A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on August 5, 2009, at 9:00 a.m., in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 9:03 a.m., by the Chairman, Mr. Slutzky.

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

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Agenda Item No. 4. Recognitions. There were no recognitions to be made this date, so this item had been removed from the agenda.

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

Mr. Dorrier said 70 contributions have been received for operation of the Hatton Ferry, with about $13,000 raised to date; the Charlottesville-Albemarle Retail Merchants' Association has pledged $3,000 to $5,000 and he will be approaching the Buckingham County Board of Supervisors and the Scottsville Town Council to seek additional funds. He said most people feel it is an historic activity that Albemarle should take pride in supporting and they are optimistic for the future although no one has stepped up to take over its operation.

Mr. Slutzky asked if he had spoken with anyone at the Lewis & Clark Center about taking over ferry operations at some point.

Mr. Dorrier responded that the Center has its own priorities. He does no think they are able to take over this project. Ms. Thomas noted that the Hatton Ferry has no connection to either Mr. Lewis or Mr. Clark.

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Mr. Rooker said the Board should congratulate Ms. Thomas who recently received an award from the Virginia Association of Planning District Commissioners. She was recognized for her efforts at TJPDC – she was one of the first to advocate for bringing rural transit to the region. She was instrumental in helping JABA get formed, as well as helping establish the Charlottesville-Albemarle MPO. On the issue of affordable housing, she helped convince leaders of the six TJPDC member localities to form the Thomas Jefferson Home Consortium in 1993. During the 1990s, she led in the development of the TJPD Sustainability Accords and also helped organize the Rivanna Roundtable which is focused on preservation of the Rivanna River. He thinks all are proud and pleased that she received this award which is an acknowledgment of the many things she has done for this area over a number of years. Attendees applauded.

Ms. Thomas mentioned that the items listed where group efforts.

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Ms. Thomas said the Historic Preservation Committee has been concerned about certain demolitions taking place, particularly when a house has burned. The Committee met with the fire chief and now has a good understanding of what is going on and it has been agreed that notices will be sent to Albemarle County when there is going to be a burn or even consideration of one. Likewise, the committee met with Mr. Jay Schlothauer and has a better understanding of the demolition permit system. There will be improved communication on that also.

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Ms. Thomas said her next item has to do with the letter the Board authorized being sent to Gov. Kaine at the July meeting. It has resulted in Albemarle joining with other localities to request that the Governor get three secretariats together to develop guideline standards for the use of rainwater. The Health Department was told to do this in 1997 and they developed regulations for gray water, but that is not the same, so it has left the confusion noted in a newspaper article recently.

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Ms. Thomas said she is the Board's representative on the Rivanna Water & Sewer Authority Board. Although many people in the community are concerned about the pipeline that is part of the Water Supply Plan, the pipelines that are part of the sewage transport system should be more of an immediate interest to the community. One of those pipelines, the Shenck's Branch interceptor, just had its cost raised by more than $1.0 million because the infiltration has caused "spongy" pipes that catch more stormwater and they are "leakier" then the City had realized. That pipe has to be made larger.

Mr. Boyd asked who pays the $1.0 million; is it the City?

Ms. Thomas replied that the project will become a part of the CIP of the RWSA.

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Ms. Thomas said she recently attended a couple of meetings concerning the Chesapeake Bay Program. All localities will soon be handed a total maximum daily load, a nutrient diet, for all of their tributaries. It will be broken down into small components. For example, Albemarle may have several, such as the Hardware River and the Rivanna River. Then, the State must develop implementation programs. In all of these years of doing TDMLs, they don't have any implementation programs yet, and they are supposed to do it now in a two-month timeframe. She does not think this is a recipe for success, but at the EPA level that's being planned for getting a nutrient diet for the entire Chesapeake Bay watershed.

Mr. Rooker asked if there is any indication that they will provide localities with the tools necessary to achieve those goals in the way of guidance, money and possibly enabling legislation.

Ms. Thomas responded that each state is supposed to send a report to the EPA listing their current facilities and listing their existing legislation and authority for carrying out these plans. She does not know what happens after that. She said the Pennsylvania Secretary of Natural Resources indicated that his budget has been cut by 75 percent over the last two years. She does not know that Virginia is in a better position. She finds this to be grim situation.

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Ms. Thomas asked that Mr. Rooker report on the conference call with Rep. Tom Perriello.

Mr. Rooker said there were a lot of participants – probably 25 people on that call. He said that staff members Mr. Bill Letteri and Ms. Lori Allshouse both listened in on the call because they know more about what the County is doing in the way of grants. He said there is FEMA money available as part of the Stimulus Package for fire company construction projects, and there was a cutoff on July 10 for applying for that money. The County had already submitted a grant application for that one; he did not find out about that until after the call had ended. He said Mr. Letteri has already visited Mr. Perriello's office to discuss grant opportunities. He said there was a lot of interest in Southside Virginia in programs that focused on employment. A significant portion of the discussion, time-wise, was spent on those things. Ms. Brennan Johnson was on the telephone and explained some of the grant opportunities. It was helpful that staff people listened in because to the extent there was new information, they got it. He thinks staff is on top of the opportunities available, and is moving quickly to put the County in a position to make an application where there is some potential of receiving funds. He said everyone is worried about what will happen economically in their area when the stimulus money runs out, especially in the education area. State budgets have plummeted, and there have been discussions about taking transportation money from education money. There is one more year of stimulus money for education after this year.

Mr. Slutzky said the idea of the stimulus is that it will stimulate the economy and revenues will come back up. If not, something further will need to be done.

Mr. Rooker said the State's projections for the next biennium look bad. There has been discussion of rolling the budget back to the budget of 2005.

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Mr. Boyd mentioned that new development is surrounding the Fontana neighborhood. He thinks they are one of the first neighborhoods to be hit by the high-density urbanization going on. There are hundreds of heavy trucks passing through their neighborhood every day. He tried to help them by working with the developer so the trucks do not go though when the school busses are there because the streets are narrow. There have been problems with burns and destruction of property because ash is landing on their cars, etc. All of these are by-right developments. There was also an explosion - the blast was written about in the newspaper. He asked if there is something the Board could consider, ordinance wise, to help provide some protection for the neighborhoods where building is taking place around them.

Mr. Slutzky said the Board has considered not having open burns in the growth area, and he thought Mr. Boyd opposed that idea at the time. He asked Mr. Boyd if he had changed his thinking about that question.

Mr. Boyd said "no." This is compensation for damages when they do something wrong. He said there are controls in place now but they were in violation of those. He asked Mr. Mark Graham if there was a problem with the burning when it was occurring, but there was no way for the County to enforce reimbursement for damages done to homes.

Mr. Slutzky said burning in the growth areas addresses that issue, and it has been discussed before.

Mr. Mark Graham, Director of Community Development, said the developer had a burn permit which was issued by the Fire Marshal - not his office, but he understands the burn pit was not being properly operated. They put too much wood in at one time and got excessive ash and cinders. As a result, the Fire Marshal required them to close that burn pit and allowed them to open another one set back further from adjoining properties.

Mr. Boyd said it has been a perfect storm of different things – there was the burning, the blasting, the excessive number of trucks, and the narrow streets, which are VDOT streets. They are opening and closing a back entrance onto Olympia Drive when needed to move large equipment through that area.

Mr. Slutzky asked if it would be possible to develop an ordinance that required them to have an ingress and egress plan. Maybe it could require them to find another route that did not go through neighborhoods. If there were no such alternate route available there might be negotiations concerning times or other factors to reduce impact on the neighborhoods. He asked if such a strategy has ever been used.

Mr. Graham responded that it has not been done in Albemarle, and he's not certain if it's legally available. In this case, the Highland Ridge property only has one access to a public road and that is through Fontana. They looked at the issue of obtaining the right to build a construction road through Cascadia but the two developers could not come to an agreement between them.

Mr. Tucker said if there is a consensus of the Board members, staff will look at the possibility of some type of neighborhood protection plan, rather than trying to figure it out today.

Mr. Slutzky said he thinks Mr. Boyd has a great idea, and he is also happy to hear him express an interest in addressing the issue of burning.

Ms. Mallek asked if there is a possibility of having further setbacks for the location of the burning, and also put in some accountability so that if damage happens they are held accountable and required to make restitution. Mr. Davis said there are civil actions now to do that. There is probably no role the County can play directly in that.

Ms. Mallek asked if in the permitting process it can be said the developer is responsible. Mr. Davis said they can be required to have insurance – but he does not think the County can require developers to directly pay for other people's damages. Individual homeowners would need to pursue those claims against the developer; the County cannot make those claims on their behalf.

Mr. Rooker suggested having a brochure similar to the one produced on the dog ordinance that could be handed to the neighbors listing their options.

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Ms. Mallek reported that Mr. Richard Cogan has died, and she would like to recognize the many years he served as a Planning Commissioner and as a member of the Board of Zoning Appeals. She said he was also helpful to her as a newly elected Supervisor member.

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Ms. Mallek said she would like to mention again that she feels there is need to provide training for the members of the Board of Zoning Appeals. She said quite a few other counties require this training of their appointees.

Mr. Rooker said this Board does not appoint members to the Board of Zoning Appeals, and although he thinks training is a good idea, he asked if the County actually has that authority.

Ms. Mallek said she learned at VACo that other counties have that authority. Mr. Davis said he is not sure they require training; they provide funding for training. He said a couple of localities have authority to appoint their own BZA members under their charters, and they may be able to require training. He does not know of any authority the County has to require training when the Circuit Court judges make the appointments. He thinks that if it is made available to the appointees, most would take advantage of it.

Mr. Rooker asked if the Board members agree that the appointees be made aware that training is available to them.

Ms. Mallek said this idea was brought to her attention by the current chair of the BZA; it was not her original idea.

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Ms. Mallek reported that this week is nationally Farmers' Market Week, it was declared such by Secretary Bill Zack. She said there are a lot of activities going on and she mentioned a brochure which had been handed to the Board members. She said there are eight farmers markets in Albemarle – second only to Fairfax County. She thinks this is a great achievement both for local growers and local buyers. The agricultural niche is changing – there are bigger farms where they are allowing other people to come and use an acre or more on their property for produce.

Mr. Slutzky asked if a notice can be put on the County's website noting locations and times of operation of the farmers markets. Mr. Tucker said "yes."

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Ms. Mallek noted that the Advance Mills Bridge project is progressing well. All the old piers have been demolished and removed. Holes are now being drilled to put in the new piers.

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

Mr. Frank Melli said he had given to the Board members a copy of materials concerning the "Meet the Farmer" television show. He said this past year the Charlottesville City Market downtown exceeded $1.3 million in tax revenue dollars. "Meet the Farmer TV" has been showing community food-based system best practices; it is available to over 1.3 million homes throughout Virginia on government access channels and the internet. They just did an interview with Gov. Kaine at the opening of Ciderworks, they have done interviews with PEC, and tomorrow they will meet with JABA which is helping them with a cost/benefit analysis. He would like to make another presentation to this Board to ask how they might partner with the County to support their efforts. He said land conservation and sustainable agriculture is the number one business in Virginia. They presently have some underwriters helping to support their program.

Mr. Boyd said he was curious about the figure quoted of $1.3 million and wondered if that was a total sales figure. Mr. Melli said that was $1.3 million in tax revenue dollars collected from the vendors for only one day at the one market a week downtown. He said that is talked about in the show they did with City Manager Gary O'Connell.

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Mr. David Blount addressed the Board and congratulated Ms. Thomas for the VAPDC award. He said the TJPDC was glad to nominate her; they got help from Board members and members of County staff. He came to address development of the regional legislative program for 2010. Process-wise he approaches the various boards of supervisors and City Council in August to get input on legislative recommendations. Then he drafts the program and brings it back to the bodies for them to review, returning in October to get approval of the program. He said the Board has already alluded to the "gloomy state budget picture" for not only the coming budget year, but beyond. Everyone knows the impact that has on local budgets. With the State programs that are carried out at the local level, the challenge is making the case that it is not the time to shift costs, or the time to extend those requirements – more flexibility is needed and requirements need to be reduced, not extended.

Mr. Blount said education funding will be a target for cuts. It represents one-third of the State's general fund budget and is a significant portion of local budgets also. Beyond money issues, there will be a focus in the program on land use issues, as there has been renewed discussions by study committees at the State level about the urban development and growth area provisions enacted just two years ago. There will be discussions about the proffer impact fee bill and the stormwater management regulations which are out for public comment at this time. In addition to the priority items in the legislative program, there is a section for ongoing concerns which is where individual requests of counties are listed. The unpaved roads issue this Board has talked about will be put before the VACo Transportation Steering Committee next week as well as VDOT; Mr. Rooker has already presented it to Mr. Butch Davies.

Mr. Blount said that earlier this year the Board talked about funding for the Social Services Department. There is an existing statement in the program that can be amended to bring that to the forefront again. If the Board has other things it would like to have added, they can be sent to him so they can be incorporated into the draft.

Mr. Rooker said he has recently seen discussions of the under-funding of the Virginia Retirement System and the big losses it suffered when the market went down. He said it was unclear to him as to how that might play out and how it would affect localities. He asked if Mr. Blount had seen any further information on this matter. Mr. Blount responded that he has not heard anything since the meeting was held. He said when VRS looks at its portfolio they evaluate things over a five-year period. He is not certain, at this point, how the General Assembly will address it.

Mr. Rooker said apparently there were statements made by several legislators that teachers were local employees, not State employees – and members of the public interpreted that statement as an effort to perhaps shift increases in the cost of VRS for teachers to localities - the part that is presently being borne by the State. Those are the kinds of things that can have immense impacts on the County's budget. To the extent the Board can get a better feel for what is going on before getting into budget work sessions, the better.

Mr. Boyd said he remembers that back in the early 2000s when there was a huge adjustment, it really hit the School Board hard. At that time, it was not the economy so much as making actuarial adjustments. He commented that this whole thing is too quiet. With what is going on with the economy and what is being lost in pension funds, he thinks there will be "a big hit coming down the line."

Mr. Rooker said if there is going to be some huge adjustment in the contribution formula it is easier for the Board if it has some idea of what is happening in the fall, rather than next February or March.

Mr. Slutzky said since the General Assembly has clearly delegated the funding of transportation to localities, they may do the same thing with transportation workers. Mr. Blount said they are being more creative in terms of how they are being looked at than in the past. In the past, when it was convenient, they have talked about teachers being local employees. From time to time, they do award some state funding for salary increases, but at the same time they don't want to build in local salary increases in the re-benchmarking of education funding by the State.

Mr. Tucker noted that while VRS notifies the locality of rate adjustments for teachers or local government, there are times that they've actually reduced that rate. It does work both ways, but staff will keep its eyes and ears open about what might happen.

Mr. Rooker said he thinks there are difficult budget years ahead and the further in advance localities find out if there is going to be bad news the better.

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Mr. Neil Williamson of the Free Enterprise Forum said he appreciates the concerns Mr. Boyd raised regarding development in the development areas. He strongly encourages the Board to direct staff to meet with neighborhood groups that have issues as well as with folks in the development community. It is clear that there are many case-by-case issues. He said this is the kind of conflict the DISC I and DISC II committees thought would occur with dense development. He said the Board should not make it more difficult to develop in the development area; there are reasonable and rational approaches that can be used by listening to both sides. There needs to be a cooperative effort as development moves forward because there are issues on the neighborhood side that the development community may not be aware of, or vice versa. In order to obtain the vision in the Comprehensive Plan it will require everybody working together around the table.

Mr. Rooker said that vision is now codified in the Code of Virginia. It requires that urban development areas be provided in densities greater than what Albemarle has provided for.

Mr. Slutzky added that the Board does not want to push development out into the rural areas. Mr. Williamson said Albemarle is also on the leading edge of the conflicts being seen in construction within the development area.

Mr. Rooker said he does not disagree that a way is needed to solve the problems that arise in these circumstances. There will not always be one size fits all solutions.

Mr. Boyd said he has brokered a couple of meetings between homeowner associations and developers and they have not been fruitful. He said that he and Mr. Graham have had two different sessions with them. Things got better for a while, but then drifted back to where they were.

Mr. Rooker said the Fontana area is particularly difficult because the roads were not built to the Neighborhood Model standards. They preceded the NM and the results of that can be seen. People do not have places to walk, and there are large trucks in a neighborhood with no sidewalks.

Mr. Slutzky said there are also some success stories. There was a voiced concern from a homeowners' association about the blight condition along Rio Road associated with tall, unattended grass and abandoned structures. As a result of that voice coming from the community, some of those structures were torn down earlier than the developer might have liked, and at some significant expense to him. That was the result of a discourse between the community and the developer that led to a good outcome.

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Mr. Jeff Werner of the Piedmont Environmental Council said he finds it "remarkable" when the development community says they are not able to develop in the growth area, when since 2000 there have been about 15,000 residential units approved through rezonings and special use permits. Also, there is about 2.5 million square feet of commercial/retail space already approved. He said the development community continues to say the Board is not doing anything to facilitate growth and development. Sometimes facts are needed to offset that rhetoric.

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Agenda Item No. 7. Consent Agenda. Mr. Slutzky **moved** to approve the Consent Agenda with the April 1st and May 6th minutes removed, with an addition on item 7.3 to grant the County Executive approval to sign on behalf of the County for the USDA Farm and Ranchlands Protection Program grant, and approval of the execution of the proposed letter of August 7, 2009, to Ben Taub. (Discussions on individual items are included with those items.)

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

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

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Item No. 7.1. Approval of Minutes: April 1, May 6 and June 10, 2009.

Ms. Thomas had read her portion of the minutes of May 6, 2009, pages 37 (beginning with Item #9) to the end, and found them to be in order as presented.

Mr. Slutzky had read the minutes of June 10, 2009, and found them to be in order as presented.

(Discussion: Mr. Rooker noted that the minutes are now being typed faster than the Board can get to them, and staff is doing a terrific job in bringing them up to date. Mr. Slutzky said that the minutes are being done extremely well.)

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

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Item No. 7.2. Resolution to approve the County's participation in the Virginia Department of Transportation (VDOT) Revenue Sharing Program for FY '09-10.

The Executive Summary states that the VDOT Revenue Sharing Program ("Program") is a competitive funding program for road improvements which requires a minimum dollar for dollar match from participating localities. The County has participated in this Program since 1988. The Program provides an opportunity for the County to receive an additional $1.0 million for road improvements. Last year, the County provided a $1.5 million match and received the full award of $1.0 million, which was applied to the Meadow Creek Parkway project.

Revenue Sharing Program funding priorities (Tiers) were modified last year to make projects that are administered by the locality the highest priority for funding (Tier One) and projects in which the locality has provided a match in excess of a dollar for dollar match the second highest priority for funding (Tier Two). The County is not administering any projects eligible or viable for grant funding this year. In order to qualify under the second highest criteria (Tier Two) for this competitive program, the County should provide more than a dollar for dollar match. The County has provided a $1.5 million match for the past two years.

VDOT Residency staff recommends applying any FY 2010 Revenue Sharing funds toward the Jarmans Gap Road project to ensure that sufficient funds are available for the project to stay on schedule for construction. If the VDOT Revenue Sharing request is awarded, the project would receive the full $2.5 million in funding, which would consist of $1.0 million in State funding and $1.5 million in local funding. The County has previously provided $483,600 in a Revenue Sharing Fund match for this project, bringing the total revenue sharing match from the County to $1,983,600 or 12 percent of the total project cost, if this latest request is approved.

The estimated cost for the Jarmans Gap Road project (from Crozet Avenue to Jarmans Lake Road) is $16,462,050. The project has received a cumulative total of $14,268,596 (including previous funding and the FY '09-10 Secondary Program allocation), resulting in a shortage of $2,196,454 to complete the project. VDOT and staff believe the full $2.5 million in requested Revenue Sharing Funds will be needed for the project by the time it reaches construction to cover potential cost increases and/or possible reductions in the FY '09-10 Six-Year Secondary Plan allocations. The current estimated advertisement date to bid the Jarmans Gap Road Project for construction is 2011. As noted, this project has been a previous recipient of Revenue Sharing funds.

A total of $1,074,698 in previous appropriations is available in unencumbered funds in CIP Revenue Sharing Road funds. To fully fund the $1.5 million match, an additional $425,302 would need to be appropriated from the Fund Balance of the Transportation Improvement Program-Local Fund (950136) which currently has an unobligated fund balance of $3,705,730. This appropriation will not need to be made until after the County is notified of the grant award (October-November, 2009). Staff recommends that due to uncertainties in the ultimate status of this project and the County's overall financial condition, this item be brought back to the Board for final consideration if approved. It is important to point out that this proposal does not make use of any Revenue Sharing Funds in the current fiscal year (FY2009-10) which have been specifically obligated as a reserve for the General Fund if the County should experience further revenue shortfalls in FY 2009-10.

Staff recommends that the Board adopt a resolution to participate in VDOT's Revenue Sharing Program for FY 2010 which shall include $426,000 from Local Transportation Improvement Program funding in the CIP in addition to the current unencumbered balance in Revenue Sharing Funds to provide sufficient funding to cover the $1.5 million local match. If this funding request is approved, staff will bring this item back for final consideration after more information is available regarding the project's status and the County's overall financial condition.

By the above-recorded vote, the Board adopted the following resolution to participate in VDOT's Revenue Sharing Program for FY 2010 which shall include $426,000 from the Local Transportation Improvement Program funding in the CIP in addition to the current unencumbered balance in Revenue Sharing funds to provide sufficient funding to cover the $1.5 million local match:

RESOLUTION TO PARTICIPATE IN
VIRGINIA DEPARTMENT OF TRANSPORTATION
REVENUE SHARING PROGRAM FOR FISCAL YEAR 2010

WHEREAS, the County of Albemarle desires to submit an application for up to $1.0 million of revenue sharing funds through the Virginia Department of Transportation Fiscal Year 2010/11 Revenue Sharing Program; and

WHEREAS, the County is willing to commit a $1.5 million match in order to compete for Tier Two funding; and

WHEREAS, these funds are requested to fund the Jarmans Gap Road improvements project between Crozet Avenue and 0.597 miles east of Route 684 – Half Mile Branched Road.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby commits to provide $1.5 million of matching funds in its application for $1.0 million of revenue sharing funds from the Virginia Department of Transportation Revenue Sharing Program and requests that the Virginia Department of Transportation approve the County's application.

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Item No. 7.3. Approval of FY 2009 ACE Appraisals and Easement Acquisitions.

The Executive Summary states that on March 11, 2009, the Board approved the Acquisition of Conservation Easement (ACE) Committee's request to have the top six ranked properties from the Round 9 applicant pool (FY '09) appraised: the McDaniel, E.N. Garnett, Hudson (Michael), Magerfield, Hudson (Charles) and Thurman properties. Based on estimated easement values for these properties prior to the official appraisals, the ACE Committee believed that the ACE Program Fund Balance would be enough to purchase most or all of the easements. Even if it were not, the Committee believed it would be prudent to obtain appraisals on extra properties in the event that any applications were withdrawn.

The Board of Supervisors' role in the ACE program is to select the easements to be purchased. County Code § A.1-111(A) provides in part: "From the list of applications received under section A.1-110(D), the Board of Supervisors shall designate the initial pool of parcels identified for conservation easements to be purchased. The size of the pool shall be based upon the funds available for easement purchases in the current fiscal year and the purchase price of each conservation easement in the pool established under § A.1-111(B)." Because it is unlikely that every invited applicant will submit an actual offer to sell, if one or more applicants drop out of the pool, other applicants would be substituted until the eligible applicants or available funding were exhausted.

Acquisition of these six properties from the FY '09 class would add another 849 acres in conservation easements and significantly further the County's goals. All six appraisals were completed in mid-May and submitted to the Appraisal Review Committee (ARC). After a few minor revisions, the ARC formally approved the revised appraisals on July 14, 2009.

For FY '09, funding of $1,614,000 was appropriated to the ACE program in addition to the $29,000 of unencumbered funds carried over from FY '08. In addition, two separate grants have been awarded recently that together would add almost $315,000 to the program's funding ($49,900 from the state Office of Farmland Preservation and $265,000 from USDA's Farm and Ranchland Protection Program). The $49,900 State grant will likely be applied toward an easement purchase from Round 8. Though both grants have been tentatively approved by the grantors, neither has been allocated yet. A Cooperative Agreement, currently under staff review, must be approved by the Board of Supervisors and signed by the County Executive before USDA will release its funds. With this grant, the total funds for acquiring Round 9 easements would be nearly $1,900,000, enough for the six applicants from FY '09 and a significant amount to be carried over to FY '10's restricted budget.

Because neither grant has been officially approved or allocated yet, staff recommends approval of the purchase of the first five ranked properties. The sixth-ranked property is the Thurman property. In the absence of one or both grants, the FY '09 budget has funding sufficient to acquire these first five properties. The Thurman property can be authorized for acquisition after the grants are officially approved. The acquisition of all six appraised properties would result in the following resource protection:

Protection of 849 acres of farm and forestland
Elimination of 65 development lots
7,404 feet of state road frontage
8,112 feet of riparian buffer, including 2,154 feet on the James River
140 acres of mountain top protection
15,533 feet of common boundary w/other protected lands, including 541 feet on Walnut Creek Park
471 acres of "prime" farm and forestland
Five of six properties have significant tourism value

Funding for the purchase of these conservation easements comes from the CIP-Planning-Conservation budget (line-item 9010-81010-580409) and the CIP-Tourism-Conservation budget (line-item #9010-72030-580416), a budget previously approved by the Board to fund ACE properties with "tourism value". The McDaniel, E.N. Garnett, Hudson (Mike), Magerfield, and Hudson (Charles) properties all qualify for the use of tourism funds because they either provide mountaintop protection or lie on the James River. In addition, it is anticipated that the County will receive a $265,000 grant from the USDA's Farm and Ranchland Protection Program that can be used for Round 9 acquisitions.

The ACE Committee and staff recommend that the Board approve the six appraisals by Pape and Company for applications from the year FY '09 applicant pool; approve the purchase of ACE easements on the top five ranked properties for Round 9, (namely: McDaniel, E.N. Garnett, Hudson (Mike), Magerfield, and Hudson (Charles); and, authorize staff to invite these five applicants to make written offers to sell conservation easements to the County.

(**Discussion**: Ms. Thomas congratulated staff and the committee for bringing in outside money to help with this grants program.

Mr. Davis said that after the executive summary was prepared, staff became aware of a deadline for the USDA Farm and Ranchlands Protection Program that is before the next Board meeting. Staff is still working on an agreement to get the $265,000 grant, so if the Board would include in approval of this

item authorization for the County Executive to sign the grant agreement for that program that would be helpful with the timeline.

Mr. Slutzky said the executive summary implies that the County is spending $27,136.31 per development right extinguished, and there are clearly other benefits beyond the extinguishing of the development rights associated with conservation easements. That is why he enthusiastically embraces any opportunity to get land in easements. He thinks it is important for the public to understand the economics of this program. He thinks it would be helpful for the public if the executive summary included that unit of information along with the total amount spent, the total number of development rights retired, and the average amount spent per development right.

Mr. Rooker said keeping track of that information will give a better understanding of the per acre cost of the program.

Mr. Slutzky suggested adding a running tally of how many acres would be added to the existing inventory of acreage and easements. Then, each time there is a step forward with this program, it can be seen. He has expressed hesitation about the dollars per development right aspect, but the other elements of it are powerful.

Ms. Mallek said the different properties all have different characteristics so "average is really just an average." She is not sure a whole lot can be read into it from year to year.

Ms. Thomas said talking about easements, not the ACE Program, apparently there is quite a flurry of activity resulting from the Land Use Taxation Program revalidation process now taking place. She thinks when that's concluded, the Board should request a report on how many acres have been added during this time period, as well as agricultural/forestal district acreage.

Mr. Slutzky asked if any information is currently distributed with the tax bills explaining the benefits of putting land into an easement. Mr. Tucker replied that it's not done specifically, but staff could look into doing it.

Ms. Thomas said the County is getting open space agreements - that was one of the first reactions to getting the revalidation notice. People came in and said they did not want to cut down their woods, and were told they needed for their land to be in open space and have an agreement with the County. Mr. Davis said that next month staff is going to explain the process that will be used for open space easements.

Mr. Boyd said that at one of his town hall meetings, Mr. Tucker said there had been 10 applications thus far for open space.

Mr. Rooker said it might be helpful to have the ACE Committee involved. There are other things that must be considered, such as State road frontage, riparian buffer areas, and other units of measure they use in awarding points to determine which properties to pursue.)

By the above-recorded vote, the Board approved the six appraisals by Pape and Company for applications from the year FY '09 applicant pool; approved the purchase of ACE easements on the top five ranked properties for Round 9, namely: McDaniel; E.N. Garnett; Hudson (Mike; Magerfield; and, Hudson (Charles); approved staff to invite these five applicants to make written offers to sell conservation easements to the County; and, authorized the County Executive to sign the grant agreement for the USDA Farm and Ranchlands Protection Program.

Item No. 7.4. FY 2009 Appropriations.

It is stated in the Executive Summary that 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; provided, however, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The total of this requested FY 2009 appropriation is $30,200.00. A budget amendment public hearing is not required because the cumulative appropriations will not exceed one percent of the currently adopted budget.

This request involves the approval of one new FY 2009 appropriation – No. 2009-067 totaling $30,200.00 for various Education programs and projects. Staff recommends approval of the budget amendment in the amount of $30,200.00 and the approval of Appropriation No. 2009-067.

* * * *

Appropriation #2009067		**$ 30,200.00**
Revenue Source:	Local Revenue	$ 30,200.00

The Virginia Department of Education (VDOE) selected Albemarle County Public Schools to participate with twelve public school divisions and act as fiscal agent for the Professional Partnership for School Leadership Preparation Grant. The other twelve participating school divisions are Charlottesville, Fredericksburg, Staunton, Waynesboro, Clarke, Fluvanna, Greene, Louisa, Manassas Park, Orange, Rockingham, and Warren County. This grant program offers an alternative approach to administrative preparation that will give candidates the knowledge and skills they need to become effective school

administrators. We received $200 in candidate fees which may be used for professional staff development.

The mission of the Community Charter School Grant is to provide an alternative and innovative learning environment, using the arts, to help children in grades six through eight learn in ways that match their learning styles; developing the whole child intellectually, emotionally, physically, and socially. Seeking to serve students who have not succeeded in school, the program will close their achievement gap by offering a balance of literacy tutorials and an arts-infused curriculum in support of the Division's strategic plan. The Community Charter School Grant is responsible for the following major programs and/or services: 6th and 7th Grade Instructional Program, Literacy and Arts Infused Education, Choice Theory School Development, and Mastery Learning. We received donations in the amount of $30,000 from anonymous donors to be used for payroll and benefits.

(**Discussion**: Ms. Thomas said she wants to congratulate the School System. It seems that there were only 29 localities nationwide that were selected for the grant Albemarle received.)

By the above-recorded vote, the Board approved the budget amendment in the amount of $30,200.00 and the approval of Appropriation No. 2009-067.

County of Albemarle — App # 2009-067
Appropriation — Date 08-05-09

Explanation: Education Donations And Programs
School Board Meeting - 07/09/2009

					Sub Ledger			General Ledger	
Type	Fund	Dept	Object	Description	Code		Amount	Debit	Credit
2	3220	18000	189900	Misc Revenues	J	2	200.00		
1	3220	61311	580500	Staff Development	J	1	200.00		
2	3380	18100	181080	Donations	J	2	30,000.00		
1	3380	61101	112100	Salaries-Teachers	J	2	22,000.00		
1	3380	61101	210000	FICA	J	2	1,689.00		
1	3380	61101	221000	VRS	J	2	3,152.00		
1	3380	61101	231000	Health Insurance	J	2	2,892.00		
1	3380	61101	232000	Dental Insurance	J	2	108.00		
1	3380	61101	241000	VRS Group Insurance	J	2	159.00		
	3220		0501	Est. Revenue				200.00	
			0701	Appropriation					200.00
	3380		0501	Est. Revenue				30,000.00	
			0701	Appropriation					30,000.00
Total							60,400.00	30,200.00	30,200.00

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Item No. 7.5. Health Department Lease Amendment & Charlottesville Free Clinic License.

It was stated in the Executive Summary that on January 7, 2009, the Board approved a request from the Charlottesville Free Clinic (CFC) to proceed with its plan to renovate approximately 2,800 square feet of office space located in the Charlottesville/ Albemarle Health Department building on Rose Hill Drive to:

Provide a full-time dental clinic with paid staff to treat low-income adults and children
Increase the size of its pharmacy in order to continue to offer free medications to patients
Offer two additional exam rooms
Double existing office space to accommodate a growing number of staff and volunteers.

CFC estimated that the cost of these improvements would total $400,000 and accommodate its operational needs for the next five to 10 years.

The City and County jointly own the Health Department building and property on Rose Hill Drive and lease it to the Health Department on a year-to-year basis pursuant to a 1995 Deed of Lease. The Lease currently authorizes the Health Department to License the CFC to occupy 1,426 square feet on the second floor of the building. Based on the Board's January 7, 2009, action, staff proceeded with developing a five-year amendment to the existing City/County Lease with the Health Department and a License Agreement between the Health Department and CFC. Likewise, CFC proceeded with bidding and constructing the improvements described above and is nearing completion of this work. On July 20, City Council approved the execution of the new five-year Lease amendment, which incorporates the CFC License.

There is no financial impact to the County as the result of this action. CFC will continue to seek County and City financial assistance through the Agency Budget Review Team (ABRT) process to partially fund its annual operating expenses. Moreover, both the City and County reallocated its funding for the Dental Clinic from the Health Department to CFC effective fiscal year 2010. These transfers and funding requests are currently programmed and accounted for in the County's Five-Year Financial Plan.

Staff recommends that the Board adopt a Resolution to authorize the County Executive to execute the 2009 First Amendment to the Deed of Lease between the City of Charlottesville, the County of Albemarle and the Commonwealth of Virginia, Department of Health.

By the above-recorded vote, the Board adopted the following Resolution to authorize the County Executive to execute the 2009 First Amendment to the Deed of Lease between the City of Charlottesville, the County of Albemarle and the Commonwealth of Virginia, Department of Health:

RESOLUTION APPROVING THE FIRST AMENDMENT TO THE DEED OF LEASE BETWEEN THE CITY OF CHARLOTTESVILLE, THE COUNTY OF ALBEMARLE AND THE COMMONWEALTH OF VIRGINIA DEPARTMENT OF HEALTH

WHEREAS, the City of Charlottesville and County of Albemarle jointly own the Health Department property and building located at 1138 Rose Hill Drive leased to the Commonwealth of Virginia (Thomas Jefferson Health Department); and

WHEREAS, the current lease authorizes the Health Department to license the Charlottesville Free Clinic, which offers free or reduced cost medical care to qualifying residents of the community, to occupy 1,426 square feet of the Health Department facility; and

WHEREAS, the current lease, dated July 1, 1995, renews automatically unless either party terminates the lease; and

WHEREAS, on January 7, 2009, the Albemarle County Board of Supervisors approved a request from the Charlottesville Free Clinic to renovate approximately 2,800 square feet of office space located in the Health Department facility to expand its office and dental clinic space; and

WHEREAS, the attached First Amendment to Deed of Lease extends the lease term to June 30, 2014 and consents to the execution of the License Agreement between the Health Department and the Charlottesville Free Clinic for the Clinic's sole use of 3,386 square feet of the facility.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive to sign, in a form approved by the County Attorney, the Amendment to the Lease Agreement between the City of Charlottesville, the County of Albemarle and the Commonwealth of Virginia Department of Health to allow for the expansion of the Charlottesville Free Clinic and to extend the Health Department Lease through June 30, 2014.

* * * * *

FIRST AMENDMENT TO DEED OF LEASE

This FIRST AMENDMENT TO DEED OF LEASE ("this Amendment"), dated _____, 2009, by and between THE CITY OF CHARLOTTESVILLE and the COUNTY OF ALBEMARLE (the "Lessors") and the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF HEALTH ("Lessee"), amends that certain Deed of Lease dated July 1, 1995 (the "Lease") by and between the Lessors and the Commonwealth of Virginia, Charlottesville/Albemarle Health Department (as lessee therein).

W I T N E S S E T H

WHEREAS, the proper name of Lessee is the Commonwealth of Virginia, Department of Health; and

WHEREAS, the initial term of the Lease terminated on June 30, 2000 and the Lease automatically renewed and continued in full force and effect thereafter from year to year; and

WHEREAS, the parties hereto desire to amend the Lease as hereinafter set forth.

NOW, THEREFORE, it is agreed that the Lease be amended as follows:

1. Lease term shall be extended for an additional period of five years from the termination of the current renewal term of June 30, 2009 until June 30, 2014. The parties acknowledge that Sections 10 and 11 of the Lease shall remain in full force and effect.

2. Attachment No. 1 to Deed of Lease is hereby deleted. In lieu thereof, Lessors consent to execution of a new license agreement by and between Lessee and the Charlottesville Free Clinic as shown on Exhibit A.

3. Lessors and Lessee acknowledge and consent to the Charlottesville Free Clinic's alterations and additions to the premises described in the above-referenced license agreement at the sole cost and expense of the Charlottesville Free Clinic. The alterations and additions are described in Exhibit B.

4. All notices to Lessee required or permitted under this Lease shall be given in any manner set out in Section 12.(b), with additional copies addressed to:

Virginia Department of Health
ATTN: Director, Purchasing and General Services
109 Governor Street, 12th Floor
Richmond, Virginia 23219

and

Division of Real Estate Services
ATTN: Director
1111 East Broad Street, 2nd Floor
Richmond, Virginia 23219

Except as amended herein, the Lease shall remain in full force and effect.

This Amendment shall not be effective or binding unless and until signed by all parties and approved by the Governor of Virginia pursuant to Section 2.2-1149 of the Code of Virginia (1950), as amended.

IN WITNESS WHEREOF, the parties have affixed their signatures and seals.

LESSOR: CITY OF CHARLOTTESVILLE
By: _____
Title: _____

LESSOR: COUNTY OF ALBEMARLE
By: _____
Title: _____

Item No. 7.6. ZTA 2009-13, Home Occupations and ZTA 2009-12, Churches. Resolutions of Intent to amend the Zoning Ordinance to allow certain churches and home occupations to be permitted as by-right uses.

It was stated in the Executive Summary that in a joint work session of the Board and the Planning Commission to discuss the Rural Areas Implementation on June 3, 2009, staff was given direction to proceed with two zoning text amendments to allow certain churches, church expansions and home occupations to be permitted as by-right uses in the Rural Areas, subject to supplementary regulations. The Board identified limitations on the size, scale and intensity of uses as important considerations.

Currently, churches, church expansions and Home Occupations-Class B are uses allowed by special use permit in the Rural Areas zoning district. Standard conditions for these uses have been routinely employed to address anticipated impacts. With appropriate amendments to definitions and supplementary regulations to address the nature, scale and intensity of these uses, small-scale churches, church expansions and certain Home Occupations-Class B could become by-right uses in the Rural Areas.

Allowing small-scale churches, church expansions and certain Home Occupations-Class B would reduce staff time spent in processing special use permits for these uses (only a portion of which is recovered by current fees), allowing staff more time to devote to policy related work program initiatives. Staff recommends that the Board adopt Resolutions of Intent for Churches and Home Occupation-Class B.

By the above-recorded vote, the Board adopted the following Resolutions of Intent for Churches and Home Occupation-Class B:

RESOLUTION OF INTENT

WHEREAS, home occupations, Class A, are permitted by right in the Rural Areas zoning district; and

WHEREAS, home occupations, Class B, are permitted by special use permit in the Rural Areas zoning district; and

WHEREAS, several standard conditions have been imposed over the years in conjunction with the approval of special use permits for home occupations, Class B; and

WHEREAS, County and applicant resources would be more efficiently used if the eligibility for a home occupation was more fully delineated and if proposed home occupations, Class B, meeting specified criteria were allowed by right in the Rural Areas zoning district, subject to supplementary regulations under Section 5 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Board of

Supervisors hereby adopts a resolution of intent to amend Zoning Ordinance §§ 3.1, 5 and 10 and any other regulations of the Zoning Ordinance deemed appropriate to achieve the purposes described herein; and

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on the zoning text amendment proposed by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.\

* * *

RESOLUTION OF INTENT

WHEREAS, churches are permitted by special use permit in the Rural Areas zoning district; and

WHEREAS, several standard conditions have been imposed over the years in conjunction with the approval of special use permits for proposed churches and church structures, and minor changes to church structures or uses; and

WHEREAS, although the term "churches" has a longstanding and consistent administrative interpretation that includes all religious uses and religious structures, it may be desirable to expressly define the term in the Zoning Ordinance; and

WHEREAS, the County's and the churches' resources would be more efficiently used if proposed church structures and uses meeting specified criteria, and minor changes to church structures and uses, were allowed by right in the Rural Areas zoning district, subject to supplementary regulations under Section 5 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to amend Zoning Ordinance §§ 5 and 10 and any other regulations of the Zoning Ordinance deemed appropriate to achieve the purposes described herein; and

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on the zoning text amendment proposed by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

_____

Item No. 7.7. Authorization to charge direct project management expenses incurred by the Office of Facilities Development against the Capital Fund.

It was stated in the Executive Summary that in 2005 the Office of Facilities Development (OFD) was established to provide general oversight and execution of the County's Capital Improvement Program, including school construction. The need for the office was the result of the growth in both the volume and complexity of the capital program. Currently, for example, OFD is directly responsible for managing the design and/or construction of more than 38 active projects with total commitments of over $40.0 million.

The office is comprised of a Director, an Administrative Assistant, a Capital Program Manager (vacant), five Project Managers and two Project Inspectors. Two of the Project Manager positions are outsourced and engaged as "contract employees". OFD also currently utilizes 50 percent of the time of three Building Inspectors employed with Community Development to perform project inspection services.

OFD's current budget for costs associated with operations ($658,002) is funded from the General Fund, except for the costs associated with the Capital Program Manager position ($106,238) and the two contract employees ($195,506) which are charged directly to applicable projects in the Capital Fund.

As one of the measures to address the current budget challenges and after review of best practices from other localities, staff is proposing to change how OFD is funded. The proposal is to charge direct project management expenses incurred by OFD for a project to that project's funding in the Capital Fund. In addition, staff proposes that the employment status of the two "contract employees" be changed to permanent FTE status and that 50 percent of the salaries of the three Project Inspectors from Community Development assigned to OFD be transferred to OFD.

The workload and demands of OFD are directly proportional to the volume of approved projects in the Capital Improvements Plan (CIP). Overall growth in the CIP has created challenges for OFD and the need to outsource project management services. Despite recent reductions in the volume of CIP projects, OFD anticipates a continuing need to supplement its project management staff to effectively manage current and future project loads.

A survey of similar municipalities and school districts, as well as UVA, has shown that their project management costs are four to six percent of total project costs. Comparable services secured privately would cost six to seven percent. OFD's current personnel costs are approximately two to three percent of the adopted CIP. In addition, surveys indicate that the typical ratio of Project Managers to assigned projects is approximately one to three, depending on the size and complexity of the projects. OFD's current ratio of managers to projects is one to 7.6.

To more directly allocate costs, accommodate staffing needs, and more closely match staffing levels to the project volume in the CIP, staff seeks authorization to charge direct project management costs to the Capital Fund rather than to pay these costs from the General Fund. Capital project budgets would include an appropriate "Project Management Fee" line item to fund OFD charges. Adjustments to OFD's staffing levels would be driven by the relative activity in the CIP. Conversion of the two contracted employees to permanent status would: a) reduce the County's costs associated with privatized project management services; b) ensure retention of trained/developed staff; and, c) avoid inconsistency in the quality and effectiveness of project management services.

Approval of this item would have no overall impact on the County's budget. Revenues to support project management operations in OFD, including the funding for Community Development employees being used by OFD, would be funded by the Capital Fund rather than the General Fund. Since current capital budgets do not include a Project Management fee component, it would be necessary to utilize savings from current projects for FY '10; capital budgets beyond FY '10 would include a project management fee component. Annual costs associated with privatized project management services would be reduced with the conversion of contract employees to regular FTE's.

Staff recommends that the Board:

- Authorize OFD to charge direct costs associated with Project Management services, including
- the Capital Program Manager position, to the Capital Fund;
- Convert two contracted employees to permanent FTE's;
- Transfer 50 percent of salaries of three project inspectors from Community Development to OFD;
- Direct staff to include a 4.5 percent Project Management fee in all future CIP budgets; and
- Designate a portion of savings from completed projects in the Capital Fund to a "Project Management" line item in the Capital Fund to fund FY '10 project management expenses.

(**Discussion**: Mr. Slutzky said he thinks this is a rational approach and he appreciates Mr. Bill Letteri's leadership in pursuing this. He said there is a reference to the fact that in the Capital budgets beyond FY '10 there would be a project management fee component. He wants to know what that fee will be relative to comparables. Mr. Tucker responded that the cost is usually about three percent.

Mr. Boyd asked if that is something that will be shifted between operating and capital costs, or will it be an increased expense. Mr. Letteri said it is a shift from operating to capital. Mr. Boyd asked if this is a zero-sum operation. Mr. Letteri said that is correct.

Ms. Mallek asked if this means the County will be borrowing to pay salaries. Is the County paying interest now on the money being shifted to that account? Mr. Letteri said there is no direct correlation there. It is possible some funds amassed to resource the capital fund could be used in effect to fund projects that then fund project management fees.

Mr. Slutzky said since those staff hours are directly attributable to those projects, to put them in the general flow of revenues would be less fair than if there were associated debt service.

Mr. Boyd asked how this will affect School projects. Mr. Letteri said as budgets are entertained for School projects they will include a project management fee of 4.5 percent. Mr. Boyd asked if School projects are being managed centrally now. Mr. Tucker said "yes", School and Local Government projects are managed centrally by Mr. Letteri's office.

Mr. Rooker noted a paragraph in the staff report reading: "A survey of similar municipalities and school districts, as well as UVA, has shown that their project management costs are four to six percent of total project costs. Comparable services secured privately would cost six to seven percent. OFD's current personnel costs are approximately two to three percent of the adopted CIP." He thought the County would adopt something close to what it currently spends to manage projects. Mr. Letteri said in the recommendation section of the Executive Summary he indicated that it would be 4.5 percent.

Mr. Rooker asked why the percentage would be higher, as the County is currently running at about two to three percent. Mr. Letteri said in looking at best practices, staff looked at the ratio of staff to projects and Albemarle is understaffed to handle even the current load, much less the future load. There is one manager for 7.6 projects.

Mr. Tucker asked if this will recoup more than just personnel costs per se. Mr. Letteri said it is basically just to have adequate staffing levels. This increase attempts to recoup some of the costs other than personnel costs – such as vehicle usage, etc.

Mr. Boyd asked if the Board would be authorizing a shift from current practices – or for more staffing. Mr. Tucker said "no."

Ms. Mallek said it is bringing the contract people on full-time with benefits. She just wants to be sure benefits are added to make it a level playing field. Mr. Letteri said there are two project managers on his staff now who are outsourced. They are paid from private fees. These two positions would become full-time equivalents, which will actually save the County money.

Mr. Rooker said before adopting a hard number, he would like for it to be looked at so expenses that are not actually being incurred are not added into capital.

Mr. Boyd said because the contract people were not counted before is Mr. Letteri planning on hiring more people. Mr. Letteri said he does not anticipate hiring more staff.

Mr. Boyd asked if the ratio will go down. Mr. Letteri said it will go down a little. Year to year they have to look at the project load. He anticipates that for the next two years they will be operating with about one project manager to about four to five projects – which is a heavy load based on industry standards.

Ms. Thomas asked if the County aims for more LEED certified projects, will that increase or decrease the number of projects a manager should manage. Mr. Letteri said it intensifies the management effort. They are mindful of the complexities of LEED as it relates to management and that is another reason why they must watch that ratio. He said small mistakes in projects can create quite a significant financial impact.

Ms. Thomas said that as there are more complex stormwater retention systems, that will need to be watched even more carefully.)

By the above-recorded vote, the Board authorized the OFD to charge direct costs associated with Project Management services, including the Capital Program Manager position, to the Capital Fund; converted two contracted employees to permanent FTE's; transferred 50 percent of salaries of three project inspectors from Community Development to OFD; directed staff to include a 4.5 percent Project Management fee in all future CIP budgets; and designated a portion of savings from completed projects in the Capital Fund to a "Project Management" line item in the Capital Fund to fund FY '10 project management expenses.

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Item No. 7.8. Resolution of Endorsement for New Amtrak Passenger Service through the Region.

At the request of Piedmont Rail Coalition and by the above-recorded vote, the Board adopted the following resolution:

Resolution of Endorsement
for
New Amtrak Passenger Rail Service through the Region

WHEREAS, Albemarle County, Charlottesville and the Central Virginia Region have enjoyed a rich history of passenger rail service connecting the region to Northern Virginia and Washington, D.C.; and

WHEREAS, the railroads were vital to the growth of Central Virginia's economy and to the development, strength and diversity of its educational, cultural and civic institutions; and

WHEREAS, these historical ties to Northern Virginia and Washington, D.C. continue to be critical to the strength of our economy, to the health and vitality of our academic and research institutions, to our tourism industry, and to Central Virginia's increasing role as host to federal defense agencies and their allied contractors; and

WHEREAS, the Amtrak Crescent is the only daily passenger train connecting Charlottesville to Washington, D.C. and the Northeast Corridor, supplemented three days a week by the Amtrak Cardinal; and

WHEREAS, neither of these Amtrak trains provides peak hour service to Northern Virginia and Washington, D.C., nor do they, as part of Amtrak's national system, provide a sufficient level of on-time performance to meet the needs of the business or non-business traveler who must arrive early in the day, arrive on-time, and return the same evening; and

WHEREAS, in spite of these limitations, Charlottesville maintains one of the highest, most consistent ridership levels of any Amtrak station in Virginia; and

WHEREAS, the Charlottesville Regional Chamber of Commerce found that 63 percent of its member businesses regularly send employees to Northern Virginia and Washington, D.C. for business purposes, 84 percent of the time they travel there by car, and 66 percent said they would use a reliable passenger rail link if one were available; and

WHEREAS, multiple state-funded studies over the past decade have identified Charlottesville-Washington as the route segment having the greatest potential for ridership growth in the US29/I-81 corridor; and

WHEREAS, in a 2008 report to the Virginia Department of Rail and Public Transportation (VDRPT), Amtrak recommended new service in the Lynchburg-DC corridor "as soon as possible," describing it as "underserved" and "a route segment that frequently sells out," and Amtrak proposed a new service structure, along with a schedule; and

WHEREAS, both VDRPT and Amtrak expressed interest in providing peak hour service for Washington-bound passengers; for example, Amtrak described the proposed schedule as offering "...a good service pattern for business travel to Washington - a first for the region."; and

WHEREAS, Central Virginians rallied around the Amtrak proposal, providing broad-based public input to the Department of Rail and Public Transportation to demonstrate that current Amtrak service is not currently meeting the region's needs, particularly for business and non-business travel to Washington, D.C.; and

WHEREAS, the City of Charlottesville and the Counties of Albemarle, Greene, Nelson, Fluvanna, and Louisa unanimously joined twenty-two political subdivisions in the US29 corridor that executed a resolution of support for the proposed Lynchburg-DC service; and

WHEREAS, on May 7, 2008, the Board of Supervisors of Albemarle County, Virginia, expressed support for additional passenger rail service from Central Virginia to Washington, D.C. by adopting a Resolution; and

WHEREAS, Governor Timothy M. Kaine has secured the necessary agreements with the host railroads, Amtrak and Virginia Railway Express, and the Commonwealth Transportation Board has appropriated the funds to operate Lynchburg-DC intercity passenger service for three years as a Demonstration Project; and

WHEREAS, VDRPT recently released the approved schedule for the Lynchburg-DC train, but this schedule is not useful for the business traveler or for a day trip to Washington, D.C., having a 7:43 a.m. departure from Lynchburg and 11:20 a.m. arrival in Washington; and

WHEREAS, according to DRPT, "…the actual schedule for the new trains was developed based on the available time slots for new trains to be added in each corridor and compatibility with Amtrak Northeast Corridor service schedules, as defined in the agreements executed with the applicable host railroads and Amtrak." ; and

WHEREAS, with the approved schedule, the Lynchburg-DC train will add to the rail options available for recreational travelers and others making extended stays, but will perpetuate the existing situation wherein passenger rail is of limited utility to the business, professional, academic, government and defense-related sectors of the Charlottesville and Central Virginia region, and will not serve the citizens of the US29 corridor who would choose the train for a day-trip to Washington, D.C. if an early morning arrival were available; and

WHEREAS, in order to demonstrate success and to justify future investments in the corridor, the ridership for the Lynchburg-DC train must materialize;

NOW THEREFORE BE IT RESOLVED, that the Board of Supervisors of Albemarle County, Virginia, urges VDRPT to closely monitor ridership performance of the Lynchburg-DC train, providing origin and destination figures during the first year to determine if it is meeting expectations, as well as support the conduct of a comprehensive, valid market study to determine if a peak hour schedule, such as the schedule originally published by Amtrak, would result in greater use of the service, as well as generate additional revenue; and

BE IT FURTHER RESOLVED, that the Board of Supervisors of Albemarle County, Virginia, urges Governor Kaine, Secretary Homer and the VDRPT to do everything within the State of Virginia's legal power and authority to negotiate additional, peak hour slots in Northern Virginia, including an appeal with the Surface Transportation Board, if necessary, to mediate additional access for this and future trains serving the US29 corridor.

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Item No. 7.9. Board-to-Board, August 2009, *Monthly Communications Report from School Board,* School Board Chairman**, was received for information**.

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Item No. 7.10. Department of Social Services Workload Update**, was received for information**.

It is stated in the Executive Summary that in the Fall of 2008, the Board requested that the Department of Social Services (ACDSS) provide a periodic summary of workload indicators due to continuing economic conditions and its resulting impact on the department's programs. The Board specifically requested caseload information for Benefit Programs as well as a multi-year trend of caseload growth and the impact of overtime resulting from this growth. ACDSS presented its first report to the Board on April 1, 2009. The data presented with this report is representative of activity for the quarter ending June 30, 2009.

The following graphical information is provided:

- Attachment A – Applications and case trends for Benefit programs as well as Child Protective, Foster Care and Adult and Adult Protection Services programs;
- Attachment B – Workload Measures for Benefit programs, as well as Adult , Child Care, Child Protection, Foster Care and Adoption Services programs; and
- Attachment C – Overtime hours and overtime payouts for selected programs

In terms of applications and case trends for Benefit programs as well as Child Protective Services programs, the number of both applications received and active cases are trending upward since October 2007, with the exception of Medicaid applications. Temporary Assistance for Needy Families (TANF) applications shows a slight upward trend. Employee caseloads during this period remain above state standards. The only exception to these trends is the Foster Care caseload, which dropped slightly below state standards from September, 2008 to April, 2009, but has since risen slightly above the standard.

During the period of July, 2008 to July, 2009, ACDSS has witnessed the following changes in workload:

- Food Stamp Applications: increase of 43%
- TANF Applications: increase of 22%
- Food Stamp Active Cases: increase of 32%
- TANF Active Cases: increase of 45%
- Medicaid Active Cases: increase 10%
- On-going CPS Cases: increase of 46%
- Adult Services: decrease of 21%

Since the last report to the Board in April, 2009 the following changes in workload have occurred within the quarter:

- Food Stamp Applications: increase by 4.5%
- TANF Applications: increase by 2%
- Food Stamp Active Cases: increase by 10%
- TANF Active Cases: decrease by 3.5%
- Medicaid Active Cases: increase by 3.8%
- On-Going CPS Cases: increase by 6%
- Adult Services: decrease by 15.5%

As explained to the Board during its FY '09-10 budget work sessions, these caseload increases are occurring at the same time that the County has expanded its hiring freeze to 55 positions through vacancies and retirements. The Department of Social Services experienced nine retirements in FY 2009 and all nine positions are being filled. The Department currently has one frozen position.

This executive summary is provided for the Board's information only.

(**Discussion**: Ms. Thomas said the workload of Social Services continues to increase and she is concerned about the amount of overtime being paid in both the Adult Services and Childcare categories.

Mr. Slutzky said if the demand for social services does not decrease that much in the next quarter or two, it can be assumed that level of overtime will have to be sustained for a long time. He asked if some overtime pay could be avoided and if it would be cheaper for the taxpayers if one FTE position was unfrozen. He understands that the overtime is spread across a bank of people and one individual could not cover all of those functions.

Mr. Rooker said some employees actually appreciate the opportunity of getting overtime pay.

Mr. Tucker said that is something staff monitors constantly. This report is made to keep the board up-to-date on what the department is facing.)

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Item No. 7.11. Southeast Energy Efficiency Alliance (SEEA) Grant Update**, was received for information, as follows:**

It is stated in the Executive Summary that the following is relevant background information for an update on the status of the SEEA Grant:

- In December 2007 the Board adopted the *U.S. Cool Counties Climate Stabilization Declaration*, pledging to reduce greenhouse gas emissions countywide by 80 percent by 2050. The City adopted a similar agreement in 2006.
- By January 2009, both the County and City had completed ICLEI (International Council for Local Environmental Initiatives, now known as Local Governments for Sustainability) Milestones 1 and 2, which include: 1) a baseline inventory of greenhouse gas emissions, and, 2) setting a reduction target. Both the County and City issued baseline reports.
- In January 2009, County and City staff and elected officials (David Slutzky from the County and Dave Norris and David Brown from the City) met with the Director of Virginia's Department of Mines, Minerals and Energy (DMME), Steve Walz, and discussed a competitive $500,000 grant opportunity through the Southeast Energy Efficiency Alliance (SEEA), to be awarded to a community who had the best plan and support in place to develop and implement a comprehensive, community-based energy efficiency program whose goals were a 20 to 40 percent efficiency gain per building; a 30 to 50 percent market penetration; and a five to seven-year timeframe for the goals.
- Shortly thereafter DMME funded a consultant to work with the County and City to develop a proposal for the grant competition.

- On January 14, 2009, the Board of Supervisors adopted a resolution requesting that the Virginia General Assembly enact legislation to enable the County of Albemarle and the City of Charlottesville to develop and implement a clean energy financing program (see Va. Code § 15.2-958.3).
- On January 14, 2009, the Board also adopted a resolution in support of the County, City and University working cooperatively to discuss energy and climate change opportunities, including collaborating on developing a joint proposal for the Southeastern Energy Efficiency Alliance (SEEA) grant. As part of this resolution the Board also resolved to appoint a representative (Chairman David Slutzky) in discussions and working groups related to energy efficiency and climate protection initiatives.
- On January 28, 2009, SEEA officially released a Request for Proposal (RFP) for the grant competition.
- On May 6, 2009, the Board adopted a resolution to authorize the County, jointly with the City, to apply for SEEA grant funds and to help "establish a model community energy efficiency program."
- Between the months of January and May 2009, County and City staff worked with the State-funded consultant to compile a proposal for the SEEA grant, which was submitted on May 15, 2009.
- On June 17, 2009, the County and City were notified that they had been awarded the SEEA grant.

SEEA Proposal: The entire SEEA Grant Proposal is included as Attachment D (linked electronically, but the hard copy is not attached because of the length of the document). In summary, the proposal requests funding from SEEA to support the administrative elements of implementing a local energy alliance program (LEAP) that, as envisioned, would be a community-based partnership between the County, City, State and other public and private organizations. The main purpose of LEAP would be to help property owners significantly lower their energy usage and reduce energy costs by coordinating energy audits, follow-up improvement work, and managing a loan fund. LEAP would make loan money available to property owners to cover the upfront costs of implementing improvements, and then the money would be paid back by property owners with interest from the money saved through lower energy bills. Job creation estimates in the proposal include creating between 915 and 1,271 new jobs over seven years in the residential sector alone. This range corresponds with the 30 percent to 50 percent market penetration goals set forth in the proposal and the calculations are based on EPA's statistic of 18 to 25 jobs created for every $1.0 million spent in home energy performance. Greenhouse gas reduction estimates, updated after the proposal was submitted, are between 20,902 and 69,685 metric tons for the seven-year period. SEEA has cited the Letters of Support in the proposal as a very compelling case for community support. Letters were received from Governor Tim Kaine, Congressman Tom Perriello, Dominion Power, UVA, and many other local organizations and stakeholders (See Appendix N in Attachment D for all of the letters of support).

Va. Code § 15.2-958.3: Although it is not discussed in detail in the proposal, Va. Code § 15.2-958.3, adopted by S.B. 1212 in the 2009 General Assembly, effective July 1 2009, enables local governments in Virginia to adopt an ordinance to "authorize contracts to provide loans for the initial acquisition and installation of clean energy improvements with free and willing property owners of both existing properties and new construction. The details for implementing such a loan program and how it would function or fit into LEAP, as LEAP is envisioned in the proposal, will need to be further researched by staff.

Current Status: Potential legal barriers to establishing LEAP as an "operating company" as set forth in the SEEA RFP have been identified and are currently being evaluated by County and City legal staff. In addition, County and City legal staff currently are reviewing the grant contract provided by SEEA. One possible solution provided in the draft contract is for SEEA to act as the temporary fiscal and operating agent until LEAP has become a legal entity under Virginia law. This option is being evaluated. It is anticipated that a recommendation on how to form an "operating company" will be presented in September or October.

In a parallel effort, County and City staff have begun working with the original SEEA Proposal team [David Slutzky (County), Dave Norris (City), David Brown (City), Bill Dunnington (State consultant), Steve Walz (State)], now called the "Transition Team," to work through the financial and administrative logistics of the program in an effort to implement LEAP.

Related Grants: 1) The County has submitted its Energy Efficiency and Conservation Block Grant (EECBG) application and strategy for use of funds to the Department of Energy (DOE) for approval. Included in the strategy is a designation of $60,000 to support LEAP through monies used toward energy efficiency-related education and outreach. The City intends to designate all $195,300 of its EECBG funds to support the LEAP initiative.

2) County and City environmental staff are currently working on a cooperative proposal for a City Grant application to the Environmental Protection Agency's (EPA) Climate Showcase Communities grant, which is a $500,000 competitive grant that seeks to award funds to a community that has designed a replicable community program focused on energy efficiency and greenhouse gas emissions reductions. City staff is proposing to use the SEEA Grant funds as the required 50 percent match if such use of SEEA Grant funds is allowed per the SEEA Grant contract, and would use the EPA funds if awarded to further support LEAP.

The budget impact of the SEEA Grant and related program is dependent upon how LEAP is created and funded. It is not anticipated that additional direct funding from the County beyond Grant funding would be required.

(**Discussion**: Mr. Slutzky congratulated Sarah Temple and George Shadman for their efforts in helping the County and City win this grant to set up a local energy program. The grantors, the Southeast Energy Efficiency Alliance, went out and got money to fund this grant and now they want acknowledgement that the County and City will accept the grant and move forward. It has been explained to SEEA that something will be done but there are a lot of legal questions as a result of Virginia's Dillon Rule. There is an additional grant from Blue Moon for $100,000, a portion of which will fund the legal fees for outside counsel to help City and County legal staffs figure out the best form of governance. The grantors have asked for a statement acknowledging that this effort will move forward. He has just handed to everybody a copy of language that is acceptable to both the County Attorney and the City Attorney and also to the grantor. He asked the other Board members for permission to sign it and sent it to the grantors.

Mr. Rooker said he can support sending a letter. He thinks everybody should be excited that the community was selected to receive this grant. He said some of the Board members attended the press conference where this grant was announced. It made him proud to see this community recognized by State and Federal officials as a leader in environmentalism and energy conservation. He said Mr. Slutzky deserves much credit for getting the County involved; he worked with the City and University to see that this application went forward.

Mr. Boyd said he has one question about the letter. It implies that there is a group that will continue to work with this and lay out the plan for it. He said the letter is lacking in detail particularly as to the financials, and he hopes Mr. Slutzky will concentrate on a business plan and put together actual numbers, not just theoretical numbers and bring those details back to the Board. He is particularly concerned about adding staff or anything like that. That would certainly need approval first.

Mr. Slutzky said there is no plan to add staff, but the expectation is that this will be an organic process. The locality may receive grant money that will then pass through to this purpose. The goal is that this will not be a draw on local taxpayers' dollars.

Mr. Boyd said he needs to see those dollar figures.

Mr. Slutzky said the first step is to put together the analysis needed to persuade the grantors that there is a reasonable vision for how to achieve 30 to 50 percent market penetration.

Mr. Boyd inquired as to what market he is referring to.

Mr. Slutzky said it is the City of Charlottesville and Albemarle County.

Mr. Boyd asked if Mr. Slutzky is saying this is 30+ percent of the households in those areas, or 30+ percent of the average remodeling jobs that will be done. These are the details that are lacking.

Mr. Slutzky said the details are clearly laid out in the proposal. It gives several different scenarios for different levels of market penetration and how those translate.

Mr. Boyd said he read the proposal, but he did not see that information. It is 30+ percent of what market.

Mr. Slutzky said it is dwelling units in Charlottesville. It is a thick document but those details are in it. He thinks Mr. Boyd would be impressed with not just the degree of details, but the scale of the green job formation associated with this initiative. That is exciting to him.

Mr. Boyd said he has trouble understanding how this $500,000 grant is going to translate into 1,500 jobs as stipulated in the plan.

Mr. Slutzky encouraged Mr. Boyd to go back and carefully read through the proposal because the process to achieve those outcomes is clearly laid out in it and the derivation of those numbers. Numbers were not made up about jobs, they used nationally recognized studies to determine how many jobs are created as a result of a certain type of activity. The proposal is very comprehensive and it is the reason this community was able to beat Miami, Huntsville, Gainesville, major cities throughout the Southeast to win this award. The proposal demonstrates how comprehensively they thought about implementation and what its consequences would be.

Mr. Boyd said he wants to see income and expense projections and balance sheets before this moves forward.

Mr. Rooker said this grant was awarded to the community, not to Albemarle County. He said if the program goes forward and instead of creating 1,500 jobs it creates 800 jobs, would Mr. Boyd suggest that is not a good thing.

Mr. Boyd said "no."

Mr. Rooker said the County is not putting a dime into this plan at this time. The application prevailed with a very detailed proposal that was judged by a number of people. The State is excited about it, the Department of Energy is excited about it, and all the detail Mr. Boyd might want is in the proposal. He said the implementation is being developed with additional grant money. He finds it kind of incredible that Mr. Boyd's approach to this is to be hypercritical when the County's not putting a dime into it, and if it does only half of what it suggests it will do, it will create 750 jobs in the community.

Mr. Boyd said he is not being hypercritical; he is being hyper-cautious. He has seen these things expanded to where they do not create the things they say they will.

Mr. Slutzky asked if when Mr. Boyd says "these things" is he referring to other energy programs. What is he referring to?

Mr. Boyd said he is referring to other programs that the Board implements that do not pan out. One very local one that could be used is Monticello High School. It was supposed to have great energy efficiency but it never was proved that it achieved any of that for the additional cost put into the building.

Mr. Rooker said there is a difference here because these are not taxpayer dollars. He said Mr. Boyd's approach is to look at it as though the County is investing its money in this. The fact is that through the work of others a highly competitive grant has been obtained to try and implement a very innovative program which will improve the energy use of many homes in the area and at the same time expand jobs in the community.

Mr. Boyd said he wants to be sure the plan is predicated on something that can actually be achieved.

Mr. Rooker said Mr. Boyd originally voted against participating in this grant program.

Mr. Boyd said, "We're growing a government entity here."

Mr. Slutzky said he would like to explain what has been achieved already for a very nominal investment of time on his part and on staff's time. He said a $100,000 grant has been secured from Blue Moon, $500,000 from the Southeast Energy Efficiency Agency, and an additional grant of $500,000 has been applied for and the community is in a good position to win another this grant from the Department of Energy, which in the RFP refers to the kinds of programs they want to see by the same exact name this program has been named, LEAP. It is a stunning success, and it is very frustrating for those who have invested time and effort to achieve those very good outcomes, to have Mr. Boyd vote against putting in a resolution of support for it, when about "everybody else and their mother" wrote letters of support for it throughout the Commonwealth. Now, when announcing that the grant was won and there are now additional funds, and everything is moving forward, to have Mr. Boyd express caution is to him very disappointing. He said everybody has heard Mr. Boyd's views, and he thinks the Board should move forward with the meeting.

Mr. Rooker told Mr. Boyd that if he has such a strong interest in it, he should get involved. He should actually read the proposal and provide input as opposed to being a critic.

Mr. Boyd said he is not being a critic; he is only being cautious. He is not trying to diminish the accomplishment of getting the grant. He just wants to make sure this is the best move for this County, and that is to establish a banking institution because loans will be created to give to people to do energy things to their houses.

Mr. Slutzky said at the end of this program, when they achieve the level of market penetration that they envision achieving, the goal is to have a market-driven private capital base funding this effort. There is not an expectation that the localities will in the long-run fund anything, even though it has been given enabling legislation from the General Assembly with S.B. 1212 last Session to create a loan program; they are not looking to put local moneys into it. There is none of that in the proposal; it is very clear on that point. The goal is to have this be market-driven so it is sustainable and replicable throughout the country. He said in this country, the government has taken on the commitment of achieving an 80 percent reduction in greenhouse gas emissions by the year 2050. Forty percent of those greenhouse gas emissions come from existing buildings, which means that for all the energy investment the government is doing at the Federal and State levels in alternative energy technologies, the 40 percent that comes from existing buildings is where this national effort will succeed or fail.

Mr. Slutzky said this is a national effort that both of the presidential candidates last cycle embraced. In order to achieve that, there must be programs like this being started to make it possible to retrofit substantial portions of existing housing stock with energy efficiency technologies and have a mechanism for paying for it because homeowners do not have an average $8,000 "to shell out" to implement changes in their energy consumption that will yield in a few years more benefit than that $8,000. That is what this program is about. If Mr. Boyd reads through the proposal, that is made very clear. He offered to spend as much time as necessary to answer Mr. Boyd's questions about the program and said he would welcome his participation with the group. He thinks that when Mr. Boyd learns more about this, he will be impressed that it is dependent on private activity – not taxpayer money at the local level – and the benefit that will inure to this locality in the form of green jobs and reduced energy consumption. He will remind Mr. Boyd that green jobs are not just new jobs, but existing contractors who are out of work presently because of the meltdown in the real estate economy will be used. These people will go back to work putting insulation in buildings, putting in HVAC systems,

upgrading buildings, putting in new windows; a lot of existing workers are desperate for this program to move forward. As Mr. Boyd learns more about this program, he predicts he will "sing its praises" quickly.

Mr. Boyd said he will take the time to sit down with Mr. Slutzky and go over the program. He hopes that Mr. Slutzky is right, but is not convinced of that yet.)

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Item No. 7.12. Copy of letter dated July 8, 2009, to Hunter Lewis, from Ronald L. Higgins, Chief of Zoning, Department of Community Development, ***re: Official Determination of Parcels and Development Rights – Tax Map 27, Parcel 6 (property of Hunter Lewis) – White Hall Magisterial Distric*t, was received for information.**

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Item No. 7.13. Copy of letter dated July 8, 2009, to Brian S. Ray, LS, c/o Roger W. Ray & Associates, Inc., from Ronald L. Higgins, Chief of Zoning, Department of Community Development, ***re: Official Determination of Parcels and Development Rights – Tax Map 56A2(1), Parcel 12 (property of Tabor Presbyterian Church) – White Hall Magisterial District*, was received for information.**

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Item No. 7.14. Copy of letter dated July 14, 2009, to Catherina J. Womack, Esq., c/o Feil, Pettit & Williams, PLC, from Ronald L. Higgins, Chief of Zoning, Department of Community Development, ***re: Official Determination of Development Rights – Tax Map 99, Parcel 52 (property of Ronald Scott & Kathy Y. Woodson) – Samuel Miller District,* was received for information.**

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Agenda Item No. 8. Annual Housing Report.

Mr. Ron White, Housing Director, said this report will be brief. He wants to give most of his presentation time to Ms. Jennifer Jacobs from AHIP who will explain some of their interesting housing initiatives. He said that attached to the Executive Summary is the Housing Report along with two reports from the Charlottesville Area Association of Realtors. He will not be talking today about the real estate market and did not include information in the written report regarding the market because of its uncertainties. Normally, they look at trends data, and it cannot be compared at this time to previous years.

Mr. White said the Housing Office had a good return on investments in its programs this year. County general funds made up about 14 cents of every dollar spent on affordable housing initiatives with the other 86 cents being equally split between private and public funds. The two top funding sources were Federal funds for the Rental Assistance Program and private mortgage funding to support homebuyers who purchased homes during the year. Over 400 families received financial assistance during the year from a number of housing programs; 27 houses were rehabilitated; 54 houses received some level of emergency repair; 18 homebuyers received down payment assistance; and, at least 450 families received rental assistance including the 30 units at Woods Edge Senior Housing which received rental assistance supported by County funds. He said that FY '09 was to be the last year of funding Woods Edge, but the Board agreed to extend that funding for up to an additional seven years.

Mr. White said he would like to note two important factors associated with the year's production. First, AHIP exceeded both their rehabilitation and emergency home repair goals through successful fundraising and better utilization of volunteers –volunteer labor was valued at over $34,000 and accounted for about five percent of their total leverage. Production in the Homebuyer Assistance Program was down from 38 last year to 18 this year, attributable to the market and changes in mortgage underwriting. He said there are a number of people who are ready to purchase and could get good deals in the way of financing and home prices, but they are "skidish" about going into the market.

Mr. White said one measurement for potential for new homebuyers in the future is the number of families who participate in the home purchase counseling programs. The Piedmont Housing Alliance (PHA) provided counseling to 165 new Albemarle clients during the year, but unfortunately 91 of these was for home purchase while 57 were seeking assistance with mortgage defaults and most of PHA's energy went to those 57. He said the Office of Housing has not been immune to the impacts related to the economy. There has been a steady increase in subsidy payments for voucher holders, and very little turnover. In the past he has reported that they see an average of seven to eight vouchers turned over each month, but there has been virtually no turnover in the last six months. The year started above 100 percent in the voucher program which is something HUD recommends agencies do and then manage down during the year so by the end of the year the agency can be hopefully be at an average of 100 percent usage; his office started the year with 102 percent and it's now at 106 percent. He said that they are dipping into their reserves, have cut off issuance of vouchers, and at this time he does not foresee any vouchers issued before January 1, 2010, and that is dependent on the next Federal fiscal budget.

Mr. Rooker asked how they will manage to meet the commitments already made for projects now coming along. Mr. White responded that they are committed to projects that already have agreements. He said they will only enter into a housing assistance payment agreement with Treesdale and Crozet Meadows when there are sufficient funds to do so. If those projects come on line and there are not sufficient funds to give them vouchers, they still have to meet their letter of intent, but they might have to delay providing assistance.

Mr. Rooker asked if they would be next in line to receive those payments, but that would not stop projects from going forward. Mr. White said that is correct. If they know projects are coming on line, as vouchers are turned over, they would withhold those vouchers to meet that commitment. If the new funding does not allow them to maintain the current level of vouchers they will have to find a way to remove people from the program.

Mr. White said that in June one of AHIP's clients – an Albemarle resident from North Garden – was recognized by the USDA Rural Development as Virginia's "Homeowner of the Year." He noted that this client's home was rebuilt by AHIP – in part by using a Rural Development loan. Also, Rural Development, surprisingly to the recipient and to everyone, recognized Ms. Jane Andrews from AHIP for her years of service and dedication to improving the living conditions of hundreds of County residents.

Mr. White said the Virginia Department of Housing and Community Development notified his office last July that they had received an award for $700,000 to support the Crozet Meadows project. After lengthy negotiations, a contract was signed at the end of April, the project was advertised and than an award made to LINCO; their goal now is to be on the ground next Friday if everything can be finalized and the construction contract signed. He reported that the project would result in 28 rehabilitated units being brought up to an EnergyStar level, as well as constructing 38 new senior apartments. Through a joint venture between AHIP and the Park brothers at Pinnacle Construction, Treesdale Park recently received preliminary approval for an allocation of low-income housing tax credits; this project has been going on for ten years and it will bring 88 new affordable family rental units to the County's housing stock.

Mr. White said both Crozet Meadows and Treesdale Park will receive financial support from the Crozet Crossings Housing Trust Fund - the trustees have already approved that funding, and staff will be requesting an appropriation of those funds in the future. These two developments will be a primary focus for the upcoming year, particularly with management of the CDBG. He added that they are working with Mr. Bill Letteri to get his help in managing the project by assigning one of his employees as a clerk of the works; part of the grant costs would be used to offset those staffing costs. They are trying to find grants not only to do the hard stuff, but also to cover some of the other costs. He offered to answer questions.

Ms. Thomas noted that in the 1970s she had read that 25 percent of houses in Albemarle were regarded as "inadequate." She asked if there is a similar judgment on the housing stock today. Mr. White said there is not just one definition for substandard. About three years ago they got information from the Real Estate Assessor's Office that about one percent of the housing stock in Albemarle County, from an external view, could be considered substandard. He said AHIP has a waiting list that might indicate that number is low.

Ms. Thomas said it is her impression that since AHIP and others are working on housing, the situation has improved somewhat since the 1970s. Mr. White said he has one other thing to mention because they may be requesting the Board's support. There has been other funding from the State that allowed AHIP to do scattered site things, primarily related to indoor plumbing jobs. AHIP will be working with the DHCD and others to try and get funds for scattered site rehabilitations which cannot be done with the CDBG (the CDBG is a block grant - there has to be an identified neighborhood where an impact can be made) and also is not eligible for the indoor plumbing program. He hopes that as this effort moves forward, the Board will lend its support.

Mr. Rooker said he thinks there might be some synergy between the rehabilitation projects AHIP is doing over the next couple of years and the work that may be done under the SEEA grant regarding weatherization of homes. He said it might be helpful to liaise with that program to see if they could work with AHIP to create some value added on the energy side. Mr. White said there is a larger pool of weatherization money that is coming to the Community Energy Conservation Program (CECP). They are the local weatherization agency. He knows that Ms. Jacobs has discussed a partnership with them because in the past that program was limited to very, very low income people. The income ranges have been increased, the amount of work that can be done on each house has been increased so it makes it more viable for a rehabilitation project to work closely with the CECP.

Mr. Slutzky said Virginia Power and the state, through some of the stimulus money, are beginning programs focused on the affordable housing component of the housing stock for doing these retrofits. There will be a lot of opportunities for synergy.

Ms. Jennifer Jacobs, AHIP's Interim Director, addressed the Board stating that Albemarle is the organization's "staunchest and longest standing partner" enabling AHIP to help 392 people alone this year. She will mention three primary components – community construction, community housing and collaboration – that are part of AHIP's efforts. Community construction includes the housing rehabilitation program (big projects) and emergency home repair program (smaller projects). She said these are the bedrock programs that AHIP has been doing since 1976. It is AHIP's mission to keep people in their homes and to keep them safe and healthy in those homes.

Ms. Jacobs reported that in FY '09, AHIP completed 27 rehabilitation projects spending an average of $20,000 per job – ranging from $4,000 up to $120,000. They completed 55 emergency repair projects at an average of about $1,700 per job. She indicated that AHIP leveraged contributions of $773,000 through outside grants, loans, deferred loans, in-kind contributions and private donations. She said AHIP started as an all-volunteer organization with volunteers from UVA trying to clean up after Hurricane Camille. They have used volunteers over the years, but two years ago they had a private donation that re-birthed the volunteer program. Last year they had 380 volunteers with 252 of them

working within the confines of Albemarle – donating nearly 2,000 volunteer work hours valued at about $37,000.

Ms. Jacobs said community housing is another piece of the puzzle. Community housing includes projects such as Parks Edge, which has 95 units housing 216 people – 102 of them are under the age of 18 – with an average household income under $14,000 annually, or 19 percent of the median income. She said 46 residents use Section 8 vouchers, and there are 22 project-based units there as well; the majority of households are working, with the vast majority being single-parent households – a lot of them have indicated they are working reduced hours and receiving pay cuts. Community housing also means wrap-around programs and services. This creates a livable neighborhood and strengthens family. They have partners come into Parks Edge and run an after-school program there. They have a partnership with the Piedmont Family YMCA and Urban Vision – last year they served 43 children by providing safe, stimulating, no-cost programs in the after-school hours. Parents that work do not have to worry about what to do with their children after school, and if they are only bringing home $260.00 a week, regular after school programs are not accessible.

Ms. Jacobs said community housing also means Treesdale Park. That project received tax credits this year, and she would like to pause and thank the Board members and the Planning Commission for support of this project. She also gave a special thank you to Mr. Wayne Cilimberg, Ms. Elaine Echols, Ms. Summer Frederick, Ms. Amelia McCulley, Mr. Ron White, and everyone in the Community Development Department who attended a meeting, answered questions and passed the plan around, and everyone who encouraged them to keep going over the last ten years. She said there will be 88 new rental units EarthCraft certified, six of those will be accessible to disabled families and marketed to people with special needs.

Ms. Jacobs said if you were to ask Ms. Jane Andrews, AHIP's Associate Director for Rehab and Repair, where to go for assistance she always says the same thing "There is no other place." If an elderly couple or a working family needs a critical renovation to their home and there is no money in their monthly budget, they can't get a loan or only get a sketchy loan, can't get a family member or church person to come and help them do it as a favor, AHIP is their only option. Just because AHIP is the only organization in the County doing this kind of work does not mean it does that work alone. Collaboration is how AHIP carries out its mission – through support from the County, local support agencies, peer organizations, public/private funds, in-kind contributors, private developers – they work with everybody. She noted that "healthy housing is the foundation for healthy communities." It has an exponential long-term effect on physical and mental health and a lasting and potential success on every household and everybody in the household.

Ms. Jacobs then presented some pictures and related stories of people and households helped by AHIP in the past. She said AHIP keeps people in their homes, and keeps them safe and sound in those homes. Their services provide stability for them and the community so they can go to work. They have clients who are the economic backbone of the community. For elderly persons who are retired, AHIP's services keep them healthy, living longer, living more independently, while being able to age in place.

Ms. Jacobs said she will mention what AHIP accomplished in FY '09. They directly benefited 392 people in 177 households in all areas of the County. They served households averaging 28 percent of median income –$20,000 for a family of four. She said they leveraged more than $700,000 directly benefiting low-income families and the local economy – all of their goods and services are bought locally. She said they focus on everybody who has housing needs and are low-income. AHIP has the same challenges ever year that any housing organization faces. There are now about 100 people on their waiting list for housing. She said they need to counter shrinking or stale funding sources.

Ms. Jacobs said AHIP is seeking stronger partnerships with organizations like those shown on the screen. They are looking for more creative ways to harness the energy of other groups like the CECP. She said that she and Mr. White will be pursing another CDBG project for the County. She said there are smaller development projects in the pipeline to help chip away at the affordable housing deficit that all talk about. As to green elements, this is an opportunity for AHIP to harness resources to do what they do every day (roofs, windows) and try and make those repairs more sustainable and better for the environment.

Ms. Jacobs said that on behalf of her Board and her colleagues and clients, she would like to thank the Board for its ongoing commitment and support. She encouraged the Board members to visit her and said she and Ms. Andrews would take them on a tour of some properties assisted by AHIP.

Ms. Slutzky thanked Ms. Jacobs for the presentation saying it was inspiring.

(**Note**: At 10:51 a.m., the Board recessed and reconvened at 11:02 a.m.)

Agenda Item No. 9. **Appeal of Denial of Plat**: SUB-2008-100, Wyant Family Division. Proposal to subdivide an existing 5.2-acre parcel into two lots (2.7 and 2.5 acres). The proposed division has been submitted as a Family Division. Tax Map 26, Parcel 42. White Hall Magisterial District.

Mr. Bill Fritz, Chief of Current Development, said the applicant proposes subdividing an existing parcel of approximately five acres into two lots for a family division – there are currently two houses on the parcel. This would represent full development of the property. He said a subdivision plat was

submitted but was denied. Although family divisions are not subject to the full provisions of the Subdivision Ordinance, two sections of the ordinance require VDOT approval of the entrance onto a public street; this property is located some distance from the public road – the property is located on an old roadway which is not a private street. VDOT reviewed the entrance request onto Slam Gate Road, but they did not grant approval because it didn't meet all of their requirements – the primary issue being the non-existence of an easement that allows sight distance to be maintained at the intersection. Without VDOT approval, the County was forced to deny the plat and the applicant has appealed that decision. He offered to answer questions.

Mr. Slutzky asked what would physically change by granting this request. Mr. Fritz replied that nothing would change physically. It is simply the division of an existing parcel that contains two dwellings into two lots each containing its own dwelling.

Mr. Slutzky asked if there is a disadvantage to the community by allowing them to break this parcel into two parcels. Mr. Fritz said the ordinance requires VDOT approval of the entrance. The requirements of VDOT apply even if the County regulations were removed that require VDOT approval before County approval, VDOT could still take some action because there has been a change in circumstances with that entrance. If this were a commercial division, not a family division, there would be a lot of different things that would need to happen.

Mr. Davis said one issue that is important to this question is that the second house was added to the lot under the assumption by staff that the lot could be subdivided. If that lot could not have been subdivided, that house should not have been approved. Staff looks at issues which do not include the detail that the final approval of a subdivision plat requires. Their assumption when they issued the building permit in 2004 was that it could be divided. As it turns out, due to the issues cited by VDOT, it may not be able to be divided.

Mr. Slutzky said the County made a mistake in 2004 and the consequence of that is that these people built a house and cannot put it on a separate parcel. Mr. Davis said he would not call it a mistake; it was the level of analysis that was satisfied with no guarantee that they could later subdivide.

Mr. Rooker said the advantage was that they were able to build another house which is now occupied and used.

Ms. Mallek said it was constructed for a family member, so subdivision of the parcel now would allow half of it to be sold to someone who is not a family member, so that would change the family division aspect.

Mr. Fritz said staff's advice to the Board now is that under the current language of the Subdivision Ordinance, this plat cannot be approved because it does not have VDOT approval.

Mr. Slutzky asked if VDOT could make a determination that would change that status for the County. Mr. Fritz said if approval were granted by VDOT, the grounds for denial would be lifted and the plat could be moved forward.

Mr. Slutzky asked if the applicant has a way to request VDOT to grant approval subject to the County allowing the subdivision. Mr. Fritz said he thinks the applicant has talked with VDOT. He, personally, has spoken with VDOT and stated the same things Mr. Slutzky said that the houses are there and there is no physical change contemplated. VDOT was not able to grant approval. He is not aware if there is an appeal process to VDOT.

Mr. Rooker asked about the requirement that Old Breakhart Road be approved as a private street in order for the proposed lots to comply with the lot frontage requirements of the Subdivision and Zoning ordinances. Mr. Fritz said the Subdivision Ordinance has a clause that requires all lots, including family divisions, to front on a private street. He said Old Breakhart is not considered a private street so it needs to be approved as a private street. If the ordinance were amended to say family divisions did not have to front on a private street that would make a difference

Ms. Thomas asked what is keeping it from being declared a private street. Mr. Davis explained that staff discovered a flaw in the process during this appeal. The property for the street is being included on the subdivision plat and is proposed to be changed to a private street without the consent of the property owners who own the property. Under Virginia subdivision law, the consent of the landowners must be obtained before the status of a property can be changed on a subdivision plat. Apparently, staff had not been following that closely. He said in order to validate the change of the property to a private street consent of those property owners would be required which is achievable, but is more difficult, unless the ordinance is amended to no longer require family subdivision lots to front on a private street.

Mr. Fritz said that was a new interpretation provided to staff during this review. Up until the present time, the approval of all landowners was not required.

Ms. Thomas asked if that has been attempted in this case. Mr. Fritz said staff did not ask the applicant to do that because it was denied specifically because of the entrance.

Ms. Thomas said she knows of two families who were planning family divisions in her district who found that they could not divide because of VDOT's entrance standards. Both of them were also in a situation where they did not own the land at the intersection, so there was no way they could improve it.

Mr. Fritz said there have been a number of situations where a subdivision plat could not be approved because the applicant did not have VDOT approval. The private street issue is a different issue.

Ms. Mallek said they are still able to occupy a single-family house in these circumstances. Mr. Fritz said it is the subdivision that is at issue. Ms. Mallek said this does not deny anybody use of their property.

Ms. Thomas asked if one of those houses burned down, could it be replaced. What is its status as a second house on one lot? Mr. Fritz said he would prefer that the Zoning Administrator answer that question.

Mr. Slutzky said the Board has no legal choice but to deny this appeal whether it feels it is fair or not. Mr. Davis said that is correct. The consent issue could be overcome with permission from the property owners. He noted that the subdivision scheme is a tool that allows VDOT to become aware of proposed development and to implement their requirements; the subdivision could be approved if they could meet the sight distance requirements of VDOT. He said there are two steps. As proposed, it cannot be approved, but if they can get the consent of the property owners for the road and make the sight distance improvements, it could be approved.

Mr. Rooker said as it stands, the Board cannot legally approve the request. There are ways that the issues which have been raised could be solved in order for this to be approved. Otherwise, the Board would have to amend the ordinance. He is not sure the Board has the right to waive the entrance requirement; those requirements are actually in place for good reasons. VDOT owns and controls the state roads that serve the County so the Board expects them to act properly in determining when entrance requirements are met and when they are not.

Mr. Slutzky said he would not want to open up the rural area to subdivisions that should not be built, but in this case he sympathizes because the structure exists. He asked if the Board can give the applicant an opportunity to solve their challenge. Mr. Fritz said staff told the applicant they were not able to approve this subdivision and would have to take action to deny it, but they would hold off on taking action which would set a clock for his appeal. The applicant said to hold off and he worked with VDOT then called back and said to issue the denial so he would have something to appeal.

Ms. Mallek asked if the applicant still has the alternative to get the easement to meet the VDOT requirement. If so, he already has a pathway to success without amending the ordinance. Mr. Fritz said it is his understanding that if the applicant got the necessary sight distance easements at the intersection and also addressed the concerns Mr. Davis brought up about the private street, this plat is approvable. He has Health Department approval, he has family division verification, the plat meets all content requirements, and he has the acreage.

Mr. Slutzky asked if there is any advantage to the Board denying the appeal. Mr. Fritz said if the appeal is denied, it sets another clock running to appeal that decision. Mr. Davis said that unless the applicant withdraws the appeal, the Board needs to act.

Mr. Slutzky asked the applicant to speak.

The applicant, Mr. Timmy Wyant, addressed the Board. Mr. Wyant said he has exhausted his ability to do anything. When they got the building permit for his daughter's house, they asked about dividing this property. He knew that when his property was divided years ago, existing roads went by one standard and new roads go by a different standard. He asked at that time if it would be a problem to divide the property if they built the house, and he was told there would be no problem. After the house was built and they went through the process, he was told the rules had changed. He said they are caught in the middle; they spent what they had to build the house, and now he can't give it to his daughter. He thinks the County must have some ability to make an exception in a case like his.

Mr. Slutzky said the County is not legally allowed to do that, but it sounds as if Mr. Wyant were to identify all the neighbors that have property on that road and get their permission, VDOT might potentially approve it. Is that right?

Mr. Rooker said he understands there are two different issues. There has to be road frontage on a private street and for this to be designated as a private street, he would need to get the landowners along the road to join in that request.

Mr. Wyant said he cannot foresee that happening. It is a safe entrance now. VDOT does not need more sight distance. They need a deeded easement because their right-of-way is not wide enough to guarantee that the site at the road's entrance would be maintained. It is a better entrance than most of them on that gravel road. He said his family has used that entrance since 1929.

Mr. Slutzky asked if Mr. Wyant knows who owns the land under the entrance. Mr. Wyant said there are a number of different property owners along that road.

Mr. Dorrier asked whose property is designated for the easement. Mr. Fritz said it is on TM26-P41B. Mr. Wyant said TM26-P52 would be involved. When 26-41 was divided, it gave another 10-foot right-of-way to the state road, so that leaves only 25 feet from the center of the road. The other one is only 15 feet from the centerline. There is only a 30-foot right-of-way at that point.

Mr. Slutzky asked if Mr. Wyant had approached the owner of 26-52 and he is not willing to help. Mr. Wyant said that property owner allowed him to knock the edge off of the bank at that entrance to improve the sight distance, but he told Mr. Wyant he had used up his favors.

Mr. Slutzky said the Board has been advised that it has no choice but to deny this appeal because of the legal framework. He said Mr. Wyant could allow the Board to do that or he could withdraw the appeal and see if he can solve the problem over time. The Board's hands are tied – he does not want to put Mr. Wyant in a further disadvantaged spot. He shares the applicant's frustration, but the rules are what they are. Mr. Wyant asked if the Board could grandfather it because he started this process in 2004 and the rules at that time would have allowed the division. He said Mr. Fritz told him that the rules were changed mid-process.

Mr. Rooker said there are two issues. One has to do with the private street and there is the issue with the entrance. He said approval has always been required of VDOT for an entrance onto a state road. Mr. Fritz said staff did not refer family divisions to VDOT where there was an existing entrance prior to adoption of the current Subdivision Ordinance in 2005. Mr. Davis emphasized that the process changed, but the rules were already in place. He said if the County was approving subdivisions prior to that time, it was in violation of the VDOT regulations which were not being enforced because VDOT was not aware of the development.

Mr. Slutzky said Mr. Wyant has two choices. He can withdraw the appeal until he determines whether there are other options to make it possible for that to become a road or he can allow the Board to deny the appeal. He said it does not sound as though the Board has a choice because of the way the rules are written. He asked Mr. Wyant how he wished the Board to proceed.

Mr. Rooker asked if the private street requirement can be waived by the Board. Mr. Davis responded that it cannot be waived but it could be addressed by an ordinance amendment.

Mr. Rooker said the Board cannot approve something that violates the ordinance. The ordinances exist for a reason. The question is whether or not the Board would want to consider that at some point whether it made sense to change the ordinance in that regard. The ordinance amendment would have to make sense in an overall application; it could not apply to a specific circumstance. He would be amendable to looking at the private street part. He said the Board does not have the ability to solve the VDOT entrance issue. He asked if the Board were willing to look at the private street part of this, would Mr. Wyant want a deferral to see if he could solve the entrance requirement.

Ms. Thomas said all he needs is an easement. She shares the applicant's frustration with not being able to get the easement from his neighbor because it appears he also depends on that entrance for the beginning of his driveway which does not look like it is on Slam Gate Road; it looks like the driveway comes off of Breakhart Road. In that case, if he ever wants to do anything and needs VDOT approval, he would need to give that easement.

Mr. Wyant said his neighbor uses that as part of his farm entrance. His dwelling is elsewhere. He does use that entrance but it did benefit him when the bank was graded. He said it is a safe entrance; there is sight distance in both directions.

Ms. Mallek said the work has been done, but it is the ability to maintain the work that is lacking. Mr. Wyant said VDOT said that is the issue. However, with that landowner using it, it benefits him to keep it as it is. There would be no benefit for him to plant a bush or build a fence that would restrict the sight.

Mr. Slutzky said VDOT will say that he could stop using the road or a subsequent owner could stop using it. VDOT is not wrong for taking that position. He would recommend that Mr. Wyant defer or withdraw his appeal. Mr. Davis said if he wants to work further with staff on this plat, the applicant could withdraw the appeal and staff would open up the application again and work with him.

Mr. Dorrier felt there should be an exception for people in this position. A family subdivision is something that is usually encouraged. There are two houses on one lot. The area has been safe for years, and Mr. Wyant was told when he started this process it would be fine to go ahead with his application.

Mr. Slutzky said Mr. Dorrier is just making sense, but the problem is that the Board has the constraint of legal process, and that is the burden. The Board cannot choose to overturn the VDOT decision at this point.

Mr. Dorrier said he is not suggesting that, but he thinks the Board should move ahead with looking at an exception so this situation cannot happen again in the future.

Mr. Slutzky said the Board could choose to ask staff to visit the question of whether there should be a modification of the ordinance. That would take some period of time, but Mr. Wyant's houses are already built.

Ms. Thomas said the change in the ordinance would be to not require landowner approval of a private road, and she does not know if the Board would actually want to do that.

Mr. Slutzky said he is skeptical of looking at such a change.

Ms. Thomas said the other change would be to convince VDOT that it does not have to have adequate sight distance at an intersection, and the Board would not want to do that. She is struggling with what to do.

Mr. Slutzky said it would give him time to work with the landowner.

Mr. Rooker said maybe an exception could be granted to the private street frontage requirement where there is an existing structure in place. It would not invite new development that did not meet frontage requirements. He said this is a circumstance which is not creating an additional burden on the road or on the entrance. However, the County only has the capacity to solve half of the problem; VDOT has to determine whether to approve the entrance. He said the Board can undertake to address the first part of it through consideration of an ordinance amendment, but nobody knows what the result of that amendment would be. It sounds as though Mr. Wyant will still need to work with the landowner to see if some way can be found to satisfy VDOT. He said the Board just finished working on a situation where hedges had grown up; a four-way stop had to be installed because a landowner would not allow their hedges to be trimmed. Those things become issues and that is why VDOT is involved in the approval.

Mr. Wyant said he was not aware that anything other than the entrance was an issue. This is the first he has heard about making the road a private road. Mr. Fritz said it was brought to staff's attention by the County Attorney's Office during its writing of the staff report for this meeting.

Mr. Slutzky said he thinks Mr. Rooker's suggestion is excellent. There is a real possibility the Board could make a sufficiently narrow ordinance change that would not invite additional dwellings in the rural area, but would accommodate Mr. Wyant in his circumstances to some degree. If he were to get the easement somehow, that would probably make it possible for this to move forward. He would recommend that Mr. Wyant withdraw his appeal so the Board does not have to deny it, and then the Board would direct staff to bring information forward on an ordinance amendment that might help him part way, and in the meantime he could continue to negotiate with his neighbor. It does not seem like there are other options; the Board's hands are tied.

Mr. Wyant said that one thing will stop this from happening.

Mr. Rooker said the Board does not control VDOT; that half of this situation is not subject to the Board's control. They need to approve the entrance as part of this subdivision process.

Mr. Tucker told Mr. Wyant that the Board is not able to approve what he is requesting, so the Board's only option is to deny the appeal or for him to withdraw it – which may give him some more time. He said changes can be made in the ordinance, but they cannot approve the subdivision today.

Mr. Slutzky said Mr. Wyant has two problems that need to be solved. By doing a narrow ordinance amendment, the Board might solve one of them. Mr. Wyant, through ongoing discussions with the neighbor, might be able to solve the other. When those two things are solved, the plat might go forward as requested. The Board does not have that choice now. Mr. Davis pointed out that if Mr. Wyant withdraws the appeal, staff will reopen the application and hold it until the issues can be solved rather than treating it as a denial.

Mr. Rooker said that is the most beneficial approach for the applicant. He said the Board would like to find a way to deal with the circumstance in a way that gets Mr. Wyant where he wants to be.

Ms. Thomas said even if the Board changes the ordinance it can only deal with one-half of the problem which is the private street part. The Board cannot deal with the VDOT requirement for a sight easement. That is something that Mr. Wyant will have to work out with the neighbor.

Mr. Rooker said that is not a County requirement, it is a VDOT requirement. Mr. Wyant asked if the County is required to have VDOT's approval.

Ms. Thomas said "yes." Mr. Wyant said he understands that in the past that was not done for existing roads. It was the standard practice of the County to not require existing roads to fall under the requirement of VDOT approval.

Mr. Boyd said the problem is that the County "has let that cat out of the bag." By that, he means that VDOT wasn't involved because the County did not tell them what was going on, but that's not an option anymore. VDOT did not change the rules, the County just didn't tell them. Mr. Tucker added, "We should have been telling them."

Mr. Rooker said VDOT controls the entry onto state roads; the County does not do that. Mr. Wyant said VDOT told him that if the County requires him to do this, he needed to go to the County and ask the County not to require them to do this.

Ms. Mallek asked if the difference is that the County is requiring a private street and in order to help him, because there are existing houses, he would be able to use a regular driveway.

Mr. Rooker said this is clearly not a driveway. This is a private entryway that serves a number of properties and then exits onto a state road.

Ms. Mallek asked if these two houses are the only houses on this road.

Mr. Rooker said "no." Mr. Wyant said there is one house past his property.

Mr. Rooker said the division rights on the other properties on this road are not known. Mr. Davis said if the County did not have this process, the bottom line is that the County would not know about it.

Mr. Slutzky said the process is in place for good reasons other than just this property.

Ms. Thomas asked if the Zoning Administrator would explain the status of two houses on one lot. If the Board can't find some action to take, is the new house non-conforming and could it be replaced if it burned down. Ms. Amelia McCulley, Zoning Administrator, replied that in terms of zoning regulations, it is conforming because there is adequate acreage and it appears to meet setback requirements. Concerning Zoning Ordinance requirements, it is possible to have two houses on one property provided separation, setbacks, acreage and development rights can be met. It is not nonconforming to the Zoning Ordinance unless Breakhart Road is not an approved road by the County. Then they would not have the road frontage required by the Zoning Ordinance. Mr. Davis said that is the problem.

Mr. Rooker asked if additional road frontage is needed if there are two houses on one lot. Ms. McCulley said "no."

Mr. Rooker asked if Mr. Wyant would be able to build back the house if it burned. Ms. McCulley said "yes."

Ms. Mallek said the issue is the separation and sale of the house.

Ms. Thomas said the two houses can exist; it is just that there are not two separate parcels of land under each one. Ms. McCulley said the direction of the ordinance is that there can be more than one dwelling provided density and setbacks are maintained. If that is the case, it does not reference road frontage requirements. A permit could be issued for a second home.

Mr. Slutzky told Mr. Wyant that he is protected unless he wants to sell one of the dwellings as a separate unit. The reason he was able to build a second house is that it was a family house and he met all other requirements. The only thing he is disadvantaged by is the inability to take one of those houses and sell it as a separate unit to somebody else.

Mr. Boyd said he also can't deed it in his daughter's name.

Mr. Rooker said he cannot transfer ownership of that property until there is a division of the lots.

Mr. Boyd said there is a VDOT representative present, and he wonders if the Board should ask him to speak so Mr. Wyant leaves today with some clarity as to the problem.

Mr. Rooker said he had another question. He asked if the Board has the power to go back to the process that was used previously.

Ms. Thomas asked if that is to say "just forget it."

Mr. Rooker said he understands there was a period of time for family subdivisions where the County was not bringing VDOT into the process with respect to the entry requirements. He asked if that was the case. Mr. Davis said that in the past he understands it was "don't ask, don't tell."

Mr. Rooker said that in effect the County cured that issue by saying that regardless of the kind of subdivision, VDOT was to be notified of each case. He said there is some unfairness here to the applicant because that process changed after he built the home. The question is whether the Board has the power to allow this division to go forward notwithstanding VDOT's objections to the entrance.

Mr. Boyd said that is why he wanted to ask what VDOT's position would be "if the Board took it back."

Mr. Joel DeNunzio, Residency Program Manage, asked if Mr. Boyd was saying the County might take back the ordinance requirement for VDOT to check the sight distance at intersections.

Mr. Rooker said the Board cannot take that ordinance requirement back. Mr. DeNunzio said if VDOT does not know about it, they can't check the sight distance. He said if there is an existing entrance on a State road and there is a change in use, a change in maintenance or a change in the safety of that entrance, they require the property owners to make upgrades to that entrance.

Mr. Rooker said in this case there is no change in use. There are two houses using that entrance now which are occupied dwellings. He said the change needed would allow the property owner to break that property into two pieces so he can transfer one piece to his daughter or another person.

Mr. Slutzky interrupted to say there was a change in use in 2004 because a second dwelling was added.

Mr. Rooker said that change in use occurred in 2004. The question is whether VDOT has the ability to look at this situation and say there is no change of use because the two houses are there. Mr. DeNunzio said he understands the County's ordinance requires VDOT to give approval of the sight

distance using current standards. Whether or not there is a change in use, approval of sight distance cannot be granted if it doesn't meet VDOT's current standards.

Mr. Slutzky asked if the Board could modify the ordinance so it did not require VDOT to weight in when there was a second existing structure and the applicant wanted to subdivide the property. Mr. DeNunzio said he would only have a problem if he saw a change in the maintenance, the safety or the use of the property.

Mr. Slutzky asked if the Board wanted to direct staff to bring this back for consideration at a later time; an ordinance change that spoke only to existing structures that are otherwise compliant. Mr. Davis said that would only put VDOT in the dark as to how they would enforce the regulations.

Mr. Rooker said the Board is talking about the same kind of narrow exception where a subdivision is taking place that does not involve increased usage of a road. Mr. Davis said if VDOT made a determination that subdividing for an existing house was not a change in use, they could approve it today. However, it is subject to VDOT's interpretation of their own regulations.

Mr. Rooker said that is why the Board was asking Mr. DeNunzio these questions. It seems to him that in this case there is no change in use, so there will be no increased usage of the road. There are two houses on one lot already in existence, and creating the second lot does not increase the use.

Mr. Slutzky said Mr. DeNunzio's point was that VDOT has another means in the event of a safety issue that would allow them to act. He said they don't mind being in the dark because they don't have any affirmative reason to step in. Mr. Davis said if that is their position, they could simply approve this.

Mr. DeNunzio said he does not have the ability to approve the sight distance requirement, and he does not want to make a recommendation that the County keep VDOT in the dark when asking for sight distance approvals.

Mr. Rooker said he thinks the Board has exhausted discussion of this matter.

Mr. Slutzky explained to Mr. Wyant that the Board could deny this appeal today, or he could withdraw the appeal and see what he can work out with his neighbor. Does he want the Board to take up the question, at a later date, of a potential narrow modification to the ordinance that might get him half way to approval if he can get his neighbor to agree to the easement for sight distance. Mr. Tucker said the easiest thing for the applicant is to request a withdrawal of the appeal. He does not know what implications there might be in the future if the appeal is denied.

Ms. Mallek asked if a withdrawal would allow the current application with fees already paid to stay open, or would starting over from scratch involve more funds.

Mr. Wyant said he did not know how there is an advantage either way if there is no solution to the problem. How does either benefit him?

Mr. Slutzky said the only way it benefits the applicant is if he is able to have his neighbor have a change of heart. In the meantime the Board could adopt a narrow modification of the ordinance. Mr. Wyant said as far as he was concerned, the issue the Board cannot solve has been the issue the whole time. He did not know about the other issue Mr. Slutzky said the Board can solve. He does not understand how policies can be such that you are allowed to start a process and then it is said "we made a mistake" or for whatever reason he can't finish this. His daughter has built a house and he has to own it. If something happens to him, her house is in jeopardy because he can't give it to her because of how the County's process is done.

Mr. Rooker said the normal approach to subdividing property and then building a house is to subdivide the property first. That was not done in this case. The house was built, which was legal and he had a right to do, but he then became subject to whatever rules and rule changes that occurred before he decided to subdivide. He said Mr. Wyant could have waited ten years to apply but at that time he would have been subject to the subdivision rules in place at the time he filed the application. He did this in an unusual way if the goal was to have two lots with two houses. He said the Board is in a position where legally it has no choice but to deny this request; the rule is what it is today. There are two issues, and the Board thinks it can help solve one of them. The other is a matter of working with VDOT and the other property owner to see if something can be worked out to get the entrance approved that is subject to VDOT's control, not the County's.

Mr. DeNunzio mentioned that Mr. Charles Baber, VDOT's permit inspector, went out and looked at the site. He determined there was less than 100 feet of sight distance within the prescriptive easement of the road; Route 673 has a 30-foot prescriptive easement – 15 feet on either side of the centerline of the road. It is a common problem that when there is a prescriptive easement there is not enough width to get sight distance. He has not seen a plat showing that sight distance easement – the required sight distance at this location is 280 feet in both directions. Mr. Wyant asked if he was correct that the sight distance is already there; it is the deeded easement that is missing.

Mr. DeNunzio said that is correct. In Mr. Baber's letter he indicated that the property at that intersection had been cleared for the sight line, but the property that has been cleared falls outside of the prescriptive easement of the road and that is why there is the problem.

Mr. Slutzky said the Board needs to make a decision. He said he will leave it to the applicant to either let the Board deny the appeal, or to request a withdrawal. Which does he want the Board to do? Mr. Wyant's daughter, from the audience, said "we will withdraw."

Mr. Dorrier said he thinks the Board could do something else. He suggested deferring this request for a month so Mr. Wyant can work with the County and the Highway Department to see if they could come up with something that would allow him to move ahead.

Ms. Mallek said a withdrawal allows him to do that.

Mr. Rooker said that will keep the application open and allow him to do that. In the interim, the Board can bring the ordinance back to see if it might be amended. He reiterated that the County does not have the legal capacity to change VDOT's regulation.

Ms. Thomas said "we can't assume other people are always going to be reasonable." She thinks an engineered drawing which shows the area that is needed for the easement, and the fact that it has already been cleared, would be something clear for the neighbor to see since nobody is asking for the land. Mr. DeNunzio said he understands the land has been cleared, and the easement insures VDOT that if there is an issue they can do something about it. He said in the case of a commercial entrance (this is a commercial entrance because it serves more than two private residences), the property owners are required to maintain their entrance, but if there is a problem VDOT could go on the property to make a correction.

Mr. Slutzky asked Mr. Wyant if he wished to withdraw the appeal. Mr. Wyant said he does not have a lot of choices. He said the County's solution will only be half way.

Mr. Rooker said the Board does not have the ability to approve the entrance; it is a VDOT decision. Mr. Wyant said he thought the Board had the capacity to back up and say "do not look at it."

Mr. Rooker said VDOT has already looked at it. Between the time Mr. Wyant built the house and the time he applied for the subdivision the County adopted a process which VDOT had wanted all along - when family subdivisions were requested VDOT would be notified so they could look at whether the entrance requirements onto a public road were met. That requirement is in place now. He thinks the Board needs to make a decision. Mr. Wyant said to withdraw his request for now.

Mr. Slutzky said staff will look at how the Board might be able to fix the one problem. Maybe a case can be made with the neighbor, and Mr. Wyant can then subdivide the property.

Mr. Rooker asked if a motion is needed. Mr. Davis said he would suggest that there be a motion that would say "At the request of Mr. Wyant the Board accepts withdrawal of the application and directs staff to reopen the subdivision application with the consent of Mr. Wyant to try and resolve the outstanding issues."

Ms. Mallek immediately offered a **motion** to that effect**.** Mr. Slutzky **seconded** the motion.

Mr. Wyant asked if that would allow him to bring this back up if he can't solve anything.

Mr. Slutzky said "yes."

Mr. Wyant said he is in a situation where he has to do something. He has to have some way to give his daughter her house. There has got to be some way to do this. He said Mr. Rooker pointed out that he did it backwards, but he did the best he knew and the information that he got from County staff said he could divide it. He decided to get the house under roof and be sure they were going forward with it.

Mr. Slutzky said at that time he could have subdivided; the problem is that in the intervening years the rules changed. He then requested that roll be called; the motion carried by the following recorded vote:

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

Agenda Item No. 10. **Public Hearing**: FY 2010 Budget Amendment. *(Notice of this public hearing was advertised in the Daily Progress on July 26, 2009.)*

Mr. Tucker said the total of these new requested FY 2010 appropriations is $3,229,119.30. Because the cumulative amount of the appropriations exceeds one percent of the currently adopted budget, a budget amendment public hearing is required. The budget amendment is comprised of nine new appropriations: No. 2010-009 provides $550.00 for a Police Department grant; No. 2010-010 totals $8,741.00 for the Circuit Court Clerk Preservation Grant; No. 2010-011 is to carry forward $274,798.40 in Capital Project funds for the Rt. 250/Westminster Canterbury sidewalk project; Nos. 2010-012 total $100,000.00 for the ECC building security system; Nos. 2010-013 and 2010-014 total $2,768,648.90 for Education donations/programs; No. 2010-015 totals $31,381.00 for miscellaneous grants for CCF; No. 2010-016 totals $18,462.00 for lighting upgrades at Greer Elementary School; and, No. 2010-017 totals $45,000.00 to reimburse VDOT for all costs associated with the acquisition of right-of-way/ construction

easements for improvements to Route 29. A detailed description of these requests is provided on Attachment "A" which follows:

Appropriation No. 2010-009, $550.00. Revenue Source: Local Revenue - $ 550.00. Target Corporation awarded the Police Department a grant in the amount of $550.00. This grant will assist in the purchase of a digital SLR camera for use in evidence collection.

Appropriation No. 2010-010, $8,741.00. Revenue Source: State Revenue $8,741.00. The Library of Virginia has awarded the Circuit Court Clerk's Office grants in the amount of $8,741.00. The purpose of these grants is to preserve court documents in paper form until such time as they are able to be offered in a suitable reformatted copy.

Appropriation No. 2010-011, $274,798.40. Revenue Source: CIP Fund Balance $274,798.40. This request is to carry forward balances remaining in the sidewalk program at the end of FY '08-09 into FY '09-10 for the Rte. 250/Westminster Canterbury sidewalk project. The design plans for this project are nearly complete and we expect to bid and begin construction later this summer. It is necessary to carry forward the funds into the current year before the County can execute a contract.

Appropriation No. 2010-012, $100,000.00. Revenue Source: ECC Fund Balance $100,000.00. We are presently negotiating with a vendor who finished first in our RFP process to replace our security system. The current system needs to be expanded and is outdated. The oldest computer system in the ECC is the one that controls access to the facility. The software is no longer supported by the vendor and the hardware is prone to failure. We intermittently have problems with the cameras and the hard disk that stores the images is no longer reliable. The new system will also allow complete camera coverage for our external doors. We hope to finish this project by September 1, 2009.

Appropriation No. 2010-013, $2,450,960.00. Revenue Source: State Revenue $2,450,960.00. Federal funds were provided to the states via the American Recovery and Reinvestment Act (ARRA). The General Assembly adopted a budget that included expending all State stimulus funds over a two-year period. ARRA funds are to be spent in ways that meet the overall guidelines of the Act and also meet the requirements of the Elementary and Secondary Education Act (ESEA). The conceptual framework for the use of these funds is identical to that presented to the School Board on April 23.

ARRA guidelines are: 1) funds must be expended quickly to save or create jobs, 2) funds must be used to improve student achievement, 3) funds will be subject to additional and rigorous reporting requirements, and, 4) funds should be spent in ways that do not create future funding shortfalls when Federal stimulus funding ceases in two years. Funds are designated to fund capital purchases of technology, restore textbook funding, improve technology infrastructure, provide four FTEs of technology staffing, and purchase testing materials. The technology positions are two-year grant funded positions, and all hires are being informed that their positions are only guaranteed for the years in which the funds are available. These positions will be used to install and support the technology deployment over the next two years. This appropriation was approved by the School Board at its June 11, 2009, meeting.

Appropriation No. 2010-014, $317,688.90. Revenue Source: Federal Revenue $104,879.90; Fund Balance $212,809.00. During the School Board retreat, there was discussion by the Board regarding increasing outreach services to the community. Discussion included increasing the time available to the staff member in charge of Latino relations from half-time to full-time. The increased costs associated with moving from a half-time to a full-time position is $52,898.00, to be funded utilizing the School Board reserve. There will be no impact on the total County budget as a result of this appropriation.

As part of the continuous improvement process of the ACPS Transportation Department, there is a need to more carefully track and verify routes, timing and location of buses in an effort to reduce costs and improve safety. ACPS buses travel approximately 1.1 million deadhead miles (miles with no students on buses) at a cost of 3.4 million dollars per year based on the past three year's average. Implementation of a bus GPS system would offer improvements in safety, verification of ridership and tracking of buses and deliver equal or better services at reduced operational costs. Projected savings would exceed implementation costs in the first two years of implementation. The Transportation Department intended to purchase a bus GPS system prior to the end of FY '08-09 with operational savings realized during FY '08-09. The Transportation Department planned to purchase the desired system based on a competitively bid RFP issued by Virginia Beach Public Schools. However, VBPS did not finalize the contract for the desired system until July 1, 2009. As such, Transportation was not able to execute a contract based on the VBPS contract prior to the end of FY '08-09. The operational savings the department planned to use became part of the School Division's fund balance. At the July 9 School Board meeting, School Board members voted 6-0 to approve the project and ask the Board of Supervisors to amend the appropriation ordinance accordingly. The cost is $212,809.00.

Albemarle County Schools has been approved for additional School Improvement Funds under Title I, Part A, Section 1003(g) of the No Child Left Behind Act of 2001(NCLB). The approved school is Mary Carr Greer Elementary in the amount of $104,879.90; grant period May 12, 2009, through September 31, 2010. These funds will allow Greer Elementary to keep a Literacy Specialist (Coach) whose priority is to continue her work coaching grade level teams to design high-quality assessments and analyze student assessment data on a weekly basis at the grade level PLCs. This Coach will also support teachers in classrooms with high-quality instruction, as needed. Planning time will begin in July and August; this summer planning will allow instructional teams to begin planning units that integrate reading, writing, and content areas in an interdisciplinary manner. Non-fiction reading material on all levels will be purchased. These appropriations were approved by the School Board at its July 9, 2009,

meeting.

Appropriation No. 2010-015, $31,381.00. Revenue Source: Local Revenue $5,986.00; Federal Revenue $25,395.00.

The Department of Criminal Justice Services awarded the Commission on Children and Families a one-time grant in the amount of $8,869.00 with a local match of $986.00 for a total award of $9,855.00. This grant will provide training monies for presenters to continue education for staff. Local match monies are being provided by CASA.

The Charlottesville Area Community Foundation, specifically the Bama Works Fund of the Dave Matthews Band, has donated $5,000.00 to the Commission on Children and Families to provide stipends for Family Support mentors to accompany families of children with mental health needs to meetings.

The Department of Criminal Justice Services awarded the Commission on Children and Families a grant in the amount of $16,526 with a local match of $1,836 for a total grant award in the amount of $18,362. This grant will provide training and the implementation of promoting greater accountability in the juvenile justice system including the increased accountability for juvenile offenders. Local match moneys will be provided by both the County and the City through their existing contributions to CCF.

Appropriation No. 2010-016, $18,462.00. Revenue Source: Maintenance/Replacement Funds $18,462.00. This appropriation will transfer $18,462.00 from the School Maintenance and Replacement project to the Greer Elementary School Additions/Renovations project. Funds will be used for the removal of 60 existing light fixtures and replacement with 60 new energy efficient lights. Work will also include installation of six new occupancy censors to operate lights. There will be no impact on the total County budget as a result of this appropriation.

Appropriation No. 2010-017, $45,000.00. Revenue Source: Fund Balance $45,000.00. This appropriation will transfer $45,000 from the Fund Balance to a special account used to reimburse VDOT for its expenditures to acquire the right-of-way necessary to construct a continuous turn lane on Route 29 between Greenbrier Drive and Hydraulic Road. The funding was provided in FY '09 by the developer of Albemarle Place pursuant to an agreement to assure the completion of proffered road improvements.

Mr. Tucker said that after holding the public hearing, staff recommends approval of the FY 2010 Budget Amendment in the amount of $3,229,119.30 and then approval of Appropriations Nos. 2010-009, 2010-010, 2010-011, 2010-012, 2010-013, 2010-014, 2010-015, 2010-016 and 2010-017 to provide funds for various Local Government and School projects.

Mr. Boyd said he is curious about the half-time Community Outreach person in the School System costing about $53,000 which means that position must cost $104,000 with benefits. Mr. Jackson Zimmerman, Director of Fiscal Services, explained that the position is being changed from half-time to full-time which makes it VRS eligible with full benefits.

Mr. Boyd said he understands that, but it is a cost of $104,000 for that position. Mr. Zimmerman said that is correct – the total cost is at that level. There is an incremental cost of greater than half because of the inclusion of VRS.

Mr. Slutzky said that is a salaried position of $80,000. Mr. Zimmerman said he does not know the specifics of the salary level. Benefits cost about 25 percent.

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

Mr. Rooker offered **motion** to approve the FY 2010 budget amendment in the amount of $3,229,119.30. Ms. Thomas **seconded** the motion. Roll was then called and the motion carried by the following recorded vote:

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

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Mr. Rooker then offered **motion** to approve Appropriation Nos. 2010-009, 2010-010, 2010-011, 2010-012, 2010-013, 2010-014, 2010-015, 2010-016 and 2010-017 to provide funds for various local government and school projects and programs as set out on the appropriation forms which follow. Ms. Thomas **seconded** the motion. Roll was then called and the motion carried by the following recorded vote:

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

COUNTY OF ALBEMARLE **APP # 2010-009**
APPROPRIATION **DATE 08-05-09**

Explanation: Police Department Grant - Target Corporation

Type	Fund	Dept	Object	Description	SUB LEDGER Code		Amount	GENERAL LEDGER Debit	Credit
2	1233	18120	181279	Grant Revenue - Miscellaneous	J	2	550.00		
1	1233	31013	601013	Evidence Equipment	J	1	550.00		
	1233		0501	Est. Revenue				550.00	
			0701	Appropriation					550.00
Total							1,100.00	550.00	550.00

COUNTY OF ALBEMARLE **APP # 2010-010**
APPROPRIATION **DATE 08-05-09**

Explanation: Circuit Court Clerk Grant - Records Preservation

Type	Fund	Dept	Object	Description	SUB LEDGER Code		Amount	GENERAL LEDGER Debit	Credit
2	1216	24000	240802	State Revenue	J	2	8,741.00		
1	1216	21010	350000	Binding - External	J	1	8,741.00		
	1216		0501	Est. Revenue				8,741.00	
			0701	Appropriation					8,741.00
Total							17,482.00	8,741.00	8,741.00

COUNTY OF ALBEMARLE **APP # 2010-011**
APPROPRIATION **DATE 08-05-09**

EXPLANATION: Re-appropriate funding for the Rt. 250/Westminster sidewalk project

Type	Fund	Dept	Object	Description	SUB LEDGER Code		Amount	GENERAL LEDGER Debit	Credit
1	9010	41350	950516	Rt 250/Westminster	J	1	274,798.40		
2	9010	51000	510100	Appropriation-Fund Bal	J	2	274,798.40		
	9010		0501	Est. Revenue				274,798.40	
			0701	Appropriation					274,798.40
Total							549,596.80	274,798.40	274,798.40

COUNTY OF ALBEMARLE **APP # 2010-012**
APPROPRIATION **DATE 08-05-09**

EXPLANATION: Replacement of the current ECC building security system

Type	Fund	Dept	Object	Description	SUB LEDGER Code		Amount	GENERAL LEDGER Debit	Credit
1	4100	31041	331800	R&M Buildings	J	1	100,000.00		
2	4100	51000	510100	Appropriation-Fund Bal	J	2	100,000.00		
	4100		0501	Est. Revenue				100,000.00	
			0701	Appropriation					100,000.00
Total							200,000.00	100,000.00	100,000.00

COUNTY OF ALBEMARLE **APP # 2010-013**
APPROPRIATION **DATE 08-05-09**

EXPLANATION: Education Donations and Programs: School Board Meeting: 6/11/2009

Type	Fund	Dept	Object	Description	SUB LEDGER Code		Amount	GENERAL LEDGER Debit	Credit
2	3163	24000	240303	ARRA - State Stimulus	J	2	2,450,960.00		
1	3163	51000	930010	Transfer to CIP	J	1	550,000.00		
1	3163	61101	800100	Machinery/Equipment	J	1	156,000.00		
1	3163	61101	800700	ADP Equipment	J	1	420,000.00		
1	3163	61320	601300	Instr Materials & Supplies	J	1	300,000.00		
1	3163	61337	301210	Contract Services	J	1	40,000.00		
1	3163	66200	114300	Salaries Other Technical	J	1	273,683.00		
1	3163	66200	210000	FICA	J	1	20,938.00		
1	3163	66200	221000	VRS	J	1	40,751.00		
1	3163	66200	231000	Health Insurance	J	1	28,180.00		
1	3163	66200	232000	Dental Insurance	J	1	1,012.00		
1	3163	66200	241000	VRS Group Life Insurance	J	1	2,436.00		
1	3163	66200	380000	Purchased Services	J	1	70,000.00		
1	3163	66200	580000	Misc. Supplies	J	1	5,000.00		

1	3163	66200	800700	ADP Equipment	J	1	8,000.00		
1	3163	66200	800700	ADP Equipment	J	1	250,000.00		
1	3163	66300	601300	Instr Materials & Supplies	J	1	100,000.00		
1	3163	66300	800700	ADP Equipment	J	1	84,960.00		
1	3163	66300	800700	ADP Equipment	J	1	40,000.00		
1	3163	66300	800710	Software	J	1	60,000.00		
	3163		0501	Est. Revenue				2,450,960.00	
			0701	Appropriation					2,450,960.00
Total							4,901,920.00	2,450,960.00	2,450,960.00

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COUNTY OF ALBEMARLE **APP # 2010-014**
APPROPRIATION **DATE 08-05-09**

EXPLANATION: Education Donations and Programs: School Board Meeting: 7-09-2009

					SUB LEDGER			GENERAL LEDGER	
Type	Fund	Dept	Object	Description	Code		Amount	Debit	Credit
2	2000	51000	510100	Use of Fund Balance	J	2	212,809.00		
1	2410	60100	999981	Board Reserve	J	1	(52,898.00)		
1	2411	61241	111400	Salaries-Other Mgt	J	1	35,376.00		
1	2411	61241	210000	FICA	J	1	2,707.00		
1	2411	61241	221000	VRS	J	1	10,535.00		
1	2411	61241	231000	Health Insurance	J	1	3,523.00		
1	2411	61241	232000	Dental Insurance	J	1	127.00		
1	2411	61241	241000	VRS Group Insurance	J	1	630.00		
1	2433	62320	800100	Capital Equipment	J	1	180,460.00		
1	2433	62320	800710	Software	J	1	32,349.00		
2	3171	33000	330071	Title I Greer Elem Grant	J	2	104,879.90		
1	3171	61101	112100	Salaries-Teachers	J	1	54,510.00		
1	3171	61101	160300	Stipend	J	1	13,114.50		
1	3171	61101	210000	FICA	J	1	5,174.00		
1	3171	61101	221000	Virginia Retirement System	J	1	7,113.00		
1	3171	61101	231000	Health Insurance	J	1	7,045.00		
1	3171	61101	232000	Dental Insurance	J	1	253.00		
1	3171	61101	241000	VRS Group Insurance	J	1	485.00		
1	3171	61101	580500	Staff Development	J	1	2,000.00		
1	3171	61101	601300	Instr/Recreation Supplies	J	1	15,185.40		
	2000		0501	Est. Revenue				212,809.00	
			0701	Appropriation					212,809.00
	3171		0501	Est. Revenue				104,879.90	
			0701	Appropriation					104,879.90
Total							635,377.80	317,688.90	317,688.90

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COUNTY OF ALBEMARLE **APP # 2010-015**
APPROPRIATION **DATE 08-05-09**

EXPLANATION: Various CCF Grants

					SUB LEDGER			GENERAL LEDGER	
Type	Fund	Dept	Object	Description	Code		Amount	Debit	Credit
2	4400	18000	189900	Miscellaneous Revenue	J	2	5,000.00		
1	4400	54103	580000	CSA Coordinator - Misc	J	1	5,000.00		
2	1582	18110	180180	Contribution	J	2	986.00		
2	1582	33000	330001	Grant Revenue - Federal	J	2	8,869.00		
1	1582	53161	550100	Travel/Training/Education	J	1	9,855.00		
2	1578	33000	330001	Revenue - Federal	J	2	16,526.00		
2	1578	51000	512000	Transfer - Other Funds	J	2	1,836.00		
1	1578	53161	312210	Contracted Services	J	1	18,362.00		
	4400		0501	Est. Revenue				5,000.00	
			0701	Appropriation					5,000.00
	1582		0501	Est. Revenue				9,855.00	
			0701	Appropriation					9,855.00
	1578		0501	Est. Revenue				18,362.00	
			0701	Appropriation					18,362.00
Total							66,434.00	33,217.00	33,217.00

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COUNTY OF ALBEMARLE **APP # 2010-016**
APPROPRIATION **DATE 08-05-09**

EXPLANATION: Greer Change Order

					SUB LEDGER			GENERAL LEDGER	
Type	Fund	Dept	Object	Description	Code		Amount	Debit	Credit
1	9000	62420	950184	Lighting Upgrades	J	1	(18,462.00)		
1	9000	60204	800605	Greer Elem Construction	J	1	18,462.00		
Total							0.00	0.00	0.00

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COUNTY OF ALBEMARLE **APP # 2010-017**
APPROPRIATION **DATE 08-05-09**

EXPLANATION: Reimburse VDOT for costs associated with acquisition of right-of-way

					SUB LEDGER			GENERAL LEDGER	
Type	Fund	Dept	Object	Description	Code		Amount	Debit	Credit
2	8555	51000	510100	App. Fund Balance	J	2	45,000.00		
1	8555	81022	312342	Development Area's Study	J	1	45,000.00		
	8555		0501	Est. Revenue				45,000.00	
			0701	Appropriation					45,000.00
Total							90,000.00	45,000.00	45,000.00

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Agenda Item No. 11. **Public Hearing:** ZTA-2008-004, Beauty/Barber Shops in CO District. Amend Sec. 23.2.1, By-right, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 23.2.1 to add beauty shops and barbershops as permitted accessory uses in the Commercial Office (CO) zoning district. *(Notice of this public hearing was advertised in the Daily Progress on July 20 and July 27, 2009.)*

Ms. Elaine Echols, Principal Planner, addressed the Board, noting that last December a citizen requested that the Commercial Office District be amended to allow beauty shops and barbershops as accessory uses. The Planning Commission adopted a resolution of intent in April and a public hearing was held in June. There were no public comments and no opposition with very little discussion by the Commission. The amendment essentially adds these barbershops and beauty shops as uses in the Commercial Office District under "Accessory Uses." She said a clarification was added about the aggregate of the accessory uses so it is easier for staff to administer the ordinance. Staff and the Planning Commission recommend that this ordinance amendment be approved as written.

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

Mr. Rooker immediately offered **motion** to approve ZTA-2008-004 by adopting Ordinance No. 09-18(6), An Ordinance to Amend Chapter 18, Zoning, Article III, District Regulations, of the Code of the County of Albemarle, Virginia, by amending Sec. 23.2.1, By Right.

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

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

ORDINANCE NO. 09-18(6)

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

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

By Amending:

Sec. 23.2.1 By right

Chapter 18. Zoning

Article III. District Regulations

Sec. 23.2.1 By right

The following uses shall be permitted in any CO district, subject to the requirements and limitations of these regulations:

1. Administrative and business offices.

2. Professional offices, including medical, dental and optical.

3. Financial institutions.

4. Churches, cemeteries.

5. Libraries, museums.

6. Accessory uses and structures incidental to the principal uses provided herein. The aggregate of all accessory uses shall not occupy more that twenty (20) percent of the floor area of the buildings on the site. The following accessory uses shall be permitted:

   -Eating establishments;

   -Newsstands;

   -Establishments for the sale of office supplies and service of office equipment;

   -Data processing services;

   -Central reproduction and mailing services and the like;

   -Ethical pharmacies, laboratories and establishments for the production, fitting and/or sale of optical or prosthetic appliances on sites containing medical, dental or optical offices;

   -(Repealed 3-17-82)

   -Sale/service of goods associated with the principal use such as, but not limited to: musical instruments, musical scores, text books, artist's supplies and dancing shoes and apparel; (Added 12-3-86)

   -Barber shops; (Added 8-5-09)

   -Beauty shops. (Added 8-5-09)

7. Electric, gas, oil and communication facilities, excluding tower structures and including poles, lines, transformers, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations and appurtenances owned and operated by the Albemarle County Service Authority. Except as otherwise expressly provided, central water supplies and central sewerage systems in conformance with Chapter 16 of the Code of Albemarle and all other applicable law. (Amended 5-12-93)

8. Public uses and buildings including temporary or mobile facilities such as schools, offices, parks, playgrounds and roads funded, owned or operated by local, state or federal agencies (reference 31.2.5); public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations and the like, owned and/or operated by the Rivanna Water and Sewer Authority (reference 31.2.5; 5.1.12). (Amended 11-1-89)

9. Temporary construction uses (reference 5.1.18).

10. Dwellings (reference 5.1.21). (Added 3-17-82)

11. Temporary nonresidential mobile homes (reference 5.8). (Added 3-5-86)

12. Day care, child care or nursery facility (reference 5.1.6). (Added 9-9-92)

13. Stormwater management facilities shown on an approved final site plan or subdivision plat. (Added 10-9-01)

14. Tier I and Tier II personal wireless service facilities (reference 5.1.40). (Added 10-13-04)

(§ 20-23.2.1, 12-10-80; 3-17-82; 3-5-86; 12-3-86; 11-1-89; 9-9-92; 5-12-93; Ord. 01-18(6),
10-9-01; Ord. 04-18(2), 10-13-04; Ord. 09-18(6), 8-5-09)

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Agenda Item No. 12. **Public Hearing:** ZTA-2009-008, Body Shops and Towing Services in HI Heavy Industrial District. Amend Sec. 28.2.1, By right, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 28.2.1 to add body shops and the towing and temporary storage of motor vehicles as by right uses in the Heavy Industry (HI) zoning district. *(Notice of this public hearing was advertised in the Daily Progress on July 20 and July 27, 2009.)*

Ms. Elaine Echols said this request to allow body shops and towing services in the Heavy Industrial District came from both a citizen and staff. It was found that there was a heavy industrial use going on in a district where it was not allowed. After checking the ordinance, it seemed that was a use which had been omitted because it was allowed by special use permit in the light industrial district. Staff thought this would be corrected in a set of housekeeping amendments, but they kept being pushed back and it was important to get these uses in the ordinance. The Planning Commission adopted a resolution of intent in April and held a public hearing in June. She said the changes in the HI District add body shops, towing, and temporary storage of motor vehicles as uses with the references of 5.1.31A and B, which cover visibility from the road. Staff and the Planning Commission recommend approval of the ordinance as written; she is not aware of any public opposition.

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

Mr. Rooker immediately **moved** for approval of ZTA-2009-008, by adopting Ordinance No. 09-18(7), An Ordinance to Amend Chapter 18, Zoning, Article III, District Regulations, of the Code of the County of Albemarle, Virginia, by amending Sec. 28.2.1,By-right.

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

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

ORDINANCE NO. 09-18(7)

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

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

By Amending:

Sec. 28.2.1 By right

Chapter 18. Zoning

Article III. District Regulations

Sec. 28.2.1 By right

Except as otherwise limited by section 28.2.2.14, the following uses shall be permitted by right in the HI district: (Amended 2-13-85)

1. Automotive, farm and construction and machinery products assembly.
2. Brick manufacturing, distribution.
3. Concrete mixing plant, storage, distribution.
4. Dry-cleaning plants.
5. Fire and rescue squad stations (reference 5.1.09).
6. Machine shops, tool and die, blacksmithing, boiler shops and similar operations.
7. Manufacture of heavy household, commercial and industrial appliances.
8. Manufacture of building components.
9. Manufacture, distribution, service of individual sewage disposal systems.
10. Manufacture and recycling of tires.
11. Metal fabrication and welding operations.
12. Mobile home manufacturing, distribution.
13. Moving businesses, including storage facilities.

14. Petroleum, gasoline, natural gas and manufactured gas bulk storage (reference 5.1.20).

15. Recreational vehicle and components manufacturing, distribution.

16. Sawmills (reference 5.1.15), planing mills, wood preserving operations, woodyards.

17. Veterinary or dog/cat hospitals, indoor accessory kennels (reference 5.1.11).

18. Warehouse facilities.

19. Storage yards. (Amended 11-12-08)

20. Electric, gas, oil and communication facilities excluding tower structures and including poles, lines, transformers, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations and appurtenances owned and operated by the Albemarle County Service Authority. (Amended 5-12-93)

21. Public uses and buildings including temporary or mobile facilities such as schools, offices, parks, playgrounds and roads funded, owned or operated by local, state or federal agencies (reference 31.2.5); public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations and the like, owned and/or operated by the Rivanna Water and Sewer Authority (reference 31.2.5; 5.1.12). (Amended 11-1-89)

22. Temporary construction uses (reference 5.1.18).

23. Temporary nonresidential mobile homes (reference 5.8). (Added 3-5-86)

24. Stormwater management facilities shown on an approved final site plan or subdivision plat. (Added 10-9-02)

25. Tier I and Tier II personal wireless service facilities (reference 5.1.40). (Added 10-13-04)

26. Heavy equipment and heavy vehicle parking and storage yards. (Added 11-12-08)

27. Body shops (reference 5.1.31(a) and (b)). (Added 8-5-09)

28. Towing and temporary storage of motor vehicles (reference 5.1.32(b)). (Added 8-5-09)

(§ 20-28.2.1, 12-10-80; 2-13-85; 3-5-86; 11-1-89; 5-12-93; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04; Ord. 09-18(7), 8-5-09)

Agenda Item No. 13. **Public Hearing:** ZTA-2009-011, Definitions, including Home Occupations. Amend Sec. 3.1, Definitions, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 by amending the definitions of Home Occupation, Class A and Home Occupation, Class B, by expressly requiring that the home occupation be conducted within the same dwelling unit in which the members of the family conducting the home occupation reside. *(Notice of this public hearing was advertised in the Daily Progress on July 20 and July 27, 2009.)*

Ms. Amelia McCulley, Zoning Administrator, said this is a limited text amendment related to the definition of "Home Occupation-Class A and Home Occupation-Class B." The amendment will require that the business be conducted only in the dwelling unit in which the family or business owners reside. It better reflects the County's longstanding intent and consistent administrative practice for this home business zoning provision and it assures that residential character is preserved. These are the three aspects the Board asked staff to consider for every text amendment, and in consideration of those, no negative impacts were identified and no one from the public spoke at the Planning Commission meeting. She said this amendment should better improve and clarify the process.

Ms. McCulley said this text amendment is limited only to these two definitions, and there is no proposed change in the substance of the regulations, the process, or the limitations. She said that on the Board's consent agenda today there was a resolution of intent for an ordinance amendment for home occupations and churches in the rural areas. Of the two, home occupations will be a more comprehensive text amendment than the one presently before the Board. She said the Planning Commission's discussion focused on a minor grammatical change, and it also talked about the fact that in consistent administrative practices, employees who don't come to jobsites are counted in the employee count. This revised draft reflects the consistent administrative practice, and makes it clear for people applying for home business permits. She said staff and the Commission recommend approval.

Mr. Slutzky said he had a question. Under the current definitions, if a person living in Belvedere wanted to conduct a home occupation with no employees it would be treated as a Class A permit if the occupation took place in the home where that person lived, but if it was conducted in an accessory structure not attached to the house they need a special use permit. Ms. McCulley responded that they would. Unfortunately, in Belvedere, their Code of Development does not include Home Occupation-Class B as a permitted use.

Mr. Slutzky said those developers were given credit for the affordable housing requirement so the Board thought the units would be used for that purpose. He asked if this change today makes it so people working by themselves in the accessory unit become a Class B and have to get a special use permit to do it. Ms. McCulley said the permits already approved (she thinks there are two or more in Belvedere) would become nonconforming to this regulation. They could not seek to expand the approval they have but the existing approval would remain unimpaired.

Mr. Slutzky said if they did not hire someone they should be able to continue their home occupation in the accessory structure. Ms. McCulley said that is correct.

Mr. Slutzky said the act today would preclude others in that same situation from doing so without going through the special use permit process. Ms. McCulley said that is correct provided they reside in the main house. If they reside in a "carriage house" on the property, that is a Home Occupation-Class A.

Mr. Boyd asked what problem this change will solve. Ms. McCulley said when there is a property with multiple dwelling units one of those units could be converted into a business. At that point it would no longer be a dwelling and it would change the character of that property and the area. There are provisions in the ordinance which clearly allow that as a subordinate use, businesses in a home.

Ms. Thomas asked if one bought a home in Belvedere which had an accessory structure and wanted to put a law office or something else in that accessory structure which saved paying rent elsewhere and it made buying that house an affordable option for the family, is that now illegal?

Mr. Rooker said it would require a special use permit. Ms. McCulley said that in Belvedere, because the Home Occupation-Class B is not included in their Code of Development, they would have to amend their Code to allow it. In other Planned Developments they provided for a Class B – either by-right or by special use permit. Belvedere is a unique situation.

Ms. Thomas said that was a bad example. But in other places if there were an accessory structure and one decided to use it to run a professional business, a special use permit will not be needed. Ms. McCulley said that is correct.

Ms. Thomas said requiring a special use permit would allow the neighbors to speak for or against the request. Mr. Davis said that has always been the case. A special use permit has always been required if a home occupation were going into an accessory building outside of the dwelling unit.

Ms. Thomas asked what is different in this proposal. Mr. Davis said that in Belvedere there are two dwelling units – one occupied and one not occupied. The second unit is not an accessory unit, but is designated as a dwelling. The question was whether you must live in the dwelling unit in order to have a home occupation. Under the technical reading of the existing ordinance, it says someone has to live in a dwelling unit on the premises, and that was never the interpretation or the intent. In order to fix that glitch which allowed someone to have a home occupation in a building that is not dwelled in, this change is necessary.

Mr. Slutzky said it is assumed that is a bad thing which needs to be fixed. He thinks the exception is Belvedere and while he understands credit was given toward the affordable housing by using the accessory apartments for that purpose, he thinks the Board is punishing people in Belvedere who want to have home occupations where there is just a sole proprietor. It is a different issue if they have employees. However, in Belvedere Ms. McCulley said they cannot do it because it is not in their Code of Development.

Mr. Rooker said that has nothing to do with the ordinance. That has to do with the Code of Development which is just like the Covenants and Restrictions put on property.

Mr. Slutzky asked if the Board did not act today, if they could do it.

Ms. Mallek asked if they cannot do it now. Ms. McCulley said they can do it now.

Mr. Slutzky said they can do it now. The Board is shifting those people from a Class A to a Class B by what it may adopt today. Ms. McCulley said that is right.

Mr. Slutzky said that is why they would no longer be allowed to do that in Belvedere. Ms. McCulley said that is correct, but keep in mind that the consistent administrative practice would have been to call it a Class B all along. Staff was about to take an appeal in Belvedere to the BZA when they looked at the words on the page and realized they did not support the consistent administrative practice. She said that across the nation home businesses or cottage industries have always been allowed in the home as a subordinate use, but once you allow it to operate in another structures by-right (which could be done under the current language), "that's a whole different animal."

Ms. Mallek said it also takes away the supervision and care that someone would take of the premises when it is the house they live in. If it's in the barn in the back, there is much less consistency for the neighbors.

Ms. Thomas asked about a "mother-in-law" unit or some other unit that can be occupied.

Mr. Slutzky said that is an accessory unit, not a separate dwelling. Ms. McCulley said whoever lives in the accessory unit could conduct a home business as a Class A.

Ms. Thomas asked if the owner of the property could move their business into that accessory unit as a Class B if the unit was not occupied. Ms. McCulley said that is a good question because Ms. Thomas is talking about an accessory apartment within the same dwelling.

Mr. Rooker asked if Ms. Thomas was talking about it being in the same building.

Ms. Mallek said it is connected by heated space, which is the way they do the accessory apartments now. So, it probably would stay as a Class A.

Mr. Davis said the other issue raised is that in the supplementary regulations that apply to home occupations, only 25 percent of the structure can be used for the home occupation. The ordinance says only 25 percent of the unoccupied dwelling can be used for the home occupation so the other 75 percent must be vacant. That was clearly not the intent of the Board when this was adopted.

Mr. Boyd said he is worried about unintended consequences of adopting these amendments.

Ms. Mallek said leaving it vague puts all other subdivisions throughout the County at risk.

Mr. Boyd said it is obvious that staff found a quirk in the wording with a particular case in Belvedere. Other than that, has there been serious abuse of the home occupation use. He said a worse case scenario would be someone who had an accessory home and nobody was living in it, so they turned it into a garage and started working on cars. Would that fall into a Class A as long as there were no employees?

Ms. Mallek said if that were in the middle of Gray Rock it would be a problem. It would be a big problem with trucks bringing in parts all the time.

Mr. Rooker said the way he reads the ordinance there is nothing that prevents someone from having employees. They just can't work out of the house.

Mr. Boyd asked if a Class B permit is required if there is more than one employee.

Mr. Rooker said the business could be run from the house, and the business could have 50 employees as long as they did not engage in the occupation within the dwelling unit.

Mr. Slutzky said that question was before the Board a couple of years ago. Ms. McCulley said that two changes in definitions are proposed. One is to make sure the occupation takes place in the home in which the applicant resides, and the second deals with employees and basically codifies what has been done as an administrative practice. It is common for contractors, in particular, to begin with an office in their home and when the business becomes bigger and there are more employees, as long as they meet their employees offsite it does not have an impact in the home, and they need not be penalized.

Mr. Rooker agreed but said it isn't clear as to when people can come and go. Mr. Davis said the intent of this amendment is not to allow that. He said Ms. McCulley passed out a sheet showing language that has been tweaked from the original version. In the proposed definitions, staff added a stipulation that the employees do not come to the dwelling unit to engage in the occupation. That is at the end of both definitions (see Attachment A). Staff is proposing that the last phrase in both definitions be dropped. It would not prevent someone from coming to their employer's house socially, but they could not come there to engage in the occupation.

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

Mr. Rooker immediately **moved** for approval of ZTA-2009-011 as shown in Attachment A of the Board's packet by adopting Ordinance No. 09-18(8), An Ordinance to Amend Chapter 18, Zoning, Article I, General Provisions, of the Code of the County of Albemarle, Virginia, by amending Sec. 3.1, Definitions.

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

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

ORDINANCE NO. 09-18(8)

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

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, is hereby amended and reordained as follows:

By Amending:

Sec. 3.1 Definitions

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

. . . . .

Home Occupation, Class A: An occupation conducted for profit within a dwelling unit solely by one or more members of the family residing within the dwelling unit; provided that nothing herein prohibits the occupation from engaging other persons who work off-site and do not come to the dwelling unit to engage in the occupation. (Amended 08-05-09)

Home Occupation, Class B: An occupation conducted for profit within a dwelling unit solely by one or more members of the family residing within the dwelling unit and up to two (2) additional persons not residing within the dwelling unit, with or without the use of one or more accessory structures; provided that nothing herein prohibits the occupation from engaging other persons who work off-site and do not come to the dwelling unit or any accessory structure to engage in the occupation. (Amended 08-05-09)

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Agenda Item No. 14. **Public Hearing:** WPTA-2009-0002, Water Protection Ordinance. Amend the following sections:

Sec. 17-203, Erosion and sediment control plan,
Sec. 17-204, Review and approval of erosion and sediment control plan,
Sec. 17-207, Issuance of permit; surety,
Sec. 17-304, Review and approval of stormwater management/BMP plan, and,
Sec. 17-306, Issuance of permit; surety, of Chapter 17, Water Protection, of the Albemarle County Code.

This ordinance would -
Amend Sec. 17-203 to revise a cross-reference to a state regulation;
Amend Sec. 17-204 to provide that an application for an erosion and sediment control plan would be deemed withdrawn if a revised plan addressing omitted modifications, terms or conditions was not submitted within 6 months, and would void an approved erosion and sediment control plan if a grading, building or other permit for land disturbing activities was not obtained within 1 year;
Amend Sec. 17-207 to require that permanent vegetation be established on denuded areas within 9 months after the start of land disturbing activity, with exceptions and the opportunity for time extensions, to reduce the percentage of a surety amount to cover administrative costs and inflation from 25% to 10%, and to make other administrative changes;
Amend Sec. 17-304 to increase the period in which to act on a stormwater management plan from 45 to 60 days, to require the program authority act on a previously approved plan within 45 days after it was revised and accepted for review, and to revise a cross-reference to a state regulation; and,
Amend Sec. 17-306 to reduce the percentage of a surety amount to cover administrative costs and inflation from 25% to 10%, and to make other administrative changes and clarify terms in the regulation.
(Notice of this public hearing was advertised in the Daily Progress on July 20 and July 27, 2009.)

Mr. Mark Graham, Director of Community Development, said he has a presentation to make which does not duplicate the information in the Board's packet. He said there are two parts to this ordinance amendment. There are administrative process improvements involved – the most important are avoiding plans which address some record retention requirements. There is one exception; there was a recent change in State Code §15.2.2209 extending the approval of certain plans to July 1, 2014. If there is a plan that falls under that requirement, regardless of what this ordinance says, it would be extended to that time. He mentioned that the General Assembly made another change by reducing the maximum amount that can be charged for administrative costs on bonds associated with permits, but there is some question as to whether it applies to erosion and sediment control, or just subdivisions. For consistency, they will all be treated the same. He thinks the most controversial part of this ordinance amendment is the timeline for completion of a project.

Mr. Rooker noted a figure on the screen showing a reduction from 25 to 10 percent. He asked if the bond amount is reduced by that amount. Mr. Graham said that is correct. Mr. Rooker said there is a benefit to the contractor. Mr. Graham said there is a substantial benefit to the contractor.

Mr. Graham said he would give some background on the timeline issues. During the period 2005 to 2008 the Board had expressed concern about the adequacy of the State's erosion and sediment control standards and the Board was accepting proffers to provide higher levels of erosion and sediment control protection. In September, 2007 with the Biscuit Run rezoning was the first time there was a proffer committing to a nine-month timeline for installation of permanent vegetation. That was quickly followed by several other major rezonings with a similar proffer.

Mr. Graham said that last August a group composed of representatives from the Rivanna Conservation Society, Southern Environmental Law Center, and University of Virginia Law Center for Environmental Policy came forward with a report entitled "Before the Storm." That report included a number of recommendations, one of which was a timeline. The Board directed staff to work with this group to develop recommendations for addressing water resource impacts. In March, 2009 there was a public roundtable and those draft recommendations were presented for comments; in May, 2009 those draft recommendations and comments were brought before the Board, who at that time directed staff to proceed with ordinance amendments.

Mr. Graham said a timeline is important because it improves water resources by reducing the time of disturbance, which is the single most important means of reducing sediment. It reduces the impact on neighborhoods that have been affected by projects. It improves the public's confidence in the government process – they see that projects are being completed quickly. He then explained what the State requires through soil and erosion control regulations. The State's first minimum standard is that temporary soil stabilization be applied within seven days after final grade is reached, and permanent stabilization is required for any area that is going to be left dormant for more than one year.

Mr. Graham said he would give a couple of examples of what will happen now. He showed on the screen a hypothetical property with forest and an intermittent stream. The property owner would get a plan approved, and then would put perimeter sediment control measures in place. Then, the property would be mass graded and at the same time a storm sewer would be installed to pick up drainage upstream of the property. Next they would do the first phase of developing the property, and most likely the second phase would be done in a year or so. That is an extended period with bare ground.

Mr. Graham said that under this ordinance amendment, its anticipated development would start in the same way – in the first phase the perimeter sediment control measures would be put into place. There would be the same process for grading and putting in the storm sewer. The big change would be getting someone to come in and stabilize the site. Then, the developer could proceed with doing Phase I simultaneously with the permanent vegetation or even before it if the timeline could be met. Regardless, for the remainder of the site and for Phase II the site has been stabilized for this period rather than having the excess sediment run off. As an example, he showed on the screen the Pavilions at Pantops where this has been done. He said the area which looks like open space is actually an area for future townhouses. They have done a good job of going in and stabilizing the site on the parts that are not under active development at this time. Then he showed an example of temporary stabilization failure – a project where temporary stabilization was used instead of permanent stabilization. The third example will clarify the exempted building construction. It is the Martha Jefferson Hospital site – the part of the property where the staging area is located would be considered exempt from the requirement for permanent vegetation.

Mr. Graham said he wanted to stop the rumors that this amendment is opposed to mass grading. Staff thinks mass grading of the property can help – it eliminates the need to haul dirt onto and off the property as part of the grading activity. He said environmental impacts can be helped by reducing the overall time of disturbance with mass grading. It also simplifies project management for the contractor and grader. Staff is trying to balance the cost to the public with these timelines. There are diminished natural resources and diminished quality of life for neighborhoods the longer the disturbance goes on. However, the tighter these regulations are made, the more it increases the construction costs for that property owner.

Mr. Graham explained the strategies that were available for these amendments. He showed on the screen: a strategy from the 1970s with a very short timeline, the current practice, and one which would require the developer to use close to state-of-the-art best management practices without a timeline, and then there is the strategy being proposed today of keeping the same minimum standards but speeding up construction and proposing vegetation installation within nine months. The most desirable strategy would be speeding up construction and implementing the maximum practicable BMPs, such as those proffered with the Biscuit Run and Avon/Fifth Street developments.

Mr. Graham said looking at this in terms of tons of sediment, if the project lasted 23 months and there was zero percent of sediment removal from the streams, the sediment could be reduced by almost two-thirds by just reducing the time to nine months. This proposal is comparable to the current practice - cutting the time down to nine months and maintaining the current standard of 60 percent efficiency on the BMPs. If the time were cut to nine months with an 80 percent removal, that is the Biscuit Run standard which is state-of-the-art for soil erosion and sediment control. He said the public cost for this would decrease rapidly as a more intensive strategy was implemented, and at the same time construction costs would also rapidly decrease.

Mr. Graham said there are no free solutions to this question, so somebody has to pay. He said the timeline is the single most effective means to reduce the impacts of the sediment leaving the property. Timelines are an easy standard to understand. Staff does not know how expensive this would be for contractors. At this time, installation of permanent vegetation is estimated at a cost of about $3,000 per acre. The question is how much of this would need to be done as the project progresses. A site needs permanent vegetation in any case. They have to do it one time, but would this process require repeated installation of permanent vegetation.

Mr. Graham said staff has discussed recommendations of Demming/Crosby about total quality management. If the process can be refined and all the inefficiencies taken out, that might actually prove to be the cheapest way to build. The second big question is how easily big contractors and developers

can adapt to this change. It requires a different approach to construction projects than that which has been used historically. Contractors like to start a project and then move their equipment to another project, etc. This would require a different approach to the process.

Mr. Rooker said the whole process of keeping a site open has always been a loophole. The State statutes contemplate that the site will be stabilized in a certain period of time. Actually, a little area on the site could be kept open and the contractor say it's still under construction for years. Mr. Graham said this is not a unique problem to Albemarle County. Localities across the Commonwealth and even DCR recognize that it is a problem; Albemarle is at the leading edge of trying to identify a solution.

Mr. Rooker said when the total daily maximum load rules start coming into play, this may be minor compared to what's going to have to be done to meet those standards.

Mr. Graham said this amendment should not be confused with what Virginia's DCR is doing now in changing stormwater regulations. This addresses impacts prior to completion of a project. DCR regulations are primarily focused on impacts from long-term post-construction efforts. He said there can always be exceptions to the rule for some projects. There are provisions for waivers so extension of a timeline can be requested. He noted that through the public roundtable and a "dress rehearsal" of this on Monday, members of the public suggested several alternatives such as extending the timeline to some other standard to provide more relief, adjust the timeline based on the size of the disturbance, grant staff the ability to expand administrative waivers, trade for a higher standard of BMPs onsite, and recognize that from November through February it is hard to get anything done, so automatically extend the deadline by three months for any project that would end during those periods.

Mr. Graham said he would conclude by saying staff believes the nine-month time standard is fairly aggressive, but provides the best balance of cost to benefit reducing impacts to the water resources. He offered to answer questions.

Mr. Slutzky asked if Mr. Graham was saying that all the grading has to be done within nine months, but if there are good reasons, staff could use its discretion to give an extension of three months. He thinks this is a good idea because the County has to be proactive in protecting the streams. It is just a matter of time until the EPA forces the localities to do these kinds of behaviors. However, he is concerned about a couple of things. If a lender sees that the grading on a large project could take nine months and then there are delays, the lender might question funding this project because there is no guarantee the developer could go forward. Under staff's proposal, if it looks like the grading will take longer than nine months the developer would come to the Board and request an extension. If staff said there were circumstances involved which made the extension reasonable and appropriate, he thinks the Board would grant the extension. Nine months makes sense, but he also thinks it might be reasonable to extend the staff discretion period longer than three months to six months. It would keep them from having to come before the Board. Staff is the experts, the Board is not. Since the Board will ultimately defer to staff, he would be comfortable extending it for a longer period of time. There would still be the option for the parties to come before the Board.

Ms. Thomas said the value of having the request come before the Board is that it allows the public to watch the project and observe how the developers are managing the runoff. It adds an additional incentive for the developer to do a good job if he knows that in order to extend it beyond a year he'll be coming to the Board of Supervisors to make that plea. She is not sure it is a technical issue as described by Mr. Slutzky. People would have been watching the project for a year, and have views as to how the developer is doing.

Mr. Slutzky said that is a fair point. He was thinking that two growing seasons might be needed to establish permanent cover, and he thinks that on larger scale projects it will require 15 months. He wants to avoid the process step of having to appear before the Board if that is possible. He asked if a developer could early in the process when getting a rezoning bring forward a grading plan and indicate the length of time that would be needed, but in the meantime show how they will mitigate the loading of sediment into the streams. Is there any way to get that approved at the front end so a lender knew there would be acceptance of their strategy? Mr. Graham indicated that the administrative waiver is for an extension where circumstances have come up that have prevented a developer from completing work on time; the Board-administered waiver can be issued at any point in the process, even as part of the initial plan. Mr. Davis pointed out that they would not be able to meet the criteria that are set out for the waiver, which says a developer must effectively control erosion on the property.

Mr. Rooker said for the largest projects that have come before the Board the applicants agreed to a more aggressive plan. Those developers voluntarily came forward with that kind of approach to stabilizing the site and preventing stormwater runoff. He does not think the Board will ever see a project larger than Biscuit Run. He does not see that this is overly aggressive.

Mr. Slutzky said he is not suggesting that it is overly aggressive. He is worried about the instances where it is problematic. He asked if North Pointe came in for approval now, would they be able to do this in nine months. Is their site terrain like Biscuit Run, or do they have more challenges with respect to grade that might require a longer cycle. Mr. Graham said he has not seen a grading plan for North Pointe. The engineer's answer is that there is nothing there that money can't fix. If they put enough equipment on site presumably they could get it done in nine months. He does not know how realistic that is. It was proposed that this waiver be left with the Board recognizing that there is an interest in balancing cost. A technical criteria is an easy standard for staff to administer, but if there is a policy

issue of balancing the cost to the developer against the cost to the environment, that is hard for staff to administer as a waiver.

Ms. Thomas noted that the waiver which would be given by the Board of Supervisors has no set time limit in this ordinance, so a Board could postpone it almost indefinitely.

Mr. Rooker said it is appropriate for people to be able to come and weigh in – those people who may live in the area being impacted. That venue is not provided with purely administrative waivers. If there had been something similar to this in place when Hollymead Towncenter was under construction because a first administrative waiver had been granted, he would certainly have wanted this Board to look at the request before another waiver was granted, and to have allowed the people being impacted to speak. In that case, the neighbors probably had hundreds of thousands of dollars in costs resulting from what happened to their ponds.

Mr. Slutzky said he does not disagree with anything being said, but his concern is that it is set for nine months, and he thinks that in the instances where it is appropriate and staff determines it is reasonable to give an extension for a limited period of time, giving staff an extra three months discretion is healthy for the system. Staff does not have to give a waiver if they think there is a political dimension involved - they can say the developer needs to go before the Board for the waiver. Mr. Davis said in order to do that the waiver language would need to be tweaked. It is easily done, but as it is addressed now, it would not allow that.

Mr. Slutzky said after a rezoning was granted, if a new owner came in with a different strategy, would the new owner have to come before the Board to get a change.

Ms. Mallek said if they did not, the public would be totally in the dark if the second owner decided to change everything. She wants to keep that request before the Board.

Mr. Rooker said that as part of developing a grading strategy, a developer may determine that the best strategy is not to mass-grade the entire site on day one; he does not think that will happen at North Pointe.

Ms. Mallek said if they want their project to be unique, they will not want it to be a “table top.” She said one of the slides showed an 80-ton measure as the “best success” for vegetation. She asked if that was 80 tons per acre. Mr. Graham responded said it was a hypothetical 10-acre site and about 920 tons would be leaving the site as the result of construction over 23 months. That would be equivalent to about 66 dump truck loads being dumped into the stream.

Ms. Mallek asked if any of the changes will affect the current problem where developers move machinery from one side of a lot to the other and call it work. Mr. Graham emphasized that the only thing that changes is that at the end of nine months they have to install permanent vegetation.

Ms. Mallek said the growing season does not matter then, because it is not a turf situation. Mr. Graham said there will not be grass growing necessarily at the end of nine months, but you should be able to see that seed and straw mulch have been put down over bare ground.

Ms. Thomas said if this ordinance is going to be amended, and she is not sure it should be amended, she would suggest that a sentence be added saying: “If permanent vegetation has been installed but has not been effectively established within three months, the program authority may require re-installation.” Mr. Graham said the County already has that authority. Typically they would not be required to reseed, principally because there are two grass-growing seasons – March to May and September to November. If they put the grass seed down in March and there were still bare spots at the end of May, the developer would be asked to have all of those areas reseeded by the end of August.

Ms. Thomas asked if staff has full authority to do that at this point. Mr. Graham said when the loophole is closed with this ordinance revision they could ensure that any remaining areas are reseeded.

Ms. Mallek asked about grandfathering. She asked if there is anything in existence now that would not come under this new requirement. Mr. Graham said staff proposes that this new ordinance not be applied to an existing permit until a developer comes in for a permit renewal. An annual permit renewal is required under the ordinance now, so when the renewal permit is granted the nine-month clock would start. Staff felt that would be fair to people who had made certain assumptions in getting a project started. That gives them a lead to be able to recognize what they have to do.

Mr. Dorrier asked how staff arrived at the nine-month recommendation. Mr. Graham said it came from the proposed Biscuit Run development. Both the nine months and the three months for administrative waivers come from that development proposal.

Mr. Dorrier said that has not been used by any other development to date. Mr. Graham said it has not. It has been proffered on a number of sites, but it has not been tried yet.

Mr. Boyd asked if this would apply to all construction in the County, such as Highland Ridge. Mr. Graham said “yes.” Highland Ridge is grandfathered, so the nine-months would not be applied until the developer came in for a permit renewal. He said they have been installing vegetation there this past week.

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

Mr. Morgan Butler said he directs the Charlottesville/ Albemarle Project of the Southern Environmental Law Center. He said the proposed amendments are designed to address a loophole in the State's erosion and sediment control program – which allows inactive areas on construction sites to remain denuded for long periods of time. When terrain is in that condition, it is an open source of rapidly eroding dirt. He said that DCR estimates that erosion from construction activities can be 2,000 times greater than that from forested land. Every time it rains a large amount of that eroded soil can wash off the site into the nearest waterway – even when good erosion control devices are in place onsite. That dirt suffocates the life out of streams and rivers, and reduces the capacity of reservoirs and can inflict great trouble and expense on downstream neighborhoods. In short, construction sites are open sources of damaging pollution so it's critical to get them stabilized as quickly as possible.

Mr. Butler said the proposed amendments would do just that by requiring all inactive areas of a site to be either planted with vegetation or otherwise re-stabilized within nine months of the date the grading work began. The nine-month limit is modeled after a proffer that several recent rezoning projects have agreed to – including some of the largest projects in the County's history. They believe nine months is a generous and fair amount of time and the vast majority of projects would be able to comply with the time limit with little additional expense. However, some of the largest projects that mass grade the entire site at the onset may face some new costs in that they would need to re-stabilize inactive areas of the site when they finish the major grading work. They feel this important environmental safeguard is a reasonable expense for these projects to bear, especially considering that it's the loophole in State regulations that has allowed this expense to be avoided up to now.

Mr. Butler said a great deal of flexibility has been built into the current proposal – in addition to a three-month extension that staff may grant to account for bad weather and related difficulties, a developer may request further time from the Board, and the Board may grant whatever extensions it deems appropriate based on the circumstances of that project. He said the proposal today is a product of many meetings with County staff, and it also reflects numerous discussions with members of the environmental community, members of the development community, and some "who reside in both camps." He said the result of the proposal today is not as protective or as airtight as SELC might prefer. It is possible that in a few years, SELC will be here asking that certain aspects of this be tightened up. He appreciates Ms. Thomas' suggested language to "shore up" the point about installation versus establishment. More important is the fact that a proposal like this is long over-due. Therefore, he strongly urges the Board to pass the proposed ordinance amendments today.

Mr. Slutzky thanked Mr. Butler for the time he spent working with County staff to get the ordinance to this point.

Ms. Leslie Middleton, Executive Director of the Rivanna River Basin Commission, addressed the Board. She said the Commission is composed of elected officials from four Rivanna watershed localities and includes Ms. Thomas and Mr. Dorrier from Albemarle. The commission's purpose is to provide guidance for the stewardship and enhancement of the water and natural resources of the Rivanna basin. There is a technical advisory committee comprised of staff from each of the localities – as well as local and University experts, including nationally recognized stormwater professionals.

Ms. Middleton said that in 2008 this technical advisory committee undertook a methodical and scientific analysis regarding the variety of threats to the health of the Rivanna basin. Earlier this year the Commission endorsed the recommendations of its technical advisory committee to single out sedimentation as the overall greatest threat to the health of the Rivanna River and its tributaries. She said this comes as no surprise to anyone who has observed the river after a rainfall event. The Commission believes that it is not only the sediment laden water that contributes to the problem, but just the sheer volume of water coming off of landscapes that have been compacted or in other ways made impervious to infiltration of water that would otherwise percolate through the ground to recharge groundwater and the base flows of the streams themselves.

Ms. Middleton said that in January, they wrote to all the Rivanna localities, including Albemarle, strongly encouraging the County to adopt and promote best management practices on public and private sites to address this threat – in particular to reduce runoff to minimize siltation and thus help improve the water quality and health of the Rivanna River. She added that the Commission encourages Albemarle and all the other watershed localities to explore the use of proffers, permit conditions, and incentives to encourage private developers to include various BMPs in their projects, and specifically to identify obstacles in local codes that may prevent their implementation. By statute the Commission's role is to suggest solutions. In this capacity, it encourages the Board to consider these proposed ordinances with respect to their potential to impact the Rivanna, especially with respect to reducing sedimentation in the river and its tributaries that flow through Albemarle County.

Mr. Jeff Werner said he was present to speak on behalf of the Piedmont Environmental Council. PEC endorses these recommendations and encourages the Board to adopt them. He also recognized the hard work of Mr. Morgan Butler, Mr. Mark Graham, UVA law school representatives, and those from the Rivanna Conservation Society.

Ms. Robbie Savage of the Rivanna Conservation Society addressed the Board. She said the RCS was created in 1990 as a nonprofit to protect and care for the Rivanna River. They consider themselves to be the voice of the river. They have a large membership of volunteers who help them do that. She said that they worked with County staff and their volunteers for over two and one-half years.

They looked at the codes and ordinances of Albemarle County, the City of Charlottesville and Greene and Fluvanna counties. Their recommendations were submitted to the board who suggested they work with staff to develop this proposed ordinance amendment. She said concerns have been expressed about the timeframe and costs. However, the RCS feels the objections pale in comparison to the cost to the public – not only the cost of environmental protection which they care about, but also the aesthetics of the community, siltation into lakes and streams, the cost in aquatic life lost, and generally the cost of frustration people have had to endure given the associated problems. She stated the goal of RCS is pollution prevention. It is a lot easier to resolve a problem before it begins than to remediate a problem. Remediation is not cost-effective, pollution prevention is. She said RCS thanks the Board for its thoughtful consideration and looks forward to working with the County on implementation.

Mr. Scot Ellif said he represents the Board of Directors of the Forest Lakes Community Association – they have 5,000 residents and own Lake Hollymead along with another nearby association. He said they strongly support the ordinance before the Board today. He said he had a lengthy statement that he would like to have included in the record. He understands the "devil is in the details" including things like "install" versus "establish", the "29-day dance" and so forth. He hopes there is a mechanism whereby he can communicate some views to the Board on the context of the overall ordinance. He said that by tightening the ordinance the requirements will be clearer and the penalties and follow-up actions will be clearer, and he thinks that will give developers an incentive to proceed expeditiously with the development process. He said the ordinance as drafted is the next step and not the full solution. It can be improved. He has six specific things listed in his written statement that he would like to see addressed.

Mr. Ellif said the concept of a single, simple standard has been before the Board for a while. It makes a lot of sense to his group and others who have spoken. He said developers will need to adjust their practices to these timelines. If development has to start early in the calendar year so it can be completed and vegetation put into place in the fall, so be it. Development can also start in the summer, or fall, work through the winter, and be complete by the following summer; there is plenty of flexibility in the ordinance.

Mr. Ellif said the Forest Lakes residents live downstream from Hollymead Towncenter and they have been substantially damaged by the development process to the tune of about a million dollars – maybe more. He said that what happened to them should not happen again to anyone else. It is unfair that one community should absorb the downstream effects of lack of sedimentation control and attention by developers. He said that over a three-year period the annual siltation rate in Lake Hollymead was 28 times the historical rate, in effect receiving more than 50 years of normal siltation over that period. If the silt from the Hollymead Towncenter development were all piled in one place, the estimated 60,000 cubic yards would cover a soccer field 19 feet deep. The cost for dredging will be $1.0 million to the Forest Lakes Community Association. That might have occurred in that community 30 years "down the line." They had a $1.0 million unbudgeted and unaffordable expense put on their community. That should never occur again in any development area. He said that voluntary, good faith efforts and oral representations, etc., simply do not work. At the last approval for Hollymead Towncenter in 2007 it was discussed that some financial remediation would be provided to Forest Lakes. This Board chose not to act on that expecting that the oral representations of the developer's representative would be adequate. Mr. Rooker said at that time that the developer was a "man of his word." He never met with the Community Association and does not answer telephone calls or e-mails, and no money has ever been forthcoming. The ownership of those properties has changed, so he recognizes that was something said in the past. However, it is a great example of what can happen if you live downstream and there are inadequate controls and not the best BMPs in place.

Mr. Jay Willar, Executive Vice President of the Blue Ridge Homebuilders' Association addressed the Board. He noted that most of the pending changes are useful and merit support. It is not BRHA's intent to block increased erosion controls - everyone benefits from those efforts. Their concern, which has been discussed frequently, is the provision requiring a nine-month timeline to install permanent vegetation for every future project regardless of that project's complexity or start date. While some things have to occur sequentially between start-up and vegetation, some are within the developer's control, and some are not. Some are flexible, but some can only be modified at significant cost. Factors builders have no control over are weather and temperature - key factors in successful efforts to establish vegetative cover. In his presentation Mr. Graham said that perhaps 30 to 40 percent of all projects are under permanent cover by the end of nine months. However, all projects could not be completed in that same timeframe. They are concerned that for large projects which contain density and mixed use the nine-month timeline may not be practicable, or it would require the project to be cut into multiple smaller phases adding to the cost and the neighborhood disturbance.

Mr. Willar said several references have been made to Biscuit Run having proffered that nine-month period. He said that is a proffer at this time, not a proven accomplishment. It may well be that although Biscuit Run proffered this, once the development is underway, there will be a lot of requests for waivers and other changes. The costs are important to builders. In this market, they have clearly learned the importance of costs and the inaccuracy of the hope that the market will absorb them. Future buyers are tenants with super choices elsewhere and will take those options first. It is a question of where the County wants developers to build and the cost of building those, and if they can be built in cost-effective ways that will make them successful projects. He said there is also complexity for the County; it was discussed in the staff's report. Projects driven by planning cycles are a problem for developers, but could also create an uneven workload for County staff. He said they want some flexibility in erosion control which is also adaptable to the complexity and details of the specific project, not a "one size fits all" approach. Although there are waiver provisions in the current proposal, they only come into play at the

end of the timeline and approval, even for an administrative waiver, is always uncertain. They could also potentially involve more staff and Board time. He asked that these things be considered, along with the e-mail sent to the members several weeks ago, and the comments about ways that could still amend what is on the table tonight to make it more workable.

Mr. David Mitchell said he is a contractor. He said getting a job done in a nine-month period would be challenging, and based on Mr. Graham's analysis 60 to 70 percent would have to get a waiver, because only 30 to 40 percent get vegetation in nine months. He knows that a lot of those requests will have to come before this Board for political reasons, and he understands that the Board has to answer to those people. However, having an engineering and construction decision made by a political body is cumbersome and is not fair to the realities of what goes on in the real world. He thinks the Board will be inundated with requests. The County's engineering staff should have more leeway in assessing the complexity of a project. He noted that the Harris Teeter site in Crozet has taken 15 months for a six-acre site because of the massive infrastructure underneath that site and the huge 20-foot retaining walls that had to be erected to hold the dirt back before they could even start to build. Developers have to deal with that type of topography in Albemarle. Simply "slapping down" a nine-month time period is shortsighted and won't benefit the Board or the community in general. He said if the Board arbitrarily sets a completion time in nine months that will dictate certain start times. That will concentrate start times with a limited number of site contractors available, and cause problems as well. He said the two growing season issue is important to allowing the flexibility in starting and stopping a project.

Mr. Neil Williamson of the Free Enterprise Forum said that much of the mass grading that occurs on site is dictated by the rules of Albemarle County and VDOT. He commended Mr. Morgan Butler and the group assembled for their work on this ordinance. He said he is not that well versed on this subject, but he does find out bits and pieces of things in his job. One interesting thing he pulled from the EPA with regard to stormwater BMPs was a discussion of the effectiveness of seeding. In terms of the administrative waiver, if they are looking at two growing seasons, would the addition of the words "up to six months" instead of a mandated three-month extension be of some help in placing this in a position to be a sustainable operation. The permanent vegetation needs to survive, not just be installed and then re-installed. He asked if that one element might be considered. Mr. Davis pointed out that the current draft for the administrative waiver says "up to three additional months."

With no one else from the public rising to speak, Mr. Slutzky closed the public hearing and placed the matter before the Boards.

Ms. Thomas said he is suggesting up to six months. Mr. Davis said it could be six months just as it is now three months.

Mr. Rooker asked Mr. Graham to comment on the two growing season issue and whether a change to "up to six months" would make a difference in terms of the ability to get permanent vegetation in place. Mr. Graham said the three-month stipulation came from the Biscuit Run proffers, but six months would provide more flexibility.

Ms. Thomas said the ordinance does not mention the possibility of temporary vegetation so should it be included as part of a waiver arrangement. Mr. Davis said the ordinance allows the administrator to impose conditions, so it could be a condition of the waiver.

Ms. Mallek asked if as part of normal procedures temporary cover could be put on the large bare spots the developer would have to come back to in six months for installation of permanent vegetation. She said the Airport project where the State highway was moved and they graded huge numbers of acres was very successful. They kept going back and reseeding even if for only six weeks at a time. Mr. Graham said he would argue that even under current State regulations, temporary stabilization would have to be required – an area cannot be denuded for that long. Temporary stabilization would be required even if the permit were to be foregone.

Mr. Dorrier asked if there is a better way to time construction projects so the actual replanting of the grass would not be such a problem. Mr. Graham said in its guidance DCR speaks about minimizing grading of larger critical areas during seasons of maximum erosion potential such as during the spring thaw and thunderstorm periods. People have always known that timing of construction projects is an important factor. That has not been addressed in this ordinance, instead flexibility has been provided. He commented that the peak growing season for grass has been in the fall, but during the last few years fall has been incredibly dry, and because of that, plantings have failed.

Mr. Slutzky said it does not sound as though Mr. Graham would be worried about adding three additional months to staff's discretion. Mr. Graham said he thinks that is something staff can work with.

Mr. Slutzky said he had suggested that when someone requests a rezoning they be allowed to give a proffer at the front end of that rezoning request. Mr. Davis replied that of the three waiver findings the Board has to make the first two could be done prospectively. On Page 4 of the ordinance, Paragraph B.3 at the top of the page could be amended to say "The owner has plans to effectively control or has effectively controlled ...." That could also be met prospectively, so if someone wanted to apply for an application before they started land-disturbing activities, they could do so.

Ms. Thomas said that assumes staff can look at plans and say they are adequate. That is a big judgment difference from saying an owner has effectively "controlled" erosion. She does not know how comfortable staff would feel about looking at a plan and saying the plan is good enough to allow the soil

to be raw for 15 months. Mr. Graham said obviously that would require a judgment call. He thinks staff could provide the Board some advice on that, but there will be some difficult decisions for the Board to deal with early because some of it will get into balancing cost issues.

Mr. Slutzky said a developer might say an extension was needed for some technical reasons, but would say he is willing to put in a more permanent type of grass for a certain area. There could be a tradeoff there that would make it plausible for staff to allow an extension that would still provide adequate stream protection. Mr. Graham said an example of that would be for the developer to agree to sod an area rather than relying on seeding.

Mr. Boyd asked for clarification as to what the language already allows. Mr. Davis said that under III of the "Findings" section where it says "... the owner has effectively controlled erosion ...." it would need to be amended to say "... the owner has plans to effectively control or has effectively controlled."

Ms. Thomas said there is no time limit to the waiver the Board of Supervisors grants. If it is going to be done prospectively, should there be a time limit set on it. Mr. Graham replied that staff is going to provide an opinion to the Board as to whether the applicant appears to have an effective plan and whether they have done what they can to minimize the time of disturbance.

Mr. Boyd said the proposed ordinance gives the Board the authority to make that determination where it does not have that authority now.

Ms. Mallek asked about checking at intervals so it is not left to the inspectors to check. Mr. Graham said the ordinance clearly allows the Board to establish reasonable conditions to assure that the plan and the permit are being effectively managed.

Mr. Slutzky said he is comfortable with this ordinance, with the caveat that language be added to accommodate being able to prospectively make changes subject to staff or Board discretion, and that staff discretion would be extended from a three to a six-month period because of the planting season issue. Those are the only changes he would make; this is a terrific step forward.

Mr. Boyd said he can go along with that if the nine-month standard becomes the standard. He does not want the waiver to become the standard.

Mr. Rooker said there was a comment about the percentage of plans that are closed today in a nine-month period of time, but today there is no standard or requirement to close sites in any particular period of time. He would expect there would be more plans to close within nine months because there will be a requirement in place.

Mr. Slutzky said that clearly that will be the case for the small plans. As the gentlemen who spoke earlier said there are some plans that have unique circumstances attached. He asked if there is a consensus of support for going forward with this ordinance as written with a few minor tweaks.

Mr. Rooker then **moved** for approval of ZTA-2009-002 with the changes just discussed – a change of "up to six months" and the change in III as stipulated by Mr. Davis (on page 4 of the ordinance under Section 17-207B.3.a is the change to six months, and under Section 207B.3.b the change would allow the waiver with a finding that plans effectively control as an added criteria).

Ms. Mallek **seconded** the motion.

Mr. Dorrier asked if the appeal is to the Board.

Mr. Slutzky said that appeal is a request for a waiver.

Mr. Rooker said an administrative waiver can be received first and if it goes beyond that the developer can come to the Board for a waiver.

Ms. Thomas said she is not comfortable with just allowing the owner to plan to have an effective control which opens it up to an unlimited in time waiver. She asked if staff is comfortable with that.

Mr. Slutzky said it is not an unlimited waiver.

Ms. Thomas said there is no time limit to the Board of Supervisor's waiver. The Board is saying that waiver can be granted to an owner who shows to staff that they "effectively plan to" – it is an unlimited waiver granted for simply having good plans.

Ms. Mallek asked if Ms. Thomas wanted it to say "up to an additional time period."

Mr. Slutzky said that is at the discretion of the Board of Supervisors. Mr. Davis said the Board has explicit authority to impose reasonable conditions so to address Ms. Thomas' concern a time limit would have to be imposed.

Mr. Slutzky said they would need to demonstrate during the period of the performance that the interim measures had been met to the satisfaction of staff as a condition.

Mr. Boyd said there would be a time limit established at the time that was granted.

Ms. Thomas said none of that is in the ordinance.

Mr. Slutzky said if the Board did nothing but approve the waiver, it has the discretion to do that.

Ms. Thomas said the Board only does that after the owner has been effectively controlling the erosion during the land-disturbing activity, so he has proven that he can effectively control erosion. He does not just have plans to do it, but has effectively done it.

Mr. Slutzky said the Board or staff could put in a condition for example for intermediate steps that have to be demonstrated to their satisfaction for that waiver to be allowed to continue in effect. Mr. Davis said if the Board wants to address this concern, in the last sentence of Paragraph B.3.b where it now says "... in granting an extension, the Board may impose reasonable conditions ...." it could be changed to say "... in granting an extension the Board shall set a time limit and may impose other reasonable conditions."

Ms. Mallek asked if a set number of months should be included in the language.

Mr. Boyd said he does not agree with that suggestion. He wants the Board to have the latitude to address the circumstances involved.

Mr. Rooker asked if Ms. Thomas was comfortable with that suggestion.

Ms. Thomas said "just marginally."

Mr. Slutzky said that sounds like a consensus.

Mr. Rooker said he would include the change just discussed in Paragraph 17-207B.3.b in his **motion**.

Ms. Mallek said it would set a time limit and impose other conditions. Mr. Davis said it would now read "In granting an extension the Board shall set a time limit and may impose other reasonable conditions." Ms. Mallek said she would **second** that change to the motion as well.

Ms. Thomas said the first time there is a blow out of erosion if there are a lot of complaints staff will have to say "his plans looked really good."

Mr. Slutzky said that is true now. During the nine-month period they could have a blow out; the County is not in a different situation. At a certain point, the County expects the developer to operate in good faith, and it expects them to use best management practices effectively. Unfortunately, sometimes that does not happen. He is not sure that truncating the time will change that fact.

Ms. Thomas said she understands the argument.

Mr. Slutzky asked for a vote at this time to adopt Ordinance No. 09-17(1), An Ordinance To Amend Chapter 17, Water Protection, of the Code of the County of Albemarle, Virginia, by amending Article II, Erosion and Sediment Control, and Article III, Stormwater Management and Water Quality, by amending Sec. 17-203, Erosion and sediment control plan; Sec. 17-204, Review and approval of erosion and sediment control plan; Sec. 17-207, Issuance of permit, surety; Sec. 17-304 Review and approval of stormwater management/BMP plan; Sec. 17-306 Issuance of permit, surety, as amended during the above conversation, all as set out in full below.

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

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

ORDINANCE NO. 09-17(1)

AN ORDINANCE TO AMEND CHAPTER 17, WATER PROTECTION, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA, BY AMENDING ARTICLE II, EROSION AND SEDIMENT CONTROL, AND ARTICLE III, STORMWATER MANAGEMENT AND WATER QUALITY

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 17, Water Protection, Article II, Erosion and Sediment Control, and Article III, Stormwater Management and Water Quality, are amended and reordained as follows:

By Amending:

Sec. 17-203	Erosion and sediment control plan
Sec. 17-204	Review and approval of erosion and sediment control plan
Sec. 17-207	Issuance of permit; surety
Sec. 17-304	Review and approval of stormwater management/BMP plan
Sec. 17-306	Issuance of permit; surety

Chapter 17. Water Protection

Article II. Erosion and Sediment Control

Sec. 17-203 Erosion and sediment control plan.

Except as provided in section 17-205, each owner subject to this article shall submit to the program authority for review and approval an erosion and sediment control plan as provided herein:

A. The owner shall submit a completed application on an application form provided by the program authority, the fee required by section 17-209, an erosion and sediment control plan that satisfies the requirements of paragraphs (B) and (C), and a certification stating that all requirements of the approved plan will be complied with.

B. The plan shall include specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the program authority shall deem reasonably adequate, considering the nature and extent of the proposed land disturbing activity, and a statement describing the maintenance responsibilities of the owner to assure that the land disturbing activity will satisfy the purposes and requirements of this article. The plan shall be in accordance with the applicable provisions of the handbook, including the criteria, techniques and methods set forth in 4 VAC 50-30-40. The plan shall identify the person holding a certificate of competence, as described in Virginia Code § 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.

C. The program authority may require additional information as may be necessary for a complete review of the plan.

D. In lieu of paragraphs (A), (B) and (C), if the land disturbing activity involves land also under the jurisdiction of another local erosion and sediment control program, the owner may, at his option, choose to have a conservation plan approved by the Virginia Department of Conservation and Recreation, Division of Soil and Water Conservation Board. The owner shall notify the program authority of such plan approval by such board.

E. If land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of a plan shall be the responsibility of the owner.

(§ 19.3-11, 2-11-98; § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-87, 12-11-91, 3-18-92; Code 1988, §§ 7-3, 7-4, 19.3-11; Ord. 98-A(1), 8-5-98; Ord. 01-17(1), 7-11-01; Ord. 09-17(1), 8-5-09)

State law reference--Va. Code § 10.1-563.

Sec. 17-204 Review and approval of erosion and sediment control plan.

Each erosion and sediment control plan submitted pursuant to this article shall be reviewed and approved as provided herein:

A. The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 17-203 and all other requirements of this article.

B. During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and shall inform the owner in writing of any modifications, terms, or conditions required to be included in the plan in order for it to be approved. The program authority may also consider and act on a variance request under the following criteria: (i) the owner shall explain in writing the reasons for requesting the variance; and (ii) the variance may be approved if the program authority determines that the approved plan, with the variance and any associated conditions of approval, would protect off-site properties and resources from damage to the same extent or better than if the variance was not granted.

C. Except as provided in paragraph (E), the program authority shall approve or disapprove a plan in writing within forty-five (45) days from the date the complete application was received by the program authority. The decision of the program authority shall be based on the plan's compliance with the requirements of this article. The decision shall be in writing and shall be served by first class mail to the address provided by the owner in the application for approval of the plan or by personal delivery to the owner. The date of the decision shall be either the date that it is deposited for mailing or the date that it is personally delivered to the owner. If the plan is disapproved, the reasons for disapproval shall be stated in the writing.

D. If the program authority fails to act on the plan within forty-five (45) days from the date the application was received by the program authority, the plan shall be deemed approved.

E. If the owner is required to obtain approval of a site plan or plat, the program authority shall not approve an erosion and sediment control plan unless and until the site plan or plat is approved as provided by law. For purposes of this paragraph, a site plan or plat may be

deemed approved by the program authority if its approval is conditioned upon the approval of an erosion and sediment control plan pursuant to this article, and the program authority determines that review and approval of the erosion and sediment control plan will not affect approval of the site plan or plat. The program authority may approve an erosion and sediment control plan prior to approval of a required site plan or plat in the following circumstances:

1. to correct any existing erosion or other condition conducive to excessive sedimentation which is occasioned by any violation of this chapter or by accident, act of God or other cause beyond the control of the owner; provided, that the activity proposed shall be strictly limited to the correction of such condition;

2. to clear and grub stumps and other activity directly related to the selective cutting of trees, as permitted by law;

3. to install underground public utility mains, interceptors, transmission lines and trunk lines for which plans have been previously approved by the operating utility and approved by the county as being substantially in accord with the comprehensive plan, if necessary;

4. to fill earth with spoils obtained from grading, excavation or other lawful earth disturbing activity;

5. to clear, grade, fill or engage in similar related activity for the temporary storage of earth, equipment and materials, and to construct temporary access roads; provided, that in each case, the area disturbed shall be returned to substantially its previous condition, with no significant change in surface contours. The return to previous condition shall occur within thirty (30) days of the completion of the activity or temporary use, or within thirteen (13) months of the commencement of any land disturbing activity on the land which is related to the activity, whichever period shall be shorter; or

6. to establish borrow, fill or waste areas in accordance with sections 5.1.28 and 10.2.1.18 of the zoning ordinance.

F. An application for an erosion and sediment control plan that requires modifications, terms, or conditions to be included in order for it to be approved shall be deemed to be withdrawn if the owner fails to submit a revised plan addressing the omitted modifications, terms or conditions within six (6) months after the owner is informed of the omitted information as provided under paragraph (B).

G. An approved erosion and sediment control plan shall be void if the owner fails to obtain a grading, building or other permit for activities involving land disturbing activities within one (1) year after the date of the approval.

(§ 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-12, 2-11-98; Code 1988, §§ 7-5, 19.3-12; Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08; Ord. 09-17(1), 8-5-09)

State law reference--Va. Code § 10.1-563.

Sec. 17-207 Issuance of permit; surety.

A grading, building or other permit for activities involving land disturbing activities may be issued by a permit-issuing department only as provided herein:

A. The owner shall submit with his application for such permit an erosion and sediment control plan, submitted for review and approval pursuant to this article, or an approved and valid erosion and sediment control plan and certification that the plan will be followed. The permit-issuing department shall not issue a permit until an approved and valid erosion and sediment control plan and certification are submitted.

B. Each permit shall also be subject to the following:

1. The permitted land disturbing activity shall be deemed to have commenced on the date the permit was issued, provided that the program authority may establish another date of commencement based on documentation submitted by the owner that clearly demonstrates that the land disturbing activity commenced on that date.

2. Permanent vegetation shall be installed on all denuded areas within nine (9) months after the date the land disturbing activity commenced, except for areas that the program authority finds are necessary parts of the construction that are subject to an active building permit and areas where erosion is prevented by a non-erosive surface. For the purposes of this section, a “non-erosive surface” includes, but is not limited to, roadways and sidewalks covered by gravel, asphalt pavement, or concrete; trails or paths covered by gravel, stone dust, or mulch; buildings and other permanent structures; and such other surfaces that the program authority determines would adequately provide a permanent barrier to erosion.

3. The time limit for installing permanent vegetation as required by paragraph (B)(2) may be extended by either the program authority or the board of supervisors, or both, as follows:

a. The program authority may extend the time limit for installing permanent vegetation up to an additional six (6) months, provided the owner submits a written request to the program authority no less than one (1) month prior to the deadline for installing the permanent vegetation. The program authority may grant the extension if it finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has effectively controlled erosion and sedimentation on the property during the land disturbing activity. In granting an extension, the program authority may impose reasonable conditions.

b. The board of supervisors may extend the time limit for installing permanent vegetation for duration it determines to be appropriate, provided the owner submits a written request to the clerk of the board of supervisors no less than two (2) months prior to the deadline for installing the permanent vegetation. The program authority shall provide its opinion to the board as to the condition of the property with respect to compliance with this chapter and an estimate of the minimum time needed to complete grading and install permanent vegetation for the land disturbance covered by this permit. The board may grant the extension if it finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has plans to effectively control or has effectively controlled erosion and sedimentation on the property during the land disturbing activity. In granting an extension, the board shall set a time limit and may impose other reasonable conditions.

4. An application to amend the erosion and sediment control plan shall not extend the time limit for installing permanent vegetation authorized by paragraph (B)(3).

5. The installation of permanent vegetation required by paragraph (B)(2) shall be required only for those land disturbing activities that are subject to an erosion and sediment control plan approved on or after September 5, 2009, or an erosion and sediment control plan that was approved prior to that date but was renewed on or after September 5, 2009.

C. Prior to the issuance of such permit, the permit-issuing department shall require, or in the case of an agreement in lieu of a plan may require, the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the permit-issuing department and the county attorney, to ensure that measures could be taken by the permit-issuing department or the program authority at the owner's expense should he fail, after proper notice as provided in section 17-213, to take timely corrective action specified in the notice.

D. A bond or other surety required by the permit-issuing department pursuant to paragraph (C) shall not exceed the total of the estimated cost to initiate, maintain and repair all erosion and sediment control structures and systems, and to comply with all other terms and conditions of the erosion and sediment control plan. The amount of the bond or other surety shall be based on unit price for new public or private sector construction, including architectural engineering, inspection and project management expenses, in Albemarle County, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed ten (10) percent of the estimated cost to initiate, maintain and repair all erosion and sediment control structures and systems, and to comply with all other terms and conditions, of the erosion and sediment control plan.

E. If the program authority is required to take corrective action pursuant to section 17-213, upon the failure of the owner to do so, the county may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.

F. Within sixty (60) days of achieving adequate stabilization of the land disturbing activity in any project or section thereof, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner or terminated based upon the percentage of stabilization accomplished in the project or section thereof.

G. If a bond or other surety is provided under paragraph (D) and the erosion and sediment control plan expires before the permit is issued, the permit-issuing department shall return the bond or other surety to the owner.
(§ 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-15, 2-11-98; Code 1988, §§ 7-5, 19.3-15; Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09)

State law reference--Va. Code § 10.1-565.

Article III. Stormwater Management and Water Quality

Sec. 17-304 Review and approval of stormwater management/BMP plan.

Each stormwater management/BMP plan submitted pursuant to this article shall be reviewed and approved as provided herein:

A. Within ten (10) days from the receipt of an application, the program authority shall conduct a preliminary review of the application for completeness. During this period, the program authority shall either accept the application for review, which will begin the forty-five (45) day review period set forth in paragraph (D), or reject the application for incompleteness. If the program authority rejects the application because it is incomplete, it shall inform the owner in writing of the information necessary to complete the application. If the program authority accepts the application for review, it shall send an acknowledgment of the acceptance of the application to the owner.

B. The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 17-303 and all other requirements of this article.

C. During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.

D. The program authority shall approve or disapprove a plan within sixty (60) days from the date the application was accepted for review; provided that the program authority shall act on any plan that was previously approved within forty-five (45) days after the plan was revised, resubmitted to the program authority, and accepted for review. The decision of the program authority shall be based on the plan's compliance with this article. The decision shall be in writing and shall be served by first class mail to the address provided by the owner in the application for approval of the plan or by personal delivery to the owner. The date of the decision shall be either the date that it is deposited for mailing or the date that it is personally delivered to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.

E. Each stormwater management/BMP plan approved by the program authority shall be subject to the following:

1. The owner shall comply with all applicable requirements of the approved plan, this article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the state stormwater management regulations set forth in 4 VAC 50-60-10 et seq.;

2. The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;

3. Land development shall be conducted only within the area specified in the approved plan;

4. The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (E)(2);

5. The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 17-323;

6. The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 17-324; and

7. The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.

F. Nothing in this section shall require approval of a plan or part thereof that is determined by the program authority to pose a danger to the public health, safety, or general welfare or to deviate from sound engineering practices.

(§ 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; § 19.3-28, 2-11-98; Code 1988, §§ 19.1-7, 19.1-8, 19.3-28; Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09)

State law reference--Va. Code §§ 10.1-603.2, 10.1-603.8.

Sec. 17-306 Issuance of permit; surety.

A grading, building or other permit for activities involving land development may be issued by a permit-issuing department only as provided herein:

A. The owner shall submit with his application for such permit an approved stormwater management/BMP plan and certification by the owner that all land clearing,

construction, land development and drainage will be done according to the approved plan. The permit-issuing department shall not issue a permit until an approved stormwater management/BMP plan and certification are submitted.

B. Prior to the issuance of any such permit, the permit-issuing department shall require the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the permit-issuing department and the county attorney, to ensure that measures could be taken by the permit-issuing department or the program authority at the owner's expense should he fail, after proper notice as provided in section 17-325, to take timely corrective action specified in the notice. The performance bond or other surety shall be provided from a date prior to the issuance of any permit by the permit issuing department until sixty (60) days after the requirements of the approved stormwater management/BMP plan have been completed, as determined by the program authority. If approved by the program authority and the county attorney, the owner may submit the performance bond or other surety as part of, or included in, any performance bond or surety required in conjunction with a site plan, plat, or the performance bond or surety required by section 17-207.

C. A performance bond or other surety required by the permit-issuing department pursuant to paragraph (B) shall not exceed the total of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan as a result of the land development. The amount of the bond or other surety shall be based on unit price for new public or private sector construction, including architectural engineering, inspection and project management expenses, in Albemarle County, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed ten (10) percent of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan.

D. If the program authority is required to take corrective action pursuant to section 17-325 upon the failure of the owner to do so, the county may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.

E. Within sixty (60) days of the completion of the requirements of the approved stormwater management/BMP plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this article shall be assured by a maintenance agreement entered into by and between the owner and the program authority, which agreement shall be in a form approved by the county attorney.

F. If a bond or other surety is provided under paragraph (B) and the stormwater management/BMP plan expires before the permit is issued, the permit-issuing department shall return the bond or other surety to the owner.

(§ 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-30, 2-11-98; Code 1988, §§ 19.1-7, 19.3-30; Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09)

State law reference--Va. Code § 10.1-603.8.

This ordinance shall be effective on and after September 5, 2009.

Agenda Item No. 15. **Public Hearing**: Ordinance to amend Chapter 9, Motor Vehicles and Traffic, of the Albemarle County Code. The ordinance would establish a traffic signal enforcement program and authorize the installation of traffic light signal violation monitoring systems. *(Notice of this public hearing was advertised in the Daily Progress on July 20 and July 27, 2009.)*

Police Chief John Miller made a PowerPoint presentation. He said this proposed amendment addresses use of photo-red technology to monitor and enforce red light violations 24 hours a day. It is an alternative to staffing issues for law enforcement agencies throughout the country. It provides more coverage than police agencies could render at intersections. The goal of this program is to help reduce traffic accidents and change the behavior of drivers through voluntary compliance. He said that seven years ago some of the agencies in Virginia had authority to conduct pilot programs on the photo-red technology. He looked at two of those programs several years ago - the City of Alexandria and the Town of Vienna – and both were very successful before they were stopped. They reduced the number of accidents within intersections, as well as other violations.

Chief Miller said that his department's goals for the program are the reduction of red light violations and the reduction of personal injury accidents. Some intersections are hard to enforce and this technology offers an alternative way to do it and is an effective use of manpower. In a survey in 2008 there were 90 summonses issued for red-light violations just at the Rio Road/Route 29 intersection; this year in just a 12-hour period on June 29 there were 121 violations. That intersection is one of the largest in terms of size and presents a unique problem for the department. Over the last three years there have been over 185 accidents at that location (with 37 injuries). But, in enforcement, Rio Road and Route 29

present a problem. Even if an officer observes a violation and is behind that violator, it is dangerous for him to go into that intersection, follow, pursue and overtake that car.

Chief Miller explained how the system works. First, three still pictures are taken. One is when the violator is at the break bar, the second is when the car goes into the intersection and at the same time there is a video which covers the last six seconds of the vehicle's movement. When information is received from the vendor of what appears to be a violation, the officer has three still pictures of the violation, and the officer can see what the car was doing. It is just like having an officer sitting in a car at that intersection.

Mr. Rooker said a lot of people have sent e-mails to the Board members, and most of their concerns have been dealt with by Chief Miller today and most are covered by the statute. One question people raised is whether a person for pulling into the intersection and traffic backs up and they can't get through the intersection before the light turns red would be ticketed. Chief Miller said that will not happen with this system – the officer has not only the still photos but the video to use in determining whether the vehicle is in the intersection after the light turns red.

Mr. Slutzky asked if the definition of entering the intersection is crossing that thick, white marker. Chief Miller said it is called a break bar.

Mr. Slutzky asked if a car had gone only slightly across that bar and the light turned red, would the car be considered to be in the intersection during that half a second delay. Chief Miller said there is a delay on the activation in the sensor of .5 seconds. Those people past that stop bar, no matter what part of the vehicle is past it, are okay.

Mr. Dorrier said at Rio Road the turn arrows are so quick to turn from green to red that only two cars can get turned before the change. Going east on Rio Road, you cannot turn left to go north without the light turning on you automatically. Chief Miller said it depends on what the first vehicle in line does. Timing of the light is up to VDOT.

Mr. Slutzky said he lives in that area and cars can always get through the second light. That is not a County issue; it is a VDOT issue. They set up the sequencing; it varies at different times of the day.

Mr. Rooker said the fact that the light is too short does not give people the right to run a red light. Chief Miller said stacking will not automatically get a driver a violation, because an officer would be able to tell from the video whether a car entered the intersection after the light turned.

Mr. Boyd asked how cars turning right on red would be handled. Chief Miller responded that as a car approaches a red light it must come to a complete stop. Officers are aware that at some intersections cars creep up to the light to merge, but as long as a car stops first and then creeps up to the intersection and waits for its time to go, it is not a violation.

Mr. Boyd asked if a car would be caught on the camera doing that. Chief Miller said the camera catches those cars that do not stop at all.

Mr. Boyd asked if the car came to a complete stop and then went on, they would get caught by the camera, but the officer would be able to see that the car had stopped. Chief Miller said that was true.

Mr. Slutzky said at a tight intersection with a short window like that at Rio Road, drivers tend to get trained to run the light because they know that only two cars will get through. If people know they will get caught because this red-light system is in place at that intersection, he thinks it will have a chilling effect on their behavior. Chief Miller said when the pilot programs were over in Alexandria and Vienna, law enforcement personnel saw the results and were strong supporters of this technology. It is almost the only way at certain intersection to enforce violations.

Ms. Mallek said she has received calls from some people who got a ticket from New York and they had never been there. It was a mistake, but it doesn't sound like those processes were as thorough with the number of pictures as what Chief Miller has presented. Chief Miller said that is a good point. He said if the vendor (the people that are contracted with) believes there is a violation, the photos are sent to the department. A police officer goes through those photos and if he feels there is a violation, a summons is issued to the driver of that vehicle. If they feel it is not a violation, they tell the vendor that and they must destroy the video within a certain amount of time. As soon as the case is adjudicated, they also have to destroy all evidence they are holding.

Mr. Slutzky said many years ago when these systems were first starting, he got a letter in the mail (he lived in Illinois at the time) telling him to send a check for a violation that had occurred only six hours before. It was easy for him to say neither he nor his car had been in that town. He got a letter back saying they had reviewed the file and it was an error. Chief Miller pointed out that when a summons is sent, they also send the still pictures and a link to the video of the violator's car. Mr. Davis said the statute and the ordinance both provide that if the person who is issued the summons files an affidavit, it's not pursued.

Mr. Rooker said a lot of people felt they might get the wrong license plate, but that person could review the pictures, and an affidavit eliminates the ticket. Chief Miller added that there is the appeals

process. Also, an interview can be set up with the officer who reviewed everything, and they do not have to go to court.

Mr. Dorrier asked how many points the violator gets on his license. Chief said there are no points for this violation.

With no further questions for staff, Mr. Slutzky opened the public hearing. He said there were four names on the sign up list and he has a note from a Ms. Chase asking that her strong support for this program be acknowledged. She was present at 9:30 a.m. but she had to leave; and, Ms. Lee Condor who lives near Rio Road and Route 29 also had to leave early but sent her opposition to the ordinance.

Mr. Steve Yelton said he opposes the ordinance for three reasons. He said many studies indicate that these traffic cameras actually increase accidents because of drivers attempting to abruptly stop at red-light camera intersections. He quoted from a University of South Florida report that states "Red-light cameras increase crashes and costs. Rather than improving motor safety, red light cameras significantly increase crashes and are a ticket to higher auto insurance premiums. The effective red-light running system uses engineering solutions to improve intersection safety." He reported that a study by the Australian Road Research Board found that "The results of this study suggest that the installation of the red-light cameras at these sites did not provide any reduction in accidents, rather there have been increases in rear-end and adjacent approaches accidents on a before and after basis and also by comparison with the changes in accidents at intersection signals." He noted that the Virginia Transportation Research Council said "After cameras are installed, rear-end crashes increased for the entire six-jurisdiction area after controlling for time and traffic volume at each intersection, rear-end crashes increased by an average of 27 percent for the entire study area." He said it goes on and on, but he thinks that gives the gist of the argument. The second reason he is in opposition is that it does not address the issue of inattentive driving, which is the root cause of most accidents. He would propose a much better solution for the County to consider is the banning of cell phones while driving. This would make all intersections safer and dramatically reduce all accidents. His third reason is that realistically this ordinance does not apply to out-of-state drivers, because the cost of summons would far outweigh the $50 fine. Once again the out-of-staters are getting a free ride.

Mr. Edward Strauss said in listening to the conversation today, he keeps hearing the word "safety." If Route 29 is really to be made safe, build a bypass. He said the proven method to make roads safer is to take vehicles off of them. This is just a revenue bill. There's no funding mechanism mentioned in the Executive Summary. It supposes the tickets could pay for the plan. If it doesn't, will money be taken from the schools to pay for it? He said people will be scared at intersections that they will be hit from people behind their car, and people will decide not to pay for the ticket. He said the citizens get penalized by creeping across the line, and penalized if they obey the law. Somebody has to pay for this. There are a lot of companies who are not going to do this work for nothing. This is a small, rural area and three camera locations are requested. He said he had handed to the Board members a copy of a 2007 report sponsored by the Virginia Department of Transportation and the Federal Highway Administration which was conduced by the Virginia Transportation Research Council. It documents where rear-end crashes increased from 27 to 42 percent depending on the statistical method used. He said the State has control over the timing of the lights; the County has no control over that. Will the timing be set back or moved forward? He is asking that the Board not put another burden on the citizens.

Mr. Dennis Gruchon said he is in favor of the photo-red system.

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

Mr. Slutzky said he had a couple of follow-up questions. He asked for confirmation that the Board did not have the enabling authority from the General Assembly to ban the use of cell phones in the County while driving. Mr. Davis said that is correct. The last General Assembly banned the use of text messaging by the driver as a secondary offense, but did not go so far as to ban cell-phone usage.

Mr. Slutzky asked if there is a student driving a car with an out-of-state license, does the department try to see if they have a local address. Chief Miller said they would try and seek voluntary compliance.

Ms. Thomas said the report from the Virginia Transportation Research Council suggests that decisions be made on an intersection-by-intersection basis. She thinks the Rio Road intersection is one where all would agree this is the only way to get enforcement. It also suggests that localities implementing the red-light program determine how an increase in rear-end crashes can be avoided at specific intersections. She asked Chief Miller if there are plans to do that. Chief Miller replied that with the experience gained through the pilot programs, the Code has changed the signing requirements. A sign has to be 500 feet prior to the intersection; the signs are very large and noticeable. He does not think that Alexandria and Vienna had that problem.

Mr. Dorrier asked if this program is supposed to pay for itself. Chief Miller said it is a leased program and is based on violations, and if the amount of violations within an intersection doesn't cover the costs then the program would cease.

Mr. Dorrier asked if the time a person would be in the lane would be shortened to catch them. Chief Miller said the Police Department has no control over the timing of the lights.

Mr. Slutzky said the goal of the program is safety not generating revenue.

Mr. Dorrier asked about the costs. Chief Miller reported that each camera costs $4,500 per month and when they did the Rio/Route 29 survey it showed that there would need to be about three violations per day. He said that within that 12-hour period there were actually 121 violations. If that number were not met, there would be no cost to the County and the program would just be shut down. He said a real success would be a reduction in violations and accidents.

Mr. Rooker said the Board actually has the authority to put up nine of these cameras based on one per 10,000 of population. He thinks the police have done a good job at evaluating places where this might be a good idea and picking out the three that are heavily trafficked, where a lot of violations occur and which have a high accident rate. Mr. Davis said an individual intersection analysis is required that addresses those issues, plus an engineering study that says it can effectively be done at that intersection.

Mr. Rooker said the Board expects this program to pay for itself. If it finds out next year that it is not a good idea for any reason, it can be reevaluated and it can decide not to continue. He then offered **motion** to adopt Ordinance No. 09-9(1), An Ordinance to Amend Chapter 9, Motor Vehicles and Traffic, of the Code of the County of Albemarle, Virginia, by adding Article VII, Traffic Light Signal Monitoring Systems, Sec. 9-700 Definition, Sec. 9-701, Establishment and implementation, and Sec. 9-702 Traffic signal violations; penalty, as shown in Attachment A to the Executive Summary and set out in full below.

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

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

ORDINANCE NO. 09-9(1)

AN ORDINANCE TO AMEND CHAPTER 9, MOTOR VEHICLES AND TRAFFIC, 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 9, Motor Vehicles and Traffic, is hereby amended and reordained as follows:

By Adding:
Article VII Traffic Light Signal Monitoring Systems
Sec. 9-700 Definition
Sec. 9-701 Establishment and implementation
Sec. 9-702 Traffic signal violations; penalty

CHAPTER 9. MOTOR VEHICLES AND TRAFFIC

ARTICLE VII. TRAFFIC LIGHT SIGNAL MONITORING SYSTEMS

Sec. 9-700 Definition.

For the purposes of this article and, unless otherwise required by the context, “traffic light signal violation monitoring system” shall mean a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more micro-photographs, video, or other recorded images of each vehicle at the time it is used or operated in violation of Virginia Code §§46.2-833, 46.2-835, or 46.2-836. For each such vehicle, at least one recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection.

Sec. 9-701 Establishment and implementation.

A. *Establishment.* The county hereby establishes a traffic signal enforcement program pursuant to Virginia Code §15.2-968.1. The program shall include the installation and operation of traffic light signal violation monitoring systems in a number up to the maximum number permitted by state law. No traffic light signal violation monitoring system shall be operated for enforcement purposes at an intersection until all prerequisites required for such operation have been fulfilled.

B. *Implementation*. The county executive shall (i) have the authority to implement the provisions of this section, (ii) promulgate the rules and regulations necessary to administer the traffic signal enforcement program in compliance with all requirements of Virginia Code §15.2-968.1 and this article, and (iii) be responsible for the compliance of all aspects of the traffic signal enforcement program with applicable state law. The county shall annually certify compliance with Virginia Code §15.2-968.1 and make all records pertaining to such system available for inspection and audit by the Commonwealth Transportation Commissioner or the Commissioner of the Department of Motor Vehicles or his designee. In addition, the county shall evaluate the system on a monthly basis to ensure all cameras and traffic signals are functioning properly. Evaluation results shall be made available to the public.

C. *Private entities.* The county may enter into an agreement with a private entity to provide the traffic light signal violation monitoring system or equipment and all related support services, to include consulting, operations and administration. However, only a law-enforcement officer employed by the county may swear to or affirm the certificate required by Virginia Code §15.2-968.1(C). A private entity may not obtain records on behalf of the county regarding the registered owners of vehicles that fail to comply with traffic light signals.

D. *Restricted uses of information; penalty.*

1. Information collected by a traffic light signal violation monitoring system installed and operated pursuant to this article shall be limited exclusively to that information that is necessary for the enforcement of traffic light violations. Notwithstanding any other provision of law, all photographs, microphotographs, electronic images, or other personal information collected by a traffic light signal violation monitoring system shall be used exclusively for enforcing traffic light violations and shall not (i) be open to the public; (ii) be sold or used for sales, solicitation, or marketing purposes; (iii) be disclosed to any other entity except as may be necessary for the enforcement of a traffic light violation or to a vehicle owner or operator as part of a challenge to the violation; or (iv) be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of Virginia Code §§46.2-833, 46.2-835, or 46.2-836 or requested upon order from a court of competent jurisdiction.

2. Information collected under this section pertaining to a specific violation shall be purged and not retained later than 60 days after the collection of any civil penalties. If the county does not execute a summons for a violation of this section within 10 business days, all information collected pertaining to that suspected violation shall be purged within two business days.

3. Any person who discloses personal information in violation of the provisions of this section shall be subject to a civil penalty of $1,000.

Sec. 9-702 Traffic signal violations; penalty.

A. *Monetary penalty.* The operator of a vehicle shall be liable for a monetary penalty of fifty dollars ($50.00) imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

B. *Evidence of violation.* Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a law-enforcement officer employed by the county authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

C. *Summons.* Summonses for traffic light signal violations under this article shall be executed by first-class mail and accompanied by a written notice in accordance with Virginia Code §15.2-968.1.

Agenda Item No. 16. **Work Session:** ZTA-2008-02. Planned Developments and Neighborhood Model District.

(**Note**: Due to time constraints, this item was moved to the afternoon portion of the meeting.)

Agenda Item No. 17. Closed Meeting.

At 2:05 p.m., **motion** was offered by Ms. Thomas that the Board go into a Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia, under Subsection (1) to consider appointments to boards, committees and commissions; under Subsection (7) to discuss the acquisition of real property necessary for a library; and, under Subsection (7) to discuss the acquisition of real property necessary for a public safety facility.

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

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

Agenda Item No. 18. Certify Closed Meeting.

At 3:14 p.m., the Board reconvened into open meeting. **Motion** was offered by Ms. Thomas to certify by a recorded vote that to the best of each Board member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed or considered in the closed meeting. The motion was **seconded** by Mr. Rooker. Roll was called, and the motion carried by the following recorded vote:

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

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Agenda Item No. 21. **Public Hearing**: SP-2008-0025, Earlysville Service Center.

Proposed: Special Use Permit to relocate an existing vehicular repair garage from the east side of an 11.833 acre parcel (zoned C-1 Commercial) to the west side of the subject parcel (zoned RA Rural Areas); the existing garage is currently located on the property would remain, but the garage use would be abandoned.
Zoning Category/General Usage: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); C-1 Commercial - retail sales and service uses; and residential use by special use permit (15 units/acre).
Section: 10.2.2 (37) Public Garage.
Comprehensive Plan Land Use/Density: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development density).
Entrance Corridor: No.
Location: West side of Earlysville Rd. (Rt. 743) approx. 775 ft. north of Reas Ford Rd. (Rt. 660).
Tax Map/Parcel: TMP 31-14.
Magisterial District: Rio.
(Notice of this public hearing was advertised in the Daily Progress on July 20 and July 27, 2009.)

Ms. Joan McDowell, Senior Planner, said this is a request for a special use permit for Earlysville Auto – located on Earlysville Road at Reas Ford Road, and there is an existing station on the property. She explained that the Comprehensive Plan showed Earlysville as one of 14 villages, and in 1977 the south side of Earlysville Road was in the Earlysville Village land use designation – later it was changed to rural area because of its location in the South Fork Rivanna River watershed. It is in the rural area land use designation at this time.

Ms. McDowell mentioned that earlier a portion of this property was rezoned to C-1, so the station is now in the C-1 is to move to the rural areas side of the property, subsequently the reason for needing a special use permit. She noted that the parcel is 11.8 acres, with two acres to be used for the special use permit area for the garage. It will have a 12-bay garage with 46 parking spaces, 12 employees, with hours of operation Monday through Friday from 8:00 a.m. to 6:00 p.m. She presented a visual depiction of the site and its proximity to other nearby dwellings. The parcel is all wooded and contains one dwelling.

Ms. McDowell said there were issues during the review. She said the existing garage has clearly outgrown its present site – there is random parking not only around the property but across the street as well. There is presently no waiting room or office; it only has limited storage and room for cars. The proposed site would give it landscaped buffers, provide some storage inside and the vehicles would all be worked on inside.

Ms. McDowell said the Planning Commission recommended approval of the special use permit with a change to Condition No. 2. It will read "A public garage used on the C-1 commercial district portion of this site would be permanently terminated upon the CO for the garage constructed under this special use permit." She said there is a minor change to the last condition regarding the five-year timeframe the applicant requested. The County Attorney's Office helped with the wording to change the approval to 60 months and if construction had not commenced in that time, the permit would be abandoned and the authority granted would be terminated. Mr. Davis clarified that a date certain is preferable rather than 60 months, so it would be August 5, 2014.

Ms. Thomas asked if the Board can say what will happen with that building or is it just the use in the building that is being discontinued. Ms. McDowell said it is the use in the building.

Mr. Rooker said under the current zoning on the property, what use could be made of the old building. Ms. McDowell replied that there had been discussion of storage, but the property owner might explain further. She said that under the C-1 zoning, it is whatever uses are currently allowed in that district.

Ms. Thomas asked if the County should require that the building be demolished.

Mr. Slutzky indicated that it is a historic building. Ms. McDowell noted that it is a very simple one-room building.

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

Mr. David Wyant addressed the Board on behalf of the applicant, Mr. White. He said the square footage is 5,000 square feet but they have added a shed to the back to store barrels of oil and for a place to put the old tires, etc. and that is not included in the 5,000 square feet. He talked with Ms. McDowell today about putting on a shed of not more than 500 square feet (a 10' x 50' across). He said they need hours of operation from 7:00 a.m. to 10:00 p.m. Monday through Friday, and on Saturday from 7:00 a.m. to 1:00 p.m. instead of those hours in the recommended conditions. He said the economy has hit this community, so the applicant is not sure when they can get construction started. They would like to have seven years until August 5, 2016, for completion of the project. This structure will be expensive to build; he said the applicant is satisfied with the other conditions.

Mr. Rooker asked if any neighbors would object to a change in hours of operation. The request is for a five-hour extension of working hours.

Mr. Slutzky said he is sensitive to that change, but will say that he has received 40 letters, phone calls or e-mails, and none of them have objected to this application.

Ms. Mallek said there has been a tremendous outpouring of support.

Ms. Thomas said the public did not know the proposed hours of operation would be from 7 p.m. to 10 p.m. She can understand them requesting some hours on Saturday as it is a good idea for the customer.

Mr. Slutzky said he is not worried that there will be anybody who will feel slighted by the fact that the Saturday hours were allowed at the end of this discussion and if there had been objections to this request, he might want to give them an opportunity to speak after proper notice, but everybody in this neighborhood seems to want this done.

Mr. Wyant said he has heard that throughout the community. He said everybody is positive. It will help as the cars are now parked all over Earlysville. The building will be hidden with the curved road and the cars will be parked in marked places, so it will be more orderly than the current garage.

Ms. Mallek said the woods between the building and the road will be basically unchanged, so there will not be the headlight problems, etc. that occur in the evening hours.

Mr. Rooker said extending the hours by five hours makes it a nighttime operation, but if no one thinks that will make a difference to the surrounding neighbors, then it is not a concern. Mr. Wyant pointed out that they are adding a buffer and the client will be taking the native trees in the area and using them rather than going out and purchasing trees. He said they have made some nice steps in how these plans have come together.

Ms. Mallek said it has been great to watch this project come along because they have lived up to the spirit of what is asked and what is required. It looks wonderful. Mr. Wyant noted the area on the drawing listed as primary and reserve drainfield, it will not take that much area. Since there will be only two small restrooms, there will be less disturbance than what is shown on the drawing.

Mr. Slutzky said the land is also flat. Mr. Wyant confirmed that to be true. He said one other thing in development of the stormwater facilities is that it will be retained and used to water plants; he does not anticipate much runoff from this place through stormwater and it will also be treated through a bio-filter of the parking area.

Ms. Thomas asked Mr. Wyant to clarify the larger size of the shed he mentioned. Mr. Wyant responded that the shed would be no larger than 10' by 50' at the maximum and it would be covered.

Mr. Rooker asked if the condition should reflect a facility that is no greater than 5,500 square feet – including the shed. Mr. Wyant said that is correct.

Mr. Slutzky said there are two changes to the conditions on the screen – one is the date certain and the other is the addition of the shed. Mr. Davis added that the condition setting forth the hours of operation needs to be rewritten. He asked about the Saturday hours. Mr. Wyant confirmed that they would be open from 8:00 a.m. to 1:00 p.m. He said he was worried about the hours because sometimes they work after the doors are locked and the facility is not open to the public. The hours listed are those hours when they are on the property working on vehicles. The hours of operation are the hours when the public comes in – from 8 a.m. to 6 p.m.

Mr. Rooker noted that the language states: "These hours should not prohibit customers from dropping off vehicles before or after the permitted hours of operation." He said the hours of operation are the hours when employees and the owner can be on the site working.

Ms. Mallek asked that there be no distinction between open and shut so they have the flexibility to work late on something if in a hurry to get it done.

At this time, the public hearing was opened.

Mr. Michael Boggs said his business has been using Earlysville Auto Service and its predecessor since it opened in 1978; he and his family also use this service for their personal vehicles. He found that Roger, his sons, and his employees provide an honest, convenient and economical auto repair service. They are accommodating to one's needs. No other business in the area provides this level of service. He said this business is truly a hub of the Earlysville community, and it is the kind of business the County should support. He asked that the permit be approved with a minimum of conditions so they can afford to build a building and continue their service. The larger building has a lot to do with the larger and more sophisticated automobiles of today. It takes more computers and everything to service these vehicles. He supports the extended hours of service as a customer.

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

Mr. Davis said assuming the applicant wants the 7 a.m. to 10 p.m. operating hours he would suggest the language read: "The hours of operation shall be no earlier than 7:00 a.m. nor later than 10:00 p.m. Monday through Friday, and no earlier than 8:00 a.m. nor later than 1:00 p.m. on Saturday." The next sentence would remain the same.

Mr. Slutzky said unless there is more discussion, he will enthusiastically make a motion for approval.

Mr. Boyd interrupted to ask about the five or seven-year condition.

Mr. Slutzky said seven years is an awfully long time. Originally it was two years and then it went to five years and now they are asking for seven. He asked if anyone objected to the seven years.

Ms. Mallek said it took ten years for them to get to this point. Anything that would help them stay there is important to the community.

Mr. Slutzky said if no one objects, the time will be changed to seven years.

Mr. Rooker said that just means they do not have to come back for a renewal of the approval if they don't get completed.

Mr. Davis asked if the change regarding the square footage was made. Is that clear?

Mr. Rooker said the condition should say 5,500 square feet including the shed.

With those clarifications, Mr. Slutzky **moved** to approve SP-2008-00025 with the conditions recommended by the Planning Commission, but modifying Condition No. 1 in the second bullet to read: "The size, height and location of the proposed building, including the shed, shall be no more than five thousand, five hundred (5,500) square feet/maximum thirty-five (35) feet high." by changing Condition No. 16 to read: "If the use, structure, or activity for which this special use permit is issued is not commenced by August 5, 2016, the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate." and, to modify Condition No. 11 to read: "The hours of operation shall be no earlier than 7:00 a.m. nor later than 10:00 p.m., Monday through Friday and no earlier than 8:00 a.m. nor later than 1:00 p.m. on Saturdays."

Ms. Mallek gave **second** to the motion. Roll was called and the motion carried by the following recorded vote:

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

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

1. Development of the use shall be in accord with the conceptual plan titled "Special Use Permit Earlysville Service Center, 4036 Earlysville Road Earlysville, VA 22936", prepared by DW Enterprises and dated March 23, 2009 (hereafter, the "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Concept Plan, development shall reflect the following major elements within the development essential to the design of the development:
   - The area designated for the special use (public garage);
   - The size, height and location of the proposed building, including the shed, (no more than five thousand, five hundred (5,500) square feet/maximum thirty-five (35) feet high);
   - The location of the perimeter landscaping and limits of clearing, with the exception of minimum clearing possible to install drainfields and utilities; and
   - The number of parking spaces (maximum forty-six (46) spaces) and general location/ arrangement of the parking spaces;
2. A public garage use on the C-1 Commercial district portion of TMP 31-14 shall be permanently terminated upon issuance of a Certificate of Occupancy for the garage constructed with SP-2008-25;
3. Additional landscape materials, either replanted from the area to be cleared for the garage site or new landscape materials, shall be installed in the undisturbed buffer area inside the boundary of the special use permit as may be necessary to achieve very little

visibility between the garage site and the public right-of-way and adjacent properties, as depicted on Attachment B;

4. A minimum six (6) feet high fence shall be constructed in the location shown on Attachment B (twenty [20] feet inside the special use permit boundary and outside the seventy-five [75] foot front setback) to provide an additional buffer for the adjacent property (TMP 31-14H);
5. The sale or rental of vehicles or other motorized equipment is prohibited;
6. Gasoline sales are prohibited;
7. The outdoor storage of parts, equipment, machinery and junk is prohibited. All storage shall take place inside the storage shed and/or inside the building;
8. The sale or rental of vehicles or other motorized equipment is prohibited;
9. All repairing or equipping of vehicles shall take place inside the existing garage;
10. Parking of vehicles associated with the public garage shall take place only in the parking spaces depicted on the Concept Plan;
11. The hours of operation shall be no earlier than 7:00 A.M. nor later than 10:00 P.M., Monday through Friday and no earlier than 8:00 A.M. nor later than 1:00 P.M. on Saturdays. These hours do not prohibit customers from dropping off vehicles before or after the permitted hours of operation;
12. A maximum of twelve (12) employees shall be permitted on-site at any one time;
13. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at the north, west, and south property lines and the east boundary of the area designated to the special use permit to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval;
14. Approval from the Department of Environmental Quality shall be required prior to issuance of the Certificate of Occupancy;
15. Approval from the Health Department shall be required prior to issuance of a building permit; and
16. If the use, structure, or activity for which this special use permit is issued is not commenced by August 5, 2016, the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate.

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Agenda Item No. 20a. VDOT Monthly Report.
Agenda Item No. 20b. Transportation Matters not listed on the Agenda.

Mr. Joel DeNunzio, Residency Program Manager, noted that Mr. Allan Sumpter is on vacation this week. He is present to make the Residency report for this month. He told Mr. Rooker that the "skip lines" at Hydraulic Road will be added to their schedule and hopefully completed in the upcoming month.

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Mr. DeNunzio said that VDOT sent a right of entry form to the landowner on Buck Road regarding a drainage issue, and he has granted verbal approval but hasn't yet returned the form.

Ms. Mallek said she is thrilled VDOT actually had contact with that landowner; that is a further step forward than in the last 20 years.

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Ms. Thomas asked if the changes in the phasing of the two traffic lights on Route 250 near Farmington will be a major improvement to the problematic traffic there or is it just tweaking it slightly.

Mr. DeNunzio said they hope it will be a major improvement in that area. They have received a number of complaints from people in that area with traffic backing up. VDOT had anticipated changing that signal for a while. He said part of the complaints came about due to the construction on Interstate 64, but in addition to that they found that several of the controllers in the area had failed, and those have now been replaced.

Ms. Thomas said years ago the community spoke strongly in opposition to the widening of Route 250. She said the County was warned what would happen if that road wasn't widened, and that's certainly proven to be the case. She added that at times the traffic backs up as far as Bloomfield Road.

Ms. Mallek commented that she hopes the light sequence will be increased in favor of the traffic on Route 250 so travelers aren't "held hostage" by a couple of small neighborhoods.

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Mr. Boyd asked if the signal changes at Route 250 /Route 20 have helped. Mr. DeNunzio responded that he is not certain what the impact of those measures has been particularly since traffic volumes are a little lower in the summer months. He added that the signal on the City side of the river and the signal on the County side need to be better coordinated.

Mr. Boyd said there is now a problem with traffic exiting the shopping center. He got caught in it the other day and it took him six light cycles to get 100 feet. Mr. DeNunzio said there is a lot of traffic coming out of Riverbend Drive and it is hard to have that volume of traffic exiting at that point while maintaining traffic on Route 250.

Mr. Boyd said he had people leaving State Farm Boulevard express a concern about traffic. He thought the new light at that intersection would alleviate some of the concerns about traffic heading west, but it has not. Mr. DeNunzio said a lot of the traffic from State Farm comes down South Pantops Drive and exits onto Route 250 from Riverbend Drive. Hopefully, VDOT will be able to get traffic on Route 250 moved through faster.

Ms. Mallek said that several years ago there was some discussion about having a roundabout in the area to help with traffic, but "it has not stayed on the table."

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Mr. Rooker asked about the surface repairs to the Broomley Road Bridge. Mr. DeNunzio confirmed that the surface work is still expected to begin on August 10.

Mr. Rooker asked when something will go out to people in the area giving notice of the road closing. Mr. DeNunzio said the message boards should be placed tomorrow.

Mr. Rooker asked how long the bridge might be closed. Mr. DeNunzio said it will likely be closed for about four days.

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Mr. Rooker mentioned that along east Rio Road, in the median between the two shopping centers and just beyond the Putt-Putt Golf Course, the weeds are completely out of control (some being over five feet high). He asked that it be put on the schedule to improve the road's appearance in that area.

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Mr. Rooker said there had been discussion about improving the pedestrian signals at Hydraulic Road/Commonwealth Drive and Hydraulic Road/Georgetown Road. The written report indicates that this work will occur after the Farmington signal upgrades are complete. He asked why these projects are linked. Mr. DeNunzio said VDOT has a traffic signal contract and the crew moves from one signal to the next.

Mr. Rooker asked when the Farmington signals will be completed. Mr. DeNunzio said he thinks it will be by the end of August.

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Mr. Dorrier reported that James River Road (Route 726) has issues with vehicles not being able to get past each other because of the narrow road width. Mr. DeNunzio said he would ask the traffic division for a recommendation.

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Ms. Thomas said there has been information in the news media about personnel cuts at VDOT. She asked for the status of this VDOT Residency Office. Mr. DeNunzio responded that VDOT has started personnel cuts at the central and district offices, but there have been no cuts in the residency offices or any residency offices closed yet – those are scheduled to take place this fall. The cutbacks are being phased.

Ms. Thomas said she drove to Washington, D.C. recently and noticed the difference it makes since the rest stops have been closed along that road.

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Mr. Slutzky said he read that VDOT had reviewed the bid package for the safety project on Hillsdale Drive and that complete approval had been given for the project to be awarded. He thought it had already been awarded to the second bidder. Mr. DeNunzio said the first bidder didn't meet the DBE requirements; the second bidder met all requirements but the contract has to go through VDOT's Central Office and since there are Federal funds involved, it had to go to FHWA for their approval and then back to the VDOT Commissioner for signature. That contract was signed on July 17; all paperwork is in place now, so the project is ready to go.

Mr. Slutzky asked if anyone knows when this project will begin.

Mr. Bill Letteri, Facilities Management, said that beyond the signature of the Commissioner the County needed an easement from Our Lady of Peace. That has just been received so a notice to proceed can now be issued to the contractor. He thinks that will be done within days; the estimated completion date is probably 60 days from project inception, but that is only a guess at this time.

Mr. Slutzky said after the schedule is developed he would like to have a copy since he has a lot of constituents who are interested, and he would like share that information.

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Agenda Item No. 19. Boards and Commissions: Vacancies/Appointments.

Motion was offered by Ms. Mallek to:

Appoint Mr. Jason Trujillo to the Pantops Advisory Council.

Reappoint Ms. Sherry Buttrick, Mr. David Callihan, Mr. Bill Edgerton and Mr. Jean Lorber to the ACE Committee with said terms to expire August 1, 2012.

Appoint Lieutenant Ernie Allen to the Jefferson Area Community Criminal Justice Board with said term to expire June 30, 2012.

Mr. Boyd **seconded** the motion, which passed by the following recorded vote:

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

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Agenda Item No. 16. **Work Session:** ZTA-2008-02, Planned Developments and Neighborhood Model District.

Ms. Elaine Echols said this zoning text amendment is for Planned Districts which are addressed in Section 8 of the Zoning Ordinance, and Section 20-A which addresses the Neighborhood Model District (NMD) requirements. The NMD was established in March of 2003 as a new district. Changes were also made at that time to the existing Planned District regulations. Staff knew there would be tweaks needed to the NMD because it was new and different. At this time there are 15 Neighborhood Model Districts.

Ms. Echols reported that in April, 2008, while reviewing a subdivision plat for a Planned District in the Rural Area, the Planning Commission became aware that regulations in effect when it was originally approved in the 1980s were being applied to this development even though it was just being developed. She said the Commission adopted a resolution of intent to look at how current regulations could be applied to old planned districts where no development had occurred.

Ms. Echols mentioned that the Planning Commission held four work sessions, and a developers' roundtable was held on September 30, 2008. The developers were concerned that projects approved now would be affected by regulations in the future and those future regulations might make it difficult or impossible to achieve the rezoning that had been approved. They asked the Commission to scrutinize the proposal further. The Commission did so and held several more work sessions and a public hearing in February and in April recommended approval of the ordinance before the Board today.

Ms. Echols said the changes from the existing ordinance can be put into four categories. The "clean-ups" changes are mostly related to vesting. Staff had an issue regarding the timing for parking studies and asked that it be modified. Staff also recommended changes to the architectural requirements that are part of the Neighborhood Model district. In the "clarifications and clean-up" section, the language has been made more consistent and the titles of decision-makers has been changed to conform to current titles. The section concerning who signs the application for a Planned District has been expanded; the determination is not different from what the County Attorney's Office previously said, but it is much clearer as to who can sign an application.

Mr. Rooker said that was a state law issue. Mr. Davis confirmed that state law requires the owner of the property affected to be an applicant.

Mr. Rooker said this will not change that requirement. Mr. Davis said it does not, but gives clarity to it and provides a process for those cases where it is determined that everyone isn't required to be an applicant. A process is created where everyone gets notice because it is a two-pronged issue. One issue is that people wanted to change it because they were frustrated with the process. The second issue was that everyone in a planned development thought they could rely on the master plan for that development and they should not be surprised by a request for amendment.

Ms. Mallek asked if people in the community are notified of the request as well as people in the development. Mr. Davis said it is the normal requirement for a rezoning. All adjacent property owners and all the people within the planned development must be notified of the request. Ms. Echols said it was a notice to the people in the planned development that brought this to the attention of staff. Having this as the standard will be good in the future.

Ms. Echols said the last clarification in that section has to do with when a parking study for a Neighborhood Model District is required. The original ordinance expected that a parking study would be provided at the time of rezoning and would give sufficient information to allow for maximum, shared parking. Over time it has been found that many applicants don't have an idea of what the uses in that district will be so they request a wide range of uses. That wide range of uses also has a wide range of parking requirements. The recommendation now is for a parking study to be provided with the rezoning application or at the site plan stage.

Ms. Mallek asked if this will help reduce the number of parking spaces installed. The Board was trying to accomplish this with the water protection suggestions. Right now, the developer is probably overcompensating for what might be needed some day. Ms. Echols responded that it could be either too many or not enough if the use of the property is not known in the beginning.

Ms. Echols said the biggest issue for the Planning Commission had to do with vesting. The existing regulations say the old zoning and subdivision regulations can be applied to the new development at the applicant's request. The change would say that unless a vesting can be established, anything approved prior to December 10, 1980, would have to come in under the new regulations; for all

Planned Districts approved after December 10, 1980, they can choose which one they would use except that the Entrance Corridor, the flood hazard overlay, the landscaping, the lighting, the parking and signs would require compliance. Those are the exceptions that would take place unless a vesting could be established.

Mr. Davis said there is a statutory means of establishing what vesting is in Virginia. Before that there was a common law standard developed by case law. Basically, there must be proof that there was an affirmative governmental act, that the act was relied upon in good faith, and that the developer has incurred extensive obligations or expenses in diligent pursuit of that approval. This usually breaks down to whether there has been diligent pursuit, and certainly 27 years is not diligent pursuit. Ten years has been established to not be diligent pursuit. Depending on the circumstances it could be a shorter period of time, but that gets into a case-by-case analysis based on the totality of the circumstances. That is a decision that, by state law, has to be made by the Zoning Administrator with concurrence of the County Attorney.

Ms. Mallek asked how many things approved prior to 1980 are still pending. Ms. Echols said the staff is aware of only a minimal number.

Ms. Echols said another thing recommended for change relates to the requirements for architecture. The current Neighborhood Model District ordinance requires that in the development's code of development information be provided on form, massing and proportions, styles, materials, colors, and textures. She said staff has trouble enforcing that for a number of reasons. There really isn't sufficient staff to look through every building permit and ensure that all of these things are met in that code of development. She said when a code of development is filed staff looks through all the requirements. They are hoping that instead of looking at what is relevant to the NMD and it can be changed to what is relevant to urban design and not necessarily architectural style. It is recommended that it be narrowed down to only form, massing and proportions, and façade treatments. Those deal with the NMD urban design aspects. She said preservation of historic features, structure sites, and archeological sites on the DHR list are important to the goals in the Comprehensive Plan for historical sources. It is also recommended that architectural styles, materials, colors and textures be required if it's necessary to determine compatibility with adjoining property. There were some Commissioners who felt this was important, so asked that it be included.

Ms. Echols said the "terms form and massing" are hard to describe; she presented three pictures on the screen to explain the terms. One shows a "big box" with no windows, only a basic rectangular form without much change in plane – it is big and bulky. The next picture shows a building with more height so in terms of form and massing it is higher than it is wide. The next picture shows a residential structure that has elements of both height and width but it does not look like a massive structure. Massing and scale of a structure can be broken down through the façade treatments. Windows help to delineate stories and other elements help to break up the massing of the building – they can be a change in plane, the roof pitch, a change in building materials – they relate to the outside of the buildings. It can also be the relationship of solid area to openings.

Ms. Echols showed the picture of the big box store again and said the distinctions that relate to the NMD have to do with pedestrian orientation and buildings and spaces of human scale. What is the comfort level of a pedestrian standing next to one of those buildings? Do you want to have the big box on the street helping to create a streetscape? Staff is interested in the pedestrian look and feel which comes about through the way windows openings are placed. She said the pedestrian cannot ascertain the height or the number of stories on the box because it does not have façade treatments that breakup the façade.

Ms. Echols said other minor amendments in the ordinance have to do with changing the name of the "general development plan" to "application plan", and having a standard format for codes of development. She said codes of development can be short or long documents and they can contain lots of extraneous information or just the bare minimum. In order for staff to review these codes routinely and make sure they contain all the necessary elements, having a standard format for them is essential. Another amendment is to have a special use option available in the code of development. Originally, it was thought that the conditions of approval could be written into the code of development – in that way, if someone wanted a use all they had to do was to meet those performance standards. It has not played out the way anticipated. A special use option is being added in case someone wants a use that was not appropriate throughout the entire district, but under certain circumstances would be available for them to request. Often, it relates to the expectations of the people who move into the development.

Ms. Echols said staff recommends that the Board review the amended ordinance, its history, and the recommendations of the Planning Commission. If the Board is satisfied with what has been proposed, a public hearing could be set for September or October. She then offered to answer questions, and said a number of staff members are also present who can answer questions.

Mr. Slutzky asked if the proposed standard code of development will be brief and to the point. Ms. Echols said "yes." It will be easier for the Zoning Office to administer. When there is a lot of "fluff" it raises a number of questions about what is really meant. In the Zoning Ordinance there are concise statements about what is expected and that is what the codes should have.

Mr. Boyd mentioned the picture just shown depicting the façade issue. He asked if certain standards will be established in the code saying that there can only be certain façades. Ms. Echols said "no." At this time, the list of things required in a NMD is longer than is felt to be necessary, and they do

not get at issues of proportionality. It is recommended that the list be reduced to the form, massing and proportions, and façade treatments. Those two items help to create the pedestrian-friendly requirements, not all of the other items.

Mr. Boyd said this does not limit the kinds of façades available. Ms. Echols said "no."

Mr. Boyd said this is basically a plan for review because a planner's view might be quite different from that of an average person's view of form or mass.

Mr. Slutzky said this is less restrictive. It leaves the meaning of a NMD up to the developer. Ms. Echols said staff never prescribes what the architecture should be in a development. When the developer proposes the architecture they want, staff looks to see whether it means something, so it's worthwhile enforcing, and if it has the elements that help create a Neighborhood Model district.

Mr. Boyd said that is an observation from a planner's standpoint. He questions this because in the past there have been issues about approving footprints for buildings or signatures for buildings. The Board has said it did not want a particular signature look and that decision was not based on business reasons or because it would affect sales tax revenues. He said that was based on a planner's view that they did not like that particular façade or that particular look. He is struggling with how that decision can be made for a business when their footprint, façade, mass, and everything else is used all across the country but is not acceptable here.

Mr. Slutzky asked how that is different from the ARB's discretion. They have a mind full of objectives.

Mr. Boyd said he does not want to rule anything out.

Ms. Thomas emphasized that the Neighborhood Model stipulates that a building is considered from a pedestrian point-of-view which is different than the drive-by point-of-view. Most communities would not say the building needs to be looked at from the pedestrian's point-of-view; that's the distinction and it might mean that the corporate style used all around the country will not work in Albemarle. That is what the neighborhood model is about.

Mr. Boyd said he has listened to those kinds of thought processes before about the pedestrian's view but every pedestrian is not the same. He thinks the County has established a planner's type of view as what is right.

Mr. Slutzky said it was a process where a lot of people spoke during a number of public hearings in support of the notion of a pedestrian-oriented, human-scale development.

Mr. Boyd said the average person does not understand what a pedestrian's point-of-view of the building is.

Ms. Thomas said in a sense that is true, but it is also something that expertise can "bring to the table." For a long time she thought that one tends to walk beside the buildings that have something interesting to look at as they walk. Then she thought back to the fact that she actually goes across the street in the downtown area and walks beside the interesting buildings and avoids the blank face buildings. She had been doing that for years without analyzing it. But, that is what having a pedestrian-face to a building means.

Mr. Rooker said when Albemarle Place talked about how they design their buildings, they could have had the backs of the buildings along Hydraulic Road and nothing but a concrete slab would have been seen driving by. They will probably end up with the backs of buildings in that area, but there will be façade treatments that will make it more interesting driving by.

Mr. Boyd said he receives a lot of complaints from people about the backs of buildings at Hollymead Towncenter. He does not know if that was to be a pedestrian-friendly development or not.

Ms. Thomas said staff argued against the closeness of those buildings to the road. That development was not done using staff guidance.

Mr. Slutzky noted that Atlanta is a good example of a city with a "cold feeling" because there are massive structures that don't have much retail along the street. There are just blocks of granite. It is a very cold experience which is different from the experience walking along State Street in Chicago where it comes alive with energy. It is not a planner's point-of-view, it is a human experience of a place and the idea underlying what is trying to be done in the NMD design processes is to make sure the form of development activity makes people want to be in town, and in the growth areas as opposed to fleeing to the rural areas.

Mr. Boyd said he doesn't buy that argument. He does not think this area can be compared to a place like Atlanta. It is not going to become like Atlanta.

Mr. Slutzky said there is an aesthetic experience. He asked Mr. Boyd what exactly he objects to. Does he not want to have no standards of design, and just let the free market of design ideas play out and see what kind of urban sprawl comes about?

Mr. Boyd replied that he doesn't want to have "one size fits all." The other part is that if he is looking at a big box building that could potentially bring in a million a year in sales taxes to the community, he would "give up a little look" to bring in that revenue.

Mr. Slutzky said it doesn't matter to that developer because they are going to build that building for a purpose. He reminded Mr. Boyd that he and Mr. Slutzky had met with some people who showed them a big box with a NMD façade on it. It did not look like a big box. It looked like a bunch of little shops and it worked fine for them, they were happy to put that out into the marketplace. They do it in places in the country that are mindful of the experience.

Mr. Boyd said he had no problem with that when they can come to that type of conclusion. But, those particular people are not here now.

Mr. Rooker emphasized that this proposal does not dictate a particular style of building. It says that when the code of development is presented for approval it will include proposed façade treatments – it doesn't say what those treatments are going to be. If it is a rezoning that will be part of the package presented to the Board.

Mr. Slutzky said the proposed changes actually make it easier and "more nimble" for a developer to bring forward a code.

Mr. Boyd said every time he tries to express an opinion, the Board tries to turn it into being opposed to something. He is not opposed to what has been proposed. He has a couple of questions as to how this fits into the overall scheme of neighborhood planning. He said it is not a matter of him saying he objects to pedestrian-friendly buildings if that is what the community wants and everybody votes on.

Mr. Rooker said the proposal today does not oppose any standard but when the code of development comes forward it should include something on façade treatment, form and massing, and structure. It should include those things so that ultimately the Board can make its decision based on the package of things it brings forward and whether the Board determines those to be beneficial to the community.

Mr. Boyd said the Board must consider the economic impact of that decision.

Mr. Rooker said the Board always gets a fiscal impact statement on the proposal, and he certainly always considers that information.

Mr. Slutzky said during the public hearing the community will weight in with their interpretation on each of the proposals. The applicant can also say he can't do certain things because of costs. That has not happened on any of the 15 NMDs which have been approved. The developers have been able to satisfy the vague notion of the NMD form of design that has been superimposed. It is not a one-size fits all and there has not been precisely the same façade treatment across those 15. Each one on its own merits came through the process.

Mr. Boyd said few of them have been built.

Ms. Thomas said she had a question based on the experience with White Gables and Kenridge. Kenridge presented plans that showed mass and façade but when they changed builders, the buildings were built taller than White Gates thought they would be and it totally ruined the views from White Gables. The Board did not require them to have certain height buildings. It was not on their plans, so there was no way to keep them to what had been kind of "a gentlemen's agreement." She wants to be sure that does not happen again. When the ordinance says they should show massing, etc. on their plans is there any way to say their development should not block the neighboring property's view.

Ms. Echols responded that views are not specifically considered by staff in the development areas. It is expected that goals for views happen outside of the development area. However, there are height and story limitations in the ordinance, as well as the placement of the tallest buildings. They look for more verticality than horizontal space. If it were something that was important to the community during the rezoning, that would be considered, and if it was important to preserve a view, it probably would be written into the code of development.

Ms. Mallek pointed out that the White Gables/Kenridge problem occurred because there were two different parcels – one older one and one newer one. When this problem was brought to the Board's attention they were told it could have been worse, because there could have been more stories by what was written down.

Mr. Rooker said they were subject to the same height limitations that are imposed throughout the County in that zoning district. Mr. Davis said that project was by special use permit, so the zoning district had maximum heights – which weren't exceeded – and no condition was placed on the maximum height. As to codes of development, typically a maximum height is included and in some instances a minimum height to capture the mass that Ms. Echols mentioned. If the views were an issue, it could be regulated in a code of development by a maximum height.

Ms. Thomas said that sounds as though that would deal with something that turned out to be a bad issue in those two neighborhoods.

Mr. Rooker said that complaint came from people living in buildings on the site which were higher, or as high as the buildings being complained about.

Ms. Thomas said in that case there was a "gentleman's agreement" that that would not happen. They never should have depended on the gentleman because that is not what happened. The height was not for more living space, it was totally a picture of the roof, so it was a design, not an occupancy square footage issue.

Mr. Wayne Cilimberg said that during the Board's consideration of rezonings for Planned Developments – particularly Neighborhood Model districts – there is consideration of what's around the proposal, so the Board usually addresses it on a case-by-case basis.

Mr. Slutzky said the Board has before it today some well thought out recommendations. In the spirit of looking at the clock, he asked if there were further questions for staff, or does the Board want to move this to a public hearing.

Ms. Mallek said she thinks this is all a great idea. She said the original pictures for Crozet Station the mountains were shown to be way above the buildings when in reality they were completely hidden. That sort of detail needs to come forward at some point so that in addition to the color glossy elevations, the actual relative foot heights are shown. She asked if staff gets information now about what is next door to the proposal or if it is just an architectural rendering.

Mr. Rooker said there are height limitations, and it is encouraging verticality. Thus far the County has never gotten into protecting the view sheds or airspaces of surrounding properties. He is not sure that is even possible.

Ms. Mallek said the resolution to the problem she just described was that a break was put in the building, so it was not 300 feet long. There are three sections to the building. The community was the one that lost because the building wiped out the view of the mountains for the whole community. She said her point is that the information is needed. It was someone at the ARB who dug into the elevations enough to figure that one out. They were then able to get the information.

Mr. Davis said architectural renderings are a challenge. The County doesn't want to hold people strictly to architectural renderings and then something comes up and they can't do it that way. You don't want to have to go back to a rezoning to change an architectural rendering. Sometimes renderings show mountains where they are not located and it makes it difficult for Planning staff to deal with. It's better to nail down the essential elements in the code of development, rather than relying on an architectural rendering.

Mr. Slutzky said a priority of the NMD design idea was not to protect the value of land in the growth area with respect to its views. The idea was to promote good, denser urban form, so that is why verticality is encouraged in some places. This is not about protecting views, but about making it a livable, fairly dense urban area to protect the rural areas.

Ms. Thomas said she made it sound like the idea was to protect views. She just wanted to make sure the information was presented to the County so it could make someone hold to it if they had agreed to it in their development plan.

Mr. Boyd said he thinks that is important. He has spoken with a lot of people in Fontana who point out The Pavilions or the backside of the Kia dealership and say there used to be woods in those areas. On the other side of them they have the new Highlands Ridge with another 100+ houses which are affecting their views that way. Then they also have Cascadia which will come down next to them. It is important not to give people the impression that there will not be high-density growth around them.

Ms. Thomas said she thinks realtors often point to a beautiful stand of trees and if not overtly, covertly, imply that they will always be there. Mr. Tucker said people forget that the new houses where they live are built on land that used to be wooded and forested.

Mr. Slutzky asked if the Board is in agreement to follow staff's recommendation and move these amendments along in the process necessary.

Mr. Rooker said he thinks it is fine to go forward with a public hearing. He then **moved** to set ZTA-2008-002 for a public hearing on the next available date. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Agenda Item No. 22. **Work Session:** Zoning Ordinance Fee Amendments**.**

Mr. Mark Graham, Director of Community Development, said this is the last of the major ordinance changes to the fee structure. The fee study was done in 2007. In August, 2008 the Board adopted new fees for both building regulations and the water protection ordinances. In May, 2009 the Board adopted changes in the Subdivision Ordinance. This proposal is to make changes in Zoning Ordinance fees. All fees should then be on a regular schedule for keeping them up-to-date. The

objective was that fees should be comparable to those of other localities and there should be an attempt to recover a significant part of the cost of services, and there should be a policy for establishing a regular updating of the fees.

Mr. Graham said it was recognized by staff that comparisons to the fees charged by other localities are difficult because there is a lot of variation between their processes and their approaches. He noted that Attachment "C" to the Executive Summary lists staff's recommended fees. The first bullet is to reduce the fees for special use permits and zoning map amendments. Special use permits were split into a major and a minor category and then a cost estimated based on a typical review. The second bullet applies to those special use permits and zoning map amendments - the idea is to recover the cost associated with numerous submissions without punishing the applicants who quickly resolve issues. One fee is set for the application and the first resubmission of that plan - an additional fee is charged for each additional resubmission of the plans.

Mr. Slutzky said a number of people have told him they understand this approach. However, when they filed the original application staff came back with a list of things that needed to be addressed, and often they got a second list of items not on the first list. He asked if the applicant is responsive to the items on the first list, do they need to be charged for the items on the second list. Mr. Graham said staff had considerable discussion about this point. That would not be considered a resubmission unless that comment was the result of how the applicant revised their plan in response to the first comments. Through this approach, they are trying to encourage having the applicant and staff sit down together, go through the comments, and make sure both parties agree to an approach before the applicant makes a resubmission. He said that for special use permit requests and zoning map amendments there are usually multiple resubmissions.

Mr. Graham said under the third bullet – recovering the cost of required notifications and legal notices – they have found that most localities are charging applicants the cost of legal advertisements. He said that in some cases that cost actually exceeds the fee amount. This will be a significant change for people. Legal advertisements seem to average about $300 for the times they are run in the newspapers.

Mr. Slutzky asked if publishing in either C-Ville or the Daily Progress is a legally sufficient notice. Mr. Davis said both are papers of general circulation in the County, but the problem with using C-Ville is that it is a weekly newspaper. In order to meet State Code requirements for the timing of advertisements for zoning applications, it would be particularly difficult to do. The advertisement must be in print for two successive weeks and not less than six days prior to the meeting. If for some reason that advertisement did not appear in the paper on a particular day, a meeting would have to be canceled.

Mr. Slutzky said that now that the cost of the advertisement is being shifted to applicants there is a greater duty to make sure they are not burdened. Mr. Davis said most applicants want to make sure the legal advertisement is right because if a legal advertisement is wrong it voids the zoning application; if the advertisement is delayed for some reason, it can delay their project for at least a month. Usually they want it to be done in a way that will best guarantee it will be done correctly and on time.

Mr. Slutzky asked if the Board could require that all issues be resolved so the legal notice could go forward at an earlier date so there would be time for a notice correction before the public hearing. Mr. Davis said that is possible, but it conflicts with how the Planning Commission and the Board of Supervisor's hearing dates work. There is usually not that much time between the two. In some instances it would work, but it would make a major shift in how petitions go from the Commission to the Board.

Mr. Graham said this matter was discussed when staff was talking about the process. He said staff doesn't schedule the public hearing until the applicant indicates their application is ready to be heard. He said more time could be added in, but staff has found that the applicants are quite anxious to get it to public hearing and get it through the process as quickly as possible. He said time is money.

Ms. Mallek said that in some rural areas, the Progress is probably more widely circulated through the country places than some other magazines. People are more likely to see it if it comes to their door than if they have to go to the store and get it.

Mr. Slutzky said it might not be around in a couple of months, and then there would be another problem.

Mr. Graham said the proposal at this time with the zoning fees is that regardless of how the notice is given, that just the direct cost of those advertisements would be recovered.

Mr. Graham said it was recognized that appeals have a different perspective on recovery of costs. There are some possible due process issues involved. They are proposing recovery of administrative costs, not the cost of staff's analysis of the appeal – the County would be absorbing that part of the costs. That is reflected in two areas; site plans which can be appealed to the Board and under the Board of Zoning Appeals where determinations can be appealed.

Mr. Graham said the next proposal is to use the fee-study recommended fees. He staff wants to make sure that if ordinance amendments are proposed, consideration is given to the cost of service impacts that could result from changing that ordinance. Finally, there is a provision to provide for a biennial review of fees.

Mr. Slutzky asked about the ARB fee. He said that is entirely for public benefit and not necessarily for the benefit of the applicant. Mr. Graham said it is a County process, just like a site plan.

Ms. Mallek noted that the fee is only at 30 percent recovery.

Mr. Graham said the Board has the recommendation and Attachment C reflects the recommended fees. If the Board is comfortable with this arrangement for the fees, the next step would be for staff to develop a Resolution of Intent and start moving these ordinance amendments through the Planning Commission. He offered to answer questions.

Mr. Boyd said he assumes fees have not been updated in a long time. It causes him a pause when looking at the zoning ordinance fees which will jump substantially. The Board can say it is not a tax, but people look at it that way.

Ms. Thomas said the consultants suggestions were for much higher fees.

Mr. Boyd said staff is trying to compare these fees to other localities and Albemarle is probably lower than them and he recognizes that fact. He asked if the County subcontracted this work (hired an engineer to do this particular plan) if it would be competitive. The last time this was discussed developers and land planners came to him and said the County is charging more to review their plans than it costs them to prepare the plans. He does not know what those kinds of things cost, but a different way of looking at the question would be to contract with a private engineering firm.

Mr. Slutzky said that earlier today Mr. Bill Letteri showed what is paid in the private sector for managing CIP equivalent projects and what others are paying. Albemarle is remarkably efficient with what it is accomplishing.

Mr. Boyd said he thought the County was going to charge a higher percentage – the County was going to 4.5 and they were going to 3.0 percent on a fee.

Mr. Slutzky said they are four to six percent and the County is going to 4.5 percent. He said the County has been operating with double or triple the caseload.

Mr. Boyd said if that has been true all along, the same kind of comparison could be done with these fees.

Mr. Rooker said he has been through several rezonings on the side of an applicant over the years – not in Albemarle. He said that on a 270-acre rezoning the proposed fee is $3,500 plus a $1,750 review after two reviews. That $3,500 is probably only one-tenth of the engineering fee associated with one 40-acre rezoning. He said the engineering fees associated with that rezoning would probably approach $50,000. He can't image that an engineer could be found who would do the indoor planner work and the engineering work and prepare a rezoning application and all the itinerant things that go along with it for $2,500+.

Mr. Boyd said that is not what he is talking about. He is not talking about what it cost to have plans prepared in the first place. He was talking about the County outsourcing plan reviews instead of doing them in-house.

Mr. Rooker said it was mentioned earlier that people complained they were spending more for review than the cost to have the plan prepared. He finds that comment to be ridiculous when he looks at these fees. As to the amount of review time, a consultant was hired to review how long it takes to do the reviews. In most cases the fee proposed is less than what the consultants recommended. He said the proposal is that on a 270-acre rezoning the fee be $3,500, but the same size rezoning in Greene County would cost $28,900; James City County would charge $15,500. He said when looking at fees in terms of the consultant's analysis of the time spent, and in terms of comparison to other localities it's still "a pretty good deal." Mr. Davis said a lot of the cost is the public process. That is a huge multiplier of the amount of time his staff spends on reviewing plans and carrying them through the public process.

Mr. Boyd said he is in favor of recouping the County's cost for the work. He thinks the County should go to job-costing for that department; that is already being done in Building Services and also Mr. Bill Letteri is going to job accounting. Maybe some real thought should be given to doing that in this case. Mr. Graham said if the Board would like to experiment with that idea, he could work up the cost of an experiment.

Mr. Boyd said it would be easy to justify all of these fees. Maybe just the cost of processing an application could be charged, less the public good section.

Mr. Rooker said there would not be any predictability for an applicant in that case.

Mr. Boyd agreed that was true. However, if there were job accounting, there probably could be a good estimate of the cost.

Mr. Rooker said the consultant's review attempted to estimate the amount of time spent to do these things. What they did was an average. If every job was billed based on time spent and an applicant thought it would cost $1,500 and because of complexities they could be billed for $6,000.

Mr. Slutzky said he thinks staff has done an excellent job of taking the Board's discussion about these fees and presenting this response. In effect, there was an independent assessment based on real time effort and it was aggregated by category and the public benefit of this exercise looked at. The fee was decreased to reflect that, and when compared to the previous fee structure it is a "bit of a sticker shock" compared to neighboring jurisdictions, it is a bargain and it was arrived at in the right way. That is the part of this that makes him the most comfortable. He does see a lot of people in the audience fussing about it and he does not think there will be that many comments when the public hearing is held. The way these numbers were derived was a fair and reasonable way to get at them and they have been adjusted appropriately for the public benefit. He is enthused about moving forward with these as submitted. An extraordinarily good job was done and he likes the outcome.

Ms. Thomas asked about the item on Attachment "C" noted as "Official Letters." She said they are the letters giving an official determination of parcels and development rights. She understands keeping the fee at $100.00 because they are often done for ACE applicants or people putting property into conservation easements; those are things the Board is in favor of. She got a complaint from a constituent a couple of years ago who wanted an official determination for curiosity purposes only; he had no intention of doing anything with his property. He wanted to come in and pay the $100.00 for the determination; often it costs more to produce these letters than $100.00. She asked what deals with the case of a person who is just curious and thinks he can get the determination for $100.00.

Mr. Graham said that in that column on Attachment "C" it says the applicant must provide a title report; that's something that hasn't been routinely done in the past. Staff ended up doing a lot of the title research, essentially creating a title report. That is where the vast majority of the cost is. If staff starts saying its job is simply to take the applicant's completed title report that has been done by a professional, and review it to assure it was done accurately, the costs would go down dramatically,

Ms. Mallek asked if that is the difference between the $1,000 per unit told to the Board before and this. Mr. Graham said he thinks $100.00 will be sufficient; staff can try it. Mr. Davis said the way the process works now ACE applicants do not pay that fee. It is absorbed in the system. However, if someone wants to give an easement to some other entity, they would have to pay for the development rights determination. Also, people who just want to develop their property and maximize the number of lots they can have on a large parcel have to pay for that letter of determination.

Mr. Rooker said there is somewhat of a waste there. When in the mode of justifying to the appraiser the value difference, title work that goes beyond just the determination must be presented. It makes sense to have that package provided to the County early on at the determination stage. He said the Board should move forward to a resolution of intent. Mr. Davis said that resolution will come back to the Board next month on the Consent Agenda.

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Agenda Item No. 23. From the Board: Matters Not Listed on the Agenda.

Ms. Thomas said that she and Mr. Slutzky, along with Mr. Graham and a few others, worked on a resolution to respond to DCR's new stormwater regulations. The opportunity to respond ends on August 21 and since the Board does not have another meeting before that time it can either agree to the resolution before the Board members today with one change or send a letter later with the Chairman's signature. She would like for the Board members to agree to send a resolution which is a little stronger. She said the resolution that Mr. Slutzky sent out (two pages) is something that they agreed on except for the paragraph at the bottom of the first page that starts "Be it further resolved" because the only way they could agree was to leave out that paragraph. It is something he feels strongly about in one direction, and she feels strongly about it in another direction. He can send his own letter and maybe get other Board members to approve it, and it is something he has done a lot of work on.

Mr. Slutzky said they are not in complete disagreement, but are also not on the same page at this time. He said that he and Ms. Thomas are both requesting that this Board today approve this as a resolution with deletion of the last paragraph beginning on the bottom of the first page. He said that paragraph embodies largely the work he has been focusing his attention on. He said at the end of June he and Mr. Bryan Elliott met with the Secretary and the head of DCR and one of his staff people and they spent a few hours going through a lot of issues. He thinks they reached a view that they would be comfortable with. He is writing a comment on the proposed regulations that embodies the discussion they had. This paragraph "kinda gets at it" but not precisely. It was an effort to get at it, but it is squeezing a lot of thoughts into a small space. He will submit his comments, and circulate them among Board members in the hope they will read his comments and write back to say they can support those comments, or give him a tweak. If, in fact, his comments are embraced by some or all Board members, then he could add into his submittal letter that this is being submitted by him with the support of these members of the Board of Supervisors. He said what is in front of the Board today is that language minus that paragraph. He asked if anybody objects to any of it.

Mr. Boyd said he has not read it. He has a problem with moving forward with something he has not had time to study and think about. If there is another way to do it through the letter, that would be his preference.

Mr. Rooker asked if Mr. Boyd was asking for a few minutes to read it now.

Mr. Boyd said he would not want to do it today.

Mr. Slutzky said the Board of Supervisors of Albemarle County would then not be commenting on the regulations as they are proposed.

Mr. Boyd said he does not have a problem with a letter from the Chair on behalf of the Board if that is a sufficient way to do it.

Mr. Slutzky said he would propose that each Board member read it as swiftly as possible and send him an e-mail stating that they are in agreement with everything except that one paragraph. Assuming he gets everyone's complicity he will send a letter on behalf of the Board.

Mr. Boyd asked if Mr. Slutzky was saying the last paragraph would be removed.

Mr. Slutzky said that everyone is agreeing that the last paragraph on the first page be removed in its entirety and all the other language remains in its entirety. He said that he and Ms. Thomas both are in agreement with that language.

Mr. Rooker said the "where as's" in the resolution are not technically a part of the resolution like the paragraph that says "they move forward expeditiously to develop their programs, and providing that the fees associated with the proposed regulations adequately fund local government's responsibility for establishing a local program and the cost associated with ongoing inspections and regulations."

Ms. Thomas said as those regulations are now proposed, it's not clear their fees would cover such things, in fact they probably would not. This actually urges them to change the fee structure so it covers things it does not cover in its present form.

Mr. Slutzky said if that is not done it would become an unfunded mandate. The County will have to go forward with the program but would not be able to charge money for it.

Mr. Rooker said he does not know that study will make a difference.

Mr. Boyd suggested the Board take a ten-minute recess and allow him to read it.

Mr. Rooker said there is one on the next page which asks for some latitude.

Ms. Mallek asked if the last paragraph is the same as the one Ms. Thomas presented.

Ms. Thomas said all of the "whereas" paragraphs are the same as hers. The one in the middle of the page that says "Whereas, the new channel protection" and the one that says "Whereas, §4VAC50-60-96 of the proposed VSMP provides the possibility" are new, but she agrees with them. Also, the "Now, Therefore, Be It Resolved" is the same as hers, the change was in the "Be It Resolved" paragraph and it has been removed. The last "Be It Further Resolved" is also new, but she agrees to that one.

Ms. Mallek asked if that takes the place of the "flexibility one" in Ms. Thomas' draft. That seemed in more generic terms to cover everything that was in the one more specifically spelled out.

Mr. Slutzky said Ms. Thomas wanted that paragraph out.

Ms. Thomas said they were talking about the very last "Be It Resolved."

Ms. Mallek said the last paragraph in Ms. Thomas' draft seems to have disappeared. She does not know if that was put in somewhere else or not.

Ms. Thomas said that was her replacement for the next to the last paragraph, but Mr. Slutzky did not like her wording and she did not like his wording.

Mr. Slutzky said he might be able to agree to put Ms. Thomas' paragraph back in the resolution. He is actually fine with that wording.

Mr. Rooker said the more this is changed, the less likely it will be done today.

Ms. Mallek said she thinks the one with the blue stripe may not be as detailed as yours but it does cover everything else. Mr. Graham said with that last paragraph he was trying to capture what Ms. Thomas was trying to say because that is the part that deals with where the local government may modify or adjust the requirements. He is trying to say that recognizing that there are open development areas, flexibility is needed to be able to make things work in that development area. That was the intent with the last paragraph. He said if you read through Part 122 which deals with exceptions, it does not address where it may be inconsistent with the form of development the local government is promoting. He was trying to make it explicit that localities have authority to grant exceptions in those circumstances.

Ms. Mallek said that is different from the language in the last paragraph in the copy with the blue stripe. It talks about regional and offsite things, so they both need to be in to have the best possible job.

Mr. Rooker said he and Mr. Slutzky opposed Federal legislation which would have required onsite treatment of all water quality/quantity issues.

Ms. Mallek asked if that would have applied to the Crozet stormwater basin.

Mr. Rooker said Jerry Connelly was actually proposing that legislation. It would not have allowed regional stormwater treatment facilities. He does not think they realized what they were about to do.

Mr. Slutzky said Mr. Connelly thanked them for putting that in there. He said he would still be thrilled if the Board could take a five-minute break and come back and potentially pass either draft of the resolution, minus that one problematic paragraph. Whatever the Board does today, he will send his comments to each Board member and ask them let him know if that member's name should be added in support or not. This would be him making comments as a private person and not as Chair.

Mr. Rooker said he thinks it is one thing for Mr. Slutzky to send a letter, so it would be strange for the letter to say that "x" Board members think "x".

Mr. Slutzky said he would then just share with the Board members and hope he gets some constructive feedback on the letter.

Mr. Boyd said he was not sure which version the Board is talking about. If it is Ms. Thomas' original version, he did read that last night and did not have a problem with it.

At 5:06 p.m. Mr. Slutzky suggested the Board take a ten-minute break.

Mr. Slutzky called the meeting back to order at 5:16 p.m. and the conversation continued.

Mr. Slutzky asked if everybody is comfortable with the language minus that paragraph.

Mr. Boyd said basically he has concluded that the last paragraph that Ms. Thomas had in her draft had been rewritten by Mr. Slutzky, and he does not have a problem voting on the resolution exclusive of that last paragraph on the first page.

Mr. Slutzky then offered **motion** to adopt the Resolution of Intent distributed with the last paragraph on the first page and as it continues over to the top of the next page being deleted in its entirety (The resolution is set out in full below.). Mr. Rooker **seconded** the motion, which passed by the following recorded vote:

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

RESOLUTION

Whereas, the Virginia Soil and Water Conservation Board proposes to amend regulations associated with the Virginia Stormwater Management Program (VSMP) and published the proposed regulations in the June 22, 2009 edition of the Virginia Register of Regulations; and

Whereas, the Albemarle County Board of Supervisors has repeatedly affirmed its commitment to protect and preserve natural resources from degradation resulting from stormwater runoff by establishing ordinance requirements that exceed state minimum standards; and

Whereas, Albemarle County recognizes that, as an MS4 community, we will be required by the proposed regulations to implement a local storm-water management program; and

Whereas, these regulations provide the option for Albemarle County and regional partners, such as the Rivanna River Basin Commission, to develop a comprehensive watershed stormwater management plan that allows off-site nutrient offsets; and

Whereas, Albemarle County shares the Commonwealth's stated interest in promoting new urbanism as expressed in §15.2-2223.1 of the Code of Virginia; and

Whereas, local governments are currently under severe fiscal stress and any new unfunded mandate will likely result in funding reductions for other public health and safety concerns; and

Whereas, §10.1-603.3 of the Code of Virginia specifies local governments will not manage the VSMP before October 2011, thus providing adequate time to further refine the proposed regulations; and

Whereas, the new channel protection standards may conflict with the Commonwealth's policy to promote new urbanism as expressed in §15.2-2223.1 of the Code of Virginia in part by promoting the unintended consequences of reduced density and stale zoning:

Whereas, §4VAC50-60-96 of the proposed VSMP provides the possibility of using offsite credits in lieu of onsite Best Management Practices (BMPs) for compliance with the water quality criteria requirements and this practice may provide reasonable alternatives to cost prohibitive BMPs;

Now, Therefore, Be It Resolved, that the Albemarle County Board of Supervisors strongly recommends the Virginia Soil and Water Conservation Board move forward expeditiously

to develop this program, providing that the fees associated with the proposed regulations adequately fund local governments' responsibility for establishing the local program and the costs associated with ongoing inspections and regulation of stormwater facilities; and

Be It Further Resolved, that the Albemarle County Board of Supervisors strongly recommends that the Virginia Soil and Water Conservation Board, as part of expeditiously developing this program, provide clear and unambiguous direction within §4VAC50-60-122 of the proposed regulations that a locality may include consideration of circumstances where strict application of these regulations would be inconsistent with the Commonwealth's interest in promoting urban development areas as envisioned by §15.2-2223.1 of the Code of Virginia and the locality's Comprehensive Plan.

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Ms. Thomas mentioned that she would be representing the County in Italy. The Italians who have been participating in the Sister City exchange have a festival and the Board was invited to attend. She told the Board members a while back that she would be attending. At some point she will be meeting with the President of the Provincial of Prato and also the City of Prato. The only notice received here was from the President of Poggio á Caiano and he said "we will be telling you later about speeches expected." She is brushing up on her Italian. She said Charlottesville has purchased some gifts so she may be asking for a gift to take for both the City and the Province, so there may be some budget impact, but that will be the only one. The one thing they asked for are posters of Monticello with "come visit us" on them so we are enticing them to come back for a visit. She said she will be taking a number of posters that Lee Catlin and Jeanne Cox are designing.

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Agenda Item 24. Adjourn. At 5:20 p.m., with no further business to come before the Board, the meeting was adjourned.

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Chairman

Approved by the Board of County Supervisors

Date: 12/09/2009

Initials: EWJ