

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on March 11, 2009, with an adjourned meeting beginning at 3:00 p.m., in Room 241, and the regularly scheduled meeting beginning at 6:00 p.m. in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia. The adjourned meeting was from March 9, 2009.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry W. Davis, Clerk, Ella W. Jordan, and Senior Deputy Clerk, Meagan Hoy.

Agenda Item No. 1. The meeting was called to order at 3:05 p.m., by the Chairman, Mr. Slutzky.

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Agenda Item No. 2. **Work Session: FY 2009-10 County Budget:**

Mr. Tucker reported that the major item on the list for discussion today is the JAUNT funding request, and staff would also present information on the impact of fare increases at 25 cents and 50 cents. He also said that he would review the list of how to utilize VDoT revenue-sharing funds, and then the Board needs to adopt a tax rate for the April 1<sup>st</sup> public hearing.

Mr. Bryan Elliott, Assistant County Executive, said that after the March 9<sup>th</sup> budget work session, staff had further discussions with JAUNT about state revenue loss and the \$150,000 baseline operations increase. He reported that the County's share of the proposed revenue loss – which totals just over \$99,000 – is \$42,697, and the other jurisdictions served have not yet acted on their budgets. Mr. Elliott stated that staff recommends that the funding from the County be contingent on participation of other jurisdictions. He mentioned that the other reason for the baseline increase is to serve an additional 1,000 passengers forecasted for the County, and JAUNT's delay in requesting for an increase last year – so the current request essentially covers two years. Mr. Elliott said that staff is suggesting that the \$108,253 be looked at in more detail between now and the April 1 meeting to clarify how the 3,600 passenger trips increase breaks down over the two years.

Mr. Rooker commented that JAUNT's request using 3,600 passenger trips equates to \$30 per trip which is quite significant.

Mr. Elliott reported that JAUNT indicates a fare increase of 25 cents would result in a net decrease in passengers of 1,221 in the County; a 50-cent fare increase would result in about 2,019 less passengers. Staff did ask JAUNT what they based these numbers on, but they have no tracked data to show the impact on ridership.

Mr. Slutzky noted that those figures are based on unrelated data. He said that perhaps the item should be included in the budget as an assumption, with the discussion revisited on April 1<sup>st</sup> when Mr. Tucker and his staff have had an opportunity to further evaluate the information.

Mr. Boyd asked for clarification that the County pays \$30 for a trip, with the person being transported paying \$6.

Ms. Mallek commented that that cost is based on the increase in ridership, not the total ridership.

Mr. Boyd added that there are people who are using this service three and four times a week so the actual supplement is more like \$120 for one individual.

Mr. Rooker commented that there is no means test for JAUNT. He asked whether this is the most efficient way to provide transportation services to the elderly and disabled in the community who do not have other options.

Mr. Slutzky responded that Donna Shaunesey would need to provide that information.

Mr. Elliott said that staff extrapolated that amount from the data JAUNT provided.

Mr. Rooker commented that he is not advocating for reducing services to the needy, but at \$33 per trip the county needs to evaluate whether they are providing services in an efficient way.

Mr. Tucker added that other localities have not taken action yet, and Albemarle doesn't want to be in the position of subsidizing them if they don't provide additional funding.

Mr. Rooker said that the County is also being asked to pay for services that have already been delivered last fiscal year, when JAUNT chose not to ask for a funding increase.

Ms. Thomas suggested having a brief phone call with Ms. Shaunesey.

Mr. Tom Foley, Assistant County Executive, replied that it seems the issues go a bit deeper, and recommended having staff delve into the matter further with her.

Mr. Tucker suggested having her come to the day meeting on April 1<sup>st</sup>.

Mr. Rooker said that he would be more comfortable with staff working through these numbers with her prior to that meeting. He noted that he'd be more comfortable with a placeholder that makes up the state revenue loss of \$42,000, and one-half of the \$108,000 baseline operation increase.

Mr. Slutzky stated that he'd approve of putting a placeholder in for what JAUNT requested, then ask them to justify that.

Mr. Boyd mentioned that this is coming from Board reserves, so there's no real need to put a placeholder in the budget.

Ms. Thomas noted that there is only \$100,000 in Board reserves right now.

Mr. Tucker said that the reserve placed in the budget was \$100,000, with the shortfall of \$387,000. If the \$150,000 was granted to JAUNT, staff is suggesting taking that off the top of the capital transfer, and then funding the Mohr Center at \$3,255 with a subtotal of \$154,000 leaving a reserve of \$96,700.

He explained that the Board would need to take an amount off the top before the local government/school split. Mr. Tucker said that the Board had discussed not approving the additional 2.5-cent transfer for a contingency fund, so if they still want the fund the VDoT revenue-sharing could be left in the CIP, or take that \$1.5 million off the top and put it in the operational budget as a contingency reserve.

Mr. Rooker said that he would rather do the first option, and then a decision could be made at the half-year mark when the revenue picture is clearer as to whether that money needs to be moved out of capital or not.

Mr. Slutzky asked if the \$96,700 is an appropriate amount to hold back.

Mr. Rooker responded that the Board has the ability to make a decision mid-year as to whether the \$1.5 million designated for revenue-sharing transportation projects could be allocated. He is comfortable with leaving the money where it is. It doesn't prevent the Board in mid-year if necessary from making a decision to utilize some of that money in operating to meet a further downturn if it occurs.

Ms. Thomas commented that Mr. Slutzky's question is a good one, as that amount held back is lower than what the Board usually has.

Mr. Slutzky said that he considers the Board reserve to cover unexpected operational issues, unrelated to erosion of revenues. A rainy day fund or a "lock box" is an unrelated and separate issue. His question is whether the Board is comfortable with taking the reserve from approximately \$300,000 to approximately \$96,000 for the unexpected expenses that may occur during the course of the year.

Ms. Thomas replied that she is comfortable with that, as community perception is often that any money in reserve is there waiting to be spent.

Ms. Mallek asked if a certain percentage could be set aside in "each budget compartment" until some future time. It's her understanding that the Schools set aside ten percent.

Mr. Tucker answered that the Schools had to do it. He does not recommend it, but the Board can technically "raid" the CIP fund. He explained that several years ago the Schools got into a fix, they didn't have the money and didn't have reserves, and had to come before the Board and request additional funding, which prompted the School policy to hold back 7.5 percent. Most of local government's funds are through salaries and people. Mr. Tucker also said that discretionary operations items such as travel have been reduced to bare bones, but paying for electricity and copying is more challenging to cut back.

Mr. Dorrier asked what the possibility of deferring capital projects to the following year might be.

Mr. Tucker responded that if the Oversight Committee found other items that could be delayed, that would go back into the CIP fund and that could be tapped.

Mr. Rooker mentioned that the Committee should look at the \$2.8 million in fire and rescue apparatus, noting that cutting that in half would save \$140,000 in debt service a year.

Mr. Foley responded that some of those orders have been placed, but the Committee would definitely scrutinize these items as well as others. He also said that the County is relying on \$900,000 to come out of the operating budget in order for it to be balanced.

Mr. Boyd asked how much was sitting in the transportation fund.

Mr. Foley responded that there is currently \$3.9 million in the fund.

Mr. Rooker also mentioned that when times were good, the Board transferred significant money into the CIP, rather than putting it in a rainy day fund.

Mr. Boyd reiterated the importance of separating those funds out, so there is truly a reserve that is not incorporated into the CIP.

Ms. Thomas said that during the upcoming public hearing she would like it to be emphasized that the County has made significant cuts in salaries and frozen positions, noting that at a recent budget hearing people expressed concern that the County didn't seem to show much "passion" in attempting to make reductions. It's not understood.

Mr. Rooker pointed out that the County has about 9 percent fewer employees than it did a year and a half ago, with no salary increases for existing staff, and \$80.0 million in mandates for local government and schools – including a \$7.5 million increase for local government mandates that translates into 12.5 cents on the tax rate. He emphasized that Albemarle will likely continue to have the lowest effective tax rate of any county in the state with more than 90,000 population. The County has responded to the economic times by very, very significantly tightening its belt and reducing expenses, and eliminating personnel. That's the only way this budget balances.

Mr. Boyd cautioned that mandates in some cases are a result of the "chosen path" the County has taken.

Ms. Thomas said that there is a requirement that every seventh grader must have an "academic career plan" on record that is updated each year. That's thousands of pieces of paper that have to be created, have to be updated, have to be kept track of, have to be there if anyone wants to see them. She said that there is no state money to pay for this policy, which was just passed a couple days ago.

Mr. Dorrier asked if this is a revenue-neutral budget.

Mr. Tucker explained that the 74.2-cent rate, which the budget was balanced upon, based on assessments and what staff has done, leaves the average single-family homeowner with the same tax bill as last year.

Mr. Rooker mentioned that the budget is \$26.0 million less than last year's.

Mr. Boyd asked if next year's budget would likely be higher than the final numbers this year.

Mr. Rooker responded that it would likely be less next year, except for the payment to the City.

Mr. Wiggins said that when the 2.5-cent revenue contingency shortfall is taken out, the County would be spending less next year.

Mr. Slutzky stated that it's important for the public to be aware of these items, and asked Mr. Tucker if Ms. Catlin could provide some talking points that the Board can share with their constituents.

Mr. Rooker commented that there is a request coming from JABA for \$40,000 over seven years for affordable senior housing at Woods Edge, and the Board shouldn't be unreasonable when it considers requests from JAUNT when balanced against other needs. The Board has to make choices and will affect the reserves.

Ms. Thomas asked if it would be possible to look at money going into the Affordable Housing Trust Fund and see if there is flexibility for use of that funding.

Mr. Tucker asked what impact would reducing \$40,000 from the Housing Trust Fund have on PHA.

Mr. Ron White, Director of Housing said that a reduction of \$40,000 would equate to three people getting down payment assistance or 30 households with rental assistance.

Ms. Thomas commented that it seems there would be more people in the rental market.

Mr. White agreed, adding that 18 of the 30 families receiving assistance at Woods Edge have been there since it opened; the remainder have come in between 2003-2005. He said that there is not a lot of turnover at the facility; this funding is to continue keeping people in place once their rental assistance ends. Mr. White also expressed concern that there may be requests after the seven years, as it is very difficult to turn off rental assistance once it starts.

Mr. Rooker said that if JABA can execute their plan to purchase the building, they wouldn't need the continued assistance.

Mr. Tucker suggested reducing it each year, so the seventh year wouldn't hit so hard.

Mr. Davis emphasized that the Board entered into a very clear agreement with the PHA in 2001, with a finite amount of money - \$320,000 over eight years – to help qualify the project for tax credits; in year two, PHA wasn't able to leverage the money so the County entered into an agreement with JABA that ends June 30, 2009. He said that if the Board wants to extend it, the County should enter into a new agreement with specific expectations and an end date.

Mr. Rooker said that he doesn't think this needs to be decided today as the Board just got the information, but brought it up as an example of competing requests.

Mr. Boyd asked if all of the \$250,000 is being used up each year. Mr. White said last year the Board was asked to reappropriate leftover money because they used about \$300,000 in proffer money

instead of using County money. Normally they have been expending all of the money. He further explained that the \$250,000 has \$20,000 going to AHIP for emergency home repair with the remaining \$230,000 going toward down payment assistance.

Mr. Rooker pointed out that in the past, that funding has been deemed by some to be inadequate. He mentioned that the time limit for affordable housing provisions that come through proffers may expire if there isn't money available for down payment assistance when those units become available.

Ms. Thomas stated that it may be wiser now to help with rental subsidy, which doesn't really answer the question of whether to enter into a seven-year contract but may be a better use of affordable housing money.

Mr. Tucker said that staff would bring forth more information and analysis at the same time the JAUNT issue is discussed.

Mr. Tucker indicated that the Board needs to move forward with what tax rate they want to take to public hearing.

Mr. Slutzky said that he is going in a different direction than what fellow Board members probably expected. He noted that between July 1 and the end of the November there has been an erosion in revenues that would have taken a nickel on the tax rate to replenish. He also expressed concern with the lack of contingency funds for social services, as the demand for those would likely increase in the near future. Mr. Slutzky added that he is also concerned about reducing the transfer to the CIP as this is an attractive time to pursue capital projects. He said that he wants to advertise the tax rate at the 74.2-cent level.

Ms. Thomas stated that in going through the state budget, she was "appalled" at some of the decisions made for cuts – including capping the number of positions in K-12, limiting VRS support, reducing school construction, allowing transfer in transportation funds from capital to operations, reducing the amount of lottery money given to local schools, reducing state support of Medicaid, reducing state support of per diem for prisoners in local jails, reducing state support of best management practices in agriculture and land conservation, reducing state support for planning district commissions, reducing state funds for water supply funding, etc. It's just a general trend of cutting down on state support of programs that sometimes are even required and the localities are stuck. The taxpayers are stuck.

Mr. Boyd asked if those categories were chosen because they are likely candidates for stimulus money.

Ms. Thomas responded that the VML budget report indicates that the decisions were made first, with stimulus money coming in later.

Mr. Dorrier commented that he is hopeful the Oversight Committee can find ways to cut or delay further, as the initial scrutiny wasn't as thorough as it probably should have been. He thinks the issue they face is "wants versus needs" on every aspect of the budget." He thanked Mr. Rooker for pointing out the need for more work from that Committee. Mr. Dorrier also said that there is room for improvement in the process between staff and the Board with budget evaluation.

Ms. Thomas emphasized that this is our infrastructure Mr. Dorrier is talking about.

Ms. Mallek said that citizens do seem to understand that there are projects that won't get built at the time frame expected.

Mr. Boyd stated that he has received several calls about the 74.2-cent tax rate, with concerns from businesses that have not experienced a reduction in appraisal values. He also commended staff for all the work they have done to trim the budget.

Ms. Thomas said that she is concerned that some estimates still may be too high, as with sales tax. She has been supportive of a higher contingency fund.

Mr. Rooker said that the Board did cut the state estimate.

Mr. Tucker mentioned that if the real estate rate is 74.2-cents, he would also like Board members to include the \$4.28 for personal property, public utilities, and machinery and tools.

Mr. Rooker also suggested that staff discuss with Ms. Shaunesey the possibility of moving stimulus money available for capital to operating.

Ms. Thomas recalled that Ms. Shaunesey had indicated a need for capital.

Mr. Rooker said that at the MPO meeting, she had said that they would have more capital money than needed, but it should be explored further.

Mr. Rooker then offered **motion** to set the 2009 tax rates for public hearing as follows: the real estate tax rate at \$0.74.2/\$100 assessed valuation for real estate, public service and mobile homes for the 2009 tax year and at \$4.28/\$100 assessed value for the personal property tax rate, including machinery and tools. Ms. Mallek **seconded** the motion. Roll was then called and the motion carried by the following recorded vote:

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

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Mr. Tucker mentioned that the Board had requested having Police representatives explain the closing of Garth Road for the Charlottesville Marathon run there. Chief Miller and Sgt. Sean Hackney are present.

Chief John Miller addressed the Board, stating that he had Sgt. Hackney meet with Ivy Farm representatives as well as race sponsors. He said that the information sent out about the race evidently did not reach everyone, nor did the reverse E-911 system reach everyone. Chief Miller said that Sgt. Hackney had a meeting again today and everything has been smoothed over with a system put in place to disseminate that information in the future.

Mr. Rooker asked about the appropriateness of closing public roads for private events.

Chief Miller explained that it goes through Zoning for a permit, then through VDoT with approval as long as the Police Department is participating. He said that there are typically 20 races per year, five parades, and a few special events like Foxfield. Chief Miller stated that the Police need to be involved and need to be there to close some roads for the safety of participants.

Mr. Davis said that his office followed up with VDoT, which has a "non-specific policy" about how they permit these things, with a standard being that the applicant proposing to close a road gets consent from Zoning and the Police Department. He said that VDoT will not close the road unless the Police Department says they are in favor of it, and Chief Miller is indicating that the Department is not in favor of running the race unless the road is closed.

Ms. Thomas asked if it would be possible to utilize the road between gaps, as is done in other races.

Chief Miller replied that that the runners have a time they have to get through the race, but there are not many gaps in a large event like the Charlottesville Marathon.

Ms. Thomas said that there were definitely some issues with the dissemination of information for the race, and the reverse E-911 call should have provided a phone number to call with questions.

Mr. Davis noted that the only requirement on the permit notice was that signs be posted at both ends of the area during the week prior to the race, and that announcements be made by local media indicating the time and location of the race.

Ms. Thomas replied that some races put ads in the *Daily Progress* for five or so days leading up to the race, and this is a for-profit race so they should be held to the maximum standard.

Chief Miller indicated that, in his meeting today, Sgt. Hackney stated that the race organizers indicated that they would do whatever they needed to do to get the word out; the Charlottesville Marathon has a team of volunteers to put notices on people's doors.

Sgt. Hackney said there are more than 20 events that he keeps track of. Some are low impact and then there are the larger marathons. They do have to advertise, pay for the VDoT signs at \$10.00 per hour, and he believes they are on for five consecutive days. Last year, the issue with E911 was a computer glitch.

Mr. Rooker commented that it's different when streets are closed in the City because there are interconnected streets, so people are not trapped in their neighborhoods. He does not think it is reasonable to have events where people get trapped in their neighborhood for long periods of time with no way out.

Chief Miller said that his department provided 17 officers for the Charlottesville Marathon, who were assigned to help people who needed to get out.

Sgt. Hackney explained that there are some neighborhoods where the residents may feel stuck. The residents are not trapped, they could take a right on Garth Road and get to Free Union or Owensville Roads. He thinks part of the frustration is that there are two weekends straight with a large major event (Charlottesville Marathon and Foxfield). He also said that residents seem to be happy with the outcome of today's meeting. Sgt. Hackney added that the runners are informed that there may actually be vehicles passing them, and residents are able to return to their homes.

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Agenda Item No. 3. Adjourn.

The meeting was adjourned at 4:18 p.m.

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Agenda Item No. 1. The meeting was called to order at 6:01 p.m., by the Chairman, Mr. Slutzky. Mr. Foley was present in the absence of Mr. Tucker.

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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. Mallek said that at the town hall meetings many people have been interested in volunteering, so it seems they would like to get involved in ways they haven't previously.

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Ms. Mallek said that some communities send out a form with tax bills giving people the opportunity to contribute more than they owe, and they can specify specific departments for support. She asked the Board to think about this being something that can be done in the County.

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

Ms. Carol Harris, a resident of Crozet, addressed the Board regarding the Crozet Library. Many people there do not like the design or the location of the new proposed library. She stated that there is an attractive stucco that can be used for the façade instead of brick that is much cheaper and is aesthetically pleasing. Ms. Harris commented that the design plans look like a 19<sup>th</sup> century train depot building, and there already is a real train depot in the town.

Mr. Rooker mentioned that Ms. Harris had distributed a *New York Times* article on the stucco.

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Ms. Eryn Brennan, a planner in Albemarle County and President of Preservation Piedmont, distributed two documents to the Board – one to post in places of businesses to promote Preservation Week, and one that expresses gratitude to the County for their work in preservation. The County is a contributing member to the Piedmont Area Preservation Alliance, the umbrella organization that charged Preservation Piedmont with organizing Preservation Week. The County's membership and support in helping to advertise the events of the week have been appreciated and hopefully will lead to a good turnout. The image was designed by local artist, Christophe Vorlet, who has been recognized nationally and internationally for this work. The idea that drove the design of the poster was how these different places in the County and City, both historic and contemporary, fit together and work to make this a special and unique place.

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Agenda Item No. 6. Consent Agenda. **Motion** was offered by Mr. Rooker, **seconded** by Ms. Thomas, to approve Items 6.1 (as read) and 6.2 on the consent agenda, and to accept Item 6.3 for information. Roll was called and the motion carried by the following recorded vote:

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

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Item No. 6.1. Approval of Minutes: April 2 and June 11, 2008.

Ms. Thomas had read the minutes of April 2, 2008 and found them to be in order with the exception of some typographical errors.

Mr. Boyd had read his portion of the minutes of June 11, 2008 and found them to be in order.

Ms. Mallek asked that her portion of the minutes of June 11, 2008 be pulled and moved to the next agenda.

**By the above-recorded vote, the minutes were approved as read.**

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Item No. 6.2. Acquisition of Conservation Easements (ACE) Ranking Order for FY 2008-09 Applicant Class.

It was noted in the Executive Summary that pursuant to sections A.1-110(G) and A.1-110(H) of the ACE Ordinance, the Board of Supervisors reviews the list of ranked parcels submitted by the ACE Committee and identifies parcels on which it desires to acquire conservation easements. Each conservation easement identified by the Board for purchase is appraised by an independent appraiser chosen by the County.

Eleven (11) ACE applications were submitted for the Round 9 class (FY 2008-09) by the October 31, 2008 deadline. Six of the applications (McDaniel, Mike Hudson, Thurman, Rives, Barksdale and Rushia) were re-enrolled from the previous year because the County was unable to acquire ACE easements on those properties due to funding limitations. Staff has evaluated the properties of each of the Round 9 applicants according to the ACE Ordinance ranking evaluation criteria. These objective criteria include: open space resources; threat of conversion to developed use; natural, scenic and cultural resources; and County fund leveraging from outside sources. Based on the results of the evaluation, staff

has determined the eligibility of the properties and has placed them in ranking order (see Attachment A)-copy on file. These results were presented to the ACE Committee at its February 9, 2009 meeting.

The evaluation of the eleven applications from Round 9 has determined that nine (9) properties scored high enough to be eligible for ACE funding. With \$1,640,000 of appropriated funding available for this class, the ACE Committee believes that the County can acquire ACE easements on the 5 or 6 highest ranked properties. Based on the final ranking order and eligibility status of the Round 9 properties, the ACE Committee recommends that the Board authorize staff to acquire appraisals for the six (6) highest ranked properties: McDaniel, Garnett (E.N.), Hudson (Michael), Magerfield, Hudson (Charles) and Thurman. Although the total ACE budget for FY 2008-09 may be insufficient for purchasing easements on all six properties, the ACE Committee believes it is prudent to obtain appraisals on more properties than funding will allow in the event that additional funding becomes available or some higher ranking applicants withdraw their application from the Program.

The acquisition of easements on the six highest ranked properties would eliminate 65 development rights and result in the protection of the following resources:

- 849.6 acres of farm and forestland, of which 347 acres are "prime" farm & forestland
- 8,332 feet of state road frontage
- 8,412 feet of protected stream & river frontage (including 2,154 feet on the James River – a state scenic river)
- 15,533 feet of common boundary with other protected lands (including 541 feet adjoining Walnut Creek Park)
- 140 acres within the proposed "mountain overlay district"
- Five of the six properties have significant tourism value
- Five of the six properties are productive, working farms

There is no additional request for funding related to this action. The funding for the appraisals and the purchase of these potential conservation easements would come from both the CIP-Planning-Conservation budget (line-item #9010-81010-580409) and the CIP-Tourism-Conservation budget (line-item #9010-72030-580416), a budget previously approved by the Board to fund ACE properties with "tourism value." Staff will continue to pursue outside funding sources to supplement the ACE Program funding. One such source is the Office of Farmland Preservation (administered by the Virginia Department of Agriculture and Consumer Services), which recently awarded the County a grant of \$49,900 to help preserve farmland. Additional sources of potential outside funding include the Preservation Trust Fund, the Virginia Land Conservation Foundation and the Farm and Ranchlands Protection Program.

The ACE Committee and staff recommend that the Board:

- 1) Approve the final ranking order for Round 9 (FY 2008-09) as shown on Attachment A;
- 2) Identify the McDaniel, Garnett (E.N.), Hudson (Michael), Magerfield, Hudson (Charles) and Thurman properties as those on which it desires to purchase conservation easements; and
- 3) Authorize staff to acquire appraisals for the McDaniel, Garnett (E.N.), Hudson (Michael), Magerfield, Hudson (Charles) and Thurman properties.

**By the above-recorded vote, the Board approved the final ranking order for Round 9 (FY 2008-09) as shown on Attachment A to the Executive Summary (on file in the Clerk's Office), identified the McDaniel, Garnett (E.N.), Hudson (Michael), Magerfield, Hudson (Charles) and Thurman properties as those on which it desires to purchase conservation easements; and authorized staff to acquire appraisals for the McDaniel, Garnett (E.N.), Hudson (Michael), Magerfield, Hudson (Charles) and Thurman properties.**

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Item No. 6.3. 2008 Annual Report of the Board of Zoning Appeals.

In a memorandum dated March 4, 2009, Ms. Amelia G. McCulley, Zoning Administrator, reported that State Code Section 15.2-2308 requires the Board of Zoning Appeals (BZA) to keep a full public record of its proceedings and to submit a report of its activities to the governing body. The full 2008 BZA annual report is attached for your information.

The Board of Zoning Appeals hears variances from the Zoning Ordinance and appeals from decisions of the Zoning Administrator or other administrative officer. These appeals can include determinations of zoning violation.

The number of appeals in 2008 decreased by two, from nine received in 2007 to seven in 2008. One was moot, one was void, two were affirmed and one was modified by the Board. There are three appeals pending (one from 2007 and two from 2008).

The number of variances in 2008 decreased by one, from 12 in 2007 to 11 in 2008. Of the eleven, five variances were approved, one was denied, and five were withdrawn. The number of variance requests related to setbacks decreased (by one) in 2008.

The number of special use permits for off-site signs/lighted signs increased by three, from zero in 2007 to three in 2008. Of the three applications, two applications are still pending and one was void.

The following court cases are still pending as of December 31, 2008:

1. Paul Begin, et al. v. Board of Zoning Appeals and Planned Parenthood.
2. Scott W. and Caroline F. Watkins v. Board of Zoning Appeals. Appeal of determination of zoning violation.
3. Ellen Hawkins v Board of Zoning Appeals: Appeal of determination of zoning violation.
4. Rickey Lee Baumgardner, Donna G. Baumgardner and Crown Motorcar Company, LLC v Board of Zoning Appeals: Appeal of determination of zoning violation.

**The report was provided for the Board's information and no action required.**

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**#11).** Agenda Item No. 7. **PUBLIC HEARING: SP-2008-0057. Charlottesville Kingdom Hall (Sign**

**PROPOSED:** Renewal of expired S.U.P. – SP-2004-002 currently in site development process. Request for S.U.P. to allow a Church.  
ZONING CATEGORY/GENERAL USAGE: R-2 Residential - 2 units/acre and R-4 Residential - 4 units/acre.  
SECTION: Sections 14.2.2.12 and 15.2.2.12 of the Zoning Ordinance which allow for Churches.  
COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses in Neighborhood 5.  
ENTRANCE CORRIDOR: Yes.  
LOCATION: 665 Old Lynchburg Road (Rt 631), at the intersection of Old Lynchburg Road and Sunset Avenue Extended.  
TAX MAP/PARCEL: 76/51. MAGISTERIAL DISTRICT: Scottsville.  
(Advertised in the Daily Progress on February 23 and March 2, 2009.)

Mr. Cilimberg reported that this is a facility located off of 5<sup>th</sup> Street, South in the City. The applicant is requesting a re-approval of a special use permit originally approved and now expired. He said that they have been in the site development plan process and approval of this request would allow the process to continue. This request would allow the church in the residential district. Mr. Cilimberg said that favorable factors include it is a supporting use in a residential area. The site design is appropriate considering topography. There is an accommodation made for a road that could ultimately connect 5<sup>th</sup> Street to southern areas such as Biscuit Run and Southwood and eventually tie into Route 20. He mentioned that the favorable factors for the original application have not change, and there have been no ordinance changes that would impact the application.

Mr. Cilimberg stated that the site is not intended to be served initially by public sewer due to physical and distance limitations, with the closest potential connection requiring a boring under 5<sup>th</sup> Street and tying into a line on a property owned by someone who has expressed grave concerns about that plan. He said that the other option would be going across the Southwood Mobile Home Park to a site that is a great distance from the Kingdom Hall site, but the applicant is interested in connecting to sewer in the future once it becomes more reasonably available.

Mr. Cilimberg reported that staff and the Commission have recommended re-approval with five conditions, including one that provides for the approval until March 11, 2013.

Mr. Boyd asked if any of the original conditions had changed.

Mr. Cilimberg replied that there were some minor changes made to references, but no new requirements of the applicant.

At this time, the Chairman opened the public hearing.

The applicant's representative, architect Mr. Hardee Johnston, spoke on behalf of the three congregations who use the facility. Mr. Johnston reported that the building was constructed in the 1980's and accommodated one congregation. It is now being redesigned and redeveloped to allow for more intense development and growing congregational use. He said that the apartment that was part of the original application has now been deleted.

There being no further public comment, the public hearing was closed, and the matter placed before the Board.

Mr. Dorrier **moved** to approve SP-2008-0057 subject to the five conditions recommended at the Board meeting. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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

1. The development of the site shall be in general accord with the concept plan entitled Kingdom Hall of Jehovah's Witnesses prepared by Hardee Johnston, A.S.L.A. Landscape Architect, Page T.1 dated January 9, 2006, Revised 12-08-08 and page C.2 dated January 2, 2006, Revised 1-1-09 (hereinafter, the "Concept Plan"). In addition, the following elements shall be in strict accord with [or "conform to"] the Concept Plan: the relationship of parking areas to building areas, building areas to the street, location of the area for sidewalk dedication and reservation of area for the extension of the Southern Parkway;
2. The area of assembly shall be limited to a maximum of two (2) auditoriums with one hundred seventy-five (175) seats in each;
3. The final site plan shall show an area to be graded across the front of the site to allow the future installation of a sidewalk by others (the "sidewalk area"). The final site plan shall include a note reserving the sidewalk area for future dedication. The area for dedication shall allow for a minimum width of a five (5) foot sidewalk and which shall meet all applicable VDoT and County standards per Section 32.7.2.8 of the Zoning Ordinance. The sidewalk area shall be graded in conjunction with the installation of other improvements on the site required by the site plan. The sidewalk area shall be graded in compliance with the grading standards imposed by the agent. Upon request by the County, the sidewalk area shall be dedicated for public use. The owner shall grant all necessary temporary construction easements to allow the sidewalk to be installed;
4. There shall be no day care center or private school on site without approval of a separate special use permit; and
5. Construction of the development plan referenced in Condition 1 above shall commence by March 11, 2013 or this special use permit shall expire.

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Agenda Item No. 8. **PUBLIC HEARING: SP-2009-001. Montessori Community School-Pantops Mountain (Signs #105&106).**

**PROPOSED:** Special Use Permit (SP) request to extend approval for an existing special use permit (SP 06-038) for a private school to allow for replacement of modular trailers with permanent buildings for 40,700 square feet of total building area on a 6.71 acre site.

**ZONING CATEGORY/GENERAL USAGE:** CO Commercial Office - offices, supporting commercial and service uses; and residential use by special use permit (15 units/ acre).

**SECTION:** 23.2.2.9 Private School.

**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 Neighborhood 3 (Pantops) Development Area.

**ENTRANCE CORRIDOR:** Yes.

**LOCATION:** 305 Rolkin Road, adjacent to the NW of the intersection of Rolkin Road and Richmond Road (Route 250).

**TAX MAP/PARCEL:** TMP 78-12A and 12A1.

**MAGISTERIAL DISTRICT:** Rivanna.

(Advertised in the Daily Progress on February 23 and March 2, 2009.)

Mr. Cilimberg reported that this request is an extension request for a previously approved special use permit that would allow for updating of a campus plan with new buildings and other improvements and amenities in the Pantops area. He stated that the factors of the original special use permit have not changed, and there have been no ordinance changes that impact the application. Mr. Cilimberg said that one unfavorable factor that was noted during the original approval is the construction of a fence on the site without a site plan or ARB approval, and staff is recommending a condition to address that matter. He explained that a new condition would allow for the replacement of a chain-link fence with a new fence satisfying the ARB requirements by September 1, 2009 or alternatively installing plantings to screen the fence from the Entrance Corridor. Mr. Cilimberg said that a fourth condition would allow the application to extend until March 11, 2015.

Mr. Slutzky mentioned that the planting alternative does not have the same stipulation for ARB approval.

Mr. Cilimberg responded that the last sentence in the proposed condition is intended to address that.

Mr. Boyd asked if it would be agreeable to the ARB to do the plantings.

Mr. Cilimberg replied that it was ARB's idea to have the two options.

At this time, the Chairman opened the public hearing.

Ms. Wendy Fisher, Head of Montessori Community School, stated that they are asking for the special use permit to be extended six years. Ms. Fisher said that last year they were given the opportunity to purchase the property next door to the school, and funds initially allocated for new construction were shifted. With the state of the economy and need to embark on a fundraising campaign to do buildings, they want to be fiscally responsible and take their time and do this well. That is the reason they are asking for the extension. They have been in numerous ongoing communications with County staff about the fence, and she feels there is a good plan in place to deal with the fence issue by the deadline.

There being no further public comment, the public hearing was closed and the matter placed before the Board.

Mr. Boyd **moved** to approve SP-2009-001 subject to the five conditions presented tonight. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

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

1. Maximum enrollment shall be three hundred (300) students;
2. Development of the use shall be in conformity with the "Montessori Pantops Mountain Community School Sheets SP01-SP-03", prepared by Neal R. Deputy, Architecture & Master Planning, last revised January 16, 2007, as determined by the Director of Planning and the Zoning Administrator. To be in conformity with the plan, development shall reflect the general size, arrangement, and location of proposed Buildings A, B, C, D, and E, Central Lawn, Amphitheatre, playgrounds and ball fields, wooded natural area, and parking areas. Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance;
3. Fencing shall be provided at a minimum around the perimeter of the Central Lawn, Lower Elementary Playground, and Children's House Playground, or at other locations as required by the County to ensure safety of children adjacent to Route 250 and Rolkin Road. Final design of the fence shall be subject to review and approval by the Architectural Review Board. However, to address safety concerns, the fence details shall include:
  - At least forty-eight (48) inches tall;
  - No more than a two (2) inch gap under the fence;
  - Openings shall be small enough that a four (4) inch sphere will not pass through;
  - No ornamental indentations that can be used as a ladder;
  - Maximum mesh size for chain link fences is two and one-quarter (2-1/4) inches; and
  - Maximum mesh size for diagonal lattice fences is one and three-quarter (1-3/4) inches.
4. The existing chain link fence shall be replaced with a new fence that satisfies the requirements of the Architectural Review Board by September 1, 2009. Alternatively, planting shall be installed by September 1, 2009 that will screen the fence from the Entrance Corridor. That planting shall be in accord with an approved landscape plan that satisfies the requirements of the Architectural Review Board; and
5. Construction of proposed buildings as shown on the concept plan shall commence on or before March 11, 2015 or this special use permit shall expire.

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Agenda Item No. 9. **PUBLIC HEARING: SP-2008-0032. Central Virginia Recycling Center (Signs #49&52).**

**PROPOSED:** Special Use Permit on approximately 25 acre portion of a 100.261 acre parcel and a .23 acre parcel containing a central well. Proposal is to receive wood products from timber, stumps, and wood waste from construction, shipping and excavation and then processed/recycled by grinding, chipping, drying and composting into mulch and wood biofuel; conduct both retail and wholesale sales of the products at the site; site would include two-story building to hold offices, vehicle repair and wash bays; guardhouse at site entry; and multiple bins to hold the finished wood products. Materials to be processed and while composting would be placed in multiple max 12' high mounds. Hours/days of operation proposed from 7 AM to 5 PM Monday - Friday and 7 AM to 1 PM Saturday.

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 (14) Sawmills, planning mills and woodyards.

COMPREHENSIVE PLAN LAND USE/DENSITY: RA Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/density (.5 unit/acre in development lots); EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access.

ENTRANCE CORRIDOR: Yes.

LOCATION: 4545 Richmond Road; South side of Richmond Rd. (Rt 250 East) at its intersection with Three Chopt Road (Rt 794), approximately 1,325 feet west of Union Mills Rd. (Rt 759) and Black Cat Rd. (Rt. 616).

TAX MAP/PARCEL: TMP 94-21N and TMP 94-21N1 (well lot).

MAGISTERIAL DISTRICT: Scottsville.

(Advertised in the Daily Progress on February 23 and March 2, 2009.)

Mr. Cilimberg said that Ms. Joan McDowell, Principal Planner, was also present to respond to questions. Mr. Cilimberg reported that the request is for an area on Route 250 East in Boyd Tavern, on a property that was subject in the early 1990's for an outdoor historical drama center – but that was never constructed. He said that more recently a determination was made that the request was consistent with the section of the Zoning Ordinance that allows sawmills, planning mills, and wood yards by special use permit in the rural areas. The proposed operation would be Monday through Friday, 7:00 a.m. to 5:00 p.m., and Saturdays, 7:00 a.m. to 1:00 p.m., with ten employees. The applicant has provided that they anticipate daily traffic to be: 50 dump trucks, 10 tractor trailers, plus employees and retail customers. Mr.

Cilimberg stated that the proposed operation would accept delivery of wood products, grind them into mulch, color some of the mulch, age the mulch, and conduct wholesale and retail sales from the site. Mr. Cilimberg reported that they would be using up to 25 acres of the site, and reconstructing the current entrance as well as widening an access road to 24 feet and paving it, as well as constructing certain improvements on the property in conjunction with their operation. He presented pictures of similar wood-recycling facilities.

Ms. McDowell said that the pictures are from facilities at Zion's Crossroads, Ivy, and one a landfill in Williamsburg.

Mr. Cilimberg stated that staff initially proposed a Planning Commission work session for earlier in the review process, but the applicant did not choose to do that. He reported that the applicant directed that the application proceed to public hearing with the Board and Commission. Additional information requested by reviewers has not been provided. Mr. Cilimberg indicated that the noise impacts have been a concern. A noise test was conducted and it exceeded the maximum allowable noise level in one location; no additional noise tests have been conducted by the applicant. He stated that the proposed grinding area would be closer to the east property line than the location of the noise test; existing trees between the mulching operation and the east and south property lines would be preserved, and the applicant has assured that the noise issues would be resolved when the business is in operation. Mr. Cilimberg said that the Planning Commission also cited concerns about a variety of noises that would be part of the operation – traffic, truck back up warning devices, flapping truck tailgates, trucks slowing down and breaking before entering the site, noise levels and noise duration, neighbors would be placed in the position to police the operation and the operation would generate noise that is uncharacteristic of the area.

Mr. Cilimberg also reported that staff is unsure if parking onsite would be adequate to meet ordinance requirements; a parking study and analysis was requested but not submitted. He said that traffic would be accessing at Route 250 and Route 794 through a reconfigured intersection that creates a "Y" access with each road having access to the property; the existing driveway would be paved and widened to 24 feet, and there would be an eastbound right turn lane coming into the site constructed on Route 250 but no westbound left turn lane is warranted according to VDoT. Mr. Cilimberg mentioned that there is projected water usage of 1,000 gallons per day, but that has not been verified by staff and the impact on local groundwater cannot be determined based on information submitted to date. He added that no permits would be required by the Department of Environmental Quality (DEQ), at least based on their comments to this point.

Mr. Cilimberg presented a map showing where the noise test was conducted, and the decibel readings exceeded the ordinance allowances. He noted the location of a general operation area and an office repair shop. Mr. Cilimberg also presented a concept map showing the positioning of buildings and the roads leading into the site. He described the area as rural area, which stresses preservation and protection. The wood products to be recycled and turned into mulch would come primarily from land clearing in areas of development from palettes and construction waste. Mr. Cilimberg commented that staff does not feel the proposed use directly supports preservation and protection of the rural areas, as the guiding principles pledge to protect and enhance rural quality of life for present and future rural area residents.

He explained that there are some easements north and west of the site. Staff finds a favorable factor in that wood recycling would provide a service to reuse waste from land clearing and construction as well as palettes. He noted the unfavorable factors being the noise and traffic, the potential for the operation to exceed maximum allowable noise standards and the impact on neighbors. The mulching operation would be of greater benefit to development occurring in Albemarle County's development areas and Fluvanna County than to the rural area. Mr. Cilimberg mentioned that the information requested pertaining to groundwater, parking, and traffic generated from the operation has not been fully provided. Other findings in the report show that the use is a substantial detriment to adjacent property, changes the character of the district, purpose and intent of the ordinance, and public health safety and welfare.

Mr. Cilimberg reported that one concern noted at the Planning Commission meeting and in the report is the potential for mulch pile fires, which have occurred at other sites. He stated that the recommended action from staff and the Commission is denial of the special use permit, but staff did provide conditions in the staff report in the event the Board chooses to approve the request.

Mr. Slutzky asked what the Planning Commission vote was.

Mr. Cilimberg replied that it was unanimous.

Mr. Dorrier asked if the County had received petitions against this proposal, and if those people were from the area planned for the facility.

Mr. Cilimberg responded that there were a number of emails and petitions from residents in that area. Staff has not been able to verify the location of all the signatures.

Ms. McDowell said that they were presented at the Planning Commission meeting, and the petitions include over 100 names.

Mr. Slutzky clarified that most of them are from that immediate area.

Ms. McDowell stated that several people at the Commission hearing spoke in favor of wood recycling, but not in this location.

Ms. Thomas mentioned that the applicant contends a certified engineers report would cover all issues raised, and asked staff if that would be sufficient.

Ms. McDowell responded that the applicant provided that report, but there were still some unanswered questions, including how the noise level would be addressed.

The Chairman then opened the public hearing and asked the applicant to come forward.

Mr. Mark Keller, of Terra Concepts, PC, addressed the Board on behalf of Central Virginia Recycling, and introduced CVR's owner, Bobby Vess.

Mr. Keller explained that the proposal for this facility is to take natural materials and recycle them into a marketable product; palettes, tree stumps, brush and branches can be used, and these byproducts are the result of land clearing, construction, landscape maintenance and storm damage. He said that they are recycled into marketable secondary products and the facility created will not be a dump. It is mandatory that the facility remain clean. The facility is self-regulating - a load into the facility needs to equal a load out. Mr. Keller stated that Mr. Vess has operated a mobile tub grinding operation for several years. The site conditions that he arrives at are often muddy or littered with debris, and consequently the product of his grinding becomes contaminated, unmarketable, and casually disposed of. Mr. Keller emphasized that Mr. Vess wants to create a controlled environment in which he can properly manage this resource.

Mr. Keller stated that the Ivy Landfill is now a transfer site, and much of that space is filled with recyclable waste; many products go to Amelia County, and recycling of the products is the logical thing to do. In this proposal, CVR will perform the actual recycling on site. He said that to encourage recycling, it must be made cheaper and by creating a second income stream through marketable products is one way to achieve this. Mr. Keller stated that the products must be clean and consistent, with the facility being readily accessible and conveniently located. He added that right now they are paying money to have it trucked away and then trucked back in as mulch. Mulch is safe.

Mr. Keller said that there are four requirements for the project – proper zoning, facility area requirements, site requirements, and operational requirements. He stated that the business definition is "sawmill and wood yard," which is by-right only in a heavy industrial zone and requires a special use permit in rural areas. Mr. Keller reported that the applicant could not find a vacant site at the size needed – 12+ acres – in the County, so they attempted to find locations in neighboring counties, but those were not available or convenient. He said that this is why the applicant has tried to find an appropriate location in the rural area.

Mr. Keller reported that the applicant has created a flow-chart as to how the operation would work, as well as an analysis of how much product could come in – correlated with an amount of area required for a facility of this nature. He said that the operation requires ready access to I-64 in order to serve trucks, and large acreage is best; it is also preferable to have a wooded area to preserve and screen the facility from neighbors, and having an adequate water supply is also very important. Mr. Keller stated that based on the volumetric limitations of the site, only approximately 10 hours per week would be needed for the grinding. He also mentioned that the noise test was done outside the wood line, but the actual grinding would take place back in the woods. Mr. Keller said that there would be no use of Three Chopt Road, and there may be other roads that the Board may deem appropriate.

Mr. Keller stated that staff pinpointed five unfavorable factors, with three of the five suggesting that the noise levels would be "uncharacteristic or excessive," and the fourth comment stating that the facility would serve activity in Albemarle's development area instead of the rural areas, and information regarding groundwater, parking needs, and traffic had not been provided. Mr. Keller said that the noise would be generated primarily by truck traffic and the grinding process, and noise levels – along with dust, odor, glare, vibration, and environmental risks, are limited by code and are performance standards to be met by a business when they are operating. He emphasized that these standards are the "metrics used to measure compliance and to justify issuance of citations, fines, and possibly even closure of a facility" but are not intended to act as a burden of proof prior to commencement of operations. Mr. Keller noted that the applicant is aware of the limitations and has performed enough due diligence to feel comfortable that he can operate within the parameters; he also understands that the County has the authority to shut the operation down if he violates the code.

Mr. Keller said that the facility is designed to meet a need largely generated by growth and development, with most of that occurring in development areas but other development occurring in the rural areas. The vast majority of mass clearing and grubbing occurs where most of the trees are – and that is in the rural areas. He added that the intent of the facility is to meet a need that is County-wide. Mr. Keller also said that the contention that the applicant has not been forthcoming with information sends a disturbing message that he has not been cooperative. Mr. Keller stated that they have provided a Tier III groundwater assessment, a traffic analysis by Ramie Kemp Associates, self-review of VDoT numbers, an APEX review of possible dust and odor issues, moisture maintenance, rotating and aerating, coloring, short term inventory; analysis that prevailing winds do not blow toward neighbors west or east; safety data sheets of all products used on site; an initial inquiry to DEQ; and permission from the Army Corps of Engineers to cross the culvert there.

Mr. Keller explained that Mr. Nick Evans of Virginia Groundwater was retained to analyze the water well, and its aquifer, and that report is part of the applicant's submittal. He said that the well yields 23 gallons per minute, or 33,120 gallons per day; recharge over the 100-acre site was estimated at 49,000 gallons per day; consumption estimates for the facility range between 1,000 to 2,000 gallons per day – the

equivalent of 10 homes built on this acreage. Mr. Keller stated that storage tanks are proposed to eliminate peak demand on the wells, and the cisterns would also provide quick access to stored water for dust control, irrigation of product, and if necessary fire suppression. Mr. Keller asked that the application not be voted against for inadequate water supply or excessive water consumption.

He also said that the applicant plans to have no more than 10 employees, and has offered to limit truck traffic to 53 trucks or 103 vehicle trips, assuming four trips for employees and 24 trips by homeowners per day for a total traffic count of no more than 167 vehicle trips per day. Mr. Keller stated that VDOT has indicated that the annual average daily trips on Route 250 were 5,500, with 167 trips representing 3 percent of that figure; the same VDOT information indicates that 10 percent is truck traffic – 2 percent is dual-axle, 7 percent is three-axle, and 1 percent is single. He said that this equates to about 550 trucks per day, with some of them carrying wood waste from Albemarle to other localities for processing. Trucks and the noise that they generate are characteristic of Route 250. Mr. Keller also said that with only 10 employees and rarely more than one or two visitors at a time, the applicant does not feel that a parking study is needed; there are 30 parking spaces on the site.

Mr. Keller said that other favorable factors not mentioned by staff include redirection of truck traffic on Dick Woods Road, reduced grinding and truck transfer of similar products to and from the Ivy Landfill or to points outside the County, curtailed burning of these natural products, reduction of erosion, and less compromising of good land through onsite burial of material. He stated that it is an environmentally sound and green practice, and the County would be approving agribusiness in an agricultural district, as well as promoting turnkey recycling.

At this time the Chairman asked for other public comments.

Ms. Julie Minetos said she and her husband own an adjacent property on the south side. She has a lot of concerns about this project as it is totally uncharacteristic for the area. She has major concerns about the groundwater supply and the potential fire hazard, adding that if the applicant does not abide by the ordinances and other issues, the Board won't be the ones to enforce it. Ms. Minetos said that the applicant "flunked" the noise test, which sounded like it was about 50 feet from her house. She stood on her deck when this noise test was performed. All the neighbors were here first and they want to see their quality of life preserved. She has nothing against business but it's the wrong place for this one.

Mr. Carlton Brooks, a lifelong resident of the community, said he and his wife live at 4649 Vista Court, an adjacent property due east of this site. He said that their home is about 450 feet off of the adjoining property line, and anything the applicant puts in the air – sound, odor, dust, smoke – blows directly from the site to his house. Mr. Brooks stated that this use is not unique, and within 10 miles of this location there are three permanent tub grinders – recycling stumps and brush into useable mulch. Within sight of this property, there are 355 acres that have been put into conservation easement, and these landowners have strived to preserve the rural nature and open spaces of Albemarle County. He thinks that in granting this special use permit the Board would be negating a lot of the intent that these landowners have had. Mr. Brooks added that the application is a "thinly disguised method" for the applicant to locate all of his heavy equipment at this site, making it a contractor's yard. He also said that the applicant is asking citizens to subsidize his investment because he can buy this land cheaper than industrial zoned land. Granting of this permit would negatively affect the rural area as well as the enjoyment of his property and his neighbor's home and property. He asked that the Board deny the request.

Mr. Matthew Bassignani presented a petition of 272 names from neighbors in Keswick, Troy, and Boyd Tavern. He said that he lives just over the hill from the proposed manufacturing operation and as a U.Va. physician expressed concern that the leading causes of bladder cancer is smoking and exposure to industrial dyes – which mulching operations use. Mulching is only one part of this operation. Mr. Bassignani said that the products would also be stored on site and would give off noxious fumes and odors as well as leaching into groundwater. He stated that Mr. Vess is trying to take advantage of loopholes in zoning laws to pass off a manufacturing operation as a simple sawmill. This noise will disturb the peace and enjoyment of his backyard. Mr. Bassignani urged the Board to reject the applicant's request.

Ms. Karyn Warren said she lives about a mile from the proposed site. This area has been very residential. Ms. Warren stated that the increased traffic – including large trucks – is her greatest concern, as many vehicles use Route 250 between Zion's Crossroads and Pantops instead of hopping onto I-64. She said that the noise level starts early in the morning and goes until late evening, and rocks continuously fall out of trucks along this stretch. Ms. Warren mentioned that her property adjoins someone who has a special permit – which she opposed – and her concerns have come to fruition as no one polices it. It has never been enforced. She asked who really is out there monitoring all of this.

Ms. Marcia Buck said that she owns the old Boyd Tavern, and her family has put a lot of work into the property. She said that this historic property could be negatively impacted by this proposed facility, and she is working with the Virginia Department of Historic Resources to achieve landmark status as well as pursuing National Register of Historic Places designation. When they look at this project, they think it is just not really right for their area. They do not really want to lose the rural nature of our property and they are very concerned about the things they have heard about tonight – the noise, the traffic, the dust, and certainly the fire hazard with the fact that they have a 250 year old house that was built by Thomas Jefferson's brother so close to this manufacturing facility. She asked for denial of the request.

Ms. Chris Buck said that residents worry about the risk of contamination of well water and its impact on their health over the years. Ms. Buck asked that mulching operations be located in areas

already zoned for industry, and asked for the Board to consider this application's appropriateness in a rural area.

Ms. Diane Reynolds said she lives at 4640 Vista Court behind this site. Ms. Reynolds said that she home schools her children because they have problems with noise. The test that was done for the proposed facility reached 65 to 79 decibels – which is certainly over the limits and was conducted with just one machine running. She stated that the trees will not buffer sound much when the leaves are off from October through March, and air pollution is another big concern as the prevailing winds are very strong. Ms. Reynolds said that her daughter was premature and has breathing difficulties that would be affected by particles in the air. She also indicated that the additional traffic would have a huge impact on the roads, including Route 616.

Mr. Bill Johnson said his family has resided in Keswick for about 38 years and his home is close to this property. Mr. Johnson said that his family is involved with preservation of older properties and rural land, and some of the family's properties are in a conservation easement. He stated that the parcel to the west of this project is Limestone Farm, a 500-acre farm that his family has in easement; Limestone House was owned by President James Monroe and the front portion contains Jefferson's kiln used for the mortar for U.Va. and Monticello. Mr. Johnson said that he and his wife hope to move to this property soon. The applicant's proposal will turn the area into an industrial complex no matter how you control it. He added that his family has been in the lumber business for four generations, and there are definitely impacts to air and water.

Ms. Leslie Dorsey said she lives on the property adjacent to Mr. Vess's. She said that the loads that would be brought into this site contain roof tiles and other contaminants to be monitored by the applicant, and if the business changes hands the material could be dumped in the rural area. Ms. Dorsey asked if a licensed professional would be policing the property, and whether someone would be posted at a gate to watch the site around the clock. She stated that from her home she can see Route 250 and the truck traffic, and they would turn at her property to access the business.

Mr. Bill Dorsey, Jr., said that he and his wife's property is probably the closest to the proposed facility location. He also has concerns about traffic on Route 250. Mr. Dorsey said that the only passing area for several miles is right in front of his property, and several people have been killed almost directly in front of the entrance to the proposed facility. He also stated that the turning lane would take one-half to two-thirds of his frontal property on Route 250, so this would be a huge hindrance to him.

Mr. Bill Dorsey, Sr., said he owns 130 acres. He knows Mr. Vess and has no issue with him, but this business should be located in a commercial area. He also stated that within 1,500 yards of his home is the location of a Confederate Civil War hospital, as well as kilns that Jefferson used to make bricks.

Mr. Eric Wagner thanked the Planning Commission and Linda Porterfield – for her work on researching these types of facilities in other locations. Mr. Wagner said that Ms. Porterfield made it clear in the Planning Commission hearings that this was a "real can of worms." He also stated that Planning staff requested information that the applicant never provided, and they came to the conclusion that there are "too many unknowns" with this proposal. It doesn't make sense. Mr. Wagner said that this facility would become a yard for industrial equipment and would be a very loud operation.

Mr. Matt Montgomery said he lives in the area of the proposed facility and is a physician at Martha Jefferson Hospital. He commended the Planning Commission for the job they did in analyzing the application. Mr. Montgomery said that while the industry is being touted as green, it has some significant impacts. He mentioned that noise decibel levels increase exponentially – tenfold with every ten decibels. There would be pollution to the air and water, and Woods Edge Road has over 40 homes that depend on a well close to where this project would be.

Ms. Jo Higgins addressed the Board, stating that as approved under an SP for a sawmill or other manufacturing, if this is not successful then the equipment could be changed to planers and de-barkers and a sawmill could be set up here without a change to the SP. She said that none of the equipment related to a true sawmill was considered in the noise study, and the underlying zoning does not go away. Ms. Higgins commented that it would be impossible to differentiate a sister operation onsite, and would be a "zoning enforcement nightmare." She also stated that with contractors' storage yards, nothing prevents equipment from coming and going as long as it hasn't exceeded the limit. The applicant is an excavating contractor. She has issues with the certified engineers report not being provided at this time, noting that there is a disclaimer on the face of it that says "any data found to be inaccurate is the responsibility of CVR and will be revised as necessary." She added that the data source hasn't been verified by the engineer. Ms. Higgins said that the engineer has indicated that the demonstration shows the grinding and other initial process would have to occur within the portion of the site, where added distance, tree cover and topography would further abate noise levels. She said there's no way to definitively determine noise levels until operation, and also said that there's no way to provide a buffer for this noise.

Mr. Jeff Werner, of the Piedmont Environmental Council, said that everyone should be grateful to the Johnsons for their conservation efforts. Mr. Werner said that there have been lots of differing opinions within the PEC. County policies have allowed the rural area to become small-lot subdivisions. He commented that the proposed activity really shifts from agricultural to manufacturing, and the noise is a significant issue. He added that the large forested areas are noted on the site plan as not being subject to special use permit conditions.

Mr. Colt Peyton, a physician at Martha Jefferson Hospital, asked attendees to raise their hands if they are opposed to this project. Mr. Peyton said that there is a similar facility at Zion's Crossroads that

has the same process, and there are concerns about spontaneous combustion, groundwater contamination, impact on horse farms, and air pollution.

Ms. Mary Beth Wagner said she lives in Keswick Farms adjacent to the Dorsey Farm. Ms. Wagner said that the day they did the noise test there were no large stumps going into the grinder – only pine logs. It was not accurate of what they will actually be doing at certain times. She stated that several residents in the area work at home, and there is no way you could work from home with the noise level from the wood processing facility.

Mr. Trevor Joslyn, a resident of Glenmore, said this property's boundary is 1.1 mile from the border of Glenmore, which has over 700 homes; additional homes are planned to be built at the Village of Rivanna. Mr. Joslyn presented a report from Tom Richard of the Cornell Institute of Waste Management, which states that odor is the most common problem with composting. He also mentioned problems with truck traffic on Route 250, which is already jammed between Glenmore and Route 250 past the Luck Stone quarry.

Mr. James Allen said he lives on Boyd Tavern Lane. Mr. Allen mentioned that if any traffic is coming from the east it would have to stop on Route 250 and turn left, and trucks on Route 616 would probably stop on the "blind corner" of Three Chopt Road to enter the property in question. He is concerned about the traffic.

Mr. Straun said he lives within a quarter mile of the proposed project. He said that he is already experiencing traffic problems on this road which is not being addressed.

Mr. Keller re-addressed the Board, stating that there were no objections from the ARB, the Historical Society, or Department of Natural Resources in the staff report. He said that the prevailing winds information he presented was from the NOAA website, which stated that 9 out of 12 months the winds are predominately southwesterly. Mr. Keller reported that the dyes would be stored indoors, not outdoors, and they are applied via a pump and a machine, internal to the machine and then conveyed out; they are not necessarily airborne. He stated that trucks would be checked at the guard house, and then by a different employee when they dump at a particular location, and then a third time as the materials is sorted; materials are processed palettes with palettes, stumps with stumps, brush with brush. Mr. Keller said that every time information is requested it delays the project a month, and the client did not want to go through all of that. He added that when the engineer's report template was obtained, staff indicated it was a "poor example." Their engineer's report is fairly lengthy. Mr. Keller stated that the disclaimer Ms. Higgins mentioned is standard for liability reasons on all engineers' reports that come out of his office.

Mr. Bobby Vess said that he provided the information to staff about which facilities to visit. He said that he was born and raised in Crozet and has lived in the area for 63 years. Mr. Vess asked where all the brush and stumps and debris from all of the development there, and in places like Glenmore, would go. He noted that it could be dropped off at his facility. He emphasized that the County needs to take care of its own debris rather than paying for it to be shipped out of town to grind up and then pay for its return.

There being no further public comments, the public hearing was closed and the matter placed before the Board.

Ms. Mallek asked if the burden of proof for noise had to be met via the standard test.

Mr. Cilimberg replied that there was a test done, and throughout operation they have to meet the requirements of the ordinance – but usually noise issues are discovered because of complaint.

Mr. Slutzky said that a performance standard is to provide a test on the front end.

Mr. Cilimberg responded that the test is a starting point.

Ms. McDowell confirmed that the result was above the allowable maximum in one location, but the plans that the applicant submitted later showed the operating area to be moved a little further east on the property. The consequence is it is closer to other neighbors. She said that the applicant had discussed running another noise test, but for some reason that did not occur.

Mr. Dorrier said that the Zoning Ordinance specifies where things should go, and this is a classic case of industrial use bumping up against residential. He pointed out that the only place in the County where this type of use is allowed by-right is in a Heavy Industrial zoned district. He has looked at the site and the neighboring homes, noting that one house is in very close proximity to the proposed grinder location. The issue is whether it is appropriate to locate this industrial use in a residential area. He thinks the answer is a resounding "no". Mr. Dorrier said that Mr. Vess has good intentions and he admires his idea, but this is not the right place for his facility. The Keswick area has a history all of its own, and it is one of the most beautiful areas in the country. He also noted that this stretch of Route 250 is not in the best of shape, and is a dangerous area of road. Mr. Dorrier said that Mr. Vess plans for about 50 vehicle trips per day with large trucks coming in full of material to be ground up. There are the issues of noise, dust, debris and other activity that have to also be considered. There are a number of reasons to deny this request but the primary reason is the issue of heavy industrial use in a residential area. He recommended that the Board deny the request.

Mr. Rooker said he agrees with Mr. Dorrier's concerns. He added that Mr. Keller did an excellent job of presenting information on this. Mr. Rooker said that the applicant has the burden in a special use permit – which is not by-right – to show that his use will be in the public interest as well as his own. He stated that the ordinance guides the County to consider whether the proposed use would be a substantial detriment to adjacent property, and the evidence here shows that it will be. Mr. Rooker referenced a case in Nelson County that resulted in long litigation over someone trying to locate a tub grinder there, which was bitterly opposed by surrounding property owners. He said that this use in this location would be a substantial detriment to surrounding property, and would change the character of the district, and is not in harmony with the purpose and intent of the ordinance. The only place in the County where this use is allowed by-right is in the HI zone district. That indicates the kind of operation one might expect to have. He does not support the application.

Mr. Slutzky agreed with the previous Board comments and further stated that this is a rural area, which is identified in the Comprehensive Plan for protection of quality of life. There are a number of elements of this proposal that would likely threaten the integrity of ecological systems – particularly water. This is an industrial use in a rural area, and he thinks it's completely inappropriate for that location. Mr. Slutzky said that when he visited the site with Mr. Vess he was reminded of issues with a huge burn pile in the growth area in Belvedere. He added that the community would benefit from this facility, but not in this location. Perhaps Ms. Susan Steimart could work with the applicant to find a better location in the County where the use is more appropriate.

Ms. Mallek stated that she is in favor of portable grinders that go to sites because there are less hauling of materials back and forth, and the applicant is well-involved with these already. She said that one such operation is a mile and a half away from her home was still audible, inside her home, when they put in sizable stumps. People understand that portable grinders are temporary and will not be at a site forever. She thinks that use would be better than trying to find one location where everybody would come to. She also thinks that fires are an issue for consideration.

Mr. Slutzky said that while the mobile grinders are great, they are not always applicable on a site that is smaller than two acres.

Mr. Boyd agreed with previous comments. He said he applauds Mr. Vess for what he's trying to do. He thinks it would be a tremendous asset for the County. This is just the wrong place for it.

Ms. Thomas said that she called up the Ivy Landfill to find out how it works there and how it impacts neighbors there. She stated that she was most taken tonight by Jeff Werner's comments because this is a failure of our rural policy, as this type of activity should be in the rural area – but this area has become residential. Ms. Thomas said that in this case, the residents were here first and the County tries to give some precedent to the situation that exists on the ground and the people who live there already. It ought to be possible to have a hundred acres in the rural area and do something like this, and she thinks it is an indictment in our failure of our rural policy that we can't. But, she also thinks this is not the place to have it, unfortunately.

Mr. Dorrier then offered **motion** to deny SP-2008-032. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

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Agenda Item No. 10. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Thomas said that several months ago the County had said they would issue revalidation forms in April to everyone on land use taxation use-value assessment, and then proceed to do that every two years. She said that the new County Assessor has indicated the two year frequency will be a burden on staff. Ms. Thomas stated that the form is inadequate and needs a lot of work before it can be sent out in April, and something like an open house needs to be held to disseminate information to affected landowners. She added that there is some difference of opinion with the Assessor as to what the law is, and whether the form even meets the requirements of the law. She is concerned about the amount of work that needs to be done to get something out there. She said that Mr. Willingham has also indicated he is unclear as to what the County's purpose is.

Mr. Foley commented that staff has set up a meeting within the next week with Mr. Willingham and the Finance Director to ensure there is clarity about the Board's previous actions and goals.

Ms. Mallek said she was under the impression that there still needed to be more work done to the form, and that something would be coming back to the Board.

Ms. Thomas said there is a word "or" in the forms that state that you have to provide these forms (income tax forms) or fill out a chart. Mr. Willingham said that "or" has to be "and". That is a major change because large farmers are going to want to hand in their forms, as they've been used to doing that for agricultural programs; small farmers are going to be turned off by dealing with some kind of income tax.

Mr. Boyd said he thought the Board had decided that it was going to use "or" instead of "and".

Ms. Thomas said she also thought the print type was going to be larger. There are also items that are not listed in the form that tell you what is needed to get open space provisions, and the forestry use in the form still makes it sound like the Forestry Department is only concerned with marketable timber.

Mr. Slutzky asked if it would still be reasonable to get the letters out in April.

Mr. Foley responded that the plan was to connect with the community in a reasonable timeframe, but the County is not wed to that date.

Ms. Thomas said that the applicants do need to get their applications in by September.

Mr. Rooker stated that the reason for the form is to ensure that people who are receiving land use taxation benefits actually qualify for it.

Ms. Thomas commented that other communities have more staff to go out and check. Another point made by Mr. Willingham was that if the County is not going to check on the form after people fill it out, are we sure we are getting what we think we are getting. Nelson County uses a volunteer group to go out and check. She acknowledged that Albemarle has about 5,000 parcels.

Mr. Rooker said that the point is to weed out those who do not qualify and are getting the tax benefit.

Ms. Mallek said that there is a committee, which is the appeal committee for Land Use designation types of judgments, and they are experienced people in farming. She suggested reading the article in *The Hook* about Connie Hicks as there are comments about new farm owners who are not farming but want the tax break.

Mr. Rooker stated that he likes the idea of a volunteer group as it would take extensive staff time to monitor the parcels.

Mr. Foley said that they would discuss that at the meeting, and come back to the Board for some additional clarity after talking with Ms. Thomas and Ms. Mallek.

Mr. Rooker mentioned that there were several jurisdictions that required revalidation, and the Board had been presented some sample forms from those localities that were less complicated than Albemarle's. It may be helpful to call some of those jurisdictions to see how their revalidation process has worked, how long they have had the form in place, and has it been changed or modified over the years. Sometimes it is best to not reinvent the wheel when someone else has gone through the trial and error process.

Ms. Mallek commented that many of the forms were much simpler than the County's form.

Mr. Rooker added that it did seem that the County's form was a lot more complex than the one used by other jurisdictions.

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Ms. Thomas commented that there has been a focus on broadband and its' applicability to all rural residents for community planning in the future. She would like for there to be more discussion about this – as the Planning District Commission is discussing it next month. She said that broadband availability should be an integral part of discussions about traffic, and economic opportunities with the possibility of people working from homes.

Mr. Rooker said that there is always the dilemma that it might encourage more development in the rural areas. He also mentioned that there was a discussion at the PACC meeting about using specific pots of stimulus money for broadband in rural areas. Mr. Rooker noted that the Greenwood neighborhood was brought up as an example of a rural area that had a substantial interest in broadband. He said that the idea was to provide money to vendors like Verizon to encourage investment in capital there.

Mr. Boyd indicated that Verizon had been hesitant previously because of the capital investment and they viewed a lack of return on investment, but the stimulus money might get them past that concern.

Mr. Foley stated that the County has submitted a proposal to try to make broadband available more in rural areas. Mr. Michael Culp, Director of Information Services, has worked on a fairly extensive proposal and might be able to share information about the status of this.

Ms. Mallek commented that Albemarle County was listed on one of her constituent's Comcast bill as the franchisee, but the County has no power to do anything. She thinks that if the County is giving them permission to be here, there should be some standards.

Mr. Slutzky asked if there was any ability to ask Comcast to provide public access to County meetings.

Mr. Davis explained that the County does not have a franchise, and most franchises require a local access channel that could be used in that way. The City of Charlottesville broadcasts over Channel 10. In the early 1970's, Albemarle made a decision not to franchise, and Comcast decided to locate here without that. Mr. Davis stated that there has not been a compelling reason to franchise because it is preempted by federal law as to what can be regulated – stations, content, and even fee amounts. He said

that since that time, the state has preempted the franchise fee. The only thing available to a locality is perhaps some local access.

Ms. Mallek said citizens concerns are whether the County can require Comcast to provide better service.

Mr. Davis responded, "no", but there is a contact at Comcast that has been fairly responsive to customer concerns which has been found to be fairly effective.

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Ms. Thomas commented that she and Ms. Mallek would be going to Culpeper for the next transportation meeting. Other localities/divisions have not been losing offices in the way that the Culpeper District is. It appears that the Culpeper District is losing more offices than other districts.

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Ms. Thomas said PreservationWeek.com has a place on their website which says "this place matters" where citizens can upload photos of buildings that are significant.

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Mr. Boyd said that they met recently with the AFRAC Board to discuss the initial draft of the fire and rescue ordinance, and met again with them last night to refine input. The process is far enough along they cancelled their next committee meeting because the next step is to go back to AFRAC. They hope to bring it back to the Board for public hearing at the May night meeting.

Mr. Slutzky asked if process revisions he had suggested had been included in the ordinance.

Mr. Davis added that they had in part, and he would share that with Mr. Slutzky.

Mr. Slutzky said that his suggestions had to do with the availability of recourse up to the Board level if there is disagreement about why a policy was rejected.

Mr. Boyd stated that the group has worked hard and has had a lot of good input from volunteers.

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Mr. Dorrier asked about an invitation from Monticello that he had received.

Mr. Slutzky mentioned that there is a drum and fife corps event with other festivities this Sunday, March 15th at Monticello. He and Mayor Dave Norris were asked to read some of what was said to Jefferson when he returned to Monticello after retiring from public office.

Ms. Thomas encouraged him to read the speech first, as when other Board members were asked to do that in the past it was pretty embarrassing.

Ms. Mallek said that the draft was sent out to Board members a few weeks ago.

Ms. Thomas commented that the sensitivities of people in that day were different than those of today.

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Agenda Item No. 11. Adjourn.

At 8:19 p.m., with no further business to come before the Board, the meeting was adjourned.

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Chairman

Approved by Board
Date: 07/08/2009
Initials: EWJ