

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on September, 2009, at 6:00 p.m. in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry W. Davis, Director of Planning, V. Wayne Cilimberg, and Clerk, Ella W. Jordan.

Agenda Item No. 1. Call to Order. The meeting was called to order at 6:00 p.m. by the Chairman, Mr. Slutzky.

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

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

Mr. Boyd reminded Board members that this Friday evening, in commemoration of the September 11 event the County's Fire and Rescue Department will host a special ceremony in front of the County Building on McIntire Road, if weather permits.

Ms. Mallek complimented staff on the new brochure about conservation easements noting that she has heard many good comments about it.

Ms. Mallek said at the last Mayors & Chairs meeting Louisa County shared a video about their County. She asked if Albemarle has such a video.

Ms. Mallek said she is the Board's representative on the Piedmont Workforce Network "One Stop" Committee. She said Goodwill Industries has the new contract for management of the one stop. They have a new director and have made some quantum leaps forward in getting all of the various agencies to work together in a productive way and improve services to clients.

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

There were none.

Agenda Item No. 6. Consent Agenda. **Motion** was offered by Mr. Rooker, **seconded** by Ms. Mallek, to approve the consent agenda as presented. Roll was called, and the motion carried by the following recorded vote:

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

Item No. 6.1. Approval of Minutes: July 8, 2009.

Mr. Thomas had read the minutes of July 8, 2009, pages 22 (beginning with the Ordinance to the end of the minutes) and found them to be in order.

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

Agenda Item No. 7. **Public Hearing:** FY 2010 Budget Amendment. (*Advertised in the Daily Progress on August 30, 2009.*)

Mr. Richard Wiggans, Director of Finance, summarized the following executive summary which was forwarded to Board members: 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 that 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 the new requested FY 2010 appropriations, itemized below, is \$3,848,351.19. Because the cumulative amount of the appropriations exceeds one percent of the currently adopted budget, a budget amendment public hearing is required.

Estimated Expenditures

| | |
|---|------------------------|
| General Fund | \$ 831,453.00 |
| Special Revenue Funds | \$ 113,138.00 |
| School Program Funds | \$ 1,534,988.19 |
| Capital Improvements Fund | \$ 1,312,902.00 |
| Emergency Communication Center Funds | \$ 55,870.00 |
| Total Estimated Expenditures – All Funds | \$ 3,848,351.19 |

Estimated Revenues

| | |
|---|------------------------|
| Local Revenues (Fees, Contributions, Donations) | \$ 43,458.50 |
| State Revenue | \$ 133,446.00 |
| Federal Revenue | \$ 2,622,126.19 |
| Other Fund Balances | \$ 1,049,320.50 |
| Total Estimated Revenues – All Funds | \$ 3,848,351.19 |

The budget amendment is comprised of seven separate appropriations, five of which were approved by the Board at its meeting on September 2, 2009 (Appropriation No. 2010-018 transferring \$91,000.00 for road and drainage improvements to Sun Ridge Road; Appropriation No. 2010-019 totaling \$113,138.00 for a Community Policing grant; Appropriation No. 2010-020 totaling \$55,870.00 for grants to replace equipment at the Emergency Communications Center; Appropriation No. 2010-021 totaling \$831,453.00 to change the way the Office of Facilities Development is funded; and, Appropriation No. 2010-022 totaling \$1,535,463.19 for various school programs and grants). The two new appropriations are Appropriation No. 2010-023 re-appropriating \$1,195,760.00 for uncompleted general government capital projects, and Appropriation No. 2010-024 re-appropriating \$116,667.00 for uncompleted school capital projects. A detailed description of these requests is provided on Attachment A below.

Staff recommends approval of the FY 2010 Budget amendment in the amount of \$3,848,351.19 after the public hearing, and then approval of Appropriations No. 2010-023 and No. 2010-024 to provide funds for various local government and school projects and programs.

ATTACHMENT A:

Appropriation No. 2010-023, \$1,195,760.00. Revenue Source: Local Revenue \$20,983.50; State Revenue \$77,576.00; Federal Revenue \$996,000.00; General Government CIP Fund Balance \$101,200.50. This request re-appropriates the urgent contract costs related to various General Government Capital Improvement projects that were not completed as of June 30, 2009. The following projects are included in the appropriation:

- Hillsdale Drive sidewalk \$368,468.00
- Rivanna Greenway/Free Bridge Connector Trail \$89,950.00
- A space study for the Levy Building, formerly used as the Juvenile and Domestic Relations Court \$30,009.00
- Relocation of the Sheriff's Office to the renovated Juvenile and Domestic Relations Court \$7,333.00
- Crozet Meadows housing rehabilitation project \$700,000.00

Appropriation No. 2010-024, \$116,667.00. Revenue Source: School CIP Fund Balance \$116,667.00. This request re-appropriates the urgent contract costs of School Capital Improvement projects that were not completed as of June 30, 2009. This appropriation includes moving, furniture and change order costs related to the following projects: Brownsville Elementary \$64,350.00; Greer Elementary \$47,000.00; and, Albemarle High School \$5,317.00.

Mr. Rooker asked if the Hillsdale Drive allocation is for a safety improvement. Mr. Jack Kelsey explained that this grant money was specifically appropriated for that project's safety improvements.

Mr. Slutzky said construction on this project is about to begin and it includes a crosswalk at Rio Road and Hillsdale Drive which is a much needed improvement at that point. Mr. Kelsey said the contract is ready for final approval.

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

Mr. Rooker then offered **motion** to approve the FY 2010 Budget amendment in the amount of \$3,848,351.19, and to **approve** Appropriations No. 2010-023 and No. 2010-024 to provide funds for various Local Government and School projects and programs. Ms. Thomas **seconded** the motion.

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

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

**COUNTY OF ALBEMARLE
 APPROPRIATION**

APP # 2010-023
 DATE 9/9/2009

EXPLANATION: Reappropriating contract costs related to various general government capital projects and the Crozet Meadows Rehabilitation Project

| | | | | | SUB LEDGER | | | GENERAL LEDGER | |
|-------|------|-------|--------|--|------------|---|--------------|----------------|--------------|
| TYPE | FUND | DEPT | OBJECT | DESCRIPTION | CODE | | AMOUNT | DEBIT | CREDIT |
| 1 | 9010 | 43100 | 950174 | Hillsdale Sidewalk/Imp | J | 1 | 368,468.00 | | |
| 1 | 9010 | 72030 | 950520 | Rivanna Greenway-Free Bridge Connector Trail | J | 1 | 89,950.00 | | |
| 1 | 9010 | 21000 | 950135 | Court Square Enhancements | J | 1 | 30,009.00 | | |
| 1 | 9010 | 21050 | 800901 | Building Renovations | J | 1 | 7,333.00 | | |
| 2 | 9010 | 33030 | 330035 | Hillsdale Dr Imp | J | 2 | 296,000.00 | | |
| 2 | 9010 | 24000 | 240447 | DEPT CON/REC: REC. TRAILS | J | 2 | 77,576.00 | | |
| 2 | 9010 | 19000 | 190249 | CITY SHARE-COURTS FESIBTY | J | 2 | 20,983.50 | | |
| 2 | 9010 | 51000 | 510100 | Appropriation - Fund Balance | J | 2 | 101,200.50 | | |
| | | | 0501 | Est. Revenue | | | | 495,760.00 | |
| | | | 0701 | Appropriation | | | | | 495,760.00 |
| 1 | 1223 | 81030 | 950164 | Crozet Meadows Housing Rehabilitation | J | 1 | 644,000.00 | | |
| 1 | 1223 | 81030 | 300205 | Administrative Services | J | 1 | 56,000.00 | | |
| 2 | 1223 | 33000 | 330009 | Grant Revenue - Federal | J | 2 | 700,000.00 | | |
| | | | 0501 | Est. Revenue | | | | 700,000.00 | |
| | | | 0701 | Appropriation | | | | | 700,000.00 |
| TOTAL | | | | | | | 2,391,520.00 | 1,195,760.00 | 1,195,760.00 |

**COUNTY OF ALBEMARLE
 APPROPRIATION**

APP # 2010-024
 DATE 9/9/2009

EXPLANATION: Re-appropriating contract costs that are moving related at Brownsville and Greer Elementary Schools and Albemarle High School

| | | | | | SUB LEDGER | | | GENERAL LEDGER | |
|-------|------|-------|--------|------------------------------|------------|---|------------|----------------|------------|
| TYPE | FUND | DEPT | OBJECT | DESCRIPTION | CODE | | AMOUNT | DEBIT | CREDIT |
| 1 | 9000 | 60202 | 800605 | Brownsville Elementary | J | 1 | 64,350.00 | | |
| 1 | 9000 | 60301 | 800200 | Albemarle High School | J | 1 | 5,317.00 | | |
| 1 | 9000 | 60204 | 800605 | Greer Elementary | J | 1 | 47,000.00 | | |
| 2 | 9000 | 51000 | 510100 | Appropriation - Fund Balance | J | 2 | 116,667.00 | | |
| | | | 0501 | Est. Revenue | | | | 116,667.00 | |
| | | | 0701 | Appropriation | | | | | 116,667.00 |
| TOTAL | | | | | | | 233,334.00 | 116,667.00 | 116,667.00 |

Agenda item No. 8. **Public Hearing:** Darden Towe Park Lease Agreement. To consider the approval of a Lease Agreement for the tenant house located in Darden Towe Park, which is jointly owned by the County of Albemarle and the City of Charlottesville. The house is proposed to be leased to tenants who assist in maintenance of the Park. (Notice of this public hearing was advertised in the Daily Progress on August 31, 2009.)

Mr. Tucker summarized the following executive summary which was forwarded to Board members:

The City and County jointly own a house located at Darden Towe Park which is leased at a reduced rate in exchange for the tenants providing approximately 50 hours of park maintenance and security tasks each month. Earlier this year, the City and the County were notified by the existing tenants that they did not desire to renew their lease and the availability of this rental property was publicly advertised for two weekends in July in the Daily Progress. Two parties responded to the advertisement and interviews were conducted by City and County Parks and Recreation staff. Based upon the outcome of these interviews, the Parks and Recreation Department is recommending that the City and County enter into a lease agreement with Ms. Doraine Glidden and Ms. Shelia McMillian.

Under the proposed lease, the tenants would pay a \$620 monthly rent to the County and all utility bills, and perform the following duties:

- Assure that the park entrance gates, greenbelt gate, and restrooms are opened and closed at posted times and upon special requests;
- Assure that park visitors leave the park at posted closing times;
- During closing rounds, pick up loose litter and check restrooms for maintenance or plumbing issues, and correct or advise park personnel as necessary;
- Assist the public with information, as needed;
- Clean and stock restrooms and clean-up and remove trash from parking lots and playing areas on days when park employees are not scheduled to work;

- In the absence of park personnel, perform emergency repair(s) or maintenance of park facilities and grounds, to the extent possible, and contact park personnel;
- In the absence of park personnel, enforce field closures, and unauthorized use of athletic fields and park areas; and
- Mow and trim grass around the tenant house, as outlined by the Park Foreman.

The initial term of the lease is for one year, beginning October 1, 2009, followed by up to four additional one-year terms. The monthly rent for the initial year would remain at \$620 per month (determined after review by the County Assessor's Office) and could be adjusted to reflect any change in tenant responsibilities. The proposed lease has been reviewed and approved by the County Attorney. Virginia Code §15.2-1800(B) requires that the Board of Supervisors hold a public hearing prior to entering into this lease agreement. The Clerk of the Board has advertised the hearing as required. City Council is scheduled to consider the proposed Lease Agreement on September 21, 2009.

It is expected that the lease will generate \$7,440 in annual income. In addition, having the tenants perform the listed duties is much more efficient than having County employees perform these tasks.

Mr. Tucker said staff recommends that, after the public hearing, the Board approve the proposed lease agreement and authorize the County Executive to sign the lease agreement.

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

Motion was offered by Mr. Rooker, to approve the Residential Lease Agreement for Darden Towe Park and to authorize the County Executive to sign the lease agreement. Mr. Slutzky **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

RESIDENTIAL LEASE AGREEMENT DARDEN TOWE PARK

THIS LEASE AGREEMENT is made as of this ____ day of _____, 2009; by and between the County of Albemarle and the City of Charlottesville (hereafter collectively, the "Landlord"), whose addresses are 401 McIntire Road, Charlottesville, Virginia 22902 (hereafter, the "County"); PO Box 911, Charlottesville, Virginia 22902 (hereafter, the "City"), respectively; and Doraine K. Glidden and Sheila M. McMillian (collectively referred to as "Tenant").

1. **REAL PROPERTY AND TERM OF OCCUPANCY.** In consideration of the promises and covenants herein, Landlord hereby leases to Tenant that property located in the County of Albemarle, Virginia, and known as Towe Park Tenant House together with the fixtures and personal property listed below, (the Premises) for the term of 1 (one) year(s) commencing at noon on October 1, 2009. Thereafter, unless otherwise terminated by either party, as provided herein, this Lease shall renew automatically for four (4) additional one-year terms.
2. **PERSONAL PROPERTY.** The following personal property is included in the Premises subject to this lease: Range oven and woodstove.
3. **USE OF PREMISES.** The Premises will be used by Tenant as a private dwelling and for no other purpose. The Premises will be occupied by no persons other than persons who have signed this Lease as Tenant and such person's children under the age of 18.
4. **RENT.**
 - a. Tenant agrees to pay as rent the total sum of \$7,440.00, due and payable in advance in monthly installments of \$620.00, except as follows: If the lease term begins on a day other than the first day of a calendar month, the first month's rent shall be \$310.00. If the lease term ends on a day other than the last day of a calendar month, the last month's rent shall be \$310.00. The first month's rent payment is due October 1, 2009. The monthly installment of rent due for each month thereafter shall be due on the first day of each month. Rent shall be paid to County of Albemarle (landlord/agent) at Albemarle County Parks & Recreation, 401 McIntire Road, Charlottesville, Virginia 22902 (address) or at other such place as Landlord or Agent may from time to time designate in writing. If a monthly installment of rent is not received before the 6th day of the month, Tenant agrees to pay as additional rent a charge of late fee of \$10.00 for each month that the monthly installment of rent is not received by the 6th day of such month. The purpose of this late fee is to compensate Landlord for the expenses of processing such delinquent account. Rent payments will be applied first to all past due balances of rent and other charges owing under this Lease. The remaining portion if any of such rent payments will be applied to current rent. If there are two or more tenants, Landlord shall have the option of requiring that only one check, cashier's check or money order will be accepted for each monthly installment for rent.
 - b. As additional rent, the Tenant shall perform the following duties as long as either of

them resides on the Property. The following duties may be modified, as duties may be added or deleted by mutual written agreement between the County and City and the Tenant. Failure to perform the following duties on the part of the Tenant shall constitute a material breach by the Tenant under the Lease Agreement and shall entitle the Landlord to terminate this Lease or exercise any other remedy under this lease or available law. The Tenant shall:

- i. Assure that the park entrance gates, greenbelt gate, and restrooms are opened and closed at posted times and upon special requests;
 - ii. Assure that park visitors leave the park at posted closing times;
 - iii. During closing rounds, pick up loose litter and check restrooms for maintenance or plumbing issues, and correct or advise park personnel as necessary;
 - iv. Assist the public with information, as needed;
 - v. Clean and stock restrooms and clean-up and remove trash from parking lots and playing areas on days when park employees are not scheduled to work;
 - vi. In the absence of park personnel, perform emergency repair(s) or maintenance of park facilities and grounds, to the extent possible, and contact park personnel;
 - vii. In the absence of park personnel, enforce field closures, and unauthorized use of athletic fields and park areas; and
 - viii. Mow and trim grass around the tenant house, as outlined by the Park Foreman.
 - c. The County and City reserve the right to agree to certain modifications pertaining to the foregoing tenant responsibilities during the term of the lease agreement. It is the intent of the County and City to delegate this responsibility to the Albemarle County Parks and Recreation Department, and its Director.
 - d. The County and City further agree that, in the event tenant performs additional duties at the specific request of the County and City in connection with the property, or for any other reason in the sole discretion of the County and City, then an adjustment in the payment of rent under this lease agreement may be made, provided that any such modifications shall be effective only if in writing between the County, City and the tenant. It is the intent of the County and City to delegate this responsibility to the Albemarle County Parks and Recreation Department, and its Director.
5. **BAD CHECKS.** Tenant agrees to pay as additional rent a charge of \$15.00 for each check returned for insufficient funds. This charge will be in addition to any late fee, which may be due. If any of Tenant's checks are returned to Landlord or Agent for insufficient funds, Landlord will have the option of requiring that further payments must be paid by cash, cashier's check, certified check, or money order.
6. **SECURITY DEPOSIT.** Tenant agrees to pay the sum of \$620.00 as a security deposit. This sum will be due when this Lease is signed by Tenant. Prior to the termination or expiration of this Lease, if Landlord makes any deductions from the security deposit for charges arising under this Lease or by law, Tenant agrees to pay Landlord such sums as may be necessary to offset such deductions to replenish and maintain the security deposit in the amount set forth above. The security deposit will be held by Landlord to secure Tenant's full compliance with the terms of this Lease. Within 30 days after the termination of this Lease, Landlord may apply the security deposit and any interest required by law to the payment of any damages Landlord has suffered due to Tenant's failure to maintain the Premises, to surrender possession of the premises thoroughly cleaned and in good condition (reasonable wear and tear excepted), or to fully comply with the terms of this Lease, and any balance, if any, to unpaid rent. Landlord shall provide Tenant with an itemized accounting, in writing, showing all such deductions. Within this 30-day period, Landlord will give or mail to Tenant the security deposit, with any interest required by law and minus any deductions. To assist Landlord, Tenant shall give Landlord written notice of Tenant's new address before Tenant vacates the Premises. During the term of occupancy under this Lease, if Landlord determines that any deductions are to be made from the security deposit Landlord will give written notice to Tenant of such deduction within 30 days of the time Landlord determines that such deduction should be made. This provision applies only to deductions made 30 days or more before the termination of this Lease. Landlord will maintain itemized records of all security deposit deductions and these records may be inspected by Tenant, his authorized agent or attorney, during normal business hours. However, when two years has passed from the time a deduction was made, Landlord may destroy the record of that deduction. If Landlord sells or otherwise transfers all or any interest in the Premises during the term of this Lease, Tenant agrees that Landlord may transfer the security deposit, plus any interest required by law, to the purchaser who in such event shall be obligated to comply with the provisions of this section.
7. **PARKING.** Tenant agrees to comply with such parking rules and regulations as Landlord may issue from time to time, and deliver to Tenant; provided that Tenant shall be given a reasonable opportunity to comply with any parking changes made during Tenant's term of occupancy under this Lease. Vehicles parked on or about the Premises in violation of such rules and regulations may be towed at the owner's expense.

8. PETS AND ADDITIONAL RESIDENTS. The Tenant shall not be allowed to have pets or additional residents without Landlord's prior written consent, which may be withheld in the Landlord's sole discretion. If such permission is granted the tenant agrees to be responsible for all damages to the property and third parties (persons and property) caused by pets or additional residents. It is understood that if this approval is given that it may be rescinded in the event a problem develops related to a pet or an additional resident.
9. UTILITIES. The Tenant is responsible for all utilities.
10. ALTERATIONS AND IMPROVEMENTS. Tenant agrees that no alterations; installations, repairs or decoration (including painting, staining and applying other finishes) shall be done without Landlord's prior written consent. However, Landlord may require Tenant to return the Premises to its original condition when this Lease terminates or expires. In addition, Landlord may require that any change, alteration or improvement to the Premises will become a permanent part of the Premises which may not be removed upon the termination or expiration of this lease. Such changes or improvements will include, but not be limited to, locks, light fixtures, shutters, built-in shelves or bookcases, wall-to-wall carpeting, flowers and shrubs.
11. INSPECTIONS AND ACCESS. Landlord may enter the Premises to make inspections, repairs, decorations, alterations or improvements, and to show the Premises to prospective tenants, purchasers, mortgagees, workers and contractors and shall have the right to erect or place "For Sale" or "For Rent" signs thereon. Except in case of emergency or when it is impractical to give notice, Landlord will give Tenant reasonable notice of Landlord's intent to enter and may enter the Premises only at reasonable times.
12. MOVE IN INSPECTION. Within 5 days after Tenant takes possession of the Premises, Landlord agrees to provide Tenant with a list setting forth all of the defects and damages to the Premises, its equipment and appliances. The list shall be treated as correct unless Tenant objects to the list by written notice given to Landlord within five days after Tenant receives the list.
13. COVENANTS BY LANDLORD. Landlord covenants and agrees to maintain all electrical, plumbing, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in good and safe working condition; and comply with applicable building and housing code requirements materially affecting health and safety. Landlord's failure to comply with the above requirements will not be grounds for Tenant's termination of this Lease unless Tenant has given Landlord written notice of the defective condition and Landlord has failed to remedy the condition within 21 days. However, Tenant may not terminate the Lease if Tenant, a member of Tenant's family or some other person on the Premises with Tenant's consent intentionally or negligently caused the defective condition. Such defective conditions will be repaired at Tenant's expense. Any termination by Tenant shall be made in accordance with the section of this Lease concerning breach by Landlord.
14. COVENANTS BY TENANT. Tenant covenants and agrees to keep the Premises clean and safe; use all electrical, plumbing, heating, ventilating and air-conditioning facilities and appliances in a reasonable manner; conduct himself or herself, and require guests to conduct themselves, in a manner that will not disturb Tenant's neighbors; and to take care not to intentionally or negligently destroy, damage or remove any part of the Premises, and that he or she will not permit any person to do so. The County and City reserve the right to request the Tenant to remove from the site any personal property that is inconsistent with the scenic natural beauty of the park (inoperable vehicles, appliances, etc.). The County and City reserve the right to request the Tenant to cease any activity that is inconsistent with the park or surrounding neighborhood. Tenant covenants and agrees to care for, maintain and repair the Premises, equipment, appliances and fixtures. Upon the expiration or termination of this Lease, Tenant agrees to deliver the Premises in good and clean condition, ordinary wear and tear excepted. Tenant agrees to pay the cost of all repairs and cleaning required by wear and tear beyond the ordinary. During the duration of this Lease, Tenant agrees to give Landlord prompt written notice of any defects in the Premises, its equipment, appliances and fixtures. If further damage occurs between the time Tenant learns that a defect exists and the time Landlord learns of such defect. Tenant will be liable for the costs of any repairs of such additional damage, which might have been avoided, had Tenant promptly notified Landlord of the defect. Tenant agrees to pay all costs resulting from the intentional or negligent destruction, damage or removal of any part of the Premises by Tenant or by any of Tenant's guests or other persons on the Premises with Tenant's consent. Tenant further agrees to release, indemnify, protect, defend and hold the County and City harmless from all liability, obligations, losses, claims, demands, damages, actions, suits, proceedings, costs and expenses, including attorney's fees, of any kind or nature whatsoever, whether suffered, made, instituted or asserted by any entity, party or person for any personal injury to or death of any person or persons and for any loss, damage or destruction of the Premises, arising out of, connected with, or resulting directly or indirectly from the negligent or intentional acts of Tenant, Tenant's guests or other persons on the Premises with the consent or permission of Tenant. The foregoing agreement to indemnify shall continue in full force and effect notwithstanding the termination of this Agreement. Tenant further agrees to release, indemnify, protect, defend and hold the County and City harmless from all liability,

obligations, losses, claims, demands, damages, actions, suits, proceedings, costs and expenses, including attorney's fees, of any kind or nature whatsoever, whether suffered, made, instituted or asserted by any entity, party or person for any personal injury to or death of any person or persons and for any loss, damage or destruction of the Premises, arising out of, connected with, or resulting directly or indirectly from the negligent or intentional acts of Tenant, Tenant's guests or other persons on the Premises with the consent or permission of Tenant. The foregoing agreement to indemnify shall continue in full force and effect notwithstanding the termination of this Agreement.

15. **TENANT TO CLEAN PREMISES WHEN LEASE ENDS.** Upon the termination or expiration of this Lease, Tenant will remove all of Tenant's property from the Premises and deliver possession of the Premises, thoroughly clean and in good condition, reasonable wear and tear excepted, and in compliance with such reasonable conditions as may be set forth in Landlord's rules and regulations. Tenant's compliance with this section is necessary to insure that the Premises will be in good condition for the next tenants to whom Landlord leases the Premises. Tenant will be liable for any damages Landlord may suffer due to Tenant's failure to leave the Premises thoroughly clean and in good condition, reasonable wear and tear excepted.
16. **MOVE OUT INSPECTION.** Upon the termination or expiration of this Lease, Landlord will inspect the Premises to determine whether Tenant has properly maintained the Premises and has left Premises thoroughly cleaned and in good condition, reasonable wear and tear excepted. Grease accumulation and unreasonable marks, holes, nicks or other injury to walls, ceilings, floors or appliances will not be considered ordinary wear and tear. This inspection will be made to determine what portion of the security deposit will be returned to Tenant and whether Tenant may be liable for damages exceeding the amount of the security deposit. This inspection will be made with 72 hours after the termination of Tenant's occupancy of the Premises. For the purposes of this section, the termination of Tenant's occupancy of the Premises will not be deemed to have occurred until all or substantially all of Tenant's property has been removed from the Premises. Tenant will have the right to be present during this inspection, provided Tenant gives Landlord written notice of Tenant's desire to be present during the inspection. Upon receiving such notice, Landlord will notify Tenant of the time and date when the inspection will be made. However, Tenant's delay in notifying Landlord of Tenant's desire to attend the inspection will not require Landlord to delay making the inspection more than 72 hours after the termination of Tenant's occupancy. If Tenant attends the inspection, an itemized list of damages known to exist at the time of the inspection will be provided to Tenant by Landlord immediately upon the completion of the inspection.
17. **ABANDONMENT OF PROPERTY.** Any personal property Tenant leaves on the Premises after the termination or expiration of this Lease may be treated by Landlord as abandoned property. Landlord will prepare an itemized list of such property and may immediately remove the property from the Premises and place it in storage for safekeeping for a period not less than one month from the date this Lease terminates and possession of the Premises is delivered to Landlord. Tenant may reclaim the property during this one-month period, provided that tenant pays the cost of its removal and storage. Upon expiration of the one-month period, Landlord will be free to dispose of the property as Landlord sees fit, provided written notice of Landlord's intent to dispose of the property is given to Tenant at least 10 days before such disposal occurs. This notice must be sent to Tenant's last known address, address correction requested. In addition, Landlord must keep the itemized list of Tenant's property for two years after Landlord disposes of that property. Any funds received by Landlord from the disposal of Tenant's property may be applied to Tenant's indebtedness to Landlord for unpaid rent or other damages, including charges for removing, storing and selling the property. Any remaining funds will be treated as security deposit.
18. **DAMAGE OR DESTRUCTION OF PREMISES.** If, through no fault or negligence of Tenant or Tenant's guest, fire or other cause destroys or damages the Premises to the extent that Tenant's enjoyment is substantially impaired, Tenant may immediately vacate the premises and within 14 days thereafter give written notice to Landlord of Tenant's intention to terminate this Lease. In such cases, the Lease will terminate as of the date of termination of Tenant's occupancy and Landlord will return Tenant's security deposit, any interest required by law, and prepaid rent covering the period after Tenant vacated the Premises - subject to any set off for charges or damages Tenant owes to Landlord. If, through no fault or negligence of Tenant or Tenant's guests, fire or other cause damages the Premises to the extent that Tenant's enjoyment is somewhat impaired, though not substantially impaired, Landlord will have a reasonable period of time in which to repair the Premises. Landlord's duty to repair will not arise until Tenant gives Landlord written notice of the damage to the Premises. If Landlord fails to repair the Premises within a reasonable period of time after having received written notice from Tenant, Tenant will be entitled to a reduction in rent for that period of time beginning 30 days after notice was given to Landlord and ending on the date Landlord successfully repairs the Premises. In any dispute concerning Tenant's right to terminate this Lease or receive a rent reduction, Tenant will be required to prove that the condition of the Premises justifies such relief.

19. **BODILY INJURY AND PROPERTY DAMAGE.** Landlord is not an insurer of Tenant's person or property. Except to the extent provided by law, Landlord will not be liable to Tenant for any bodily injury or property damage suffered by Tenant or Tenant's guest.
20. **RULES AND REGULATIONS.** Tenant agrees to comply with Landlord's reasonable and non-discriminatory rules and regulations which concern the use and occupancy of the Premises, which intend to promote the convenience, safety or welfare to tenants or preserve Landlord's property from abusive conduct. Landlord agrees to give Tenant reasonable notice of any new rules or regulations before enforcing such rules and regulations against Tenant.
21. **EARLY TERMINATION OF OCCUPANCY.** Tenant will not be released from liability for all rent and other charges due under this lease unless Landlord signs a written statement on which Landlord agrees to release tenant from such liability.
22. **EARLY TERMINATION OF LEASE BY MILITARY PERSONNEL.** If Tenant is a member of the United States armed forces and (i) receives orders for a permanent change of station to depart 50 miles or more (radius) from the Premises or (ii) is prematurely and involuntarily discharged or relieved from active duty with the United States aimed forces, Tenant may terminate this Lease by serving on Landlord a written notice of termination. This notice must state the date when termination will be effective and that date shall not be less than 30 days after the date Landlord receives the notice. In addition, the termination date shall not be more than 60 days prior to the date of departure necessary for Tenant to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Tenant's written notice of termination must be accompanied by a copy of the official orders. If Tenant exercises this right to terminate this Lease, Tenant shall be obligated for rent prorated to the date of termination. Rent for the final month or portion thereof shall be due on the first day of such month. On account of Tenant's early termination of this Lease, Landlord may require Tenant to pay liquidated damages as follows:
 - a. If Tenant has completed less than 6 months of the tenancy under this Lease as of the effective date of termination, liquidated damages may be no greater than one-month's rent.
 - b. If Tenant has completed at least 6 months but less than 12 months of the tenancy under this Lease as of the effective date of termination, liquidated damages may be no greater than one half of one month's rent. Any amount owed; as liquidated damages by Tenant shall be due on the first day of the month in which the effective termination date occurs. This section shall not relieve Tenant of any other liabilities, which have accrued as of the date of termination.
23. **TERMINATION, RENEWAL OR EXTENSION OF LEASE.** This Lease will automatically terminate at the end of the lease term on the date on which Tenant's occupancy ends. In addition, Landlord may terminate this lease for any reason by giving at least thirty (30) days written notice to Tenant. The termination of this Lease will terminate Tenant's right to occupancy but it will not terminate any claims Tenant or Landlord may have arising out of events occurring during the Lease term or during any holdover by Tenant. No agreement renewing or extending this Lease will be effective unless that agreement is in writing and signed by Tenant and Landlord. If Tenant remains in possession of the Premises after the lease term is terminated or expires and Landlord consents to such holdover but does not enter into a written agreement extending this Lease or substituting a new written lease, Tenant shall have a month to month lease subject to termination by either party upon 30 days notice. The monthly rent during such holdover period shall be at the same rate as under this Lease or as otherwise agreed in writing.
24. **ASSIGNMENT OR SUBLET.** Tenant will not assign this Lease or sublet the Premises without Landlord's prior written consent, which will not be unreasonably withheld or delayed. Tenant agrees to pay Landlord a \$ N/A fee if Tenant assigns or sublets the Premises, or any part thereof. No assignment or sublet will release Tenant from continuing liability for the full performance of this Lease unless Landlord signs a written statement clearly releasing Tenant from such liability.
25. **BREACH BY TENANT.** If (a) Tenant fails to pay rent within five days after the date when due, (b) Tenant commits a material breach of this Lease, (c) Tenant denies Landlord's exercise of any rights under this Lease or arising by law, (d) legal proceedings are begun by or against Tenant to levy upon or dispose of Tenants leasehold interest in the Premises, or (e) the Premises is used by Tenant or others for any illegal purposes, Landlord will have the right to sue for rent and to enter and take possession through legal proceedings or, if the Premises is abandoned, to enter and take possession by any lawful means. In addition, Landlord will have the right to pursue all other remedies available, including a claim for damages. If Landlord pursues any such remedies (and regardless of whether such remedies are prosecuted to judgment), Tenant will be liable as follows:
 - a. For all past due rent and other charges
 - b. For all additional rent (future rent) that would have accrued until the expiration of the term of occupancy under this Lease or until a new lease term begins, provided (i) that this will not affect Landlord's duty to minimize the damages by making reasonable efforts to enter into a new lease as soon as practical, and (ii) that if Landlord obtains

- a judgment for future rent, Landlord shall apply as a credit towards that judgment all funds received by Landlord as rent for the Premises for those months for which the judgment for future rent was awarded.
- c. For all expenses Landlord may incur for cleaning, painting and repairing the Premises due to Tenant's failure to leave the Premises thoroughly clean and in good condition, reasonable wear and tear excepted;
 - d. For any court costs and reasonable attorneys fees incurred by Landlord (i) in collecting rent, other charges or damages, and (ii) in obtaining possession of the Premises;
 - e. For a collection fee equal to 25% of the judgment amount for rent, damages, court costs and attorneys fees. Tenant understands and agrees that this amount represents damages Landlord will be likely to incur in efforts to obtain a judgment against Tenant (including time and effort spent in case investigation, correspondence, filing suit, discussions with lawyers, case preparation and court attendance) and to collect such a judgment. If Tenant has breached the Lease by failing to pay rent when due, Landlord shall give a written notice to Tenant stating that the Lease will terminate within 5 days if the rent is not paid. If Tenant fails to pay the rent within that 5 day period, Landlord may terminate the Lease and proceed to obtain possession of the Premises by filing an unlawful detainer proceeding. In that proceeding, Landlord may pursue a claim for rent and other damages. In connection with breaches other than failure to pay rent, if a material noncompliance with this Lease exists or if there is a violation materially affecting health and safety, Landlord may serve Tenant with a written notice stating that acts or omissions constituting the breach and stating (i) that the Lease will terminate upon a date not less than 30 days after Tenant receives the notice unless the breach is remedied within 21 days, and (ii) that the lease will terminate as set forth in the notice. If the breach is remedial by repairs or the payment of damages and Tenant adequately remedies the breach within 21 days or such longer period of time as Landlord may allow, the Lease shall not terminate. On the other hand, if the breach is not remedial, Landlord's written notice to Tenant may state the acts and omissions constituting the breach and state that the lease will terminate upon a specific date, which date may not be less than 30 days after Tenant receives the notice.
26. **BREACH BY LANDLORD.** If Landlord (a) commits a material breach of this Lease, or (b) fails to a substantial extent to comply with any laws with which Landlord must comply and which materially affect Tenant's health and safety, Tenant may give written notice to Landlord identifying the acts and conditions on the Premises concerning Landlord's breach and stating that this lease will terminate upon a specific date (which must be 30 days or more from the date Landlord receives the notice) unless Landlord remedies the breach within 21 days. If Landlord remedies the breach within that 21 day period, this Lease will not be subject to termination by Tenant in that instance. Tenant will not have the right to terminate this Lease because of conditions caused by the intentional or negligent acts of Tenant or persons on the Premises with Tenant's consent.
27. **RENT WITHHOLDING.** Tenant may not withhold rent because of conditions on the Premises that Landlord is required to repair unless Tenant has given Landlord written notice of the condition and Landlord has failed to successfully repair the condition within a reasonable period of time. If Tenant withholds rent because Landlord has breached the Lease, Tenant must immediately give Landlord a second written notice of the breach and of any conditions of the Premises which Landlord is required to remedy or repair and must state that rent is being withheld for such reasons. If Landlord then sues Tenant for possession of the Premises or for withheld rent, Tenant must promptly pay the rent to the court, which will hold the rent until it decides what portion, if any, should be paid to Landlord. If conditions exist which Landlord is required to remedy and which creates a fire hazard or serious threat to the health or safety of Tenant, Tenant may file an action in a court of competent jurisdiction to terminate the Lease, to require Landlord to repair the Premises, or to obtain other relief. In such an action, Tenant may pay rent to the court to be held until Tenant's action is decided. If Tenant withholds rent or pays rent into court under this section and the court finds (a) that Tenant has acted in bad faith, (b) that Tenant, Tenant's family or guests have caused the conditions or have refused unreasonably to allow Landlord or Landlord's written notice of the condition, Tenant will be liable for Landlord's reasonable costs, including costs for time spent, court costs, any repair costs due to Tenant's violation of the Lease, and attorneys fees.
28. **NOTICES.** All notices in writing required or permitted by this Lease may be delivered in person, or sent by mail (postage prepaid) to Landlord, Tenant or Agent at such party's address, as set forth above or at such other address as a party may designate from time to time by notice given in accordance with the terms of this section.
29. **HEADINGS.** The headings of the sections of this Lease are inserted for convenience only and do not alter or amend the provisions that follow such headings.
30. **GOVERNING LAW.** This Lease is entered into and shall be construed under the laws of the State of Virginia.

31. SEVERABILITY. Any provision of this Lease which is prohibited by, or unlawful or unenforceable under, Virginia law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions of this Lease.
32. FAILURE TO ENFORCE LEASE NOT A WAIVER. Landlord's waiver of a breach by Tenant shall not be interpreted as a waiver of any subsequent breach or noncompliance, and this lease shall continue in full force and effect.
33. AMENDMENTS. This lease may not be amended or modified except by prior written consent of the Landlord. All amendments or modifications shall be in writing and signed by both parties.
34. ENTIRE AGREEMENT. This lease shall constitute the full and complete agreement between the parties, and no other writings or statements (other than amendments or modifications pursuant to Section 33) shall be of any consequence or have any legal effect.

WITNESS the following signatures and seals:

CITY OF CHARLOTTESVILLE
BY: _____ (seal)
City Manager

COUNTY OF ALBEMARLE
BY: _____ (seal)
County Executive

TENANT

(seal)
(seal)

Agenda item No. 9. **Public Hearing:** SP-2008-060, Albemarle Baptist Christian School.

Proposed: Private school with up to 40 students and up to 5 teaching staff on a 6.26-acre property in conjunction with the existing Albemarle Baptist Church.
Zoning Category/General Usage: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access.
Section: 10.2.2.5 Private schools.
Comprehensive Plan Land Use/Density: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/density (.5 unit/acre in development lots).
Entrance Corridor: Yes.
Location: 1685 Roslyn Ridge Rd. at n/w corner of Hydraulic Rd (Rt. 743) and Roslyn Ridge Rd.
Tax Map/Parcel: 06100000001E0.
Magisterial District: Jack Jouett.
(Notice of this public hearing was advertised in the Daily Progress on August 24 and August 31, 2009.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this is a request for a special use permit to operate a private school in Albemarle Baptist Church facilities serving a maximum of 40 students with five teaching staff members. He showed a concept plan on the screen depicting existing building and parking areas on the site. The entrance to the property is from Roslyn Ridge Road close to the Hydraulic Road intersection.

Mr. Cilimberg mentioned that there is an area shown on the church's approved plan that may be used for a future building, but can be used now as a playground area. There is also an area that has been blacktopped that can be used for playing basketball. He said this request is small scale in terms of number of students, but is typical of private schools in rural areas using an existing building.

Mr. Cilimberg said staff does not anticipate any detrimental impacts to adjacent property given the distance of the school from neighboring residents. Also, there will be no site development changes or new construction on the property. VDOT has confirmed that the proposed school would not significantly impact traffic on Hydraulic Road. Based on the potential operating times presented by the applicant, the VDOT analysis shows 36 trips in the 7 a.m. to 9 a.m. time period and 24 trips in the 2 p.m. to 4 p.m. time period. Peak traffic hours on Hydraulic Road are from 7 a.m. to 9 a.m. with the afternoon peak hours being from 4 p.m. to 6 p.m. He said there is an existing left turn from Hydraulic Road into Roslyn Ridge and a dedicated bike turn lane. Based on the VDOT analysis there would be a possible five-second delay to exit onto Hydraulic for turning vehicles.

Mr. Cilimberg said this application requires no new support infrastructure. The well and septic system is sufficient to handle the school as proposed. The applicant is proposing a playground where the Phase 3 building is shown on the concept plan. The applicant is aware that a playground in that area will require an amendment to a previously approved site plan; if, and or when Phase 3 is built, relocating the

playground recreational area to another area on the site would require an amendment to this special use permit.

Mr. Cilimberg noted favorable factors to the application as: no detrimental impacts to the adjacent property, an expanded educational opportunity for the community, and minimal impacts to the existing character of the area and the church building. The unfavorable factor noted was an increase in vehicle trips on Hydraulic Road during the peak morning hours, but VDOT indicated that the minor delays expected are acceptable but said that any expansion beyond what is proposed would require a traffic impact analysis.

Mr. Cilimberg said the relatively small-scale of the school and with no physical expansion of the church, its general conformity with the Comprehensive Plan and the facts demonstrating there will be no impact on health, safety and welfare as provided by the Health Department, VDOT and the County reviewers, staff recommended approval. However, the Planning Commission at its hearing by a 4:3 vote, recommended denial based on the following factors: existing traffic concerns as represented by the neighbors, the potential of expansion as outlined by the applicant, and the potential negative impacts on the South Fork Rivanna Reservoir. He said if the Board chooses to approve this special use permit, staff has the conditions that were supplied to the Planning Commission including the reference to their plan, the maximum enrollment for staff and students, and that the hours of operation (as requested by the applicant) be between 9:30 a.m. and 3:30 p.m., Monday through Friday, from September 1 to June 15 (excluding special events), with students arriving no earlier than 9:00 a.m. and leaving no later than 4:00 p.m. to avoid peak travel times on Hydraulic Road. He said they also suggest that existing Condition No. 6 continue to be included as a reference although no physical improvements are planned except for the possibility of the playground area where a building is shown on the site plan. Staff felt that keeping existing Condition No. 6 which references the ARB's indications on the plan of the existing tree line and specific trees that should be saved and retained would be a good condition to keep. Staff also suggests a Condition No. 10 which simply says: "There shall be no daycare center without the approval of a separate special use permit."

Mr. Rooker said that before the public hearing is opened he would like to **disclose** that he owns property located at 1800 Roslyn Ridge Road and has a financial interest in Roslyn Ridge LC which owns property identified as Tax Map Parcel 45-18 located near the property subject to this application. He is also the registered agent for Roslyn Ridge LC at 1421 Sagem Place, Unit 3, Charlottesville, Virginia. He declared that he is a member of the following business, profession, occupation or group, the members of which are affected by this transaction: the group of numerous persons with personal interest in the ownership of property located in Roslyn Ridge subdivision and in property in close proximity to the Albemarle Baptist Church. However, he believes he is able to participate in this transaction fairly, objectively and in the public interest.

Mr. Boyd asked if an existing site plan has approval to add an additional building on the property. Mr. Cilimberg said according to the church's original plan, in conjunction with their special use permit and subsequently a site plan, the applicant showed all the buildings they could ultimately build, although they have only built one so far. He said that site plan was approved as part of the expectation for the growth of the church and future development. At the time it was approved that approval was not based on a school locating on the property.

Mr. Boyd said he did not quite understand – will that approval be changed based on conditions being placed on this special use permit to restrict that as the next step? Mr. Cilimberg said the church has that approval – if they were to build a playground instead of that new building, the plan would need to be amended.

Mr. Boyd said it would then be a playground, and the plan would have to be amended if they were going to build a building. Mr. Cilimberg said that is correct. They would have to either give up the playground, or if it were put in another location, amend the special use permit.

Mr. Boyd said the Planning Commission seemed to have a concern about the potential of future expansions, but the conditions clearly say they cannot do any future expansions without coming back for further approvals. He just does not understand the Commission's concern.

Mr. Dorrier asked about the two other churches in the vicinity of this one. Mr. Cilimberg replied that including this church, there are four churches on the west side of Hydraulic between Earlysville Road and Lambs Road and there is another church on the east side, but it is located in the development area.

Mr. Dorrier asked if all of these churches have special use permits. Mr. Cilimberg said the Unity Church and the church on the corner of Hydraulic/Lambs Roads and the church at Hydraulic/Earlysville Roads have a permit. None of these churches are grandfathered - they have all gone through the special use permit process.

Mr. Rooker said this request is different from a church. The church is already there and is in operation. This request is for potential use of the property for a private school.

Mr. Dorrier said the school is located inside of the church. Mr. Cilimberg said it would be located inside of that building.

Ms. Thomas said she had a question about the septic system. In the earlier special use permit request it was a special situation. She asked if it has worked fine. Mr. Cilimberg said according to the Health Department everything is okay, and it is suitable for a school of this size.

Mr. Boyd said in reviewing the materials in the packet, he wanted to be sure it was staff that recommended approval of the request. Mr. Cilimberg confirmed for Mr. Boyd that staff did recommend approval.

With no further questions for staff, Mr. Slutzky opened the public hearing and explained the public hearing process to those in the audience. He then invited the applicant to speak first.

Mr. Ray Jones asked that everyone in the audience who had come on behalf of the applicant stand to show support (approximately 90 people stood). He is with the law firm of Martin Wren representing the applicant. He said this matter is very important to him and his family. All three of his adult daughters attended such a church school. It is the foundation stone of his faith and is the core purpose of this church – to engage in activities and conduct ministries that may include – but are not limited to – an elementary and a secondary day school. With that purpose in mind, they contracted to purchase the current property in 2000.

Mr. Jones said that on May 15, 2002, the Board of Supervisors approved a three-phase, 435-seat sanctuary church at this location. On August 30, 2002, a proposed deed from the sellers, Roslyn Ridge, included restrictions which forbade the applicant from exiting onto Roslyn Ridge. At that time the sellers wanted the church to have a separate entrance from the property directly onto Hydraulic Road. In October, 2002, VDOT and the Albemarle County Department of Engineering rejected that option and ruled that for safety concerns access to Hydraulic Road from their property should come from Roslyn Ridge Road because of its lower volume and lower speed.

Mr. Jones said there were three options on the table at that time – the seller could have rejected the contract, the seller could have restricted access during different days and different times, or the seller could have waived those restrictions. He explained that for the final deed dated December 16, 2002, all restrictions were removed by the owners in Roslyn Ridge, meaning the seller removed any restrictions for the church's stated use for Roslyn Ridge Road. He said Albemarle Baptist Church paid for the use of Roslyn Ridge Road and when you pay for the use of a road you also pay for the delays or waiting time caused by the other people using that road.

Mr. Jones said the present request for a special use permit for a church school does not ask for any new buildings. They ask only to use the existing buildings for all school functions – that is something which is encouraged by Albemarle County. They have an approved 435-seat church building in Phase 2. The septic system and well can easily handle this and it is all contained on their property. He said that at this time they only have five children committed to attending this school in the fall of 2010.

Mr. Jones said he would address the concerns of the Planning Commission. First, they had traffic concerns. VDOT has approved using Roslyn Ridge Road to come out onto Hydraulic Road. Traffic generation from the proposed school, as well as the public school complex, impacts the morning peak traffic for Hydraulic Road but does not impact the evening peak traffic. VDOT determined that there would be a minor delay for vehicles departing Roslyn Ridge onto Hydraulic Road – an additional five seconds for a delay of approximately 40 seconds. He said that when the church paid for the property, it paid for those delays.

Mr. Jones said the Commission's second concern had to do with the environmental impact. The Health Department has stated that the current well and sewage disposal system is sufficient for the proposed school with 40 students and five teaching staff. Plus, their property is well landscaped and well drained to control any rainwater that falls onto the property. There will be no impact to the reservoir which lays approximately three-quarters of a mile in a straight line from their property. He emphasized that they are not changing or adding any structures to the property, or changing the layout of the property, not moving any dirt or any asphalt or any cement. Everything stays as is.

Mr. Jones said the Commission's third concern had to do with future expansion, but the only issue before the Board today is 40 students and five staff as a cap. They only have five children registered for this fall and there are three sets of parents involved. One is the pastor and he comes to the church everyday. There is another person who lives at Whitewood, and another parent who has two children. He said that on Sunday mornings they have between 150 and 200 people attend, and there are between 90 and 110 people who attend on Sunday evenings, with between 75 and 120 people present on Wednesday evenings. During vacation Bible school there are between 50 and 100 students arriving daily at about 5:15 p.m. and leaving at about 9:00 p.m.

Mr. Jones said he has never been made aware of any complaints about traffic related to their church activities. He said County staff mentioned to him that this application is subject to the First Amendment's Establishment and Free Exercise clauses and the Religious Land Use and Institutionalized Persons Act of 2000. One key provision in that Act states: "No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution unless the government demonstrates that imposition of the burden on that person assembly or institution a) is in furtherance of a compelling governmental interest and b) is the least restrictive means of furthering that compelling governmental interest."

Mr. Jones stated that this school is important to him. He is a grandfather and he wants to allow his grandchild to go to a church school so he can take her to school and pick her up in order to be an active part of molding her heart and her life. He asked that the Board unanimously approve this special use permit.

Mr. Shane Seymour said he has been a member of the church for three years and its Assistant Pastor for about two years. He travels to the church six or seven days a week during peak traffic times and has never had any issues with traffic. He does not believe their vision for a church school will affect traffic in any way. He has five reasons why the church should be allowed to have a Christian school – they want to teach their children the word of God, give the children a great education, they want to cultivate in their children good character traits, they want to nurture their children in a healthy environment, and to instruct their children in a way of righteousness. He asked that the Board vote “yes” on their request.

Ms. Star Palmore said the church’s day school will utilize existing facilities and will not interfere with the daily functions of Roslyn Ridge Road and VDOT has confirmed that it would not significantly impact traffic on Hydraulic Road. School activities would not impact the residential properties given their distance from the school. She said the Health Department has confirmed that the existing well and septic system are currently sufficient for the proposed school. The Albemarle Service Authority noted that the site is not on public utilities and will in no way upset the ecological balance of the reservoir and local groundwater. In the past year and a half they have planted trees by local licensed landscapers who adhere to the best ecological practices available for the area. She said there are different functions at the church on different days of the week, and even week-long events, and the additional traffic has been negligible. She encouraged the Board to vote in favor of the application.

Mr. Mark Harris said he lives in Scottsville, but is an active member of Albemarle Baptist Church and teaches in its teen ministry. He said they have all required permits from Albemarle County to gather up to 300 people in the existing building. All they request now is the ability to title their daytime gatherings as a school. Two years ago he worked landscaping this property and while there for many hours during the day he never saw more than three cars use Roslyn Ridge Road. They have a program on Friday evenings which requires them to gather at the church between 5:00 and 5:30 p.m., a busy time for Hydraulic Road, but he has never experienced delays either entering or leaving Roslyn Ridge Road. He understands that people do not like change but this special use permit brings change in name only, it does not allow them to meet anymore than at present. He understands that all of the Board members are education-friendly and family-friendly, so he encouraged the Board members to support the application.

Mr. Mark DeLoach said he is the pastor of the church. He brought his wife and two sons tonight, and they wanted him to express their disappointment in not being able to attend the school this year, but they are hopeful for this coming year. They do not understand traffic concerns, but do understand that this school is a part of faith. He said their church highly values the right to call upon their God to seek his assistance in all matters, particularly educational endeavors. They are home schooling their children in order to pass their Christian values to them. It has always been his goal to establish a church school in order to provide an excellent education for them in a safe Christian environment. This church was founded 11 years ago with a goal of teaching. He asked that the Board consider their application carefully and to vote “yes.”

Ms. Tina DeLoach said she is the pastor’s wife and they have two children – ages 14 and 12. She said she is home schooling her boys and allowing them to go to a church school is her religious right. She indicated that she has never had difficulty entering or exiting Roslyn Ridge Road onto Hydraulic Road during various church activities. She implored the Board to look at their proposal objectively and without partiality realizing that VDOT and the Health Department have both given their consent. She said the church had met all requirements necessary in order to move ahead with the church school. She requested that the Board approve this request.

Mr. Peter Cheage said he has been involved with Albemarle Baptist Church for many years. He is currently serving as the assistant to the pastor for the Albemarle Baptist Church of Africa International, which is a ministry to minister to the African people in Charlottesville. He introduced his wife and two children and stated that his children would attend the new school if it is approved. He said he frequents church facilities throughout the week and has never been delayed on entering or leaving the church premises on any occasion. He emphasized that the school would not significantly impact the traffic on Hydraulic Road or Roslyn Ridge Road. He thinks the school would make a positive impact on the community in this and future generations.

Mr. B.J. Yost stated his support for the church’s school proposal. He said a mission of the church is to assist parents and to support students in discovering and developing their individual uniqueness and talents. He emphasized that the church has the capacity to support ongoing services and meetings each day of the week with little or no impact to the environment or current system. He said that an ongoing Christian environment has the liberty to address the social, physical and spiritual aspects of the Bible – which in turn reaches the possibility of excellence in a child’s life. He encouraged the Board to approve this proposal, as it’s been recommended by VDOT, the Health Department and the County’s Planning staff. He also encouraged the Board to approve this extension of the home school education based on the positive, godly guiding principles Christians hold dear.

Ms. Beatrice Brown said she is a member of the church and is employed by the Albemarle County Public Schools. She expressed her support for the special use permit to operate a church school. According to the staff’s report, the County Planning staff recommended approval of the application citing

the fact that VDOT found that their school would not affect traffic or safety. They also cited the Health Department as saying the current well and sewage disposal system is sufficient for the proposed school of 40 students and five teaching staff. The school is requesting a maximum of 40 students at this time. She requested that the Board approve their request.

Ms. Pamela Harrington said she is a church member and works as a physician at UVA. She supports the church's application for a special use permit to operate a church school. She said the County's planning staff recommended approval of their application. She asked that the Board follow their recommendation and vote "yes" on the request.

Mr. Eddie Giles said he attends this church and has since last December. He encouraged the Board to approve the application for a school. He lives across the street from the church and he has never noticed it having any impact on his use of Hydraulic Road. He is not in such a hurry that a 40-second delay will harm him in any way.

Mr. Michael Roberts said he is employed at the Seminole Trail post office and is a member of the church. He said the issue of most concern has centered on traffic. He said there is an average of 21,000 vtpd at this location. Would an increase of 36 to 40 vehicles affect the traffic flow on Hydraulic Road? That would add only one vehicle to every 525 vehicles traveling on Hydraulic Road, or .2 percent which is very small in comparison to other projects approved in the County. VDOT has confirmed that it will not have an affect on this road. Most of the families who have children who will be enrolled in the school have more than one child. That alone will cut the volume of vehicles by one-third or more. He has grandchildren that are being home schooled and this would extend their resources for a better education, a safer environment, and an overall Christian atmosphere. He said it seems that the Roslyn Ridge community has been misled to think the church wants to make the neighborhood different in some way, but that is not true. They have gone out of their way to keep the area as neat as possible and to be good neighbors. They just want a safe place for their children to be able to extend their education. There was also a concern expressed about water and the strain on the watershed and contamination of the reservoir. Their facility is almost three-quarters of a mile from the reservoir. He asked the Board to vote in favor of the proposal.

Ms. Debbie Roberts she is a church member. The church has two employees who come to the building every day. Between the two of them they have six of the 40 students that could possibly attend this school. Also, the wives of both the pastor and assistant pastor are degree teachers, so there would be 10 people in two vehicles. Even if every one of the 25 school-aged children who are members of the church attended the school, only 11 vehicles would be involved. She said this would be only nine extra vehicles a day if all the children attended the school. However, at this time there are only five students committed to attending the school. She said they have activities almost every day of the week and regular church activities where 30+ cars enter the church property each night. She asked that the Board approve this special use permit for a church school.

Mr. David Bradley encouraged the Board to follow the recommendations of the Planning staff and approve the application.

Ms. Joy Joyner said that Christian education has an impact on the lives of young people and their future influence on communities. She had the benefit of attending a like-minded church school where she received a solid foundation in academics. That has allowed her to succeed as a professional. She said this day school will give its students a strong academic foundation which will enable them to become ethical and moral professionals who seek to serve future needs of the community. As to the concern about traffic on Hydraulic Road, that traffic is minimal compared to that on Seminole Trail and other roads. She asked that the Board review the VDOT report which confirmed that traffic from the church school will have a minimal impact on the road. In evidence of the church's desire to be a good neighbor, the church has offered to adjust the hours of the school's operation and the Planning staff made a recommendation as to what those hours should be. She asked the Board to consider staff's recommendation and approve this request.

Ms. Nora Kennon Winky said she is a member of the church as well as a Sunday school teacher. She emphasized that the church provides a lot of opportunities for members like her, and she supports the church school. She has never heard of or seen any impact on traffic on Hydraulic Road from the church and she does not believe that having 40 students will cause any undue traffic issue, complaints or burden to the road. In order to fulfill the church's mission and purpose as a learning center, she asks that the Board vote unanimously for their church school.

Ms. Lindsie Ware said she and her family live in the Rio District. Her child is one year old today and they are at this meeting instead of having a birthday party because they feel this Christian school is important. She emphasized the importance of a Bible-based education which they feel will serve him throughout his life. While they are not opposed to home schooling their son, they would prefer to send him to a school where he can learn and play with other children, and a school with small class sizes where he can get individual attention. Also, they will not have to worry about the background of the other children in the school. She understands the neighbors in Roslyn Ridge have expressed concerns about additional traffic on Hydraulic Road, but the results of the VDOT traffic study showed there is no need for that concern. If the Board approves their application tonight, it will be making a wise decision that will have a positive impact on the parents and children of the church for many years to come.

Ms. Karen Herndon said she has been an active member of Albemarle Baptist Church since her daughter was four years old – she is now a student at Jack Jouett Middle School. Her daughter has

participated in every activity possible at the church. This school would be a blessing for her daughter, and she would not have to worry about her daughter as she will get the Christian background training she needs and a good education. She asked the Board to approve this request for a school to make that possible.

Mr. John Snyder said he is a member of the church. He read the Planning Commission's report and noted their traffic concerns but VDOT has said the school would not significantly impact traffic on Hydraulic Road. They also had a concern about potential expansion of the school, but if the church should want to expand they would have to submit another request for that expansion so it is not an issue today. The Commission also noted a potential negative impact on the reservoir. The church has a water well and a septic system and both have been determined to be adequate. The neighbor's concern about traffic and safety was addressed by the appropriate departments and determined to have no significant impact. As to the Commission's concerns about an impact on the environment, having a maximum of 40 students and five teaching staff occupying the facility Monday through Friday would cause no additional impact on the environment since the facility has been approved for a capacity of 435 in Phase 3 of its development. At this time, Phase 1 of the church has a capacity of 200 in the sanctuary and 110 in the fellowship hall. There was no restriction in the original approval as to when the total capacity could be used. He asked for unanimous approval by the Board. He mentioned that he has seven great-grandchildren. One lives in the area and he would like to have the opportunity to take her to a Christian School at Albemarle Baptist Church.

Mr. Dan Zacharias said he is the Executive Director of the Old Dominion Association of Church Schools, which was founded in 1976 as an association of Christian schools operated under the ministries of independent Baptist churches. He said the association provides a wide range of services and activities for member schools, including opportunities for professional growth at their annual educator's convention – to be held in Charlottesville in November at the Doubletree Hotel. He is present to support the church and ask that the Board grant the special use permit that would allow the church to open their Christian school. He said their association is convinced that the Nation's children and their parents are served best when they can choose an educational setting from a variety of options. The existence of private religious schools in the community is a desirable and a beneficial thing, and the history in Albemarle of granting many such special use permits indicates this Board's agreement with their benefits and desirability. Parents who want their children to be in an academic institution whose philosophy is consistent with their own deeply-held religious beliefs deserve the freedom to make such a choice. He encouraged the Board to grant the special use permit because it will afford several families in Albemarle the freedom to have their children educated in a distinctly Christian and Baptist setting – a setting they believe is best for their children.

Mr. Dennis Morris said he lives in Tom Brooks, Virginia. He serves on the Shenandoah County Board of Supervisors. He said they have two similar private schools in their county. One was established in 1976 and another established three years ago. They also have two additional private schools and a military academy in Woodstock, and another academy in New Market. In their county they have seen over the years that the Christian schools provide a good, healthy environment. He related several stories relating to those Christian schools. He came to let the Board and the neighbors of Albemarle Baptist know that in Shenandoah County they have a good healthy environment with their two Christian schools, the neighborhoods are healthy, and the neighbors have accepted them. He has never received a negative comment about these schools from the neighbors, VDOT or the Sheriff's Department. He asked that the Board act favorably on this request since he thinks the Albemarle Baptist Christian School will be an asset to the neighborhood.

(Note: At 7:30 p.m., the Board recessed, and reconvened at 7:42 p.m.)

Mr. Thomas McFarlin, a member of Albemarle Baptist Church, addressed the Board. He believes in God, the protection of the family, and the principles of the country. His basic and primary education came from the church members at his home church. He said they were not a legal setting but the education he received was life-sustaining. He is proud of his 21 years of active service as an enlisted soldier. He still serves with the Department of the Army at the JAG School at UVA. He understands the concerns of those who might disagree with their church, but he also understands the reports and the facts that have been presented. He requests the Board's approval of this church school.

Mr. Timothy Weber said he and his wife Debbie live in Earlysville. He is employed by PRA International and he serves as deacon, treasurer, choir director, song leader, and part-time Sunday school teacher at the church. He said the church sponsors many other activities that can take place on the church site at almost anytime during any day of the week. The activities generate more traffic than what the school in its current state will produce. The school will be small – currently there are only five children who will be enrolled in 2010 - four of them belong to families who already make daily trips along Hydraulic Road. He said the Health Department granted its approval of the church's special use permit and said the church could have up to 40 students and five teachers in a school setting. They have only indicated interest in having a school within the church facility. They did not ask for a 40-student cap. That cap was set by the Health Department based on their objective assessment of the sewer, the water flow, etc. In order to have more than 40 students, it would require a new permit. He noted that his house in Earlysville is actually much closer to the reservoir than is Roslyn Ridge. He said they understand the concerns about traffic and water quality but feel the extensive, objective analyses performed by VDOT and the Health Department demonstrate that those concerns will not be realized. He urged the Board to unanimously approve this application for a church school.

Ms. Debbie Weber said she teaches Sunday school at the church. She teaches four to six-year olds and a number of them come from disadvantaged homes with little parental direction. Because they are at an impressionable age, it is important to instill values in them such as telling the truth, being friendly and sharing with their peers, not taking things that do not belong to them, showing respect to their parents, and being helpful. These are hard concepts for small children to understand, so she believes that a Bible-based Christian education can make a significant difference in their lives. She asked that the application be approved.

Mr. Adam Westfall said he is a member of the church. He said there were three aspects for denial of this request. First, was a concern about additional traffic on Hydraulic Road during peak traffic hours. He said the VDOT report indicates that the addition of the school traffic will not have a negative impact on traffic. He then read some VDOT comments archived in minutes of the Planning Commission. He said the current application is for Phase I of the school and should be treated as such. He then read more comments from the archived minutes of the Commission. Third, were the possible negative impacts on the reservoir. He said since the church uses a private well, that should not be an issue. The other had to do with contaminants from runoffs – the church was designed by a civil engineer and approved by the Board to self-contain any contaminated water or runoff. He said all three negative items have been addressed by the respective professional entities and he would implore the Board to vote “yes” on this request.

Mr. Justin Goodman said he lives in Roslyn Ridge subdivision. He speaks on behalf of his neighbors as well as himself. He stated that despite what the VDOT report says, it is difficult to make a left-turn out of or into the subdivision at 9:00 a.m. As to the number of students, their lack of success in enrolling students should be a factor in the approval. It should be approved as if the 40 students were coming from 40 different households because this school has that potential. Additionally, all of the church members who have said the traffic is easy at all times are talking about off-peak hours. As to the point that a compelling government interest is needed because this is a religious institution, the fact is that the church is located in a no-growth area and that is a compelling government interest – not one of the church members mentioned that it is a no-growth (rural) area, but they have not refuted that and the church knew that when they bought the property. That is also something that was considered when the neighborhood sold the property. As to the concern about parents being able to teach their children what they want - he does not see how this Board's vote will have an impact on what parents teach their children. He thanked the Board for their time.

Mr. Germaine Battle gave his support for the church school. He came to support them because he believes in what they believe in. He said taking everything into consideration (traffic, septic system, approvals of other boards), although those things are important, the character of the people who will attend the school is more important. This will not just be 40 students learning what God wants them to do, but about how they will live and tell others about living their life according to the Bible. He requested that the Board vote “yes” on the application.

Mr. Jason Haddock said he lives across the street from the church in the Garden Court area. Instead of repeating what so many others have said tonight, he would like to refute what a Roslyn Ridge neighbor might have concerns with. He thinks there are more people living in Garden Court than there are in Roslyn Ridge, and they all share the same issue about getting onto Hydraulic Road. Everyone who uses that road is subject to the traffic there. He does not see the school as having an impact. They have offered to adjust the operating hours of the school so it will not affect the neighbors in Roslyn Ridge. He reiterated that the application for the special use permit has met the requirements of all agencies involved. These agencies found no reason to deny the founding of Albemarle Baptist Christian School. While all members of his family were educated in the public schools, he believes that all should have a choice as to where they receive their formal education. The curriculum will be taught by teachers with years of experience in either public schools or church schools or by parents who now home school. He asked that the Board vote affirmatively on this request.

Ms. Linda Haddock said she is a member of the church. She will not speak about traffic which can be congested at peak times, but they are willing to change the hours of operation of the school to alleviate that problem for the neighbors and others using Hydraulic Road. Her main request is that the Board grant them the opportunity to serve the Christian children in their church. She is a special education teacher with the public schools and she knows it is tough for some kids who do not fit into the pattern of being in “the in” crowd. It is nice to have the kids relate to children who have their own interest and their own ideals. As a member of the church and a mother she is asking that the Board approve the special use permit so they can offer an education to the children in the church and the community.

Mr. James R. Haddock said he lives in Garden Court. He said the Board has just heard from other members of his family who have all been educated in the public school system. He has been employed by public schools for 39 years as a special education teacher, as a principal, as a special education director, and has been teaching special education classes at Albemarle High School for the last 11 years. He is very supportive of an alternative type of education for those children and youth, and for the parents who chose to have an alternative to the public school. He has been involved in the planning of the church school for the last year and a half. He has talked with representatives from VDOT, also with the Health Department and discussed the various concerns with this application. The final proposal they presented to the Planning Department was the result of the input from those agencies. He said they worked hard on meeting the concerns of the various people who represent the County in different capacities. The Planning Department gave them various conditions and he will say that the officers of the church who will serve as its Board of Education and the others involved as administrators and teachers

have accepted those conditions and agree to them without any kind of argument or concern. He thanked the Board for its time and urged it to support establishment of the school.

Mr. Donald Jones said he joined this church based on three things. First there is a healthy respect for women, racial prejudice is not welcome, and this church embraces a diversity of people from many walks and backgrounds. He believes these values are best passed on by example. He said they are not seeking approval for a large Christian school. Their vision is to fulfill their responsibility to the next generation. They need to have the tools to succeed in the modern world, and the character to do right even when it is not easy. They seek to meet the needs of parents who are members of Albemarle Baptist. He does not think there should be a concern with their septic system because it is capable of handling a congregation of 400 so should be able to handle a few dozen students during the week. He asked the Board to consider the recommendations of staff and the experts in each of the agencies mentioned, and approve their request for a special use permit.

Mr. Dan Dobbs said he and his wife are members of the church. They both strongly support the application for the church school. Although they do not have children, it is important that there be the opportunity to attend a faith-based school in which students can get an education in both reading/writing/arithmetic and training in the Bible. He said the church is not on an enrollment drive – this is because there are only 25 school-aged children in the church and only five of them have committed to attending the school. He asked the Board members to vote in favor of this church school.

Mr. John Wright had signed to speak, but was not present at this time.

Ms. Hyacinth Vickerman said she is a member of the church and is speaking in support of the school.

Mr. Lewis Martin said he and Mr. Ray Jones represented the church when they negotiated the contract with the Roslyn Ridge LLC which was ably represented by Mr. Dennis Rooker. He thinks that those negotiations of seven years ago are relevant to the decision today. At that time, the seller's primary concern was that the church's access to Hydraulic Road be straight off of the church property. That was their main condition in the contract. The church's main condition was that their intended use of the property be permitted by the utilities that serve the property and the title restrictions on the property. With those two primary restrictions, they moved forward. At a critical point just before settlement, and shortly before Mr. Rooker had presented the draft of the first deed provided to the Board members by his associate today, they learned from VDOT that they would not approve an entrance directly off of Hydraulic Road. Looking at the first draft deed, one can see that a full paragraph in that deed has a well-crafted, restrictive covenant imposed by Mr. Rooker to preclude the church's use of Roslyn Ridge Road, and the church was fine with that, but VDOT said "no." He explained that at that point, the sellers had three choices. First was to terminate the contract – they could keep the property and preserve their access, but they would not get the purchase price so they did not choose that option. The second choice was to propose an addendum to the contract which would require that the road access be restricted to certain days of the week and certain hours of the week, and this would have required that the church get less than they originally bargained for. The church might have agreed to this if they wanted to reduce price. They may have disagreed and insisted on what they had originally bargained for, but those negotiations never occurred. What happened is that the Roslyn Ridge lot owners elected a third alternative which is the recorded deed the Board members have a copy of today - it has absolutely no restriction on the use of Roslyn Ridge Road. If the Board votes to approve the church's application tonight, it insures that the church gets the benefit of its bargain just as the Roslyn Ridge property owners got the benefit of their bargain when the church paid them the full consideration for the property.

Ms. Amber Roberts said she is a product of Christian education. She started in kindergarten and went all the way through college in Christian schools. She would like the same opportunity for her daughters. Currently she home schools her daughter who is in the fourth grade this year. Her three-year old daughter thinks she would like to go to school, and she and her husband have decided the only school she would be allowed to attend is the church's school. They have looked at other Christian schools and at private schools, but they are not comfortable with them. They want her at a small school. She asked the Board to vote "yes" today.

Ms. Marylou Fowler had signed to speak, but was not present at this time.

Mr. David Nielsen said he and his wife attend Albemarle Baptist Church and are both retired. He stated that they support the special use permit request. He read the staff's report and the one thing that stood out was fear. He thinks the objections are based on fear. He asked that the Board not let fear be a motivating force and that they approve the request.

Mr. Mark Covey had signed to speak, but was not present at this time.

Mr. Biff Rossberg said he actually came to speak about the Music Festival, but as a product of Christian schools he would like to support the Albemarle Baptist application.

Mr. Mike Leo had signed to speak, but was not present at this time.

Mr. John Updive had signed to speak, but was not present at this time.

Mr. Kam Khare said he lives in the Roslyn Ridge subdivision. He went to Tandem School which started out very small. It had less than 50 students, and now it has about 200. The residents are

concerned with safety. There are many churches located along Hydraulic Road in terms of different needs and requirements. Soon Albemarle Place will be at the corner of Route 29 and Hydraulic. The residents see the issue as traffic and growth in the area. They don't want to stop any kind of education, but they want to be sure it is safe. He said the fact that the school will grow should be considered – it's about safety, it's about traffic and about doing it in a way that is best for everybody.

Ms. Roseanne Ford said she has lived in Roslyn Ridge for 18 years. She came to express concern about traffic congestion in the area – particularly with respect to entering and exiting the subdivision off of Hydraulic Road. It has been her experience that the road is congested between 8:30 and 9:00 a.m. and the rush hour between 5:00 and 6:00 p.m. She appreciates the church taking that into account and adjusting its hours of operation. One concern is that there might be before-school or after-school activities. Even a few additional cars could make a significant impact, particularly left-hand turns in and out of the subdivision. She opposes approval of this application.

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

Mr. Davis suggested the applicant be allowed to speak again.

Mr. Boyd said he also has a question for the applicant.

Mr. Ray Jones said he understood he had five minutes for a rebuttal at the end of the hearing. He said there is no evidence that granting the special use permit will make things unsafe or cause traffic headaches. That is speculation and he understands the concern. No one has said there have been any delays caused by anything the church has done to date. None of the speakers from Roslyn Ridge have made such an indication and the man who attended Tandem School is not opposed to them having a church school. With regard to rush hour, he personally travels that road during that time period and often stops by the church, but has never experienced more than a 15 to 20-second delay in getting out of the road. He said the church is actually complying with all of the Roslyn Ridge residents' concerns. They are not adding traffic or increasing use of the building, they are simply replacing a greater capacity with a lesser capacity. They are actually bringing in a lesser use of the church facility thus trumping larger uses for other purposes later. He said the church is doing exactly what the Comprehensive Plan calls and that is having a small-scale operation that complies with the rural area.

Mr. Jones said the impact will be minimal. If the Board could never approve anything that called for up to a 40-second delay, everything would shut down immediately. If all they have is up to a 40-second delay, five seconds per vehicle according to VDOT, that is a very small inconvenience to those in Roslyn Ridge especially since the church bargained and paid for that property and the use according to their mission and their purpose. He said this school is a part of their faith, and part of their faith is also being good neighbors to members of Roslyn Ridge, good neighbors to other people along the highway, and they have been. He said the officers of the church have already agreed to comply with what County staff recommended. He asked that the Board vote unanimously to approve up to a 40-student school with no more than five staff members. He asked the Board to do that - all the facts support them, and all the evidence, and all the studies support their position.

Mr. Boyd said a couple of the conditions had been tweaked tonight – he asked if the applicants had reviewed the recommended conditions. Mr. Jones asked if he was talking about beginning school at 9:30 a.m.

Mr. Boyd said that was correct. Mr. Jones said that is not a problem.

Mr. Rooker said that is something the church submitted and agreed to.

Mr. Rooker said he appreciates all of the comments made tonight. He said the church has been a good neighbor. They keep their property nicely and he admires the goals of the church and its parishioners. However, this is not a religious decision – this is a land use decision. He said most people hold their religion as a very important thing in their lives. But, from the Board's standpoint, this is a land use decision.

Mr. Rooker said this property lies in the rural areas. In the past he has had at least one private school come to him asking if he would support them going into a lot off of Hydraulic Road virtually adjacent to this property. He had indicated he would not support that request because it was an expanded facility in the rural area. He has heard the comments tonight on both sides of the traffic issue, but he would say that during rush hour if you want to make a left-hand turn out of any place on the west side of Hydraulic Road, you need to make a right-turn and travel down the road to a place where you essentially turn and come back.

Mr. Rooker said there is virtually no money in Virginia for transportation improvements. Six years ago, the County's funds for State Secondary roads were over \$5.0 million; this year they will be only \$1.5 million. The Board expects that amount will be cut in half in the next three or so months. The Board recently received a "talking point" sheet from the Secretary of Transportation which indicated that soon they plan to provide no funds for transportation construction in the state. This is a remarkable decline in transportation funding which is supposed to be paid for by the State and Federal governments. It will be a huge problem for the County. He said Hydraulic Road is one of the parallel roads to Route 29 and it presently has about 20,000 vtpd.

Mr. Rooker said there are points of difference between this request and the Charlottesville Day School which was the school that approached him about potentially using the Roslyn Farm property. There will be no new facilities added as a result of this application. The conditions on the time of pick-up and drop-off of students is very important because assuming the conditions are adhered to, this will not add traffic during the time of day when the road is overburdened. That is a significant point of distinction. In light of the conditions, he will support the application, but it is unlikely that he would support an expansion of the application beyond 40 students.

Mr. Rooker said there has been little talk tonight of the distinction between the growth areas and the rural areas – that is a significant distinction in the Comprehensive Plan. The County provides for what are called “hard edges” between the rural areas and the growth areas. There should be a significant difference between what is seen on one side of the line and the other side of the line. He said Hydraulic Road is the dividing line between the growth area and the rural area. When people speak of the growth they have seen along Hydraulic Road, that growth is on the east side in the growth area. The County needs to be extremely cautious about discretionary approvals which will add any significant traffic to Hydraulic Road especially during rush hour.

Mr. Rooker said the Comprehensive Plan and the master plan which is being brought forward (Places29) call for significant additional density on the east side of Hydraulic Road and on the east side of Rio Road. Capacity needs to be preserved on those roads for that growth. If all of that capacity is used up approving discretionary things in the rural area, there will be no capacity left and there is no money to build additional facilities to accommodate the growth that is coming in that area. He said this is a minimal traffic increase as long as the cap is maintained on the number of students. It is important that traffic will not be put on the road during peak hours when it is presently over capacity. After saying all of that, he supports the application.

Ms. Thomas said she recalls when Hydraulic Road was made the boundary line between the rural and the growth areas. Because of the possible effect on the reservoir, it was important that there not be public water and sewer in an area where a lot of people said, if you don't want septic tanks you should have public water and sewer. At the time, the Board realized that would allow greater growth and in the end, the impact from the stormwater from that growth would be worse than septic tanks. She is glad that the septic tank situation, which is an unusual one at this church, is working. For the people who are concerned about the threat of growth, the County Attorney has advised that something now which is a matter of supposition can't be used as a reason in a case like this. The Board is not ignoring that because case law says that it must. She said if the church is considering 40 students as a starting point, they might do well to discuss that with members of the board before they make lots of plans for growing beyond that point, particularly since the Health Department suggested 40. She does not want anyone to think about growing beyond that point – she will warn people that expansion is unlikely to be met with approval by the Health Department or by this Board. When she went out and looked at the road, she felt it was ironic because Roslyn Ridge probably provided those turn lanes that make it possible to have this additional traffic. She said she will support the proposal.

Mr. Dorrier said he thinks the congregation has made an effort to show their good faith in abiding with their plans. It appears that the Planning Commission based their decision on the potential for expansion and the potential negative impacts on the reservoir. He doesn't see the potential for expansion as part of this application. That is really not something the Board can consider at this time. As to negative impacts on the reservoir, he does not see that this church is impacting the reservoir that much, probably because it is just one of many churches in the neighborhood. The road itself is a four-lane road, and he does not see this one church as having a negative impact. Traffic concerns were the third reason given by the Commission. The 40-member school is a new use by the church and it does not appear it will be that significant compared to the 22,000 vtpd on Hydraulic Road today. He said staff has recommended approval, and when the Board decided in 2002 to allow a church to go on that property, “the die was cast at that time” to make a use of the property that would be compatible in the rural area, but also could be compatible in a suburban area which is what he considers this area to be.

Ms. Mallek said she is sensitive to the Comprehensive Plan and the rural area restrictions and the County's goals for where uses will take place. This is an ideal location for a congregation that comes from so many different parts of the County. She appreciates the changes the church has made and the way they've addressed those rural area issues. Since many of the same children coming to the school are ones that already come for special events, the operating hours will provide a more structured environment in terms of traffic and road usage. She said she will support the application.

Mr. Boyd said he supports the church and what they are trying to do. He appreciates Mr. Rooker pointing out that this is a land use decision. When he looks at land use, he considers the economic value of the land and what that can do to keep taxes low. But, it's equally important for character development. This is a case of land use being used for character development. He said he is solidly behind what the church is doing.

Mr. Slutzky said he shares most of the thoughts that have been shared tonight. He views this as not specifically pertaining to a church school – it is a land use decision. He is appreciative of Mr. Rooker having shared the frustration of the Board members with the lack of funding for transportation infrastructure that does relate to the slightly increased use of this particular location. He loves public hearings because he always learns something – he was not familiar with this church before tonight. He said that tonight the Board members got a feeling of what the church is about and it is clear the congregation has a great deal of interest in not just having a church school, but an environment through which children can be taught to be good citizens. He said this Board has to make political decisions as

elected officials. The Board is not supposed to be unduly influenced by the emotional relationships with the request. He thinks this boils down to an interesting balance between wanting to preserve what is meant by the term "rural area." It means there should be no increased activity in those rural areas. All of the development activities have been concentrated inside the development areas to protect the rural areas. The church location is in a rural area so that suggests to him that the Board should be very careful about permitting any increased intensity of the use. It was interesting that when confronted with the concerns of the community about the impact the church school might have on the transportation in the neighborhood, the response was to adjust the request by scheduling the church school at a time when it would not create those negative impacts. He applauds the church's willingness to be responsive to those concerns. He thinks they have been addressed adequately. He appreciates that fact because it made it easy for him to make his decision.

Mr. Rooker then offered **motion** to approve SP-2008-0060 with the conditions as presented by staff tonight. Ms. Mallek **seconded** the motion. Roll was called and the motion passed by the following recorded vote:

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

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

1. The school is limited to the existing building and grounds, as indicated on the concept plan (Attachment A). Any additional building or site changes beyond those shown on the approved site plan for SP-2001-47, prepared by Dex A. Sanders and dated November 28, 2007, will require an amendment to this Special Use Permit;
2. Maximum enrollment of students and staff shall be limited to forty (40) students and five (5) staff. Any increase in enrollment and/or staff shall require an amendment to this Special Use Permit (SP-2009-60) and a traffic study shall be required to be submitted with the amendment;
3. Hours of operation for the school shall be between 9:30 a.m. and 3:30 p.m. Monday through Friday from September 1 to June 15, excluding special school events. Students shall arrive no earlier than 9:00 a.m. and shall leave no later than 4:00 p.m.;
4. No additional outdoor lighting shall be allowed without an amendment to this Special Use Permit;
5. Food preparation for the private school use shall not be conducted without an amendment to this Special Use Permit;
6. All requirements of the Architectural Review Board shall be met, including the site plan indicating the existing tree line and specific trees of six (6) inches or greater and retaining significant trees;
7. The area of assembly shall be limited to a maximum four-hundred-thirty-five (435) seat sanctuary;
8. Commercial setback standards, as set forth in Chapter 18, 21.7.2 of the Albemarle County Zoning Ordinance, shall be maintained adjacent to residential uses or residentially zoned properties;
9. Any number of parking spaces in excess of the required minimum shall not be paved; and
10. There shall be no day care center without the approval of a separate special use permit.

(Note: The Board recessed at 8:47 p.m., and reconvened at 8:54 p.m.)

Agenda item No. 10. **Public Hearing:** SP-2008-066, 20 South (Amendment).

Proposed: Amend SP-2002-0022 (Home Occupation-Class B) to allow three storage sheds for an existing catering business.

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

Section: 10.2.2 (31) Home Occupation Class B.

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

Entrance Corridor: No.

Location: 1156 Roundtop Farm; east side of Rt 20 Scottsville Road, approx. 1400 feet north of Rt. 708 Red Hill Rd.

Tax Map/Parcel: 102000000017E0.

Magisterial District: Scottsville.

(Notice of this public hearing was advertised in the Daily Progress on August 24 and August 31, 2009.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request is to allow three sheds to be added to a previously approved special use permit for a catering business. The three sheds already exist as the applicant was not aware they required an amendment to the original permit. The property is located in the Southern Albemarle Rural Historic District. Approval of this permit would allow this business which has been operating out of the site since 2002 to expand; it is a catering business that relies on local growers, it supports agricultural uses in the rural areas and promotes economic viability for rural

landowners. He then showed pictures on the screen of the sheds, noted that the square footage of all three totals 1,035 square feet. There is no plumbing or electrical wiring associated with the sheds. One is shown as a workshop on the concept plan, but is used as a tool shed. Staff and the Planning Commission recommend approval with five total conditions – two of which are added or amended to reflect the request before the Board. He offered to answer questions.

With no questions for staff, Mr. Slutzky opened the public hearing and invited the applicant to speak first.

Mr. Pierce McClesky indicated that he didn't have anything to add.

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

Mr. Dorrier commented that he knows the McClesky family and the three sheds serve a useful purpose and don't disrupt the landscape. He then offered **motion** to approve SP-2008-066 subject to the conditions recommended by the Planning Commission.

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

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

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

1. Special Use Permit SP-2008-66 20 South Office shall be developed in general accord with the concept application plan, provided by the applicant and received March 16, 2009 (Attachment D-on file). However, the Zoning Administrator may approve revisions to the concept application plan to allow conformance with the Zoning Ordinance;
2. There shall be no on-site sales;
3. There shall be no outdoor storage of materials;
4. All requirements of the Health Department shall be satisfied; and
5. No additional outdoor lighting shall be allowed without an amendment to this Special Use Permit.

Agenda item No. 11. **Public Hearing:** SP-2009-006, Kenridge.

Proposed: Amendment to SP-2004-52 to change the approved application plan. Modification consists of revised location for access road and parking for the commercial building and the elimination of one of the single family attached units. Approved uses remain unchanged.

Zoning Category/General Usage: CO Commercial Office - offices, supporting commercial and service uses; and residential use by special use permit (15 units/acre).

Section: 23.2.2(9) R-15 residential-15 units/acre.

Comprehensive Plan Land Use/Density: Office Service - office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre) and Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/acre in development lots) in Neighborhood 7.

Entrance Corridor: Yes.

Location: North side of Ivy Road (Route 250 West across from Birdwood Golf Course) approximately 1/2 mile west of the intersection of Ivy Road and the 29/250 By-pass.

Tax Map/Parcels: 60K/61 & A2.

magisterial district: Samuel Miller.

(Notice of this public hearing was advertised in the Daily Progress on August 24 and August 31, 2009.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this project is located off of Ivy Road West in an area that was subject to a prior approval for residential development. Most particularly, it is the area that incorporates the old carriage house which was associated with the manor house. He showed the original plan, which is being revised by this request, on the screen. On that plan the manor house had its own existing driveway and parking area, and the carriage house was to have access from Kenridge Lane on the east side of the project. He pointed to an area on the plan where a total of six units were originally proposed with the entrance off of Kenridge Lane to be between the single-family detached and attached units. The applicant's request now is to have the carriage house which has served as a sales facility, accessed instead off of the west side of the property instead of the east side. That would involve the loss of one unit on that side bringing the number of units down to five. He said the driveway as it exists now was initially created when the existing building was being used as a sales facility. According to the plan and the notes on the plan, the driveway would be eliminated beyond the parking area unless it is brought up to appropriate standards.

Mr. Cilimberg said factors supporting the original special use permit have not changed, the applicant has made the revisions recommended by staff and the Planning Commission; the staff and the Commission recommend approval with the revised conceptual plan and 17 conditions. He said all of the

conditions were carried over from the original approval; the changes actually occur in the first condition which makes reference to the conceptual plan he described. He offered to answer questions.

Mr. Boyd said since there will be the loss of one lot, he wondered if one would be picked up on the other side once the driveway is moved. Mr. Cilimberg said on the other side they show eight lots where there were originally eight lots, but he believes it is the applicant's intent to widen the lot sizes.

Ms. Thomas said the neighbors are interested in the traffic light that is to be placed on Route 250 when VDOT says there is enough traffic to warrant the light. She asked if this will increase traffic in any way. Mr. Cilimberg said what they propose to do would not increase traffic.

With no further questions for staff, Mr. Slutzky opened the public hearing and invited the applicant to speak.

Mr. Scott Collins, representing Kenridge LLC, offered to answer questions.

Mr. Boyd asked if Kenridge had any problems with the conditions. Mr. Collins replied that they do not.

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

Mr. Rooker said he thinks this is a positive change in the plan.

Ms. Thomas said she checked with staff to be sure the neighbors had been sufficiently notified of this hearing, and whether staff had received any concerns. There were only a couple of comments, but they had nothing to do with this plan. She then **offered** motion to approve SP-2009-006 with the amendment and the conditions as presented.

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

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

NAYS: None.

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

1. The approved final site plan shall be in general accord with the revised Conceptual Plan prepared by Collins Engineering, revision date August 25, 2009 ("Conceptual Plan") (See Attachment). Parking for the office use shall be limited to the area and number of spaces shown on the Conceptual Plan. If additional parking is required for the office use, an amendment of this special permit shall be required;
2. There shall be a minimum front yard of two hundred seventy-five (275) feet between the southern-most structure (the "Main House") and the property line adjacent to Route 250 as shown on the Conceptual Plan; side and rear yards shall be as shown on the Conceptual Plan;
3. All streets on the property connecting to adjacent properties as shown on the Conceptual Plan shall be constructed by the applicant to an urban section with the intent that such streets on the property connecting to adjacent properties will be built to a standard consistent with the connecting street on the White Gables property. All streets and pedestrian accesses shall be constructed to a standard acceptable to the County Engineer in accordance with the highlighted sections of Attachment A, revised and dated August 30, 2005, and initialed as CTG;
4. The connecting road extending from the former ITT property (Tax Map 60, Parcel 28) and across the Kenridge property to its entrance at Ivy Road, as shown on the Conceptual Plan, shall be established as a private street in conjunction with the final subdivision plat or site plan. As a condition of final subdivision plat or site plan approval, the applicant shall grant all easements deemed necessary by the Director of Community Development to assure the public's right to use the connecting road for purposes of ingress to and egress from Tax Map 60, Parcel 28;
5. The applicant shall comply with all requirements of the VDOT related to design and construction of the entrance to the property, as shown on the Conceptual Plan, and shall pay its pro rata share of the cost for signalization of this infrastructure contributed by traffic from the development as follows:
 - (a) Prior to the issuance of a building permit, the applicant shall place funds in escrow or provide other security ("security") acceptable to the County in an amount equal to its pro rata share of the cost of the signal which amount shall be calculated by the Director of Community Development in the year in which the security is provided. The security shall continue so that it is available to pay for the cost of the signal until ten (10) years after the date of approval of this special use permit; security provided that is not in an interest-bearing account shall be annually renewed, and the amount of the security shall be adjusted each year according to the consumer price index, as determined by the Director of Community Development; and
 - (b) If, at any time until ten (10) years after the date of approval of this special use permit, VDOT authorizes in writing the installation of the signal, and VDOT and

- the County's Engineer approve the signal's installation before the applicant has obtained a building permit, the County may demand payment of the applicant's pro rata share of the cost of the traffic signal, and the applicant shall pay its pro rata share of the cost to the County within thirty (30) days of that demand;
6. Screening adjacent to the railroad right-of-way and along the west and east sides of the project shall be provided and maintained as depicted on the Conceptual Diagram of Perimeter Screen and Privacy Planting, dated May 12, 2005, by Charles J. Stick, attached as Attachment B. The continuous evergreen trees noted as Leyland Cypress Hedge along the north, east and west sides of the project shall be installed at ten (10) feet to twelve (12) feet in height after lot grading but prior to issuance of a building permit for any dwelling unit construction. The Leyland Cypress Hedge also shall be planted on eight (8) foot centers. Underground irrigation shall be provided for all the planting areas. Screening deemed acceptable to the Director of Community Development shall be provided adjacent to the railroad to mitigate the impact of this development on adjacent property and the impact of the railroad on this development;
 7. Prior to any alteration or demolition of any building, a reconnaissance level documentation to include black and white photographs and a brief architectural description shall be provided to the satisfaction of the County's Historic Preservation Planner;
 8. Regardless of the ownership of the open space and amenities, they shall be made available for use by all residential and commercial units in the development;
 9. Except for those attached single-family buildings located in Zone (A) the exteriors of blocks of attached single-family buildings shall be either red brick, or white painted brick, with gable roofs. The exteriors of attached single-family buildings in Zone (A) shall be red brick with gable roofs. The features in Zone (A) shall be reviewed and approved by the ARB during its review of the site plan for these buildings. The exteriors of detached residences shall be either red brick or painted white brick. These materials shall be reviewed and approved by the Design Planner before the issuance of a building permit for the buildings (See Attachment C);
 10. Exterior roof surfaces shall be constructed of either copper or synthetic slate;
 11. The new villa and town home units shall include garden improvements, generally as depicted on the Front Garden Diagram, dated August 24, 2005, by Charles J. Stick, Landscape Architect (See Attachment D). Maintenance of these areas shall be provided for and required by the Homeowner's Association which shall be set forth in the Covenants for this development. The decorative walls, steps and walks shall be constructed of either brick or stone;
 12. To ensure the retention of the majority of the existing trees in the two hundred seventy-five (275) foot front yard setback described in Condition 2 (located between the main house and the Route 250 West Entrance Corridor), the applicant shall submit for review and approval by the County's Design Planner a tree conservation plan prepared by a state certified arborist that meets the requirements of Section 32.7.9.4 of the Zoning Ordinance. This plan shall be required for all erosion and sediment control plans, site plans, and subdivision plats;
 13. The site wall immediately adjacent to Route 250 West shall be included on all drawings that include its context. All grading, road alignments, turning lanes, and other improvements shall be adjusted to insure that impacts to the wall only include closing the existing entrance and adding a single entrance. Notes shall be included on the grading, site plans and subdivision plats that state: "The existing site wall shall remain. Disturbance shall be limited to the closure of the existing entrance and the opening of the proposed entrance into the site." Any changes to the wall shall be minimal and articulated to blend with the character of the existing wall to the satisfaction of the Architectural Review Board. Prior to the issuance of any building permits in the final block, the stone pillars shall be replaced at the new entrance from Route 250;
 14. The design of all single-family detached residences, including but not limited to colors, roofing, siding and foundation material selections, shall be coordinated with the Architectural Review Board-approved designs of the attached residential units, as determined by the Design Planner;
 15. The owner agrees to voluntarily contribute a sum of three thousand dollars (\$3,000) cash per new dwelling unit to the County for funding affordable housing programs [including the Housing Trust Fund]. The cash contribution shall be paid at the time of the issuance of the Building Permit for such new unit. The acceptance of this special use permit by the owner shall obligate the owner to make this contribution;
 16. Pedestrian access deemed acceptable by the Director of Community Development shall be provided to the Manor Home and the Carriage House; and
 17. With the exception of the entrance road, all streets within the development shall conform to the neighborhood model matrix deemed appropriate by the Director of Community Development.

Agenda item No. 12. **Public Hearing:** SP-2009-016, Music Festival.

Proposed: Special Use Permit to allow a special event at the Misty Mountain Camp Resort.
Zoning Category/General Usage: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).
Section: 10.2.2.50 Special events.

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

Entrance Corridor: Yes.

Location: 56 Misty Mountain Road, approx. three-quarters of a mile west of 64E junction.

Tax Map/Parcel: 07100000000300.

Magisterial District: Samuel Miller.

(Notice of this public hearing was advertised in the Daily Progress on August 24 and August 31, 2009.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request is for a special permit that would allow one three-day music festival per year at the Misty Mountain Resort off of Route 250 West; he noted that a festival has already been scheduled to be held there from October 2 to October 4, 2009. He presented on the screen a concept plan for the festival area, which is separated from the campground and is accessed from a road entering from Route 250 - it includes the parking, vending and staging areas. The Planning Commission added language to insure that this specific area is denoted by the conditions.

Mr. Cilimberg said a portable stage would be used and there would be no more than 500 people in attendance each day. There is a condition which would restrict noise levels to no higher than 65 decibels during the event as measured from any adjacent property. The hours of operation would be from noon to 10:00 p.m. All the festival parking would be onsite. They have contracted for trash removal and recycling. Security would be required onsite at all times during the entire festival. Camping outside of the designated camping areas would not be allowed. There is a provision for emergency exits. He said staff offered a condition to limit the validity of the special use permit to allow a trial period consisting of two events - one in the fall of 2009 and one in the fall of 2010 - in order to monitor the impacts of the festival and to insure that no unforeseen impacts arise that would jeopardize the health, safety and welfare of the general public. He said if they applied to have the permit re-approved, staff would be able to judge what conditions should be changed, altered, removed or added based on what had been experienced at those two events.

Mr. Cilimberg said VDOT has determined that the proposed use would not have a detrimental impact on traffic in the area. He showed on the screen a rendering of the campsite where the festival would be held. He mentioned that factors favorable to the request as the minimal impact the site would have given that the festival is a temporary special event and no permanent structures or improvements would be constructed and no anticipated detrimental impacts on adjacent property resulting from the use. He said the added language in the condition that the Planning Commission recommended was to address concerns raised by a couple of property owners in an adjacent subdivision regarding any activities that could drift toward the subdivision.

Mr. Cilimberg said the unfavorable factor is that there would be increased traffic in the area during the three days of the festival. He said staff and the Planning Commission have recommended approval subject to the conditions, including the added language by the Commission to insure that the area he noted earlier would be the area within which the festival would be held, and only within that area. He said there are a total of 17 conditions recommended. Staff made a slight alteration on the tenth condition just to have the language read clearer as to the parking on the site for this special event and the maximum amount of parking each day. He then offered to answer questions.

Mr. Slutzky asked what happens if the decibel level exceeds 65 decibels on an offsite property. Is there a plan between staff and the applicant as to what the response would be? Mr. Cilimberg said that Mr. Higgins from the Zoning Office is present and may want to respond to that question.

Mr. Slutzky asked what would happen if more than 500 people attend on a given date. Is there a plan in place to address that condition? Mr. Cilimberg handed to the Board members a copy of the one letter received in opposition to this request from an owner about 2,000 feet away. It is not an adjacent property.

Mr. Ron Higgins, Chief of Zoning, said staff has actively talked about a decibel level limit; staff will have to get some baseline measurements before the festival occurs and from adjacent properties during the festival. They will work with the applicant to find a way to dampen the sound. If the permit is approved for two years and they find that the decibel levels are exceeded this year, the organizers would need to come up with more substantial measures to limit the sound. They will get baseline measurements so it will help the applicants know what to measure from.

Mr. Slutzky said he would encourage staff to take measurements at different times. He is hopeful the County is getting good data. Mr. Higgins said it is hoped that they will find something on which the organizers can base their own management.

Mr. Slutzky asked about the 500 person, 224-car limit. Mr. Higgins said the applicant has a limitation method of his own. They will sell 500 tickets - with an additional number of attendees possible by the campers on the property. It is possible that they could have 1100 people on the property at one time. The applicants do not expect that to happen, but the limitation condition would allow that. Mr. Cilimberg noted that if any of the 600 campers go to the festival, they have to buy a ticket and are thus included in the 500 attendees. Because of that, the maximum number would self-lower.

Ms. Thomas asked if the ABC Board is involved with this event, and is there a need for police to direct traffic on the highway, and if so, is there a provision to pay overtime for the police. Mr. Higgins said the applicant can give the details as to what is planned for that because there is a lot involved. Mr. Cilimberg mentioned that Condition No. 11 sets out the requirements for security, parking and traffic control. It does not speak to police in particular.

Mr. Boyd asked about the origin of the 65-decibel level. Mr. Higgins responded that in the rural area, the typical limitation is 55 decibels for nighttime and 60 decibels for daytime. They will not be operating in any of the nighttime hours. Because of the nature of the use and the applicant's request for a waiver of the sound limits, staff recommended imposing the commercial sound limit which is 65 decibels day and night.

Mr. Rooker asked if there is any precedent for granting a waiver of the sound ordinance. Mr. Cilimberg said there have been waivers granted for sound associated with kennels, but he's not sure about general decibel variations.

Mr. Rooker emphasized that it is something that shouldn't be taken lightly. He said another concern he had is raised in the letter from the Clarks. It is not about this special use permit so much as about the existing operation. They make some factual statements about the existing operation. He questions whether there has been any examination of those allegations about the current use of the property or whether there is a violation of the existing special use permit or the zoning. Mr. Higgins responded that he did a brief investigation of the previous special use permit. He was told that there were people living on the property and children catching the school bus from that property. He said it is interesting that a condition on the earlier special use permit said that four of the cabins could be used as dwelling units, while another condition said the cabins would not be used between November and March. He said staff will look into that, but he does not think there is a violation.

Mr. Boyd said originally the Board said a music festival would need a special use permit, and then Misty Mountain got a special use permit to hold events like this, and he wondered how it all ended up the way it did. Now, it appears the music festival is the entity. Mr. Cilimberg explained that the permit runs with the land, not the landowners. There is the campground as well as the concert both allowed by special use permits.

Mr. Boyd said he understands that other events have been going on too, and that was the reason for Misty Mountain to get this special use permit. Now it appears that they will be limited to two music festivals a year. Does that mean they can't use it for any other purposes? Mr. Higgins said there are two answers to this question. First, it became complicated and the applicants were concerned that the permit might not be granted in time for the October music festival. They felt it was better to separate the two issues. Second, Misty Mountain has other events - they make their campground available on a regular basis throughout the season to, as an example, an antique car club, a dog show, a blue grass festival, etc. They rent the campground out for these events and have the event themselves. Whether outside people come in has been the subject of debate. They were trying to operate the music festival as an accessory to the campground, but said it would be looked at this year as to whether a separate special use permit should be pursued to expand beyond the campground.

Mr. Slutzky said the staff report suggested that this special use was not particularly enhancing the quality of life. One of the reasons he is comfortable with a trial basis waiving the 60-decibel threshold during the daytime hours is the notion that there is some value in having this (from a cultural perspective) in the rural area. If this became just a commercial enterprise disguised as a one-off event, he would think differently. It is not entirely inconsistent with a rural area use to have a single event that is well managed only once a year. If it became an ongoing commercial enterprise, he would think differently. Mr. Cilimberg said from the standpoint of the Comprehensive Plan the plan does not say much about events and assembly of people in the rural area. In the Rural Area update next year, that will be addressed more specifically.

Mr. Dorrier said a good model is the Blue Grass Festival at the Graves Mountain Lodge in Madison County. He said Scottsville had a blue grass festival a few years ago and it was successful, but not successful enough to have it again. They could not afford the high paid acts that must be paid in advance of the festival.

With no further questions for staff, Mr. Slutzky opened the public hearing and asked the applicant to speak first.

Mr. Mike Leo, owner and property manager of Misty Mountain Camp Resort, addressed the Board. He said there was a mention of kids catching the bus; those are his children. There are no permanent residents on the property; the cabins are strictly rental units for no more than 30 days at a time. There is that same restriction on campers. He said they did the music festival last year and it went off without a hitch - there were no complaints or law enforcement issues. They provided their own security using 12 people. The ABC officer came out last year and said it was a well-run festival.

Mr. Leo said the festival is not designed as a commercial entity. It is designed for the local community with eight of the local vineyards, local breweries and local restaurants coming out, with 80 percent or so of the bands being local. It is designed to get them more exposure in the community for their camping facilities. He noted that Mr. Bill Rossberg, who is the festival promoter, is in attendance to answer any questions about the bands and music part of the event. As to how they handle the facility and people, there are currently between 400 and 600 people on site and there has seldom been any

incident which required the police. They are cautious as to letting things get out of hand. He offered to answer questions.

Ms. Mallek asked if there is parking across Route 250. She knows that in past years that land was available to use upon approval by that landowner and Mr. Leo had insurance to cover it. Mr. Leo responded that Seven Oaks Farm – which is directly across 250 – last year granted permission to use it for parking if their festival parking became full. He noted that last year there was room to park all vehicles, with the number of people allowed for the festival. He said it would be nice to have that as an overflow parking area, but they think all parking can be handled on site. If necessary, they could use the land across the street and perhaps run a small bus across the road so people did not walk across Route 250.

Ms. Thomas said she did not think that is allowed with this list of conditions.

Ms. Mallek said that is something that needs to be discussed. Mr. Leo said he was not requesting offsite parking.

Mr. Rooker asked what kind of music would be offered. Mr. Rossberg replied that Friday is rock and roll day, Saturday is family day, and Sunday is retro day.

Mr. Rooker asked if local bands will be playing. Mr. Rossberg said that about 60 percent of the bands are from Charlottesville, with another 20 percent from the Afton/Greenwood area.

Mr. Slutzky asked what happens if the sound level carries. Mr. Leo said the way the property is laid out, the only possibility of sound traveling out of the property would probably be toward the camping area or on the other side where the creek is located, but that sound would travel toward steep slopes and woods. To the west of the stage, there are no residences within 1,000 feet. If an issue arose the soundman would need to adjust the sound level.

Ms. Thomas asked if County police would be needed to augment the applicant's security people. Mr. Leo said that last year there was no need for police. There is a deceleration lane on Route 250. There is no ticketing or parking fees when cars pull into the property so there is no backup of traffic onto the highway.

Mr. Rooker asked if there is an indoor stage and an outdoor stage. Mr. Leo said there is a community building which is 120' by 70' which holds about 120 people.

Mr. Thomas said it was pointed out earlier that the special use permit runs with the property and not the applicant, so after the two-year trial there might be more conditions placed on any renewal. At that point, it would be to codify what the applicant is doing right. She said the Board must make sure that any owner subsequent to Mr. Leo would also be doing things right so don't be insulted if conditions are added.

Mr. Boyd said he thought the applicant requested that the Board take out the offsite parking. Mr. Leo said he feels they can handle the parking for the size they are requesting; if that is an issue as to approval of this request that is not a major issue for him. He can park the cars onsite, but it would be nice to change the condition to reflect the possibility of having overflow-parking offsite; he agreed to commit to a shuttle bus, if necessary.

Mr. Slutzky asked the County Attorney to suggest language. Mr. Davis suggested adding language to Condition No. 8: "... except in authorized parking lots from which people are transported to the special event by shuttle or comparable vehicles."

Mr. Rossberg said there would be security present to be sure people don't walk across Route 250.

Mr. Rooker said there is a limit of 224 parking spaces. He asked if that is 224 onsite. Mr. Leo said there is a huge Christian event on that weekend that will use 30 of his parking spaces. All of their cabins are booked and all of their tent sites are booked for the music festival.

Ms. Thomas asked if the people staying overnight in the campground would still have to be counted within the 500. Mr. Leo said if they are going into the designated festival area.

Mr. Slutzky asked if they are part of the 224 cars. Mr. Leo said "not necessarily." Each campsite can have a car on that campsite. In addition to that parking, they also have 224 parking spaces.

Mr. Rooker asked if the offsite parking would only be needed if there were more than 224 cars. Mr. Leo said that is correct.

At this time, Mr. Slutzky invited the public to speak.

Mr. Rossberg said he is one of the producers of the music festival. He offered to answer questions.

Ms. Mallek asked if there is a designated recipient for the festival proceeds. Mr. Rossberg responded that the money will go to the Western Albemarle Rescue Squad, the Crozet Park for a dome to make their pool a year-round facility, and to the Mountainside Senior Living benevolent fund. As to the

letter of complaint from the Clarks, he has visited them six times in an attempt to make contact to ameliorate their concerns. They are anxious to get along with their neighbors. He said the festival staff will work with the County to try to be sure the 65-decibel limit is not exceeded. They would actually like to stay significantly under that level.

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

Mr. Slutzky said he is sympathetic but would want the "relief valve" in the conditions which seems like relief for an unlikely exigency and he thinks the inclusion of Mr. Davis' additional language would satisfy the needs.

Ms. Mallek said she thinks it is a good idea.

Mr. Slutzky said it is a two-year experiment. He asked if it did not work this year because there were violations of the conditions, could the festival be shut down for the next year. Mr. Davis replied that if there is "substantial noncompliance" there are two remedies. One is that the organizers could be cited with a zoning violation and they could be fined for that violation. Second, if there were substantial noncompliance the Board could establish a revocation procedure for the permit. He said that if health and safety issues arise during the course of the event, the County could go the Circuit Court and get an injunction to shut it down. None of those things are anticipated.

Ms. Mallek then **moved** for approval of SP-2009-016 with the conditions recommended and with the additional language to Condition No. 8 as read by Mr. Davis.

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

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

NAYS: None.

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

1. The use shall conform to any existing applicable special use permits, including but not limited to SP-1994-30, whose terms are hereby incorporated by reference;
2. Development of the use shall be in conformity with the Concept Plan entitled Misty Mountain Camp Resort SP-2009-16 Music Festival, prepared by Albemarle County Office of Geographic Data Services, and signed by Mike Leo and dated August 6, 2009, (hereinafter, the "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator;

To be in conformity with the plan, development shall reflect the following central features within the development essential to the design of the development:

- location of temporary parking areas 1,2, and 3
- location of temporary stage

All activities related to the music festival shall take place within the area of the site bound by the Rockfish Gap Turnpike, Misty Mountain Road, Stockton Creek and the western parcel boundary. Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance;

3. A music festival special event shall be permitted once every twelve (12) month period, for a maximum of three (3) consecutive days consisting of one (1) week day and two (2) weekend days. Any increase in the number of special events shall require an amendment to this special use permit;
4. A maximum of fifteen (15) vendors shall be allowed to operate on any given day during the music festival;
5. Written approval from the Police Department, Fire and Rescue, and the Health Department shall be required each year prior to the issuance of a zoning clearance to allow the special event use;
6. No tree removal, grading, or disturbance shall take place within the driplines of the trees as shown on the Concept Plan prepared by Mike Leo, and dated March 25, 2009. Any grading or disturbance within ten (10) feet of any dripline shall necessitate submittal of a "Tree Protection Plan" in accord with section 32.7.9.4 of the Zoning Ordinance. No grading or disturbance within ten (10) feet of any dripline shall be permitted until: a) a survey and fencing have been completed, and, b) the Planning Director approves a plan which shows the grading or disturbance and the surveyed dripline of the existing trees;
7. Hours of operation for the music event shall be between 12:00 p.m. and 10:00 p.m.
8. Off-site parking shall not be permitted except in authorized parking lots from which people are transported to the special event by shuttle or comparable vehicles;
9. The maximum number of people allowed on the site for the special event on each day shall not exceed five hundred (500) persons.
10. The maximum number of vehicles allowed to be parked on the site for the special event on each day shall not exceed two hundred twenty four (224).
11. A minimum of twenty (20) private security, parking, and traffic control staff members shall be required on site each day of the music festival;

12. Overnight camping outside the designated camping areas shall be prohibited;
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 all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval;
14. The maximum level of noise shall not exceed sixty-five (65) dBA as measured from an adjacent property;
15. The applicant shall reseed and restore the parking area site(s) as required by the zoning administrator within thirty (30) days of the last day of the special event;
16. The site shall be restored and cleared of all trash, debris, and temporary structures associated with the special event within two (2) days after the final day of the special event; and
17. Special use permit 2009-016 shall be valid until June 30, 2011.

Agenda item No. 13. **Public Hearing:** EMS Revenue Recovery Ordinance. Proposed ordinance to amend Chapter 6, Fire Protection, of the Albemarle County Code by adding a new Article V, Emergency Medical Services Cost Recovery. Pursuant to Virginia Code § 32.1-111.14, the proposed ordinance would authorize and establish a framework for charging reasonable fees for emergency medical services vehicle transports provided by the Albemarle County Department of Fire and Rescue and by any volunteer rescue squad that applies for and has been issued a permit by the County to charge fees. If the ordinance is adopted, it is anticipated that fees could begin being charged in calendar year 2010. (*Notice of this public hearing was advertised in the Daily Progress on August 24 and August 31, 2009.*)

Mr. Davis said this ordinance would authorize and establish a framework for emergency medical services billing for ambulance transports. A similar ordinance to this one has been adopted in over 40 jurisdictions throughout Virginia which implemented revenue recovery programs. The ordinance, if adopted, would authorize the County to establish fees for ambulance transports provided by the County's Department of Fire and Rescue and by any volunteer rescue squad that elected to participate in the program and which receives a permit from the County to do so.

Mr. Davis said the ordinance provides that the fee amounts be set by resolution of the Board of Supervisors after additional information is provided to them as to the customary fees charged by such programs. It specifically provides that no person shall be denied emergency medical services due to an inability to pay the fee. It also requires that policies and procedures implementing the revenue recovery program include payment standards for persons demonstrating economic hardship – that is commonly referred to as a compassionate billing program.

Mr. Davis said adoption of this ordinance would be the first of several tasks before a program could be fully implemented. Additional tasks would include securing a billing contractor, continuing discussions with volunteer rescue squads about their participation in the program, adopting fees by resolution of this Board, creating and executing a comprehensive public information plan to inform the public of the fees, easing public fears about how the fees would be collected, and then implement the program.

Mr. Davis said these fees are primarily paid for by Medicare, Medicaid and insurance providers and are routinely included in the costs for those programs. One additional task for the County before fully implementing the program would be to get approvals from Medicare and Medicaid – that approval would allow the County to have provider numbers to bill those programs. Once the ordinance is adopted, regulations are implemented, the program is laid out, and that approval is accomplished, the program could be unfolded. He said the proposed ordinance is Attachment "A" to the Executive Summary for tonight's meeting (on file). After holding the public hearing, staff recommends adoption of the ordinance so it is authorized to proceed.

Mr. Rooker said that he and Ms. Mallek have met regularly with representatives from the volunteer squads and they have had good discussions about this ordinance. They hope that if this ordinance is adopted, eventually those squads will choose to participate.

Mr. Dorrier asked if this ordinance allows for the rescue squad to handle the money or does the County handle the money.

Mr. Rooker responded that any action taken tonight will not address that question at all. That would be part of a plan worked out with the rescue squads if they decide to participate. All this does is to authorize the Board to adopt a plan which still requires working through all of the details.

With no more questions for staff, Mr. Slutzky opened the public hearing and invited the public to speak.

Mr. David Zimmerman said he did not come to speak on behalf of the Charlottesville-Albemarle Rescue Squad although he is a life member and spent thousands of hours donating to this County and the City running calls. He said there is a world-renowned rescue squad in place here that doesn't cost the County anything more than its normal contribution. He said the County chose to donate that money, and they would not turn down money because they are a volunteer agency. He is speaking as a taxpayer in the County. He said the County got into the ambulance business several years ago and he thinks the Squad advised that it would cost a lot of money. He believes the sentiment was that the County would do

what it wanted to do, and he does not appreciate that, or do a lot of people who are not present tonight. He said there is a fine fire department, but keep it as a fire department. The Rescue Squad takes care of the rescue squad part of that operation. He is concerned about the money spent there and does not think it makes any difference what a fire truck looks like as long as it can make it to the house that's on fire. It doesn't need extra money spent on paint. He does not think a lot of supervisors are needed to supervise professionals. He asked that the County get out of the ambulance business. The Board is taking money out of his pocket as a taxpayer and everybody else in the County running a rescue squad that is already in operation. He said the rescue squad has been operating on donated money for many years and it should be able to continue doing so. A paid rescue squad service is not needed in this area because there is something that already takes care of that. He asked that the Board remember the taxpayers in Albemarle County. He said too much money is being spent, and the Board needs to get a handle on spending and stop charging the taxpayers more than what is needed.

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

Mr. Rooker said the County substantially supplements the rescue squads – the County is paying their operating expenses and most of their capital expenses. This ordinance would enable the County to move some of the expense that is currently on the taxpayers to insurance companies, Medicare and Medicaid. He thinks that is a wise decision.

Mr. Rooker said there are some statistics that are fairly impressive about what is being done nationwide. He said that 85 percent of the people in the U.S. live in areas that have revenue recovery programs in place. Eighty percent of the people in Virginia live in communities that have revenue recovery programs in place – Louisa, Nelson and Orange have revenue recovery programs in place. Albemarle County is behind the curve on this, but out in front of things concerning land use and protection of natural resources. Local people are supplementing areas that have revenue recovery programs in place because they are paying insurance premiums and Medicare and Medicaid contributions that are going to support rescue squads in other communities, but do not go to support local rescue squads.

Mr. Rooker said he agrees that the Board needs to be good stewards of the taxpayers' money, and he thinks this program would contribute toward doing that. The Board has had many good discussions with the rescue squads and will continue to do so; hopefully everyone will decide to participate. He said everyone knows about the bleak state of finances for all localities. He said about 33 states are now furloughing employees. Virginia just joined those ranks. He said some Board members may have received calls the other day because sheriff's departments in Virginia have been notified that their funding will be cut by five-percent. He was asked if the County would hold the department harmless from that loss. Looking at the current financial situation, the County does not have the money to hold any agency harmless for state cutbacks, so it is a difficult financial time. This is one place where the County can obtain some fees for services that are generally picked up by third parties, other than County citizens.

Ms. Mallek said if the volunteer agencies join in, in situations where they have a call in adjacent counties where there is no revenue sharing to help cover the cost that Albemarle taxpayers are putting into those rescue squads, those out-of-the-county residents can be billed and their insurance will be billed. That is revenue the County cannot claim at all at this time.

Mr. Rooker said the Scottsville Squad runs a large number of calls into Fluvanna and Buckingham counties and neither county makes a contribution toward that squad's expenses.

Mr. Slutzky said he would like to clarify one point. There is no intention on the part of the County to chase down the payment from people who do not have Medicare, Medicaid or private insurance. Mr. Tucker said that is correct.

Ms. Thomas said one attempt must be made to collect that fee in order to maintain the County's ability to bill Medicare and Medicaid.

Mr. Dorrier said he thinks the speaker was saying that some money may be wasted on the items he mentioned, like the paint on the truck. He said if money is not being spent wisely, the County needs to at least be aware of that fact.

Mr. Slutzky said Mr. Dorrier is a member of the CIP Committee. He does not know how much detail that committee goes into on items like that, but he thinks it is appropriately addressed during the budget process. The Board should absolutely be looking at any example of potential waste that the public brings to its attention. While that is an interesting observation, it is not directly on point with the ordinance before the Board tonight.

Mr. Dorrier said there should be some way the Board can look into that eventually.

Mr. Rooker said he agrees. One place where it can be brought up for discussion is in the CIP Committee when looking at the various items in that budget.

Ms. Thomas said it is not said often, but she would like to emphasize how much the County appreciates its volunteers. It absolutely needs and depends on those volunteers. This action today in no way is intended to send a message to the contrary.

Mr. Slutzky said the County ultimately benefits from the number of volunteer hours that are provided to the benefit of the public.

Mr. Rooker then offered **motion** to adopt ORDINANCE NO. 09-6(1), An Ordinance to Amend and Reordain Chapter 6, Fire Protection, of the Code of the County of Albemarle, Virginia, by adding Article V, Emergency Medical Services Cost Recovery.

Ms. Thomas **seconded** the motion. She also expressed her gratitude to Mr. Rooker, Ms. Mallek and Mr. Boyd for their work on this issue.

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

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

NAYS: None.

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

ORDINANCE NO. 09-6(1)

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 6, FIRE PROTECTION, 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 6, Fire Protection, of the Code of the County of Albemarle, is hereby amended and reordained as follows:

By Adding:

| | |
|------------|--|
| Article V | Emergency Medical Services Cost Recovery |
| Sec. 6-500 | Purpose |
| Sec. 6-501 | Definitions |
| Sec. 6-502 | Permits Required |
| Sec. 6-503 | Fees for emergency medical services vehicle transports |

CHAPTER 6. FIRE PROTECTION

ARTICLE V: EMERGENCY MEDICAL SERVICES COST RECOVERY

Sec. 6-500 Purpose.

Pursuant to Virginia Code §32.1-111.14, it is hereby determined that the powers set forth herein must be exercised in order to assure the provision of adequate and continuing emergency services and to preserve, protect and promote the public health, safety and general welfare.

State law reference—Virginia Code § 32.1-111.14

Sec. 6-501 Definitions.

"Agency" means any person engaged in the business, service or regular activity, whether or not for profit, of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless, or of rendering immediate medical care to such persons.

"Ambulance" means any vehicle, vessel or aircraft, which holds a valid permit issued by the Office of Emergency Medical Services, that is specially constructed, equipped, maintained and operated, and is intended to be used for emergency medical care and the transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless. The word "ambulance" may not appear on any vehicle, vessel or aircraft that does not hold a valid permit.

"Emergency medical services vehicle" means any vehicle, vessel, aircraft, or ambulance that holds a valid emergency medical services vehicle permit issued by the Office of Emergency Medical Services that is equipped, maintained or operated to provide emergency medical care or transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless.

State law reference—Definitions, Virginia Code § 32.1-111.1

Sec. 6-502 Permits required.

No agency shall charge fees for transport services provided by a private emergency medical services vehicle within the county in response to a call for service originating from the county without first obtaining a permit pursuant to this section. Permits shall be issued in accordance with section 32.1-111.14 of the Virginia Code, as amended, by the county executive or his designee, upon such terms and conditions as may be needed to ensure the public health, safety and welfare. No permit shall be required for any person acting pursuant to a mutual aid agreement with the county or while assisting the county during a state of emergency. Agencies permitted pursuant to this article shall comply with all terms and conditions of their permits.

State law reference—Virginia Code § 32.1-111.14

Sec. 6-503 Fees for emergency medical services vehicle transports.

(a) Reasonable fees shall be charged for transport services provided by emergency medical services vehicles operated by the department of fire and rescue or by any private agency permitted under this article. The schedule of fees shall be established by resolution of the board. In no event shall a person be denied transport for emergency medical services due to his or her inability to pay.

(b) The county executive shall establish policies and procedures to implement this section in accordance with applicable law, including payment standards for person's demonstrating economic hardship.

Agenda item No. 14. From the Board: Matters Not Listed on the Agenda.

Mr. Slutzky wished Ms. Thomas well on her trip to Italy on the Board's behalf. Ms. Thomas said she will give the Board's best wishes to them, and will bring back a report.

Ms. Mallek said the Board discussed the timetable for the Crozet Master Plan several months ago. She said the final projected report date is July, 2010. She wanted to mention it so the Board might have a discussion and a resolution of support to adhere to that date.

Mr. Slutzky said one reason there are concerns about the length of time needed for the review process is that the new green jobs initiative is getting started. It is hoped this initiative will create 1,000+ green jobs and they will largely require light industrial land to accommodate expansion in the business market. There needs to be sufficient light industrial land in one place for this program. There is the possibility of having additional light industrial land near the Crozet Master Plan area. He hopes the community can be encouraged to discuss that topic early in their cycle of discussions. If staff could arrange for that to happen early in the cycle so the Crozet community can weight in, that might be helpful to the community's effort.

Ms. Mallek said the item that must come next is staff's inventory of existing light industrial land – that is expected to be completed in November.

Ms. Lee Catlin, Community Relations Director, said staff will present the focus areas in October; the Focus Area schedule is near the top of the work list.

Mr. Boyd said he thought the inventory of light industrial land had already been done.

Ms. Mallek said the boundaries of some of that land was not what was requested. Ms. Catlin said some work was done on that when it went to the Planning Commission. The Board did not see all of that staff work, so it is being updated for presentation to the Board.

Ms. Mallek said this was discussed when the Board discussed economic development several months ago. Another reason to keep this matter on track is that the committee wants to solve existing dilemmas and fix the places that need fixing "before things start to heat up." She thinks there will be a lot of heated discussion when the new plan is presented to the public. They want this work wrapped up in a timely way so there is no chance the text will say one thing and the map show something different. There is a lot to gain by getting all work completed in a timely fashion.

Mr. Dorrier asked for clarification of the meeting scheduled for September 22 at 10:45 a.m. Mr. Tucker said it has been scheduled to hear the ASAP (Advocates for a Sustainable Albemarle Population) report.

Mr. Slutzky said that some Board members – likely more than two – will possibly be briefed on the findings of the growth study the ASAP group contracted out. In case more than two Board members will be present, the Board will adjourn to that date.

Mr. Boyd said he cannot attend.

Mr. Slutzky said he also has a conflict with that date.

Agenda item No. 15. Adjourn to Sept 22, 2009, 10:45 a.m.

At 9:59 p.m., Mr. Rooker offered **motion** to adjourn to September 22, 2009, at 10:45 a.m. in Room 241. Mr. Boyd **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

Chairman

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| Approved by the Board of County Supervisors |
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| Date: 12/02/2009 |
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| Initials: EWJ |
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