007-062, Southwood Community Center Expansion, are set out in full below.)

1. Development shall be in general accord with the concept plan dated February 26, 2008; and
2. The parking study is based on a maximum of eighty (80) children. There shall be no more than eighty (80) children served at this location of the Boys' and Girls' Club.

Agenda Item No. 16. **Public Hearing:** SP-2007-063, 5th Street Development (Sign # 27).

Proposed: Special use permit for fill in the floodplain, no residential units proposed.

Zoning Category/General Usage: HC Highway Commercial - commercial and service uses; and residential use by special use permit (15 units/acre); LI - Light Industrial - industrial, office, and limited commercial uses (no residential use); AIA Airport Impact Area - Overlay to minimize adverse impacts to both the airport and the surrounding land; and FH Flood Hazard - Overlay to provide safety and protection from flooding.

Section: 30.3.05.2.2 (3) which allows filling of land in the floodway.

Comprehensive Plan Land Use/Density: Regional Service - regional-scale retail, wholesale, business and/or employment centers, and residential (6.01-34 units/acre); Community Service - community-scale retail wholesale, business and medical offices, mixed use core communities and/or employment services, and residential (6.01-34 units/acre); Parks and Greenways - parks, greenways, playgrounds, pedestrian and bicycle paths in Development Area 5.

Entrance Corridor: Yes.

Location: approximately 1100 feet north of I-64 on the east side of 5th Street, north and east of the Holiday Inn.

Tax Map/Parcel: 76-55A, 76M1-1.

Magisterial District: Scottsville.

(Notice of this public hearing was published in the Daily Progress on April 28 and May 5, 2008.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request is to allow fill in the floodplain for the purpose of exercising the plan that was approved as part of a rezoning, SUP-1999-013, a proffered plan that was approved in 2002. The special use permit has expired. The location is on property adjacent to the Holiday Inn South on Fifth Street to the north of I-64 close to the Fifth Street/Avon Street project recently reviewed and approved by the Board. It is in an area of commercial zoning and has a long history which is spelled out in the staff's report.

Mr. Cilimberg said initially in 2001, there was a recommendation for denial of the ZMA and SUP. The Board asked that certain things be addressed by the applicant, so it was referred back to the Commission and in 2002, it was recommended for approval. The special use permit was approved, but it expired after the normal 24 months. In 2005 the rest of the development was addressed by the rezoning, the Application Plan and proffers. In 2005 FEMA issued new floodplain maps for the County and while the LOMR of the map revision were revalidated at the time, this particular location did not get a revalidation of a previous letter-map revision. Now there is a request for a new special use permit and recently FEMA contractors notified the applicant that a new letter-map revision will be reissued.

Mr. Rooker asked what that means in terms of what the Board is requested to approve tonight. Mr. Cilimberg said to his knowledge it does not bind the Board to approving the request tonight. Ultimately the County has to sign off on the letter-map revision independent of this particular special use permit.

Mr. Cilimberg said staff noted in its report that there is a 24-month provision which is intended to allow for any new circumstance to be considered or ordinance changes to be applied to a special use permit that will expire in that 24-month period.

Mr. Rooker asked if there is any change. Mr. Cilimberg said no changes are proposed in the previous approval. This is basically the same proposal as the prior proposal.

Mr. Rooker said this application is the same, so is there any change in circumstance? Mr. Cilimberg said staff did not identify any that would be applicable on this request. The Board had a different opinion than the County Engineer which was based on concerns about precedent and concerns about fill of this magnitude in the floodplain for any project. The proposal itself is inclusive of a convenience store with gas pumps, a sit-down restaurant and associated parking; this was part of the original Application Plan.

Mr. Cilimberg then pointed out the floodplain boundaries on a map. He said staff noted that there have been no significant changes in circumstances since the last approval. The applicant has shown that fill in the floodplain is possible without raising the flood elevation or having an impact on neighboring properties. The County Engineer does not support the request based on concerns regarding good practice and policy, proximity of flood waters to occupants, integrity of fill slopes in the long term, and the precedent approval might set. Staff and the Planning Commission did not recommend approval of the original rezoning, in part due to concerns regarding impacts to the floodplain. After receiving additional information, the Board approved both the rezoning and the proffers after sending it back to the Commission for further review; approval included a proffered plan that established use of the property.

Mr. Cilimberg said staff found no change in circumstance since the Board's prior approval that would change the basis of that decision. There are no changes in the development proposal for the property since the original Board approval. There have been new floodplain maps, but they have not materially changed the floodplain boundary. The recommendation now from the Planning Commission is for denial by a vote of 4:2. They took the County Engineer's recommendation feeling it was valid. Should the Board recommend approval, staff has furnished it a list of five conditions to consider. He offered to answer questions and said that Mr. Mark Graham is also present to answer questions with regard to the floodplain.

Mr. Rooker asked if an Application Plan was approved with the rezoning. Mr. Cilimberg said it was a proffered plan. Mr. Davis said there was only the one plan allowed by the rezoning, and it was dependent upon the special permit.

Mr. Boyd asked if the Engineer's opinion today as opposed to that at the time of the rezoning is a personal interpretation issue. Mr. Cilimberg said he thinks it is a professional opinion concerning this magnitude of fill in the floodplain. There was a recent project before the Planning Commission that proposed a large area of fill in the floodplain. That request went to a work session and the County Engineer made some of the same findings. The Commission told the applicant they would not be agreeable to a development that required that amount of fill in the floodplain.

Mr. Boyd asked about the Planning Commission's language in that case. Mr. Cilimberg said the Commission's finding was that the request was not in harmony with the purpose and intent of the ordinance regarding floodplains.

Mr. Boyd said something has evidently changed since 2001. Other than having a different person's interpretation, what is the change? Mr. Mark Graham, Director of Community Development, said he spoke with the County Engineer, Mr. Glenn Brooks, who said he was trying to treat this application the same as he would any new application. He performed a technical engineer's review of the application and did not look at the fact that there was a previously approved plan. He was trying to be consistent with how a new plan would be treated. He said the staff that prepared the staff's recommendation incorporated Mr. Brooks' recommendation. It weighed all the factors, but based on the fact that this was a previously approved rezoning, recommended approval of this special use permit.

Mr. Boyd asked if staff recommended approval, but the engineer did not. Mr. Graham said that is true. The engineer was focused on a technical review based on the engineering facts before him, and did not consider all of the other unique characteristics of the project. But, when the Planning staff looked at all of the factors, and weighted them with everything else, they came up with a different recommendation.

Mr. Rooker asked why fill in the floodplain is problematic if mitigation measures are taken. Mr. Graham said there is a loss of storage capacity as far as having a reservoir hold water. Also, the sensitivity of the stream becomes much higher. If there is any miscalculation as to the amount of water associated with that flood, the error becomes more significant. The way FEMA uses "floodplain" for the over bank areas, it is a factor of safety to buffer any flood increase. The County Engineer made that point as well. Fill is somewhat insignificant now because the flow immediately upstream is already constricted by the Fifth Street crossing. If that Fifth street crossing were ever expanded and the carrying capacity of that bridge enlarged, there would still be a constriction caused by putting this fill immediately downstream. In other words, the channel could not be improved.

Mr. Slutzky asked if the Board is obligated to approve this request because it was approved previously. Mr. Davis said the Board is not obligated to approve a special use permit as a general principle, but there are some other considerations for this permit the Board would want to consider before denying it.

Mr. Slutzky said if the Board did not consider that it was previously approved, would staff's opinion change? Does the recommendation shift to support Mr. Brooks' arguments, or do the totality of the circumstances warrant approval? Mr. Graham said staff was very careful to avoid speculating about this request. Staff made a recommendation based on the facts before it, and not on hypotheticals.

Mr. Slutzky said the fact that the permit had been approved previously were "taken off of the table", would staff then shift over to Mr. Brooks' opinion. Mr. Graham said he does not want to speculate but thinks it would shift consideration more toward recommending denial of the request.

Mr. Slutzky asked if the Board should consider this request without advice from staff. What factors should it weight? There is the fact that the engineer has found it would be problematic from a technical standpoint. Mr. Graham said staff recognized that stream buffers can be smaller in development areas because of the interest in promoting a good form of development. That is a characteristic staff would want to support in this situation. There are also some positive factors to weigh.

Mr. Rooker said when this proposal was originally considered, the Board felt it was appropriate to have these kinds of services walkable to the Holiday Inn South, and now they would be walkable to another community nearby. Going back to the original rezoning, there was a concern about the kinds of uses that could go on the property. As an example, no one wanted a truck stop there. He would have a problem with denial of this application because the applicant has been locked into a single use based on a rezoning Application Plan. In effect, if this request is denied, there is no use left for the property.

Mr. Slutzky said he understands that. He wanted to make sure that since the previous special permit expired that would not cause the Board to approve it again automatically. He wants to weigh this

request on its independent merits as if it were coming before the Board for the first time. The engineer has found that there are ecological considerations that would weigh against approval but there are other factors in its favor. From what he has heard so far, and from what he read in the Planning Commission's minutes, he is favorably disposed toward approving the permit. It is not because it was approved previously. It is because of the other factors that to some extent tie their hands.

Mr. Rooker said as a practical matter, they are completely tied.

Mr. Cilimberg said there was a question earlier about what kind of changes have occurred since the original approval. That weighs heavily when looking at re-approval of special permits. In the fundamental areas, there is no difference in this project compared to the approval in 2002.

Mr. Boyd asked how this site will work with Avon Park and how some of the things associated with this project will complement that development. He is interested in the potential for a pedestrian walkway under I-64. He asked if that is an important piece of the puzzle. Mr. Cilimberg said he does not have the proffers in front of him and cannot remember if there was a commitment made along that section. He knows Mr. Boyd is talking about the potential for a continuous greenway trail through to the other side of I-64 which would eventually connect to Biscuit Run.

Mr. Boyd said he is concerned that the County get that connection. If this is part of getting that done, it is important.

Ms. Thomas asked what mitigation means. Mr. Graham said the most important part is that construction is done in a timely fashion and the area stabilized as quickly as possible. When they get into stormwater management, they must use Best Management Practices. Staff will be looking for measures that provide some comparable protection to what would be provided by a natural 50-foot buffer.

Ms. Thomas asked if that is possible. Mr. Graham said comparable "yes", but identical, "no." Additional stormwater measures and additional bio-swale measures can be provided to roughly compensate for what is lost in that stream buffer, but it is not identical in function.

Ms. Thomas said that since 2001 she has learned a lot more about waterways and the ways they can be damaged. That stormwater would ideally be treated as if it were falling in a forest. She asked if there is anyway to require rain harvesting. What would be regarded as a mitigating process and why not go as far as requiring them to retain water completely on site? Mr. Graham said staff would look for a performance measure rather than specifying how they go about accomplishing it. They will look to see if whatever measures they come up with will satisfy what is comparable water quality protection to what would have been obtained by that 50-foot buffer. Staff hesitates to specify methodology or how it should be accomplished. They leave it open to the design engineer to determine what is best for that site.

Ms. Thomas said that several years ago she did not think about the fact that as the water goes underneath Fifth Street and is constricted by the size of the culvert there, it creates an area that is ripe for extending into the floodplain. She does not want to set a precedent of allowing a fill in the floodplain on the downstream side of any culvert because the culverts would have to be kept at the same size. She asked how the Board can approve this request and not set a precedent it will regret. The Board has already approved this once, and that now seems to not have been a wise decision.

Mr. Graham said every application is looked at for the unique set of circumstances that are contained in that application. He said Mr. Slutzky asked if this were a completely new application if staff's recommendation would be different. He does not want to speculate about what staff's recommendation might have been because it was not analyzed against that set of facts. There is no question that what Mr. Brooks has said and what staff feels about protection of floodplains and stream buffers weighs against the project. He said staff started with the idea that the rezoning had been approved, the special use was previously approved, and there has not been a significant change in any condition since that approval.

Mr. Davis said to answer Ms. Thomas' question, approval of this request would not be a precedent which would require the Board in the future to disregard the engineering staff's recommendation in the future

Ms. Mallek asked why that is so. Mr. Davis said it is because the set of circumstances would not be the same. There is case law to the effect that if a zoning application or a special use permit were approved and all conditions were exactly the same, that could have a bearing on whether or not that same application could legally be denied. If there are material differences or any differences in the application, every site plan is then reviewed on its own merits.

Mr. Slutzky asked if variances and proffers from one application to another are weighed. Mr. Davis said because there is a prior zoning approval in this instance which restricted the use, that requires a significant difference in the analysis staff would do for its recommendation to the Board.

Ms. Thomas said when the Board suddenly started approving rural churches it was "thrown in its face" that it had approved one big church, so it had to approve the second big rural church. She has gotten jaundiced on the idea of setting precedents. Mr. Davis said applicants will always make that argument.

Mr. Cilimberg said he has looked at the proffered plan, and there is a greenbelt easement proffered along Moores Creek and on one side of Biscuit Run, as well as a conservation easement on the west side of Biscuit Run.

Mr. Boyd said if there were no further questions for staff, he would invite the applicant to speak.

Mr. Patrick Enright said he is responsible for Dominion Development Resources which represents the applicant. He made a PowerPoint presentation. He said if one had looked at the site it is not the best piece of property for an entrance corridor into the County. He pointed out on a map Moores Creek, Biscuit Run and the floodplain as defined by FEMA in 2000 and which will be revalidated within the next 30 days. He then pointed out the 100-foot stream buffer on the fill side of the property; it extends across Biscuit Run. He said the greenway provides a link from Biscuit Run up to Avon so it is an important piece of this request. It has been recorded as part of the proffer on the original rezoning. He showed the overlap of the fill that would encroach within the 100-foot buffer to the 50-foot buffer. He continued showing pictures of the site and explaining the details. He said the applicant got a letter from FEMA saying they will push approval through in 30 days, so in 15 days they should have a revised LOMR which will be presented to the County for signature.

Ms. Thomas asked if it is expected to change anything Mr. Enright has shown to the Board tonight. Mr. Enright said "no."

Mr. Enright said at one time there were other uses on the land. There was a residential use, and the prior owner tried to get the density increased. Now, the fill is necessary, otherwise the site is virtually rendered useless. Although it is a site of nine acres, with the floodplain, critical slopes and buffers, there is no use unless the floodplain can be filled in. He said the fill could have unforeseen impacts, but FEMA is saying it will not. Base flood levels have not changed in this area, and the fill will not impact any adjacent properties. He said the current plan would have the finished floor level at four or five feet above the one hundred year flood level. Also, it is all a commercial use; there will be no residential use on the site. As to slope integrity, they will be properly engineered. They are thinking about ready-rock walls to insure that banks do not erode due to movement if the stream ever got that high. Recently they had a firm which makes geo-fabrics look at the proposal, and they went through a complete retaining wall discussion with them. Other fabrics are available that might be more attractive, more consistent with the greenway, but which would provide just as much structural integrity. He said without the fill, there is no reasonable use of the land.

Ms. Thomas said maybe she was using the wrong words. Fill is necessary in order to use this site, but is the encroachment shown on the plan necessary. She said there seems to be considerable usable space for one of the two uses allowed by the zoning with the fill but without the encroachment. Mr. Enright said in looking at the economic viability of a nine-acre site, they are filling in approximately two and one-half acres. The 50-foot encroachment into the buffer allows additional parking which makes the site economically viable.

Mr. Dorrier asked Mr. Enright if the applicant is in agreement with the five recommendations made by the County Engineer. Mr. Enright said they are in agreement.

Mr. Davis said the Water Protection Ordinance makes a distinction between the buffer in the growth area and the rural area. In the growth area it allows for a reduction to 50 feet with a mitigation plan.

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

Mr. Slutzky said he supports this request. He had a number of unresolved questions about the ecological impact of the request before the presentations, but is now convinced given the totality of the circumstances that it is the appropriate thing to do and he is not worried about setting a precedent. There is quite a unique configuration of factors involved here. He can understand the argument that their use of the site would be profoundly constrained if the Board did not allow the fill.

Ms. Thomas said Mr. Davis' last comment made the difference for her. This property is in the development area and encroachment is foreseen with mitigation. She assumes staff will be persistent on mitigation. It is not the Board's job to make sure someone has the highest use of their land if it causes environmental damage, so she does not want that to be the precedent here.

Mr. Rooker said he does not think the Board would be setting that precedent. He thinks the Board must consider that there was a prior rezoning of the property which locked in a plan so there is really only a single use available. The Board is basically looking at renewing the special use permit which was issued in association with an Application Plan for a prior rezoning which the Board has previously approved.

Mr. Dorrier said the applicant will have "to jump through a few hoops" to bring the property up to the standard required by the Engineer's Office. He then offered **motion** to approve SP-2007-063 subject to the five conditions recommended by staff. The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

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

(Note: The conditions of approval for SP-2007-063, 5th Street Development, are set out in full below.)

1. The fill in the floodplain shall be shown on a site development plan and shall be in general accord with the "Conceptual Site Plan," dated January 8, 2002, and most recently revised on March 10, 2008, except as may be modified in order to meet the requirements of the County's Water Protection Ordinance, as determined by the County Engineer;
2. The County Engineer's approval of an erosion and sediment control plan;
3. The County Engineer's receipt of proof of compliance with Federal and State agencies regulating activities affecting wetlands and watercourses. The applicant must obtain a map revision, a letter of map revision, or a letter of amendment as required from the Federal Emergency Management Agency (FEMA) and copy the County Engineer on all correspondence;
4. The County Engineer's approval of a mitigation plan outlining mitigation measures for encroachments into the stream buffer; and
5. The County Engineer's approval of computations and plans documenting changes to the floodplain. Computations must demonstrate compliance with Sections 30.3.2.2 (verification of limits of floodway and floodway fringe) and 30.3.3 (general requirements for flood hazard overlay districts) of the Zoning Ordinance. Plans must show the existing and proposed floodplain boundaries and elevations.

Agenda Item No. 17. From the Board: Matters Not Listed on the Agenda.

Ms. Thomas said City Council will be holding a public hearing regarding the proposed Water Supply Plan and also the issue of maintenance of the South Fork Rivanna Reservoir. She thinks this Board remains as supportive of the Water Supply Plan as it was when it wrote the letter to DEQ some months ago. She is asking the Board members if they want to say anything to encourage City Council because it has new members who have not gone through this exercise previously. If anyone wants to make comments, she has spent quite a few hours trying to get the arguments down to a few simple points. It is a complex plan because it deals with several items in the environment; it is not just a water supply plan but it also gets water flowing in the Moormans River, and it will not ruin the Mechum River, and it will not cause replacement of an old and brittle 13-mile pipeline coming down from Sugar Hollow. The Plan has many good elements, but each one of them can be a target for criticism. She said maintenance of the South Fork Rivanna Reservoir in some shape or form is something in which there is community interest. When the dredging engineers met with interested parties she asked them to "walk them through the steps" of dredging. The engineer said the first thing he would do is ask why they wanted dredging; the community has not quite answered that question at this time. She does not want to hold up the Water Supply Plan in order to deal with mitigation of the South Fork Rivanna Reservoir. It is clear it is more expensive to do dredging. The bottom 30 feet of a dam is the most expensive feet of the dam to build. Adding 15 more feet is not very expensive. That is what is being talked about if every bit was dredged out the reservoir; that would be over 2.0 million cubic yards now, and then throughout the next 50 years somehow it must be made sure it does not fill in again. She said the dollars do not say that is the cheapest alternative. She thinks the community wants that reservoir maintained in some shape or form.

Mr. Slutzky said he appreciates that Ms. Thomas brought up this subject, and he does have some comments. First, one of the things he has enjoyed about being on the Board is that some of the members have been at this for a while and have a wealth of knowledge and experience on some of these complex issues. The way Ms. Thomas has "dug in" communicating for the public's benefit in the City and with City Council has been helpful. She also made sure Mr. Slutzky was made aware of all the nuances that took place before he became a Board member. He is 100 percent committed to the Water Supply Plan the Board has already agreed to. It went through a long public process and there were good conclusions. This plan uses our water for a sufficient number of years and answers the question of what will be done. There have always been details of the Plan that are imperfect and there always will be questions with any consensus outcome. The most noticeable were the number of people who said "wait a minute", wouldn't it be great if there could be a secondary water source as a backup. Suppose there were maintenance dredging of the Rivanna in the event there was a catastrophic occurrence in the Ragged Mountain Reservoir? Plus there are recreational values and other reasons why the Rivanna should be dredged. He thinks these are two separate issues. There is the Water Supply Plan which has been approved, and he thinks the RWSA should continue down that path and get the permits and plan to build it for all of the reasons agreed to in the first place. Separate from that, he is interested in the idea of dredging. It may make sense to have RWSA put out an RFP to see what the dredging community could come up with to deepen that body of water. If nothing can be done in terms of dredging, he would not want to slow down what is being done with the approved Water Plan. If it became inexpensive to dredge, he still would not want to back off from what the Board has already committed to doing because there still would not be enough water to supply the needs out 50 years. However, he thinks the issues need to be kept separate.

Ms. Mallek said before considering any dredging the reasons for it need to be known. That would determine how much were taken out of the reservoir and what the costs might be.

Mr. Boyd asked if Ms. Mallek is solidly behind the current 50-year Plan.

Ms. Mallek said she is.

Mr. Rooker said he is solidly behind the Plan and pursuing the permits to get that Plan. A permit does not require that anything be built. If something came up that made it less expensive to do "a" rather than "b" or something that was more environmentally sound, the Plan could be amended. During the

period of time the Plan was being looked at, a big concern was that there were four boards independently looking at things. A lot of different opinions were expressed. One of the most important things that happened during that process was that the four boards came together to support a plan that ultimately was supported by virtually everyone in the community. He thinks it is important not to unravel the Plan that has been approved, and that the permits which allow each component of the plan be obtained. He said several Board members have expressed throughout this process that they want some kind of dredging looked at to maintain the health and some of the capacity of the South Fork Reservoir. He thinks dredging should be considered, but said it may be found that dredging is not as easy as some of the other options.

Mr. Dorrier said he is committed to the existing 50-year Plan.

Mr. Boyd said he agrees with Mr. Rooker. He thinks maintenance dredging should be pursued, but he has not seen any evidence that the 50 year plan should not move forward. Unless something comes along that completely changes his mind, he thinks the two things should be pursued separately.

Ms. Thomas said it might be helpful to convey that to City Council because they are facing a public hearing. She is not sure that the Board saying something officially in front of them is helpful, but it may assure each one of the Board's feelings in this matter.

Mr. Boyd said he had planned to make some telephone calls and tell them that. There are some members of the press still present in the audience, so he thinks they heard that this Board is unanimously supportive of the 50-Year Water Plan as it is designed, and is also interested in looking at maintenance dredging of the South Fork Rivanna Reservoir as an addition to the Plan.

Mr. Rooker said that during the process, there were a lot of questions raised about Gannett Fleming's study. He asked if the right starting point was used for demand, and whether the population figures are reasonable. In some ways he argued with them on some of these issues in meetings that he and the Mayor had with their staff. Ultimately, the response was that if they are wrong there might be a 60-year supply rather than a 50-year supply. It's hard to argue with the fact that they should be conservative in estimating the 50-year needs. He did not hear many people in the public attacking the underpinnings of their projections at the public hearings.

Ms. Thomas said it has occurred to her that the projections are all based on residential growth and use of water and not on any possible industrial use of water.

Ms. Mallek said during the campaign last year, the voters asked why the County does not plan ahead. This is one case where the Board is doing what it is actually supposed to do.

Mr. Rooker said the Board has talked about the scale of wind turbines in the County. There were some pictures done which help you to understand the scale of these turbines.

Mr. Cilimberg said a clarification is needed on the John Cann request because the Board did not get into the lighting requirements. He said the Board has been discussing the rural area condition Mr. Davis composed a few months ago. The Zoning administrator has a concern about how the second sentence of the old condition is interpreted (shown on the screen in the Auditorium). It is suggested that in the future there be a modification of that condition as a new condition. Staff would like to move to that wording which would make it easier for the Zoning Administrator to be able to judge lighting. He said that sometimes there are no site plans where lighting is included. The new condition would speak to the kind of fixtures that need to be used and how they would be shielded. Secondly it would speak to a lighting plan that would limit lighting levels. There would be a level that could be represented by the Plan that the Zoning Administrator would receive and review for approval. The Board has not had a chance to see this before tonight, but it is something staff thinks will be easier to administer and still accomplish the intent.

Ms. Thomas asked if Mr. Cilimberg is suggesting that the next time the Board has a plan before it and wants to say something about lighting, this wording should be used. Mr. Cilimberg said that is correct.

Ms. Mallek said it addresses her concern.

Mr. Davis said this standard will probably be what the Zoning Administrator will use to implement the adverse language in the prior conditions. The new condition will read as follows: "All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval."

Agenda Item No. 18. Adjourn to May 21, 2008, at 1:30 p.m., Room 241, for a Joint Meeting with the Planning Commission and Architectural Review Board.

At 8:59 p.m. with no further business to come before the Board, Mr. Slutzky offered **motion** to adjourn this meeting until May 21, 2008, **at noon** in anticipation of a closed session to discuss a legal matter, as opposed to adjourning until 1:30 p.m. Mr. Rooker gave **second** to the motion. Roll was called, and the motion carried by the following recorded vote:

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

Chairman

Approved by the
Board of County
Supervisors

Date: 08/06/2008

Initials: EWJ