

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on March 10, 2010, at 6:00 p.m., in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 6:00 p.m., by the Chairman, Ms. Mallek.

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

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

Mr. Boyd said that he and Ms. Mallek attended the dredging consultant's meeting last night. It was an informative report, but there is not a lot of detailed information yet or cost figures because that is part of Phase 2 of the study. The consultants did a good job of presenting the options. He learned a little about mechanical dredging as opposed to hydraulic dredging.

Ms. Mallek said there has been a second and final management meeting about the Artisan Trail grant process. The survey and the final documents are in the process of being prepared to be sent to the Department of Housing and Community Development to work on the final award.

Ms. Mallek said a group came before the Board a year ago about a local food hub. They are a group that aggregates farm produce from over 100 farmers. She said that in their first year they distributed produce from 30 local farms with most farmers reporting a 10 percent increase in sales, providing 17 public and private schools with access to locally grown fruit and vegetables and educational materials. They helped with connections to restaurants and caterers which are local institutions. They hosted service days and hands-on classes at their learning farm in Louisa County. They partnered with organizations such as the Save-Our-Food Program with the State Farm Bureau and facilitated a lot of planning with local farmers. They are also working with many local community groups, the Boys' and Girls' clubs, middle schools, etc. She said it is exciting to see what this group has accomplished in such a short period of time.

Ms. Mallek said the Board had recently discussed transit and the CTS bus service. She said ridership for the CTS (now called Charlottesville Area Transit - CAT) in the current fiscal year has increased 21 percent over the last year. In 2009 they had more than 2.0 million passenger boardings.

Mr. Rooker said he had a call from a news reporter today saying the City was rethinking the symbol they use on the busses.

Ms. Mallek said that at a joint presentation about the Senior Statesman Mr. Dave Norris will make that announcement. He said that due to a public outcry they are not "holding onto the cat" for now, but will change the name to CAT.

Mr. Rooker said they presented this change of logo to the MPO several months ago, but no one on the MPO liked it including the City's representatives.

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

Ms. Veronica Wilson said she was present to represent IMPACT. She said 33 faith-communities are concerned about pre-K education. If children do not read at grade level by the end of the third grade, their chances of succeeding in school and graduating from high school are worse than that of other children. Most likely they will earn less in their lifetimes, experience failure, depend more on public assistance and have problems with the criminal justice system. She said access to pre-K education for children from low-income families benefits the students, the schools and the community. She asked that the Board make sure the level of funding remains and the focus remains on pre-K education.

Ms. Jeanette McCarthy, a County resident and member of IMPACT, said that last year they voted to: seek changes in the area of interpretative services for people with limited English proficiency with regard to the legal system; and, to pursue access to affordable quality pre-K education for low-income, at-risk three and four-year olds. Children beginning school with inadequate preparation are at a greater risk of failing in school and subsequently dropping out. She said that on Monday, March 22, 2010, at

University Hall, IMAPCT will hold its Annual Nehemiah Action assembly at 7:00 p.m. She invited the Board members to attend.

Mr. John Martin from Free Union said he was speaking as a rural area resident. He asked the Board to consider the Sheriff's Hunting Enforcement Program. He lives on Catterton Road, which is a gravel road similar to a lot of gravel roads in the rural area. When he first moved to the County about 12 years ago, there was a difficult situation with hunting in that area. After a citizen was killed in a hunting incident, the Sheriff instituted this program and things have been better since. He thinks it is a worthwhile program for a small cost. When he sees someone spotlighting deer on his road in the middle of the night, if he calls 9-1-1 he does not want to think a police officer would be taken off of the street in a core area to answer his call. He said rural area residents do not demand a lot in terms of services, but he thinks this is a worthwhile program.

Agenda Item No. 6. Consent Agenda. **Motion** was offered by Mr. Rooker to approve Items 6.1 (as noted) and 6.2 on the consent agenda and to accept the remaining items as information. The motion was **seconded** by Mr. Snow. Roll was called, and the motion carried by the following recorded vote:

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

Item 6.1. Approval of Minutes: December 2, 2009 and February 10, 2010.

Mr. Dorrier had read the minutes of December 2, 2009 (page 34, beginning with Item #11 to page 69 ending at Item #18) and found them to be in order as presented.

Mr. Rooker had read the minutes of December 2, 2009 (page 69 beginning at Item No. 18 to the end) and found them to be in order as presented.

Mr. Boyd had read the minutes of February 10, 2010, and found them to be in order as presented.

By the recorded vote set out above, the minutes which had been read were approved. Those not read will be moved to the next agenda.

Item 6.2. Authorize County Executive to co-sign an application for a special use permit to locate an off-premises sign for the Church of Incarnation on County property.

It was noted in the Executive Summary that in 2008 the Church of the Incarnation on Hillsdale Drive requested that the County allow it to install an off-premises sign on County property at the corner of Hillsdale Drive and Incarnation Drive (TMP 61Z-03-9). This property currently contains a stormwater detention pond that in 2008 was scheduled in the CIP for an extensive upgrade. The requested sign is likely to be in the staging area for the proposed stormwater upgrade project. However, due to a strong VDOT recommendation for the sign installation at this location, and the County's deferral of the stormwater upgrade project, staff can support the sign request, provided the approval is contingent upon the future removal of the sign by the Church at the County's request.

During ongoing discussions between the County and the Church, County staff's main concern was that the proposed site for the sign would conflict with planned improvements to a major stormwater facility. The Church is requesting use of an area 10 feet x 10 feet for an eleven square foot post mounted sign. It is anticipated that the County will need this area for the staging, construction or modification of the stormwater facility. After considering possible alternative locations for this sign, including the VDOT right-of-way, the Church's preference remains to locate the sign on the County's property at the corner of Hillsdale Drive and Incarnation Drive.

The principle purpose of the sign is to redirect the primary entrance of the Church. VDOT staff engineer Joel DeNunzio, wrote: "I evaluated both entrances and have determined that the southernmost entrance has better sight distance and better geometry than the northern entrance. Promoting the use of the southernmost entrance by placing a sign at that location could potentially cause fewer conflicts with users of either entrance and will be an overall safer condition. I would recommend that the County approve this request to move the sign to this location for safety reasons."

Because County staff agrees that County property is the best location for the sign when considering the safety of vehicle travel on this portion of Hillsdale Drive and because the proposed stormwater detention pond project has been removed from the current five-year CIP, County staff supports the conditional location of the sign. Before an off-site sign may be erected at this location:

1. The Church and the property owner (in this case, the County) must apply for and receive a special use permit for an off-premises sign from the Board of Zoning Appeals (BZA); and
2. The Board of Supervisors must hold a public hearing and approve the conveyance of an easement to the Church to authorize the placement of the sign.

The limited question before the Board at this time is whether to authorize the County Executive to co-sign the special use permit application on behalf of the County. If the Board authorizes this special

permit application, and if the BZA grants a special use permit for the proposed sign, the request for approval of the easement would come back before the Board for separate consideration. The Board need not consider the specific terms of the easement at this time. However, staff's recommendation will be that the easement be contingent upon a condition that the sign shall be removed by the Church at any time it is deemed necessary or convenient by the County. In addition, as required by law, the Church will have to compensate the County for the fair market value of the easement.

There is no foreseeable budget impact for granting authorization to the County Executive to co-sign the special use permit application on behalf of the County. Staff recommends that the Board authorize the County Executive to co-sign the application for a special use permit for an off-premises sign on the County property located at the corner of Hillsdale Drive and Incarnation Drive.

By the recorded vote set out above, the County Executive was authorized to co-sign the application for a special use permit for an off-premises sign on the County property located at the corner of Hillsdale Drive and Incarnation Drive.

Item 6.3. Copy of letter dated February 22, 2009, from Ronald L. Higgins, Chief of Zoning, to Carol Jennings, re: LOD-2009-008 – OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS – Tax Map 7, Parcel 46 (Property of Roy & Joyce Jennings), White Hall Magisterial District, **received as information.**

Item 6.4. Copy of letter dated February 22, 2009, from Ronald L. Higgins, Chief of Zoning, to Richard G. "Lee" Rasmussen, III, re: LOD-2009-012 – OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS – Tax Map 113, Parcel 6 (Property of Maria T. Kluge Trustee of the Featheridge Trust, Scottsville Magisterial District, **received as information.**

Item 6.5. Copy of letter dated February 22, 2009, from Ronald L. Higgins, Chief of Zoning, to Richard G. "Lee" Rasmussen, III, re: LOD-2009-013 – OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS – Tax Map 113, Parcel 6C (Property of Maria T. Kluge Trustee of the Featheridge Trust), Scottsville Magisterial District, **received as information.**

Item 6.6. Copy of letter dated February 22, 2009, from Ronald L. Higgins, Chief of Zoning, to Richard G. "Lee" Rasmussen, III, re: LOD-2009-014 – OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS – Tax Map 113, Parcel 6C1 (Property of Maria T. Kluge Trustee of the Featheridge Trust), Scottsville Magisterial District, **received as information.**

Item 6.7. Copy of letter dated February 22, 2009, from Ronald L. Higgins, Chief of Zoning, to Mary B. Sheridan, Executor, Phillip L. Sheridan Estate, re: LOD-2009-019 – OFFICIAL DETERMINATION OF DEVELOPMENT RIGHTS – Tax Map 26, Parcels 33A & 33B (Property of Phillip L. Sheridan Estate), White Hall Magisterial District, **received as information.**

Agenda Item No. 7. Public Hearing: To solicit public input on the proposed Community Development Block Grant (CDBG) application to be submitted to the Virginia Department of Housing and Community Development for Phase 1 Sewer Project in the Oak Hill neighborhood. The proposal will include installation of sanitary sewer to approximately 55 houses and laterals to connect the houses to the system. (Notice of this public hearing was published in the Daily Progress on February 22, 2010 and March 1, 2010.)

Mr. Ron White, Director of Housing, said that on January 13, 2010, the Board held a public hearing about the Virginia Community Development Block Grant (VCDBG) applications for the year. At that time information was provided on eligible activities that may be funded by VCDBG, the amount of funding estimated to be available, past activities undertaken with VCDBG funds and the process for applying for funding.

Mr. White said one proposal was received from the Albemarle County Service Authority (ACSA) requesting that the County submit an application for the Oak Hill Phase 1 Sewer Project. The proposed project will consist of installation of approximately 5,000 feet of eight-inch diameter gravity sewer pipe, manholes, and service laterals to 57 housing units. The amount of the grant requested is \$712,500 which is the maximum amount the County may request based on an average of \$12,500 per unit. The ACSA will provide \$541,500 for acquisition of easements, engineering and design. In addition, ACSA has proposed to waive connection fees for all properties. Waiving connection fees for low-to-moderate income households is required by DHCD when CDBG funds are utilized.

Mr. White said a survey of households indicates that 52 percent of the households are low-to-moderate income (CDBG requires that at least 51 percent of the beneficiaries meet that income category). In addition to providing sewer services to residents of the Oak Hill neighborhood, the project would eliminate contamination from failed onsite septic systems which is contributing to the impairment of Biscuit Run located east of the Oak Hill neighborhood. Fifty thousand dollars (\$50,000) is included in the application to cover administrative and grant management costs for the funded activity. Projects applying

for VCDBG generally require some level of local financial support which will be provided by ACSA for the proposed project.

Mr. White said staff recommends that the Board adopt the project resolution but amend it to say “up to” \$712,500 because numbers have not been finalized. The project is estimated to be almost \$1.3 million of which CDBG will cover about 50 percent. It is further recommended that the Board authorize the County Executive to execute the application as well as all required certifications and assurances. He then offered to answer questions.

Mr. Boyd said he noticed that the County would have to put up \$50,000 if the grant is awarded for grant administration. He asked if there is \$50,000 available for that expense. Mr. White said that \$50,000 will come out of the grant to cover administrative costs; it is not County money.

Ms. Mallek said the local match is the ACSA’s investment.

Mr. Boyd said he had read that wrong; he didn’t know where the County would come up with \$50,000 to get the grant. Mr. White said he would not be able to make this request if the County had to pay \$50,000.

Mr. Snow asked about the failing septic systems in that area. Mr. White said he has copies of letters from the Health Department corresponding with property owners verifying this fact. He thinks a couple of property owners did put in other systems (not alternative systems) – at least one person put in a pump system which they have to maintain. The lots are not large enough to hold a second septic system if the present one fails.

Mr. Rooker said the Board tried to do this about a year ago, but could not establish the income qualifications necessary to go forward. Mr. White said information gathering was started late last year. A meeting was held with the residents, but it was not well attended. At that time, neither the ACSA nor the Housing Office had the time to do door-to-door follow-up. This year the ACSA started contacting people early, a meeting with residents was held in December, and then there was follow-up after that meeting. They received 47 surveys from households and he just heard that 44 owners have agreed to sign conditional contracts to hook-up to the system if the funding is made available.

Mr. Snow asked if this has cost the homeowners anything at this point. Mr. White said that low- and moderate-income homeowners will not have to pay anything – that is a requirement of the grant. The ACSA Board of Directors has agreed to hookup any house whether the owner is low- or moderate-income or not, with no connection fee. A limited period of time is available to make that decision. He said the ACSA could install the main line without this funding. The question is how many people would actually hook to the line. There would be a sizeable investment in that sewer line, but if people did not hook to it, the environmental issue – which is the main issue – would not be resolved.

With no further questions for staff, Ms. Mallek opened the public hearing.

Mr. John Martin said he is a member of the ACSA Board of Directors. He urged the Supervisors to approve this request. He said this is a win-win situation – particularly for the neighborhood. It is a win for the watershed because it will protect Biscuit Run. It is a win for the ratepayers of the ACSA because if this grant is awarded, they will pay less. He said that if the grant is not received, there are houses in that subdivision that will still need “a rescue operation” to take care of the problems. There are people who are not willing to hook to a line due to their income. The ACSA would have to spend a tremendous amount of money on a line just for the benefit of a few people. This grant makes it very attractive for the homeowners by being able to cover the cost for all of them. He thanked ACSA staff who had spent a tremendous amount of time on this project, along with Mr. White.

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

Mr. Boyd offered **motion** to approve the following resolution for the County’s submission of an application for the Oak Hill Phase I Sewer Project adding the words “up to” in the fourth whereas clause, and to also authorize the County Executive to execute the application as well as all required certifications and assurances.

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

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

(**Note:** The resolution, as adopted, is set out in full below.)

RESOLUTION

WHEREAS, the County of Albemarle is committed to ensuring that safe, decent, affordable, and accessible housing is available for all residents and improving the livability of all neighborhoods; and

WHEREAS, on-site septic systems are failing in the Oak Hill neighborhood, resulting in on-site contamination and the impairment of Biscuit Run; and

WHEREAS, the County of Albemarle is committed to addressing conditions causing contamination endangering the public's health and safety or impairing streams and waterways in the County; and

WHEREAS, after holding public hearings on January 13, 2010, and March 10, 2010, the County wishes to apply for up to \$712,500 in Virginia Community Development Block Grant ("VCDBG") funds for the Oak Hill Phase 1 Sewer Project ("Project") to support the installation of approximately 5,000 feet of eight-inch sewer line and service laterals in the Oak Hill neighborhood; and

WHEREAS, the Albemarle County Service Authority will provide additional funding of over \$500,000 and waive connection fees for the Project and will undertake the Project responsibilities, including procurement, providing project management, and providing timely reporting to the County under a Memorandum of Agreement; and

WHEREAS, fifty-two percent (52%) of the households in Oak Hill are low- and moderate-income; and

WHEREAS, the projected benefits of the Project include:

- Sewer service availability to 59 housing units including approximately 114 persons;
- Eliminating on-site sewage contamination in the Oak Hill neighborhood; and
- Reducing the impairment of Moore's Creek caused by contamination from failing on-site septic systems in the Oak Hill neighborhood.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves the County's submission of the VCDBG application for the Oak Hill Phase 1 Sewer Project and authorizes the County Executive to execute the application and required certificates and assurances and to take any further action required for this application.

Agenda Item No. 8. **Public Hearing:** SP-2009-00024, Rockfish Wildlife Sanctuary.

Proposal: Special use permit to renovate existing barn for wildlife sanctuary; no residential units proposed. Waivers have been requested from Section 5.1.11 (a) and (c) requiring solid fencing and that animals be confined in an enclosed building between 10:00 p.m. and 6:00 a.m.

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

Section: 10.2.2 (47) Animal Shelter.

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

Entrance Corridor: No.

Location: Miller School; 1000 Samuel Miller Loop, Crozet; access off Dick Woods Road approximately 3500 feet from the intersection of Dick Woods Road and Miller School Road (Rt. 635).

Tax Map/Parcel: TMP 07200000003200.

Magisterial District: Samuel Miller.

(Notice of this public hearing was advertised in the Daily Progress on February 22 and March 1, 2010.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. This is a request to relocate an existing wildlife sanctuary to the Miller School campus. The 1046.98-acre parcel that is the subject of this special use permit application includes the old barn, an existing driveway and an area of approximately three acres surrounding the barn for the proposed wildlife sanctuary.

Mr. Cilimberg said that factors which are favorable to the request include: the activities that will occur there in rehabilitating orphaned and injured wildlife; approximately 50 percent of the wildlife currently cared for at Rockfish Wildlife Sanctuary is found in Albemarle County so locating the sanctuary in the County would bring it closer to the need; locating the sanctuary in the County would also bring it closer to the Wildlife Center of Virginia (located in Waynesboro) where more severely injured or ill animals are treated; and, an unused structure, the barn, would be renovated and maintained. He said that no unfavorable factors were identified. Staff and the Planning Commission both recommended approval subject to conditions. The Commission saw eleven conditions, but the tenth condition was actually covered by waivers granted that night, so it does not need to be included in the Board's approval.

With no questions for staff, Ms. Mallek opened the public hearing.

The applicant was not present, and no one from the public rose to speak. Ms. Mallek then closed the hearing and placed the matter before the Board.

Motion was immediately offered by Mr. Snow to approve SP-2009-00024 subject to the ten conditions recommended by the Planning Commission. The motion was **seconded** by Mr. Rooker. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

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

1. Development of the use shall be in substantial accord with the concept plan entitled "Rockfish Sanctuary, Inc. Concept Plan," prepared by Jill Trischman-Marks, Landscape Architect, and dated August 18, 2009, (hereinafter, the "Concept Plan") as determined by the Director of Planning and the zoning Administrator. To be in accord with the Concept Plan, the development shall reflect the following major elements within the development essential to the design of the development:
 - Cages, chambers, and the aviary located within the three-acre site
 - Structures limited to the renovated barn and the aviary
 - Limit of three parking spaces

As shown on the Concept Plan. Minor modifications to the Plan that do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance;
2. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval;
3. The hours of operation shall not begin earlier than 7:00 a.m. and shall end not later than 7:00 p.m. each day, seven (7) days per week;
4. All animals being treated must be kept within the barn or the three- (3) acre area around the barn that is leased to the Rockfish Wildlife Sanctuary, as shown in Attachment C;
5. There shall be no more than two (2) employees on the site at any time;
6. There shall be no visitors to the Wildlife Sanctuary;
7. Renovation of the barn shall commence on or before twenty-four (24) months from the date of approval by the Board of Supervisors or this special use permit shall expire;
8. Compliance with the Virginia State Department of Health regarding water supply shall be verified by the Health Department prior to issuance of a zoning compliance clearance and the commencement of the special use;
9. Compliance with the Virginia State Department of Health regarding septic systems shall be verified by the Health Department prior to issuance of a zoning compliance clearance and the commencement of the special use; and
10. In order to maintain the driveway within the right-of-way on Route 637, the applicant shall obtain a Land Use Permit from the Virginia Department of Transportation.

Agenda Item No. 9. **Public Hearing:** ZMA-2005-00003, UVA Research Park (Sign #18).

Proposal: Request to rezone approximately 30.56 acres (parcels identified below) from RA Rural Areas which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots) to Planned Development Industrial Park (PD-IP), which allows industrial and ancillary commercial and service uses and no residential uses, for 700,000 square feet of office and research use and to rezone 534± acres (parcels identified below) from PD-IP to PD-IP to amend proffers and application plan associated with ZMA-1995-04 and subsequent related ZMAs.
Proffers: Yes.

Concurrent with ZMA-2005-00003, the following proposed special use permits (SP) within UVA Research Park PD-IP authorized by Zoning Ordinance §29.2.2.

- 9a. SP-2008-00015 Parking structures.
Proposed: Allow parking structures; reference Zoning Ordinance §27.2.2(16), Parking structures.
- 9b. SP-2008-00062 Laboratories.
Proposed: Allow laboratory uses; reference Zoning Ordinance §27.2.2(1), Laboratories, medical or pharmaceutical.
- 9c. SP-2008-00063 Supporting commercial uses.
Proposed: Allow supporting commercial uses, not to exceed a total of 110,000 square feet of floor area, reference Zoning Ordinance §27.2.2(14), Supporting commercial uses.
- 9d. SP-2008-00064 Hotels, motels, inns.
Proposed: Allow motel, hotel or conference facilities not to exceed 190,000 square feet of floor area under Zoning Ordinance §29.2.2(2), Hotels, motels, inns.

The following information applies to all five proposals:

Zoning Category/General Usage: PD-IP - Planned Development Industrial Park - industrial and ancillary commercial and service uses (no residential use).
Existing Comprehensive Plan Land Use/Density: Industrial Service - warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing

activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre).

Entrance Corridor: Yes.

Location: on the north side of Airport Road (Route 649) approximately one-third of a mile from the intersection of Airport Road and Route 29 North in the Community of Hollymead.

Tax Map/Parcel: Tax Map Parcels 32-18 and 32-18A (rezone from RA to PD-IP with proffers; all SPs); 32-6A, 18B, 32-19C, 32-19D, 32-19E, 32-19F, 32-19F1, 32-19G, 32-19H, 32-19H1, 32-19H2, 32-19J, and 32-19J1 (rezone from PD-IP to PD-IP with amended proffers and application plan; all SPs).

Magisterial District: Rio.

(Notice of this public hearing was advertised in the Daily Progress on February 22 and March 1, 2010.)

Mr. Cilimberg said this request originated in 2006. Over time there have been efforts to address various matters related to how the addition of 30± acres to the Research Park would be accommodated through a rezoning. A public hearing was held in August, 2009 by the Planning Commission, but there was an advertising error because of some parcel ownership changes. Those had to be addressed through a new public hearing which was held by the Commission on February 16, 2010. The 30± acres would be rezoned to PD-IP and added to the 525 acres currently in the park. This would allow an additional 700,000 square feet of development in the park bringing the total to 3.7 million square feet.

Mr. Cilimberg said the area in question actually surrounds the property where the Hollymead Fire Station is located. This rezoning will bring all of the parcels surrounding the fire station into the research park. He said the Land Use Plan designates all of that area as industrial. He showed on the screen a rendering of the basic application plan for the rezoning which is the governing plan for future development showing building envelopes as well as areas for parking adjacent to what is now Innovation Drive, but which will ultimately be an extension of Lewis & Clark Drive which in the long-term will be part of Berkmar Drive Extended.

Mr. Cilimberg said the revised proffers update the Application Plan, provide design standards which include this new area (Area "D"), indicate maximum build-out of 3.7 million square feet, update provisions for transportation improvements, an additional playing field, some modifications to landscape buffering to allow disturbance for future interconnections, and a survey of a historic structure on the property. He said the additional transportation proffers include an accommodation for future Northside Drive interconnections (Northside Drive is actually off of this property on another property that intersects Route 29, but ultimately could provide an additional interconnection). There is right-of-way for the future improvement of Dickerson Road when funds are available to make those improvements. There are clarifications regarding the improvements on Route 29 including correcting vertical curvature, right-of-way acquisition language has been updated, there is a level of service for turning movements at intersections and a limitation to development in Area "D" to 180,000 square feet until Lewis & Clark Drive/Innovation Drive is interconnected through.

Mr. Rooker said that much of that is not yet built. Mr. Cilimberg said Innovation Drive was half section construction - from there to the Lewis & Clark Drive intersection with Quail Run probably several thousand feet still need to be built. Expectations for how levels of service at intersections on Route 29 both for the overall functioning of the intersection and the individual turning movements are specified in the proffers.

Mr. Cilimberg said staff found no unfavorable factors to the request. They noted that the rezoning is consistent with the Industrial Service designation. It meets the goals and objectives of the County's Economic Development Policy. It provides for additional interconnections to the research park. The commitments necessary to address the transportation impacts have been provided. That was based on submittal of a traffic study reviewed by VDOT and the County to determine how proffers needed to be updated to address transportation impacts.

Mr. Cilimberg said the recommendation for the rezoning is for approval inclusive of the proffers dated February 22, 2010. There are also four special use permits that are a part of the overall project and need to be approved to allow for the parking structure(s) that might be developed in the future in the research park for laboratories, medical and pharmaceuticals, for supporting commercial uses which are allowed and for hotels, motels and inns. He then offered to answer questions.

Mr. Dorrier asked if the same process was used getting proffers from the University of Virginia as was used in getting proffers for North Pointe. Mr. Cilimberg said both were subject to a traffic study that determined the improvements needed. Initially there was a traffic study done for the original rezoning for the UVA Research Park. There was recently a new traffic study provided in accordance with the State's new 527 requirements. North Pointe went through its own traffic study and the requirements based on that study were made as part of that rezoning.

Ms. Mallek asked if the southbound lane from Lewis & Clark Drive to Airport Road is in the first phase. Mr. Cilimberg said it is actually in the second phase – it comes after 1.5 million square feet of development. He said they are at approximately 500,000 square feet now.

Mr. Rooker said this came up during approval of North Pointe. That developer wanted the UVA Research Park to contribute toward the southbound lane on Route 29 which he will have to build when he reaches a certain point in his development. That developer expressed some interest in having that number lowered so UVA would contribute to that lane at 750,000 square feet of development instead of 1.5 million. It sounds to him as if Mr. Rotgin called Mr. Dorrier. He had called Mr. Rooker about the idea

of the University accelerating their contribution to the southbound lane on Route 29. He does not think it was presented at the Commission meeting, it was not discussed by them (according to their minutes), and there is no one present to represent North Pointe to argue that point, but it was raised. Mr. Cilimberg said the applicant may want to speak to that point – he thinks there was a late communication to the applicant's representative, as well as to some Board members.

Mr. Rooker said Mr. Rotgin sent an e-mail saying he supported the application, but he also said he thought their proffer should be amended to require them to "kick in" earlier.

Mr. Snow said Mr. Rotgin called him. He thinks developers are held to one standard while UVA is held to a different standard. Mr. Snow said he is in favor of the project, but wants the same standards applied across the board.

Mr. Rooker said Mr. Rotgin raised that with him also. He told Mr. Rotgin that the UVA Research Park was approved in 1995, and it had a "hefty" package of proffers attached at that time. They are as stringent as the proffers applied to any other commercial development approved in the County up until that time. There are stipulations in those proffers on water limitation that have never been applied to any other commercial development. There are limitations on the size of water users that they could locate in the park without regard to whether there was water available. There were a long series of proffers applied to the park, and he does not think there was any discrimination in favor of the University with the proffers required, as compared to the proffers required of other developers at that time. He does not think this five percent addition to the land in the park adds any significant additional burden that would require changes to the proffers beyond what are being recommended.

Mr. Dorrier said this came up because roads are so expensive and the developers have carrying costs.

Ms. Mallek said when Innovation Drive is completed (it is in the middle of this park), it will help get people off of Route 29. Mr. Cilimberg said that was the response to the traffic study, it needed to be a commitment because it is associated with that southern area. When it is built, it will relieve the Route 29 traffic.

Mr. Boyd said a study of light industrial land was just completed. The Board has discussed the practice of converting light industrial land to Class A office space and whether that made sense. He asked if this is just another example of doing the same thing. Mr. Cilimberg said the land is zoned rural area now so it can't be used at this time for that purpose.

Mr. Boyd asked if it is shown in the Comprehensive Plan as rural area. Mr. Cilimberg said it is in the Plan as Industrial and they are requesting an industrial use. It depends on the ownership and what they want to market in terms of potential use.

Mr. Boyd said he does not oppose the request. He is just pointing out that the Board has discussed the practice of taking industrial land and turning it into office space. Mr. Cilimberg said staff did not evaluate this project on the merits of providing lower cost possibilities for smaller industrial users because it is an extension of an existing research industrial park.

Mr. Boyd mentioned erosion control. He said when the road for the fire station was built, there was quite a bit of damage done to some houses on the property right below that road. He asked if there is anything in this application that will insure that does not happen again - he wants to be sure that property does not receive further damage because it is lower than the park. Mr. Cilimberg said the proffer used in some recent rezonings concerning erosion control is not a part of these proffers. Mr. Davis said the ordinance has been amended to incorporate most of those standards.

Mr. Mark Graham said looking at the proffers for the Biscuit Run and the Hollymead Towncenter projects, the emphasis was on reducing the time the land is left open. Since then the Water Protection Ordinance was amended so that is a part of ordinance requirements. Staff did not raise that as issue with this project.

Mr. Boyd said it is a sensitive issue for the people living in Airport Acres and also any impact it might have downstream on homeowners in Forest Lakes. He just wants to be sure the County is taking the necessary precautions. What happened to the one family in Airport Acres was caused by placement of a drainage pipe which basically fed right into their home. They had a couple of trees fall on their house because they were eroded by the drainage. Will the neighborhood be secured so that does not happen again? Mr. Graham said in some of the older subdivisions infrastructure was inadequate to begin with. When development takes place above them, it is difficult to insure that there will not be impacts.

Mr. Boyd asked if there is anything that can be done in the way of proffers to lessen the possibility of that happening. Mr. Graham said he believes the regulations that are in place now go a long way toward that. Whether they will guarantee or assure there will not be any problems is a high standard.

Ms. Mallek said the applicant can speak to how they will use the wetlands and the possibility of curtain drains, etc.

Mr. Rooker said he had a question about Proffer 6.1 having to do with the developed recreational areas. He said that one is part of the older proffers and he asked if these old proffers have been completed in accordance with the schedule. He has driven through the park several times and has never noticed any playing fields, or any picnic area.

Ms. Mallek said there is a pavilion at the top of the hill which is the picnic area. Mr. Cilimberg said there is also a gazebo. Part of this proffer is based the County requesting conveyance with monetary considerations of the sports fields.

Mr. Rooker asked if the sports fields have been done. Mr. Cilimberg said he did not know that the County has made that request.

Mr. Rooker said there is a better system in place today for monitoring proffers than back in 1995 when this was originally approved. He wants to make certain the County follows the proffers carefully so the things that are supposed to be done are actually done. Mr. Cilimberg said that sunset dates and times for development activities are associated with proffers now. Mr. Tucker said he does not think a request has been made to the applicant by the County. Staff will have to work with the Parks & Recreation Department and the applicant, and make that request if it is timely to do so. The area will have to be identified.

There being no further questions for staff at this time, Ms. Mallek opened the public hearing and asked the applicant to speak.

Ms. Valerie Long was present to represent the applicant. She said there were several representatives of the Foundation also present: Mr. Tim Rose, CEO, Mr. Fred Missle, Director of Development, and, Ms. Deborah VanErsel, who handles marketing and tenant issues in the park. She said the request is to add about 30 acres of land currently zoned RA but shown in the Comprehensive Plan as Industrial Service to the Research Park. That would equate to an additional 700,000 square feet of available space, for a total of 3.7 million square feet in the entire park. Also, all of the proffers for the entire park have been updated to bring them up to current standards in terms of language that has evolved over the last 15 years since the park was originally approved.

Ms. Long said the representatives "chatted among themselves" about some of the issues Mr. Rooker raised about the parks issue. The Foundation representatives told her there has not been a request from the County officially, but they have been working with Mr. Dan Mahon and others in the County's Parks Department about land dedication and trails, etc. She said there is one picnic area and one area has been graded for ultimate dedication to the County for a soccer field area near where the roads and other buildings already exist. They are happy to proceed with the schedule.

Ms. Long said in answer to Mr. Boyd's question, the land is designated in the Comprehensive Plan for industrial service, and the zoning which is requested is Planned Development-Industrial Park which is what the existing park is zoned. These are light industrial uses carried on in the park as required by the Zoning Ordinance although they are carried on in offices.

Mr. Dorrier asked if there is an incubator. Ms. Long said some of the space is, but representatives of the Foundation can answer that better. She said all of their park tenants have a relationship with the University or are working toward those relationships. Many are called "an incubator space." A lot of them are homegrown businesses started through the University which outgrew their space so need to have more space for their business and employees. The total park is at about 500,000 square feet now. There are presently approximately 1,100 employees in the park.

Mr. Boyd asked for a clarification about the zoning in the park. He said one un-served area in the community is in skilled labor. Obviously this is not a place where skilled labor will be placed in the traditional sense. It will not facilitate housing or business locations for that. His point is that this whole labor pool is being driven out of the County because there is no place for them to locate.

Ms. Mallek asked if he was talking about scientific manufacturing, etc. That seems to fall into the skilled labor pool and the businesses which are in the park.

Mr. Boyd said that is not the same classification he was talking about. He is talking about plumbing, heating, carpenters, trades people.

Mr. Rooker said the only way to assure that any property owner that leases space to tenants of the kind Mr. Boyd is talking about is to put some conditions, or proffers on the rezoning that would require what he is talking about.

Mr. Boyd said he thought the Board was going to look at changing the definition of "light industrial" to accommodate that same thing.

Ms. Mallek said the PD-IP is a different category.

Mr. Boyd said he is not opposed to this application, but he is reminding the Board members that there is a need for true light industrial to house skilled labor in the County. He said the Board was "kicking itself" about some other rezonings it approved where the property could have been available for that, but is not available for that type of thing. He is not saying this is not a legitimate use for this property.

Mr. Rooker said he does not know what Mr. Boyd means by "skilled labor." He considers the people who work in the Research Park and the light industrial users they have to be employing skilled labor.

Mr. Boyd said they are generally considered more of a manufacturing type of concern or a building concern.

Mr. Rooker said they have some light industrial users in the park. If he is talking about machine shops and those types of things, he doubts that they would be leasing to that kind of thing. He said the County does need to change the definition if that is what the County is after.

Mr. Boyd said he won't belabor that any more, but he wants to ask again about erosion control. He is concerned about it and he knows that Mr. Missel is familiar with the situation.

Mr. Fred Missel, Director of Design and Development for the UVA Foundation, said he thinks there were 10 or more meetings on site with the Garwood family. They found that both construction of the fire station and construction of the road contributed to the erosion control issues. They were operating off of an approved erosion control plan and an engineering plan that had been approved by the State and also by the County. A question arose relating to adequate channel size. Location of the channel basically day lighted into an area shown on the map as an adequate channel. However, when looking at the area on the ground, it was passable, but not adequate. They got together with VDOT and Jack Kelsey from the County and found there was a culvert downstream of the Garwood's property underneath the road that was acting as a constricting point. That culvert has since been replaced by VDOT. They have heard nothing from the Garwoods in the last year and a half, and they understand that the problem was solved.

Mr. Missel said he understands the tree issue was unrelated to erosion. When the area was cleared for the fire station and the road, the tall trees that had no growth on the bottom simply blew over. They went in and cleaned them up for the Garwoods and stabilized the area including extensive landscaping to buffer the area both from the sounds and visibility of the fire station and the roadway and to buffer the research park from the neighborhood.

Mr. Boyd said he does not doubt what Mr. Missel is saying but he just wanted to bring it up as a reminder that as the site is developed further, they need to be cognizant of the fact that there are other homes below the Garwoods home that need to be protected.

Ms. Long said that on the Application Plan a required 50-foot undisturbed buffer is shown. Nothing can ever go in that area without getting a waiver from the Planning Commission. That should address some of the concerns expressed. She then offered to answer questions.

Mr. Snow said this project started back in the 90s. If this project were by a private company and it was updating its plan, would the proffers also have to be updated. Are the same proffers being requested of UVA as would be requested of a private company? Is everybody being held to the same standard as far as completion and getting the work done in a timely manner?

Mr. Cilimberg said that as part of this application the proffers have been updated. He said the Foundation is actually a private entity; they are subject to zoning because they are private. This application would be treated as would any other private project. The transportation proffers are tied to certain levels of development. That is a reflection of the traffic study update done recently which is now a state requirement. VDOT reviews the study and uses the same standards they would use on any other 527-traffic study. All projects which have been approved have not been subject to that 527-study requirement because it is a recent requirement. In the past, traffic studies were reviewed under different expectations by VDOT. Any project coming to the County today is reviewed by VDOT under the 527 requirements, and those standards are the same for all projects.

Mr. Cilimberg said each project is different in terms of how it creates impacts. As an example, this project creates one intersection with Route 29 - they proffered and have built some of the requirements of the proffers for that access to Route 29. They have committed to internal connections that will provide for the alternative road between Route 29 and Airport Road. This rezoning is primarily for an employment-based use. If the North Pointe or Hollymead Towncenter projects were requested today they would be reviewed under the 527 law. Both of those projects were presented to the County for a rezoning for their land use proposals which were primarily residential and retail commercial, rather than employment generating uses, office uses and industrial uses as in this research park. That affects traffic generation and the kinds of improvements that are necessary to the transportation system to accommodate that traffic. They will also be different in terms of how they impact particular roads based on points of access. This project has one access to Route 29. Across the road, North Pointe has three and each of those has an impact at the location of those intersections. What the County would get as commitments through proffers for projects in the same general area may be very different based on the impacts and the nature of the uses going into those projects.

Mr. Boyd asked if that is a flaw in the Neighborhood Model. The County is forcing developments that are mixed use and not all commercial. In Biscuit Run and North Pointe the County was forcing that residential piece in there. It was not that the developers wanted to do it.

Mr. Rooker said when the County went through the rezoning process for North Pointe the applicant complained about the residential requirements. About six months ago he was talking to Chuck Rotgin and he said he was glad they had that residential requirement because as it turned out that is what they will develop first because the demand had completely flipped. With NGIC coming in, now they think they will move forward with the residential part way ahead of the commercial.

Mr. Boyd said if the County had approved their application earlier they might have had that commercial up. It went away because of the times.

Mr. Rooker said the Board could talk about the timing on that. Albemarle Place started five years later than North Pointe and was approved long before it, and the reason for that is the way the developer approached it. He said Old Trail applied much later and it was approved and North Pointe was still "fiddling around."

Mr. Boyd said to go back to Mr. Snow's question. He asked the number used for the traffic study. Mr. Cilimberg said it is a 527. There is a state law requiring these studies.

Mr. Boyd said it also has to do with federal election laws. He asked if that was the standard used for Biscuit Run. Mr. Cilimberg said the 527 law went into effect in 2008, so that was after Biscuit Run had been approved. All applications now are being reviewed under that law. Each development is different in terms of how it internalizes or externalizes trips. Any project with a large regional retail component will externalize a lot of trips so will create regional road impacts. For a mixed-use project the trips are more internalized because the commercial is smaller scale and serves the area where it is developed rather than a large regional area. It depends on the nature of the project as to how it will affect the transportation system. If it gets people to live closer to where they work and shop that will lessen impacts on the regional system. That is the basis for the urban development area legislation in the State Code. That legislation tells the County as a local government of its size and with its amount of growth, that it has to have areas of mixed use. The Board certified the Comprehensive Plan at the end of last year to recognize that law. The idea is that trips are being reduced to some extent.

Mr. Boyd said when he meets with the homeowners association in Forest Lakes it is hard to say the County is creating more office space or light industrial or mixed-use space and it will not have any impact on the traffic in the area. They are not going to believe that, no matter what the VDOT studies say.

Mr. Rooker said their concern is with the traffic that will be created by retail.

Mr. Boyd said they were also concerned about the amount of traffic that will come from the research park.

Mr. Rooker said that last year they were just as concerned about adding to the growth area further south, and the retail attractions there.

Mr. Boyd said they do not want to add any traffic until Route 29 has six-lanes all the way past the Airport. Everybody knows that transportation is a big issue.

Mr. Rooker said the State is not going to pay for road improvements now, and the County does not have the money to do it, so the question is "who is going to do it?" He said infrastructure does not take care of itself. As the County grows somebody has to take care of the infrastructure.

Ms. Mallek said she is looking forward to that 1.5 million square feet so that new southbound lane becomes a project.

Mr. Rooker said the road system planned in the research park appears to be good and workable. The traffic coming out of the park now is manageable and will be more so when the roads are completed. He asked if there is a projection as to when that road connection will be made.

Mr. Boyd said there is a lot of development occurring on Route 29 North, not just the research park, but there is the DIA facility and Briarwood subdivision, etc. That is what the people in Forest Lakes are concerned about. The parallel roads are not being built, Lewis & Clark Drive is not being connected all the way through, and there is nothing going on with Berkmar Drive Extended.

Mr. Rooker said the Lewis & Clark Drive connection will probably not take traffic off of Route 29 that is not internal to the research park.

Mr. Boyd said if that were connected to an extension of Berkmar Drive and some other pieces it would make a difference.

Mr. Rooker said unless people are going into the research park, he does not think they would take that last leg. He does not think there is enough traffic coming out of the park today to require that connection.

Ms. Mallek said southbound traffic uses Lewis & Clark Drive now to Airport Road and then to Earlysville Road. In the morning a lot of traffic comes off of Route 29 to the traffic circle at the Airport. That has always been the historic traffic pattern. For the people who live in Earlysville it is a good connection.

Mr. Rooker asked about the connection from Dickerson Road into the Hollymead Towncenter. He said the road appears to be close to built.

Ms. Mallek said it has been like that for over a year and a half.

Mr. Tucker reminded Ms. Mallek that there is still need to open the public hearing to the public.

Mr. Davis said Ms. Mallek should make it clear that the public hearing is for the rezoning as well as the four special use permits.

Ms. Mallek said she would read the petition numbers into the record. She then invited the public to speak.

Mr. Wendell Wood said they sold the land to the University of Virginia in 1985 and have been patiently waiting to see some results although they have done a good job so far. He thinks the Board should do everything it can to support further development when there is a world-renowned University involved. Not many communities can attract the top quality of firms that the community would like to see located here. He still owns land adjoining this property, and he encourages the Board to do what it can to support this request.

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

Mr. Davis said he will suggest that the Board have five motions on these petitions. The first would be on the rezoning with the proffers (shown on the screen), and then there would be a separate vote on each of the special use permit requests.

Mr. Thomas offered **motion** to approve ZMA-2005-0003 inclusive of the proffers dated February 22, 2010. The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

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

(**Note:** The proffers are set out in full below.)

PROFFER STATEMENT UNIVERSITY OF VIRGINIA RESEARCH PARK

Date: February 22, 2010

ZMA-2005-003 UVA Research Park

Tax Map Parcels 32-18, 32-6A, 32-18A, 32-18B, 32-19C, 32-19D, 32-19E, 32-19F, 32-19F1, 32-19G, 32-19H, 32-19H1, 32-19H2, 32-19J, and 32-19J1

30.56 Acres to be rezoned from Rural Area (RA) to Planned Development-Industrial Park ("PDIP") with proffers

534± Acres to be rezoned from PDIP to PDIP with amended proffers

All of the parcels identified herein are part of ZMA 2005-003 and subject to these proffers. In the aggregate, these parcels compose the "Property," which is described with more particularity on the exhibits filed with the Application Plan dated July 6, 2009, prepared by Cline Design and attached hereto as Exhibit A (the "Application Plan").

Tax Map and Parcel Numbers 32-18 and 32-18A are owned by The University of Virginia Foundation and comprise approximately 30.56 acres identified as Tract 1 on Exhibit J of the Application Plan. Tract 1 is rezoned from RA to PD-IP under ZMA 2005-003.

The following parcels comprise the lands that were rezoned under ZMA 95-04 to PD-IP, as amended by ZMA 1998-27:

Parcels owned by the University of Virginia Foundation: 32-6A, 32-18B, 32-19D, 32-19E, 32-19F, 32-19F1, 32-19G, 32-19H, 32-19H1, 32-19H2, 32-19J, and 32-19J1.

Parcel owned by other entity:

TMP 32-19C, owned by 1641 Edlich Realty Co LLC

A portion of parcels 32-18 and 32-6A were also affected by ZMA 2005-002, which involved the development for a County fire and rescue squad station. This station is located on what is now identified as TMP 32-18B.

These proffers incorporate and modify as appropriate the proffers accepted in conjunction with ZMA 1995-04 and ZMA 2005-002 and supersede those proffers as they apply to the Property (no proffers were associated with ZMA 1998-27). The development of the Property authorized by ZMA 2005-003 is referred to as the "Project." For the purposes of these proffers, the University of Virginia Foundation is referred to as the "Owner" and the "Applicant."

The term "Road A" as referred to in these proffers also means "Lewis and Clark Drive" as referred to in some of the exhibits.

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the property subject to ZMA 2005-003 to PDIP as requested, the Owner shall develop the Property in accord with the following proffers pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. These

conditions are voluntarily proffered as part of the requested rezoning, and the Owner acknowledges that the conditions are reasonable. If rezoning application ZMA 2005-003 is denied, these proffers shall immediately be null and void and of no further force and effect.

I. REZONING APPLICATION PLANS AND ILLUSTRATIONS

Plans and Illustrations. ZMA 2005-003 increases the permissible square footage on the Property to 3,700,000 square feet gross floor area. The Application Plan is a graphic depiction of the proposed development.

II. OWNERS ASSOCIATION AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Proffer II from ZMA 95-04 has been satisfied. The Declaration of Covenants, Conditions, Restrictions and Easements is recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 1819, page 434. A Supplemental Declaration of Covenants, Conditions, Restrictions and Easements is of record in the aforesaid Clerk's Office in Deed Book 2085, at page 696. Upon approval of ZMA 2005-003, the Applicant will record in the aforesaid Clerk's Office an instrument to extend the Declaration to those portions of the Property that are not already subject to the Declaration.

III. GROSS FLOOR AREA TO BE DEVELOPED

3.1 Total Buildout. Total maximum square footage to be developed within the Project shall not exceed 3,700,000 square feet gross floor area, excluding recycling centers, picnic shelters, fire and emergency response station(s), office trailers for temporary use during construction of permanent structures, small (not to exceed 1,500 square feet gross floor area per building) storage buildings, and structures included as amenities within Common Areas (collectively, the "Excluded Areas"). The total gross floor area within the Project which may be constructed in any one year shall not exceed 200,000 square feet beginning in 1996, in addition to any accumulated undeveloped square feet of gross floor area.

IV. STORMWATER MANAGEMENT AND WATER CONSERVATION

4.1 Flood Plain. The area of the 100-year flood plain within the Project shall remain undisturbed except for road crossings, public utility facilities and their crossings, and pedestrian and riding trails, Tracts 1 and 2 as shown on Exhibit J, and only to the extent such exceptions are permitted by County ordinances and regulations.

4.2 Stormwater Management Plan. The Owner has provided an overall Stormwater Management Plan for the Project, incorporating the applicable drainage sheds on the Property. Applicant's implementation of the Stormwater Management Plan includes those modifications that comply with design and engineering standards necessary for approval by the County during the site development plan review process for Project development.

4.3 Wetlands. Wetlands, as defined in the wetlands study submitted by the Applicant and on file with the Albemarle County Department of Community Development but not including those wetlands in Tracts 1 and 2 as shown on Exhibit J, shall not be disturbed in the Project except for the installation and use of roads, permanent retention ponds, utilities and walking trails, or any other uses approved by the County after obtaining all necessary federal, state and local permits and approvals.

4.4 Water Conservation. No single industrial or commercial user which proposes a use that will require more than 125,000 gallons per day (average daily consumption) of potable water shall be constructed without obtaining County approval. The County shall consider whether to approve such a user through the same procedures as required in an application for a special use permit (including the same notice requirements, public hearings, and Planning Commission review as in the process for considering a special use permit). The County's approval shall be limited solely to issues of water usage and must include a finding that sufficient capacity exists to support such a user. The County's approval may include reasonable conditions relating to water usage.

V. TRANSPORTATION

Applicant will construct new roads in accordance with the Application Plan as provided herein.

5.1 Internal Road Network. Applicant has and shall provide vehicular access within the Project by an internal road network generally in the locations shown on Exhibit L: Internal Road Network Plan (the "Internal Road Network"). Applicant shall design, construct, and install signs and signalization for the Internal Road Network in accordance with minimum standards of the Virginia Department of Transportation ("VDOT"), unless VDOT approves a lesser standard at Applicant's request. The

exact location of roadways depicted on Exhibit L shall be subject to adjustment during the subdivision plat/site plan approval process.

5.2 Road Construction Standards.

- A. All internal roads which serve an area submitted to the County for site plan approval, (and other Internal Road Network improvements which VDOT and the County reasonably determine are necessary for safe and convenient access to such area) shall be constructed or bonded for construction and dedicated for public use, for acceptance into the state highway system at the time of recordation of the final subdivision plat for each applicable area or at the time of issuance of a certificate of occupancy for development under a site development plan.
- B. The Owner shall construct the Internal Road Network in phases as described in Section 5.4 herein and shown on the Application Plan. Before issuance of certificates of occupancy, however, the Owner shall complete that segment of road which serves the building for which a certificate of occupancy is sought with at least the base and one (1) layer of plant mix asphalt.

5.3 Phases of Development. The following schedule shall apply for determining the timing of road improvements set forth in Section 5.4 below:

PHASE I

<u>Land Use (note 1)</u>	<u>Maximum Cumulative Build-out (note 2)</u>
Maximum Build-out to be accessed by Road A (all uses): Support Commercial to 85,000 (note 2)	635,000
Maximum Build-out to be accessed by Rt. 606 (all uses): General Office limited to: 120,000 Support Commercial limited to: 25,000	345,000
Maximum Total Build-out, Phase I (all uses)	980,000 (note 3)

Not more than 180,000 square feet gross floor area shall be constructed within Tract 1 and Tract 2 as shown on Exhibit J during Phase I.

PHASE II

<u>Land Use (note 1)</u>	<u>Maximum Cumulative Build-out (note 2)</u>
Support Commercial:	110,000
Hotel/Conference Center:	190,000
All Other Uses:	1,268,000
Maximum Total Build-out, Phase II (all uses)	1,568,000 (note 3)

PHASE III

<u>Land Uses (note 1)</u>	<u>Maximum Cumulative Build-out (note 2)</u>
Support Commercial:	110,000
Hotel/Conference Center:	190,000
All Other Uses:	3,400,000
Maximum Total build-out, Phase III (all uses)	3,700,000 (note 3)

(1) Note: The use categories in the charts above shall have the following definitions for the purposes of this Article V: "All Other Uses" shall mean those uses other than Hotel/Conference Center and Support Commercial permitted within the Project as delineated the Land Use Matrix on Exhibit K to the Application Plan. "Hotel" shall have the definition set forth in the Albemarle County Zoning Ordinance (the "Ordinance"). "Support Commercial" shall mean those uses listed on the "Non-Residential Land Use Guidelines" Table, Village and Neighborhood Service Areas, Typical Primary Uses Section, in Section 9.0 of the Ordinance as well as the following uses: copy centers, florists, newsstands, pipe and tobacco shops, barber and beauty shops and tailor shops. See the Land Use Matrix on Exhibit K of the Application Plan.

(2) Note: Total gross floor area, in square feet.

- (3) Note: Nothing contained herein shall restrict Applicant from altering the mix of land use types within any Phase of development in accordance with the Application Plan.

Applicant proffers that the total build-out of Hotel, Support Commercial, and All Other Uses for any given Phase shall not exceed the gross floor area limitations shown in the charts above in this Section 5.3.

5.4 Proffered Road Improvements. Applicant shall design, construct and/or contribute for road improvements in phases. Road improvement proffers in this Section 5.4 shall not include dedication of land unless expressly provided for herein. All construction by Applicant of offsite road improvements shall be conditioned upon the County or VDOT obtaining required right-of-way (if such right-of-way is not owned in fee simple by Applicant), unless expressly provided herein. So long as Applicant is ready, willing and able to construct an improvement as provided in these proffers, even though the necessary right-of-way is not available (and in the instances in which Applicant has proffered to acquire right-of-way, and the Applicant has made good faith efforts to acquire the land necessary for such right-of-way) Applicant shall not be precluded from developing the approved density build-out under the applicable zoning, unless the improvement is otherwise required by applicable regulations or ordinances. Unless an earlier time is required below, the road improvements described in this Section 5.4 for each applicable phase shall be completed or bonded, or contributed for (as set forth below), before constructing each phase's Maximum Total Build-out as set forth in Section 5.3. Notwithstanding anything to the contrary herein, in addition, for property acquisition that is required for the off-site public right of way for construction of the improvements by this Section 5.4, Applicant shall make a cash contribution or provide a letter of credit in a form approved by the County Attorney for such purpose in the amount as deemed necessary for the property acquisition by the County Attorney provided that such amount shall not exceed one hundred fifty percent (150%) of the County's appraisal prepared for acquisition or condemnation purposes. If the cost of the right of way acquisition exceeds the amount previously contributed above, then Applicant shall reimburse the County all such excess costs within thirty (30) days after request by the County. The County shall refund to the Applicant all excess contributions upon completion of the land acquisition.

A. Applicant shall satisfy the following Phase I road proffers before the Maximum Total Build-out, Phase I (as shown in Section 5.3 above) is constructed or earlier if (i) specified in this Section 5.4 (A), or (ii) a need is created by such development and is demonstrated by a traffic study prepared by the Applicant at its sole expense at the request of the County or by VDOT, and as approved by VDOT. The proffered Phase I road improvements shall be as described on Exhibit M of the Application Plan. Notwithstanding the foregoing, Applicant shall be permitted to construct beyond the Total Maximum Build-out, Phase I in advance of satisfying all Phase I road proffers, if a traffic study approved by VDOT demonstrates that the following intersections (including all turning movements) will function, with the proposed additional building construction, with a delay that is equivalent to or better than the following: a Level of Service ("LOS") "C" average at the intersection of Lewis and Clark Drive (Road A) and U.S. 29, and LOS "D" for each individual turning movement at the U.S. 29 intersection, and LOS "D" average at the following intersections (i) Route 649 and Road A, (ii) Route 606 and Quail Run, (iii) Route 606 and Route 649.

(1) Proffer 5.4(a)(1) of ZMA 95-04 has been completed.

(2) Applicant shall acquire (or reimburse the acquiring governmental entity for acquisition costs, if Applicant is unable to acquire) right of way for, design and construct two northbound left turn lanes at the intersection of Road A (the Research Park Entrance) and U.S. 29 (one northbound turn lane has been completed as of the date of this Proffer Statement). Applicant will also construct a westbound turn lane into the Research Park to provide a free flowing right turn movement for southbound vehicles turning into the Project from U.S. 29 onto Lewis and Clark Drive. Applicant shall acquire (or reimburse the acquiring governmental entity for acquisition costs, if Applicant is unable to acquire) right of way for, design and construct a channelized southbound right turn lane on U.S. 29 (This has been completed as of the date of this Proffer Statement). The Road A/Lewis and Clark Drive exit onto U.S. 29 shall include dedication, design and construction of two eastbound left turn lanes and two eastbound right turn lanes (one lane in each direction has been completed as of the date of this Proffer Statement). The entrance at Road A/Lewis and Clark Drive at U.S. 29 also shall include dedication, design and construction of two westbound through lanes

(one lane has been completed as of the date of this Proffer Statement).

(3) Proffer 5.4(a)(3) of ZMA 95-04 has been completed.

(4) Proffer 5.4(a)(4) of ZMA 95-04 has been completed.

B. Applicant shall satisfy the following Phase II road proffers before the Maximum Total Build-out, Phase II is constructed (but not before the Maximum Total Build-out, Phase I is constructed) (as set forth in Section 5.3 above) or earlier if (i) specified in this 5.4 (B), or (ii) a need is created by such development and is demonstrated by a traffic study approved by VDOT (provided however that if the site development plan review process does not otherwise require Applicant to supply a traffic study, Applicant will provide at least a traffic count upon the County's request for evidence that such need has not been created):

(1) Applicant shall design, dedicate, and construct within the Project a two lane collector road extending from U.S. 29 to Route 649 through the Research Park Project within six months of the issuance of the first certificate of occupancy for a building constructed after construction of the Maximum total Building-out, Phase I (980,000 gross floor area of which up to 180,000 gross floor area may be in Tract 1 and 2 on Exhibit J) (a portion of this road, Lewis and Clark Drive, has been completed). Applicant shall dedicate and widen to four lanes the two lane collector road extending from U.S. 29 to 649 when traffic volumes within the Project create the need for such widening.

(2) Applicant shall design, dedicate and construct at the Route 649 entrance: two southbound left turn lanes on Road A, one southbound right turn lane on Road A, and two northbound through lanes on Road A.

(3) Proffer 5.4(b)(3) of ZMA 95-04 has been completed.

(4) Applicant shall design and install all traffic signals necessary for appropriate traffic control at the intersection of Route 649 and Road A as improved in satisfying these Phase II road proffers, but no later than when a need is created by the Project as determined by VDOT.

C. Construction of improvements may proceed up to the Maximum Total Build-out, Phase III described in Section 5.3 above if any one of the following conditions shall have been satisfied (but such conditions shall not be conditions for constructing the Maximum Total Build-out for Phases I and II):

(1) Applicant shall design and construct (within existing right of way) to VDOT standards (including correcting the vertical curvature of U.S. 29) the addition of a third southbound through lane on U.S. 29 from the entrance to the Research Park at Road A to Route 649. In the alternative, if VDOT requires, and at the County's direction, Applicant shall contribute an amount equal to the design and construction costs which would otherwise be contributed by Applicant for an additional southbound through lane on U.S. 29 from the entrance to the Research Park at Road A to Route 649.

(2) Before the issuance of the first certificate of occupancy for improvements in excess of the Total Maximum Build-out, Phase II, six through lanes shall have been constructed along U.S. 29 between the entrance of the Research Park at Road A and Route 649 to the satisfaction of VDOT and the County Engineer.

(3) Construction may nevertheless continue in excess of the Total Maximum Build-out, Phase II (but in no event beyond the limitation contained in Section 3.1) without all the road improvements having been completed as contemplated in Section 5.4C(1) above so long as Applicant can demonstrate to VDOT through traffic studies approved by VDOT that acceptable levels of service can be maintained to the satisfaction of VDOT and the County Engineer at the intersection U.S. 29 and Route 649, and at the intersection of U.S. 29 and Lewis and Clark Drive/Road A. For purposes of this subsection 5.4C(3), acceptable levels of service shall mean a LOS "C" average, and LOS "D" for each turning movement.

D. Upon the request of the County, the Applicant shall dedicate to public use and convey in fee simple an area within its Project necessary for

construction of a grade separated interchange. The approximate location shall be as designated on Exhibit M as "Right of Way Area Reserved for Possible Future Grade Separated Interchange." Applicant shall dedicate such area without consideration. If the area is dedicated by one or more subdivision plats, each such subdivision plat shall depict the area to be dedicated and bear a notation that it is dedicated for public use. If the area has not been dedicated by subdivision plat, the Applicant shall pay the costs of surveying the area, preparing one or more plats thereof and preparing and recording one or more deeds of dedication. It is Applicant's desire to participate in the design for such interchange so that Applicant may preserve the aesthetic features of the Project's entrance.

- E. The one hundred fifty (150) foot buffer adjacent to Dickerson Road and shown as "150' Buffer Area" on Exhibit K, may be reduced by up to fifty (50) feet if the dedication of right of way is required for the widening of Dickerson road by VDOT. If the dedication of right of way is required for the widening of Dickerson Road, the Applicant shall dedicate, without monetary consideration, the right of way upon written request by the County. The right of way shall be conveyed within six (6) months following the Applicant's receipt of the written request. If the right of way is dedicated by one or more subdivision plats, each such subdivision plat shall depict the right of way and bear a notation that the right of way is dedicated for public use. If the right of way is not dedicated by subdivision plat, the applicant shall pay the costs of surveying the right of way to be dedicated, preparing one or more plats thereof and preparing and recording one or more deeds of dedication, which shall convey the right of way to the County in fee simple and shall be in the form of a general warranty deed.

VI. RECREATIONAL AREAS AND OPEN SPACE

- 6.1 Developed Recreational Areas. Applicant shall develop active recreation, playing fields and picnic areas as shown on Exhibit N: Open Space System Phasing Plan. Phasing of the Open Space System improvements shall follow the phasing schedule of proffered road improvements as set forth in Section 5.4 above. For example, those open space improvements described for Phase 1 shall be completed before construction of the Maximum Total Build-out, Phase I, as set forth in Section 5.3. Such recreation areas, unless conveyed to the County, shall be maintained by the Applicant or an appropriate organization. Upon request by the County, the Applicant shall convey to the County, without monetary consideration, within six (6) months following the Applicant's receipt of the written request, the Sports Fields depicted on the Exhibit N. The Applicant shall pay the costs of surveying the Sports Fields parcel, preparing one or more plats thereof and preparing and recording one or more deeds of dedication, which shall convey the Sports Fields parcel to the County in fee simple and shall be in the form of a general warranty deed. Sports Fields areas will not be lighted with field or stadium lighting unless otherwise approved by the County.
- 6.2 Open Space. Applicant shall restrict development of areas not shown as either development parcels or as "30.56 Acres (ZMA 05-03)" on Exhibit N: Open Space System Phasing Plan, subject to boundary adjustment once boundaries are established by plat. In no event will the total area of such undeveloped areas, including the Greenway (defined in Section 6.3 below), Buffer areas (defined in Section 7.2 below), Open Space (shown on exhibits) and recreation areas described in these Proffers be less than a total of 200 acres. These areas shall be for the use and enjoyment of the residents of the Project, subject to the restrictions imposed by the Declaration. Applicant may dedicate such undeveloped areas to the Owners Association or to an appropriate organization. No structural improvements other than utilities, pedestrian and riding trails, and Common Area amenities shall be constructed in these areas. Applicant does not intend by this proffer to subject these areas to Section 4.7.3 of the Ordinance, if such areas are not currently governed by such ordinance.
- 6.3 Rivanna Greenway. Upon request of Albemarle County, the Owner shall dedicate to the County for public use either in fee simple or as one or more easements, a Greenway no less than one hundred (100) feet in width along the boundary of the Property and adjacent to the Rivanna River as shown on Exhibit N: Open Space System Phasing Plan (the "Greenway"). No structural improvements other than pedestrian and riding trails shall be constructed, or erected within the Greenway without the consent of the Owner. Utilities may be provided in the Greenway if, in the opinion of the County Engineer, there is no reasonable alternative. If utilities are allowed in the Greenway, the Owner may grant across the Greenway utility easements, and access easements to the Rivanna River for the users of the Project and their guests and, may at its option, build pedestrian and riding trails or similar uses of the area. Construction of pedestrian and riding trails shall conform to the County Design Standards Manual for trails. The Owner will obtain approval from the County Engineer for construction of any trails except primitive nature trails (Class B Type 1 trails).

The Owner shall convey the Greenway by Deed of Gift and Easement Agreement. The Deed shall be accompanied by a subdivision plat depicting the Greenway and bearing a notation that the Greenway is dedicated for public use, subject to provisions and reservations contained within the Deed. If, at the time of dedication, the Greenway is not dedicated by an accompanying subdivision plat, the owner shall pay the costs of surveying the Greenway, preparing the subdivision plat or other depiction thereof acceptable to the Director of Community Development and the County Attorney, and preparing and recording the Deed, and further provided that the Deed is in a form approved by the County Attorney. After dedication, the Greenway shall continue to be counted as open space for the Research Park.

- 6.4 Cemetery and Ice Pit Site. Applicant shall not disturb the existing family cemetery located approximately in the area as shown on the Open Space System Phasing Plan. Applicant has completed a preservation plan which incorporates the cemetery, ice house and former homestead site into the development of the Project. The preservation plan has been filed with the County to accompany these proffers. The preservation plan memorializes the historical significance of this site, consistent with the wishes of the family of those interred in the cemetery.

VII. LANDSCAPING AND BUFFERING

- 7.1 Landscaping. The Applicant shall landscape all Project roads in accordance with the standards contained in the "Exhibit D, UREF's North Fork Street Tree Master Plan", filed with the Albemarle County Planning Commission on November 1, 1994. Placement of trees and underground utilities shall be designed to avoid root interference with such utilities.
- 7.2 Buffer Areas. Except as expressly provided herein in Sections 7.2 (A) and 7.2 (B), the Owner shall not disturb the Buffer Areas (the "Buffer Areas") as depicted on the Application Plan, other than to: i) establish and maintain signage, fences or walls, ii) remove underbrush, iii) plant landscaping trees for screening or (iv) construct an interconnection along the eastern boundary between development parcels B10 and B11 as shown on Exhibit K. The Owner shall plant additional landscaping in Buffer Areas as reasonably required for screening.
- A. Tract 2 - Disturbance within Eastern Buffer. Within Tract 2 on Exhibit J, the fifty foot buffer on the eastern side of Tract 2 shown as "50' Buffer Area" on Exhibit K-4 (the "Eastern Buffer") may be disturbed in conjunction with the construction and maintenance of the public street shown on the Application Plan as Lewis and Clark Drive. The land disturbing activity in the Eastern Buffer shall be the minimum necessary as determined by the County Engineer and reasonable construction practices to allow for the construction and maintenance of Lewis and Clark Drive, including all sidewalks and pedestrian pathways, and the construction and maintenance of erosion and sediment control structures and measures, drainage facilities, and stormwater management facilities which may be located either within or out of the Eastern Buffer.
- B. Tract 2 - Landscaping within Eastern Buffer. Any portion of the Eastern Buffer within Tract 2 on Exhibit J that is disturbed as provided in paragraph 7.2 (A) shall be landscaped by the Applicant as provided herein within one hundred eighty (180) days after the County's Program Authority releases the erosion and sediment control bond for land disturbing activity within the Eastern Buffer. The disturbed portion of the Eastern Buffer shall be planted in accordance with a landscaping plan approved by the County in conjunction with the road plan and profile for Lewis and Clark Drive. The landscaping plan shall include the following: (i) an informal mix of native species evergreens planted at least five (5) feet in height, serving as screening trees, loosely staggered, fifteen (15) feet on-center; (ii) the same species of screening trees shall be clustered in groups and alternate groups of screening trees shall be provided to create a naturalistic rural landscape; (iii) shade trees shall be interspersed among the screening trees; (iv) clusters of ornamental trees shall be provided in groups of 3's and 5's; and (v) tall shrubs shall be massed to help integrate the proposed plantings into a naturalistic rural landscape. Approved plant species shall be obtained from the Albemarle County Recommended Plant List and the buffer design shall be subject to the review and approval of the Director of the Department of Community Development. The minimum caliper of all shade trees identified herein shall be two and one-half (2 ½) inches at the time of planting. The Eastern Buffer shall be maintained by the Applicant.

VIII. FIRE STATION

- 8.1 Fire Station. The Applicant has leased to the County the Fire Station Parcel which is identified as of the date of this Proffer Statement Tax Map Parcel 32-18B (the "Fire Station Parcel") at no cost to the County and under such other terms as are acceptable to the County (the "Land Lease"). The Land Lease shall be for a term

that extends until the Applicant dedicates the Fire Station Parcel, or portion thereof, to the County as provided in paragraph 8.5.

- A. Proffer 8.1(A) of ZMA 2005-002 has been completed.
 - B. Proffer 8.1(B) of ZMA 2005-002 has been completed.
 - C. The Applicant shall provide hazardous materials training to County fire and rescue personnel. The training program shall be approved in advance by the Chief of the County's Department of Fire Rescue. The training shall consist of two (2) four (4) hour training sessions per year during the three (3) year period beginning on the date the certificate of occupancy for the Fire Station is issued. The training program shall pertain to biological, chemical and radiation elements.
 - D. The portion of Proffer 8.1(D) of ZMA 2005-002 dealing with a septic tank and septic drain field has been completed. The Applicant shall close and remove the septic disposal system on the Fire Station Parcel at its sole expense when the system is no longer required after the Fire Station Parcel is connected to the public sewer system as provided in paragraph 8.4.
- 8.2 Hazardous Material. No Hazardous material, including medical wastes shall be disposed within the Project.
- 8.3 Disposition of Dedicated Property. In the event any of the property dedicated to the County pursuant to Section 5.4(b)(1) and (2), 5.4(d), 6.1, 6.3, and 8.1 is not used for the purpose for which it is proffered, with such use being undertaken within twenty (20) years of receipt of the property by the County, then the property shall be used as open space.
- 8.4 Extension of Public Sewer to Fire Station. As condition of final subdivision plat or final site plan approval for any development within Tracts 1 and 2 as depicted on Exhibit J, or within Tax Map and Parcel Number 03200-00-00-01800, other than the final subdivision plat and final site plan creating and authorizing development of the Fire Station described in Section 8.1, the Applicant shall design and construct at its sole expense, or provide a sufficient bond or other form of surety to the County in an amount sufficient to assure construction and acceptance by the appropriate authority, a public sewer to serve the Fire Station Parcel and, in conjunction with such construction and upon request by the developer of the Fire Station Parcel, shall install a lateral from the public sewer that connects the Fire Station to the public sewer. If such request is made, the developer of the Fire Station Parcel shall reimburse the Applicant for its costs to design and install the lateral, and shall pay all fees required for connecting the Fire Station to the public sewer system. Reimbursement shall be made within sixty (60) days of receipt by the developer of a request for reimbursement accompanied by documentation to support the amount requested.
- 8.5 Dedication of Fire Station Parcel. Within ninety (90) days after the Fire Station Parcel is served by the public sewer system as provided in Section 8.4, the Applicant shall dedicate to the County in fee simple the Fire Station Parcel, less that portion no longer needed for the septic disposal system, and less such adjoining lands within the Fire Station Parcel determined by the County to not be needed for public use (the "Dedication Parcel"). The size of the Dedication Parcel is estimated to be approximately 111,021 square feet (2.55 acres) and as shown on Exhibit B to the proffers approved with ZMA 2005-002. The Applicant shall bear the costs of preparing the subdivision plat necessary for the dedication of the Dedication Parcel to the County, and any other required plats or surveys, and the preparation of the deed to convey the Dedication Parcel to the County. The Applicant shall provide general warranties of title in the deed conveying the Dedication Parcel. Upon such conveyance, the Land Lease described in Section 8.1 shall terminate.
- 8.6 Connection of Fire Station to Street; Alternate. The Applicant shall construct a street from Lewis and Clark Drive to Tax Map and Parcel Number 03200-00-00-01800 north of the Fire Station Parcel (the "Street") and a travelway from the Street to a connection point within the Fire Station Parcel or Dedication Parcel, as applicable, mutually agreed to by the Applicant and the developer of the Fire Station Parcel, which will be shown on the approved final site plan for the development of the Fire Station (the "Connector"), as provided below:
- A. The Street shall be designed and constructed to Virginia Department of Transportation standards or applicable street standards as determined by the County Engineer, shall be designed and constructed to accommodate its intersection with the Connector, and shall be located so that there is three hundred (300) feet or such lesser distance, approved by the Virginia Department of Transportation, of separation on Lewis and Clark Drive between the cross-over serving the Fire Station Parcel (the "Bay Door Egress") and the cross-over serving the Street to allow for the required left-

turn lane and taper from Lewis and Clark Drive into the Street. The Street shall be completed for acceptance by the Virginia Department of Transportation into the state highway system or by the County, as applicable, before the median break allowing a direct left turn access from the northbound lane(s) of Lewis and Clark Drive into the northern access to the Fire Station Parcel from Lewis and Clark Drive (the "Median Break") that is in use as of the date of this Proffer Statement (the "Temporary Access") is closed.

- B. The Connector shall be designed and constructed to applicable private street standards set forth in Albemarle County's Subdivision Ordinance and Design Standards Manual. The Connector shall be completed for acceptance by the County before the Median Break is closed. The developer of the Fire Station Parcel shall close, or pay all costs to close, the Temporary Access, including the cost of removing all unnecessary pavement and installing landscaping in those areas consistent with the existing landscaping along the front of the Fire Station Parcel.

IX. HISTORIC RESOURCES

Prior to approval of the first preliminary subdivision plat or preliminary site plan or an early grading permit within Tract 1 on Exhibit J (except for the Fire Station property), the Owner shall provide a reconnaissance level survey performed by an architectural historian or other qualified individual to adequately provide an archival record of the existing buildings within Tract 1. The survey shall meet the requirements of the Virginia Department of Historic Resources (VDHR) and be provided on the VDHR Reconnaissance Survey Field Form.

X. PROJECT PROGRESS REPORT

- 10.1 Project Report. Applicant shall submit a report to the Department of Planning and Community Development, or its successor, every 3 years. The report shall outline the development activity in the Project over the applicable period. Development activity updates may be completed as part of the site plan review process and shall consist of a summary spreadsheet of total gross square footage completed to date.

XI. SIGNATORY

- 11.1 Certificate. The undersigned owners certify that they are the only owners of the Property which is the subject of this Proffer Statement and of ZMA 2005-03.

- 11.2 The Applicant. These proffers shall run with the Property and each reference to the "Applicant" within these proffers shall include within its meaning, and shall be binding upon, Applicant's successor(s) in interest and/or the developer(s) of the Property or any portion of the Property.

UNIVERSITY OF VIRGINIA FOUNDATION

a Virginia non-stock corporation

By: (Signed) Tim R. Rose

Tim R. Rose, Chief Executive Officer

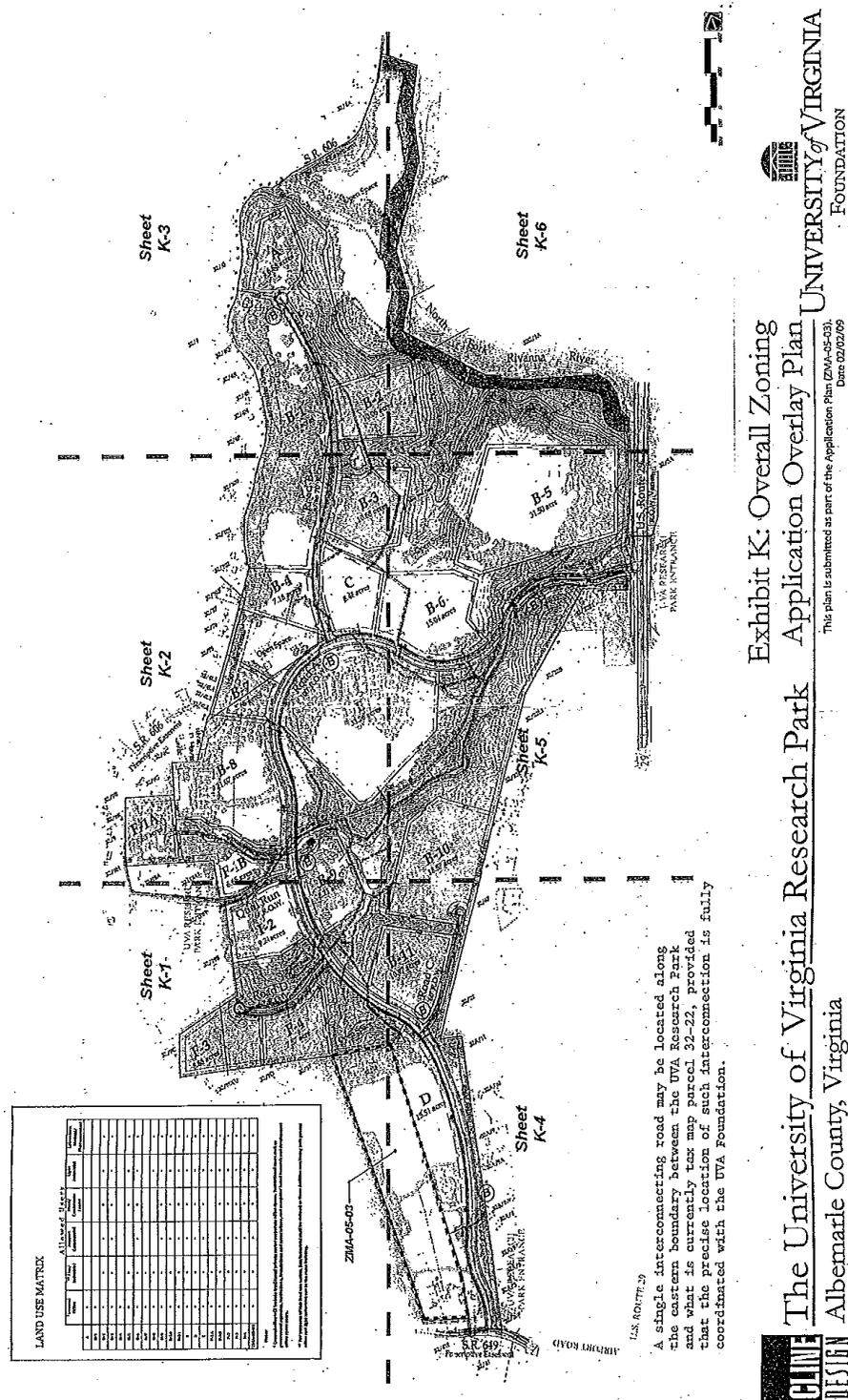
1641 EDLICH REALTY CO LLC,

a Delaware limited liability company

By: (Signed) Brett Sarason

Printed Name: Brett Sarason

Title: Corporate Counsel



Motion was then offered by Mr. Thomas to approve SP-2008-00015, Parking Structures, with no conditions. The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

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

Motion was offered by Mr. Thomas to approve SP-2008-00062, Laboratories, subject to the two conditions recommended by the Planning Commission. The motion was **seconded** by Mr. Rooker. Roll was called, and the motion carried by the following recorded vote:

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

(**Note:** The conditions of approval for SP-2008-00062, Laboratories, are set out in full below.)

1. Laboratories shall be subject to Section 4.14 Performance Standards of the ordinance and a Certified Engineers Report is required pursuant to Section 4.14.8 of the Zoning Ordinance; and
2. Laboratory buildings shall not be less than 30 (thirty) feet from the perimeter buffer areas to adjoining properties not located within the development, unless modified by the Director of Planning.

Motion was offered by Mr. Thomas to approve SP-2008-00063, Supporting commercial uses, subject to the one condition recommended by the Planning Commission. The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

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

(**Note:** The condition of approval for SP-2008-00063. Supporting commercial uses, is set out in full below.)

1. In addition to the proffered limitation not to exceed five (5%) percent of total floor area, commercial uses shall not exceed ten (10%) percent of total floor area at any time during phased development.

Motion was offered by Mr. Thomas to approve SP-2008-00064, Hotels, motels, inns, subject to the two conditions recommended by the Planning Commission. The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

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

(**Note:** The conditions of approval for SP-2008-00064, Hotels, motels, inns, are set out in full below.)

1. Not more than one (1) hotel, motel, or inn shall be permitted. Such hotel, motel, or inn shall not exceed two hundred fifty (250) lodging rooms; and
2. Conference facilities (other than those as may be provided by individual occupants) shall not be required to locate internal to nor on the same site as the hotel/motel/inn, but total gross floor area of lodging and conference facilities shall not exceed one hundred ninety thousand (190,000) square feet.

Agenda Item No. 10. From the Board: Matters Not Listed on the Agenda.

Ms. Mallek asked Mr. Mark Graham to speak about the road she mentioned earlier in the Hollymead Towncenter.

Mr. Graham said since Mr. Wood is present, he may want to comment on this situation. He said staff is presently negotiating with him on the schedule for completion. Staff has looked at the project and thinks it can be ready for acceptance by August or September. With the road acceptance process by VDOT it can be ready by the end of the calendar year. Staff thinks the road could be opened and ready for use by the beginning of September.

Ms. Mallek asked if Mr. Wood would like to speak.

Mr. Wendell Wood said he can answer questions. He said he sold that property and now has it back. The people who bought it - with the proffers placed on it and with the time and the way the world is today - they lost about \$30.0 million due to the proffers placed on it because they are just not feasible. He made the mistake of posting the bond with the County for them when they could not do it.

Mr. Rooker said that bond was actually posted before the rezoning was approved.

Mr. Graham said that was done before Area "A" was rezoned.

Mr. Wood said that was part of his transaction. The bond was upgraded with Phase 2A. He said that when it was approved, Mr. Rooker wanted the road from Harris Teeter back to Dickerson Road built as a two-lane road; under the new conditions it is now curb, gutter, storm sewer, a different standard of road. He put up that bond for the other party so it is his bond. Basically everything has been done on that road for the last year and a half except the final blacktop and sidewalks. He said they have taken it back over and need to finish the work because a Kohl's Store is being built and it is scheduled to open October 1, 2010, and they are behind schedule. He said there is a \$2.0 million bond posted, and there is about \$300,000 of work left to be completed. He said bonds are hard to get these days and are very expensive. They have been requesting for a year to reduce the bond. He thinks the road will be open by October 1. They would prefer that it not happen that soon because experience has shown him that mistakes occur, and they prefer not to have to go back and dig up the road. They have everything except the final inch

and a half of blacktop down. They are trying to finalize how that phase will be developed; after the final blacktop is laid if a line has to go from one side of the road to the other it has to be tunneled and that is very expensive. They are waiting for decisions from a couple of tenants who will require a different makeup from the approved Phase A2. He said the road is virtually completed and the bond is costing about \$50,000 a year and he thinks it could be reduced. He thinks the State of Virginia has accepted everything they have done – they don't accept a road for a year after it is completed.

Mr. Snow asked about the bond reduction. Mr. Graham said they actually built the road without an approved plan and then tried to get the plan approved by VDOT. VDOT had significant concerns about the design of the roundabout where Towncenter Drive intersects Meeting Street. They went through an extensive design and compromise approach between the developer and VDOT. Staff was just notified the plan was approved on February 12, 2010. It actually received a copy of the approved plan about ten days later, so the approved plan has only been in the hands of staff for two weeks. It is just now at the point of knowing what can be done with a bond reduction. They are close to getting a bond reduction calculated.

Mr. Rooker said the public's responsibility is to be sure that the bond being held is at least sufficient to complete the improvements that are not yet done.

Mr. Wood said that is what he is saying. There is a \$2.0 million bond posted for about \$300,000 worth of work left to do.

Mr. Graham said the bond process for reductions with public roads is changing. Until now VDOT had the staffing to come out and do the inspections to quality the workmanship during the process and then make an agreement with staff as to whether they felt that quality was acceptable or whether it would have to be redone. As of about a month ago, VDOT stopped doing that. They no longer have the staffing to do these interim inspections. At the time the road is felt to be ready for acceptance, VDOT will simply look at it and make a determination as to whether it is acceptable or not.

Mr. Rooker asked if the County has to make its own determination. Mr. Graham said they will have to determine how much risk they want to take and the quality of the workmanship. It is a significant change in process that has happened in the last couple of months.

Mr. Wood said the process for what has to be done after the road is built has been in effect for a long time. After the road is built, you must hire a private engineering firm to core drill the road to make sure the road is built to the proper standards. An engineer has to do centerline adjustments to be sure the road is built in the right place and that the storm drains are in the right locations and built to the size shown on the plans. He said that information by a certified engineer has to be provided to VDOT; the State used to do that work.

Ms. Mallek asked if there is VDOT staff that could be hired by applicants to do this inspection for an additional fee so the County does not "put its neck in the noose?" Mr. Graham said the County requires certifications from private engineers.

Mr. Rooker asked who estimates the cost for completion of the road. Mr. Graham said County staff does that. Staff decides on the original bond estimate and then does the reductions based on the work. The big question is – where is VDOT going to draw the line on acceptable work? He said nothing is ever built perfect; that is unrealistic. It is always a judgment call on particular features of the work.

Mr. Rooker said the County does not want a road built to a standard so it is not ultimately accepted into the state system.

Mr. Wood said VDOT has already passed this road. Mr. Graham said they have not done all of the final inspections. They did the core borings and the centerline, but there are other issues. The sidewalks have not been built, so there are still other things to do. Another inspection is that they run TV cameras up the storm drains to be sure they are properly built. That has not been done. If a storm drain has to be torn up it runs on top of the curb and gutter in the street, so all of that and the street would have to be torn up to fix that storm sewer.

Mr. Wood said VDOT used to come out and inspect as the work progressed. He said this plan calls for an 18-inch line to be put in, and contractors are bonded so not many would do it wrong. Installation is a basic operation and he does not know of many that have had to be torn up. The new thing about videoing the work costs \$3.00 a foot. That costs is about one-third of the cost of the pipe, and it has to be done twice. It has to be done when the road is requested to be taken in, and then the state does not take the road in for one year, so he has to put up a maintenance bond and at the end of the year, they come back and video it again in case some trash got into the pipe, so it is actually \$6.00 a foot. He said that is where "we are in this world today." He does not think there is a problem in this town with contractors who do it wrong because they have to tear it out.

At 7:30 p.m., Mr. Thomas offered **motion** that the Board go into a Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to consider an administrative appointment. The motion was **seconded** by Mr. Boyd. Roll was called, and the motion carried by the following recorded vote:

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

At 7:38 p.m., the Board reconvened into open meeting. **Motion** was immediately offered by Mr. Thomas that the Board certify by a recorded vote that to the best of each Board member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed session were heard, discussed or considered in the closed session.

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

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

NAYS: None.

Agenda Item No. 11. At 7:39 p.m., with no further business to come before the Board, **motion** was offered by Mr. Thomas, **seconded** by Mr. Snow, to adjourn this meeting to March 15, 2010, at 9:00 a.m., in Room 241. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

Chairman

Approved by the Board of County Supervisors

Date: 04/07/2010

Initials: EWJ
