

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on September 14, 2011, at 4:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas C. Foley, County Attorney, Larry W. Davis, and Senior Deputy Clerk, Meagan Hoy.

Agenda Item No. 1. The meeting was called to order at 4:00 p.m., by the Chair, Ms. Mallek.

Agenda Item No. 2. Work Session: Capital Financing Opportunities.

Mr. Foley reported that this work session is a follow-up to discussions staff had with the Board a few months ago about how to optimize the way the Capital Program is financed, in hope of realizing some savings for future consideration. He announced that Courtney Rogers from Davenport & Co., Bill Letteri, Assistant County Executive, and Betty Burrell, Director of Finance, are present to lead this discussion. Mr. Foley added that at its October 5th meeting, the Board will have an opportunity to consider any savings as a follow-up to this discussion.

Mr. Letteri said that staff and the Board began in June to look at opportunities in the capital fund, to find capacity, and to improve the way programs are actually financed. He also recognized Courtney Rogers and Betty Burrell, adding that this was a good team effort of diligence and creativity to come up with some good solutions. Mr. Letteri said that today's objectives are to have a discussion about a restructuring and a refinance program of the existing capital fund, and the extent to which that changes the burden on debt service and perhaps creates some new opportunities. He said they would also discuss potential changes to policy, all geared toward the notion of maintaining a strong financial position in the capital program. Mr. Letteri emphasized that everything they do needs to be focused on retaining the AAA rating. He mentioned that later today they would hold a VPSA public hearing on a portion of debt related to school projects. The final discussion will be on next steps relating to the capital program including timing decisions.

Mr. Letteri said that staff hopes to come out of the meeting today with three decisions: 1) agreement from the Board about refinancing/restructuring of \$40 million; 2) input/agreement on proposed policy changes; and 3) decision/timing regarding potential use of additional \$10 million capacity.

Mr. Rogers said that the goal is to develop a plan of finance, which would include looking at the entire CIP and how it would be paid for – whether in debt or equity – and part of that would revolve around how the County's AAA credit rating can be maintained or even enhanced. He said that they would be talking about policy guidelines, which has not been done recently, and market changes might necessitate some updating in order to retain the strong AAA level. Mr. Rogers said that with a slow economy interest rates are low, which provides an opportunity to look at existing debt and consider refinancing and restructuring at lower rates – improving cash flow and possibly adding other projects. He stated that with a five-year CIP debt can be issued every 18-24 months as needed, without having to involve staff and consultant professionals every year. In recognizing that low interest rates today are at/near 40-year lows, they plan to take advantage of that in terms of possibly refinancing some current outstanding debts. Mr. Rogers noted that it is never known what might make interest rates go higher so it is Davenport's philosophy to move as quickly as possible, but not too quickly.

Mr. Snow asked if the new interest rates would be fixed terms. Mr. Rogers responded "yes", they would be fixed through the final maturity. He added that the current schedule is for a sale in early November.

Mr. Rogers said that they would also be discussing the County's current portfolio of debt, the majority of which was issued through state programs – the Virginia Public School Authority (VPSA), which is static in that the Board cannot initiate any refinancing of that debt. He reported that the County has \$124 million in outstanding debt, but only \$20 million is eligible for refinance.

Mr. Rooker asked if the VPSA is considering any refinancing over the next year or two that might impact the County's portfolio with them.

Mr. Rogers responded that at their board meeting last week, the VPSA did not discuss any refinancing. He added that the VPSA Board only meets twice a year. He explained that the VPSA has a local bond between the County and the State, and the State then goes out and issues bonds to the public – so the VPSA refinances the public debt but not the local bond so localities are paying at the higher rate. Mr. Rogers said they come up with a mathematical calculation and give the savings back in the form of a check, rather than the traditional way of extending the refinancing over the life of the loan.

Mr. Rogers stated that the target timeframe is early November to refinance the bonds and issue new bonds. Mr. Rogers said they are looking to move around \$2 million of the \$20 million in principle in order to free up a little bit of cash flow to produce more capacity in the CIP, and \$16 million of the \$20 million would be put into "match maturity." The other \$2 million is already at low rates and there is no economic advantage to taking those out.

He stated that the County's dedicated Undesignated Fund Balance in the Capital Account would remain at/above \$2 million by the end of FY 2016 as previously presented to the Board at the June 2, 2011 retreat. In terms of issuing the bonds, he explained, they would follow the practice of going through the Economic Development Authority for a public sale in which the lowest interest rate bidder would win the bonds and sell them to their market. Mr. Rogers added that as part of this competitive sale, the County would have the new money as well as the refinancing.

The County's GO or issuer rating is a AAA rating, as rated by S&P and Moody's, and when lease revenue bonds are issued they are appropriation bonds that come in a budget annually with a decision made then about whether to appropriate funds for them – with GO bonds being full faith and credit backed by the taxes of Albemarle County. Mr. Rogers said that because there is a risk as to whether a future Board would appropriate the debt items, it is one notch off of the GO, or AA+, as the bonds in 2003 were.

Mr. Boyd asked what the pros and cons of referendum are. Mr. Rogers responded that time is an issue, there is a cost associated with that process and a possibility of it not passing, and one-quarter to one-half percentage point saved on interest costs because those bonds are AAA.

Mr. Rooker said that one-quarter percent would yield about \$60,000 a year.

Mr. Boyd stated that that is significant over the term of a bond.

Mr. Foley added that that is a longer term capital financing question that would be discussed again during the budget process this year.

Mr. Rogers said that it would be a good idea to discuss the CIP after the County gets through this issue. They need to get into the market place and secure funds to reimbursement themselves for those and the ones in 2012.

Mr. Rooker asked what the ratings are on the VPSA bonds. Mr. Rogers responded that they are AA+, AA1, or the same as the existing lease bonds.

Mr. Boyd said that the only advantage is that it provides more control for refinancing. Mr. Rogers responded that there is a five basis-point additional fee added onto the interest cost over time, but the up-front costs are a little bit lower, making it pretty close to a break even.

Mr. Rogers said that for Davenport's plan of finance, with the 2012-2016 CIP planned debt issuance, the first bond issue from the new money side would be \$21 million for fall 2011, with an additional allocation in winter 2013 and winter 2015 for the final issue. Mr. Rogers added that the public hearing tonight for qualified school construction bonds are zero percent interest. The \$2 million in school bonds is reflected in the cash flows.

Mr. Rogers explained that the money for new projects totals \$22 million, matching the existing CIP. He added that \$57 million of total planned debt issuance is the County's current adopted CIP.

Mr. Rogers reported that interest rates have trended very well from the standpoint of issuing debt. The 20-year bond rate for AA-rated bonds has remained under 5% for most of the 2000s decade. Mr. Rogers said that there were a lot of people who ran to the market with the "Build America" bonds and not a lot of people buying them, so rates went up to entice buyers – but they have started coming down since January and have dropped off considerably, down to below 2%.

Mr. Rogers stated that a bond was done in 2009 for fire and rescue, accomplished through a bank placement with a higher rate – 4.70% - but rates now range from .7 to 4.17, almost 100 basis points lower, or one-half million savings for that issue. He said they also have the 2003 issue, which is a longer term bond issue, with rates originally at 3.60 to 4.60, now at 3% and again a one-half million savings. He noted that the total savings is almost \$1 million for the life of those bonds.

Mr. Boyd asked if that savings is per year. Mr. Rogers replied that it is the total savings.

Mr. Rogers reiterated that the plan for the fall issuance is \$22 million of new money, comprised of the 2011 adopted CIP projects, the 2012 adopted CIP projects, and the qualified school bonds. He said the refunding is around \$16 million with restructuring at \$2 million, so the total issuance is \$40 million – with the \$2 million as part of the qualified school construction bond and the balance being a public sale in early November.

Mr. Roger then began a discussion of the County's financial policies, which were adopted in the early 2000s when Davenport was first hired as the financial advisor.

Mr. Boyd asked for clarification of the cash-flow situation, positives and negatives over the years, totaling \$40 million. Mr. Rogers replied that the cash-flows are included in the appendix (page 22 of the presentation).

Mr. Rogers said that when putting everything together – the new money, the refunding, the restructuring, the qualified school bonds, and \$10 million additional capacity – it does not impact cash flows negatively. He pointed out that the savings from the refinancing of the 2003 and 2009 bonds totals about \$115,000 per year for most of those years, and then falls to about \$45,000 once the 2003 bonds fall off. Mr. Rogers said that if the Board chooses not to do the \$10 million in additional projects they would

have about \$400,000 for the first five years and then \$1 million in the out years, which is the additional cash flow produced by the restructuring.

He also pointed out that the revenues available for debt service have a growth factor in there based on a number staff was using, so if growth is slower those numbers would have to be brought down – putting some pressure on the leftover cash flow.

Mr. Boyd asked if staff was looking for approval of the additional \$10 million in funding today.

Mr. Foley responded that they are not, only the \$40 million existing in the CIP right now.

Mr. Rogers clarified that there is \$22 million of new money and \$18 million of refinancing, without the \$10 million and with the restructuring.

Mr. Rogers explained that the County has two main debt policies, one of which is debt to assessed value. He said that the County is well within its 2% policy – total outstanding debt divided by total assessed value of the County. Mr. Rogers stated that they did include the CIP and hypothetical example of the \$10 million, which still keeps them well within their policy. Davenport does not think the County needs to change its policy as the County has had the AAA rating with that policy. Mr. Rogers then showed a comparison of Albemarle to other AAA Virginia counties, as well as the City of Charlottesville since they are a “neighbor.” He added that as a group, Albemarle is the lowest of any peer in terms of debt to assessed value.

Mr. Rogers reported that the second policy is debt service to revenues – how much debt service the County pays in a given year divided by the revenue side of budget. He said that Albemarle is well within its 10% guideline, which is seen with other AAA localities as well. Mr. Rogers said that the County ranks very well among those peers, and a few of them have bumped above that 10% - Loudoun and Prince William.

He stated that Davenport would like the Board to consider adopting a policy for a “payout ratio,” which is a measure of how much debt they pay off over the next 10 years – looking at the total amount of outstanding debt, calculating the amount of principle, and considering how fast it will be paid off. Mr. Rogers said that 50% or greater is considered best practice, with AA credits and higher usually at 60% or better, so he is proposing a floor of 60%. He explained that the best way to measure it is to look at it at the end of the CIP, as there could be a large project that skews the payout ratio. Mr. Rogers said the County is currently at 72%, which has to do with the shorter amortizing projects; working within the plan presented the County would be at 79%. He clarified that the number is the percentage of how much the County would pay off.

Ms. Mallek noted that it's taking more cash every year to do that higher amount of pay down, which is interfering with the ability to do projects that they need. Mr. Rogers agreed.

Mr. Letteri pointed out that part of what drives the quick rate of pay-down has to do with the nature of the debt being financed, as a lot of it might be short-term apparatus-type projects.

Mr. Boyd said that has been the County's approach. Mr. Foley said that it is the County's policy to pay it off within its useable life.

Mr. Rogers stated that there is currently no specific policy regarding increasing capacity, so this lets the rating agencies know the County is setting a floor – and 60% is recommended for AAA rated locality as a sufficient floor. He said that it is a “three-legged stool,” with this policy working with the other two polices and they all balance each other out. The County is in good shape with all three.

Mr. Rogers stated that another policy is Undesignated Fund Balance and this isn't debt-related but it is important when talking to rating agencies. The current policy states that the Undesignated Fund Balance, plus the designation for fiscal cash liquidity purposes, at the close of each fiscal year should be equal to no less than 8% of the County's total operating budget, which includes the General Fund plus the School Fund. Mr. Rogers stated that over the last 10 years the County has been above 10%, but as the economy soured, the County dipped into that to help balance the budget – as many localities do. He added that they would like to look at getting it back up to the 10% level and actually adjusting the policy to that level.

Mr. Rogers said that AAA counties in Virginia are all over the board in terms of where they ended FY 2010 on a percentage basis. Mr. Rogers reported that some localities in Virginia have policies that are lower than 10%, for various reasons including other pots of money – such as Fairfax, with a level at around 5%. He noted that Loudoun functions at above 10% because they have so much growth going on they need a larger fund balance to be able to function and manage from year to year. Mr. Rogers said that Davenport recommends enhancing the policy by increasing it to 10%, due in part to rate agencies tightening up on fund balances and wanting to see localities have enough flexibility to navigate through challenges. He said that the County started out at above 10% and then dipped down below it, so the recommendation is to get back up to 10% - even if it doesn't happen right away.

Mr. Rooker asked if it would take about \$6 million in cash. Mr. Rogers responded that it would take about \$3.7 million. He said that the County has a policy now of 8% and is at about 8.6% currently – the lowest it has been in the last 10 years.

Mr. Foley said that there is no action being requested on this today because there is more analysis to be done and new information coming from GASB 54 policy changes.

Mr. Rogers stated that those changes may actually relate to nomenclature – what counts and what doesn't count. He also said that when the last AAA grade was given through S&P, they focused on fund balance and the chart showed Albemarle at the lowest point it had been in 10 years. Mr. Rogers said part of Davenport's job is to give the County advice on how to keep that AAA rating.

Mr. Rooker said that the amount of money being saved on refinancing would more than suffice. Mr. Rogers said that is correct.

Mr. Foley stated that there are a number of options. The Board adopted a stabilization fund of 1% in addition to the 8.6%, which would count toward a fund balance. He added that staff will come back with recommendations, and even raising the 8.6% to 9% would put them in better shape. Mr. Foley said that he would rather not change the policy until they need it.

Mr. Rogers also reported that Davenport wanted to look at how much money it takes to operate the County on a daily basis, and 8% is about that number – which means the County is really on the edge in terms of how much in emergency funds they have below that 8%, so the 8% is operating day to day and the other 2% is actually rainy day funds.

Mr. Boyd commented that he thinks the Board should look at the composite number for cash flow as a point of evaluation on an annual basis.

Mr. Foley said that the other thing to consider in those times is the healthy capital fund balances, so it's borrowed against and reimbursed when the money comes in through taxes, etc., but the capital balances are not what they used to be.

Mr. Rogers stated that the other items to consider are really cosmetic. Davenport is recommending the County further refine the policy by adding "General Fund" prior to Undesignated Fund Balance. In addition "total operating budget" should be clarified to say "total operating revenues". He said that the rating agencies are looking at whether the Board can get their hands on the money quickly.

Mr. Rooker asked at what point they are measuring the fund balance. Mr. Rogers responded that it is June 30, and in the typical Virginia counties collect taxes twice a year and they will find their lowest points at the end of October and the end of April.

Mr. Foley said there is a potential you are drawing from the capital fund, but it is only for a short period of time until the revenues come back in – which is typical – and the 10% gives that extra cushion going forward.

Mr. Rogers stated that if the Board decides to use the fund balance there should be some type of acknowledgement they are going to put it back over some period of time, which is something the rating agencies like to see. Davenport recommends the following: "Use of the Undesignated Fund Balance may be necessary from time to time to meet unexpected revenue shortfalls or financial emergencies. Under the Virginia Code, appropriations greater than \$500 from the UFB require a majority vote of the elected members of the Board of Supervisors. Should the level fall below the policy no appropriation from the UFB will occur without prior presentation to the Board of Supervisors by the County Executive of a plan and timeline for replenishing the UFB to its minimum 10% level."

Mr. Rooker said he does not see any reason why the Board should not adopt this policy.

Mr. Boyd said that he doesn't think the Board should change it until they are sure they can match it.

Mr. Foley noted that the reality is that every locality is being reviewed by rating agencies, and how they adhere to their policies is the big issue. He said that staff would like to bring this back within six weeks. He added that hearing the GASB changes is a critical piece.

Mr. Rogers said that Davenport will start working on the actual documentation. They will be working on a credit presentation for the rating agencies as well as the public sale documents. He stated that the rating agencies will be in Staunton during the week of October 17, so he thought they might come over and have a tour and see the County and have meetings to discuss what they would like to do. Davenport will come back to the Board on October 5, Davenport with the legal documents for formal vote. That would be followed by a meeting with the Economic Development Authority followed by the public sale the first week of November, and closing by Thanksgiving.

Mr. Boyd stated that he would like to see the numbers as to what it would cost the County to do this.

Mr. Rogers said that doing the new money and refinancing at the same time helps the refunding, so there are some economies of scale there.

Mr. Foley stated that what is before the Board is based upon a consensus that they want to move forward with the \$40 million refinancing as recommended. The only real difference is the County won't use VPSA to do school financing as has been done in the past. He said the only other item for consensus is the two policies proposed – establishing the debt ratio and the all-around fund balance. Mr. Foley noted

that on October 5 they would come back with some suggested uses for the savings, including setting it aside to meet the 10%.

Mr. Boyd asked that the discussion would coincide with the CIP discussion. Mr. Foley responded that it would precede the CIP discussion and there is a question as to whether the previous CIPs would inform whether the Board wants to add \$10 million to this financing in November. Mr. Foley emphasized that if the \$10 million is out there and available and the Board is comfortable that it should pay for some other capital projects, there is a question as to whether they should wait for the oversight committee or make decisions on something that is critical now. He said that the key is missing the November date, but there would be some separate issuance costs if they wait.

Mr. Boyd said he would like to see information on those costs.

Ms. Mallek stated that they would also miss some of the interest costs, as it has already gone from 2.5% to 3% over the last six months.

Mr. Foley agreed that there is that risk if they wait until next year.

Mr. Rooker said that they could decide to do \$7 million, for example, and not the full \$10 million. He also asked how a 1% rate change might impact the capacity.

Mr. Rogers stated that he can't do it in his head, but the numbers he has included are very conservative so there is already a cushion, but if rates stay where they are today until early November the figures will be better.

Ms. Mallek asked how the advisement to state government on their financial position might trickle down to the counties.

Mr. Rogers responded that it does enter into the equation, because in early August when the federal government had the debt ceiling deadline Moody's said they would keep the AAA rating but would give a negative credit outlook – and also put on the state of Virginia and all AAA localities the stipulation they would come talk to them within a 90-day period. He also said that the day after that happened, Montgomery County, Maryland sold bonds and they got great rates even with the negative outlook. The market sort of just dismissed the credit negative, so he does not think that it is an issue that is going to hurt the County. He does not think the County will get it off when they talk with them in October; they may still leave the negative outlook. He added that he wouldn't take that as a slight against the County, as Moody's is just trying to be consistent across the board – examining how much is used in federal dollars and the impact of a hypothetical shutdown of the federal facility here.

Mr. Boyd said the County is issuing bonds based on EDA money so the AAA rating isn't affecting them.

Mr. Rogers explained that they look at your issuer rating (AAA) and if all the legals are in place and it is an essential project, it is one notch off of your issuer rating. For example, if you are a AA1, the lease would come in at a AA2, which would be slightly higher.

Mr. Boyd asked how this affects the VPSA. Mr. Rogers said the County's rating does not affect the VPSA rating, but the state's rating might affect it.

Mr. Rogers said that Loudoun just got rated in the end of June, and now they are going to get a negative credit outlook, so there is definitely some disappointment in how this is being evaluated. Mr. Rogers added that S&P has said they would consider each individual credit and not view them across the board because they take federal dollars. He also emphasized that the marketplace has dismissed the rating for the time being.

Agenda Item No. 3. **Public Hearing** on the proposed issuance of general obligation school bonds of Albemarle County in the estimated maximum principal amount of \$6,835,000. The purposes of the proposed bonds are (i) to finance capital projects for public schools, including without limitation, an addition to, and renovation of, the Mary Carr Greer Elementary School as well as other school maintenance and replacements projects and (ii) to pay issuance and related financing costs. Such bonds may be sold to the Virginia Public School Authority through its qualified school construction bond program or its regular pooled financing program. In the alternative, the Board of County Supervisors may determine to finance all or a portion of such project costs through other financing mechanisms as it may determine to be in the best interests of the County. Interested persons may appear at such time and place and present their views. *(Advertised in the Daily Progress on August 29 and September 5, 2011.)*

Ms. Betty Burrell, Director of Finance, summarized the following executive summary which was forwarded to Board members:

The FY 2011/12 Capital Improvement Budget was approved with the intent to issue approximately \$6,835,000 in bonds through the Virginia Public School Authority (VPSA) for the following projects:

Greer Elementary School Addition/Renovations	\$3,908,780
School Maintenance Projects	\$2,926,220
Total	\$6,835,000

Resolutions authorizing the application to the VPSA were adopted by the School Board on August 11, 2011. The required public hearing to be held by the Board is advertised for September 14, 2011 to consider the issuance of bonds in the maximum principal amount of up to \$6,835,000.

The attached Resolution authorizes the issuance of VPSA bonds not to exceed \$2,000,000, the sale of the bonds to VPSA, and approves as to form the Bond Sale Agreement relating to the Bonds. The \$2,000,000 amount reflects the maximum amount of bonds that can be issued as qualified school construction bonds (QSCB) under provisions of the American Recovery and Investment Act of 2009 (ARRA). Under ARRA any interest paid by the County on QSCB is refundable by the federal government. The result is that the \$2,000,000 borrowing should have an effective 0% interest rate.

A decision on whether to authorize the issuance of the additional \$4,835,000 of VPSA bonds is proposed to be delayed until the Board's October 5, 2011 meeting after the Board has considered alternate financing options. It may be possible to borrow the \$4,835,000 using an alternate financing method that would provide the same interest rates available through the VPSA and provide greater flexibility in the future to restructure the debt if favorable opportunities in the market arise.

The FY12 CIP and Debt Service budgets anticipated the issuance of \$6,835,000 in bonds for the above referenced projects.

Ms. Burrell stated that after the public hearing, staff recommends adoption of the attached Resolution (Attachment A) to authorize the issuance of QSCB bonds in the maximum principal amount of \$2,000,000 to finance certain capital improvements for the County's public schools. Staff recommends deferring any decision on the method of issuing the remaining \$4,835,000 of bonds until the October 5, 2011 Board meeting.

The Chair opened the public hearing. Since no one came forward to speak, the public hearing was closed and the matter was placed before the Board.

Mr. Rooker **moved** to adopt the following resolution to authorize the issuance of \$2 million in qualified school bonds under the ARRA program. Mr. Dorrier **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.

RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION SCHOOL BONDS OF THE COUNTY OF ALBEMARLE, VIRGINIA, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$2,000,000, TO BE SOLD TO THE VIRGINIA PUBLIC SCHOOL AUTHORITY AND PROVIDING FOR THE FORM AND DETAILS THEREOF

WHEREAS, the Board of Supervisors (the "Board") of the County of Albemarle, Virginia (the "County"), has determined that it is necessary and expedient to borrow an amount not to exceed \$2,000,000 and to issue its general obligation school bond (as more specifically defined below, the "Local School Bond") for the purpose of financing capital projects for public schools, including without limitation, an addition to the Mary Carr Greer Elementary School; and

WHEREAS, the County has held a public hearing, duly noticed, on September 14, 2011, on the issuance of the Local School Bond in accordance with the requirements of Section 15.2-2606, Code of Virginia 1950, as amended (the "Virginia Code"); and

WHEREAS, the School Board of the County has, by resolution adopted on August 11, 2011, requested the Board to authorize the issuance of the Local School Bond and consented to the issuance of the Local School Bond; and

WHEREAS, the Virginia Public School Authority ("VPSA") has offered to purchase the Local School Bond along with the local school bonds of certain other localities with a portion of the proceeds of certain bonds to be issued by VPSA in the fall of 2011 (the "VPSA Bonds"); and

WHEREAS, VPSA intends to issue the VPSA Bonds as "qualified school construction bonds" (referred to below as "QSCBs" and each a "QSCB") within the meaning of Section 54F of the Internal Revenue Code of 1986, as amended (the "Tax Code"), which section was added to the Tax Code by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355), enacted on February 17, 2009; and

WHEREAS, VPSA intends to elect to treat the VPSA Bonds as "specified tax credit bonds" under Section 6431 of the Tax Code, as amended by the Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147, 123 Stat. 301), enacted on March 18, 2010, which status enables an issuer of a QSCB to receive a direct payment of a refundable credit in lieu of providing a tax credit to the purchaser or holder of the QSCB; and

WHEREAS, the refundable credit payable with respect to each interest payment date will be equal to the lesser of (i) the amount of interest payable under the QSCB on such date or (ii) the amount of interest which would have been payable under the QSCB on such date if such interest were determined at the applicable credit rate determined under Section 54A(b)(3) of the Tax Code (that is, the rate used in computing

the amount of tax credit that could be claimed by the QSCB holder absent the "specified tax credit bond" refundable credit election); and

WHEREAS, subject to the terms and conditions set forth or referred to below, VPSA will transfer to the County the allocable portion of the refundable credit actually received in cash by VPSA with respect to the VPSA Bonds; and

WHEREAS, the allocation of QSCB volume cap pursuant to which VPSA will issue the VPSA Bonds will be made by Executive Order to be issued by the Governor of the Commonwealth of Virginia (the "Executive Order"), to finance the Project along with a number of other projects selected through a competitive evaluation process administered by the Virginia Department of Education; and

WHEREAS, the Bond Sale Agreement (as defined below) shall indicate that \$2,000,000 is the amount of proceeds requested (the "Proceeds Requested") from the VPSA in connection with the sale of the Local School Bond; and

WHEREAS, VPSA's objective is to pay the County a purchase price for the Local School Bond which, in VPSA's judgment, reflects the Local School Bond's market value (the "VPSA Purchase Price Objective"), taking consideration of such factors as the purchase price to be received by VPSA from the sale of the VPSA Bonds, the underwriters' discount and the other issuance costs of the VPSA Bonds and other market conditions relating to the sale of the VPSA Bonds; and

WHEREAS, such factors may result in the Local School Bond having a purchase price other than par and consequently (i) in the case of any bond premium, the County may have to issue the Local School Bond in a principal amount that is less than the Proceeds Requested in order to receive an amount of proceeds that is substantially equal to the Proceeds Requested, or (ii) if the maximum authorized principal amount of the Local School Bond set forth in paragraph 1 of this Resolution does not exceed the Proceeds Requested by at least the amount of any bond discount, the purchase price to be paid to the County, given the VPSA Purchase Price Objective and market conditions, will be less than the Proceeds Requested.

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

1. **Authorization of Local School Bond and Use of Proceeds.** The Board hereby determines that it is advisable to contract a debt and issue and sell its general obligation school bond in a principal amount not to exceed \$2,000,000 (the "Local School Bond") for the purpose of financing capital projects for public schools, including without limitation, an addition to the Mary Carr Greer Elementary School, and for paying the County's allocable share of (a) VPSA's costs of issuing the VPSA Bonds and (b) any upfront flat fees of VPSA as determined by VPSA to be necessary to compensate VPSA for the ongoing costs related to administering the local school bonds purchased with the VPSA Bonds, including the County's Local School Bond (such upfront fees may be in lieu of the Annual Administrative Fee described in paragraph 4 in this Resolution). The Board hereby authorizes the issuance and sale of the Local School Bond in the form and upon the terms established pursuant to this Resolution and the Bond Sale Agreement.

2. **Sale of the Local School Bond.** The sale of the Local School Bond, within the parameters set forth in paragraph 4 of this Resolution, to VPSA is authorized. Given the VPSA Purchase Price Objective and market conditions, the County acknowledges that if the limitation on the maximum principal amount on the Local School Bond set forth in paragraph 1 of this Resolution restricts VPSA's ability to generate the Proceeds Requested, the Local School Bond may be sold for a purchase price of not lower than 90% of the Proceeds Requested. The Chairman of the Board, the County Executive (which term shall include any Assistant County Executive), or either of them, and such other officer or officers of the County as either may designate, are hereby authorized and directed to enter into an agreement with VPSA providing for the sale of the Local School Bond to VPSA (the "Bond Sale Agreement"). The Bond Sale Agreement shall be in substantially the form submitted to the Board at this meeting, which form is hereby approved.

3. **Details of the Local School Bond.** The Local School Bond shall be dated the date of its issuance and delivery; shall be designated "General Obligation School Bond, Series 2011B," or such other designation as the County Executive shall determine; shall bear interest from the date of delivery thereof payable semi-annually on dates specified by VPSA (each, an "Interest Payment Date" at the rates established in accordance with paragraph 4 of this Resolution; and shall mature annually in the years (each a "Principal Payment Date," and together with any Interest Payment Date, a "Payment Date") and in the amounts (the "Principal Installments") determined by the County Executive, subject to the provisions of paragraph 4 of this Resolution.

4. **Interest Rate and Principal Installments.** The County Executive is hereby authorized and directed to accept the interest rate on the Local School Bond established by VPSA, provided that each interest rate may be up to five one-hundredths of one percent (0.05%) over the interest rate to be paid by VPSA for the corresponding principal payment date of the VPSA Bonds, a portion of the proceeds of which will be used to purchase the Bonds, to the extent required by VPSA (the "Annual Administrative Fee"), and provided further that the true interest cost of the Local School Bond does not exceed seven and a half percent (7.50%) per annum. The Payment Dates and the Principal Installments shall be specified by VPSA. The County Executive is hereby authorized and directed to accept the final Payment Dates and the Principal Installments at the request of VPSA based on the final term to maturity of the VPSA Bonds, requirements imposed on VPSA by the nationally-recognized rating agencies and the final principal amount of the Local School Bond; provided, however, that the principal amount of the Local School Bond shall not exceed the amount authorized by this Resolution and the final maturity of the Local School Bond shall be no later than the earlier of (a) December 31, 2030, and (b) the latest maturity date permitted under Section 54A of the Tax Code. The execution and delivery of the Local

School Bond as described in paragraph 10 hereof shall conclusively evidence the approval and acceptance all of the details of the Local School Bond by the County Executive as authorized by this Resolution.

5. **Certain Investment Earnings.** The Board hereby acknowledges that VPSA will (i) issue the VPSA Bonds with multiple maturities or with a single "bullet" maturity, in either case, with a final maturity date on or shortly before the latest maturity date permitted for the VPSA Bonds under Section 54A of the Tax Code, (ii) invest the Principal Installments for the benefit of the County until they are applied to pay the principal of the VPSA Bonds and (iii) either remit the investment earnings periodically to the County or credit the investment earnings against the County's obligation to make Principal Installments, at the option of VPSA. The Board further acknowledges that VPSA may cause a portion of such earnings to be deposited into a reserve fund or account to be applied by VPSA for use to pay the costs, fees and expenses described in paragraph 15 below. Any balance in such reserve fund or account attributable to investment earnings on the County's Principal Installments as reasonably determined by VPSA will be remitted or credited to the County on the final maturity date of the VPSA Bonds.

6. **Certain Acknowledgements.** The County acknowledges that the interest rate on the Local School Bond will be set at the level necessary to pay the interest on the allocable portion of the VPSA Bonds plus the Annual Administrative Fee, if any, and that the County will be obligated to pay interest on the Local School Bond at the stated taxable rate thereon regardless of the elimination or reduction of the refundable credit to be received by VPSA due to (i) any amendments by Congress to Sections 54A, 54F or 6431 or any other applicable sections of the Tax Code, (ii) any failure or determination by Congress not to appropriate funds necessary to pay the refundable credit, (iii) any guidance or changes to guidance provided by the U.S. Department of Treasury or the Internal Revenue Service, or (iv) any action or omission by VPSA, the County or any other locality selling local school bonds to VPSA in connection with the VPSA Bonds that causes the VPSA Bonds to lose their status as QSCBs and/or specified tax credit bonds in whole or in part. It is also acknowledged that the County has the right to effect an extraordinary optional redemption of the Local School Bond in whole or in part upon the occurrence of any of these events as provided in the form of Local School Bond.

7. **Form of the Local School Bond.** The Local School Bond shall be issued initially in the form of a single, temporary typewritten bond substantially in the form attached hereto as Exhibit A.

8. **Payment; Paying Agent and Bond Registrar.** The following provisions shall apply to the Local School Bond:

(a) For as long as VPSA is the registered owner of the Local School Bond, all payments of principal, premium, if any, and interest on the Local School Bond shall be made in immediately available funds to, or at the direction of VPSA at, or before 11:00 a.m. on the applicable Interest Payment Date, Principal Payment Date or date fixed for prepayment or redemption, or if such date is not a business day for Virginia banks or for the Commonwealth of Virginia, then at or before 11:00 a.m. on the business day next succeeding such Interest Payment Date, Principal Payment Date or date fixed for payment, prepayment or redemption.

(b) The Bond Registrar and Paying Agent for the Local School Bond shall be the banking institution selected by VPSA for such purposes.

9. **Prepayment or Redemption.** The Principal Installments of the Local School Bond may be subject to optional prepayment or redemption prior to their stated maturities as determined by VPSA. The Principal Installments of the Local School Bond will be subject to extraordinary mandatory redemption (i) if certain proceeds of the Local School Bond have not been spent within three years after the date of its issuance and delivery (which three year period may be extended by the U.S. Secretary of the Treasury or his delegate), (ii) due to a loss of "qualified tax credit bond" and "qualified school construction bond" status of the VPSA Bonds corresponding to the Local School Bond under Sections 54A and 54F of the Tax Code, and (iii) if due to (a) any amendments by Congress to Sections 54A, 54F or 6431 or any other applicable sections of the Tax Code or (b) any guidance or changes to guidance provided by the U.S. Department of Treasury or the Internal Revenue Service, there is a reduction or elimination of the direct payment of the refundable credit to be received by VPSA with respect to the VPSA Bonds. The Principal Installments of the Local School Board shall be redeemed at the redemption prices and upon the other terms set forth in the Local School Bond.

10. **Execution of the Local School Bond.** The Chairman or Vice Chairman of the Board, either of whom may act, and the Clerk of the Board or any Deputy Clerk of the Board, either of whom may act, are authorized and directed to execute and deliver the Local School Bond and to affix the seal of the County thereto.

11. **Pledge of Full Faith and Credit.** For the prompt payment of the principal of and interest, if any, and premium, if any, on the Local School Bond as the same shall become due, the full faith and credit of the County are hereby irrevocably pledged, and in each year while any of the Local School Bond shall be outstanding there shall be levied and collected in accordance with law an annual ad valorem tax upon all taxable property in the County subject to local taxation sufficient in amount to provide for the payment of the principal of and interest, if any, and premium, if any, on the Local School Bond as such principal, interest, if any, and premium, if any, shall become due, which tax shall be without limitation as to rate or amount and in addition to all other taxes authorized to be levied in the County to the extent other funds of the County are not lawfully available and appropriated for such purpose.

12. **Use of Proceeds Certificate and Tax Compliance Agreement.** The Chairman of the Board, the County Executive and such other officer or officers of the County as either may designate are hereby authorized and directed to execute and deliver on behalf of the County a Use of Proceeds Certificate

and Tax Compliance Agreement (the "Tax Compliance Agreement") setting forth the expected use and investment of the proceeds of the Local School Bond and containing such covenants as may be necessary for the VPSA Bonds to qualify as and to remain as "qualified tax credit bonds," "qualified school construction bonds" and "specified tax credit bonds" under Sections 54A, 54F and 6431 of the Tax Code and the applicable regulations. The Board covenants on behalf of the County that (i) the proceeds from the issuance and sale of the Local School Bond will be invested and expended as set forth in the Tax Compliance Agreement and that the County shall comply with the other covenants and representations contained therein and (ii) the County shall comply with the provisions of the Tax Code so that the VPSA Bonds will not lose their status as "qualified tax credit bonds," "qualified school construction bonds" and "specified tax credit bonds" under Sections 54A, 54F and 6431 of the Tax Code.

13. **State Non-Arbitrage Program; Proceeds Agreement.** The Board hereby determines that it is in the best interests of the County to authorize and direct the County Director of Finance to participate in the State Non-Arbitrage Program in connection with the Local School Bond. The Chairman of the Board, the County Executive and such officer or officers of the County as either may designate are hereby authorized and directed to execute and deliver a Proceeds Agreement with respect to the deposit and investment of proceeds of the Local School Bond by and among the County, the other participants in the sale of the VPSA Bonds, VPSA, the investment manager and the depository, substantially in the form submitted to the Board at this meeting, which form is hereby approved.

14. **Continuing Disclosure Agreement.** The Chairman of the Board, the County Executive and such other officer or officers of the County as either may designate are hereby authorized and directed to execute a Continuing Disclosure Agreement, as set forth in Appendix E to the Bond Sale Agreement, setting forth the reports and notices to be filed by the County and containing such covenants as may be necessary in order to show compliance with the provisions of the Securities and Exchange Commission Rule 15c2-12, under the Securities Exchange Act of 1934, as amended, and directed to make all filings required by Section 3 of the Bond Sale Agreement should the County be determined by the VPSA to be a MOP (as defined in the Continuing Disclosure Agreement).

15. **Fees, Costs and Expenses.** The County agrees to pay from proceeds of its Local School Bond or other legally available funds the following fees, costs and expenses incurred by VPSA in connection with its purchase and carrying of the Local School Bond within thirty days after receipt by the County Executive of a written bill therefor:

(a) The County's allocable share of (i) the fees, costs and expenses of the trustee, paying agent and bond registrar under the indenture pursuant to which VPSA will issue the VPSA Bonds and (ii) the County's allocable share of any fees, costs and expenses payable to third parties in connection with such indenture or VPSA's School Tax Credit Bond Program, as determined by VPSA; and

(b) To the extent permitted by law, the reasonable fees, costs and expenses, including reasonable attorneys' fees, if any, incurred by VPSA in connection with any false representation or certification or covenant default by the County or any County or School Board official, employee, agent or contractor under the Local School Bond, the Continuing Disclosure Agreement, the Tax Compliance Agreement, the Proceeds Agreement and/or any document, certificate or instrument associated therewith (collectively, the "County Documents"), or in connection with any extraordinary mandatory redemption of the Local School Bond as described in paragraph 9 above and the corresponding VPSA Bonds, any amendment to or discretionary action that VPSA makes or undertakes at the request of the County under any of the County Documents or any other document related to the VPSA Bonds.

16. **Filing of Resolution.** The appropriate officers or agents of the County are hereby authorized and directed to cause a certified copy of this Resolution to be filed with the Circuit Court of the County.

17. **Election to Proceed under Public Finance Act.** In accordance with Section 15.2-2601 of the Virginia Code, the Board elects to issue the Local School Bond pursuant to the provisions of the Public Finance Act of 1991, Chapter 26 of Title 15.2 of the Virginia Code.

18. **Further Actions.** The members of the Board and all officers, employees and agents of the County are hereby authorized to take such action as they or any one of them may consider necessary or desirable in connection with the issuance and sale of the Local School Bond and any such action previously taken is hereby ratified and confirmed.

19. **Effective Date.** This Resolution shall take effect immediately.

Agenda Item No. 4. Consideration of U. S. Route 29 Western Bypass Resolution.

Following is the proposed resolution that was forwarded to Board members:

Resolution

WHEREAS, the Charlottesville-Albemarle Metropolitan Planning Organization amended its Constrained Long-Range Transportation Plan and Transportation Improvement Program on July 27, 2011, to remove language opposing the allocation of construction funding to the proposed Route 29 Western Bypass ("Bypass"); and

WHEREAS, the Virginia Secretary of Transportation has announced that the State will soon begin advertising for bids for the design and construction of the bypass; and

WHEREAS, the Final Environmental Impact Statement for the Route 29 Bypass was completed eighteen years ago and the Supplemental Environmental Impact Statement was completed eight years ago, and VDOT is therefore required to prepare a written reevaluation of the environmental impact statements; and

WHEREAS, among other items, the traffic modeling, the traffic estimates, the air quality analyses and the noise analyses in the environmental impact statements are now outdated and additional analysis needs to be done; and

WHEREAS, there is significant new information that has been developed since the environmental impact statements were prepared, including new scientific research documenting the detrimental effects of highway pollutants on the health of individuals, and children, especially; and

WHEREAS, new data and analyses that should be developed as part of a thorough and properly done review of the bypass and its impacts, including results of traffic modeling, will be necessary in order to provide updated and accurate information about health, noise, and other impacts of the bypass, as well as to identify strategies to mitigate those impacts; and

WHEREAS, the new data and analyses should be considered before it becomes costly and difficult to make changes to the proposed plans for the bypass.

NOW, THEREFORE BE IT RESOLVED that the Albemarle County Board of Supervisors hereby requests that, before ~~issuing a request for proposals concerning~~ awarding a contract for the design and construction of the bypass, the Virginia Department of Transportation:

- Evaluate updated traffic modeling for the bypass that includes a comparison of at least two scenarios, including one that evaluates a baseline set of improvements with the bypass, and one that evaluates the same baseline set of improvements without the bypass; and
- Consider new scientific research documenting the detrimental effects of highway pollutants on the health of individuals, and children, especially; and
- Conduct thorough analyses of the potential health and noise impacts of the bypass on children attending the six schools and the residents of the neighborhoods located along its proposed route; and
- Engage in meetings with impacted citizens and representatives of impacted schools concerning appropriate strategies to mitigate such impacts in time to appropriately implement mitigation strategies into design and construction of the bypass;
- Consider a reduction of the design speed for the bypass from 60 mph to 50 mph; and
- Hold a public hearing to allow comment on the above information after it has been prepared.

Ms. Mallek said that she was not able to connect with Mr. Jim Utterback, of VDOT, about some of the details. She stated that she is asking that consideration be given to asking for a reduction of the design speed. She thinks the Board should ask VDOT engineers as they are in the best position to provide feedback on that matter.

Mr. Rooker said it was brought up to them in the last meeting and Mr. Utterback said they thought it was a good idea to consider.

Ms. Mallek said that he had indicated that VDOT had considered it as well and was glad to hear the Board was contemplating it.

Mr. Boyd said he thought VDOT had discounted it.

Mr. Rooker stated that there are two things he would like to revise in what's presented here. He said that the first bullet stating "evaluate updated traffic modeling" should say "allow the MPO to evaluate updated traffic modeling," because under federal regulations the MPO is supposed to do the traffic modeling for this. Mr. Rooker said they have an employee devoted to traffic modeling and it makes sense for them to satisfy their federal obligation to do the modeling. Although it may not get Board support, he would propose a resolution the way it was read regarding issuance of RFPs, as there have been a huge number of people emailing on that topic and the earlier input is gathered before they are committed, the better in terms of its value.

Mr. Rooker then offered **motion** to adopt the resolution with the language issuing a request for proposals concerning the design and construction of the bypass, Virginia Department of Transportation, and allow the MPO to evaluate the traffic modeling. Other than that, the proposed resolution would be unchanged.

Mr. Thomas asked if Mr. Rooker had written the resolution.

Mr. Rooker said that originally Ms. Mallek had written it.

Ms. Mallek said that she wrote it initially, added some information from what other people had sent in, and then sent it to Mr. Davis for legal review and editing.

Mr. Thomas said that you would be coming off of Route 29 at 55 mph, and he disagrees with the speed limit being lower than 60 mph.

Ms. Mallek said that people won't be able to navigate the entrance flyovers at the southern end at 55 mph, so the transition cannot be kept at the same speed. She stated that if VDOT comes up with substantial savings of dollars and reduced footprint, the County should ask VDOT to consider it.

Mr. Thomas stated that the road is being built to move traffic.

Ms. Mallek said that the capacity issue will be there because people won't be stopping for traffic lights and would have to slow down for lights and traffic at the northern end. It just seems a sensible thing to ask VDOT to consider. She said that is all they are doing here.

Mr. Rooker said this is just a request for consideration, adding that there is speculation about speed and there is no way to know what the road will cost to build at this design speed. He stated that it might make sense to consider a lower design speed from a fiscal standpoint, and this is simply a request. They are not dictating here, just saying consider this.

Mr. Boyd said he doesn't see the word "consider" in here.

Mr. Rooker and Ms. Mallek noted that it says "consider a reduction of the design speed."

Mr. Rooker stated that the resolution is worded as "The Albemarle County Board of Supervisors hereby requests that..." and then it asks them to do the things listed.

Mr. Thomas said that he doesn't like these items to be requested prior to a contract being done.

Ms. Mallek **seconded** the motion.

Mr. Boyd asked him to restate the motion.

Mr. Rooker explained that the motion is exactly as this reads except it goes back to the original language... "issuing a request for proposals concerning the design construction of the bypass, Virginia Department of Transportation," with the only change in the first bullet being to "allow the MPO to evaluate the traffic speed".

Mr. Dorrier asked if the MPO has looked at the resolution.

Mr. Thomas responded that they have not looked at it as an official body.

Ms. Mallek said that the MPO has the federal highway responsibility to be the citizen input for federal dollars spent on transportation, and has a highly skilled transportation staff member who does this kind of work.

Mr. Rooker re-read the resolution: "Now therefore be it resolved that the Albemarle County Board of Supervisors hereby requests that, before issuing a request for proposals concerning the design and construction of the bypass, the Virginia Department of Transportation..." He said that everything would be the same except the first bullet related to the MPO's role in traffic design.

Mr. Snow said he disagreed with it, as it puts it back into the hands of someone else for a different process.

Mr. Rooker stated that under federal regulations, the MPO should be doing the evaluation of the traffic.

Mr. Snow said that this was supposed to be a "resolution for us," not a resolution to "encumber the MPO" or cause them to have to do something to make this happen. He added that the MPO has already done that.

Mr. Rooker responded that this does not require any action of the MPO other than having their staff, as a part of this process, do traffic modeling for this road.

Mr. Boyd asked if VDOT has already said they were going to do it.

Mr. Rooker said that under federal regulations, the MPO should be doing it.

Mr. Dorrier said that if it is already the MPOs job to do traffic modeling, they shouldn't have to be told to do it.

Mr. Rooker stated that if it makes a difference, he will take it out, especially if Board members are going to vote against it.

Mr. Thomas asked if he would still want to have the bullet in that asks for an evaluation of baseline set of improvements, with and without the bypass.

Ms. Mallek said she thinks that is required in order to meet federal highway regulations. Mr. Thomas said he is not sure that is correct.

Mr. Rooker said that without having that, how you would know what the improvement to traffic would be. He would think you would need both to understand what improvement you were getting from a proposed project.

Mr. Thomas asked if that is what they would do anyway. Mr. Davis responded that he did not know.

Mr. Boyd asked what the alternative would be.

Mr. Rooker said this just asks VDOT to do that, whether it is "required" or not. He thinks it is prudent information to have.

Mr. Thomas responded that VDOT is going to do the modeling they would normally do. He does not know that it makes sense to have both of those statements in the resolution especially if that is the way they work.

Mr. Rooker said he doesn't know if that is how they work or not, but it is wise for the County to at least ask them to do that evaluation.

Ms. Mallek stated that this provides certainty that they will do it.

Mr. Thomas said that they are going to do it the right way anyway. They are not going to do it improper.

Ms. Mallek said that it depends on how much money they have, adding that they may very well cut corners.

Mr. Rooker said that in looking at VDOT's documents, they have no interest in doing environmental work on this road. Documents in their files indicate that they would prefer to get out from under the environmental analysis but were told that they could not by the FHWA.

Mr. Thomas stated that they were required to do it because the project was outdated.

Mr. Rooker said the administration did not want to do this stuff, but were forced to by the FHWA.

Mr. Thomas said he had not heard that. He added that all the proper tests were going to be done on it in the method they are supposed to be done.

Mr. Rooker reiterated that it is wise to request some of this, as there are a whole lot of people who have an interest in making certain that the road has as little impact on the community as possible while still providing a transportation benefit. Board members heard from hundreds of people at public hearings. He added that he sat and watched Mr. Thomas oppose, for example, connecting Woodbrook Drive to Carrsbrook Drive because it might bring some extra traffic into one of those neighborhoods because it might bring some extra traffic into one of those neighborhoods – a 50-foot strip of land. Yet Mr. Thomas seems to have no problem running a super-highway through neighborhoods, by schools, et cetera because it is not in his area of the County. You won't connect 50 feet to save kids from having to go out on Route 29 for the school busses because some neighbors are now complaining. You wouldn't allow a sidewalk to come over close to the Woodbrook neighborhood because the people didn't want it and yet you seem to have no problem not only running a super-highway through neighborhoods and by schools, you don't want to ask for the minimal things to make certain that the schools and the neighborhoods are protected.

Mr. Thomas responded that those are going to be taken care of.

Mr. Rooker said that Mr. Thomas keeps saying "VDOT will take care of it." He added that this Board has an obligation to the County to see that our citizens are taken care of.

Mr. Thomas asked Mr. Rooker if he just does not trust the state.

Ms. Mallek said the State has certainly cut corners in the past.

Mr. Rooker said there are people in the State he trusts, but he doesn't trust them to do all of the right things for County citizens. He thinks this Board has to be vigilant too.

Mr. Thomas said he was getting ready to walk around behind Albemarle High School with a VDOT official so they will know exactly where it is going to be.

Ms. Mallek said it doesn't hurt anything. They are not fighting; they are not being obstructionist; and they are not putting up an obstacle. They are actually speaking up for County citizens who need a voice to make sure they are doing the best job they can. She added that this is a formal recognition of some of the things VDOT has already said they are going to do.

Mr. Snow stated that VDOT has agreed to do all of the things listed here, except for the item related to the public hearing. He said that the contract is expected to be awarded in January, and now the Board is asking them to [have that public hearing] before that point. He added that it was never the part of the conversation to have the public hearing before the contract was issued.

Mr. Rooker clarified that it was never part of their conversation, and the question is as a County – looking out for its citizens – should the Board ask for some of these things. He said that a lot of people feel that a public hearing held after a contract is awarded isn't going to afford the opportunity for actual input that will have impact into how the road would be designed. It's important that there be some input on the front end as well as the back end.

Mr. Dorrier said the Board shouldn't jump into the middle of a train that's going down the road. A design build process is a faster way of building a highway. If this Board gets in the middle of their [train], they [the Board] are going to get run over by it.

Mr. Rooker asked Mr. Dorrier how he would react if this road was going in Scottsville.

Mr. Dorrier responded that he would have the same position.

Mr. Rooker said that is not really the case, as he sees it. He stated that every little thing concerning Scottsville is a huge issue to Mr. Dorrier, but because this isn't in his district he shows little concern. It bothers him that people are sitting here and acting like the County has no responsibility at all. He thinks County citizens want to understand how much impact that train is going to have on them and have a little input into what is coming toward them before it's built – before it is irretrievable, exactly how it is designed and exactly where it is located, et cetera. He said that he is not getting the same feeling from them that he sees them exercise when something affects their districts.

Mr. Thomas said that it is approximately 50% in his district as well.

Mr. Rooker asked what he is doing for residents of Squirrel Ridge.

Mr. Thomas responded that he has been in that neighborhood talking with them about a sound wall.

Ms. Mallek said that this resolution would encourage VDOT to take that kind of issue seriously because it is helping them to be informed.

Mr. Thomas asked if she did not think VDOT would take it seriously.

Ms. Mallek responded that VDOT had never thought about sound walls anywhere in this six-mile stretch, adding that Mr. Connaughton told her he was not interested in any better improved bypass, "I only want this one because that's the one that is designed that I can get built in the next two years while I am in this position." She said that the Board needs to do a better job of getting these issues out in front of them so they know the issues are important. If VDOT is informed prior to sending the RFP they will then know to include those things. She said that she can guarantee that after the company who is doing this design build offering has already invested hundreds of thousands of dollars in putting a plan together, they are not going to be really keen to go back to page 49 and say 'oh by the way, we are now going to amend our plan to add \$2 million worth of sound walls.' This should be so effectively done at the beginning, as part of the requirement, as part of the details to how the road should be designed. Ms. Mallek emphasized that the proper order of things is to first do the environmental impact statement and find out what the obstacles are, then do the design to meet those obstacles, and then do the RFP to get the price.

Ms. Mallek said she understands the stampede because VDOT wants to get it done fast, but that does not negate the fact that they do have environmental issues that need to be addressed, and they do have design issues for County neighborhoods and schools that need to be addressed. The County is not being well-served by just looking away and letting the state do whatever it wants with this very questionable design build thing; no project of this dimension or this size has ever been done. A little \$50 million interchange is nothing compared to the complexity of this issue. She said that she is very concerned for the effect of it for a long, long time on the County. She added that just with the minor project on Advance Mills Road, VDOT has pushed all the little repair projects aside into the future because they are completely consumed with the bypass. The Board needs to make sure they are getting the best job it can. It may be the last road they get around here for a generation.

Mr. Thomas said they are never going to see as much money put into the County as they are going to put in with this road.

Ms. Mallek said she would encourage VDOT to do the very best job they can do. It is up to this Board to encourage them to do the very best job they can and to ensure they have the information needed to do the best job they can.

Mr. Dorrier said that he would think the state would read this information. He questions having a public hearing before the RFP.

Mr. Snow stated he could support this with one language change stating that VDOT consider these items before proceeding with construction.

Mr. Rooker said that he would like his original motion to be voted on, with the MPO item removed.

Mr. Boyd stated that he would not support this particular resolution, expressing concern about the validity of the science used in raising health concerns – as the study cited was done under a huge expressway in L.A. He added that in Madison and Nelson Counties, Route 29 goes very close to schools there and perhaps the health information from those localities is available.

Mr. Rooker said there have been studies of overpasses and waterways, yielding results that no fish could live there over time.

Mr. Boyd said that from what he's read, the best way to address carbon dioxide in children is to not get them to stand next to idling busses and asked if those should be cut out too.

Mr. Rooker reiterated that all the Board is doing is asking VDOT to consider it.

Mr. Boyd stated that this resolution is "written by people who are opposed to the bypass," and was brought forth by the two Board members who are opposed to it. He added that if the entire Board could come up with a resolution, he could support it, noting that VDOT has said this is a design build project and they are going to do environmental studies and make amendments as needed.

Ms. Mallek pointed out that all at extra cost, after they award the contract, which is why those things are tentative.

Mr. Boyd said that he took it to mean they would work with the contractor and make amendments.

Mr. Dorrier stated that the resolution refers to new information, but he does not know if it is true or not.

Mr. Rooker said that among the new information is that Forest Lakes wasn't even there, nor was Hollymead Town Center, NGIC or the U.Va. Research Park.

Mr. Dorrier said he cannot support the resolution as written.

Roll was called and the **motion** failed by the following recorded vote:

AYES: Ms. Mallek and Mr. Rooker.

NAYS: Mr. Thomas, Mr. Boyd, Mr. Dorrier and Mr. Snow.

Mr. Rooker asked the Board to go back to the beginning and asked if they could support the resolution if the language were changed from "before awarding a contract for the design and construction of the bypass," and taking out having the MPO evaluate the traffic.

Mr. Boyd asked if having the MPO clause is a direction from the Board as to what they want their representatives on the MPO to do.

Mr. Rooker said that he took that part out, but he hopes the MPO would do a traffic analysis of this – adding that it is required under federal law.

Mr. Boyd stated that this resolution seems contrary to what VDOT has stipulated for the design build RFP.

Mr. Rooker emphasized that all he is saying is that once the contractors bid and present a design, the chances of having changes made in that process are much less than they are if those are provided before those are completed.

Mr. Snow said that Mr. Utterback said when the study comes back it would identify certain things that need to happen and he would issue change orders at that point to make those things happen.

Mr. Rooker stated that if the MPO had put conditions on the approval that the schools would be protected with sound walls, it would have been done. He said that the VDOT environmental representative indicated that they punch information into a computer and whatever it spits out dictates whether sound walls are put up are not – and sometimes that data isn't completely accurate. This at least lets them know we are getting involved.

Mr. Boyd stated that he is involved.

Ms. Mallek said that if there is something the whole Board can adopt, VDOT will take it much more seriously.

Mr. Rooker stated that he would like to see a resolution that says these things would be addressed before awarding a contract, in late December or January.

Mr. Snow said that he would change it to "before construction starts."

Mr. Thomas said he would agree with that.

Mr. Snow said he does not think it is the right time to tell VDOT to do these things before they have all the facts.

Mr. Rooker then **moved** to adopt the resolution sent out by Mr. Davis a week ago and presented in the Board packets today. Ms. Mallek **seconded** the motion.

Mr. Dorrier said that each “whereas” needs to be looked at and evaluated for accuracy.

Ms. Mallek read the first whereas clause, indicating that it wouldn't be changed.

She read the second whereas clause, noting that it is a given.

Ms. Mallek read the third whereas clause, referencing the environmental impact statement required to be done by VDOT through federal law.

She read the fourth whereas clause, asking for additional analysis of the traffic modeling, traffic estimates, air quality analysis and noise analysis in the environmental impact statement.

Mr. Dorrier asked if that statement is true.

Ms. Mallek responded that they are, noting that the shelf life for those items is five years.

Mr. Rooker added that VDOT made that statement at the meeting last week.

Mr. Dorrier asked what the additional analysis would be.

Mr. Boyd said that it would be an update as required by law.

Mr. Snow said that is also true.

Ms. Mallek stated that this would just be an update to the current environmental impact statement that is on the books.

She read the fifth whereas clause, referencing “significant new information” related to the effects of highway pollution on health of children.

There were no comments regarding that whereas.

Ms. Mallek read the sixth whereas clause, referencing the need for updated and accurate information related to the bypass – such as the new neighborhoods that weren't there when the original plan was brought forth.

Mr. Snow said that the northern and southern termini would need to take those things into account and could not be designed without that.

Mr. Boyd stated that he doesn't see anything on here that VDOT wouldn't be required to do or would offer to do.

Ms. Mallek read the seventh whereas clause, referencing the need for the new data and analysis before the project plan goes forward – as the expense of issuing change orders is much more significant than designing it right in the first place.

Mr. Snow said that he wants to make sure it doesn't delay the project by asking for this information. A lot of this information will not be available until April. He wants the language in the resolution to reflect that.

Mr. Dorrier asked how all this would be resolved “before it becomes costly,” as it seems ambiguous.

Ms. Mallek read a redraft of that particular item: “Whereas the new data and analyses should be considered before it becomes costly and difficult to make changes to the proposed plans for the bypass.”

Mr. Snow said the new environmental impact statements would not be available until April.

Ms. Mallek said this would bring them to the contractor's attention.

Mr. Rooker asked if the best price would be obtained for things like berms and sound walls after the contract is awarded, through a change order – or on the front end, when a contractor is bidding competitively on the whole project.

Mr. Boyd stated that they are planning on revealing potential change order items as the RFP goes out.

Mr. Rooker questioned whether those things would be included in the initial RFP.

Ms. Mallek said that is the reason they want to include this now in the resolution.

Mr. Rooker stated that when building a house, you put the specifics in first.

Mr. Boyd said that he gave his contractor an allowance to build to. He added that there would be an allowance put in the RFP for sound walls and environmental changes, and if it's not enough then VDOT would negotiate with the contractor.

Mr. Rooker said he has no confidence they will do that because it is not what they said they would do. VDOT did not say they were going to do it that way, adding that there was no discussion of sound walls.

Mr. Boyd said that he had discussed this with Mr. Utterback, who said VDOT has the ability to write the contract so they have the capability to make modifications – and are asking the contractor to take that into consideration.

Mr. Rooker stated that the northern terminus has not been designed – and that is the difference. He added that lowering the design speed would increase the chances of making the interchange smaller in the south. He reiterated that the Board is asking, not telling, VDOT what to do.

Mr. Snow said he has no problem supporting this with the change in the language to say “NOW, THEREFORE BE IT RESOLVED that the Albemarle County Board of Supervisors hereby requests that, the Virginia Department of Transportation consider the following recommendations prior to beginning construction.”

Mr. Rooker asked for a vote on the motion he has on the table.

Roll was called and the **motion** failed by the following recorded vote:

AYES: Ms. Mallek and Mr. Rooker.

NAYS: Mr. Thomas, Mr. Boyd, Mr. Dorrier and Mr. Snow.

Mr. Snow read his revised resolution to include the language to request these items “NOW, THEREFORE BE IT RESOLVED that the Albemarle County Board of Supervisors hereby requests that, the Virginia Department of Transportation consider the following recommendations prior to beginning construction.”

Mr. Thomas expressed concern about possible “delay factors.”

Mr. Rooker reiterated that this is a request to address these items before beginning construction.

Mr. Snow said there is no language in this resolution that is compelling VDOT. Also, this is not a binding document. This Board is asking VDOT to consider these things which they have already said they would do.

Mr. Davis read the revised language in the resolution: “NOW, THEREFORE, BE IT RESOLVED, that the Albemarle County Board of Supervisors hereby requests that, before construction of the bypass begins, the Virginia Department of Transportation: ...” and then noted the bulleted items.

Mr. Snow **moved** adoption of the proposed resolution as recommended. 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.

Resolution

WHEREAS, the Charlottesville-Albemarle Metropolitan Planning Organization amended its Constrained Long-Range Transportation Plan and Transportation Improvement Program on July 27, 2011, to remove language opposing the allocation of construction funding to the proposed Route 29 Western Bypass (“Bypass”); and

WHEREAS, the Virginia Secretary of Transportation has announced that the State will soon begin advertising for bids for the design and construction of the bypass; and

WHEREAS, the Final Environmental Impact Statement for the Route 29 Bypass was completed eighteen years ago and the Supplemental Environmental Impact Statement was completed eight years ago, and VDOT is therefore required to prepare a written reevaluation of the environmental impact statements; and

WHEREAS, among other items, the traffic modeling, the traffic estimates, the air quality analyses and the noise analyses in the environmental impact statements are now outdated and additional analysis needs to be done; and

WHEREAS, there is significant new information that has been developed since the environmental impact statements were prepared, including new scientific research documenting the detrimental effects of highway pollutants on the health of individuals, and children, especially; and

WHEREAS, new data and analyses that should be developed as part of a thorough and properly done review of the bypass and its impacts, including results of traffic modeling, will be necessary in order to provide

updated and accurate information about health, noise, and other impacts of the bypass, as well as to identify strategies to mitigate those impacts; and

WHEREAS, the new data and analyses should be considered before it becomes costly and difficult to make changes to the proposed plans for the bypass.

NOW, THEREFORE BE IT RESOLVED that the Albemarle County Board of Supervisors hereby requests that, before construction of the bypass begins, the Virginia Department of Transportation:

- Evaluate updated traffic modeling for the bypass that includes a comparison of at least two scenarios, including one that evaluates a baseline set of improvements with the bypass, and one that evaluates the same baseline set of improvements without the bypass; and
- Consider new scientific research documenting the detrimental effects of highway pollutants on the health of individuals, and children, especially; and
- Conduct thorough analyses of the potential health and noise impacts of the bypass on children attending the six schools and the residents of the neighborhoods located along its proposed route; and
- Engage in meetings with impacted citizens and representatives of impacted schools concerning appropriate strategies to mitigate such impacts in time to appropriately implement mitigation strategies into design and construction of the bypass; and
- Consider a reduction of the design speed for the bypass from 60 mph to 50 mph; and
- Hold a public hearing to allow comment on the above information after it has been prepared.

Agenda Item No. 5. Adjourn.

There being no further business, the Chair adjourned the meeting at 5:55 p.m.

Chairman

Approved by Board
Date: 12/7/2011
Initials: EWJ