A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on December 9, 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 Community Development, Mark Graham, 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 6:04 p.m., by the Chairman, Mr. Slutzky.

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

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

Ms. Thomas provided an update on the status of the Rivanna Water and Sewer Authority (RWSA) and Meadow Creek Interceptor. She reported that City Council allowed its right of way to be used for the interceptor where it needs to be. Dominion Power is still a holdout; there is a meeting next week where the matter is expected to be approved and moved forward.

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Ms. Mallek said she is the Board's liaison on the Piedmont Workforce Network Board; she also serves on the One-Stop Committee. The One-Stop Committee has received some updates on operations, which are managed by Goodwill Industries. She said that the various agencies are working much better together to try to achieve a functional unity to benefit the people who use their services.

Ms. Mallek also stated that the Thomas Jefferson Partnership for Economic Development and Workforce jointly have hired Mary Ann Hussar – who will be running the "executive pulse" part of the business outreach. She will be visiting business people to learn about their employment needs and training opportunities in hopes of raising the levels of the Workforce and One-Stop.

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Mr. Rooker recommended the appointment of Mr. Russell "Mac" Lafferty to fill the Jack Jouett District seat on the Planning Commission. He noted that Mr. Lafferty lived in Crozet for a long period of time and served on the Crozet Advisory Committee. Even after moving into the Jack Jouett District, he continued to attend the Advisory Committee meetings. Mr. Lafferty also served on the CHART Committee and as their representative to the MPO. Mr. Rooker stated that Mr. Lafferty is an engineer, has a contractor's license, and has taught engineering at the college level. Mr. Lafferty will be a good addition to the commission

Mr. Rooker then **moved** to appoint Mr. Lafferty as the Jack Jouett District representative on the Planning Commission, with said term to expire December 31, 2013. Ms. Mallek **seconded** the motion.

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

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

Mr. Rooker pointed out that Mr. Bill Edgerton served for eight years on the Commission as the Jack Jouett District appointee. Mr. Edgerton decided that he did not wish to continue to serve in that seat as it requires a great deal of time and commitment. On behalf of the County and the Jack Jouett District, he applaud and thank Mr. Edgerton for his service.

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

Ms. Marcia Joseph addressed the Board to thank Ms. Thomas for all she has done. She stated that she will miss her. She then presented her with a dozen roses in appreciation. (Meeting attendees applauded.)

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Ms. Mallek recognized Ms. Joseph for her service to the Planning Commission as the at-large member, and to thank her for her devotion to the County.

Ms. Joseph said she enjoyed serving on the Commission and was honored that the Board appointed her for six years.

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Ms. Laura Dollard thanked Ms. Thomas and Ms. Joseph for their work on Blenheim Road improvements.

Ms. Thomas thanked Ms. Dollard for being an "active defender of her rural area."

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Mr. Jack Marshall said that Ms. Thomas has been a "model of what a County Supervisor should be". Ms. Thomas is always well-informed, does her homework, is thoughtful, and cognizant of the big picture. Ms. Thomas has always had a consistent balance of the needs for economic stability, justice and environmental wellbeing. He thanked her for a job well done.

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Ms. Jerry Ray thanks Ms. Thomas for listening to citizens when they had something to say and paying attention to the details – especially as it relates to water as a community resource. She appreciates all of Ms. Thomas efforts.

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Ms. Mary Joy Scala addressed the Board, and thanked Ms. Thomas for what she's done in the community and for being a great role model.

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Ms. Sara Lee Barnes thanked Ms. Thomas for her years of service on the Historic Preservation Committee and for her concern for the environment in the County. Ms. Thomas has gone many extra miles and given such wisdom; it is just extraordinary.

Mr. Slutzky stated that there are "thousands of others" out there who feel the same way about Ms. Thomas, and others on the Board agree.

Ms. Thomas thanked everyone, She added that it takes four votes on the Board to get anything done so no one does anything by him or herself. Even though there are disagreements this is an amazing community where people participate, speak up and care deeply about the community; she hopes they will continue to do so.

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Agenda Item No. 6. Consent Agenda. **Motion** was offered by Ms. Thomas, **seconded** by Mr. Slutzky, to approve Items 6.1 through 6.5 on the consent agenda, and to accept Item 6.6 for information. (Discussions on individual items are included with those items.)

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

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

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Item No. 6.1. Approval of Minutes: August 5, 2009.

Ms. Mallek had read her portion of the minutes of August 5, 2009, pages 36-end, and found them to be in order.

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

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Item No. 6.2. Resolution to approve amendment of Personnel Policy P-61, Overtime/ Compensatory Time.

The executive summary states that Human Resources and the County Attorney's Office are working together to review and update personnel policies as part of the comprehensive revision of the County's Personnel Policy Manual. Under joint policies adopted by the School Board (GAD-AP) and Local Government (P-08), the two boards require that when proposed personnel policies apply to both of them, a joint staff committee will review the proposed policies and make recommendations to the Superintendent and County Executive for Board and School Board adoption. The proposed revisions to the Overtime/ Compensatory Time policies have been reviewed and approved by this committee. The corresponding School Board policy will be presented to the School Board on December 10, 2009.

The proposed Overtime/Compensatory Time policy revisions include the following:

- The organization of the policy is revised to be more user-friendly.
- Key terms related to overtime and compensatory time are defined.
- Both employer and employee responsibilities are more clearly established and defined.
- A provision to allow for departments to develop on-call compensation programs is added.
- A provision has been added in the Holiday Pay section to address alternative work schedules.
- The maximum accrual balance for compensatory time is decreased as indicated:
    1. The maximum accrual for employees in sworn law enforcement positions is reduced from 480 hours to 240 hours
    2. The maximum accrual for all other employees is reduced from 240 hours to 100 hours

The provision to allow for departments to develop on-call compensation programs may result in a budgetary impact, which would be assessed during the development of each program. The cost would be assumed at the departmental level.

Staff recommends that the Board adopt the attached Resolution, which will approve the proposed changes to Personnel Policy P-61.

(**Discussion:** Ms. Thomas asked who served on the joint staff committee and if it covers exempt and non-exempt.

Mr. Tucker responded that it is primarily for public safety and the Department of Social Services.

Ms. Lorna Gerome, Assistant Director of Human Resources, explained that the policy will cover all employees. The committee was comprised of School Principals, Finance employees, a teacher, representatives from Police, Human Resources staff, legal counsel, and a teacher's assistant.

Regarding Section III, B-3, compensatory time in lieu of overtime, Mr. Rooker asked if that is something exceptional in the FLSA for government employees, because typically overtime in the 40-hour work week cannot be made up for in comp time in a later week.

Mr. Davis replied that the Fair Labor Standards Act, government employees can earn 1.5 hours of compensatory time in lieu of an hour of overtime pay, and can accumulate that up to certain levels.)

By the above-recorded vote, the Board adopted the following Resolution approving changes to Personnel Policy P-61.

RESOLUTION

WHEREAS, the County of Albemarle Personnel Policy Manual has been adopted by the Board of Supervisors; and

WHEREAS, the Board of Supervisors finds that an amendment to Personnel Policy P-61/62 is necessary to modify and reorganize the County's Overtime and Compensatory Time Policy.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of Albemarle County, Virginia, hereby amends the following section of the County of Albemarle Personnel Policy Manual:

By Amending:
Section P-61/62 OVERTIME/COMPENSATORY TIME POLICY

§P-61 OVERTIME/COMPENSATORY TIME POLICY

I. GENERAL

A. Purpose. This policy establishes the general guidelines and procedures Albemarle County will follow regarding overtime and compensatory time requirements of the Fair Labor Standards Act (FLSA) and applicable state law. If any conflict arises between this policy and the FLSA or state law, the requirements of the FLSA and/or state law will govern.

B. Scope. This policy applies to all County employees.

II. KEY TERMS REGARDING OVERTIME PAY AND COMPENSATORY TIME

A. Fair Labor Standards Act. The FLSA requires all covered employers, including the County, to comply with its minimum wage and overtime compensation requirements. Public employers must compensate eligible employees for hours worked in excess of maximum allowable hours by making monetary payment or granting compensatory time.

B. Exempt Employees. Employees are exempt from the FLSA's overtime and compensatory time requirements if they satisfy the criteria for bona fide professional, administrative, or executive positions. A list of these positions must be approved by the County Executive and maintained by the Department of Human Resources.

C. Non-exempt Employees. Employees who are subject to the FLSA's overtime and compensatory time requirements are considered non-exempt.

D. Public Safety Exemption. The FLSA provides a partial exemption to employees whose primary duty is law enforcement or fire protection. Employees who qualify for the 207(k) partial exemption work a 28-day work period.

E. Workweek and Work Period. The County Executive has established the official workweek as extending from Saturday at 12:01 a.m. to Friday at 12 midnight. Changes to this established workweek may be adopted by department heads to meet the operational needs of their department, provided that the revised workweek notice is provided in writing to the employees and a copy is on file in Human Resources. The work period for law-enforcement

and fire protection employees is a 28-day period. The beginning and ending time for the 28-day work period under section 207(k) of the Fair Labor Standards Act shall be determined by the appropriate department head.

F. Maximum Allowable Hours. Maximum allowable hours for employees are as follows:

Sworn Law-Enforcement Employees	171 hours within the 28-day work period
Fire Protection Employees	212 hours within the 28-day work period
All Other Employees	40 hours within the workweek

G. Hours Worked.

1. General. Non-exempt employees who work more than the maximum allowable hours in a workweek or work period must receive either overtime pay or compensatory time for their excess hours worked. Paid or unpaid time off during which the employee is absent from the service of the County shall not be counted as "hours worked" in determining if the maximum allowable number of hours has been exceeded. Such absences include, but are not limited to, holiday, sick, annual, and compensatory leaves, leaves of absence, meal breaks, and inclement weather closures.

2. Meal Breaks. Bona fide meal breaks do not count as hours worked. Meal breaks must ordinarily be at least 30 minutes long and provide the employee a rest period free from any work requirements.

3. Travel Time. When non-exempt employees are required to attend meetings or conferences that occur outside of County facilities, the hours involved in the actual travel, as well as the hours involved in the training/meeting, shall be considered hours worked. Employees shall report this time to their supervisors, using forms designated for that purpose.

III. GENERAL REQUIREMENTS OF OVERTIME PAY AND COMPENSATORY TIME

A. Eligibility to Earn Overtime/Compensatory Time

1. Non-exempt Employees. Unless excluded by the FLSA, all non-exempt employees of the County who work in excess of 40 hours within one designated workweek or the maximum allowable hours within one 28-day work period are eligible to earn overtime/compensatory time.

2. Exempt Employees. Exempt employees are not eligible to earn overtime, whether as monetary payment or compensatory time. This does not, however, preclude department heads from using their discretion and granting time off to exempt employees in recognition of time worked beyond normal work schedules.

B. Calculation of Overtime/Compensatory Time

All eligible, non-exempt employees are to be compensated one and one half times the employee's regular hourly rate of pay for hours worked in excess of their maximum allowable hours. This compensation may be monetary or through the accrual of compensatory time at the choice of the employee prior to the performance of the overtime work. Special conditions apply if the hours worked are performed pursuant to the Emergency Situation Staffing Policy (P-37). Calculation of overtime/compensatory time shall be as follows:

1. Fire Protection Employees. Fire protection employees who work in excess of 212 hours within the 28-day work period are to be paid one and one half times the employee's regular hourly rate of pay, or be compensated one and one half hours of compensatory time for every hour in excess of 212 hours.

2. Sworn Law-Enforcement Employees. Sworn law-enforcement employees who work in excess of 171 hours within the 28-day work period are to be paid one and one half times the employee's regular hourly rate of pay, or be compensated one and one half hours compensatory time for every hour in excess of 171 hours.

3. All Other Employees. All other, eligible non-exempt employees who work in excess of 40 hours within the workweek are to be paid one and one half times the employee's regular hourly rate of pay, or be compensated one and one half hours of compensatory time for every hour in excess of 40 hours.

4. Compensatory Time for Non-Overtime Work. Non-exempt employees who work in excess of their regularly scheduled work hours but do not exceed the maximum allowable number of hours may be granted compensatory leave in the amount of one hour for each hour worked or may be paid their regular hourly rate for those excess hours worked.

5. Pay-outs of Compensatory Time. Any payment for unused compensatory time shall be based upon the employee's current regular hourly rate. Upon termination, non-

exempt employees shall be paid for unused compensatory time. Non-exempt employees who are transferring to another department or who are promoted from a non-exempt into an exempt position shall, prior to assuming the new position, reach an agreement with their department head to use their accumulated compensatory leave or to be paid for the unused compensatory leave balance. The employee's compensatory leave balance must be zero prior to the starting date for the new position.

6. Two or More Hourly Rates. Employees holding more than one position may have two or more regular hourly rates. Department heads should consult with Human Resources for guidance regarding the payment of overtime compensation to such employees.

C. Maximum Compensatory Time Balances

Employees in positions eligible for a 28-day work period under FLSA 207(k) may accrue up to 240 hours of compensatory leave. All other non-exempt employees may accrue up to 100 hours of compensatory leave. Employees shall be paid for all compensatory leave in excess of the maximum allowed for accrual.

D. Employer Responsibilities

1. Managing the Accrual of Overtime. Department heads may require that employees work additional time or overtime to meet the needs of the department, and are responsible for managing employees' hours worked whenever possible within the designated workweek or work period to avoid overtime. If an employee works more than the designated work hours in one day, thus creating the potential to exceed the maximum allowable hours within the workweek or work period as defined in section II.F, the employee's supervisor may require the employee to take leave in the amount of the excess time worked within the same workweek or work period to avoid the accrual of overtime.

2. Fund Availability. Department heads shall ensure that adequate funds are available to pay required overtime compensation and compensatory time pay-outs.

3. Scheduling Compensatory Leave. Department heads shall be responsible for scheduling compensatory leave so that it may be taken within a reasonable period of time after the employee requests it, so long as such use does not unduly disrupt the operations of the department. A "reasonable period" under the FLSA is determined by considering the customary work practices within the department, such as: a) the normal schedule of work; (b) anticipated peak workloads based on past experience; (c) emergency requirements for staff and services; and (d) the availability of qualified substitute staff. Leave is considered to "unduly disrupt the operations of the department" if it would impose an unreasonable burden on the department's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.

4. Recordkeeping. Department heads shall ensure that all non-exempt employees complete and submit, on a timely basis, accurate data recording their hours worked and leave taken.

E. Employee Responsibilities

1. Authorization for Overtime. Employees may work overtime only with prior authorization from their supervisors. Failure to do so may result in disciplinary action in accordance with County policy. Employees will report additional hours worked to their supervisors within five business days.

2. Scheduling Compensatory Leave. Employees are required to arrange use of compensatory leave in advance with their supervisors. In case of a conflict because of the work schedule in a particular department, leave will be granted at the discretion of their supervisors.

3. Time Recording. All non-exempt employees must complete and submit, on a timely basis, accurate data recording their hours worked and leave taken. Failure to do so may result in disciplinary action in accordance with County policy.

IV. ON-CALL AND CALL-BACK COMPENSATION

A. On-Call Compensation

1. Eligibility. Non-exempt employees required to be "on-duty" while on-call must be compensated for the "on-duty" hours worked while on-call. Whether the FLSA considers an employee to be "on-duty" while on-call depends on a number of circumstances, including, but not limited to, being required to remain on the employer's premises and being restricted from using on-call time effectively for personal purposes. In addition, non-exempt employees may be compensated for "off-

duty" on-call time pursuant to a departmental on-call compensation program approved in accordance with this section. Exempt employees are not eligible to receive on-call compensation.

2. Departmental On-Call Compensation Programs. Departments may develop on-call compensation programs to compensate employees for "off-duty" on-call time based on department-specific needs. Department heads must submit their proposed guidelines to the Human Resources Department and the County Attorney's Office for approval in order to ensure that they meet all applicable legal and policy requirements.

Compensation pursuant to a departmental program will be authorized only if the on-call service meets all of the following criteria:

a. Service must be mandated.

b. On-call employees are expected to respond promptly to calls, resulting in partially restricted personal time of on-call employees. Specific response time may vary depending on individual department requirements.

c. On-call employees will not be called if another County employee is already on duty and available to perform the required services.

d. The department's on-call guidelines have been approved by Human Resources and the County Attorney's Office.

3. Calculation. The rate of compensation for off-duty on-call time shall be established in each departmental on-call compensation program. In all cases, however, employees shall be given the option of monetary payment or compensatory time and must communicate that preference to supervisors prior to working the on-call time.

4. Special Provisions Regarding CPS Workers. Child protective service workers employed by the Department of Social Services shall be compensated for their on-call service in accordance with all state-mandated requirements.

B. Call-Back Compensation

1. Eligibility. Any eligible non-exempt employee who is required by the department head to report back to work outside of the employee's regularly designated work hours on less than 24 hours' notice shall be eligible for call-back compensation at one and one-half times the employee's regular hourly rate, regardless of the number of hours worked in that workweek or work period. An employee's "regularly designated hours" are those hours at which the employee is normally scheduled to work. Hours worked beyond regularly scheduled work hours which require an employee to stay at work, rather than report back to work, shall not be deemed call-back hours and shall be compensated as otherwise provided herein.

2. Calculation. In lieu of paying an employee for call-back time, the County may compensate an employee with compensatory time. Compensatory time shall be accrued at a rate of one and one half hour for every hour of call-back time worked. Employees shall decide whether to receive monetary compensation or compensatory time and communicate that preference to their supervisors prior to working the call-back time.

V. HOLIDAY PAY

A. General Rule. Any non-exempt employee who is required by the department head to work on a holiday which is observed by the County shall be:

1. Compensated for that holiday for the hours worked plus the hours normally accrued for the holiday, all at the regular hourly or daily rate; and

2. At the discretion of the department head, be paid the regular hourly or daily rate for the hours worked and accrue eight hours of compensatory leave. If an observed holiday falls on a day when an employee is not otherwise scheduled to work, the employee shall earn eight hours of compensatory leave for the observed holiday.

3. Full-time employees shall receive eight hours of holiday leave to be used on the designated holiday. For part-time employees, the amount of holiday leave received shall be consistent with the length of a regularly scheduled work day.

B. Alternative Work Schedules. Full-time employees that work an alternative work schedule (e.g., 10 hours/day for 4 days/week) shall also receive eight hours of holiday leave for each observed holiday. It is the employee's responsibility to make up the hourly difference between the hours granted as holiday leave and the employee's regular work schedule. The employee and his/her supervisor may compensate for the difference in hours in one of two ways:

1. The employee may use compensatory leave or annual leave; or

2. The employee may work the difference within that workweek.

VI. SPECIAL PROVISIONS FOR SWORN LAW-ENFORCEMENT EMPLOYEES

A. Court Time. Court time worked by sworn law-enforcement employees outside of the regularly scheduled work hours for that day shall be compensated at one and one-half times the employee's regular hourly rate regardless of the number of hours worked in that work period.

B. Contractual Overtime. Contractual overtime is defined as work hours assigned to a sworn law-enforcement employee at the request of an outside entity that reimburses the wages of the employee. Contractual overtime shall only be compensated monetarily. Voluntary contractual hours worked by employees shall not count as hours worked for the County. Sworn law-enforcement employees shall be paid for voluntary contractual hours worked at a fixed flat rate established by the County Executive.

Amended August 4, 1993; August 3, 1994; September 1, 1997, December 9, 2009

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Item No. 6.3. Authorize County Executive to execute a License Agreement for a private driveway within the County's undeveloped Sun Ridge Road public right-of-way.

The executive summary states that the Office of Facilities Development recently constructed the Phase 2 extension of the existing Sun Ridge Road. Beyond this road extension is a network of unimproved public rights-of-way that connect to Huntington Road and Wakefield Road that were platted with the Northfields subdivision. Tax Map Parcel 62A1-F-10, currently owned by William Crutchfield (the "Owner"), backs up to a segment of this unimproved right-of-way. The Owner has requested permission to construct a private driveway from the new terminus of Sun Ridge Road to the rear portion of this parcel. [Please refer to the attached letter for the details of Mr. Crutchfield's request (Attachment A)]. As shown on the enclosed Driveway Concept Sketch (Attachment B), approximately 275 feet of this proposed private driveway will be within the existing undeveloped public right-of-way.

Since this undeveloped public right-of-way is owned by the County, the construction of any private improvement within the right-of-way requires a license agreement between the County and the Owner specifying the rights and responsibilities of both parties for the construction and maintenance of the improvements. A draft license agreement, which was prepared by the County Attorney, is attached (Attachment C).

Staff has reviewed the driveway request and, from a land use perspective, has no issues or concerns. Although it is rare for the County to authorize private improvements in a public right-of-way, under appropriate terms and conditions, the public's interest in the right-of-way is protected. In this case: (1) the public right-of-way at issue is an unimproved segment; (2) the license agreement expressly requires that the public's right of passage not be impeded or obstructed; and (3) the license agreement allows either party to terminate the agreement with 60 days' notice (such as when the County may desire to improve this segment as a public street or trail), and requires the unimproved segment to be restored to its current condition.

From an engineering perspective, staff will require a high level of care be taken in the proposed driveway's design and construction to assure downstream drainage problems are not created by increased runoff from the driveway or by driveway grading diverting runoff from the upstream area across the existing drainage divide. The proposed license agreement requires that the design of the driveway be approved by the County's Transportation Engineer and that the Owner address all erosion, drainage, stormwater or any other impacts when directed by the Transportation Engineer.

Under the terms of the license agreement, the Owner of TMP 62A1-F-10 (currently Mr. Crutchfield) will be responsible to construct and maintain the driveway; and, when abandoned the Owner will be responsible to remove the driveway and restore the area to its current condition. Therefore, there are no anticipated budget impacts to the County.

Staff recommends that the Board authorize the County Executive to execute a license agreement, approved as to content and form by the County Attorney.

(**Discussion:** Ms. Thomas stated that in the right-of-way on Sunridge Road there are plants planted by the owner there, and she wants to ensure that the public can still walk if this becomes a private driveway.

Mr. Jack Kelsey, Transportation Engineer, said that there is a line of trees that were planted there, but there is still an open pathway that allows for walking along the right-of-way. In 2004 the Board wanted to vacate the right-of-way, and at some point, if that is done, it would be deeded back to the property owners.

Mr. Davis pointed out that has not been done and there may be disagreement as to whether that is the right thing to do.)

By the above-recorded vote, the Board authorized the County Executive to execute a license agreement, approved as to content and form by the County Attorney:

This document was prepared by:
Albemarle County Attorney
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902

Tax Map and Parcel Number 062A1-00-0F-01000

AGREEMENT GRANTING LICENSE
TO ESTABLISH AND MAINTAIN PRIVATE IMPROVEMENT
IN PUBLIC RIGHT-OF-WAY

THIS AGREEMENT is made this _____ day of _____ 2009, by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the "**COUNTY,**" and identified as the Grantor for indexing purposes, and the **WILLIAM G. CRUTCHFIELD, JR. REVOCABLE TRUST**, William G. Crutchfield, Trustee, hereinafter referred to as the "**OWNER,**" identified as the Grantee for indexing purposes, and whose address is 2406 Northfield Road, Charlottesville, Virginia.

WHEREAS, the Owner is the owner in fee simple of the real property located in Albemarle County identified in the tax records of the County of Albemarle as Tax Map and Parcel Number 062A1-00-0F-01000, hereinafter referred to as the "Property;" and

WHEREAS, the County is the owner of that public right-of-way in Albemarle County known as Sun Ridge Road, one segment of which is improved with pavement, another segment of which is not improved with pavement (hereinafter, the "unimproved segment"); and

WHEREAS, the Property abuts the unimproved segment of Sun Ridge Road; and

WHEREAS, the Owner desires to obtain from the County a license that would allow the Owner to use a portion of the unimproved segment of Sun Ridge Road to establish, maintain and use a gravel driveway that would serve a garage on the Property; and

WHEREAS, the parties intend that this Agreement serve as a license from the County to the Owner granting permission to the Owner to establish and maintain a private driveway within the unimproved segment of Sun Ridge Road.

WITNESS:

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

1. GRANT OF LICENSE. For and in consideration of ONE DOLLAR ($1.00), cash in hand paid, the County hereby grants a license to the Owner to establish and maintain at its sole expense and for its sole use a private driveway within the unimproved segment of Sun Ridge Road. In addition:

A. Non-Exclusive Grant of License. The grant of this license is non-exclusive permission from the County to the Owner to occupy and use the unimproved segment of Sun Ridge Road under the terms and conditions of this Agreement.

B. Unimproved Segment of Sun Ridge Road Remains a Public Right-of-Way. The unimproved segment of Sun Ridge Road shall remain at all times a public right-of-way and the Owner shall do nothing that impedes or obstructs the public's right of passage upon the right-of-way.

C. Successors and Assigns. All references in this Agreement to the "Owner" include the Owner's successors and assigns. This license shall automatically transfer to each subsequent owner of the Property, and each subsequent owner shall be subject to the terms and conditions of this Agreement until the license is terminated as provided herein. This license may not be transferred or assigned to any person or entity who is not an owner of the Property other than to an occupant of the Property, in which case the owner shall not completely transfer or assign the license and both the owner and the occupant of the Property shall be subject to the terms and conditions of this Agreement.

2. ESTABLISHMENT AND MAINTENANCE OF DRIVEWAY. The Owner shall have the right to establish and maintain a driveway in the general location and to the extent as shown on the drawing attached hereto as Attachment A (hereinafter referred to as the "Driveway"), which is incorporated herein by reference. In addition:

A. Design and Construction. The design of the Driveway shall be subject to the review and approval of the County's Transportation Engineer. No land disturbing or construction activity pertaining to the Driveway shall occur within the unimproved segment of Sun Ridge Road prior to the Transportation Engineer's approval of the Driveway design. The Driveway shall be constructed and maintained in compliance with the Driveway design approved by the Transportation Engineer.

B. Grading. If deemed necessary by the Owner at the time the Driveway is established or maintained, the Owner may grade within the unimproved segment of Sun Ridge Road with the prior review and approval of the proposed grading by the County.

C. Materials and Other Improvements. The Driveway shall be constructed of gravel. If determined to be necessary by the County's Transportation Engineer to address erosion, stormwater, drainage or any other impact caused by the Driveway, the Owner shall install other improvements within a reasonable time as directed by the Transportation Engineer.

D. Applicable Laws. The Owner shall comply with all applicable laws in establishing and maintaining the Driveway.

3. TERM OF LICENSE. The term of this license and the rights and obligations of the parties upon termination of this license shall be as follows:

A. Term of license. The term of this Agreement shall be for a period of one (1) year from the date hereof, and shall automatically renew for an additional one (1) year term on the anniversary date. Either party, however, may terminate this Agreement at any time by giving sixty (60) days written notice to the other party of its intent to terminate.

B. Removal of the Driveway. If either party terminates this Agreement as provided in paragraph 3(A), the Owner shall remove all gravel and all other improvements established for the Driveway from the unimproved segment of Sun Ridge Road during the sixty (60) day notice period.

C. Restoration of Unimproved Segment of Sun Ridge Road. If either party terminates this Agreement as provided in paragraph 3(A), the Owner also shall restore the unimproved segment of Sun Ridge Road as nearly as possible to the condition it was in prior to the grant of this license, as determined by the County's Transportation Engineer.

4. MISCELLANEOUS PROVISIONS.

A. Liability insurance. The Owner shall add the County to its general liability insurance policy as an additional insured for any claim by the Owner or any third person pertaining to establishment, maintenance or use of the Driveway.

B. Modifications. This Agreement may not be modified, except in a writing signed by the parties.

C. Entire agreement. This Agreement constitutes the entire agreement between the parties and supercedes any prior understandings or oral or written agreements between the parties respecting the within subject matter.

The County, acting by and through its County Executive, duly authorized by the Board of Supervisors of Albemarle County, Virginia, does hereby consent to the terms of this Agreement.

WITNESS the following signatures.

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Item No. 6.4. Resolution Certifying Consistency of Albemarle County Comprehensive Plan with Virginia Code § 15.2-2223.1.

The executive summary states that Virginia Code § 15.2-2223.1 was enacted in 2007 as part of the massive transportation legislation (House Bill 3202) adopted by the General Assembly that year. Section 15.2-2223.1 requires certain high growth localities, including the County of Albemarle, to amend their comprehensive plans to incorporate one or more "urban development areas" ("UDA"), which is defined to be an "area designated by a locality that is appropriate for higher density development due to proximity to transportation facilities, the availability of a public or community water and sewer system, or proximity to a city, town, or other developed area."

Section 15.2-2223.1 requires that a UDA must provide for commercial and residential densities that are appropriate for reasonably compact development. Residential densities must be at least four dwelling units per gross acre and commercial densities must have a minimum floor area ratio of 0.4 per gross acre. A UDA may provide for a mix of residential housing types, including affordable housing, to meet the projected family income distributions of future residential growth. At least one UDA must be designated as being sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least 10 but not more than 20 years. Principles of new urbanism and traditional neighborhood development must be incorporated into the comprehensive plan.

In lieu of amending the County's Comprehensive Plan as set forth above, the Board of Supervisors is authorized by Virginia Code § 15.2-2223.1(E) to adopt a resolution certifying that the Comprehensive Plan accommodates growth in a manner consistent with the elements of a UDA and the principles of new urbanism and traditional neighborhood development.

The Comprehensive Plan's Land Use Plan accommodates growth in a manner consistent with the elements of a UDA under Virginia Code § 15.2-2223.1, as follows:

Density: All residential land use designations (Neighborhood Density, Urban Density, Crozet Transects) in the Land Use Plan allow at least 4 dwelling units per gross acre with the exception of the Village of Rivanna. All commercial land use designations in the Land Use Plan (Neighborhood, Community and Regional Service, Crozet Transects) allow FARs of 0.4 per gross acre. The policy of the Comprehensive Plan is to provide a mixture of housing types, including affordable housing, in all Development Areas. The residential zoning districts encouraged within the Development Areas allow a mixture of housing types, and the Neighborhood Model District requires a mixture of housing types.

Availability of public or community water and sewer systems: The Development Areas are predominantly served by public water and sewer services and the Comprehensive Plan's policy is to extend public water and sewer facilities to all lands within the Development Areas.

Proximity to transportation facilities: The Development Areas are located so that they are in close proximity to various transportation facilities including inter-county and major intra-county roadways such as Interstate 64, U.S. Route 29, and U.S. Route 250, as well as other transportation services such as public bus service, passenger rail service, and air service.

Proximity to a city, town or other developed areas: The Urban Area (Neighborhoods 1-7 including the Pantops Master Plan Area) surrounds the City of Charlottesville. The Communities of Hollymead and Piney Mountain along U.S. 29 North are continuing to develop, and extend north from the Urban Area. The Community of Crozet primarily consists of an area that has been developed for a long time. The Village of Rivanna primarily consists of the Glenmore and Running Deer subdivisions, which are developed.

The areas are sufficient to accommodate at least 10 years, but not more than 20 years, of development: The Development Areas will accommodate development for up to the next 20 years. While it may be possible that the Development Areas are sufficient to accommodate development beyond 20 years, it is staff's opinion that the overarching elements of a UDA and the principles of new urbanism and traditional neighborhood development are better achieved by the current compact sizes of the Development Areas, their periodic review every 5 years, the County's existing development policies, and the Neighborhood Model's policy of establishing clear boundaries with the Rural Areas, rather than an arbitrary 20-year window.

The Comprehensive Plan's Land Use Plan also accommodates growth in a manner consistent with the principles of new urbanism and traditional neighborhood development under Virginia Code § 15.2-2223.1. The Land Use Plan designates seven Urban Neighborhoods, three Communities and one Village that constitute the County's Development Areas. The Development Areas comprise 36 square miles or 5% of the County's total land area and the form and characteristics of their development are guided by the Neighborhood Model. The Neighborhood Model promotes density through principles of pedestrian orientation, neighborhood friendly streets, street interconnections, parks and open space, neighborhood centers, buildings of human scale, relegated parking, mixture of uses, mixture of housing types and affordability, redevelopment, site development that respects terrain and clear boundaries with the Rural Areas. In addition, area master plans that reflect these principles were added to the Land Use Plan for the Community of Crozet in 2004 and the Pantops Urban Neighborhood in 2008. Two new area master plans have recently been recommended for approval to the Board of Supervisors by the Planning Commission: (1) Places29, which includes the area of two Urban Neighborhoods and two Communities; and (2) the Village of Rivanna.

It is staff's opinion that these elements and principles in the Comprehensive Plan are consistent with the manner of growth sought by Virginia Code § 15.2-2223.1.

There is no immediate budget impact; however, certification shows an additional level of County consistency with state code provisions that could be helpful in pursuing an Urban Development Area Planning Grant from the state.

Staff recommends that the Board adopt the attached resolution certifying that the Albemarle County Comprehensive Plan accommodates growth in a manner consistent with Virginia Code § 15.2-2223.1.

(**Discussion:** Mr. Boyd asked if this related to the Census.

Mr. Cilimberg replied that it is not related to the Census, but simply acknowledges the Comp Plan's compliance with State law – which was changed a few years ago to introduce the Urban Development Area – and might actually provide an opportunity for resource assistance in further planning work. He noted that the County has applied for a grant with the State to address work in the development areas that might otherwise be delayed. Mr. Cilimberg explained that the County was included in the mandate to have urban development areas because of the last ten-year census and the growth in population.

Mr. Davis added that that's what made the County fit into the requirement to either amend the Urban Development Area to comply with State Code or to certify that it already complies prior to July 2011.

Ms. Thomas commented that the State is catching up with what Albemarle County has been doing for years.

Mr. Rooker read from the statute: "The Comprehensive Plan shall further incorporate principles of new urbanism in traditional neighborhood development, which may include, but need not be limited to,

pedestrian-friendly road design, interconnection of new local streets with existing local streets and roads, connectivity of road and pedestrian networks, preservation of natural areas, satisfaction of requirements for stormwater management, mixed-use neighborhoods including mixed housing types, reduction of front and side-yard building setbacks, and reduction of subdivision street widths and turning radii at subdivision street intersections." He emphasized that the language comes almost directly from Albemarle's Comprehensive Plan – in which they adopted the Neighborhood Model, and now the State requires adoption.)

By the above-recorded vote, the Board adopted the following resolution certifying that the Albemarle County Comprehensive Plan accommodates growth in a manner consistent with Virginia Code § 15.2-2223.1**.**

RESOLUTION

WHEREAS, the County of Albemarle is one of the localities subject to Virginia Code § 15.2-2223.1, which requires localities to amend their comprehensive plans to designate one or more Urban Development Areas ("UDA") and to incorporate principles of new urbanism and traditional neighborhood development, as defined therein; and

WHEREAS, in lieu of amending the County's Comprehensive Plan, the Board of Supervisors is authorized by Virginia Code § 15.2-2223.1(E) to adopt a resolution certifying that the Comprehensive Plan accommodates growth in a manner consistent with the elements of a UDA and the principles of new urbanism and traditional neighborhood development; and

WHEREAS, the County's Comprehensive Plan addresses the elements of a UDA by allowing residential density of at least 4 dwelling units per gross acre (with the exception of the Village of Rivanna) and allowing commercial density having FARs of 0.4 per gross acre; by encouraging a mixture of housing types, including affordable housing, in all Development Areas; by providing that Development Areas are predominantly served by public water and sewer services and having a policy to extend public water and sewer facilities to all lands within the Development Areas; by locating the Development Areas in close proximity to various transportation facilities including inter-county and major intra-county roadways as well as other transportation services; and by locating Development Areas in close proximity to the City of Charlottesville (the Urban Area comprised of Neighborhoods 1-7 including the Pantops Master Plan Area), areas that are developed and continue to develop north of the Urban Area (the Communities of Hollymead and Piney Mountain), and areas that are already developed (the Community of Crozet and the Village of Rivanna); and

WHEREAS, the Development Areas incorporate principles of new urbanism and traditional neighborhood development in that they comprise 36 square miles or 5% of the County's total land area, and the form and characteristics of their development are guided by the Neighborhood Model, which promotes density through principles of pedestrian orientation, neighborhood friendly streets, street interconnections, parks and open space, neighborhood centers, buildings of human scale, relegated parking, mixture of uses, mixture of housing types and affordability, redevelopment, site development that respects terrain and clear boundaries with the Rural Areas.

WHEREAS, the Development Areas are established to accommodate development for the next 20 years and, while it may be possible that the Development Areas are sufficient to accommodate development beyond 20 years, the overarching elements of a UDA and the principles of new urbanism and traditional neighborhood development expressed in Virginia Code § 15.2-2223.1 are better achieved by the current compact sizes of the Development Areas, their periodic review every 5 years, the County's existing development policies, and the Neighborhood Model's policy of establishing clear boundaries with the Rural Areas.

NOW, THEREFORE BE IT RESOLVED that the Albemarle County Board of Supervisors hereby certifies that the County's Comprehensive Plan accommodates growth in a manner consistent with Virginia Code §15.2-2223.1.

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Item No. 6.5. Increase Department of Social Services (DSS) Full-Time Equivalent (FTE) Employee Authorized Staffing Level.

The executive summary states that since 2007, the County Executive's Office has pursued a wide range of proactive strategies aimed at addressing the continued shortfall in County revenues void of resorting to employee layoffs and furloughs. One of these strategies has included the voluntary reallocation of staff from areas of the County currently experiencing reduced workloads to those departments witnessing increased demand for services. To date, these staff reallocation efforts have contributed to generating the equivalent of sixty (60) positions that have been eliminated, frozen or offset with alternative revenue sources.

DSS, being a County Department experiencing increased workload, has benefitted from this strategy with at least three (3) of its vacant positions being filled in this manner. Recently, the County's Human Resources Department, working in conjunction with several Department Heads, identified two (2) additional employees that are qualified to perform work at DSS and therefore are eligible for reassignment. In order to proceed with relocating these employees to DSS, it is necessary to seek Board approval to increase the number of DSS authorized FTE employees from 98.2 to 100.2.

The rationale for seeking an increase in staffing for DSS is linked to the fact that this Department has experienced an unprecedented growth in caseload over the past two years without additional resources to manage or address this growth. Staffing was below state standards prior to this growth and continues to be a significant problem for the department to manage. The majority of growth has been seen in the Benefit Programs that provide Medicaid, TANF, Employment Services and SNAP (formally Food Stamps) assistance to citizens. As demonstrated in quarterly DSS workload summary provided to the Board at its December 2, 2009 meeting, these areas have witnessed the following changes since November 2007:

- 52% increase in SNAP (Food Stamp) cases; 55% increase in applications
- 63% increase in TANF cases; 23% increase in applications.
- 19% increase in Medicaid cases; 50% increase in applications

Workload standards established by the state for line staff are monitored by the department on a regular basis. Based on those standards, the DSS Eligibility Division is currently understaffed by a total of seven (7) positions. Given the County's financial position, it is not possible to consider hiring externally for these, or other vacant positions; however, reallocating existing staff into the DSS Eligibility Division allows for federal reimbursement of up to 50%. For every two positions the County can move into DSS Benefit Programs from other departments that are fully funded by County dollars, there is the equivalent savings of one FTE's cost.

Increasing the overall FTE employee total in DSS from 98.2 to 100.2 and voluntarily transferring two (2) existing local government employees to fill these positions will generate the equivalent of one additional position offset with alternative revenue given that the County will receive 50% federal reimbursement for any position that can be allocated to Benefit Programs.

Staff recommends that the Board authorize an increase in the number of authorized General Fund FTE Employees in DSS from 98.2 to 100.2.

(**Discussion:** Mr. Boyd commented that he didn't understand if this meant a net increase of one person or a net decrease of one person overall in staffing.

Mr. Tucker explained that it is a net increase in savings, but it is two people that will be covered by repositioning from other departments; the federal government will pick up one-half of that.

Ms. Thomas said that a recent newspaper article pointed out that the welfare system is not covering as many people as it use to. For example, TANIFF is covering a little over one-third of what it was covering in numbers 15 years ago. She is glad personnel is being added to the County's Social Services Department, but as a whole, we are far from covering all the people who are in need right now.

Mr. Tucker stated that staff may have an opportunity to add another position that will do the same thing as the others, but that is not ready for presentation yet. He confirmed that it will also represent savings in salary costs.

By the above-recorded vote, the Board authorized an increase in the number of authorized General Fund FTE Employees in DSS from 98.2 to 100.2.

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Item No. 6.6. Copy of the Albemarle County Service Authority's Comprehensive Annual Financial Report for the fiscal year ended June 30, 2009**, *was received for information***.

(**Discussion:** Ms. Thomas said that the report shows that about 85 percent of the water usage decrease is accounted for by not having Con-Agra and other industries.

Ms. Mallek emphasized that the Crozet community is working hard to bring them back, which is why Beaver Creek should not be considered a sponge to dabble in by the main urban area.)

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Agenda Item No. 7. **PUBLIC HEARING: ZTA-2009-001. Small Wind Turbines.** Amend Secs. 3.1, Definitions, 10.2.1, By right, 11.3.1, By right uses, 12.2.1, By right, 13.2.1, By right, 14.2.1, By right, 15.2.1, By right, 16.2.1, By right, 17.2.1, By right, 18.2.1, By right, 19.3.1, By right, 20.3.1, By right, 20A.6, Permitted uses, 20B.2, Permitted uses, 22.2.1, By right, 23.2.1, By right, 24.2.1, By right, 27.2.1, By right, 28.2.1, By right, and add Sec. 5.1.46, Small wind turbines, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would add small wind turbines as a by right use in all zoning districts and standardize the introduction of each of those sections (Secs. 10.2.1 through 28.2.1 listed above), would amend Sec. 3.1 to add definitions of "small wind turbines" and associated terms and "historic areas," and would add Sec. 5.1.46 to establish substantive and procedural requirements to establish and use small wind turbines. The full text of the ordinance is available for examination by the public in the offices of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. *(Advertised in the Daily Progress on November 23 and November 30, 2009.)*

Mr. Graham said that in May, 2009 the Board had a joint work session with the Planning Commission, and it has now gone through the public hearing process. He said that this actually came up last February as part of the Community Development's Work Program and the Board suggested that staff work with the Commission on the wind turbine issue. Mr. Graham reported that between May 2008 and April 2009, there were four work sessions to consider the issues and approaches. In May 2009, he said,

there was a joint Board-Commission work session where staff received direction on an approach, and a Commission and Board member volunteered to assist staff as it tried to sort out remaining issues. Mr. Graham stated that in October 2009 wind turbines went back to the Commission for a final work session on ordinance language, followed in November by a public hearing and recommendation to the Board with a four to zero vote.

He explained that the concept for the ordinance is a two-tiered approach, similar to that of the personal wireless facilities. Tier I specifies conditions where it's a by-right use, and is a simple administrative process by the Agent. Tier II requires a waiver or modification of conditions using the supplemental regulations – which must be done by the Planning Commission. Mr. Graham noted that with the Tier II approach there are notices sent to the abutting property owners in advance of Commission consideration, and they have the ability to impose reasonable conditions as part of approving the Tier II application.

Mr. Graham said that Tier I is allowed in any zoning district, but not along ridge areas (mountaintops) nor in historic districts; through supplementary regulations it is set as an accessory to the use of the property and cannot be the primary use on the property. He stated that the structure height must meet the building height limits in the zoning district, and the setback from the property line is equal to the height of the structure plus 20 feet to accommodate a fall zone. Mr. Graham stated that there is no lighting on the structure or collocation of personal wireless antennae, and a requirement that it be disassembled or removed within 90 days if it is no longer being used. He then presented pictures of what an ideal Tier I tower would look like.

Looking at the photograph, Mr. Boyd asked if it would be that high, noting that it seems to be well above the height of the property.

Mr. Graham explained that it could be if there were no trees there, as the maximum height in residential is 35 feet – so to the top of the structure's blade the height would need to be the same.

Mr. Rooker said that an ordinance with by-right provisions would allow it to be higher, as many zoning districts have limitations that are greater than 35 feet. Mr. Graham said that is correct. Mr. Rooker added that there are also no massing limitations, presenting pictures from *Business Week* of newer wind turbines. Mr. Rooker expressed concern about the lack of mass limitations.

Mr. Graham responded that that was discussed, but it was recommended to keep the structures in line with the setbacks and height restrictions of other structures in the same district.

Mr. Rooker said he can understand that if it is compared to a building, but it is a piece of machinery, not a building.

Mr. Graham explained that with Tier II there are possible waivers and modifications of the supplemental regulations, as well as notices sent out to adjacent property owners; the Planning Commission would have discretionary authority over those exceptions – locating the wind turbine within the historic districts or within ridge areas where visibility may be of higher concern; building it higher than allowed by the zoning district; reduced setback from property lines.

Mr. Rooker asked why an easement for the fall zone would not be required from the adjacent property owner rather than letting the Planning Commission waive it.

Mr. Graham responded that there is a provision for an administrative modification if a landowner has an agreement with an adjoining property owner, or if it was going to go into the VDoT right-of-way. Lacking the consent of the adjoining property owner, it would fall under Tier II.

Mr. Graham added that similar for the Tier II are lighting of that structure or collocation of personal wireless antennae. He then provided a picture of an example of a Tier II facility.

Mr. Graham indicated that staff feels this will have a negligible fiscal impact, as very few applications are anticipated. He said that Tier I applications are very simple to administer, and the cost of the processing is captured through existing building permit fees; Tier II applications would still be captured through the building permit fees but there is no fee currently being proposed for the waivers – the Planning Commission waiver provision was one that staff felt they should "wait and see" regarding the cost before making a recommendation. He concluded that staff recommends adoption of ZTA-2009-001, as presented to the Board, setting the effective date of the ordinance as December 10, 2009.

At this time, the Chairman opened the public hearing.

Mr. Jay Willer said he supports the proposed amendment. He thinks it would be useful for the County. He suggested that in Article II, B1, "primary purpose" definition be clarified to indicate that this is for consumption onsite and define it as something greater than 50 percent - defined by kilowatt hours rather than maximum demand – which would automatically limit the options as to how much can be built on a given site. Mr. Willer noted that the American Wind Power Association recommends between five and seven kilowatts for an average house economically-designed system, and making that calculation based on peak demand you get a huge number. If you look at average kilowatt hours, you might get something more useful.

Mr. Dorrier asked if any other localities are working on wind turbines. Mr. Willer responded that Greene County and Harrisonburg are.

Ms. Thomas added that Nelson County is.

Mr. Dorrier asked if Albemarle had sufficient wind power to make this work. Mr. Willer replied that it will be up to the landowner to determine that. The market will make a lot of those decisions for any individual, and that is going to be based on where they're located and what their demands are, and what's the price of electricity.

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

Mr. Rooker noted that the staff report (May 6, 2009) in the Board's packets lists a number of concerns. He emphasized that the County should be permissive to the use of wind energy in the County, but there are other property interests that need to be protected beyond the person who wants to have a turbine. The second issue in the staff report states: "Small wind turbines create noise. It appears that the technology has significantly reduced the noise levels with newer wind turbines, but noise concerns are still an issue when the turbines are in close proximity to other uses." There is nothing in this ordinance that requires the use of the best-available noise technology. The way this ordinance is set up, you could put a wind turbine by right in every zoning district in the County. He also noted in the staff report that "Albemarle has very limited areas where wind power will be cost effective, as most of the County is considered poor for wind energy production." This is not a technology that will be broadly used in the community because it is not cost effect. Mr. Rooker added that the places it will likely be most effective will be the ridgelines, and this ordinance would give the Planning Commission the power to approve anything anywhere in the County without involvement from the Board. The handout he passed around earlier indicates a problem he sees with this ordinance and his concern about the lack of regulations on massing, noting that very large turbines are currently "en vogue." He said that even though it's not likely the turbines will start being put everywhere, we do not know where and when they might be placed and in proximity to what.

Mr. Rooker said that the Board spent a huge amount of time adopting a cell tower ordinance that was considered one of the most forward-looking ordinances of its kind in Virginia, and has been covered by the media as being a model for protecting the aesthetics of communities as well as being emulated by many other communities. He thinks the Board needs to think long and hard about adopting an ordinance that would allow large-massed machines on virtually any parcel in the County as a matter of right. He added that the water should be tested before it's jumped in, and this ordinance jumps all the way in it. Mr. Rooker said that it would be appropriate to approve an ordinance that allowed by-right wind turbines in the rural areas – not on ridgelines at all – on parcels that are large enough to provide for at least a 300-foot setback. He noted that most three-acre parcels can provide for a 300-foot setback, and suggested that after that if the County wants to expand that use it can be done in a thoughtful way.

Mr. Slutzky suggested modifying the ordinance such that it would require a special permit by the Board.

Mr. Rooker said he does not support that because the ordinance does not require action by the Board, and requiring a special permit does not deal with his problem.

Ms. Mallek also asked if adding the Board as a layer of discussion would work. Mr. Rooker replied, "no".

Ms. Thomas asked if restricting it to the rural areas would work.

Mr. Slutzky indicated that he was in support of the ordinance, as presented, and asked other Board members how they felt.

Ms. Thomas stated that she would like this to go forward, but with modifications.

Ms. Mallek agreed.

Mr. Rooker said that Mr. Davis has advised that it is possible to take out all of the other districts, allowing the rural districts only to have turbines, with setbacks increased to 300 feet. He does not think the turbine should be located on a rural parcel and be closer to the neighbor than the person who built it.

Ms. Thomas noted that there are a lot of two-acre lots in the rural area.

Mr. Rooker responded that he would be willing to support 250 feet, because that would work on a two-acre parcel – as 250 x 250 is less than the 88,000 that comprises a parcel that size. He indicated that the noise, as well as the visibility issues, concerns him, and there should be some assurance that there is a reasonable distance between the turbine and a neighbor.

Mr. Slutzky mentioned that the 300-foot setback might force the turbine up a hill to make it more visible to a neighbor, and there is unlimited dog barking in the rural areas because the Board felt it was necessary not to restrict noises in that way in the rural area. He does not see that noise is going to be a big issue with the turbines.

Mr. Rooker emphasized that there should be some reasonable setback to ensure they are not pushed up against property lines. There is also the also noting the problem of "shadow flickers" – resulting from the sun behind the rotating blades – a primary concern with small wind turbines in close proximity to other uses, such as other homes. He said that he doesn't want to approve things as a matter of right without any testing to find out if there are problems.

Mr. Slutzky asked if he would support the proposed ordinance if it was modified to only include the rural areas and required a 300 foot setback. Mr. Rooker said he would, and he possibly could support a 250 foot setback.

Mr. Graham stated that a 300-foot setback would mean a minimum width of 600 feet – or 8.5 acres – and reducing it to 250 feet would be about 500 feet by 500 feet, 250,000 square feet, or six acres.

Mr. Slutzky suggested having the setback be the height of the structure.

Ms. Mallek said that that's only 35 feet.

Mr. Rooker said he does not think that is at all adequate.

Mr. Slutzky stated that, although he understands the concerns, the noise argument really isn't a valid one.

Mr. Rooker commented that noise-free technology can be used, but it is usually more expensive than the older technology and it is not stipulated in this ordinance. He added that the noise can be constant, and putting setback requirements into the ordinance will help address that.

Ms. Thomas asked Mr. Graham what kind of setback would be needed in a two-acre lot.

Mr. Graham responded that a two-acre lot is about 150 feet by 150 feet if it is perfectly square.

Ms. Thomas said that it's going to be difficult for an engineer to establish what the noise of a wind turbine is going to be because it will vary in different conditions.

Mr. Graham stated that a man who spoke at the May 9th joint work session indicated that on windy days there is more noise from the leaves on the trees than the actual turbine, but it's hard to quantify what is coming from where. He added that the sound meters the County uses cannot distinguish the sound source in this case either.

Mr. Rooker pointed out that the noise ordinance recently adopted does not mention wind turbines, and if a noise level is going to be applied, it should be through that ordinance. He said that setbacks may be the better way to address this.

Ms. Thomas said that she would hate to restrict landowners who want to try alternative energy sources, and suggested including a 150-foot setback requirement.

Mr. Rooker stated that he would support that so that people in "reasonable circumstances" can try this.

Mr. Slutzky asked if a helix cylinder would be covered under this ordinance.

Mr. Graham responded that as currently proposed, it would not be able to exceed the height of an allowed structure in that district.

Mr. Slutzky asked if Walmart is currently allowed to put 60 helix turbines on their roof, taking advantage of the air currents over the top of their building, but this ordinance would preclude that. Mr. Graham said currently they are not allowed to do that because no wind turbines are allowed in any district. Mr. Slutzky asked if they are expressly disallowed. Mr. Graham responded "no". They are currently not allowed because the Zoning Administrator made a determination that they are not a normal accessory structure.

Mr. Rooker said he would like the Board to do something that allows this technology to go forward, but he does not want to do something that is precipitous and might lead to installations of the kind that the Board does not imagine.

Mr. Dorrier said he thinks the County should encourage alternative sources of energy, and it sounds like it would be good for the County.

Mr. Slutzky asked if Mr. Rooker would support allowing turbines in the growth area subject to approval by the Board. All the variables could be evaluated on a case-by-case basis.

Mr. Rooker said he would be willing to consider that but when you start making significant changes from what is before the Board, you have to think through how that wording fits into the ordinance.

Mr. Davis pointed out that the Zoning Ordinance noise provisions would apply to this. For example in the rural area and residential area because it applies to the receiving zone, the maximum daytime level would be 60 decibels above the ambient sound level, with the nighttime being 55 decibels.

Mr. Rooker stated that the difference with this noise is that it is constant, and being subjected to it around the clock "might be exceptionally annoying."

Ms. Thomas mentioned an air conditioner or idling car as being at that level.

Mr. Graham responded that heat pumps are exempt because they cannot meet the requirement.

Mr. Davis noted that heat pumps do not run constantly. He said that modifying the ordinance to apply only to the rural area, with a 150-foot setback, could be easily accomplished with some simple language alterations. In terms of setback, on page 2 of the draft ordinance, under Section 5.1.46.B.3, change the first sentence to read: "The small wind turbine shall not be located closer in distance to any lot line than its fall zone or 150 feet, whichever is greater". On page 4, everything after the amendment to Section 10.2.1, By right, could be deleted.

Mr. Rooker stated that he would prefer not to pursue a path that might end up in a massive fight as to whether wind turbines would be allowed along County ridgelines. He does not think he would ever support that and he does not want to allow a process for that to take place. From his reading, the only place turbines are going to be economical is along the ridgelines.

Mr. Slutzky said people are not going to build them just for economic reasons. This is making turbines fairly limited, and he thinks they should be made possible through a public process.

Mr. Boyd agreed that the ordinance should be approached with a year test period that includes the restrictions Mr. Rooker suggests.

Mr. Slutzky said that there will be limited takers under this scenario. He will support the proposal because he does not want it to just die, but he is disappointed that this Board won't allow the public to bring forward specific proposals instead of vagaries, to be considered in a case-by-case basis whether or not to support them.

Mr. Rooker emphasized that he is concerned about opening up historic districts and ridgelines with this ordinance, and this does not preclude the use of something to augment their use of solar panels and those who want to experiment with wind energy.

Mr. Slutzky asked if Tier II applies only to historic districts. Mr. Graham responded that it applies to historic districts, ridgelines, or modifications of other requirements at the Tier I level.

Mr. Davis said that if there is consensus this would only apply in the rural area with 150-foot minimum setback and no Tier II application, staff could modify the ordinance and have it ready for adoption tomorrow.

Ms. Thomas said that she is eager for the Board to do something, and is sorry that it is going to be this restrictive but she does not see a way around that and she sympathizes with the concerns that the County would end up with turbines in the ridge area. She added that a modest start may be what is needed to at least get this started, so that the public can come forward with suggested alterations in the future.

Motion was then offered by Mr. Slutzky, **seconded** by Mr. Rooker, to defer ZTA-2009-001, to December 10, 2009.

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

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

Agenda Item No. 8. **PUBLIC HEARING: PROJECT: ZMA-2007-002. Timberwood Commons Phase III (also known as) Hollymead Town Center TIKI (Sign #110). PROPOSAL:** Rezone 1.021 acres from PD-MC Planned Development Mixed Commercial - large-scale commercial uses; and residential by special use permit (15 units/ acre) and HC Highway Commercial - commercial and service uses; and residential use by special use permit (15 units/acre) to PD-SC Planned Development Shopping Center - shopping centers, retail sales and service uses. PROFFERS: Yes. EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Town Center -- Compact, higher density area containing a mixture of businesses, services, public facilities, residential areas and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre) and Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses. ENTRANCE CORRIDOR: Yes. LOCATION: 450 feet West of the intersection of U.S. Route 29 and Timberwood Boulevard within the Hollymead Town Center, directly behind the existing CVS Pharmacy in the Community of Hollymead. TAX MAP/PARCEL: Tax Map 32, Parcel 41 R (portion) and Tax Map 32, Parcel 41D1. MAGISTERIAL DISTRICT: Rio. *(Advertised in the Daily Progress on November 23 and November 30, 2009.)*

Mr. Cilimberg said this request is for property on Timberwood Boulevard on the west side of Route 29 and the Hollymead Town Center, and would bring two separate pieces of land under separate zoning into one PDSC (Planning District Shopping Center) zoning district. This property is a little more than one acre, and is in an area behind the CVS. Factors favorable were: 1) this would eliminate split zoning and the proposal makes administration of the regulations – such as uses and parking on the site – easier. He added that there was a related issue discussed at the Planning Commission meeting that use of the adjacent median opening on Timberwood Boulevard to make a left turn to go to CVS results in vehicles going the wrong way on Timberwood westbound. Mr. Cilimberg emphasized that that situation is not a result of this proposal, but current circumstances.

Ms. Mallek noted that her husband was almost killed there just the other day in that very same circumstance.

Mr. Cilimberg said that the recommended remedy has been to establish Jersey barriers, but before the road gets into the State system the issue needs to be addressed in a permanent way. He indicated another area on the map where staff has a site plan that has been approved for a hotel. The applicant would like to have access at a median and it is a matter of deciding what kind of ultimate design would work to eliminate these "illegal" left turns occurring into CVS.

Mr. Rooker asked if you were going to make a left turn into CVS legally today if you would have to go out onto Route 29.

Mr. Cilimberg replied that you essentially make a U-Turn, although you could access CVS by going through the traffic circle and come in through the new development that will occur, more or less the back way into CVS. He added that this project will provide that opportunity once the back area gets developed, as access will be available to this project subject to the rezoning. Mr. Cilimberg indicated that connections that go to the west through future development would get you back to Connor Drive as it gets extended – but that won't be the circumstance initially when Jersey barriers go up. He concluded that staff and the Planning Commission have recommended approval of the rezoning inclusive of the proffers dated and signed November 2, 2009 and the application plan dated September 23, 2009.

Ms. Thomas asked if the proffers only consist of eliminating some allowed by-right uses.

Mr. Cilimberg replied that the proffers address those uses that would be allowed by-right, but do not speak to any kind of treatment of Timberwood, as this parcel would not be subject to that offsite situation.

Mr. Rooker asked if staff was confident that when this property develops out, the current turn problem will be cured.

Mr. Cilimberg responded that the issue will be addressed through two mechanisms: this development and the one behind it providing access from near the traffic circle; and the treatment to the median through future improvements that get this road accepted into the State system. He said that it is possible that there will end up being a median to serve the hotel and will only allow the lefts in – discouraging any opportunity to go left the wrong way onto the westbound Timberwood. Mr. Cilimberg stated that people trying to circulate here will actually need to use the future development here and behind it to get to CVS.

Mr. Rooker emphasized that people need to be able to get to that side of the road without having to go out on Route 29 to do so.

Mr. Cilimberg said that it would happen through the ultimate development of this area.

Ms. Mallek commented that it isn't the end of the world once you get used to it, but asked if there was an opportunity to move the crossing further up the hill instead of right at the hotel.

Mr. Cilimberg responded that he doesn't know the hotel plan well enough yet, but staff and VDoT will look at all the possibilities to address the situation. He added that when Timberwood was built, it was only built to the point where the crossover is, and the crossover happened as a by-product of that initial construction; it was not necessarily what was in the plans that VDoT was ultimately going to approve.

At this time, the Chairman opened the public hearing.

Ms. Jo Higgins, representing the applicant, said that Dr. Anthony Valente is TIKI, LLC. Some of the issues brought up tonight are not related to the site. This is the infill piece that will tie the parking lot from CVS to the parking lot in Block 9 which provides access up to the roundabout. Because of the economy, that project has not moved forward, but people will be able to come off of the roundabout and go into Block 9 and then come through the small Timberwood Commons area. It will also provide a link because of the significant grade difference. It will take the conflict off of Timberwood Boulevard and put it on site. She acknowledged that the crossover is a dangerous situation, but since the area has been like a construction zone, many people view it as a cut-through and if there were a lot of traffic traveling in at this entrance, when the back part of Hollymead is developed it would become more of a detriment. Ms. Higgins stated that as this road becomes a through road people can circle with dual left turns, if they come down to the intersection and Route 29 they will have an interior, legal U-turn with a light controlling it. She added that they will be able to come in at the Liberty station and travel through Seminole Commons, through CVS, through TIKI, and into Block 9 without ever having to go on to Route 29. Ms. Higgins said that they have a piece of HC and a piece of PDMC, so there won't be a zoning line between the building. Under PDSC, the property can use a gross parking calculation. They went to the Architectural Review Board with Block 9. The ARB was pleased with the buildings and the landscaping without issues. This is not a large piece of property, but is critical to making the area walkable and driveable without conflicts on Route 29.

Mr. Dorrier asked if this is the same road where an extension of Berkmar Drive is being considered. Mr. Cilimberg replied "no". He indicate on the map the extension of Berkmar Drive and stated that it becomes Town Center Drive.

Ms. Higgins said Timberwood Bouleveard would be a perpendicular connection; a network piece that would tie in and take traffic off Route 29.

Ms. Higgins then added that Block 9 is not involved with this proposal.

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

Motion was then offered by Mr. Slutzky, **seconded** by Ms. Mallek, to approve ZMA-2007-002, inclusive of the proffers dated and signed November 2, 2009 and the application plan dated September 23, 2009. Roll was called, and the motion carried by the following recorded vote:

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

PROFFER STATEMENT

ZMA No. **2007 - 0002**

Tax Map and Parcel Number(s): **03200-O0-041D1 and PORTION OF 03200-00-041R0**

Owner(s) of Record: **Post Office Land Trust and Tiki LLC**

Date of Proffer Signature: **November 2, 2009**

1.021 acres to be rezoned from **HC & PDMC to PDSC**

Post Office Land Trust, is the owner of a PORTION OF Tax Map and Parcel Number **03200-O0-041R0 and Tiki, LLC,** is the owner of Tax Map and Parcel Number **03200-00-041D1** (the "owners" and the "Property") which is the subject of rezoning application ZMA No**. 2007-0002**, a project known as "**Timberwood Commons**" (the "Project").

This Proffer Statement shall relate to the Application Plan entitled "Application Plan for Timberwood Commons", dated June 5, 2009, and prepared by Dominion Development Resources, LLC.

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owners hereby voluntarily proffer the conditions listed below which shall be applied to the Property if it is rezoned to the zoning district identified above. These conditions are proffered as a part of the requested rezoning and the Owners acknowledge that the conditions are reasonable.

1. The uses of the Property permitted by right shall be only those uses allowed by right under Section 25.2.1 except for the following C-I (Section 22.2.1), CO (Section 23.2.1) and HC (Section 24.2.1) uses permitted in the PDSC zoning district by reference under Section 25.2.1(1), as all of those sections of Chapter 18, Zoning, of the Albemarle County Code, are in effect on December 9, 2009, copies of which are attached hereto and incorporated herein as Attachment A:

   A. Cemeteries: Sections 22.2.1 (b)(3), 23.2.1(4), 24.2.1(5)
   B. Fire and rescue squad stations: Sections 22.2.1(b)(6), 24.2.1(13)
   C. Indoor theaters: Sections 22.2.1 (b)(9), 24.2.1(38)
   D. Libraries, museums: Sections 22.2.1 (b)(12), 23.2.1(5)
   E. Automobile service stations: Sections 22.2.1 (b)(16), 24.2.1(3)
   F. Automobile, truck repair shop, excluding body shop: Sections 22.2.1(b)(22), 24.2.1(2)
   G. Hotels, motels and inns: Section 24.2.1(20)
   H. Mobile home and trailer sales: Section 24.2.1(23)
   I. Modular building sales: Section 24.2.1(24)
   J. Motor vehicle sales, service and rental: Section 24.2.1(25)
   K. Building material sales: Section 24.2.1(4)
   L. Light warehousing: Section 24.2.1(21)
   M. Machinery and equipment sales, service, and rental: Section 24.2.1(22)
   N. Sale of major recreational equipment and vehicles: Section 24.2.1(32)
   0. Wholesale distribution: Section 24.2.1(34)
   P. Heating oil sales and distribution: Section 24.2.1(39)

2. The uses of the Property permitted by special use permit shall be those uses allowed by special use permit under Section 25.2.2 of Chapter 18, Zoning, of the Albemarle County Code, as that section is in effect on December 9, 2009, a copy of which is attached hereto and incorporated herein as Attachment B.

OWNER
(Signed) Charles W. Hurt, 11/2/2009
By: Charles W. Hurt
Title: Trustee
Post Office Land Trust

(Signed) Shirley L. Fisher, 11/2/2009
By: Shirley L. Fisher
Title: Trustee
Post Office Land Trust

OWNER
(Signed) Anthony D. Valente, 11/2/2009
By: Anthony D. Valente
Title: manager and member
Tiki, LLC

(Signed) Mary K. Valente, 11/2/2009
By: Mary K. Valente
Title: manager and member
Tiki, LLC

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(**Note:** The next two items were heard concurrently.)

Agenda Item No. 9. **PUBLIC HEARING: PROJECT: ZMA-2008-007. ATNA Building (Signs #15&17). PROPOSAL:** Rezone .7866 acres from CO zoning district which allows offices, supporting commercial and service uses; and residential use by special use permit (15 units/acre) to C1 zoning district which allows retail sales and service uses; and residential use by special use permit (15 units/ acre). Existing building on site will house an animal emergency care clinic. This proposal also includes one concurrent special use permit SP 08-067, a request to allow a veterinary services clinic on the property. PROFFERS: Yes. EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses. ENTRANCE CORRIDOR: Yes. LOCATION: 1540 Airport Road/Southeast corner of the intersection of Dickerson Rd. and Airport Rd. in the Community of Hollymead. TAX MAP/PARCEL: Tax Map 32, Parcel 48 Lot A. MAGISTERIAL DISTRICT: Rio. *(Advertised in the Daily Progress on November 23 and November 30, 2009.)*

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Agenda Item No. 10. **PUBLIC HEARING: PROJECT: SP-2008-067. ATNA Building (Signs #15&17). PROPOSED:** Request a special use permit to operate a veterinary services clinic in the existing building on the site. This proposal also includes a concurrent rezoning request (ZMA 2008-007) to rezone .7866 acres from CO zoning district to C1 zoning district. ZONING CATEGORY/GENERAL USAGE: CO Commercial Office - offices, supporting commercial and service uses; and residential use by special use permit (15 units/acre). SECTION: 22.2.2(5) Veterinary office and hospital and 5.1.11 Commercial Kennel, Veterinary Service, Office or Hospital, Animal Hospital, Animal Shelter. COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses. ENTRANCE CORRIDOR: Yes. LOCATION: 1540 Airport Road/Southeast corner of the intersection of Dickerson Rd and Airport Rd in the Community of Hollymead. TAX MAP/PARCEL: Tax Map 32, Parcel 48 Lot A. MAGISTERIAL DISTRICT: Rio. *(Advertised in the Daily Progress on November 23 and November 30, 2009.)*

Mr. Cilimberg reported that this is a request on Airport Road at an existing office building near the Airport, to rezone from CO to C-1 in order to house an animal emergency care clinic; the concurrent special use permit is for the veterinary hospital. He stated that since the Planning Commission meeting, the proffers have been revised to clarify the uses allowed by-right and by special use permit, and for the addition of the sidewalk that the Commission and staff had requested be provided along the western side of the entrance – from Airport Road into the site.

Mr. Cilimberg stated that both the rezoning and special use permit are consistent with the land use plan, and would provide the veterinary hospital use with an opportunity to expand and relocate to a central location; they currently exist off of Greenbrier Drive. He added that the hospital will provide a 24-hour service instead of the current hours, which are only after business hours. Mr. Cilimberg said that the revisions to the proffers include the commitment to construct the sidewalk along the western side of the entrance have addressed the factors that were previously identified as unfavorable. Staff recommends approval, along with the Commission, subject to acceptance of the applicant's proffers and subject to conditions on the special use permit. He noted the following amendments to the proposed conditions: "#1. Development of the use shall be in accord with the concept plan, entitled "Proposed Fencing" prepared by Gorman Architects, PLC, dated ~~June~~ ***July*** 20, 2009 (the "Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in conformity with the Plan, development shall reflect the following elements only and all other elements of the Plan may be modified during site plan review and approval: general location of parking areas, buffer and screening from adjacent residential properties, ~~the outdoor dog exercise yard and the canine elimination yard.~~ ***, and proposed fence enclosure***. Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance; and #8. An eight (8) foot tall treated solid wood privacy fence in a cabot slate gray #1445 stain for pressure treated wood shall be constructed and maintained to enclose the ~~canine elimination yard~~ ***proposed fence enclosure*** shown on the Plan; and"

Mr. Slutzky asked where the building would be situated relative to nearby residential units.

Mr. Cilimberg responded that there are residences in the rear of the building, with a fairly heavily wooded area on this property and adjacent on some of the lots behind it. He does not know the actual distance of wooded area. He said that the applicant's condition includes the building of an eight-foot fence along the back property line as a supplement to existing vegetation; there would be no tree removal.

Mr. Slutzky said the Board had an issue before it about a year ago where someone had a number of dogs in a residential neighborhood; the dogs barked and the neighbors had a problem with that. The Board adopted an ordinance to protect those residential neighborhoods from having the barking. Staff has indicated that there are no unfavorable factors with this application. He asked why barking dogs is not an unfavorable issue.

Mr. Cilimberg said this is an indoor facility. The area where the dogs will be walked is a very limited outdoor area. There will not be general outdoor activities for the dogs.

Mr. Rooker stated that these animals would not be there overnight unless they are under the care of a doctor.

Mr. Slutzky expressed concern that this is a residential area, and he doesn't understand how this is different from the person who had a dog rescue operation in her home.

Ms. Mallek said that she views this as part of the active business strip on Airport Road as opposed to being in the middle of a residential neighborhood. Her father's veterinary hospital on Hydraulic Road was just 30 feet from the apartments – and this application will have a distance of at least 50 feet. She stated that the animals that are there overnight are not usually outside to play, but are walked in tight containment so as not to become injured further.

Ms. Thomas commented that she is concerned about the windows never being opened, thinking of times when the air conditioning might not be working. She said that the applicant might be able to address the provision that "the windows shall never be opened."

Mr. Cilimberg said he cannot speak to that, but it is not unusual for windows in an office building to not open.

The Chairman then opened the public hearing.

The applicant, Dr. Sara Salmon, addressed the Board, stating that she is the owner of the clinic and this property. She said that VETSS has served the emergency needs of Albemarle County pets for over 20 years. Veterinary, emergency and critical care has evolved to encompass many other significant services by incorporating veterinary specialists into emergency hospitals. Dr. Salmon said that expansion into a 24-hour centrally located, regional facility will allow them to serve the Central Virginia region in a facility designed to meet the needs of current and future patients. She added that their location near the Airport will provide services which are not currently available. In order to receive these services now residents must travel at least 60 miles for the care their pets require. By establishing this new hospital, she said, the pets and the revenue they generate by their care will remain local.

Dr. Salmon said that they are no longer on Greenbrier but are located at Hydraulic Road Animal Hospital with Dr. Doss. There is another limited-hours facility located on Greenbrier only opened at night. She stated that there are two eight-foot fences planned for the new hospital to buffer the hospital from neighbors, and a small enclosure where dogs are walked singly, as needed and as prescribed by the vet. Dr. Salmon said that they don't kennel healthy animals. Hydraulic Road Animal Hospital has about 40 apartments within 50 feet of the walk yard – with most within 20 feet of the walk yard. She noted that they have been there for almost three months and have not had a single complaint. She added that their last facility did not have windows that opened, and this one does – but the clinic agreed not to open them in an effort to keep animals from escaping. A screen will not slow down an animal that is panicked. She asked for the Board's support of the rezoning and special permit.

Mr. Slutzky asked if the clinic would be providing something that's not currently available.

Dr. Salmon explained that in the daytime they will provide specialty services – such as a board-certified surgeon and internal medicine – that are not currently offered in the area.

Mr. Rooker commented that it will be nice to have this available in the community, as he has had to take two dogs to Midlothian for procedures in the past.

Mr. Bruce Marshall said he lives at 110 Deerwood Road at a property adjacent to the proposed clinic. He said that this type of facility is not feasible to be in a residential area – with people coming and going all night long, doors opening and closing, etc. Mr. Marshall stated that a spotlight on the corner near the enclosure "stands out like a sore thumb" and is very obvious from Airport Road. He said the trees are not a buffer, but are nothing more than underbrush. He said that the eight-foot fence won't hold back any noise and it will block views of the mountain. Again, he just thinks the building is too close to the residential areas, and it is a problem.

Mr. Greg Quinn said he is a friend of Mr. Marshall's and asked if this facility will affect the value or disrupt the harmony of Mr. Marshall's property. He is not for or against the request, but Mr. Marshall was here before this use.

Dr. Salmon stated that the light being referred to only had a bulb replaced, and they intend to only replace the yellow light bulbs that were already there. The building has not been occupied for awhile.

Mr. Rooker said that any exterior lighting would need to be full cutoff lighting as part of the site plan approval for this project.

Mr. Cilimberg indicated that the site has been in place for some years, and the site plan approved for it would not have been subject to the lighting provisions of the ordinance.

Mr. Rooker suggested that the applicant proffer to abide by the existing lighting ordinance with respect to all outdoor lighting, as full cutoff lighting is now required.

Dr. Salmon said that the light also oversees the parking lot, and they did it for safety reasons.

Mr. Rooker said he believes that, given the proximity of the site to residential use, the external lighting should be full cutoff lighting. He thinks that would solve a lot of the problems with lighting.

Mr. Davis pointed out that full cutoff lighting can be a condition of the special use permit.

Dr. Salmon said she had no problem with that as a condition. She added that this building is in a commercially zoned area on a commercially zoned strip – and the building was never fully occupied – and

the rest of the strip has just not been developed yet. She said that it is important to recognize that the clinic is a specialty practice, and they need peace and quiet too. They are not a general practice. Dr. Salmon stated that things are usually pretty quiet overnight, with most activity ending by 11:00 p.m. or 12 midnight.

Mr. Rooker said that the property is already in a commercial district, and there is no rezoning to commercial to allow this use. He added that another use might occupy this property that could be more intrusive.

Ms. Mallek mentioned that in the old days it was a real estate office and a lawyer's office and there were lots of people coming and going during the day.

Mr. Rooker stated that a special use permit condition regarding the lighting would make a significant difference to the adjacent residential properties.

Ms. Thomas added that all commercial uses on the properties there should be required to have that lighting requirement.

Mr. Davis suggested adding the language "all outdoor lighting shall comply with the requirements of Zoning Ordinance Section 4.17 Outdoor Lighting." This requires that all lighting not spill out beyond the boundaries of the property.

Ms. Thomas said that it also covers lighting that spills up into the sky.

Ms. Mallek asked if the property is connected to sewer service. Mr. Cilimberg responded that it is connected to sewer service and it is a condition.

Mr. Marshall again addressed the Board and commented that all the existing lights on the building are yellowish, and not a bright halogen-type light.

Mr. Slutzky clarified that the applicant has agreed as part of her special use permit to comply to the current ordinance for outdoor lighting, which will require that the lights funnel down so that off the property away from the parking lot the light won't be visible.

Mr. Marshall expressed concern about his property values with this directly adjacent to his. There is no way there won't be doors slamming and noise overnight – and other neighbors have voiced their concerns to him. He does not think anyone on this Board would want this use in their backyard. He asked that Board members take that into consideration when they vote.

Mr. Slutzky pointed out that the current zoning is commercial.

Ms. Thomas said that this allows for religious institutions, schools, offices, etc.

Mr. Slutzky mentioned that he has received numerous phone calls from the Deerwood community, all of them expressing concern about dogs barking late at night.

Mr. Rooker stated that the dogs won't be outside at night, adding that both he and Ms. Mallek have lived in the apartment complex beside a facility similar to this one and didn't know it was there for a year and a half.

Mr. Davis also noted that the Animal Noise Ordinance exempts animal shelters and commercial kennels but does not exempt animal hospitals, so if there are 30 consecutive minutes of barking that is audible at the adjacent property that would be a violation of the Noise Ordinance.

Ms. Mallek said that there is protection for the neighbors built in already.

Motion was then offered by Mr. Slutzky, **seconded** by Mr. Dorrier, to approve ZMA-2008-007, inclusive of proffers dated and signed November 1, 2009.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek and Mr. Rooker.
NAYS: Mr. Slutzky (preferenced his vote by saying he will vote "no" out of respect for the neighbors who have expressed their concerns. Also, he is eager to see the benefit of this come to the community and he is hopeful the applicant will be sensitive to the concerns of the neighbors, be a good neighbor and add value to the community).

Ms. Thomas added that developers usually talk with their neighbors before a development moves along, but this is a different situation because the building is already there. She encouraged the applicant to have an open house so that neighbors know what's going on. Dr. Salmon added that she has already done that.

PROFFER STATEMENT

ZMA No.: **ZMA 2008-007 (ATNA Corporation, LLC; VETSS, Inc.)**

Tax Map and Parcel Number: **03200-00-00-04800**

Owner(s) of Record: **ATNA Corporation, LLC**

Date of Proffer Signature: **November 1, 2009**

0.78 acres to be rezoned from CO to C-1

ATNA Corporation, LLC is the owner (the "Owner") of Tax Map and Parcel Number 03200-00-00-04800 (the "Property") which is the subject of ZMA No. 2008-007, a project known as "ATNA Building — VETSS Hospital" (the "Project").

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the zoning district identified above. These conditions are proffered as part of the requested rezoning and the Owner acknowledges that the conditions are reasonable.

1. The use of the Property shall be limited to those uses allowed by right under Section 22.2.l(b)(1), (3), (5), (12), (17), (18), (19), (20), (26) and (27); those uses allowed by special use permit under Section 22.2.2(2), (3), (5), (6), (7), (9), (10), (11) and (14); and those uses allowed by right under Section 23.2.1; of Chapter 18, Zoning, of the Albemarle County Code, as those sections are in effect on December 9, 2009, copies of which are attached hereto and incorporated herein as Attachment A **(on file in Clerk's office)**.

2. The Owner shall install a sidewalk in the location shown on Attachment B. The design of the sidewalk shall be approved by the Virginia Department of Transportation ("VDOT") prior to its construction. Construction of the sidewalk shall be completed by not later than June 30, 2010. Construction of the sidewalk shall be deemed complete when the Owner obtains from VDOT a written determination that the sidewalk is completed and safe for pedestrian use.

ATN Corporation, LLC
(Signed) Stuart C. Salmon
By: Stuart C. Salmon, Member

(Signed) Sara V. Salmon
By: Sara V. Salmon, DVM, Member

_____

Motion was then offered by Mr. Slutzky, **seconded** by Ms. Mallek, to approve SP-2008-067, subject to the conditions as presented and with the additional condition #9 that: "All outdoor lighting shall comply with the requirements of Zoning Ordinance Section 4.17 - Outdoor Lighting".

Ms. Thomas asked if everyone was okay with the windows not being able to be opened.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek and Mr. Rooker.
NAYS: Mr. Slutzky (for the same reasons he stated previously).

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Mr. Cilimberg noted that the nine conditions must be satisfied before the applicant can operate, and clearance needs to be obtained through the Zoning office. He does not know what that means in terms of the lighting.

Mr. Davis said, if that is an issue, the condition could be modified to give the applicant sufficient time to comply with the lighting requirement.

Mr. Slutzky said that seems like a reasonable request.

Motion was then offered by Mr. Slutzky, **seconded** by Ms. Mallek, to reconsider approval of SP-2008-067. Roll was called, and the motion carried by the following recorded vote:

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

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Motion was then offered by Mr. Slutzky, **seconded** by Ms. Mallek, to reapprove SP-2008-067, subject to the previous nine conditions, with condition #9 modified to read: "All outdoor lighting shall comply with the requirements of Zoning Ordinance Section 4.17 - Outdoor Lighting, no later than February 15, 2010".

Mr. Davis said, because this does not have a site plan, it will require the applicant to consult with Zoning, determine the requirements, install the lighting, and have an inspection by Zoning.

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

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

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

1. Development of the use shall be in accord with the concept plan, entitled "Proposed Fencing" prepared by Gorman Architects, PLC, dated July 20, 2009 (the "Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in conformity with the Plan, development shall reflect the following elements only and all other elements of the Plan may be modified during site plan review and approval: general location of parking areas, buffer and screening from adjacent residential properties, and proposed fence enclosure. Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance;
2. This special use permit applies to the existing building and any new buildings for the veterinary use will require a new special use permit;
3. The opening of any windows shall be prohibited;
4. Dogs may be walked only in the outdoor dog walk area;
5. No animals shall be boarded overnight or groomed, except for those animals under medical care at the veterinary hospital;
6. The use shall not commence until the building located at 1540 Airport Road is served by public sewer;
7. An eight (8) foot tall treated solid wood privacy fence in a cabot slate gray #1445 stain for pressure treated wood shall be constructed and maintained along the full perimeter of the property adjacent to the residential properties. The existing trees and landscape along the perimeter of the property adjacent to the residential properties shall not be disturbed. Screening requirements shall comply with Section 32.7.9.8 Screening of the Albemarle County Code;
8. An eight (8) foot tall treated solid wood privacy fence in a cabot slate gray #1445 stain for pressure treated wood shall be constructed and maintained to enclose the proposed fence enclosure shown on the Plan; and
9. All outdoor lighting shall comply with the requirements of Zoning Ordinance Section 4.17 - Outdoor Lighting, no later than February 15, 2010.

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Agenda Item No. 11. **PUBLIC HEARING: 09-03( ) – Agricultural and Forestal Districts; AFD 09-54 Kinloch AFD – District addition** – The proposed ordinance would amend Sec. 3-220, Kinloch Agricultural and Forestal District, of Chapter 3, Agricultural and Forestal Districts, of the Albemarle County Code, to add TMPs 49-5C, 49-6A1, 50-13 and 50-19 to the district. Notice also is hereby given that the Albemarle County Planning Commission will consider the addition and make their recommendations on the addition of TMP 50-19 on December 8, 2009 and the Albemarle County Agricultural and Forestal Advisory Committee on a date prior to December 8, 2009. *(Advertised in the Daily Progress on November 23 and November 30, 2009.)*

Mr. Cilimberg said that the Planning Commission, at its meeting last night, recommended approval of this set of additions of four parcels. The Commission had previously recommended approval of three additions, but inadvertently missed one; last night they took action to approve all four additions, which was also the recommendation of the Ag/Forestal Advisory Committee and staff.

At this time, the Chairman opened the public hearing. With no one coming forward to speak, the public hearing was closed.

Motion was offered by Mr. Slutzky, **seconded** by Mr. Rooker, to adopt the ordinance as presented and recommended. Roll was called, and the motion carried by the following recorded vote:

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

ORDINANCE NO. 09-03(5)

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, AGRICULTURAL AND FORESTAL DISTRICTS, ARTICLE II, DISTRICTS OF STATEWIDE SIGNIFICANCE, DIVISION 2, DISTRICTS, 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 3, Agricultural and Forestal Districts, Article II, Districts of Statewide Significance, Division 2, Districts, of the Code of the County of Albemarle, Virginia, is hereby amended and reordained as follows:

By Amending:
3-220 Kinloch Agricultural and Forestal District

Chapter 3. Agricultural and Forestal Districts

Article II. Districts of Statewide Significance

Division 2. Districts

Sec. 3-220 Kinloch Agricultural and Forestal District.

The district known as the "Kinloch Agricultural and Forestal District" consists of the following described properties: Tax map 49, parcels 5C, 6A1; tax map 50, parcels 13, 19; tax map 65, parcels 7, 7A, 8, 84A, 86, 89, 90, 91, 91A, 92, 93A, 93A1, 94, 94A, 95, 95A, 100, 121; tax map 66, parcels 2, 3C, 10G1, 32, 32D, 32E, 34 (Albemarle part only), 34B. This district, created on September 3, 1986 for not more than 10 years and last reviewed on November 3, 2004, shall next be reviewed prior to November 3, 2014.

(11-17-93; 10-12- 94; Code 1988, § 2.1-4(f); Ord. 98-A(1), 8-5-98; Ord. 00-3(3), 9-13-00; Ord. 04-3(3), 11-3-04; Ord. 09-03(5), 12-9-09)

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Agenda item No. 12. From the Board: Matters Not Listed on the Agenda.

Mr. Slutzky said that he will not be present for the meeting tomorrow. It has been a privilege and an honor to serve with each Board member. He has the highest regard for each member's judgment and integrity. He looks forward to dropping by and sharing his thoughts with Board members. He also wished the best of luck to Mr. Thomas and Mr. Snow in their coming terms.

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Agenda item No. 13. Adjourn to December 10, 2009, Room 241, 12:00 Noon, for Annual Meeting with Legislators.

At 8:07 p.m., Mr. Rooker offered **motion** to adjourn to December 10, 2009, 12:00 Noon, Room 241. Ms. Mallek **seconded** the motion.

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

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

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Chairman

Approved by Board
Date: 02/03/2010
Initials: EWJ