An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was scheduled for December 10, 2009, at 12:00 Noon, in Room 241 of the County Office Building on McIntire Road, Charlottesville, Virginia. This meeting was adjourned from December 9, 2009.

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

ABSENT: Mr. Slutzky.

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

Agenda Item No. 1. The meeting was actually called to order at 12:22 p.m., by the Vice-Chairman, Ms. Mallek.

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Agenda Item No. 2. Meeting with Area Legislators. Present at this time were: Delegate Rob Bell, and Delegate David Toscano. Also present was Legislative Liaison for the TJPDC, Mr. David Blount.

Mr. Blount said the packet of information reflects the Thomas Jefferson Planning District's 2010 legislative priorities. The positions are pretty much the same as from prior years. The priorities are:

LOCAL and STATE FUNDING OBLIGATIONS

- The state should honor its funding obligations to localities and resist cost-shifting and unfunded mandates on localities.
- In the face of continuing state budget woes and funding reductions to localities, the state should relax state requirements or provide flexibility for meeting requirements.

PUBLIC EDUCATION FUNDING

- The state should fully fund its share of realistic costs of the Standards of Quality (SOQ) without making formula changes that shift the funding burden to localities (e.g. cap on support personnel funding, reducing the 55% state share, not recognizing salary costs).

LAND USE and GROWTH MANAGEMENT

- We request additional tools to manage growth without preempting or circumventing existing local authorities in this area.
- We support approval of a broader impact fee and oppose attempts to weaken the current proffer system.

TRANSPORTATION FUNDING

- We request separate and dedicated state revenues for all transportation modes.
- The state should continue to be responsible for road maintenance/construction.

COMPREHENSIVE SERVICES ACT

- We urge a better partnership between the state and localities in containing the costs of CSA, and in balancing CSA responsibilities. We support additional state funding for administering CSA, as localities foot the bill for most of these costs.

Mr. Blount indicated that localities are not looking for the state to shift costs or send down any unfunded or underfunded mandates to them, and would like to see some flexibility to meet requirements or relax standards. He said that public education funding is a primary concern, and localities are stressing the need for any reductions in direct aid to be "temporary, fair and flexible." Mr. Blount stated that the regional position has been for local control of land use and growth management, and localities do not want to see any existing authority to be taken away or circumvented.

Mr. Blount reported that transportation funding is an ongoing and dire need, and localities have been asking for separate and dedicated state revenues for transportation. He added that they have also been looking for a better balance of responsibilities between state and local government regarding the Comprehensive Services Act, noting that 90 percent of costs for administering the CSA are borne by the localities. Mr. Blount said that the state's portion of funding for CSA is actually based on 1996 levels of appropriations.

Mr. Bell stated that the CSA has been on the County's list for eight years and the concern is the base costs for the program which rises at a level that exceeds growth of budget, inflation, surface population, etc., and the fundamental divide has been the ratio between state and local portions. The State's portion is rising at an unsustainable rate too, and they are always open to ideas about the overall program costs. They can shift the money around between the State and the locality but the program is growing at a rate that is not sustainable.

Ms. Mallek asked if any progress had been made in re-establishing in-state treatment centers so that kids are not sent out of state.

Mr. Rooker commented that Delegate Landes had been very active in that area recently and talked about creating a committee to address the CSA.

Mr. Bryan Elliott, Assistant County Executive, reported that about a year and a half ago the funding shares related to congregate care and in-community care home placements all changed. The

local requirement for congregate care went up while state funding went down. He stated that Senator Hanger's office has done a lot of research on services being offered in the community, and Charlottesville/ Albemarle has been trying to keep kids in the community here while providing support services. Mr. Elliott stated that some benefits of that have already been seen, and efforts are being made to get kids back from congregate care more quickly than before. Although they are making some progress part of the gap they have identified is on day treatment facilities and education services within communities for children who may not be ready to reenter the public schools. Both Charlottesville and Albemarle have been heavily involved in "systems of care" over the past year. He reported that in FY09, the City and County experienced a drop in CSA expenditures for the year, and the state should have seen a corresponding drop as well; the number of children in congregate care also dropped. Mr. Elliott noted that the City has been involved with a statewide effort to look at targeted ways to keep kids in the community.

Mr. Bell asked if local efforts were being mimicked statewide or if this is more of a pilot program.

Mr. Elliott responded that it is a little bit of both; the City has been involved with a targeted group addressing this, but the payment formula of what the state will match on CSA expenditures is statewide. Communities across Virginia are involved with that as well.

Mr. Bell asked if there has been some success with better treatment or cheaper expenditures, and if that is something that should be emulated statewide.

Mr. Elliott replied that there is a statewide push to implement the "systems of care" approach to try to keep kids in the community, and the program has been in place for six or seven months now. This should be yielding some results statewide.

Ms. Mallek commented that the gap is the day-treatment facility.

Mr. Elliott responded that that's the case locally, and a group is working with private providers to fund that service locally.

Mr. Bell asked if there is anything the state needs to be doing to incentivize this, in terms of structuring payouts.

Mr. Elliott indicated that there were two adjustment periods – one in January 2008 and one in summer 2009 – that put a premium on congregate care costs.

Ms. Thomas commented that putting social workers in elementary schools was yielding cost savings, but wondered if it was bringing results in terms of outcomes, or County costs.

Mr. Elliott explained that expenditures for family service workers are not funneled through CSA but there is some state and federal reimbursement for those positions, but they are funded primarily through local monies. He mentioned Bright Stars as an example that could benefit from these services and a social worker in the classroom, to help reduce their chance of ending up in the CSA system. Mr. Elliott mentioned the first graduating Bright Stars class, many of whom are going off to college.

Ms. Thomas said she is easily convinced that preventive efforts pay off. She thinks it is easy to overlook the work being done in elementary schools, but they are probably having an impact on a number of children involved in CSA.

Ms. Mallek asked if there was any connection between school investment in family support, or if that is a separate line item. Mr. Elliott responded that it is separate.

Mr. Bell asked if CSA children are judge-driven and are court ordered. Mr. Elliott responded "yes". He added that Hampton is often utilized as the benchmark for keeping kids in the community and involving the judicial system in those decisions, creating an awareness in the judiciary that keeping children local and providing wrap-around services in the home to try to keep them there generates positive outcomes. That is a key component, and one of the things the County's Department of Social Services and other stakeholders in the CSA system continually work with the judicial system to impress upon the judges.

Mr. Boyd commented that the effort has been a priority for several years now.

Mr. Rooker said that he wasn't sure if the local effort to keep judges informed was also happening statewide. There should be some standardized program whereby judges are made aware of all the facets of the program, the various costs, alternatives, etc. It is at the mercy of the local social services department and OAR, and that can vary a great deal from locality to locality.

Mr. Dorrier said probably one of the most important issues the state is dealing with is convicted felons and reentry into the community. He and Mr. Tucker serve on the Jail Board, and this Jail is one of the most effectively-run jails in the state. Colonel Matthews is very interested in trying alternatives. The judges in the area have not been as progressive and innovative as the jail would recommend. He thinks that we need to work on developing better alternatives for hiring people once they are released and dealing with some of their issues, especially with release programs for non-violent offenders. He asked if the General Assembly was addressing some of the newer more progressive initiatives.

Mr. Blount replied that he doesn't know what in particular will be discussed in the upcoming session, but the Public Safety Secretary usually addresses that with input from state agencies.

Mr. Toscano said that, as an attorney who represents social service agencies, he views the role of the courts as an important one. It seems to be suggested that social service workers need to be trained and sensitized as to the financial implications of the plans they put before the courts, and that judges need to be aware of the costs of their actions. Mr. Toscano noted that the Court Improvement Program through the Supreme Court has a program for educating judges, but so much more of this is driven by the social workers as opposed to the judges. He said that social workers put forth a comprehensive plan, and generally judges don't look behind those plans, as attorneys and guardians ad litem for the child do. Mr. Toscano emphasized that the hands-on advocates are the first line when it comes to the costs, and that is why they are looking for more cost-effective placements. He believes that they do look to place the children in the community first, but some of them are so much in need and emotionally challenged, that there is no choice but to put them in a more structured environment which is expensive.

Mr. Rooker asked about the County's response to the Department of Conservation and Recreation's position on Biscuit Run.

Mr. Graham explained that the County had planned for it to be part of the development area, not a state park.

Mr. Rooker replied that the real estate tax loss based on its current undeveloped state is $325,000 annually, and a 1,250-acre parcel is going to be taken out of the planned use – with 850 of that in the growth area. As part of the development, there were plans for a 400-acre park.

Mr. Graham noted that the proffers were valued at about $38 million.

Mr. Rooker said that nothing has been received from the State as to their planned use for the park.

Mr. Graham said it is ironic that the State requires local governments to declare an urban development area. This was declared an urban development area and now the State has taken part of that and proposes to change it into a State park.

Mr. Dorrier asked why this couldn't be made into a "win-win" situation for the State and the County, with both realizing some gains.

Ms. Thomas expressed concern that if there aren't going to be 3,000 development units in that area, they might end up in the rural area, or in the already challenged Route 29 North area – in a haphazard pattern of growth.

Mr. Rooker asked if this gift to the State would take State tax credits, as there is usually a fair market deduction.

Mr. Bell said there is a special tax credit.

Mr. Rooker said it seems to him the taxpayers are paying for this property at a very high value in the form of either deductions and/or credits to acquire development property. It doesn't seem this has been very well thought through from a financial standpoint, or from the standpoint of its integration with the County's comprehensive plan.

Ms. Mallek said that she learned that of the $50 million available in tax credits, only $2 million was left.

Mr. Rooker added that the State is acquiring this property with the existing zoning in place.

Mr. Davis pointed out that the zoning remains with the property, but the State is not subject to those zoning restrictions for public uses. If the property were transferred back to a private entity, those zoning restrictions would apply.

Mr. Dorrier asked if the land becomes a part of the State park system. Mr. Davis replied, "yes". He added that he isn't aware of any legislative action required to accept the property, but there may be some funding decisions required to develop it as a State park.

Mr. Graham mentioned that there is another property owner involved, as the Breeden family retained 36 acres – which is part of the rezoned tract – and they are bound by the same plan of development and proffers. If Forest Lodge LLC gives the rest of the property to the State, they are put in a quandary as to how they could develop that smaller parcel. The acreage they retained is near the middle of the property.

Ms. Mallek asked if the property can be used for anything other than a State park. Mr. Graham said he does not know.

Mr. Davis stated that in order for it to qualify for tax credits, there must be some restriction on the property.

Mr. Rooker said that if they have a high appraisal, Forest Lodge can come out on the property through the deduction as there is a fair market value deduction for the contribution.

Mr. Toscano asked if some kind of memo was being prepared about the next steps in the process and what the ramifications are. He asked if the Board was planning to weigh in on it.

Ms. Mallek replied that the Board has not been invited to make any comments.

Mr. Rooker noted that County staff responded to a formal request from the state. He suggested Mr. Graham provide a copy of his response to the legislators.

Mr. Toscano said he would like to see the response because the legislators are going to be asked a lot of questions, particularly on what they want to do.

Mr. Rooker emphasized that any further inquiries should be made soon, as the owners will realize the tax deduction for calendar year 2009.

Mr. Toscano asked if the County has formally taken the position that their growth area is a UDA.

Mr. Davis responded that that action was taken last night.

Mr. Blount mentioned that City Council took action this week as well. He added that the Joint Study Committee is looking at revising the UDA statutes that were adopted in 2007 – as localities were given until 2011 to amend their Comprehensive Plan or make a resolution similar to what the Board approved yesterday. Yet, here in midstream the State is talking about changing the rules.

Ms. Thomas reported that when the Virginia Association of Counties (VACo) met in November, their attorney warned all participants that there was an item of concern in front of the General Assembly – the proposal to change sovereign immunity of counties. She said that Mr. Davis is distributing further information.

Mr. Davis said that at the Boyds-Graves Conference there was a Sovereign Immunity Study Committee formed with representation from some local attorneys, some of whom filed a report to the conference. He stated that the committee split on its recommendations to the conference. He stated that this is a good summary of the local government positions as to the issues that are alarming to local governments about any move to remove a locality's sovereign immunity or to place localities under the Torts Claims Act. Mr. Davis added that there is also a memorandum from Davenport & Company as to the economic uncertainties and impacts related to diminishing sovereign immunity – especially in these uncertain and difficult financial times. Albemarle hopes the legislators will help to fend off any attempt to do this in this session. It has arisen a number of times over the last 15 years, and he does not think it has ever gotten out of committee. He hopes that if the bill is introduced it will reach the same result this year.

Mr. Bell asked who is proposing the bill. Mr. Davis responded that he did not know, but he assumes a bill will be introduced since it was a recommendation of the Conference.

Ms. Thomas reported that in her role on the Local Government Advisory Committee to the Chesapeake Bay Program, she is aware that the program has become a "major driver" of several attempts to reduce the harmful substances being put in the waters that go into the Bay. She said that it's possible that the state's stormwater regulations that have been adopted may be challenged in the General Assembly, and watering those down further might be popular with some segments of the community. Ms. Thomas noted that taxpayers paying for wastewater treatment plants will have one view, farmers will have another, etc., but the action in front of the legislators as it relates to stormwater regulations is important and she hopes they won't "give way to further challenges." She added that if the regulations are weakened, then wastewater regulations would need to be tighter so it really just shifts the burden as the EPA is going to require the total to be reduced in some way.

Mr. Toscano said he has read a number of the email exchanges and some of the regulations as they have gone through the process. He understood that the County and some people in the development community have taken the position that if the original stringent regulations were to have passed it would have had the unintended effect of potentially driving development into the rural areas and therefore exacerbating sprawl. He stated that that is why Mr. Slutzky and others advocated for a change in those regulations. Today he understands that the regulations in their current format are in the appropriate form and local legislators are being asked not to support the change.

Ms. Thomas confirmed this, adding that the State Water Control Board loosened the regulations at their most recent action – so they shouldn't be loosened any more at the legislative level. She emphasized that if you look at one segment, you sympathize, but the EPA is under court orders and "somebody is going to have to help clean up the Bay."

Mr. Rooker pointed out that the original regulations actually prohibited regional stormwater management basins, and required that stormwater treatment for new development take place on the property – which made it difficult to develop with density in the urban areas.

Mr. Toscano said it is important that the Board keep them in touch because the bills can move in a lot of different ways and take different forms.

Mr. Davis suggested that he run through all the bills and then get the Delegates input.

He said that there are four bills that Mr. Blount has requested for introduction – the first three are in the County's legislative package and the fourth has not been formally endorsed by the Board yet. Mr.

Davis explained that the first one is a bill that would address unpaved secondary road funding, as there is none currently allocated by the State for unpaved roads. It is a formula driven percentage which in the past has been allocated to localities. He said that because the County has a project that couldn't be funded for a long time, the Board felt it was important to utilize that money on secondary road improvements that could be done more quickly; however, a statutory penalty applies that whenever unpaved road money is shifted to a paved road use – a one-mile penalty for every $250,000 that is transferred – and the formula that drives the unpaved road funding in the future is based on the number of unpaved miles of road. Mr. Davis noted that the penalty would impact the County in future years. There are several options that could be used to offset that penalty. The County's first preference would be for the penalty not to apply in the future, with the second option being the penalty not applying for any transfer of funds in a year when there aren't unpaved road funds allocated to the community, and a third option would be to amend the statute to reflect current values. The $250,000 value was last amended in 1985; the current cost of one mile of unpaved road is estimated at $500,000. At a minimum that penalty should be reduced to reflect inflation and costs. Mr. Davis said the County's preference would be that the penalty be removed in its entirety.

Mr. Bell asked a few questions to clarify the structure of the allocations.

Mr. Davis explained that there are separate funds for secondary and unpaved roads. The County's Six-Year Secondary Road Plan lists secondary road projects and lists unpaved road projects. It is a long list. Some of those projects have been on the lists for many years, but the funding is so small that it's difficult to ever accumulate enough funding to actually do the project.

Mr. Bell asked if the County had considered a payment/repayment setup whereby the County uses it now, and when funding returns, have some mechanism for repaying it.

Mr. Davis replied that that's always an option for the Board to allocate funding to the paved or unpaved roads list.

Mr. Bell said if you take away the penalty altogether, right now is an obvious time to do it because there is not enough money to pave the road; it is just sitting there and could help you do another project. Would there be anything to stop you from forever shifting the money from the unpaved road funds into some other project. Mr. Davis said, under the first option, "no"; it would be a local decision that would be made.

Ms. Mallek noted that the second option would have the balance of the "dire distress" economy situation – which would allow the County to maneuver differently than if they had been receiving the $1.5 million that they in turn could match. The County was told that there would be no $1.5 million until 2017 at the earliest and that is just too long of a time period.

Mr. Rooker commented that there are other projects that have safety issues that need to be resolved.

Mr. Bell said he does not see any reason to keep it sitting there for something we cannot finish. On the other hand for some reason when they set up a formula they dedicated some of it to that he presumes because if you do not do it that way there will always be the high most on the list and you almost never get to them. He is trying to think of it as a way to balance those two concerns.

Mr. Davis said he thinks option two is a way that does have some balance in that regard.

Mr. Rooker said the County has always allocated a percentage of funds to unpaved roads. Funding has become so miniscule now and everyone is trying to scrape money out of whatever barrels there are to get a few important projects done.

Ms. Mallek mentioned a small bridge project that could be addressed if this were changed.

Mr. Davis reported that the second bill is to provide a local option for localities to extend the rollback period from 5 years to 10 years when property that's in land use is changed to a more intensive use or is subject to an upzoning. He said that currently when a property is under land-use value taxation and it comes out for one of those reasons, the current year and the five previous years are assessed at full fair market value and the property owner has to pay the difference between the taxes he would have owed at full fair market value minus the amount he paid under land-use value taxation. Mr. Davis stated that the legislation would give localities the option to adopt an ordinance to extend that period up to 10 years. The primary purpose for this is that the goal of land use is to preserve land for agricultural and forestal uses, but not to simply benefit people whose intent is to develop the property. He emphasized that the longer time period may better capture the people who are intended to be benefitted, and less likely to capture people who are holding their land for development purposes on a short term basis.

Mr. Dorrier asked if this is something all Virginia localities support.

Mr. Blount responded that other localities have expressed interest in it, but he's not certain if it's statewide.

Mr. Rooker emphasized that this would be a local option, not required.

Mr. Dorrier said that he is concerned that the public thinks that this is money that would be spent as soon as it is collected. He added that the Board has received a few calls about it.

Mr. Toscano asked if the Board held a public hearing on its' legislative program. Mr. Davis responded that the Board did not hold a public hearing. It did receive a presentation.

Mr. Rooker noted that if any locality were to change their current ordinance, a public hearing would need to precede that.

Mr. Toscano asked what the arguments might be against giving localities the flexibility to do that.

Mr. Boyd replied that the biggest argument usually levied is that landowners view their land in the way that people view a 401 (k) – to be used for emergencies if necessary. He said that there are realistic situations, such as medical emergencies, that make him concerned about these restrictions.

Mr. Rooker stated that it is a deferral program and not a tax forgiveness program. Many localities do not have a land use program. There are approximately 4,000 landowners who have property in land use, and it comprises over 60 percent of the land in the County. It costs approximately $19 million per year. There is pressure from people in the growth areas to put an end to the program. He does not envision the Board taking any drastic action with respect to land use in the coming year. One tool that localities might use to defend the program is to increase the recovery period to make it more palatable to people who don't feel they are financially benefitting from the land-use program. He emphasized that the $19 million is worth about 12 cents on the County's overall tax rate, so technically taxes could be lowered across the board were that program not in place. It may be that at points in the future when you get more and more urbanized and you get more and more people who are on the other side of that equation, being able to extend the rollback period would be a good option to consider as opposed to dealing with the pressure to eliminate the program.

Mr. Boyd disagreed that the majority of the people in the urban area are opposed to land use taxation.

Mr. Rooker added that he said the majority of the citizens do not benefit financially from the program.

Mr. Davis reminded the Board that they had proposed this out of their discussion about land-use taxation over the last several years, and this is one of the items suggested to better capture those people who would benefit and keep their land in an agricultural use. He said that currently if someone withdraws from the land use program they do not pay a rollback until they actually change the use. If they withdraw from the program and wait five years before changing the use to a nonagricultural use, they pay no rollback.

Mr. Davis said the third recommended piece of legislation relates to Section 15.2-953 of the Virginia Code, which talks about what entities localities can make donations. Staff's review indicates there isn't authority to make donations to entities that are promoting energy efficiency – unless that organization is a charitable organization. Mr. Davis stated that in examining the County's Green Programs, it became apparent that there may be situations to create public-private partnerships, where a donation to a nonprofit promoting energy efficiency would be appropriate. This bill would add some clear language that would authorize localities to make such donations to nonprofit organizations, associations or agencies that are engaged in providing energy-efficiency services or promoting energy efficiency within localities. He thinks that without this authority, the County will be limited in how it can form some of these public-private partnerships. He added that this might help the County develop more efficient programs.

Mr. Boyd commented that it would also help to grow government and would be a way for government to grow larger by getting involved in more entities.

Mr. Rooker and Ms. Mallek responded that it's outside money, and it's not clear how government would get larger by partnering with these organizations.

Mr. Davis stated that there are some grants the County receives that would make the locality a pass-through for grant funding that wouldn't be local dollars, and would go to nonprofits for this purpose.

Mr. Rooker said that the Board voted for this in their legislative package, and this allows a partnership with nonprofits to accept grants that promote energy efficiency. This enables organizations outside of government to grow and prosper in the community to provide some of these services for which the grant is given and it allows the grant to be used in a more efficient way.

Mr. Boyd said he does not think he voted for this item.

Mr. Davis reported that the last legislative item is not formally in the legislative packet, but several Board members raised it as a concern as it went through the revalidation process. This relates to the prerequisite that land has to meet in order to qualify for land-use taxation, as set out in Code Section 58.1.3233 – which states that currently in order to qualify for land use taxation under the open space category, the land must be in agricultural/forestal districts of statewide significance, subject to an open space agreement, or be subject to a perpetual conservation easement. He said that in Albemarle County, there is authority for statewide ag/forestal districts and local districts – and only eight localities have the authority for the districts of local significance. Mr. Davis stated that when looking at revalidation, there were a number of property owners who wanted to shift their property from agricultural uses into the open space use. He said that under the County's local district, landowners were under the impression that this would qualify them to go into open space use, but the State Code only allows statewide districts to qualify – not local districts.

Mr. Davis clarified that local districts must have a core of 20 acres, and statewide districts must have a core of 200 acres. He said that Albemarle has one local district, Augusta has none, Loudoun has none, Prince William has none, Rockingham has one, Roanoke has none, Hanover has one, and Fairfax has 38. Mr. Davis noted that the Fairfax Attorney's Office has indicated that they have no problem with allowing the change to happen – but staff has struggled with this, as their experience with the revalidation process was that there were approximately 21 or 22 property owners who were not in ag/forestal districts of statewide significance who wanted to come in under open space. He said that if they were to have been processed as AFDs, there would have had to have been 22 newly created AFDs – generating a huge burden in terms of time and cost, for very little acreage. Mr. Davis stated that an alternative is for them to enter into open space agreements, and those property owners have chosen that option to qualify for open space taxation – even those requirements are more restrictive.

Ms. Thomas asked if this is being recommended or not.

Mr. Davis said staff has a split recommendation. He thinks staff recommendation would be "no", this is not necessary for the County's land use program, but only because of a process cost consequence.

(Note: Mr. Bell left at 1:30 p.m.)

Mr. Toscano asked if the County wants language drafted or not.

Mr. Davis responded that the Board has not taken an official position. Staff is not aware of the legislative history of this Code section. He said that most likely, these property owners would have jumped into the AFD process if they could, and before the discrepancy was identified a number of property owners had already made application because they thought it would get them into the open space program.

Mr. Rooker commented that if the problem can be solved by signing an agreement with the County instead of going through the administrative expense of creating alot of small ag/forestal districts, there is no reason to support this.

Mr. Toscano responded that he will hold off from introducing this unless he is directed otherwise.

Ms. Mallek asked if it would be possible to extend the distance from the core in the ag/forestal districts.

Mr. Davis replied that it is statutory and is already "pretty generous."

With regard to unpaved secondary roads, Mr. Toscano asked the Board to help him strategize how it might play out with the rural and suburban districts around the Commonwealth. He asked if someone could argue that the allocation for unpaved road monies could be perceived as a "back door way to get more money" into the Secondary Roads Program.

Mr. Rooker stated that it's all secondary road funding, and there is a provision that a certain percentage must be allocated or there will be a penalty.

Mr. Davis explained that the total amount of secondary road funds is identified, and then the State takes 5.67 percent of that out and separates it into a separate fund – then allocates it across the Commonwealth based on the number of unpaved road miles in each locality. He said that option #2 negates that concern to some extent; because in the years they are not providing any unpaved road funding, it gives localities the option to more efficiently use the funding. He does not think the locality should be penalized for efficient use of that funding. Mr. Davis said that option #1 might open up that criticism.

Mr. Toscano said he is thinking of a way to get this legislation through. He does not want a group of legislators who represent a certain area think they will be penalized in some fashion.

Ms. Mallek asked if it would not just be sensible to put in option #2.

Mr. Rooker said it is a key problem right now because the State has stopped funding unpaved roads. If the County got back to the level of funding it had six or seven years ago for secondary roads, it would probably start paving some unpaved roads.

Mr. Toscano stated that with land use, someone who put their land in land use 15 years ago has been paying on a lower value – but if they sell it now, the way land use works, the rollback is collected from only the last five years. He clarified that the Board's intent with the new legislation is that the subsidy be different.

Mr. Rooker emphasized that the goal is for localities to have more flexibility in designing their land-use programs.

Mr. Davis said that now after five years, the deferral is forgiven; this would say that after 10 years the deferral is forgiven.

Mr. Dorrier commented that it may be a good thing, but not enough is known about it to make the decision.

Mr. Rooker replied that the point of the legislation is to provide flexibility; it does not change the County's local program.

Ms. Mallek emphasized that this is just asking the legislature for the right to do it if localities so choose.

Mr. Toscano said that he hopes the Board will continue to keep him informed on the land-use tools issue, noting that the County has been very actively engaged in the issue of whether the state would get rid of proffers and substitute an impact fee that would be a low number. He said that it is hard to know whether that bill would be introduced this year, adding that there may be a comparable bill this year on elimination of proffers that introduces a cap. There is going to be a lot to look out for in this General Assembly session. The more information the County gets to him on their positions the better.

Ms. Thomas noted that she and Mr. Dorrier went to hear Delegate Athey talk to VACo and learned that what was driving his pro-impact fee position was the desire to help the State with road costs. In his mind impact fees were road impact fees because of the incredible cost to the State. She was quite amazed because the County had thought of impact fees as helping local government that follows from a major development.

Mr. Davis mentioned that several years ago there was a provision for impact fees for things other than roads for higher population localities, if they adopted urban development areas and agreed to take over road maintenance outside of those urban development areas. He added that no localities took that on, and it seems Delegate Athey is still modeling his thoughts on that now-expired legislation.

Mr. Rooker stated that the explosion of secondary roads built by developers in subdivisions is not a construction cost problem, it's a maintenance issue – and that won't be covered by a one-time impact fee.

Mr. Dorrier said that Delegate Athey seemed convinced that the impact fee would be put into effect as early as this year.

Ms. Thomas asked Mr. Toscano to summarize what might be coming out of the Delegate Athey's committee.

Mr. Toscano responded that it was left with various bills before the subcommittee the day before the Session, and there would potentially be recommendations out of the subcommittee in support of one bill or another. Again, they meet the day before the Session starts and quite frankly he does not know if they will see any bills.

Mr. Blount indicated that Delegate Athey anticipated a UDA bill, but it got hung up on how to deal with the issue of densities.

Mr. Toscano said that some believe that impact fees shouldn't be allowed to be imposed in an urban development area, or should be lessened in order to encourage growth there. He thinks that people understand the logic of trying to push the impact fee into places where it is designed to encourage growth in development areas.

Mr. Dorrier asked if VACo favored impact fees.

Ms. Thomas responded that they do favor the concept, but with provisos.

Mr. Rooker noted that the proffer system does have the unintended consequence of driving development into the rural areas, but unless that is replaced with some workable impact fee, localities will fight the elimination of proffers because the tradeoff has not been good.

Mr. Toscano said that argument has been heard loudly and clearly.

Ms. Mallek said the result is that there would be no incentive to do a rezoning, which is what Northern Virginia counties told their developers a couple of years ago.

Mr. Davis commented that none of the impact fees that have been introduced in the past have adequately addressed how to impose an impact fee on a rural by-right lot.

(Note: At 1:48 p.m., Mr. Toscano left the meeting.)

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Agenda Item No. 3. Recess. The Board took a brief recess, and then continued its meeting at 1:50 p.m.

(NonAgenda. Ms. Mallek asked if any Board members planned to attend the Scenic River Steering Committee discussion on December 15th or the Chesapeake Bay TMDL meeting with the EPA on December 17th. If more than two plan to attend, the Board needs to adjourn to that date.)

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Agenda Item No. 4. Wind Turbines:

Mr. Davis distributed the revised wind turbine ordinance. He believes the proposed language captures what was presented and discussed at the December 9th meeting.

Mr. Mark Graham, Director of Community Development reiterated the changes made the previous evening – only allowing wind turbines in the RA zoning district, eliminating Tier II provisions, and not allowing waivers by the Planning Commission under the Supplemental Regulations. He added that the questions related to the maximum height of structures seem to indicate that the Board wanted to maintain the height as allowed in the zoning district as the maximum height. Mr. Graham said that in this case, it would be limited to RA property so the height would be 35 feet. He also noted that the definition of setback was modified that say it would be no closer than 150 feet with a fall zone of 20 feet. It is still an administrative process. The same restrictions apply with respect to ridge areas, mountain areas and historic districts.

Mr. Dorrier asked if this would be brought back in six months or so to determine whether to pursue Tier II.

Mr. Rooker said that this can be brought back at anytime for review. He added that all the speakers at the Planning Commission hearing were rural area property owners that had significant size properties.

Ms. Mallek asked what the building permit level would be on this.

Mr. Graham replied that this would simply be a basic building permit for a structure with an electrical permit.

Mr. Rooker then **moved** to adopt ZTA-2009-001 as presented today. Ms. Thomas **seconded** the motion.

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: None.
ABSENT: Mr. Slutzky.

ORDINANCE NO. 09-18(11)

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

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

By Amending:
Sec. 3.1 Definitions
Sec. 10.2.1 By right

By Adding:
Sec. 5.1.46 Small wind turbines

Chapter 18. Zoning

Article I. General Regulations

Sec. 3.1 Definitions

. . .

Fall zone. A zone on the surface of the ground that is a circle whose center is the proposed or standing personal wireless service facility or small wind turbine (the "facility or turbine"), where the radius is measured from the outer surface of the facility's or turbine's pole or other vertical structure immediately above its foundation, and where the radius is: (i) for facilities, equal to the height of the facility; and (ii) for turbines, equal to the height of the turbine plus a distance of twenty (20) feet.

. . .

Historic district. The Southwest Mountains Rural Historic District, the Southern Albemarle Historic District, the Proffit Historic District and the Batesville Historic District, all of which are listed on the Virginia Landmarks Register.

. . .

Small wind turbine. A wind energy conversion system used for the generation of power to support an authorized use on the property and all components of the system including, but not limited to, the tower, guy wires, wiring, rotors and turbine blades, generators and control systems.

Article II. Basic Regulations

Sec. 5.1.46 Small wind turbines

The purpose of this section 5.1.46 is to authorize small wind turbines as an accessory use in order to promote renewable energy. Each small wind turbine shall be subject to the following, as applicable:

a. *Application for approval.* In conjunction with the submittal of a building permit application for a small wind turbine, the applicant shall submit the following information:

1. A plat of the parcel showing the lot lines, the location of the proposed small wind turbine and the setbacks to the lot lines.

2. Plans that show the total height of the proposed structure, including rotors or turbine blades and that show compliance with the building code.

b. *Requirements*. Each small wind turbine shall be subject to the following:

1. *Primary purpose.* The primary purpose of the small wind turbine shall be to support and provide power for one or more authorized uses of the property; provided that nothing herein shall prohibit the owner from connecting the small wind turbine to a public utility and selling surplus power to the utility.

2. *Location*. Notwithstanding section 4.2.3.1 of this chapter, the small wind turbine may be located in an area on a lot other than a building site. A small wind turbine shall not be located within a historic district or within a ridge area.

3. *Setbacks*. The small wind turbine shall not be located closer in distance to any lot line than one hundred and fifty (150) feet. The agent may authorize a small wind turbine to be located closer to any lot line if the applicant obtains an easement or other recordable document showing agreement between the lot owners that is acceptable to the county attorney and, where applicable, that prohibits development on the portion of the abutting parcel sharing the common lot line that is within the small wind turbine's fall zone. If the right-of-way for a public street is within the fall zone, the Virginia Department of Transportation shall be included in the staff review, in lieu of recording an easement or other document.

4. *Height*. The small wind turbine shall not exceed the maximum height permitted for structures within the applicable zoning district.

5. *Lighting*. The small wind turbine shall have no lighting.

6. *Collocation*. The small wind turbine shall not have personal wireless service facilities collocated upon it.

7. *Removal*. The small wind turbine shall be disassembled and removed from the property within ninety (90) days after the date the use(s) to which it provides power is discontinued or its use to generate power is discontinued. If the agent determines at any time that surety is required to guarantee that the small wind turbine will be removed as required, the agent may require that the owner submit a certified check, a bond with surety, or a letter of credit, in an amount sufficient for, and conditioned upon, the removal of the small wind turbine. The type and form of the surety guarantee shall be to the satisfaction of the agent and the county attorney.

c. *Approval*. The agent is authorized to review and approve small wind turbines. The agent shall act on the application before the building permit application or site plan for the small wind turbine is approved. Notwithstanding subsection 5.1, no requirement of subsection 5.1.46(b) may be waived or modified for a small wind turbine.

d. *Denial*. If the agent denies an application, it shall identify which requirements were not satisfied and inform the applicant of what needs to be done to satisfy each requirement.

Article III. District Regulations

Sec. 10.2.1 By right

The following uses shall be permitted by right in the RA district, subject to the applicable requirements of this chapter:

. . .

25. Small wind turbines (reference 5.1.46)

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NonAgenda. Other Matters.

Mr. Rooker said that one of the components of the composite index the state uses in budgeting is assessed value of real estate and land use does not diminish that value for the purpose of determining the composite index number. He said that in counties where over 60 percent of the land is in land use, the

State determines the value of that property for tax purposes, which penalizes the County from a CPI standpoint as a substantial part of the property in the County is significantly diminished for tax purposes, but continues to be valued at fair market value in the index. He stated that he had mentioned to Mr. Toscano whether there was legislative potential in addressing this, and his response was that it should be looked at. Mr. Rooker asked if any Board members had any reasons why not to pursue that.

Ms. Thomas added that it should also be determined whether the revenue-sharing program could in any way affect the composite index, and that has led to some hard feelings with the City of Charlottesville – who believes it might end up costing them money. She would much prefer the approach mentioned by Mr. Rooker. She believes that the land use taxation program fulfills a State goal of increasing land held in forests and farms so they should not be penalizing localities that take advantage of the program.

Mr. Rooker said he will continue his discussions with Mr. Toscano and suggested another Board member talk with Mr. Bell to see if he is interested in exploring.

Mr. Boyd said that the composite index is a zero sum gain, so it is going to have to come from some other area if the CPI is changed.

Mr. Rooker responded that it would benefit all localities that have land-use programs and wouldn't be peculiar to Albemarle, but there is a fairness issue here because the State sets those values.

Mr. Davis indicated that this argument has been made in the past, and the counter has been that it's a "local choice" and doesn't reflect a locality's ability to pay, and you could tax it. If the amendment were to happen, it would be to the budget bill, and there is time to address a strategy to get that done. He added that a problem is that most cities do not have any land in ag/forestal districts, and some of the large urban counties do not have land in districts either. Mr. Davis said there might not be a real great political base to support this proposal.

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Agenda Item No. 5. Adjourn. At 2:01 p.m., with no further business to come before the Board, the meeting was adjourned.

Ms. Thomas **moved** to adjourn the meeting to Thursday, December 17, 2009 at 2:00 p.m., at the COB-5th Street, for purposes of board members attending the Chesapeake Bay TMDL meeting. Mr. Boyd **seconded** the motion. Roll was called and the motion passed by the following recorded vote:

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

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Chairman

Approved by the Board of County Supervisors

Date: 02/10/2010

Initials: EWJ