

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on July 1, 2009, at 9:00 a.m., in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia.

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 9:03 a.m., by the Chairman, Mr. Slutzky.

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

Agenda Item No. 4a. Recognition: Innovation Alliance Award.

Mr. Slutzky said on behalf of the Board it was his pleasure to welcome Ms. Toni Shope of the Alliance for Innovation who will recognize the County's Family Support Program. They chose the County's program to receive a prestigious *Outstanding Achievement in Local Government Innovation Award*. The program is one of only ten programs nationwide to be so honored. Family Support is an innovative prevention and early intervention program in County elementary and middle schools that supports children's growth and development, strengthens the family's alliance and promotes school success through home, school and community collaboration.

Mr. Slutzky said the Family Support workers address these safety concerns as well as create a bridge between home and school that opens the way for parents to feel welcome and empowered to participate in their children's education so that they are ready to learn and be successful in school. Mr. Slutzky shared a few highlights of the program's outcomes: workers have served an average of 167 children each year over the last four years; in FY '08, of those children whose behavior was an issue, 69 percent showed improvement in behavior; in FY '08, of those children who were identified as having academic issues, 68 percent showed academic improvement. He commented that Family Support staff and the Department of Social Services management team for creating and running a program with such broad and long-term benefits to families in the community, and congratulated them on this outstanding recognition. He then introduced Ms. Toni Shope from the Alliance for Innovation.

Ms. Shope said she is the East Regional Director with the Alliance for Innovation – a network of innovative governments from across the country pursuing innovative ideas and solutions to better serve citizens in their communities. She said the Alliance's "*Outstanding Achievement in Local Government Innovation*" award was established by their Board of Directors to honor their first President and Board Director – Bob Havlick and Thomas Mullenback – the intent of the award is to acknowledge local governments from across the nation and Canada who have successfully addressed important issues such as delivery of services and preparing their community for the future. Every year the Alliance receives more than 100 applications from nearly 400 members sharing their creative, innovative and timely programs, services, initiatives and projects. Only a few are selected annually to receive the award, and in May the Alliance recognized the 2009 winners. Ms. Shope then called upon Ms. Kathy Ralston and Ms. Debbie Chlebnikow with the Albemarle County Department of Social Services to present them the award.

Ms. Ralston commented that the department is thrilled to receive the award, noting that the Alliance is a wonderful organization. She also recognized Debbie Chlebnikow and the Family Support Program workers, who do a fabulous job in County schools with the families the program serves.

Ms. Chlebnikow also expressed her appreciation for the recognition.

Ms. Ralston then recognized Mr. Claude Foster, member of the Social Services Advisory Board, who was in attendance.

Agenda Item No. 4b. Recognition: 25th Anniversary of the Creation of the Albemarle County Police Department.

Mr. Slutzky read the following resolution into the record:

On behalf of the citizens and the Board of Supervisors of Albemarle County, we would like to recognize the men and women of the Albemarle County Police Department on the occasion of the 25th anniversary of the formation of the Police Department. It is our pleasure to recognize and express appreciation and support for the

Albemarle County Police Department

Achieving this milestone is a tremendous credit to all of the men and women of the Department who for the past 25 years have provided our citizens with a high level of dedication and professionalism. Albemarle County was only the 24th law enforcement agency in the

Commonwealth of Virginia to receive its accreditation in 2000, following a rigorous four-year process.

Our community receives many accolades, appearing frequently on national lists such as the #1 Best Place to Live in the United States. We could not achieve the outstanding quality of life we are so fortunate to enjoy, and that we are so well known for, if we were not a safe and secure place for people to live, work and play. Our Police Department plays a critical role in our success as an attractive and desirable location for residents, businesses and tourists.

The Police Department has evolved over time to meet the community's changing needs and demands and has remained on the leading edge of law enforcement innovations. These advancements have been made possible by progressive, innovative police professionals who over the past 25 years have acted aggressively to keep our department at the forefront of the law enforcement profession.

On behalf of the County of Albemarle and the citizens of Albemarle County, we want to congratulate the Police Department on its 25th anniversary and thank all the department members, past and present, for the contribution they each have made to our community's safety and well-being.

Chief John Miller was present and introduced Lt. James Bond and Officer Kanie Richardson, who took the oath 25 years ago as some of the department's first officers. They came forward and accepted the resolution of recognition.

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

Ms. Thomas reported that she and Ms. Mallek recently attended a meeting of the High Growth Coalition, and one topic discussed was the alternative sewer system legislation. She said representatives from the State Health Department were in attendance and talked about their plans for developing the regulations which localities will not be permitted to exceed for people who have alternative sewer systems.

Mr. Rooker asked if the Health Department views septic systems as state-of-the-art ways to deal with waste.

Ms. Thomas replied that in the past they have regarded them as being temporary uses – something used only until a sewer line was available; that does not fit the situation in Albemarle at all. Albemarle has regarded whether land perked as a land use control regulation, although it has not been specifically stated. The County realized that certain sections of the rural areas would not develop because the land does not perk. That will no longer be a controlling factor. That is the land use aspect of this legislation.

Ms. Thomas said there is a health aspect related to these systems because they need careful maintenance, but so do septic tanks. She said the Legislators told the Health Department not to put increased regulations on these systems over that for the ordinary type of septic tanks. From the Health Department's point of view, they would like to have all septic tanks regulated more carefully.

Ms. Thomas said they also learned about subdivision road standards; she thinks most of the Board members are already aware of the changes. Then there was discussion of stormwater regulations. She said the County recognizes that stricter stormwater regulations are necessary. It could add millions of dollars to the sewage treatment plant or it could tackle agricultural runoff, and/or can tackle stormwater runoff from construction in development areas. In this community, if stormwater is regulated in the City or more stringently in the urban area, it will "squish" development out into the rural area because it would be less expensive to manage it in the rural area. A more diligent approach would be to take a watershed approach and recognize that some watersheds will be impacted and in the process other watersheds could be saved, but they also could put that into the regulations and allow a "cap and trade" situation.

Mr. Slutzky mentioned that he met (personally) with the Secretary of Natural Resources last week and with the head of the Department of Conservation and Recreation, the agency promulgating these regulations. One productive outcome was that they may allow for a "trading" system. He made the same arguments about the unintended consequences of promoting sprawl and creating stale zoning. They seem to be inclined to allow the .28 pounds per acres for phosphorus to be achieved either onsite or to allow an option to purchase credits from the agricultural sector - that would be at a lower cost to the developer but would achieve the same benefit for the Chesapeake Bay. Another option would be to put money into a fund the State would manage for redevelopment situations where they don't currently have to meet this more stringent standard; with some additional investment from the State it might be possible to achieve a better standard which would be better for the Bay than achieving the .28 onsite. He would like to submit a response (he will submit one personally), but if the Board members agree with what he has to say it could be submitted on behalf of the Board.

Mr. Rooker asked what local authority would regulate agricultural runoff.

Ms. Thomas responded that it's up to the Soil and Water Conservation districts, and they have been given some more funding. In this community, it tends to be a matter of creating riparian buffers – which takes away land and value from the farmer. She said the SWCS manages the State and Federal program to provide funding, but it's a matching situation with the farmer putting up 25 percent. If the

Board wanted the RWSA to pickup some portion of that 25 percent, or if the County wanted to do that, or if that is something that could become subject to the "trading" that would be the most useful thing to do in a community such as this one.

Ms. Mallek said that other counties have offered other programs where the setback is lower in order to make it possible for narrow properties to be fenced; Louisa County has a 10-foot setback, whereas Albemarle's is 35 feet on each side. Many people would do that if there was a way for us to pay the whole cost and be able to fence closer to the stream. She said the maps of her property demolish their lower pasture because it takes so much land. Hopefully, the SWCS will widen their perspective because each county has a different approach.

Ms. Thomas commented that it has to be a "super buffer" to be effective at 10 feet.

Ms. Mallek said it keeps the cows out of the stream. It seems to be working in other places.

Mr. Slutzky said one good thing would come from this proposed new strategy - if the appropriate buffer is built and fencing/watering systems put in, there's potentially some compensation for the lost value of land that would transfer to the agricultural sector from the development sector. That achieves protection of the Bay, and addresses the disproportionate burden these proposed regulations would have on the development community that would result in stale zoning and increased sprawl. He thinks that what is being worked on will work for every sector.

Mr. Rooker noted that the Charlottesville-Albemarle area was chosen by Kiplinger's recently as the fourth best place in the country to find a job. He has worked with Ms. Catlin over the past few years to create a list of various community accolades this area has received, and there are probably 50 recognitions on that list.

Ms. Mallek mentioned that Mr. Tom Foley and Ms. Lori Allshouse gave a sensational presentation yesterday at the VACo class on budgeting that she has been taking. The meeting was held at COB Fifth Street and they made her proud. They explained to the class all about strategic planning - she learned more than she knew before, but the people who had never done this before in their counties were "blown away" by the success of what Albemarle has in place.

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

Mr. Kevin Boyer, President of the Association of Firefighters here in Albemarle, addressed the Board. He encouraged the Board to work toward the creation and acceptance of the ordinance begun last fall. As a County employee he works at many fire stations; some of which have been run by volunteers for a long time within the resources they had. He said there are differences between stations in running the same calls and that creates issues on the scene during management of the response. He said there are national safety standards the County needs to strive for, and everybody needs to be "on the same page." He said the firefighters are doing a good job now, but there is a need to bring everybody to the table to create an ordinance that allows for accountability and continues the process of effective response in the community. He encouraged the Board to develop the ordinance and create a structure where the firefighters can step up to the forefront of fire and rescue in the County.

Agenda Item No. 7. Consent Agenda. **Motion** was offered by Mr. Rooker, **seconded** by Ms. Mallek, to approve Items 7.1 (as read) through 7.5, and to accept the remaining items as information. (Discussion on individual items is included with those items.) Roll was called and the motion carried by the following recorded vote:

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

Item 7.1. Approval of Minutes: May 7, 2008; March 3, March 11, March 30, April 1, April 8, April 17, and May 13, 2009.

Mr. Dorrier had read his portion of the minutes of May 7, 2008, pages 1-39 (ending at Item #8), and found them to be in order as presented.

Ms. Thomas had read the minutes of March 3, 2009, and found them to be in order as presented.

Mr. Dorrier had read the minutes of March 30, 2009, and found them to be in order as presented.

Ms. Thomas had read the minutes of April 17, 2009, and found them to be in order as presented.

Mr. Slutzky had read the minutes of May 13, 2009, and found them to be in order as presented.

By the above-recorded vote, the Board approved the minutes which had been read. Approval of the minutes not read was carried to the next meeting.

Item 7.2. FY 2009 Appropriations.

The executive summary states that Code of Virginia § 15.2-2507 stipulates that any locality may amend its budget to adjust the aggregate amount to be appropriated during the fiscal year as shown in the currently adopted budget. However, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The total of this requested FY 2009 appropriation is \$130,866.46. A budget amendment public hearing is not required because the cumulative appropriations will not exceed one percent of the currently adopted budget.

This request involves the approval of two new FY 2009 appropriations, No. 2009-065 and No. 2009-066, totaling \$130,866.46 for various Education programs and projects (as set out on Attachment A below).

ATTACHMENT A:

Appropriation No. 2009-065, \$125,216.46. Revenue Source: Local Revenue \$52,227.00, Fund Balances \$72,989.46.

At its meeting on May 28, 2009, the School Board approved the following appropriations:

- Meriwether Lewis Elementary School received a donation in the amount of \$52,127.00 from the Meriwether Lewis PTO. This contribution was made in order to purchase various technology items for the classrooms at Meriwether Lewis Elementary School.
- Western Albemarle High School received a donation in the amount of \$100.00 from Mary and John Deviney. The donors have requested that their contribution be used towards funding the synthetic turf field project at Western Albemarle High School.
- Various Shannon Foundation Grants have an unexpended Fund Balance from FY 07-08 in the amount of \$9,772.69. Holders of these grants have been encouraged to expend these balances. This agenda item is to reappropriate available funds for use in FY 08-09.
- Various Miscellaneous Grants have an unexpended Fund Balance from FY 07-08 totaling \$63,216.77. Holders of these grants have been encouraged to expend these balances. This agenda item is to reappropriate available funds for use in FY 08-09.

Appropriation No. 2009-066, \$5,650.00. Revenue Source: Local Revenue \$5,650.00.

At its meeting on June 25, 2009, the following appropriations will be presented to the School Board for its approval:

- The mission of the Families in Crisis Grant is to provide an effective structure to meet the needs of students, whose families are in crisis, ensuring they receive equitable access to Division services in support of the Division's strategic plan. Families in Crisis received from the Bama Works Fund of Dave Matthews Band in the Charlottesville Area Community Foundation a donation in the amount of \$5,000.00. The donation will be used for the "Hispanic Mothers Club" program that provides English tutoring and language enrichment and learning activities for mother and child. We also received a donation from an anonymous donor in the amount of \$50.00.
- V.L. Murray Elementary School received a donation in the amount of \$600.00 from an anonymous donor. The donor requested that their contribution be used at the discretion of the principal at V.L. Murray Elementary School.

Staff recommends approval of the budget amendment in the amount of \$130,866.46 and the approval of Appropriations No. 2009-065 and, subject to School Board approval, No. 2009-066. (**Note:** Appropriation No. 2009-066 was revised based on action taken by the School Board - the amount was revised from \$5,650.00 to \$600.00.)

By the above-recorded vote, the Board approved the budget amendment in the amount of \$125,816.46 and approved Appropriation Nos. 2009-065 and 2009-066 as set out below:

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2009-065
 DATE: 07-01-09
 EXPLANATION: Education Programs And Grants - School Board Meeting: May 28, 2009

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
2	2000	18100	181109	Donation	J2	52,127.00		
2	3104	51000	510100	Fund Balance	J2	63,216.77		
2	3502	51000	510100	Fund Balance	J2	9,772.69		
2	9002	18100	181107	WAHS - Turf Field Project	J2	100.00		
1	2206	61101	800700	Data Processing Equip-New	J1	52,127.00		
1	3104	60201	601300	Ed/Rec Supplies	J1	80.75		
1	3104	60203	312500	Prof Services-Instructional	J1	325.00		
1	3104	60203	601300	Ed/Rec Supplies	J1	500.00		
1	3104	60204	601300	Ed/Rec Supplies	J1	990.00		
1	3104	60205	312500	Prof Services-Instructional	J1	1,550.00		
1	3104	60205	601300	Ed/Rec Supplies	J1	1,464.28		

1	3104	60206	601300	Ed/Rec Supplies	J1	18.24		
1	3104	60207	601300	Ed/Rec Supplies	J1	200.00		
1	3104	60209	601300	Ed/Rec Supplies	J1	105.29		
1	3104	60210	601300	Ed/Rec Supplies	J1	1,869.02		
1	3104	60211	601300	Ed/Rec Supplies	J1	72.63		
1	3104	60212	601300	Ed/Rec Supplies	J1	656.23		
1	3104	60213	601300	Ed/Rec Supplies	J1	4,806.83		
1	3104	60215	132100	Pt/Wages-Teacher	J1	23,218.50		
1	3104	60215	210000	FICA	J1	1,781.69		
1	3104	60215	601300	Ed/Rec Supplies	J1	1,051.56		
1	3104	60216	601300	Ed/Rec Supplies	J1	1,600.49		
1	3104	60217	601300	Ed/Rec Supplies	J1	5,014.10		
1	3104	60251	601300	Ed/Rec Supplies	J1	797.38		
1	3104	60252	312500	Prof Services-Instructional	J1	4,641.77		
1	3104	60253	601300	Ed/Rec Supplies	J1	2,452.10		
1	3104	60302	601300	Ed/Rec Supplies	J1	600.00		
1	3104	60304	601300	Ed/Rec Supplies	J1	12.76		
1	3104	61101	420100	Field Trips	J1	1,000.00		
1	3104	61101	601300	Ed/Rec Supplies	J1	5,779.00		
1	3104	61311	580500	Staff Development	J1	2,629.15		
1	3502	60606	601300	Ed/Rec Supplies	J1	9,772.69		
1	9002	60302	950245	WAHS Turf Field Program	J1	100.00		
	2000		501	Est. Revenue			52,127.00	
			701	Appropriation				52,127.00
	3104		501	Est. Revenue			63,216.77	
			701	Appropriation				63,216.77
	3502		501	Est. Revenue			9,772.69	
			701	Appropriation				9,772.69
	9002		501	Est. Revenue			100.00	
			701	Appropriation				100.00
Total						250,432.92	125,216.46	125,216.46

COUNTY OF ALBEMARLE
APPROPRIATION NO. 2009-066
DATE: 07-01-09
EXPLANATION: Education Donations and Programs - School Board Meeting - 06/25/2009 (REVISED)

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
2	2000	18100	181109	Donation	J2	600.00		
1	2215	61411	580000	Miscellaneous Expense	J1	600.00		
	2000		501	Est. Revenue			600.00	
			701	Appropriation				600.00
Total						1,200.00	600.00	600.00

Item 7.3. Destruction of FY 2004 Paid Personal Property Tax Receipts.

The executive summary states that pursuant to Va. Code § 58.1-3129(A), the Director of Finance may, with the consent of the governing body, destroy all paid tax tickets at any time after five years from the end of the fiscal year during which taxes represented by such tickets were paid, in accordance with retention regulations pursuant to the Virginia Public Records Act. The Library of Virginia's Record Retention and Disposition Schedule GS-28 requires that paid tax tickets be retained for five years from the end of the fiscal year in which the tax is paid or until an audit, whichever is longer, at which time the governing body is to be petitioned for authorization to destroy the records.

Paid personal property tax tickets for FY 2004 were included in the FY 2004 audit in December, 2004 and reached the five-year retention period on June 30, 2009, and are eligible for destruction. Attached is the County's Certificate of Records Destruction (Attachment A - on file in the Clerk's Office), which has been approved and signed by the Director of Finance and by the Clerk of the Board of Supervisors, the County's designated Records Retention Officer. Authorization from the Board is required to proceed with the destruction of these records. Staff requests that the Board authorize the destruction of the FY 2004 paid tax receipts.

By the above-recorded vote, the Board approved the destruction of FY 2004 paid tax receipts as set out on Attachment A.

Item 7.4. Five Oaks Court Road Name Change.

The executive summary states that pursuant to Part I, Section 6 (e) of the Albemarle County Road Naming and Property Numbering Manual, road name change requests shall be forwarded to the Board for approval upon validation that the landowners of more than fifty percent of the parcels served by the road have signed a petition in favor of a common road name, and that the proposed road name is otherwise consistent with the road name guidelines set forth in the Manual.

A majority of the landowners of the properties served by Five Oaks Court submitted a request to change the road name of Five Oaks Court to Frays Ridge Court. The proposed name is a common road name within the meaning of the Manual and is consistent with the Manual's other road name guidelines.

There is no anticipated budget impact. The landowners will be responsible for costs associated with new signage. Staff recommends that the Board approve changing the road name of Five Oaks Court to Frays Ridge Court and authorize staff to implement the change.

(Discussion: Ms. Thomas said she understands the request to change the name Five Oaks Court to Frays Ridge Court; there is a policy that says if community members want to change the name of their road, they should be allowed to. Currently there are roads that have similar names (Frays Ridge Road, Frays Mountain Road, Frays Lane, Frays Ridge Crossing and Frays Ridge Court) and this causes confusion.

Mr. Slutzky said that most of those are in the same subdivision.

Ms. Mallek said they are in the Advance Mills area because that was the family that founded the neighborhood.

Ms. Thomas said it is an historic name, but she thinks staff should give some advice when there are so many roads with the same name.

Mr. Rooker said it might be helpful to hear from the ECC and Fire & Rescue on that issue, and whether it creates problems when trying to locate a road. To him, that is the real problem. Mr. Tucker said staff checks with the Police, Fire/Rescue and ECC on these issues to make sure it is not too confusing.

Mr. John Oprandy said there is an opportunity for some confusion, but it is helpful that they are all in the same area and the mapping information would help to clarify the location. As long as they can speak with ECC while answering the call, he does not think it is a huge problem.

Ms. Mallek asked if there are computers on the engines to direct them to the proper location. Mr. Oprandy said they have a printed map book, and they can access something similar to MapQuest or Google Maps, so they can see the roads on a map as they respond to the area.

Ms. Mallek said it is interesting that Buck Mountain Road used to go from Earlysville all the way around the ridge through White Hall and into Crozet. When E-911 came along, they separated off the section in Crozet, and after discussing this with neighbors they settled on calling that section Buck Road – they did not want to give up the name because it had been there for a couple of hundred years.)

By the above-recorded vote, the Board approved changing the road name of Five Oaks Court to Frays Ridge Court and authorized staff to implement the change.

Item 7.5. Resolution to accept road(s) in High View Estates Subdivision into the State Secondary System of Highways.

At the request of the County Engineer, and by the above-recorded vote, the Board adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **High View Estates Subdivision**, as described on the attached Additions Form AM-4.3 dated **July 1, 2009**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **High View Estates**, as described on the attached Additions Form AM-4.3 dated **July 1, 2009**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

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

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

* * *

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

- 1) **Molly Lane (State Route 1039)** from the intersection of Route 618 (Martin Kings Road) to the cul-de-sac, as shown on plat recorded in the office of the Clerk of the Circuit Court of Albemarle County in Deed Book 3335, page 474, with a 50-foot right-of-way width, for a length of 0.26 miles.

Total Mileage – 0.26

Item 7.6. Quarterly Resource Management Review Update **was received for information**, as follows:

The executive summary states that on May 7, 2008, the Board directed staff to initiate an external assessment of the County's resource management in conjunction with the County's ongoing continuous improvement efforts. On July 2, 2008, the Board approved the County entering into an agreement with Virginia Commonwealth University's Commonwealth Educational Policy Institute (CEPI) to conduct this assessment. CEPI delivered its final report to the Board on February 11, 2009. On May 6, 2009, the Board received initial information on staff's progress and planned actions in evaluating and implementing the recommendations of CEPI's assessment. This is an update to the information presented in May.

The Resource Management Review included 148 recommendations for local government departments and selected community agencies. In order to improve the clarity of the report's recommendations and allow for better management of and reporting on recommendations, staff has consolidated similar or related recommendations and categorized them as follows:

- 18 recommendations have been resolved either by implementation or continuing existing County processes or practices.
- 48 recommendations are in the process of being implemented.
- Eight recommendations are related to providing additional resources. These will be reviewed in the context of the County's annual Five-Year Financial Plan and budget processes.
- Eleven recommendations will require further evaluation by staff before they can be considered for implementation. Staff will proceed with these evaluations as soon as possible recognizing that existing staffing levels in some departments, and the scope of organizational change required by certain recommendations, will determine their timing for implementation.

A list of the recommendations included in each category is available in Attachment A (on file in the Clerk's Office). Staff will continue to provide quarterly updates to the Board on the status and results of the Resource Management Review's recommendations. There is no budget impact in analyzing the report's recommendations at this time. Recommendations that will require additional resources to analyze or implement beyond the reallocation of existing resources will be brought to the Board for discussion and action.

(Discussion: Ms. Thomas asked if staff had tried to determine the fiscal impact to the sum total of the recommendations. She was impressed that there were many things suggesting that the county do more, rather than less.

Mr. Tucker said staff had done that; it had given the Board some information during budget work sessions. He said some recommendations were to increase staff in certain areas. Staff can come up with some financial information related to the recommendations.

Ms. Mallek asked if she could e-mail her questions to staff rather than bringing them up now.

Mr. Boyd said he has a number of questions also.)

This update was presented for the Board's information.

Item 7.7. Update on Safer Chemicals Policy, **was received for information**, as follows:

The executive summary states that in June, 2008 the Board expressed support for the implementation of the Safer Chemical Management Procedure, a department-level operational procedure that promotes the use of non-chemical methods and safer product alternatives in day-to-day County operations and activities in lieu of using traditional, synthetic products. The procedure is being implemented by the Parks and Recreation and General Services Departments. In July, 2008 the School Board also expressed support for implementing a slightly revised version of this procedure. This Executive Summary is meant as an update on implementing this Procedure in Local Government departments.

In summary, the Procedure stipulates that: 1) Custodial products must be certified by a green label specified in the Procedure; 2) High touch surface areas (e.g. bathrooms) be routinely *sanitized* (not disinfected), but that disinfection occur as soon as practicable in response to a blood-borne pathogen event, viral outbreak, or as directed by the Virginia Department of Health; 3) In management of grounds, chemical use is eliminated where practicable and feasible. If chemicals must be used, then organic or biological-based alternatives are to be used, with five outlined exceptions; and, 4) the County implement a formal integrated pest management (IPM) program for the management of indoor pests.

During the June, 2008 meeting, the Board of Supervisors requested an annual update via the Consent Agenda as to the progress of implementing the Safer Chemical Management Procedure, including a summary of any waiver requests granted, a copy of any audits conducted, and a summary of any issues with implementation.

Functional Area Updates

Grounds Management

- Recognizing the intent of Procedure, the Parks & Recreation Department has reduced the use of Round Up in exempted areas by an estimated 50 percent.
- Corn gluten, a biological alternative for a pre-emergent, is currently being tested for effectiveness by the Parks & Recreation Department. This test will require two years for accurate results. The first application of corn gluten was applied this Spring in a test area. Another area was treated with a chemical pre-emergent and a third area with nothing. Parks will repeat that process again this Fall and next Spring with hopes of having informative results by Spring, 2010.
- The Parks Department has diverted some volunteer work groups from other projects to hand weeding landscape beds and mulched areas.
- Parks and Recreation staff has noted that the parks don't have the routine "neat and trim" appearance as in the past, but thus far this has not generated complaints from the public. This is particularly noticeable along sides of roads, fence lines, landscape beds and mulched areas around trees.
- Staff has yet to find an alternative as effective as Round-Up. Burn-Out, a biological-based alternative, is currently being used and is the best of the alternatives.

Custodial / Cleaning Operations

- All custodial products used by the General Services Department have been replaced with products that are certified by a green certification system listed in the Safer Chemical Management Procedure.
- The General Services Custodial Division has made an almost seamless transition from using traditional custodial products to using green certified products, and has had no major reported performance issues with using the new green certified products.
- Despite making the switch to green certified products, General Services has received occasional complaints from building occupants who are sensitive to these cleaning products and associated odors, despite the green certification.
- Parks & Recreation cleaning staff report that green certified cleaning products do not clean as well and require more effort and product.

Integrated Pest Management (IPM): An integrated pest management program for the management of indoor pests is currently in place, but staff is currently working on formalizing this program.

Internal Audit Process: The Environmental Compliance Managers are planning the first internal audit of the Safer Chemical Management Procedure, to be scheduled before the end of July, 2009. Results of the audit can be made available to the Board and will be included in the June, 2010 update to the Board.

Waiver Requests: As of June, 2009, only one waiver has been requested and granted. The Parks & Recreation Department submitted a waiver request for the purpose of treating an irrigation pond at Darden Towe Park that becomes overtaken annually by an aquatic weed known as Mosquito Fern (*Azolla caroliniana*). In 2008, staff attempted to manually remove this weed, which proved infeasible with the labor hours and staff required; shortly thereafter, the weed grew back in its entirety. While there are no biological or organic treatment alternatives available, there is a biological-based prevention product that will be used in the future to try to prevent this from recurring. The product approved for treatment has been researched by staff to be the most environmentally friendly alternative, and all requirements on the product label, including dilution rates, signage, etc., will be strictly adhered to. Staff has identified some environmental and safety risks inherent in *not* treating the pond. Examples include the potential of a fish kill due to lack of oxygen in the water, and the possibility of a child mistaking the pond for solid ground.

There is no budget impact in presenting the Board with an update of program implementation.
This update was presented for the Board's information only.

Agenda Item No. 8. School Board Chairman, Board-to-Board.

Mr. Brian Wheeler, Chair of the School Board, thanked the Supervisors who attended graduation exercises this year; it was his personal observation that the students performed among the best he had ever seen at those ceremonies which were streamed live over the internet.

Mr. Slutzky asked how many people viewed the simulcast. Mr. Wheeler responded that there were 757 viewers, coming from every continent except Antarctica.

Mr. Wheeler said as of the first day of the new fiscal year, today, the Central Office has been restructured - based on the changes made as part of budget considerations.

Mr. Wheeler said the turf field project at Monticello High School and other capital projects have been going well. All major school renovation projects are anticipated to be done on schedule and on budget. He offered to answer questions.

Mr. Dorrier asked what the timetable is for making decisions about renovation of the three schools in the southern part of the County, and what role is the Board of Supervisors expected to have in that decision. Mr. Wheeler said the School Board is in the midst of its master planning process. Their

Resource Utilization Study recommended that they look closely at whether to invest in renovating small schools or consolidating some or all of those small schools into a new facility.

Mr. Wheeler said that earlier in the year they focused on getting public input and having a committee work through the pros and cons of different approaches. That input was shared with their Long-Range Planning Committee. Unlike the Supervisors, the School Board only appoints people to special committees - the Health Advisory and the Long-Range Planning committees. He said their recommendations have been given to the Superintendent, so the matter is expected to be before the School Board in August. Once they get the recommendation, the School Board will set a process for the remainder of the year.

Mr. Dorrier asked if the Supervisors have any input into the School Board's decision. Mr. Wheeler said they welcome input. If a decision is made not to use those buildings for instructional purposes, the Supervisors have an immediate role to play since those buildings would come to the Supervisors and it would have to decide what possible community purposes they could serve. He said the School Board has a good collaborative relationship with the Supervisors, so if the members have feedback, it would be welcomed.

Mr. Rooker said if the recommendation was to have one school to house the student population from those three schools, to fund that project a Capital Improvement decision would need to be made. Mr. Wheeler said that will be discussed later today during the joint meeting with the School Board.

Ms. Mallek asked if there are several different options available. Mr. Wheeler said the committee that advised Dr. Moran did narrow them down. One of their recommendations was to close all three schools and build a new school near the Walton Middle School site; another recommendation was not to close any schools and renovate them all as needed – which is what's reflected in the CIP of the past. The question now is whether that is a good use of resources.

Mr. Dorrier asked for a copy of the documents involved, since he and Ms. Thomas are members of the CIP Committee. He said they have constituents who feel strongly about the issues. Mr. Tucker said most of that information is online. Mr. Wheeler said that is true, he will send Mr. Dorrier that link.

Ms. Thomas said when she was a member of the School Board and they closed a school it was for educational reasons. She asked if the School Board is confident that after doing this, it will have the financial, fiscal argument clearly laid out. Mr. Wheeler said they know the cost to maintain these facilities today as compared to a newer school. That information has already been reviewed by the Committee and by the public. There are greater upfront costs when building a new school and that will be a challenge for their CIP.

Ms. Mallek asked if the additional transportation costs have been considered. Mr. Wheeler said "yes."

Ms. Thomas asked if Mr. Wheeler is confident they have those costs. Mr. Wheeler said they do as to maintenance of the facilities. More research may be needed on the Yancey School site, to see if the septic system can handle a larger facility. The County's park across the street uses the school's septic field because that land did not perk. They may need to explore with adjoining property owners use of additional property for septic fields.

Mr. Boyd asked if the School Board expects this process to determine a threshold for school sizes. There is a number they use now for elementary schools – these three schools are way under that number, and he is concerned about Stony Point elementary because of those numbers. Mr. Wheeler said there is a community conversation going on now about the best size for elementary schools. What he hears is that everybody likes the size of the school their children presently attend. The School Board wants to look carefully at the research. Parents came before the School Board recently and expressed a clear preference for the small schools they have and the benefits they see them having on the community, teachers and staff. In the past the numbers considered were 650 students for an elementary school, 900 for a middle school and 1,200 for high schools such as Monticello and Western; Albemarle is bigger.

Mr. Boyd said that recently some people have questioned whether it's possible that other schools could be considered for consolidation, such as Stony Point and V.L. Murray. Mr. Wheeler said it might be considered depending on where those buildings are located and the opportunities for making positive changes. From the beginning, the School Board said this process would be division-wide, and it would start in the southern feeder pattern. He said they have talked about Murray and Meriwether-Lewis and the potential of those two schools. If this process brings forth information suggesting changes need to be made elsewhere, they would take that process and do it for the other two feeder patterns.

Ms. Mallek asked where travel time to school fits in. She said more than an hour on the bus in the morning and afternoon for a six-year old is debilitating. Mr. Wheeler said data presented at the public meeting shows that the average time on a bus would not change if all three schools were consolidated. On the average, the student experience on the bus would not change.

Mr. Boyd asked if Central Office restructuring will result in a significant reduction in administrative costs for next year's budget. Mr. Wheeler responded that it is expected to, but the exact amount is not known; it depends on where the people who were shifted ended up in their jobs. He said they budgeted for a certain amount of savings.

Ms. Thomas asked how many employees retired and how many are back teaching in the classroom. Mr. Wheeler said 80 employees took advantage of the retirement incentive. That should have a positive impact on payroll as people with less experience are hired for teaching positions. He said the Schools are taking out of their Fund Balance about \$1.5 million to cover the cost of the early retirement incentive.

Mr. Boyd asked if a large number of those retirees came from the transportation area. Mr. Wheeler confirmed that was true.

Mr. Slutzky said a goal of school systems nationally is to have 65 cents of each dollar go into the classroom. He asks how close they are to achieving that goal. Mr. Wheeler replied that Albemarle is well beyond that goal.

Mr. Slutzky said he knows the School Board has historically been well beyond that number, but he wonders if the County is getting light on its percentage of investment in administration. Mr. Wheeler said the Schools have been well above the standard for directing dollars into the classroom. When the recommendation was first brought up for restructuring, he thought they would end up as a stronger organization. He still believes that.

Mr. Wheeler said he would like to jointly celebrate the Human Resources Department since it is a joint operation of Local Government and the Schools – they will be receiving an award from the U.S. Senate Productivity and Quality Award Program in Virginia. They are one of six organizations being recognized at an event in October – it comes out of the Baldrige performance criteria that the School Board has been having their many departments look at. There are three sub-parts of the School Division – Monticello High School, Transportation and Human Resources – all will be recognized under this award. It is not about the award, but about continuous improvement. He said the Schools have a goal of being a world-class organization and the Baldrige performance criterion is one of the ways they are measuring that.

Mr. Slutzky said both Local Government and the Schools are often acknowledged by independent and objective outside forces as having achieved extraordinarily high levels of effectiveness. He suggested having awards and accolades such as this mentioned on the County's website. He thinks it is important that taxpayers recognize that their tax dollars are being well spent. Mr. Tucker replied that the site is being updated now, and he would see to its inclusion.

Mr. Slutzky said in anticipation of having those posted, he would appreciate having a list of those items, as would the other Board members.

Agenda Item No. 9. Quarterly Updates.

Item No. 9a. Albemarle County Service Authority (ACSA), Gary Fern.

Ms. Thomas noted that these sessions have been very valuable to the Board. It has made a difference in how much City Council does not understand about things going on. She appreciates having these updates.

Ms. Gary Fern, Executive Director of the Albemarle County Service Authority, was present. He said there is a new rate structure starting today for the ACSA. Last year ACSA engaged the services of the Municipal and Financial Services Group in Annapolis, Maryland. They worked with members of the ACSA Board, its finance director and Mr. Fern looking at different types of structures for water and sewer rates and made recommendations for new rates which the ACSA Board adopted in June. He said the old structure included a three-tiered system to encourage water conservation, and they are now shifting to a four-tiered system – with the first tier being charged at the RWSA wholesale rate.

Mr. Fern said the first tier will just be to cover the RWSA charges; that first tier will give a benefit to those people with lower income. Then there is a second tier, a third tier and finally a fourth tier. The second tier will be two times the RWSA rate, the third tier three times the RWSA rate and the fourth tier will be four times the RWSA rate. He said the first tier is from 0-3,000 gallons, the second tier is for 3-6,000 gallons, the third tier is for 6-9,000 gallons, and the fourth tier is anything above 9,000 gallons per month.

Mr. Rooker asked how these tiers apply to commercial users. Mr. Fern said commercial users would still pay the flat charge – the one-time charge per 1,000 gallons – they are not in the tiered system. Only single-family residential, irrigation flows, multi-family and apartment complexes are in the tiered structure.

Mr. Rooker asked why commercial properties are not included in the tiered system. Mr. Fern said because they are master-metered there is no way to assign bills to each user.

Mr. Slutzky said he thinks charging the occupants would encourage users to change their behavior because they are not now paying the bill for their use. Mr. Fern said that one item in their strategic plan is to identify the top 20 percent of users, which are multi-family, and educate them that they can save money by using less water.

Ms. Thomas asked if there is a way to charge more for institutions that use a garbage disposal. Mr. Fern said they do not have any direct way of charging. One item they will be looking at in the coming

year is a fat, soil and grease program – which comes from garbage disposals and commercial dishwashers. They will address implementing a surcharge for those higher-strength wastes; currently both authorities share a set of sewage regulations which provides an opportunity to charge at a higher rate, but no way has been established to do that.

Mr. Slutzky said there are currently a number of residential dwellings in the growth area that are not connected to either sewer or water and would like to connect. However, the upfront capital cost prohibits them from connecting. Has any thought been given to changing the rate structure so they could hookup to public water and sewer? Mr. Fern said that has been considered. He explained that one of the consultant's recommendations was to terminate the local facilities charge; they would look at recalculating the system development charge and the RWSA capacity charge. The local facilities charge would be terminated in the hope of encouraging people whose property lies in a jurisdictional boundary that is not connected to the system to be able to connect to the system.

Mr. Slutzky said when people in Northfields tried to connect their house to the sewer line, there was a charge of several thousand dollars upfront over and above their responsibility for paying a plumber privately to connect from the ACSA line into their house. Is this recommendation to eliminate the charge altogether for the cost of putting in the system? Mr. Fern said "no." There are four components related to the connection fee: the actual connection charge, the local facilities charge, a system development charge and an RWSA capacity charge. In this case, the local facilities charge would be eliminated, but the other charges would be retained.

Mr. Slutzky asked the cost for a residential connection. Mr. Fern said it is about \$2,500.

Mr. Slutzky said in small portions of neighborhoods the system was not built out entirely. Now it has to be retrofit so the cost of building out is disproportionately high per house. Has any thought been given to addressing that impediment to those homeowners? Mr. Fern said that topic needs to come back to the ACSA Board for discussion, but it also brings up the subject of mandatory connections which he knows this Board has not been in favor of in the past. There will be a public hearing on the revised connection charges in August with implementation in September.

Mr. Slutzky said he is frustrated that homes in the growth areas are using a septic system with failing septic fields, and because they are older couples on fixed incomes they cannot afford to get into the sewerage system. There is a lot of evidence that the problem will grow.

Mr. Rooker said he had a question about the tiered-rate system. If the first tier is one times the rate per unit paid to RWSA, how are administrative expenses covered out of that tier? Mr. Fern said it is not covered in the first tier, it is picked up in the second, third and fourth tiers.

Mr. Rooker said he thinks the tiered structure is a good idea, but it seems imprudent to have a rate for a large number of users who make no contribution toward anything except the raw cost of the water. Mr. Fern explained that in the analysis they found that about 82 percent of their customers use the first two tiers – less than 6,000 gallons per month; there are 12 percent in the third tier and six percent in the fourth tier.

Mr. Rooker said he does not understand having a rate structure that has a large component of payers contributing nothing toward the overhead of the system.

Ms. Mallek said this is a big shock because even the people using 9,000 gallons are getting the first two amounts for no overhead charge.

Mr. Slutzky said because of the humble consumption patterns of this group, they are not burdening the system in a way that requires additional infrastructure which would have a debt service component that would have to be absorbed throughout the system.

Mr. Rooker said a lot of infrastructure cost is replacing old existing infrastructure so there is no contribution being made toward amortizing the cost of replacing the equipment that they do use.

Ms. Mallek asked where irrigation falls in the tiers. Mr. Fern said irrigation is on auxiliary and exclusion meters - that is where the water is metered either for irrigation or car washing or outdoor uses. There are separate meters for an in-ground irrigation system – it is called an auxiliary meter. In a single-family residence the ACSA reads both the auxiliary meter and the primary meter, combines the two flows and then applies the tiered system. If there is a single-family residence that uses 3,000 gallons on their primary meter, that first 3,000 gallons is billed at the first tier rate. If the irrigation system uses another 5,000 gallons, the auxiliary meter reading would be used in the second tier, and then another 2,000 in the third tier.

Mr. Rooker said there had been discussion of metering and billing an irrigation system at a different rate. Mr. Fern said that proposal was considered by the ACSA Board, but they decided to use the consultant's proposal for billing.

Item No. 9b. Rivanna Water and Sewer Authority, Tom Frederick.

Mr. Tom Frederick, Executive Director of the Rivanna Water and Sewer Authority, was present. He appreciated the comments earlier that these reports are helpful to the Board members because he wants to keep all of the affected boards as informed as possible. Before he begins discussing his list, he

will say that was a good discussion with Mr. Fern. He is going to send a compliment to the ACSA – from what he reads and from his past experience with retail policies, the ACSA is doing “cutting edge work” in trying to improve conservation in the community through rate structures. He said a citizen sent him an e-mail a few weeks ago suggesting that a community in Georgia was doing a lot more than Charlottesville and Albemarle to encourage conservation. Basically that citizen was not aware of things being done here. He started the dialogue, passed it to Mr. Fern who continued it, and there were a stream of e-mails leading to a conclusion that this community is doing more than the community this citizen was comparing it to. It turned out to be an educational process for that citizen.

Mr. Frederick reported that last Thursday the RWSA Board, after a lot of deliberation, made a decision to seek a new designer for the Ragged Mountain Dam. Their expert panel encouraged the RWSA to talk to Gannett Fleming after the expert opinion released its report that suggested things be taken in a different direction from that recommended by Gannett Fleming. Recently there have been comments and suggestions about expenses and whether some costs will be duplicated by hiring a new designer. He said RWSA is pulling together information to answer that question.

Mr. Frederick said all of their contacts are with professional services and the RWSA owns all the work they produce so RWSA has a right to request all of that work, and everything has been received from Gannett Fleming - nothing has been lost in terms of data and information. Even their expert panel told them the geological boring information and geotechnical information was very sound and useful. Hiring a new designer will provide an opportunity for that designer to provide its own interpretation of the data already paid for and obtained. The goal of this process is to get the closest interpretation to a pragmatic viewpoint that recognizes the safety and importance of the structure, but also looks for innovative and exciting ways to keep the cost as economic as possible.

Mr. Boyd asked if a lot of the expense for Gannett Fleming was to lead the boards through the process of deciding on a plan. Money must have been spent on public hearings and engineering studies. The 30+ plans were narrowed down to just a few. He would refute comments that it will be lost money, because it would have been spent anyway. Mr. Frederick said it is a fair argument that 100 percent of what was invested in the development of the plan that led to permit approvals is useful information. The goal was to get permits from both State and Federal agencies – that is something this community never accomplished with any of the previous water planning. Everything was driven by what was needed in order to get the permits. Some community groups have said certain items were not studied hard enough but the whole process was driven by what was needed to properly influence public participation in the process, and what regulatory agencies needed to make their decisions. They were not focused on trying to gather every piece of data in the world, but were driven toward a management purpose.

Ms. Thomas said it is amusing that the very people in the community who were most critical of Gannett Fleming quote the firm all the time.

Mr. Frederick said the RWSA is pursuing the dredging feasibility study requested. Eight proposals were received from good firms in terms of names and qualifications. They are meeting with the committee that will be reviewing these proposals next week, July 8, at 3:00 p.m. in COB-Fifth Street, Room A, and the public is invited to sit in and observe the process.

Mr. Frederick said he has good news with respect to the Moores Creek Wastewater Treatment Plant – it is in construction and in some places a little ahead of schedule. There was a groundbreaking ceremony which Governor Kaine attended and he said this was the first wastewater plant groundbreaking he had attended in his term as governor and he called the proposed project a model. He mentioned that the component of the plan that addresses energy efficiency and the reuse of biogas in the production of electricity is above and beyond the goals of nutrient removal from surface waters. That was part of his decision to attend this ceremony. He wanted to recognize that this is a model for other communities to follow.

Mr. Frederick said RWSA pursued this project due to aging equipment. They said they would have to replace that equipment anyway. He said RWSA is challenged toward the future with the certainty that there will be carbon legislation passed at the Federal level, and it will put a premium on beneficial uses of energy and penalize the purchase of electricity from more commercial settings in terms of higher rates. RWSA thought this was positioning itself well for the future, and also making a significant mark on carbon footprint reduction as an example to other sectors in the community.

Mr. Rooker asked how much power might be generated from that. Mr. Frederick said that in July when they can use almost 100 percent of the methane gas they generate toward electricity production, they can produce 400 kilowatts of power per day.

Mr. Slutzky asked what percentage that is of the facility's consumption. Mr. Frederick said they would be purchasing high-efficiency blowers that push air into the aerobic bacteria processes, and the demand for electricity should be driven down while increasing production. They will not be able to produce the full 400KWh in the winter months because that is when they have to heat the digesters to produce the methane gas. It is more efficient to heat the digesters through a hot water exchange than it is to produce electricity and use it to do the heating.

Mr. Rooker asked if on a year-round basis it would be 15 percent of electrical needs. Mr. Frederick said he thinks 20 percent is achievable, with carbon footprint reductions of around 40 percent.

Mr. Frederick said on a related subject, he included in his written report some information about the Chesapeake Bay. He said the EPA is directing a new process to look at how to allocate nitrogen and

phosphorous throughout the Chesapeake Bay. There have been previous attempts to do these allocations – they are easy but involve sophisticated computer models that can be threatening to day-to-day people who do not understand all the numbers and statistics. Through that process Virginia adopted a leadership role in 2005 and adopted allocations that are part of the project RWSA now has under construction where allocations were set, and the community decided to do a little better than that and sell credits at the same time.

Mr. Frederick said there is a lot of publicity about the fact that at the Federal level the Chesapeake Bay is not going to meet the clean water goals that were set for 2010. In terms of publicity, that is what is making the headlines now. What is not making headlines, but which is true, is that the Commonwealth of Virginia is on schedule to meet its 2010 goals for point sources which are predominately the wastewater treatment plants. They are a model to the rest of the sectors in the communities that contribute nitrogen and phosphorus to the surface waters. The EPA is reconsidering how to reassign allocations to achieve a goal which at the Federal level will not be achieved. They are talking about moving the target for wastewater treatment plants and that can be a challenging issue when in the process of building hardened concrete and equipment structures designed to achieve a certain target and then the target may move.

Mr. Frederick said through an association of which the RWSA is a member, that the EPA and the states look at those sectors which have an influence on nitrogen and phosphorous. Those sectors are much less regulated than wastewater treatment plants - this does not need to be done unfairly on the backs of ratepayers where other sectors in the community that contribute nutrients may not be paying their fair share. That is aligned with some of the Supervisors' goals of promoting development in urban areas and not in rural areas.

Mr. Frederick said there is current research sponsored by VAMLA looking at how to reduce nutrients such as nonpoint sources which are atmospheric deposition. It can be done better by looking at the carbon footprint and at environmental issues. Driving levels down through higher advances in wastewater technology is very expensive from an energy consumption standpoint. He said there is also uncertainty about what to do with respect to stormwater programs. They are on the table now for possible numeric limits, but it's too early in the process for County staff to get a handle on this and develop specific strategies. He thinks this is something all should be watching.

Mr. Slutzky asked if the trade organization that represents the point source community that RWSA is part of has weighed in on the proposed DCR regulations. Are they trying to share their perspective with DCR that there are unintended consequences of pushing development out of the rural areas since it will undermine some of the benefit achieved by what RWSA is doing in its sector. Mr. Frederick said "yes."

Mr. Slutzky said they need to make comments during this "comment window" because DCR needs to hear from all sectors that the proposal is inadequate. If Mr. Frederick needs help with how to frame those comments, he has personally invested some time in the subject and would be happy to work with him.

Mr. Frederick said the Meadow Creek Interceptor project is moving forward. The RWSA is addressing comments provided to it by the ACSA and the City in the design of the project, as well as continuing right-of-way acquisition. They hope to be to the bid stage by fall, the target date for bids is October. They will move the project along as fast as possible. The RWSA will be meeting with individuals and homeowners' associations with respect to landscape plans. Every property owner along the route has been provided with an individual plan of how the landscape plantings will occur on their property after construction takes place; these plans are open to comment. If homeowners want to move trees or shrubbery around, or plant different species, RWSA has a list to choose from of what are being called "sewer safe" trees and shrubbery. In the past, right-of-way easements were allowed to grow up as people wanted and without attention as to how they affect the integrity of the sewer system. They are trying to achieve a balance – they do not want cleared areas that look ugly, but they want to reflect the compatibility of the two systems.

Mr. Slutzky asked if it is true the RWSA has not yet resolved how to get the supply line that needs to be relocated out of Route 29. He said the Board had talked about whether it was more efficient to go to Route 29 along the right-of-way to the side of the road and then back over, or go straight down and hang the line off of the future Berkmar Bridge to be more cost effective. He has had some conversations with Congressman Perriello's office exploring the possibility of getting some earmarked dollars to invest in the Berkmar Bridge so that critical element of the Places29 Plan parallel road network could move forward more quickly. There may be value to the RWSA weighing in on this and making them aware of the RWSA's time sequence in the event there is a possibility of getting that money.

Mr. Slutzky said in discussing the Places29 plan, both the Planning Commission and the Board talked about how to pay for some of its transportation infrastructure. One element of that discussion was whether to fund projects sooner on the backs of proffers rather than waiting for the money to come out of the taxpayers' pockets. In that regard, there are land use decisions that have not been resolved in Places29 that would definitely affect the ability to have private money if there is not earmarked money. Private money would fund most of that bridge connection. Since the RWSA has a part in this they may want to be sure the Commission is aware of the beneficial impact that facilitating private funding of that bridge might also help the RWSA in getting its pipe installed.

Mr. Frederick said he appreciates the feedback; he will work with Mr. Fern and his staff to try and accomplish that. With respect to Route 29, that project is still on hold. The RWSA is working within the Hollymead Towncenter area as to what infrastructure is needed there, but there remains uncertainty as to how to get from the southern edge of the Towncenter property back to the South Fork Rivanna Treatment

Plant. There are not any good alternatives currently that use the existing lay of the land and no security that the lay of the land will remain as it is today. That is a troublesome concern when trying to locate infrastructure that should last 100+ years.

Mr. Slutzky said that concern would be solved if there were a road and a bridge. Mr. Frederick said that is true. Getting a road corridor, a final grade for the road, and getting a bridge would solve that problem. They want to be responsive when those decisions are made. They want to be in the readiness mode so they can jump in and do what they need to do when the timing works for the Board. They are not imposing a strict timeline on their project so this can be worked out. He emphasized that there are some risks in delaying the implementation of this connector, such as a hypothetical situation where the North Fork Treatment Plant is shut down for several days; the RWSA is working now on an emergency plan on how they would keep service as long as possible in that area in the event of some catastrophic issue. The ACSA is also a part of working out that plan. They have some innovative ideas, but it is not a total solution. It would just reduce the risk in order to "buy some time." The ultimate solution to making that whole service area reliable, especially looking at the North Pointe development and beyond is a new connector on the ground that is in a corridor and at an elevation that works for the long-term future.

Mr. Rooker said since the issue was raised about Federal money for a Berkmar bridge, he thinks there would be a better chance of getting money for the widening of Route 29 from Polo Grounds Road to the Hollymead Towncenter than for that bridge. In the County's priorities, the widening and the solving of the geometry problems on Route 29 in that area is a higher priority project. Also, if the bridge were built tomorrow, it would go nowhere until the rest of the road network was built out, and that would depend on land use decisions not yet made. That project is in the long-range plan, and he has supported it, but the widening of Route 29 is a needed safety improvement. He also spoke with Mr. Perriello's office and it is his understanding they are giving the Route 29 widening project a higher priority than the bridge project. He does not want Mr. Frederick to leave believing there is a significant chance of getting Federal money for that project today.

Mr. Slutzky said he did not want Mr. Frederick to think the two projects are competing with each other for the same dollars. The conversations he had are within the context of the Transportation Bill which is up for its five-year authorization; since the widening of Route 29 is a high priority it would be funded through that mechanism. As a separate earmark the County could possibly get funding in a subsequent effort for the bridge, but not as a replacement project.

Mr. Rooker said he supports that; he does not want the Board to get out of order with its priorities.

Mr. Slutzky said he thinks that having Mr. Frederick weigh in with Mr. Perriello's office and enforce the value of that additional supplemental source of funds would be helpful.

Mr. Frederick said he would like to brief the Board on one other item which was not a part of the written report. He said the RWSA has been working with the ACSA and the City for a number of months to come up with an effective master plan. The idea for the master plan came from the Supervisors when they mentioned projects that had been approved at the Planning and Zoning levels; it is needed to get ahead of that process. While the RWSA was collecting data about the sewer system, it found capacity limitations. That project has been advancing and is now at a critical point – a decision has to be made in their master planning process as to what extent to design piping and pumping systems that carry wet-weather flow, and to what extent wet-weather flow can be cost-effectively removed before it gets to the system. For the RWSA and the City it means doing an intense study of data within the City's systems. They think that process needs to move forward at a pace that allows the City to feel comfortable with the ultimate decision that must be made.

Mr. Frederick said that at the same time, the RWSA has some systems that need to be designed in the near-term – they include the Rivanna Pump Station, the Moores Creek Pump Station, the Rivanna Interceptor, and the area of Crozet. Decisions need to be made in the next 60 to 90 days on how to size the pump stations so they stay ahead of the concern he just expressed. The RWSA and the City will need longer to come up with an effective detailed answer to their question, some sort of adaptive management that scientists use. They can establish some minimum agreements that can be edited as the process moves forward. It is tough to get three units to sit down and try to work out something together, but they are determined to keep going.

Ms. Thomas said she is playing a role on the RWSA Board by trying to be sure the total overall cost for the system is kept in front of the decision-making process. She said the City and the RWSA have the pipes that lead to the sewer treatment plant, and the pipes are spongy and let in rainwater during wet-weather events. If the pipes are to be fixed so less rainwater gets into the sewer treatment plant, that is expensive for the City and the RWSA. If they're not fixed, it's expensive for the RWSA because they have to build bigger interceptors and bigger holding ponds at the sewer treatment plant. There is a point at which the expense ends up being the least for the total system, but is not where it is the least for the City and the RWSA. The RWSA Board needs to keep that in front of everybody, and it will mean twisting a few arms in order to get the lowest cost system for the whole system. She said that is the role that she and Mr. Tucker play because they are not customers like the other members of the RWSA Board.

Mr. Rooker commented that if the cost of water goes up, it gets passed to consumers one way or another. He said Mr. Frederick had noted that their goal is to have the Meadow Creek Interceptor project go out to bid in October. If that is the case, at what point would the construction phase be completed? Mr. Frederick said with an October award there should be a contract in place and "Notice to Proceed" by the first of December; it's estimated it will take about 14 months to complete all aspects of the project, so that would probably be in January, 2011.

Mr. Rooker asked that until the project is completed, is there a restriction on new hookups that could impact the existing interceptor? Mr. Frederick answered that looking at both dry weather and wet weather data, there is no capacity in the existing system. The tightest area is near the Greenbrier area where the sewer line is not adequately sized for what they are treating, especially during wet periods. The system works well during dry periods, even peak day needs, but it is not always where it needs to be during wet weather periods.

Mr. Rooker said there are several projects under construction now; Whole Foods, Albemarle Place, Trader Joe's. How does that impact these facilities from being able to go on line and tap into the existing system. Mr. Fern said there is a process of analyzing the flow that those businesses will put into the system; if it's more than 40,000 gallons per day, the ACSA is required to request that capacity from the RWSA. If there isn't sufficient capacity at the Meadow Creek Interceptor, that development will not get approval from the RWSA. They could not grant approval to a development, and then have no place to put the wastewater.

Mr. Rooker asked if a grocery store is a typical 40,000 gallons user. Mr. Fern replied in the affirmative.

Mr. Rooker asked how Whole Foods would come on line under that scenario. He said that Trader Joe's which will be on the other side of the road is a facility of a similar size. If both use comparable amounts of water, and put out a comparable amount of sewage, he wants to make sure there is equal treatment with respect to the ability to use the facilities – he is not expecting priority treatment, but expects equal treatment on both the City and County sides of the road. Mr. Fern replied that the City has to go through the same process of requesting that capacity because wastewater from the City and from the County goes into RWSA's pipes. Mr. Frederick said the site plan for Trader Joe's has not come forward yet. The RWSA's Chief Engineer is responsible for reviewing those plans and he is not aware of any recent requests.

Mr. Frederick said the last issue he wants to mention has to do with solid waste. Staff discussed with the Rivanna Solid Waste Authority (RSWA) Board during its retreat last week about their strategic plan. They also need to discuss upgrading or improving a transfer station in the Ivy vicinity that could serve the public for the long-term. Eventually service would be expanded beyond just accepting trash to accepting C&D materials (construction demolition debris) - a large part of those materials can now be recycled. Perhaps they could accept single-stream recycling which would help haulers working in subdivisions to have a convenient place to bring these materials. They cannot offer those services now because physical facilities are limited and very old. Useful life of these facilities is being measured in months not years, which makes this issue critical.

Mr. Frederick said that last week the RSWA Board authorized staff to develop a business plan to see if this idea and strategy can work. With respect to the services they are talking about, Ivy would continue to operate as a transfer facility. It would not get into the processing of recyclable material because there are private entities in the area that can do the processing. He said RSWA needs to get back to discussion of the current agreement which expires at the end of June, 2010. At some point, they must discuss how to pay for the free services that people continue to ask for, such as special collections for household hazardous wastes – should they charge a fee or continue providing that as a free service and if so, how do you pay for it?

Mr. Boyd said as this Board's representative on the RSWA Board, he said the Supervisors need to think about a decision regarding recycling and trash collection. At some point, the City will want to know what the County is going to do – things like a single-payer hauler or using multiple haulers, etc. He said such things will need to be addressed by ordinances. He will need some direction from this Board to use in those discussions.

Mr. Rooker said the Board has never received the results of the study. The purpose of that study was to help the Board with the decisions it had to make, and the results of that study were never distributed.

Mr. Boyd asked if Mr. Frederick could get that study finished, and the results sent to the Board. Mr. Frederick said if the RSWA is going to do a business plan, it can be incorporated into that plan using the information that was obtained. They have data – the open question is: What is the recommendation?"

Mr. Rooker said he thinks the Board needs that information before it has a work session. Mr. Frederick said he would get the information requested to the Board.

Mr. Boyd said he would like to know what capabilities the County has in regulating the collection of trash. He knows there is "a five-year thing" if the County went to a single-payer. His question is whether the County can stay with its existing system but require that all people pick up recyclables, and how would it be billed. Also, can they be required to charge only one fee?

Ms. Mallek said that trash haulers are required to pick up newspapers now as part of their original "thing."

Mr. Slutzky asked if the haulers are picking up everything. Mr. Tucker said it is required by the ordinance, but it is not totally enforced.

Ms. Mallek said if you call the RSWA and tell them that the hauler is not picking up everything, they will call the hauler and tell them they have to do it. Mr. Davis said the haulers will pick up newspapers if they are requested to do so.

Mr. Slutzky said in anticipation of the Board having a work session, it needs both the finished study data and a memo from the County Attorney summarizing different options. It sounds like there is interest in having a work session so that during the next budget process the Board will go into it "with eyes wide open."

Mr. Boyd said there are some real maintenance issues now having to do with the transfer station at Ivy. If there is not a fairly quick decision, the RSWA might spend more money than is necessary.

Ms. Thomas said she had one more matter related to water that she will mention. She said clarity in the billing process of wholesale is also being worked on by staff. She said people think it's unfair when their rates go up when their usage has gone down in a time of drought. If consumers understood the cost of providing service, the cost would be clearer to them.

Mr. Fern said that earlier today the Board talked about administrative costs. He said the ACSA has a monthly service charge in addition to the tiered rate structure, and there are some administrative costs built into that service charge – the cost to prepare a bill, to read the meter, and now the cost to maintain and/or replace that meter has been added in the monthly service charge; that is part of the new rate starting July 1 (today). He said every customer of the ACSA pays some part of that service charge.

Mr. Rooker said he assumes the largest part of ACSA's non-water purchase cost is CIP amortization, which is not included in the service charge. Mr. Fern confirmed this to be true.

(**Note:** At 10:47 a.m. the Board recessed and reconvened at 10:58 a.m.)

Agenda Item No. 10. **Public Hearing:** FY 2010 Budget Amendment (*Advertised in the Daily Progress on June 21, 2009*).

Ms. Laura Vinzant, Budget Analyst, said this budget amendment is comprised of six new appropriations as follows: No. 2010-001 providing \$2,530.00 from the Board's contingency to the Commonwealth's Attorney Office which was erroneously excluded from their recommended budget; No. 2010-002 totaling \$1,347.00 for the Police Department's "Neighborhood Safety Project" grant; No. 2010-003 for the Belvedere bond default totaling \$3,675,790.00; No. 2010-004 totaling \$1,083.65 to the Natural Heritage Committee; No. 2010-005 totaling \$12,500.00 for Education donations/programs; and No. 2010-006 establishing a special revenue fund for rental income and expenses related to the Old Crozet Elementary School totaling \$57,778.65. (**Note:** A detailed description of these requests is provided on Attachment A, set out below.)

ATTACHMENT A:

Appropriation No. 2010-001, \$-0-. Revenue Source: Board Contingency \$2,530.00. It was discovered that the recommended funding for the Commonwealth Attorney's Office had inadvertently omitted a total of \$2,530.00 from various operating line items. This request will provide the additional funding from the Board's Contingency. This appropriation will not increase the total County budget.

Appropriation No. 2010-002, \$1,347.00. Revenue Source: Federal Revenue \$1,212.00; Transfer from General Fund \$135.00. The Department of Justice through the Department of Criminal Justice Services has awarded the Police Department a grant in the amount of \$1,212.00 with a local match of \$135.00, for a total of \$1,347.00. This grant will assist in funding overtime for the Police Department's "Neighborhood Safety Project" focused in the Southwood Mobile Home Park. The local match will be provided from overtime previously funded within the Police Department's operating budget and will require no additional local funding. This appropriation will increase the total County budget \$1,212.00.

Appropriation No. 2010-003, \$3,675,790.00. Revenue Source: Other Fund Balance \$3,675,790.00. The developer of Belvedere Subdivision, Belvedere Station Land Trust (BSLT), provided performance bonds to the County for Belvedere Phase 1 and Belvedere Phase 1, Blocks 3, 4A, 5A, 6B & 9A covering water protection (erosion control & stormwater management), roads, drainage and related site work, and water and sewer improvements. The bonds totaled \$3,675,790.00 and were secured by letters of credit from Wachovia Bank. In November, 2008 the County received notice from Wachovia Bank that the letters of credit securing the bonds would not be renewed beyond their current expiration. Since BSLT was unable to get Wachovia Bank to renew the letters of credit and did not provide replacement performance bonds, the County demanded payment in January, 2009 on the six letters of credit securing the bonds.

BSLT is currently working with Wachovia to obtain new letters of credit for the project and the County Engineer is reviewing the project to determine if the County should complete some of the work rather than allow BSLT to re-bond all of the incomplete improvements. This request is to move the proceeds from the letters of credit to an expenditure account. The County will then be in a position to either use the funds to complete the improvements or return funds to Wachovia Bank if new letters of credit are issued to BSLT, or a combination of both.

Appropriation No. 2010-004, \$1,083.65. Revenue Source: Other Fund Balance \$1,083.65. Some individuals expressed an interest in making donations to the County to fund the efforts of the

Natural Heritage Committee (NHC). A separate account was established to accept these donations which now total \$1,075.00 with interest accumulated in the amount of \$8.65. The Chair of the NHC has requested the donated funds be appropriated so the committee can make use of the funds to support their mission - to maintain and restore the County's native biological diversity and provide a healthy environment for the citizens of Albemarle County.

Appropriation No. 2010-005, \$12,500.00. Revenue Source: Local Revenue (Donations/Grants) \$12,500.00. At its meeting on June 25, 2009, the following appropriations will be presented to the School Board for their approval:

- Woodbrook Elementary School has been awarded a grant in the amount of \$4,000.00 from the Bama Works fund of Dave Matthews Band in the Charlottesville Area Community Foundation. These funds will be used to engage students in the "Nature Path to Environmental Learning" school project that will build a walking trail while teaching students about the environment. This grant will be used in conjunction with an \$8,500.00 donation to build a walking trail and gravel track.
- Woodbrook Elementary School received a donation in the amount of \$8,500.00 from William Sterrett. The donor requested this contribution be designated toward the building of a Woodbrook Nature Path and Track on the Woodbrook school grounds. This contribution will work in conjunction with a recently awarded BAMA grant of \$4,000.00 to see this project through.

Appropriation No. 2010006, \$57,778.65. Revenue Source: Local Revenue (Rental Income) \$57,778.65. The General Services Department has requested the use of rental revenues generated from leases of the Old Crozet Elementary School to fund the operating costs of the facility as well as to provide a source of funding for major capital replacements/repairs that may be necessary in the future (e.g., boiler replacement, roof repairs, etc.). It is anticipated that the leases currently approved will generate \$57,778.65 during FY '10 assuming no reductions are made for certain approved improvements as allowed by the leases.

Since the Waldorf School's lease expired in September 2007, General Services has absorbed all cost of utilities and maintenance for this facility without a corresponding increase in its operating budget, to the detriment of other programs for which the Department is responsible. During the FY '10 budget process, an additional \$21,800.00 was requested and subsequently approved to cover the increase in fuel oil costs at County buildings, including the Old Crozet School. Of this amount, approximately \$8,000.00 relates to the Old Crozet School building. With approval of this request, General Services' FY '10 operating budget will be reduced \$8,000.00 and the reduction used to decrease budgeted "anticipated salary savings."

Because the cumulative amount of the appropriations exceeds one percent of the currently adopted budget, a budget amendment public hearing is required. After the public hearing is held, staff recommends approval of the FY 2010 Budget Amendment in the amount of \$3,748,364.30, and then approval of Appropriation Nos. 2010-001, 2010-002, 2010-003, 2010-004, 2010-005 (subject to approval by the School Board at its June 25, 2009 meeting) and 2010-006 to provide funds for various Meadow Creek and school projects and programs.

Mr. Boyd said he does not have a question about the Belvedere bond, but just wonders what will happen; he only knows what he read in the newspaper about this situation. Mr. Tucker explained that the appropriation is being requested because it will give the County the opportunity to turn the money back to the developer if a bond replacement is received, adding that if any of the funds would be needed for improvements required by the County the funds would be available.

Mr. Boyd said the newspaper implied that the County wanted to take over and do the improvements. Mr. Tucker said absolutely not; the County definitely does not want to take over and do these improvements.

Mr. Slutzky said he talked with the developer and understands they basically have a commitment from their lending institution, so they will be able to furnish letters of credit to reactivate the bond. In order for that to happen, they need to have a new bond agreement - the old one expired. There also needs to be a schedule of completion. He thinks that will happen quickly. The County would give the money back to the lender and go back to the bonding position. The developer would satisfy the requirements they committed to and that would be recorded in the new schedule of completion. Anything short of that puts the developer in the position where the project could go under and that would be a disaster for Albemarle County. The County would have the money to complete the roads that nobody would need, so he thinks this is the correct way to proceed. He said some work on stormwater runoff is actually being undertaken now at some risk to the developer so he thinks this will "play out the right way."

Mr. Tucker said that if there were no further questions, staff recommends approval of the budget amendment and approval of the appropriations listed in the Executive Summary.

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

Motion was then offered by Ms. Mallek, to approve the FY 2010 Budget Amendment in the amount of \$3,748,364.30 and to approve Appropriation Nos. 2010-001, 2010-002, 2010-003, 2010-004, 2010-005 and 2010-006 (as set out in full below) as described in Attachment A.

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

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

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2010-001
 DATE: 07-01-09
 EXPLANATION: Budget Adjustment - Commonwealth's Attorney Office

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER	
							DEBIT	CREDIT
1	1000	22010	520100	Postal Services	J1	510.00		
1	1000	22010	520300	Telecommunications		10.00		
1	1000	22010	550502	Travel-Witnesses		6.00		
1	1000	22010	580100	Dues & Memberships		444.00		
1	1000	22010	600100	Office Supplies		1,020.00		
1	1000	22010	601200	Books & Subscriptions		520.00		
1	1000	22010	601700	Copy Expenses		20.00		
1	1000	95000	999990	BOS Contingency		(2,530.00)		
TOTAL						0.00	0.00	0.00

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2010-002
 DATE: 07-01-09
 EXPLANATION: Police Department Grant - Neighborhood Safety Project

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER	
							DEBIT	CREDIT
2	1508	33000	330001	Federal Grant Revenue	J2	1,212.00		
2	1508	51000	512004	Transfer From General Fund	J2	135.00		
1	1508	31013	120000	Overtime	J1	1,243.95		
1	1508	31013	210000	FICA	J1	103.05		
	1508		0501	Est. Revenue			1,347.00	
			0701	Appropriation				1,347.00
1	1000	31013	120000	Police - Overtime	J1	(135.00)		
1	1000	31031	930210	Transfer to Grants	J1	135.00		
TOTAL						2,694.00	1,347.00	1,347.00

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2010-003
 DATE: 07-01-09
 EXPLANATION: Belvedere Bond Default

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER	
							DEBIT	CREDIT
2	9011	51000	510100	Appropriation - Fund Balance	J2	3,675,790.00		
1	9011	90900	940080	Belvedere Bond Default	J1	3,675,790.00		
	9011		0501	Est. Revenue			3,675,790.00	
			0701	Appropriation				3,675,790.00
TOTAL						7,351,580.00	3,675,790.00	3,675,790.00

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2010-004
 DATE: 07-01-09
 EXPLANATION: Natural Heritage Committee

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER	
							DEBIT	CREDIT
2	8407	51000	510100	Appropriation - Fund Balance	J2	1,083.65		
1	8407	79000	568755	Natural Heritage Committee	J1	1,083.65		
	8407		0501	Est. Revenue			1,083.65	
			0701	Appropriation				1,083.65
TOTAL						2,167.30	1,083.65	1,083.65

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2010-005
 DATE: 07-01-09
 EXPLANATION: Education Donations and Programs - School Board Meeting: 6/25/2009

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER CODE	AMOUNT	GENERAL LEDGER	
							DEBIT	CREDIT
2	3104	18100	181109	Donation	J2	8,500.00		
2	3104	18000	181240	Rev-Miscellaneous Grants	J2	4,000.00		
1	3104	60608	800605	Bama Wks Wdbrook Const	J1	12,500.00		
	3104		0501	Est. Revenue			12,500.00	
			0701	Appropriation				12,500.00
TOTAL						25,000.00	12,500.00	12,500.00

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2010-006
 DATE: 07-01-09
 EXPLANATION: Old Crozet School Rental Account

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
2	8610	15000	150262	Rent: Old Crozet School	J2	57,778.65		
1	8610	91081	301221	Maint Cont - Landscaping	J1	4,000.00		
1	8610	91081	331200	R&M Equip.-Buildings	J1	5,000.00		
1	8610	91081	332200	Maint. Contract-Building	J1	1,180.00		
1	8610	91081	510100	Electrical Services	J1	7,151.00		
1	8610	91081	510210	Heating/Fuel Oil	J1	17,081.00		
1	8610	91081	510300	Water & Sewer Services	J1	1,610.00		
1	8610	91081	530200	Fire Insurance	J1	6,200.00		
1	8610	91081	600700	Repair & Maint. Supplies	J1	2,000.00		
1	8610	91081	800949	Maintenance Projects	J1	13,556.65		
		8555	0501	Est. Revenue			57,778.65	
			0701	Appropriation				57,778.65
1	1000	43002	510210	General Services-Heating Oil	J1	(8,000.00)		
1	1000	95000	999975	Anticipated Vacancy Savings	J1	8,000.00		
TOTAL						115,557.30	57,778.65	57,778.65

Agenda Item No. 11. **Public Hearing:** An Ordinance to Amend Sec. 7-201, Health and Safety, Designation of agent, of Article II, Naming of Roads and Numbering of Properties, of Chapter 7, Health and Safety, of the Albemarle County Code, to revise a reference to the County officer designated as the agent under Article II. (*Public Hearing advertised in the Daily Progress on June 15 and June 22, 2009.*)

Mr. Tucker said this amendment to the County Code is occasioned by the reorganization of the development departments. Section 7-201 of the Code currently designates the Director of Planning and Community Development as the County's agent for the road naming and property addressing program. That needs to be amended to change the reference to "Director of Planning" which will conform to the current job title.

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

Mr. Rooker immediately offered **motion** to adopt Ordinance No. 09-07(1), An Ordinance to Amend Chapter 7, Health and Safety, Article II, Naming of Roads and Numbering of Properties, of the Code of the County of Albemarle, Virginia, by amending Sec. 7-201, Designation of agent.

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

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

ORDINANCE NO. 09-07(1)

AN ORDINANCE TO AMEND CHAPTER 7, HEALTH AND SAFETY, ARTICLE II, NAMING OF ROADS AND NUMBERING OF PROPERTIES, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 7, Health and Safety, Article II, Naming of Roads and Numbering of Properties, is hereby amended and reordained as follows:

By Amending:

Sec. 7-201 Designation of agent

Chapter 7. Health and Safety

Article II. Naming of Roads and Numbering of Properties

Sec. 7-201 Designation of agent.

The director of planning is hereby designated the agent under Virginia Code § 15.2-2019 for the purpose of assigning road names and property addresses, and for the development and maintenance of a manual and maps, as provided in sections 7-202 and 7-203. (§ 16.01-2, 7-8-92; 10-13-93; Code 1988, § 16.01-2; Ord. A(1), 8-5-98)

State law reference--Va. Code § 15.2-2019.

Agenda Item No. 12. **Public Hearing: Ordinance No. 09-07() – Health and Safety.** Amend Secs. 7-100, Purpose and intent, 7-101, Administration and enforcement, 7-102, Applicability, 7-103, Definitions, 7-104, Prohibited noise, 7-105, Prohibited acts enumerated, 7-106, Exempt sounds, 7-107, Complaints of noise, and 7-108, Violation and penalty, of Article I, Noise, of Chapter 7, Health and Safety, of the Albemarle County Code. This ordinance would amend Sec. 7-100 to establish a new statement of purpose and intent for regulating excessive or unwanted sound; Sec. 7-101 to revise references to county departments and officers authorized to enforce Article I; Sec. 7-102 to revise a cross-reference to chapter 18; Sec. 7-103 to amend, delete and add definitions applicable to Article I; Sec. 7-104 to establish new sound levels produced by acts or devices not addressed in Sec. 7-105 that are a violation of Article I; Sec.

7-105 to establish new sound levels generated by specific acts so as to be a violation of Article I; Sec. 7-106 to clarify that although animal sounds are exempt under this Article, they are subject to the noise regulations in Chapter 4 of the County Code; Sec. 7-107 to clarify a reference to an officer; and 7-108 to delete an obsolete reference. The current regulations establish violations of Article I if the sound is at a level that annoys or disturbs the quiet, comfort or repose of a person (or terms to similar effect); the proposed regulations would establish a violation of Article I if the sound is audible by a person from specified distances, at specified locations, for specified durations and/or depending on the time of day. *(Notice of this public hearing was advertised in the Daily Progress on June 15 and June 22, 2009.)*

Mr. Greg Kamptner, Deputy County Attorney, said staff has provided, in the Executive Summary, reasons for a proposed new Noise Ordinance. He will review the reasons for the recommended changes. He said studies show that excessive or unwanted sound ("noise") has many adverse impacts including physical and mental impairment, impacts on traffic safety, and diminished job and school performance.

Mr. Kamptner said noise is regulated by localities using three approaches: (1) by prohibiting sounds that exceed prescribed sound levels described in decibels and measured using sound meters (the County's noise regulations in the Zoning Ordinance regulate noise generated by land uses using this approach).

Ms. Thomas asked for an example since she did not understand the distinction. Mr. Kamptner said the noise regulations in the Zoning Ordinance establish, for example, nighttime noise standards that would be measured at the property line at 55 decibels.

Mr. Davis said that would include sawmills, factory noises from machines running for industrial operations, things that are a part of the land use itself, rather than a random nuisance. If there were a commercial operation that generated noise as part of the operation itself, it would be regulated by these noise standards.

Ms. Mallek asked if lumbering is under that category when harvesting is taking place. Mr. Davis said that is correct.

Mr. Boyd asked if a sawmill is exempt. Mr. Davis said certain standards are set out in the Zoning Ordinance, and some uses are exempt.

Mr. Rooker asked about construction noise. Mr. Davis said that would not be a part of the Zoning Ordinance, but is addressed in the proposed Noise Ordinance.

Mr. Rooker said construction noise has been the subject of many complaints over the years, primarily because it starts earlier in the day than is allowed by the ordinance. Mr. Davis said that both the existing ordinance and this new ordinance continue to regulate that noise after-hours, but not during daytime hours.

Mr. Kamptner explained that approach (2) prohibits sound levels audible from a specified distance or location. In the current Noise Ordinance there is a single standard, such as music coming from motor vehicles. It uses a distance approach; sound that is audible from 100 feet would be a violation under current regulations. The proposed ordinance carries on that 100-foot distance.

Mr. Kamptner reported that approach (3) is to prohibit noise levels that are loud, disturbing or raucous so as to disturb or annoy the reasonable person, i.e., "nuisance noise." The current noise regulations in Chapter 7 prohibit sound levels that are "loud, disturbing, or raucous so as to disturb a reasonable person." He said many localities in Virginia and across the country have used this approach for years. In late April the Virginia Supreme Court considered a case in the City of Virginia Beach and found that kind of standard to be unconstitutionally vague for a couple of reasons. State courts in other states have reached a similar conclusion. There are some constitutional considerations in drafting an ordinance.

Mr. Kamptner showed on the screen outlines of the two things that need to be considered when drafting a noise ordinance. One is to be mindful of the Free Speech clause in the First Amendment, and the second is to be certain the regulations are such that a person of ordinary intelligence can understand what conduct is prohibited. In this ordinance there are three proposed standards which work in combination or sometimes alone for determining whether a violation exists.

Mr. Kamptner said one standard is the duration of the sound. There are certain provisions such as 1) the sound must be continuous (the definition of "continuous" is prescribed in the ordinance), for a certain duration of time before it is a violation. The second standard is the distance (100 feet) or the location, typically inside a dwelling or a hotel room. Third, is a standard for the time of day (daytime versus nighttime). All of these standards work in combination to establish a noise standard the courts say is narrowly tailored to address the identified problem.

Mr. Kamptner said the two key provisions of the Noise Ordinance are found in Sections 7-104 and 7-105. In 7-104 is the standard proposed for the general prohibition on noise. This standard would apply to any sound created that is either not exempt under this ordinance or does not fall within one of the classes considered in the following section. There is a differentiation between the daytime and nighttime standards and whether the sound source is on public property or private property. The determination of audibility varies, if on public property the distance is measured from the sound source and on private property the sound must be audible 100 feet or more beyond the property line - the courts have said it

should not be a violation of a noise ordinance or a crime if the sound is not audible beyond the property line of the parcel on which the sound source is created.

Mr. Boyd asked if the sound of a trash truck backing up and making a beeping noise would violate the ordinance. Mr. Kamptner said warning signals and things of that type are typically exempt; although those particular sounds have been found to be annoying they are a necessity of life. The beeping sounds are required by Federal law and are exempt.

Mr. Boyd said he has received complaints about trash trucks coming in to neighborhoods too early - before 6:00 a.m. Mr. Davis said that has been addressed in the proposed ordinance under "Exempt Sounds." That has not been regulated before but what is being proposed is that trash collection not take place between 10:00 p.m. and 6:00 a.m. in any residential zone.

Mr. Rooker said this is a complaint-driven ordinance, so these things do not normally come to enforcement unless someone makes a complaint.

Ms. Thomas said if you are a grouchy old person and don't like the sound of children playing in the neighbor's pool and it goes on for longer than five minutes (in her case she is definitely more than 100 feet from the edge of her property when she hears such noises), this ordinance gives people the ability to file complaints over even slight violations. She is not happy with the "audible" provisions.

Mr. Rooker said he thought the prior standard was better. There was a reasonableness standard applied, and he does not think the court would find that children playing in a pool where the sound was not creating a certain decibel level would be unreasonable. He is sympathetic to what Ms. Thomas said, but the court ruling eliminated what to him was the best way to approach a sound ordinance, which is what the County had in effect before. The question now is what to do now in light of that ruling.

Ms. Mallek said there are appliances which are associated with normal household use, so would children playing be associated with normal household use. Is there another description that could be added to the ordinance? Mr. Kamptner said there is a new exemption which is not in the current ordinance and it creates an exemption for home appliances that are in their normal use and good repair. There is also an exemption for protected speech (conversation or yelling, anything of that type) and it creates a fairly significant defense. The exemption provides the person who is allegedly violating the ordinance to establish a defense that the person is exercising their First Amendment rights.

Ms. Mallek asked if children playing would come under that category. Mr. Kamptner said there is some disagreement about that.

Mr. Slutzky asked if it can be made clear that by adopting this standard it is the intent of the Board that children playing in pools and similar sounds are protected free speech, so are not subject to the ordinance. Would that help? Mr. Kamptner said the best thing is to establish the exemption expressly in the ordinance.

Ms. Mallek asked if something could be added that described what the Board is talking about. Mr. Davis said the failsafe would be that a district or circuit court judge would consider the facts and circumstances and make a decision.

Mr. Slutzky said he thought the Supreme Court took judgment out of this. Mr. Davis said it took the judgment out of legislative bodies and out of complainants. It did not take away the common sense of judges.

Ms. Thomas asked why the Board as a legislature would set up a judge to have to throw out something.

Mr. Rooker said the judge would not throw it out, but simply apply his own reasonable standard to the interpretation of the ordinance. He asked for a definition of "continuous sound." He said Ms. Thomas mentioned children playing in a pool, and he did not think that would be continuous noise.

Ms. Thomas said the noise did go on for longer than five minutes, but she hates to put into an ordinance something that seems on the face of it seems so unreasonable.

Mr. Rooker said he does not disagree. However, to him the alternative is to go to a decibel measurement level.

Mr. Slutzky asked if the Board could discuss Item I on Page 8 of the Board's materials, which is the list of exempt sounds - Section 7-106. He said there is an item listed as "protected expression." He asked if that language could be tweaked to include children playing and people in general conversation. Mr. Davis said that would be difficult to do. The key to this is the distance and the reasonableness of the distance for normal noise. He said 100 feet beyond the property line is in addition to whatever distance from the sound source it is before it gets to the property line. He said that children playing would have to be really loud for this to be a factor in the daytime.

Ms. Thomas said they do not have to be really loud to bother a reasonable person, but to be audible, they definitely can be heard. Mr. Davis said if "audible" is the problem, then a better solution would be to increase the distance; that would make all noises audible at a greater distance, but the greater distance the requirement is increased the more sound that can be permitted without it being a violation.

Ms. Thomas asked if decibels could be applied to the definition of audible. Mr. Davis said decibels could be, but that would require every citizen and police officer to have a decibel reader, and staff does not think that's practical.

Ms. Mallek said someone could call and ask for an intervention with a meter if there were even one meter in the County. Mr. Davis said that would be an option if the Board wanted to require a County police officer or staff person to be involved in every noise complaint.

Ms. Mallek did not agree with that suggestion.

Mr. Slutzky did not agree, and said an imperfect circumstance has been brought upon the County by the court's decision. If it cannot be done in the preamble, or in the specific exemptions section, then maybe it is stuck with legislative history and the Board can only have faith that the judge will get it right. He does not think the Board is interested in squashing children playing in yards.

Mr. Boyd said he does not understand why this cannot be addressed under the listing of excluded things – it deals with animals, bells, construction, firearms, public facilities, sporting events and school athletic events. Can something be added in for activities such as “outdoor play?”

Mr. Rooker said the discharge of firearms is exempted under the noise provisions. Someone shooting in their backyard continuously would be allowed, but children playing in a pool could be subject to potential prosecution. He does not know why, especially at night, discharge of firearms is allowed. Mr. Davis said that exemption was in the existing ordinance, and it's a topic staff was not going to touch.

Mr. Dorrier noted the exemption for County fairs under the section for fireworks, etc.

Mr. Slutzky said he thinks Section H captures that. He asked if an additional exemption could be added for children playing. Would that satisfy the Board that the concern has been addressed, or is that illustrative of a broader defect in this approach?

Ms. Thomas said it was illustrative in her situation. Mr. Kamptner said staff will look at that question.

Mr. Slutzky asked if there is a preamble opportunity to characterize the spirit and intent without undermining the particularity of the ordinance. Mr. Kamptner said in the preamble and also in one of the exemptions, it is noted that the production of sound is being regulated mindful of the limitations of the First Amendment to the extent it can be regulated. Some additional language could probably be added but “sound is sound,” and the First Amendment prohibits regulating content. Whether sound coming out of a child should be distinguished from sound coming out of an adult, staff can look into.

Mr. Slutzky said he can see a headline in the newspaper tomorrow saying “Board outlaws children's laughter.” Technically the Board would be doing that by passing this ordinance as presented.

Ms. Thomas said there is the old question: When a tree falls in the forest, if no one hears it, has there been any noise? She said, by legislation, it has been decided that there is no noise. She said the word “sound” means “the sensation perceived by the sense of hearing.”

Mr. Slutzky asked how the Board members wanted to handle the fundamental challenge of this ordinance. Are the Board members satisfied that the First Amendment protection is adequate?

Mr. Rooker said the distance could be increased.

Mr. Slutzky said that would affect other things.

Mr. Rooker agreed that it would, but the question is, how often will this be implemented? When it is implemented he thinks it would be the kind of noise that could be heard 150 feet away as opposed to 100 feet away. The Board needs to arrive at a reasonable standard, such as that used in the prior ordinance. He thinks there are only two ways to do that – distance or through use of a meter. The Board has decided that use of a meter is not practical in the enforcement of this ordinance.

Ms. Thomas asked how impractical that is. How many noise complaints are received by staff? How hard is it for the police to have a sound meter? Can sound meters be rented to complainants? Mr. Davis said the Zoning Administrator can explain the training required in order to operate a sound meter. Currently, the Police Department has no sound meters. They rely on the Zoning Department to help them when they become involved in a noise enforcement situation. If the Police were present they would say noise complaints are a very low priority; they respond to them as soon as they can but often it is long after the noise is gone.

Mr. Slutzky said that with only 1.3 officers per 1,000 people, he does not want them chasing after loud noises. If there is already an acknowledgement in the preamble that there is a separation on the First Amendment between content and other freedoms of expression, a logical judge should be able to discern what is reasonable noise or not. If the Board has had a discussion here to support that conclusion by a judge, arguably it may be adequately addressed and the issue is not to regulate childhood laughter. That is certainly not the intent of the ordinance, if the Board passes it.

Mr. Davis said the same concern was raised last year with the barking dog provisions. People were concerned that the ordinance might be used “to get even” with their neighbors, but that has not been

the case. He said this ordinance would require someone who wanted to file a noise complaint, to go to a magistrate, swear out a summons, and appear in court and testify. The anticipation is that no one will ever use this ordinance unless it is a last resort situation.

Mr. Slutzky said in Item G there is an exemption for generators. During the hurricane a few years ago, somebody in his neighborhood had a generator so the entire neighborhood had to listen to it for about two weeks, and it was very loud and obnoxious. He would not want to prohibit that person from protecting himself from a power failure and this ordinance is very generous in what it allows. He asked if the Board members are satisfied that they have addressed legitimate First Amendment concerns and if there is a consensus it is not the Board's intent to undermine the free speech inherent in children playing and other reasonable expressions of joy and exaltation.

Mr. Rooker said he would favor increasing the audibility distance to try and deal with that. If Mr. Slutzky is talking about things such as loud music or construction activities that go on after normal hours, he thinks the objectionable noise would be audible from 150 feet.

Mr. Slutzky asked if it would be possible to change the language to suggest that the noise must be sound that is clearly aberrational compared to background noise. Is that too vague? Mr. Kamptner said that staff talked about that. In determining what normal background noise is, staff was not certain how to define that. What is normal can change significantly.

Mr. Slutzky asked if it could state that it is the conditions at the site independent of the specific sound.

Mr. Rooker said that gets back to the question of using a meter. Audibility would still be the standard.

Mr. Kamptner said there is one carry-over from the current regulation which is a meter-based sound level - sound that causes a 15-decibel increase over the ambient sound level is prohibited. It is measured with a sound meter and there was a reason why 15 decibels was selected. At that increase above the ambient level that change in sound was termed as being "noticeable" or "objectionable." He said this is the one meter-based standard in this ordinance. Because the Police Department has no sound meters at this time, that provision exists as a fall back type of regulation which would require involving an inspector from either Zoning or General Services to assist the Police in the enforcement of this regulation. If the Board is interested in changing the distance for determining audibility staff looked at cases where the courts upheld distances of 50 feet and up, with the greatest distance found in case law being 250 feet; some localities have different distances for different types of sound. That appears to be the range that most localities have elected to choose. Since the Virginia Beach case, the City of Virginia Beach has adopted a new noise ordinance and for the most part it has gone to a meter-based regulation; they retained one standard for a particular type of noise that is based on a distance of 100 feet. Curiously, they also retained one standard based upon raucous, annoying or disturbing noise that would disturb a reasonable person. He contacted their City Attorney's Office, but was not able to get a lot of information because there is still some back and forth between the city and the plaintiff in the original case.

Ms. Thomas asked if the Board is "stuck" with not being able to define "audible." She thinks 100 feet would be reasonable if it were an annoying sound. She asked if any qualifiers are allowed to be put on the word audible. Mr. Kamptner replied that audibility is the standard the localities that take this approach use; different terms are used such as "plainly" or "clearly" audible - but the definition itself still breaks down to a sound that's capable of being heard by a person.

Mr. Dorrier asked what an ambient sound is. Mr. Kamptner explained that it is generally what would be regarded as the background sound. In this room, the ambient sound level would incorporate the sound of the lights and the air-conditioning; it is almost like white noise. It is measurable - probably ranging from 40 to 45 decibels; a normal conversational human voice is around 50 to 55 decibels.

Mr. Boyd said he found it interesting to hear that some localities have put different restrictions on different types of sounds. He asked if the Board could use 150 feet when talking about conversation or playing - human noises.

Mr. Kamptner said staff looked at the general prohibition, and there are daytime and nighttime standards. It is a "catch-all" provision. In Section 7-105 there are four subsections where there is sound being produced from very specific sources - they are all in the current regulations. He said the County's Noise Ordinance has been on the books for probably 30+ years; it was updated somewhat in 1998. There are four types of sound sources listed. First are motor vehicles and motor cycles operated in ways that could be considered obnoxious. There is a 100-foot standard for that sound. Next is sound from electronic equipment or instruments. This would be enforced where there is a party with a band playing or stereo equipment. In talking with the police officers, it was his impression that this is their most typical type of violation. They said that when called out, they may go back three or four times before citing someone. They try to get compliance in the field. There is also a 100-foot standard for that one.

Mr. Rooker asked if there is an exemption for a paid party. Mr. Kamptner said some localities have established a permitting process for parties. Sometimes the courts look at those as creating loopholes if the permitting process does not have objective standards.

Mr. Rooker said someone having a party once or twice a year at their house is one thing, but having a party every weekend with loud music is another thing. He said this proposed ordinance prevents someone from having a party at all the way he reads it. This ordinance is like killing an ant with a

steamroller. There needs to be a way to deal with objectionable things without sweeping away everything that a normal, sensible person would not consider objectionable.

Mr. Davis said there are about 70 jurisdictions struggling with this right now. Albemarle is on the leading edge of this, other than Virginia Beach. He said the Local Government Attorney's Association has formed a committee that's trying to put together a model ordinance. He said Mr. Kamptner has done a tremendous amount of research on this, so he is ahead of them. The question is whether the Board wants to adopt this ordinance, with tweaks, as an interim ordinance that can be re-examined after other jurisdictions "have weighed in on this." The problem is the existing ordinance clearly does not now meet the standards required by the Virginia Supreme Court. His best advice to the Police Department is not to charge people unless they use a decibel reader for the existing ordinance. There is a gap in time, so it may be better to adopt an ordinance, even flawed, and revisit it as soon as possible, than not to adopt an ordinance at all.

Mr. Boyd asked how often the County gets noise complaints. Is it once a week, or infrequently? Mr. Davis replied that they are infrequent.

Mr. Rooker said he thinks the Board should wait and see whether the model is able "to wrestle" with some of these problems and come up with a model ordinance that deals with this in a more reasonable way. He said there are decibel limits. Mr. Davis said there are zoning decibel limits for land uses, and there is the 15-decibel limit which is the catchall in the current ordinance.

Mr. Rooker said if someone has a loud party going on at one o'clock in the morning and the police go out a few times and the party has not shut down, the person could be cited. Mr. Davis said the police would have to go and get a sound meter.

Mr. Rooker said he thinks this proposed ordinance is overkill and a better way needs to be found to enforce existing regulations.

Mr. Dorrier said that under the present "disturbing the peace" ordinance, there does not have to be a decibel level to enforce it. Mr. Davis said that is a State Code provision that may have some constitutional issues given the Supreme Court's ruling on the noise ordinance.

Mr. Slutzky said if the Board comes back with a different ordinance, he would suggest that the definition of "motor vehicle" be looked at. Mr. Kamptner said the definition is based on the State Code, and the Police Department specifically asked that other types of vehicles be included because they do experience problems with them.

Mr. Slutzky said the part that refers to an internal combustion engine was deleted – it is vaguely referred to by saying "they are not limited to electric vehicles" which are nearly silent. He said the fundamental piece was left out while focusing on that additive piece.

Mr. Boyd agreed with Mr. Rooker that the Board should postpone passing this ordinance now.

Ms. Thomas said that will leave the County without an ordinance except for the 15-decibel test which police do not have a sound meter to do, but she is willing to put up with that rather than "hit a gnat with a cannon."

Mr. Boyd said if there were several calls a week that would be different, but given the infrequency of calls, he does not think the County is too exposed. Mr. Davis said that according to the police, the biggest occurrences take place in student housing situations. He understands that neighbor-to-neighbor situations are very rare.

Mr. Slutzky said if the majority of complaints concern amplified stereophonic equipment issues, why not draft a more narrowly conceived ordinance that allows for the broader 15-decibel variance across the subject matter, rather than shutting down children playing in a pool. That would address most of the citizen complaints. Mr. Davis said it's not just amplified music, but that is a big part of the problem.

Mr. Slutzky asked how the Board members felt about having an ordinance that addresses that aspect.

Mr. Rooker said if this is being worked on by the Committee on Local Government, he would prefer to wait for its recommendation. In the interim, there is the existing ordinance. It might be found to be unconstitutional if it played out the way the case in Virginia Beach did, but it is on the books.

Mr. Slutzky asked if the Board wanted to direct the police department to enforce what it thinks might be unenforceable.

Mr. Rooker said it gives them the ability to say that what is being done is in violation of the current ordinance. It gives the ability to cite them, and they would have the right to challenge its constitutionality and they might prevail. His point is that in the interim period there is the 15-decibel limit in place. There is the current ordinance, and to him that provides sufficient teeth in order to stop the activity being complained about. There is also the common law of nuisance.

Mr. Boyd said as a practical matter, if there were a complaint, would not a policeman go out and say a complaint had been received.

Mr. Slutzky said there seems to be a consensus that the Board is not prepared today to move forward with the proposed ordinance despite the good efforts of staff. After staff discusses it with its peers in Virginia and has an ordinance it feels might satisfy the needs of the County, it could be brought back at that time. He asked if that is a fair statement.

Ms. Mallek said she does not understand why the Board cannot just add something into the exclusions. That seems logical to her. It would allow the occasional party and if it got to be a pattern, there must be some other way to handle it.

Mr. Rooker said that is why he thinks it is better to wait for a recommendation from the committee. He thinks it will grapple with those types of issues and come out with a recommendation and a model. He does not see a compelling need for the Board to act on this prior to that playing out.

Mr. Slutzky said if staff finds that there are significant increases in complaints, they could let the Board know that and bring the ordinance back more quickly. Mr. Davis said he thinks the ordinance will have to be grappled with in the near future, but waiting for some consensus from other jurisdictions may be a good approach. He reminded Mr. Slutzky that this ordinance was advertised for a public hearing today, but given the Board's feelings about this ordinance he does not know if they want to go ahead with that hearing.

Mr. Slutzky said he thinks the public hearing should be held in the event citizens showed up to speak. He then opened the public hearing and invited anyone present who wished to speak to come forward to the microphone.

Mr. Dennis Hanley said he lives in the Fontana community. There was a blast that let rock fly all over the neighborhood two weeks ago. After meeting with the County Fire Marshal, the permit which allowed the blast was rescinded with no intention of allowing further blasting in the exact site where they are currently working. He said it is not a new issue; it was an issue before they started blasting – the developer has an impact crane drill that runs for hours. Yesterday it went on for so long that they contacted the police and asked for some assistance after they had looked at the ordinance proposed for today. They were told by the police that until the matter is resolved, they are not enforcing the 15-decibel existing ordinance; they will not come out and investigate.

Mr. Davis said there is some confusion. The noise Mr. Hanley is referring to is exempt under the ordinance, so the police cannot enforce the 15-decibel provision because it is part of construction demolition. He said the police can enforce the 15-decibel level for other noises which are not exempt.

Mr. Hanley said that is what he is here about. He thinks there are certain types of noises and the one he is speaking about is the impact drill working for so long – if it is going to continue to be exempt he will just have to live with it, but if that drill were within 100 feet of this building, there would be no way to have a meeting here today.

Mr. Slutzky said his message is loud and clear and valuable and he appreciates it.

With no one else from the public coming forward to speak, Mr. Slutzky closed the public hearing and placed the matter before the Board.

Mr. Slutzky asked Mr. Davis what the Board can do to address Mr. Hanley's legitimate concern. Mr. Davis said in most jurisdictions construction noise is a noise which is not regulated by a noise ordinance.

Mr. Rooker asked if that is only during certain times of the day. Mr. Davis said during daytime hours when you would expect construction activity to take place the theory is that there is no way to avoid it and it only happens while construction is taking place and then it ends. That does not make it less annoying to the people around it. As Mr. Rooker pointed out earlier, if someone feels it is unreasonably caused, there is a "civil nuisance" provision if they think it is damaging the use of their property for an unreasonable period of time, they would have a civil cause of action, and would need to consult their private attorney to see if that could be maintained under this fact situation. That is not something a locality would regulate.

Mr. Slutzky asked if there were further comments from Board members. He then asked for a motion.

Mr. Rooker **moved** to defer action on this proposed Noise Ordinance until such time as staff can bring back alternative proposals, with the proviso that the Police will continue to enforce the existing ordinance up until that time. Ms. Thomas **seconded** the motion, which passed but the following recorded vote:

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

NAYS: None.

Agenda Item No. 13. **Public Hearing: ZTA-2009-005, Enforcement and Administration.** Amend Secs. 3.1, Definitions, and 34.3, Appeal to the board of zoning appeals; amend and rename Secs. 31.1, Enforcement, zoning administrator, and 36.1, Violations; amend, renumber and rename Secs. 31.2.2, Building permits, 31.2.3.1, Certificate of occupancy, 31.2.3.2, Zoning compliance clearance, 31.2.4, Special use permits, 31.2.4.1, Reserved to board of supervisors, 31.2.4.2, Application, 31.2.4.2.1,

Limitation of filing new application after original denial, 31.2.4.2.2, Withdrawal of application, 31.2.4.3, Conditions, 31.2.4.4, Revocation, 31.2.5, Review of public uses for compliance with the comprehensive plan, 37.1, Criminal penalty, 37.2, Civil penalty, and 37.3, Injunctive relief and other remedies; repeal Secs. 31.1.1, Enforcement of board of zoning appeals decisions, 31.1.2, Enforcement of minimum requirements, 31.1.3, Interpretation by zoning administrator, 31.2, Permits (heading only), and 31.2.3, Certificates of occupancy; zoning compliance clearance (heading only); and repeal but move substance into new sections Secs. 31.2.1, Permits required; conformance, 31.2.3.3, Authority not to issue certificate of occupancy or zoning compliance clearance, 36.2, Notice of violation, 36.3, Remedies not exclusive, 36.4, Complaints regarding violations; of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 to define several terms commonly used in the Zoning Ordinance; would amend and reorganize Sec. 31.1 and its enumerated subsections by restating the authority of the zoning administrator; would amend and reorganize Sec. 31.2 and its enumerated subsections by clarifying the procedures and standards for the review and approval of building permit applications (new Sec. 31.2), zoning permits (formerly referred to as non-Building Code "building permits") (new Sec. 31.3), certificates of occupancy (new Sec. 31.4), and zoning clearances (formerly referred to as "zoning compliance clearances") (new Sec. 31.5), by renumbering those subsections pertaining to special use permits and amending cross-references (new Sec. 31.6), and by amending the regulations pertaining to review under Virginia Code § 15.2-2232 (new Sec. 31.7); would amend Sec. 34.3 by restating the requirements for appealing a decision to the board of zoning appeals and by adding that an appeal of a decision pertaining to temporary or seasonal commercial uses must be filed within 10 days of the decision if the notice of violation states that the 10-day appeal period applies, rather than the generally applicable 30-day appeal period and by adding that an appeal shall not be processed until the required fee is paid; would amend Sec. 36.1 which delineates acts that are violations of Chapter 18; would amend and reorganize Secs. 36.2, 36.3 and 36.4 pertaining to notices of violation, remedies and complaints regarding violations into a new Sec. 36.2 which establishes the powers and procedures for enforcing Chapter 18; would amend, reorganize and renumber Sec. 37.1 and amend that section to authorize criminal penalties to be sought when civil penalties have reached \$5,000 and to authorize separate criminal penalties for violations of regulations pertaining to the number of unrelated persons in a single-family dwelling unit (new Sec. 36.4); would amend, reorganize and renumber Sec. 37.2 and amend that section to authorize civil penalties proceedings to be initiated by a ticket in limited circumstances, and to authorize criminal penalties to be sought when civil penalties have reached \$5,000 (new Sec. 36.3); and would amend and renumber Sec. 37.3 pertaining to injunctive relief (new Sec. 36.5). (*Notice of this public hearing was advertised in the Daily Progress on June 15 and June 22, 2009.*)

Ms. Amelia McCulley, Zoning Administrator, said the next three zoning text amendments are basically housekeeping measures. For ZTA-2009-005, Enforcement and Administration, the Planning Commission, at its meeting on June 9, recommended approval making very limited comments. This amendment will reorganize and update sections of the Zoning Ordinance to align them with State Code, as well as provide some new provisions for zoning administration and enforcement. The new ordinance content generally codifies a lot of current practices – such as establishing a definition for a zoning permit (it is a permit not required under the Building Code as a building permit) which is regulated for zoning purposes in terms of use and setbacks. Examples of that are farm buildings and sheds containing less than 150 square feet. This codifies current practices by establishing a zoning permit when the Building Code does not require a building permit.

Ms. McCulley said it specifies cases where the final zoning inspection can act in place of a Certificate of Occupancy. There are certain types of construction, most often for interior alterations, where the Building Code does not require that a CO be issued. Staff wants to codify that in those cases the final zoning approval stands as the issuance of the CO for the purpose of approval of that construction. The third point is to provide for administrative approval rather than Board approval of site plan bond extensions beyond the first year. Staff is getting more and more requests for these extensions. There are criteria in the ordinance for how those requests are reviewed. Additional ordinance content would apply the same safety standards for a certificate of occupancy as that used for a zoning clearance – such as when things come up during construction that weren't shown on the site plan, but in the field on the site are warranted. Often it is a guardrail or a handrail or stairs. Typically it has to do with grade differences and safety. This amendment would allow staff to require that with zoning clearances and COs.

Ms. McCulley said the next change relates to a State Code provision for temporary events and temporary situations such as a temporary sign. She said the violation appeal period is 30 days for all violations and determinations, but it can be decreased to 10 days for temporary events, and staff would like to utilize that tool. There are some investigative tools listed in the Code that staff would like to have the opportunity to use if necessary. The final recommendation is to provide some ordinance language for a violation ticket system – which is not done at this time, but staff would like the opportunity after working with the County Attorney's Office to determine that is an effective way to go. It also has some expanded notice of violation delivery methods. She said this would improve clarity and procedures for both the public and for staff.

Ms. Thomas pointed out that in Attachment B there is the term "*Subpoenas duces tecum*" and she thinks it should be translated into everyday English in the body of the text. Ms. McCulley said it is on page 13 of the draft ordinance.

Mr. Rooker said it gives staff the right to enter and investigate. Mr. Davis mentioned that it's a legal term that would only be exercised by a staff person or attorney in court.

Mr. Kamptner said the regulation explains what the Zoning Administrator can do, and the *Subpoenas duces tecum* is a document issued by the court that authorizes the Administrator to obtain records from the violator where there's a records-based violation. In his experience with zoning

enforcement, the need to obtain records from an alleged violator is extremely rare. Although the term is not defined in the Code, it is simply a reference to the document that is issued by the court. What the Zoning Administrator is doing is getting a court order to obtain records from the alleged violator.

Mr. Rooker said the Zoning Administrator would have to make a showing to the court of a reasonable cause for issuance of the subpoena.

Mr. Slutzky suggested putting parenthetically after the term the name of the document. That would give clarity to a layperson that those three words refer to the document. Mr. Kamptner said it could be something as simple as "court order to produce records."

Ms. Thomas agreed with that suggestion.

With no further questions for staff, Mr. Slutzky opened the public hearing. With no one from the public rising to speak, the hearing was closed, and the matter placed before the Board.

Mr. Davis said that to address Ms. Thomas' question he would suggest that on the top of Page 13 where it says *Subpoenas duces tecum*, put a parenthetical in that heading saying "court order to produce records."

Mr. Rooker immediately **moved** to adopt Ordinance No. 09-19(3), An Ordinance to Amend Chapter 18, Zoning, Article I, General Provisions, Article IV, Procedure, and Article V, Violation and Penalty, of the Code of the County of Albemarle, Virginia, as amended by Mr. Davis.

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

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

NAYS: None.

ORDINANCE NO. 09-18(3)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE IV, PROCEDURE, AND ARTICLE V, VIOLATION AND PENALTY, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, Article IV, Procedure, and Article V, Violation and Penalty, are hereby amended and reordained as follows:

By Amending:

Sec. 3.1 Definitions
Sec. 34.3 Appeal to the board of zoning appeals

By Amending and Renaming:

Sec. 31.1 Designation of zoning administrator; authority
Sec. 36.1 Violations

By Amending, Renumbering and Renaming Where Noted (old section number first, followed by name, followed by new section number):

Sec. 31.2.2	Building permits	Sec. 31.2 (part) and Sec. 31.3 (part) Zoning permits
Sec. 31.2.3.1	Certificate of occupancy	Sec. 31.4
Sec. 31.2.3.2	Zoning clearance	Sec. 31.5
Sec. 31.2.4	Special use permits	Sec. 31.6
Sec. 31.2.4.1	Reserved to board of supervisors	Sec. 31.6(part)
Sec. 31.2.4.2	Application	Sec. 31.6(part)
Sec. 31.2.4.2.1	Limitation of filing new application after original denial	Sec. 31.6(part)
Sec. 31.2.4.2.2	Withdrawal of application	Sec. 31.6(part)
Sec. 31.2.4.3	Conditions	Sec. 31.6(part)
Sec. 31.2.4.4	Revocation	Sec. 31.6(part)
Sec. 31.2.5	Review of public features to determine substantial accord with the comprehensive plan	Sec. 31.7
Sec. 37.1	Criminal penalties	Sec. 36.4
Sec. 37.2	Civil penalties	Sec. 36.3
Sec. 37.3	Injunctive relief and other remedies	Sec. 36.5

By Repealing:

Sec. 31.1.1 Enforcement of board of zoning appeals decisions
Sec. 31.1.2 Enforcement of minimum requirements
Sec. 31.1.3 Interpretation by zoning administrator
Sec. 31.2 Permits (heading only)
Sec. 31.2.3 Certificates of occupancy; zoning compliance clearance (heading only)

By Repealing But Moving Substance into a New Section (old section number and name first, followed by new section number):

Sec. 31.2.1	Permits required; conformance	Sec. 31.2(part), Sec. 31.3(part) and Sec. 36.1(part)
Sec. 31.2.3.3	Authority not to issue certificate of occupancy or zoning compliance clearance	Sec. 31.3(part) and Sec. 31.4(part)
Sec. 36.2	Notice of violation	Sec. 36.2
Sec. 36.3	Remedies not exclusive	Sec. 36.2
Sec. 36.4	Complaints regarding violations	Sec. 36.2

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

...

Building code: The term "building code" means the Virginia Uniform Statewide Building Code.

...

Building permit: The term "building permit" means a permit issued by the building official under the building code that is subject to the fees stated in Albemarle County Code § 5-201.

...

Certificate of occupancy: The term "certificate of occupancy" means a certificate issued by the building official and the zoning administrator after final inspections under the building code and this chapter certifying that a building or structure is in compliance with the building code and this chapter.

...

Chapter, this: The term "this chapter" means chapter 18 of the Albemarle County Code, also known as the Albemarle County zoning ordinance, and all applicable proffers, special use permits and their conditions, certificates of appropriateness and their conditions, variances and their conditions, application plans, codes of development, site plans, zoning compliance clearances, waivers, modifications and variations and their conditions, and all other approvals and their conditions authorized by this chapter.

...

Site. The term "site" means one or more lots, or any part thereof, including one or more lots shown on a subdivision plat, site plan, or application plan. References in this chapter to "premises," "land," "lands," "lots" or "parcels" are to a site.

...

Virginia Code. The term "Virginia Code" means the Code of Virginia, 1950, as amended, including the latest edition or supplement unless otherwise indicated. References in this chapter to the "Code of Virginia" and the "Code" are to the Virginia Code.

...

Zoning administrator. The term "zoning administrator" means the officer designated to administer and enforce this chapter, or his or her designee.

...

Zoning clearance: The term "zoning clearance" means a written determination by the zoning administrator that a proposed use or structure complies with this chapter. References in this chapter to "zoning compliance clearance" are to a zoning clearance.

...

Article IV. Procedure

Section 31. Administration and Enforcement

Sec. 31.1 Designation of zoning administrator; authority

The office of zoning administrator is hereby established, subject to the following:

- a. *Authority.* The zoning administrator shall have all necessary authority on behalf of the board of supervisors to administer and enforce this chapter. This authority includes, but is not limited to:
 1. Interpreting this chapter and the official zoning map;
 2. Administering this chapter by making determinations and decisions on any matters arising under this chapter, including but not limited to, how a building, structure or use should be classified, whether a use is permitted within a particular zoning district, whether a proposed building or structure complies with setback, height, bulk and other requirements, whether a building, structure, use or lot is nonconforming, and whether a lot meets minimum lot size requirements.

3. Ordering in writing the remedying of any use or structure determined to be in violation of this chapter;
 4. Insuring compliance with this chapter, bringing legal action, including an action for injunction, abatement, civil penalties or other appropriate action or proceeding subject to appeal as provided by Virginia Code § 15.2-2311 and this chapter;
 5. In specific cases, making findings of fact and, with concurrence of the county attorney, conclusions of law regarding determinations of rights under Virginia Code §§ 15.2-2307 and 15.2-2311(C);
 6. Enforcing the provisions of this chapter regulating the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws; and
 7. Making decisions and determinations as to whether a pending site plan, subdivision plat, building permit application or any other application subject to review and approval by the county or the program authority complies with this chapter.
- b. *Absence of specific authority not a limitation.* The specific authority expressly granted to the zoning administrator in other sections of this chapter shall not be construed to be a limitation on the authority of the zoning administrator to administer and enforce those sections where specific authority is not expressed.

State law reference – Va. Code § 15.2-2286(A)(4), (14).

Sec. 31.2 Building permit applications

The zoning administrator shall review building permit applications submitted to the building official as follows:

- a. *Review.* The zoning administrator shall review each building permit application to ensure that the proposed building or structure complies with this chapter. Each applicant shall provide two (2) copies of the building plans, two (2) copies of the approved site plan if applicable, and a copy of the most recent plat of record of the site to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description of the land. Each applicant shall also provide any other information the zoning administrator deems necessary to review the application.
- b. *Approval.* If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the building permit application as to its compliance with this chapter. Upon approval of the building permit, one (1) copy of the building plan shall be returned to the applicant with the permit.
- c. *Circumstances when building permit shall not be approved.* The zoning administrator shall not approve a building permit in the following circumstances:
 1. No building permit shall be issued for any building or structure for which a site plan is required unless and until the site plan has been approved.
 2. No building permit shall be issued for any structure to be served by an individual well subject to a Tier 1 groundwater assessment under Albemarle County Code § 17-400 until the applicant complies with Albemarle County Code § 17-401. (Amended 2-5-05)
 3. No building permit shall be approved in violation of any provision of this chapter. (Amended 10-3-01) (§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01)
- d. *Other information for building official.* The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure would not comply and, therefore, a building permit application should not be approved by the building official. (§ 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05)

Sec. 31.3 Zoning permits

The zoning administrator shall review requests for zoning permits for those buildings and structures not required to file a building permit application, as follows:

- a. *When required.* Prior to starting, establishing, constructing, reconstructing, enlarging or altering any buildings or structures for which a building permit application is not required under the building code, the applicant shall request a zoning permit.
- b. *Review.* The zoning administrator shall review each zoning permit application to ensure that the proposed building or structure complies with this chapter. Each applicant shall

provide a copy of the most recent plat of record of the land to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description of the land. Each applicant shall also provide any other information the zoning administrator deems necessary to review the application.

- c. *Approval.* If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the zoning permit application.

Sec. 31.4 Certificates of occupancy

The zoning administrator shall review certificates of occupancy submitted to the building official as follows:

- a. *Review.* Prior to issuance of a certificate of occupancy, the zoning administrator shall review the certificate to ensure that the building, structure and improvements comply with this chapter.
- b. *Approval.* If the proposed building, structure and improvements, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the certificate of occupancy. The final zoning inspection approval or approvals may serve as evidence of the zoning administrator's approval of the certificate of occupancy for any addition or alteration to a building or structure for which a certificate of occupancy has previously been issued or is not required under the building code.
- c. *Certificate of occupancy where improvements not completed.* Upon the request of a developer, the zoning administrator may approve a certificate of occupancy where the buildings or structures shown on a site plan are completed in compliance with the building code and this chapter before all improvements required by the site plan are completed, as follows:
1. *Required findings.* The zoning administrator may approve a certificate of occupancy upon finding that: (i) the improvements still to be completed and operating are not directly related to health and safety, such as fire hydrants and safe and convenient access to public roads; and (ii) the site may be occupied without endangering life or public health or safety prior to full completion of the improvements required by the site plan.
 2. *Surety.* Before issuing a certificate of occupancy, the zoning administrator may require the developer to provide a certified check, bond with surety, a letter of credit, or other form of surety, all of which shall be in a form satisfactory to the county attorney, in an amount sufficient for and conditioned upon the completion of the improvements within one (1) year. Upon the request of the developer prior to the expiration of the surety, the zoning administrator may extend the period of the surety if the developer demonstrates that an extension is required because of adverse weather conditions or other unusual circumstances beyond the developer's control, rather than the developer's failure to diligently pursue completion or other reasons.
(§ 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01)
- d. *Circumstances when certificate of occupancy shall not be issued.* The zoning administrator shall not issue a certificate of occupancy in the following circumstances:
1. No certificate of occupancy shall be issued in violation of this chapter. (Amended 10-3-01) (§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01)
 2. No certificate of occupancy shall be issued if, after review of any building, structure or site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan. (Added 9-9-92; Amended 10-3-01) (§ 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01)
- e. *Other information for building official.* The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure does not comply and, therefore, a certificate of occupancy should not be issued by the building official.

Sec. 31.5 Zoning clearance

The zoning administrator shall review requests for zoning clearances as follows:

- a. *When required.* A zoning clearance shall be required in the following circumstances:
1. *New use.* Prior to establishing a new non-residential, other than an agricultural, use.
 2. *Change or intensification of existing use.* Prior to changing or intensifying an existing non-residential, other than an agricultural, use.

3. *Change of occupant.* Prior to a new occupant taking possession of an existing non-residential, other than an agricultural, use.
 4. *Specific buildings, structures or uses.* Prior to establishing any building, structure or use for which a zoning clearance is required under section 5.
- b. *Approval.* If the proposed building, structure, improvements, and site, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the zoning clearance.
 - c. *Circumstance when zoning clearance shall not be issued.* The zoning administrator shall not issue a zoning clearance if, after review of any site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan. (Added 9-9-92; Amended 10-3-01) (§ 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01)
 - d. *Commercial and industrial uses defined.* For the purposes of this section 31.4, production agriculture is not a commercial or industrial use, and a home occupation, class A or class B, is a commercial use. (Added 9-9-92; Amended 10-3-01)
 - e. *Effect of renumbering and renaming.* Any other section of this chapter that refers to section 31.2.3.2 or to a zoning compliance clearance shall be deemed to be a reference to section 31.4 or a zoning clearance.
(§ 31.2.3.2, 9-9-92; Ord. 01-18(6), 10-3-01)

Sec. 31.6 Special use permits

Sec. 31.6.1 Reserved to board of supervisors

The board of supervisors hereby reserves unto itself the right to issue all special use permits permitted hereunder. Special use permits for uses as provided in this ordinance may be issued upon a finding by the board of supervisors that such use will not be of substantial detriment to adjacent property, that the character of the district will not be changed thereby and that such use will be in harmony with the purpose and intent of this ordinance, with the uses permitted by right in the district, with additional regulations provided in section 5, and with the public health, safety and general welfare.

Sec. 31.6.2 Application

Application for a special use permit shall be made by the filing thereof by the owner or contract purchaser of the subject property with the zoning administrator, together with a fee as set forth in section 35. No such permit shall be issued unless the board of supervisors shall have referred the application therefor to the commission for its recommendations. Failure of the commission to report within ninety (90) days after the first meeting of the commission after the application has been referred to the commission shall be deemed a recommendation of approval. Provided, however, any day between the date an applicant requests or consents to a deferral or continuance of the consideration of the application by the commission until the date of the deferred or continued hearing by the commission shall not be counted in computing the ninety (90) day review period. The board of supervisors may extend the review period upon a request by the commission.

The board of supervisors shall act upon such application and render a decision within a reasonable time period.

No such permit shall be issued except after notice and hearing as provided by Virginia Code § 15.2-2204 and section 33.8 of this chapter. (Amended 5-5-82; 6-19-96)

- a. *Limitation of filing new application after original denial.* Upon denial by the board of supervisors of any application filed pursuant to section 31.6.2 above, substantially the same petition shall not be reconsidered within twelve (12) months of the date of denial. (Added 6-19-96)
- b. *Withdrawal of petition.* An application shall be withdrawn, or be deemed to be withdrawn, as provided herein: (Added 10-3-01)
 1. An application filed pursuant to section 31.6.2 above may be withdrawn upon written request by the applicant. The written request must be received by the body considering the application prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the commission or the board. Substantially the same application shall not be reconsidered within twelve (12) months of the date of the withdrawal unless the body considering the application at the time of withdrawal specifies that the time limitation shall not apply. (Added 6-19-96; Amended 10-3-01)
 2. If the applicant requests that further processing or formal action on the application be indefinitely deferred, the application shall be deemed to have been voluntarily

withdrawn by the applicant if the commission or the board does not take action on the application within twelve (12) months after the date the deferral was requested. Upon written request received by the director of planning before the application is deemed to be withdrawn, the director may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the size or nature of the proposed use, the complexity of the review, and the laws in effect at the time the request for extension is made.

(Added 10-3-01)

(§ 31.2.4.2.2, 6-19-96; Ord. 01-18(6), 10-3-01)

Sec. 31.6.3 Conditions

The board of supervisors may impose upon any such permit such conditions relating to the use for which such permit is granted as it may deem necessary in the public interest and may require a bond with surety or other approved security to ensure that the conditions so imposed shall be complied with. The conditions shall relate to the purposes of this ordinance, including, but not limited to, the prevention of smoke, dust, noise, traffic congestion, flood and/or other hazardous, deleterious or otherwise undesirable substance or condition; the provision of adequate police and fire protection, transportation, water, sewerage, drainage, recreation, landscaping and/or screening or buffering; the establishment of special requirements relating to the building setbacks, front, side and rear yards, off-street parking, ingress and egress, hours of operation, outside storage of materials, duration and intensity of use, building height and/or other particular aspects of occupancy or use. Except as the board of supervisors may otherwise specifically provide in a particular case, any condition imposed under the authority of this section shall be deemed to be essential to and non-severable from the issuance of the permit itself. (Amended 10-3-01) (§ 31.2.4.3, 12-10-80; Ord. 01-18(6), 10-3-01)

Sec. 31.6.4 Revocation

Any special use permit issued pursuant to this chapter may be revoked by the board of supervisors, after notice and hearing pursuant to Virginia Code § 15.2-2204, for willful noncompliance with this chapter or any conditions imposed under the authority of section 31.6.3. If the use, structure or activity for which a special use permit is issued is not commenced within twenty-four (24) months after the permit is issued, the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate. For purposes of this section, if the use authorized by the permit requires the construction of one or more structures, the term "commenced" means starting the lawful physical construction of any structure necessary to the use authorized by the permit within twenty-four (24) months after the permit is issued. The board of supervisors may, as a condition of approval, impose an alternative period in which to commence the use, structure or activity as may be reasonable in a particular case. A determination that a permittee has commenced a use, structure or activity under this section is not a determination that the permittee has acquired a vested right under Virginia Code § 15.2-2307. (Amended 10-3-01) (§ 31.2.4.4, 12-10-80; Ord. 01-18(6), 10-3-01)

Sec. 31.7 Review of public features to determine substantial accord with the comprehensive plan

If a public facility subject to Virginia Code § 15.2-2232 is not already shown on the comprehensive plan, the commission shall determine whether the location, character and extent of the public facility subject is in substantial accord with the comprehensive plan as provided by Virginia Code § 15.2-2232.

Sec. 34.3 Appeal to the board of zoning appeals

An appeal to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the zoning administrator, or from any order, requirement, decision or determination (collectively, the "decision") made by any other administrative officer in the administration or enforcement of this chapter, as provided herein.

- a. *Time for filing appeal.* A notice of appeal (an "appeal") shall be filed within thirty (30) days after the decision appealed, provided that an appeal of a decision pertaining to temporary or seasonal commercial uses shall be filed within ten (10) days after the decision if the notice of violation states that the ten (10) day appeal period applies.
- b. *Filing and contents of appeal.* An appeal shall be filed with the zoning administrator and with the board of zoning appeals. The appeal shall specify the grounds for the appeal.
- c. *Transmittal of record.* Upon the filing of an appeal, the zoning administrator shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.
- d. *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board of zoning appeals that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a

restraining order granted by the board of zoning appeals or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

- e. *Payment of fee.* No appeal shall be processed, no record shall be required to be transmitted as provided under section 34.3(c), no proceedings shall be stayed as provided under section 34.3(d), and the time for which the appeal must be heard and acted on by the board of zoning appeals shall not begin, until the fee required by section 35 is paid. The failure of the appellant to pay the required within the time for filing an appeal shall not be a basis to refuse to accept the appeal or to dismiss the appeal.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2311(A), (B).

Article V. Violation and penalty

Sec. 36.1 Violations

The following are violations of this chapter and are declared to be unlawful:

- a. *Uses.* Any use of a structure, improvement or land, established, that is conducted, operated or maintained in violation of any provision of this chapter or any approved application plan, site plan, code of development, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter.
- b. *Structures or improvements.* Any structure or improvement that is established, conducted, operated or maintained in violation of any provision of this chapter or any approved application plan, site plan, code of development, zoning permit, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter.
- c. *Structures without building permits.* Any structure for which a building permit application is required that is started, established, constructed, reconstructed, enlarged or altered without a building permit.
- d. *Use of structure or site without certificate of occupancy.* Any use of a structure or site for which a certificate of occupancy is required that is conducted, operated or maintained without a certificate of occupancy.
(Subsection c: § 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01; subsection d: § 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01)

Sec. 36.2 Enforcement

The zoning administrator is authorized to enforce this chapter as follows:

- a. *Investigation.* Upon receipt of a complaint or a request to investigate whether this chapter is being violated, the zoning administrator or his designee shall conduct an investigation.
- b. *Inspection warrants and search warrants.* The zoning administrator is authorized to request and execute inspection warrants issued by a magistrate or court of competent jurisdiction to allow the inspection of dwellings authorized under Virginia Code § 15.2-2286(A)(15). The zoning administrator also is authorized to request and execute search warrants issued by a court of competent jurisdiction as provided by law. Prior to seeking an inspection warrant or a search warrant, the zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant to enter the structure or property to conduct an inspection or search.
- c. *Subpoenas duces tecum (court order to produce records).* Whenever the zoning administrator has reasonable cause to believe that any person has engaged or is engaging in any violation of this chapter that limits occupancy in a dwelling unit and, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the office of the county attorney petition the judge of the general district court for a subpoena duces tecum against any person refusing to produce the data or information, as authorized under Virginia Code § 15.2-2286(A)(4).
- d. *Notice of violation; exception.* If, upon completion of the investigation, the zoning administrator determines that a violation of this chapter exists, a notice of violation shall be issued to the person committing and/or permitting the violation if the zoning administrator determines to pursue enforcement; provided that a notice of violation shall not be required to be issued for a violation initiated by a ticket under section 36.3(a).
 - 1. *Contents of notice.* The notice shall include the following information: (i) the date of the notice; (ii) the basis for the decision; (iii) a statement informing the recipient that the decision may be appealed to the board of zoning appeals within applicable appeal period provided in section 34.3 and that the decision shall be final and unappealable if it is not timely appealed; and (iv) the time within which the violation shall be abated.

2. *Delivery of notice.* The notice shall be either hand delivered, posted on the door of a building on the site, or mailed by regular or certified mail, provided that notice to the property owner, sent by certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this section.
- e. *Remedies.* In the enforcement of this chapter, the zoning administrator may pursue any remedy authorized by law. The remedies provided in sections 36.3, 36.4 and 36.5 are cumulative and not exclusive except to the extent expressly provided therein, and shall be in addition to any other remedies authorized by law.

Sec. 36.3 Civil penalties

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter as provided in section 36.1, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act violates this chapter as provided in section 36.2, shall be subject to the following:

- a. *Procedure.* Proceedings seeking civil penalties for all violations of this chapter under this section 36.3 shall commence either by filing a civil summons in the general district court or by the zoning administrator or his deputy issuing a ticket.
- b. *Minimum elements of a civil summons or ticket.* A civil summons or ticket shall contain, at a minimum, the following information: (i) the name and address of the person charged; (ii) the nature of the violation and the section of this chapter allegedly violated; (iii) the location and date that the violation occurred or was observed; (iv) the amount of the civil penalty being imposed for the violation; (v) the manner, location and time in which the civil penalty may be paid to the county; (vi) the right of the recipient of the summons to elect to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of a court; and either the date scheduled for trial, or the date for scheduling of such trial by the court.
- c. *Amount of civil penalty.* Any violation of this chapter shall be subject to a civil penalty of two hundred dollars (\$200.00) for the initial summons, and a civil penalty of five hundred dollars (\$500.00) for each additional summons arising from the same set of operative facts.
- d. *Maximum aggregate civil penalty.* The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00). After the civil penalties reach the five thousand dollar (\$5,000.00) limit, the violation may be prosecuted as a criminal misdemeanor under section 36.4.
- e. *Each day a separate offense; single offense in 10-day period.* Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period.
- f. *Option to prepay civil penalty and waive trial.* Any person summoned or ticketed for a violation of this chapter may elect to pay the civil penalty by making an appearance in person or in writing by mail to the department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, such an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
- g. *Civil penalties are in lieu of criminal penalties.* A violation enforced under section 36.3 shall be in lieu of any criminal penalty except as provided in section 36.3(d) and section 36.4 and, except for any violation resulting in injury to any person, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter.
- h. *Violations excluded.* Section 36.3 shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development where, for the purposes of this section, the term "land development" means a human-made change to, or construction on, the land surface including, but not limited to, land disturbing activity within the meaning of chapter 17 of Albemarle County Code or the construction of buildings, structures or improvements under an approved site plan or subdivision plat, but does not mean the land development project's compliance with this chapter; or (ii) for the violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.

(§ 37.2; Ord. 00-18(5), 6-14-00; Ord. 02-18(3), 2-13-02; Ord. 05-18(3), 3-16-05;
Ord. 06-18(1), 7-05-06)

State law reference – Va. Code § 15.2-2209.

Sec. 36.4 Criminal penalties

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter that results in injury to any person, or to whom the five thousand dollar (\$5,000.00) maximum aggregate civil penalty provided in section 36.3(c) has been reached and who continues to violate any provision of this chapter as provided in chapter 36.1, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act continues to violate this chapter as provided in section 36.2, shall be subject to the following:

- a. The person shall have committed a misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).
- b. If the violation is uncorrected at the time of conviction, the court shall order the person convicted to abate or remedy the violation in compliance with this chapter, within a time period established by the court. Failure to remove or abate such violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period, punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500.00).
- c. Notwithstanding sections 36.4(a) and (b), any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwelling units shall be punishable by a fine of up to two thousand dollars (\$2,000.00). Failure to abate the violation within the specified time period shall be punishable by a fine of up to five thousand dollars (\$5,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period punishable by a fine of up to seven thousand five hundred dollars (\$7,500.00). However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of the dwelling unit against a tenant to eliminate an overcrowding condition in accordance with chapters 13 or 13.2 of title 55 of the Virginia Code, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwelling units shall not be punishable by a jail term.
(§ 37.1; Ord. 00-18(5), 6-14-00)

State law reference – Va. Code § 15.2-2286(A)(5).

Sec. 36.5 Injunctive relief and other remedies

Any violation of this chapter may be restrained, corrected, or abated as the case may be by injunction or other appropriate relief.
(§ 37.3; Ord. 00-18(5), 6-14-00)

State law reference – Va. Code § 15.2-2208.

Agenda Item No. 14. **Public Hearing: ZTA-2009-006, Accessory structures in required yards.** Amend Secs. 4.11.2, Structures in required yards, 4.11.2.1, Accessory structures, 4.11.2.2, Public telephone booths, and 4.11.2.3, Fences, mailboxes, and similar structures, and add Sec. 4.11.4, Structures within easements, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Secs. 4.11.2, 4.11.2.1, 4.11.2.2 and 4.11.2.3 by reorganizing them into a single section, prohibiting accessory structures within required front yards with exceptions, revising the types of structures allowed within required yards currently delineated in Secs. 4.11.2.2 and 4.11.2.3 by deleting signs, which are subject to other yard requirements and adding automated teller machines, and by requiring that accessory structures be physically separated from the primary structure up to 6 feet or it be subject to primary structure yard requirements. This ordinance would also add Sec. 4.11.4 to prohibit structures within an easement in a way that adversely affects the easement purpose. (*Notice of this public hearing as advertised in the Daily Progress on June 15 and June 22, 2009.*)

Mr. Ron Higgins, Chief of Zoning/Deputy Zoning Administrator, said this amendment is to change the setbacks for accessory structures in required yards. Accessory structures can be in the front yard, but somehow over time the minimum requirement for them not to be located in the front setback had been inadvertently eliminated. An accessory structure could be detached from the house and as an accessory structure would only have to be six feet from the property line. An accessory structure could be only one-inch from the house and need to have a side setback or a rear setback of only six feet.

Mr. Higgins said the Planning Commission made some good suggestions about accessory structures in commercial and other areas, and about setbacks for retaining walls, ATMs and dumpsters. In the course of that discussion, the Commission debated whether it should be one-foot or six feet of

separation for a building to meet the setback of the main structure. If it were less than one-foot it would meet the main setback. The Commission was concerned about fire codes and about maintenance so increased it to six feet. Staff was asked to look at that before this amendment came to the Board just to be sure there were no other ordinance or Building Code issues. There are no concerns there.

Mr. Higgins said there was a provision in the ordinance concerning "not having an adverse affect on easements." There was a lot of language in the draft ordinance describing how that would be done and requiring the easement holder to approve it, but that language was eliminated by the Commission. They went with the language that says a structure would not have an adverse impact on the easement.

Mr. Slutzky asked why that provision was eliminated. Mr. Higgins said the Planning Commission felt that as long as staff could determine it was not having an adverse affect on the easement, the person did not have to sign a document. He said the Commission recommended approval of the ordinance.

Ms. Mallek asked if this change allows for a bigger footprint. She is thinking of a small lot with a large house and if it had an attached garage it would not be allowed to encroach on its neighbor, but if the garage were separated, with a reduced setback the garage could be right up against the property line. Mr. Higgins said that can be done now. At this time it only has to be physically detached from the house. It was suggested that staff come up with a minimum distance and if the garage were within that minimum distance, it would be part of the main house.

Mr. Rooker asked whether it should be one foot or six feet. Mr. Higgins said the discussion centered on practical issues. They talked about how you could get in that space to take care of the structure if there were a fire issue. He said the Fire Code addresses all of that, regardless of setback and distance.

Ms. Thomas asked what the Board members thought about the impact of making it less easy to have dense development by six feet. She said it would reduce compact development on some lots. She thinks that was the reason for staff's suggestion of one-foot. Mr. Higgins said in a mobile home subdivision, if six feet is used as the separation it almost eliminates accessory buildings.

Ms. Thomas said she personally would prefer either one-foot or three feet for those reasons.

Mr. Rooker said one size does not fit every situation.

Mr. Boyd said he is struggling with this issue.

Mr. Rooker said he thinks this is a reasonable compromise with respect to the issues being presented. There are good reasons to go in either direction.

Mr. Boyd said he would like to clarify what is being said. If there is going to be an accessory structure, it has to be three feet, or it can be up to three feet.

Mr. Slutzky said if it is within three feet it becomes part of the original structure so has to meet the setback.

Ms. Mallek said it would protect the neighbors from having a garage an inch from their property line.

Mr. Boyd said it could also impact a mobile home because there is not enough room on the lot to put up an accessory shed for a legitimate use.

Mr. Rooker said setbacks could be eliminated all across the County, but for mobile homes, he assumes that a shed could be built that connected onto the mobile home. Nothing prevents you from putting it close to the mobile home. But there is a reason for setback lines.

With no further questions for staff, Mr. Slutzky opened the public hearing. With no one from the public rising to speak, the hearing was closed and the matter was placed before the Board.

Mr. Rooker **moved** to approve ZTA-2009-006 with a change in Section 4.11.2.d from a six-foot separation to a three-foot separation as discussed, by adopting Ordinance No. 09-18(4), An Ordinance to Amend Chapter 18, Zoning, Article II, Basic Regulations, of the Code of the County of Albemarle, Virginia, as set out in full below.

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

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

ORDINANCE NO. 09-18(4)

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

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

By Amending and Renumbering (old section number first, followed by name, followed by new section number):

Sec. 4.11.2	Structures in required yards	Sec. 4.11.2 (part)
Sec. 4.11.2.1	Accessory structures	Sec. 4.11.2 (part)
Sec. 4.11.2.2	Public telephone booths	Sec. 4.11.2 (part)
Sec. 4.11.2.3	Fences, mailboxes and similar structures	Sec. 4.11.2 (part)

By Adding:

Sec. 4.11.4 Structures within easements

Chapter 18. Zoning

Article II. Basic Regulations

Sec. 4.11.2 Accessory structures in required yards

Accessory structures are authorized in required yards as follows:

- a. *Front yards.* Accessory structures, including detached garages, are prohibited within the minimum front yard required by the applicable district regulations except as otherwise provided in subsection (c).
- b. *Side and rear yards.* Accessory structures are permitted in side and rear yards, provided that they are erected no closer than six (6) feet to the side or rear property lines or, in the case of an alley or a shared driveway, no closer than three (3) feet to the edge of the easement or right-of-way of the alley or shared driveway except as otherwise provided in subsection (c). The zoning administrator may authorize an accessory structure to be located closer to the edge of an alley easement or right-of-way if the county engineer determines that the proposed design incorporates features that assure public safety and welfare. In making the determination, the county engineer shall consider the provision of adequate access to required onsite parking and/or garages, unimpeded vehicular circulation along the alley, an adequate clear zone along the alley, and other safety issues deemed appropriate for the conditions.
- c. *Accessory structures permitted in required yards.* The following accessory structures are permitted in required yards provided that they comply with the visibility clearance requirements of section 4.4:
 1. Fences, including free-standing walls enclosing yards and other uncovered areas.
 2. Freestanding mail and newspaper boxes.
 3. Retaining walls.
 4. Shelters for school children traveling to and from school.
 5. Public telephone booths, provided that: (i) the telephones are equipped for emergency service to the public without prior payment; (ii) the zoning administrator determines that the location of the booth will not adversely affect the safety of the adjacent street; and (iii) the booth shall be subject to relocation at the expense of the owner, whenever relocation is determined by the zoning administrator to be reasonably necessary to protect the public health, safety and welfare or whenever relocation is necessary to accommodate the widening of the adjacent street.
 6. Automated teller machines.
- d. *Accessory structures located closer than three (3) feet to primary structure.* Accessory structures for which any part is located closer than three (3) feet to any part of a primary structure shall comply with the minimum applicable yard requirements for a primary structure.
(12-10-80, § 4.11.2 (3-18-81), 4.11.2.1 (1-1-83, Ord. 02-18(2), 2-6-02), 4.11.2.2 (3-18-81), 4.11.2.3 (Added 3-18-81))

Sec. 4.11.4 Structures within easements.

No structure shall be permitted within an easement in a way that adversely affects the easement.

Agenda Item No. 15. **Public Hearing: ZTA-2009-007, Temporary construction headquarters and yards.** Amend Secs. 3.1, Definitions; 5.1.18, Temporary construction headquarters, yards, 5.1.18.1, Temporary construction headquarters, and 5.1.18.2, Temporary construction yards, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Secs. 3.1, by adding definitions of temporary construction headquarters and temporary construction yards, and 5.1.18, 5.1.18.1 and 5.1.18.2, by reorganizing the sections into a single section and amending the regulations pertaining to the duration (by requiring that the use terminate within 30 days after construction of the last building is completed or active construction is discontinued, and eliminating the requirement that construction yards exist for not more than 18 months), location (by clarifying the requirement that the use be located on the same site, rather than the same lot, as the construction and that construction yards be set back from existing public streets and dwellings) and maintenance of temporary construction headquarters and yards, by amending the regulations pertaining to the screening of temporary construction yards, and by authorizing the zoning administrator to approve such uses with a zoning clearance rather than a temporary permit. *(Notice of this public hearing was advertised in the Daily Progress on June 15 and June 22, 2009.)*

Mr. Ron Higgins said this proposed amendment would delete the 18-month time limit for construction headquarters and add provisions for consistent administrative regulation of both temporary construction headquarters and temporary construction yards. He said it is also being defined as a facility located on "a site" because the current language talks about parcels and lots and properties, so the language is "fuzzy." He said the Planning Commission suggested that staff define in the ordinance temporary construction yards and temporary construction headquarters so there would be no confusion on an applicant's part.

Mr. Slutzky asked if the current ordinance allows for any defined period prior to the commencement of construction. Mr. Higgins said there is a 30-day and 20-day provision in the ordinance, so it is a little disjointed there also.

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

Mr. Mike Matthews said he is present with Mr. Ron Cottrell from the Martha Jefferson Hospital. They are in attendance today to urge the Board to adopt the ordinance as written. He said they are building a new hospital on Pantops and it takes more than 18 months to build the project. They are on schedule but would like to be able to finish – they are at the 18-month mark now. It is a large undertaking, but with the discretion vested with the Zoning Administrator, this change would reflect the realities of large projects.

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

Mr. Rooker **moved** for approval of ZTA-2009-007 as recommended by the Planning Commission by adopting Ordinance No. 09-18(5), An Ordinance to Amend Chapter 18, Zoning, Article I, General Provisions, and Article II, Basic Regulations, of the Code of the County of Albemarle, Virginia, as set out in full below.

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

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

ORDINANCE NO. 09-18(5)

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

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

By Amending:

Sec. 3.1 Definitions

By Amending, Renaming and Renumbering:

Sec. 5.1.18	Temporary construction headquarters and temporary construction yards	Sec. 5.1.18
Sec. 5.1.18.1	Temporary construction headquarters	Sec. 5.1.18 (part)
Sec. 5.1.18.2	Temporary construction yards	Sec. 5.1.18 (part)

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

Temporary construction headquarters: A building or structure used for the on-site management or oversight of construction or development activity for the duration authorized in section 5.1.18(a).

Temporary construction yard: An area used for the on-site storage of construction or development materials, supplies, equipment, and tools, and the on-site stockpiling and recycling of useable construction materials and other items, for the duration authorized in section 5.1.18(b).

Article II. Basic Regulations

Sec. 5.1.18 Temporary construction headquarters and temporary construction yards

Temporary construction headquarters and temporary construction yards are permitted as follows:

- a. *Temporary construction headquarters.* The zoning administrator is authorized to issue a zoning clearance allowing temporary construction headquarters serving a construction project, subject to the following:
 1. *Duration.* The headquarters shall be authorized on the site for a period beginning no earlier than thirty (30) days prior to the commencement of actual construction and ending no later than thirty (30) days after completion of the last building to be constructed in the project or thirty (30) days after active construction on the site is suspended or abandoned, whichever occurs first (hereinafter, the "ending date"). Construction shall be deemed to be suspended or abandoned if no substantive progress, characterized by approved building inspections or other evidence that substantial work has been performed in the prior thirty (30) day period. The zoning administrator may extend the ending date, upon the written request of the owner, if the suspension or abandonment of active construction is the result of inclement weather. The headquarters shall be removed from the site by the ending date.
 2. *Location.* The headquarters shall be located within the same site where the construction project is located.
 3. *Maintenance.* The area in the vicinity of the headquarters and the access roads thereto shall be treated or maintained to prevent dust and debris from blowing or spreading onto adjacent properties and public street rights-of-way.
- b. *Temporary construction yards.* The zoning administrator may issue a zoning clearance allowing temporary construction yards serving a construction project, subject to the following:
 1. *Duration.* The yard shall be authorized on the site for a period beginning no earlier than thirty (30) days prior to the commencement of actual construction and ending on the ending date. All materials, supplies, equipment, debris and other items composing the yard shall be removed from the site by the ending date. The zoning administrator may extend the ending date, upon the written request of the owner, if the suspension or abandonment of active construction is the result of inclement weather.
 2. *Location.* The yard shall be located within the same site where the construction project is located. In addition, no portion of a yard shall be located: (i) closer than fifty (50) feet to any public street right-of-way existing prior to the recording of the subdivision plat served by the yard or existing prior to the commencement of the construction project; and (ii) closer than one hundred fifty (150) feet to any preexisting dwelling not owned or leased by the owner of the subdivision or construction project served by the yard.
 3. *Maintenance.* The area in the vicinity of the yard and the access roads thereto shall be treated or maintained to prevent dust and debris from blowing or spreading onto adjacent properties and public street rights-of-way. All yards shall be maintained in a clean and orderly manner, and building material and construction residue and debris shall not be permitted to accumulate.
 4. *Screening.* The zoning administrator may require appropriate screening or fencing around a yard if the yard will be located in or adjacent to a residential zoning district.

Agenda Item No. 16. Downtown Crozet Stormwater Management.

Mr. Greg Harper, Water Resources Manager, said that more than a year ago the Board authorized staff to proceed with a regional approach to stormwater management for the downtown area of Crozet, and to proceed with planning and land acquisition. He is here today to get authorization to buy

some property, continue with engineering work, and request an appropriation of proffer money and to allocate additional stormwater funds for this project. He said there was a statement in the Executive Summary which is not correct. He is not here to request that grant money be appropriated – that grant money has not yet been secured under contract, so it is premature to do that.

Mr. Harper said he will explain the Water Resources Capital Program – basically it is to protect streams and other natural water resources through several different types of capital projects – including enhancing existing facilities, demonstration projects such as the green roof on the County Office Building, stream and buffer enhancement projects, providing regional stormwater management for future development, and most importantly, to incorporate stormwater management into existing built areas. There are a lot of areas that preceded stormwater regulations so their streams suffer from lack of stormwater management. Staff has completed or is working on projects that fit into these categories, such as making small, cheap improvements to the Birnam Basin near the Humphris Park.

Mr. Rooker commented that the changes there have been very helpful, observing the natural activity that takes place there.

Mr. Harper said they have completed a small bio-filter project at Broadus Wood Elementary School, and soon will be building a bio-filter between the lower parking lot of this building and McIntire Road to treat most of the runoff from the lower parking lot instead of having it dumped directly into Schenk's Branch. Another large project being worked on simultaneously with the Crozet project are the Woodbrook Lagoons enhancement project which is part of the Stormwater Master Plan. He said the Crozet wetland project fits into three categories – stream and buffer enhancement, regional stormwater management for future development, and existing impervious areas that have no stormwater management currently.

Mr. Harper explained that there are two basic project goals. There are a number of highly important streams downstream of the downtown Crozet area impacted by runoff. Since this area lies in a water supply watershed, this water eventually gets into the South Fork Rivanna Reservoir and is part of the main drinking water supply source. Additional protection is needed for these sensitive waters. This will also facilitate the dense downtown development foreseen by the Crozet Master Plan - much of the area which will be served by this project is intended to be very dense and as much as 100 percent impervious. When 100 percent impervious is combined with stormwater management, there is very expensive underground detention so they will try to provide stormwater management downstream at a much cheaper price, but upstream of the sensitive waters.

Mr. Harper explained that there are two project elements: making improvements to an existing channel which collects and conveys the stormwater from this area into Powell's Creek, and using a stormwater wetlands system for treatment – which will provide good water quality and attenuation of peak flows. He said staff has identified the property (shown on a map on the screen) as being ideal for location of the stormwater wetlands. Staff has been communicating with the property owners for the past couple of years and the owners are willing to sell the property to the County. Staff has also communicated with other adjacent property owners regarding easements. Everybody is "on board" with providing easements for the stream portions as well. Staff is poised to do final negotiations with the property owners.

Mr. Harper reported that design consultants – Kimberly Horn – have been hired – they are also consultants for the Crozet streetscape project. Stormwater wetlands has been selected as the treatment type; construction drawings are about 80 percent complete; and, staff has been working with the RWSA to get approval to relocate the utilities that are on this property.

Mr. Harper said the last thing he will mention is the service district. It has essentially been defined. Staff will develop a pro-rata formula in the form of "x" dollars per square feet of impervious area that can be used by developers within the service district to pay back the County to help reimburse the cost of this project. He would like to add a feature to allow property owners to opt out of this instead of making it mandatory. If someone can do it cheaper than the County, they should be able to do it on site. The County would not get as much money back, but economically it would be cost-effective for someone who can do it cheaper. Their property might lie in outlying regions of the district, and it would not be developed to the density that a more internal property would be developed.

Mr. Harper said a trading program might be developed for that service district would allow someone developing in the core of downtown to have somebody else in the district provide stormwater management on their behalf. The point of that would be to provide stormwater management at its lowest cost whether regionally or onsite. He said Ms. Thomas pointed out more than a year ago that stormwater wetlands will not address any increase in volume as the watershed is developed. If a little volume capture can be provided, infiltration and evaporation throughout the service district, in combination with a regional wetlands approach, would be the best of all possible solutions.

Mr. Slutzky said if the County is going to spend taxpayer dollars to create a structural solution to stormwater, to facilitate cleansing and entrapment for a period of time, there is a certain cost associated with that. This project is being sized and scaled based on a certain demand throughout the service district. If half of the people in the service district opted out feeling they would be better off downzoning relative to the density that is allowed, the consequence would be to create a disincentive for density and at the same time erode the support base to pay for this larger facility. What happens if there is a substantial opting out?

Mr. Rooker said to take care of stormwater on their own would in most cases be more expensive. Mr. Harper said if someone can do it cheaper than the County, that's great, there might be some volume

reduction from the watershed. There might be improved stream health. The worst that can happen is that there is a treatment train and there is a better quality of water. Staff thinks that for the cost of stormwater management which will be provided for this district, not many people will be able to avoid buying in. Staff has calculated that stormwater management can be provided for \$25,000 to \$30,000 per impervious acre. It has talked to developers who are developing very dense areas and they are now estimating \$66,000 per impervious acre. He said the County's cost will be about one-half of that.

Mr. Boyd asked when staff expects to start this project. Mr. Harper responded that staff is hoping to be under construction within six months.

Mr. Boyd asked if this is being done far in front of any planned development. Mr. Harper said any planned development in the downtown Crozet area would probably be piecemeal; there is no large planning development coming online.

Mr. Slutzky said this will capture the runoff from existing development immediately. Mr. Harper agreed, saying there are 15 acres of impervious area that have been identified that can be treated immediately and prevent those pollutants from reaching the water supply.

Mr. Boyd said Mr. Harper referenced establishing a service district, and although it has been discussed several times, the Board has not done anything about it yet. Mr. Davis said this is different than what is normally considered a service district; it is legislation that's available under the Subdivision and Site Plan ordinances; it is the only impact fee legislation localities have as it allows for recovery of offsite drainage costs on a pro-rata basis. He said this is done now for the Lickinghole Creek Basin. Mr. Tucker said it is actually used for all of the basins. Mr. Davis said this would be overlapping another service district established under this legislation, so they would be paying for Lickinghole Creek as well as this basin.

Mr. Boyd asked if it is a one-time fee and not an ongoing maintenance fee. Mr. Davis said it is a one-time fee – there is a process on the front-end to establish the cost of the facility. The County fronts that cost and everyone contributes their pro-rata share. He added that if people opt out, the County never recovers that portion of the cost. Theoretically, all new development will pay their pro-rata cost and any existing development using it will have a "free pass" on paying for it, so the County will pay for existing development and anyone who opts out. New development would pay its own share.

Ms. Mallek said that would apply also to properties as they are redeveloped. Mr. Davis said for a new subdivision or site plan the developer would be required to pay their pro rata share.

Mr. Rooker said that is one reason the County needs to be in front of development, otherwise the cost would not be recovered. Mr. Harper said that in the past many of these regional facilities were driven by particular large developments. In this case, staff wanted to do the regional approach before all of the properties in the downtown area of Crozet are redeveloped.

Ms. Mallek said that on the corner of Crozet Avenue near the proposed library there is a very small stormwater feature that might account for part of someone's responsibility. She asked if someone were redeveloping and had a small feature on their property, the larger part would be achieved by paying into the system. Mr. Harper said a person could be allowed to do a portion of their stormwater management on site in whatever combination they wanted – that part could be done by using impervious pavers. The details of the service district will be worked out by staff and brought back to the Board at a later date.

Mr. Slutzky asked if service district participation would be imposed on new development and redevelopment, not superimposed on what exists. Mr. Davis said that is correct.

Mr. Harper said this relates to the streetscape project which will create a storm sewer system for property to tie into. That system will connect directly to the channel where improvements will be made, and the County will provide stormwater management for the streetscape itself and any properties that tie into the storm sewer system. Without making improvements to the channel, that obligation would go to the streetscape project itself. The library would have difficulty managing all of its required stormwater management onsite. If they do anything on site, such as a demonstration project for educational purposes, it would not have to meet the full rule, they could partially buy in. For Jarmans Gap Road, staff has been talking with VDOT to get them to buy in to this system. There is already a property owner waiting to start using this and start paying into it quickly.

Mr. Harper said staff came to the Board previously with a preliminary planning cost estimate of about \$600,000, and after some cost recovery about \$350,000; those numbers have increased. Staff made the best guess it could at the time based on a concept, using formulas provided by some institutions. That guess was low. They failed to provide a contingency based on the uncertainty of that estimate. He said there is no way to know what it will cost until it is put out to bid. This estimate could be a little high. Due to the economy, construction costs are cheaper at this time. Hopefully, it will not be the full \$1.0 million price tag at the end.

Mr. Harper said he would like to discuss one of the cost recovery items, which is a grant. He reported that the Rivanna River Basin Commission applied for a grant and was successful in receiving that grant of about \$725,000 – a portion of that will in turn be granted to the County to construct this project. There are various obligations the County will have to fulfill to get the funds from the Commission. He said the County is part of that Commission and has been working with the other governments which are part of the Commission on the application and administration of the grant. It will be part of the cost recovery.

Mr. Harper said the Gray Rock development, in 1998, made a proffer for improvements to Jarmans Gap Road. Since this project will serve Jarmans Gap staff thought it was appropriate to apply that money to the stormwater project. In all, the net project cost may go up as much as \$344,000.

Mr. Slutzky asked how much money is in the Stormwater Improvement Fund. Mr. Harper said he did not have that figure today. However, if this project is done at the cost mentioned and the other big project, Woodbrook Lagoons, is done at an estimated cost of \$600,000, there will be about \$1.0 million left in that account.

Mr. Slutzky said he asked because it has been a few years since the Board approved money to be used for Sunridge Road. He thought this fund was going to be used since a significant portion of that project also addresses a stormwater runoff problem. He wants to be sure that since that project "is languishing terribly" that its funding base is not eroded in the meantime. Mr. Harper said he was not aware of that.

Mr. Slutzky asked if he was wrong about that. Mr. Tucker responded that money is set aside for Sunridge Road. He said the project is not "languishing" because of staff.

Mr. Slutzky asked if it is being held up because of right-of-way issues. Mr. Tucker said that is what he understands.

Ms. Mallek said recently someone mentioned that the amount of money involved seemed large, but in comparison, the Birnam Basin project cost about the same and it does not have the same features as the wetlands. Mr. Harper said it cost about \$725,000 when all the components were added together. Engineering-wise it was a much simpler project. He said the Crozet project is unusual because historically the County has not done large projects, so \$1.0 million should not be shocking to anyone. This will serve 30 impervious acres. The cost, per impervious acre, is very competitive. He mentioned that cost recovery takes many years, and so far about \$50,000 has been recovered for the Birnam Basin project which was completed five years ago. It has been on the books since 1984. If there is a lot of development, cost recovery will happen more quickly.

Mr. Rooker said the area served by the Birnam Basin is almost built out. In the Crozet situation, it would be expected to have a lot of development over the next 15 years.

Mr. Harper said that is a summary of what staff is requesting today. He then offered to answer questions.

Mr. Davis said if the Board is in favor of using these funds, a formal appropriation would need to be prepared and then brought back for approval on a consent agenda. The Board needs to authorize staff to proceed with the project.

Ms. Mallek **moved** to authorize staff to proceed with easement and property acquisition; and, also to authorize staff to bring back the necessary appropriation form to appropriate funds from the Gray Rock proffers, Stormwater Control Improvement Funds and Rivanna River Basin Commission grant.

Ms. Thomas added that she and Mr. Dorrier are members of the Rivanna River Basin Commission. That money brings with it some extra features – for example, there will be signage - all of the communities that have these projects will have signage so people will understand what is going on. The County will also have to certify to the Commission that the project has been done right which may help with the contractor. The University of Virginia did a very expensive project and at the last minute the contractor put the pipe in the wrong place, so they want to make sure it is done right. Many of these projects go into effect and no one puts in the extra money to see that it is actually collects the sediment and nutrients it was to collect. She said Mr. Harper was on the Technical Advisory Committee and has helped shape this project.

Mr. Rooker said the Board is certainly grateful to the Commission for helping make this possible.

Ms. Mallek said having seen over the years the great success of a similarly designed project in Bentivar where the North Fork and South Fork of the Rivanna come together, that TNC put together several years ago, she is looking forward to this. It will be a great place to see a lot of wildlife.

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

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

Agenda Item No. 17. **Work Session:** ZTA-2008-02, Planned Developments and Neighborhood Model District.

Due to time constraints, this item was moved to the August 5, 2009, Board meeting.

Agenda Item No. 18. Closed Meeting.

At 12:46 p.m., **motion** was offered by Ms. Thomas that the Board went into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia, under Subsection (1) to consider appointments to boards, committees, and commissions; under Subsection (1) to conduct an administrative evaluation; under Subsection (1) to evaluate the performance of a County department which requires the discussion of the performance of a specific individual; and, under Subsection (7) to discuss with legal counsel and staff specific matters requiring legal advice relating to the negotiation of an open space easement.

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

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

Agenda Item No. 19. Certify Closed Meeting.

At 2:12 p.m., the Board reconvened into open meeting. **Motion** was offered by Ms. Thomas to certify by a recorded vote that to the best of each Board member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed or considered in the closed meeting.

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

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

Agenda Item No. 20. Boards and Commissions: Vacancies/Appointments.

Motion was offered by Ms. Mallek to:

Appoint Ms. Frances Hooper to the Community Mobility Committee, to fill an unexpired term which will expire December 31, 2010.

Appoint Ms. Jane Covington to the Historic Preservation Committee, to fill an unexpired term which will expire June 4, 2010.

Appoint Mr. Drew Holzwarth to the Housing Committee, to fill an unexpired term which will expire December 31, 2010.

Appoint Ms. Darlene "Casey" Beeghly to the Pantops Community Council, with term to be determined at a future date.

Appoint Ms. Faye Giles as an at-large member to the Workforce Investment Board, with said term to expire June 30, 2010.

Reappoint Mr. Jeff Werner to the Fiscal Impact Advisory Committee with said term to expire July 8, 2011.

Reappoint Mr. Rod Gentry to the Workforce Investment Board as an at-large member with said term to expire June 30, 2010.

Reappoint Ms. Sue Goldman to the Workforce Investment Board with said term to expire June 30, 2012.

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

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

Agenda Item No. 21a. Transportation Matters: VDOT Monthly Report.

Mr. Allan Sumpter, Residency Administrator, reported that the signal at Woodbrook Drive and Route 29 North has been investigated and VDOT found some intermittent problems. Changes were made so hopefully that resolved the issue.

Mr. Sumpter stated that VDOT is proceeding with plans to install four-way stop signs at Woodlands Road and Reas Ford Road next week; there are message boards in place letting people know about the changes in the traffic pattern.

Mr. Sumpter reported that the public hearing package for the Georgetown Road project is being reviewed by the VDOT central office. It will then go to the State Office to be signed for approval.

Mr. Rooker noted that constituents in that area do not want streetlights on that road. Mr. Sumpter said before there is an absolute "no" to that he would like to have more discussion to see if some kind of indirect lighting could be used. There are many options available now as opposed to what lights up the entire community. If this is something the traffic engineers feel strongly about, he has asked them to come and show some examples of how to minimize the impact of lighting.

Mr. Sumpter said VDOT is proceeding with getting the right-of-way for Jarmans Gap Road.

Mr. Sumpter said VDOT's District Construction Engineer, Mr. Kenneth Shirley, is present to give an update on the Meadow Creek Parkway project.

Mr. Shirley said the project cost is \$12.0 million, and about 12 percent has been spent thus far. He said the clearing and removal of trees to prepare for construction is 100 percent complete with the exception of a couple of trees here and there. As to excavation of material, about 43,000 cubic yards have been moved to date – that is an area the size of a football field filled 20 feet high with material. The box culvert has been placed south of the creek close to Melbourne Road. There is approximately 10,000 linear feet of storm sewer pipe on the job with almost 1,000 feet having been placed so far – about 10 percent of the storm sewer.

Mr. Shirley said he wanted to paint a picture for the Board members. He knows that while pieces of this project are visible, a lot of it is not. Some drainage work has been done at the Melbourne Road side of the project. The majority of the utility relocations have been done from that point north. They are at-grade at Melbourne near the softball field area. Continuing northward there is a small amount of excavation needed to fill in where the box culvert is located. There is a large hill between the box and the creek. That is almost down to grade at this point. The material left will be hauled to the bridge at the creek. One of the piers for the bridge has been installed and it looks beautiful with the stone finish, and they are working on the northern abutment which is where the bridge lands. He said they are working on the substructure on the north side. When that side is completed, they will move to the south side of the creek and begin that portion of the bridge.

Mr. Shirley indicated that continuing north there is a large hill just north of the bridge. A lot of material has to be moved from that area. South of the creek, 70 to 80 percent of the earth has been moved. North of the creek that big hill must be removed. Drainage work is going on in front of CATEC. The majority of the 1,000 feet of storm sewer pipe will be installed in that area. Continuing around by the railroad, the bore underneath the railroad has been completed so that work can begin on the northern end of the twin structures going over the railroad.

Mr. Shirley said from now until the end of the year, work on water lines and storm sewer lines will continue near CATEC. Soon the work will begin to show the layout of the road and the near realignment at CATEC. It will be next spring before there will be asphalt on that road. He said that next summer traffic will be shifted from the existing bridge over the railroad onto the new bridge, so the existing bridge can be replaced. Also, next summer they will make the tie-in with Rio Road which will require closure to do the water lines and build, and do the excavation and rebuild that road. He said that essentially the road is banked in one direction but when the project is done it will be going in another direction.

Mr. Rooker asked if Rio Road will be closed for a period of time. Mr. Shirley said Rio Road will be closed during the summer months between school sessions. It is in the contract that it will be for a limited period of time

Mr. Rooker asked how long that closure should last. Mr. Shirley said it will be approximately one month. He said there are eight to 10-foot deep trenches that have to be dug to place the waterline, then getting it placed, backfilled, and tested and tied in will take a couple of weeks, not to mention the road work that has to occur. It is a very confined space, so not too many crews can work at the same time. Completion date is scheduled for October, 2011.

Mr. Slutzky asked if there is a contingency should people decide to take the wooden bridge on Free State Road to circumvent the closure on Rio Road. He said that bridge is not capable of taking any more cars. Mr. Shirley said he is not aware of where that bridge leads to on the east side. They would not be able to go further south on Rio Road.

Mr. Slutzky asked where traffic would go when it comes out of Belvedere. Mr. Shirley said they will have to make a right turn out of Belvedere and head toward Route 29.

Ms. Mallek said the detour will then be through Greenbrier Subdivision.

Mr. Rooker said that earlier Mr. Shirley mentioned a \$12.0 million project, but there are three separate projects in the County portion of the Parkway which total nearly \$30 million. Mr. Shirley said the project from Melbourne Road to the railroad bridge was awarded to the contractor for \$11.8 million in construction dollars.

Mr. Rooker asked if the cost of the bridges is included in that figure. Mr. Shirley said the bridges and roadway cost \$11.8 million from Melbourne Road to the railroad.

Mr. Boyd asked if Mr. Shirley knows what will happen with the rest of the road. Mr. Shirley said he does not have that information at this time. He knows that VDOT is continuing to work on the next portion south of Melbourne and the City is working on the interchange portion.

Agenda Item No. 21b. Transportation Matters not listed on the Agenda.

Mr. Rooker said the Broomley Road Bridge was discussed in the winter, and it was too cold to do paving work at that time. It was to be done in the summer, and now he sees that it is scheduled for August. He said the top of that bridge is in very bad condition. Mr. Sumpter said because VDOT is partnering with the railroad to do this project, VDOT is pushing them to make it happen. He said Buckingham Branch Railroad has told him they have been dealing with a lot of conditions throughout their entire line trying to get work scheduled. He was at the bridge this morning and there are a couple of potholes which he reported in an effort to get them immediate attention. For everybody's benefit, he wants to get something done to this bridge.

Ms. Thomas asked if the project will assure a greater weight limit. Mr. Sumpter said the weight limit won't change, this work only deals with rideability.

(Note: At this time, the Board skipped to Agenda Item No. 21d, and considered Agenda Item No. 21c immediately after completing this item.)

Agenda Item No. 21d. Transportation Matters: Hatton Ferry.

Mr. Tucker said the Board, at its meeting on June 3, 2009, discussed the decision of the Virginia Department of Transportation (VDOT) to close the Hatton Ferry on July 1, 2009. At that time the Board authorized Mr. Slutzky to send a letter requesting the Commonwealth Transportation Board to reconsider its decision and at a minimum work collaboratively with the County to weigh other alternatives for continuing the Ferry operation. On June 10, 2009, the Board agreed to guarantee funding for VDOT to continue operations for one quarter beginning July 1, 2009. That was communicated to Commissioner David S. Ekern. The Board took this action with the expectation that private funds would be forthcoming to reimburse any County funding necessary to guarantee the continued operation of the Ferry.

Mr. Tucker said VDOT has taken the position that continuation of their operation of the Ferry will require advance payment of funds and a memorandum of agreement signed by the appropriate County official and Commissioner Ekern. VDOT has estimated its administrative/overhead cost for the upcoming quarter to be approximately \$1,800. The daily contract rate for the Ferry operator is \$290/day. Last year, the Ferry actually operated only 12 days from July 1 through September 30. Pending river conditions, there are potentially 26 days the Ferry could operate during the upcoming quarter.

Mr. Tucker said the potential total budget impact for the County is \$9,340 for the operation of the Hatton Ferry from July 1 through September 30. It is unknown to what extent this budget impact will be mitigated by private fundraising. Staff recommends that the Board appropriate \$10,000 for the operation of the Ferry through September 30, 2009, with the understanding that any private contributions received for the Ferry operation be utilized to offset County funding support. It is further recommended that the Board authorize the County Executive to execute an appropriate Memorandum of Agreement with VDOT.

Ms. Thomas noted that the operator of the Ferry and the President of the Historical Society are both present if anyone has questions for them.

Mr. Boyd asked Mr. Dorrier to report on the status of the private fundraising.

Mr. Dorrier replied that they have set up a committee to deal with funds. Members of that committee are Mr. Marshall Pryor (President, Old Dominion National Bank), Mr. Steve Meeks (President, Albemarle-Charlottesville Historical Society), Mr. Larry Barnett (a local realtor), Mr. Ashley Pillar (who runs the ferry) and Mr. Dorrier. He said they have talked informally and opened a bank account at Old Dominion National Bank. They are actively raising money for the Hatton Ferry Fund; funds can be sent to P.O. Box 321, Scottsville, Virginia. He said progress is being made.

Mr. Dorrier said they are trying to get enough funds to get through the next quarter so they have time to get better organized, and get a mailing out to the people who have shown an interest in the Hatton Ferry. There has been significant interest shown by a number of people. In fact, it has gone national because the Today Show wants to come here and do a piece on the Hatton Ferry. He said that practically everyone who is interested has been sending e-mails to VDOT asking for funding. The committee is trying to set up a permanent organization to take over the operation of the Ferry. VDOT is in a position to help direct the future of the project since they have managed it for many years. He passed out a copy of a brochure about the Ferry which says this is not the first time the Ferry has been threatened with closure; it was so threatened back in the 1940s. It was not closed, and has actually been in continuous operation since the 1870s. He thinks it would be a tragedy to have it closed because it is the last poled ferry in America. That is something Albemarle County can be proud of, and if promoted properly, it would pay for itself.

Mr. Dorrier said the Town of Scottsville has been working on walking trails and river activities – there is a park (Canal Basin Square) showing how bateau are made and they are actively pursuing historical preservation. There is an opportunity here for the County, working with the Historical Society

and VDOT, to forge a public/private partnership that will enhance the Ferry and attract people to it. He understands that about 200 people came to Hatton over the weekend to look at the Ferry. It has already attracted a lot of interest and he thinks it will continue to, particularly if promoted properly.

Mr. Boyd suggested that a local person who works for VDOT be added to the committee.

Mr. Slutzky said that person could be on the committee, but VDOT has no money at all. They have been gracious in accommodating its management it for the next three months.

Mr. Boyd said he was thinking it would keep VDOT in the loop to know what is going on.

Mr. Davis said it's important for VDOT to clearly state what their position is on the future of the Ferry, because what they've told the County is significant as to their expectation for the County after the end of September. It might be helpful for Mr. Sumpter to clarify that with the Board at this point.

Mr. Sumpter explained that it is VDOT's position that it will use the funds as specified in the draft agreement and operate the Ferry for the months of July, August and September. Beyond that, VDOT does not plan to participate in any operation of the Ferry.

Mr. Rooker said it is understood on the record that during that time VDOT expects to be paid for its cost of the operations. The request today is for the County to put up \$9,000 against which VDOT would draw to pay for the operation, but at this time it is not willing to put any more money into it. Mr. Sumpter said that is correct.

Ms. Thomas asked if the County is aware of all its obligations should it choose to take on the ownership of the Ferry operation as of October.

Mr. Rooker said the Board discussed this at its last meeting. At that time it was represented that private money was "just about in the bank." Since VDOT was going to close down operations on June 20, and the Board did not have another meeting scheduled until today, the County needed to say it would put up \$5,000 that would come back from private money in order to prevent it from being closed on June 30.

Mr. Slutzky said Mr. Dorrier had said that \$5,000 was already committed.

Mr. Dorrier said he still thinks \$5,000 is committed, and he also believes it can be moved ahead. Mr. Sumpter said he wanted to make a clarification just to be sure the record is clear. The \$9,000 that is specified (chart on screen) is the scenario if the Ferry were to operate every available weekend from July through September. He said that last year, due to weather conditions, the Ferry only operated about 12 days during that period. There is no way to know what the weather conditions will be during that period this year so that number is based on every potential weekend that it could operate.

Mr. Rooker said the Board had talked about \$5,000 that it wanted to get back. There has not been any commitment by this Board to take over the operations of the Ferry. VDOT will continue to operate for this limited period of time, and now the Board is saying it will actually pay to VDOT \$9,200, and if they do not utilize all of that money, the County will get back the difference. It is his understanding that the commitment is that private money will reimburse the County for that outlay. Also, he would suggest that the Town of Scottsville participate in the funding because it is the primary beneficiary of any tourism that occurs.

Ms. Thomas added that Buckingham County should also contribute.

Mr. Rooker said the Board has received several e-mails from people in Buckingham County urging the County to keep the Hatton Ferry operating, but none of them have volunteered to put money into it. He thinks the Board's intentions need to be clear, that it is putting up interim money to allow this to continue to be operated by VDOT between now and September 30, with the expectation that it will probably not take the \$9,000 because that is the maximum that could occur if it were open every day. It will probably cost \$5,000 and the County expects it will get that money back from the private money that Mr. Dorrier has said he is putting together.

Mr. Dorrier said Mr. Meeks is in the audience and he invited him to come forward and speak as president of the Albemarle-Charlottesville Historical Society.

Mr. Davis said he thinks it's a good idea to have VDOT involved in the long-term discussions about this, because ultimately at the end of September VDOT will have to enter into an agreement with someone if they are going to continue the operation of the Ferry. He said VDOT would have to enter into an agreement to transfer or rent or lease the physical ferry to someone, and he is assuming that VDOT would need to issue a permit to someone to operate it in their right-of-way. VDOT will have to play a role if the Ferry is going to continue beyond September and be operated by someone else.

Mr. Rooker commented that the capital costs could well be substantially more than the operating costs – last year VDOT spent about \$40,000 in capital costs. It was suggested at the Board's last meeting that another \$25,000+ may need to be expended in the next year or two. It is not just the operating expense.

Ms. Thomas noted that the \$40,000 mentioned was a once in 18+ year's expense.

Mr. Rooker said they did suggest that there was a possible \$25,000 needed for the cabling mechanism.

Mr. Steven Meeks said he would like to introduce Mr. Ashley Pillar who is the actual operator of the Ferry.

Mr. Pillar stated that the Ferry has received zero maintenance since 1986, other than preventative maintenance such as greasing cables and winches and cleaning off the ramps when there is high water. This spring money was spent to refurbish the Ferry – bringing cranes in from VDOT – and last spring a company from Lynchburg inspected the cables and rode them across (Mr. Pat Mullaney has the documentation on that visit). He said there has been little deterioration to the cable system – it was deemed to be in great condition. He said there is not a semi-annual cable check. There are two days in the contract – one at the beginning of the year and one at the end of the year – to get the Ferry ready for the season. There is little maintenance necessary; the Ferry can operate for another 20 to 30 years.

Mr. Pillar said the Ferry does not generally operate in July and August because of low water levels. There has been an unusual spring this year so the water level is higher – the River is at about three and a half feet, but they probably will not run this weekend anyway. It probably will not run until there is a good amount of rain; when it is lower than three and a half feet it cannot cross without hitting rocks. When the water level gets above nine feet the Ferry can't be hooked up on the other side to the chain. He offered to run the Ferry at no cost until the Board figures out where the funding will come from for the long-term, and then it can pay him per day. He would like to see the County keep it, since he thinks the benefit far outweighs the cost. He said the Board members need to visit the Ferry and see the kind of people who come to see the ferry, they are from all over the country.

Mr. Slutzky said Mr. Pillar's comments seem to go against VDOT's contention that there is a pending need to do significant cable repair at a significant price tag. Mr. Sumpter responded that Mr. Pillar is speaking about the cabling itself. VDOT's Structures Report indicates that there will need to be rehabilitation work on the tower support systems that link to the cabling, and also to the dead bin where they are anchored. He said the estimated cost could be anywhere from \$30,000 to \$50,000.

Mr. Rooker said that, personally, he thinks there is a nice historic aspect to this, and it is a benefit to the area. That could be said about Monticello or the Lewis & Clarke Center, and to him it would be appropriate for a nonprofit to take over its operation. He said the Board could choose to contribute to a nonprofit, and if Scottsville deems it to be important, they should also contribute. He does not think this Board should take over the operation. It should help facilitate a nonprofit to do that job, and apparently there is significant interest in doing that.

Mr. Sumpter said he would like to clarify that when talking about VDOT being involved, VDOT is willing to be involved with any kind of transition that would take place. They have no intent of going to the ferry on July 1 and pulling the boat out of the water and cutting the cables down, etc. They are just talking about not operating the ferry after this date. No decision has been made about whether to dry dock the ferry; they are willing to be involved in discussions. VDOT's position is clear – they do not intend to continue to operate this facility as part of its transportation structure.

Mr. Slutzky asked Mr. Meeks to speak.

Mr. Meeks said there needs to be some dialogue about what will happen after September. That will make the task of raising the funds to continue after this year easier. He said that in 1982 the Historical Society made a commitment to the Ferry and raised money at that time to help refurbish it and the building. They have been overseeing the ferryman's hut – a historical kiosk – ever since. The Historical Society Board has gone on record as wanting to continue to support it, and will do everything possible to help raise the funds. He said that he and Mr. Dorrier are working to get the process started. All of this has happened fast. There is one charitable institution, the 20th Century Merchants' Fund, that has pledged to match some of the money they raise, with the final amount to be determined.

Mr. Slutzky said he applauds the efforts to raise funds and facilitate a seamless transition to private management of the operation. He said they should make it clear to potential contributors that this Board only committed to a short-term guarantee of money. Mr. Meeks said "correct."

Mr. Meeks said Mr. Dorrier had identified a committee that would like to work on this project. In 1982 the County established an ad-hoc committee, and he asked if they could do it again. It would give the committee a little more legitimacy to pursue funding, and if a County staff person could be assigned it would keep lines of communication open and clear.

Mr. Rooker said if there really is broad-based support for keeping the Ferry going, a nonprofit should be created for that purpose - it does not need County action for that to occur. He does not think the Board needs to create a committee – it has received numerous e-mails from people expressing an interest in putting together a group to do this. He suggests they set up a nonprofit so contributions would then be tax deductible.

Mr. Slutzky said he thinks the Board members would support letting Mr. Mullaney invest some time to facilitate that ongoing transitional dialogue. It would slow down the process to wait for the Board to form a new committee. Mr. Meeks said that would probably serve the same purpose.

Mr. Slutzky asked the Board members if they are willing to move forward with the agreement and the appropriation.

Mr. Dorrier **moved** to accept the Memorandum of Agreement dated July 1, 2009, between Albemarle County and the Virginia Department of Transportation to operate the Hatton Ferry through September 30, 2009, and to authorize the County Executive to execute same, and to appropriate \$9,300 from the Tourism Fund, Capital Code 1901072030950107, River Access Improvements, for the operation of the Hatton Ferry through September 30, 2009, with the understanding that any private contributions received for the Hatton Ferry operation be utilized to offset County funding support. Mr. Slutzky **seconded** the motion.

Mr. Rooker said he would support this with a provision as stated earlier on the record about the expectation of the County regarding the total cost, and that the County will get money back from VDOT if it is not utilized, and that the Board expects private fundraising to ultimately pay the County back.

Mr. Dorrier said funds can be sent to P.O. Box 321, Old Dominion National Bank, Scottsville, Virginia, 24590.

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

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

Mr. Davis clarified that the \$9,300 would be forwarded to VDOT, and they will return any unexpended moneys after the end of September; if there are any unanticipated operating costs that exceed \$9,300 they will not incur that cost unless they amend the agreement with the County and have this Board agree to pay any additional cost. There is a possibility that if unanticipated costs arose that they would not go beyond the date when they run out of money.

Mr. Slutzky said that is understood.

(**Note:** The Memorandum of Agreement is set out in full below.)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made and executed in triplicate this 1st day of July, 2009, by and between the County of Albemarle, Virginia, hereinafter referred to as the COUNTY, and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT.

WHEREAS, the Commonwealth's official revenue forecasts have been reduced significantly as a result of current economic conditions and the Commonwealth Transportation Board budget for fiscal year 2010 adopted on June 18, 2009, does not include funding for continued operations of the Hatton Ferry, located on the James River near Scottsville, Virginia, between the counties of Albemarle and Buckingham, Virginia; and,

WHEREAS, the DEPARTMENT and the COUNTY, recognize the historical significance of the Hatton Ferry as one of the last remaining operational poled ferries in the United States; and,

WHEREAS, the COUNTY has expressed its support for the continued operation of the Hatton Ferry and, furthermore, the Albemarle County Board of Supervisors has voted to guarantee funding to the DEPARTMENT for the operation of the Hatton Ferry from July 1, 2009, to September 30, 2009; and,

NOW THEREFORE, in consideration of the mutual premises contained herein, the parties agree as follows:

1. The COUNTY shall:
 - a. Provide funds to the DEPARTMENT for the operation of the Hatton Ferry, in the amount of \$9,300, no later than July 10, 2009, for the operation of the Hatton Ferry from July 1, 2009, through September 30, 2009.
 - b. Accept responsibility for any additional costs to operate the Hatton Ferry from July 1, 2009, until September 30, 2009, in excess of those identified in 1.a, but only after concurrence of the Albemarle County Board of Supervisors and modification of this Agreement.
2. The DEPARTMENT shall:
 - a. Continue operation of the Hatton Ferry in accordance with established DEPARTMENT processes and procedures, including the DEPARTMENT'S current contract for an operator of the ferry, beginning July 1, 2009, and ending midnight September 30, 2009.
 - b. Provide a summary of operational expenditures to the COUNTY for charges of actual DEPARTMENT cost.

- c. Notify the COUNTY of additional expenses resulting from unanticipated circumstances and provide detailed estimates of additional costs associated with those circumstances.
 - d. Return any unexpended funds to the COUNTY no later than 90 days after final operational expenses have been paid in full.
3. Nothing in this agreement shall be construed as a waiver of the COUNTY's or the Commonwealth of Virginia's sovereign immunity.

THE COUNTY and DEPARTMENT acknowledge that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors, and assigns.

THIS AGREEMENT may be modified in writing by mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

COUNTY OF ALBEMARLE, VIRGINIA:

(SIGNED) Robert W. Tucker, Jr.
Robert W. Tucker, Jr.
Typed or printed name of signatory
County Executive
Title

July 1, 2009
Date

Signature of Witness

Date

NOTE: The official signing for the COUNTY must attach a certified copy of his or her authority to execute this agreement.

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:

Commonwealth Transportation Commissioner
Commonwealth of Virginia
Department of Transportation

Date

Signature of Witness

Date

Note: At this time, the Board returned to consider Agenda Item No. 21c. Transportation Matters: Route 29 Corridor Program.

Mr. Charlie Rasnick, VDOT Project Manager for the Route 29 Corridor Study, addressed the Board. He reported that the study began about 15 months ago when the Commonwealth Transportation Board met with many members of the General Assembly as well as elected local leaders. The CTB initiated the Route 29 study to address 219 miles from the North Carolina line at Danville to Gainesville, Virginia. He said they used recommendations from a lot of the previous studies to the extent possible, particularly those with local emphasis such as Places29. All forms of transportation to move people and goods are considered in this study. Their goal is to develop a framework plan for Route 29 with more details included at the project level. They are looking at rail service, transit service, as well as highway-oriented transportation and other issues that need to be addressed, such as carpooling and vanpooling, and connections to other modes.

Mr. Rasnick said they are looking at many issues that have been looked at before particularly the area south of Charlottesville between North Carolina and I-64. There was a significant study completed for that corridor in 2003. Much of that study is being used as is, but it is being augmented with more in-depth study of transit and rail. They are also looking at policies, procedures, and legislation that protects Route 29. There are many areas where things done in the past must be fixed. Many things have occurred along the corridor that have impeded the traffic flow, both local and through traffic. There needs to be a level of procedure and a level of policy and some legislation to protect the corridor, in order to control the access.

Mr. Rasnick said a blueprint is being developed that will be in three stages. The short-term stage will focus on what to do in the first 10 years, and in that phase they will talk about procedures, policies and legislation. The first 10 years will focus on safety-related projects, smaller projects. He said they will only get to the zero year when funding is available, so it might be some time before they get to the zero year. It is a good time to develop a plan while waiting for transportation funding to become available.

Mr. Rasnick said there is the wide swath of the Route 29 corridor along the Piedmont – which includes rail. He then introduced Mr. Joe Springer, the Project Manager for the consulting team, and Mr. Blager Vilovich with Renaissance Planning. He said they will give an overview and then the Board may

wish to ask questions. In the next couple of months they will get into details with the Board and members of County staff.

Mr. Springer said the group's study process was in three phases. The first was to identify needs and establish a planning framework. The study began with no preconceived notions, so their initial steps were to seek public input on issues related to Route 29. They have been at the second stage for about six weeks. That phase is to develop specific recommendations which are not only project-related but looking at the way things are done and legislation, access management regulations, how VDOT and localities work together, etc.

Mr. Springer said today's meeting with the Board is part of the series of one-on-one meetings they have had throughout the corridor. They want feedback before putting out specific recommendations on the overall planning framework to make sure everyone is in general agreement with the framework. He showed a slide on the screen outlining some of their goals for getting input on that framework. They had a "listening tour" that consisted of eight meetings starting in the south and moving up to Gainesville. Concerns that arose at those meetings included safety as number one and congestion in spot locations. They heard from people in five general locations such as the area north of Charlottesville. He said there was a 100 percent consensus throughout the corridor about the proliferation of traffic signals. Concerns were expressed about possible bypasses, potential impacts on historic resources, economic development, the lack of mobile choices, and issues related to land use and growth management.

Mr. Springer reported that following those meetings, they had a series of planning forums – four workshops were held throughout the corridor – and from that process they identified consensus themes. People were asked to look at a "tool kit drawing" on maps and then asked to draw their ideas on maps. The next step is to think about how things are developing and how land use decisions are made, and how access is granted onto Route 29 by local government and VDOT. Those decisions are made on a regular basis so many questions were asked as to how those decisions might have affected a better outcome.

Mr. Springer said based on that meeting they came up with a number of preliminary consensus themes. The first relates to access control. For long-term control the minimum level of access would only be at designated secondary road intersections and at key primaries. Land use planning and transportation planning would be done around this concept. A subtext to this particular issue is to make sure there is access management so that strip development doesn't continue to occur. Some tools to make this happen include purchase of development rights, incentives to have access take place via secondary roads, developing portions of a grid system through private or public funding, and perhaps even purchasing limited access right-of-way.

Mr. Springer reported that the next theme is related to congestion mitigation. Congestion needs to be controlled and managed with the idea of ultimately improving locations through a number of measures including intersection improvements, signal coordination, and ultimately construction of interchanges. One thing they heard consistently throughout the corridor was the idea that a corridor-wide master plan should be developed, perhaps through cooperation between VDOT and local governments. It would guide both land use and transportation or ensure that they work together to manage land use decisions to minimize travel and traffic congestion.

Mr. Springer said there was discussion about the idea of corridor stewardship – basically ownership of Route 29. There is a need to look at ways to enhance the ownership aspect of VDOT whether it is done from a top-down level or cooperatively with local governments or whether VDOT sets the rules. He said the last item related to consensus themes is the multi-modal aspect. One thing that needs to be emphasized is the importance of the rail system in the corridor. It is important to put an investment in the rail system in advance of some roadway improvements to provide a competitive advantage to the rail transit and make it a higher priority than it is currently in Virginia. He offered to answer questions, and asked for feedback on some of the consensus items.

Mr. Rooker said that currently there are 53 lights on Route 29 from Charlottesville to I-66, with several applications pending for lights north of Albemarle. He asked why the State can't put a moratorium on red lights until the study is finished. Mr. Springer said a flat-out moratorium may actually come from the idea of corridor stewardship and changing the way VDOT and local governments work together. He is not certain the mechanism exists today for a flat-out moratorium on traffic signals.

Mr. Rooker said he understands that VDOT has the power to say whether a red light can be installed on Route 29. That issue came up with a light that was almost installed on Route 29 near the Route 250 bypass and VDOT had the power to stop it. Mr. Rasnick explained that VDOT has the power to stop installation, but many of the signals have been in the works for many years. There is an expectation from citizens that if VDOT makes a commitment to put them in the electricity will be put there to make them work. That is an issue that cannot be overcome right away. They are trying to limit the number of additional traffic signals because even though the signals make overall safety greater, they do not stop traffic accidents. They recognize that the number of traffic signals needs to be limited, but there is not much they can do in this study because of the timeframe and the commitments already made.

Mr. Rooker said he understands applications have been made for additional lights that may be "at a point of no return." He thinks VDOT could "put out the word" that they are not going to accept any more applications for new lights until this report is issued and digested. Hopefully certain things are implemented that will ameliorate the need for some of the lights. Mr. Rasnick said as part of this plan they talked about what would be done in the first 10 years. They are looking at an operations plan that shows what is in the works and what needs to be done to address all the safety issues. Even though funding is

not available for projects, safety issues must be addressed. There must be a plan so it is clear to local leaders what VDOT will be doing if safety issues arise.

Mr. Springer said as a practical matter, traffic signals are installed based on traffic signal warrant studies. They are typically based on some identified need; if a signal is not installed then some other way has to be found to accommodate what is happening at that location.

Mr. Rooker said he knows that, but it is more difficult to take something out once it has been installed then not to install it in the first place. Mr. Springer agreed.

Ms. Thomas said she would like to speak up for Route 29 South in Albemarle because it is not normally the focus of anyone's attention. If there is a one-size fits all solution put onto the corridor it will impact that nice rural area. It is all zoned rural and is not under any growth pressures. Also, it's too sparsely populated to ever support the kind of parallel road that would allow it to have more limited, controlled access than it has now. It also has school busses using it, and when talking about multi-modal that is a mode that is not often considered, but it creates a very definite safety issue. She said the General Assembly overrode VDOT and raised the speed limit on that road, so there are school busses and a rural road and people speeding at well over 60 mph. She appreciated the meeting held with parishioners at the Cove Presbyterian Church talking about the historic structure and their concerns about what widening the road in that area would mean to them. She said these are things that are not mentioned often because it is sparsely populated.

Mr. Springer responded that the second and third phases would address alternatives to the knee-jerk reaction of doing things such as installing signals. If traffic volumes and development in the southern part of the County stays as it is presently, some of those things will be on the shelf available for use, but probably would not be used.

Ms. Thomas said people worry about the future of their property if there is a dashed line on a map. They are not sure what it means.

Ms. Mallek said the list of information forwarded to the Board talks about access control as a long-term project in the way of fewer curb cuts, but what can be done in the short-term to make the long-term possible. Mr. Springer said they are working on specific prototypes to address situations at crossroads where properties were developed in the quadrants of the intersection and will require a grade separation at some future time. They are looking at ways to develop parallel road systems around these rural nodes, perhaps by building a simple bridge structure for the cross street and having local roadways serve as ramps. Some of those concepts are in Places29, but the idea is to apply it in an area that is rural.

Ms. Thomas said "corridor stewardship" is a nice term, but she is not sure what it means. Stewardship is the kind of word that is so popular that everybody has a different idea of what it means. Often, in this community, she has appreciated VDOT's stewardship such as not allowing cut-throughs in the median. That has helped the Board with land use planning decisions; sometimes the Board cannot say "no" because of stale zoning, but VDOT can say "no" to the cut-through. She tends to be distrustful of pretty words like "stewardship." Mr. Springer said it has meant different things to different people. He said VDOT owns this road so they are looking at that with these new Access Management regulations. They are looking at what they should be done with legislation to ensure that VDOT works more with local governments to protect their investment.

Mr. Slutzky asked when they anticipate having a final report completed. Mr. Springer said they are making a presentation to the CTB in November, and at that point it should be wrapped up. He mentioned a forum earlier that had to be rescheduled, hopefully in early September, and at that point there will be draft recommendations available for people to look at with the idea that they take some of these things and put specifics to them. He said they want to have this as their framework, but want to have some specifics so that people can see what is being talked about.

Ms. Thomas said use of the term "multi-modal" would be more believed if the train tracks were denoted on the maps. Mr. Springer said they should be on there now. If they are not, that was an oversight.

Mr. Slutzky said it is appreciated that VDOT is looking at this corridor-wide. There are risks to everyone on the corridor to having some element that is superimposed upon them as a matter of policy to the benefit of the corridor, but to the perceived detriment of the locality, when in fact if a U.S. highway like this is to be managed, there is no other way to do it right. He appreciates engaging localities in these discussions, and being open and receptive to comments. Mr. Springer said they are also developing specific recommendations relative to the Places29 plan as well as some other parallel corridors that Mr. Rooker has suggested; those are being discussed with County staff currently and probably will come back to the Board within the next month to get some feedback as well.

Agenda Item No. 22. From the Board: Matters Not Listed on the Agenda. (This item was moved to end of today's agenda.)

(Note: The Board recessed at 3:28 p.m., and reconvened at 3:37 p.m. in Meeting Room 241.)

Agenda Item No. 23. Joint Meeting with School Board

SCHOOL BOARD MEMBERS PRESENT: Mr. Steve Koleszar, Ms. Diantha McKeel, Ms. Barbara Massie Mouly, Mr. Ronnie Price, Sr., Mr. Jon Stokes and Mr. Brian Wheeler.

SCHOOL BOARD MEMBER ABSENT: Ms. Pamela Moynihan.

STAFF PRESENT: Superintendent, Pam Moran, Assistant Superintendent for Student Learning, Bruce Benson, Director of Fiscal Services, Jackson Zimmerman, Senior Assistant County Attorney, Annie Kim, and, Clerk, Jennifer Johnston.

Item No. 23a. Call to Order. At 3:37 p.m., Mr. Slutzky called the Supervisors back to order. Mr. Wheeler called the School Board to order.

Item No. 23b. Policy, re: School-Funding Allocations.

Mr. Tom Foley, Assistant County Executive, explained that staff is getting ready to start work on the CIP update. This week Local Government departments and the Schools will be asked to start developing requests which will be due back at the end of August; in September staff will start reviewing those requests. Today the question is whether to include debt service payments in the transfer to the Schools and whether to move to a single-allocation to the Schools for both operations and debt; a decision is requested on that question. If that is the decision, when all of the requests are reviewed in September, they would not be jointly reviewed. Instead the Schools would be responsible for their own capital program within this allocation of money. Staff is asking the boards today if that is a good idea. Staff has prepared some questions for this discussion.

Mr. Foley said he would make a short PowerPoint presentation before the boards begin discussion of these questions. If the Supervisors want to allocate to the Schools and have them be responsible for both operations and debt, staff will have to determine what percentage to add on top of the existing 60 percent. That's going to be a complicated review because there's no set amount; every year the amount changes. If it is decided to keep the existing process staff will draft recommendations on how to make the CIP Oversight Committee process more effective. However, staff needs to get past this first issue – it has been doing research of how these questions are handled in other localities.

Mr. Foley showed a slide depicting the allocation to the Schools, primarily focused on operating needs. It depicts the other localities staff researched, ones that are typically looked at for having best practices, and ones that use some kind of an allocation formula. This will give a perspective on the topic of the 60/40 split which will be discussed over the next couple of months. This group shows that there are a variety of ways used by different localities; two of them consider only revenue growth, four consider revenue growth plus another factor in determining the allocation, and two do not consider revenue growth at all but use some other type of data. He said staff wants the boards to know this is preliminary research and findings – School staff and Local Government staff will work together to follow up on some of this data and come back to the boards with that information.

Mr. Foley brought the attention of the boards to the next slide which focuses on the topic of discussion today which is the transfer for debt and capital. Four out of the seven localities researched consider the capital program for the schools independent of their allocation for operations. They do not allocate debt service with operations; they basically do an independent review of capital and make decisions separately from the allocation for operations. He said Spotsylvania considers operations and debt service and makes one transfer; in Arlington and Virginia Beach, in addition to debt service the allocation also covers pay-as-you-go or cash-funded projects. He said a majority of the localities are doing it in a way similar to how Albemarle does it, but their consideration is a little different.

Mr. Bruce Benson, Assistant Superintendent for Operations and System Planning, said a lot of factors determine the amount of the transfer. Today's conversation should include discussion of the disadvantages of moving in that direction and whether the current process works for the joint boards. Is it broken, does it need to be adjusted, should the guidelines for the CIP Oversight Committee be changed, or should the boards look at a different way of allocating resources. Prior to making a decision about whether to transfer the debt service to the Schools and have some separation in capital projects discussion, the current process needs to be looked at to see if there are ways to refine it. Both he and Mr. Foley think there is some room for improvement in the current process. What the Boards decide today will direct the next steps of the staff in preparing the FY 2010-11 Budget.

Mr. Benson said there are some additional questions that need consideration. Should School capital improvements be funded according to a set formula or funded based on evaluation of needs? One challenge when moving to a model where debt service is transferred to the Schools is that it could potentially limit conversation between the two boards regarding projects that would likely benefit both. In thinking about the additions/renovations going on at some schools, those schools meet a community need and separating the two programs entirely might limit the opportunity for conversation. What are the implications of an allocation that includes capital and operational needs on the following practices: upgrading facilities for community use, operation of school facilities for community use, maintenance standards for those facilities, and maintaining commonality as it relates to joint compensation goals?

Mr. Foley said depending on which of the two options the boards decide to proceed with, staff will need to either recommend an improvement in the CIP Oversight Committee process or develop a formula to split that percentage.

Mr. Slutzky said if there were a formula agreed upon, would staff have answers to the second set of questions. How would the Supervisors have a way to weight in on the community benefit of a school facility when it was no longer a part of the funding decision? How do you overcome that as a concern? Mr. Foley said staff is asking that question of the Supervisors today. That issue would have some impact – is it a good direction to move in?

Mr. Slutzky asked if a policy could be set up saying that there is a mutually agreed upon expectation that facilities would be available for certain kinds of uses, and that would be applied to any school building/project the Schools undertook if that expectation was satisfied.

Mr. Rooker said after looking at the staff report and thinking about this, he does not think it is a good idea. However, he might be persuaded otherwise if he hears things he had not thought of. Generally speaking, capital improvements are “lumpy” – a school is built and then another might not be built for 10 years. There are facilities that are used for multiple purposes – school property is usually purchased with greater acreage than necessary for a school in order to satisfy community needs. The artificial turfs were just installed, and the Supervisors contributed money to those at the three high schools because it was a way to provide lighted field time for the community in an economical way, etc.

Mr. Rooker said he thinks this issue has come about because the boards need to look at retooling what the CIP Committee does. There is significant input from the Supervisors on school projects, and vice versa at that level. It needs to be a working committee that develops a priority list of projects – both school projects and General Government projects. He does not see an advantage to “going down this road” of a fixed allocation. There might be five years in which the Supervisors decided the schools had big capital needs and that was fine. Five years later when the Schools did not have big demands, other things could be funded. He is afraid a fixed allocation will not be responsive to the differing needs of the community. Capital is much different than operations.

Mr. Slutzky said Mr. Rooker may have saved this group a fair amount of time because that was his conclusion also. He thinks this became a problem for the committee because it felt the Schools decided what projects they needed and they did not have an obligation or right to weigh in heavily on them. Not dissimilarly the School members of the CIP committee did not seem to feel welcome engaging too much on some County projects. The CIP process might be focused on it being truly collaborative – put all the projects in one box and collectively decide what gets done and why. If that is the crux of the problem that gave rise to this discussion, maybe that is the way to solve it. He asked Mr. Boyd to comment since he is a member of the committee.

Mr. Boyd said he was in a hybrid position. He does not think the 60/40 split should be used for anything other than budget guidance. It should not be a hard and fast rule either on the operating side or the CIP side. This year, the CIP Committee was faced with decisions about whether to renovate all of the tracks at three of the high schools, or to fund the library project. There was no mechanism to use to decide which project was the most important. Some people on the committee said they weren't “giving in” on the library project. It would be easier if the Committee had guidelines about how much money was traditionally allocated in the CIP to one side or the other side. In the last 10 years there have not been many County projects so it has not been a problem. Now there are several library projects in the mix and stormwater management needs. School System needs have tapered off a little because enrollment is not increasing. There should be a system that is flexible enough to deal with the changing environment – the lumpiness that Mr. Rooker talked about. That cannot be done when saying 60 percent goes to the Schools and 40 percent goes to the County.

Mr. Slutzky said the 60/40 issue is a separate conversation. The Board has been funding the Schools because education is a priority, but the result is that the Board, for a long time, has been remiss in adequately funding infrastructure. Now, it is predicted that there are about to be infrastructure needs in the County. The fact that they have not been addressed is in part because of the CIP process where there is an underlying deference to School projects. If the two are not going to be bifurcated but commingled more effectively, how do the Supervisors and School Board collaboratively figure out how to fund them?

Mr. Boyd said the School System does not try to determine what projects they need in terms of the CIP. There is nothing that says they will get “x” amount of dollars over the next few years based on projections and the County's needs. The Schools don't start at that place, but with a lot of placeholders for projects that may or may not be done. If they think a new school will be needed in the next five years, money is set aside in the CIP for land purchase - it is a placeholder, it is not a definite project. He knows that some of that type of thing is needed, but there have to be guidelines for both sides of government in terms of what is available to budget based on the economic forecast.

Mr. Stokes said he has been a member of the CIP Oversight Committee for three years, and thinks there are guidelines. He takes exception to the description of the CIP process as not collaborative and broken. The Committee has gone through projects for both the Schools and Local Government making decisions based on the guidelines of debt levels and revenue levels. First they discuss the amount of money available. This past year there was not the money needed, so the number of projects was reduced - the Committee went through each project. When they got to the School projects it was not said they could not be talked about because a decision had already been made. From his perspective as

a Committee member, the Committee, which is made up of School Board and Supervisor members as well as citizens and others, went through the process to decide what is needed and what can be afforded.

Mr. Slutzky commented that Mr. Stokes' is characterizing everybody as getting along fine, but the Supervisors have gotten a report from its representatives that there was no agreement at all.

Mr. Boyd said his perspective was from this year, he has not been a member of the Committee for three years. He said the committee directed staff to bring the CIP projects back in budget. The Committee talked about all of the different projects included in the CIP, but he did not say to delete a school project here and there because he did not feel it was his place to do that, as Mr. Stokes did not say to postpone the Crozet Library for two years.

Mr. Stokes said he knows Mr. Boyd expressed that opinion to the Supervisors. He took exception to that and wrote an e-mail to everyone explaining that was not what happened. He was sorry that Mr. Boyd didn't feel he could question the School Board's requests, but he certainly felt he could question the expense of a library or the expense of a firehouse and that's what the group did. At the end of the three or four meetings, the Committee put a recommendation together and that is when all of a sudden this questioning of the process came up and it seems like Mr. Boyd is asking why it was not done right.

Mr. Boyd said the Committee realized the CIP was not going to balance the way it was presented. They did not go back and say each side needs to cut a specific percentage out of its CIP.

Mr. Rooker said the whole idea of having a Committee is so it can, in a collaborative way, make recommendations that are in the community's interest based upon the amount of money available, whatever the percentage. He feels the School Board is as interested in the overall well-being of the County as the Supervisors are interested in excellence of the schools. It needs to be sure that when recommendations come out of that Committee, everyone is comfortable the process has been followed and the Supervisors get the collective judgment of that Committee.

Mr. Boyd said from his perspective, the reverse sides asked staff to step up and find balance. He thinks County staff went to great lengths to make that happen. It was tough to talk about putting off Crozet Library construction because he knew the Supervisors would "get a lot of flack" for putting it off for a couple of years. He didn't feel the School Board representatives were willing to step up and say "we didn't see your maintenance project until the last meeting we had." There was no definition of the \$3.0 to \$4.0 million a year in maintenance.

Mr. Stokes replied that he 100 percent disagrees with that statement.

Ms. McKeel said that is not an accurate description of what happened. Even the at-large community member on the Committee, Mr. Chris Lee, agreed that there was sufficient opportunity for input.

Mr. Stokes added, "If it hadn't happened, staff would not have brought forward a recommendation to the Supervisors."

Ms. McKeel said everyone needs to remember that this committee that she and Mr. Stokes are on with Mr. Boyd and Mr. Dorrier is an "oversight committee." There is another committee comprised of staff from both groups – Schools and Local Government – that reviews all of the processes in detail. It's their job to go over all projects, sort them out, and make recommendations; the Oversight Committee reviews them last. She said Mr. Boyd seemed to want the Oversight Committee to do what the staff committee was charged to do, or that is the way she interpreted it. She said there were already projects which had come forward, and for the Oversight Committee to start over was not a good idea.

Mr. Stokes said if there is going to be a project the Technical Review Committee checks how much it will cost and if that cost is correct. Those projects then come to the Oversight Committee and it chooses based on the level of debt - that is what the committee did last year and the year before. They got feedback that it did not happen, and that is why he is puzzled.

Ms. McKeel said it was her sense that Mr. Boyd wanted them to go back to the very beginning (not do what the committee was charged to do), and rework everything. They could not do that in absence of more information.

Mr. Boyd said when appointed to this committee there is no training manual. He will admit that being on it the first year he did not ask a lot of questions that he should have asked early in the process.

Ms. McKeel said that Mr. Boyd agreed with everything at the committee level, and then went back to the Board of Supervisors and said something different.

Mr. Boyd retorted that he didn't agree to anything because there was never any vote.

Mr. Rooker said he thinks the consensus is that the process should not be changed from the standpoint of allocation, but the CIP process should be such that the recommendations are the joint recommendations prioritized by the committee to go openly to the Supervisors. Ultimately, the Supervisors have the final determination when they vote on the CIP.

Mr. Foley said staff can help with some of the value judgments that the Technical Review Committee does not make; those have to be made by the Oversight Committee. Staff can help the

Oversight Committee make some of those value judgments by developing criteria for consideration. At the end of the day, decisions have to be made, but it will help them to be done a little more objectively.

Mr. Rooker said he understands where the Schools are coming from, but the Supervisors' representatives were not as comfortable with how the process worked. Both sides need to be comfortable with how the process works and what the end product is.

Mr. Boyd asked Mr. Dorrier to comment.

Mr. Dorrier commented that he believes there needs to be a better system in the oversight process for making cuts in projects. He said the 60/40 split works pretty well, but he felt some things should be cut and he did not get any support. He said they were dealing with Brownsville School, which was the number one priority of the School Board. He and Mr. Boyd both supported that project. He said the Oversight Committee is supposed to set priorities to recommend to the two boards. He said there is not a good system for making cuts. He does not know where the cuts were made on the school side.

Ms. Mallek said she thinks the School Board as a whole should convey to their representatives what their priorities are, in the same way that Local Government would have to decide what improvements had to be made for lots of reasons.

Mr. Boyd said he did not recall the School Board prioritizing their projects.

Mr. Wheeler said the School Board looks at the entire CIP, not just one given year.

Mr. Boyd said the place to start may be to first rank the list of projects. Then, if there is a need to cut the last project on the Schools' list it could be deleted leaving the last one for Local Government on the list. That could keep the Committee from unknowingly recommending a project that isn't a priority.

Mr. Stokes said that's why he serves on the Oversight Committee. He felt empowered by the School Board to list those priorities, report back to them and if they didn't agree they could give other instructions. He said they appointed him and Ms. McKeel to this committee to make those decisions within the overall assessment of all the CIP projects. That is what he thought they were doing.

Mr. Slutzky said at the budget level a decision was made to take three cents out of the CIP to start with. Then the CIP Committee had to choose among priorities and it had a charge to cut. At the end of the process it may have been perceived by the Supervisor members that the School Board did not cut as much as they did. That doesn't mean their intent was wrong. He wondered if the process can be tweaked and refined since the process may not be broken but could always be improved. He said there are a lot of good reasons why this was not a good year to cut capital projects even though there were not sufficient revenues. In some ways it may have been better to hold onto those three pennies and been more brutal on the operations side. There is no way for that deliberative process to be a part of the CIP Oversight Committee's prioritization of capital projects. He wonders if the boards should ask staff to suggest different approaches to how the process might continue (assuming it will choose the path Mr. Rooker stated earlier).

Mr. Tucker said that is the next step. If it is the consensus of both boards that capital and debt shouldn't be added to the 60/40 split for operations, then staff will come back with how the Oversight Committee process might be tweaked.

Mr. Slutzky asked that anyone who had not yet spoken give their opinion now.

Mr. Wheeler pointed out that the reason this topic is on the agenda was not because of the CIP process this year but because the County's consultants recommended that it be discussed.

Mr. Rooker said things arose this year that gave the impression the process could be improved. Also, he is in favor of having a vote by the CIP Oversight Committee on what they are recommending.

Mr. Dorrier said there was one vote at the end of the meeting, but it was a 2-2 tie, so the tiebreaker had to vote.

Mr. Stokes said in the past there hadn't been a need for a vote because it was all done by consensus, but in hindsight he wished there had been a vote on every project so Mr. Boyd would have had an opportunity to vote one way or the other.

Mr. Boyd said he looks at this whole thing differently. The recommendation in the Utilization Resource Study suggests that Debt Service be put over on the School Board side. If that were done, it was assumed a different formula would be needed. He still thinks the Schools' debt service should be on the School Board side of the budget. That doesn't mean the allocation process needs to be changed, but once it is decided he thinks that should be part of the School Board's budget so it can be recognized every year as part of their expenditures.

Ms. Mallek asked if that was done, what it would change from the School Board's point-of-view.

Mr. Boyd said it would give them some level of accountability as to how much their level of debt service is.

Mr. Rooker said it would need to be altered every year because of the nature of capital projects.

Mr. Wheeler asked why the consultants made that recommendation.

Mr. Boyd said the per-pupil expenditure for education is talked about but debt service is not included because it is not in their budget. Should it be included in that number?

Ms. Thomas said the chart shown to the Board suggests that even Chesterfield County does not do it the way the Resource Utilization Team suggests it be done.

Mr. Boyd said he was curious as to why Prince William County was not included in staff's research. Their information may be a little dated but they have a very sophisticated model for calculating their CIP. Mr. Foley replied that they didn't respond despite numerous phone calls.

Ms. Thomas said the different personalities involved were analyzed by Mr. Slutzky. She said the two "most eager to cut our budget" Supervisor members were on that committee, and that was not the frame of mind for the School Board's representation. She thinks that has brought the two boards to the table today as much as anything. Since there is a joint committee, she would like to see a discussion of how each project is a community project. There has been discussion about the Jail situation which came in too late to be considered in this process. Those sorts of things should be thought of earlier; the policy on the Supervisor's side says that almost every capital project now has to be considered as a multi-use building.

Mr. Slutzky said there is a point early in the cycle which looks at projects before they get into the CIP. The degree of urgency for each of them can fluctuate over time. He doesn't know if there is a sufficient process in place now on an annual basis to separate projects that must be done versus ones that could be delayed. The Supervisors are driven by maintaining a tax rate and looking at what that implies in terms of available capital budget. It does not look at weighing that against operating, and it is not weighed against how urgent needs may or may not be. Staff might make recommendations about how each of these interdependent variables can be best reflected in the process to the extent that they may not be quite as fine-tuned as they could be. He asked if everybody was comfortable with that tasking for staff.

Mr. Rooker said he thinks staff should proceed to make recommendations on this, so it can move forward quickly for the upcoming budget session.

Mr. Koleszar said he agrees with the general consensus stated, but from a long-term perspective, he thinks there has been a tendency to look at School projects as just School projects and County projects just as County projects. He asked if the Crozet Library has ever been looked at as a joint project.

Ms. McKeel said that goes back to what Ms. Thomas was saying - things need to be looked at through that "lens" better.

Ms. Thomas said there has been discussion about whether the downstairs part of the new Crozet Library could be used by other County departments – continuing education sorts of things, not as a school. She said that is not a good example because it is not a multi-use building.

Mr. Koleszar said he is just saying that the boards need to think in a broader perspective.

Ms. Thomas said when Monticello High School was being built there was discussion about whether it could have a community library, but that did not work out.

Mr. Dorrier said there is a need to define the timeframe of the CIP; is it five years, ten years or three years? Mr. Foley said it is a five-year period for an adopted plan, but every other year the County looks ten years out so they can see what's on the horizon.

Mr. Rooker said he thinks the Supervisors are "shooting" for a Committee that looks at the overall capital needs of the County and makes priority recommendations based upon that view. All the members should feel comfortable asking questions about any project on the list, so everybody is educated and understands where the money is going.

Ms. Mouly said she served on the committee for a year when there was no need to cut, so they weren't even aware of the possibility that they might want to go back to their board to prioritize. She is not adverse to that idea – she feels it is a good idea to include it in the process somehow. She does not remember anything in the process that required them to go back to their board and get the priority for their projects clearer.

Mr. Slutzky said one difference between the Capital budget and the Operating budget is that there is more inherent fundability in the operating budget in a given year. Before it gets to the point of losing staff, things can be stepped back and picked up the next year without it being a huge problem. With a capital project there is a 20-year debt service attached, a revenue stream commitment – it is a different animal. There needs to be a good effective process in place to look harder at prioritizing capital projects in terms of the urgency of need, and in those years where there are not lots of urgent needs and there is extra money, more projects might be picked up. If it is a year where revenues will be down, anything not urgent can be sliced off. Having a way to integrate all of those things is probably what is missing.

Mr. Rooker said the other thing that needs to be considered by the Committee to the extent possible, and which needs to be included in staff's presentation of information, is the increased operating

expense a particular capital project brings with it. That needs to be included in the prioritization consideration.

Ms. Mouly said she was interested in knowing why the Utilization Review Team made this recommendation about debt service.

Ms. Thomas said she does not think they gave a reason.

Mr. Slutzky said they may have felt it was a way to break through the 60/40 rigidity which they did not embrace, but that is just guessing.

Ms. Mouly said in the Resource Utilization Study for the Schools it seemed that every conclusion had some support. Mr. Tucker said he thinks they felt there was disproportionate spending between the two.

Mr. Slutzky said another way is to change the process of decision-making within the Committee, and that is what is being talked about today. That seems to be a consensus, and that was the feedback staff asked for.

Mr. Foley said staff may come back with some revisions to the by-laws as well as a list of criteria with weights on different factors. They will do more research on other localities and how they handle this matter.

Mr. Slutzky said the staff has clear directions. He asked if there were other matters to discuss. There being none, Mr. Koleszar **moved** that the School Board adjourn its meeting. Mr. Wheeler gave **second** and all members present voiced ayes.

(**Note:** At 4:27 p.m. the School Board left the room.)

Agenda Item No. 22. From the Board: Matters Not Listed on the Agenda.

Mr. Slutzky mentioned an article in the newspaper concerning an expensive meal held by the Rivanna Water & Sewer Authority. He thinks they took appropriate action to make a change so that circumstance does not happen again. It reminded him of something. He remembers that from his years of doing government consulting, there were federally mandated rules concerning meals and lodging for Federal contractors. Everybody pays their own bill; it is an absolutely rigid rule. With respect to this Board and County staff, he wonders if the Board wants to ask staff to recommend a policy regarding this issue.

Ms. Thomas said the Supervisors paid for their own meals when the visitors from Italy were here. Mr. Tucker said that's true of staff as well.

Mr. Slutzky asked if there is a formal policy that articulates what those rules are with respect to when you can or can't pay for a meal. Mr. Tucker said he will have to see how much of the County's policy is actually written out.

Mr. Slutzky said it is his sense that it doesn't happen, but he was hoping that fact could be codified so the public understands it can't happen because there is a process in place to prevent it. Unless anyone objects he would like to ask Mr. Tucker to touch base with the policy, and tweak it if necessary.

Mr. Tucker asked Mr. Wheeler if the School Board has a policy that could be looked at as a model.

Mr. Wheeler said he is not aware of any policy; the Schools operate the same way as Local Government does.

Agenda Item No. 24. Adjourn. At 4:31 p.m., with no further business to come before the Board, the meeting was adjourned.

Chairman

Approved by the
Board of County
Supervisors

Date: 10/07/2009

Initials: EWJ