

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on April 20, 2011, at 4:30 p.m., at the Old Albemarle County Jail, 409 East High Street, Charlottesville, Virginia. The purpose of the meeting was to take a tour of the Old Jail Facility. This meeting was adjourned from April 19, 2011.

Following the tour, the Board recessed and reconvened for its regular night meeting at 6:00 p.m., in the Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas Foley, County Attorney, Larry W. Davis, Director of Planning, V. Wayne Cilimberg, and Senior Deputy Clerk, Meagan Hoy.

Agenda Item No. 4. The meeting was called to order at 6:00 p.m., by the Chair, Ms. Mallek.

Agenda Item No. 5. Pledge of Allegiance.
Agenda Item No. 6. Moment of Silence.

Agenda Item No. 7. From the Board: Matters Not Listed on the Agenda.

There were none.

Agenda Item No. 8. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Graham Patterson addressed the Board, stating that he owns the Rock Store and five acres behind it that is used as a trailer park. Mr. Patterson explained that in the 1980's the County asked his father, who then owned the property, to remove some of the 28 trailers there because the road was going to be widened, which never happened.

He said that upon visiting the trailer park the manager told him that at least once per day someone comes by and asks if there is a trailer available for rent. He feels that he is prevented, for reasons unknown, from adding three or four more trailers to provide affordable housing.

Mr. Patterson stated that he met with some employees from the County, who indicated he would have to apply to the County to amend the master plan (at a cost of \$25,000). He also said that the County staff told him if they tried to get around that process, they would fight him tooth and nail, and told him that no one has ever succeeded in getting by them.

Mr. Patterson indicated that it is because of the perceived demand and personal issues related to health that he is motivated to ask for additional trailers to be put on the property.

Mr. Rooker commented that he has never heard of an application fee in the amount of \$25,000, and his understanding is that the trailer park cannot be approved for septic. He said there are a lot of reasons why that park was not allowed to expand, and was actually asked to reduce its size. He added that the allegations made against staff should be put in writing with the people identified.

Mr. Foley stated that staff would follow up on both of those items and report back to the Board.

Mr. Jim Byrom addressed the Board, stating that he is here to raise concern regarding the administration of the building inspections office and the enforcement of building codes, as well as the building permit process and contractor relations process as it affects the issuance of permits.

Mr. Byrom reported that he brought information to the office of Building Codes regarding building code violations that have been going on for some time, with notice first given to the building inspections office in March 2010. He said that these violations include major structural, electrical, plumbing, and total renovation of a house, done under a fraudulent affidavit claiming exemption from licensure.

Mr. Byrom stated that yesterday he had a conference call with the County Executive and County Attorney and was told his complaints had no standing, and that the head of the building inspections office had deemed that the property owner and tenant in that building (4225 and 4227 Cottonwood Headquarters Lane) met the exemption requirements under Virginia Code Section 54.1-1101.

Mr. Byrom said that the building official stated today that he does not concur with that finding. Mr. Byrom asked that the Virginia Code be applied equitably in this situation.

Agenda Item No. 9. Consent Agenda. **Motion** was offered by Mr. Rooker to approve Items 9.1 and 9.2 on the Consent Agenda. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Item No. 9.1. Schedule public hearing to amend Field School of Charlottesville's Lease for part of the Old Crozet School.

The executive summary states that the County currently leases the Old Crozet School to two tenants. The Field School of Charlottesville ("Field School") currently leases 10,943 square feet. The Field School's lease will automatically renew on July 1, 2011 unless notice is given by the County or the Field School. The second tenant, the Old Crozet School Arts ("OCSA"), currently leases 4,826 square feet. The OCSA's lease will renew on August 1, 2011 unless notice is given by the County or the OCSA.

The Field School has identified a need for additional space to be used as a school library. Specifically, it would like to add 417 square feet of basement space that is in the older section of the facility and currently un-leased. The Field School would like to begin leasing this additional square footage concurrent with its lease renewal on July 1, 2011. The lease would be amended to add this additional space and to clarify the rental rate to be charged for the added space. Use of this space by the Field School has no foreseeable impact on the OCSA's operations.

The approval of this lease amendment would result in an increase in annual revenue of at least \$1,588.77. The exact amount will be determined once the May 2011 CPI is published, as specified in the lease.

Staff recommends that the Board schedule a public hearing on May 11, 2011 to receive public comment on the proposed lease amendment (Attachment A).

By the above-recorded vote, the Board scheduled a public hearing on May 11, 2011 to receive public comment on the proposed lease amendment.

Item No. 9.2. Request Approval of Thurman ACE Appraisal and Authorize Invitation to Sell Conservation Easement.

The executive summary states that on January 5, 2011, the Board of Supervisors approved the Acquisition of Conservation Easement (ACE) Committee's request to have the four remaining properties from the Round 10 (FY 2009-10) applicant pool (the Thurman, Rives, Rushia, and Nash/Violette properties) appraised (see Attachment "A"). All higher-ranked easements have either been acquired (Pugh/Stanson) or withdrawn from consideration (Lively and Barksdale).

Under *County Code* section A.1-111(A), "[T]he board of supervisors shall designate the initial pool of parcels identified for conservation easements to be purchased. The size of the pool shall be based upon the funds available for easement purchases in the current fiscal year and the purchase price of each conservation easement in the pool established under section A.1-111(B)."

The Thurman appraisal has been completed and was officially approved by the Appraisal Review Committee (see Attachment "B") on April 12. The VDACS Office of Farmland Preservation is offering additional funds of \$17,000 – 50,000 on the Thurman property if this purchase is closed by May 27, 2011.

Based on this compressed timeline, The ACE Committee recommends that the Board accept the completed Thurman appraisal and authorize an invitation to Ms. Thurman to sell a conservation easement at the amount indicated in the approved appraisal. Acquisition of this easement would provide the following benefits and resource protection:

- Protection of 108 acres of farm and forestland
- Elimination of 6 development rights
- 2,650 feet of state road frontage
- 3,000 feet of riparian buffer
- 55 acres of "prime" farm and forestland
- Property which is currently a family run farm

Funding for the purchase of this conservation easement comes from the CIP-Planning-Conservation budget (line-item 9010-81010-580409).

The following recommendations are provided for action by the Albemarle County Board of Supervisors:

- 1) Accept the completed Thurman appraisal (see Attachment "B").
- 2) Approve extending an invitation to submit an offer to sell to Ms. Thurman based on this appraisal.

1. ACE Budget for Round 10 (FY 2009-10) Applicant Pool

County Funds Available from FY09-10 Appropriation	\$ 1,008,917.69
<u>Funds Reduced by BOS from FY09-10 Allocation</u>	<u>- 470,000.00</u>

Current County Funds Available from FY09-10 Appropriation	\$ 538,917.69
Funds from 2009 Farmland Preservation Grant	49,900.00
Funds from 2010 Farmland Preservation Grant	93,932.19
Funds from 2011 Farmland Preservation Grant	12,500.00
Funds Available for FY09-10 Easements	\$ 695,249.88

Acquisition Cost of ACE Easements:	
Easement Acquisition - Pugh/Stanerson	\$ 162,500.00
Appraisals	9,000.00
Title Insurance	1,500.00
Net Easement Acquisition Cost	\$ 173,000.00

Funds Available for Remaining Properties in FY09-10 \$ 522,249.88

2. Appraisal & Acquisition Cost for Thurman - Round 10 (FY 2009-10)

Applicant	Total Appraised FMV	Easement Value (% FMV)	ACE Payment (% EV)
Thurman (Milton)	\$ 1,030,000	\$ 230,000 (23%)	\$ 230,000 (100%)

FMV = Fair Market Value
 EV = Easement Value

By the above-recorded vote, the Board accepted the completed Thurman appraisal as recommended by staff and approved extending an invitation to submit an offer to sell to Ms. Thurman based on this appraisal.

Agenda Item No. 10. Consideration of the adoption of an ordinance to amend Chapter 6, Fire Protection, Article I, In General, of the Albemarle County Code that adopts and reordains an amended Article I, Coordinated Fire and Rescue System. The ordinance would establish a coordinated fire and rescue system, consisting of the County's volunteer fire companies and rescue squads and the Albemarle County Department of Fire and Rescue, under the general direction of the County's fire and rescue chief. Section 6-100 regarding the office of the fire marshal and section 6-102 regarding the Junior Firefighters Program would be renumbered and updated to clarify and conform these sections to state code requirements. Section 6-101 regarding precautions to prevent the spread of fire and related penalties would be repealed because this provision is set forth in Virginia Code § 10.1-1142, which may be enforced by the Fire Marshal without a local ordinance. *(Advertised in the Daily Progress on April 4 and April 11, 2011.)*

The Executive summary provided to the Board states that between September and November, 2010, an ad hoc committee made up of volunteer chiefs and Board members Ann Mallek and Rodney Thomas met several times to draft revisions to the ordinance considered by the Board at an August 11, 2010 public hearing. The Board affirmed at its November 3, 2010 meeting that it remained committed to an ordinance based on a collaborative fire chief organizational model rather than a commission model. At the committee's invitation, staff from the Albemarle County Department of Fire and Rescue ("ACFR") and the County Attorney's Office met with the ad hoc committee six times between December, 2010 and February, 2011 to work on revisions to the August 11th ordinance. The County Attorney's Office generated four drafts of the ordinance for the committee's review and comments. Following the committee's final meeting on February 1, 2011, the County Attorney's Office produced a final draft ordinance dated February 1, 2011. At its February 23, 2011 meeting, the Albemarle County Fire Rescue Advisory Board ("ACFRAB") voted to advance to the Board of Supervisors for its consideration at its March 3, 2011 work session an alternative version of a draft ordinance dated November 1, 2010 prepared by its ad-hoc working committee.

On March 3, 2011, the Board held a work session with members of ACFRAB and staff to hear comments related to the draft ordinances (See Attachment B for the March 3, 2011 executive summary). At the conclusion of the work session, the Board directed the County Attorney's Office to revise the February 1, 2011 draft ordinance to include the Fire Chief as a member of the FEMS Board for purposes of participation, along with any reconciling changes required as a result, and authorized the Clerk to advertise a notice of its intent to adopt the revised ordinance at its meeting on April 20, 2011. All changes made to the August 11, 2010 proposed ordinance since August 11th are shown in the working document found at Attachment C and have been incorporated into the proposed March 14, 2011 draft ordinance.

The County Attorney's Office revised the February 1, 2011 draft ordinance to include the changes the Board requested on March 3, 2011.

The March 14, 2011 draft ordinance was distributed to ACFRAB members so that they could review it with their membership and community board members. Supervisor Mallek and Chief Eggleston were invited by and met with some fire and rescue departments to discuss the draft ordinance and address questions from the members.

Although there is no immediate budget impact associated with the proposed fire rescue structure, the amount of staff time to support the FEMS Board and the Executive Committee will need to be evaluated over time to determine if a sustained amount of support can be provided with existing staff.

Staff recommends that the Board adopt the ordinance.

Mr. Foley summarized that the matter before the Board is consideration of adoption of an ordinance to amend County Code Chapter Six – Fire Protection – to establish a coordinated and integrated fire/rescue system composed of volunteer fire companies and rescue squads and the Albemarle County Department of Fire & Rescue.

He said that the purpose of the ordinance is to develop an integrated and seamless systems approach to the provision of emergency services, to ensure to the greatest extent possible that the system performs with maximum cost effectiveness consistent with safety objectives, accounts for service delivery and resource utilization, communicates and considers all views regarding the system and promotes the interest and welfare of County citizens and communities.

Mr. Foley stated that in the end the system established through this ordinance will ensure that all fire & rescue calls in the County receive consistent, predictable high-quality responses by creating system-wide coordination, accountability and oversight, collaboratively developing policies for the system and making the fire/rescue system accountable to the Board and its goals. He said that a more cohesive and collaborative model of fire/rescue service delivery is being achieved through the ordinance, but that it keeps intact individual agency autonomy and self-management while allowing volunteer departments the opportunity for significant input in all policy matters pertaining to fire and rescue services in the County.

Mr. Foley explained that the Albemarle County Fire/Rescue Chief retains all State statutory powers and responsibilities provided by the ordinance and position in the County staff and the chief will have accountability to the County Executive's Office and the Board of Supervisors. He reported that the proposed ordinance was created, reviewed and amended through a collaborative process with volunteer representatives over the past two and a half years and through fifteen to twenty meetings. The ordinance also reflects the final revisions that the Board directed the County Attorney's office to incorporate at its March 3, 2011 work session on this matter, recognizing the chief as a full member of the Fire/EMS Board.

Mr. Foley noted that this version of the amendment was reviewed and vetted by the Albemarle County Fire/Rescue Advisory Board (ACFRAB) during its March meeting. Mr. Foley recognized the time and effort put forth by volunteer fire and rescue chiefs as well as Chief Dan Eggleston, Senior County Attorney Annie Kim, Chair Anne Mallek and Supervisors Ken Boyd and Rodney Thomas in the ordinance to guide the delivery of services going forward. He concluded by stating that staff recommends adoption of the ordinance.

Mr. Rooker commented that this has been a long process, and after the last Board meeting they arrived at something that certainly seemed to have the support of the vast majority of volunteer units. He thinks everyone involved is pleased to have gotten to this point. He noted that it was ultimately decided to go along with the request that the fire chief sit on the advisory committee as a member of the committee.

Mr. Thomas stated that this gives the volunteers more of a voice, and the volunteers are more inside, rather than on the outside, working together with the County. He thinks it is a fantastic ordinance and he hopes that everyone involved can go forward from this point. He expressed his appreciation to everyone who worked on it and specifically the firefighters.

Mr. Rooker added that this is a great balance of a collaborative ordinance, creating a system that can function as a system, adding that in growing County like Albemarle we need to make certain that the millions of dollars put into fire and rescue provide the best system for the people who need service in the community. This ordinance goes a long way toward assuring that.

Ms. Mallek commented that there is a "high performance bar" for volunteers as well as for paid staff, and on March 9, 2011, the Board decided essentially to double the fire chief's responsibility. She expressed her appreciation for all who put work into the process and coming to the table to meet in the middle. She said this is a great example of how we do things well.

Ms. Mallek added that she agrees with Mr. Thomas that this gives official recognition to volunteers even though they are part of an ordinance now, which also holds the Board more responsible. She feels this is a real success on everybody's part.

Ms. Mallek **moved** for adoption of the ordinance as presented. Mr. Rooker **seconded** the motion, which carried by the following recorded vote:

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

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

ORDINANCE NO. 11-6(1)

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 6, FIRE PROTECTION, ARTICLE I, IN GENERAL, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 6, Fire Protection, Article I, In General, of the Code of the County of Albemarle, is hereby amended and reordained as follows:

By Adding:

- Sec. 6-100 Purpose
- Sec. 6-101 Definitions
- Sec. 6-102 Establishment and composition of the coordinated fire and rescue system
- Sec. 6-103 Responsibilities of the coordinated fire and rescue system
- Sec. 6-104 Fire and Rescue Chief
- Sec. 6-105 Volunteer fire companies and rescue squads; volunteer chiefs
- Sec. 6-106 Establishment and composition of FEMS Board
- Sec. 6-107 Responsibilities of the FEMS Board
- Sec. 6-108 Executive committee of the FEMS Board
- Sec. 6-109 Procedure for developing policies of the coordinated fire and rescue system
- Sec. 6-110 Noncompliance with system policies

By Amending and Renumbering:

- Sec. 6-100 Office of the fire marshal created; appointment, oath and powers of the fire marshal and his duties to Sec. 6-111 Office of the Fire Marshal
- Sec. 6-102 Junior Firefighter Programs to Sec. 6-112 Junior Firefighters Program

By Deleting:

- Sec. 6-101 General precautions to prevent spread of fire; penalties

ARTICLE I. COORDINATED FIRE AND RESCUE SYSTEM

DIVISION I. IN GENERAL

Sec. 6-100. Purpose.

The board of supervisors, determined to provide for the public safety, health and welfare of Albemarle County citizens and communities, hereby establishes a coordinated and integrated fire and emergency medical service system currently composed of the following, volunteer fire companies, volunteer rescue squads and the Albemarle County Department of Fire and Rescue:

- Charlottesville-Albemarle Rescue Squad
- Crozet Volunteer Fire Department
- Earlsville Volunteer Fire Company
- East Rivanna Volunteer Fire Company
- North Garden Volunteer Fire Company
- Scottsville Volunteer Fire Department
- Scottsville Volunteer Rescue Squad
- Seminole Trail Volunteer Fire Department
- Stony Point Volunteer Fire Company
- Western Albemarle Rescue Squad

In taking this measure to assure the most efficient and effective service possible and to meet the challenges of the growth and development of the jurisdiction, the board of supervisors specifically recognizes the essential and historical contributions of volunteers and the necessity of continuing and expanding volunteer participation, without which the county could not discharge its responsibilities.

The coordinated fire and rescue system shall work to develop an integrated and seamless systems approach to the provision of emergency services; promote the interests and welfare of county citizenry and communities; perform with maximum cost-effectiveness consistent with safety objectives; account for service delivery and resource utilization; and communicate and consider all views regarding the system.

Sec. 6-101. Definitions.

For the purposes of this article and, unless otherwise required by the context, the following words and terms shall have the meanings respectively ascribed to them by this section:

Albemarle County Department of Fire and Rescue means the county agency responsible for delivering fire, rescue and emergency medical services in partnership with the volunteer organizations within the coordinated fire and rescue system.

Board or board of supervisors means the Board of Supervisors of Albemarle County.

Company means a volunteer fire company or department located in Albemarle County. Each individual fire-fighting organization within the county shall be defined as a "fire company," as provided in Virginia Code §27-8.1.

County employees or County staff means employees of the Albemarle County Department of Fire and Rescue who provide fire, rescue, and emergency medical services as members of the coordinated fire and rescue system.

County volunteers mean volunteers of the Albemarle County Department of Fire and Rescue who provide fire, rescue and emergency medical services as members of the coordinated fire and rescue system. County volunteers are not members of incorporated fire companies or rescue squads.

Executive Committee means a committee of the FEMS Board as provided in section 6-108.

Fire EMS Board or FEMS Board means the Albemarle County Fire and Emergency Medical Services (EMS) Board, formerly known as the Albemarle County Fire and Rescue Advisory Board, which advises the fire and rescue chief and performs additional functions as provided in sections 6-106 and 6-107.

Fire and rescue chief or chief means the director of the Albemarle County Coordinated Fire and Rescue System, as established in section 6-104.

Policies mean the rules and regulations of the coordinated fire and rescue system, including standard operating guidelines and standard administrative procedures.

Rescue squad means a volunteer rescue squad or emergency medical services organization, as described by Virginia Code §32.1-111.1 *et seq*, that is located in Albemarle County, as well as the Charlottesville-Albemarle Rescue Squad, which has its principal place of business in the City of Charlottesville.

Volunteers mean non-employee volunteer members of the several fire companies and rescue squads set forth in section 6-100.

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

DIVISION II. ESTABLISHMENT OF THE COORDINATED FIRE AND RESCUE SYSTEM

Sec. 6-102. Establishment and composition of the coordinated fire and rescue system.

(a) The Albemarle County Coordinated Fire and Rescue System (“the system” or “the coordinated fire and rescue system”) is hereby established pursuant to Virginia Code §27-6.1. The coordinated fire and rescue system shall provide comprehensive fire, rescue, and emergency medical services throughout the county in accordance with state laws, county ordinances, and duly adopted policies issued by the system.

(b) The coordinated fire and rescue system shall be a combined force of non-employee volunteer members of the several fire companies and rescue squads, county employees, and county volunteers of the Albemarle County Department of Fire and Rescue. The following volunteer fire companies and rescue squads, and any others that may be duly established in the future, along with county volunteers, constitute an indispensable part of the public safety program for the county: Charlottesville-Albemarle Rescue Squad, Crozet Volunteer Fire Department, Earlysville Volunteer Fire Company, East Rivanna Volunteer Fire Company, North Garden Volunteer Fire Company, Scottsville Volunteer Fire Department, Scottsville Volunteer Rescue Squad, Seminole Trail Volunteer Fire Department, Stony Point Volunteer Fire Company, and Western Albemarle Rescue Squad.

State law reference – Virginia Code §§27-6.1, 27-8.1

Sec. 6-103. Responsibilities of the coordinated fire and rescue system.

The coordinated fire and rescue system shall:

- (1) Manage the delivery of prehospital emergency patient care and services through policy development and implementation consistent with state emergency medical services regulations and the guidance of each organization’s operational medical director.
- (2) Manage the provision of system-wide fire prevention, protection, investigation, suppression, education and rescue services, and services relating to hazardous materials and other hazards posing a threat to life and property, through policy development and implementation.
- (3) Provide any additional, related, system-wide services that are essential for the provision of high-quality fire and emergency medical services.
- (4) Perform and deliver services consistent with state laws, county ordinances, and duly adopted policies of the coordinated fire and rescue system.

State law reference – Virginia Code §§27-7, 27-14, and 32.1-111.14

Sec. 6-104. Fire and Rescue Chief.

The director of the coordinated fire and rescue system shall be known as the fire and rescue chief, who shall be appointed by the board of supervisors upon recommendation by the county executive following a selection process that includes representation from both the fire and emergency medical services membership as designated by the FEMS Board. The fire and rescue chief shall:

- (1) Provide general oversight and management of the system's functions through:
 - a. Strategy development, in collaboration with the FEMS Board, for the retention and expansion of the volunteer base within the system to ensure that the health of the volunteer system remains a high priority for the fire and rescue chief.
 - b. Policy development, in collaboration with the FEMS Board, of system-wide policies that are essential to the effective and equitable provision of high-quality, countywide fire and rescue services, and overseeing the implementation of those system-level policies. All policies of the coordinated fire and rescue system shall be developed through the collaborative policy procedures established by section 6-109 and shall include, but not be limited to:
 - i. Standard operating guidelines for the system's delivery of fire, rescue, and emergency medical services;
 - ii. System performance standards, such as minimum staffing and response goals;
 - iii. A seamless command structure and incident command system that complies with federal and state incident management standards;
 - iv. Minimum personnel, training, licensure, and reporting requirements for the welfare of county and volunteer personnel and the delivery of high-quality fire and rescue services;
 - v. System fleet size, deployment, and functions;
 - vi. Minimum standards regarding apparatus and equipment;
 - vii. System funding by the county and system budget matters; and
 - viii. A process for setting and maintaining first due areas, response districts and apparatus response orders.
- (2) Make day-to-day operational decisions necessary for the coordinated system on matters not specifically addressed by system-wide policies. Prior to any significant decision affecting the coordinated system, however, the fire and rescue chief shall consult with the executive committee and consider all reasonable recommendations from the executive committee to the maximum extent possible. If exigent circumstances do not permit such prior consultation with the executive committee, the fire and rescue chief shall advise the executive committee as soon as practicable after the decision is made and seek its recommendations for future actions. The FEMS Board may at any time discuss and review significant system-wide decisions made by the fire and rescue chief without its prior consultation.
- (3) Serve as the executive of the system to support the FEMS Board by leading and facilitating the executive committee; participating fully in FEMS Board meetings, communications, programs and activities; providing and managing county staff support, as needed, for the FEMS Board and executive committee; and overseeing the preparation of FEMS Board and executive committee agendas and meeting documents. The fire and rescue chief shall also be a full voting member of the FEMS Board. In no way shall this subsection diminish the authority of the county executive to supervise the fire and rescue chief.
- (4) Provide general management, planning, preparation, response and recovery for any disaster relating to fires, hazardous materials, rescues or emergency medical services that may occur in the county.
- (5) Assume responsibility, under the authority of the county executive, for actions necessary to implement and carry out agreements for mutual aid, disaster preparedness and the provision of services related to hazardous materials, rescues, fire suppression, investigation, medical services or other emergency response services deemed necessary in the judgment of the fire and rescue chief in events exceeding the capabilities of an individual locality or government agency.
- (6) Exercise all powers authorized by state law as necessary for the provision of fire and emergency medical services.

State law reference – Virginia Code §§27-6.1, 27-7.

Sec. 6-105. Volunteer fire companies and rescue squads; volunteer chiefs.

(a) *General; authority to create by-laws.* Volunteer fire companies and rescue squads may be formed, named and dissolved in accordance with state law and board approval. They shall operate in conformity with state laws, county ordinances, and the duly adopted policies of the coordinated fire and rescue system. Boards and governing authorities of volunteer companies and squads shall have full authority to adopt policies, guidelines and protocols for the governance of their stations, except where specifically constrained by state law, county ordinances, or policies of the coordinated fire and rescue system as they are duly adopted. Nothing in this article is intended, nor shall it be construed, to make any member of a volunteer company or squad an employee of the county.

(b) *Responsibilities.* Volunteer fire companies and rescue squads shall have all the powers and duties granted to them by state law. They shall also execute the following responsibilities in conformity with their respective organizational by-laws, chains of command, and the duly adopted policies of the coordinated fire and rescue system:

1. Managing performance by the company or squad, including directing station activity and operations as needed;
2. Assuming or delegating the role of incident commander within the system's integrated incident command structure;
3. Providing management of response districts and apparatus response orders;
4. Selecting and promoting officers and other personnel;
5. Recruiting, retaining and advocating on behalf of volunteer members;
6. Managing officers and personnel, including disciplining, training, and keeping records;
7. Preparing their annual budgets for submission to the county, and managing their budgets;
8. Fundraising and managing all funds and assets that derive from private or non-county sources;
9. Collecting and forwarding to the fire and rescue chief such data, statistics and other information as may be necessary to assure the efficient and economical operation of the coordinated fire and rescue system;
10. Caring for and maintaining station facilities, apparatus and equipment; and
11. Managing station procurement of supplies and coordinating station procurement and stewardship of county-supported apparatus, equipment, and tools.

(c) *Chiefs.* The operational head of each volunteer fire company and rescue squad within the coordinated fire and rescue system shall be selected according to the by-laws of the company or squad and shall be known as the chief. Volunteer chiefs shall exercise the authority granted to them by state law and the by-laws of their organizations, so long as their actions do not conflict with the provisions of this article or the duly adopted policies of the coordinated fire and rescue system.

State law reference – Virginia Code §§15.2-955, 27-9, 27-10, and 32.1-111.14

Sec. 6-106. Establishment and composition of FEMS Board.

(a) The Albemarle County Fire and EMS Board ("FEMS Board") is hereby established to accomplish the following:

1. Collaborate with and advise the fire and rescue chief concerning the delivery of fire, rescue and emergency medical services as representatives of the volunteer companies and squads and as described by this article;
2. Facilitate communication and collaboration between the volunteer and county-employed members of the coordinated fire and rescue system; and
3. Communicate issues of importance to the fire and rescue chief concerning individual volunteer organizations or the coordinated fire and rescue system.

Nothing in this article abridges the First Amendment rights of private citizens to communicate directly with the county executive or the board of supervisors.

(b) The FEMS Board shall be composed of the highest ranking operational leader of each of the volunteer organizations listed in section 6-102 of this article and the fire and rescue chief, who shall also serve as the executive of the system in accordance with section 6-104. Nothing in this section shall

be construed to prevent the FEMS Board from adopting by-laws concerning voting rights and the delegation of duties.

Sec. 6-107. Responsibilities of the FEMS Board.

The FEMS Board shall perform the following duties:

- (1) Adopt by-laws for its operation consistent with this article, including, but not limited to, by-laws concerning the voting rights of members and the delegation of member responsibilities.
- (2) Review all proposed policies affecting the coordinated fire and rescue system and provide comments and advice to the fire and rescue chief through the collaborative procedures established in section 6-109 and ensure the communication of duly adopted system-level policies to all companies and squads.
- (3) Appoint a committee or committees to meet regularly with the fire and rescue chief, county staff and, if appropriate, county volunteers, in order to consider concerns and provide input regarding:
 - a. Incident management;
 - b. Non-conformance with duly adopted system policies; and
 - c. Assurance of quality in the delivery of emergency services.
- (4) Appoint such additional committees as may be necessary, as well as committees that may be useful to facilitate communication regarding matters of importance to the coordinated fire and rescue system in the performance of its essential mission, including county staff and county volunteers in such committees, as appropriate.
- (5) Appoint an executive committee to perform the responsibilities outlined in section 6-108.
- (6) Review and provide input and recommendations to the fire and rescue chief regarding new initiatives for the system's operating and capital improvement budgets.
- (7) Develop, in collaboration with the fire and rescue chief, a broadly supported grievance procedure for chiefs of volunteer organizations to contest decisions of the fire chief to the county executive or his designee in matters affecting individual volunteers, who are not employees of the county, in accordance with section 6-109. The general management and discipline of volunteers shall be a station-level responsibility, as provided in section 6-107.
- (8) Meet on a regular basis in order to perform its responsibilities under this section, and present a report at least annually to the board of supervisors regarding the health and welfare of the volunteer system.

Nothing in this article abridges the First Amendment rights of private citizens to communicate directly with the county executive or the board of supervisors.

Sec. 6-108. Executive committee of the FEMS Board.

(a) *Composition.* The executive committee of the FEMS Board shall be composed of the chair and vice-chair of the FEMS Board, a fire representative selected by the FEMS Board in accordance with its by-laws, and a rescue representative selected by the FEMS Board in accordance with its by-laws. The fire and rescue chief shall lead and facilitate the executive committee. Executive committee members must be active members in good standing with their respective volunteer companies and squads.

(b) *Terms of service.* The FEMS Board shall determine the terms of service for committee members, who shall serve at the pleasure of the FEMS Board.

(c) *Responsibilities.* The executive committee shall advise the fire and rescue chief in a timely manner on all proposed policies of the coordinated fire and rescue system and on any other system matter for which the fire and rescue chief requests input and advice. In addition, the executive committee shall perform other functions delegated by the FEMS Board in accordance with this article and FEMS Board by-laws. The executive committee shall meet as frequently as needed to discharge these responsibilities.

Sec. 6-109. Procedure for developing policies of the coordinated fire and rescue system.

(a) *Purpose.* In adopting this article the board of supervisors recognizes that, to have full effect, policies must be developed through a collaborative process and enjoy the support of a majority of the elements of the coordinated fire and rescue system. The procedures in this section are intended to assist the fire and rescue chief, the FEMS Board, and the executive committee in the collaborative and careful development of policies for the system. These procedures may be changed at any time by agreement of the fire and rescue chief and the FEMS Board by a majority vote. In addition, the fire and

rescue chief may at any time seek more input and advice from the executive committee or FEMS Board than this section requires.

(b) *Initiative and Drafting.* Any member of the coordinated fire and rescue system may suggest new policies or policy amendments to the fire and rescue chief and the FEMS Board through the member's chain of command. In cooperation with the executive committee, the fire and rescue chief shall oversee the preparation of new system-level policies and the review of all existing system-level policies. Policies that affect only county employees or county volunteers will not be considered by the executive committee. Draft policies, prepared by the fire and rescue chief, shall be submitted to the executive committee for joint consideration and collaborative development. The draft will be accompanied by a written report summarizing the rationale for the policy and the impacts, if any, on volunteer budgets and volunteer members' time.

(c) *Executive Committee Role in Policy Development.* The executive committee shall review and evaluate all draft policies proposed by the fire and rescue chief or others in light of the following standard: whether the policy is essential to the effective and equitable provision of high-quality, countywide fire and rescue services (hereinafter, "system policy standard"). Within thirty (30) calendar days of receiving the initial draft policy, barring unforeseen circumstances, the executive committee shall review the draft and decide to: support the policy as worded; support the policy with specific revisions; or decline to support the policy. The committee may accompany its decision with a written explanation of its position, although it must provide a written explanation in the event it declines to support the policy.

The fire and rescue chief shall consider the comments and recommendations of the executive committee and shall incorporate such recommendations for revision which, in his judgment, meet the system policy standard. The fire and rescue chief shall then re-submit the draft, with any revisions, to the executive committee for additional review and comment, repeating this process until he is satisfied that the resulting draft meets the system policy standard and addresses the reasonable concerns of the executive committee. Should the chief decline to accept any material recommendation for revision from the executive committee, he shall provide a written explanation of his decision to the executive committee and attempt to reach a consensus with the committee prior to submitting the proposed policy to the FEMS Board.

During the collaborative process described above, the executive committee shall brief other members of the FEMS Board on the progress of its work with the fire and rescue chief and solicit from the FEMS Board any questions, concerns and suggestions for introduction to the chief.

(d) *FEMS Board Deliberations.* After completing collaborative consultations with the executive committee as described above, the fire and rescue chief shall submit the proposed policy, along with any annotations he considers necessary, to the full FEMS Board for its review. If, after following the collaborative process described above, the executive committee wishes to advance a policy which the fire and rescue chief has declined to issue, as evidenced in written notice to the executive committee, the executive committee shall submit the policy to the FEMS Board for its review. The fire and rescue chief may submit an alternative policy or a written summary of the reasons for his decision to decline issuance with the executive committee's policy for simultaneous review by the FEMS Board. If both the fire and rescue chief and the executive committee submit policies for simultaneous review by the FEMS Board, the FEMS Board shall consider and vote on both policies at the same meeting.

Provided that the proposed policy is submitted to the FEMS Board at least fourteen (14) calendar days before any monthly meeting, the FEMS Board shall take action on the policy at that meeting unless the FEMS Board decides, by a majority vote, to require a second reading of the policy at the following meeting. After considering the draft policy in light of the system policy standard defined in §6-109(c), the FEMS Board shall take one of the following actions by majority vote, which shall be reflected fully in the minutes of the FEMS Board:

1. Accept the draft policy as worded.
2. Support the policy in principle, but with specific revisions.
3. Decline to accept the policy. If the FEMS Board subsequently votes to appeal the policy, it must provide a clear explanation for its vote at that meeting, and may, at its discretion, follow with a written explanation of the reasons for its opposition.

After the FEMS Board votes to take an action described in numbers 2 or 3 above on a policy proposed by the fire and rescue chief, the chief shall reconsider the draft policy in light of the system policy standard defined in §6-109(c) and incorporate such revisions from the FEMS Board which, in his judgment, meet that standard. The chief shall then submit any revised draft policy to the FEMS Board or the executive committee for additional review and consider any further recommendations, repeating this process until he is satisfied that the resulting draft policy meets the system policy standard and addresses the reasonable concerns of the FEMS Board. The chief shall submit his final draft policy to the FEMS Board at least fourteen (14) calendar days before their next meeting for final consideration.

(e) *Adoption of Policies.* The fire and rescue chief shall be authorized to adopt and issue a policy of the coordinated fire and rescue system immediately after a vote by the FEMS Board to support the policy as worded. Should the FEMS Board vote to support the policy with revisions, or to decline to support the policy, the chief shall be authorized to, but need not, issue the proposed policy as submitted after providing written notice to the FEMS Board at least fourteen (14) days prior to the next FEMS Board

meeting. In that event, the policy shall take effect the day after the next FEMS Board meeting or later, if the policy specifies a later effective date. Any vote by the FEMS Board to appeal a policy shall immediately suspend the adoption and issuance of the policy.

(f) *Appeals of Policies.* Appeals of proposed policies will be taken in accordance with this section. The FEMS Board may vote to appeal either a proposed policy of the fire and rescue chief, or to appeal the chief's decision to decline issuance of the executive committee's proposed policy, by a majority vote taken no later than the next meeting following the introduction of the policy to the FEMS Board or the meeting following the second reading of the policy, if a second reading has been required by the FEMS Board. The minutes of the FEMS Board shall reflect the vote to appeal and a summary of all statements made during the deliberation of the policy. Within seven (7) calendar days of any vote to appeal, the chairman of the FEMS Board shall submit a written notice of appeal, including a statement of the basis for the appeal, to the county executive. If the appeal arises from the chief's decision to decline to issue the executive committee's proposed policy, both the executive committee's proposed policy and any alternative proposed policy of the fire and rescue chief shall be submitted for joint review throughout the appeal process.

Within ten (10) calendar days of receiving the notice of appeal, the county executive or his designee shall provide a written decision to the FEMS Board and the fire and rescue chief. Decisions shall be based on whether the proposed policy or policies meet the system policy standard as defined in §6-109(c). A decision that the appeal has merit may also provide guidance to the fire and rescue chief and the executive committee regarding further work to be undertaken on the disputed policy. A decision that the appeal is without merit may be appealed to the board of supervisors by a majority vote of the FEMS Board at its next meeting.

Within seven (7) calendar days of the vote to appeal to the board of supervisors, the chairman of the FEMS Board shall submit a written notice of appeal, including a statement of the basis for the appeal, to the clerk of the board of supervisors. The written notice of appeal will be accompanied by a packet, compiled by county staff, containing a copy of the following: all documents submitted by the FEMS Board, fire and rescue chief, and the county executive as part of the appeal process; the proposed policy or policies; and the minutes, if any, reflecting FEMS Board deliberations on the proposed policy or policies. Any party may include such other documents it believes would be helpful for the board of supervisors to consider by providing them to the clerk of the board of supervisors prior to the expiration of the seven (7) calendar days described above. The board of supervisors shall consider the appeal at a subsequent meeting and issue a decision that the appeal should be sustained or not sustained, in whole or in part. The basis for the decision shall be whether the proposed policy or policies meet the system policy standard as defined by §6-109(c).

Sec. 6-110. Noncompliance with system policies.

(a) *Purpose.* A peer-accountability procedure for enforcing duly-adopted system policies applicable to volunteer fire companies and rescue squads is hereby established to accomplish the following:

1. full and consistent adherence to system policies by all member organizations;
2. fair, equitable, and objective consideration of all potential material noncompliance violations in accordance with this section;
3. management of discipline and compliance remediation efforts by the chief of the noncompliant organization to the greatest extent possible; and
4. promotion of open and ongoing communication by and between member organizations about policy compliance matters.

(b) *Definition of Material Noncompliance.* "Material noncompliance" or "materially noncomplying" with system policies means a failure to adhere to a system policy adopted in accordance with section 6-109 which: (i) is committed on two or more separate occasions, or on a single occasion if the alleged conduct involves either civil legal violations or actions by multiple members of the organization's leadership, or is committed intentionally after notice that the conduct would violate system policy; and (ii) does one or more of the following:

1. threatens the health, safety or welfare of county citizens, volunteers or county staff;
2. impairs the operational readiness of the coordinated fire and rescue system to deliver fire and emergency medical services;
3. violates any applicable civil federal, state or local law; or
4. involves the violation of a policy provision regarding public funds.

(c) *Informal Resolution of Concerns.*

1. The chiefs of all member organizations and the fire and rescue chief shall be entitled to communicate concerns about noncompliance with system policies to the chiefs of those organizations believed to be noncompliant.

2. For all noncompliance concerns that rise to the level of "material noncompliance," as defined by this section, the complaining chief must first notify the chief of the noncompliant organization and make reasonable efforts to achieve a mutually agreeable resolution, consistent with system policies and this article, with that chief prior to initiating the procedures for formal resolution of material noncompliance. The complaining chief shall also apprise the executive

committee and the fire and rescue chief of the compliance concern and resolution efforts, and may seek assistance from the fire and rescue chief for such efforts.

3. Should such efforts to achieve a mutually agreeable resolution of material noncompliance fail, the complaining chief shall initiate a formal procedure for material noncompliance in accordance with subsection (d).

(d) *Formal Resolution of Material Noncompliance Complaints.*

1. *Initiating Complaint.* After completing the informal resolution process established in subsection (c), the chief of any member organization or the fire and rescue chief may initiate a formal Complaint of Material Noncompliance with System Policy ("Complaint") by submitting the Complaint in writing to the executive committee. The Complaint must state, at a minimum, which policy or policies has been violated, and a summary of the facts supporting the violation.

2. *Investigation of the Complaint.* As soon as practicable after receiving the Complaint, the executive committee and the fire and rescue chief shall consider the Complaint and determine whether reasonable cause exists to believe that the charged organization has materially noncomplied with a system policy. If the executive committee decides, by a majority vote, that reasonable cause exists, the executive committee shall undertake a formal investigation of the Complaint or appoint a committee to conduct the investigation. The investigation shall be concluded as soon as practicable and no later than thirty (30) calendar days after receiving the charge to investigate the Complaint, unless extraordinary circumstances justify the need for a longer investigative period. Should the fire and rescue chief disagree with the majority vote of the executive committee as to whether reasonable cause exists, the investigation shall be conducted as described in this section.

3. *Determination of Material Noncompliance.* The executive committee, or the committee appointed by the executive committee to conduct the investigation, shall prepare a written report summarizing the investigation and its factual conclusions and submit the report to the executive committee and the fire and rescue chief no later than ten (10) calendar days following the conclusion of the investigation. As soon as practicable following receipt of the report, the executive committee shall determine whether the charged organization has materially noncomplied with system policy. If the executive committee determines, by majority vote, that the charged organization has materially noncomplied with system policy, with the concurrence of the fire and rescue chief, the steps described in subsection (d)(iv) (Remediation) shall be followed. Should the fire and rescue chief disagree with the majority vote of the executive committee, the chief shall be authorized to take, but need not take, any action permitted by subsection (g) (Authority Reserved for Immediate Action) as needed to act in the best interest of the system.

4. *Remediation.* As soon as practicable following a determination of material noncompliance, the executive committee shall, in consultation with the fire and rescue chief, design a plan for remediating the noncompliance. The executive committee shall communicate the plan to the charged organization and oversee implementation of the plan. Should the charged organization substantially fail to implement the plan, the fire and rescue chief may modify the plan, discontinue the plan, implement an alternative plan, and/or take other action as needed. Prior to taking these steps, however, the fire and rescue chief must consult the executive committee about his intended action and consider its recommendations except when immediate action under subsection (g) is required, in which case he shall consult with the executive committee as soon as practicable after such action.

5. *Referral for Dissolution or Reduction in Funding.* If the executive committee and fire and rescue chief determine that the nature of the material noncompliance is so serious as to merit consideration of dissolution of the organization or reduction in its funding by the board of supervisors, they shall apprise the FEMS Board of the investigation and their recommendation for such action. After such appraisal, a recommendation may be made by the fire and rescue chief to the county executive for referral to the board of supervisors, which shall retain at all times the sole authority to dissolve a fire or rescue organization, pursuant to Virginia Code §27-10, and to determine annual appropriations.

(e) *Appeal Procedure for Determinations of Material Noncompliance.*

1. *Filing of Appeal.* Once the determination of material noncompliance has been made and the plan of remediation has been issued to the charged organization, the charged organization may appeal, in writing, the determination of material noncompliance, the plan of remediation, or both, to the county executive within thirty (30) calendar days of receiving the plan of remediation. The appeal must state the decision being appealed and the basis for the appeal. The charged organization may be assisted in its appeal by any member of the FEMS Board or by any individual.

2. *FEMS Board Review.* At the request of the charged organization, the FEMS Board shall review and discuss the Complaint, investigation report, determination of material noncompliance, and plan of remediation at its next meeting. After such consideration, the FEMS Board may, but need not, decide by a majority vote to provide a recommendation to the fire and rescue chief and to the county executive concerning the appeal.

3. *County Executive's Decision.* Within thirty (30) calendar days of receiving a timely appeal from a charged organization, the county executive or his designee shall issue a written decision to the charged organization, the fire and rescue chief, and the FEMS Board. A decision that the appeal has merit may also provide guidance to the fire and rescue chief and the executive committee regarding the determination of material noncompliance, the plan for remediation, or both. The decision of the county executive shall end the appeal process.

(f) *Disqualification from Voting.* No representative of an organization charged with material noncompliance may participate in the investigation of any Complaint or vote as provided in this section concerning its organization. In the event that a member of the executive committee belongs to a charged organization, the executive committee shall appoint a substitute member from an organization within the system to discharge all executive committee responsibilities of that member which are required by this section.

(g) *Authority Reserved for Immediate Action.* Notwithstanding the provisions in this section, the fire and rescue chief shall be authorized at all times to take immediate action to prevent or mitigate imminent harm to the health, safety, or welfare of county citizens, volunteers or county staff; to ensure operational readiness of the coordinated fire and rescue system to deliver fire and emergency medical services; to comply with all applicable laws; and to exercise any authority otherwise provided in section 6-104. Such immediate action may be taken concurrently with the procedures for informal resolution, formal resolution and appeal described in this section.

Sec. 6- 111 Office of the Fire Marshal.

(a) Pursuant to Virginia Code § 27-30, the Office of the County Fire Marshal is hereby established. The board of supervisors shall appoint the fire marshal and such assistant fire marshals as the board deems necessary.

(b) The fire marshal and his assistants shall, before entering upon their duties, take an oath, before any officer authorized to administer oaths, to faithfully discharge the duties of their offices.

(c) The fire marshal and his assistants shall be authorized to exercise all of the powers authorized by Title 27, Chapter 3 of the Virginia Code.

(Code 1988, § 9-1; Ord. 98-A(1), 8-5-98)

State law reference – Virginia Code §§27-30, *et seq.*

Sec. 6- 112 Junior Firefighters Program.

Any person sixteen years of age or older is authorized to participate fully in all activities of a volunteer fire company duly authorized to operate in the county after he or she:

(a) Becomes a member of the volunteer fire company;

(b) Supplies to the chief fire officer of the volunteer fire company written confirmation that such person is a resident of the Commonwealth of Virginia and has parental or guardian approval; and

(c) Attains certification under National Fire Protection Association 1001, level one, fire fighter standards as administered by the Department of Fire Programs.

(Ord. 01-6(2), 12-05-01)

State law reference -- Virginia Code § 40.1-79.1.

Agenda Item No. 11. PUBLIC HEARING: PROJECT: SP-2010-00053. South Plains Presbyterian Church (Signs #92&93).

PROPOSAL: Amend existing special use permit to allow removal of 19th century manse.

ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access.

SECTION: 10.2.2.35, 35, church building and adjunct cemetery.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/acre in development lots).

LOCATION: 410 Black Cat Road, at the intersection of Black Cat Road (Route 616) and Louisa Road (Route 22).

TAX MAP/PARCEL: 08000000011600.

MAGISTERIAL DISTRICT: Rivanna.

(Advertised in The Daily Progress on April 4 and April 11, 2011.)

The executive summary forwarded to Board members states that on May 13, 2009, the Albemarle County Board of Supervisors approved SP2008-29 to allow for the construction of a new fellowship hall (Phase 1) and sanctuary (Phase 2) on the parcel directly in front of the 19th century historic manse and approximately 20 feet west of the original church. A site plan was subsequently approved for Phase 1 of the development on April 1, 2010. The applicant is now seeking to amend Special Use Permit SP2008-29

to allow demolition of the manse. On March 15, 2011 the Planning Commission recommended approval of the special use permit with the conditions recommended by staff.

In order to show the context of the existing site, the applicant submitted the approved site plan as part of this special use permit, which did not include the Phase 2 portion of the concept plan referenced in condition 1 by the Board of Supervisors approval of SP2008-29. The applicant is requesting that the same concept plan, minus the manse proposed to be demolished, be referenced as part of this special use permit as outlined in condition 1 below. Please note, based on recommendations from their landscape architect regarding species, minor modifications to the landscape plan have been made since the previously approved concept plan.

Staff recommends approval of SP2010-53, South Plains Presbyterian Church with the conditions recommended by the Planning Commission as amended to reference the concept plan.

SP-2010-00053 South Plains Church - Recommended Conditions of Approval

1. The development of the site shall be in general accord with the "Conceptual Site Plan" prepared for South Plains Presbyterian Church by Atwood Architects, Inc., dated ~~February 4, 2011~~ **March 25, 2011**, as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Site Plan, the development shall reflect the following major elements within the development essential to the design of the development:
 - the location of the parking area,
 - the location of the new sanctuary and fellowship hall, and
 - the preservation of existing trees as shown with tree protection fencing.
1. Provided parking shall not exceed seventy-five (75) spaces;
2. Commercial setback standards, as set forth in Section 21.7.2 of the Albemarle Zoning Ordinance, shall be maintained adjacent to properties zoned Rural Areas;
3. Storm water facilities and parking lot surface meeting the approval of the County Engineer shall be required before approval of the final site plan for this use;
4. There shall be no day care center or private school on site without approval of a separate special use permit;
5. Health Department approval of well and/or septic systems;
6. 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;
7. Documentation of the manse, including detailed digital photographs of both the interior and exterior, and drawings of the floor plans and elevation with measurements, shall be submitted to the County prior to the issuance of a demolition permit;
9. The screening trees (58) shown on the Conceptual Site Plan along the rear property line shall be planted prior to demolition of the manse.
 - (i) The plantings will be evergreen trees, five (5) to six (6) feet tall, planted a minimum of eight (8) feet on center or spacing distance as recommended by the American Nurseryman's Association;
 - (ii) The tree choices are arborvitae or trees of comparable value.

Mr. Cilimberg reported that this is an SP to amend the original special use permit – 2008-00029 – to allow the removal of the manse located on the site, which dates to approximately 1900. He stated that this is an area characterized by large farms, scattered patches of wooded areas and the church site itself is listed as a contributing resource in the Southwest Mountain Rural Historic District. Mr. Cilimberg presented photos of the location of the manse and its proximity to the new fellowship hall, and an updated plan showing the removal of the manse and some new evergreen screening. He referenced a photo showing a view from the adjacent property to the south, noting that that particular property owner has been concerned about the removal of the manse as it helps buffer the view of the new fellowship hall.

Mr. Cilimberg said that staff believes that given the distance of the hall from the property owner's home, in addition to the existed wooded area in the southern rear portion of the lot, the view is substantially mitigated and the evergreen trees on the shared southern property line would provide further buffering from the properties to the south. He stated that staff and the Planning Commission recommend approval with conditions as noted.

Ms. Mallek asked how tall the trees are expected to get, adding that they are not really going to be effective as visual screening.

Mr. Cilimberg responded that he is not enough of a tree expert to say how the five six foot tall trees planted eight feet on center is going to fill.

Mr. Snow said that Leyland Cypress are very fast-growing and would fill in nicely.

Mr. Boyd noted that this was the agreeable solution arising from much negotiation of the original special use permit, adding that he has met with the neighbors and the applicant there.

Ms. Mallek commented that there was a long debate at the last review, with concern about removal of the manse.

Mr. Snow said that the manse is painted white and without it the fellowship hall will blend in and be less visible than what is there now.

Mr. Rooker said that he agrees with the visibility issue, but the applicant had originally wanted to preserve the manse because of its historic significance.

At this time, the Chair opened the public hearing.

Mr. Bill Atwood addressed the Board, stating that he is here with Ashley Cooper of Cooper Planning to represent the church.

Mr. Atwood presented a photograph showing the sanctuary, noting that it has been on the site for 190 years with no bathrooms in the church the entire time. He said that this has been a very long discussion with eight different schemes for redesign, and most of the debate was based on the scale of the solution relative to this building, as you have to be a simple mass in association with a building that has a simple façade and very simple openings.

Mr. Atwood stated that there has been involvement by the ARB, the Commission and Board, and the tree cover onsite led to the recommended solution. He said that the original scheme called for parking in the rear, which provided the necessary parking for service, but damage to the tree canopy required them to develop other schemes in order to accomplish what they ultimately do.

Mr. Atwood said that they positioned the new sanctuary in a location where no green would be disturbed, adding that the manse was discussed but was not the biggest concern, and pointing out in a photograph where its roof is. He stated that they attempted to tear off the front of the manse to create a roof connection but it became apparent that there really was not much manse left and it became a liability.

Mr. Atwood added that he does not recall from the last time this was reviewed any public discussion against the decisions made to this point. He also said that they agreed to add trees to the front, and the applicants have been good citizens to the neighborhood.

Mr. Rooker asked him what the size of the new sanctuary is.

Mr. Atwood responded that Kirk Hall, the fellowship hall, has a 4,500 square foot footprint with two floors (one being a basement) and it has been dropped so far in the ground that the sidewalk leading to it has to have a handrail. He confirmed that the manse is 1,231 square feet, and the connection piece between the manse and the building changes the manse forever. He said that it becomes a very tough fit, so the decision was made to move in another direction.

Mr. Dorrier asked about the architectural significance of the manse.

Mr. Atwood replied that it is a little bit older than he is, and it has been a good solider to a solid church for many years, but that use is now diminished if not erased.

Mr. Rick Bowie addressed the Board, stating that he lives in the Scottsville District and was formerly a Supervisor representing the Rivanna District. Mr. Bowie acknowledged Mr. Dorrier's service to the County, stating that Scottsville residents would miss him and wish him the best for the future. Mr. Bowie stated that he and his wife are members of the church and said the congregation tried to save the manse but the cost to remove it was \$40,000 and would be recycled. He emphasized that they would work to protect the trees and the surrounding areas, and asked the Board to let the church serve some other people for the next 100 years. Mr. Bowie asked supporters of the application to raise their hands, and then asked those against the application to raise theirs.

Mr. Preston Stallings addressed the Board, stating that he has been a builder for over 50 years, has looked over the church building, and determined it was not worth repairing. He stated that the building has no historic value and should be torn down as it is a fire hazard to the new building.

Mr. Bill Orr addressed the Board, stating that he has been going to church there for approximately twenty five years and indicating that there was never a plan to keep the manse where it is. He said that an interested party had considered moving it but realized it would be difficult to move and that it was not particularly valuable. Mr. Orr stated that there are no big beams, no heart pine floors, etc., and a salvage company indicated it was not a special building in any way. He emphasized that the new building performs the role that the old one did, and they would like a few months to take the building down.

Frank Keplinger addressed the Board, stating that there were twenty seven trees planted in the front yard of the church, many that will have to be removed when the parking lot is built, and the screening trees are six to eight foot trees. We feel like we have really done a good job with the landscaping, and we believe that the landscape of the church should be as inspirational as the sanctuary itself.

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

Mr. Boyd said that he has had the opportunity to meet with the congregation at the church and is very happy they were all able to come up with a solution.

Mr. Snow said that one speaker had asked for more time to dismantle the old manse and wondered if that should be a condition.

Mr. Boyd commented that they can take as much time as they want.

Mr. Cilimberg noted that the SP has already been started through the work occurring there now.

Mr. Rooker said that there was no deadline as to when they had to have the manse down.

Motion was offered by Mr. Boyd to approve SP 2010-00053 subject to the nine conditions as recommended by staff and the Planning Commission. The motion was **seconded** by Ms. Mallek. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

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

1. The development of the site shall be in general accord with the "Conceptual Site Plan" prepared for South Plains Presbyterian Church by Atwood Architects, Inc., dated March 25, 2011, as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Site Plan, the development shall reflect the following major elements within the development essential to the design of the development:
 - the location of the parking area,
 - the location of the new sanctuary and fellowship hall, and
 - the preservation of existing trees as shown with tree protection fencing.
2. Provided parking shall not exceed seventy-five (75) spaces;
3. Commercial setback standards, as set forth in Section 21.7.2 of the Albemarle Zoning Ordinance, shall be maintained adjacent to properties zoned Rural Areas;
4. Storm water facilities and parking lot surface meeting the approval of the County Engineer shall be required before approval of the final site plan for this use;
5. There shall be no day care center or private school on site without approval of a separate special use permit;
6. Health Department approval of well and/or septic systems;
7. 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;
8. Documentation of the manse, including detailed digital photographs of both the interior and exterior, and drawings of the floor plans and elevation with measurements, shall be submitted to the County prior to the issuance of a demolition permit; and
9. The screening trees (58) shown on the Conceptual Site Plan along the rear property line shall be planted prior to demolition of the manse.
 - (i) The plantings will be evergreen trees, five (5) to six (6) feet tall, planted a minimum of eight (8) feet on center or spacing distance as recommended by the American Nurseryman's Association;
 - (ii) The tree choices are arborvitae or trees of comparable value.

Agenda Item No. 12. **PUBLIC HEARING: PROJECT: SP-2010-00032. Avon Street Ross AT&T CV376 Tier III PWSE.**

PROPOSAL: A one hundred and eleven (111) foot AT&T treetop Personal Wireless Service Facility in an avoidance area (Southern Albemarle Rural Historic District).

ZONING CATEGORY/GENERAL USAGE: RA, Rural Areas-; agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).

SECTION: 10.2.2 (48) which allows for Tier III personal wireless facilities in the RA Zoning District.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - Preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/acre in development lots).

ENTRANCE CORRIDOR: YES.

LOCATION: 527 Woodchuck Lane off of Scottsville Road [State Route 20]. **TAX MAP/PARCEL:** 09000-00-00-014B2.

MAGISTERIAL DISTRICT: Scottsville.

(Advertised in The Daily Progress on April 4 and April 11, 2011.)

Mr. Gerald Gatobu, Planner, addressed the Board, stating that this is a special permit application pertaining to a Scottsville Road facility, as AT&T is trying to provide coverage in the corridor along Route 20 South toward Scottsville. Mr. Gatobu stated that usually people are calling in opposition to towers, but in this case he has had landowners call and offer their property. He said that this is a special use permit because it is in the Southern Albemarle Historical District and ordinarily this would have been a typical Tier II permit. Mr. Gatobu reported that staff did a balloon test in November and presented photos of the tower site and proposed monopole location, noting that the balloon was not highly visible during the test.

He also stated that the runoff generated from the new access point would be addressed through a condition that the applicant maintain runoff within the property and try to mitigate it.

Mr. Gatobu stated that the tower would be 111 feet tall and is not visible from Scottsville Road, noting that it is a scenic byway that prohibits location within 200 feet, but the applicant's site is well beyond that. He said that on March 1, 2011 the Planning Commission recommended approval with

conditions, adding that they agreed the tower would provide cell phone coverage on Scottsville Road with no loss of historic or scenic resources, and runoff would be addressed with Section 5.140-D9 with final construction drawings. Mr. Gatobu stated that staff recommends approval of the facility at the proposed height of ten feet above the reference tree with conditions as presented.

Mr. Rooker commented that it looks like a really good location for the tower with minimal visibility.

At this time, the Chair opened the public hearing.

Ms. Marian Ross addressed the Board, stating that AT&T has worked for some time on this in very good faith and in a very professional way. Ms. Ross said that when the historic district was made it was run down to Marshall Manor, a house that was built in a Japanese style.

Ms. Katie Carmichael addressed the Board on behalf of the applicant, stating that AT&T is trying to improve coverage along Route 20 and noting that there is significant tree coverage in the area. Ms. Carmichael said that this site was chosen for a number of reasons, one of them being that it avoids critical slopes. She noted the location of the access to the site and referenced a map of coverage in the area before and after the tower. Ms. Carmichael presented photo simulations of the proposed tower, noting that it is not visible from Route 20 and stating that there is a natural clearing on the tower site that has helped with construction.

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

Motion was offered by Mr. Dorrier to approve SP 2010-00032 subject to the two conditions as recommended by staff and the Planning Commission. The motion was **seconded** by Mr. Rooker. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

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

1. The proposed personal wireless service facility must be developed in general accord with the plan prepared by SAI Communications with a revision date of 12-2-2010, and a certified engineer's seal and signature dated 12-02-2010; and
2. Additional condition to be added requiring the applicant to keep the runoff off the neighboring property. (Language to be finalized prior to this item going before the Board of Supervisors. The goal is not to try to keep all runoff from the adjacent site, but to reduce the impact of the increased runoff resulting from the tower.

Agenda Item No. 13. **PUBLIC HEARING: PROJECT: ZMA-2010-00001. Pantops Ridge.**
(Signs #13,14&15).

PROPOSAL: Rezone approximately 37.5 acres from PD-SC Planned Development Shopping Center, which allows shopping centers, retail sales and service uses and residential by special use permit (15 units/acre) to R-15 Residential zoning district which allows single family attached/detached uses and multifamily residential uses up to 15 units/acre. Proposed number of units is 399 for a density of 11 units/acre.

PROFFERS: Yes.

EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses; Urban Density Residential - residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses; Greenspace.

ENTRANCE CORRIDOR: Yes. **LOCATION:** 1998 Hansens Mountain Road, Intersection of US Route 250 East and Hansens Mountain Road. Access is proposed from a relocated Hansens Mountain Road and through 106 Viewmont Court.

TAX MAP/PARCEL: Tax Map 78, Parcel 53; Tax Map 78B-A-4 is not included in the rezoning. It will be used for the road relocation.

MAGISTERIAL DISTRICT: Rivanna.

(Advertised in The Daily Progress on April 4 and April 11, 2011.)

Mr. Cilimberg reported that this site has been proposed as a gazebo plaza shopping center next to Glen Orchy, Ashcroft, and near the I-64 interchange off of Hanson's Mountain Road. He said that the proposal would rezone about 37.5 acres to R-15 residential and the proposal is for 399 residential units, approximately eleven houses per acre.

Mr. Cilimberg stated that there are a number of proffers, including the relocation of Hanson's Mountain Road, as well as a proffered exhibit that shows the road relocation although there is no proffered plan of development. He presented the approved site plan for Gazebo Plaza, which includes access on the existing Hanson's Mountain Road to come out at the 250 intersection which has had a crossover but is proposed to be closed.

Mr. Cilimberg presented the proffered Hanson's Mountain Road exhibit, noting that the proffered plan would relocate it through another property, then through Viewmont and Glen Orchy, using Glen Orchy Drive as the access to 250 at a signal by its intersection.

Mr. Rooker said that it is an area covered by the Pantops Master Plan and the land uses identified in the plan are neighborhood density residential, urban density residential, central green, and some additional green space.

Mr. Cilimberg reported that since the item came before the Planning Commission as a public hearing earlier in the year, a number of revisions have been made by the applicant, such as a reduction in the number of dwelling units, updating of Hanson's Mountain Road relocation, landscaping proffered, a minimum of 50 percent of dwelling units at build out being single-family attached or detached, more detailed architectural standards, revised trail easement proffers to provide more detail, a commitment to no less than 15 percent of gross acreage as green space, limit on height and structures to four stories, and a bus stop to be located on the relocated Hanson's Mountain Road.

Mr. Cilimberg stated that the proffer for the abandoned shopping center site plan was tied by the Board to the approval of this rezoning previously, and now it is tied to the approval of the first site plan or subdivision under this rezoning and the VDOT issuance of commercial entrance permits. He added that late today, the applicant offered \$100,000 toward the Pantops Fire Station.

Mr. Rooker commented that the Board has not seen the final proffers.

Mr. Davis indicated that they were emailed to staff at 4:00 p.m. today.

Mr. Cilimberg reported that staff found favorable factors with the project being more in keeping with the Pantops Master Plan than the shopping center, the relocation of Hanson's Mountain Road can address existing and potential traffic impacts and concerns, and should have less impact on surrounding residential developments than the shopping center would. Mr. Cilimberg noted that unfavorable factors include a density that exceeds the master plan recommendation, which is 305 units exclusive of the green space.

Mr. Rooker asked about the letter sent November 17, 2010 to the applicant's representative, stating that the master plan calls for 305 units but indicating that a more liberal application of the plan could allow for approximately 395 units, or 10 dwelling units per acre.

Mr. Cilimberg said the plan is the plan, and the 395 figure was taking into account the possibility of some green space area being used for development that was not within the view shed of Monticello or resource area associated with streams.

Mr. Rooker asked if density was typically calculated on gross acreage or net acreage.

Mr. Cilimberg responded that it is normally computed from the area shown in the plan as being designated for residential use, commercial use, etc., and the 305 is computed based on only two specific areas. He said that an R-15 zoning without proffers to limit the number would be based on 15 dwelling units per acre times the number of acres or gross acreage. Mr. Cilimberg added that this does allow for higher net densities when people cluster, and the Comprehensive Plan is a little less absolute.

Mr. Boyd asked why the green space is specifically dedicated when there is no idea what will be built around it.

Mr. Cilimberg responded that it's just guidance, a starting point for the discussion.

Mr. Rooker noted that the applicant did not participate in the master planning process but felt it was important to have green space available.

Mr. Cilimberg noted that no proffered plan of development has been provided, so something like a central green has not been provided for. He also said that the traffic study that would normally have been provided to VDOT in a rezoning case has not been done, so the proffered relocation of Hanson's Mountain Road cannot be verified as approvable.

Mr. Cilimberg stated that a proffered traffic study with a site plan or subdivision plat does not obligate the applicant to road relocation design improvements not otherwise proffered. He said that the worst case scenario would be they could develop a site without the road.

Mr. Rooker commented that there is a horrible traffic situation in Pantops that is getting worse and this might help that, but these proffers do not require the applicant to build the road and make those improvements unless he can obtain approval exactly as submitted.

Mr. Davis clarified that the amended proffers have not changed that proffer, but what they say is that the offsite road improvements are conditioned upon the improvements being required to conform with what is shown in their exhibit or addressing five issues that are identified in proffer 1-F that may be required as a part of a traffic study that is proffered to be done at the site plan stage. He stated that if there are any improvements required that are outside of those specific improvements that may be addressed by the traffic study, or if the improvements required by VDOT are not as shown on their exhibit

there is no requirement that the applicant do any offsite road improvements, and they would still have their R-15 zoning.

Ms. Mallek asked if that could be addressed through conditions.

Mr. Davis responded that the applicant could proffer something more specific to close that loophole, but that is not what the Board has before them at this time.

Mr. Rooker asked if finalized proffers had been put into the Board's information.

Mr. Davis indicated that he did not get them until just now.

Mr. Boyd said that the only thing that has changed is the addition of \$100,000 for the fire station.

Mr. Davis stated that the proffer indicates the proffer would be triggered when a building permit is obtained for a Pantops fire station.

Mr. Cilimberg reported that staff also raised concern of obligations to acquire land for the relocation of Hanson's Mountain Road, and a commitment by the applicant has now been made to first seek acquisitions by written offer, which is not something the Planning Commission saw, but if unsuccessful in seeking acquisition, it is just the obligation of the County, with the applicant covering costs incurred.

Mr. Rooker said that this is an issue at some point, as private property would need to be acquired in order to build the road to VDOT standards and come out to Route 250. This puts the onus on the County to condemn that property for that road.

Mr. Thomas expressed concern about the County being in that position and said that he would not vote for it in that situation.

Ms. Mallek also said that she would like Mr. Davis to address whether private property is being condemned for the benefit of a private person rather than public use.

Mr. Davis responded that there is much public concern about condemnation being only for a public purpose, and a constitutional amendment has passed one session of the General Assembly that would further restrict when localities could condemn private property if the primary purpose was for something like economic development.

Mr. Davis emphasized that the road is an identified needed improvement, and condemnation procedures as they exist today could be used to take the property necessary to make these improvements. There may be a perception that it is being done to benefit a particular developer in this case, but under existing law he feels the County could justify the public purpose and the public need for acquiring this property.

Mr. Davis said that how much land needed would be very dependent upon engineered road plans and could be significantly more if the right of way has to shift or be straightened.

Mr. Cilimberg said that that is why staff asked for a traffic study early in the review of this application, because all that the applicant has brought forth is a rendering of the road relocation.

Mr. Boyd stated that he was hoping someone from VDOT would be here, as that has been one of their priorities for a number of years, and that intersection has become one of the most dangerous in the County. He said he does not want to lose another young driver to an inadequate intersection, and that is worth some consideration in the overall project. He said that as Mr. Rooker pointed out earlier, the Board has to be sure that the road has to be built, and it has to be built to specifications. He added that he is not sure there are proffers here that reflect that.

Mr. Rooker noted that the approval could technically be conditioned on the County's willingness to condemn property. He said that the Board needs to go into this with open eyes.

Mr. Snow said that it is unknown how much land would be needed until the traffic study is done.

Mr. Rooker responded that whatever the Board does, it needs to be made certain that whatever they do accounts for the fact that this development cannot proceed without road improvements.

Mr. Cilimberg stated that the applicant has designed the concept around what they believe would accommodate a little over 5,000 vehicle trips per day, and have used a cross section with a sidewalk on one side, but it would be preferable to have sidewalks on both sides.

Mr. Thomas said that the road is needed to get traffic in and out of Ashcroft, but the problem in that area is not just at that intersection. He asked if a road study would take into account the left turn lane turning onto I-64 East.

Mr. Cilimberg explained that the traffic study under the 527 requirements stipulates that the study be for current and forecast year conditions and they are supposed to be taking into account not only the immediate intersection but also those in proximity to the location. He emphasized that you cannot really

require an applicant to do offsite improvements in a site plan process, other than what immediately accesses their site; the only opportunity to address that would be during a rezoning.

Mr. Rooker said that the Board is being asked to approve this without the information available as Mr. Thomas mentioned. He stated that there has been some widening at the Shadwell I-64 exit, but the ultimate solution is a millions of dollar solution that the County will not see the funding for, for many years.

Mr. Rooker also mentioned Exit 119 off of I-64, which is a higher priority than Shadwell, but is a \$60 to \$70 million cost.

Mr. Cilimberg stated that there is no commitment to bus service but there is a bus turnoff being provided, and there is no commitment to affordable housing, which has been expected from residential development since the adoption of the policy in the mid 2000's. He also said that the applicant is not providing cash proffers as per the cash proffer policy, which is estimated at \$5.3 million based on the dwelling unit type.

Mr. Cilimberg stated that the relocated Hanson's Mountain Road, bus stop turnoff and Pantops fire station cash would be offsets to the cash proffer policy but impacts to schools, libraries and public safety would not be addressed without cash proffers, which are also a consistent expectation of the Board.

Mr. Cilimberg noted that commercial development has a different fiscal impact than residential development, which is typically putting children in schools and demanding services that commercial development does not, which is why the proffer policy is geared toward residential. He stated that commercial is usually more directly addressed through improvements such as transportation to serve sites.

Mr. Cilimberg stated that the proffers are in need of some substantive and technical changes and are not legally acceptable as presented. He said that staff recommends denial of the ZMA but should the Board wish to approve it the proffers would need to be changed as mentioned.

Mr. Snow said that one of the residents in the subdivision indicated there may be a way to bring the road in that would be less expensive.

Mr. Cilimberg explained that in working on the master plan, it was left that there might be different alternatives that might be utilized to provide the connection, and there was the potential of coming in the back which would involve different property owners.

Mr. Boyd commented that that has been considered already and there were some issues with that approach and the landowners there.

Mr. Rooker noted that there were some terrain issues there as well.

Mr. Cilimberg mentioned that the applicant owns one of the lots through which this proposed relocation would occur.

At this time, the Chair opened the meeting to public comment.

The applicant's representative, Ms. Valerie Long, addressed the Board on behalf of Neighborhood Properties and Mr. Spurzem. Ms. Long stated that the language in the proffers with regard to the potential need to acquire or swap land with landowners is absolutely the exact same language that has been used for at least three other projects that she has personally been involved in, and said that the language used is a starting place.

Ms. Long said that the applicant enhanced that language further after the Planning Commission's suggestion that there be a clause that obligated the owner to try to get it on his own first. She stated that Mr. Kamptner had also asked the applicant to include some additional provisions and take out other provisions, so the language goes further than other projects. Ms. Long added that the applicant is not aware of any other options for routing the road, and said that Mr. Spurzem bought a lot for about \$400,000 and rents that property out, which is the key land acquisition that enables the road relocation to actually occur.

Ms. Long stated that the proposed 399 dwelling units at 37.5 are consistent with the Comprehensive Plan, and staff's letter indicates that the plan is a general guide for long-term development of a community. Nowhere in the plan does it list how many parcels should be granted per acre. She added that the applicant has made a 29 percent reduction in number of houses since the Planning Commission meeting. Ms. Long said that staff's letter mentions 395 units or 10.64 dwelling units per acre as a more liberal interpretation of the Comprehensive Plan, and stated that the use is in conformance with the plan.

Ms. Long reported that relocation of Hanson's Mountain Road is critical to this project, and a trail has been proffered to be built by the owner along with a number of architectural elements. She stated that there is a setback from Culpeper Branch and the preservation of green space as a minimum of 15 percent of the property.

Mr. Rooker asked if there is a way of assuring that the green space would be useable, as opposed to floodplain area, etc., as it is not really addressed in the proffers. He said that the idea of a village green was to provide useable green space for the residents who might live in that area.

Ms. Long responded that this would be a well designed community, and Mr. Spurzem has a positive history of building high-quality facilities in the area. She said that the use of the term "green space" is for clarity purposes because it is mentioned that way in the ordinance.

Mr. Rooker commented that this project is not going to be voted on tonight due to technical issues with proffers, and clearly the road issue is a huge item that is not addressed in the proffers. He stated that he is not comfortable voting to approve a development that's primary public benefit is to provide transportation improvements that have no assurance built in.

Mr. Rooker stated that if it is not approved tonight and the applicant comes back with proffers, he would look more favorably on a green space proffer that specified useable green space.

Mr. Dorrier asked about affordable housing.

Mr. Rooker responded that it is an issue staff has had concerns with and perhaps the applicant would address that.

Ms. Long reported that the zoning ordinance requires sidewalks and street trees in residential communities and the ARB will have jurisdiction over this project because it borders on an Entrance Corridor, so landscape and building design will all be on the table as part of the site plan and subdivision process. She stated that this project is actually a down zoning, as the current zoning is Planned Development, Shopping Center, and the only current permitted use is the shopping center.

Ms. Long said that this is a down zoning to residential and the density has been reduced significantly, adding that the value of the road and other amenities totals several million dollars. She said the cash proffer policy does provide flexibility to the Board to consider unique circumstances. She added that the value of the relocation of Hanson's Mountain Road in construction costs alone is \$3-4 million, not even accounting for its full value, and this is a road situation the County agrees is extremely dangerous. Ms. Long stated that there is no funding from the County or VDOT for the road, so the project far exceeds that value.

Ms. Long explained that the application plan is not legally required under the R-15 zoning ordinance, and the applicant has tried to address all issues in the proffers that would normally be covered under an application plan. She stated that the applicant is proffering to do a traffic study at the site plan or subdivision plat stage, and VDOT has identified a handful of issues that need to be fixed, such as relocation of the road as well as a handful of issues related to the intersection of Glen Orchy and Route 250 that might need to go beyond what is shown on the plan, such as an extra turn lane and some signalization upgrades.

Mr. Rooker said that once this is approved, it is approved, and a site plan is ministerial not discretionary so the question would be whether the traffic study would reveal information that would be important in making the discretionary decision on the rezoning.

Ms. Long stated that there was an extensive traffic study done in 2006 as part of the shopping center site plan process back when there were 562 dwelling units planned, and the shopping center would have generated more than double that.

Mr. Rooker asked if staff agrees with that traffic study comparison.

Mr. Cilimberg stated that Mr. Glen Brooks, County Engineer, could address that.

Ms. Long said that the expense of upgrading the interstate interchange is astronomical, and the applicant is offering road improvements that are fixable at this point, those that serve the entire Pantops community and everyone who uses Route 250 in that area. She added that if the crossover is closed it will create a U-turn situation that would make things far worse.

Ms. Long presented a plan from an engineering firm who have looked at the site and said this can work, adding that the applicant has been careful how to design the road to achieve the goals of staying as close as possible to the existing right of way alignment, maintaining the gentle curves that are there, and installing a deflection island to slow people down. She said that VDOT had originally wanted the speed limit here to be 45 miles per hour here, but the applicant wanted to retain a residential character so he had engineers work with VDOT to ensure radiuses that allow for a 25 mph speed limit. Ms. Long stated that there is a sidewalk on the new road.

Mr. Snow asked how the plan would affect property owners in the area.

Ms. Long presented a chart illustrating how each lot would be affected, noting that not a single property would lose a single square foot of acreage overall but there is a need for some small boundary line adjustments. She said that there is an area of new right of way to be acquired from the property that is 567 square feet, which is the existing right of way that would be transferred to the property owner's lot.

Mr. Rooker clarified that this is essentially taking a little property and then abandoning some of the existing right of way that would go to the landowner.

Mr. Davis said that his understanding is that this is right of way that was dedicated to the County and is maintained in the State secondary road system, and there is a process for abandoning right of way that is at the discretion of the County.

Mr. Snow commented that essentially no one's property is being taken.

Ms. Long replied that it could be viewed different ways, presenting a rendering that illustrates the area of new right of way to be acquired from the Denbergs, totaling 292 square feet that would go from their lot into the right of way. She said that a small sliver currently in the right of way would be added to their lot. It is an exchange. It is a boundary line adjustment. She emphasized that the objective here is not to decrease anyone's lot size and to be as respectful as possible, knowing that the road has been approved by the County as part of the Comprehensive Plan.

Mr. Rooker asked if the applicant is willing to take the risk that more right of way needs to be acquired once the traffic study is done, engineering studies are done and VDOT comments on engineering plans. He said that it is one thing to equalize a property owner's situation of land loss and gain, but it is another thing to approve the project and find out that more land is actually needed because VDOT says the road needs to take a different trajectory. This is a concern of his, because a minimal case is being presented. He asked what happens if it turns out not to be a minimal case?

Ms. Long responded that that is why the applicant spent so much time with VDOT and got them to say yes, this will work. She said that VDOT has indicated that they would approve the road in this alignment in this location with certain radiuses and speed limit.

Mr. Rooker asked if there is any written confirmation from VDOT on that.

Ms. Long responded that they have an email from Mr. Joel DeNunzio after it went through various levels of review within VDOT confirming it, but she added that the applicant must do fully engineered designed road plans that show more detail than this. She said that in terms of fitting the road in as needed, along with traffic-calming measure, they have blessed this exhibit. Ms. Long stated that 100 percent of issues have not been decided but it is a highly engineered road plan.

Mr. Rooker reiterated that he would like to know if the applicant is willing to take the risk that the amount of property needed might be greater than what is being estimated.

Ms. Long said that the proffers contemplate that, and they are confident that more land will not be needed. She does not think that will be an issue, but the proffers have been written to say that the landowners will be worked with, and worked with in good faith and fair market value written offers will be made to them, and the applicant intends to do that.

Ms. Mallek asked if the items listed on page 3 of the new handout are basically the items that are completed and those that need to be considered.

Ms. Long responded that VDOT reviewed the plan in great detail and responded with some recommendations as outlined, the five things they indicated need to be looked at.

Mr. Rooker said that under the current proffers, proffer G says that the terms of the traffic improvements "are conditioned upon VDOT not requiring any additional offsite road or traffic improvements or cash contributions other than as shown in Exhibit A and is stated in subparagraph 1-F as a condition of approving any final site plan or subdivision plat within the property of the project, or as a condition for a commercial entrance permit." He asked Ms. Long, what happens if they do.

Ms. Long replied that the applicant believes that the scope of all the issues has been narrowed based on their comments.

Mr. Rooker stated that he understands that, but reiterated, what would happen if they do? He explained to Ms. Long that the Board does not have the power at that point to require anything beyond Exhibit A, and if that does not cut it, technically they could build the improvements without having to do anything listed in paragraph 1.

Ms. Mallek asked if the project would be contingent upon these things all being met?

Mr. Boyd responded, not the way it is written. He added that the question is whether the applicant is willing to tighten up the language to say the project cannot move forward without that road being built. The Board wants an absolute guarantee that that road has to be built before any kind of approval.

Ms. Long stated that the applicant's reason for working so intently with VDOT is to have them indicate everything that a traffic study might raise, adding that he is trying to avoid being tagged with additional improvements such as interstate interchanges. She emphasized that the goal is to improve traffic here and said the project does not work very well without the road.

Mr. Brooks said that there has not been an official scoping meeting regarding this project, and all the preliminary discussions Ms. Long is describing did not include the County, but were between the applicant and VDOT.

Ms. Long commented that the only use of the property currently is the shopping center and asked the Board to consider the application in light of the reality that the shopping center is the only legal use for the property. She noted that you could not build a church or a school there.

Mr. Rooker said that a lot of people would be happy with a church or a school there.

Ms. Long mentioned that there was a contract on the property for the church, but the purchaser and owner took it to the County and were told it is not permitted under the zoning or Comprehensive Plan designation.

Mr. Rooker said that under the existing zoning that is the case, but if they came in for a rezoning based upon a church they would not have a lot of trouble.

Ms. Long added that the applicant has made considerable changes and voluntary limitations since the Planning Commission meeting, noting the proffer for the Pantops Fire Station. The applicant thinks this is a unique case and there are not any other options, unfortunately.

At this time, public comment was invited.

Ms. Cynthia Neff addressed the Board, asking them not to approve this development and citing concerns about how to treat the growth areas and the rural areas. She said that she is really irritated after listening to Ms. Long for two hours. She said the applicant is acting like they are doing the County a big favor, adding that the residents of Pantops should be involved in this process. We have a significant problem as a community with Pantops and Route 250, and the problem is not just Hanson's Mountain Road, it is what is going to happen when all those people get out on 250.

Ms. Neff emphasized that they are not doing us a favor by building a development there and the fact that they are not willing to commit to affordable housing or a binding road plan is appalling at this point in time. She said that the people who have already bought into the community at Pantops need to be supported.

Mr. Richard McGrane addressed the Board, stating that he lives at Pavilions at Pantops and asked the Board to come from I-64 at 3:00 p.m. on a Friday afternoon and make it to Stony Point Road in less than a half hour. He said traffic is atrocious. He said that an outside party needs to do a traffic analysis, as the lights are completely out of synch, and the area perhaps should be rezoned to "God's country."

Mr. David Cook addressed the Board, stating that he is a third generation resident of the community and has been a full time real estate broker for the last 27 years. He stated that he supports this project because it will add a lot of desperately needed housing options in the Pantops market, including options for employees of the new Martha Jefferson Hospital. Mr. Cook said that this project puts housing exactly where it should be, in the designated growth area of the urban ring.

Mr. Cal Morris addressed the Board on behalf of the Pantops Community Advisory Council, which has looked at this application and responded via e-mail to the Board. Mr. Morris stated that the Council's charge is to support and defend the master plan for the Pantops area, which started moving in 2004 and consumed four years in its development, with the Board approving it in 2008.

He said that this location is in a transitional area, going from the development to the rural area, and it should be a gentle transition. Mr. Morris stated that a 300 dwelling unit neighborhood would better accomplish this and would blend in better with the neighboring Glen Orchy and Ashcroft. There is not enough information, but what is available does not follow the guiding principles of any type of planned unit such as walkability, sustainability, and so on.

Ms. Deborah Parsons addressed the Board, stating that she lives at 103 Viewmont Court, where she and her husband bought and built 30 years ago. She said that they chose it because it is a cul-de-sac and there are only five houses there.

Ms. Parsons stated that with 10 vehicle trips per day that would mean 7,050 cars going in front of her house daily when this development is combined with Ashcroft. That is an abomination. It would be a traffic nightmare.

She said that moving Hanson's Mountain Road and adding 400 more households would not alleviate traffic on 250, it would just add to it. Ms. Parsons stated that this would also harm her property values, adding that the Gazebo Plaza site that Mr. Spurzem sued the County for and won should remain as planned. She said that all the subdivision lines would have to be redone to accommodate the road change, but the biggest issue is that Mr. Spurzem does not currently own the land needed to do this and it would require the County to implement eminent domain. Ms. Parsons added that Harley Easter would be appalled to know what was happening here.

Mr. Ron Denberg addressed the Board, stating that the developer and his agent have finally recognized the interests of the residents of Viewmont Court, yet he has still not heard a good explanation

of why relocation of Hanson's Mountain Road must clip off 299.5 square feet of his property. Those 299.5 square feet are not for sale. Now if you see fit to force me to acquiesce to this private developer through the condemnation process that is the Board's prerogative. But he will not acquiesce quietly.

Mr. Denberg said that in the most recent proffers, the developer offers residents of Viewmont Court \$5,000 to plant a barrier to protect them from the noise and pollution created by the traffic. That sum is not adequate. That sum is not acceptable. He stated that he has been coming before the Board and Commission for 30 years to protect the interests of Viewmont Court and Glen Orchy, and in all of that time he has not heard a single discussion of the development of Hanson's Mountain for public safety in the Pantops area.

Mr. Denberg said that the traffic on 250 is dangerously congested, and this will just add hundreds and hundreds more vehicles. He also noted that every study he has seen has shown that increased population of a finite territory and the incidence of violent and property crime. Mr. Denberg said that if the Board foregoes a discussion of public safety they are being irresponsible, and said that a vote in favor of this plan is a vote in favor of making the government of Albemarle County complicit in the intrusion into the private lives of the citizens, the residents of Glen Orchy.

Ms. Melanie Carrot addressed the Board, stating that she lives on Viewmont Court and noting that she has sent an e-mail to them. Ms. Carrot said that she is strongly opposed to having a highway put through her front yard and is not sure why their neighborhood needs to be destroyed because of a new development on Hanson's Mountain Road.

Mr. Morgan Butler addressed the Board on behalf of the Southern Environmental Law Center, stating that he agrees with the Commission's general take on this proposal that the concept is agreeable but the proposal and the sketchy proffers need much more work.

Mr. Butler said that there have been improvements to the proffers since the Commission hearing but a number of important matters remain unaddressed. He stated that the Pantops Master Plan shows that an area on the eastern part of the site should be left undeveloped because Culpeper Branch and steep slopes are located there, and while the applicant has proffered a 50-foot building setback along the stream, and that 50 feet is minimal. The proffer only applies to building locations, not grading and other major land disturbances. Mr. Butler said that there is a need for useable green space and the applicant uses a definition that allows things like front yards and landscaped islands in parking lots to count toward the 15% requirement.

Mr. Butler stated that the SELC shares staff concerns with the transportation proffers and the wording of proffer 1-G, which seems to allow the commitment to build Hanson's Mountain Road to evaporate if VDOT decides that an additional or altered road improvement is necessary. He said that the proffers seem inadequate to address the development's impacts, even with the eleventh hour proffer for the fire station, adding that an approval of this application without provisions for transit and affordable housing among other key items would represent a notable departure from prior projects.

Mr. Butler added that there is a bigger picture to keep in mind, and that is ensuring that the rezoning that the Board approves will adequately mitigate the impacts that they create, otherwise service levels in the development areas will be depleted and will dig a deeper hole that taxpayers will eventually have to dig out of. He is not suggesting that this type of proposal is wrong for this location, but he believes it needs more work.

Mr. Andrew Drocopoli addressed the Board, stating that he represents Worrell Land and Development Company, the developer of Peter Jefferson Place. Mr. Drocopoli indicated that his company acquired this site from Dr. Hurt in 1986 as part of what became Peter Jefferson Place.

He said that his company worked with the County on the 1989 Comprehensive Plan, which designated this parcel for neighborhood density residential up to 10 units per acre and a small neighborhood shopping center.

Mr. Drocopoli said that the 399 units is in keeping with that, and the larger shopping center would be a disaster for the area. He added that anything to get rid of the possibility of that happening next to Glen Orchy is worth doing.

Mr. Drocopoli also said that there is benefit to relocating Hanson's Mountain Road and understands the residents' concerns, but whatever happens at Ashcroft and on Pantops Ridge would mean that intersection would be closed off and made even worse. He stated that overall this plan is a plus for the community as a whole.

Mr. Paul Beyer addressed the Board, stating that he is with Liberty Land, the developer of Ashcroft, and commenting that Pantops' traffic problem is not the 400 potential units. He added that the potential for negative traffic consequences are so much greater without relocating Hanson's Mountain Road, and he feels that the needs of Ashcroft residents demand a traffic solution. He hopes that the perfect is not the enemy of the good, and that we get a solution out of this.

Ms. Kelly Oakes addressed the Board, stating that she is an Ashcroft resident and is president of their neighborhood association. Ms. Oakes said that they have been discussing this proposal for several years and given the fact it is zoned for commercial use, she would much rather have a neighborhood at

the bottom of their hill than a huge, unsightly commercial building. She stated that most importantly, the traffic is getting worse and worse, and this project would at least provide a way out of their neighborhood.

Mr. Rick Beyer of Liberty Land addressed the Board, stating that from the access standpoint they are the only spot that does not have a light.

Mr. Halsey Blake Scott addressed the Board, stating that he is an Ashcroft resident and does not disagree with the Hanson's Mountain Road cutoff into Glen Orchy, but does not see the price of 600+ cars being a solution. Mr. Scott said that this would be like trying to put out a fire with a can of gasoline.

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

Mr. Davis suggested hearing the comments from Mr. Glenn Brooks, County Engineer, and Mr. Mark Graham, Director of Community Development, regarding road improvements, as they paint a different picture than what is been painted today by Ms. Long.

Mr. Brooks addressed the Board, stating that what he heard today was a vague problem of the Pantops traffic, but nothing specific. Mr. Brooks emphasized that the reason VDOT and the County are still asking for a traffic study, even though there was one done previously, is mostly a question of scope. He said that the older study did not meet the 527 guidelines of going out to the intersections that are further down the road up to the point where there is a threshold of 15 percent of contributed traffic, or a mile limit.

Mr. Brooks noted that this would address Mr. Thomas' concerns about the ramps and left-turn movement onto I-64, as well as the concerns regarding the signals for Martha Jefferson Hospital and Peter Jefferson Place.

Mr. Boyd asked him if the 527 requires an expansion of scope to evaluate the impact of 400 homes on a specific distance that does not have anything to do with the cost or design of the road being built.

Mr. Brooks responded that part of the study would be to reroute that traffic, which is now coming out at an un-signalized, free movement crossover, and put it into the Glen Orchy signal and add in the newer developments that have occurred along with Martha Jefferson and Peter Jefferson Place. He said it is the growth and the background traffic on the main lines that becomes sort of the governing factor in the traffic study, and when you add a little bit of turning movement into that, it has a bigger impact. You need longer cues, you need more signal time, and VDOT's not always willing to give you that signal time on the main line. Mr. Brooks confirmed that it does potentially impact the road design.

Mr. Brooks said that the problem being discussed here is not just a traffic issue, it is a problem with unprotected left turns. He emphasized that the unprotected left turns are dangerous because they involve a high-speed collision and do not trigger airbags. Mr. Brooks also noted that the issues raised by Ashcroft is an access problem that would not be addressed by the traffic study, it is the fact that a large development only has one point of access to a major arterial road. That is not going to change, and the situation will become worse. He said that a few year ago there was a tractor-trailer accident where it completely blocked access, and no one could get out. Mr. Brooks stated that this road alteration will not change that, and could mean that an accident could happen right in front of people's houses.

Mr. Thomas asked why the road by Aunt Sarah's was not reopened.

Mr. Boyd explained that the road went through Westminster Canterbury and was closed when that property was developed.

Mr. Rooker added that it should have been a connecting road, as it was the best way into the Ashcroft property.

Mr. Brooks said that Ashcroft was built in the 60's and 70's but if it were to come in today, staff would recommend a secondary access onto a primary arterial in the case of 50+ units.

Mr. Dorrier asked how much traffic would be put on the road with a commercial development.

Mr. Brooks responded that it would be around 5,000 trips.

Mr. Rooker clarified that one land use is by right and that is a shopping center, and one is a rezoning for residential. The question is which one creates the worst traffic implication for the roads in the area.

Mr. Brooks agreed that it would be the commercial development, and he was addressing the issue of scope as part of asking for a new traffic study.

Mr. Boyd asked if VDOT could look at the new plan for Hanson's Mountain Road and evaluate the impact of the larger use, then extrapolate whether the road is sufficient to handle that.

Mr. Brooks responded, yes and no. He explained that a traffic study would indicate what is going on at the intersections, but the other issue not addressed is the road plan itself, which the applicant has been discussing with VDOT and not the County. Mr. Brooks said that essentially you are taking a road that serves 50 cars per day and asking it to serve 5,000. That is a big increase.

He stated that the road comes in at 45 mph and asks people to slow down to 25, which is always a problem and requires a waiver from VDOT to reduce that design speed. Mr. Brooks noted that VDOT has not granted that waiver but has said they will look favorably upon it, but they are looking to the County for a lead in support of that waiver. He also said that a waiver would be needed for the curves, as they are too small with that speed design and create a potentially dangerous situation if people do not slow down.

Mr. Brooks stated that there is a T-type drive where Glen Orchy comes into Viewmont Court and if the turning movement is the primary movement with 5,000 trips, you are creating a situation where most of the traffic has to stop and wait to make the turn, such as the turn at Greenbrier and Whitewood. It is ridiculous, that is a huge traffic design blunder and we do not want to repeat that here.

Mr. Brooks said that typically this would be made into a 200-300 foot radius curve and making that the primary road route, not making all the traffic stop, and to do that would require an alignment shift to make a curve without that hard left. You would need more right of way, typically. He added that sidewalks and street trees would also require further widening, adding that there would also be a need for drainage structures that require easements from property owners. That is no small thing as it hangs up innumerable bonds that he deals with on road building, and it is a difficult process.

Mr. Rooker mentioned that in a condemnation case a landowner is entitled to the cost of right of way and damage to the remainder, which could be measured by the increased traffic on the parcel, going from 50 vehicles per day to 5,000. He asked Mr. Davis if that is part of the computation of damages to the remainder.

Mr. Davis responded that it probably could not be, as long as the owner would continue to have reasonable use of their property by still having access. He added that it is hard to predict what would be damages available to people a year or two from now.

Mr. Dorrier said that he believes there needs to be an alternative that satisfies both sides.

Mr. Thomas asked Mr. Brooks what would happen if VDOT decided to shut the crossover down.

Mr. Brooks responded that the residents would have to do a u-turn movement to get out, but that actually does offer more safety as it eliminates the unprotected left turns – it's during a signal phase, it's not a safety problem, and it's a continuation of the congestion.

Mr. Boyd noted that Hanson's Mountain Road does not have street trees, sidewalks or drainage now.

Mr. Brooks indicated that although the applicant mentioned those things being required by ordinance, they actually would not be for an off-site improvement like this. He emphasized that there is a danger in getting a road done with half-measures, and squeezing it into the existing right of way provides a lot of impacts but not any amenities.

Mr. Rooker asked if there is anything that prevents the applicant from running shopping center traffic through Glen Orchy today, without any improvements, if the applicant owns a lot that connects to that road.

Mr. Davis responded that they are limited by the plan that is part of the planned development zoning, which does not show the access, so they would need to seek a rezoning to amend that plan.

Mr. Rooker clarified that the only access they would have by right is the access onto Hanson's Mountain Road.

Mr. Dorrier commented that there are lots of loose ends here, and suggested that the applicant work with the County to come up with solutions that are better than what is provided now.

Mr. Davis said that staff has identified a number of issues that should be addressed and if the Board shares those concerns staff would continue to work with the developer to try to address those issues. He added that VDOT has requested a traffic study and one is required to be submitted to VDOT as part of the rezoning process, and that has not been accomplished at this point unless VDOT has waived that requirement.

Mr. Cilimberg commented that it is expected under a rezoning.

Mr. Brooks said that technically VDOT does not require it, but advises the County to require it. He added that it has not really been decided, and the applicant has stated it is a down zoning that does not require a study, while staff believes it would be very helpful.

Mr. Boyd noted that the applicant has indicated they would do a traffic study, but the question is about the timing and whether the County has the right to enforce the rights of the traffic study before it can be developed.

Mr. Davis said that at this point, without a traffic study, it is hard to know for sure what improvements are needed.

Mr. Rooker stated that the applicant could proffer that they would do all of the traffic improvements recommended by VDOT as part of the 527 study.

Mr. Snow noted that the problem with that is that more property could be taken than the plan presented today really addresses.

Mr. Rooker said that that is why he was adamant in asking whether this Board would be willing to exercise condemnation in a private neighborhood. That is a question that you have to answer, because there's no reason in putting everybody through this if at the end of the day we are not willing to live with a proffer that says if the applicant cannot buy this property, the Board of Supervisors is willing to take it.

Mr. Rooker emphasized that that is the bottom line, and this application needs to be addressed through work sessions if it is moving in this direction.

Mr. Snow stated that there are too many unanswered questions here to move forward, and a traffic study is necessary to answer some of those.

Mr. Foley said that if the Board is not planning to move forward, the issue is whether they want to deny it tonight.

Mr. Boyd asked if the applicant should speak again.

Mr. Rooker said that the applicant had 45 minutes tonight, and perhaps staff should lay out the issues and have a work session with the Board where the issues are worked through one by one. He stated that the Board has a year to act, adding that the issue of condemnation should not be swept under the rug. That decision is still going to come back to the Board. Mr. Rooker said that the applicant has put together proffers that are similar to what has been done before, but the difference is those other applications were commercial.

Mr. Davis noted that in the case of Albemarle Place, the County was prepared to take the corner at Hydraulic, but that was for an identified traffic improvement that the County had noted on an area plan that had to be done one way or another. He said that with this application, this is not an improvement mandated by any plan the County has adopted now to take place any time soon. Mr. Davis confirmed that VDOT has it in a long-range study, and it is also recognized in the Comprehensive Plan, but it is not specific as to how it would be done.

Mr. Boyd agreed with Mr. Rooker's suggestion for a work session, adding that it is important to know whether a sliver of land or a swath of land will be needed.

Mr. Davis responded that that is not going to be revealed by a traffic study and would not be resolved until there is an engineered road plan submitted and reviewed by County staff and accepted by VDOT.

Mr. Boyd said that he would like a proffer to be included that says the County would be willing to do this only if it involves plus or minus acreage.

Mr. Davis responded that the applicant would then have a property zoned to R-15 with no road.

Mr. Foley stated that it is clear more information is needed on the timing of the traffic study, condemnation issue, etc.

Ms. Mallek asked if staff should still be saddled with all this work if the condemnation issue is not resolved, adding that the damage to remainder is potentially significant.

Mr. Boyd commented that he still does not understand why some of those things cannot be tied to proffers.

Mr. Snow said that a traffic study would inform what road improvements are needed.

Mr. Rooker said that the taking required to make that road work is substantially more than is being shown according to Mr. Brooks. He said that bothers him.

Mr. Snow stated that it bothers him too and he would like to see what VDOT says about how much can be taken.

Mr. Davis emphasized that the only way to guarantee how much would be taken is to have a traffic study and an engineered road design that VDOT approves.

Mr. Rooker responded that the applicant would probably not want to spend that money up front without some reasonable certainty of outcome.

Mr. Davis said that if they are willing to proffer that they are willing to do that road no matter what the traffic study and designed road requires, there is no way for them to avoid the road improvements, but that still does not say how much property would need to be condemned. He also stated that Mr. Brooks has already indicated that there would need to be drainage and construction easements.

Mr. Brooks said that it would be helpful for staff to know whether the Board would prefer to squeeze in 5,000 trips or, as he recommends, smoothing that curves out and making it the primary route. He said that requires a lot more right of way, possibly the taking of a house.

Mr. Boyd stated that he would like to have the work session if the applicant is willing to do that, including a history of that intersection and an engineering evaluation of the road redesign.

Mr. Rooker commented that if there is a road built like what the applicant presented, with Ashcroft and 400 new units using it, it raises the question as to how far back this road will queue. He emphasized that there is a fundamental issue there that the Glenorchy residents did not create this problem, and it is unfortunate that a small neighborhood on a cul-de-sac is going to be asked to accept an increase from 50 cars to 5,000 cars per day. He asked if it is fair that the solution be on them.

Mr. Foley said that there seems to be enough information to move forward with a work session, and Mr. Cilimberg asked if there are issues besides traffic that need to be addressed.

Mr. Dorrier stated that affordable housing needs to be considered.

Mr. Cilimberg responded that the applicant is not providing for that, so there is not much more staff can say on that.

Mr. Rooker commented that that is a discretionary decision, adding that the normal proffer for this development would be around \$5 million, as staff has indicated, and the applicant could be credited for the road but they should be liable for the difference.

Mr. Brooks mentioned that the queuing analysis on that single intersection could be addressed with a consultant study that is less extensive than the 527 study, even though it would be his recommendation to do the full study.

Mr. Rooker said that it seems that the Board is saying it would like a traffic study in order to have a work session that intelligently addresses these issues.

Mr. Boyd stated that he does not disagree, unless the existing study done would be enough. He also said that more staff information is not really needed on the other issues.

Mr. Davis pointed out that the applicant proffers a traffic analysis without any definition of what that means, and without some standard as to what that would be it is questionable as to what that information would be.

Mr. Boyd said that he certainly hopes VDOT would attend.

Mr. Brooks said that they will be invited, as they were for tonight's meeting, and he hopes they will come as well.

Mr. Rooker noted that it is also important to find out if the applicant wants to continue with the plan after what has been heard tonight.

Ms. Mallek asked Ms. Long if she needed a few more minutes, but she declined.

Motion was then offered by Mr. Rooker to defer ZMA 2010-0001 indefinitely. The motion was **seconded** by Mr. Dorrier. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Mr. Davis noted that from that motion it can be inferred that the item would come back before the Board when staff and the applicant agree that it is ready to be brought back.

Mr. Rooker said that it seems the idea would be to have a work session rather than a scheduled public hearing.

Agenda Item No. 14. **PROJECT: ZMA-2010-00012. King Property (Sign #91).**

PROPOSAL: Rezone .85 acre of a 1.775 acre parcel from Rural Areas (RA) zoning district which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots) to Light Industrial (LI) zoning district which allows industrial, office, and limited commercial uses (no residential use). Remainder of the parcel is zoned Light Industrial.

PROFFERS: Yes.

EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/acre in development lots).

ENTRANCE CORRIDOR: Yes. LOCATION: 352 Rio Road W (Rt. 631) at intersection with Four Seasons Drive.

TAX MAP/PARCEL: 04500000025A0.

MAGISTERIAL DISTRICT: Rio.

(Advertised in *The Daily Progress* on April 4 and April 11, 2011.)

Mr. Cilimberg reported that this property is half-zoned Light Industrial now, and the applicant is seeking to have the rest of the property zoned the same. He explained that it is a property on the west side of Rio Road and is in the reservoir watershed, but that is old zoning on the properties surrounding it.

Mr. Cilimberg said that there is LI zoning that has existed since before the 1980 rezoning and this particular property owner is seeking to bring his zoning into all LI. He noted that the standard advice would be not to rezone properties in the watershed to uses that are of an urban nature, but in this particular case with some of the property already zoned LI, along with surrounding properties, it is an acceptable change. Mr. Cilimberg stated that it would address some unique locational circumstances, would consolidate the zoning on the property, and would remove potentially inappropriate uses through revised proffers.

Mr. Cilimberg stated that staff recommends approval with the proffers dated April 14, 2011.

Ms. Mallek asked what the status of the triangle is, heading northwest from this parcel toward Squirrel Ridge.

Mr. Cilimberg explained that VDOT has acquired property along the alignment of the Western Bypass, and if it ever gets sold back to a private individual it would again be partially zoned. He said that that is not before the Board tonight.

Mr. Rooker asked if staff is comfortable that the uses that have been removed adequately address the protection of the water supply.

Mr. Cilimberg responded that the uses listed are those that the Commission agreed would be appropriate to remove, and staff agreed.

At this time, public comment was invited.

Mr. David Cook addressed the Board on behalf of Mr. King, stating that they do not have anything else to add. He offered to answer any questions.

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

Mr. Cilimberg noted that Attachment A lists all the permitted uses by right in LI, with the applicant proffering out four that staff had identified.

Motion was offered by Mr. Thomas for approval of ZMA 2010-00012 subject to revised proffers. The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

(Note: The proffers are set out below:)

Original Proffers ____ **X** ____
Amendment

PROFFER STATEMENT

ZMA 2010-00012, King Property

Tax Map and Parcel Number: 04500-00-00-025A0 (portion)

Owner of Record: Stephen C. King

Date of Rezoning Action: April 20, 2011

0.85 acres to be rezoned from Rural Areas (RA) to Light Industry (LI).

Stephen C. King is the owner (the "Owner") of Tax Map and Parcel Number 04500-00-00-025A0 (the "Property") which is the subject of rezoning application ZMA No. 2010-00012, a project known as "King Property" (the "Project").

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

1. The uses of the Property permitted by right shall be all those uses allowed by right under Section 27.2.1 of Chapter 18, Zoning, of the Albemarle County Code, as that section is in effect on April 19, 2011, a copy of which is attached hereto and incorporated herein as Attachment A, except for:
 - a. Manufacture, processing, fabrication, assembly, distribution of products such as but not limited to: (Amended 12-2-81; 2- 20-91) (Section 27.2.1(3)).
 - Photographic equipment and supplies including processing and developing plant.
 - b. Assembly and fabrication of light aircraft from component parts manufactured off-site (Section 27.2.1(8)).
 - c. Storage yard. (Amended 11-12-08) (Section 27.2.1(9)).
 - d. Engineering, engineering design, assembly and fabrication of machinery and components, including such on-site accessory uses as machining, babbiting, welding and sheet metal work and excluding such uses as drop hammering and foundry. (Amended 10-3-01) (Section 27.2.1(10)).

The owner shall have no right to establish or maintain a use that is subsequently amended or deleted from Section 27.2.1 unless the owner establishes that its right to engage in or maintain that use has vested.

OWNER

Stephen C. King

Date Signed

27.2 PERMITTED USES

ATTACHMENT A

27.2.1 BY RIGHT

Except as otherwise limited by section 27.2.2.10, the following uses shall be permitted by right in the LI district, subject to the applicable requirements of this chapter: (Amended 2-13-85, 5-5-10)

1. Compounding of drugs, including biological products, medical and chemical as well as pharmaceutical.
2. Fire and rescue squad stations (reference 5.1.9).
3. Manufacture, processing, fabrication, assembly, distribution of products such as but not limited to: (Amended 12-2-81; 2- 20-91)
 - Artists' supplies and equipment.
 - Business, office machines and equipment.
 - Cosmetics, including perfumes, perfumed toiletries and perfumed toilet soap.
 - Drafting supplies and equipment.
 - Electrical lighting and wiring equipment.
 - Electrical and electronic equipment and components including radio, telephone, computer, communication equipment, TV receiving sets, phonographs.
 - Food products, such as bakery goods, dairy products, candy, beverages, including bottling plants.
 - Gifts, novelties including pottery, figurines and similar ceramic products.
 - Glass products made of purchased glass.
 - Industrial controls.
 - Jewelry, silverware.
 - Light machinery and machine parts, including electrical household appliances but not including such things as clothes washers, dryers and refrigerators.
 - Musical instruments.
 - Paper products such as die-cut paperboard and cardboard, sanitary paper products, bags and containers.
 - Photographic equipment and supplies including processing and developing plant.
 - Rubber, metal stamps.
 - Small electrical parts such as coils, condensers, transformers, crystal holders.
 - Surgical, medical and dental instruments and supplies.
 - Toys, sporting and athletic equipment, except firearms, ammunition or fireworks.
 - Watches, clocks and similar timing devices.
 - Wood cabinets and furniture, upholstery.
4. Publishing, printing, lithography and engraving, including but not limited to newspapers, periodicals and books.
5. Preparation of printing plates including typesetting, etching and engraving.
6. Research and development activities including experimental testing.
7. Scientific or technical education facilities.
8. Assembly and fabrication of light aircraft from component parts manufactured off-site.
9. Storage yard. (Amended 11-12-08)
10. Engineering, engineering design, assembly and fabrication of machinery and components, including such on-site accessory uses as machining, babbiting, welding and sheet metal work and excluding such uses as drop hammering and foundry. (Amended 10-3-01)

11. Electric, gas, oil and communication facilities excluding tower structures and including poles, lines, transformers, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations and appurtenances owned and operated by the Albemarle County Service Authority. Except as otherwise expressly provided, central water supplies and central sewerage systems in conformance with Chapter 16 of the Code of Albemarle and all other applicable law. (Amended 5-12-93)
12. Public uses and buildings including temporary or mobile facilities such as schools, offices, parks, playgrounds and roads funded, owned or operated by local, state or federal agencies (reference 31.2.5); public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations and the like, owned and/or operated by the Rivanna Water and Sewer Authority (reference 31.2.5; 5.1.12). (Amended 11-1-89)
13. Temporary construction uses (reference 5.1.18).
14. Business and professional office buildings.
15. Dwellings (reference 5.1.21). (Added 4-17-85)
16. Temporary nonresidential mobile homes (reference 5.8). (Added 3-5-86)
17. Warehouse facilities and wholesale businesses not involving storage of gasoline, kerosene or other volatile materials; dynamite blasting caps and other explosives; pesticides and poisons; and other such materials which could be hazardous to life in the event of accident. (Added 12-2-87)
18. Stormwater management facilities shown on an approved final site plan or subdivision plat. (Added 10-9-02)
19. Tier I and Tier II personal wireless service facilities (reference 5.1.40). (Added 10-13-04)
20. Farmers' markets that will be conducted outdoors or within a temporary or existing permanent structure (reference 5.1.47). (Added 5-5-10)
(§ 27.2.1, 12-10-80, 12-2-81, 2-13-85, 4-17-85, 3-5-86, 12-2-87, 11-1-89, 5-12-93; § 18-27.2.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-

Agenda Item No. 15. From the Board: Matters Not Listed on the Agenda.

Ms. Mallek said that she would like to get some general feedback on a donor in Crozet who has considered donating a large amount of land in Old Trail to the County Parks and Recreation Department. She said that it is very high quality, high altitude land that would be suitable for playing fields and backs up to Henley and Brownsville schools.

Mr. Boyd said that he wants to make sure there is a use for the land and see what the challenges would be with using CIP money to improve it.

Ms. Mallek stated that the donor has said that there is a farmer who hays it who would continue to be responsible for the site, and the land is criss-crossed with a lot of Old Trail's walking trails. She also noted that there are soccer teams who have been using farmers' fields in rural areas.

Mr. Snow noted that it is difficult to find level fields and having the property would mean it would be available later when there is money to develop playing fields.

Mr. Davis mentioned that it is part of the planned community that has planned residential development zoning and would have impacts on existing proffers that have not been analyzed, such as per-unit cash proffers, and would reduce the growth area in Crozet. He said that there are a number of land use issues that should be considered before a final decision is made, but if the Board is interested staff could go ahead and begin that analysis.

Mr. Davis pointed out that since this is designated as growth area, the landowner could not donate the property to a nonprofit and put an open space easement on it unless the Board amended the Comprehensive Plan.

Ms. Mallek said that she does not really expect official analysis at this point, but just wants to get an idea of Board interest.

Mr. Cilimberg pointed out that in a public land process, staff does a Comprehensive Plan compliance review with the Commission to determine if a piece of land for public use and development is consistent with the Comprehensive Plan, so the Crozet Master Plan would play into this as well.

Mr. Rooker noted that there are definite advantages to this, such as adjacency to the schools, and it should be evaluated, although there will obviously be some issues to overcome.

Agenda Item No. 16. Adjourn.

At 9:39 p.m. with no additional information to come before the Board, the meeting was adjourned.

Chair

Approved by Board
Date: 11/02/2011
Initials: EWJ