

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on July 8, 2009, at 6:00 p.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, and Senior Deputy Clerk, Meagan Hoy.

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

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

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

There were none.

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

Mr. Mike Etchemendy, President of the Board for Literacy Volunteers of Charlottesville Albemarle, said this is the only local agency that offers free, confidential, one-on-one tutoring for adults learning basic literacy or English as a Second Language. He read several anonymous comments from learners, as they were printed in LVCA's June newsletter. Mr. Etchemendy then listed several accomplishments students have made, and thanked the Board for their support.

Mr. Jay Willer, Executive Vice President of the Blue Ridge Homebuilders Association, referenced Item 6.2 on the Consent Agenda. The BRHA is very concerned about the decision to proceed to public hearing on stormwater regulations that originally arose out of concerns by local environmental groups. He stated that a nine-month timeline for establishing permanent vegetation on any site larger than a single-family residence is almost unworkable. Mr. Willer said that there are things that need to happen in sequence that make it a difficult timeline to accomplish. The examples used from other states involve different terrain and are not applicable here. The question of whether it will work in Biscuit Run is still up in the air.

Mr. Boyd asked if BRHA would be presenting an alternative proposal. Mr. Willer responded that the only possible alternative would be a different timeline, and they have offered to work with the concerned groups and staff. He emphasized that timelines are important and they would like to see regulations that they have a reasonable chance of meeting so that the process works smoothly for everyone involved.

Mr. Slutzky commented that it would be helpful for BRHA to bring forward a specific proposal before the public hearing on this in August. Mr. Willer responded that that is their plan.

Mr. Neil Williamson, of the Free Enterprise Forum, said that Item 6.2 on the Consent Agenda should be removed – as it would be better for the County to rely on existing local and state regulations. He said that this shouldn't be moved forward until the item at DCR is resolved.

Agenda Item No. 6. Consent Agenda. **Motion** was offered by Ms. Thomas, **seconded** by Mr. Slutzky, to approve the consent agenda. (Discussions on individual items are included with that item.)

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 No. 6.1. Approval of Minutes: May 7 and December 9, 2008; and March 11, April 1 and April 8, 2009.

Mr. Boyd had read his portion of the minutes of May 7, 2008, pages 39 (beginning with Item #8) – to end, and found them to be in order with the exception of some typographical errors.

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

Mr. Rooker had read the minutes of March 11, and April 8, 2009 and found them to be in order.

By the above-recorded vote, the Board approved the minutes as read. The other minutes were moved forward to the next meeting date.

Item No. 6.2. Set a public hearing to consider proposed ordinance to amend County Code Chapter 17 to require permanent vegetation to be established on disturbed areas within a specified period and to make other administrative and procedural changes.

The executive summary states that at the May 6, 2009 work session on stormwater regulations, the Board directed staff to, among other things, initiate the process for the Board to amend the Water Protection Ordinance to establish limits on the time that land may remain disturbed under the County's erosion and sediment control regulations. In preparing a draft ordinance as directed by the Board, staff has identified some other recommended amendments to the Water Protection Ordinance to facilitate its implementation and administration, and to keep it current with State law.

The proposed ordinance would establish a time limit for land disturbance as directed by the Board at its May 6, 2009 work session. Staff recommends that land be allowed to be disturbed for 9 months, by which time permanent vegetation would need to be installed on all denuded areas that are either not part of an active building permit or areas where erosion is prevented by a non-erosive surface. "Non-erosive surface" would be defined in the regulations. The proposed ordinance also would allow the 9-month period to be extended by the program authority for up to two or three months or by the Board, both under prescribed circumstances.

Staff recommends that the Water Protection Ordinance also be amended to address inactive applications for erosion and sediment control plans (hereinafter, "E & S plans") and approved E & S plans for which no subsequent land disturbing activity timely occurs. The proposed ordinance would provide that an application for an E & S plan for which revisions are required in order for the plan to be approved would be deemed withdrawn if a revised plan was not submitted within 6 months after the owner received notice of the required revisions from the County. The proposed ordinance would also provide that an approved E & S plan would become void if the owner failed to obtain a grading, building or other permit for land disturbing activities within one year after approval of the E & S plan.

Staff also recommends that the bonding requirements in the Water Protection Ordinance be amended to comply with a new state law effective July 1, 2009 that requires localities to reduce the percentage of administrative overhead that may be included in bonds to secure subdivision improvements from 25 percent to 10 percent.

The proposed ordinance also would make other minor technical amendments to update cross-references to State regulations and to mirror time periods for action allowed by State law.

Although no specific budget changes are anticipated, staff believes these changes will allow for limited resources to be used more effectively and provide greater predictability with respect to process.

Staff recommends that the Board set an August 5, 2009 public hearing for the attached ordinance.

(Discussion: Mr. Slutzky said he is supportive of this item moving forward for public hearing. The public hearing will give the Board an opportunity to hear from the public.

Mr. Boyd asked if there was a pressing need to take this item to public hearing or should the Board get additional information before moving forward.

Ms. Mallek said the County has been working towards this for many years and she supports moving forward with a public hearing.

Mr. Rooker stated that this goes to the issue that was dealt with at Hollymead Town Center. Board members supported proffers for the most recent developments that have required at least this. He wants to go to public hearing and hear all the comments.

Mr. Boyd acknowledged that he has pushed for this ordinance.)

By the above-recorded vote, the Board set an August 5, 2009 public hearing for the proposed ordinance.

Item No. 6.3. Set a public hearing to consider the adoption of an ordinance to implement Traffic Light Signal Monitoring Systems ("Photo Red Systems").

The executive summary states that in 2007, the General Assembly enacted Virginia Code §15.2-968.1, permitting localities to establish, by ordinance, traffic light signal monitoring systems ("Photo Red systems"). Localities may install a Photo Red system at one intersection per 10,000 residents upon completing traffic safety engineering studies and obtaining approval from the Virginia Department of Transportation ("VDOT"). Under this statute, the County may install up to nine Photo Red systems at approved traffic signal intersections.

Responding to Board member interest in Photo Red systems, the Police Department began researching Photo Red ordinances, vendors, and agency administrative procedures in 2007. In the spring of 2009, the City of Virginia Beach became the first Virginia locality to begin implementing a photo-

monitoring system pursuant to this new legislation. VDOT also finalized its administrative procedures and forms for intersection approval in 2008.

On June 3, 2009, the Board approved staff's recommendation to move forward with the program and directed staff to prepare an ordinance and analyze the cost of implementing the program, as well as the staff time that would be required to manage the program.

Photo Red Programs Throughout Virginia

According to VDOT's website, motorists driving through red lights caused over 5,000 accidents in Virginia in 2004, including 26 fatalities and over 3,600 injuries. Localities such as Newport News, Richmond, Fairfax City and County, Arlington and James City have taken steps to implement Photo Red programs in an effort to reduce accidents caused by red light violators.

Photo Red systems permit law-enforcement agencies to improve their deterrence and enforcement of red light violations without assigning more officers to on-site traffic enforcement. Traditional traffic enforcement at busy intersections often proves difficult, due to the limited areas in which officers may position patrol vehicles to safely observe violations and quickly navigate heavy traffic to apprehend a violator.

Virginia Code Requirements for Photo Red Programs

Virginia appears to be unique in requiring that motorists be provided a 0.5 second grace period between the time the signal turns red and the time the first violation is recorded. According to one Photo Red vendor, the photo would be taken at 0.6 seconds after the light has turned red. Other states require grace periods of less than 0.5 seconds. Another important feature of the Virginia Photo Red statute is that only a sworn law-enforcement officer may certify that a motorist committed a red light violation for the purpose of issuing a summons.

In addition, the Photo Red statute requires that localities notify each red light violator: (1) that the recordings of the violation will be available for the motorist's inspection for at least 60 business days before a court date; and (2) how to contest a summons by filing an affidavit. Once the motorist files an affidavit denying that he or she operated the vehicle, the law-enforcement agency must prove in court that the motorist committed the violation. The statute does not give law-enforcement agencies the authority to require the motorist to state who operated the vehicle at the time of the violation. Finally, the maximum penalty that may be imposed is a civil penalty of \$50. More detailed information concerning the enforcement process may be found in the statute attached as Attachment A.

To implement a Photo Red program, a locality must complete the following for submission to VDOT for its approval:

1. A list of proposed intersections for inclusion in the Photo Red system.
2. An engineering study for each proposed intersection by a licensed professional engineer (can be the County Engineer).
3. A crash and traffic signal violations data report setting forth statistics for the previous three years, including the number of traffic signal violations, and how many crashes involved a traffic signal violation for each proposed intersection.
4. A current 48-hour study of traffic signal violations for each proposed intersection.

Should the Board decide to adopt a Photo Red ordinance, the County must implement a public awareness campaign regarding the proposed Photo Red program. Signs notifying motorists about Photo Red-controlled intersections must be placed within 500 feet of the intersection approach.

Police Department staff has:

1. identified the following three intersections as top priority for inclusion in the system: Rio & Seminole Trail (Route 29); the County portion of Hydraulic Road & Seminole Trail (Route 29); and Richmond Road & Stony Point Road
2. worked with the County Attorney's Office to prepare a draft ordinance for the enforcement of traffic signal violations utilizing the Photo Red System;
3. developed plans to complete the required reports and studies;
4. attended a training seminar in the City of Virginia Beach; and
5. reviewed several Photo Red product presentations by potential vendors.

In the spring of 2009, Virginia Beach began implementing a fully operational Photo Red system at several intersections. The entire process, including obtaining VDOT approval and camera installation, took approximately one year. Four other localities (the Cities of Newport News, Richmond and Fairfax and the County of Fairfax) have issued a Notice of Decision to award a vendor with a Photo Red contract and are in the process of having their Photo Red systems installed. Staff is reviewing an open contract that the City of Newport News has awarded to a Photo Red vendor to determine whether the County could contract with that vendor through cooperative procurement. Should an ordinance be adopted, staff will conclude its analysis of proposed intersections for the Photo Red program, contract with a Photo Red system vendor and obtain VDOT approvals to begin implementing the Photo Red program at selected intersections as soon as practical.

Impact on ACPD Staff:

Several variables make it difficult to estimate the impact this program would have on ACPD staff. The Virginia Beach Police Department (VBPD) currently has one full-time sworn supervisor, one full-time sworn officer, and two retired certified officers who manage their Photo Red program. The two retirees, who work 32 hours a week, are responsible for validating the violations, managing the appeal process and

attending court if needed. ACPD could evaluate VBPD's procedures to ascertain if a similar staffing approach would be feasible for the County. It should be noted, however, that Virginia Beach's Photo Red program, which is authorized to include 43 intersections, is much larger than any program the County might undertake.

How Does It Work?

The enforcement cameras are active only during the red cycle of the traffic light. Only vehicles entering the intersection after the light has turned red are captured on film. The cameras are wired to the traffic lights using sensors buried in the roadway surface. Vehicles that cross the sensors after the light has turned red are recorded by the video during the violation. The vehicle is also photographed prior to entering the intersection. A second photo is taken as a close-up of the vehicle's license plate. A third photo is taken showing the vehicle proceeding through the intersection. These records of the violation serve as evidence to support the imposition of a \$50 civil penalty.

Staff research indicates that a typical Photo Red program costs more than \$100,000.00 for camera system installation, maintenance, and monitoring. If the County were to contract with the vendor used by Newport News, the County would incur no upfront or camera system installation costs, but would be billed a fixed, monthly fee. Staff would determine, in advance of entering into a contract, whether the penalties collected from selected intersections would be sufficient to defray that monthly fee and any additional staff costs incurred for the program. The Newport News vendor would be able to provide some information, based on the experiences of other localities, as to whether the selected intersections would likely yield enough violations to make the program cost-neutral. Under no circumstances, though, would the Photo Red program vendor receive payment on a per ticket basis. It is not anticipated that Albemarle County tax payers and safe drivers will absorb any of the cost of the automated systems. It is anticipated that revenue generated by the civil fines will pay for the program.

Staff recommends that the Board set a public hearing on August 5, 2009 to receive public comment and to consider adoption of the attached ordinance.

By the above-recorded vote, the Board set a public hearing on August 5, 2009 to receive public comment and to consider adoption of the proposed ordinance.

Item No. 6.4. Resolution to accept road(s) in Bargamin Park 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:

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 8th day of July 2009, adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **Bargamin Park Subdivision**, as described on the attached Additions Form AM-4.3 dated **July 8, 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 **Bargamin Park Subdivision**, as described on the attached Additions Form AM-4.3 dated **July 8, 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.

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

- 1) **Bargamin Park Lane (State Route 1312)** from the intersection of Route 691 (Jarmans Gap Road) to the intersection of Route 1313 (Bargamin Branch Road), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2777, page 483, with a 47-foot right-of-way width, for a length of 0.04 miles.
- 2) **Bargamin Branch Road (State Route 1313)** from the intersection of Route 1312 (Bargamin Park Lane) to the east intersection of Route 1313 (Bargamin Loop), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2777, page 483, with a 41-foot right-of-way width, for a length of 0.03 miles.

- 3) **Bargamin Branch Road (State Route 1313)** from the intersection of Route 1312 (Bargamin Park Lane) to the west intersection of Route 1313 (Bargamin Loop), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2777, page 483, with a 41-foot right-of-way width, for a length of 0.03 miles.
- 4) **Bargamin Loop (State Route 1313)** from the intersection of Route 1313 (Bargamin Branch Road East) to the east intersection of Route 1313 (Bargamin Branch Road West), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2777, page 483, with a 41-foot right-of-way width, for a length of 0.15 miles.

Total Mileage – 0.25

Item No. 6.5. Resolution to accept road(s) in Hidden Forest 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:

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 8th day of July 2009, adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **Hidden Forest Subdivision**, as described on the attached Additions Form AM-4.3 dated **July 8, 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 **Hidden Forest Subdivision**, as described on the attached Additions Form AM-4.3 dated **July 8, 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.

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

- 1) **Forestvue Drive (State Route 1544)** from the existing end of state maintenance Route 1544 (Forestvue Drive) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1930, pages 189-192, with a 50-foot right-of-way width, for a length of 0.11 miles.

Total Mileage – 0.11

Agenda Item No. 7. **FY 2010 Budget Amendment.** (*Advertised in the Daily Progress on June 29, 2009.*)

Mr. Tucker summarized the following executive summary which was forwarded to Board members. The Virginia Code § 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 Code section applies to all County funds, i.e., General Fund, Capital Funds, E911, School Self-Sustaining, etc.

The total of the new requested FY 2010 appropriations, itemized below, is \$3,132,193.72. Because the cumulative amount of the appropriations exceeds one percent of the currently adopted budget, a budget amendment public hearing is required.

The proposed increase of this FY 2010 Budget Amendment totals \$3,132,193.72. The estimated expenses and revenues included in the proposed amendment are shown below:

ESTIMATED EXPENDITURES

School Fund	\$	(755,398.00)
School Program Fund	\$	3,392,591.72
Emergency Communications Center	\$	<u>495,000.00</u>
TOTAL ESTIMATED EXPENDITURES – All Funds	\$	3,132,193.72

ESTIMATED REVENUES

Federal Revenue	\$	2,637,193.72
Other Fund Balance	\$	<u>495,000.00</u>
TOTAL ESTIMATED REVENUES – All Funds	\$	3,132,193.72

The budget amendment comprised of two new appropriations as indicated below:

- One (1) appropriation (#2010007) providing \$495,000.00 for the Emergency Communication Center's Fire/Rescue Paging project; and
- One (1) appropriation (#2010008) recognizing American Recovery and Reinvestment Act of 2009 (ARRA) funding for the School Division totaling \$2,637,193.72.

A detailed description of the requests is provided on Attachment A.

After the public hearing on the FY 2010 Budget Amendment, staff recommends approval of Appropriations #2010007 and #2010008 in the total amount of \$3,132,193.72 to provide funds for school and Emergency Communications Center projects and programs as described below:

Appropriation #2010007 **\$ 495,000.00**

Revenue Source:	ECC Fund Balance	\$	495,000.00
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The Emergency Communications Center Management Board has approved funding for the Fire/Rescue Paging System project, totaling \$495,000.00. Funding for the project will be provided from the Emergency Communication Center's fund balance. The project will replace the Fire/Rescue paging system for the City and County which includes the volunteer companies. It will replace outdated infrastructure equipment and increase ECC's paging capabilities from one to three tower sites within the County. It will also allow the departments to purchase new multi-frequency pagers for their use.

Appropriation #2010008 **\$3,392,591.72**

Revenue Source:	Federal Revenue	\$	2,637,193.72
	Transfer from Schools		755,398.00

At its meeting on June 11, 2009, the School Board approved the following appropriation:

Albemarle County Public Schools has received significant new funding for various entitlement grants under the American Recovery and Reinvestment Act of 2009 (ARRA).

ARRA will provide new funding for Title I, Part A, in the amount of \$994,557.02. These funds will be used to provide the following services and supports: 1.0 FTE Title I Coordinator, 1.75 FTE Title I teacher positions, 1.0 FTE Pre-K Teacher, 1.0 FTE Pre-K Teaching Assistant, substitutes, bus driver salaries, parental involvement, instructional materials that focus on reading instruction, classroom technology and SES/Public School Choice set aside.

ARRA will provide new funding for IDEA Part B-Section 611, Flow Through, in the amount of \$1,533,976.00. These funds will be used to provide the following services and supports: 11.4 FTE Special Education teaching positions, four vehicles to support transition services at the three comprehensive high schools and Post High, commercial grade appliances at Post High, start up funds for a service delivery work program, renovations of classrooms to address life skills/vocational training, contracts with a Public Consulting Group to provide software management for tracking student interventions and to provide management of the IEP process, a contract with Web-Ex to provide on-line staff development, instructional materials and staff development for teachers and teaching assistants that focus on reading and math interventions, and technology for classrooms.

ARRA will provide new funding for IDEA Part B-Section 619, Preschool, in the amount of \$72,900.00. These funds will be used to provide the following services and supports: 0.30 FTE School Psychologist position, 0.20 FTE Speech Pathologist position, 0.33 FTE Teaching Assistant to support the Pre-K inclusive model, instructional materials and office equipment and furniture for the centralized Pre-school team evaluation center.

ARRA will provide new funding for Title II, Part D, in the amount of \$35,760.70. These funds will be used to provide the following services and supports: University courses to support teachers in reaching state and national certification standards in the use of technology in the classroom, workshops/staff development for teachers and a computer/technology literacy assessment tool.

In order to comply with IDEA requirements; \$755,398.00 will be transferred from the school fund to cover the costs of Early Intervention teachers. ARRA funds are subject to the following guiding principles:

1. Funds must be spent quickly to save and create jobs.
2. Funds must be used to improve student achievement through school improvement and reform.
3. Funds will be subject to additional and rigorous reporting requirements.

4. Funds are available for only 2-3 years.
5. Funds should be spent in ways that do not result in unsustainable continuing commitments after the funding expires.

Mr. Tucker said some Board members had expressed some concerns about the stimulus funds for the schools. The concern was whether the positions proposed under the stimulus package would be permanent positions in the School system. Their understanding is that the package is suggested the County should make sure the positions continue beyond the two to three year period, it is not necessarily mandatory. They also indicated that some of the positions may be retained but most probably will not. All individuals being hired in these positions are being told that their positions may be temporary. After two years the School Board will reevaluate all of these programs and then determine whether to put them in a request for a future budget.

Ms. Thomas asked if it would be regarded as a new initiative at that point.

Mr. Tucker replied that whatever funding is provided, the Schools would need to determine priorities as part of the normal budget discourse.

Mr. Boyd commented that he has had a lot of concerns about this. Local government has been very careful how it will spend stimulus funds – not to create permanent ongoing positions. There is all the issue of tenure positions with teachers.

Ms. Thomas noted that the guidelines indicate the funds shouldn't be spent on anything that creates continuous commitment after the funding expires.

Mr. Rooker said that no one wants to turn down millions of dollars in a year when the budget is so tight.

Ms. Thomas said she wants to make sure the School system realizes that this is not necessarily open to continued funding.

Mr. Tucker stated that staff does not expect this to continue on and on, although they haven't ruled out requests for permanent items in the future – knowing that they will have to compete against other requests.

Mr. Dorrier commented that hiring 11 special education teachers will lead to new permanent positions.

Mr. Rooker said he thinks they will juggle their positions around so that they can use the funds in a way allowed by law. In looking at their overall roster of employees, he does not think the schools are going to have more employees than they had two years ago. They have to pigeon-hole the money into specific areas where it is allowed to be spent.

Mr. Slutzky added that the applicants would be informed of the short-term nature of the funding.

Mr. Rooker emphasized that this is going to be a problem all over the country, noting that the state is anticipating a \$3.0 to \$4.5 billion revenue shortfall for the 2010-12 budget period. He said that Senator Stosch has suggested that they would probably revert to the budget from 2005-06, and that's where the state may be in terms of the money it has going forward. The County is being forewarned that State aid for education and other things is going to be cut further.

Mr. Boyd said he thinks the Board should include some stipulation that when this comes back in two to three years, that it is not a cut in their budget, but instead a new request.

Mr. Tucker stated that the schools' Assistant Superintendent and Financial Director understand the short-term nature of the funding.

Mr. Rooker commented that it's really a matter of semantics, as everyone will have to be dealing with this situation.

Ms. Mallek said that there was already a program in place that was being expanded by the federal funds, not just something being created to capture the federal money.

Mr. Boyd responded that the schools had shifted away from special teachers and instead elected to use a coaching program.

Ms. Thomas emphasized that special education is a different thing altogether.

Mr. Rooker said this is somewhat contradictory in that when the stimulus funds were originally announced, they were different in terms of how they have to be used. That is unfortunate but he is not prepared to vote to turn down \$2.0 million of federal money for education.

Ms. Mallek asked about the ECC funds.

Mr. Tucker said any of the matching funds that the County is required to provide will come from the ECC Fund balance, not local funds from the City, County or University.

At this time the Chairman opened the public hearing. No one came forward to speak and the public hearing was closed.

Mr. Davis clarified that the ECC grant totals \$495,000.

Mr. Rooker **moved** approval of Appropriations 2010-007 and 2010-008 in the total amount of \$3,132,193.72. 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.

Mr. Rooker then **moved** to approve the proposed budget amendment related to Appropriations 2010-007 and 2010-008 in the amount of \$3,132,193.72. Ms. Mallek **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

**COUNTY OF ALBEMARLE
 APPROPRIATION**

APP # 2010007
 DATE _____
 BATCH# _____

EXPLANATION: ECC - Fire/Rescue Paging System

					SUB LEDGER		GENERAL LEDGER	
TYPE	FUND	DEPT	OBJECT	DESCRIPTION	CODE	AMOUNT	DEBIT	CREDIT
2	4100	51000	510100	Appropriation - Fund Balance	J 2	495,000.00		
1	4100	93010	930028	Transfer - FR Paging System	J 1	495,000.00		
2	4120	51000	512021	Transfer from ECC	J 2	495,000.00		
1	4120	31052	800303	Fire/Rescue Paging Project	J 1	450,000.00		
1	4120	31052	999999	Contingency	J 1	45,000.00		
	4100		0501	Est. Revenue			495,000.00	
			0701	Appropriation				495,000.00
	4120		0507	Est. Revenue			495,000.00	
			0701	Appropriation				495,000.00
TOTAL						1,980,000.00	990,000.00	990,000.00

**COUNTY OF ALBEMARLE
 APPROPRIATION**

APP # 2010008
 DATE _____
 BATCH# _____

EXPLANATION: Education - American Recovery and Reinvestment Act of 2009
 School Board Meeting - June 11, 2009

					SUB LEDGER		GENERAL LEDGER	
TYPE	FUND	DEPT	OBJECT	DESCRIPTION	CODE	AMOUNT	DEBIT	CREDIT
2	3162	33000	330101	Revenue-ARRA/Title I	J 2	994,557.02		
2	3162	33000	330105	Revenue-ARRA/Title II	J 2	35,760.70		
2	3162	33000	330110	Revenue-ARRA/IDEA	J 2	1,533,976.00		
2	3162	33000	330111	Revenue-ARRA/Preschool	J 2	72,900.00		
2	3162	51000	512001	Revenue Transfer In-From School Fund	J 2	755,398.00		
1	3162	61170	111400	Salaries-Other Management	J 1	75,900.00		
1	3162	61170	112100	Salaries-Teacher	J 1	129,879.60		
1	3162	61170	114100	Salaries-Teacher Assistant	J 1	16,691.00		
1	3162	61170	137100	PT/Wages-Bus Drivers	J 1	38,033.00		
1	3162	61170	152100	Sub/Wages-Teacher	J 1	1,000.00		
1	3162	61170	210000	FICA	J 1	20,006.24		
1	3162	61170	221000	VRS	J 1	30,102.44		
1	3162	61170	231000	Health Insurance	J 1	33,464.00		
1	3162	61170	232000	Dental Insurance	J 1	1,202.00		
1	3162	61170	241000	VRS Group Life Insurance	J 1	1,981.00		
1	3162	61170	312700	Prof Serv-Consultants	J 1	149,183.55		
1	3162	61170	420100	Field Trips	J 1	12,000.00		
1	3162	61170	600200	Food Supplies	J 1	2,000.00		
1	3162	61170	601300	Ed & Rec Supplies	J 1	483,114.19		
1	3162	61171	112100	Salaries-Teacher	J 1	544,600.00		
1	3162	61171	210000	FICA	J 1	41,663.00		
1	3162	61171	221000	VRS	J 1	81,091.00		
1	3162	61171	231000	Health Insurance	J 1	80,313.00		
1	3162	61171	232000	Dental Insurance	J 1	2,884.00		
1	3162	61171	241000	VRS Group Life Insurance	J 1	4,847.00		
1	3162	61172	112100	Salaries-Teacher	J 1	20,481.00		

1	3162	61172	160300	Stipends-Staff/Cur. Development	J	1	65,025.00		
1	3162	61172	210000	FICA	J	1	6,542.00		
1	3162	61172	221000	VRS	J	1	3,050.00		
1	3162	61172	231000	Health Insurance	J	1	7,045.00		
1	3162	61172	232000	Dental Insurance	J	1	253.00		
1	3162	61172	241000	VRS Group Life Insurance	J	1	182.00		
1	3162	61172	301240	Prof Serv-Online Meetings	J	1	16,000.00		
1	3162	61172	312700	Prof Serv-Consultants	J	1	35,000.00		
1	3162	61172	540305	Software License	J	1	224,000.00		
1	3162	61172	580500	Staff Development	J	1	5,000.00		
1	3162	61172	601300	Ed & Rec Supplies	J	1	64,000.00		
1	3162	61172	601305	Instructional Supplies	J	1	89,500.00		
1	3162	61172	800100	Machinery/Equipment-Addl	J	1	70,000.00		
1	3162	61173	112100	Salaries-Teacher	J	1	544,600.00		
1	3162	61173	210000	FICA	J	1	41,663.00		
1	3162	61173	221000	VRS	J	1	81,091.00		
1	3162	61173	231000	Health Insurance	J	1	80,313.00		
1	3162	61173	232000	Dental Insurance	J	1	2,884.00		
1	3162	61173	241000	VRS Group Life Insurance	J	1	4,847.00		
1	3162	61174	113200	Salaries-Psychologist	J	1	12,671.00		
1	3162	61174	114100	Salaries-Teaching Assistant	J	1	22,443.00		
1	3162	61174	210000	FICA	J	1	2,686.00		
1	3162	61174	221000	VRS	J	1	5,229.00		
1	3162	61174	231000	Health Insurance	J	1	8,454.00		
1	3162	61174	232000	Dental Insurance	J	1	304.00		
1	3162	61174	241000	VRS Group Life Insurance	J	1	313.00		
1	3162	61174	600100	Office Supplies	J	1	1,500.00		
1	3162	61174	601300	Ed & Rec Supplies	J	1	4,500.00		
1	3162	61174	800200	Furniture/Fixture-Addl	J	1	4,300.00		
1	3162	61175	312700	Prof Serv-Consultants	J	1	5,000.00		
1	3162	61175	580500	Staff Development	J	1	30,760.70		
1	3162	62240	112100	Salaries-Teacher	J	1	7,324.00		
1	3162	62240	210000	FICA	J	1	560.00		
1	3162	62240	221000	VRS	J	1	1,091.00		
1	3162	62240	231000	Health Insurance	J	1	1,409.00		
1	3162	62240	232000	Dental Insurance	J	1	51.00		
1	3162	62240	241000	VRS Group Life Insurance	J	1	65.00		
1	3162	62320	800500	Motor Vehicles	J	1	60,000.00		
1	3162	62320	800505	School Buses	J	1	72,500.00		
1	3162	64600	800901	Building Renovations	J	1	40,000.00		
	3162		0501	Est. Revenue				3,392,591.72	
			0701	Appropriation					3,392,591.72
1	2100	61802	112100	Salaries-Teachers	J	1	(181,533.60)		
1	2100	61802	210000	FICA	J	1	(13,889.00)		
1	2100	61802	221000	VRS	J	1	(27,029.40)		
1	2100	61802	231000	Health Ins	J	1	(26,771.00)		
1	2100	61802	232000	Dental Ins.	J	1	(961.40)		
1	2100	61802	241000	VRS Group Life	J	1	(1,615.00)		
1	2100	61805	112100	Salaries-Teachers	J	1	(181,533.60)		
1	2100	61805	210000	FICA	J	1	(13,889.00)		
1	2100	61805	221000	VRS	J	1	(27,029.40)		
1	2100	61805	231000	Health Ins	J	1	(26,771.00)		
1	2100	61805	232000	Dental Ins.	J	1	(961.40)		
1	2100	61805	241000	VRS Group Life	J	1	(1,615.00)		
1	2100	61808	112100	Salaries-Teachers	J	1	(181,533.60)		
1	2100	61808	210000	FICA	J	1	(13,889.00)		
1	2100	61808	221000	VRS	J	1	(27,029.40)		
1	2100	61808	231000	Health Ins	J	1	(26,771.00)		
1	2100	61808	232000	Dental Ins.	J	1	(961.20)		
1	2100	61808	241000	VRS Group Life	J	1	(1,615.00)		
1	2112	93010	939999	Transfer	J	1	755,398.00		
	TOTAL						6,785,183.44	3,392,591.72	3,392,591.72

Agenda Item No. 9. **PROJECT: SP-2009-002. Keswick Hunt Club -AT&T CV333A Tier III**

PWSF.

PROPOSED: New treetop facility in an avoidance area (South West Mountains Historic District).
ZONING CATEGORY/GENERAL USAGE: RA, Rural Areas-; EC Entrance Corridor overlay.
SECTION: 10.2.2 (48) Special Use Permit, which allows for Tier III personal wireless facilities in the RA Zoning District.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas uses in Rural Area 2.

LOCATION: Tax Map 80, Parcel 6A: in the Keswick area at the intersection of Louisa Road [State Route 22] and Hunt Club Road [State Route 744].

MAGISTERIAL DISTRICT: Rivanna.

RELATED APPLICATION: None

(Advertised in the Daily Progress on June 22 and June 29, 2009.)

Mr. Bill Fritz, Chief of Current Development, reported that this is a request for a personal wireless service facility, noting that this type of application is typically reviewed only by the Planning Commission. He explained that this is a "tree-top tower," and is proposed at 10 feet taller than the tallest tree within 25 feet. The reason it is before the Board is because it's located in the Southwest Mountains Rural Historic

District – requiring a Tier Three review and special use permit. Mr. Fritz presented an aerial photo of the site, indicating that the location has minimal visibility from Route 22. He said that the site is a wooded knoll with predominately pine and poplar – and there is an existing access road that leads to it; only minimal clearing would be needed just to install the tower itself and the ground equipment. Mr. Fritz reported that the pole for the tower would be steel, not wood. He stated that staff analyzed the proposal to see if the tower would have any negative impact on the District, and no negative impact is expected. He added that the Planning Commission reviewed this request at their May 19th meeting and had very few comments and unanimously recommended approval. Mr. Fritz noted that staff has changed the conditions slightly – replacing the word “must” with “shall” throughout – and also recommends approval.

Mr. Rooker asked about Section 5.1.40 of the Ordinance, which incorporates a number of the things that used to be in conditions – such as the tree maintenance requirements. Because of the wording, it might conflict with the Ordinance or create an ambiguity. He would recommend removing the recommended conditions #3 and #4 because they are already in the Ordinance.

Mr. Davis confirmed that those are now embodied in the Ordinance, and agreed that some of the conditions are redundant. He explained that the tree preservation plan is also a requirement of the Ordinance, and the only thing that the condition adds is the timing for submittal – but that’s been in practice in the Ordinance anyway.

Mr. Rooker suggested referring applicants to the Ordinance in the action letter that lists other items that need to be complied with.

Mr. Davis and Mr. Fritz agreed.

Ms. Thomas said the drawing of the lighting doesn’t show a full cutoff, but says “fully shielded.”

Mr. Fritz responded that they’re below 3,000 lumens so are not subject to the full cutoff, and the lighting in this case is motion sensed and only goes off during maintenance.

At this time the Chairman opened the public hearing.

Ms. Valerie Long, representing the applicant, AT&T, stated that the staff report was very thorough and she would answer any additional questions. She mentioned that the lights would really only go on during dark hours when maintenance is occurring, and they are by motion sensor.

Ms. Thomas asked if the motion sensor could be turned off; it would not come on each time something wanders by. Ms. Long said that is correct.

Ms. Long added that the site itself would be enclosed by a wooden fence. If anything does trigger the lighting, they will adjust it to be operated by switch or some other mechanism. She asked for the Board’s support of the request.

With no one else to come forward to speak, the public hearing was closed.

Mr. Slutzky said he supports the request.

Mr. Rooker said this seems to be a good site. The facility will be well-disguised in the tree area. He supports the request.

Mr. Boyd **moved** for approval of SP-2009-02 subject to the conditions as presented, removing staff recommended conditions three and four. Mr. Rooker **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

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

1. The proposed personal wireless service facility shall be developed in general accord with the plan prepared by BC Architects and Engineers with a revision date of 4-28-2009, and a certified engineer’s seal and signature dated 5-01-2009;
2. AT&T shall provide a tree conservation plan prepared by a certified arborist prior to issuance of a building permit. The installation, operation and maintenance of the facility shall be conducted in accordance with the tree conservation plan; and
3. Address all conditions outlined by the Architectural Review Board. The applicant shall obtain a certificate of appropriateness from the Architectural Review Board staff.

Agenda Item No. 10. **An ordinance to amend Chapter 4, Animals and Fowl of the Albemarle County Code.** The proposed ordinance: 1) re-organizes the Chapter and amends the local animal laws to parallel the re-codified Virginia Code provisions related to local animal laws; 2) includes new provisions that set forth the standard of care for companion animals; regulates the abandonment of an animal; allows livestock owners to seek compensation for livestock or poultry killed by dogs; set forth the licensing and business practice requirements for commercial dog breeders; allows animal control to impound an animal that has not received adequate care; and establishes the procedures for capturing a rabid animal and the duties of a rabid animal owner; 3) amends the animal noise standard by removing “unreasonably disturbs

the peace and quiet, comfort, or repose of any person” and adding that the excessive, continuous and untimely noise of an animal must be “audible on the property of the complainant”, and **removes the five-acre Rural Areas exception to make the animal noise provision applicable County-wide**; and 4) amends the running at large section to prohibit running at large throughout the County except in areas zoned Rural Areas District but continues to prohibit running at large in those areas zoned Rural Areas District that were previously identified in Sec. 4-200(A) as no running at large areas, and provides an exception for dogs on a bona fide hunt during hunting season or during field trail and training periods when accompanied by a licensed hunter. (*Advertised in the Daily Progress on June 22 and June 29, 2009.*)

The following executive summary was forwarded to Board members:

The 2008 General Assembly re-codified Title 3.1 of the Virginia Code which included the enabling authority for local animal laws. Effective October 1, 2008, Title 3.2 replaced the provisions of Title 3.1. Chapter 4, Animals and Fowl, of the Albemarle County Code merits a comprehensive update to ensure conformance with state law and to properly reference the re-codified Virginia Code animal laws. On June 3, 2009 the Board authorized the ordinance amending Chapter 4, Animals and Fowl to be set for public hearing, and additionally requested the removal of the five acre Rural Area exception of the animal noise ordinance.

The attached ordinance (Attachment A) reorganizes and updates Chapter 4, Animals and Fowl. The changes to Chapter 4 encompass both housekeeping and substantive changes. The housekeeping changes include re-organizing and re-numbering the articles, divisions and sections of Chapter 4, amending the wording of existing provisions to mirror Virginia Code language, and amending the state law references to reflect the newly codified Virginia Code sections. The key substantive changes in the draft ordinance are:

- **Section 4-100 Definitions.** Addition of “clearly visible sign,” “commercial dog breeder,” “emergency veterinarian treatment”, “foster care provider” and “properly cleaned”. Adoption of the definition for “commercial dog breeder” is mandated by Virginia Code, and except for “clearly visible sign”, these new definitions all mirror the Virginia Code definitions. The Section 4-100 (15), “clearly visible sign” definition is included at the request of animal control to clarify a requirement of section 4-219, Dangerous and vicious animals, which requires the owner of a dangerous dog to post clearly visible signs at the owner’s residence warning minors and adults of the presence of a dangerous dog on the property.
- **Section 4-105 Care of companion animals; penalty.** Addition of Virginia Code § 3.2-6503 requirements which require owners of companion animals to provide adequate feed, water, shelter, space, exercise, care, treatment and veterinary care to their companion animal. This section is also applicable to all pounds, animal shelters, releasing agencies, foster care providers, animal dealers, pet shops, kennels, groomers and boarding establishments. The Virginia Code enables localities to adopt an ordinance with these specific animal care requirements and these requirements have been added at the request of animal control.
- **Section 4-106 Noise from animals; penalty.** A recent Virginia Supreme Court ruling in *Tanner v. City of Virginia Beach* held that the “reasonable person” standard in the Virginia Beach noise ordinance was vague and unconstitutional. Section 4-106(A) has been amended by removing the “reasonable” person standard which is stated as “unreasonably disturbs the peace and quiet, comfort, or repose of any person” and inserts an objective standard which states that the excessive, continuous and untimely noise must be “audible on the property of the complainant”. A minor amendment was also made to section 4-106(C), at the request of the SPCA, by replacing “SPCA” with “animal shelter”. On June 3, 2009, the Police Department provided a 12 month report on the impact of the animal noise ordinance (see Attachment C) and recommended that animal noise continue to be regulated as it has been a helpful tool for the animal control officers. Additionally, animal control suggested that the five acre Rural Areas exception be re-evaluated. Based upon Board discussion at the June 3 meeting, the five acre Rural Areas exception has been removed, making the animal noise provision applicable County-wide.
- **Section 4-107 Abandonment of animals; penalty.** Addition of Virginia Code § 3.2-6504 provisions, which regulate the abandonment of any animal, and deems abandonment of an animal to be punishable as a class 3 misdemeanor with a fine of up to \$500.00. Releasing an animal to a pound, animal shelter or other such agency shall not be considered abandonment. This provision has been added at the request of animal control.
- **Section 4-200 Running at large prohibited.** Currently, running at large is prohibited only in certain areas of the County as designated by the Board and specifically listed in the ordinance. The list of prohibited areas has increased over the years and animal control has had difficulty determining which areas of the County the ordinance is applicable to, thus rendering it difficult to enforce the ordinance. Additionally, animal control receives complaints about dogs running at large in parts of the development areas of the County where running at large is currently not prohibited. Some examples of areas where running at large is currently not prohibited are: Barracks West/Old Salem apartments, Forest Lakes South, Templeton Circle, Abington Crossing, Glennwood Station condominiums, Hollymead Town Center, Raintree, Northfields, Albemarle Square, Fashion Square Mall, and the Village of Rivanna. At the request of animal control, Section 4-200 has been amended to prohibit running at large throughout the County, except in areas zoned Rural Areas District; however, areas zoned Rural Areas District which were previously identified as a no running at large area will remain a prohibited running at large area and are listed as such in section 4-200(A). At the suggestion of animal control, an exemption has been added that a dog is not deemed to be running at large if it is on a bona fide hunt during hunting season accompanied by a licensed hunter or during field trials or training periods when accompanied by its owner. Lastly, specific authority has been included to provide that if a dog is observed or captured by animal control while running at large, the dog will be impounded in accordance with the impoundment provisions, section 4-300 et seq., of this ordinance.

- **Section 4-202 Compensation for livestock and poultry killed by dogs.** Addition of Virginia Code § 3.2-6553 provisions which set forth the procedures and maximum compensation that an animal owner may seek for livestock, poultry or fowl killed by a dog. These procedures and compensation have been available to such animal owners pursuant to the Virginia Code, and has been added to the ordinance at the suggestion of animal control in order to more readily inform such animal owners of available procedures and remedies, while also providing continuity with section 4-201, Dogs killing, injuring or chasing livestock or poultry—Generally.
- **Article II, Dogs and Other Animals, Division 3, Commercial Breeders.** The Virginia Code mandates that all localities adopt the provisions and requirements of Virginia Code § 3.2-6507.1 et seq., which sets forth the licensing and business practice requirements for commercial dog breeders. The requirements include: obtaining a valid business license for commercial dog breeding; maintaining no more than 50 dogs over the age of 1 year at any time; obtaining an annual certification from a licensed veterinarian for female dogs between the ages of 18 months and 8 years, with such certification stating that the dog is suitable for breeding; disposing of only by gift, sale, transfer, barter or euthanasia by a licensed veterinarian; and maintaining accurate records of the commercial breeding operation for at least five years. Violations of these requirements are punishable as a class 1 misdemeanor with a fine of up to \$1000.00 or up to 12 months in prison.
- **Section 4-301 Impoundment; expenses; lien; disposition of animal.** Addition of Virginia Code § 3.2-6565 provisions which authorize animal control or law-enforcement officers to impound an animal whose owner has failed to provide appropriate and adequate care to an animal, which renders the animal in such a condition that it constitutes a direct and immediate threat to its life, safety or health, and whose owner has failed to remedy the condition and situation. This provision has been added at the request of animal control.
- **Section 4-401 Rabid animals.** Addition of Virginia Code § 3.2-6522 provisions which address rabid animals. The provisions authorize confinement of animals suspected to be rabid. In addition, any person having knowledge of the existence of an animal that is afflicted with rabies is required to immediately report the information to the Charlottesville/Albemarle Health Department. Violation of this section is punishable as a class 1 misdemeanor with a fine of up to \$1000.00 or up to 12 months in prison. This has been added to provide the County with the necessary powers to protect the public's health and safety as it relates to rabid animals.

An annotated draft of the ordinance is provided as Attachment B. The annotations explain the nature of the changes to each section of the draft ordinance. The green highlighted language is revisions made pursuant to the Board's direction at its June 3, 2009 meeting.

Staff anticipates limited additional enforcement by animal control officers under the proposed ordinance and, therefore, anticipates that there should be a minimal budget impact.

Staff recommends that after the public hearing, the Board adopt the attached ordinance (Attachment A).

Mr. Davis reported that this is predominantly a housekeeping ordinance, as the County Code regarding animal laws had not been updated for several years, and the Virginia Code that governs animal control laws was recently re-codified. He said that there are two issues also included in the ordinance – one being the animal noise ordinance provisions that the Board adopted last year. Mr. Davis explained that the proposed ordinance proposes to eliminate the exception for animal noise that is generated from rural area lots that are five acres or greater in area, so that the noise provisions are applicable county-wide if an animal made noise that was audible on the property of the complainant for 30 or more consecutive minutes with no interruption of less than five minutes. He stated that currently the ordinance exempts parcels that are five acres or greater and are zoned Rural Areas. Mr. Davis also said that the change in the term “audible” is also a change from the existing ordinance – with the “reasonable person” language in the current ordinance. He reported that the Virginia Supreme Court has struck down that language as being unconstitutional, and the County has replaced that with a version of the ordinance that defines the noise level as “audible” for a certain time period.

Mr. Davis explained that the other change in the ordinance relates to the “running at large” provisions. Currently there are 41 discrete areas in the County that have been defined in the ordinance where running at large by dogs is prohibited. He stated that running at large restricts dogs that are off-property of their owners or custodians who are not under the immediate control of their owners or custodians. Mr. Davis said that the problem over the years has been that the boundaries of those areas have become very confusing to animal control, and outdated as well. He stated that the running at large ordinance would apply to all areas of the County that are not zoned RA – so anything zoned residential, commercial or industrial would be included in the running at large area – which is primarily in the growth areas and Scottsville and Crozet. Mr. Davis noted that there are 17 additional areas in the County which are currently restricted and zoned RA, and staff proposes including those areas to continue to be restricted – basically neighborhoods in the RA district that have previously petitioned the Board for inclusion.

Mr. Rooker asked about the ability of a neighborhood to petition in the future for inclusion. Mr. Davis responded that if any additional neighborhoods in RA wish to have running at large restrictions they would petition the Board, and if 50 percent or more of those property owners requested that change the Board would hold a public hearing and make a decision as to whether or not to include them.

Mr. Davis said that in terms of enforcement, animal control officers will be able to quickly determine the zoning of the property using the GIS system. This would only apply to areas zoned RA – in those areas where citizens have previously petitioned to be protected.

Mr. Boyd asked how farm dogs would be dealt with if a leash law is passed in a rural neighborhood surrounded by a farming community.

Mr. Davis replied that if a dog is running in a restricted area, it is a violation; if it's running in a non-restricted area, it is not in violation. He also explained that the "leash law" is a misnomer – as the County Code has never required a dog to be on a leash, just under control of the owner.

Mr. Rooker commented that under control of the owner extends far beyond a leash.

Ms. Thomas said that "leash" is only used in the sections for dangerous dogs and rabid dogs.

Mr. Davis distributed a minor errata sheet to address several typographical errors in the proposed ordinance. He also said that there were several housekeeping measures to include in the noise ordinance – adding the exemptions for an animal pound in addition to animal shelters and commercial kennels. Mr. Davis restated that the only proposed extension of the area covered by the ordinance is within areas that are zoned residential, commercial, or industrial. He mentioned that the animal care conditions are in the State law and they are simply being added to the ordinance at the suggestion of animal control.

Ms. Mallek asked if there are other suggestions for other additions for "audible."

Mr. Davis responded that the Supreme Court had issues with descriptors, and the ordinances that have been upheld simply use the term "audible."

Mr. Boyd commented that Stafford County requires two different people from two different residences in order to file a complaint with the Magistrate.

Mr. Slutzky stated that the Board discussed this previously and agreed that having an extra person complain doesn't necessarily change the legitimacy of a complaint, as they are still bearing the burden of proof when they pursue the case.

Ms. Thomas commented that the requirement for qualifying as a dog breeder is 30 or more female dogs. Mr. Davis explained that the number is required to apply the commercial dog breeding regulations in the State law.

Ms. Thomas said how "minor" injury is defined is important, but it's only "major" injuries that can force a dog to be declared dangerous; what's new in this proposed ordinance is the wording "injury to a person."

Mr. Davis said that in order for a dog to be declared a dangerous dog, animal control would have to investigate and determine that they believe it's a dangerous dog, then a Judge would need to consider the totality of circumstances and make an independent determination that the dog is dangerous. "The injury to a person is just an entry into the process where discretion is then used at both the animal control level and at the judicial level."

At this time, the Chairman opened the public hearing.

Mr. James Dubovsky said he lives in a neighborhood of 19 homes – with a neighborhood association that tried to address excessive dog barking at their neighborhood meeting 10 years ago. He said that it's when a dog owner chooses to ignore his or her barking dog with either negligence or spite that government is obligated to protect its citizens, and is not a violation of a dog owner's rights. Excessive dog barking violates the rights of neighboring landowners when they are denied a peaceful healthy environment within their homes and property. Mr. Dubovsky commented that the stress and sleep deprivation caused by a neighbor's negligence should also be viewed as a health issue, and this issue is about preserving landowners' rights to a "peaceful and healthy home environment." He played a recording of his neighbors' dogs barking, which is located not more than 200 feet from his property line.

Ms. Charlotte Hogue said that there should be a countywide requirement that all dogs be on a leash when they are off their owner's property. For the past several months she has been a "prisoner" in her own yard because of a German shepherd who was running loose in her neighborhood. All dogs should have identification with their owner's name, address and telephone number. Ms. Hogue also stated that a limit on the number of dogs allowed on small lots would help. Limiting the number would help with the noise level.

Ms. Debbie Burgess, on behalf of the Charlottesville-Albemarle Kennel Club, stated that the Kennel Club promotes responsible dog ownership and respecting non-dog neighbors' needs for amicable living conditions. She said that the Club believes the proposed ordinance needs changes if it is to be enforceable and fair: remove the term "injury" from the dangerous dog ordinance as it refers to minor cuts, tears, and bruises – use the term "serious injury" instead; change the term "audible on the complainant's property" as it will be difficult to define "audible" and defend it in a court of law. Ms. Burgess stated the Kennel Club's opposition to the change in the animal noise ordinance to extend it to rural properties of more than five acres, as it forces the courts to "decide emotional cases without objective criteria," and to extend the law to large rural parts of the County counters the whole experience of a rural lifestyle.

Ms. Burgess also said that the group recommends adding to the running at large ordinance to include organized dog events by established groups – such as outdoor dog shows, sport dogs such as

obedience, coursing, agility, herding, tracking, field trials, and carting, where dogs are under supervision of their handler and dog event monitors.

Mr. George Urban said he and his wife are residents in the Samuel Miller District and are “responsible dog owners” as well as keeping “foster dogs” and running dog rescues. As a responsible dog owner, he opposes expansion of the barking dog ordinance and calls for its full repeal. Mr. Urban stated that the ordinance is a “reactionary, poorly thought out, poorly researched measure” that would likely fail in its primary objective and bring unintended negative consequences – and in the past year those concerns have been validated. He commented that the local Commonwealth’s Attorney has called the ordinance “unenforceable,” and the proposed change to the audible standard may attempt to correct that, the language is concerning. Mr. Urban stated that the ordinance is reactionary and creates unnecessary, ineffective laws despite dozens of emotional pleas at last year’s public hearing. He emphasized that only two citations have been issued in the last year, and he expected many more based on last year’s hearing – with only one making it to court. The criminal court system is the wrong venue to handle these disputes. Mr. Urban stressed that there are other barking dog statutes in other localities that could be used as a model for a “more reasonable, well thought out ordinance in Albemarle.” He is opposed to the expansion of the ordinance. He believes the barking dog ordinance should be removed totally. He supports the Kennel Club’s stated positions.

Ms. Wendi Giordano, a resident of the County, member of the Charlottesville-Albemarle Kennel Club, and President and founding member of the Burmese Mountain Dog Club of Central Virginia, said she supports the Kennel Club’s position and recommendations for language change, as they believe that the qualifiers should be measurable – improving enforceability – with “audible” being too vague. She added that there are injuries that happen by accident, and that doesn’t necessarily mean that a dog is dangerous.

Mr. Rooker clarified that organized events where dogs would typically be subject to someone’s control would not in any way be prohibited by this ordinance. Mr. Davis confirmed that is correct.

Mr. Robert Hogue said that the leash law should be countywide, because of “bad dog owners” and “lazy dog owners.” He has had run-ins with aggressive dogs and should not have to look over his shoulders for these dogs. There was a German shepherd hanging around his property that was eventually hit by a car on Dick Woods Road and died. Too many dog owners do not put any identification on their collars. There needs to be a countywide leash law.

Ms. Alice Harrington said she represents the Virginia Federation of Dog Clubs and Breeders, which has over 50 clubs including the Charlottesville-Albemarle Kennel Club. She explained that the Federation helps communities solve problems with legislation and other issues. Ms. Harrington stated that the local club is very active and committed to maintaining good relations in the community. She suggested amending the language to ensure it includes agents and handlers, not just owners. They would like to see exemptions for all organized and sponsored dog events and training for those events. Ms. Harrington indicated that they encourage mediation, and don’t usually support codifying these measures into criminal matters as they quickly become fuel for neighborhood feuds.

Mr. Slutzky noted that the definition of owner in the proposed ordinance is “any person who has a right of property of an animal; keeps or harbors an animal; has an animal in his care; or acts as a custodian of an animal.

Mr. Davis stated that if the animal is not off of the property where it is supposed to be, it won’t be a violation.

Ms. Mallek clarified that if a dog is on your home property it can run around, but if it’s not on your property then it needs to be under someone’s control.

Mr. Rooker mentioned that the County doesn’t have the authority to order mediation.

Mr. Davis responded that there is no enabling authority in Virginia to require mediation before a criminal charge or civil charge. He said that a common practice in court today is for judges to first look at whether a solution can be reached through mediation.

Mr. Tom Polder said that their neighbor to the west had 13 dogs – 12 of which are caged hunting dogs; his neighbor to the north had seven dogs – two of which are vicious. He said that one issue with allowing dogs to run is that they may run across areas that are under easement for access. They could not go in and out of their driveway because the neighbor dogs were attacking them. The dogs would bite on the fender of their car. Mediating did not work. Mr. Polder said that it is difficult for him to sleep, sit on the front porch, or have full use of his property. They put up with this for two years and eventually had to move. They can close all of their windows and still hear them. Outside it’s unbelievable at times. He doesn’t think it is fair that they have to spend thousands of dollars in lawyer fees to do something about this. He looks at hunting dogs as a hobby and these neighbors are putting their hobby in his face. It’s more than audible – much more than audible. He noted that this all takes place on five-acre tracts and they have no recourse. In his opinion a lot of people do not care.

Mr. Dorrier asked him why mediation wouldn’t work. Mr. Polder replied that perhaps it would with a Judge involved.

Mr. Rooker emphasized that the current ordinance doesn’t require the dog owner to do anything.

Ms. Julie Polder indicated that she contacted an easement attorney, and if it went to court it would likely cost them \$9,000 to use their driveway. Mr. Polder, again, stated that he does not think it is fair; that they have to spend this money.

Mr. Bob Johnson said he has lived in Albemarle County for 40 years and in his present home for 33 years. Mr. Johnson said that it's rural and sounds are to be expected, but recently he has a neighbor with six or seven very loud dogs that bark about 18 hours a day. The critical factor is the difference between the background sound and the level the sound when the dogs are barking. He is not trying to change rural living. His neighbor is changing the entire environment. He stated that mediation is not really practical in his situation, but it would be helpful to have a mechanism of enforcement to get a neighbor to talk.

Mr. Joanne Hayden addressed the Board, stating her opposition of extending the dog ordinance into the County on properties of five acres or more. Her family has lived in Free Union for 23 years. Ms. Hayden said that this is a slippery slope of adding more laws in response to an isolated few situations that have not been thoroughly vetted out. She thinks it is wrong to allow neighborhood disagreements to rise to a level where dog owner in the County is threatened globally. She stated that it would be reasonable to expect a written report from a responsible County officer who assesses a situation, and that has not been the case. Ms. Hayden asked if the new ordinance would affect local farmers with sheep and goats, or local vineyard owners who use guardian dogs to keep the deer off of their property. The Board needs to contact the animal officer to check out the reported areas of concern. You may find that [the ordinance] is not needed and does not add value for the majority of citizens. The Board needs to find out all the facts before making a decision. She said that a year ago Ms. Mallek was cited as firmly favoring the extension of the dog ordinance prior to the public hearing and suggesting that the ordinance apply to all rural areas before that concept was announced to the public or researched. Those individuals who say this is not an anti-dog or anti-barking ordinance are "sugar coating" the truth.

Mr. Dick Hayden said that the night air in the rural area carries sound, and it doesn't make sense to expand the dog ordinance into the County. He stated that the animal control officer has only had two complaints and that is not enough justification for increasing the new law. Mr. Hayden stated that the County dog ordinance is now 24 pages, and the U.S. Constitution is only 19 pages. He suggested encouraging mediation before implementing new "unnecessary laws." He strongly opposes the proposed ordinance.

Ms. Jessica Hayden said she opposes the proposed ordinance. She said that changing the barking definition to include all noises that are audible on the property of the complainant is unnecessary. She expressed concern that the ordinance would put an unfair burden on farmers who need dogs to guide their livestock, and would put their farms in jeopardy. Ms. Hayden emphasized that the ordinance doesn't need to be changed to suit the demands of one dispute in which parties couldn't mediate the problem. She noted that last year under the ordinance, 47 noise complaints were called in and of those calls only two went to court – the first case was sent back to mediation and the other defendant paid a fine for locking his dog in a car. She asked why the entire County loses their rights as farmers and landowners because of a couple of unsuccessful cases. If this ordinance passes, what is next? She strongly urges the Board to consider what these provisions will have on the entire County. Expansion of this ordinance to the rural areas is not the solution to the problem. The real problem with barking is the humans involved.

Ms. Sherry Buttrick said that she lives in the White Hall District. She and her husband have used packs of hunting hounds. Ms. Buttrick said that they have two concerns about the proposed revised ordinance – the extension of the barking section into the rural areas, and the standard of audible, which seems a "Draconian" standard. She commented that there may be fact-specific cases that demand solutions, and to have an ordinance that binds everybody seems to be too restrictive. Ms. Buttrick also expressed concern that these ordinances will be used to eventually end hunting in the County altogether.

Ms. Judith Gardner said she is against the proposed extension of the ordinance to rural areas. She said that the house she used to own in Nelson County was right next to a working farm, and her family accepted the noise as part of the country life they were seeking. Ms. Gardner stated that she and her husband wanted their son to have the freedom to roam the countryside with their dogs. She added that she now lives within earshot of the Farmington Hunt Club, and the barking of their many dogs is audible from her land and her house. Another neighbor owns four Jack Russell Terriers and they also bark, but she would not complain about those noises any more than she would complain about traffic noises had she stayed in the city. She is concerned about the changes to the proposed ordinance because she worries that it is a step in a direction many in the country do not want the Board to go. She is concerned about the next ordinance that the Board may enact. Second, it seems this is an ordinance that in fact is a private dispute between two neighbors and the issue should be settled another way.

Ms. Ellen Popkin, a County resident, said she is here to support the presentations being made by the Charlottesville-Albemarle Kennel Club and to encourage the Board to be conscious of the rural areas.

Ms. Alexandra Lawwill said that in 1992 one-half of her family's angora goats were killed after being attacked by a neighbor's hunting dogs. She said that they now have a livestock guardian dog to prevent this from happening again, and it would be impossible to run the farm without that type of dog. This ordinance will affect her farm and she asked that the Board not adopt the proposed ordinance.

Ms. Kristina Lawwill said she apologizes for the part her farm has "inadvertently played" in having this issue before the Board. She said that this is the result of a conflict between two families who came to the rural areas of Peavine Hollow in Free Union for two completely different reasons, "and their dreams have collided." She emphasized that rural life changed forever when animals became domesticated

10,000 years ago, and choosing to use livestock guardian dogs is the correct biological predator control. Ms. Lawwill stated that it would be very difficult to prove violations of this ordinance, and there are many many reasons not to extend it.

Ms. Carol Minetree said she is the one Albemarle County resident who is accused of violating the barking dog ordinance, although she made “every conceivable effort” to accommodate her neighbor. Ms. Minetree stated that she still contends she was not violating the ordinance, yet she was still taken to court even though there was no proof brought to the Magistrate. She requested that the Board remove the ordinance and replace it with a less intrusive, more constructive mediation program which would be far more successful – as it was in her case. Ms. Minetree said that if the ordinance is adopted, she suggests changing the criteria of dogs barking from 30 minutes to a level of “unreasonable barking” and the five-acre exemption be maintained. She noted that during her hearing, Judge Barkley indicated that the dogs might continue to bark no matter who he finds in favor, but if the defendant is found guilty the dog is removed from its home and moved to another area – which only transfers the problem. Ms. Minetree said that the percentage of barking complaints over the last three years is no more than two-tenths of one percent of all dogs in the County, so they are really not a widespread problem. It’s the exceptions that need assistance and not a heavy hand, and she believes mediation offers that solution. She added that the current standard is far too low, and should be raised to a level of unreasonable barking – such as 30 to 45 minutes without cessation, or to a level that would raise attention to abused and neglected dogs. Ms. Minetree suggested setting up a mediation panel using local animal experts and animal lovers to help solve neighborhood disputes.

Ms. Thomas asked Ms. Minetree if a voluntary mediation program would have had an effect in her case. Ms. Minetree responded that it absolutely would, noting that both she and her neighbor would have been willing to participate. Part of her mediation was the use of an animal behaviorist and an animal trainer.

Mr. Rooker pointed out that there is voluntary mediation now and it is recommended in the County’s brochure. He emphasized that the County recommends it, as do animal control officers.

Ms. Minetree indicated that she wasn’t aware of the brochure until after she was already being taken to court, and the brochure is essentially a “how to on how to take your neighbor to court.” There is nothing in the brochure that helps the neighbor with the barking dog or outline resources available to them.

Ms. Melissa Wolf Riley said she is the attorney who represented Ms. Minetree in her case that went before the General District Court. She stated that she handles dangerous dog cases, and one of the most concerning provisions of the proposed ordinance expansion is the definition of injury – which would include minor scrapes and bruises, as that occurs frequently with no aggressive intent. Ms. Riley said that the animal control officers feel constrained by State law as it doesn’t give them a lot of leeway and judgment in terms of which cases should move forward. She would hate to see this Board make further constraints on that which do not leave the animal control officers the opportunity to use their judgment and discretion in cases. She supports the leash law but asked them to consider an exemption for dogs that are on the property of others with the permission and consent of the property owner. Ms. Riley said that civil cases are automatically referred to mediation, but that is not the case with criminal cases – and this ordinance refers them to the criminal system. She added that if cases can get to mediation before court that would be a more effective way to resolve the issues. She opposes the proposed ordinance and asked that the Board reconsider it.

Ms. Marianne Sullivan said she is a member of the Charlottesville-Albemarle Kennel Club and agrees with Ms. Riley’s statements. She has been a County resident for 33 years. Ms. Sullivan said that she has concerns with the definition of injury, stating that the provision should include “serious injury” as defined. A dog can leave a mere scratch or bruise. She isn’t sure why exemptions wouldn’t be made in the ordinance for animals other than hunting dogs. She emphasized that living in the country allows people to live their lives as they choose, and if they wanted to live somewhere where there are covenants and restrictions they would live there instead. Most issues are resolved through education, offering the expertise of those from the kennel club. Ms. Sullivan added that if the ordinance is passed, she would like the word “audible” to be removed from the ordinance, and the under five-acre provision should be included.

Ms. Catherine Emanuel said she is a member of the Charlottesville-Albemarle Kennel Club and is a business owner in Albemarle County, as well as a livestock owner and guardian dog breeder, an owner and confirmation exhibitor and AKC licensed judge for a shepherd breed of livestock guardian dogs. She said that she has served as expert witness in several cases involving these dogs, and has provided testimony on their proper use. Ms. Emanuel stated that she supports the kennel club’s position on revisions to the ordinance with further input regarding the “anti-agriculture nature” of this ordinance change. She said that livestock guardian dogs serve a specific purpose, and barking is one way for them to alert that there are predators. She asked that the Board not silence our livestock guardians in our rural communities.

Ms. Allison Robertson, a resident of the County, stating that she was reviewing an executive summary from July 2004 regarding a Board request for information regarding nuisance dog regulations and stating that some cities in Virginia have dog ordinances that regulate nuisances such as excessive barking and chasing vehicles. Ms. Robertson stated that no Virginia Codes at that time included barking, and staff recommendations indicated that there was no authority to regulate nuisance dogs. She said that she sees nothing in the State Code that allows the Board to have that authority now.

Mr. Rooker asked Mr. Davis if there was any doubt that the County could implement this ordinance. Mr. Davis replied that there is no doubt, and the staff report did not say that there was no authority to have a barking dog ordinance.

Ms. Margaret Marsh, a County resident, said that she is opposed to the current ordinance as well as the proposed change. The dog is being punished, not the owner. Ms. Marsh stated that the current ordinance allows the animal control officers to seize the dog and bring it to the SPCA if its custodian is found guilty three times within a 12-month period of time. She said that at the Board's June 11th meeting, a Supervisor indicated that dogs would not be euthanized because of the SPCA's policy – but their website states that they euthanized 135 animals in 2008 and 192 in 2007. She stated that she was a volunteer at the shelter, and dogs could be killed for various reasons such as not getting along with other dogs, cats, not reacting well to strangers or to being touched or being confined to a cage. There is a chance that the animal could be euthanized because it barked in Albemarle County. Ms. Marsh mentioned that the only cases that have come forward resulted in one fine and one mediation order, and the Judge indicated that he could not settle the case in court stating in his decision "this is exactly the sort of law that doesn't make sense." She suggested that rather than adopting another locality's ordinance, the County should create a task force of interested parties comprised of citizens, animal trainers, and veterinarians to look at all possible solutions.

Mr. Slutzky asked if it would be possible for a dog to end up being euthanized as a result of the Board's actions. Mr. Davis responded, "not at the consequence of this ordinance directly." The ordinance from last year was the same as the City's ordinance, and the Board chose not to adopt the provision that stated the court could order the dog to be euthanized on a third violation. He said that the ordinance as existing now would provide that the animal be seized and be offered to the animal shelter for adoption in a home outside of the area of the County covered by this section. He is not aware of any dog that the SPCA has allowed to be euthanized that could be adopted.

Mr. Rooker indicated that the SPCA here has adopted a no-kill policy.

Mr. George Padaroff, a resident of the Rio District, said he supported the ordinance last year and would like to talk about the effectiveness of the ordinance. Mr. Padaroff said that he did not go before the Magistrate in his case, but instead followed the brochure and has been able to encourage offenders to go along with its recommendations. He has contacted the police about barking dogs and they were effective in stopping the barking at about 3:00 a.m., and convince the owner to not allow it to happen again. He also contacted animal control on two separate occasions. The last time he contacted the police, this past May, they told him that the Virginia Supreme Court had struck down the wording of the ordinance and they could not do much. Mr. Padaroff indicated that one of his neighbors had no idea there even was an ordinance. He thanked the Board for the current ordinance and encouraged the Board to keep the ordinance but put in the right wording and "keep this going."

Mr. Mark Reynolds encouraged the Board not to adopt the ordinance and to keep the five-acre exemption in place. He said that he is a former agricultural agent for the County, and raises sheep and goats in the southern part of the County. Mr. Reynolds emphasized that he would not be able to have his farm without his guardian dogs, and barking is how they work. He stated that if the barking gets excessive, he goes outside and whatever is triggering his dogs' barking usually goes away and the barking stops. It's a neighbor situation; it's not an ordinance situation. He asked that the ordinance not be expanded.

Ms. Mallek asked if he would go out within 30 minutes to see what was going on. Mr. Reynolds replied that he would if he heard them when he was at his house, adding that his barn is one-quarter mile from the nearest neighbor and if he hears barking he will check it out.

Mr. Andrew Lynn said that he is a former past president and one of the current masters at the Keswick Hunt Club. He asked what the definition implies regarding how it effects kennel operations.

Mr. Davis responded that this is State law, and the definition is 30 or more adult female dogs as the threshold for having to comply with the law regarding commercial dog breeding. This is nothing that the County has any control over and would be applicable to you under state law currently.

Mr. Lynn reported that the Hunt Club has gone to extensive measures to keep their dogs quiet, and want to be good neighbors. He said that he opposes expansion of the ordinance as presented.

Mr. Slutzky said that the current ordinance wouldn't change the breeding dog provisions, as they are pulled from State law.

Mr. Davis emphasized that the State requirements must be complied with.

Mr. Tucker said that if they don't sell their dogs, then they are not a commercial breeder.

Ms. Dorothea Muller said she would like to have a clear definition of "excessive" and when "untimely" starts and stops.

Mr. Davis explained that "excessive, untimely, and continuous" is defined as being 30 consecutive minutes with no cessation for more than five minutes.

Ms. Muller asked if the time limit applies differently during the day and night. Mr. Davis responded that it applies the same, 24 hours per day.

Mr. Macgruder Dent said he agrees with the Kennel Club and others that they should vote against this "Draconian" law and adding that it will be difficult to enforce.

Ms. Linda King said that she would like for the Board not to exceed what the State requires. Ms. King said that the rural lifestyle has lots of sights, sounds, and odors that you may not desire, but that should be protected. She does not want County ordinances urbanizing the rural areas. She believes this ordinance is a reactive response. She suggested that the issues be dealt with as they come up. The language including bruises and scratches is "absurd" and should be deleted. The Kennel Club is here to be proactive, helpful, to be supportive and to educate.

Mr. Slutzky emphasized that the ordinance doesn't by definition make a dog that causes a bruise or an injury a dangerous dog.

Mr. Rooker agreed, adding that he doesn't see the potential for that with this ordinance. He said that it requires an animal control officer to make that determination, and then it must be reviewed by a Magistrate.

Mr. James Barrett said that he has lived in the Samuel Miller District for over 20 years and is present in opposition to the ordinance. Mr. Barrett asked the Board to include other exemptions for dogs at large other than hunting dogs and dog shows. He would like the references to injury removed. He asked that the County not be "suburbanized" by the Board. He also believes that education and mediation are the solutions to barking dogs and other dogs that cause problems. He thanked Sgt. Mainzer and Ernie Allen for all the great things they do for the County.

Mr. Art King said he moved here 20 years ago to the rural area to be able to maintain a lifestyle that they enjoy. Mr. King said that he doesn't want these issues to take the County down the slippery slopes of urbanizing a rural county. He is also a member of the Kennel Club, and they oppose the ordinance as well as the running at large issues. He asked that the verbiage on scratches and bruises be removed from the proposed ordinance.

Mr. E. R. Shifflett, a 61 year resident of the County, said that he loves his dogs and they are God's creatures – they have voices and can be eyes for people who are blind. This is not a county-wide issue, but a neighbor issue that need to be addressed between them. He asked Ms. Mallek what types of dogs she has, noting that he read an article in which she indicated her dogs didn't bark.

Ms. Mallek replied that they bark, but she always goes to see what they're barking at.

Mr. Shifflett said that farm animals make noise, and that is part of country living.

Mr. Charlie Hurt, a resident of Southern Albemarle, asked that the dog barking ordinance not be extended to the entire County. Mr. Hurt said that he has a sheep flock and it requires protection from predators, which can be accomplished with good fences or with more severe methods as the government recommends. He has a livestock protection dog that barks. He stated that the ordinance would be a problem if it were extended to working dogs such as the ones he uses to protect his sheep. Animal rights activists have also embraced livestock protection dogs because it is a nonviolent way of coexisting with other predators.

Ms. Brenda Shifflett, a 39 year County resident, said that she strongly disagrees to the changes in the ordinance. Sounds are just a part of nature and rural living. She said that it's not right to impose a regulation on annoyance, as many things fall into that category. To be perfectly honest she would rather be around a barking dog than some people.

Mr. Spencer Wood said he strongly opposed this ordinance because he would not like to go to Hell after been assassinated by PETA. He is not sure what makes people's enjoyment more important than that of dogs.

Ms. Deven Gaston, a resident of Free Union, said she owns "Canine Campus," a positive reinforcement dog-training facility. Ms. Gaston said that there have been excellent points made tonight, but the expansion of the ordinance should be based upon demonstrable proof that the existing ordinance has been effective and based upon its history it has not. Education is at the heart of all resolution.

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

(Note: At 8:45 p.m., the Board took a recess and then reconvened at 8:52 p.m.)

Mr. Slutzky suggested that a representative from animal control speak to the Board about their experiences and thoughts on the proposed ordinance.

Officer Kimberly Maddox said that there must be an ordinance in place for them to be able to enforce anything. She explained that the first step is a phone contact to determine what the issue is, an explanation of the brochure – which is available through mail or online, and a conversation regarding whether the complainant has discussed the problem with the dog owner. Ms. Maddox said that they try to mediate the situation by talking to the owner and seeing if he or she can take steps to resolve the issue. She has been handling the calls the same way she always has and has not yet had to pursue a summons through a Magistrate. The first case that went to court occurred before the current ordinance was enacted.

Mr. Boyd suggested having brochures available to give to people so they don't have to pursue getting them themselves. Ms. Maddox responded that that is the current procedure.

Ms. Thomas commented that the ordinance the County passed a year ago doesn't seem to have made any difference in the animal control officers' work.

Ms. Maddox replied that she still handles it the same way. With most calls she receives, it's just a matter of explaining the ordinance, adding that most citizens don't want to speak with their neighbors. Also, with current budget cuts, she does not go to a residence and just sit to hear if a dog barks for 30 minutes.

Ms. Mallek asked if Ms. Maddox thinks there is more interest with mediation compliance and working with neighbors since the ordinance was adopted and there are consequences.

Ms. Maddox said, in the calls she receives, usually the person is asking about the ordinance. She explains the ordinance and occasionally she helps individuals by going speaking to the neighbor.

In terms of how to proceed, Mr. Slutzky suggested discussing the various components of the ordinance. He asked if the Board wanted to adopt the State law provisions as part of the County's ordinance. The next issue with regard to barking – does the Board want to make the adjustment in the definition to include "audible". The third issue is whether the Board wants to extend the barking ordinance out into the rural areas on lots greater than five acres. The fourth issue is the running at large provisions. The Board can consider extending these provisions to the entire growth area and/or the entirety of the County.

Ms. Thomas said she thinks the Board needs to discuss the definition of "injury" since it has been mentioned several times.

Mr. Davis said that regarding the "injury" question, that definition has been in the ordinance since at least 1994, and through mandated State law an "injury" to a person is the threshold for a dangerous dog determination – a "serious injury" to a person is the threshold for a vicious dog determination. He added that there is no State Code definition of injury, and the one the County has is from many ordinances across the state, which were all compared and implemented in the 1990s when these laws took effect. Mr. Davis noted that a playful injury would not be actionable, as the standard pertains to dogs having an unfriendly interaction with a person. He mentioned that the animal control officers would exercise their discretion to determine whether that had happened and a person had received an injury; the officer would have to be the one to instigate the action in court and the Judge would establish the totality of the circumstances and determine whether or not the dog was dangerous. Even if a technical injury occurred the Judge could say it is not dangerous under those circumstances. Mr. Davis said that the standard of "serious injury" to a person only applies to analyzing the vicious dog part of the ordinance.

Ms. Thomas commented that the definition apparently hasn't caused any trouble or led to misjudgments since its implementation in 1994.

Mr. Slutzky stated that at the end of the day, it is up to the Judge to determine and he has the ability to reject the charge if it shouldn't be there. He is comfortable with leaving the definition of injury.

Ms. Thomas commented that laws shouldn't be carelessly written because there's an assumption that a Judge will just take care of it, and there are concerns about setting up your neighbor to make a complaint. There's paranoia afoot as to what it is we're setting up.

Mr. Rooker emphasized that they are not setting up anything new – it's been in place since 1994 – and the injury alone does not give rise to a determination.

Mr. Slutzky said that the language in the current ordinance says, "bitten, attacked, or inflicted injury."

Mr. Rooker responded that a playful injury cannot give rise to the determination.

Mr. Davis stated that the dangerous dog language is the required wording from the State Code and thus cannot be changed.

Mr. Rooker said that the definition of injury could be changed though.

Mr. Davis noted that animal control interpretation and application of that requires there to be an "unfriendly interaction" for them to consider a dog to be dangerous. They would not act on a playful injury.

Mr. Slutzky indicated that while that is a reasonable standard, the language is clear that injury can include a scratch or bruise.

Ms. Mallek added that it would also include being knocked down.

Mr. Davis said you do not want to require a situation to have to become a serious injury before you deal with a dog that has the potential for dangerous tendencies.

Mr. Slutzky suggested changing the wording to reflect injuries resulting from "attacks" by dogs, so it's not an injury resulting from something else.

Mr. Rooker said that the language of “unfriendly encounter” seems to cover it.

Mr. Davis commented that he is comfortable with “unfriendly encounter” being included.

Mr. Slutzky said the language would read: “The term ‘injury to a person’ means any superficial cut, scratch, scrape, or minor tear to the skin, or any bruise to bone or skin area resulting from an unfriendly encounter.” Board members concurred.

Ms. Mallek added that the threshold of small injury being handled without having to wait for a serious injury would still be included.

Ms. Thomas said that she was moved by the story from the man whose family could barely get in their house because of the neighbor’s loose dogs in the right of way, but there doesn’t seem to be anything in this ordinance that can address that situation.

Mr. Slutzky said he thinks the issue of euthanization needs to be addressed.

Mr. Davis clarified that the ordinance currently stipulates that if a Judge finds that a dog has excessively barked three times in a 12-month period, in addition to imposing a fine he may order the dog removed from the property by the dog owner, who has two weeks to comply with that order. The dog owner has the first option of finding a proper home for the dog to avoid the dog having any consequences other than the fact he can’t remain with his owner. He added that if this isn’t done, the court can order the dog to be seized and moved to an animal shelter or other location where the ordinance is not applicable.

Mr. Boyd said since the owner has the option to do something, he has no problem with the language.

Ms. Thomas asked about the origin of the language regarding hunting dogs running at large.

Mr. Davis explained that the language was recommended by animal control, and is similar to language that’s in other localities’ running at large ordinances. He said that as long as the training or exercising includes a dog being accompanied by its owner, it would be covered by the existing language – but the word “exercise” could be included for clarity.

Ms. Thomas responded that it would be clearer, but the question was raised about including the term “dog show” as well.

Mr. Davis indicated that the more language included, the more complicated the ordinance becomes – but for hunting dogs it is relevant as they tend to go off of property. For animal shows, they are on property where they have permission to have the animal show, and under no circumstance could they be off property and not under control of the owner, as defined. He thinks it would be an unnecessary amendment.

Mr. Rooker asked if that could be interpreted as a dog running at-large. Mr. Davis responded, “no”.

Mr. Boyd asked what about if a person visits a neighboring farm and leave the dog unattended at that person’s farm. Mr. Davis said that is covered by the term “owner”. Owner means any person who keeps or harbors an animal. If you have permission to have the animal on someone else’s property, they are harboring it, and it would not apply.

Mr. Rooker said that there is no proposal to add the at-large dog ordinance to the rural areas except for subdivisions that have petitioned to be included.

Mr. Slutzky noted that members of the public have commented as to their wish to include expansion of the at-large area to include the rural areas.

Mr. Rooker responded that it’s not on the table, and if it were the public hearing would need to be re-advertised.

Ms. Mallek said if there is a majority of Board members interested in further discussion of this issue, she would also be agreeable.

Mr. Rooker said he thinks the problems described by people would fall under dangerous and vicious dog circumstances.

Mr. Dorrier said he does not think the issue that has been presented to the Board is packs of dogs running around attacking people.

Mr. Rooker said he thinks if there were a number of circumstances where this appeared to be a problem, then the Board should address it at that time. That is not the case at this time.

Ms. Thomas commented that what’s in place is a “very democratic situation” in which people get to vote as to whether or not they want to have a leash law, and if this provision of the ordinance is adopted then the leash law would automatically be implemented. She is not supportive of expanding the leash law throughout the development area to neighborhoods that have not put it into effect.

Mr. Rooker noted that dogs wander into Albemarle Square, Fashion Square, etc., and they are not included under the current ordinance provisions.

Ms. Thomas suggested changing the ordinance to include commercial areas, which would be different than including other neighborhoods.

Mr. Slutzky said that he lives in Northfields, which has a loosely structured association, and people walk with their dogs in his area and other nearby neighborhoods. He stated that a lot of constituents in his area are puzzled that the County doesn't have a leash law.

Mr. Boyd emphasized that there is an issue for animal control in being able to distinguish which areas are covered and which are not.

Mr. Davis commented that there isn't clarity as to where it applies, and the map being used to define the growth areas is from 1987. There's just such vagueness as to how that applies on a Comp Plan that it has been unenforceable from a practical standpoint. He added that what this does is allow animal control officers to have access to GIS and maps of the neighborhoods in the rural areas so that they will know whether the ordinance applies. He does not think it greatly expand the area already included by the existing ordinance.

Mr. Slutzky said that imposing the standard in the growth area is one thing, but taking it out to the rural area is a whole different issue.

Mr. Rooker stated that animal control requested this to provide certainty as to which areas are covered and which are not. He confirmed that the map is not drawn with precision and some of the areas came online after the map was drawn.

Mr. Boyd said that he is struggling with all of these issues, and he doesn't recall one objection about making the leash law apply in the growth areas.

Mr. Slutzky commented that there seems to be consensus to accept the running at large provisions to include the entire growth area and select rural area subdivisions that have already adopted it by virtue of Board action.

Mr. Davis clarified that it's all property zoned residential, commercial or industrial, and those designated areas in the rural area that have already been identified in the existing ordinance, and any future subdivisions or developments that petition the Board. He added that this is existing policy.

Mr. Slutzky stated that he is not inclined to expand the ordinance to parcels over five acres, as the rural lifestyle expects natural sounds – including barking dogs.

Mr. Rooker said that the audible issue does have an impact, in his mind. He stated that the standard the Board seems to want to have in place is the one that's currently in the ordinance – and the court has said that "reasonable" is subjective, and most jurisdictions have gone to "audible" after considering many possibilities. Mr. Rooker commented that the noise meter approach is not practical. He added that even given the audible standard, it would be unreasonable to expand this to the rural area.

Mr. Dorrier said he also thinks it would be unreasonable to expand this to the rural areas. He thinks that audible is difficult to "get your hands around".

Mr. Slutzky asked if the court has accepted the word "audible."

Mr. Davis stated that audible has withstood constitutional challenge in locations other than Virginia.

Mr. Rooker said that he reluctantly accepts the audible standard.

Mr. Boyd commented that he voted against it last year, as the ordinance "creates more problems than it solves" and he is not in favor of expanding it. He is not more supportive of expanding the existing ordinance.

Ms. Thomas stated that what she was hoping to hear through this process was whether the existing ordinance was working, and there have been mixed results brought forth.

Mr. Boyd noted that when this was discussed last year the consensus was not to make the ordinance any more onerous, and it was suggested that animal experts and some of the stakeholders should come together to find some middle ground for the provisions.

Mr. Slutzky asked if anything had been brought in over the last year from these stakeholders who have expressed an interest in a different approach. He has not received any proposals.

Mr. Rooker said that there's nothing that prevents anyone from coming forward with a better plan. He received comments and email on both sides of the issue – with some people wanting to expand the ordinance and others not in favor of it. He has always owned dogs, and he believes people have an obligation to keep their animals from becoming nuisances to the people around them. There is something wrong when a dog barks for 30 minutes. In most cases neighbors solve their situations. He thinks that the Board needs to provide people that are in those circumstances with a remedy. The primary benefit of

the ordinance at least provides a citizen with egregious circumstances with a way to require a recalcitrant neighbor to come to terms and deal with it. The County and animal control officers push mediation as the first solution. He does not want to see the Board move backwards from they currently are.

Mr. Dorrier said that a person could get a disturbing the peace warrant and take it to the General District Court and then Judge Barkley could refer it to mediation.

Mr. Davis responded that it wouldn't apply unless the owner was causing the dog to bark; allowing the dog to bark would not be considered disturbing the peace – which is why ordinances such as this are necessary. He noted that Chesterfield County's proposal includes the benchmark of an animal being heard for ten consecutive minutes with no interruption of at least one minute, adding that he thinks that will be the direction most jurisdictions take.

Ms. Mallek commented that people should have the same rights to quality life in the country as well as in the urban areas, and she hopes that people will address these problems on their own so it doesn't have to be dealt with at the County being legislated or court level. She added that this Board is the group of last resort when things don't happen according to a more neighborly standard all by themselves. She hopes that a majority of the Board will vote to at least keep the current ordinance standards.

Mr. Slutzky said that it sounds as though there's consensus on modifying the definition of "injury" to make it less Draconian, and that the Board would like to accept staff's recommendation of the revised ordinance that takes into account the State changes and does expand the running at large provision ordinance.

Mr. Rooker stated that it clarifies the running at large coverage area to the boundaries of the growth area.

Mr. Davis added that the Board also wants to add back in the exception for property zoned rural area district of five or more acres in the noise ordinance, so that language struck in Section 4-106 that says "five acres or more" would be added back in. He clarified that the adoption would include the ordinance in Attachment A with the editorial revisions as distributed at the beginning of the meeting, the amendment to the definition of "injury to a person," and adding back in the five-acre exception in Section 4-106.

Mr. Rooker then **moved** to adopt the proposed ordinance as stated by Mr. Davis. Ms. Thomas **seconded** the motion.

Mr. Boyd stated that he wouldn't be voting for the ordinance, as he has difficulty with several parts of it.

Ms. Thomas said she will support the proposed ordinance. The Board has amended it good ways and are not expanding it in bad ways. She has learned a lot about sheep and dogs in the last couple of weeks.

Ms. Mallek said that she would support it, noting that there is great disagreement among farm enterprises about how guarding dogs should behave.

Mr. Dorrier stated that he would vote for it, and he agrees with it not applying to dogs running at large in the rural areas. He will go along with the audible standard because he does not know what the alternative would be. Also, if it helps bring mediation to the table first, he supports it.

Mr. Rooker and Mr. Slutzky indicated that they are fine with what is been presented.

Mr. Slutzky stated that there needs to be a distinction made between rural area lifestyle and urban areas. Dogs are a natural phenomenon in the rural areas.

Mr. Davis added that Ms. Jenny Lytle, from his office, spent a significant amount of time on this ordinance. She communicated with a lot of people, got a lot of feedback and good comments and revisions to get it to this point.

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

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

NAYS: Mr. Boyd.

ORDINANCE NO. 09-4(1)

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 4, ANIMALS AND FOWL, 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 4, Animals and Fowl, is hereby amended and reordained as follows:

By Amending:

Sec. 4-100 Definitions

Sec. 4-101 Enforcement of animal laws; penalties

By Renumbering:

Sec. 4-102 Boundary lines declared lawful fences; animals running at large beyond boundaries of own land	to Sec. 4-103
Sec. 4-209 Unauthorized removal of collars or tags	to Sec. 4-203
Sec. 4-212 Female dogs in season	to Sec. 4-204
Sec. 4-300 Dog license required	to Sec. 4-205
Sec. 4-302 What license shall consist of; evidence of rabies Vaccination; duplicate tags	to Sec. 4-207
Sec. 4-304 Amount of license tax	to Sec. 4-209
Sec. 4-306 Payment of license tax subsequent to summons	to Sec. 4-211
Sec. 4-307 Effect of dog not wearing collar and tag as evidence	to Sec. 4-212
Sec. 4-501 Tag showing vaccination required on dogs at large	to Sec. 4-404
Sec. 4-504 Applicability of article	to Sec. 4-405

By Amending and Renumbering:

Sec. 4-200 Dogs deemed personal property; rights relating thereto and Sec. 4-201 Unlawful killing of dogs	to Sec. 4-104 Dogs and cats deemed personal property
Sec. 4-202 Duty of animal control officer or other officer upon finding stolen, etc., dogs	to Sec. 4-102
Sec. 4-203 Dogs killing, injuring or chasing livestock or poultry-Generally.	to Sec. 4-201
Sec. 4-204 Dogs killing, injuring or chasing livestock or poultry-Impoundment and disposition	to Sec. 4-302
Sec. 4-205 Disposition of unlicensed dogs	to Sec. 4-303 Disposition of unlicensed dogs; running at large
Sec. 4-206 Disposition of carcasses	to Sec. 4-109 Disposition of companion animal carcasses
Sec. 4-207 Cruelty to animals; penalty	to Sec. 4-108
Sec. 4-208 Duties of animal control officers; seizures and impoundments of animals; notice and hearing; disposition of animals	to Sec. 4-300
Sec. 4-210 Harboring or concealing untaxed or mad dogs	to Sec. 4-214 Harboring or concealing unlicensed dogs and Sec. 4-402 Harboring or concealing rabid animals
Sec. 4-211 Diseased dogs	to Sec. 4-110 Diseased dogs or cats
Sec. 4-213 In certain areas	to Sec. 4-200 Running at large prohibited
Sec. 4-301 Procedure for obtaining licenses	to Sec. 4-206
Sec. 4-302 What license shall consist of; evidence of rabies vaccination; duplicate tags	to Sec. 4-207
Sec. 4-303 Veterinarians to provide treasurer with rabies certificate information; civil penalty	to Sec. 4-208
Sec. 4-305 When license tax payable, valid	to Sec. 4-210
Sec. 4-308 Display of receipts; collar and tag to be worn; penalties	to Sec. 4-213
Sec. 4-400 Definitions and Sec. 4-401 Dangerous dogs; vicious dogs	to Sec. 4-218 Dangerous and vicious animals
Sec. 4-500 Vaccination of dogs and cats required	to Sec. 4-400
Sec. 4-502 Confinement of animals suspected of having rabies or of being in close proximity to animals having rabies and Sec.4-503 Confinement of animals which have bitten persons	to Sec. 4-401 Rabid animals
Sec. 4-601 Noise from animals; Sec. 4-602 Complaints of animal noise; and Sec. 4-603 Penalty for violations	to Sec. 4-106 Noise from animals; penalty

By Adding:

Sec. 4-105 Care of companion animals
Sec. 4-107 Abandonment of animal; penalty
Sec. 4-202 Compensation for livestock and poultry killed by dogs
Sec. 4-215 Business license required
Sec. 4-216 Commercial dog breeding; requirements
Sec. 4-217 Violations; penalty
Sec. 4-301 Impoundment; expenses; lien; disposition of animal
Sec. 4-403 Inoculation for rabies at animal shelters

CHAPTER 4. ANIMALS AND FOWL

ARTICLE I. IN GENERAL

Sec. 4-100 Definitions.

The following words as used in this chapter shall have the following meanings:

(1) *Abandon*. The term "abandon" means to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in Virginia Code § 3.2-6503 for a period of five (5) consecutive days.

(2) *Adequate care or care*. The term "adequate care" or "care" means the responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when needed to prevent suffering or impairment of health.

(3) *Adequate exercise*. The term "adequate exercise" or "exercise" means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal.

(4) *Adequate feed*. The term "adequate feed" means access to and the provision of food which is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species.

(5) *Adequate shelter*. The term "adequate shelter" means provision of and access to shelter that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry, except when detrimental to the species; and, for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Under this chapter, shelters whose wire, grid, or slat floors (i) permit the animals' feet to pass through the openings, (ii) sag under the animals' weight, or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter.

(6) *Adequate space*. The term "adequate space" means sufficient space to allow each animal to (i) easily stand, sit, lie, turn about, and make all other normal body movements in a comfortable, normal position for the animal and (ii) interact safely with other animals in the enclosure. When an animal is tethered, "adequate space" means a tether that permits the above actions and is appropriate to the age and size of the animal; is attached to the animal by a properly applied collar, halter, or harness configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from extending over an object or edge that could result in the strangulation or injury of the animal; and is at least three times the length of the animal, as measured from the tip of its nose to the base of its tail, except when the animal is being walked on a leash or is attached by a tether to a lead line. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space.

(7) *Adequate water*. The term "adequate water" means provision of and access to clean, fresh, potable water of a drinkable temperature which is provided in a suitable manner, in sufficient volume, and at suitable intervals, but at least once every twelve (12) hours, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species; and is provided in clean, durable receptacles which are accessible to each animal and are placed so as to minimize contamination of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.

(8) *Adoption*. The term "adoption" means the transfer of ownership of a dog or cat, or any other companion animal, from a releasing agency to an individual.

(9) *Agricultural animals*. The term "agricultural animals" means all livestock and poultry.

(10) *Ambient temperature*. The term "ambient temperature" means the temperature surrounding the animal.

(11) *Animal*. The term "animal" means any nonhuman vertebrate species except fish. For the purposes of Article IV, Rabies Control, animal shall mean any species susceptible to rabies. For the purposes of section 4-109, animal shall mean any nonhuman vertebrate species including fish captured and killed or disposed of in a reasonable customary manner.

(12) *Animal control officer*. The term "animal control officer" means any person employed, contracted, or appointed by the Commonwealth or any political subdivision for the purpose of aiding in the enforcement of any other law or ordinance relating to the licensing of dogs, control of dogs and cats, cruelty to animals, or seizure and impoundment of companion animals and includes any state or county police officer, animal control officer, sheriff or other employee whose duties in whole or in part include assignments which involve seizure or taking into custody of any dog or other animal.

(13) *Animal shelter*. The term "animal shelter" means a facility, other than a private residential dwelling and its surrounding grounds, which is used to house or contain animals and which is owned, operated, or maintained by a non-governmental entity, duly incorporated humane society, animal welfare

society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of animals.

(14) *Boarding establishment.* The term "boarding establishment" means a place or establishment other than a pound or animal shelter where companion animals not owned by the proprietor are sheltered, fed, and watered in exchange for a fee.

(15) *Clearly visible sign.* The term "clearly visible sign" means a sign that is (i) unobstructed from view, (ii) contains legible writing, and (iii) may be read by any person without assistance while standing ten feet away from the sign.

(16) *Collar.* The term "collar" means a well-fitted device, appropriate to the age and size of the animal, attached to the animal's neck in such a way as to prevent trauma or injury to the animal.

(17) *Commercial dog breeder.* The term "commercial dog breeder" means any person who, during any twelve (12) month period, maintains thirty (30) or more adult female dogs for the primary purpose of the sale of their offspring as companion animals.

(18) *Companion animal.* The term "companion animal" means any domestic or feral dog, domestic or feral cat, non-human primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal which is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

(19) *Emergency veterinary treatment.* The term "emergency veterinary treatment" means veterinary treatment to stabilize a life-threatening condition, alleviate suffering, prevent further disease transmission, or prevent further disease progression.

(20) *Enclosure.* The term "enclosure" means a structure used to house or restrict animals from running at large.

(21) *Euthanasia.* The term "euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during such loss of consciousness.

(22) *Foster care provider.* The term "foster care provider" means an individual who provides care or rehabilitation for companion animals through an affiliation with a pound, animal shelter, or other releasing agency.

(23) *Hearing dog.* The term "hearing dog" means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond.

(24) *Injury to a person.* The term "injury to a person" means any superficial cut, scratch, scrape, or minor tear to the skin, or any bruise to bone or skin area resulting from an unfriendly encounter. An injury shall be presumed to have occurred when a dog knocks a person to the ground or tears that person's clothing or any possession on his or her person.

(25) *Kennel.* The term "kennel" means any establishment in which five (5) or more canines, felines, or hybrids of either are kept for the purposes of breeding, hunting, training, renting, buying, boarding, selling, or showing.

(26) *Leash.* The term "leash" means any rope, strap, chain, or other material not exceeding four (4) feet in length, being held in the hand of a person capable of controlling the dog to which it is attached.

(27) *Livestock.* The term "livestock" includes all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; capradae animals; animals of the genus Lama; ratites; fish or shellfish in aquaculture facilities, as defined in Virginia Code § 3.2-2600; enclosed domesticated rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals.

(28) *Owner.* The term "owner" means any person who: (i) has a right of property in an animal, (ii) keeps or harbors an animal, (iii) has an animal in his care, or (iv) acts as a custodian of an animal.

(29) *Person.* The term "person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity.

(30) *Poultry.* The term "poultry" includes all domestic fowl and game birds raised in captivity.

(31) *Pound.* The term "pound" means a facility operated by the Commonwealth, or county for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; or a facility operated for the same purpose under a contract with any county, city, town, or incorporated society for the prevention of cruelty to animals.

(32) *Primary enclosure.* The term "primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment, or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.

(33) *Properly cleaned.* The term "properly cleaned" means that carcass, debris, food waste and excrement are removed from the primary enclosure with sufficient frequency to minimize the animals' contact with the above-mentioned contaminants; the primary enclosure is sanitized with sufficient frequency to minimize odors and the hazards of disease; and the primary enclosure is cleaned so as to prevent the animals confined therein from being directly or indirectly sprayed with the stream of water, or directly or indirectly exposed to hazardous chemicals or disinfectants.

(34) *Releasing agency.* The term "releasing agency" means a pound, animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that releases companion animals for adoption.

(35) *Serious injury to a person.* The term "serious injury to a person" means any bodily injury for which medical attention was sought and obtained, which involves a serious laceration requiring stitches to more than one puncture wound or which is serious in the opinion of a licensed physician.

(36) *Service dog.* The term "service dog" means a dog trained to accompany its owner for the purpose of carrying items, retrieving objects, pulling a wheelchair or other such activities of service or support.

(37) *Sterilize or sterilization.* The term "sterilize" or "sterilization" means a surgical or chemical procedure performed by a licensed veterinarian that renders a dog or cat permanently incapable of reproducing.

(38) *Treatment or adequate treatment.* The term "treatment" or "adequate treatment" means the responsible handling or transportation of animals in the person's ownership, custody or charge, appropriate for the age, species, condition, size and type of the animal.

(39) *Veterinary treatment.* The term "veterinary treatment" means treatment by or on the order of a duly licensed veterinarian.

(Code 1967, § 4-4; 4-13-88; Code 1988, § 4-4; Ord. 98-A(1), 8-5-98; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code §§ 3.2-6500, 6528.

Sec. 4-101 Enforcement of animal laws; penalties.

A. Enforcement of this chapter is vested in one or more animal control officers as employed by the county police department. When in uniform or upon displaying a badge or other credentials of office, such officers shall have the power to issue a summons or obtain a felony warrant as necessary, providing the execution of such warrant shall be carried out by any law enforcement officer as defined in Virginia Code § 9.1-101, to any person found in the act of violating this chapter, Virginia Code §§ 3.2-6500 *et seq.*, and all laws for the protection of animals, and shall exercise all other powers as provided by state law and such other duties as may be provided by the board of supervisors.

B. Unless otherwise specified, any person violating a provision of this chapter shall be guilty of a class 4 misdemeanor.

(Code 1967, § 4-5, 4-13-88; § 4-16; Code 1988, § 4-5, § 4-16; Ord 98-A(1), 8-5-98; Ord. 09-4(1), 7-8-09)

State law reference-- Va. Code §§ 3.2-6555, 18.2-11.

Sec. 4-102 Duty of animal control officer or other officer upon finding stolen, etc., dogs.

Any animal control officer finding a stolen dog or a dog held or detained contrary to law shall have authority to seize and hold such dog pending action before the general district court or other court. If no such action is instituted within seven (7) days, the animal control officer shall deliver the dog to its owner. The presence of a dog on the premises of a person other than its legal owner shall raise no presumption of theft against the owner of such premises, but it shall be his duty to notify the animal control officer, and the animal control officer shall take such dog in charge and notify its legal owner to remove it. The legal owner of the dog shall pay a reasonable charge for the keep of such dog while in the possession of the animal control officer.

(Code 1967, § 4-8; 4-13-88; Code 1988, § 4-8; Ord. 98-A(1), 8-5-98, § 4-202; Ord. 09-4(1), 7-8-09)

State law reference---Va. Code § 3.2-6585.

Sec. 4-103 Boundary lines declared lawful fences; animals running at large beyond boundaries of own land.

The boundary lines of each lot or tract of land in the county are hereby declared to be a lawful fence. It shall be unlawful for the owner or manager of any horse, mule, swine, sheep, goat or cattle of any description to permit any such animals to run at large beyond the boundaries of their own land.

(Code 1967, § 4-1; Code 1988, § 4-1; Ord. 98-A(1), 8-5-98, § 4-102; Ord. 09-4(1), 7-8-09)

State law reference—“Va. Code §§ 55-306 - 55-316; 18.2-121.1.

Sec. 4-104 Dogs and cats deemed personal property.

All dogs and cats shall be deemed personal property, and may be the subject of prosecutions for larceny and malicious or unlawful trespass, and the owners thereof may maintain any action for the killing of any such animals, or injury thereto, or unlawful detention or use thereof, as in the case of other personal property.

The owner of any dog or cat that is injured or killed contrary to the provisions of this chapter or state law by any person shall be entitled to recover the value thereof or the damage done thereto in an appropriate action at law from such person.

(Code 1967, § 4-6; Code 1988, § 4-6; Ord. 98-A(1), 8-5-98, § 4-200; Code 1967, § 407; Code 1988, § 4-7; Ord. 98-A(1), 8-5-98, § 4-201; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6585.

Sec. 4-105 Care of companion animals; penalty.

Each owner shall provide the following for his companion animal:

1. Adequate feed;
2. Adequate water;
3. Adequate shelter that is properly cleaned;
4. Adequate space in the primary enclosure for the particular type of animal depending upon its age, size, species, and weight;
5. Adequate exercise;
6. Adequate care, treatment, and transportation; and
7. Veterinary care when needed or to prevent suffering or disease transmission.

The provisions of this section shall also apply to every pound, animal shelter, or other releasing agency, and every foster care provider, dealer, pet shop, exhibitor, kennel, groomer, and boarding establishment. This section shall not require that animals used as food for other animals be euthanized.

(Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6503.

Sec. 4-106 Noise from animals; penalty.

A. *Noise from animals.* It shall be unlawful and shall be a nuisance for an owner or custodian of an animal to harbor or keep any animal within the county which frequently or for a continued duration howls, barks or makes other excessive, continuous or untimely sounds which are audible on the property of a complainant in the county; provided however, this section shall not apply to any animal located on property zoned Rural Areas District of five (5) acres or more, to any animal in a pound or an animal shelter or commercial kennel as defined in chapter 18 of the zoning ordinance, or to sounds caused by livestock or poultry. For the purposes of this section, "excessive, continuous or untimely sounds" shall mean any howling, barking or other animal noise which continues for thirty (30) consecutive minutes or more with no cessation of such sounds for time periods greater than five (5) minutes during the thirty (30) consecutive minutes.

B. *Complaints of animal noise.* Notwithstanding section 4-101 of this Code, no person shall be charged with a violation of this section unless the complainant appears before a magistrate and requests a summons to be issued. However, when a violation is committed in the presence of an animal control officer or police officer, he shall have the authority to initiate all necessary proceedings.

C. *Penalty for violation.* A violation of this section shall be punishable as a class 3 misdemeanor, and any owner or custodian of an animal found guilty under this section shall be required to abate the disturbance. Upon a third conviction within twelve (12) months of any offense under this section involving the same animal, in addition to imposing a fine, the court shall order the animal to be removed from any area of the county covered by this section. If the owner or custodian of the animal fails to comply with such order within two (2) weeks, the animal control officer shall seize the animal and offer the animal to an animal shelter for adoption in a home outside of the area of the county covered by this section.

(Ord. 08-4(1), 6-11-08, § 4-601, § 4-602, §4-603; Ord. 09-4(1), 7-8-09)

Sec. 4-107 Abandonment of animal; penalty.

No person shall abandon or dump any animal. Violation of this section shall be punishable as a class 3 misdemeanor. Nothing in this section shall be construed to prohibit the release of an animal by its owner to a pound, animal shelter, or other releasing agency.

(Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6504.

Sec. 4-108 Cruelty to animals; penalty.

A. Any person who: (i) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly or

unnecessarily beats, maims, mutilates, or kills any animal, whether belonging to himself or another; (ii) deprives any animal of necessary food, drink, shelter or emergency veterinary treatment; (iii) sores any equine for any purpose or administers drugs or medications to alter or mask such sores for the purpose of sale, show or exhibition of any kind, unless such administration of drugs or medications is within the context of a veterinary client-patient relationship and solely for therapeutic purposes; (iv) willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; (v) carries or causes to be carried by any vehicle, vessel or otherwise any animal in cruel, brutal, or inhumane manner, so as to produce torture or unnecessary suffering; or (vi) causes any of the above things, or being the owner of such animal permits such acts to be done by another shall be guilty of a class 1 misdemeanor.

In addition to the penalties provided in this subsection, the court may, in its discretion, require any person convicted of a violation of this subsection to attend an anger management or other appropriate treatment program or obtain psychiatric or psychological counseling. The court may impose the costs of such a program or counseling upon the person convicted.

B. Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly and unnecessarily beats, maims, mutilates or kills any animal whether belonging to himself or another; (ii) sores any equine for any purpose or administers drugs or medications to alter or mask such sores for the purpose of sale, show, or exhibit of any kind, unless such administration of drugs or medications is under the supervision of a licensed veterinarian and solely for therapeutic purposes; (iii) maliciously deprives any companion animal of necessary food, drink, shelter or emergency veterinary treatment; (iv) instigates, engages in, or in any way furthers any act of cruelty to any animal set forth in clauses (i) through (iv); or causes any of the actions described in clauses (i) through (iv), or being the owner of such animal permits such acts to be done by another; and has been within five (5) years convicted of a violation of this subsection or subsection A, shall be subject to prosecution pursuant to Virginia Code § 3.2-6570 if the current violation or any previous violation of this subsection or subsection A resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, and such condition was a direct result of a violation of this subsection or subsection A.

C. Nothing in this section shall be construed to prohibit the dehorning of cattle conducted in a reasonable and customary manner.

D. This section shall not prohibit authorized wildlife management activities or hunting, fishing or trapping as regulated under the Code of Virginia, including Title 29.1, or to farming activities as provided by this Code or the Code of Virginia.

E. It is unlawful for any person to kill a domestic dog or cat for the purposes of obtaining the hide, fur or pelt of the dog or cat. A violation of this subsection is a class 1 misdemeanor. A second or subsequent violation of this subsection shall be subject to prosecution pursuant to Virginia Code § 3.2-6570.

F. Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation or cruelly and unnecessarily beats, maims or mutilates any dog or cat that is a companion animal whether belonging to him or another; and (ii) as a direct result causes the death of such dog or cat that is a companion animal, or euthanasia of such animal on recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, shall be subject to prosecution pursuant to Virginia Code § 3.2-6570. If a dog or cat is attacked on its owner's property by a dog so as to cause injury or death, the owner of the injured dog or cat may use all reasonable and necessary force against the dog at the time of the attack to protect his dog or cat. Such owner may be presumed to have taken necessary and appropriate action to defend his dog or cat and shall therefore be presumed not to have violated this subsection. The provisions of this subsection shall not supersede section 4-106 or 4-201.

G. Any person convicted of violating this section may be prohibited by the court from possession or ownership of companion animals or equine.

(Ord. 98-A(1), 8-5-98, § 4-207; Ord. 09-4(1), 7-8-09)

State law references- Va. Code § 3.2-6570.

Sec. 4-109 Disposition of companion animal and livestock carcasses.

The owner of any companion animal or livestock shall forthwith cremate, bury, or sanitarily dispose of the animal upon its death. If, after notice from the police department, animal control officer or other county officer, the owner fails to do so, the animal control officer or other officer shall bury or cremate the companion animal or livestock, and may recover on behalf of the county from the owner the cost for the service. The county may collect the costs of disposal in the same manner as taxes and levies are collected.

(Code 1967; § 4-11; 4-13-98; Code 1988, §§4-3, 4-11; Ord. 98-A(1), 8-5-98, § 4-206; Ord. 09-4(1), 7-8-09)

State law reference-- Va. Code §§ 3.2-6554; 18.2-510.

Sec. 4-110 Diseased dogs or cats.

It shall be unlawful for the owner of any dog or cat with a contagious or infectious disease to permit such dog or cat to stray from his premises, if such disease is known to the owner.

(Code 1967, § 4-12; Code 1988, § 4-17; Ord. 98-A(1), 8-5-98, § 4-211; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6587.

ARTICLE II. DOGS

State law reference—Va. Code §§ 3.2-6500 et.seq.

DIVISION 1. IN GENERAL

Sec. 4-200 Running at large prohibited.

A. Dogs shall not run at large in the county except in those areas zoned Rural Areas District; however, running at large in areas zoned Rural Areas District is prohibited in the following designated areas:

- (1) University of Virginia grounds lying within the county. (7-19-73)
- (2) Crozet areas:
 - (a) Crozet areas, beginning at the point of intersection of Buck Road, State Route 789 and Railroad Avenue, State Route 788; thence, in a northwesterly direction along the southern boundary of tax map 55 parcel 51; thence, in a northeasterly direction along the western boundary of tax map 55 parcels 51 and 51A to the point of intersection with tax map 55 parcel 50; thence, in a northwesterly direction along the southern boundary of tax map 55 parcel 50 to the point of intersection with tax map 55 parcel 49; thence, in a northeasterly direction along the western boundary of tax map 55 parcel 49 to the point of intersection with tax map 56 parcel 1; thence, in a northwesterly direction along the western boundaries of tax map 56 parcel 1 and tax map 55 parcel 47, and following the boundary of tax map 55 parcel 47 in a northeasterly direction to the point of intersection with tax map 55 parcel 48; thence, in a northwesterly direction along the southern boundary of tax map 55 parcel 48 and then following the western boundary of tax map 55 parcel 48 in a northeasterly direction and continuing in a northeasterly direction along the western boundaries of tax map 56 parcels 1B, 3 and 5E to the point of intersection with the Sunrise Acres subdivision (tax map 40A), thence, with Sunrise Acres in a clockwise direction to the intersection with the centerline of White Hall Road, State Route 810; thence, in a southwesterly and southeasterly direction with State Route 810 to the intersection with Buck Road, State Route 789 and continuing along Buck Road, State Route 789 to the point of beginning.
 - (b) The real property commonly known as Claudius Crozet Park, comprised of the following tax map, sections and parcel numbers:
 - tax map 56A2, section 1, parcel 72;
 - tax map 56A2, section 1, parcel 72A; and
 - tax map 56A2, section 4, parcel A4.
 - (c) Sunrise Acres Subdivision, as platted and recorded in the office of the clerk of the circuit court for the county, in Deed Book 367, page 312, and in Plat Book 367, pages 315 and 316.
- (3) Country Green Apartments as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 453, page 553. (12-7-77)
- (4) Waverly Subdivision as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 697, page 382; and Deed Book 781, pages 267 and 270. (12-16-87)
- (5) Whipporwill Hollow as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 643, pages 285 to 292; Deed Book 644, pages 269 and 270; Deed Book 646, pages 220 to 221; Deed Book 657, pages 789 to 790; Deed Book 659, pages 561 to 565; Deed Book 694, pages 544 to 545; and Deed Book 867, page 253. (12-16-87)
- (6) Key West/Cedar Hills Subdivision as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 353, pages 193 to 197; Deed Book 365, page 202; Deed Book 371, page 474; Deed Book 388, page 514; Deed Book 393, page 417; Deed Book 410, page 577; Deed Book 420, page 259; Deed Book 505, page 607; Deed Book 530, page 351; Deed Book 543, page 114; Deed Book 661, page 44; Deed Book 692, page 453; and Deed Book 809, page 623. (9-7-88)
- (7) North Pines Subdivision as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 703, pages 742, 743 and 744. (1-17-90)
- (8) The Meadows in Crozet as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 651, page 149. (8-8-90)
- (9) Milton Heights Subdivision as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 343, page 64. (8-17-94)
- (10) Shadwell Estates Subdivision as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 339, page 458. (8-17-94)
- (11) Thurston Subdivision as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 637, page 456. (12-7-94)
- (12) Lexington Subdivision as platted and recorded in the office of the clerk of the circuit court of the county in Deed Book 564, page 088. (3-12-97)

(13) Bedford Hills Subdivision as platted and recorded in the office of the clerk of the circuit court of the county in Deed Book 365, page 212. (12-2-98)

(14) Westmont Subdivision as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 1513, page 201, and in Deed Book 1617, page 510. (5-3-00)

(15) Blue Springs Farm Subdivision as platted and recorded in the office of the clerk of the circuit court of the county, in Deed Book 1341, page 121.

(16) Farmington Subdivision as platted and recorded in the office of the clerk of the circuit court of the county in Deed Book 203, page 53; Deed Book 203, page 233, Deed Book 205, page 504; Deed Book 206, page 44; Deed Book 207, page 370; Deed Book 207, page 483; Deed Book 208, page 130; Deed Book 209, page 195; Deed Book 213, page 296; Deed Book 216, page 44; Deed Book 223, page 146; Deed Book 240, page 203; Deed Book 246, page 183; Deed Book 247, page 315; Deed Book 247, page 355; Deed Book 290, page 214; Deed Book 292, page 485; Deed Book 296, page 205; Deed Book 325, page 225; Deed Book 357, page 527; Deed Book 394, page 63; Deed Book 463, page 72; together with all streets and roads abutting the lots depicted on the said plats.

(17) Section One of Corville Farm Subdivision as platted and recorded in the office of the clerk of the circuit court of the county in Deed book 474, page 003.

B. For the purposes of this section, a dog shall be deemed to "run at large" while roaming, running or self-hunting off the property of its owner or custodian and not under its owner's or custodian's immediate control. However, a dog shall not be considered at large if during the hunting season it is on a bona fide hunt in the company of a licensed hunter or during field trials or training periods when accompanied by its owner.

C. Any person who permits his dog to run at large shall be deemed to have violated the provisions of this section.

D. Any dog observed or captured while unlawfully running at large shall be impounded in accordance with Article III, Impoundment, of this chapter.

(7-19-73; 8-22-73; 9-26-73; 11-15-73; 12-19-73; 1-3-74; 1-23-74; 3-24-77; 5-22-74; 10-9-74, 1-22-75; 3-10-76; 4-21-76; 12-7-77; 5-22-78; 6-21-78; 10-7-81; 5-21-86; 5-13-87; 9-16-87; 11-4-87; 12-16-87; 9-8-88; Ord of 1-17-90; Ord. of 8-8-90; Ord. No. 94-4(2), 8-17-94; Ord. No. 94-4(3), 12-7-94; Ord. No. 95-4(1), 1-4-95; Ord. No. 95-4(2), 9-6-95; Code 1988, § 4-19; Ord. 98-A(1), 8-5-98; Ord. 98-4(1), 12-2-98; Ord. 00-4(1), 5-3-00; Ord. 03-4(2), 3-5-03; Ord. 04-4(1), 5-12-04; Ord. 05-4(1), 12-7-05; Ord. 06-4(1), 12-6-06, § 4-213; Ord. 09-4(1), 7-8-09)

State law reference--Va. Code§ 3.2-6538.

Sec. 4-201 Dogs killing, injuring or chasing livestock or poultry--Generally.

A. It shall be the duty of any animal control officer who may find a dog in the act of killing or injuring livestock or poultry to kill such dog forthwith, whether such dog bears a tag or not. Any person finding a dog committing any of the depredations mentioned in this section shall have the right to kill such dog on sight, as shall any owner of livestock or his agent finding a dog chasing livestock on land utilized by the livestock when the circumstances show that such chasing is harmful to the livestock. Any court shall have the power to order the animal control officer or other officer to kill any dog known to be a confirmed livestock or poultry killer, and any dog killing poultry for the third time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the dog to produce the dog.

B. Any animal control officer who has reason to believe that any dog is killing livestock or poultry shall be empowered to seize such dog solely for the purpose of examining such dog in order to determine whether it committed any of the depredations mentioned herein. Any animal control officer or other person who has reason to believe that any dog is killing livestock, or committing any of the depredations mentioned in this section, shall apply to a magistrate of the county, who shall issue a warrant requiring the owner or custodian, if known, to appear before the general district court at a time and place named therein, at which time evidence shall be heard. If it shall appear that the dog is a livestock killer, or has committed any of the depredations mentioned in this section, the district court shall order that the dog be: (i) killed immediately by the animal control officer or other officer designated by the court; (ii) or removed to another state that does not border the Commonwealth and prohibited from returning to the Commonwealth. Any dog ordered removed from the Commonwealth that is later found in the Commonwealth shall be disposed of pursuant to Virginia Code § 3.2-6570.

(Code 1967, § 4-9; 4-13-88; Code 1988, § 4-9; Ord. 98-A(1), 8-5-98, § 4-203; Ord. 09-4(1), 7-8-09)

State law reference--Va. Code § 3.2-6552.

Sec. 4-202 Compensation for livestock and poultry killed by dogs.

Any person who has any livestock or poultry killed or injured by any dog not his own shall be entitled to receive as compensation the fair market value of such livestock or poultry not to exceed four hundred dollars (\$400.00) per animal or ten dollars (\$10.00) per fowl if: (i) the claimant has furnished evidence within sixty

(60) days of discovery of the quantity and value of the dead or injured livestock and the reasons the claimant believes that death or injury was caused by a dog; (ii) the animal control officer or other officer shall have been notified of the incident within seventy-two (72) hours of its discovery; and (iii) the claimant first has exhausted his legal remedies against the owner, if known, of the dog doing the damage for which compensation under this section is sought. Exhaustion shall mean a judgment against the owner of the dog upon which an execution has been returned unsatisfied.

Ord. 09-4(1), 7-8-09

State law reference—Va. Code § 3.2-6553.

Sec. 4-203 Unauthorized removal of collars or tags.

It shall be unlawful for any person, except the owner or custodian, to remove a collar or a legally acquired license tag from a dog.

(Code 1967, § 4-14; Code 1988, § 4-12; Ord. 98-A(1), 8-5-98, § 4-209; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6587.

Sec. 4-204 Female dogs in season.

It shall be unlawful for the owner of any female dog in season to fail to keep such female dog confined beyond reach of any male dog at large.

(Code 1967, § 4-13; Code 1988, § 4-18; Ord. 98-A(1), 8-5-98, § 4-212; Ord. 09-4(1), 7-8-09)

DIVISION 2. LICENSES

Sec. 4-205 Required.

It shall be unlawful for any person other than a releasing agency that has registered as such annually with the county to own a dog four (4) months old or older in the county unless such dog is licensed, as required by the provisions of this article.

(Code 1967, § 4-17; 9-13-89; Code 1988, § 4-20; Ord. 98-A(1), 8-5-98; Ord. 08-4(2), 9-3-08, § 4-300; Ord. 09-4(1), 7-8-09)

State law reference-- Va. Code § 3.2-6524.

Sec. 4-206 Procedure for obtaining licenses.

A. Any resident of this county may obtain a one year, two year, or three year dog license by making oral or written application to the director of finance or his designee, accompanied by the amount of the license tax and a current certificate of vaccination as required by this chapter or satisfactory evidence that such certificate has been obtained.

B. The director of finance or his designee shall license only dogs of resident owners or custodians who reside within the county, and may require information to this effect of any applicant. Upon receipt of a proper application and a current certificate of vaccination as required by this chapter or satisfactory evidence that such certificate has been obtained, the director of finance or his designee shall issue a license receipt, on which he shall record the name and address of the owner or custodian, the date of payment, the year for which issued, the serial number of the tag, whether male or female, whether spayed or neutered, or whether a kennel, and deliver the metal license tags or plates provided for herein. Multi-year dog licenses may only be issued upon evidence that the certificate of vaccination is valid for the duration of the multi-year license.

C. The director of finance or his designee shall retain the application information during the period for which such license is valid, and shall be available for public inspection.

D. It shall be unlawful for any person to make a false statement in order to secure a dog license to which he is not entitled.

E. Failure to pay the dog license tax imposed by this division prior to February 1 of any year or at such other time as may be required by this division on any dog four (4) months of age or older and owned by him shall be a violation of this chapter.

(Code 1967, § 4-18; 5-15-75; Code 1988, § 4-21; Ord. 98-A(1), 8-5-98, § 4-301; Code 1967, § 4-33; Code 1988, § 4-36; Ord. 98-A(1), 8-5-98, § 4-316; Code 1967, § 4-34; 4-13-88; 9-13-89; Code 1988, § 4-37; Ord. 98-A(1), 8-5-98, § 4-317; Ord. 08-4(2), 9-3-08, § 4-301; Ord. 09-4(1), 7-8-09)

State law reference-- Va. Code §§ 3.2-6527, 3.2-6530(B), 3.2-6587(A).

Sec. 4-207 What license shall consist of; evidence of rabies vaccination; duplicate tags.

A. A dog license shall consist of a license receipt and a metal tag. The tag shall be stamped or otherwise permanently marked to show the county has issued the license and bear a serial number or other identifying information prescribed by the county.

B. No dog license shall be issued for any dog unless there is presented to the director of finance or his designee, satisfactory evidence that such dog has been inoculated or vaccinated against rabies, as required by section 4-206, by a currently licensed veterinarian or currently licensed technician who was under the immediate and direct supervision of a licensed veterinarian on the premises.

C. If a dog license tag shall become lost, destroyed or stolen, the owner or custodian shall at once apply to the director of finance or his designee for a duplicate license tag by presenting the original license receipt. Upon affidavit of the owner or custodian before the director of finance or his designee that the original license tag has been lost, destroyed or stolen, he shall issue a duplicate license tag. The owner or custodian shall immediately affix the duplicate license tag to the collar of the dog. The director of finance or his designee shall endorse the number of the duplicate and the date issued on the face of the original receipt. The fee for a duplicate tag shall be one dollar (\$1.00).

(Code 1967, § 4-19; Code 1988, § 4-22; Ord. 98-A(1), 8-5-98, § 4-302; Code 1967, § 4-25; 4-23-88; Code 1988, § 4-28; Ord. 98-A(1), 8-5-98, § 4-308; Code 1967, § 4-28; 4-13-88; Code 1988, § 4-31; Ord. 98-A(1), 8-5-98, § 4-311; Ord. 08-4(2), 9-3-08, § 4-302; Ord. 09-4(1), 7-8-09)

State law reference -- Va. Code §§ 3.2-6526, 6532.

Sec. 4-208 Veterinarians to provide treasurer with rabies certificate information; civil penalty.

A. Each veterinarian who vaccinates a dog against rabies or directs a veterinary technician in his employ to vaccinate a dog against rabies shall provide the owner a copy of the rabies vaccination certificate. The veterinarian shall forward within forty-five (45) days a copy of the rabies vaccination certificate or the relevant information contained in such certificate to the county's director of finance.

The rabies vaccination certificate shall include at a minimum the signature of the veterinarian, the animal owner's name and address, the species of the animal, the sex, the age, the color, the primary breed, whether or not the animal is spayed or neutered, the vaccination number, and expiration date. The rabies vaccination certificate shall indicate the locality where the animal resides.

B. It shall be the responsibility of the owner of each vaccinated animal that is not already licensed to apply for a license for the vaccinated dog. If the director of finance determines, from review of the rabies vaccination information provided by the veterinarians, that the owner of an unlicensed dog has failed to apply for a license within ninety (90) days of the date of vaccination, the director of finance shall transmit an application to the owner and request the owner to submit a complete application and pay the appropriate fee. Upon receipt of the completed application and payment of the license fee, the director of finance or his designee shall issue a license receipt and a permanent tag.

The director of finance shall remit any rabies vaccination certificate received for any animal owned by an individual residing in another locality to the local treasurer for the appropriate locality.

Any veterinarian that willfully fails to provide the director of finance with a copy of the rabies vaccination certificate or the information contained in such certificate may be subject to a civil penalty not to exceed ten dollars (\$10.00) per certificate. Monies raised pursuant to this subsection shall be placed in the county's general fund for the purpose of animal control activities including spay or neuter programs.

(Ord. 08-4(2), 9-3-08, § 4-303; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6529.

Sec. 4-209 Amount of license tax.

A. Dog license taxes shall be as follows:

1. *Spayed Female/Neutered Male.*

One year tag: Five dollars (\$5.00)

Two year tag: Ten dollars (\$10.00)

Three year tag: Fifteen dollars (\$15.00)

2. *Unspayed Female/Unneutered Male.*

One year tag: Ten dollars (\$10.00)

Two year tag: Twenty dollars (\$20.00)

Three year tag: Thirty dollars (\$30.00)

3. *Kennel license.* Fifty dollars (\$50.00) per block of ten dogs

B. No license tax shall be levied on any dog that is trained and serves as a guide dog for a blind person or that is trained and serves as a hearing dog for a deaf or hearing impaired person, or any dog that is trained and serves as a service dog for a mobility-impaired person.

(Code 1967, § 4-20; 12-20-73; 80-11-76; 2-13-85; 4-13-88; Code 1988, § 4-23; Ord. 98-A(1), 8-5-98, § 4-303; Ord. 08-4(2), 9-3-08, § 4-304; Ord. 09-4(1), 7-8-09)

State law reference-- Va. Code § 3.2-6528.

Sec. 4-210 When license tax payable, valid.

A. The license tax imposed on dogs by this article shall be due and payable no later than thirty (30) days after a dog has reached the age of four (4) months, or no later than thirty (30) days after an owner acquires a dog four (4) months of age or older and each year thereafter no later than January 31 of each year.

B. If a dog shall become four (4) months of age or if a dog over four (4) months of age unlicensed by this county shall come into the possession of any person in this county between January 1 and October 31 of any year, a license tax for the current calendar year shall be paid forthwith by the owner.

C. If a dog shall become four (4) months of age or if a dog over four (4) months of age unlicensed by this county shall come into the possession of any person in this county between November 1 and December 31 or any year, the license tax for the succeeding calendar year shall be paid forthwith by the owner and such license shall protect the dog from the date of payment of the license tax.

(Code 1967, § 4-21; 9-13-89; Code 1988, § 4-24; Ord. 98-A(1), 8-5-98, § 4-304; Code 1967, § 4-23; Code 1988, § 4-26; Ord. 98-A(1), 8-5-98, § 4-306; Ord. 08-4(2), 9-3-08, § 4-305; Ord. 09-4(1), 7-8-09)

State law reference-- Va. Code § 3.2-6530.

Sec. 4-211 Payment of license tax subsequent to summons.

Payment of the license tax subsequent to a summons to appear before the judge of the general district court or other court for failure to pay the license tax within the time required shall not operate to relieve such owner from any penalty for the violation of this article.

(Code 1967, § 4-22; Code 1988, § 4-25; Ord. 98-A(1), 8-5-98, § 4-305; Ord. 08-4(2), 9-3-08, § 4-306; Ord. 09-4(1), 7-8-09)

State law reference--Va. Code § 3.2-6536.

Sec. 4-212 Effect of dog not wearing collar and tag as evidence.

Any dog not wearing a collar bearing a license tag of the proper calendar year shall prima facie be deemed to be unlicensed, and in any proceeding under this article, the burden of proof of the fact that the dog has been licensed or was otherwise not required to bear a tag at the time shall be on the owner of the dog.

(Code 1967, § 4-24; Code 1988, § 4-27; Ord. 98-A(1), 8-5-98; Ord. 08-4(2), 9-3-08, § 4-307; Ord. 09-4(1), 7-8-09)

State law reference-- Va. Code § 3.2-6533.

Sec. 4-213 Display of receipts; collar and tag to be worn; penalties.

A. Dog license receipts shall be carefully preserved by the owner and exhibited promptly on request for inspection by any animal control officer or other officer. Dog license tags shall be securely fastened to a substantial collar by the owner or custodian and worn by such dog. It shall be unlawful for the owner to permit any licensed dog four (4) months old or older to run or roam at large at any time without a license tag. The owner of the dog may remove the collar and license tag required by this section when:

- (i) the dog is engaged in lawful hunting;
- (ii) the dog is competing in a dog show;
- (iii) the dog has a skin condition which would be exacerbated by the wearing of a collar;
- (iv) the dog is confined; or
- (v) the dog is under the immediate control of its owner.

B. The license tag for a kennel shall show the number of dogs authorized to be kept under such license, and have attached thereto a metal identification plate for each of such dogs, numbered to correspond with the serial number of the license tag. The owner of a kennel shall securely fasten the license tag to the kennel enclosure in full view and keep one of the identification plates provided therewith attached to the collar of each dog authorized to be kept enclosed in the kennel. Any identification plates not so in use must be kept by the owner or custodian and promptly shown to any animal control officer or other officer upon request. A kennel dog shall not be permitted to stray beyond the limits of the enclosure, but this shall not prohibit removing dogs therefrom temporarily while under the control of the owner or custodian for the purpose of exercising, hunting, breeding, trial or show. A kennel shall not be operated in such manner as to defraud the county of the license tax applying to dogs which cannot be legally covered thereunder or to any manner which violates other provisions of this article.

C. It shall be unlawful for the owner of any dog to allow his dog to run at large at any time of the year in violation of this section

(Code 1967, § 4-26; 4-13-88; Code 1988, § 4-29; Ord. 98-A(1), 8-5-98, § 4-309; Code 1967, § 4-31; 4-13-88; Code 1988, § 4-34; Ord. 98-A(1), 8-5-98, § 4-314; Code 1967, § 4-32; 4-13-88; Code 1988, § 4-35; Ord. 98-A(1), 8-5-98; Ord. 05-4(1), 12-7-05, § 4-315; Ord. 08-4(2), 9-3-08, § 4-308; Ord. 09-4(1), 7-8-09)

State law reference--Va. Code §§ 3.2-6531, 3.2-6587(A).

Sec. 4-214 Harboring or concealing unlicensed dogs.

It shall be unlawful for any person to conceal or harbor any dog on which the required license tax has not been paid.

(Code 1967, § 4-15; Code 1988, § 4-13; Ord. 98-A(1), 8-5-98, § 4-210; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6587

DIVISION 3. COMMERCIAL BREEDERS

Sec. 4-215 Business license required.

No commercial dog breeder shall breed dogs in the county without a valid business license issued by the county's department of finance, as applicable, where he maintains dogs for the purpose of commercial dog breeding.

(Ord. 09-4(1), 7-8-09)

State law reference—Business license required. Va. Code § 3.2-6507.1.

Sec. 4-216 Commercial dog breeding; requirements.

Commercial dog breeders shall:

- A. Maintain no more than fifty (50) dogs over the age of one (1) year at any time for breeding purposes.
- B. Breed female dogs only:
 - (i) after annual certification by a licensed veterinarian that the dog is in suitable health for breeding;
 - (ii) after the dog has reached the age of eighteen (18) months; and
 - (iii) if the dog has not yet reached the age of eight (8) years.
- C. Dispose of dogs only by gift, sale, transfer, barter, or euthanasia by a licensed veterinarian.
- D. Dispose of deceased dogs in accordance with Virginia Code § 3.2-6554.
- E. Maintain accurate records for at least five (5) years including:
 - (i) the date on which a dog enters the operation;
 - (ii) the person from whom the animal was purchased or obtained, including the address and phone number of such person;
 - (iii) a description of the animal, including the species, color, breed, sex, and approximate age and weight;
 - (iv) any tattoo, microchip number, or other identification number carried by or appearing on the animal;
 - (v) each date that puppies were born to such animal and the number of puppies;
 - (vi) all medical care and vaccinations provided to the animal, including certifications required by a licensed veterinarian under this chapter; and
 - (vii) the disposition of each animal and the date.

(Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6507.2.

Sec. 4-217 Violations; penalty.

Any commercial dog breeder violating any provision of this division shall be guilty of a class 1 misdemeanor.

(Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6507.5.

DIVISION 4. DANGEROUS AND VICIOUS DOGS

Sec. 4-218 Dangerous and vicious dogs.

- A. As used in this section:

"Dangerous dog" means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat. When a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous if:

- (i) no serious physical injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite;
- (ii) both animals are owned by the same person;

- (iii) such attack occurs on the property of the attacking or biting dog's owner or custodian; or
- (iv) for other good cause as determined by the court.

No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event. No dog that has bitten, attacked, or inflicted injury on a person shall be found to be a dangerous dog if the court determines, based on the totality of the evidence before it, that the dog is not dangerous or a threat to the community.

"Vicious dog" means a canine or canine cross breed that has:

- (i) killed a person;
- (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or
- (iii) continued to exhibit the behavior that resulted in a previous finding by a court or, on or before July 1, 2006, by an animal control officer that it is a dangerous dog, provided that its owner has been given notice of that finding.

B. Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed within its jurisdiction is a dangerous dog or vicious dog shall apply to a magistrate of the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of Virginia Code § 3.2-6562. The court, upon finding the animal to be a dangerous or vicious dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages to any person injured by the animal or whose companion animal was injured or killed by the animal. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Virginia Code §§ 19.2-260 *et seq.* The county shall be required to prove its case beyond a reasonable doubt.

C. No canine or crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was: (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a dangerous dog or a vicious dog.

D. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

E. The owner of any animal found to be a dangerous dog shall, within ten (10) days of such finding, obtain a dangerous dog registration certificate from the county for a fee of fifty dollars (\$50.00), in addition to other fees that may be authorized by law. The county shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually for the same fee in the same manner as the initial certificate was obtained. The county shall provide a copy of the dangerous dog registration certificate and verification of compliance to the state veterinarian.

F. All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons eighteen (18) years of age or older who present satisfactory evidence of:

- (i) the animal's current rabies vaccination, if applicable;
- (ii) that the animal has been spayed or neutered; and
- (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed.

In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that:

- (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property; and
- (ii) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation.

All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least one hundred thousand dollars (\$100,000.00) that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least one hundred thousand dollars (\$100,000.00).

G. While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

H. The owner of any dog found to be dangerous shall register the animal with the Commonwealth of Virginia Dangerous Dog Registry as established under Virginia Code § 3.2-6542, within forty-five (45) days of such a finding by any appropriate court. The owner shall also cause the local animal control officer to be promptly notified of: (i) the names, address, and telephone numbers of all owners; (ii) all the means necessary to locate the owner and the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) tattoo or chip identification or both; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

I. After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, cause the local animal control authority to be notified if the animal: (i) is loose or unconfined; or (ii) bites a person or attacks another animal; or (iii) is sold, given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within ten (10) days of relocating, provide written notice to the appropriate local animal control authority for the old address from which the animal has been moved and the new address to which the animal has been moved.

J. Any owner or custodian of a canine or canine crossbreed or other animal:

1) shall be guilty of a class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and injures or kills a cat or dog that is a companion animal belonging to another person; or

2) shall be guilty of a class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a human being or attacks a human being causing bodily injury; or

3) shall be subject to prosecution pursuant to Virginia Code § 3.2-6540 if the owner or custodian whose willful act or omission in the care, control, or containment of a canine, canine crossbreed, or other animals is so gross, wanton, and culpable as to show a reckless disregard for human life, and is the proximate cause of such dog or other animal attacking and causing serious bodily injury to any person.

The provisions of this subsection shall not apply to any animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the performance of its duties at the time of the attack.

K. The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this section shall be guilty of a class 1 misdemeanor.

L. All fees collected pursuant to this section, less the costs incurred by the county in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund of the county for the purpose of paying the expenses of any training course required under Virginia Code § 3.2-6556.

(Ord. No. 94-4(12), 8-3-94; Code 1988, § 4-37A.1; Ord. 98-A(1), 8-5-98; Ord. 03-4(1), 2-5-03; Ord. 03-4(3), 12-3-03, § 4-401; Ord. No. 94-4(12), 8-3-94; Code 1988, § 4-37A; Ord. 98-A(1), 8-5-98; Ord. 03-4(3), 12-3-03, § 4-400; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6540.

ARTICLE III. IMPOUNDMENT

Sec. 4-300 Duties of animal control officers; seizure and impoundment of animals; notice and hearing; disposition of animals.

A. Any animal control officer or law enforcement officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of this chapter that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety or health. Before seizing or impounding any agricultural animal, such animal control officer or law enforcement officer shall contact the state veterinarian or a state veterinarian's representative, who shall recommend to such person the most appropriate action for the disposition of the agricultural animal. The animal control officer shall notify the owner of the agricultural animal and the local attorney for the Commonwealth of the recommendation. The animal control officer may impound the agricultural animal on the land where the agricultural animal is located if:

1. The owner or tenant of the land where the agricultural animal is located gives written permission;
2. A general district court so orders; or
3. The owner or tenant of the land where the agricultural animal is located cannot be immediately located, and it is in the best interest of the agricultural animal to be impounded on the land where it is located until the written permission of the owner or tenant of the land can be obtained.

If there is a direct and immediate threat to an agricultural animal, the animal control officer or law enforcement officer may seize the animal, in which case the law-enforcement officer or animal control officer shall file within five (5) business days on a form approved by the state veterinarian a report on the condition of the animal at the time of the seizure, the disposition of the animal, and any other information required by the state veterinarian.

Upon seizing or impounding an animal, the animal control officer or law enforcement officer shall petition the general district court in the county for a hearing. The hearing shall be not more than ten (10) business days from the date of the seizure of the animal. The hearing shall be to determine whether the animal has been abandoned, has been cruelly treated, or has not been provided adequate care.

B. The animal control officer shall cause to be served upon the person with a right of property in the animal or the custodian of the animal notice of the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the animal is seized, written notice shall be given at least five (5) days prior to the hearing of the time and place of the hearing. If such person or the custodian is known but residing out of the jurisdiction where such animal is seized, written notice by any method or service of process as is provided by the Code of Virginia shall be given. If such person or the custodian is not known, the law-enforcement officer or animal control officer shall cause to be published in a newspaper of general circulation in the county notice of the hearing at least one time prior to the hearing and shall further cause notice of the hearing to be posted at least five (5) days prior to the hearing at the place provided for public notices at the county courthouse wherein such hearing shall be held.

C. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. If requested by either party on appeal to the circuit court, trial by jury shall be as provided in Virginia Code §§ 19.2-260 *et seq.*

D. The law-enforcement officer, or animal control officer shall provide for such animal until the court has concluded the hearing. The county may require the owner of any animal held pursuant to this section for more than thirty (30) days to post a bond in surety with the county for the amount of the cost of boarding the animal for a period not to exceed nine (9) months. If the court determines that the animal has been neither abandoned, cruelly treated, nor deprived of adequate care, the animal shall be returned to the owner. If the court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care, then the court shall order that the animal be: (i) sold by the animal control officer; (ii) humanely destroyed, or disposed of by sale or gift to a federal agency, state-supported institution, agency of the Commonwealth, agency of another state, or a licensed federal dealer having its principal place of business located within the Commonwealth; (iii) delivered to any local humane society or shelter, or to any person who is a resident of the county or an adjacent county and who will pay the required license fee, if any, on such animal; or (iv) delivered to the person with a right of property in the animal as provided in subsection E.

E. In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if the court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care. The court shall direct that the animal be delivered to the person with a right of property in the animal, upon his request, if the court finds that the abandonment, cruel treatment, or deprivation of adequate care is not attributable to the actions or inactions of such person.

F. The court shall order the owner of any animal determined to have been abandoned, cruelly treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and providing for such animal from the time the animal is seized until such time that the animal is disposed of in accordance with the provisions of this section.

G. The court may prohibit the possession or ownership of other companion animals by the owner of any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. In making a determination to prohibit the possession or ownership of the companion animals, the court may take into consideration the owner's past record of convictions under this chapter or other laws prohibiting cruelty to animals or pertaining to the care or treatment of animals and the owner's mental and physical condition.

H. If the court finds that an agricultural animal has been abandoned or cruelly treated, the court may prohibit the possession or ownership of any other agricultural animal by the owner of the agricultural animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural animals as evidenced by previous convictions of violating section 4-107 or section 4-108. In making a determination to prohibit the possession or ownership of agricultural animals, the court may take into consideration the owner's mental and physical condition.

I. Any person who is prohibited from owning or possessing animals pursuant to subsection G or H may petition the court to repeal the prohibition after two (2) years have elapsed from the date of entry of the court's order. The court may, in its discretion, repeal the prohibition if the person can prove to the satisfaction of the court that the cause for the prohibition has ceased to exist.

J. In case of sale of an animal under this section, the proceeds shall first be applied to the costs of the sale, then next to the unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the proceeds remaining shall be paid into the Literary Fund of the state treasury.

K Nothing in this section shall be construed to prohibit the humane destruction of a critically injured or ill animal for humane purposes by the impounding animal control officer or licensed veterinarian.

(Ord. 98-A(1), 8-5-98, § 4-208; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6569.

Sec. 4-301 Impoundment; expenses; lien; disposition of animal.

When an animal control officer or law-enforcement officer finds that an apparent violation of this chapter has rendered an animal in such a condition as to constitute a direct and immediate threat to its life, safety, or health that the owner or custodian has failed to remedy, such animal control officer or law enforcement officer may impound the animal pursuant to section 4-300 in a facility that will provide the elements of good care as set forth in section 4-105, and shall then proceed to take such steps as are required to dispose of the animal pursuant to section 4-300.

(Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6565.

Sec. 4-302 Dogs killing, injuring or chasing livestock or poultry--Impoundment and disposition.

In the event any animal control officer or other person has reason to believe that any dog is killing livestock or committing any of the depredations mentioned in section 4-201, and a warrant or summons is issued by a magistrate of the county, as set out in section 4-201, the alleged killer dog may be impounded by the animal control officer until such time as the owner or custodian thereof shall provide evidence of the adequate provisions to be made to protect livestock or poultry from such dog, which provisions may include, but not be limited to, securing of such dog on the premises of the owner or custodian, with defined limitations of access. Any dog released under such conditions shall be kept under such securing provisions, and any person failing to keep such dog so secured shall be deemed in violation of this section. The owner or custodian redeeming such dog from impoundment as provided above shall also furnish the license(s) and pay the fee(s) as provided by sections 4-205 and 4-208, respectively. If the court finds such dog is not a livestock killer or has not committed any of the depredations mentioned in section 4-201, any dog not re-deemed within ten (10) days of disposition of the original charge by the court shall be dealt with by the animal control officer in the same manner as provided for the disposition of unlicensed dogs in section 4-303.

(5-2-79; 4-13-88; Code 1988, § 4-9.1; Ord. 98-A(1), 8-5-98, § 4-204; Ord. 09-4(1), 7-8-09)

Sec. 4-303 Disposition of unlicensed dogs; running at large.

A. The animal control officer shall have the authority to capture, euthanize or turn over to an animal shelter any dog of unknown ownership found running at large on which the license tax has not been paid.

B. Any dog captured and confined pursuant to this section, shall be kept for a period of not less than five (5) days, such period to commence on the day immediately following the day the animal is initially confined in an animal shelter or facility, unless sooner claimed by the rightful owner thereof. The animal control officer and/or the operator of the animal shelter shall make a reasonable effort to ascertain whether the dog has a collar, tag, license, tattoo, or other form of identification. If such identification is found on the dog, the dog shall be held for an additional five (5) days, unless sooner claimed by the rightful owner. If the rightful owner of the animal can be readily identified, the animal control officer and/or the animal shelter shall make a reasonable effort to notify the owner of the dog's confinement within the next forty-eight (48) hours following its confinement.

If any dog confined pursuant to this section is claimed by its rightful owner, such owner may be charged with the actual expenses incurred in keeping the animal impounded.

If the dog confined pursuant to this section has not been claimed upon expiration of the appropriate holding period as set-forth above, it shall be deemed abandoned and become the property of the county or the animal shelter.

Following the appropriate holding period set forth above, the animal control officer or other officer may deliver such dog to any person in the county who will pay the required license fee on such dog, with the understanding that should the legal owner thereafter claim the dog and prove his ownership, he may recover such dog by paying to the person to whom it was delivered by the animal control officer the amount of the license fee paid by him and a reasonable charge for the keep of the dog while in his possession.

Any person, animal control officer or other officer euthanizing a dog under this chapter shall cremate, bury or sanitarily dispose of the same. Prior to disposition by euthanasia or otherwise, all the provisions of Virginia Code § 3.2-6563 shall have been complied with.

C. All drugs and drug administering equipment used by animal control officers or other officers to capture dogs pursuant to this section shall have been approved by the state veterinarian.

(Code 1967, § 4-10; 8-11-76; 4-13-88; Code 1988, § 4-10; Ord. 98-A(1), 8-5-98, § 4-205; Ord. 09-4(1), 7-8-09)

State law reference - Va. Code §§ 3.2-6546 (c); 3.2-6562.

ARTICLE IV. RABIES CONTROL

State law reference-- Va. Code §§ 3.2-6521; 3.2-6522; 3.2-6523; 3.2-6525.

Sec. 4-400 Vaccination of dogs and cats required.

A. The owner or custodian of all dogs and domesticated cats four (4) months of age and older shall have them currently vaccinated for rabies by a licensed veterinarian or licensed veterinary technician who is under the immediate and direct supervision of a licensed veterinarian on the premises. The supervising veterinarian on the premises shall provide the owner of the dog or the custodian of the domesticated cat with a certificate of vaccination. The owner of the dog or the custodian of the domesticated cat shall furnish within a reasonable period of time, upon the request of an animal control officer or other law enforcement officer, state veterinarian's representative, or official of the Department of Health, the certificate of vaccination for such dog or cat. The vaccine used shall be licensed by the U.S. Department of Agriculture for use in that species.

(Code 1967, § 4-35; 4-8-87; 12-14-88; Code 1988, § 4-38; Ord. 98-A(1), 8-5-98, § 4-500; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6521.

Sec. 4-401 Rabid animals.

Dogs or cats showing active signs of rabies or suspected of having rabies shall be confined under competent observation for such a time as may be necessary to determine a diagnosis. If confinement is impossible or impracticable, such dog or cat shall be euthanized by one of the methods approved by the state veterinarian as provided in Virginia Code § 3.2-6546.

Every person having knowledge of the existence of an animal apparently afflicted with rabies shall report immediately to the Charlottesville/Albemarle Health Department the existence of such animal, the place where seen, the owner's name, if known, and the symptoms suggesting rabies.

Any dog or cat, for which no proof of current rabies vaccination is available, and that is exposed to rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or mucous membrane, by an animal believed to be afflicted with rabies, shall be confined in a pound, kennel or enclosure approved by the Charlottesville/Albemarle Health Department for a period not to exceed six (6) months at the expense of the owner. If this is not feasible, the dog or cat shall be euthanized by one of the methods approved by the state veterinarian as provided in Virginia Code § 3.2-6546. A rabies vaccination shall be administered prior to release. Inactivated rabies vaccine may be administered at the beginning of confinement. Any dog or cat so bitten, or exposed to rabies through saliva or central nervous system tissue, in a fresh open wound or mucous membrane with proof of a valid rabies vaccination, shall be revaccinated immediately following the bite and shall be confined to the premises of the owner, or other site as may be approved by the Charlottesville/Albemarle Health Department, for a period of forty-five (45) days.

At the discretion of the director of the Charlottesville/Albemarle Health Department, any animal that has bitten a person shall be confined under competent observation for ten (10) days, unless the animal develops active symptoms of rabies or expires before that time. A seriously injured or sick animal may be euthanized as provided in Virginia Code § 3.2-6546, and its head sent to the Division of Consolidated Laboratory Services of the Department of General Services, or the Charlottesville/Albemarle Health Department, for evaluation.

When any potentially rabid animal, other than a dog or cat, exposes or may have exposed a person to rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or mucous membrane, that animal shall be confined at the discretion of the director of the Charlottesville/Albemarle Health Department in a manner approved by the health department or euthanized as provided in Virginia Code § 3.2-6546.

Any person who fails to comply with the provisions of this section shall be guilty of a class 1 misdemeanor.

(Code 1967, § 4-37; Code 1988, § 4-40; Ord. 98-A(1), 8-5-98, § 4-502; Code 1967, § 4-38; Code 1988, § 4-41; Ord. 98-A(1), 8-5-98, § 4-503; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6522.

Sec. 4-402 Harboring or concealing rabid animals.

It shall be unlawful for any person to conceal a rabid animal to keep the same from being killed.

(Code 1967, § 4-15; Code 1988, § 4-13; Ord. 98-A(1), 8-5-98, § 4-210; Ord. 09-4(1), 7-8-09)

State law reference—Va. Code § 3.2-6587.

Sec. 4-403 Inoculation for rabies at animal shelters.

Dogs and cats being adopted from an animal shelter during the period an emergency ordinance is in force, as provided in section 4-401 may be inoculated for rabies by a certified animal technician at such shelter if the certified animal technician is under the immediate and direct supervision of a licensed veterinarian. (Ord. 09-4(1), 7-8-09)

State law reference—Va. Code §3.2-6523.

Sec. 4-404 Tag showing vaccination required on dogs at large.

It shall be unlawful for any dog owner or his agent to allow a dog to run at large in the county at any time without a collar and tag evidencing a rabies vaccination, as required by this article.

(Code 1967, § 4-36; Code 1988, § 4-39; Ord. 98-A(1), 8-5-98, § 4-501; Ord. 09-4(1), 7-8-09)

Sec. 4-405 Applicability of article.

The provisions of this article shall not apply to any dogs temporarily brought into the county for a period not to exceed thirty (30) days, for showing or breeding purposes; provided, that any such dog shall remain confined at all times.

(Code 1967, § 4-39; Code 1988, § 4-42; Ord. 98-A(1), 8-5-98, § 4-504; Ord. 09-4(1), 7-8-09)

State law reference-- Va. Code §§ 3.2-6525; 32.1-48.1 to 32.1-48.4.

(Note: At 9:54 p.m., the Board recessed and then reconvened at 10:03 p.m.)

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

Mr. Davis said he has distributed to Board members a copy of an annual resolution the Board adopts regarding the compensation of the County Executive.

Mr. Slutzky **moved** to adopt the resolution to set the FY10 compensation and benefits for the County Executive, which reflects no increase in salary. 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.

**RESOLUTION TO SET FY 10
COMPENSATION & BENEFITS FOR
THE COUNTY EXECUTIVE**

WHEREAS, the County of Albemarle operates under the County Executive Form of Government; and

WHEREAS, the Board of Supervisors determines the compensation and benefits to be paid to the County Executive for the performance of his duties and responsibilities.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby finds that Robert W. Tucker, Jr., County Executive, shall receive the following compensation and benefits for FY 10, beginning July 1, 2009:

- 1) Annual salary of \$177,721.
- 2) Annual vehicle allowance of \$9,650.
- 3) Deferred Compensation paid by the County in the amount of \$23,500.
- 4) Benefits provided to all County employees in the Personnel Policy & Procedures Manual.
- 5) VERIPlus benefits to consist of the VERIP benefits provided to County employees under the Personnel Policy & Procedures Manual with the following additions and modifications:
 - a) VERIPlus benefits shall extend for a period of 12 years from the date of retirement regardless of age;
 - b) VERIPlus benefits shall be equal to the base VERIP benefits plus on the following vesting dates the Virginia Retirement System (hereinafter "VRS") component of the benefits shall increase to the designated percentages of the base VERIP benefits:

June 30, 2009	136%
June 30, 2010	150%

The vesting percentage shall be set at the designated percentage as of June 30th prior to the date of retirement if retirement occurs before the next vesting date. Attachment A provides an example of the possible VRS component of the VERIPlus benefits.

- c) The retirement requirement for VERIPlus will be met if retirement is approved under

any of the retirement plans of the VRS, including any disability retirement provision.

d) VERIPlus benefits shall accrue to the benefit of a designated survivor, as designated for purposes of VRS, if death should occur prior to receiving ten years of VERIPlus benefits.

As of:	Vesting Ratio	Monthly VERIP Benefit	+	Monthly Additional Benefit for VERIPlus	=	Monthly Benefit to be Paid for 12 years for VERIPlus
June 30, 2009	136%	\$2,864	+	\$1,030	=	\$3,894
June 30, 2010	150%	\$2,987	+	\$1,494	=	\$4,481

Ms. Mallek **moved** the following appointments:

- **appoint** Kathy Rash to the Equalization Board as the Rio District representative, with said term to expire December 31, 2009.
- **appoint** Sean Dougherty to the Historic Preservation Committee with said term to expire June 4, 2012.
- **appoint** Hamilton Moses III to the Public Recreational Facilities Authority to fill an unexpired term that will end on December 13, 2009.
- **appoint** Barbara Kessler to the Workforce Investment Board as an At Large Member with said term to expire June 30, 2010.

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.

Ms. Mallek reported that she serves as Vice-Chair of the Piedmont Workforce Network. If Board members have any workforce issues to be carried forward, please let her know. They are working with PVCC to help improve training for people who are changing jobs.

Ms. Mallek asked Board members to consider whether they would encourage Board of Zoning Appeals appointees to take the VACO/BZA training course, for which the County Attorney's staff is a major player. The current Chair of the BZA took the course and indicated that he found it tremendously valuable.

Mr. Davis said that he isn't sure it can be required, but it can certainly be offered to them. He stated that he taught the course for 18 years, and Mr. Greg Kamptner has been teaching it for the last seven years. His office has an important role in the program.

Ms. Mallek noted that other counties do an active "thank you" for people who serve on committees. It would be nice to recognize the hundreds of volunteers whether it is a summer picnic or some other event.

Mr. Tucker stated that the County does send them thank-you notes and they are usually awarded a Certificate of Appreciation when they complete their service.

Ms. Mallek said this would be more on an annual and ongoing basis, not when they are dead but before hand.

Ms. Thomas said that was a good idea.

Ms. Mallek also noted that there was an article about underground storage tanks in the newspaper, and she would like to find out where they are.

Ms. Thomas indicated that they are located on a special map.

Mr. Slutzky explained that under the 1984 Resource Conservation & Recovery Act, they created the underground storage tank program and pursuant to that there is a US EPA-maintained list of identified underground tanks and a separate list of known leaking tanks. He will be happy to provide information on how to access the lists for Albemarle County.

Ms. Thomas added that the County is required to keep track of that because special well testing is required if it is going to be located near one.

Mr. Tucker noted that DEQ has that information too, and requires it.

Mr. Slutzky suggested that a link to that information be included on the Community Development part of the County's website.

Mr. Rooker mentioned that a lot of these tanks were put in before 1985, prior to requirements for having lined tanks. A lot of these are heating oil tanks for residential use and they are exempt. You don't know where all these leaks might be. The standard real estate contracts provide well tests for bacteria only – it does not test for other contaminants.

Mr. Rooker reported that there are currently discussions of impact fees. One proposal calls for charging more for outside the development areas than within development areas. He indicated that schools, public safety, and roads would be included in the pot to determine the set formula amount for an impact fee.

Ms. Thomas said that the committee is very interested in having the state have a bigger hand in land use planning, which concerns VACo and other county entities; but so far those proposals have been in line with what Albemarle County is doing. It is an interesting case and she thinks the County should keep track on what the committee is doing.

Mr. Rooker said that there is a November 27th deadline for applications for the "Safe Routes to School Program," and if there are no other projects in the running perhaps Georgetown Road sidewalks could be considered. He suggested that Board members send suggestions to Juan Wade in the Community Development Department.

Mr. Slutzky asked for an electronic copy of the updated ordinance adopted today with the corrections integrated, so that it can be shared with constituents, if requested.

Mr. Davis agreed, noting that it would be attached to the action letter as well.

Agenda Item No. 11. Adjourn. At 10:18 p.m. with no further business to come before the Board, the meeting was adjourned.

Chairman

Approved by Board
Date: 09/09/2009
Initials: EWJ