

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on June 1, 2011, at 9:00 a.m., Lane Auditorium, County Office Building on McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas C. Foley, County Attorney, Larry W. Davis, Director of Community Development, Mark Graham, Director of Planning, V. Wayne Cilimberg, Clerk, Ella W. Jordan, and Senior Deputy Clerk, Meagan Hoy.

Agenda Item No. 1. The meeting was called to order at 9:01 a.m., by the Chair, Ms. Mallek.

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

Agenda Item No. 4. Recognitions. (This item was removed from the Agenda.)

Agenda Item No. 5. From the Board: Matters Not Listed on the Agenda.

Ms. Mallek announced that Mr. Joe Henley, a former Supervisor from the White Hall District, passed away on Friday, May 27, 2011. His funeral service will be held on Saturday, June 4, 4:00 p.m. at Crozet United Methodist Church. She asked for staff remembrances to be shared with Ms. Jordan to be compiled for the family.

Ms. Mallek said that she would report at the end of the meeting on what she has learned regarding the state processes for spreading bio-solids and to collect some suggestions on ways to proceed in the study process.

Mr. Snow stated that he would share his items at the end of the meeting.

Ms. Mallek responded that it would be helpful to share now what they would be so that the public can come back for those if they desire.

Mr. Snow said that the suggestion was made through a memo to save matters from the Board until the end of the day, when there were not people in the audience waiting to be heard. Mr. Snow stated that he has a suggestion that when the Board gives staff assignments to rank them by importance.

Mr. Boyd commented that it is difficult to throw out a sound bite and say "I am going to talk about this later on," and suggested just making Matters from the Board the last item on the agenda.

Mr. Foley clarified that the Board changed that several years ago with the idea of the Board deciding on matters they wanted to act on that were not on the agenda. That would be the things that you might address at the beginning before you adopt the agenda. He added that general comments and discussion that are not intended for action could wait until the end of the meeting if the Board thinks that makes sense. He reiterated that any item the Board wanted action on would be identified at the beginning of the meeting as part of the adoption of the agenda.

Ms. Mallek added that this would also give staff time to gather information if necessary.

Mr. Boyd said that he appreciates the interest in trying to keep meetings on track.

Mr. Thomas stated that he would like to set aside time at the end of this agenda to discuss the information regarding the County's formal position on the Western Bypass, and to discuss removing all opposing remarks from the 1997 resolution of the Board of Supervisors opposing the bypass.

Mr. Rooker commented that he agrees with the proposed changes in dealing with Matters not Listed on the Agenda, because it is a good idea to identify those items that are going to be discussed later, if possible at the beginning of the meeting, so that people who come at the beginning can leave to hear something that is going to be at the end of the meeting. They can leave and come back instead of waiting around. He added that the other issue is people might leave a meeting not knowing what item would be discussed, if it is not announced, such as the issue Mr. Thomas just mentioned about the bypass.

Mr. Rooker said that he and Mr. Dorrier, as part of the Audit Committee, recently had a meeting regarding the upcoming audit, and Auditors again pointed out that the Finance Department is understaffed, with certain items lagging behind although some outside staff has been hired to help. He stated that it is in better shape now than it was two months ago, but noted that the change to Access Albemarle has required some additional staff time.

Mr. Snow asked if Access Albemarle would increase or decrease the demand on staff.

Mr. Foley replied that Mr. Boyd has also been involved in the Access Albemarle project, and said that there is a need for staffing analysis as a part of this. He explained that for the short term the County would be using temporary additional staff until it can be determined if permanent staff is needed, which is not currently anticipated. Mr. Foley noted that the new Finance Director would start June 13 and she would be assessing the staffing levels. He noted that the County has a very thin operation, but staff is not ready to tell the Board that more staff is needed.

Mr. Snow commented that overall, this is good, but if we are missing some critical items then that is a different story.

Mr. Boyd said that the Access Albemarle process committee met last week and rose some of the same issues Mr. Rooker mentioned, but he understood that the temporary help would get the County past that and in the long run it would help reduce demand on staff.

Mr. Rooker also noted that some senior staff members have been lost, and these systems require significant training.

Mr. Rooker announced that at the end of the meeting he would present for adoption a resolution that makes it clear that Board members appointed to boards, committees and commissions are required to vote on matters that come before those entities in a manner that is consistent with the policies and positions of the Board as reflected in previously adopted resolutions or official actions of the Board. He said that it did arise recently with the MPO issue, but it really addresses the broader picture. He asked if the Board wanted a situation where, for example, Mr. Boyd is on the RWSA Board, and if he decides to change his mind on the water supply plan, should he be able to go in and vote on the water supply plan on behalf of the County.

Mr. Rooker also cited the example of Ms. Mallek and himself on the TJPDC, and whether they should be able to vote in a different way than the Board has on something such as the livable communities plan. The Board members represent this Board. They represent the interest of this Board and are put on committees to do that, not to pursue their own agendas. He clarified that he has a disagreement with what Mr. Thomas did, but this resolution is really intended to address the broader issue of a specific Board member voting against the will of the Board.

Agenda Item No. 6. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Charles Battig addressed the Board, stating that a continuing review of official County documents shows that County staff enrolled the County as an ICLEI member in October 2007, two months before Mr. Rooker proposed that they join the "Cool Counties" program and four months prior to the Board's meeting where Ms. Temple recommended that the County follow the ICLEI "Five Milestones" process.

Mr. Battig said that ICLEI is a worldwide activist organization which is devoted to implementing the United Nations Agenda 21 at the local level, adding that it is of grave concern that unelected County staff activists can so easily commit the County to such major policy decisions and fund them without specific formal Board of Supervisor authorization. More recently, he said, this loose cannon behavior by County staff as illustrated by the process by which the County was committed to become a partner in the TJPDC formal application for the HUD Sustainable Communities Regional Planning Grant.

Mr. Battig claimed that in this case, Mr. Tucker signed the grant application on behalf of the County and committed the County to spending \$161,000 as documented in the grant application dated August 20, 2010. He said that if there was any formal Board of Supervisor meeting authorizing this application and taxpayer funding he has not yet found it, adding that there is more documentation of Board discussion on student pet windmills and bicycle advocacy.

He said that County citizens elected Board members to represent them and be stewards of their interests and tax monies, and it is distressing to be able to document these two incidences of staff policy actions that will have profound impacts on County policy and personal property rights, but were made without the expected Board of Supervisor oversight or public discussion.

He stated that consequences of these actions have been an outpouring of citizen outrage as the facts of these entanglements are entered into by the Board and understood by the public. He also said that seven other Counties have dropped ICLEI membership since he brought this issue to the Board's attention.

Mr. Battig said that the acceptance of nearly \$1 million in federal HUD money by a local unelected group, the TJPDC, is hailed by some as providing local income and helpful advisory capabilities to the Board, but about 40 percent of that money is borrowed or printed to order and the grant application makes clear that acceptance of the grant is conditioned on implementing federal policy. He said that federal money brings federal intrusion into our local decision-making process. He stated that the wording of the grant document "honestly sets forth a process of imposing a sustainability agenda of this non-elected outside activist group to measure, count, monitor and advocate legislation controlling every aspect of the population and property according to the utopian ideal. Mr. Battig pointed out that the federal government signed onto the United Nations Agenda 21 in 1993 under President Clinton. He told the Board to get

ready for a public policy that will strive for a size and distribution of human population, promote clustering and employment that provides just compensation, mobility and fulfillment.

Mr. Battig expressed his fear that the same individuals who would be crafting these authoritative behavior change policies are part of these non-elected groups and will be the same ones who get to vote on these recommendations when they change roles and sit on the Board of Supervisors.

Mr. Daniel Bowman addressed the Board, stating that he has lived in Virginia since 1994 and in Albemarle for the last five years. Mr. Bowman said that he was pleased to learn of the regional planning process here, but in recent weeks has heard and read many troublesome remarks that fly in the face of more than 15 years of commitment and accomplishment by your predecessors and the citizens of this area.

He stated that in response to those remarks, sustainability is not a dirty word and planning for a sustainable community is a noble and essential task. Mr. Bowman said that all current and future citizens depend on sustainable communities and resources, and the work done on the Comprehensive Plan, the Sustainability Accords, and the Cool Counties pledge was significant work that continues to bring benefits to the citizens of Albemarle County and to the wider world. He asked the Board not to turn their backs on these accomplishments.

He added that the work done here serves as a model for other communities and distinguishes our area from other places. Mr. Bowman also said that coordinated planning between Albemarle, Charlottesville and UVA is something to be embraced, not avoided. Mr. Bowman stated that the reason he and his wife moved here for several reasons, but the one that tipped the balance was their awareness that this community was made up of many people, included elected officials, who cared enough about their community to engage actively in the planning and political processes necessary to maintain and enhance this landscape, these amenities, and the "remarkable quality of life that we enjoy here." He urged the Board to take the next steps necessary to build a sustainable, integrated community for all who live here.

Mr. Saunders Midyette said that he and his wife have lived at Colthurst Farms since 1991 and noting that VDOT acquired right of way across their neighborhood for its proposed Western Bypass. He said that last year he spoke in support of the transportation component of the Places 29 Master Plan, but that did not include the Western Bypass. Mr. Midyette stated that he was very upset to read last week that Mr. Thomas acted in personal defiance of your approved Places 29 Master Plan when he urged the MPO to withdraw its opposition to funding the construction of the Western Bypass.

He asked the Board to consider making a change in its representation to a Supervisor who will support the Board's position opposing the Western Bypass, adding that to address the traffic congestion the Places 29 improvements provide for cost effective, implemented road improvements as VDOT funding becomes available.

Mr. Midyette mentioned the three parallel roads planned for Route 29, the extension of Berkmar Drive to Airport Road, the completion of Hillsdale Drive, and construction of the Meadow Creek Parkway. He pointed out that over the last two decades there have been a number of VDOT hearings that have generated large outpourings of opposition by county residents to the bypass, as it will not improve the projected 'F' level of traffic as 90% of the traffic is local. Mr. Midyette added that the bypass at this point is obsolete because substantial business development has occurred north of the northern terminus of the proposed Western Bypass, particularly Hollymead.

Mr. Milton Moore addressed the Board, stating that he served on the CHART and Route 29 Design Advisory Committee and indicating that 28 years ago the Board voted unanimously to remove the Western Bypass from the Charlottesville/Albemarle Transportation study. He said that VDOT's original purpose was to relieve traffic congestion on a three-mile stretch of Route 29 between the 250 Bypass and the South Fork of the Rivanna River, which blossomed into a 6.1 mile "bypass" that would take at least 41 homes and school property while seriously impacting the environment while doing little to alleviate congestion as 90% of the traffic is local.

Mr. Moore said in February 1997 the design advisory committee, which was appointed by the MPO, stated that after months of close inquiry the bypass should not be built. He also said that the cost has jumped from \$44 million in 1986 to \$168 million in 1999, with costs now realistically likely to exceed \$275 million. Mr. Moore encouraged Mr. Thomas to read the CATCO/Route 29 Bypass Book, referred to as "The Green Book," which is based on years of study and research, much of which is based on more than 1,000 documents obtained from VDOT through the FOIA. He said that the book is available by Googling "CATCO Green Book." Mr. Moore stated that Mr. Thomas' position and recommendations regarding the 29 Bypass reflect his lack of understanding on the project's long history.

Mr. George Larie said that he is President of the Charlottesville-Albemarle Transportation Coalition, also known as "CATCO" and is a member of the Places 29 Advisory Committee. Mr. Larie said that he was shocked to learn that Rodney Thomas has proposed that the MPO drop the long-standing opposition to construction of a Route 29 Western Bypass. The bypass has had massive citizen opposition during the public hearing and has been consistently opposed by the Board of Supervisors for over 20 years. It does not solve the traffic problem on Route 29, which is a local traffic problem, not a through-traffic problem. Mr. Larie said that the approval of the Places 29 plan last year, which includes support

from Mr. Thomas, lays out plans for parallel roads to Route 29, including the Meadow Creek Parkway, Berkmar Extended and Hillsdale Drive which will provide relief for traffic on Route 29 at much lower costs than a Western Bypass.

He said that this bypass is obsolete in that substantial development has occurred north of the northern terminus of the 6.1-mile road. He added that since 85-90% of the traffic on that stretch of 29 is local, it will never provide traffic relief to the congestion on Route 29 North. Mr. Larie said that the Board has established position priorities that are unanimously supported by the Board and the business community, and if the bypass is put back in the picture that unanimity will disappear. He added that the lack of unanimity will also jeopardize transportation funding for the agreed-upon priority projects, and said that this is not the first time that Mr. Thomas has taken his own personal views in opposition to the policy of the Board of Supervisors.

Mr. Larrie stated that he sent an email to Mr. Thomas clearly pointing out the three alternative parallel roads to Route 29 in the Places 29 Plan, which Mr. Thomas had approved, but that e-mail received no response. Mr. Larrie said that Mr. Thomas has failed to represent the Board as a whole on the MPO and therefore CATCO formally requests that Mr. Thomas be censured for his statements to the MPO and removed from his position there.

Mr. Tom Olivier addressed the Board, stating that he is a trained biologist and anthropologist, having grown up in New Orleans and spending about five years working overseas. He said that he has lived here for 30 years, with the last 20 years spent working in local government, including representing the County on the Thomas Jefferson Sustainability Council in the 1990's. Mr. Olivier said that research from ASAP and others show that we are not living within the limits of our environment and as a biologist he views sustainability as the single largest challenge facing the United States and other nations during the 21st Century. He stated that hopefully the new century will put sustainability at its core, adding that Thomas Jefferson would likely take the findings of climate scientists very seriously and would urge the nation to embark on a program of greenhouse gas emission control and would be appalled by those who shrink from the challenge of climate change and claim that it is a hoax to be ignored.

Mr. Olivier said that given the five years Mr. Jefferson spent in Paris, he would not have been the least bit troubled by the contributions of citizens of other countries to climate change science or climate science. He stated that people need to get real about ICLEI's real goal, which is reducing greenhouse gas emissions and saving the County many thousands of dollars annually. Mr. Olivier also said that the 2008 survey of Albemarle residents produced the finding that 96.4% of County residents believe that spending County tax dollars on natural resource protection was "somewhat important" or "very important."

Mr. Olivier added that is what we the people believe, and he thanked the Board for hearing comments.

Mr. Morgan Butler addressed the Board, stating that he is speaking on behalf of the Southern Environmental Law Center, which was very surprised and disappointed to learn of the discussion at last week's MPO meeting about making significant changes to the TIP entry and the MPO's position on the bypass. He said that they will be even more surprised and disappointed if this Board considers voting on such a major issue today, when there is nothing about it on the agenda, there is no opportunity for public comment, and there has been less than a week between the MPO meeting when this was first brought up and this meeting today, including a holiday weekend.

Mr. Butler pointed out that the Board adopted Places 29 just a few months ago, which involved years of staff time, extensive public input, detailed analysis, and balancing a difficult set of priorities. He said that the Board decided on a set of consensus projects for the corridor that would be the County's priorities for the next five years, and the bypass was not included although it was brought up several times, and nor were grade-separated interchanges.

Mr. Butler stated that the Board recognized that efforts should be focused on priority projects for the next five years and to amend the TIP to make the bypass eligible for federal funds would mean it starts competing for limited dollars with the consensus priorities. He said that the competition for funding might be less of a concern if this project made sense, but just about everybody who has looked at this proposal closely has acknowledged that it doesn't pass the cost-benefit test.

Mr. Butler said that even the national budget watchdog group "Taxpayers for Common Sense" has included the bypass on its list of most wasteful road projects four times, adding that VDOT's own modeling has shown that the bypass would do very little to reduce congestion on 29 for local traffic. He also stated that during the development of the statewide Route 29 Corridor Study, VDOT officials acknowledged that the bypass route would not even serve as a viable option for through travelers.

Mr. Butler said that even Board members have agreed that this bypass route does not make sense, yet it would be the subject of a TIP amendment, and the better approach would be to consider what could be done with the right of way money if it were sold. He stated that the Board has already identified a set of more pressing priorities, which are in desperate need of their own funding, and this community's efforts should remain focused on those and should not be reopened to competition from a prohibitively expensive, ineffective and extremely controversial project.

Mr. Jeff Werner of the Piedmont Environmental Council addressed the Board, stating that for 20 years the PEC has opposed the Western Bypass, and findings have shown that the route will not resolve congestion on Route 29; only improvements on 29 will reduce congestion, which the Board ironically has purged from Places 29.

Mr. Werner said that despite all the qualified recommendations to the contrary, the bypass is still being discussed – with many facts missing. He stated that the bypass is not “shovel-ready,” as VDOT has not acquired all of the right of way nor have they completed the design work. Mr. Werner also said that no money has ever been allocated to build this project, and industry left the downstate economy not because of this route but because of cheaper labor outside of the U.S.

He also mentioned that the northern terminus of the bypass is at the entrance of Forest Lakes South, and residents there opposed a growth expansion there earlier this year. He stated that the northern terminus is approximately 4.5 miles south of the growth area boundary, which includes Forest Lakes, Hollymead, the Hollymead Town Center, North Pointe and the UVA Research Park. Mr. Werner said that this bypass would only be about six miles long, then would merge with Route 29 with another 4.5 miles of development to go through. He said that the recommendations against Route 29 improvements were that the project could never be funded, as it would be too expensive, but yet here is an effort to put the bypass back on the table.

Mr. Werner stated that the Chamber of Commerce and North Charlottesville Business Council insisted that the plan include only doable projects and demanded that Places 29 showed all true costs associated with the proposed improvements and in dollar amounts that reflect the anticipated construction date, not current dollars. He said that the Chamber insisted that Places 29 explain how improvements would be funded, adding that the Free Enterprise Forum said it was deceitful for the County not to include these true costs.

Mr. Werner stated that PEC welcomes the full and complete disclosure to the community of all the facts, including its costs, its pros and cons, how it will be funded, where those funds will come from, and most importantly, which priority projects will get dumped in order to make the bypass a priority.

He read an excerpt from the Business section of *Time* magazine, stating that while some members of Congress are skeptical of global warming, Starbucks joined a coalition of companies, including Nike, Timberland, Levi Strauss and Sun Microsystems, to lobby the Federal Government to take action to reverse climate change. He said those are businesses, and businesses look to what a community is doing for its environment. He feels the Board should think about that before deciding to kill ICLEI.

Mr. Ray Caddell, a resident of 334 Dover Road, addressed the Board and thanked them for their quick response to his concerns about the spread of biosolids in the County, particularly next to his house, and asked them to continue following the issue especially in the growth area. He stated that he came to the area about 25 years ago as part of a development team for a real estate deal, adding that the planning and zoning departments were very concerned that the trucks leaving the development did not track mud onto other roads but that did not happen yesterday with the biosolid trucks were leaving his home on Dover Road and around Carrsbrook. He asked why there was not an inspection and asked where there is human waste in our streets in Albemarle County?

Ms. Mallek noted that the Board would be discussing the issue later in the day.

Mr. Neil Williamson of the Free Enterprise Forum addressed the Board, stating that the Board should include time for public comment at the end of the meeting if they have extensive conversations at the end of their meeting. He also asked why the Board does not live stream the public meetings, as this technology will be a great way to add transparency to the public and also for people who wish to return to the meeting. Regarding the bypass issue, Mr. Williamson stated that he agrees with Mr. Werner that additional study and numbers, and a clear examination is a good idea and is worthy. Mr. Williamson said that VDOT released a freight study earlier this year that did recommend a U.S. bypass around Charlottesville.

Ms. Jane Williamson addressed the Board, stating that she has sent the Board a long e-mail regarding applying biosolids to her land and noting that it was an agonizing decision given Mr. Caddell's opposition.

Ms. Williamson said that she spoke with people at the DEQ, Chesapeake Bay Foundation, Farm Bureau, and many other farmers across Virginia who have used this process for many years very successfully and without apparent harm. She invited Board members to come to her land so she can point out the wide buffer from the water that surrounds her property. Ms. Williamson noted that the biosolids were placed on her land yesterday and there was a huge presence of media along with several regulatory agencies, including the Health Department. She said it was probably one of the most carefully watched operations that has ever been done in this County.

Mr. Vic Pena, a County resident, addressed the Board, stating that he is here to oppose further participation in ICLEI, and said that the terminology the organization uses, sustainable growth and sustainable this and that, is nothing more than prudent management, and that is why citizens have elected the Board. Mr. Pena stated that the Board was not elected to participate in an international organization to

provide oversight as to how resources are managed locally. He said that the designs of ICLEI and Agenda 21 are un-American, as it proposes an array of actions which are intended to be implemented by every person on earth.

Mr. Pena stated that ICLEI calls for a change in activities of all people, adding that we can manage our resources without oversight of a United Nations collective agenda. He feels that ICLEI puts limits on private land ownership and espouses redistribution of wealth, which is un-American.

Agenda Item No. 7. Consent Agenda. **Motion** was offered by Mr. Rooker to approve Item 7.1 (as noted) on the consent agenda, to pull items 7.2, 7.3, and 7.4 for discussion, and to accept the remaining items as information. The motion was **seconded** by Mr. Dorrier. (**Note:** Discussions on individual items are included with that item.)

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

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

Item No. 7.1. Approval of Minutes: November 3, 2010 and January 12, 2011.

Ms. Mallek asked that her minutes of November 3, 2010, pages 25 (begin with Item #12) - end be pulled.

Mr. Dorrier had read the minutes of November 3, 2010, pages 1-25 (end at Item #12), and found them to be in order.

Mr. Snow had read the minutes of January 12, 2011, and found them to be in order.

By the above-recorded vote, the Board approved the minutes which had been read. The remaining minutes were carried forward to the next meeting.

Item No. 7.2. DEQ Loan for Water Resources Projects - Resolution approving the structure and execution of various funding agreements with the Virginia Resources Authority.

The executive summary states that the County's Water Resources 5-Year Capital Improvement Plan (CIP) includes improvement projects for the Downtown Crozet Stormwater Wetlands and the Parking Lot Biofilter at the County Office Building (COB) on McIntire Road. As the County has advanced with the planning, design, and construction of these improvement projects, staff has pursued various external supplemental funding. In February 2010, the County applied for financial assistance for the two projects through the Virginia Clean Water Revolving Loan Fund (VCWRLF) Green Project Reserve, a competitive program administered by the Department of Environmental Quality (DEQ) Construction Assistance Program. The significant feature of this loan program is that up to half the loan amount is forgiven; in this regard, it is similar to a grant.

On June 22, 2010, the State Water Control Board authorized an \$800,000 loan with 50% as principle forgiveness (See Attachment A). Subsequently, the Virginia Resources Authority, acting as DEQ's financial agent, offered to extend the loan to the County by means of two parts: a \$400,000 Principal Repayment Loan and a \$400,000 Principle Forgiveness Loan (See Attachment B).

The acquisition of this loan supports Goal 1 of the Board's Strategic Plan for Fiscal Years 11 and 12: By June 30, 2012, the County will explore and identify ways to address unfunded current and future capital needs.

The two capital projects that are to be partially funded through this loan have been listed in the Water Resources 5-year CIP for at least the past four years. Sufficient funds exist in the Stormwater Control Improvement Fund to fully finance both projects without the need for external funding. However, staff pursued this loan, made available to local governments exclusively for the construction of certain environmentally-beneficial projects, to expand the capacity of the Water Resources CIP.

The loan would be disbursed to the County as reimbursements for qualifying project expenditures, including design and construction costs, of up to \$800,000. Although the loan mandates special requirements typically placed on federally-funded procurements, there are no further constraints or obligations requiring significant staff time associated with the loan. The loan is secured by a lease-lease back agreement which provides that a County fire truck is used as collateral for the loan.

A Resolution is attached (Attachment C) approving the necessary financial documents and authorizing the County Executive to execute the documents, subject to their approval as to form by the County Attorney. The documents are:

- Prime Lease, in which a County fire truck is used as collateral for the loan (Attachment D)
- Financing Lease, or Principal Repayment Loan (Attachment E)
- Funding Agreement, or Principal Forgiveness Loan (Attachment F)

The County Attorney's Office has reviewed the Resolution, Prime Lease, Financing Lease, and Funding Agreement.

The forgiven portion of the loan will effectively reduce the cost of completing the two water resources improvement projects by approximately \$400,000. However, as with all grants and loans of this nature, the County has incurred and will incur additional minor costs associated with the administration of the loan, including staff time, and interest paid on the loan. Also, staff anticipates there will be an additional cost for bond counsel of not more than \$11,000.

Staff recommends that the Board adopt the attached Resolution approving the necessary financial documents for the loan (Prime Lease, Financing Lease, and Funding Agreement between the Virginia Resources Authority and the County of Albemarle) and authorizing the County Executive to execute the documents, subject to their approval as to form by the County Attorney.

(Discussion: Mr. Boyd asked that this item be pulled for discussion under Other Matters at the end of the meeting.)

Item No. 7.3. FY 2011 Budget Amendment and Appropriations.

The executive summary states that Virginia Code § 15.2-2507 provides that any locality may amend its budget to adjust the aggregate amount to be appropriated during the fiscal year as shown in the currently adopted budget; provided, however, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The Code section applies to all County funds, i.e., General Fund, Capital Funds, E911, School Self-Sustaining, etc.

The total of the requested FY 2011 appropriations itemized below is \$2,225,657.83. A budget amendment public hearing is not required because the amount of the cumulative appropriations does not exceed one percent of the currently adopted budget.

This request involves the approval of five (5) FY 2011 appropriations as follows:

- One (1) appropriation (#2011077) totaling \$2,000,000.00 for Capital Improvement Plan projects from the FY 2009/10 undesignated fund balance;
- One (1) appropriation (#2011080) totaling \$21,344.45 for the Crozet Streetscape Phase 2 project received from the Albemarle County Service Authority for expenses incurred by the County for the waterline construction component of the project;
- One (1) appropriation (#2011081) totaling \$117,800.00 for advance payment to the Central Shenandoah Criminal Justice Training Academy for the Sheriff's Office, Police Department and Emergency Communications Center's training costs to be incurred in FY 2012;
- One (1) appropriation (#2011082) totaling \$82,668.75 for the ACE program from the Farmland Preservation's Local Purchase of Development Rights (PDR) Program; and
- One (1) appropriation (#2011083) totaling \$3,844.63 for school division donations.

Staff recommends approval of the budget amendment in the amount of \$2,225,657.83 and the approval of Appropriations #2011077, #2011080, #2011081, #2011082, and #2011083.

Appropriation #2011077			\$ 2,000,000.00
Revenue Source:	General Fund Balance:	\$2,000,000.00	

This request is to appropriate \$2,000,000.00 of the FY 2009/10 undesignated fund balance to the Capital Improvement Plan Funds. This transfer was anticipated in the adopted FY12-FY16 Capital Improvement Plan and is in compliance with the County's Financial Management Policy: Funds in excess of the required undesignated fund balance may be considered to supplement "pay as you go" capital expenditures or as additions to the fund balance.

Appropriation #20110180			\$21,344.45
Revenue Source:	Local Revenue:	\$21,344.45	

This request is to appropriate \$21,344.45 to the Crozet Streetscape Phase 2 project in funds received from the Albemarle County Service Authority for the expense incurred by the project. On February 3, 2010, the Board of Supervisors authorized the County Executive to sign agreements with the Albemarle County Service Authority (ACSA) whereby the ACSA agreed to reimburse the County for its costs to construct public waterline extensions at the Crozet Streetscape Phase 2 and Phase 2A projects. In accordance with the agreement for Phase 2A, the County included the construction of water facilities (water main extension) in the construction contract. The water facilities construction has been completed for this phase.

Appropriation #2011081			\$117,800.00
Revenue Source:	General Fund Balance:	\$ 92,380.00	
	ECC Fund Balance	\$ 25,420.00	

This request is to appropriate a total of \$117,800.00 from the General Fund and the Emergency Communication Center's Fund balances for payment to the Central Shenandoah Criminal Justice Training Academy for the Sheriff's Office, Police Department and Emergency Communications Center's (ECC's) FY

11/12 training costs. These costs are funded in the adopted FY 11/12 budget; however, the Training Academy has requested earlier payment from all of its public safety agency members. Staff recommends providing this funding in FY 10/11 from available fund balance and further recommends that the funding currently included in the FY 11/12 budget for this purpose be non-appropriated for FY 11/12. While these actions will increase the FY 10/11 and decrease the FY 11/12 budgets, the net budget impact of these actions will be \$0.00.

Appropriation #2011082			\$82,688.75
Revenue Source:	State Revenue:	\$ 82,688.75	

This request is to appropriate \$82,688.75 in Local Purchase of Development Rights (PDR) Program Grant Matching Funds that has been received from the Virginia Department of Agriculture and Consumer Services, Office of Farmland Preservation to reimburse fifty percent of the County's actual cost incurred for the purchase of an agricultural conservation easement. The purchase, through the County's Acquisition of Conservation Easements (ACE) program, totals \$165,337.50.

Appropriation #2011083			\$3,844.63
Revenue Source:	Local Revenue:	\$ 3,844.63	

This request is to appropriate three donations made to the County's School Division. Henley Middle School received a donation in the amount of \$1,344.63 from Henley's Parent and Teacher Support Organization. The donor has requested that their contribution be used to help fund the "Enrichment Time before 9" program for the month of March at Henley Middle School.

Woodbrook Elementary School received a donation in the amount of \$500.00 from the Woodbrook PTO. The donor has requested that this contribution be used to help offset the cost of the fourth grade annual field trip to Washington, D.C.

Brownsville Elementary School has received a donation in the amount of \$2,000.00 from the Robert E. McConnell Foundation. The foundation asked that this donation be used to purchase snacks for the students at Brownsville Elementary School.

(Discussion: Mr. Boyd asked that this item be pulled for discussion under Other Matters at the end of the meeting.)

Item No. 7.4. Letter of Support for Rivanna River Basin Commission Grant to National Fish and Wildlife Foundation for project to develop Rivanna Watershed Action Plan.

The following memorandum dated May 10, 2011, from Leslie Middleton, Executive Director, Rivanna River Basin Commission, was received:

1. The Rivanna River Basin Commission seeks a Letter of Support for a grant proposal to the National Fish and Wildlife Foundation for a project to develop a Rivanna Watershed Action Plan.
2. The Rivanna Watershed Action Plan will provide, through a technical review of existing conditions and a facilitated development of desired future conditions, specific recommendations for Albemarle County and the other Rivanna watershed localities to protect and preserve the natural and water resources of the Rivanna watershed.
3. This Action Plan will complement and support the requirements of the Chesapeake Bay TMDL, but will go beyond nutrient and sediment reduction goals to identify specific strategies for meeting the County's comprehensive plan goals with respect to contributing to Rivanna watershed protection.
4. RRBC staff will implement the project, with input from the Commissioners and the RRBC Technical Advisory Committee, which includes two staff persons from the City (Mr. Greg Harper and Mr. Gregor Patsch). RRBC is not seeking cash match from the County, but rather the continued commitment of County staff time on the RRBC Technical Advisory Committee. Thus, project match being sought is "in-kind" (staff time).
5. RRBC will be submitting the grant proposal on June 2, 2011, and is pleased to work with County staff in drafting the support letter being requested.
6. I hope that the County will be able to consider this request at its upcoming meeting on June 1, 2011.

(Discussion: Mr. Boyd asked that this item be pulled for discussion under Other Matters at the end of the meeting.)

Item No. 7.5. 2010 Planning Commission Annual Report, ***was received for information.***

Section 15.2-2221 of the Code of Virginia stipulates that the local Planning Commission shall "make . . . an annual report to the governing body concerning the operation of the Commission and the status of planning within the jurisdiction". This report is a brief summary of the Albemarle County Planning Commission's membership and activity during 2010.

COMMISSION MEMBERSHIP

COMMISSIONER	DISTRICT	SERVED
Russell (Mac) Lafferty	Jack Jouett	1/10 - 12/31/10
Don Franco	Rio	3/4/09 - 12/31/10
Cal Morris	Rivanna	1/04 - 12/31/10
Ed Smith	Samuel Miller	1/10 - 12/31/10
Linda Porterfield	Scottsville	1/08 - 12/31/10
Thomas Loach, Chairman	White Hall	1/08 - 12/31/10
Duane Zobrist, Vice-Chairman	At-Large	1/10 - 12/31/10
Julia Monteith	University of Va. (Non-voting)	1/06 - 12/31/10

2010 MEETING AGENDA SUMMARY

Meetings = 24

PUBLIC HEARINGS/REGULAR ITEMS	# Considered	# Approved	# Denied	# Deferred
Comp Plan Amendment (Includes 5 Year Review and Master Plans) (CPA)	2	2	0	0
Zoning Text Amendment (ZTA)	7	7	0	0
Subdivision Text Amendment (STA)	1	1	0	0
Comp Plan Compliance Review (CCP)	0	0	0	0
Zoning Map Amendment (ZMA)	7	6	0	1
Special Use Permit (SP)	41	35	1	5
Preliminary Site Plan (SDP)	2	1	0	1
Final Site Plan (SDP)	0	0	0	0
Preliminary Sub Plat (SUB)	1	1	0	0
Final Sub Plat (SUB)	0	0	0	0
Site Plan Amendment (SDP)	0	0	0	0
Site Plan Waiver (SDP)	4	3	1	0
Subdivision Waiver (SUB)	0	0	0	0
Agricultural/Forestral District (AFD)	9	9	0	0
CONSENT AGENDA				
Preliminary Site Plan (SDP)	1	1	N/A	N/A
Final Site Plan (SDP)	0	0	N/A	N/A
Preliminary Sub Plat (SUB)	0	0	N/A	N/A
Final Sub Plat (SUB)	1	1	N/A	N/A
Site Plan Amendment (SDP)	0	0	N/A	N/A
Site Plan Waiver (SDP)	3	3	N/A	N/A
Subdivision Waiver (SUB)	0	0	N/A	N/A
Agricultural/Forestral District (AFD)	13	13	N/A	N/A
PC Minutes	35	35	N/A	N/A
Other	8	8	N/A	N/A
WORK SESSION				
Comp Plan Amendment (Includes 5 Year Review and Master Plans) (CPA)	2	N/A	N/A	N/A
Zoning Text Amendment (ZTA)	7	N/A	N/A	N/A
Subdivision Text Amendment (STA)	0	N/A	N/A	N/A
Comp Plan Compliance Review (CCP)	1	N/A	N/A	N/A
Zoning Map Amendment (ZMA)	0	N/A	N/A	N/A
Special Use Permit (SP)	0	N/A	N/A	N/A
Other	5	N/A	N/A	N/A

2010 HIGHLIGHTS

- CPAs considered included the Crozet Master Plan Update and Redfields Expansion
- ZTAs considered included Construction of Multiple Dwellings on a Single Parcel, Industrial Uses, Farm Wineries, Farm/Wayside Stands, Monticello Historic District, Definition of Family, Home Occupations and Body Shops
- STAs considered included the Division of Land with Existing Dwellings
- CCPs considered included Peter Jefferson Overlook
- ZMAs considered included North Hill, UVa Research Park – North Fork Expansion, National College, Fontaine Research Park Expansion and Hollymead Town Center Area A-2
- SPs considered included Rockfish Wildlife Sanctuary, Grayson Farm Air Strip, Augusta Lumber, St. Anne's Playing Field, Charlottesville Kingdom Hall, Re-Store N Station, Faith Christian Center, Baugh Auto Body, Coleman Morris Development Right, Matheny Development Right, Afton Farmer's Market, Forest Lakes Farmer's Market, Unity Church, Pink Ribbon Polo and the Hungarian Bakery
- SDPs considered included Riverfront Townhomes, Wilson Ready Mix Silo Replacement, Hollymead Town Center Apartments and Personal Wireless Facilities

- SUBs considered included Rio Station and Fontana
- Special Project Work Sessions held included the CIP, Light Industrial Land Assessment, Subdivision/Site Plan Process Improvements, Economic Vitality Action Plan, Stream Watch's Stream Conditions Report and Joint Meeting of the City and County Planning Commissions

Item No. 7.6. 2011 First Quarter Building Report as prepared by the Community Development Department, ***was received for information.***

The report states that during the first quarter of 2011, 121 building permits were issued for 398 dwelling units. There were two permits issued for mobile homes in an existing park, at an exchange rate of \$2,500, for a total of \$5,000. There were no permits issued for the conversion of an apartment to a condominium.

Item No. 7.7. 2011 First Quarter Certificate of Occupancy Report as prepared by the Community Development Department, ***was received for information.***

The report states that during the first quarter of 2011, 54 certificates of occupancy were issued for 54 dwelling units. There was one certificate of occupancy issued for a mobile home in an existing park, at an exchange rate of \$2,500, for a total of \$2,500. There were no certificates of occupancy issued for the conversion of an apartment to a condominium.

Item No. 7.8. 2010 Annual Report of the Board of Zoning Appeals, ***was received for information.***

State Code Section 15.2-2308 requires the Board of Zoning Appeals (BZA) to keep a full public record of its proceedings and to submit a report of its activities to the governing body. The full 2010 annual report is attached for your information (on file in Clerk's office).

The Board of Zoning Appeals hears variances from the Zoning Ordinance, special use permits for certain sign types, and appeals from decisions of the Zoning Administrator or her designee. These appeals can include determinations of zoning violation.

The number of appeals in 2010 decreased by 7, from 11 received in 2009 to 4 in 2010. Two were affirmed, one was withdrawn, and one was deferred indefinitely by the applicant.

The number of variances in 2010 decreased by 3, from 9 received in 2009 to 6 in 2010. Of the six, four variances were approved and two were withdrawn.

The number of special use permits for off-site signs increased by 5, from 2 in 2009 to 7 in 2010. All seven were approved with conditions, but one case was later withdrawn by the applicant and rescinded by the BZA.

The following Circuit Court cases are still pending:

1. Paul Begin, et al. v. Board of Zoning Appeals and Planned Parenthood: Appeal of use determination.
2. Scott W. and Caroline F. Watkins v. Board of Zoning Appeals: Appeal of determination of zoning violation.
3. Ellen Hawkins v Board of Zoning Appeals: Appeal of determination of zoning violation.

Item No. 7.9. 2009 FY11 Third Quarter Financial Report ***was received for information.***

The executive summary states that the attached Financial Report provides information on the County's General Fund operations and Fund Balance as of March 31, 2011. The financial report includes a bar chart that compares current fiscal year revenue and expenditure data with data from the previous fiscal year.

Recent national economic data points toward reduced growth for 2011. GDP increased 1.5% for the 1st quarter and is estimated to increase 2.0% for the 2nd quarter and 2.4% for the full year compared to 2.8% in the 4th quarter of 2010. This growth is well below the consensus estimates of economists. Overall growth continues to be restrained by cutbacks in government spending as well as struggles in the housing market. Economists are raising concerns over rising commodity prices, regulatory gridlock, and anemic domestic and global economies. Any drop in commodity prices will need to be sustainable, something not guaranteed, to ease anxiety. Wholesale prices continue to rise, particularly in the food and energy sectors. On the positive side, manufacturing is thriving and should continue to grow over the next 12 months. Non-farm private employment continues to strengthen but the national unemployment rate rose to 9.0% in April due to unemployed workers re-entering the job market as well as increased government layoffs.

A. Attachment A: General Fund Financial Report:

a. Revenues:

Revenues, excluding Transfers and Fund Balance Appropriations, are estimated to total \$213.506 million, \$2.922 million (1.4%) more than appropriations of \$210.584 million.

Combined with the use of \$2.425 million in transfers from other funds and \$0.806 million in fund balance, Revenues, Transfers, and Use of Fund Balance will total \$216.738 million, \$2.435 million (1.1%) more than Budget.

Revenue estimates included in this report are based on 9 months of actual receipts in the fiscal year. With nine months of actual data, the estimate should approximate final collections. However, property taxes and business licenses have June due dates and could still impact projections.

Following is a brief revenue analysis for the FY 10/11 fiscal year:

- Real Estate Tax revenues are projected to be \$0.661 million (0.6%) less than Budget, an increase of \$0.140 million over the previous Financial Report. The FY11 Budget was based on negative 0.50% 2011 tax year reassessment rate. The final 2011 tax year reassessment rate was a negative 1.24%. A Tax Year is equivalent to a calendar year. Its effects are realized over 2 consecutive fiscal years with the 1st half in one fiscal year and the 2nd half in the next fiscal year. A 1.0% change in the reassessment rate is equivalent to \$1.316 million in real estate tax revenues for the 2011 tax year.
- Personal Property Tax revenues are estimated to exceed Budget by \$0.241 million (1.3%), an increase of \$0.193 million over the previous Financial Report. The impact of the Cash for Clunkers program has faded over time but new sales have just started to improve due to postponed demand and improved economic conditions.
- Delinquent Property Taxes & Fees are estimated to exceed Budget by \$1.197 million (51.4%), an increase of \$0.775 million over the previous Financial Report. Additional compliance enforcement through the DMV Stop and Department of TAX Set-off Debt programs has generated additional revenues. Delinquent fees previously implemented have also encouraged payment of delinquent taxes to avoid additional fees. Revalidation rollback revenues are reserved and not included in General Fund projections.
- Sales Tax revenues are estimated to exceed Budget by \$1.680 million (15.2%), an increase of \$0.750 million over the previous Financial Report. The overall impact is due to both increased consumer purchases as well as auditor findings. Taxpayers continue to be cautious but have begun to slightly increase discretionary spending as the economy improves. The auditor has identified \$0.724 million in misallocated sales tax revenues which have been approved by the state to be transferred to Albemarle from other localities over a six month period with an additional estimated \$0.293 million in process. On-going annual receipts should increase approximately \$0.287 million based on the approved adjustments. Significant revenues continue to be lost to internet purchases and consumer purchases in adjacent localities.
- Business License, BPOL, revenues are estimated to exceed Budget by \$0.304 million (3.3%), a \$0.190 million increase over the previous Financial Report. BPOL revenues are based on gross receipts for the previous year which usually lag current sales tax revenues by a year.
- Utility Tax revenues are estimated to exceed Budget by \$0.204 million (2.3%), a \$0.042 million decrease from the previous Financial Report. The overall increase is due to anticipated additional revenues resulting from weather and improved economic conditions.
- Food and Beverage Tax revenues are estimated to be \$0.250 million (4.4%) less than Budget, a \$0.100 million increase over the previous Financial Report.
- Federal Revenues are estimated to exceed Budget by \$0.214 million (4.8%), an increase of \$0.019 million over the previous Financial Report. The increase is primarily due to increased reimbursements for DSS services.
- Revenue categories with variances of less than \$0.100 million from Budget have not been analyzed for this report.

b. Expenditures:

General Fund expenditures, including transfers, are expected to total \$211.891 million, a 1.1% savings of \$2.411 million from Budget. The savings include reduced health care expense, VRS Life Insurance savings, additional Police salary lapse, and the anticipated release of the revenue shortfall contingency.

- i. Departmental expenditures are expected to total \$79.041 million, a 1.6% savings of \$1.326 million from Budget: The savings are allocated by functional area as follows:
- Administration expenditures are expected to total \$10.307 million, a 1.8% savings of \$0.188 million from Budget.

- Judicial expenditures are expected to total \$3.792 million, a 3.5% savings of \$0.138 million from Budget
 - Public Safety expenditures are expected to total \$29.066 million, a 1.2% savings of \$0.366 million from Budget.
 - Public Works expenditures are expected to total \$4.363 million, a 3.7% savings of \$0.167 million from Budget.
 - Human Services expenditures are expected to total \$18.929 million, a 1.6% savings of \$0.308 million from Budget.
 - Parks and Culture expenditures are expected to total \$6.211 million, a 0.6% savings of \$0.039 million from Budget.
 - Community Development expenditures are expected to total \$6.373 million, a 1.9% savings of \$0.120 million from Budget.
- ii. Non-Department expenditures consisting of the revenue sharing payment, reserves, and refunds are expected to total \$19.813 million, a 5.2% savings of \$1.085 million including release of the revenue contingency reserve.
- iii. Transfers are expected to equal Budget at \$113.037 million:
- Transfer to the School Division is expected to be \$96.058 million.
 - Transfers to the Capital and Debt funds are expected to be \$16.979 million.
- c. Revenues less Expenditures:
This report projects that FY 10/11 will end with \$4.846 million of revenues in excess of expenditures. Revenues and related transfers are projected to exceed Budget by \$2.435 million. Expenditures and related transfers are expected to produce \$2.411 million in savings.

An estimated \$2.613 million of this FY 10/11 projection is anticipated to be used to establish the County's Stabilization Fund per the Board's approved FY 11/12 Budget. A portion of the FY 10/11 remaining "Revenues less Expenditures" will be required for various end-of-year reappropriations. Per County policy, any funds remaining thereafter would be available to be transferred to Capital.

B. Attachment B: General Fund Budget Comparison Report:

The chart report tracks changes in revenues and expenditures over time.

Revenues:

- Personal Property Tax, Sales Tax, Business License Tax, Utility Tax, Food and Beverage Tax, Other Local Taxes, Other Local Revenue, and Federal Revenue show positive growth over FY09/10 Actuals.
- Real Estate Tax, State Revenue, Transfers from Other Funds, and Use of Fund Balance show decreases from FY10.

Expenditures:

- Administration, Judicial, Public Safety, Public Works, Human Services, Parks & Culture, and Non-Departmental expenditures show anticipated increases over FY10.
- Community Development, Non-School and School Transfers show anticipated decreases from FY10.

C. Attachment C: Fund Balance Report:

The report indicates that the County:

- Had an Audited FY10 Undesignated Fund Balance of \$24.566 million,
- Appropriated \$0.807 million for Budgeted FY11 Initiatives and Reappropriations,
- Has a remaining June 30, 2010 Fund Balance of \$23.759 million,
- Has Policy required Undesignated Fund Balance of \$20.905 million*, and
- Has Policy June 30, 2010 available funds of \$2.854 million.
- Proposed FY11 commitments: If the Board approves the Budget Amendment/Reappropriation request that is also included in the Board of Supervisor's June 1, 2011 Consent Agenda, \$2.0 million will be transferred to the adopted FY 12-FY 16 Capital Improvement Plan from the FY 09/10 Fund Balance consistent with the adopted CIP for FY 2011. If the request is approved by the Board, the FY 09/10 undesignated year end Fund Balance would still exceed the 8% target by \$0.854 million and be available for transfer to the Capital Fund if all other reserve targets are met at the end of the current fiscal year.

*The \$20.905 million Policy reserve consists of the 8.0% net General Government and School Operating Budget requirement.

D. Budget Impact:

This Financial Report is based on audited FY10 financial data and nine months of financial data for FY11.

This report has been prepared for your information. No action is necessary.

Item No. 7.10. Court Study - Documentation of Architectural/Engineering Selection Process, **was received for information.**

The executive summary states that at its January 5, 2011 meeting, the Board authorized staff to proceed with issuance of a Request for Proposal (RFP) to engage an Architectural/Engineering firm to perform a limited, Phase I study to assist the County in determining its next step in addressing the space needs for the courts. An RFP was issued on February 2, 2011 seeking qualified firms or individuals to conduct a needs assessment and develop renovation and/or new building options for the provision of court facilities, to include the Circuit, General District and Juvenile and Domestic Relations Courts. The work of the consultant is expected to include, but not necessarily be limited to:

- Review of previous court studies, including the "Charlottesville-Albemarle Courts Study, Phase I" dated March 2001, and the "County of Albemarle/City of Charlottesville Feasibility Study for Use of the Levy Building as a General District Court Facility", dated April 29, 2010;
- Review of all previous facilities condition assessment reports on the County Courthouse;
- Review of existing conditions and capacities at each of the County's three courts;
- Evaluation of County caseload trends and expected space needs for each of the three County courts, to include related clerk, sheriff and commonwealth's attorney operations;
- Interviews with judges, clerks, commonwealth's attorney, sheriff, and other staff involved in court operations;
- Identification and evaluation of alternative sites to accommodate limited court functions or a combined court complex;
- Development of conceptual plans for renovations or new construction;
- Development of "order of magnitude" cost estimates for each of the options;
- Formal presentation of study results, in the form of a written report and oral presentation to the Board and staff.

The deadline for submittal of responses to the RFP was March 1, 2011, and the County received eleven (11) responses.

A selection committee was established to review the proposals and develop a short-list of firms to be interviewed. The committee consisted of George Shadman, Director of General Services; Trevor Henry, Manager of Office of Facilities Development; Hugh Gravitt, Purchasing Agent; Montie Breeden, Senior Project Manager; and Steven Allshouse, Coordinator of Research and Analysis. After a comprehensive analysis of the eleven submittals, the committee selected four firms to interview – HDR Architecture, Inc.; Dalgliesh Gilpin Paxton Architects; Moseley Architects; and PSA-Dewberry, Inc.

Due to the nature and importance of this study, additional committee members were included at the firm interview process phase. The additional members were: Bill Letteri, Assistant County Executive and Denise Lunsford, Commonwealth's Attorney. Interviews with the four firms were held on April 22, 2011. Although all four firms appeared to be highly qualified to perform the study, the committee ranked PSA-Dewberry, Inc., as its number one choice due to their expertise and experience in leading a thorough and detailed analysis process, consisting of data collection and review, physical assessment, data analysis and forecasting, user interviews, and development of an architectural space program summarizing future space needs for each functional component of the court system.

A Notice of Intent to Award was sent to PSA-Dewberry and negotiations are underway.

Available funds to support this study total \$35,800. Preliminary fee negotiations with PSA-Dewberry suggest that additional funds may be needed to complete the study in accordance with the outlined scope. If the proposed fee exceeds available funds, staff will recommend funding options for the board's consideration at a future meeting.

This report is for information only. No Board action is required.

Agenda Item No. 8. Board Agenda Process.

The following executive summary was forwarded to Board members:

The Board of Supervisors has always been very focused on transparency and the public's ability to be actively engaged with issues of concern as they are presented to and discussed by the Board. Board meetings are the primary opportunity for Board members, staff and citizens to come together to hear about and participate in critical governmental matters, and it is important for these meetings to provide ample time and opportunity for necessary Board dialogue and discourse to take place while being respectful of the needs and schedules of the public and staff.

Board members need adequate time and structure to discuss issues of complexity and to receive public input. Because Board agendas contain numerous items that are significant to members of the public, it is important for citizens to be able to schedule their time to participate in particular agenda items and have those items occur as closely as possible to the advertised or scheduled times. A predictable schedule also helps staff to make the most efficient and productive use of their time.

There have been recent comments by Board members and the general public regarding the flow of Board meetings and potential opportunities to improve the efficiency of those meetings for the benefit of

Board members, staff and citizens. Based on those comments, Board Chair Ann Mallek recently met with staff to discuss options that are presented below for the consideration of the entire Board.

Following discussion with the Board chair, County staff contacted a number of other localities to research best practices regarding Board meeting procedures and protocols that have been effective in keeping meetings on time while also permitting the necessary time and flexibility for Board members to conduct their business. In addition, these best practices are followed by the majority of regional Boards in our community. Through research and discussions several opportunities for improvement were identified for consideration as outlined below:

Adopting the agenda as the first order of business – Many jurisdictions begin their meeting with a “proposed” agenda, but establish the final issues to be considered as the first order of business by adopting the “final” agenda at the beginning of the meeting. This practice assures that the Board agrees, through approval of a final agenda, on all items to be voted on or considered that day. Any additional items of substance approved by Board to be considered that day are not discussed at that time, but are added to the end of the agenda to avoid disrupting the flow of the meeting and the already scheduled and advertised items. This assures that citizens and staff are aware at the beginning of the meeting whether there will be any changes or impacts to the items that involve them.

Board Comments – ‘Other Matters Not Listed on the Agenda by Board Members’ is an agenda item that can get lengthy and push other items behind on the schedule. To allow for Board communication while respecting the schedule, Board comments at the beginning of the meeting could be limited to not more than two to three minutes on topics that are not substantial enough to be considered as additional agenda items during the agenda adoption process. However if more substantial discussion becomes necessary, the Chair will move that item to the end of the agenda. Routine committee reports and information updates could be moved to the end of the meeting so that the Board can discuss those items without the agenda schedule being put behind at the very beginning of the day.

Consent Agenda – The purpose of the consent agenda is to provide a method for the expeditious handling of items that do not require discussion or comment and are anticipated to have the unanimous approval of Board members. To help the consent agenda meet this objective, items for brief comment should be removed from the consent agenda and taken up immediately after approval of the remaining consent agenda items. Items removed from the consent agenda that will require more significant discussion should be scheduled for consideration later in the meeting, either immediately before lunch or as the last item on the agenda. Staff would encourage Board members to ask clarifying questions regarding Consent Agenda items in advance of the meeting to avoid potential delays in the meeting. Handling the consent agenda in this way helps staff and the public by quickly approving items that do not require further discussion, freeing them to leave the meeting, and by setting a specific time during which any pulled items will be considered so they can come back to the meeting as necessary.

In summary, the above options are being recommended to achieve several important goals as stated earlier:

- to allow the public to plan in advance to participate in the agenda items that are important to them, with confidence that the scheduled times will be reliable and accurate to the greatest extent possible, and to eliminate the need for citizens to unnecessarily wait for items that have fallen behind schedule
- to allow Board members adequate time to fully discuss issues in a manner that does not significantly disrupt the meeting schedule
- to allow staff resources to be used most productively and efficiently by knowing when they should be available to the Board during the meeting for potential questions on agenda items

Staff recommends that the Board adopt the procedural changes outlined above effective immediately.

Mr. Foley stated that he sat down with Ms. Mallek to discuss the flow of the Board meetings in light of the challenging issues that have come before the Board, so that the public can plan in advance to participate in agenda items that are important to them with confidence that the scheduled times will be reliable and accurate to the greatest extent possible and to eliminate the need for citizens to wait for items that have fallen behind schedule; to allow Board members adequate time to fully address issues in a manner that does not significantly disrupt the meeting schedule; and to allow staff resources to be more productively and efficiently handled by knowing when they should be available – such as the items that were just pulled from the Consent Agenda.

Mr. Foley said the idea is courtesy to the public but also giving the Board the full opportunity to discuss any issues they feel are necessary.

He stated that there are three items for the Board to consider in support of that process. The first is giving Board members an opportunity to add items to the agenda, before it is officially adopted, through a time in the beginning set aside for proposed amendments to the agenda. Mr. Foley stated that if it is an item for adoption that day, Board members may need to have a discussion as to whether it's ready for adoption. He said that identifying items for discussion is something the Board should consider, as there have been comments even today requesting public discussion. Secondly, considering “Board comments” as an opportunity not to have long discussions at the beginning of a meeting but instead moving those to the end of the agenda and identifying items at the beginning of the meeting that would be discussed in depth at the end of the meeting.

Ms. Mallek emphasized that the biggest concern is having an item come up at the end of the meeting and acted upon that has not been adopted at the beginning of the day. She feels that is the biggest concern, that the Board has predictability in terms of the action items.

Mr. Foley reiterated that when the Board adopts the agenda at the beginning of the meeting, the whole Board agrees that new items not on the agenda would not be acted on at the end of the day. He stated that in researching other localities, it is typical to have the agenda adopted at the beginning of the meeting. The third issue is expediting the Consent Agenda by removing items needing discussion and action to the end of the agenda.

Mr. Foley stated that if the Board wants to move forward with this, staff would amend the Board procedures so that it is clear to members how it will work. He said that based on what the Board has talked about, this is what the Chair would do at the beginning of the meeting. Mr. Foley used the proceedings at today's meeting as an example. He said that Mr. Thomas raised the issue of the Western Bypass and said he wanted to talk about it at the end of the meeting, and staff and the public are not clear if he said he wanted to act on it or not, but that is something that should be clarified so the public knows if there is an action today at the end of the meeting or if that was intended or not. Mr. Foley said that Ms. Mallek brought up biosolids as part of the discussion; Mr. Rooker brought up representation on boards and committees as an action item; and Mr. Boyd's items would be action items at the end of the meeting.

Mr. Dorrier stated that he looks forward to seeing the history of an item and the document search done on each item. He feels that it is important that the Board get that information before we vote on it. He does not see how the Board can act on any of these things without some background information.

Mr. Foley noted that the biosolids issue is going to be covered more in depth in July.

Mr. Rooker asked what needed to be covered today that would not be covered then.

Ms. Mallek said that it was just going to be an update, indicating she would be attending a meeting with DEQ and the Environment and Agriculture Committee in Richmond on June 10, 2011, and the types of issues they would be discussing.

Mr. Foley clarified that that would be a discussion item.

Mr. Boyd stated that he has mixed emotions about all of this, adding that the questions should be asked ahead of time on the Consent Agenda, but sometimes he does not have an opportunity to read the packets ahead of time.

Ms. Mallek said that it is troubling to see citizens sitting for hours and hours waiting for an agenda item to come up.

Mr. Boyd suggested grouping items differently.

Mr. Thomas stated that his suggestion regarding the Western Bypass was to set aside time at the end of the agenda today to discuss the motion of removing all opposing remarks to the bypass. He said that he would plan on having an action this afternoon.

Mr. Rooker said that an action could be to decide to hold a public hearing, and the action to be taken is not necessarily clarified in advance.

Mr. Foley stated that Mr. Thomas is putting the item up for action.

Mr. Snow said that he is seeing this as a discussion item.

Mr. Rooker responded that Mr. Thomas wants a vote, and it is interesting because the Board has a \$1,200 investment in ICLEI that we are probably going to have a three-hour public hearing on, or four hours depending on how many people show up, and we have got a \$275 million transportation project that Mr. Thomas would like to act on at the end of the meeting.

Mr. Rooker presented 60-70 pounds of studies on the bypass and said that to suggest the Board ought to vote on a position on a project that went through massive public hearings and huge studies and was unanimously, for very good reasons, voted on by the Board after receiving all of that information, to suggest we should have a meeting late in the day to change the Board's position on that without having a public hearing on the matter, when the Board is having a public hearing on a \$1,200 investment in ICLEI is ridiculous.

Mr. Snow stated that all the Board is doing is discussing it.

Ms. Mallek said that she would like to talk about it more this afternoon.

Mr. Rooker noted that this has already been raised in December and February and the votes have never been there to do it, but Board Members keep bringing it back up.

Mr. Rooker feels that at some point the Board will catch the public unaware and do something.

Mr. Foley suggested that the adoption of the agenda be the next item after the Pledge of Allegiance and Moment of Silence.

Mr. Boyd said that he has been concerned that Consent Agenda items should actually be on the regular agenda.

Mr. Rooker said that any Board member can send an e-mail to Mr. Foley requesting that an item be moved to the regular agenda.

Mr. Boyd added that it could be done at the beginning of the meeting also.

Mr. Boyd stated that the Board had discussed live streaming in the past but agreed to go along with podcasting instead.

Ms. Mallek said that it would be good if the County was ready for the next step.

Mr. Foley indicated that staff could bring that back to the Board.

Ms. Mallek **moved** to adopt the agenda process as recommended by staff. Mr. Snow **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

Agenda Item No. 9. Development of the County's FY 12/13 – FY 17/18 Strategic Plan.

The following executive summary was forwarded to Board members:

Since 2001, the County of Albemarle has been actively engaged in an ongoing and robust strategic planning process. Over the past ten years, the Board has utilized feedback obtained from the County's Citizen Surveys, its Vision Statement/Values and relevant national, state and regional data to devise strategies and develop corresponding goals and objectives to achieve positive outcomes for the County and its citizens.

During the County's last full iteration of its strategic plan (FY 06/07– FY 09/10), the Board focused on enhancing the County's quality of life, protecting its natural resources, managing growth, developing infrastructure and creating a long-range, comprehensive funding strategy for County operations. This plan was formally closed on June 30, 2010 at which time the Board engaged in a more short-term effort to address immediate economic challenges the County was facing at that time. As a result of the Board's effort, a Strategic Action Plan was developed for the County which focuses on five (5) critical issues, including the Board's Economic Vitality Action Plan. The goals and objectives for this plan are envisioned to be completed by June 30, 2012 and can be found in Attachment A.

As staff works toward completing the goals and objectives contained in the current short-term Strategic Action Plan, it also recognizes that the County's financial situation appears to be showing signs of stabilizing; therefore, it is appropriate to undertake efforts at this time to embark on the development of a more comprehensive and long-term Strategic Plan for the time period of FY 12/13 – FY 17/18.

It is envisioned that the County's FY 12/13 -- FY 16/17 Strategic Plan will be more comprehensive than past efforts. While it will continue to focus on understanding and setting broad community priorities as informed/directed by the Board ("external component") an opportunity will be provided to allow all County staff to offer feedback and direction on the organization's internal high performance efforts ("internal component"). In addition, deliberate efforts are proposed to obtain citizen feedback on elements of the plan at critical milestones. The schedule for the development of the Plan is as follows:

- Summer
 - Board conducts its Strategic Planning Retreat on June 30, 2011 to discuss the County's vision for the future and identify the County's top strategic priorities
 - Staff elicits citizen review and feedback
 - Staff provides their review and feedback
- Fall
 - Board approves the County's Vision, Mission, Values, and top strategic priorities for FY 12/13 -- FY 17/18. The priorities will include the organization's internal high performance priorities.
 - Staff elicits citizen review and feedback to the Board's approved items
 - Staff drafts goals and objectives
 - The Board and staff strategic planning work product helps guide the Five Year financial planning process
- Winter/Spring
 - Board confirms its approval of the Strategic Plan Vision, Mission and Values, and approves the Goals, and Objectives
 - Staff develops a detailed Action Plan, which includes strategies and timelines for each objective
 - The Board and staff strategic planning work product helps guide the annual budget process

- Spring/Summer
 - The Strategic Plan's Action Plan is completed and performance measures are identified
 - Board adopts the FY 12/13- FY 17/18 Strategic Plan
- July 1, 2012 – Strategic Planning period begins

The Strategic Planning Retreat: The Board's Strategic Planning Retreat will be held on June 30, 2011 at the Woodland Pavilion at Monticello from 9:00 a.m. to 4:30 p.m. During the Retreat, the Board will review and discuss the County's progress on previous plans and environmental scan information, including the results of the 2011 Citizen Survey, and will begin to reach consensus on the County's vision for the future and to identify the County's top strategic priorities.

The Proposed Citizen Feedback Process: Because the strategic plan forms the basis for critical decisions regarding the Five Year Financial Plan, the annual budget process and other major policy and programmatic issues, it is important that County citizens have an opportunity to be engaged in the development of the plan.

The broadest and most comprehensive level of public engagement in the plan will come in the form of the 2011 Citizen Survey, results of which will be shared with Board members during the strategic planning retreat to inform discussions on that day. After the Board has identified preliminary priority strategic focus areas this summer, staff recommends that the Board solicit citizen feedback by asking for insights and comments from the Board's appointed Citizen Advisory Councils and an invited stakeholder group using a structured discussion format.

After the Board approves the County's Vision, Mission, Values, and top strategic priorities this fall, staff recommends the same citizen feedback process be utilized, as set forth above, prior to the final approval of the goals and objectives of the plan in December.

The Strategic Action Planning processes provide direction for the County's Five-Year Financial Plan and annual budget processes.

Staff recommends that the Board approve its recommended process for the development of the FY 12/13 – FY 17/18 Strategic Plan, including the proposed schedule and citizen feedback process.

Mr. Foley reported that the purpose of this item today is to discuss the proposed process of developing the FY13-17 Strategic Plan, noting that it is intended to be a five-year plan to begin in FY13 and run for five years. He stated that back in the early 2000's, the Board developed their strategic plan for the first time, with the first four-year plan being FY07-10, and last year at the Board retreat they discussed a two-year plan because of uncertainty in the economy.

Mr. Foley said that staff is now suggesting having a strategic planning session on June 30, 2011 to look at the next five years, emphasizing that because it is a critical time it is important to get staff focused on the future and to gather the Board's vision for the future. He said that this process would be different in that it is a five year-timeframe (to match up with the financial plan), and it would also be a more comprehensive approach.

Mr. Foley stated that staff is planning on June 30th to focus on those community areas and priorities that are considered the most critical over the next five years, so both an external and internal component of the plan would become one plan. He also said that staff has proposed including more citizen input on what the Board develops, especially the citizens survey and what they consider to be important issues.

Mr. Rooker asked if there were any significant questions regarding allocation of resources in the citizens' survey.

Ms. Mallek and Mr. Boyd responded that this was a national survey and likely did not include that.

Mr. Rooker noted that when 25 people show up at a public hearing, that is not necessarily an indication of how the public feels as a whole.

Mr. Boyd added that this is a representative form of government, and advocacy groups of all flavors come to public sessions rather than contacting representatives. He said that a great deal of people believe that the leadership will make the right decisions as they are elected to do so and things can be cluttered if advocacy groups get involved.

Mr. Foley said that any citizen input beyond the usual survey, which garners general information about priority areas, is really a matter of the Board developing a vision and soliciting feedback from the public.

Mr. Boyd stated that it seems generating additional feedback sounds like it would require staff time and funding.

Ms. Mallek said that she assumed it was referring to the public hearing process.

Mr. Foley responded that it was not referring to a formal public hearing.

Ms. Lee Catlin, Assistant to the County Executive for Community and Business Partnerships, pointed out that there has not been a public hearing on the strategic plan in the past, and this is a way to allow some reaction to the priorities, and citizen advisory groups are already appointed and are meeting during this plan's timeframe. She added that the only other group mentioned is the stakeholders group that is usually established for the budget and other opportunities, to react to work the Board has already done. Staff does not imagine large meetings that would take staff time beyond ways that we already work with the advisory councils for example.

Mr. Boyd asked if there is any way staff could put a price tag on that. He feels that all too often staff time is considered free.

Ms. Catlin replied that staff is already in communication with the four advisory councils, so that would not be something additional, and the strategic plan could be introduced as a topic of discussion. She added that if they did want to have a stakeholders group, such as when the budget was being formed and during the establishment of the Economic Vitality Action Plan, staff would need to be involved in an hour-long meeting along with some preparation and notification time.

Ms. Mallek commented that she is nervous about limiting input only to stakeholder groups, unless it is going to be taken out for another round later on. She added that the citizens' advisory groups may not be able to turn around instant comments on the same night that they meet.

Mr. Boyd asked if there has been a concern from the public that the Board has not been forthcoming in its strategic planning process.

Ms. Mallek noted that the strategic planning process is open but is not always convenient for people to get to, such as the upcoming one at Monticello. She added that other localities look up to Albemarle for its open process, and when people perceive that things are being done in the shadows that is not well received.

Mr. Rooker said that he has never heard any negative feedback on the strategic planning process, and if a hearing for the plan is advertised it is likely that people will not provide comment on it specifically. He noted that it is up to elected representatives to have a general sense of what is important in the County and that can be accomplished in a variety of ways, such as town hall meetings, email exchanges, talking to people on the streets, etc.

Mr. Rooker added that he does not feel the County needs to get bogged down in a public input process on the strategic plan, as it would not be fruitful and would waste staff time and money. He said that the best approach might be tailoring questions in a survey for citizens, such as the issue raised earlier on the citizens' survey question related to the environment.

Mr. Foley noted that staff's suggestion for including citizen advisory groups was to garner general feedback from them on the strategic plan.

Mr. Snow added that in the past it might have been necessary to have public hearings on the strategic plans, but with e-mail and other technology he feels he has plenty of opportunity to know how citizens are feeling, with about 100 e-mails a day. He said that the citizens' survey provides enough additional input.

Mr. Boyd said that it is probably a good agenda item to present the citizens advisory groups with the strategic plan for informational purposes.

Mr. Foley stated that by summer and fall the development of a vision and top strategic priorities would be developed, with development of goals and action plans by winter and spring. He noted that the retreat is from 9:00 a.m. to 4:30 p.m. on June 30th at the Woodland Pavilion at Monticello, and there is no cost for that facility.

Mr. Foley stated that Mr. Ron Carlie of ICMA (and former manager of Arlington County, VA) would speak to the Board about vision and provide insight on how things are going in other localities across the Country and how they are dealing with similar issues that face Albemarle.

Mr. Rooker **moved** to approve the recommended process for development of the FY 12/13- FY 17/18 Strategic Plan including the proposed schedule, with the exception of the citizen participation. Ms. Mallek **seconded** the motion.

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

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

Agenda Item No. 10. Board-to-Board, *Monthly Communications Report from School Board*, School Board Chairman.

Mr. Steve Koleszar, School Board Chairman, addressed the Board, stating that this week and next are graduation weeks, and the schools are graduating more students than ever before, with 980 seniors going into this year and an on-time graduation rate of 92%. That is a remarkable improvement from where the on time graduation rate used to be.

He stated that the School Board is going through its annual self-evaluation and a Superintendent evaluation, and would have a retreat on June 6, 2011 to develop priorities for the next two years.

Mr. Koleszar said one thing they have agreed is holding the school system back is the quality of the Standards of Learning assessments, or SOL's, and the fact that they are fact-based and knowledge-based, whereas the Schools want students to be workplace-ready, college-ready, and to be able to think, create and work in small groups, which are skills that are not measured on the SOL tests.

He stated that Albemarle has joined in a consortium with four other school divisions from Virginia Beach, Fairfax, Roanoke County and Henrico, and have met with the State Board of Education to start developing ways to improve that assessment process. Mr. Koleszar said that if the County could get out of No Child Left Behind and its stringent penalties, it could develop its own assessments and still comply, but downgrade their importance. He feels there are other skills and assessments that really matter, because these are the skills that students need to know. He feels the County performs very well on SOL's, but it's only a problem in the context of NCLB.

He noted that Secretary of Education Duncan indicated that 60% of schools nationally would be failing under NCLB. He said that putting that into context, if 8 students at Monticello High School or Albemarle High School failed one test, the school would be declared a failure because of the way NCLB works. It is something to be addressed both in our legislative packet with the State, and with the Federal Government.

Mr. Thomas asked if NCLB Act is outdated.

Mr. Koleszar responded that it initially served a good purpose but NCLB has now actually expired. However, because it is budgeted it continues going. He said that it was going to be reauthorized by the start of the school year, but the way Congress is working that may be unlikely. The process is on autopilot, and as such in the year 2014, if one child fails one test, the school is considered a failing school.

Mr. Boyd said that is what he was going to ask, does it go to a 100 percent passing rate?

Mr. Koleszar answered that this year, the target passing rate is at 85 percent.

Mr. Koleszar explained that the law itself has expired (the Elementary and Secondary Education Act) but the funding is still using that same formula. He stated that it is a mess and Congress needs to get their act together and reauthorize the Elementary and Secondary Education Act.

Mr. Koleszar reported that Dr. Benson has accepted the Superintendent position in Accomack County, and in the 16 years he himself has been on the Board, he has seen eight members of school staff go on to become Superintendents. He believes this is a real compliment to Albemarle County.

Ms. Mallek commented that she enjoyed seeing the CATEC completion ceremony, which included 200 students, and noted that Mr. Darah Bonham has done a sensational job there and would soon be leaving.

Mr. Koleszar reported that Mr. Bonham has developed an entrepreneurial portion at CATEC so all students there develop a business plan. They write it out, have it graded and evaluated, and rate them all with finalists presenting their plans to a group of business people. He said that the top tier of that presenting group all get scholarships.

Mr. Rooker said that he visited Albemarle High School to observe the SOL testing and said that what they have to go through from a logistical and scheduling standpoint is highly significant and takes a huge amount of staff time.

Mr. Koleszar pointed out that Virginia has gone to almost all online testing and feedback is provided on the same day. In high school, when students are getting end of course tests, the results come right back, and if 5 or 10 percent of the students fail, teachers have two weeks of instruction time to work with the students, and they can immediately retake the tests. It is a real benefit to a senior that may not be able to graduate if they don't pass the test.

Mr. Boyd noted that he has also attended the SOL testing at local schools and recently had dinner with a teacher from a Northern Virginia County who was very envious that there was computer testing down here as they are still doing theirs manually.

Mr. Rooker said that remedial testing is staff-intensive, with retesting going on and teaching for the retesting.

Ms. Mallek commented that by the end of the year there are 80,000 tests total, which is crippling to teachers' teaching time.

Mr. Koleszar said that teaching to the test is not necessarily bad, and research has shown that the best way to teach students how to pass these tests is to teach them comprehension, deeper understanding and context rather than memorization but the pressure on teachers is such that they get focused in on teaching to the test.

He commented that he will make sure a copy of the report is sent to the Board.

Agenda Item No. 11. Inmate Workforce Update, Sheriff Chip Harding.

The Chair stated that Sheriff Harding was not yet present at the meeting, and this item would be moved to later in the day.

Agenda Item No. 12. Crozet Library Construction Documents update.

The following executive summary was forwarded to Board members:

In December of 2004, the Board adopted the Crozet Master Plan, which identified the need for a new Crozet Library to provide enhanced library services to the community and to serve as a catalyst for redevelopment in downtown Crozet. In November of 2006, the Board authorized the design and construction of the library.

In May of 2008, the Board approved the formation of the Crozet Library Steering Committee to, along with the design team of Grimm and Parker, facilitate the engagement of stakeholders and the public, to evaluate and balance the various needs and objectives, and to oversee the schematic design phase of the project. The Committee developed a preferred design recommendation which was reviewed and approved by the Board on June 3, 2009. In December of 2010, the Board further directed staff to complete the Detailed Design phase of the project for purposes of establishing accurate cost estimates and bringing the project to a "bid ready" state.

Since the Board approved the schematic plans in June of 2009, major points of project history include:

- Dec 2009 – Proceeded with parking lot only design, phasing the project to allow construction of parking on an interim basis to relieve existing parking constraints of downtown area.
- May 2010 – Parking Lot site plan review directs inclusion of on-site Storm Water Management (SWM) due to timing of Streetscape and SWM construction
- Nov 2010 – ARB review of parking lot plan
- Dec 2010 – Board directs completion of building design to achieve 95% completion of architectural drawings and firm cost estimate hoping to take advantage of favorable bidding climates and interest rates
- Apr 2011 – ARB approval of parking phase and building phase
- May 2011 – Parking Lot bid documents issued
- May 2011 – Building design meetings with user groups to progress Construction Drawings
- May 2011 – Provided updated cost estimate by Architect
- Aug 2011 – Scheduled completion estimate for architectural drawings and detailed construction cost estimates (source for CIP process)

The purpose of this agenda item is to provide a brief update to the Board on the status of the Crozet Library and parking lot projects. The parking lot phase is expected to be constructed this summer starting in July with completion in August. The building plans are expected to be "bid ready" by late summer and will include a detailed cost estimate to inform the CIP submission process.

The original CIP Project Budget of \$9.86 million was subsequently reduced by a series of appropriation adjustments to \$1.989 million to support property acquisitions, street improvements, demolition of existing structures, design services and parking lot construction.

The Board will at a future date need to consider re-establishing project funding for building construction. Updated cost estimates recently received from the design consultant are under review. A final, independent cost estimate will be provided upon completion of the drawings in August.

The Friends of the Library are expected to fund \$1.6 million of the total project cost.

This executive summary is for information and for further discussion by the Board at its June, 2011 Retreat.

Mr. Trevor Henry, Manager of the Office of Facilities Development, said that when the work ceased on the overall Crozet Library building design, funding was allocated to continue with the parking lot to get that through construction. Bids open today for that project, which is expected to begin in early July for completion by the end of summer. He stated that the Board authorized continuance of the design and the library team has worked with the ARB members individually to understand the concerns and process, with approval in April, and a goal of completing construction design in early August along with a cost estimate.

Mr. Henry said that 2009 cost estimates were at approximately \$6.4 million or \$275 per square foot, but the most recent estimate is \$6.8 million with site work and concrete both rising in cost for this and other projects.

Mr. Boyd asked if the site work would be done at the time the parking lot is done.

Mr. Henry responded that the parking lot is bare bones, with enough infrastructure for it to stand for a few years and be useable, but there are elements such as lighting, etc., that would be deferred to the

second phase of the project. He said that the work being done should reduce overall site costs, but that is not reflected in the numbers provided thus far.

Mr. Boyd commented that he has heard conversations regarding storm water management and site presentation, and asked if there is any substance to that.

Mr. Henry responded that there were some issues with the implementation of the design of Library Avenue, but that has been corrected, with work on the lumberyard funneling a lot more water than the design anticipated down to Library Ave. and the alley. He added that there is a change order pending and work to be started in the next week or two to address that, with these issues related to the streetscape project and not the library site.

Mr. Boyd commented that he has long had a problem with building services having a 10% contingency with every project, without having to come back to the Board and explain why. He said that he is concerned about having a cost overrun with every project and never having an explanation as to why. Mr. Boyd added that he has a problem with Rivanna doing that also.

Mr. Rooker added that Rivanna's overage is 25 percent.

Mr. Henry stated that he would be happy to come back to the Board at another time with information about the building services process.

Ms. Mallek pointed out that there are also a lot of contingencies that are not used, which accumulate and are used for other projects such as the Ivy Fire Station.

Mr. Foley noted that the Board has not been involved to this level of detail with monitoring projects, but approves the budget with a contingency built in. He said that if there is a different standard the Board thinks we should use on that, or come back under certain circumstances for approvals, that is something the Board and staff should talk about.

Mr. Dorrier said that he thinks it should be examined as to whether it is a trend.

Mr. Foley said that performance measures internally on those things could also be provided.

Mr. Rooker stated that there have been cost overruns in years when inflation has been ramping up, but in the most recent four or five years it has gone the other way.

Mr. Boyd said that he would like to see a little more transparency on projects that overrun or come in under.

Mr. Henry suggested that there could be thresholds established for projects for the Board to be closer informed on, and perhaps contingency at a certain level could trigger Board review.

Mr. Boyd said that he would like to have an update at some point on how much has been spent on CIP projects in the growth area.

Agenda Item No. 13. Transit Development Plan, Bill Watterson, Manager, Charlottesville Area Transit.

The following executive summary was forwarded to Board members:

Mr. Bill Watterson, Manager of Charlottesville Area Transit (CAT), will present to the Board recommendations for future service improvements identified in the updated Transit Development Plan (TDP), with a particular focus on the recommendations for routes that serve Albemarle County. The TDP is updated every five years; the last update being adopted in 2006.

The TDP is developed by the City in conjunction with the State Department of Rail and Public Transit (DRPT) and is required to cover a six year planning period, July 1, 2011 to June 30, 2017. The Plan also contains long term recommendations for the period beginning in FY 2018. The TDP establishes a blueprint for CAT service over the six-year planning period; implementation of these plans is subject to City Council's annual approval of the transit service modifications. Establishment of new service in the County is subject to approval and funding by the Board of Supervisors.

City Council endorsed the TDP for CAT for the six year period beginning July 1, 2011 as a guide for local investments in transit over that period; however, Council stated that it did not support the recommended modifications to service along two routes serving the Woolen Mills and North Locust Avenue neighborhoods (Routes 1A and 2A). Accordingly, the draft TDP is currently under revision based on the comments and direction provided by City Council.

There are four routes funded by the County that serve three sections of the Urban Area:

- Route 2B serves the Fifth Street area, including the County Office Building (COB) on Fifth Street and Southwood Mobile Home Park;
- Route 5 runs from Barracks Road Shopping Center to Fashion Square Mall and Walmart;

- Route 10 serves the Pantops Area including Wilton Farms Apartments, the Riverbend Shopping Center, the MJH Outpatient Center, the Veteran Administration office and the Social Security office.
- Route 24 provides night service to Pantops.

Two other "City" routes serve destinations located in the County, which are not funded by the County at this time:

- Route 7 runs to Fashion Square Mall;
- Route 1 serves PVCC.

A summary of CAT's recommended service changes in the County is provided below. Mr. Watterson's presentation will provide more detail about these recommendations.

Recommended service changes in years 1 through 3 of the Plan (FY 2012--FY 2014):

- Provide service to the Avon Street Extended and Mill Creek Drive area with the rerouting of Route 1, which serves PVCC (no additional funding is anticipated to be needed from the County for this new route);
- Make relatively minor modifications to Route 2 and Route 5 to provide bi-directional travel on those routes; however, direct service to Region 10 offices on Old Lynchburg Road may be eliminated (service would be within walking distance);
- Provide service to the new Martha Jefferson Hospital, address service delays occurring on Route 10 in Pantops and modify the night service (Route 24) to generally match the Route 10 day service. The decision by City Council to not implement recommended changes to Routes 1A and 2B in the City has resulted in limited options to address the delays now occurring on Route 10. In order to maintain one-hour headways on Route 10, particularly during peak traffic periods, service that is now provided to some locations may need to be eliminated. County and CAT staff recommend that should service levels need to be modified the Veterans Administration Office service be eliminated in order to maintain on time one-hour headways. If further service reductions are needed, staff recommends that service to Wilton Farms Apartments be eliminated. These locations are recommended for reduction based on the level of usage and the travel time needed to access these locations. The issue of possible service reductions will be reviewed in greater detail during Mr. Watterson's presentation and guidance from the Board is requested on this issue.

The improvements described above are revenue neutral and require no additional expenditure of funds by the County.

Recommended service changes years 4 through 6 of the Plan (FY 2015--FY 2017):

- Provide service to The Shops at Stonefield (formerly Albemarle Place) by extending Route 8 to the site;
- Provide service to Hollymead through a modification and extension of Route 5 (Route 5B).

Additional funding from the County may be needed to implement the above new services, particularly the future Route 5B to Hollymead.

Identified long range service changes in the County beyond the six-year planning period (FY 2017--2035):

- Meadow Creek Parkway service from the City to Fashion Square Mall;
- Barracks Road Shopping Center to MJH (Pantops) cross-town service;
- US 29 limited stop service (express service) to UVA;
- US 29 Park-and-Ride lots;
- Expanded Sunday service.

The Long Range Service Changes are outside of the six year planning period of the TDP. These recommendations will be considered for inclusion in the six year planning period of the Plan with future updates from the TDP.

The TDP serves as the plan for implementing transit service to the City and the County's surrounding Urban Area and helps inform decisions on the funding of transit services. The County contracts for services with the City/CAT and decisions on the funding for service, including new or expanded service, are made during the annual budget review process.

The presentation is provided for information. There is no action required at this time. Staff respectfully requests guidance from the Board on potential modifications to the Routes 10 and 24 in Pantops.

Mr. Waterson reported that the six-year transit development plan begins in July 2011 and is something the State of Virginia has obliged all transit agencies in the state to produce, with the State funding the plan and choosing the consultant. He said that the local area had an advisory group that included David Benish from Albemarle County staff as well as others in the community, but the recommendations are coming from an outside party, so the Board may want to consider this.

He said that he would focus on the six-year period divided into the near-term three years and the routes that are in Albemarle County, such as Route 2-B with the City and County partnering to bring the COB and the mobile home park into the transit service area. Mr. Waterson stated that they plan to change

the route this August, so instead of it having a one-way loop at the end it would go all the way out on 5th Street and Old Lynchburg Road until it gets to the turn off for Southwood, serve the mobile home park and then double back on itself. He said that this would eliminate a left-hand turn off of Old Lynchburg Road to head northbound, which is not very safe as there is no traffic signal. He also noted that this change to 2-B is cost neutral. Mr. Waterson also stated that another change being proposed for implementation this August is to Route 5, which is the primary route for the County.

Ms. Mallek asked about the change in service for Region Ten, and Mr. Waterson explained that the stop for them would be put on Lynchburg Road itself. He said that the way it is being done now requires a left-hand turn for the bus, without a traffic signal, to reenter traffic on Old Lynchburg Road heading north. Ms. Mallek said that there is no sidewalk from Old Lynchburg to Region Ten, so this is not a great idea. Mr. Waterson agreed that those are challenges that we have in a number of areas, but when you are on a high-speed road turning left into Hickory, you do not have to merge into a high-speed traffic volume, and on the return trip the bus will be turning right and will not have to cross over opposing lanes of traffic.

Mr. Rooker asked how the ridership has been on 2-B, and Mr. Waterson said that the route has incrementally grown ridership each year.

Mr. Waterson continued with his report on Route 5, noting that it is the most used service in the County and services between Barracks Road and Wal-Mart via Fashion Square, Albemarle Square, and Rio Hill Shopping Center. He said that it is primarily to the neighborhoods that are west of Seminole Trail and Route 29, and the proposed change is very small and results from conversations with Fashion Square management. Mr. Waterson explained that currently the busses go in through their parking lot and then make a one-way loop on Berkmar Drive after exiting, but instead the busses would exit to the east and only get on Rio Road and serve on Rio Road, which is similar to the 2-B issues as there are four stops on Berkmar with modest use.

Mr. Waterson reported that the next set of changes are the most challenging and are a work in progress with further particulars to be discussed in August. He explained that there were some recommended changes to the transit plan with a substantial number of them rejected by Charlottesville City Council, so the service currently in place would need to be worked with, which is Route 10 during the day and Route 24 at night. Mr. Waterson said that Martha Jefferson would be open after the planned service change and field testing was being done today to test the road network to determine how much time it will take to connect various areas in Pantops. He said that the challenge has been adding MJH into the routing, as it currently is not part of the routing, and he is hoping they will come back in July with a plan. Mr. Waterson stated that the recommended action from the consultant would have modified a City bus route from the Woolen Mills neighborhood (1-A), and one in the Locust Grove neighborhood (2-A); those changes were not well received by those neighborhoods and City Council made clear that they would not implement those changes.

Mr. Boyd asked about the elimination of the Veteran's Office and Wilton Farms from the Route 10 route.

Mr. David Benish, Chief of Planning, responded that they would like some feedback, but what is being suggested first is that the Veteran's Administration, which has low ridership, be if necessary, the first service to be cut, and then as Mr. Waterson does his analysis, consider eliminating service to Wilton Farms.

Mr. Boyd asked how far people would have to walk from Wilton Farms in order to get transit, and Mr. Benish said they would need to walk to Pantops, which is only one-quarter mile but requires crossing Route 250.

Mr. Rooker said that before any changes are made to these routes, boarding information is needed.

Ms. Mallek asked if bus service is being removed from the veteran's clinic at MJH, and Mr. Waterson said that there has not been very much use of that stop, sometimes with a day going by without any riders.

Mr. Rooker reiterated that that information is necessary before any changes are made. He also asked if the route on the north side of Route 250 that goes by Westminster Canterbury to the Social Security appeals office would continue.

Mr. Waterson said that with the time available, the routes cannot cover everything, so they are trying to figure out what can be matched up and continued.

Mr. Rooker stated that when the facility was put in there, there was a requirement in the RFP that it be put on a bus line.

Mr. Waterson responded that at the time he came to the community, the service to Pantops did not serve that area but adjustments have been made to accommodate that.

He said that changes to the four routes that the County participates in financially – the 2-B, the 5, the 10 and the night 24 service would all take place this August, with the recommendation for changes next year to Route 1-B, which serves downtown to Piedmont Virginia Community College (PVCC), and to the night route. Mr. Waterson said that the path of travel would be changed to primarily use Avon Street

extended rather than Monticello Avenue, which would bring service to Mill Creek with the bus approaching PVCC off of Route 20 to the South rather than Monticello Avenue from the north.

Mr. Waterson reported that the second three-year block of time, or the "short range," would include proposed adjustments to the current Route 5, with the service being considered as two connected pieces with Route 5-A continuing service to Barracks Road and Fashion Square.

He explained that there would still be two busses running every 30 minutes, with the Northern portion extended to include Hollymead, and in order to accomplish this, an additional vehicle would be required. Mr. Waterson said that a recommendation would be to add a fourth bus, which would go into service in the first year of the short range, FY 2015, depending on the Board's decisions about whether to invest in another vehicle, which would cost about \$325,000 per year. He added that the County's share is yet to be determined and the service does receive Federal and State operating assistance.

Mr. Boyd asked how the cost allocation would be determined, as that route would be a benefit to the City and County both.

Mr. Waterson replied that the discussion has been had for years, with the "big solution" being to form a regional transit authority and an intermediate solution of designating routes as either City or County, noting that Route 7, which serves from downtown to Fashion Square, is fully funded by the City even though it provides service into the County. He said that the working expectation now is that any extension of Route 5 would be fully funded by the County, with changes possible in the interim. Exactly how the costs would be covered is not something that is fully determined.

Mr. Rooker noted that the Board discussed this about six years ago and the cost-sharing formula seemed to make a whole lot of sense at the time, with the City agreeing to share the subsidy they get for transit. He also said that he does not think they should spend a huge amount of time going into cost allocation unless the City wants to, asking if the service being considered for Hollymead would also be on the 30-minute schedule.

Mr. Waterson stated that it does not have to be, but that is currently what is proposed, and the cost of course would be less if the route were less frequent.

Mr. Rooker suggested that one idea would be to try it on an hour basis, which would be less expensive, to see what kind of ridership it generates.

Mr. Boyd asked about the status of the Regional Transit Authority.

Mr. Rooker explained that this Board along with City Council met and unanimously voted with the City to go forward with the regional transit authority but also voted to substantially upgrade transit service in the community, adding that they did not get the funding or a funding mechanism to do that. He added that there are several logistical challenges in forming an RTA, such as conveyance of capital stock, including the busses, and designation of employees away from the City to the authority.

He said it did not make sense to undertake those discussions until they group knew they were funded to the point of allowing the expansion that was contemplated to go forward.

Mr. Boyd stated that he remembered all the issues, but he didn't know if that group was still meeting or what the status was.

Mr. Rooker said that he actually recommended that the group stop meeting, as there was no money to really go forward. He stated that they had discussed putting in a funding mechanism by referendum, but they did not get the authority to proceed with that.

Mr. Dorrier asked about the decision on going to Scottsville and Crozet.

Mr. Waterson responded that there was not a recommendation made during the six-year period to have service extensions going that far.

Ms. Mallek said that the Board had discussed having JAUNT serve those areas, but could not come up with the \$15,000 to get that started.

Mr. Foley noted that about five or six years ago the County contemplated adding routes but realized they could not afford it, which led to regional transit discussions that did not generate the money from the State to pay for it. He added that even the Hollymead route being discussed today would need to be considered in the five-year financial plan.

Ms. Mallek pointed out that the proffer money is sitting there, and Mr. Rooker mentioned that the amount for that is only \$50,000 a year.

Mr. Foley commented that the cost of \$325,000 is obviously significantly more than that, and perhaps it should be addressed in the Board's strategic planning session.

Mr. Rooker noted that the figure given was without subsidy.

Mr. Waterson clarified that if the recommendation were implemented the actual cost would be less when fare revenue and operating assistance are taken into account, but there is a higher local obligation

for the first two years of a new service. He said that they have been successful in growing the operating assistance fund each year, so there may be some of that available to help defray costs, and by the time two years have lapsed they will be covered the same as other services at approximately 40 percent of costs coming from State and Federal operating assistance. Mr. Waterson stated that the local match obligation over time would end up being about half of the cost.

Mr. Boyd asked how the decisions are made to extend service to certain areas.

Mr. Waterson explained that lots of people have ideas about how to improve public services, and prior to Hollymead being built out it was brought up by people who want to work or shop there. He said that he does not recall business owners there requesting this, but elected officials and other community representatives have seen this as a gap in service. Ultimately, the decision is up to the Board. He does not believe that there will be service to Target unless there is an agreement on how to fund the service.

Mr. Boyd said that this is across the street from his district and he has never had anyone raise the issue to him.

Ms. Mallek responded that from a transportation planning point of view, the bus service was intended to get some cars off of Route 29 especially as population grows. She said that part of the reason for getting a third lane put in was to make it a rapid transit lane.

Mr. Dorrier commented that in order to get the pressure off of 29 North, service must be provided to Scottsville and Crozet.

Ms. Mallek said that JAUNT would certainly do that, and there have been a lot of people anticipating that service.

Mr. Foley said that for Mr. Waterson's purposes, he is just trying to get a general idea for this plan to go forward as opposed to funding decisions and those types of things.

Mr. Waterson said that is definitely the input he needs.

Mr. Foley asked if this was a goal that he wanted to set for the future, looking out three to six years.

Mr. Waterson stated that knowing whether or not the Board believes that service to Hollymead has merit would be an important piece of information in terms of setting future priorities. He wants to make the Board aware that based upon a lot of community input, one of the recommendations would be four years from now, to add service out to Hollymead.

Mr. Foley asked for clarification that the likely cost to the County would be half of \$325,000.

Mr. Waterson responded that circumstances can change, but based on current funding and costing it would likely be in that range.

Mr. Rooker said that it should be considered in the context of bringing it online in four years or so, as it is the County's largest growth area.

Ms. Mallek added that with all the residential units being put in there, they should provide the transportation intended to begin with.

Mr. Boyd agreed, stating that there are short-term interests such as Wilton Farms and the Veteran's Administration building, with the longer-term issue being areas like Hollymead. He said that he would like some more information about ridership beyond the anecdotal comments of people who have said they would like the service.

Mr. Rooker said that boarding information is needed for the short-range plan.

Mr. Waterson stated that there are several other adjustments to the short-range plan and there may not be any County investment required, such as the opening of Hillsdale Drive, which would have one leg of Route 7 continuing in the Seminole Trail corridor as it does now and the other using the Hillsdale Drive corridor.

He reported that Route 8 currently turns around at Seminole Trail, connects downtown and provides service to Barracks Road shopping center, and this leg would be adjusted in order to serve the Shops at Stonefield when that development opens. Mr. Waterson said that Route 9 operates in the City and goes up to the high school, with the proposed adjustment being that when the YMCA opens in McIntire Park that the route be adjusted to include that stop.

Mr. Thomas asked if the YMCA would be serviced from Charlottesville High School through the parking lot that accesses McIntire Park.

Mr. Waterson responded that they would probably go into the park, going under 250 from the City neighborhood and then getting back on it to continue the route to the high school.

Mr. Boyd asked if there are any formulas developed that would establish whether a commercial area qualifies for transit.

Mr. Waterson explained that there are a lot of quantitative analyses done on what constitutes conditions that would have higher use for transit, with one big factor being what level of preexisting service is there, and what the current habits are. He said that one challenge in a community like this is that a lot of newly developing areas do not have a history of public transportation being an option, but in the case of Stonefield, because it is on the edge of areas that are already served with public transit, it is going to be a fairly straightforward thing to get relatively healthy use of transit service as it will be frequent and reasonably direct to a lot of other popular destinations. Mr. Waterson stated that Route 7 is very successful now, and Route 8 has been made more successful with Barracks Road service and upcoming service to Stonefield.

Mr. Boyd commented that it would be helpful in long-range planning to know the build out schedule for developments like Stonefield.

Mr. Rooker noted that the apartments are going in on the first phase, as is the hotel, movie theatre and Trader Joe's.

Mr. Benish said that he could provide some numbers for the Pantops area also, adding that realignment testing is already being done for that area. He also noted that service to the Veteran's Administration has been a concern for the Board, and said that staff could bring back what adjustments could be made under the current funding and those made to provide that service with additional funding. Mr. Benish emphasized that there would be some physical constraints in providing service, based on the current funding situation.

Mr. Henry said that the Pantops area is once an hour, so there is not nearly the flexibility that there is on Route 5, which runs every 30 minutes.

Ms. Mallek pointed out that there is a fairly steep hill at Peter Jefferson Way that would be prohibitive to people using MJH or the Veteran's Administration office, adding that although the ridership may be low those passengers really need to get there.

Mr. Rooker stated that funding cures a lot of problems, and ultimately the Board may have to make some choices about cutting services or providing additional funding.

Mr. Boyd said that JAUNT is also an option.

Mr. Rooker responded that it is, but there is a cost and that varies depending on where you live in the City or County. He said that Ms. Donna Shaunessy of JAUNT should be brought into the conversation at some point to see if there is a gap and how it might be filled.

Mr. Dorrier suggested that Mr. Benish check with the American Legion Post 74 and the VFW to get information about veterans using the service.

Mr. Waterson noted that several years ago, veterans' representatives made the request to extend service to the Veteran's Administration, and it is up to the Board to determine whether the usage level warrants service. Choices need to be made. What the Board needs to ask is what is going to benefit the community most with is providing a service that can keep its schedule and has destinations that are popular ones, because with limited resources it will not be possible to serve every destination that everyone might want.

(Noting that Sheriff Harding was present, the Board took up Agenda Item No. 11.)

Agenda Item No. 11. Inmate Workforce Update, Sheriff Chip Harding.

Mr. Harding stated that the inmate workforce is a program that each judge has the statutory authority to implement in their court, so he has no authority over it at all.

Mr. Harding said that he is not able to get all of the seven judges in one room to discuss and coordinate the effort, adding that there are also commonwealth attorneys and jail personnel who must also weigh in.

He explained that when Sheriff McCabe of Norfolk visited in the Fall and indicated that there was strong evidence in his locality that the program has been very successful, not a single judge made it to the two presentations.

Mr. Harding said that he has answered a lot of their questions and the issues have all been worked through, with Judge Hogshire asking if he would need to enter an order giving credit when they work or whether it can be done by letter.

Mr. Harding said that in Norfolk the jail prepares a letter stating that an inmate has worked a certain number of hours at a certain wage, so that amount is deducted from court costs and fines. He added that he hopes to see implementation of the program within a week or two, noting that Norfolk's program has run about 40,000 inmates in the last 15 years and has had no problems. Sheriff Harding also noted that if inmates do a good job their work can be used as a reference out in the real world so that they can be placed in work release and can start paying restitution. He also said that helping inmates get their drivers licenses back is also a crucial component of inmate success.

Mr. Boyd asked if there is anything the Board can do to help facilitate this process.

Mr. Harding responded that there is not at this point, as conceptually everyone is on board with the program with the exception of one judge.

Mr. Thomas said that his company has participated in inmate job placement, and two of them are now supervisors at other printing companies in the state now. He also stated that he is working to place another inmate who will be released in June.

Mr. Dorrier stated that he would move to pass a resolution in support of Mr. Harding's program.

Mr. Foley agreed to have staff draft something and bring it back.

Mr. Snow asked what the expense for supervision would be.

Mr. Harding responded that there would be no additional costs because there is one paid staff person from the jail who does armed supervision, and these inmates are the types who have no incentive to walk off or cause a problem. He stated that they have everything to gain. He also noted that the only work the inmates can perform at this point is for Government or for nonprofits, but currently the Government jobs come first.

Mr. Foley commented that Mr. Harding has been very diligent in pursuing this program.

Agenda Item No. 14. Closed Meeting.

At 11:45 a.m., **motion** was offered by Mr. Thomas that the Board go into a closed meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under subsection (1) to consider appointments to boards, committees, and commissions; and under subsection (7) to discuss with legal counsel specific legal matters regarding a potential appeal of a BZA decision. Mr. Rooker **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

Agenda Item No. 15. Certify Closed Meeting.

At 2:15 p.m. the Board reconvened into open meeting. **Motion** was offered by Mr. Thomas, to certify by a recorded vote that to the best of each Board member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed or considered in the closed meeting. The motion was **seconded** by Mr. Boyd. Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

Agenda Item No. 16a. Boards and Commissions: Vacancies/Appointments.

Motion was offered by Mr. Snow to make the following appointments/reappointments:

Ms. Naomi Ryan to the Advisory Council on Aging, with said term to expire May 31, 2015.

Mr. William Rich to the Equalization Board as the Rio District Representative with said term to expire December 31, 2011.

Mr. John Donahue to the Fiscal Impact Advisory Committee, with said term to expire May 31, 2015.

Ms. Sarah Collie to the Housing Committee with said term to expire December 31, 2011.

Mr. Brian LaFontaine to the Jefferson-Madison Regional Library Board with said term to expire June 30, 2015.

Ms. Diane Caton to the Pantops Community Advisory Council with said term to expire June 30, 2013.

Mr. Gregory McDonald to the CACVB Board with said term to expire June 30, 2013.

Mr. Craig Evans to the Fiscal Impact Advisory Committee with said term to expire July 8, 2013.

Mr. Jared Loewenstein, Mr. Steve Thompson and Mr. Jeff Werner to the Historic Preservation Committee with said terms to expire June 4, 2014.

Mr. Gary Grant to the Jefferson-Madison Regional Library Board with said term to expire June 30, 2015.

Mr. Lynwood Bell and Ms. Rita Krenz to the Pantops Community Advisory Council with said terms to expire June 30, 2013.

Mr. Albert LaFave to the Region Ten Community Services Board with said term to expire June 30, 2014.

Mr. Rod Gentry and Barbara Kessler to the Workforce Investment Board with said term to expire with said terms to expire June 30, 2012.

Ms. Amanda Moxham to the Workforce Investment Board with said term to expire June 30, 2014.

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

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

NAYS: None.

Agenda Item No. 17. **ZTA-2011-00001. Unlicensed Wireless Broadband Internet Access.** Amend Sec. 3.1, Definitions, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 by adding facilities for unlicensed wireless broadband internet access to the definition of "personal wireless service facility." (*Advertised in the Daily Progress on My 16 and May 23, 2011.*)

Mr. Bill Fritz, Chief of Current Development, reported that this zoning text amendment is a housekeeping matter brought about by changes in technology and an FCC ruling, and what's before the Board is a proposal to amend the personal wireless service facilities definition to include unlicensed wireless broadband, which is a communication system that allows for provision of high-speed internet access, typically in rural areas.

Mr. Fritz said that it uses antennas and equipment similar to that used in cellular phone service and the FCC made a ruling that it was not covered under their definition of a personal wireless service facility, so the County needed to amend its definition to include the unlicensed wireless broadband.

Mr. Fritz noted that the Planning Commission reviewed this in April and recommended approval with one question regarding the term "unlicensed," which has no significance to the County and is just an FCC term as no one can be licensed anyway.

Mr. Boyd asked where these would be installed.

Mr. Fritz explained that they can be mounted similarly to personal wireless service facilities, and the FCC ruling was such that it said that a licensed service provider providing this service as a dual activity it would qualify as a personal wireless service facility, but unlicensed facilities as standalones would not be. He said that sometimes these can be attached to trees, so it potentially has lesser impact.

Mr. Boyd asked if someone could put in a personal wireless facility and then sell it to their neighborhoods.

Mr. Rooker said that you would have to be getting it from someone who is providing the service, and there are wholesalers and retailers.

Mr. Fritz stated that while you can resell internet service over the air, the FCC encourages having multiple unlicensed providers to cooperate with one another so they are not conflicting with their radio signals. He clarified that the waves it operates on are on a different piece of the spectrum, and the FCC regulates the unlicensed bandwidth, such as CB radios.

At this time, Ms. Mallek opened the public hearing.

Mr. Cid Scallet addressed the Board, stating that he has started "Batesville Broadband," which intends to provide high-speed internet service to hard-to-reach areas in western Albemarle County. He explained that his company buys data capacity (bandwidth) from a provider and has already bought T-1 lines that provide dedicated bandwidth from AT&T and Century Link. After that is purchased, Mr. Scallet said, they send it wirelessly to various areas so that neighbors can pick it up and have high-speed internet. Mr. Scallet said that there was a small glitch in the code that did not allow this service to fall within the County's code governing personal wireless facilities and he was facing the prospect of having to get special use permits for every hub created to provide signal, and the change in the language will make it possible to go through a less stringent permitting process.

Mr. Boyd asked what a hub would look like.

Mr. Scallet responded that his company has put up a prototype on a small mountain near the Batesville Store, and the hub consists of two or three small panel antennas that are not much bigger than a computer monitor and will receive a signal from another antenna located at his store. He added that the antennas in the trees have negligible, if that much, visual impact as they are about 50 feet up in the trees and are not above the canopy.

Mr. Scallet said that no power station or base would be built and monopoles would not be needed at this stage to put them above the tree lines, adding that the system does work and now they are just waiting for permitting from the county. He stated that when he launched the service last summer, 214 people immediately signed up, so now they are waiting for the county to rewrite the language so the company can install the kind of system that we think will work best and in the most cost-efficient manner.

Mr. Boyd asked how big the device would be in his store.

Mr. Scallet responded that it would be about the same size as what is shown. He explained that you do not have to have a direct line of site to a southern sky, but you just need a good angle for the signal. Mr. Scallet said that the system will penetrate leaves, but they are not sure to what degree as it is not installed yet. He stated that his company would intentionally avoid areas where Century Link has the ability to install phone-based DSL.

He also said that they had lost 40 customers in about two or three weeks to Century Link. He added that his intention is to focus on northwestern and southern Albemarle County where they know for certain that Century Link and Verizon will not be going, adding that terrain is the primary challenge.

Mr. Thomas asked what the range of the antenna is, and Mr. Scallet indicated that they have a three-mile maximum range.

Mr. Thomas asked why Century Link has not put grids in all over the place with this technology, and Mr. Scallet responded that there are different kinds of internet services offered by those companies and the signals from his service are tighter and do not travel as far. Mr. Scallet said that he had asked Century Link why they are not providing service, and that company has indicated that it is not cost-efficient given the small number of customers.

Mr. Boyd asked if this would fall under the regular cell tower ordinance.

Mr. Fritz responded that what this proposes to do is to put Mr. Scallet on the same footing as the other service providers, so if he is attaching to an existing conforming structure it would be a Tier One with a building permit and administrative approval. Mr. Fritz said that with a treetop facility it would be a Tier Two and would go only to the Planning Commission, with a free-standing monopole being a special use permit that comes before the Board.

Mr. Scallet stated that the Batesville area is dramatically underrepresented when it comes to high-speed internet but there is a greater need for it as the area has become more professional. He also said that public school kids are being left behind because a lot of assignments are now put online, and doing research with dial-up is very, very slow. Mr. Scallet emphasized that they may not be able to help everyone in the area but they can help some, adding that the antenna are not visible like the monopoles are.

Mr. Snow asked about the impact of weather on the signals.

Mr. Scallet responded that severe weather will affect them but because the signal is only traveling three miles versus 40 or so with a satellite, weather is not as much of a factor. He added that the larger concern is lightning strikes possibly affecting the system at a particular home, but they feel strongly that weather will not be a major issue.

Mr. Rooker noted that this is exactly the way that cable TV started, with people putting up one antenna and running the signal out to 40 or 50 homes, and said that Bluefield, West Virginia was one of the first places to get cable TV.

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

Mr. Rooker then **moved** to adopt ZTA 2010-0001. Mr. Snow **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

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

ORDINANCE NO. 11-18(5)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, is hereby amended and reordained as follows:

By Amending:

Sec. 3.1 Definitions

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

...

Personal wireless service facility. A facility for the provision of personal wireless services, as defined by 47 U.S.C. § 332 (Section 704 of the Telecommunications Act of 1996), including those Federal Communications Commission licensed commercial wireless telecommunications services such as cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), common carrier wireless exchange access services, unlicensed wireless services and, for the purposes of this chapter, unlicensed wireless broadband internet access. (Added 10-17-01; Amended 10-13-04)

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

Agenda Item No. 18. **ZTA-2011-0003. Special Lots.** Amend Sec. 3.1, Definitions, and Sec. 4.2.1, Building site required, and add Secs. 2.1.7, Creation and use of special lots, and 4.3.02, Special lots, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would add Sec. 2.1.7 to provide that the requirements for the creation of a lot shall not apply to special lots but that the requirements for the use, and the location of a structure or improvements on, a lot shall apply to special lots; amend Sec. 3.1 by adding a definition of "special lots," which are lots created for uses serving specific delineated public purposes; amend Sec. 4.2.1 to provide that special lots do not require a building site; and add Sec. 4.3.02 to provide that special lots of any size may be created in all zoning districts. (*Advertised in the Daily Progress on My 16 and May 23, 2011.*)

Agenda Item No. 19. **STA-2011-00001. Special Lots.** Amend Sec. 14-106, Definitions, Sec. 14-203, Fees, Sec. 14-209, Rural subdivisions; procedure; Sec. 14-302, Contents of preliminary plat, Sec. 14-303, Contents of final plat, Sec. 14-310, Health director approval of individual private wells and/or septic systems, and add Sec. 14-208.3, Special lots, of Chapter 14, Subdivision of Land, of the Albemarle County Code. This ordinance would amend Sec. 14-106 by renaming the term "non-building lot" to "special lot" and amending the definition, and changing the reference to non-building lots in the definition of "remnant"; amend Sec. 14-203 to establish a fee of \$88.00 for a plat creating a special lot; add Sec. 14-208.3 to identify the regulations applicable to a plat creating a special lot; amend Sec. 14-209 to provide that special lots will be processed the same way rural subdivisions are processed; amend Sec. 14-302 to refer to special lots; amend Sec. 14-303 to require a notation on a plat referring to the special lot; and amend Sec. 14-310 to provide a conditional exemption for special lots from the requirements of that section. The proposed fee for special lots is necessary to assure that the cost to the County to review applications for special lots is covered. The proposed fee is authorized by Virginia Code § 15.2-2241(9). (*Advertised in the Daily Progress on My 16 and May 23, 2011.*)

Ms. Amelia McCulley, Director of Zoning, distributed illustrations of special lots, stating that they are established for purposes such as public parks and greenways, central well and sewer facilities, pre-existing cemeteries, public utilities and road rights of way.

She said that by the shape and size and lack of road frontage, these lots will not comply with the existing zoning and subdivision ordinance regulations. For example, a well lot required by the Health Department for a central water supply must be at least 100' x 100', or 10,000 square feet, and in the rural areas the minimum lot size is two acres.

Ms. McCulley stated that there is a public purpose that is served by this text amendment, as it allows the creation of special lots, those with a limited and identifiable special purpose with exemptions from certain zoning and subdivision requirements that are necessary for the creation of lots in general, which are lots that are intended for development. She said that requiring that these lots meet all of these criteria is not necessary to their specified use and can actually work against the County and community property owners as it can discourage them from providing these because it requires the land to be sized larger, have road frontage, meet building site requirements, etc. that will then affect the value.

Ms. McCulley stated that there are several purposes and this amendment codifies an administrative practice that has been consistent in the County for a long time, while producing some consistency between the zoning and subdivision ordinance. She said that the Planning Commission recommended approval of this amendment at their May 17, 2011 meeting, and approval of special lots would be limited to certain appropriate requirements with notes on the plat specifying that limited purpose.

Ms. McCulley stated that Morgan Butler asked her a great question that needs to be stated in the public meetings: these amendments apply to establishing that lot, creating that lot, and do not carry forward to exempting development, disturbance of the site or construction of new structures. All of those regulations still apply to a building permit, a site plan or anything else applicable.

Mr. Rooker asked if it would be technically possible for a landowner to break off 100 or 200 feet and sell it to a wireless company instead of leasing it to them.

Ms. McCulley responded that it does happen in some cases that property must be acquired, but more often there are lease arrangements.

The public hearing was opened. With no one from the public wishing to address the Board, the public hearing was closed. The matter was placed before the Board.

Mr. Snow **moved** to adopt, ZTA-2011-0003 [Ordinance No. 1-18(6)]. Mr. Thomas **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

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

ORDINANCE NO. 11-18(6)

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

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

By Amending:

Sec. 3.1 Definitions
Sec. 4.2.1 Building site required

By Adding:

Sec. 2.1.7 Creation and use of special lots
Sec. 4.3.02 Special lots

Chapter 18. Zoning

Article I. General Regulations

Sec. 2.1.7 Creation and use of special lots

A special lot shall not be subject to the requirements of this chapter for the creation of a lot including, but not limited to, the building site requirements in section 4.2.1, the frontage and lot width requirements in section 4.6.1, the area and bulk regulations of the zoning district in which the special lot is located and, for special lots in the Rural Areas zoning district, the requirement in section 10.3 that each lot less than twenty-one (21) acres in size have a development right. A special lot shall be subject to the requirements of this chapter pertaining to the use of the special lot and the location of a building, structure, and improvements on a special lot.

Sec. 3.1 Definitions

...

Special lot. The term "special lot" means a lot created to be used exclusively for public or private streets, railroad rights-of-way and railroad lines, public utilities, publicly owned or operated public facilities, publicly owned or operated parks, publicly or privately owned sites for personal wireless service facilities, central water supplies and central sewerage systems as those terms are defined in chapter 16, stormwater management facilities, cemeteries existing on June 8, 2011, conservation areas, preservation areas, open space, and greenways.

...

Article II. Basic Regulations

Sec. 4.2.1 Building site required

No lot other than a special lot shall have less than one (1) building site. For purposes of this section, the term "building site" shall mean a contiguous area of land in slopes of less than twenty-five (25) percent as determined by reference to either topographic quadrangle maps of the Geological Survey - U. S. Department of Interior (contour interval twenty [20] feet) or a source determined by the county engineer to be of superior accuracy, exclusive of:

Any area located in the flood hazard overlay district or which is located under water;

Any area located within two hundred (200) horizontal feet of the one hundred year flood plain of any public drinking water impoundment or within one hundred (100) horizontal feet of the edge of any tributary stream to such impoundment; (Amended 11-11-87)

Any area designated as a resource protection areas on the resource protection areas map adopted pursuant to chapter 17 of the Code of Albemarle; provided that nothing contained herein shall be deemed

to prevent or impair the program authority from exercising discretion as set forth in that chapter. (Added 9-9-92)

Sec. 4.3.02 Special lots

Special lots shall be permitted in all zoning districts.

Mr. Snow then **moved** to adopt STA-2011-00001 [Ordinance No. 11-14(1)]. Mr. Boyd **seconded** the motion, which passed by the following recorded vote:

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

NAYS: None.

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

ORDINANCE NO. 11-14(1)

AN ORDINANCE TO AMEND CHAPTER 14, SUBDIVISION OF LAND, ARTICLE I, GENERAL PROVISIONS, AND ARTICLE III, SUBDIVISION PLAT REQUIREMENTS AND DOCUMENTS TO BE SUBMITTED, 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 14, Subdivision of Land, Article I, General Provisions, and Article III, Subdivision Plat Requirements and Documents to be Submitted, are hereby amended and reordained as follows:

By Amending:

Sec. 14-106	Definitions
Sec. 14-203	Fees
Sec. 14-209	Rural subdivisions
Sec. 14-302	Contents of preliminary plat
Sec. 14-303	Contents of final plat
Sec. 14-310	Health director approval of individual private wells and/or septic systems

By Adding:

Sec. 14-208.3 Plats creating special lots

Chapter 14. Subdivision of Land

Article I. General Provisions

Sec. 14-106 Definitions

The following definitions shall apply in the interpretation and enforcement of this chapter:

...

Special lot. The term "special lot" means a lot created to be used exclusively for public or private streets, railroad rights-of-way and railroad lines, public utilities, publicly owned or operated public facilities, publicly owned or operated parks, publicly or privately owned sites for personal wireless service facilities, central water supplies and central sewerage systems as those terms are defined in chapter 16, stormwater management facilities, cemeteries existing on June 8, 2011, conservation areas, preservation areas, open space, and greenways.

...

Remnant. The term "remnant" means any lot, other than one established as a special lot, which does not meet the minimum lot requirements of this chapter and the zoning ordinance.

...

(§ 18-2 (part) 9-5-96, 4-13-88, 7-9-86, 3-29-78, 12-15-76, 4-21-76; § 18-56, 9-5-96, 10-17-79, 8-28-74; 1988 Code, §§ 18-2, 18-56; Ord. 98-A(1), 7-15-98; Ord. 02-14(1), 2-6-02; Ord. 05-14(1), 4-20-05, effective 6-20-05)

State law reference--Va. Code § 15.2-2252.

Sec. 14-203 Fees

Each subdivider shall pay a fee upon the submittal of a plat or other application, based on the schedule below; provided that neither the county nor the county school board shall be required to pay any

fee if it is the applicant. The fee shall be in the form of cash or a check payable to the "County of Albemarle."

...

C. Other subdivision plats:

1. Plat for a rural subdivision, family subdivision, or resubdivision: \$690.00.
2. Plat for a boundary line adjustment: \$200.00.
3. Plat creating one or more special lots and one residue lot: \$88.00.

...

(9-5-96, 12-11-91, 6-7-89, 4-17-85, 12-1-82, 12-14-77, 3-2-77, 11-10-76, 8-28-74 (§ 3); 1988 Code, § 18-43; Ord. 98-A(1), 7-15-98; Ord. 99-14(1), 6-16-99; Ord. 02-14(2), 7-3-02; Ord. 04-14(1), adopted 12-8-04, effective 2-8-05; Ord. 05-14(1), 4-20-05, effective 6-20-05; Ord. 09-14(1), 5-13-09, effective 10-1-09)

State law reference--Va. Code § 15.2-2241(9).

Sec. 14-208.3 Subdivision creating a special lot and one residue lot

The following sections of this chapter shall apply to each subdivision creating one or more special lots and one residue lot:

A. *General*: Sections 14-100 through 14-108.

B. *Administration and procedure*: Sections 14-200 through 14-204 and sections 14-209, 14-226, 14-229 and 14-236.

C. *Plat requirements and documents to be submitted*: Sections 14-300, 14-301, 14-302(A)(1), (3), (4), (5), (6), (7), (9), (10), (11), (14) and (15), 14-302(B)(1), (2), (4), (5), (6), (7), (8), (9) and (10), 14-303(A), (B), (C), (D), (E), (F), (H), (I), (L), (O) and (P), 14-304, 14-305(B), 14-310, 14-312, 14-314 and 14-316.

D. *On-site improvements and design*: Sections 14-406, 14-414, 14-416, 14-421, 14-426, 14-427, 14-433 and 14-438.

Sec. 14-209 Rural subdivisions and subdivisions creating a special lot and one residue lot; procedure.

Each plat for a rural subdivision or a subdivision creating one or more special lots and one residue lot shall be submitted, reviewed and approved as follows:

A. The plat shall meet the standards for plats set forth in Virginia Code § 42.1-82.

B. Within sixty (60) days after submittal of the plat, the agent shall determine whether it complies with the applicable requirements of this chapter. If the agent determines that the plat complies, he shall approve the plat. If the agent determines that the plat does not comply, he shall inform the subdivider in writing of the reasons for the denial, with citation to the applicable section of this chapter or other law, and what corrections or modifications will permit approval. The agent shall either mail the notice of denial by first class mail, or personally deliver it, to the subdivider. However, if the plat requires approval by any agency, department or authority other than the county, and no evidence is provided at the time the plat is submitted that approval has been obtained, the agent shall approve or disapprove the plat within thirty-five (35) days after receipt of approval from the agency, department or authority provided that the plat shall be approved or denied not later than ninety (90) days after resubmittal of the plat.

(§ 18-13 (part), 9-5-96, 12-21-83; § 18-57 (part), 9-5-96, 1-3-96, 4-13-88, 12-21-83, 10-17-79, 8-28-74; § 18-58 (part), 9-5-96, 8-28-74; 1988 Code, §§ 18-13, 18-57, 18-58; Ord. 98-A(1), 7-15-98; Ord. 05-14(1), 4-20-05, effective 6-20-05)

State law reference--Va. Code §§ 15.2-2241(9), 15.2-2258.

Article III. Subdivision Plat Requirements and Documents to be Submitted

Sec. 14-302 Contents of preliminary plat

A preliminary plat shall contain the following information:

A. A preliminary plat shall contain the following information, which must be included in order for a preliminary plat to be deemed complete under section 14-216(B):

...

10. *Right of further division of proposed lots*. The number of lots, as assigned by the subdivider, into which each proposed lot may be further divided by right pursuant to section 10.3.1 of the

zoning ordinance, if applicable. The plat shall also contain the following note: "Parcel [letter or number] is assigned [number] development rights and may/may not be further divided and when further divided these rights shall not comprise more than [number] acres. The residue of Tax Map/Parcel [numbers] is retaining [number] development rights and when further divided it shall not consist of more than [number] acres." Development rights need not be assigned to a special lot.

(9-5-96, 2-4-81, 8-28-74; 1988 Code, § 18-52; Ord. 98-A(1), 8-5-98; Ord. 05-14(1), 4-20-05, effective 6-20-05; Ord. 08-14(1), 2-6-08)

State law reference--Va. Code §§ 15.2-2241(1), 15.2-2258, 15.2-2262.

Sec. 14-303 Contents of final plat

In addition to containing all of the information required by section 14-302, except for the information required by section 14-302(A)(12), a final plat shall contain the following information:

...

T. *Special lots.* If the subdivision creates a special lot, the following note shall be placed on the plat: "Lot 'X' is a special lot established solely for (insert purpose for the special lot as identified in the definition of special lot in section 14-106)."

(9-5-96, 2-4-81, 8-28-74 (§ 8); 1988 Code, § 18-55; Ord. 98-A(1), 8-5-98; Ord. 02-14(1), 2-6-02; Ord. 05-14(1), 4-20-05, effective 6-20-05)

State law reference--Va. Code §§ 15.2-2241(1), 15.2-2262, 15.2-2264.

Sec. 14-310 Health director approval of individual private wells and/or septic systems.

If required as a condition of final plat approval, a final plat shall not be approved if individual private wells are proposed for the subdivision until written approval has been received from the health director by the agent. A final plat shall not be approved if septic systems are proposed for the subdivision until written approval has been received from the health director by the agent as follows:

A. The health director shall determine the suitability of the soil of each lot of the subdivision for which septic systems with a conventional drain field will be constructed, and shall submit his opinion to the agent.

B. The health director may require as a condition of his approval of the installation of septic systems and, whenever necessary for the satisfactory installation of the septic systems, that individual lots be graded and drained so as to assure the effective removal of surface water from each lot.

C. Special lots shall not be subject to this section unless the special lot is created for a water supply or waste disposal purpose.

(Ord. 98-A(1), 8-5-98; Ord. 05-14(1), 4-20-05, effective 6-20-05)

State law reference--Va. Code §§ 15.2-2242(2), 15.2-2262.

Agenda Item No. 20. **ZTA-2011-00004. Fees.** Amend Sec. 35.1, Fees, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 35.1 by reducing the fee for special use permits for farmers' markets from \$2000 to \$490 (without an existing approved commercial entrance) and \$110 (with an existing approved commercial entrance); by deleting the requirement to pay for postage in addition to the fee; by eliminating the fee for published notice for special use permits for farmers' markets; by reducing the fee for notices provided to abutting properties upon receipt of applications for farm sales, farm stands, farmers' markets and major or minor home occupations from \$200 to a lesser fee; by reducing the fee for minor site plan amendments known as letters of revision from \$500 to \$100; and by clarifying that the fees for published notice shall be based on a cost quote from the publisher. The proposed fees are authorized by Virginia Code §§ 15.2-2241(9) and 15.2-2286(A)(6). (*Advertised in the Daily Progress on My 16 and May 23, 2011.*)

The following executive summary was forwarded to the Board:

On February 3, 2010, the Board deferred action on the proposed zoning fee ordinance that would have amended the fee structure for County zoning applications (the "zoning fee ordinance"). On May 5, 2010, the Board adopted a zoning text amendment that established new regulations for farm stands, farm sales and farmers' markets (the "farm sales ordinance") and established fees for special use permits for farmers' markets (either \$490 or \$110, depending on whether the site had existing parking and an approved commercial entrance). Subsequent to this action the Board adopted the zoning fee ordinance on August 4, 2010 and established a \$2,000 fee for special use permits. The zoning fee ordinance did not include the reduced fees previously established for special use permit fees for farmers' markets in the farm sales ordinance. Thus, under the current fee regulations, the fee for a special use permit for a farmers' market is \$2,000.

The proposed ordinance re-establishes the \$490 and \$110 fees for farmers' markets, reduces the fee for a class of minor amendments to site plans and makes other changes to the fee structure for notices

as well as administration of fees. The Planning Commission considered the proposed ordinance at its May 10, 2011 meeting and recommended approval of most of the proposed changes, but not the reduced application fees for farmers' markets or the reduced fee for notices for farm stands, farm sales, farmers' markets and major home occupations.

The Comprehensive Plan provides the guiding policies and principles for the reduced fees for the targeted uses in this proposed zoning text amendment.

With respect to the farm stands, farm sales and farmers' markets, the Rural Areas Plan describes the vision for the Rural Areas to include:

"A strong agricultural and forestal economy, with large unfragmented parcels of land on which to produce their goods, opportunities to gain value from processing their own produce, and access to local markets" and "Plans, policies and decision making that consider and protect rural economies and ecological processes."

Perhaps most relevant to this proposed ordinance is the following principle from the Rural Areas Plan: "Provide support to local and agricultural and forestal economies and connect local producers and consumers of local rural products."

With respect to the reduced notice fees for major home occupations, home occupations are one of the uses identified in the Rural Areas Plan, which, along with the farm sales-related activities, can promote the preservation of rural lands and activities." County Code § 18-5.2A(a) states that the purpose of the home occupation regulations is to "encourage limited home-based economic development," balanced with the need to protect the Rural Areas.

The proposed ordinance recommended by staff is the same as the ordinance considered by the Planning Commission with the exception of Sections 35.1(j)(1) and (2), which have been consolidated into Section 35.1(j)(1), as explained in the Fees for Notices section.

Fees for special use permits for farmers' markets

When the farm sales ordinance was considered by the Board, the reduced fees for farmers' markets were justified by the reduced review required for these applications as compared to other special use permits for commercial uses. (Attachment D)

The \$490 fee for proposed farmers' markets that do not have existing parking and an approved commercial entrance is equivalent to one-half of the \$980 fee imposed for commercial use special use permits in effect at the time. The fee was consistent with the fee charged for special use permits for Class B home occupations and small day care centers lacking existing parking and an approved commercial entrance. Under the current zoning fee regulations, the fee for a special use permit for a commercial use is \$2,000; the fee for a special use permit for a Class B home occupation or a day care center is \$1,000.

The \$110 fee for those proposed farmers' markets that had existing parking and an approved commercial entrance was justified because the application requires less review than a typical special use permit application. Although the current zoning fee regulations no longer have a fee class for minor amendments to a special use permit; the fee for a minor amendment to a site plan is \$500, which is better aligned to the required review than a typical special use permit application.

The Planning Commission recommended that the fees for special use permits for farmers' markets set forth in Section 35.1(c)(7) and (8) not be reduced as set forth above. The Commission was concerned about the budget impacts of the reduced fees.

Fees for Letters of Revision

Letters of revision are a class of minor site plan amendments that require much less review than a typical minor site plan amendment and therefore the proposed reduced fee of \$100 for letters of revision set forth in Section 35.1(d)(6) is warranted. The Planning Commission recommended approval of this proposed amendment.

Fees for notices

The proposed ordinance includes three changes to the fee structure for public notices. First, under the current regulations, Section 35.1(j)(1) requires that an applicant pay a \$200 fee plus the actual cost of postage for the first 50 mailed notices. The proposed ordinance would amend Section 35.1(j)(1) by eliminating the requirement that the applicant pay the actual cost of postage. This change would have little budget impact and would simplify administration by eliminating the need for staff to collect any later-identified unpaid postage costs. The Planning Commission recommended approval of this change.

Second, staff recommends that Section 35.1(j)(1) be amended to exempt farm stands, farm sales, farmers' markets and major home occupations from the fee imposed for mailed notices to adjoining property owners. The draft ordinance considered by the Planning Commission (Attachment A) provided that a fee of \$199 be established to provide the Board the greatest flexibility in setting a fee. Staff now recommends that these uses not be subject to any fee for mailed notices. Because the costs of mailed notice would have to be absorbed by the County, the Planning Commission recommended that these uses be subject to the \$200 fee for mailed notices under Section 35.1(j)(1).

Lastly, Section 35.1(j)(3) is recommended to be amended to provide that the fee for published notice be based on a "cost quote from the publisher" instead of on "actual cost." This change clarifies that the publication cost is limited to the actual cost of publication, and not the County's costs in processing the

published noticed, which is assumed to be covered by the application fee. The Planning Commission recommended approval of this change, but recommended that the proposed final clause of Section 35.1(j)(3), which would exempt special use permits for farmers' markets from the publication costs, be deleted.

Administration

The last paragraph of Section 35.1 is proposed to be amended to expressly authorize the zoning administrator to refund application fees subsequent to the submission of an application in those instances when it is determined that said fees are not required. The Planning Commission recommended approval of this proposed amendment.

Conclusion

Despite the budget impacts from the reduced or eliminated fees under the proposed ordinance, the guiding principles of the Comprehensive Plan support the reduced fees in the proposed ordinance.

One alternative approach would be to set the fees for special use permits for farmers' markets based upon comparables under the current fee regulations. Under that approach, the fees for farmers' market special use permits would be \$1000 (based on the fee for a Class B home occupation or a day care center) and \$500 (based on the fee for a minor site plan amendment). However, staff notes that even these fees may be market barriers for small or infrequently held farmers' markets.

The proposed ordinance impacts the County's budget because most of the costs for reviewing special use permits for farmers' markets would be absorbed by the County and all of the costs associated with published notice for those permits, and mailed notice for farm stands, farm sales, farmers' markets and major home occupations would be covered by the County. For each special use permit for farmers' market on a site that has existing parking and an approved commercial entrance, the fee would be \$110 under the proposed ordinance as compared to \$2,000 under the current fee regulations, and there would be no fee for published and mailed notices as compared to an approximately \$800 fee under the current fee regulations.

After the public hearing, staff recommends that the Board adopt the revised ordinance.

Mr. Graham reported that this was intended to be a simple housekeeping amendment, as fees were adopted back in August 2010, but in looking at it and enacting the fees in January 2011 staff realized they had overlooked some direction the Board set when they brought farmer's markets to them.

Mr. Graham said that in February 2010, the Board directed staff to indefinitely defer zoning fees, and in May 2010 the farmstand and farmer's market ordinances came forward after a public process that had a lot of support, calling for greatly reduced fees from the \$490 special use permit cost to \$110 where it would not require detailed analysis. In June 2010, he said, the Board directed staff to bring back the zoning fees for consideration and adopted them in August 2010, which is the point where he dropped the ball by not looking back at what was adopted in May regarding farmstands, failing to realize that the zoning fees being adopted here were not consistent with that direction. In January 2011, he said, the zoning fees became effective and that is when the issue with the farmer's market became apparent. Mr. Graham said that in May 2011 there was a Planning Commission public hearing on the zoning fee housekeeping.

He stated that the purpose of the ZTA is to provide consistency between the fees and the Board's earlier actions on the farmer's markets and also indicated that there was a policy issue as to whether the County should bear the cost of notices with farmstands, farmer's markets and farm sales, and this was a provision that was not in the ordinance when the Board adopted the provisions on farmer's markets in May 2010, although it was in the zoning ordinance fee changes whereby applicants bear the costs of those notices and legal advertisements rather than the County.

Mr. Graham also said staff realized they did not recognize a minor site plan change that was a fairly insignificant issue compared to site plan amendments, so they put a new fee in for that. He stated that they also clarified how fees are established for legal advertisement, with the quote from the publisher of the paper used as that benchmark, and also clarified the Zoning Administrator's ability to return unused fees.

Mr. Graham reported that staff and the Planning Commission agree that the fees for the minor site plan amendment should be reduced to \$100, which is part D-6 of the ordinance amendment, and agree that the fees for notice should exclude the postage, (part J-1 in Attachment D), that the legal advertisement cost should be based on the publisher's quote, and that the Zoning Administrator could return fees when they are not required. He said that the Planning Commission had recommended that the farmer's markets should not have reduced fees and should be treated the same as any other applicants, with full cost for a special use permit application, notices and legal advertisements. Mr. Graham stated that when the zoning fees were being considered they were also pushing for full cost recovery of those, noting that the Commission was inconsistent in that they supported the farmer's market provision but then supported the opposite position with the zoning fee amendment. He said that staff believes that the May 2010 consideration for farmer's market set the direction for a reduced special use permit fee and does have the issue of the notices and legal advertisement, which were not considered with the farmer's market in May 2010, but recognized that the Board made a policy decision in reducing the fees to encourage those activities and felt the policy should be to eliminate the fees for notices and legal advertisements associated with those use.

With that, he said, the staff recommendation is approval of the ZTA 2011-0004 as presented in Attachment D, with a reduced fee for the farmer's market special use permit and no notice fees, and no advertisement costs for those permits. Mr. Graham said that the Planning Commission recommendation is to take the ZTA as presented in Attachment A with some changes, with changes struck to Part C-7 and C-8 that created the special fee category of \$490 or \$110 for the special use permit application and altering J-1 to say "preparing and mailing or receiving, delivering up to 50 notices: \$200," which was a change agreed to eliminate the postage cost; and altering J-2 to say "published notices: cost based on the quote received from the publisher." He stated that the Planning Commission felt that the cost should be borne by the applicant and not by the County, which is where the differed from staff.

Ms. Mallek stated that with most farmers markets there is no established business, it is just a cooperative of people selling their products, so she is very much in favor of the staff recommendation. She asked if there had been any issues with the farmers markets thus far.

Mr. Graham responded that he is not aware of any issues like that, adding that there has been one farmers market application that paid the new fees, the Elks Lodge, but they came close to walking away from having the market because the fee was so high.

Mr. Rooker asked if the fiscal impact of this would be about \$11,000 per year.

Mr. Graham responded that he is estimating four applications per year. He also clarified that once you obtain a special use permit, it can continue without you having to reapply. Mr. Graham also said that under current regulations if you wanted a farmers market with an existing entrance you would still be required to pay the full \$2,000 fee for a commercial entrance, even if no improvements are required, whereas the fee under this amendment would be \$110.

Mr. Rooker asked if the Elks site is being considered for the City's market site.

Mr. Graham responded that he is not aware of those discussions.

Mr. Foley said that a committee working for the City is considering several options but has not made any recommendations yet.

The public hearing was opened. With no one wishing to speak, the public hearing was closed and the matter was placed before the Board for discussion.

Mr. Rooker **moved** to adopt ZTA-2011-00004 [Ordinance No. 11-18(7)]. Mr. Snow **seconded** the motion, which passed unanimously (6-0).

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

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

ORDINANCE NO. 11-18(7)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE IV, PROCEDURE, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article IV, Procedure, is hereby amended and reordained as follows:

By Amending:

Sec. 35.1 Fees

Chapter 18. Zoning

Article IV. Procedure

Sec. 35.1 Fees.

Each applicant shall pay the following applicable fees, provided that neither the county nor the county school board shall be required to pay any fee if it is the applicant:

- a. Zoning text amendments: \$1000.00
- b. Zoning map amendments:
 1. Less than 50 acres; application and first resubmission: \$2500.00
 2. Less than 50 acres; each additional resubmission: \$1250.00
 3. 50 acres or greater; application and first resubmission: \$3500.00
 4. 50 acres or greater; each additional resubmission: \$1750.00
 5. Deferral of scheduled public hearing at applicant's request: \$180.00
- c. Special use permits:
 1. Additional lots under section 10.5.2.1, public utilities, day care center, home occupation Class B, to amend existing special use permit, or to extend existing special use permit; application and first resubmission: \$1000.00

2. Additional lots under section 10.5.2.1, public utilities, day care center, home occupation class B, to amend existing special use permit, or to extend existing special use permit; each additional resubmission: \$500.00
 3. Signs reviewed by the board of zoning appeals: See subsection 35.1(f)
 4. All other special use permits; application and first resubmission: \$2000.00
 5. All other special use permits; each additional resubmission: \$1000.00
 6. Deferral of scheduled public hearing at applicant's request: \$180.00
 7. Farmers' markets without an existing commercial entrance approved by the Virginia Department of Transportation or without existing and adequate parking - \$490.00.
 8. Farmers' markets with an existing commercial entrance approved by the Virginia Department of Transportation and with existing and adequate parking - \$110.00.
- d. Site plans:
1. Preliminary site plans; administrative review: \$1200.00 plus \$15 per dwelling unit and \$0.015 per square foot of nonresidential structure
 2. Preliminary site plans; planning commission review: \$1800.00 plus \$15 per dwelling unit and \$0.015 per square foot of nonresidential structure
 3. Final site plans; administrative review: \$1500.00
 4. Final site plans; planning commission review: \$2000.00
 5. Waiver of drawing of site plan under section 32.2: \$1500.00
 6. Site plan amendments under section 32.3.8 ¶2: \$500.00 (minor); \$100.00 (letter of revision)
 7. All other site plan amendments (major): \$1500.00
 8. Appeals to the board of supervisors under section 32.4.2.7: \$240.00
 9. Reinstatement of review under section 32.4.2.1: \$240.00
 10. Reinstatement of review under section 32.4.2.4: \$80.00
 11. Extension of period of validity: \$475.00
 12. Inspections pertaining to secured site plan improvements; per inspection: \$280.00
 13. Deferral of scheduled public meeting at applicant's request: \$180.00
- e. Certificates of appropriateness considered by the architectural review board ("ARB"):
1. For a site plan; per review by the ARB: \$1000.00
 2. For a building permit; per review by the ARB: \$590.00
 3. Amendment to approved certificate of appropriateness: \$225.00
- f. Matters considered by the board of zoning appeals:
1. Variances: \$500.00
 2. Appeals: \$240.00
 3. Special use permits for signs under section 4.15.5: \$500.00
- g. Matters considered by the zoning administrator or other officials:
1. Official determinations regarding compliance: \$185.00
 2. All other official determinations, including development rights: \$100.00
 3. Zoning clearance for tourist lodging: \$100.00
 4. Zoning clearance for a home occupation, class A, a major home occupation, or a minor home occupation: \$25.00
 5. Zoning clearance for temporary fundraising activity: No fee
 6. All other zoning clearances: \$50.00
 7. Sign permits under section 4.15.4; no ARB review required: \$25.00
 8. Sign permits under section 4.15.4; ARB review required: \$120.00
- h. Groundwater assessments:
1. Tier 1 assessment under section 17-401: \$50.00
 2. Tier 3 assessment under section 17-403: \$510.00
 3. Tier 4 assessment under section 17-404: \$1100.00
- i. Miscellaneous:
1. Change in name of development or change in name of street: \$80.00
 2. Relief from conditions of approval; modification or waiver of requirements: \$425.00
 3. Tier II personal wireless service facilities: \$1820.00
- j. Required notice:
1. Preparing and mailing or delivering up to fifty (50) notices: \$200.00, except for uses under sections 5.1.47 and 5.2A, for which there shall be no fee.
 2. Preparing and mailing or delivering, per notice more than fifty (50): \$1.00 plus the actual cost of first class postage.
 3. Published notice: cost based on a cost quote from the publisher, except for farmers' markets under section 35.1(c)(7) and (8) for which there shall be no fee.

The fee shall be in the form of cash or a check payable to the "County of Albemarle." An application presented without the required fee shall not be deemed to be submitted and shall not be processed. If the zoning administrator determines after a fee has been paid that the review and approval to which the fee pertains is not required to establish the use or structure, the fee shall be refunded to the applicant in full.

(Amended 5- 5-82; 9-1-85; 7-1-87; 6-7-89; 12-11-91 to be effective 4-1-92; 7- 8-92; Ord. 10-18(7), adopted 8-4-10, effective 1-1-11; Ord. 11-18(1), 1-12-11)

Agenda Item No. 21. **10-03() – Agricultural and Forestal Districts** Ordinance to amend Division 2, Districts, of Article II, Districts of Statewide Significance, of Chapter 3, Agricultural and Forestal Districts, of the Albemarle County Code, to add lands to certain districts and to make corrections to certain district ordinances to identify all those tax map parcels within the districts, as specified below:

- a. **AFD-2011-00001. Hatton AFD – District Review.** The proposed ordinance would amend Section 3-215, Hatton Agricultural and Forestal District, to continue the district for all parcels identified in the ordinance, and set the next district review deadline date of June 1, 2021. It would also identify TMPs 135-22C, 135-22C1, 135-22C2 and 136-9 as being in the district (these parcels were created from parcels already in the district), and would remove any parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance.
- b. **AFD-2011-00002. Totier Creek AFD – District Review.** The proposed ordinance would amend Section 3-227, Totier Creek Agricultural and Forestal District, to continue the district for all parcels identified in the ordinance, and set the next district review deadline date of June 1, 2021. It would also identify TMPs 121-70A, 121-70B, 121-70D, 121-70E, 134-3A, 134-3B, 134-3C, 134-3D, 134-3E, 134-3F, 134-3G, 134-3H, 134-3I, 134-3J, 134-3K and 134-3L as being in the district (these parcels were created from parcels already in the district), would identify 129-9 as being in the district (this parcel is in the district but was inadvertently deleted from Section 3-227 in a prior ordinance), would show TMPs 121-70 and 134-19 as no longer existing (land from these parcels was distributed to other parcels in the district), and would remove TMP 135-11 from the district, and any other parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance. *(Advertised in the Daily Progress on My 16 and May 23, 2011.)*

Mr. Cilimberg reported that both of these applications, the Hatton District and Totier District, are continuations of existing districts so they would not be under the new legislation. He stated that the Hatton District was originally created in 1983 and had 2,500 acres; it now has approximately 860 acres, and as a largely forested parcel located on the southern part of the County along the Rivanna River.

Mr. Cilimberg said that in this particular approval of the district there have been no landowners that have requested withdrawal, so the recommendation is for renewal of the district for 10 years per the ordinance dated June 1, 2011, which Mr. Davis has distributed to the Board.

Mr. Cimimberg reported that the Totier District, originally created in 1983 with 6,900 acres, now includes 8,700 acres and is adjacent to the Hatton District with primarily forested and farm parcels. Mr. Cilimberg said that on March 8, 2011, one owner requested that their property be withdrawn, so this amendment would renew the district for 10 years without that parcel as set out in the ordinance dated June 1, 2011.

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

Ms. Mallek asked if the reduction in Hatton's size was due to parcels going into conservation easement.

Ms. Eryn Brennan, Planner, indicated that these districts formed at the same time and some people ended up joining the Totier District because they had their choice of either, adding that some landowners have put their land into easement and others have subdivided.

Mr. Dorrier **moved** to adopt, Ordinance No. 11-03(1), to renew the Hatton Agricultural and Forestal District for a period of ten years as set out in the ordinance dated May 11, 2011, and to adopt Ordinance No. 11-03(1), to renew the Totier Creek Agricultural and Forestal District for a period of ten years as set out in the ordinance dated May 11, 2011, including the withdrawal of Tax Map 135, Parcel 11 as requested by the owner. Ms. Mallek **seconded** the motion, which passed by the following recorded vote:

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

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

ORDINANCE NO. 11-03(1)

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, AGRICULTURAL AND FORESTAL DISTRICTS, ARTICLE II, DISTRICTS OF STATEWIDE SIGNIFICANCE, DIVISION 2, DISTRICTS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 3, Agricultural and Forestal Districts, Article II, Districts of Statewide Significance, Division 2, Districts, of the Code of the County of Albemarle, Virginia, is hereby amended and reordained as follows:

By Amending:

3-215 Hatton Agricultural and Forestal District
3-227 Totier Creek Agricultural and Forestal District

CHAPTER 3. AGRICULTURAL AND FORESTAL DISTRICTS

DIVISION 2. DISTRICTS

Sec. 3-215 Hatton Agricultural and Forestal District.

The district known as the "Hatton Agricultural and Forestal District" consists of the following described properties: Tax map 135, parcels 13, 13A, 13B, 14B, 15, 15A, 15C, 17, 18, 19, 22, 22A, 22C, 22C1, 22C2; tax map 136, parcels 2A, 6B, 8H, 9, 9A2, 9B, 9C, 9D1, 9E. This district, created on June 29, 1983 for not more than 10 years and last reviewed on June 1, 2011, shall next be reviewed prior to June 1, 2021.

(Code 1988, § 2.1-4(a); Ord. 98-A(1), 8-5-98; Ord. 01-3(1), 6-20-01; Ord. 07-3(1), 7-11-07; Ord. 10-3(2), 7-7-10)

Sec. 3-227 Totier Creek Agricultural and Forestal District.

The district known as the "Totier Creek Agricultural and Forestal District" consists of the following described properties: Tax map 121, parcels 70A, 70B, 70D, 70E, 72C, 85, 85A; tax map 122, parcels 5, 5A; tax map 128, parcels 13, 14A, 14B, 14C, 14D, 27, 29, 30, 72; tax map 129, parcels 3, 5, 6, 6A, 7A, 7D, 9; tax map 130, parcels 1, 5A; tax map 134, parcel 3, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 3K, 3L; tax map 135, parcels 7, 10. This district, created on June 29, 1983 for not more than 10 years and last reviewed on June 1, 2011, shall next be reviewed prior to June 1, 2021.

(Code 1988, § 2.1-4(b); Ord. 98-A(1), 8-5-98; Ord. 01-3(1), 6-20-01)

Agenda Item 22. **ZMA-2010-00009. Republic Capital Amendment (Sign #86).**

PROPOSAL: Rezoning of a 20.54 acre site zoned LI Light Industry and HI Heavy Industry, which allows industrial, office, and limited commercial uses (no residential use), to amend proffers. No residential units are proposed.

PROFFERS: Yes.

COMPREHENSIVE PLAN LAND USE/DENSITY: Industrial Service - warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre).

ENTRANCE CORRIDOR: Yes.

LOCATION: Located on west side of Route 29N, at the intersection with Northside Drive.

TAX MAP/PARCEL: 0320000002200.

MAGISTERIAL DISTRICT: Rio.

(Advertised in the Daily Progress on My 16 and May 23, 2011).

Mr. Cilimberg said that this request is a rezoning to address a change in the buffer area on the southern side of the property and presented a depiction of how the buffer area would be treated, requiring a 50-foot buffer area adjacent to airport acres with a four-foot high planted berm and a building setback of 75 feet, which is more than what is required under the ordinance.

Mr. Cilimberg said that this originally had a proffered plan with a four-acre buffer that was established in the plan, so this is a reduction from the original size. During the review of this rezoning, he said, which is part of a larger area along Route 29, one of the primary connecting roads that remained in Places 29 was shown to connect between 29 and the research park in the rear across the property. In this location, Mr. Cilimberg said, that would have had an impact on this particular property and its ability to develop, as well as intruding on the buffer area. He stated that there was a work session with the Planning Commission and they asked that a more particular location for the road be provided, and at the public hearing the County Engineer provided a potential alignment, which would be along the northern edge of the property rather than cutting through the middle.

Mr. Cilimberg said that at the UREF Research Park to the west there is an area along the western boundary of this parcel that has been proffered for the potential for a future interconnection, so there is a chance that if this were provided for it could connect to a road on the Foundation property that would tie into Lewis & Clark Drive as it ultimately will connect with Berkmar Drive.

Mr. Cilimberg noted the location of a second intersection along Route 29 North in this general area that would provide for an east-west perpendicular route paralleling 29, with the other at Lewis & Clark Drive. He said that there would be a new crossover that would also be associated with North Pointe so their access can connect to Lewis & Clark Drive without having to use Route 29 South or North. Mr. Cilimberg reported that the Commission set out certain expectations in recommending an approval to the Board, with their action including the interconnection being provided for, and they were willing to accept a commitment to dedicate right of way along the boundary with the Foundation property as an extension of the road through the subject property, or through reservation of a 25-foot strip-four road along the shared property line with the Hall's property to the North.

Mr. Cilimberg said that the Commission was willing to accept a 20-foot dedication along this property line and expected during the site plan phase that alternatively the proffer would allow for potential connection in the rear of the property. Mr. Cilimberg stated that the Commission also expected that there would be no parking on the south side of buildings adjacent to Airport Acres, and that has been met with

the proffers although the language does require revision. He said that the expectation for the reduced buffer has been met, although the proffer language does require revision.

Mr. Cilimberg indicated that proffer #5 has been met and 1, 2 and have been addressed with only language revisions needed, but technical changes to other proffers still have not been made and that expectation has not been met.

Mr. Cilimberg said that the applicant has expressed concern about the staff's review after the Planning Commission and the status that staff has put on the proffers as they come before the Board, adding that there are a few proffers that staff did not comment on until they were provided in final form.

He stated that one of those was the tangible incentive for the extension of public sewer to the property, and staff had suggested removing that proffer as unnecessary in their May 4, 2011 comments but the applicant has indicated that he wants to keep that provision in an effort to allow septic service for up to 225,000 square feet of industrial development.

Mr. Cilimberg pointed out that it is acceptable for a proffer like that to exist but it would need to be further clarified for enforceability and Section 4.1 of the Area and Health Regulations of the Zoning Ordinance would apply with or without the proffer; so determination of public sewer being provided to this site will not rest solely in the proffer but will be based on availability of public sewer as stipulated in Section 4.1, which supersedes any proffer. He explained that the determination of provision of public sewer is a question of whether or not the cost of providing the public sewer is greater than providing onsite septic.

Mr. Cilimberg said that otherwise, septic use would be subject to health department review and regulation and thus does not have to be covered in a proffer.

He stated that the second proffer pertained to uses that were being restricted or not proposed in the district, and staff had requested further specificity back in its December 3, 2010 comments to the applicant, with specific suggested language changes May 4, 2011, but revisions to that language are still needed for clarity and enforceability.

Mr. Cilimberg said that the third proffer applies to a parcel that no longer exists, and staff had requested that it be removed, which has not been done as of yet. Regarding road improvements that would address Northside Drive and its capacity to serve the site, along with necessary upgrades, he said that VDOT requested clarity via e-mail on December 3, 2011 and the County Engineer also noted at that time in written comments to the applicant that Northside Drive would require improvements. On May 4, 2011, Mr. Cilimberg said that staff noted to the applicant the lack of clarity regarding who makes a determination of capacity, what the threshold is, who is responsible for making improvements, what they would be and when they would be made. He said that there has not been a traffic study done to date so there has not been an ability to identify the specifics of the improvements as of yet, which could be included in the proffer for the future development site.

Mr. Cilimberg reported that the fifth proffer relates to the buffer area, which staff and the Planning Commission feel is being appropriately provided although the language needs to be revised to include when the buffer will be expanded, the length and location of the buffer and the plant species to be used.

Mr. Cilimberg said that regarding architectural styling, there has been language suggested in both December and May, and clarity would be needed in those proffers to provide for their enforceability. He said that there is no designated parking within 150 feet of the boundary line, as proffered based on the Commission's recommendations at their March 15, 2011 meeting, which as proposed would remove parking but could possibly still include travel ways and loading areas.

Mr. Cilimberg added that staff provided specific language changes on May 4, 2011, which is the first time they had seen the proffer since the Commission's recommendations. Regarding the road connection proffer, he said it was newly added after the March 15, 2011 public hearing with staff providing suggested language changes on May 4, 2011. He noted that the substance of the proffer is offered regarding the 25 foot strip of land along the boundary line with Hall's Auto Body, and the VDOT reviewer along with the County Engineer have advised that this would not have a tangible value to the County as it is not a road that could be built with that configuration in a 25 foot strip, with most of the land needed for the road on someone else's property.

Mr. Rooker asked if staff's suggestion is to eliminate that proffer.

Mr. Cilimberg responded that if the applicant's plans do not include a road extension to the future extension of Lewis & Clark Drive, the County would have nothing.

He stated that as provided the proffers are not legally acceptable and staff recommends that the Board defer holding a hearing on the rezoning until the proffers are revised to address issues noted, or that they may identify at this meeting. Mr. Cilimberg added that the other option would be to deny the rezoning application and said that staff and the Board is dealing primarily with proffer language that is over twenty years old.

Mr. Boyd asked for clarification as to whether staff had brought these items up with the applicant and he decided to move ahead to public hearing anyway.

Mr. Cilimberg confirmed that staff had the comments letter on May 4, 2011, and on May 5, 2011 the applicant asked to be scheduled for this public hearing. He also said that staff offered to meet with the applicant, but their request was that they come before the Board.

Mr. Boyd said that if the public hearing is opened, then there is no taking it back and he wants to make sure that the applicant understands the procedural issues.

Mr. Cilimberg stated that the Board could defer the action with the understanding that there would be another public hearing.

Mr. Rooker commented that the proffers are not in a form that can be approved so the only prudent action would be to deny this if it comes to a vote today, but the applicant could have the item deferred.

Mr. Davis pointed out that if there are substantive changes to the proffers another public hearing would be required regardless, so these changes cannot be made today before the public hearing. He said that staff's recommendation would be that if it is deferred, it would be advertised for a new public hearing so the proffers can be properly accepted.

Mr. Cilimberg said that the applicant would like feedback on some of the substantive aspects of what is pointed out here and what their expectations would be.

Ms. Mallek asked which items were not discussed at the Planning Commission hearing.

Mr. Cilimberg said that staff started with the old proffers that had been from three different approval dates, and the applicant submitted them with his application, so staff focused on those the applicant wanted to change and tried to note when each proffer was discussed, such as the first proffer, which was brought to the applicant's attention by staff's May 4, 2011 comments. He stated that after the Commission hearing the applicant had to put together final proffers to reflect the Commission's expectations.

Mr. Cilimberg stated that the second proffer is also original, and staff provided the applicant with more specific language changes on May 4, 2011. He said that the third proffer was brought to their attention after the Commission meeting in staff's May 4, 2011 comments because it was discovered that parcel no longer existed. Mr. Cilimberg stated that the fourth proffer regarding Northside Drive was first brought up during the December 3, 2010 comments, but later was more specifically addressed on May 4, 2011.

Mr. Rooker asked who is to make the capacity determination related to proffer #4.

Mr. Cilimberg responded that the County Engineer could clarify that, but a traffic study would help determine when those would be necessary, and that kind of analysis has not been done yet.

Mr. Glenn Brooks, County Engineer, said that that is usually a traffic study done before a public hearing, so that impacts can be addressed accordingly, and his recommendation to the applicant was that they do a traffic study to determine those.

Mr. Davis stated that another alternative would be for the applicant to do a traffic study prior to the development of the site subject to the approval of the County Engineer so that they would now have to make those improvements, although staff would prefer to have that done up front.

Mr. Brooks noted that in that situation it would be up to him or someone else from Community Development staff to decide which improvements identified in a traffic study should be constructed or not, which is usually a decision the Board makes instead.

Mr. Boyd said that traffic studies can be costly and it is going to benefit the adjoining properties and the County more than the applicant in this case. He asked if staff's position was that it is acceptable to drop the requirement for the road.

Mr. Cilimberg responded that staff's position all along has been that the connecting road through should be provided for, and the Commission was willing to accept the idea that the applicant could provide for the road in their site plan or could reserve 25 feet along the border.

Mr. Rooker said that Mr. Cilimberg had said earlier that the 25 feet along the border did not provide for a buildable road.

Mr. Cilimberg responded that most of the road would not be buildable on their property in that case, but with 25 feet along the line a road in another location could be partially provided for by the applicant's development with a 25 foot reservation.

Mr. Rooker stated that in order to get the road, the other property would have to go along with it or the County would have to exercise eminent domain.

Mr. Davis asked Mr. Cilimberg to clarify what was proffered in 1988.

Mr. Cilimberg explained that there was no road proffered in 1988, and the applicant's request has been to reduce buffer area in order to create more buildable area on the property and now they are feeling

that other proffers are subject to review and potential change. Mr. Cilimberg stated the applicant is feeling they are willing to provide what they have proffered.

Ms. Mallek commented that that is accurate, as the applicant has requested a change to one thing but now the County is asking them to change seven.

Mr. Cilimberg responded that it would be customary to try to get the technical changes to the proffers and the reason staff went to the Commission was to ask about the expectation of a through-road with this rezoning.

Ms. Mallek expressed concern that this would be heavy industry combined with light industrial, which would be funneled through the Research Park for an exit. She noted that now that the quarry is open, Earlysville Road and Buck Mountain Road are under a stampede of convoys of gravel trucks as part of commerce. She stated that she is just not sure that a connection right in this area, connecting all this heavy industry with our Research Park, is a great idea.

Mr. Cilimberg said that this is from the Places 29 plan and also said that the applicant could provide for the 25 feet as part of their site plan if they do not provide a connecting road.

Mr. Rooker asked for clarification on the potential uses for this site as noted in the proffer.

Ms. Eryn Brennan, Planner, responded that she does not think the uses were the issue for this proffer, but instead the language formatting including citing sections of the zoning ordinance.

Mr. Cilimberg reiterated that the substantive issues are most applicable to the fourth proffer as to further clarity in determining Northside Drive's improvement needs, and the eighth proffer pertaining to the provision of a through road and whether the Board expects that as part of this rezoning. He said that the other proffer actions are either removing those that are unnecessary or to clarify language.

Mr. Rooker asked if staff had any preliminary view on the impact of 225,000 square feet of industrial use with respect to traffic generation and the improvements needed on Northside.

Mr. Cilimberg responded that staff does not because there is no traffic study to refer to, but the area was generally modeled as part of Places 29, so the idea was for a connecting road in this general area was felt in the study to be very important to the overall functioning of roads in this area as it builds out.

Mr. Rooker asked where the proposed entrance is into the site.

Mr. Cilimberg replied that it would occur from the existing entrance, which is off of Route 29 going up to Hall's Body Shop. He said that there is not a crossover there now, it is a few hundred feet to the North, and the proposal with North Pointe is that that crossover be closed and relocated to this location as the new east-west crossover access. The location is where staff expected it to be.

Mr. Rooker noted that the property is already zoned for industrial purposes and the applicant could develop this without a decrease in the buffer area, so the applicant was asking to reduce the buffer area and put a berm in that would provide screening from the adjoining neighborhood if it is done correctly and planted right.

Mr. Cilimberg said that the Northside proffer existed as a very old one, so staff was trying to get that updated to include timing and responsibilities. He stated that the applicant is getting more developable area by reduction of the buffer, but it is primarily about their desire to create a narrower buffer area and more effective buffer.

Mr. Rooker asked what is included in the proffers to ensure it will be more effective.

Mr. Cilimberg responded that they are proposing that it be a 50-foot width, a four-foot high berm, four to six foot high evergreen trees and shrubs, and a setback of 75 feet from the boundary line with Airport Acres. He also said that at the Planning Commission's request there would be no parking on the rear side of the buildings within 150 feet of the boundary line.

Mr. Snow asked for indication if the site is heavily wooded.

Mr. Cilimberg explained that there has been clearing on the Route 29 side of the site and wooded land on the property owned by the Foundation. He said that the proffer proposes to retain the buffer at 50 feet and add the berm, and stated that the applicant worked with some of the owners at Airport Acres to have them understand how this would result.

Mr. Snow asked if there was just one person who expressed concern about the rezoning, as reflected in the Planning Commission minutes.

Ms. Brennan stated that the person was concerned about the ability of the applicant to have large buildings so close to his property, and the Commission discussed some alternatives regarding expanding the buffer to 10 feet. She said that they did not think that recommending an expanding berm was a solution.

Mr. Cilimberg pointed out that the setback to the buildings is 75 feet, which is greater than what is required in the ordinance. He said that they have also proffered not to put any designated parking within 150 feet of the boundary line. Mr. Cilimberg added that it needs to be clarified as to where the berm would be placed, along with its length and location.

Mr. Snow commented that it also needs to be clarified what should be done to make the road work in conjunction with the property lines.

Mr. Cilimberg said that a location considered where that type of road could be built was both on and off of this property, in the alignment as noted on the map and identified as feasible, fairly close to the Hall's property line on the North side, traversing that property in another location, on the North side of another property and then connecting into Northside Drive.

Mr. Rooker asked if that alignment could be executed within 25 feet on the applicant's property. Mr. Cilimberg replied no.

Mr. Brooks said that the horizontal curves have to be large radius, so no large turns can be made, and in the ideal situation a boundary line adjustment would be done, with 50 feet typically needed to build a road.

Mr. Cilimberg noted that the applicant indicated they could provide a connection within their site plan that would not necessarily be in this alignment, and if the site plans do not include a road connection to the future Lewis & Clark Drive in whatever location they and the County could determine is feasible, then they would provide the 25 feet, but there is no commitment in the proffers to actually doing that.

Mr. Rooker asked if the applicant would be willing to expand that to 50 feet.

Mr. Davis said that ultimately the Board would need to defer this and hold another public hearing, so the applicant can address the Board on this issue and the proposal.

At this time, the Chair opened the public hearing.

Ms. Marcia Joseph addressed the Board, stating that she is representing the applicant and noting that the Board has been interested in expanding light industrial zoning in the County and reducing the setbacks between industrial and residential property. Ms. Joseph said that they have spoken with the neighbors and came up with a plan they could endorse, which included maintaining a 50 foot undisturbed buffer and putting up a four foot berm with vegetation. She stated that they are only looking for a reduction in setback and agreed to a 25 foot reduction on the other side, which provides a 50 foot strip.

Ms. Joseph added that they are also looking to allow for the buildings themselves to be 30 feet high instead of 25 feet high, as allowed by the ordinance. She stated that the proffers presented were really driven by the neighbors in 1988, and the applicant continues to want to accommodate their wishes.

Mr. Boyd asked about some of the clarifying language that has been put forth by staff.

Ms. Joseph responded that Mr. Hurt would need to address that.

Mr. Blake Hurt, applicant, stated that he has been working on this since 1989 and he agrees that the proffers are ambiguous but wanted to take advantage of the County's desire to have more light industrial land.

Mr. Hurt said that his goal was to reduce and improve the buffer between his property and the neighbors', and after staff review there were suddenly a whole raft of things that were unrelated to what his request was. Mr. Hurt said that his plans are not any more developed today than they were in 1988, and it seems entirely unfair to him to have all of these other things requested, such as the connecting road to the Research Park. Mr. Hurt said that all he wanted to do was change the side setback. He stated that the Planning Commission came up with the incentive of giving 25 feet, but if he puts the road in he would get that back. Mr. Hurt emphasized that the idea here was not specific road placement but simply reservation of space.

Mr. Hurt said that the problem he has with what staff came back with is that it was a wholesale change of a technical nature that made things very specific for plans that are currently ambiguous. The ambiguity is what the Board has today, and he is not changing that. He said the only thing he is trying to change is to give the Board a little clarity on what happens on the South side. He added that he serves on the Economic Development Authority, and it has taken nine months to get a side setback change for industrial property.

Mr. Thomas said that his understanding is that all three neighbors adjacent to the property were in agreement with the berm, and he does not know which neighbor had an issue.

Ms. Mallek stated that the concern perhaps was the proposed height of the building.

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

Mr. Boyd said that Mr. Hurt has made some compelling arguments as to why the Board should go along with the Planning Commission's recommendation.

Mr. Snow commented that putting the road in or getting the 25 feet back is a more common sense answer than waiting to see what the University or someone else would do.

Mr. Rooker stated that he can support the road concept, but providing clarity for the proffers is also important. Some of these items are simply clean-up matters that are not asking the applicant to do anything. He said that when the County Attorney comes back and says that they need work in order to be enforceable, the Board needs to pay attention to that. Mr. Rooker added that substantively the road proposal is the only thing of significance here.

Mr. Boyd asked Mr. Hurt if there is anything other than the road item that is restrictive to how he might develop this property.

Mr. Hurt responded that there are wholesale changes on how things are going to be done, such as the traffic study and timeline for development. He said that the ambiguity was cleared up in 1989 and apparently he did not do a good job, but he is not ready to predict what will happen in ten years. Mr. Hurt stated that he is happy to talk with staff but does not want a situation where he must make technical changes to plot the road in a certain way, or technical changes as to who has the right to decide if the road is 25 feet, or when the sewer line might be connected to.

Mr. Rooker said that the sewer item is already covered by the ordinance.

Mr. Davis replied that under the ordinance there is no use of sewage other than domestic sewage, adding that he thought what the applicant was proposing was to limit the amount of square footage to be allowed for domestic sewage purposes.

Mr. Hurt responded that they are doing that too, and that in the existing proffer, he has a limit of 225,000 square feet until they connect, and because of the nature of it, it is domestic sewage. That is the way it is written now. He said the goal is to get public sewer, but he does not want to be forced for example to run a force main down 29 North because he no longer has the opportunity to put that on industrial property.

Mr. Rooker commented that he is just trying to understand what the ordinance requires.

Mr. Davis explained that staff is proposing that that proffer be eliminated as it is not necessary.

Mr. Rooker said that there are technical things like that that need to be cleaned up in these proffers.

Mr. Hurt asked why they needed to be cleaned up.

Mr. Rooker stated that the proffer implies that Mr. Hurt does not have to have public sewer when the ordinance requires it, for less than 225,000 square feet.

Mr. Davis added for anything other than domestic sewage.

Ms. Mallek noted that if he has a warehouse with bathrooms, then that would be domestic.

Mr. Hurt said that it should just be left alone.

Mr. Davis pointed out that someone may make a different argument in the future about what that means, and there is no better time than now to clarify that intent.

Mr. Hurt replied that he does not agree.

Mr. Davis emphasized that that would be his recommendation.

Mr. Cilimberg said that there is one other substantive matter that needs to be addressed, which is the substance of proffer #8 as provided, with wording fixed to make it workable. He added that the question of proffer #4 leaves uncertainty about when the improvement would take place versus whether some level of analysis needs to be done.

Mr. Rooker said that the staff comments regarding proffer #4 attempt to address the meaning of "capacity" on Northside Drive.

Mr. Cilimberg responded that that could only be done through traffic analysis.

Mr. Rooker asked if that could be required at the site plan level, and asked if the County would have the authority not to approve the site plan until that is proven.

Mr. Davis said that the county would take the position that they would not approve the site plan until the applicant has demonstrated that they have satisfied that proffer, and the only way to do that would be through a traffic analysis. It would be better to have that expectation clarified.

Ms. Mallek asked how a property like this would evolve over time if there were different tenants only using a portion of the capacity, and asked if a traffic study now would be helpful as uses change in future years.

Mr. Cilimberg clarified that the proffer says they would limit development to not exceed the capacity.

Mr. Brooks explained that the last person in who trips the road over a defined threshold would be the one who suffers. That would be the site plan staff could not approve, if it happened in small increments as suggested. He said that the first few people in get in for free, but those who trigger a different threshold end up being responsible for improvements.

Mr. Snow asked if the full burden is being placed on the current applicant?

Ms. Mallek added that North Pointe is going across the street and there will be larger consequences there because it is twenty times bigger.

Mr. Brooks responded that North Pointe would install their side of the traffic signal, but on the opposite side, if for instance, a through lane or a turn lane was needed to coincide with the North Pointe side, those are some possible things that could come up with a traffic study. He said that the County would go back to the applicant as the attorney's instruct, but ultimately the site plan does not get approved for some third party moving into the complex.

Mr. Rooker noted that the Board can take the position that when the applicant provides a site plan he will have to establish the capacity on Northside Drive in order to obtain a site plan, but he understands the applicant not wanting to provide a traffic study today when he does not really know what he is going to do on the property.

Mr. Snow asked why the burden is being placed on the applicant when it is happening on someone else's property for the most part?

Mr. Rooker said that it is unknown where most of the traffic will be happening, on the applicants property or the other properties, but it is clear enough at the site plan level that it can be enforced, and there is no need to impose a traffic study on the applicant in order to change the setback of the property in a way that is not objectionable to the neighbors. He suggested having the applicant sit down with staff and work through relatively minor technical changes, and bring back to the Board something that the applicant can live with that makes the basic technical changes without adding new substantive requirements.

Mr. Boyd stated that he is more inclined to go along with the applicant's request and approve what the Planning Commission did, but he would like to go through it one more time to assess what the danger would be in agreeing to them.

Mr. Cilimberg clarified that the Commission recommended that the technical changes be made before this meeting, and did not recommend that the proffers be accepted in the form they were in at the time.

Mr. Boyd said that he has no problem with making the technical changes as long as it does not cause significant delay to the applicant.

Mr. Cilimberg said that with proffer #1, there was an agreement that the proffer was not necessary as there is an overriding provision in Section 4.1 of the ordinance.

Ms. Mallek asked if everyone understands the same thing, that the property would still be on septic until uses reached a certain level.

Mr. Cilimberg responded that any use of this property under Section 4.1 would require an evaluation of whether republic sewer is reasonably available for them to hook into, it does not distinguish between domestic and industrial waste, only whether the cost of hooking into public sewer is greater than providing onsite septic. He said that that is an analysis that has been done for some projects because all projects within the jurisdictional area have been covered under Section 4.1 of the Zoning Ordinance. Mr. Cilimberg stated that staff would have to evaluate the cost of accessing sewer versus septic, which would then be evaluated by the Health Department based on whether it is domestic or industrial waste.

Mr. Davis said that it may require a special use permit if it is on septic.

Mr. Boyd commented that that requirement is there with or without this proffer.

Mr. Cilimberg agreed that Section 4.1 would cover it.

Ms. Mallek asked if this refers to a previous approval related to septic for the initial development.

Mr. Cilimberg responded that it is the original proffer, but has never been evaluated under the allowance of septic. It did not exist in that way in 1989.

Mr. Hurt said that he planned for a mass drain field for domestic waste for warehouse, put it on the property, and talked to the Health Department at the time. He said that is their first preference if public sewer is not available.

Mr. Cilimberg explained that this proffer does not supersede what is in Section 4.1, and is a determination made based on the availability of sewer, at a cost that would be no greater than the septic.

Mr. Boyd stated that it does not really matter if this proffer is there or not there.

Mr. Rooker said that it helps the applicant to take it out, but if he wants to leave it in that is fine.

Mr. Cilimberg explained that proffer #2 is simply specifying the uses in a form used for all rezonings and is nothing substantive. He said that proffer #3 is not necessary because the parcel does not exist and that does need to be removed. Mr. Cilimberg said that proffer #4 has just been discussed and if it is left as it is a traffic analysis would be required with the first site plan and any subsequent site plan to determine capacity and whether or not it is being exceeded. He stated that proffer #5 would just require wording noted regarding length and location of the buffer, timing for establishment and plant species, with the substance being fine as is. Mr. Cilimberg said that what would be most reasonable is to tie it to development along that line.

Mr. Boyd asked if that was really necessary, given that the County is asking for additional measures here.

Mr. Cilimberg explained that there is a proffer right now for a four-acre buffer, so the expectation now is that as the development is occurring, the buffer would be established, so putting in the timing is not requiring anything additional.

Mr. Hurt said that if there are trees there, he wants to put the buffer up when they cut the trees down up to that undisturbed area, and the idea is building away from neighbors. They do not want to be forced to drive across the property, cut all the neighbors' trees down and put up the buffer.

Mr. Cilimberg responded that the County does not want that either and the timing coordinated with that area is what they think is best.

Mr. Cilimberg reported that proffer #6 also requires some clarity and the language does not require ARB review for those areas not within their purview.

Ms. Mallek asked if there was someone on staff who was actually going to determine the color of the building, as the language here seems to imply.

Ms. Brennan responded that that was one of the suggested recommendations to the language on both December 3, 2010 and May 4, 2011, so that someone in the staff would be specified to review it, which was specifically requested by adjacent property owners to ensure that the buildings would look acceptable to their standards, which is why this proffer was added.

Mr. Cilimberg said that there is the alternative of not having a proffer regarding this.

Ms. Brennan stated that staff had suggested that to the applicant early on, but he expressed a desire to keep it.

Mr. Cilimberg said that proffer #7 addresses what the Planning Commission had requested, and travel ways and loading areas are not addressed in the proffer.

Mr. Hurt stated that there is no parking within 150 feet on the south side of the buildings, but there is parking within that limit in other areas.

Mr. Cilimberg noted that proffer #8 has already been discussed.

Mr. Rooker asked if proffer #7 was an original proffer.

Mr. Cilimberg responded that it was in response to the Commission's public hearing.

Mr. Rooker said that the language does not match up with what Mr. Cilimberg just said.

Mr. Hurt acknowledged that it does need to be clarified.

Mr. Boyd said that he would like for the language to be clarified but does not want to be more restrictive to the property owner.

Ms. Mallek added that proffer #8 needs to be rewritten and explained so it is understandable.

Mr. Thomas **moved** to defer indefinitely ZMA-2010-00009. Ms. Mallek **seconded** the motion, which passed by the following recorded vote:

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

NAYS: None.

Agenda Item No. 20. From the Board: Matters Not Listed on the Agenda.

(Note: At this time the Board went back to Items 7.2-7.4 from the Consent Agenda.)

Item No. 7.2. DEQ Loan for Water Resources Projects - Resolution approving the structure and execution of various funding agreements with the Virginia Resources Authority.

Mr. Boyd said that he was under the impression that storm water management was all going to be paid for with grant money, not with matching County funds.

Ms. Mallek stated that the money has already been budgeted, and has been for several years.

Mr. Boyd said that somehow he had lost that this is a loan to be paid back, and asked why \$11,000 is needed for bond council.

Mr. Foley noted that originally the County was going to pay \$800,000 for the storm water management, and now the County is getting half of it paid for.

Mr. Davis explained that originally the project was funded out of county general fund money, but this opportunity arose which allowed the County to borrow \$800,000 with \$400,000 of it being forgiven for a project that was already funded and was going to be done anyway. He stated that the other \$400,000 borrowed is at a very favorable interest rate of 2.93% and the Board could decide to pay it off early or finance it over time. He said this approach gives the Board some flexibility.

By the vote listed below, the Board adopted the following resolution approving the necessary financial documents for the loan (Prime Lease, Financing Lease, and Funding Agreement between the Virginia Resources Authority and the County of Albemarle) and authorized the County Executive to execute the documents, subject to their approval as to form by the County Attorney:

**RESOLUTION TO APPROVE A LEASE FINANCING WITH
THE VIRGINIA RESOURCES AUTHORITY,
TO APPROVE THE FORM OF CERTAIN DOCUMENTS PREPARED IN
CONNECTION THEREWITH AND TO AUTHORIZE THE DISTRIBUTION,
EXECUTION AND DELIVERY OF THE SAME**

WHEREAS, the Board of Supervisors (the "Board") of the County of Albemarle, Virginia (the "County"), desires to finance the costs of acquiring, designing and constructing stormwater management projects in the County, together with related expenses (collectively, the "Project");

WHEREAS, the County has applied to the Virginia Resources Authority ("VRA"), as administrator of the Virginia Water Facilities Revolving Fund, to provide financing for the Project and VRA has indicated its willingness to finance the Project for a principal amount not to exceed \$400,000;

WHEREAS, there have been presented at this meeting (a) a draft of the Prime Lease (the "Prime Lease"), pursuant to which the County desires to convey to VRA a leasehold interest in a fire truck owned by the County (the "Equipment") and (b) a draft of the Financing Lease (the "Financing Lease"), pursuant to which VRA will lease the Equipment to the County, both of which the Board proposes to execute or approve to carry out the purposes of the Project and copies of which shall be filed with the records of the Board;

WHEREAS, VRA has also determined to provide the County with a principal forgiveness loan in a principal amount not to exceed \$400,000, in accordance with the terms of a Funding Agreement to be dated as of a date specified by VRA, between VRA and the County (the "Funding Agreement"), the form of which has been presented to this meeting; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF ALBEMARLE COUNTY, VIRGINIA:

1. Essentiality of Project. The Board confirms that the Project is essential to the efficient operation of the County and anticipates that the Project will continue to be essential to the operations of the County during the terms of the Financing Lease.

2. Authorization of Financing Documents. The forms of the Prime Lease, the Financing Lease and the Funding Agreement submitted to this meeting are hereby approved and the County Executive is authorized to execute the Prime Lease, the Financing Lease and the Funding Agreement in substantially such forms, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be necessary to effectuate the purposes therein, subject to approval as to form by the County Attorney. All capitalized terms used but not defined herein shall have the same meaning as set forth in the Financing Lease.

3. Terms of Financing Lease. The following plan for financing the Project is approved. The County will lease the Equipment to VRA pursuant to the terms of the Prime Lease. Thereafter, VRA will lease the Equipment to the County pursuant to the terms of the Financing Lease. The County will undertake to make rental payments ("Rental Payments") and additional payments ("Additional Payments") to VRA under the terms of the Financing Lease in amounts sufficient to repay the Lease Proceeds and to pay the fees and expenses of VRA. The final pricing terms contained in the Financing Lease shall be determined by the County Executive; provided, however, that (i) the aggregate total of principal components of the Rental Payments shall not exceed \$400,000, (ii) the term of the Financing Lease shall expire no later than December 31, 2022, (iii) the interest component of the Rental Payments shall not exceed 2.93% per year, and (iv) the principal components of the Rental Payments shall be subject to prepayment upon the terms set forth in the Financing Lease. The plan of financing for the Project shall

contain such additional requirements and provisions as the County Executive may approve and determine to be in the best interest of the County.

4. Subject to Appropriation. The undertaking by the County under the Financing Lease to make Rental Payments shall be a limited obligation of the County, payable solely from funds to be appropriated by the Board from time to time for such purpose and shall not constitute a debt of the County within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit of the County beyond any fiscal year for which the Board has lawfully appropriated from time to time. Nothing herein or in the Financing Lease shall constitute a debt of the County within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit or taxing power of the County.

5. Annual Budget. The Board believes that funds sufficient to make payment of all amounts payable under the Financing Lease can be obtained. While recognizing that it is not empowered to make any binding commitment to make such payments beyond the current fiscal year, the Board hereby states its intent to make annual appropriations for future fiscal years in amounts sufficient to make all such payments and hereby recommends that future Boards do likewise during the terms of the Financing Lease. The Board directs the County's Director of Finance, or such other officer who may be charged with the responsibility for preparing the County's annual budget, to include in the budget request for each fiscal year during the term of the Financing Lease an amount sufficient to pay all amounts coming due under the Financing Lease during such fiscal year. As soon as practicable after the submission of the County's annual budget to the Board, the County Executive is authorized and directed to deliver to VRA evidence that a request for an amount sufficient to make the payment of all amounts payable under the applicable Financing Lease has been made. Throughout the terms of the Financing Lease, the County Executive shall deliver to VRA within 30 days after the adoption of the budget for each fiscal year, but not later than July 1, a certificate stating whether an amount equal to the Rental Payments and any other amounts due under each such Financing Lease which will be due during the next fiscal year has been appropriated by the Board in such budget. If at any time during any fiscal year of the County, through the fiscal year ending June 30, 2022, the amount appropriated in the County's annual budget in any such fiscal year is insufficient to pay when due the amounts payable under either Financing Lease, the Board directs the Director of Finance, or such other officer who may be charged with the responsibility for preparing the County's annual budget, to submit to the Board at the next scheduled meeting, or as promptly as practicable but in any event within 45 days, a request for a supplemental appropriation sufficient to cover the deficit.

6. Other Actions. All other actions of officers of the County in conformity with the purposes and intent of this Resolution and in furtherance of the financing of the Project are ratified, approved and confirmed. The officers of the County are authorized and directed to execute and deliver all certificates and other instruments and to take all actions considered necessary or desirable in connection with the execution and delivery of the Financing Lease and the financing of the Project. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto and to record such document where appropriate.

7. Effective Date. This Resolution shall become effective immediately.

Item No. 7.3. FY 2011 Budget Amendment and Appropriations.

Mr. Boyd said that he finds the format difficult to understand in terms of what is being spent in County funds and what is being spent in pass-through funds.

Mr. Rooker said that it is fairly clear if you reference the back page of the sheet, as it says "revenue source – general fund balance." He pointed out other instances of "local revenue," "General Fund," "ECC fund balance," etc.

Mr. Foley clarified that contributions to ECC come from the City, University and County, and perhaps it is not clear where the fund balance comes from, so staff could clarify where those revenues come from.

By the vote listed below, the Board approved the budget amendment in the amount of \$2,225,657.83 and approved the following Appropriations #2011077, #2011080, #2011081, #2011082, and #2011083:

**COUNTY OF ALBEMARLE
 APPROPRIATION**

**APP #2011077
 DATE 5/4/2011
 BATCH#**

EXPLANATION: Allocation of Prior Year Surplus from the General Fund to the Capital Program Funds

TYPE	FUND	DEPT	OBJECT	DESCRIPTION	SUB LEDGER		GENERAL LEDGER		
					CODE	AMOUNT	DEBIT	CREDIT	
2	1000	51000	510100	Approp General Fund Balance	J	2	2,000,000.00		
1	1000	93010	930004	Transfer to SCH CIP	J	1	1,300,000.00		
1	1000	93010	93010	Transfer to General Gov't CIP	J	1	700,000.00		
	1000		0501	EST. REVENUE				2,000,000.00	
			0702	APPROPRIATION					2,000,000.00

2	9000	51000	510103	Transfer-From PY GF Surplus	J	2	1,300,000.00		
2	9000	51000	510100	Approp Sch CIP F/B	J	2	(1,300,000.00)		
2	9010	51000	510103	Transfer-From PY GF Surplus	J	2	700,000.00		
2	9010	51000	510100	Approp General Gov't CIP F/B	J	2	(700,000.00)		
TOTAL							4,000,000.00	2,000,000.00	2,000,000.00

APP #2011-080 DATE 06/01/2011 BATCH NAME							
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: <i>Albemarle County Service Authority (ACSA) reimbursement the County for its costs to construct public waterline extensions at the Crozet Streetscape Phase 2 and Phase 2A projects.</i>							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	9010	19000	319000	199914	1004	21344.45	ACSA Reimbursement
4	9010	41023	441200	800605	9999	21344.45	Crozet Stscape P2 Construction
TOTAL						42688.90	

APP #2011-081 DATE 06/01/2011 BATCH NAME							
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: <i>Public Safety Training Academy</i>							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	1000	51000	351000	510100	9999	92380.00	Appropriation-Fund Balance
4	1000	21070	421070	312500	1002	14880.00	Prof. Serv. Instructional
4	1000	31013	331010	312384	1003	77500.00	Academy Services
3	4100	51000	351000	510100	9999	25420.00	Appropriation-Fund Balance
4	4100	31041	435600	312500	1003	16120.00	Prof. Serv. Instructional
4	4100	31043	435600	312500	1003	3100.00	Prof. Serv. Instructional
4	4100	31047	435600	312500	1003	3100.00	Prof. Serv. Instructional
4	4100	31049	435600	312500	1003	3100.00	Prof. Serv. Instructional
TOTAL						235600.00	

APP #2011-082 DATE 06/01/2011 BATCH NAME							
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: <i>ACE Reimbursement from VDACS Office of Farmland Preservation for PDR Program-Pugh/Stanerson Property</i>							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	9010	24000	324000	240767	1005	82668.75	Appropriation-State Rev
4	9010	81010	481020	580409	1240	82668.75	ACE
TOTAL						165337.50	

							APP #2011-083 DATE 06/01/2011 BATCH NAME
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: <i>Appropriations from School Board meeting on April 28, 2011</i>							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	2000	62000	318100	181109	6599	3844.63	Donation
4	2000	62202	461101	600220	6102	2000.00	Student Snacks/Meals
4	2000	62212	461101	137100	6112	185.00	Driver Wages
4	2000	62212	461101	210000	6112	15.00	FICA
4	2000	62212	461101	420100	6112	300.00	Mileage
4	2000	62252	461101	160300	6252	1249.08	Stipends - Instructional
4	2000	62252	461101	210000	6252	95.55	FICA
TOTAL						7689.26	

Item No. 7.4. Letter of Support for Rivanna River Basin Commission Grant to National Fish and Wildlife Foundation for project to develop Rivanna Watershed Action Plan.

Mr. Boyd stated that it bothers him that the County will continue to provide staff time for the Rivanna River Basin Commission and similar initiatives, and he would rather see an explanation of how much this costs the County. He said that the same holds true for grant applications and staff time spent on that.

Ms. Mallek said that the Rivanna effort takes an hour a month for Greg Harper to attend a meeting.

Mr. Foley stated that he could provide the cost of that kind of staff time based on their hourly pay rate.

Mr. Rooker noted that there is no information on the grant being sought related to the Rivanna River Basin Commission, adding that that group is doing some things that are going to make it less expensive for the County to meet TMDL legislative requirements.

Mr. Dorrier said that if the grant would pay for those requirements, that would be great, but if not the County will have to come up with it. He stated that Albemarle has a good record of complying with Chesapeake Bay legislation.

Mr. Foley agreed to provide an overview of the grant along with cost of in-kind participation.

Ms. Mallek pointed out that the funding pertains to the Healthy Watersheds grant, which focuses on preventative measures rather than more expensive cleanup. She mentioned that because of the Rivanna River Basin Commission, Albemarle is so far ahead of other communities, having already had stakeholder meetings, etc. She believes this will certainly save the County money in the long run.

Mr. Boyd said that his questions were for clarity, not opposition.

Mr. Dorrier suggested having Senator Emmett Hanger meet with the Board, as he is one of the most knowledgeable on the TMDLs.

Ms. Mallek said that he is on the Rappahannock River Basin Commission, and noted it would be helpful to have local legislators on the Rivanna Commission.

By the vote listed below, the Board authorized the Chair to sign the following letter of support:

Ms. Amanda Bassow
 Director, Chesapeake Programs
 National Fish and Wildlife Foundation
 1133 15th Street NW, Suite 1100
 Washington, D.C. 20005

Re: *Healthy Watersheds: Action Plan for the Rivanna*
 Rivanna River Basin Commission, Small Watershed Grant Proposal

Dear Ms. Bassow:

Albemarle County is pleased to affirm our support for the grant proposal, *Healthy Watersheds: Action Plan for the Rivanna*, submitted by the Rivanna River Basin Commission for the Small Watershed Grants program. Since the inception of the River Basin Commission (RRBC) in 2007, Albemarle County has participated as a member locality of the Commission, and several members of our staff are also designated as members of the RRBC's Technical Advisory Committee (TAC).

The Commission's proposal, "*Healthy Watersheds: Action Plan for the Rivanna*," will support Albemarle County in a number of ways. The Rivanna Watershed Action Plan will provide, through a technical review of existing conditions and a facilitated development of desired future conditions, specific recommendations for Albemarle County to protect and preserve the abundant natural resources of the Rivanna watershed.

The Action Plan for the Rivanna will complement and support the requirements of the Chesapeake Bay TMDL, especially the Phase II WIP, but will go beyond nutrient and sediment reduction goals to identify strategies for meeting the County's goals with respect to watershed protection in our comprehensive plan update. We are just commencing on a joint process with Albemarle County to update our plans with a regional focus and will welcome input from RRBC in this process.

The proposal provides funding for RRBC staff, which will provide welcome support for our hard-working Albemarle County staff through the watershed action planning process. In turn, Albemarle County commits to continue to participate on both the Rivanna River Basin Commission and its TAC. Commissioner and TAC member participation at these meetings will provide the bulk of our in-kind match for this proposal.

We look forward to continuing our work the Rivanna River Basin Commission and are hopeful for a successful application for funding.

At this time, **motion** was offered by Mr. Boyd to approve the above Items 7.2, 7.3 and 7.4 from the Consent Agenda. The motion was **seconded** by Mr. Rooker.

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

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

NAYS: None.

Ms. Mallek stated that the biggest failing with the biosolid situation is that the State has all the permitting responsibility but they are making it impossible to carry it out because of the notification nonsense that they are allowing to have happen. She said that Delegate Bell has indicated that the County should try to isolate the things under current rules that are not being done, that correction can happen immediately, but any refinements of the process would be a more difficult challenge as the industry is very strong. Ms. Mallek commented that her concern is just that the County has processes and procedures that are well carried out, with proper testing carried out on the site, which cannot be done without inspectors there.

Mr. Snow asked how the Shenandoah Valley has become exempt.

Ms. Mallek responded that she asked that question of DEQ official in Harrisonburg, but she has received no reply. She also said that she would be attending a meeting on June 10, 2011 in Richmond, which would include 30 people from different counties to talk about this issue.

Mr. Snow said that the TMDL clean-up mandates and the biosolid policies seem to be inconsistent.

Ms. Mallek agreed, but said that people disagree on biosolids and their consequences.

Mr. Snow asked how much money the DEQ receives by letting companies dump sewage in the local area.

Ms. Mallek replied that there is a permit fund and she is not sure of the total, but there are over 6,000 acres in Albemarle with over 20,000 statewide meaning the County has a huge percentage of the State acreage.

Mr. Rooker said that it would be helpful to get a little more understanding of the benefits versus the risks of using this kind of material, noting that he has read information stating there are 45 different chemicals and/or heavy metals in biosolids, but they have yet to determine the quantity and no risk factors have been established. He feels the Board needs to press our legislators at the state level to make certain that we get good testing done, to make certain that there is a full understanding of what is in biosolids, and if there are no requirements to deal with the chemical loads that are carried by these things, then what does the testing mean? He added that people who live near areas being treated are entitled to have those kinds of answers.

Mr. Foley mentioned that a DEQ representative would be here next month and may be able to provide those answers.

Mr. Boyd said that perhaps Mr. Blount could also do some legislative research regarding it.

Ms. Mallek added that Mr. Blount has been a great help in keeping the Board informed.

Mr. Snow asked how much DEQ charges for the biosolid permitting fees, and if they provide any funds to the County to hire an inspector locally.

Ms. Mallek replied that she does not know the fees, but the funds are intended to be used to pay for an inspector, which has something the Board has chosen not to do in the past.

Mr. Rooker said that there was a small reimbursement for what is needed, and Ms. Mallek pointed out that Mr. Graham has said it would now require a half-time position.

Mr. Snow asked if it would be helpful to have a resolution passed to forward to the State that Albemarle does not want it here.

Ms. Mallek stated that she circulated the drafts of the Shenandoah position last month and would like to get feedback from the Board, which could be sent to the review committee now or the Board could wait until July.

Mr. Rooker said that he would rather wait until July after more information is gathered, adding that he would like to hear from DEQ regarding the benefits and detriments of these materials.

Mr. Thomas stated that he ran into the former Farm Bureau president yesterday, adding that the County wants to help farmers get a better crop but is also faced with having these dumped close to bodies of water. He noted that it is inexpensive for the farmer.

Mr. Rooker said that it is not the only way to fertilize fields and it needs to be determined whether it is beneficial to the people of the County given the risks.

Ms. Mallek stated that the State is working on requiring liability coverage from the landowner and a statement of acceptance of liability from the landowner, and that reality may change people's willingness to have it on their property.

Ms. Mallek asked that the board appointee procedure now be addressed.

Mr. Rooker referenced a resolution that he had drafted with the purpose of making it clear that Board members are appointed to boards, committees and commissions as a representative of the Board, not to act individually.

He said that when the Board has a specific resolution or a specific policy that has been adopted by the Board, that the Board members who serve on the committees that could vote on that issue are required to vote in line with the Board's previously adopted policy or statement. He said that otherwise, Board members could go in and vote individually for items that are contrary to the Board's position.

Mr. Rooker added that if there is no previous position, the representative will have to make a discretionary decision as to the vote, but where there is an established position it is very important that the Board makes it clear that people who serve on the committees are to follow the Board's stated position.

Mr. Snow agreed.

Mr. Boyd asked if it needed to be stated through a resolution, or if it could just be a policy change.

Mr. Thomas said that this is generated from his own actions recently at the MPO meeting.

Mr. Rooker stated that that is not the only reason, but it did bring it to mind. He said that if the Board weighs in and votes on something, they do not want to represent an individual vote on other boards and commissions.

Mr. Boyd noted that sometimes a Board member must make a decision on the fly, such as him soliciting opinions from Board members on an issue recently.

Mr. Rooker clarified that that is why his wording says, as reflected in previously adopted resolutions or official actions of the Board on such matters.

Mr. Foley said that this would also be included in the Board rules and procedures to be presented in January as customary.

Ms. Mallek added that it would be in effect as of right now.

Motion was then offered by Mr. Rooker to adopt the resolution as presented. The motion was **seconded** by Mr. Snow.

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

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

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

RESOLUTION

Whereas, the Board of Supervisors (the Board) appoints its members to a variety of boards, committees, and commissions to represent the interests of the Board on those entities; and

Whereas, it is important that the Board have confidence that its policies and positions are being reflected in that representation;

Now therefore be it resolved, that board members who are appointed to boards, committees and commissions are required to vote on matters that come before those entities in a manner which is consistent with the policies and positions of the Board as reflected in previously adopted resolutions or official action of the Board on such matters.

Mr. Thomas presented copies of the Board's previous resolution stating its position on the Western Bypass, stating that he did not intentionally defy the Board of Supervisors resolution of 1997 or 2002. He added that constituents and fellow City business partners in the Route 29 corridor and the area have continually asked for the bypass, not necessarily the actual Western Bypass. He said that by removing the opposition language from the bypass will offer the possibilities of discussion and getting the funds in order to construct the bypass and widen Route 29 from the South Fork Rivanna to Hollymead, as well as getting the needed bridge built across the South Fork Rivanna. Mr. Thomas said that the goal for doing this is to get in line to receive funding for a bypass.

Mr. Thomas then **moved** to remove the opposition from the wording so that it states that the Board of Supervisors does not oppose the bypass.

Mr. Rooker said that what is handed out, the letter sent unanimously to Governor Warner by the Board, specifically goes through the reasons why this community was not in favor of this bypass. He said not to kid yourselves, what we are talking about is this bypass, not some hypothetical bypass some other place somewhere. Mr. Rooker stated that the Board unanimously opposed this road in 2002, and undoing that would violate the agreement signed by the City of Charlottesville, the University and Albemarle County which established the sequencing of transportation projects. He added that it also poses a threat to the South Fork Rivanna Reservoir, the primary source of water for 80,000 residents in the Charlottesville/ Albemarle area. He also said that it will devastate seven established neighborhoods in the county, taking 40 residences and negatively affecting 450 others.

Mr. Boyd asked if the residences were already taken.

Mr. Rooker said that they have rented those houses back so they have remained residential and there is not a super highway going through Colthurst or Montvue.

Mr. Boyd said that if he was one of those residents, he would fully expect that someday, because he is leasing the property from VDoT, that he would have to move.

Mr. Rooker stated that it passes very close to six schools in the County and takes 15 acres of land from the Greer/Jouett/ Albemarle complex, and noted that state traffic studies established that the project would not significantly improve the flow of traffic in the Route 29 Corridor, and quoted a traffic study that was done for this project as saying "building the project as presently planned would leave the traffic in the corridor at an F level of service."

Mr. Rooker said that Friends of the Earth and Taxpayers for Common Sense have selected this project four times as one of the worst transportation projects in this country measured by its waste of taxpayer dollars and its damage to the environment. He stated that citizen opposition to the project was overwhelming, and at the last public hearing 7,100 citizens expressed opposition to the project. VDoT indicated it was the most opposition it had ever received to a proposed transportation project at a single public hearing.

Mr. Rooker said that the City, County, University and MPO have all opposed the project, and the northern terminus of the project would pave over an archeological site and the property has not been acquired for that terminus, which would dump traffic right at Forest Lakes South. He stated that the impact of the southern terminus on St. Anne's Belfield and that area is very significant.

Mr. Rooker stated that every road has impacts, but what this community found is that the minimal traffic benefit provided by this \$275 million project was not justified. The State has found the same thing.

Mr. Rooker emphasized that nothing has changed since 2002 and all of these negative factors are still true. Mr. Rooker said that the Route 29 Corridor Study, which was just completed last year at a cost of \$1.5 million, specifically took the bypass out, stating that "the project would not serve a significant transportation benefit in the Route 29 corridor." He stated that the State transportation experts studied it and determined it was ineffective, noting that Butch Davies, who was in favor of the bypass initially, came down and studied the bypass when he joined the CTB and determined it was not something worth supporting. Mr. Rooker said that Whit Clement of Danville, who was the Secretary of Transportation, supported the bypass and after sending his transportation commissioner here to study it changed his position to state that the bypass "was not worth pursuing." He said that Whit Clement has been quoted as saying that "anybody who thinks this bypass will serve a significant benefit to the Commonwealth is wrong." Mr. Rooker also said that Ken White, CTB representative from Lynchburg who served for eight

years, concluded the same thing, much to the consternation of the people in this area who have been pushing so long for this bypass.

Mr. Rooker said that the Board, after seeing all of these things, adopted a position unanimously. He stated that through a WINA survey people in the community have supported an eastern bypass over a western one, and very few people supported this particular bypass.

Mr. Boyd said that he interpreted the results of the WINA survey differently than Mr. Rooker did.

Mr. Rooker said that there are some people in the community that want a bypass. There are also people in the community that want grade separated interchanges on Route 29.

Mr. Rooker referenced the traffic studies that were done as a part of the bypass studies, and quoted "the results of the traffic modeling showed that in design year 2010, the base case would function at level of service F. The expressway alternative would also operate at express level F without the express lanes, although the express lanes would operate at a better level of service C. Under all the new location alternatives, assuming the base case improvements are also implemented, Route 29 will still operate at an F level of service. If in addition to the base case, grade separated interchanges were built at three intersections, the average level of service on Route 29 would improve to a B."

Mr. Rooker also pointed out that was in the traffic study related to the bypass. All of the articles on the bypass conclude that grade separated interchanges are also needed on Route 29. He quoted another article, stating "We shook our heads in disbelief when the Virginia Department of Transportation, saying it was following public opinion, picked the short alternative 10 to the US Western Bypass. It dumped traffic right into the community's developing area. Everybody knew it would be obsolete by the time it was built. But there may be a solution. An old idea has been taken out, dusted off, and proven as a suggestion as a possible remedy." He said this particular article suggests building an eastern bypass parallel to Route 15. He said that the County ignored some of this information for Places 29 by removing the interchanges because some constituents were opposed to them, and has tried to move forward with improvements that there is some unanimity on, such as widening Route 29 from Hydraulic to the 250 Bypass, with the dual Best Buy ramp, building Hillsdale Connector, improvements on the west side of Route 29 through Albemarle Place proffers, the Berkmar Bridge, and the widening of Route 29 from Polo Grounds north as well as the Meadow Creek Parkway.

Mr. Rooker said that it is clear we had unanimity on those projects. Going back to pre-2002 and acting like there was no reason why all this was done is simply going to drive a wedge into this community. It is going to resurface a debate for a project for which there is no money. It will divert money. The bypass will not help the community get money to widen Route 29 so a bypass can be built. The County does not control primary road allocations. The State can come out and say we can now put money into the bypass so we are going to give you \$5 million, and the next year we are going to have you another \$5 or \$10 million and that will go in the pot for the bypass. He added that that is what happened with the Meadow Creek Parkway, and that is why it took twenty-some years to build and in the meantime, projects everyone has supported unanimously would not get funded.

Mr. Rooker said that the Board can either proceed with a unanimous track in the transportation program or continue arguing about grade separated interchanges versus a bypass. He added that there are people who have been living under the thumb of this project for their entire adult lives, such as the residents in Squirrel Ridge, and their properties have not increased in value at all over all this time. Montvue and Colthurst have been similarly affected.

Mr. Rooker stated that he does not want to drive another wedge into this community and hopes to move forward with the transportation program that the Board has approved.

Mr. Dorrier said that he was against the road because it was close to St. Anne's Belfield and Farmington, going through Colthurst. He said he did not see any sense in that road, but I think if what you are proposing to do is to open the discussion on a western bypass or an eastern bypass, that is a legitimate discussion because there will have to be some road put somewhere that is a bypass someday. But to debate this road, it is going to go back like Mr. Rooker says, to all the problems we have got with this road. He stated that this particular road is one he would vote against, as he did in 2002, but he is in favor of talking about a bypass either western or eastern that can be considered, because he feels it will be necessary.

Mr. Boyd stated that his understanding of Mr. Thomas' motion, is that the Board is at a place in the MPO, which is where these issues are studied, that he is asking to put this back on the table as a point of discussion and review as part of the six-year plan under the MPO. He stated that he agrees with Mr. Dorrier on this issue. He feels that a lot of the data on this is "stale," because it comes from 2002, and it's all based on the fact that this Board would not discuss it. Mr. Boyd asked why there is money in the VDOT six-year plan if they are opposed to it.

Ms. Mallek responded that the only money in there is to resolve the right of way, and that has been the case since 2003.

Mr. Boyd said that all the Board is being asked to do is direct MPO representatives to put this back on the agenda.

Mr. Rooker and Ms. Mallek clarified that that is not the motion at all.

Mr. Rooker read from Mr. Thomas' motion, which stated that "Money will go in for construction of this bypass."

Mr. Thomas said that he believes that there is money there and he is afraid that if they do not open up the discussion there would not be money for the Berkmar Bridge across the river and the widening of Route 29.

Mr. Rooker said that the language of the MPO does not need to be changed in order to discuss another bypass route.

Mr. Thomas stated that he can get some options.

Mr. Rooker said that what Mr. Thomas is talking about is actually removing a barrier to construction of this existing road that Mr. Dorrier has pointed out.

Mr. Thomas claimed that he would like to get the language out so it can be discussed.

Mr. Rooker indicated that he could talk about it with the language in there.

Ms. Mallek said that in the MPO long range plan, the MPO language only relates to one bypass, the one that has designs. She said that she cannot support that as something she is in favor of. Ms. Mallek said that this argument has been going on since the 1960's. In the 1970's, there was a large hearing in Richmond on the topic, and so many people went from Charlottesville that the location had to be moved. She stated that when she first built her house in 1984 there was discussion of a long loop from Stanardsville to the west and going south of town, which would have been a true bypass, but so few people would be using it that it was financially impractical, and it was thrown out.

Ms. Mallek stated that the bypass issue has been discussed for years and years, but there are others who are intent on doing things along Route 29. This is an issue that large numbers of people in our community are well informed about, who are very interested in making sure they are a part of any discussion that happens. She said that the proposal made by Mr. Thomas to take out the paragraph from the long range transportation plan that addresses only this specific bypass that is on the table right now is not something she can support.

Mr. Boyd said that this Board has every right to entertain a motion like that. He said that this Board never voted to put the language in there. It was done by a Board in 2002.

Ms. Mallek stated that the Board adopted and sent to the MPO the exact wording. She was on the CHART Committee at the time.

Mr. Boyd said it was in 2002.

Ms. Mallek said it was all the way through 2007.

Mr. Boyd reiterated that this particular sitting Board has never voted on it.

Mr. Rooker suggested that perhaps the Board could become like City Council and change their position every time an election happens.

Mr. Boyd said it is appropriate that political bodies are not bound by the decisions of previous Boards.

Ms. Mallek stated that is what the others say and it makes us crazy.

Mr. Boyd said he wanted to say a few things, because Mr. Rooker has expressed his opinion. Mr. Boyd said that his top priority has always been, and will continue to be, the widening of Route 29. He feels it is a dangerous road, and there are intersections there that need to be improved. That is still his top priority. But other projects such as Meadow Creek Parkway, Hillsdale Drive and the Best Buy ramp are well underway. He said that anything related to a bypass should be tied to the widening of Route 29, adding that since VDOT has processed \$3 billion and Albemarle has the lowest per capita allocation and he would like to see the western bypass put on the table.

Mr. Boyd said he is not saying he will vote for it, but he will not vote to say the Board will never consider it. He said that right now, that is how it stands, that the Board will never consider it.

Mr. Rooker explained again that this is not the language that Mr. Thomas is trying to remove; it does not say the Board will never consider it.

Mr. Boyd said that he wants to remove the language that is there that says the County opposes the bypass.

Mr. Rooker read "the MPO does not support construction money being allocated for this road."

Ms. Mallek clarified this particular western bypass project.

Mr. Boyd said that he is willing to vote to remove that language.

Mr. Rooker clarified that by doing so, construction money would be allocated for that road.

Mr. Boyd stated the Board will still decide on how the money gets allocated.

Mr. Rooker responded that the Board does not decide where primary road and interstate money is going to be spent.

Mr. Rooker asked Mr. Boyd what makes him think that all of the sudden the County is going to get money for the Berkmar Bridge and widening of Route 29.

Mr. Boyd asked if those were primary roads or secondary roads. He said that Route 29 is a primary road, but that Berkmar Drive is a secondary road.

Mr. Snow said that the Board can certainly tell the MPO that before they would consider a bypass they would want the Berkmar Bridge and the widening of Route 29 done. Mr. Snow said the Board can at least ask for these things before the bypass is even considered. It might open up a possibility for the Board to get something done.

Ms. Mallek pointed out that that was the plan in the three-party agreement, which took 15 years to establish.

Mr. Snow said that they (VDOT) are telling us right now that it will be years; currently the area is getting a million dollars every now and then. He understands that it may be years before this happens, which may be true. But, if the Board can say that if we get these things built, we will at least talk about a bypass.

Ms. Mallek responded that was the agreement with the City, County and University that the focus for transportation would be improvements on 29, the Meadow Creek Parkway, and only after those improvements, which have still not been completed because it included the widening and the grade-separated interchange, that is when the bypass would become appropriate. She said that one person on the CTB tried to erase that effort and everything fell apart with work on Route 29.

Mr. Snow said that he is saying the same thing that she just said. The County would need these other items before the bypass is even on the table.

Ms. Mallek said that is what they have been saying all along with the primary funds, we have been saying that every year.

Mr. Snow said this at least allows us to talk about it.

Mr. Rooker said that there is nothing preventing them from talking about it right now, and the only thing being prevented is allocating construction funds for that road.

Mr. Thomas said that it is a three step process.

Mr. Rooker emphasized that it does not prevent discussion of an eastern bypass or Route 29 improvements.

Mr. Boyd stated that the point is no one is going to take the County seriously while there is a statement in the MPO document that we are absolutely, unequivocally opposed to any western bypass.

Mr. Rooker reiterated that the statement in the MPO document refers to one particular road, one particular alignment, and construction money for this particular road. He said that there is nothing preventing the MPO from looking at or studying other options, such as an eastern bypass or some other bypass. He added that the State completed a \$1.5 million dollar transportation study last year, and they recommended not including the western bypass.

Mr. Boyd indicated that that transportation study, even the proposals that came out of it were entirely separate from the western bypass. They were cutting up through different routes; there was a connector road, a western connector road.

Mr. Rooker disagreed and said they were making specific statements.

Mr. Boyd said he went to the same meeting as Mr. Rooker, and he heard the presentations.

Mr. Rooker said he would be happy to get the report to Mr. Boyd next week. In regard to the bypass, the report said specifically that this bypass will not serve a significant transportation function. Therefore, they do not recommend it be included in their plan.

Mr. Boyd asked if that report was thrown out by the current administration as there were some problems with that particular company that they hired to do that report.

Ms. Mallek stated that if you don't like the answer that is usually how you do it.

Mr. Rooker stated that there were three different companies that worked on the report, and there are certainly some people that do not like the result.

Mr. Boyd said that he appreciates Mr. Rooker's stance on this, and he has listened to it for eight years. He would like to **second** Mr. Thomas' motion.

Mr. Rooker stated that he would not vote in favor if it because it would remove opposition to the western bypass as planned.

Mr. Dorrier asked for clarification of the motion.

Mr. Rooker explained that the motion is to take out all the MPO opposition to moving forward with construction money for this road that the Board opposed. He said the motion is for all the things that Mr. Dorrier just said he could not vote in favor of.

Mr. Boyd said the motion basically puts it back on the table for discussion.

Mr. Rooker clarified that it does not just put in back on the table. It is not simply a discussion. This is a move to allocate construction money to build this road. Mr. Rooker said it has already been discussed.

Mr. Boyd indicated that the road is in the six-year plan.

Mr. Rooker said it had already been discussed.

Ms. Mallek clarified that it is not in the six-year plan. The CTB took it out of the six-year plan five years ago.

Mr. Thomas stated that it is in the TIP.

Mr. Boyd also stated that it is in the TIP.

Ms. Mallek said that the amount that is in the TIP is only for right-of-way completion. She said there is no money, there is no construction, there is no preliminary engineering, there is nothing that has been funded for the last ten years in that project from the State level, and they are the ones that took it out of the State budget, the CTB, at the time.

Mr. Thomas called for the vote.

Mr. Rooker said he was going to vote no on it.

Mr. Dorrier stated that he has never been in favor of this road, the one that will go by St. Anne's Belfield School. He said it is too close in. That is the way he sees it. He said that he is in favor of discussion of the bypass, or even looking at an eastern bypass.

Mr. Boyd asserted that that is what they are trying to establish.

Ms. Mallek said that it would need to be a different motion then.

Mr. Boyd stated that Mr. Rooker could say all he wanted to that this would make the road approved, and all of a sudden money is going to flow to it. But where is the money going to come from? Mr. Rooker has told the Board that it is only \$300,000 a year.

Mr. Rooker said that is for secondary road funds.

Mr. Boyd asked what the primary road allocation is.

Mr. Rooker stated that for example, they just got \$2.3 million dollars for Route 29 from Hydraulic Road to the Route 250 Bypass. Primary money is money that the County has applied for, and would be used toward the widening of Route 29.

Mr. Rooker clarified that the State decides when you get it and where it is going to go. The County makes its case. He also mentioned that the County's CTB representative does not support this road.

Mr. Boyd stated that Mr. Rooker does not have to worry about this, because the State is not going to approve it.

Mr. Rooker said he did not know how long the Board was going to inflict harm on the people that are represented by the neighborhoods in this room as well as many, many other people.

Mr. Boyd said that there are many people in favor of the bypass as well.

Mr. Dorrier said that he is in favor of doing the doable, and that is what he has always been in favor of. He feels this is not doable.

Mr. Thomas then restated his motion to **move** to remove the opposition language from the Transportation Improvement Plan of the MPO that opposes additional funding for the Route 29 Western Bypass. Mr. Snow **seconded** the motion, which failed by the following recorded vote:

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

Mr. Rooker said that he hopes that the Board members do not wait until someone is absent to raise this again for the fifth time in the last four months.

Mr. Snow asked if Mr. Rooker was going on vacation anytime soon.

Mr. Rooker responded that he will not tell the Board when he will be on vacation.

Agenda Item No. 24. Adjourn to June 9, 2010, 4:00 p.m.

At 5:10 p.m., **motion** was offered by Mr. Rooker, **seconded** by Mr. Snow, to adjourn this meeting until 9:00 a.m. Monticello fire Station for a CIP Long Range Funding Work Session. Roll was called, and the motion carried by the following recorded vote:

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

Chairman

Approved by the Board of County Supervisors
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Date: 11/02/2011

Initials: EWJ
