

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on January 14, 2009, 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, and Director of Planning, V. Wayne Cilimberg.

Agenda Item No. 1. The meeting was called to order at 6:01 p.m., by the Chairman, Mr. Slutzky.

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

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Agenda Item No. 4. From the Board: Matters Not Listed on the Agenda.

Ms. Thomas reported that she is a member of the Rivanna River Basin Commission. That Commission was formed with the promise that it would not ask the Board for money; it was formed with donations from local and state individuals. A small amount of those funds was used to pay for a mapping project. The Nature Conservancy is facing a slowdown in donor contributions; their funding is not growing. In a couple of years, the RRBC may come to all of the boards of supervisors and ask for some support if community contributions do not continue. She suggested the Board members take an interest in what the Commission is doing. A letter will be coming soon suggesting that the Board take certain actions in terms of dealing with rainwater runoff.

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Ms. Mallek said workforce items were discussed at the Board's last meeting. She serves as the Board's liaison to the Piedmont Workforce Network. There is good news from the State. The Governor's special advisor for the workforce – Danny LeBlanc – has given all department heads about two more weeks to sign agreements to improve the operations of the One-Stop Workforce Center on Hydraulic Road.

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Ms. Mallek said she would like to recognize Dr. Elmer Gaden, who is one of her constituents. He has just been awarded a prestigious prize about engineering. He graduated from the School of Engineering and Applied Science at Columbia University, and is known as the "father of biochemical engineering." The Bio-Engineering Department at the University of Virginia is one of the earliest such departments in the United States. She thinks the community is lucky to have Dr. Gaden as a resident.

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Agenda Item No. 5. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Greg Quinn addressed the Board. He considers the proposed transit authority and the new taxing for it as "a big albatross." He thinks Albemarle County is trying to create a socialistic Shangri-la. People working with him cannot afford to make their house payment or buy groceries. To send money out of the County is irresponsible. His furnace broke last year, and he has cut wood and heated his house with wood because he cannot afford a new furnace. He thinks a transit authority could turn into a big burden if it tried to send a subway out to Ruckersville. Everybody has to live within their means now. He supports the Police Department, the School System and fire departments. If the County needs to fill a few potholes, he would head up a gang of people who would work cheap since they are all out of work.

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Mr. Len Mailloux addressed the Board, stating that he is a realtor and an adjacent property owner to the Kenridge project on Route 250 West. He introduced two residents from the development next door – White Gables – Curtis Hathaway and Vince Blazi. He was involved with the original developer when he filed the plan to build this project and voiced his opinion on that plan at both the Planning Commission and Board of Supervisors' meetings; the project was approved and it was a "very nice plan." The developer sold 12 lots to Ryan Homes which built 12 homes, then left the project June 1, 2008, because sales were bad; all 12 houses conformed exactly to the site plan.

Mr. Mailloux said the developer then hired a new builder to take over the project. He told Mr. Mailloux he had to build to the site plan only changing the interiors. Construction started a couple of months ago. Three weeks ago the roofs started going up, and the roof pitch and the height of the roof on the five new units is between 10 and 15 feet higher than what was shown on the original plan. This has "totally wiped out the view" from the top floors of White Gables looking to the west. He thought that in order to make that change the developer would have to get approval from the County. That was never done.

Mr. Mailloux said that in addition to the pitch and height of the roofs, many windows, which are larger, have been added. After an inquiry to County staff he was told by staff that it is in accord with the permit issued. He has a hard time believing that if 10 to 15 feet is added to a roof – another story (the

original approval was for a story and a half) - that would be in accord with the permit. He asked the Board's help in figuring out why this development is going this way.

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Mr. Vince Blazi said that three years ago he bought a condominium on the top floor of White Gables which cost him over \$1.0 million. He and his wife spent a significant amount of time with Mr. Mailloux trying to decide if they would be able to see the mountains and sunsets over the Kenridge development. They got topographical maps and the height of the approved plan. They were away and just came back yesterday and their hearts just sank when they saw that adding the 10 to 12 feet wiped out their view.

Mr. Boyd asked Mr. Hathaway if he had any comments. Mr. Hathaway responded that the height is the whole problem.

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Mr. Tom Slonaker said he was wearing an eye patch tonight, but with only one good eye he can "identify the pirates" who are mismanaging the government at various levels and stealing from the population. He implores the Board to not join them by considering raising taxes. He knows of a business that last year paid \$240,000 in taxes to the government at various levels, had a \$250,000 payroll and lost \$120,000 during the year. If the Board continues to consider raising taxes on sales, for example, it will continue to close and force businesses like this to send about 30 employees to the unemployment line. Do not consider any increase in taxes at the local level. Everybody is saying the solution to the problem in the country is a reduction in taxes. If this Board ever considers a tax increase, there will be many businesses like his who will have to close their doors and ask for government support.

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Mr. Stratton Salidis said both the City and the County are talking about a transportation tax. If there were going to be a tax, he does not think there should be any portion for roads. Dropping the road portion of the proposed Meadow Creek Parkway, just keeping the bikeway, would be a good way to save money and increase air and water quality. Since the land is already purchased, people could bike without having to breathe auto fumes with the danger of auto traffic nearby. This would take cars off the road without creating sprawl that would increase the demand on existing traffic infrastructure in the future. It is not wise to invest money in a road that only goes to Melbourne Road. There is no interchange at that point. The process has attempted to evade Federal parkland and historic protection by claiming they are separate projects. However, with no interchange, the Parkway would end in a field.

Mr. Salidis said two City Councilors have said they are not interested in this road and have voted against giving the City land needed for the road. Article 7, Section 9, of the Virginia Constitution mandates a super majority, which would be four votes in Charlottesville. This is a blatant disregard for the constitution. He thinks the land would best be reserved as a nature preserve and a bikeway; that is something the whole community could get behind, and it would cost less.

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Mr. Keith Drake, Chairman of the Albemarle Truth in Taxation Alliance, addressed the Board. He came to speak about the proposed sales tax resolution. The root problem is that the State is not paying its share of transportation costs; they have raided transportation funds for years for other needs. He has many questions about what appears to be "tax first" and "decide later." He asked if the transportation problem has been well-defined. What are the specific uses of the funds? What cost-benefit analysis has been or will be done on the use of the funds? Citizens are being told that if the bill is passed by the General Assembly, a referendum will be put in front of the people and if that passes, the tax will be increased and it will meet transportation and transit needs. He has does not agree with that viewpoint. Eight years ago the taxpayers were told the same thing with regard to the meals tax for education spending. That meals tax was sold through referendum to the voters as a tax that would solve education needs for the foreseeable future. That lasted only about two years. Two years later there a lot of hand wringing about not having enough money to fund transportation. As a business person, his fundamental question is why the Supervisors are not looking to private industry to solve this problem? He said the role of government is to get out of the way and to facilitate private industry providing the solution to the problem, if it actually exists.

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Mr. Jeff Werner of the Piedmont Environmental Council addressed the Board. He was a member of the Transportation Funding Workgroup convened a couple of years ago. Given a list of transportation projects people thought were critical, they were tasked with deciding on the best options available. It presented a report offering a series of options. One of the key recommendations was to seek funds and a tax referendum. He said PEC blessed the recommendation. He reminded everyone that when Northern Virginia had its tax referendum on transportation a few years ago, PEC vigorously opposed it because there was no specificity as to how the funds would be used. He does not have a problem with the Board and City Council asking him, as a voter, whether this is a good decision. There is a serious problem, and he is not sure that if the legislation is approved that the community will support it. He said PEC would not support it unless it carried a very specific list of projects.

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Ms. Thomas asked if there could be an update on the White Gables situation from Mr. Davis. She said it is a very frustrating situation; she has not found an answer yet.

Mr. Davis suggested having Mr. Cilimberg or Mr. Mark Graham provide the update.

Mr. Cilimberg said he would begin with the special use permit part of this process. The Kenridge SUP went through a public hearing, a deferral and an ultimate recommendation of denial by the Planning Commission. The petition then came to the Board. He said staff had recommended denial based on concerns about some design aspects, but the height of the units was not one of those factors. Reviewing public comments in the Board's minutes showed that the public was concerned about how Kenridge would appear from property in Farmington and the rural area. There was also concern about the proximity of units in Kenridge to White Gables which at the time was just getting under development. Ultimately, the petition came to the Board for a public hearing, there was a deferral, and later the Board took action to approve the petition; conditions were included requiring screening of Kenridge from the north which is where the rural area is located and of the Farmington properties. Screening was also required of Kenridge between the units adjacent to White Gables.

Mr. Cilimberg emphasized that during those hearings, no concerns were expressed specifically about White Gables units seeing the roofs of Kenridge, but potentially people could see through windows, so there was an interest in screening; none of those conditions addressed height. He reported that color and materials of buildings and roofs were part of the discussion. That area has some height limitations that are higher than units in Kenridge; White Gables units are several stories tall so they are taller than the Kenridge units. He said Mr. Mark Graham, Director of Community Development, will provide an update about the site plan and building permits.

Mr. Graham said staff looked at the site plan closely as well as the Building Code and building regulations. He said the developer is fully in accord with what is allowed under zoning. The first units in Kenridge were built with a lower roof, but there is nothing that prohibits them from building the roofs the way they have been done. That is some of the flexibility allowed the property owner.

Mr. Davis said the property is zoned CO-Commercial Office so a special use permit was required for residential use. The height for structures in the CO district is permitted to be up to 65 feet; the structures that have been built are less than 35 feet in height as measured from the front – which is how they are measured in the ordinance. He has been told that from the back the buildings appear to be taller because of the grade - the height in the back is approximately 50 feet from base to roof. That would not be the measure of how the height is considered under the Zoning Ordinance. The special use permit did not impose any special restrictions on the height. The site plan which was approved controls the footprint of the building and the building type but not the height. As far as the permits issued by the County and the ability of the County to regulate height, there are no restrictions in place that would require the structures to be any lower than what they are now, and there's no ability of this Board to retroactively impose that type of a condition.

Mr. Cilimberg said concerns were expressed about the layout and design of the project during review of the special use permit – the way the units were lined along the street - each has a garage and side-by-side driveways. The concern was about how that would impact street parking, sidewalks, etc. One of the Commissioners was concerned about the design because the land lies in the development area and there are certain Neighborhood Model principles which are important to the project, and they were not provided by its design and layout. Information the Planning Commission saw during its review showed illustrations as to how the units would be located along the streets and how they would look from different elevations. Those illustrations indicated that the backs of the units would be taller from the ground up, but the pitch of the roof shown was not as great as it apparently turned out to be on the newer units. That was not part of the conditions of approval.

Ms. Thomas said she is frustrated because she doesn't see a way to make these two developments fit together better. The new buildings are obstructing the existing White Gables buildings. If nothing else, this is a lesson the County needs to "have pounded into our heads." It has to be more careful about how one development fits with another. She thinks the Board needs to make sure that a development which is fine within itself is also fine within its wider neighborhood context. She wondered if that would require a legal change or a policy change. It is too late for this particular situation, so she hopes staff will work on what could have been done to avoid the present situation.

Mr. Rooker said the Neighborhood Model encourages more vertical development.

Ms. Thomas said White Gables is the type of development the Neighborhood Model encourages. Ideally both would be attractive developments. She does not think Kenridge needs this height in order to be an attractive development.

Mr. Rooker said he thinks it would be a difficult situation to deal with legislatively, because there are height restrictions in each zoning district.

Ms. Thomas said this is unusual because it is not a residential zone. The Board probably would have had the ability in the special use permit process to impose a height restriction.

Mr. Rooker said if this had been a commercial development, the buildings could have gone up to 65 feet. When the special use permit was looked at, the Board looked at an "either or" situation. There could have been a commercial development on the property with buildings up to 65 feet, or what was ultimately proposed. He thinks that what ended up being put on the property is better for the area than what could have been built under existing zoning.

Ms. Thomas said that doesn't mean the Board could not have made it better.

Mr. Graham said even if the Board had done something like Ms. Thomas mentioned, property owners could plant trees in their backyards that might grow even higher and block views even more. He

said staff has been discussing this for a few days and has not found a perfect solution to this problem. It's the classic struggle with infill development.

Mr. Slutzky said that unfortunately there does not seem to be much the Board can do. If that is true, and the people in White Gables know of something that has not been mentioned, they should bring it to staff's attention immediately.

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Agenda Item No. 6. Consent Agenda. Mr. Boyd asked that Item 6.2 (Brownsville Elementary Addition and Renovation Reappropriation) be pulled for discussion. Mr. Davis noted that this item was deferred from another meeting and is on the Consent Agenda for approval. A lengthy discussion of Item 6.2 ensued and was the subject of a separate vote which can be found later in these minutes.

Mr. Boyd **moved** for approval of Consent Agenda Items 6.1 and 6.3 (Item 6.2 had been pulled for discussion). Ms. Mallek **seconded** the motion.

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

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

NAYS: None.

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Item 6.1. Approval of Minutes: February 13, February 20, November 5 and November 25, 2008.

Mr. Mallek had read the minutes of February 13, 2008, and found them to be in order as presented (She had given the Clerk a list of typographical errors).

Mr. Slutzky had read the minutes of February 20, 2008, and found them to be in order as presented.

Mr. Dorrier had read the minutes of November 5, 2008 (pages 2 through 29 ending at Item No. 13) and found them to be in order as presented.

Ms. Thomas had read the minutes of November 5, 2008 (beginning on Pages 29 at Item No. 13 to the end) and had handed the Clerk a list of typographical errors; otherwise they were correct as presented.

Mr. Rooker had read the minutes of November 25, 2008, and found them to be in order except for one figure listed in a statement by Mayor Dave Norris at the bottom of page 4. He asked that it be checked.

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Item 6.2. Brownsville Elementary Addition and Renovation Reappropriation.

Mr. Boyd said when he looked at this request, he was concerned that the School Board understand the economic situation the County is in currently. Although there was a savings of \$1.5 million in the bid on this project, the Schools did not reduce the project total by that amount when they issued bonds; they reduced it by all but \$800,000. That might have been a good decision at the time, but he is not in favor of approving this request. He realizes the money must be used for schools because it is Virginia bond money, but things might be switched in the CIP and somehow that money could be moved to "the rainy day fund." He does see anything in this request so serious it needs to move forward at this time. This project was not on the original CIP project list.

Mr. Slutzky said he does not think it would be a good idea today to "bless" this request. He also would not want to make a decision to take that extra money and move it to the "rainy day fund." He would prefer hearing from the School System as to how valuable these expenditures might be.

Mr. Tucker said there are members of School staff present in anticipation that the Board would want to hold a discussion today, and they can comment.

Ms. Thomas said she would like to know the time constraints. It was her understanding staff felt the Board might approve this request because of possible savings if the project were done within a certain time.

Mr. Davis said Mr. Joe Letteri can speak to that. There are some time constraints because this is an ongoing project. In order to utilize the change order process it would need to be done fairly soon.

Mr. Rooker asked if borrowed money can really be put into a "rainy day fund." Mr. Davis said VPSA money would need to be spent on qualified school projects, but there is a possibility it could be spent on a different CIP project.

Mr. Letteri said he would like to speak about three parts of this proposal. The first has to do with safety, security and compliance. They feel the changes are necessary to improve safety and security of students through additional lighting, signage and windows, including the supervision window at the front desk. Also, they want to improve the traffic flow throughout the school which also affects student security. Removal of hazardous materials such as asbestos is part of the project. It will improve ADA issues with the school's front entrance and lobby bathrooms. It will upgrade aging electrical water and casework from

the 1960's that no longer supports the learning spaces which are in need of significant repairs. The energy efficiency of the building will be improved through an airlock vestibule.

Mr. Letteri said that funds were appropriated in 2006 so work continues to address efficiencies identified in the Resource Utilization Study and to implement the Baldrige quality model in the long-range master facilities plan. This work ensures that learning spaces are efficient and effective. Staff realizes the Brownsville project does not address efficiency and effectiveness for the whole school; it represents only the costs associated with the addition. Brownsville is one facility that has managed the efficiencies identified in the two years since the initial appropriation. It is important to treat Brownsville as one cohesive unit that will be wholly effective in the delivery of instruction for all students. In order for Brownsville to meet the standards that were not part of the original bid, it would cost an additional \$800,000. Addressing these issues now will make the best use of taxpayer dollars, insure that learning spaces in the school meet the efficiency guidelines, and insure the facility meets the needs of the larger community of students it will serve.

Mr. Letteri said that in terms of Strategic Plan alignment, certain types of learning spaces are more suitable to student achievement than others. Staff is actively seeking to make all facilities align with Twenty-First Century learning spaces as part of the strategic plan. Doing it now is efficient and effective since contractors are presently onsite. When the school reopens in the fall of 2009 it will be a cohesive unit ready for use rather than being an additional project in the future at a possible higher cost further disrupting learning environment backgrounds. Lastly, ensuring that all learning spaces have the tools necessary for the Twenty-First Century, older classrooms will require additional electrical outlets in order to use today's technological tools. Teachers in older classrooms now resort to use of multiple extension cords which overload electrical outlets. This creates potential hazards. He said the principal at the school is present and can address some of the instructional reasons to support this request for an appropriation.

Mr. Davis asked Mr. Letteri to comment on the Board's question about the timing of the project. Mr. Letteri said if this work is to be accomplished this summer, it is imperative that this request be approved soon in order to complete the final design of the project.

Mr. Boyd said he appreciates Mr. Letteri's prepared remarks, but his problem with this request is tied to the economic times. He does not see this project as a dire need. Balancing the County budget is more important. He applauds County staff for bringing the Board recommendations on how to save money. While he applauds the School Board for preparing its budget within the amount this Board said would be available, it is still 5.26 percent more than spending for the 2007-08 fiscal year – or about \$5.3 million more than what was spent for the Schools that year. He sees that as being different on the General Government side. The Board has not yet seen Mr. Tucker's proposed budget for FY 2009-10, but everybody has to do "a little belt tightening." He does not see that it is necessary to spend this money now.

Mr. Slutzky said in order for him to decide on this question, he has two concerns that need to be addressed. How much more will it cost if it's not done now? In light of the fact that these improvements weren't included in the original scope of work, what makes them a need and not a want? Mr. Letteri said regarding the cost of the project, the bidding environment is very good. Prices are as good as they were many years ago.

Mr. Slutzky responded that this is a change order, so the work is not being competitively bid. Mr. Letteri said that hasn't been decided yet. Staff wants to be competitive, and will work to get the best price possible. As to why it is necessary now, they are trying to make the building a cohesive unit.

Mr. Rooker said the Board has a process to decide on capital improvement projects; this request would normally go through the CIP Committee. He asked if this project could be considered next month, after the committee has a chance to review it in light of other priorities in the CIP. He thinks the committee needs to have a chance to review this project against other projects. He does not want to consider this project in isolation.

Ms. Mallek commented that she is concerned about the lack of detail, and commented that it is a nice list of items. If asbestos is so important, it cannot be delayed another year. How much would that one item cost and what is its relative merit versus other things on the list?

Mr. Slutzky asked what form the asbestos material is in. Mr. Letteri said the material referred to on this list has to do with the "hockey pucks" behind some of the old chalkboards. They would need to be removed in order to renovate the classrooms.

Mr. Rooker said the asbestos work would be occasioned by doing this project; it is not something occasioned by the project already approved. Mr. Letteri said that is correct.

Ms. Thomas asked if this decision can wait until next month. Mr. Letteri said "yes." He cannot say everything on the list could be accomplished by next summer even if the request is approved within 30 days. A number of the items on the list could be done, but he could not guarantee that every item could be done.

Mr. Boyd said Mr. Slutzky has pointed out that this might be a separate bidding process. An add-on might not be the most advantageous, economical way to do the project.

Mr. Slutzky said he is not inclined to approve anything today. It sounds like several Board members also have reservations about the request. How could the Board be assured the pricing is

optimal? What about going through the normal process of weighing this project against other projects which have been zeroed out of the CIP? Those would need to be done before he would be receptive to the request. While he thinks the project is worthy and valuable, the County is not in a luxury time. There seems to be a consensus to wait.

At this time, Mr. Rooker **moved** to defer Consent Agenda Item 6.2 until the day meeting in February. Ms. Thomas **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

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Mr. Rooker said there was a mention of legal compliance issues, and he asks that the Committee get a full understanding of whether such things (A.D.A., etc.) need to be corrected and what the component cost of those would be and whether those problems are occasioned by doing the additional work.

Ms. Mallek said almost every school in the County was built in different stages or has had renovations. Having taught for 15 years in a school that was built in about six different stages, one is always in some part that is different from another part of the school. She thinks this project should be considered along with all of the other economic decisions.

Mr. Dorrier asked if the additional items costing \$800,000 were discovered because the bid for the project came in under budget. Mr. Letteri said that was not the case. Although none of the items were in the original CIP request, over the last two years while looking at what a Twenty-First Century classroom should look like, staff put together this list. They felt this was a good opportunity to consider an infrastructure investment because of the current bidding climate. Staff is not trying to take advantage of the fact that the bids came in under budget. They feel this project would pull the school entirely together and make it one state-of-the-art facility as opposed to having an addition added to an older building, and then having to deal with that older section at some point in the future.

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Item 6.3. ZTA-2008-003. Administrative Waivers (deferred from January 7, 2009).

It was noted that at the January 7, 2009, Board meeting, the Board held the required public hearing for this zoning text amendment and deferred action until January 14, 2009, for action on its Consent Agenda.

The Board directed that the proposed ordinance be modified in two respects. Section 2.5(c) was changed to require members of the Board of Supervisors and the Planning Commission to request in writing a Planning Commission review of a waiver request. Subsections (b) and (c) of Section 32.2 were changed to clarify that the "site plan waiver" is not a waiver of a site plan but rather the waiver of certain details of the site plan that otherwise would be required by the Zoning Ordinance. The changed language of the modified sections is highlighted in the attached ordinance.

Staff recommends that the Board approve ZTA-2008-00003, Administrative Waivers, by adopting the attached ordinance dated 01/07/09.

**By the above recorded vote set out above the Board Adopted An Ordinance To Amend Chapter 18, Zoning, Article I, General Provisions, Article II, Basic Regulations, Article III, District Regulations, And Article IV, Procedure, of the Code of the County of Albemarle, Virginia, by amending Sec. 4.2.5, Modification or waiver; Sec. 4.7, Regulations governing open space; Sec. 4.7.1, Open space, intent; Sec. 4.7.2, Uses permitted in open space; Sec. 4.7.3, Open space, design requirements; Sec. 4.7.4, Ownership of open space; Sec. 21.7, Minimum yard requirements; Sec. 21.7.1, Untitled; Sec. 21.7.2, Untitled; Sec. 21.7.3, Untitled; Sec. 26.10, Minimum yard requirements; Sec. 26.10.1, Untitled; Sec. 26.10.2, Untitled; Sec. 26.10.3, Untitled; Sec. 32.2, When required; Sec. 32.2.1, Untitled; Sec. 32.2.2, Untitled; and by adding Sec. 2.5, Procedure for administrative waivers, the ordinance being dated January 7, 2009.**

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

#### **ORDINANCE NO. 09-18(1)**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE II, BASIC REGULATIONS, ARTICLE III, DISTRICT REGULATIONS, AND ARTICLE IV, PROCEDURE, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, Article II, Basic Regulations, Article III, District Regulations, and Article IV, Procedure, of the Code of the County of Albemarle are amended and reordained as follows:

**By Amending:**

Sec. 4.2.5      Modification or waiver  
Sec. 4.7        Regulations governing open space  
Sec. 4.7.1      Open space, intent

Sec. 4.7.2	Uses permitted in open space
Sec. 4.7.3	Open space, design requirements
Sec. 4.7.4	Ownership of open space
Sec. 21.7	Minimum yard requirements
Sec. 21.7.1	Untitled
Sec. 21.7.2	Untitled
Sec. 21.7.3	Untitled
Sec. 26.10	Minimum yard requirements
Sec. 26.10.1	Untitled
Sec. 26.10.2	Untitled
Sec. 26.10.3	Untitled
Sec. 32.2	When required
Sec. 32.2.1	Untitled
Sec. 32.2.2	Untitled

**By Adding:**

Sec. 2.5	Procedure for administrative waivers
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**Chapter 18. Zoning**

**Article I. General Provisions**

**Sec. 2.5 Procedure for administrative waivers**

Applications for administrative waivers submitted pursuant to sections 4.2.5, 21.7, 26.10 and 32.2 shall be processed as follows:

- a. *Application.* A developer or subdivider requesting a waiver shall file a written request with the department of community development stating the reason for the waiver and explaining why the request satisfies one or more of the applicable standards and findings in sections 4.2.5, 21.7, 26.10 or 32.2.
- b. *Notice to board, commission and abutting owners.* When an application for an administrative waiver is submitted, the agent shall send notice by first class mail, electronic mail ("e-mail") or by personal de-livery to each member of the board of supervisors, the commission and to the owner of each lot abutting the lot for which the waiver is sought. The notice shall describe the proposed waiver, the name, address, email address and telephone number of the agent, the location where any documents submitted with the waiver request may be viewed, and the date by which the agent will act on the request. The notice also shall advise each recipient of the right to request review of the waiver request by the commission and the date by which the review must be requested. The notice shall be mailed, sent or hand delivered at least five (5) days prior to the date by which the agent will act on the waiver request. Notice that is mailed to the owner of each lot abutting the lot for which the waiver is sought shall be mailed to the last known address of the owner. Mailing the notice to the address shown on the current real estate tax assessment records of the county shall be deemed compliance with this requirement. If a lot abutting the lot for which the waiver is sought is owned by the same owner, the notice shall be given to the owner of the next abutting property not owned by that owner. The failure of any person to receive the notice required by this subsection shall not affect the validity of a waiver, if granted.
- c. *Request for commission review.* An abutting owner or a member of the board of supervisors or the commission may request commission review of a waiver. Any request shall be in writing, shall state the reasons that commission review is requested, and shall be received by the agent by the date stated in the notice. A written request may be submitted either by regular mail, by email, or by hand delivery.
- d. *Procedure if commission review requested.* If review of a waiver by the commission is timely requested, the commission shall review and act on the waiver request within thirty (30) days of the date of the request for review. In its review and action on the waiver, the commission shall apply the applicable standards and findings in sections 4.2.5, 21.7, 26.10 or 32.2. In granting a waiver, the commission may impose such conditions deemed necessary to protect the public health, safety, or welfare.
- e. *Appeals.* The denial of a waiver, or the approval of a waiver with conditions objectionable to the developer or subdivider, may be appealed from the agent or the commission to the commission or the board, as the case may be, as an appeal of a denial of the plat, as provided in section 14-226 of the Code, or the site plan, as provided in sections 32.4.2.7 or 32.4.3.9, to which the waiver pertains. A waiver considered by the commission in conjunction with an application for a special use permit shall be subject to review by the board of supervisors. In considering a waiver on appeal, the commission or the board may grant or deny the waiver based upon the applicable standards and findings in sections 4.2.5, 21.7, 26.10 or 32.2, amend any condition imposed by the agent or the commission, and impose any conditions deemed necessary to protect the public health, safety, or welfare.

- f. *Waivers include modifications.* For the purposes of this section 2.5, the term “waiver” or any form thereof, includes the term “modification” as used in this chapter.

## Article II. Basic Regulations

### Sec. 4.2.5 Modification or waiver

Any requirement of section 4.2.1, 4.2.2, 4.2.3 or 4.2.4 may be modified or waived as provided herein:

- a. *Modification or waiver by the commission.* The commission may modify or waive any requirement that is not subject to an administrative waiver as provided in subsection (b), as follows:
1. *Request.* A developer or subdivider requesting a modification or waiver shall file a written request in accordance with section 32.3.10(d) of this chapter and identify and state how the request would satisfy one or more of the findings set forth in subsection 4.2.5(a)(3). If the request pertains to a modification or waiver of the prohibition of disturbing slopes of twenty-five (25) percent or greater (hereinafter, “critical slopes”), the request also shall state the reason for the modification or waiver, explaining how the modification or waiver, if granted, would address the rapid and/or large-scale movement of soil and rock, excessive stormwater runoff, siltation of natural and man-made bodies of water, loss of aesthetic resources, and, in the event of septic system failure, a greater travel distance of septic effluent (collectively referred to as the “public health, safety, and welfare factors”) that might otherwise result from the disturbance of critical slopes.
  2. *Consideration of recommendation; determination by county engineer.* In reviewing a request for a modification or waiver, the commission shall consider the recommendation of the agent as to whether any of the findings set forth in subsection 4.2.5(a)(3) can be made by the commission. If the request pertains to a modification or waiver of the prohibition of disturbing critical slopes, the commission shall consider the determination by the county engineer as to whether the developer or subdivider will address each of the public health, safety and welfare factors so that the disturbance of the critical slopes will not pose a threat to the public drinking water supplies and flood plain areas, and that soil erosion, sedimentation, water pollution and septic disposal issues will be mitigated to the satisfaction of the county engineer. The county engineer shall evaluate the potential for soil erosion, sedimentation and water pollution that might result from the disturbance of slopes of twenty-five (25) percent or greater in accordance with the current provisions of the Virginia Department of Transportation Drainage Manual, the Commonwealth of Virginia Erosion and Sediment Control Handbook and Virginia State Water Control Board best management practices, and where applicable, Chapter 17, Water Protection, of the Code.
  3. *Findings.* The commission may grant a modification or waiver if it finds that the modification or waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the area, or to adjacent properties; would not be contrary to sound engineering practices; and at least one of the following:
    - a. Strict application of the requirements of section 4.2 would not forward the purposes of this chapter or otherwise serve the public health, safety or welfare;
    - b. Alternatives proposed by the developer or subdivider would satisfy the intent and purposes of section 4.2 to at least an equivalent degree;
    - c. Due to the property’s unusual size, topography, shape, location or other unusual conditions, excluding the proprietary interest of the developer or subdivider, prohibiting the disturbance of critical slopes would effectively prohibit or unreasonably restrict the use of the property or would result in significant degradation of the property or adjacent properties; or
    - d. Granting the modification or waiver would serve a public purpose of greater import than would be served by strict application of the regulations sought to be modified or waived.
  4. *Conditions.* In granting a modification or waiver, the commission may impose conditions deemed necessary to protect the public health, safety or welfare and to insure that the development will be consistent with the intent and purposes of section 4.2.
  5. *Appeal.* The board of supervisors shall consider a modification or waiver as follows:

- a. The denial by the commission of a modification or waiver, or the approval of a modification or waiver by the commission with conditions objectionable to the developer or subdivider, may be appealed to the board of supervisors as an appeal of a denial of the plat, as provided in section 14-226 of the Code, or the site plan, as provided in section 32.4.2.7 or 32.4.3.9, to which the modification or waiver pertains. A modification or waiver considered by the commission in conjunction with an application for a special use permit shall be subject to review by the board of supervisors.
  - b. In considering a modification or waiver, the board may grant or deny the modification or waiver based upon the findings set forth in subsection 4.2.5(a)(3), amend any condition imposed by the commission, and impose any conditions it deems necessary for the reasons set forth in subsection 4.2.5(a)(4).
- b. *Waiver by the agent.* In accordance with the procedures stated in section 2.5 of this chapter, the agent may waive the prohibition of disturbing critical slopes on any parcel not within the Rural Areas (RA), Monticello Historic District (MHD) or Village Residential (VR) zoning districts in the following circumstances: (i) the critical slopes were created during the development of the property pursuant to a site plan approved by the county; or (ii) the critical slopes will be disturbed to replace an existing structure located on the critical slopes and the extent of the disturbance is the minimum necessary to replace the existing structure with a new structure whose footprint does not exceed the footprint of the existing structure. The agent may grant a waiver if he or she finds that:
1. The property is not identified in the open space plan as one having any protected resources and a field inspection has confirmed that there are no significant or critical features on the property identified for protection in the open space plan;
  2. There is no reasonable alternative that would eliminate or reduce the disturbance of critical slopes;
  3. The developer or subdivider submitted and obtained approval from the program authority of an erosion and sediment control plan, regardless of whether the area disturbed is less than ten thousand (10,000) square feet; and
  4. The developer or subdivider submitted and obtained approval from the county engineer of a plan that describes how the movement of soil and rock, stormwater runoff, siltation of natural and man-made bodies of water, the loss of aesthetic resources identified in the open space element of the comprehensive plan and, in the event of the failure of a treatment works and subsurface drainfield, a greater travel distance of septic effluent, will be mitigated through design, construction techniques, revegetation, stormwater management and other best management practices.

(12-10-80, § 4.2.5; 11-15-89; Ord. 01-18(4), 5-9-01)

#### **Sec. 4.7 Open space**

Open space shall be established, used, designed and maintained as follows:

- a. *Intent.* Open space is intended to provide active and passive recreation, protect areas sensitive to development, buffer dissimilar uses from one another and preserve agricultural activities. The commission and the board of supervisors shall consider the establishment, use, design and maintenance of open space in their review and approval of zoning map amendments. The subdivision agent and the site plan agent (hereinafter, collectively referred to as the "agent") shall apply the following principles when reviewing open space provided on a subdivision plat or site plan.
- b. *Uses permitted.* Open space shall be maintained in a natural state and shall not be developed with any improvements, provided that the agent may authorize the open space to be used and improved for the following purposes: (i) agriculture, forestry and fisheries, including appropriate structures; (ii) game preserves, wildlife sanctuaries and similar uses; (iii) noncommercial recreational uses and structures; (iv) public utilities; (v) individual wells and treatment works with subsurface drainfields (reference section 4.1.7); and (vi) stormwater management facilities and flood control devices.
- c. *Design.* Open space shall be designed as follows:
  1. *Lands that may be required.* The agent may require that open space include: (i) areas deemed inappropriate for or prohibited to development including, but not limited to, land in the one-hundred year flood plain and significant drainage swales, land in slopes of twenty-five (25) percent or greater, public utility easements for transmission lines, stormwater management facilities and flood control devices, and lands having permanent or seasonally high water tables; (ii) areas to satisfy section 4.16, and (iii) areas to provide reasonable buffering

between dissimilar uses within the development and between the development and adjoining properties.

2. *Redesign during review.* The agent may require the redesign of a proposed development to accommodate open space areas as may be required under this section 4.7, provided that the redesign shall not reduce the number of dwelling units permitted under the applicable zoning district.
  3. *Limitation on certain elements.* If open space is required by this chapter, not more than eighty (80) percent of the minimum required open space shall consist of the following: (i) land located within the one-hundred year flood plain; (ii) land subject to occasional, common or frequent flooding as defined in Table 16 Soil and Water Features of the United States Department of Agriculture Soil Conservation Service, Soil Survey of Albemarle County, Virginia, August, 1985; (iii) land in slopes of twenty-five (25) percent or greater; and (iv) land devoted to stormwater management facilities or flood control devices, except where the facility or feature is incorporated into a permanent pond, lake or other water feature deemed by the agent to constitute a desirable open space amenity.
- d. *Ownership of open space.* Open space may be privately owned or dedicated to public use. Open space in private ownership shall be subject to a legal instrument ensuring the maintenance and preservation of the open space that is approved by the agent and the county attorney in conjunction with the approval of the subdivision plat or site plan. Open space dedicated to public use shall be dedicated to the county in the manner provided by law. Open space dedicated to public use shall count toward the minimum required open space.

### **Article III. District Regulations**

#### **Sec. 21.7 Minimum yard requirements**

The minimum yard requirements in the commercial districts are as follows:

- a. *Adjacent to public streets.* No portion of any structure, excluding signs, shall be erected closer than thirty (30) feet to any public street right-of-way. No off-street parking or loading space shall be located closer than ten (10) feet to any public street right-of-way. (Amended 7-10-85; 7-8-92)  
  
(12-10-80, § 21.7.1; 7-10-85, 9-9-92; Ord. 01-18(3), 5-9-01)
- b. *Adjacent to residential and rural areas districts.* No portion of any structure, excluding signs, shall be located closer than fifty (50) feet to any residential or rural areas district. No off-street parking or loading space shall be located closer than twenty (20) feet to any residential or rural areas district. (Amended 7-10-85; 7-8-92)
- c. *Buffer zone adjacent to residential and rural areas districts.* No construction activity, including grading or the clearing of vegetation, shall occur closer than twenty (20) feet to any residential or rural areas district. Screening shall be provided as required in section 32.7.9. (Amended 9-9-92)
  1. *Waiver by the commission.* The commission may waive the prohibition of construction activity, grading or the clearing of vegetation in the buffer in a particular case where the developer or subdivider demonstrates that grading or clearing is necessary or would result in an improved site design, provided that: (i) minimum screening requirements are met and (ii) existing landscaping in excess of minimum requirements is substantially restored. (Added 7-10-85)
  2. *Waiver by the agent.* In accordance with the procedures stated in section 2.5 of this chapter, the agent may waive the prohibition of construction activity, grading or the clearing of vegetation in the buffer zone in the following circumstances: (i) adequate landscape screening does not currently exist and the installation of screening which meets or exceeds the requirements of this chapter would result in disturbance to the buffer; (ii) an arborist or landscape architect certifies that trees in the buffer are dying, diseased or will constitute a fall hazard; (iii) the county engineer determines that disturbance of the buffer is necessary in order to address an existing drainage problem; or (iv) disturbance of the buffer will result in improved screening through the use of a berm, a retaining wall or similar physical modification or improvement. In such a case, the developer or subdivider shall illustrate the result of both the existing screening without disturbance of the buffer and the screening that would be provided as a result of the disturbance of the buffer.

#### **Sec. 26.10 Minimum yard requirements**

The minimum yard requirements in the industrial districts are as follows:

- a. *Adjacent to public streets.* No portion of any structure, excluding signs, shall be erected closer than fifty (50) feet to any public street right-of-way. No off-street parking or loading space shall be located closer than ten (10) feet to any public street right-of-way. (Amended 7-10-85; 7-8-92)
- b. *Adjacent to residential or rural areas districts.* No portion of any structure, excluding signs, shall be located closer than fifty (50) feet to any residential or rural areas district and no off-street parking space shall be closer than thirty (30) feet to any residential or rural areas district. In the heavy industry (HI) district, no portion of any structure, excluding signs, shall be located closer than one hundred (100) feet to any residential or rural areas district and no off-street parking shall be closer than thirty (30) feet to any residential or rural areas district. (Amended 7- 10-85; 7-8-92)
- c. *Buffer zone adjacent to residential and rural areas districts.* No construction activity including grading or clearing of vegetation shall occur closer than thirty (30) feet to any residential or rural areas district. Screening shall be provided as required in section 32.7.9. (Amended 9-9-92)
  1. *Waiver by the commission.* The commission may waive the prohibition of construction activity, grading or the clearing of vegetation in the buffer in a particular case where the developer or subdivider demonstrates that grading or clearing is necessary or would result in an improved site design, provided that: (i) minimum screening requirements are met; and (ii) existing landscaping in excess of minimum requirements is substantially restored. (Added 7-10-85)
  2. *Waiver by the agent.* In accordance with the procedures stated in section 2.5 of this chapter, the agent may waive the prohibition of construction activity, grading or the clearing of vegetation in the buffer zone in the following circumstances: (i) adequate landscape screening does not currently exist and the installation of screening which meets or exceeds ordinance requirements would result in disturbance to the buffer; (ii) an arborist or landscape architect certifies that trees in the buffer are dying, diseased or will constitute a fall hazard; (iii) the county engineer determines that disturbance of the buffer is necessary in order to address an existing drainage problem; or (iv) disturbance of the buffer will result in improved screening through the use of a berm, a retaining wall or similar physical modification or improvement. In such a case, the developer or subdivider shall illustrate the result of both the existing screening without disturbance of the buffer and the screening that would be provided as a result of the disturbance of the buffer.

#### **Article IV. Procedure**

##### **Sec. 32.2 When site plan is required; waiver of drawing of site plan**

A site plan meeting the requirements of section 32 and all other applicable regulations shall be required as follows:

- a. *When required.* A site plan shall be required for any construction, use, change in use or other development in all zoning districts; provided that no site plan shall be required for the following:
  1. The construction or location of any single-family detached dwelling on a lot on which not more than two (2) dwellings are located or proposed to be located.
  2. The construction or location of a two-family dwelling on any lot not occupied by any other dwellings.
  3. Any structure that is accessory to a single-family detached or two-family dwelling.
  4. Any agricultural activity except as otherwise provided in section 5.
  5. Any change in or expansion of a use provided that: (i) the change or expansion does not require additional parking under section 4.12 of this chapter; (ii) no additional ingress/ egress or alteration of existing ingress/egress is required by the Virginia Department of Transportation based on the intensification of the use; and (iii) no additional ingress/ egress or the alteration of existing ingress/egress is proposed by the developer. (32.2.1, 1980)
- b. *Waiver of certain details of site plan by the commission.* After providing notice as provided by section 32.4.2.5, the commission may waive certain details of a site plan otherwise required by sections 32.5 and 32.6 in a particular case upon a finding that the details waived would not forward the purposes of this chapter or otherwise serve the public interest; provided that no such waiver shall be made until the commission has considered the recommendation of the agent. The agent may recommend approval, approval with conditions, or denial of the waiver. If the agent recommends approval of the waiver with conditions, he shall state the relationship of the recommended condition to the provisions of this section. No condition shall be imposed which could not be imposed through the

application of the regulations of section 32. The waiver shall identify the details otherwise required by sections 32.5 and 32.6 that are waived. (32.2.2, 1980; Amended 5-1-87)

- c. *Waiver of certain details of site plan by the agent.* In accordance with the procedures stated in section 2.5 of this chapter, the agent may waive certain details of a site plan otherwise required by sections 32.5 and 32.6 if: (i) the site review committee finds that all of the details required by sections 32.5 and 32.6 are not necessary for its review of the proposed development; and (ii) the zoning administrator, in consultation with the county engineer and the manager of zoning enforcement, finds that the details waived are not necessary to determine that the site is developed in compliance with this chapter and all other applicable regulations. The waiver shall identify the details otherwise required by sections 32.5 and 32.6 that are waived.

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Agenda Item No. 7. **Public Hearing:** SP-2008-0027, Field School (Signs #26, 27 & 29).

Proposal: Request to continue a middle school for boys, with a request to increase maximum enrollment from 48 students to 70 students max located in the existing community building at Claudius Crozet Park and approved with SP-2006-00043.

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

Section: 18.10.2.2.5 Private Schools.

Comprehensive Plan Land Use/Density: Designated CT-1 Development Area Preserve for Parks and Greenways in the Crozet Master Plan.

Entrance Corridor: No.

Location: 22 acre parcel at Claudius Crozet Park, north side of Park St, 1500 Feet east of High Street.

Tax Map/Parcel: 56A2-01-72 and 72A.

Magisterial District: White Hall.

(Notice of this public hearing was advertised in the Daily Progress on December 29, 2008, and January 5, 2009.)

Mr. Cilimberg summarized the Executive Summary which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request is to extend a previously-approved special use permit set to expire in June. The School is also asking that enrollment for this private boy's school be increased to 70 students. He said two of the original conditions have been satisfied through subsequent action of the applicant in establishing the school. It is located in Claudius Crozet Park which is recognized in the Crozet Master Plan as a preserve area for its open space. He noted on a rendering the general location of the Field School buildings within the park, as well as the area utilized for parking. He presented some pictures from the Park of the building being used for the school. He said staff and the Planning Commission both recommended approval with conditions, including increasing enrollment to 70 students and increasing the time of validity to June 30, 2014. He noted that the Field School may be looking for alternate locations in the future, but this is adequate for them in this timeframe.

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

Mr. Todd Barnett, the applicant, said the Field School has been using the building since September 2007, and has made improvements to the school in the way of lights, floor, outdoor plantings, painting, etc. – and it's a much nicer building as a result of their being there. They have been stewards of the place, and have been told that their presence has deterred some of the vandalism experienced in the past. Their usage and improvement of the building has increased its use by community groups in the last 18 months, with two classes occurring regularly on evenings and weekends. The school provides an alternative school that has appealed to the parents of 29 area families without burdening taxpayers in any manner. They would like to remain in the building in the foreseeable future with a maximum of 70 students. He offered to answer questions.

Ms. Thomas complimented the applicant on the work the school has done on the building, as it has improved it considerably.

Mr. Kelly Strickland with Claudius Crozet Park said he would be happy to answer questions. The Park Board is happy that the special use permit is being extended and the relationship between the park and the school has been great.

Ms. Mallek **moved** to approve SP-2008-0027 subject to the eight conditions recommended by the Planning Commission. Ms. Thomas **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

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

1. Maximum enrollment shall be seventy (70) students;
2. Hours of operation for the school shall be from 7:30 a.m. to 6:00 p.m., Monday through Friday;

3. The school is limited to existing buildings and park grounds as indicated on the concept plan (Attachment C- on file). Any additional building or site changes for the school use will require an amendment to this Special Use Permit (SP-2008-027);
4. The playgrounds and the park grounds, with the exception of the Community Building, will remain open and available for public use during the hours of school operation;
5. The athletic fields at the park shall not be available for the school's use after 4:00 p.m. on weekdays and shall not be available on weekends;
6. The athletic fields shall not be available for school use when closed by the Department of Parks and Recreation for inclement weather, overuse, fields restoration, or when any other scheduled use is authorized by the Department of Parks and Recreation;
7. Special Use Permit 2008-027 shall be valid until June 30, 2014; and
8. Shuttle bus service for students to and from school shall be provided each school day.

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Agenda Item No. 8. **Public Hearing:** SP-2008-0049, Pine Ridge Church of the Brethren (Signs #81 & 91).

Proposal: Bring existing church into conformance with the zoning ordinance and allow an expansion for a general purpose room.

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

Section: 10.2.2.35 Church building and adjunct cemetery.

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

Entrance Corridor: No.

Location: 5990 Buffalo River Road (Rt 604) at the intersection of Vintage Road; approx 525 feet northeast of Roach Ridge (Rt 817).

Tax Map/Parcel: 0190000004500.

Magisterial District: ~~Rivanna~~ White Hall (Note comment made later in the meeting)

(Notice of this public hearing was published in the Daily Progress on December 29, 2008, and January 5, 2009.)

Mr. Cilimberg summarized the Executive Summary which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request is for an 18-foot by 24-foot addition on the northeast corner of the building. This church has historic character. This request is intended to accommodate a multi-purpose area. No additional seating or parking is associated with this request. The addition will not be visible from adjacent residences. The church is located in the northern part of the County. He noted location of the proposed building on a rendering.

Mr. Cilimberg said both staff and the Planning Commission recommended approval with conditions. The Commission added a detailed fifth condition regarding the areas where trees would be protected and retained. He said this addition does not get into any of those areas; the condition is just a safeguard. At the Commission meeting there was a question raised regarding foot candles and the County's standard condition for lighting. The Commission ultimately recommended a condition for .5-foot candles rather than .3-foot which is what was listed in the staff's report and was used in prior approvals by this Board.

Mr. Cilimberg said the .5-foot was noted by a Planning Commissioner when someone asked what the ordinance requires, so the .5-foot was included in the condition forwarded to the Board; to be consistent with past actions the Board would actually use .3-foot candles. For a special use permit in the rural area that is a greater requirement than for a by-right use such as a country store or a farm winery. It is a bit of a discrepancy, but the condition which would be consistent with past actions would be .3-foot candles. To make this condition fit within what would be required in the rural area for any by-right use, it would be .5-foot candles. The difference in this condition is that it requires a lighting plan and there's no site plan required. He noted that the applicant had a conflicting meeting tonight at the church and asked if they needed to be present. Staff told him it was not necessary unless the Board had questions. He indicated that the church agrees with the conditions as recommended.

Mr. Slutzky asked if .3-foot candles are acceptable to the applicant. Mr. Cilimberg said they did not have any objections when it was included in the recommendation to the Planning Commission.

Ms. Thomas said she would prefer the .3-foot candles. Recently, people in the County have been fighting light pollution.

Ms. Mallek asked if a lighting plan would show location of any lights. Mr. Cilimberg said it would indicate how lights are aimed and shielded and their area of coverage.

Ms. Mallek asked if the tree protection measure is to keep construction vehicles from under the trees. Mr. Cilimberg said if vehicles did not get within ten feet of the drip line, basically they would go with what they mark in the field.

With no further questions for staff, Mr. Slutzky opened the public hearing. There being no one present to speak about this request, the public hearing was closed and the matter was placed before the Board.

Ms. Mallek said this location was listed in the advertisement for this meeting as being in the Rivanna District, but it is actually in the White Hall District. With that comment she **moved** for approval of

SP-2008-0049 with the five conditions recommended by the Planning Commission, modifying Condition No. 4 to 3-foot candles as mentioned by staff. Ms. Thomas **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

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

1. The church's improvements and the scale and location of the improvements shall be developed in general accord with the conceptual plan provided by the applicant and received September 12, 2008;
2. The area of assembly shall be limited to a maximum of an eighty-eight (88) seat sanctuary;
3. There shall be no day care center or private school on site without approval of a separate special use permit;
4. All outdoor lighting shall be arranged or 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 subject to approval by the Planning Director; and
5. No tree removal, grading, or disturbance shall take place within the driplines of the trees. The applicant shall have the dripline of the trees surveyed and shall mark the dripline in the field with temporary fencing. Any grading or disturbance within ten (10) feet of any dripline shall necessitate submittal of a "Tree Protection Plan" in accord with section 32.7.9.4 of the Zoning Ordinance. No grading or disturbance within ten (10) feet of any dripline shall be permitted until a) the survey and fencing have been completed and b) the Planning Director approves a plan which shows the grading or disturbance and the surveyed dripline of the existing trees.

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Agenda Item No. 9. **Public Hearing:** SP-2008-059. Luxor Commercial Veterinary Office (Sign #9).

Proposal: Extension of time allowed to establish Special Use Permit (previously approved as SP-2007-017/SP-2005-002).

Zoning Category/General Usage: PD-MC Planned Development Mixed Commercial - large-scale commercial uses; and residential by special use permit (15 units/acre).

Section: Section 25A.2.2 of the Zoning Ordinance which allows for veterinary offices and hospitals within PD-MC zoning.

Comprehensive Plan Land Use/Density: Urban Density Residential - residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses in Pantops (Neighborhood 3) of the Development Area.

Entrance Corridor: Yes.

Location: The 1.377 acre property is located on the north side of Rt 250 (Richmond Road) and east of Rolkin Road, between Montessori School and Aunt Sarah's Restaurant.

Tax Map/Parcel: Tax Map 78, Parcel 55D.

Magisterial District: Rivanna.

(Notice of this public hearing was advertised in the Daily Progress on December 29, 2008, and January 5, 2009.)

Mr. Cilimberg summarized the Executive Summary which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this is a request for time extension of an approved special use permit in a large planned development (Luxor Commercial Development) on Route 250 East in the Pantops area. He noted the site on a rendering and said it was originally approved with conditions. There was a re-approval in August, 2007 with an extension with the conditions somewhat modified at that time. There have been no changes in ordinance provisions that would affect the original approval. He said both staff and the Planning Commission recommended approval with the modified conditions including the validity of the approval until 48 months from January 14, 2009.

Ms. Mallek asked if the recommendation to waive the 20 foot setback is because there is commercial on the other side of the line. Mr. Cilimberg said the Planning Commission gave that waiver. Staff has since found that there is an inaccuracy in the Zoning Map so the modification was not necessary. The adjacent area is not residential, but commercial. Since that was done by the Commission, the Board need only approve the special use permit with conditions.

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

Ms. Denise Leceur of Denneco Development said she is the applicant. She said they have received all tentative final approvals so are moving forward. They hope to go to bid next week; the lynchpin is whether financing can be secured.

Mr. Boyd asked if the five conditions recommended are satisfactory to the applicant. Ms. Leceur said they have no problem with the conditions.

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

Mr. Boyd **moved** for approval of SP-2008-059 for the veterinary office with the five conditions recommended by the Planning Commission.

Ms. Thomas asked if the one tree is still protected. Mr. Cilimberg said the tree was part of the zoning approval, but he understands the tree may not make it.

Ms. Thomas said she knows a lot of people do not like the tree, but she actually likes it. She will also be sorry to see the other trees removed.

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

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

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

1. A separate entrance and exit shall be provided for the clinic in accordance with Section 5.1.11.d;
2. No outdoor exercise area shall be permitted;
3. The veterinary clinic shall be located in Building 4, as shown on the plan entitled "Application Plan for Luxor Commercial Center", prepared by Rivanna Engineering, dated October 13, 2004, last revised July 25, 2004;
4. Architectural Review Board issuance of a Certificate of Appropriateness; and
5. Special Use Permit 2008-059 shall be valid for forty-eight (48) months from January 14, 2009.

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Agenda Item No. 10. Resolution to request enabling legislation for the City of Charlottesville and County of Albemarle to fund transit and transportation projects.

Mr. Slutzky said this item was going to be part of the Consent Agenda, but Mr. Boyd has asked that it be put on the regular agenda for discussion. This is a request to adopt a resolution requesting enabling legislation so the City of Charlottesville and County of Albemarle can fund transit and transportation projects. He supports asking for this legislation. There are transportation challenges locally with less than a fair share of funding coming from the General Assembly. This enabling legislation would give the Board an opportunity to ask the voters of Albemarle County – and the City asking its voters – if they would agree to their taxes being increased in order to pay for transportation projects that normally would be funded through state monies.

Mr. Slutzky said several speakers made comments tonight that need to be addressed. One gentleman seemed to think the taxes would be going out of the County; he emphasized that the proceeds would go entirely to Albemarle County. Also it needs to be clear on the record that this is funding for transportation projects that have been through a significant public process. They have been identified by the MPO, including a potential expansion of the City's existing bus system. Consultants have estimated that about one-third would be gained by adding as much as a penny on the sales tax rate. He guesses that the majority of this funding would be spent on non-transit projects such as roads, pedestrian and bike routes.

Mr. Slutzky said another person commented that this is a case of tax first, and then decide how to spend the money. As Mr. Rooker pointed out, this legislation would be contingent upon transportation projects being included in the constrained plan – that means they have already been identified, discussed in public forums, and agreed upon by the bodies in the MPO. He thinks this is a unique opportunity for local citizens to be given permission by the General Assembly to choose to tax themselves or not. He trusts the voters, and if they would rather keep their money and not support these projects, he supports that outcome.

Ms. Mallek asked if the enabling legislation to create the structure is separate from this and already taken care of.

Mr. Slutzky responded that the MPO wanted to expand transit and have the system not be a monopoly provided by the City any longer. They felt it made more sense to have joint City-County ownership and have it collaboratively administered. There was unanimous support from the Board and City Council to go to the General Assembly and ask for permission to create a regional transit authority for purposes of governance related to transit. If that is going to happen, the MPO decided that as a separate matter the General Assembly should be asked for permission to ask the voters to fund transportation – with transit being only one component. He does not think the enabling legislation to form a regional transit authority is that controversial, and no elected representatives in the General Assembly have voiced a concern about doing that.

Mr. Slutzky said that a month ago when the Board passed a resolution of support for the enabling legislation, it did not act on this because there was not a draft available and Mr. Boyd said it was not appropriate to vote on something the Board had not seen. In the meantime, Mr. David Toscano asked the people in Richmond who draft legislation to produce a bill. It came back late, but has been reviewed by County counsel and others. There are technical tweaks to the language which clarify some unintended ambiguities. Unfortunately the bill introduced by Mr. Toscano did not catch all of those recommended

changes, but they are things which could be amended because they are not likely to be controversial. The question now is whether the Board wants to request the General Assembly to pass the bill.

Mr. Dorrier asked how much the one-cent figure would amount to, based on present sales.

Mr. Slutzky said the legislation allows adding up to one penny, but doesn't require that it be that much; based on sales figures from about 18 months ago it's somewhere in the \$23.0 to \$25.0 million range. With that amount of money some significant transportation projects that have been stalled for a long time could be funded.

Mr. Rooker said he has been involved in transportation issues for the community for 20 years, including 12 years of service on the MPO Technical Committee and seven years on the MPO Policy Committee. Over that period of time there has been a complete abdication by the State of its responsibility to pay for transportation. Over the last six years there has been a 44 percent cut in transportation funds for this area, a 40 percent cut followed by a 30 percent cut, followed by a recent announcement of another \$400.0 million cut, leaving about 20 percent of the transportation funds that were available six years ago – without reduction for inflation. The Transportation Commissioner has said construction costs have more than doubled over the last five years. Year after year, the Board talks to its legislators but is consistently told that it's not possible "this year." VDOT will be cutting its staff and offices by 30 percent around the State, and a number of legislators are talking about devolution meaning they are interested in seeing the cost of transportation pushed onto the counties. In effect, that cost would be put on the backs of property owners.

Mr. Rooker said he did not think anybody here has an interest in picking up the State's obligations. This is not a question of approving a tax, but a question of whether or not to allow County citizens to decide for themselves a better way to fund transportation in this area. It is doubtful that this legislation will be passed, but it would at least start a dialogue at the General Assembly level about the issue. If it passed, the Board would have to decide whether to hold a referendum, and if it were approved, the Board would have to decide whether to impose a tax. These are all separate issues which would require separate public hearings. There is flexibility as to the amount imposed based on the citizens' desires. He is in favor of allowing the citizens of the County to have an opportunity to express their opinion through the ballot.

Mr. Rooker also noted that the Funding Options Group mentioned by Mr. Werner earlier in the meeting, worked for about a year; it included representatives from all facets of the community. Several participants initially said the State and Federal governments should take care of funding. By the end of the process, their report, which was endorsed unanimously, suggested specific acute projects in the community that were not going to proceed without additional funding. There were specific recommendations about ways funds might be raised to improve funding for local transportation, and an enhanced sales tax dedicated to transportation was one of those. Under the current system, the County does not get back the funds it sends out via fuel taxes. If citizens decided they wanted to raise money locally for transportation projects they think are important for the community, those funds would stay here under such an approach. The legislation says any projects funded would have to be a part of the long-range transportation plan which is adopted by the MPO after a long public process or in Albemarle's Six-Year Road Plan, or the City's Urban Plan. He is in favor of allowing the voters locally to decide if they want to have enhanced transportation funding.

Mr. Dorrier said he is in favor of the project. He said the Executive Summary said that up to one percent could be added to the sales tax, but he wonders if that would be needed.

Mr. Slutzky said the bill would merely allow the Board to take the question to the voters in a referendum, but before putting the question on a ballot the Board would take public comments. If there was strong public favor for setting it at less than one percent, he thinks the Board would be wise to consider those comments and address them accordingly. The Board is just requesting enabling legislation at this time.

Mr. Dorrier said as a practical matter the transit authority could be as small as desired.

Mr. Slutzky said the Board would be able to spend all of the money on non-transit if it wanted to; this request is for the enabling legislation for transportation broadly.

Mr. Dorrier wondered if this should be expanded beyond Albemarle and Charlottesville.

Mr. Rooker said there were lengthy discussions about that, but at this point the other localities in the Planning District aren't urban enough to do transit to any extent; some of them use JAUNT. They were not interested in joining at this point. When the MPO discussed this with the legislators, none of them specifically indicated that they would not support the request. The more communities that bring forward ideas on how transportation might get funded, the better; it keeps the issue front and center.

Mr. Slutzky noted that at that meeting Delegate Rob Bell focused on the importance of keeping the request to transportation only, and he expressed strong aversion to any bill that was not be contingent on a referendum passing. That was a suggestion made by Mr. Boyd earlier in these discussions.

Mr. Dorrier asked if the idea is that Charlottesville Transit System would be expanded into a County transit system.

Mr. Slutzky said that is the other bill, the governance of a joint transit system which may be funded through this bill. This bill is not about transit dollars, but transportation dollars. A portion might be spent on transit, but the "lion's" share would be spent on non-transit.

Ms. Mallek said she was a neighborhood representative of the Transportation Working Group. There was a broad base of support from the business community. Even people who were reluctant about the concept at first agreed that potential projects on the list are essential to solving particular problems in the community. She supports having the ability to ask voters for their opinion. Several people asked her how she could consider this based on the current economy, and she said that if this bill is passed, the Board would have the option in the future to decide whether to go forward with the idea. One of her constituents today said he supports this measure because it would allow the County "to capture all of that money from people who come here and buy something and then go away." She will support the resolution.

Mr. Boyd said he is probably the only Board member who will not support this resolution, so he would like to explain his reasoning. It is not an issue having to do with a referendum as Mr. Slutzky has indicated. All along he has said that he could only support it if there was a referendum required. If the Board is going to move in that direction for making decisions, he would like to put the Western Bypass proposal up for a referendum and let the people decide if they want that particular route. He is not in favor of increasing any taxes at this time. He is not certain this recession is not going to be gone in a year. The Board is talking about adding \$26.0 million worth of tax burdens on the citizens of Charlottesville and Albemarle County. That would be every year; it would not be a one-time thing. The Board is talking about potentially establishing an elaborate transit system and he questions whether the full-blown version is needed as shown in the consultant's report. Also, he feels this legislation would allow the State "to get off the hook" in the way of transportation funding. If the State is going to put the burden back on the localities, he would rather see them give back existing sales tax money rather than adding a penny to the sales tax.

Mr. Rooker said the State already has a \$2.0 billion deficit. Where does Mr. Boyd think they would find the money?

Mr. Boyd said the State needs to correct some of its spending problems. He said the State budget has doubled in the last ten years; they have been spending money faster than it is coming in. He does not think the timing is right to do this. He is not mentioning these things so they can be debated; he has already made up his mind.

Mr. Rooker said he thinks Mr. Boyd is saying he is not willing to trust the voters to make the decision.

Mr. Boyd said that is not what he said.

Mr. Rooker said this is not a decision about whether or not to impose a tax. It is a decision as to whether to seek legislation which would allow the voters to determine whether they want to raise additional funds locally for transportation – and if so, when. To talk about this as though it were a vote to impose a tax of \$26.0 million "is a ridiculous misrepresentation."

Mr. Boyd said he does not consider it to be that.

Mr. Rooker said the maximum that would be permitted would be that. In fact, after public hearings the voters would determine whether they wanted to go forward with this. If the voters decided they wanted to do it, the Board at that time would decide whether to do it. He said Mr. Boyd is talking about it as if it is the decision to do it, but in fact it's a decision as to whether or not the voters locally should be trusted to make the decision as to whether or not they want to raise their own money to improve transportation in the area.

Mr. Boyd said he appreciates that thought. He also appreciates that concerning transportation, the Board wants to return to a more democratic form of government, rather than a republic type of government where elected officials make the decisions. He concurs with that, but that means the Board has to "go all the way" and let them make choices on things like the Western Bypass.

Mr. Slutzky said this is a little like "grand standing." The Western Bypass is not an entirely local decision. It involves the Federal government and the State government, and other localities. It is not a simple issue of the Board deciding to put the question on a referendum. He said it is interesting to hear Mr. Boyd discuss this because he is characterizing it in a way that clearly is not valid. Mr. Boyd is suggesting that it is not a good time to raise taxes, but yet he knows that when the County Citizen's Survey was done last summer, one of the questions asked of the citizens was their satisfaction with government performance. One of the questions asked was whether they would support funding transportation with local money in the form of a tax increase; 56 percent of the people who responded to the survey voted favorably without even knowing what tax might go up, or what the increase might be. They are so tired of the inaction in Richmond that a majority said "raise my taxes please." The Board is asking the General Assembly to give it the opportunity to go to the voters. He thinks it is interesting that Mr. Boyd knows a majority of the voters responded favorably on the question, but he is not comfortable giving them the opportunity to make that decision for themselves.

Mr. Boyd stated that he has not seen the final report on that survey, and that statistics can be interpreted many different ways.

Mr. Slutzky asked if what the Board was told by staff suggests that the majority of County voters would be against having an increase in local taxes. The survey was very clear about that question.

Mr. Boyd said Mr. Slutzky can argue the point, but he still has his opinions and that is what he has said. That is why he will vote against it. The Board could be here all night, but he will not change the way he feels about this question.

Mr. Slutzky asked if Mr. Boyd had a better plan to solve the County's transportation needs, or is he satisfied leaving them the way they are.

Mr. Boyd said the Board just needs to continue doing what it has been doing, fruitless as it has been, and lobby the State for funds.

Mr. Rooker asked if the State decided the best way to handle transportation would be add a penny to the sales tax, would Mr. Boyd think that is a good idea.

Mr. Boyd said "no" he would rather it be a gasoline tax which is a user tax.

Mr. Rooker said Senator Emmet Hanger is considering recommending that either the income tax be increased or provide a local component to the income tax which would be dedicated to transportation in some way. "No matter how you cut it", the money is not there for transportation and somebody at some time is going to impose a tax to try to solve this problem. If they do, and it's a sales tax at the State level, local people will pay that tax, and the County will not get back its share of the money.

Mr. Boyd said that Mr. Slutzky mentioned earlier that the Western Bypass was not a regional issue, but a State and Federal issue. U.S. 29 is a U.S. highway so that is part of the \$100.0 million figure he has seen which would be to three-lane the part of it which is now two lanes.

Mr. Rooker said the State has the power to build that road, and always has had, but VDOT doesn't feel it's a wise use of public money. That is not a local project; that is a State project. In the surveys that were taken, there was no majority support for that particular road.

Mr. Boyd said he does not remember those surveys. There was one by a radio station and the majority of people supported it.

Mr. Rooker said that is incorrect. The citizens supported a bypass, but most of them supported an eastern bypass. That road is about a \$250.0 million project; it is more costly than all of the road projects in the Twenty-Year Road Plan for this area. The State Commissioner of Transportation came to Albemarle a few years ago and looked at that alignment. The Commonwealth Transportation Board didn't feel it was a project the State should invest in. Several governors have taken that same approach. The CTB representative for this area supported it, but when he came to Albemarle and looked at the traffic numbers, he said it made no sense from a cost-benefit standpoint.

Mr. Boyd said he did not bring up the subject in order to debate the bypass issue. He is just saying that if a referendum is an appropriate way to do it, then projects like the Western Bypass should be "thrown into the mix" too. The Board would then be allowing the people to decide on what transportation projects they want.

Ms. Thomas said she is suddenly remembering why she got off of the MPO Board. Originally she was opposed to this sort of thing because she felt it let the State off the hook. If she can have two minutes, she will give the reasons she is in favor of this resolution. For one thing, it is enabling legislation. Because this is a "Dillon Rule" state, the Board has to go to the State and ask "Mother, May I" for almost every creative idea. Unfortunately this allows state politicians to play politics and they love to make themselves look attractive to their voters by turning down local taxes. They do this without ever coming up with the money to help the local governments – the transportation issue is the biggest example of how they're cutting into local programs.

Ms. Thomas said the Board is not asking for a handout from the State, quite the contrary. Also, she is in favor of this resolution because it is requesting a referendum. Someone will have to convince the citizens that this is the right way to spend their money, and that's going to be a really hard sell. It might include some piece of the Western Bypass but it will allow citizens to look at the road projects in the community and say whether they want to add an extra penny on the sales tax. A referendum is something that is rarely done in Virginia. Part of the question to the citizens is going to be whether they would rather have this tax burden on their real estate tax or on their sales tax. It seems to her that the State is making it clear that they are never going to fund transportation again. If they don't, the Board will have to put more and more money in the County budget for transportation projects just as it has done the last few years. That money comes out of the real estate tax.

Ms. Thomas said she would oppose this resolution if she thought just having the Board talk about it would scare the citizens into going to Richmond and making their State legislators do their responsibilities and support transportation at the level they should. That has not happened in recent years. She thinks this resolution, unfortunately, is a good idea.

Mr. Boyd said he wants to be sure that the minutes are clear on this, as well as any press people who are present. The referendum part is the only thing about this proposal that he likes. There are too many other circumstances involved with it so he can't vote for it.

Mr. Rooker said that based on Mr. Boyd's rationale, the rumble strips that were put on Route 29 at Forest Lakes would have gone to referendum before being funded.

Mr. Boyd said Mr. Rooker can interpret things any way he wants to.

Mr. Rooker said the ridiculousness of the analogy is stark. Under Mr. Boyd's approach any transportation project would go to referendum before it got funded.

Mr. Boyd told the Chairman that he would like to bring this question to a vote.

Mr. Slutzky said there has been a lively discussion of this issue.

Mr. Dorrier said he had a couple of things to say first.

Mr. Slutzky said Mr. Boyd would like to have a vote. He asked him if Mr. Dorrier can speak.

Mr. Boyd agreed.

Mr. Dorrier said gas was \$4.00 a gallon last summer and it seems that everybody has forgotten that. If it goes over \$4.00 again, public transportation will have to take up the slack. That is the reason he is supporting this resolution. He can see a need "down the road" for this. He said the Board has to look ahead; it has to be "ahead of the curve." He said that at the joint meeting with City Council, Delegate Toscano said unanimous support was needed from both bodies. For that reason, he will ask Mr. Boyd to reconsider. He said joint support is needed from both the County and the City in order for it to be considered.

Mr. Slutzky said Mr. Boyd has made it clear for the record that he has apprehensions. However, in the spirit of giving the County a chance to get this legislation passed – it would simply set up an opportunity to get this option and then decide if it should be used – would Mr. Boyd be willing to support this resolution having made it clear on the public record of the apprehensions? This would provide unanimity of support of the idea although Mr. Boyd has clearly stated his concerns about how it might play out.

Mr. Boyd said he has thought carefully about this, but he is against this idea on principle. He cannot support this resolution.

Mr. Slutzky said he is sorry and finds that it is a fairly cynical view, but it is Mr. Boyd's and he respects that.

Mr. Davis said he does not want to extend the discussion, but needs to clarify a couple of points about the legislation as currently drafted. The voters would be asked to grant the authority for the Board to impose an additional local sales tax of up to one percent. It was mentioned earlier that the question might be framed to have only a half of a percent or a quarter of a percent. If the Board were granted the authority to levy a tax they could levy less than the one percent, but the voters would not have that question before them.

Mr. Rooker said the voters would have the worse case question in front of them. Mr. Davis said that is correct.

Mr. Davis said the question to the voters would say "for transit and transportation purposes" but would not specify a list of projects. It is as Mr. Rooker said; the list would come from the Six-Year Road Plan. This is not like a bond referendum where specific projects to be funded could be named. Because this would be ongoing revenue, there is no way to name all of the projects that would be done with this revenue over the years. In the information presented in the referendum there would be projects identified from the current Six-Year Plan and the MPO Plan as projects likely to be funded by this revenue if the referendum was approved.

Mr. Slutzky said if the legislation passes in its current form, before putting the question to referendum, could the Board draw up a list of projects it would like to be funded by that revenue and make a public commitment to the voters that if the referendum passed those would be the projects funded? Mr. Davis said he thinks the Board would do something like that, but that would be subject to ratification by subsequent boards as those projects were put forward and funded through the years.

Mr. Rooker said this was discussed thoroughly by the MPO. It was pointed out that this would occur over a long period of time, and needs change. Transportation plans do need to be adjusted based on the facts as they occur.

Mr. Slutzky said if a stimulus package makes it out of Washington, and some portion is earmarked for communities that have active transit systems it would be helpful to have a regional transit system in place. It may be that a small percentage of that would be dependent on this revenue stream, so a greater percentage would be available for other forms of modality.

At this point, Mr. Rooker **moved** approval of the Resolution Requesting Enabling Legislation for the County of Albemarle and the City of Charlottesville to Fund Transit and Transportation Projects. The motion was **seconded** by Mr. Slutzky.

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

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

NAYS: Mr. Boyd.

**RESOLUTION TO REQUEST ENABLING LEGISLATION  
FOR THE COUNTY OF ALBEMARLE AND THE CITY OF CHARLOTTESVILLE  
TO FUND TRANSIT AND TRANSPORTATION PROJECTS**

**WHEREAS**, transportation planning and systems are regional in scope; and

**WHEREAS**, transportation planning in the Charlottesville-Albemarle area includes both transportation projects and the operation of a transit system; and

**WHEREAS**, the County of Albemarle and the City of Charlottesville desire to extend transit services to developing areas and to provide faster, more frequent service to the existing system, and to improve transportation in the Charlottesville-Albemarle area; and

**WHEREAS**, the County of Albemarle and the City of Charlottesville are seeking enabling legislation to establish a Regional Transit Authority to coordinate regional transit planning and operations; and

**WHEREAS**, additional funding is necessary to fund the expanded services of a Regional Transit Authority; and

**WHEREAS**, there is a dire need for transportation funding for identified and necessary transportation projects that are currently unfunded or underfunded by the Virginia Department of Transportation; and

**WHEREAS**, the County of Albemarle and the City of Charlottesville are seeking a funding source to fund necessary transportation improvement projects that cannot otherwise be reasonably or timely funded; and

**WHEREAS**, a local sales and use tax of up to one percent designated to be spent solely for the purposes of transit and transportation initiatives would provide a reasonable local source of funding for such initiatives; and

**WHEREAS**, the imposition of the proposed local sales and use tax of up to one percent would be subject to approval by local referendum and the use of such funding would be limited to transit costs, including funding for each locality's share of the cost of a Regional Transit Authority, and transportation projects selected from the region's Constrained Long Range Plan, the City's Urban Road Program, or the County's Secondary Road Program; and

**WHEREAS**, enabling legislation is necessary to enable a local sales and use tax to fund transit and transportation needs in the County of Albemarle and City of Charlottesville.

**NOW THEREFORE BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby requests that the Virginia General Assembly enact legislation to enable the County of Albemarle and the City of Charlottesville to levy a local sales and use tax of up to one percent to fund to fund transit and transportation projects in the County of Albemarle and the City of Charlottesville.

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Agenda Item No. 11. From the Board: Matters Not Listed on the Agenda.

Ms. Thomas mentioned that the High Growth Coalition recently considered four proposals put forward by the "builders," and three of them pertained to the approval process of counties. One had to do with making site plan approvals longer or at least faster; it has to do with getting buildings on the ground. She thinks there would be support for that kind of thing in this economy. The fourth one had to do with alternative septic systems. It would take away from local government the ability to approve or disapprove alternative septic systems; approval would be totally left to the public health department. Also, local government could not impose more stringent maintenance requirements on these systems than the manufacturer suggests. She said it is known locally and statewide that the regulations of alternative systems are quite lax and do not take local conditions into account. Also, she knows of no manufacturer who will tell people how difficult it is to maintain those systems. Those at the local level might want to have stronger regulations concerning the maintenance of the systems. She has already spoken up as an individual, and wonders if there is general support from the Board members to oppose a regulation that would take away from local governments the ability to address alternative septic systems.

Mr. Rooker said the idea that the only potential regulation would be that which is imposed by the manufacturer "is kinda scary." Certainly they do not take into consideration soil types, etc., so he would definitely support Ms. Thomas' position.

Mr. Slutzky said the County has worked hard to protect its waters. This has an effect on protecting those waters. If septic fields are put in that are nontraditional and they are not properly maintained, serious degradation of streams would occur. Usually soil conditions in places where these

alternative systems are used are such that degradation would be immediate and dramatic. He appreciates Ms. Thomas bringing this to the attention of the Board.

Ms. Mallek asked if there is a resolution the Board could send to the Coalition. Mr. Davis said he has not seen the bill that has been introduced. If it is the sense of the Board to oppose it, staff can let that be known and at the appropriate time bring back a resolution for the Board to support if the bill seems to be advancing.

Mr. Boyd asked if it is being opposed by the High Growth Coalition or VACo.

Ms. Thomas said it will be opposed by the Coalition. The Board does not have another meeting this month and things move very fast at the General Assembly. With that level of support, whatever action the Coalition takes, the County can join in.

Mr. Slutzky said based on this conversation, Ms. Thomas can say there was unanimous voice support.

Mr. Rooker suggested sending a letter signed by the Chair stating the Board's position.

Mr. Slutzky asked if anyone objected to having such a letter sent. There were no objections voiced.

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Mr. Boyd said he would like to report on discussions of the Fire/Rescue Committee about the ordinance, but he asked that Ms. Mallek speak first.

Ms. Mallek said there is "no option to fail" so there is nothing written down at this time, the Committee is working on a draft. She said Ambassador Howell is their "visiting listener" and facilitator so two cultures are being melded together; they need to go slow and work carefully. She said Mr. Boyd came up with an idea about how to use the Dillon Rule in reverse - describe clearly system responsibilities so by absentia the volunteer companies would be assured that the items not listed, and therefore not applying to anybody but themselves, would be things they would consider.

Mr. Boyd said at the request of the volunteers, the Committee decided upon Ambassador Nathaniel Howell as its facilitator. He is using his diplomatic prowess to help this group which needs every bit of help it can get. He will not say the discussions are going well; there are a lot of issues to be worked through. They hope to be through within the timeframe allocated for the Committee's work.

Mr. Slutzky said everyone appreciates the time and energy Ms. Mallek and Mr. Boyd are putting into this effort.

Ms. Mallek commented that it's "very important to our financial and community future that we succeed in this."

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Ms. Mallek said the contracts for the Advance Mills Bridge were advertised yesterday.

Ms. Thomas said she felt it was unfortunate that the headline in the newspaper said "they're finally moving forward." That was unfortunate because the Board members know VDOT has been working very hard to keep the project moving forward.

Ms. Mallek responded that the weight limits of the bridge were lowered as early as 1986. Taking that into account, people in that part of the County are very happy the project has gotten to this point.

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Ms. Mallek said the ACE Committee reports that some very significant properties have closed – two from each of the two previous years – but due to reforms in the process and improvements in the ordinance, the closings have been reduced from a 20-month timeframe down to 14. She noted that round nine – covering applications that were received by October 31, 2008 – includes 11 applications on over 1,200 acres. Not all of them can be afforded even if all qualify. The ranking on these properties will come out next month; five of them are brand new and six were qualified in previous years but either there was not enough money available for purchase, or the landowners changed their minds.

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Mr. Rooker said he asked the Clerk to send out the minutes from "the four-board water supply meeting" recently. He is not sure the memorandum of agreement will be completed and approved, but an agreement was reached on all the pertinent points raised.

Mr. Slutzky asked if the City keeps verbatim minutes. Mr. Tucker replied that their minutes are not verbatim.

Mr. Slutzky said the Board might like to share these minutes with City Council. Ms. Jordan responded that the Rivanna Authority prepared those minutes, and submitted them to all four bodies.

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Mr. Slutzky reported that County staff has been working to develop a climate plan in response to an earlier resolution adopted by the Board. The City, County and University have informally joined

together to discuss opportunities for cooperation with regard to development of the plans or implementation of them. He was invited to a meeting where the possibility of a significant grant becoming available if the three entities moved forward with a portion of a climate agenda was discussed. He read the proposed resolution into the record and asked if the Board might adopt this resolution supporting this collaboration, but not in a formalized way.

Mr. Slutzky said this resolution generally supports the County "sitting at the table" with the City and the University. There is no commitment to any specific outcome or any commitment to invest dollars. The Board has already agreed to work on climate change, so it just makes sense to do it in consort with others who share the same geographic domain.

Mr. Rooker **moved** for approval of the resolution. Ms. Thomas **seconded** the motion.

Mr. Boyd said he has already talked to Mr. Slutzky about his comments. He is in favor of going after the grant and continuing the County's efforts to become energy efficient, but he found that what is coming to the Board in the Cool Counties resolution is a proposal to spend \$1.0 million. This is not an endorsement on his part to spend any amount of money without taking it up as a separate issue.

Mr. Slutzky said while he would embrace the County spending significant dollars to advance the objective of protecting the environment from carbon, this vote would not be that vote. He agrees with Mr. Boyd, and that is not the intent of this resolution. That is why he brought it so the Board members could all participate in the discussion. The Board would only be saying that someone from the Board and someone from the Planning Commission could sit at the table in these discussions. If anything in the discussions required action by the Board, that would be brought to the Board and voted upon.

At this time, roll as called, and the motion carried by the following recorded vote:

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

NAYS: None.

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

**RESOLUTION TO SUPPORT THE COUNTY, CITY AND UNIVERSITY WORKING COLLABORATIVELY TO ADDRESS ENERGY EFFICIENCY AND CLIMATE CHANGE**

**WHEREAS**, addressing energy efficiency and climate change will promote a cleaner environment, a more prosperous economy and a higher quality of life; and

**WHEREAS**, the County of Albemarle, City of Charlottesville and University of Virginia have committed to promoting energy efficiency and climate change programs within their respective organizations; and

**WHEREAS**, the County, City and University desire to work collaboratively to promote energy efficiency and address climate change goals for the community;

**NOW, THEREFORE, BE IT RESOLVED**, that the Albemarle County Board of Supervisors supports the County, City and University working cooperatively to discuss energy and climate change opportunities, including collaborating on developing a joint proposal for the Southeastern Energy Efficiency Alliance grant; and

**FURTHER RESOLVED** to appoint a member of the Board of Supervisors and a member of the Planning Commission, to be the County's representatives in such discussions and working groups.

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Mr. Slutzky said he has shared information with Board members through e-mails about the SEEA grant. He said the Southeastern Energy Efficiency Alliance (a nonprofit) is trying to find a locality where they would spend \$0.5 million to fund a collaborative community effort to set up a program similar to what has been done in Cambridge, Massachusetts, with the Cambridge Energy Alliance. They are providing seed money for a community to lead the way and demonstrate how it can be done in the southeast where climate conditions are different and the building stock is different.

Mr. Slutzky said it is a "winner, take all" grant opportunity. Generally, the grantors are utility representatives, and it appears that Dominion Virginia Power is open to this. He said Mr. Steve Wahls (Governor Kaine's energy czar) who recently became head of the Department of Energy, Mines, and Minerals is politically savvy and understands the issues. He has spoken with the grantors and power companies. He believes Virginia has a "good shot" at being a winning state. He thinks Charlottesville, Albemarle and the University of Virginia could put together the best proposal, and has committed to investing seed money in funding a consultant to draft the RFP. There have been a couple of informal meetings subject to the Board's blessings about how to approach a collaborative grant proposal. If the grant is received, that is a lot of money to invest in developing a program. The Board would then need to decide if it wanted to participate. It is not likely to cost the community much, but is likely to involve a lot of private funding with some administrative participation.

Mr. Slutzky explained that Cambridge set goals for how much carbon reduction they want to have in their community by a date certain. They had trained professionals go into individual homes where someone wanted an energy audit done with the cost of that exercise being funded by the utilities – not the

localities. The result of that audit is identification of a series of actions that would significantly reduce their carbon footprint, particularly the energy efficiency of a building. That helps people overcome the first challenge. The next challenge to the property owner is how to pay for any needed improvements. Cambridge came up with a funding strategy where they use the savings in utilities to fund the up-front costs of the behaviors that would result in those savings. They have developed a financing system where moneys come from elsewhere and local lenders will front the money if certain conditions are met for the implementation of some of those recommendations. Then the homeowner can keep one-third of the savings and the remaining two-thirds goes toward paying off the debt until it is paid off.

Mr. Slutzky said it is an interesting, proactive and innovative strategy that has started to work in the Cambridge area. Other localities around the country are “dabbling” in this realm. This SEEA grant is intended to get some place in the southeast to be the catalyst for that kind of behavior in this region. This group thinks it would be awarded this grant. The State is investing in the opportunity to get it. They think this is the right jurisdiction and the community is likely to be interested in this more than other communities. Developing this program might show real results in reducing the community’s carbon footprint, and it might be done in a creative way so it would not be “on the backs” of taxpayers.

Mr. Slutzky said that implementation of such a program is against the Dillon Rule. In anticipation of that, the City has already asked Senator Deeds to introduce on their behalf legislation that would make it possible for them to implement some element of this program. He said Albemarle County does not have that same enabling authority, so it would be better if Albemarle “piggy backed” on the City’s request and asked to be included in that bill. He has already forwarded to the Board members a copy of the proposed legislation. Senator Deeds said he is willing to add Albemarle to the bill at the appropriate time if the Board is clearly in support of him doing so, and only if it does not jeopardize Charlottesville’s request.

Mr. Slutzky then **moved** that the Board pass the resolution to request the enabling legislation for Albemarle County to implement a clean energy financing program. Ms. Mallek **seconded** the motion.

Mr. Boyd asked if any tax dollars would be allocated to this program.

Mr. Slutzky said it is his understanding that there will be no tax dollars allocated to this effort. If there are any opportunities for the County to invest in these programs that would be brought to this Board and discussed in a public forum separate from this exercise.

Mr. Rooker said it is obvious that the Board would not be appropriating funds with approval of this resolution. That would be a separate decision at another time if the program were approved, etc.

Mr. Boyd said he just wanted that to be clear so no one could say at a later time that he had supported that idea by voting for this resolution.

Mr. Slutzky said that clarification is fair and appropriate. This act today is not a vote in favor of implementing the Clean Energy Financing Program. It is merely asking the Legislature to give Albemarle the needed enabling legislation in the event it wants to do that later.

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

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

NAYS: None.

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

**RESOLUTION TO REQUEST ENABLING LEGISLATION  
FOR THE COUNTY OF ALBEMARLE  
TO IMPLEMENT A CLEAN ENERGY FINANCING PROGRAM**

**WHEREAS**, the Southeastern Energy Efficiency Alliance (SEEA) is a non-profit organization that brings together businesses, utilities, governments, public utility commissions, energy service companies, manufacturers, retailers, energy and environmental organizations, low-income energy advocates, large energy consumers, and universities to promote energy-efficient policies and practices; and

**WHEREAS**, the SEEA will be awarding a Southeastern locality \$500,000 to design a program that reduces energy and water use by consumers and businesses; and

**WHEREAS**, the Commonwealth of Virginia is actively supporting this initiative with resources to help fund program management, service support, as well as SEEA proposal development and encourages the development of a regional initiative; and

**WHEREAS**, the Charlottesville City Council is requesting the Virginia General Assembly to enact legislation to enable the City of Charlottesville to create a clean energy financing program as exemplified by the Cambridge Energy Alliance; and

**WHEREAS**, the County of Albemarle desires to create and implement a similar program or in cooperation with the City of Charlottesville to assist in providing a cleaner environment, a more prosperous economy, and a higher quality of life in the County and the Charlottesville community; and

**WHEREAS**, enabling legislation may be necessary for the County of Albemarle to create and implement such a program if the County is awarded a grant by the SEEA.

**NOW THEREFORE, BE IT RESOLVED**, that the Albemarle County Board of Supervisors hereby requests that the Virginia General Assembly enact legislation to enable the City of Charlottesville as well as the County of Albemarle to develop and implement a clean energy financing program.

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Mr. Slutzky said the Board has the option to choose a representative from the Board and to ask the Planning Commission to appoint one of its members to represent the County in the collaborative discussions with the City and the University. He said that both he and Mr. Bill Edgerton have an interest and experience in the subject matter. They have both participated in some of the casual inter-jurisdictional discussions.

Mr. Rooker **moved** that Mr. Slutzky represent the Board on that committee, and that Mr. Edgerton also be a member of the committee. Mr. Dorrier **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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Agenda Item No. 12. Adjourn. At 8:26 p.m., with no further business to come before the Board, the meeting was adjourned.

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Chairman

Approved by the Board of County Supervisors
Date: 03/04/2009
Initials: EWJ