

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on October 10, 2007, beginning at 2:30 p.m. in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia; the regular meeting began at 6:00 p.m. in the same room. The adjourned meeting was from October 3, 2007.

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 2:34 p.m., by the Chairman, Mr. Boyd.

Agenda Item No. 2. Work Session: Review of Revenue Alternatives.

Mr. Tom Foley, Assistant County Executive, said the Board had discussed at its Strategic Planning Retreat a few weeks ago development of a comprehensive funding strategy to address the County's growing needs. The alternative revenue sources to be discussed today have been talked about from time to time over the last three years. During this work session, staff would like for the Board to confirm two assumptions in the Five-Year Financial Model; revenue based on EMS Revenue Recovery and capital moneys expected to come from the Proffer Policy, assuming the Board proceeds by adopting that policy. Staff needs to know if it should pursue Stormwater Funding Alternatives, Transportation Service Districts and Road Impact Fees.

Mr. Foley said EMS Recovery is part of a strategy the Board has talked about to fund some future fire/rescue needs. Part of the strategy to beat growing service demands includes the temporary stations at Pantops and Ivy, ending the City Fire Contract and then utilizing mutual aid agreements rather than the payment made to the City now. Revenue from EMS Recovery would begin in FY '09 at almost \$800,000 and increase to \$1.9 million in FY '13. This revenue is being relied on heavily in the Five-Year Plan to help balance it with other additional expenditures. The next steps regarding EMS Recovery is a public hearing and ordinance adoption toward the end of this year. There is a need for on-going public education as part of that process. Implementation would come about six months after adoption of the ordinance. The revenue projected for FY '09 starts in October giving time to work toward implementation of the program.

Mr. Foley said the second item on which staff needs confirmation is the Cash Proffer Policy. Estimates made on current rezonings and Board actions taken over the past several years is about \$1.0 million a year for Capital projects. At this time, this will not impact the Five-Year Financial Model. Staff assumed that the Board's current policy regarding transfer of funds to Capital will continue.

Ms. Thomas asked if the estimate was based on proffers the County already has in hand. Mr. Foley said it was and also on some conservative estimates of rate of development; the County is assuming only \$3,500 per unit. A number of previous rezonings were based on \$3,000 per unit; Biscuit Run is based on \$5,000 per unit. Anything new under the policy would be at \$17,000 depending on credits. The policy which will be before the Board later tonight limits the credits given to developers to things which have been identified. Providing credits beyond that could impact the projected number. As this money is put into the CIP as projected revenue, the Board's decision on credits will be important. The next step is the Comprehensive Plan amendment which is on the agenda later tonight.

Mr. Foley said he would like to confirm that this is the direction in which the Board wants to proceed.

Mr. Wyant asked when the report of the CIP Committee will be provided to the Board members. Mr. Foley said it should be shortly.

Mr. Brian Elliott, Assistant County Executive, said it can be submitted to the Board soon or it can be submitted along with a proposed ordinance the Board will hear near the end of this year.

Mr. Wyant said he would like to see it as soon as possible. While the Committee was working, they found the education process for the EMS Recovery to be the most important part. He thinks that adopting an ordinance will create a problem if the education process for the public is not done first.

Mr. Slutzky said he agrees about the education part, but asked if Mr. Wyant was suggesting that the processed be slowed down.

Mr. Wyant said the Committee recommended that public education begin as soon as possible. He is concerned that both parts are coming about simultaneously.

Mr. Slutzky said staff can't advertise to the public what the Board will do before it actually takes action. Mr. Davis said a typical ordinance does not have a lot of the detail about how it is administered and the exact cost. That is usually done in administrative implementation of the ordinance. The public will most likely be concerned about the lack of that type of information in the ordinance itself. Staff will have to decide how to coordinate that information, but he does not think that should be done until there is a firm commitment on the part of the Board members to adopt the ordinance.

Mr. Slutzky asked if the Board could decide today that in principle it is committed to moving that ordinance forward. Mr. Foley said Chief Eggleston has a lot of information from other localities, so drafting the language of the ordinance should not be difficult.

Mr. Boyd said a committee looked at this question, so he thinks the Board should have a report from that committee. Mr. Foley said the only other question would concern whether that money would go to the County to offset investments already made or which will be made in the future. At this time, it is projected as General Fund revenue to offset costs.

Mr. Boyd asked why the Board cannot have the report prior to seeing the ordinance.

Mr. Rooker said the Committee report will not go to the public so he thinks some informational brochures should be drafted to go to the public. Mr. Elliott said Chief Eggleston has been meeting with Ms. Lee Catlin about developing that strategy. The Committee report is in draft form at this time; it can be finalized and submitted to the Board members.

Mr. Wyant said a lot of people thought adoption of these fees would offset expenditures, but it will only be another source of revenue for the County.

Mr. Slutzky asked if Albemarle has formally interacted with the surrounding jurisdictions that will be impacted by it sending their citizens a bill when the County crosses the line and picks up their people. Mr. Elliott said that has not happened. Nelson County is implementing these fees and they have contacted Albemarle saying they will be billing Albemarle citizens.

Mr. Slutzky said if the Board tells staff today that it is really committed to this fee, he thinks staff could let the citizens know that this process is eminent.

Ms. Thomas said her one objection has been for the people who do not have health insurance and don't have much money. They will be billed, and all she had heard is that the bill will not be taken seriously, but that does not satisfy her concerns. She thinks they are the people who would go without food to pay a bill.

Mr. Slutzky said that is one of the two things he was going to bring up. If the County sends out a bill that it does not really intend to chase after, there are two scenarios. One is that people will just not pay, or people will pay it because they are diligent and honorable even though disadvantaged. He asked if there is a way to compromise without compromising the legitimacy of the billing to the insurance companies. Is there a way to include a disclaimer that the County has a policy to not aggressively pursue payment when people do not have insurance without running afoul of the insurance companies? Mr. Davis said probably not. It is not just insurance companies, but Medicare rules kick in as to whether they will cover these bills. There has to be uniform billing that is not based on insurance. He said other jurisdictions have dealt with this problem, and staff can present some of that information to the Board.

Mr. Boyd said he is in favor of moving forward with this, but the Board needs the Committee's report which he thinks would answer these questions.

Mr. Wyant said the company that talked to the Committee said they billed the insurance companies and they collected about 70 percent. The report shows all of those figures. They do not chase individuals down. Mr. Foley said the purpose of this work session is to get feedback on staff's revenue projections, and to be sure the Board is comfortable with moving forward. In November this matter will be before the Board again. In the meantime staff will move quickly to get answers to the Board's questions.

Mr. Slutzky asked if the insurance companies pay 100 percent of the fee or is there a deductible. He wants to be sure the taxpayer does not end up paying a \$200 fee for the first trip. Mr. Elliott said that will be covered in the report.

Mr. Rooker said no matter what happens, the cost of EMS services falls on the taxpayers or the insurance companies. If nothing is done, there is a \$1.9 million revenue stream in the future that will have to be made up in some manner. He said a lot of jurisdictions are billing for ambulance services and in most cases insurance companies pay. Medicare pays something, and he thinks Medicaid pays something also. He thinks it will be difficult to decide if an individual should be sent a bill based on their income when the County will not know their income or whether they have insurance. One way or the other the cost of this program will fall on the taxpayers. This is an opportunity to participate with other jurisdictions in recovering a substantial amount of these funds.

Mr. Slutzky agreed. The only way he would not support this in the end would be if it turned out that the people in this jurisdiction who are currently not paying a lot of property taxes wound up paying the first \$200 out of their pocket. That is why he was trying to determine what the County would be doing in making that shift.

Mr. Rooker said he sees no way the County could ensure that the one person Mr. Slutzky does not want to pay the bill would not pay the bill.

Mr. Boyd said the question today is whether the Board is ready to proceed with this matter. He said there seems to be that consensus.

Mr. Wyant said he would like to recognize Mr. Richard Wiggans and his staff for doing a lot of work on the financial side of this subject.

Mr. Foley said the other matter is a confirmation that there would be \$1.9 million going into the Capital Fund which would be a substantial addition for funding future projects. It will not impact the Five-Year Model in the same way because it is revenue that comes directly in the CIP Fund and will not be a transfer from the General Fund.

Mr. Boyd asked if Mr. Foley is saying there will be no reduction in the five-year projections of historical contributions to the CIP Fund; that will stay at the same level. Mr. Foley said staff is not assuming that the Board will change its policy.

Mr. Dorrier asked if this has been reviewed by the CIP Committee. Mr. Foley said revenues in the CIP are reviewed with the CIP Oversight Committee and the CIP Technical Review Committee.

Mr. Slutzky asked if \$1.0 million is a conservative estimate. Mr. Foley said "yes."

Mr. Boyd said it should go up over the five-year period. Mr. Foley said since this program has not begun yet, the estimate should be conservative. He said there will be some one-time large cash contributions coming from some established proffers for fire/rescue equipment, etc. The Five-Year Plan will be reviewed each year and updated at that time.

Mr. Boyd asked if any Board member disagreed with including that in the revenue projections. There were no objections.

Mr. Slutzky said the money comes in as either an earmarked proffer or a general proffer. If 50 percent of a proffer were transportation related, would the Board allocate the \$1.0 million element across the board, or would it be allocated according to the earmarking aspects of it. Mr. Foley said staff would have to track the purpose of the proffer and make sure that amount was spent on what it was designated for. Staff will be tracking the use of the proffer moneys.

Mr. Davis said the Cash Proffer Policy assumes that undesignated money goes into the CIP. It is for the five areas included in the calculations. In the past there have been proffers for specific purposes, but for the five included in the Cash Proffer Policy the idea is that the money should come in undesignated and it would then be up to the Board to spend according to the CIP.

Mr. Boyd said there was a lot of discussion by the Fiscal Impact Committee about this, and what Mr. Davis just stated was the consensus of the committee.

Mr. Slutzky said it makes sense to do it that way; he wanted to clarify that point.

Mr. Wyant said the Committee figured the numbers by the five elements. If the money comes in as undesignated will it only be spent on those five, or will it be spent on anything in the CIP? Mr. Davis said the cash proffer is intended to be spent on those broad areas. Mr. Foley said the basis of that number was the CIP as a whole, but within that are the specific areas.

Mr. Slutzky said he believes the risk is that in any given year the County will spend less than it gets in proffers.

Mr. Foley said these two items were for confirmation so staff can move forward. This is just an exercise looking out five years and making some assumptions to build a model. There are three other areas; there is no urgency that the Board make a decision on anything presented today. Staff would like general directions as to whether to continue to pursue them. He said the Board has been discussing the Stormwater Program since 2004. The Board had the option of selecting a mandated level of service to a mandated-plus level to a more comprehensive level of service. The Board selected the comprehensive level of service which included urban-type services, stormwater drainage, as well as rural area projects. In that level of service capital projects funded at a rate of three to five projects a year were discussed. Natural Resource Protection Programs and projects would be a part of this level of service. Staff assumed there would continue to be development review and construction site inspections as part of that program.

Mr. Foley said the Stormwater Program is currently funded through the General Fund. The Board said it wanted to continue funding it through the General Fund at this time. The scope of the program is not so large that it drives the need for a new revenue source. What staff is doing now will minimize the administrative burden, but in the long run it is challenging to have that comprehensive program funded out of the General Fund without more of a commitment than at present; previously the Board decided not to establish separate funding but to rely on the General Fund. There was discussion of two things as alternatives to the General Fund, and that was a Stormwater Utility and a Stormwater District.

Mr. Foley said he would like to cover those two alternatives briefly to see if the Board wants staff to pursue these further while looking at the Five-Year Financial Model. He said a Stormwater Utility relates stormwater impacts to a utility fee; the Board would have to set that rate annually. Administration of a utility is complex. The rate is determined by the extent of the program, and although it might start at a low amount, with more ambitious projects that rate would have to be considered for an increase. This type of utility setup is most appropriate when there are large substantial expenditures anticipated on a sustained basis. This would be fee-based stormwater funding based on an assumed usage or the impact by both residences and businesses.

Mr. Foley said the charge for a Stormwater Service District is based on property assessment; it is not the impacts, but the value of the property in the district. Revenue rises or declines with property

values and the administrative burden is less than with the Utility, but greater than for the General Fund. A separate entity would be set up to keep track of the expenditures in the district.

Mr. Foley handed out some information which had been put together by Mr. Greg Harper, Water Resources Manager. This will give the Board some perspective on the level of funding provided now and what is done with that funding. The program now is focused on inspecting, maintaining and improving existing stormwater-related infrastructure including regional stormwater management facilities and dams. It is also focused on the capital improvement program which is the planning, designing, permitting and constructing of new infrastructure, community education and involvement in projects such as the Green Roof on COB McIntire, and advancing local and regional expertise and effectiveness through collaboration and partnerships. A higher level of comprehensive program would impact the capital side of things. There may be more significant projects contemplated in the Development Areas and, particularly, in the Rural Areas. There are stream bank repairs and some natural resource protection efforts that would need to be put in place.

Mr. Foley said on the last page of the handout there is a spreadsheet which shows the current Five-Year Capital Program in "stormwater retrofits", "stream bank and buffer restoration" and "watershed restoration activities." To date, the money appropriated for the stormwater program, plus the money needed for the Five-Year Program, is all shown on this sheet. It shows the categories of spending for a comprehensive plan, but at a minimum scale. Staff expects the projects on the list to change dramatically in a comprehensive program. There needs to be planning and identification of the projects, plus prioritizing. The program has just started; staff has addressed organizational and planning needs and construction of some projects has been done on a small scale.

Mr. Foley said in order to do the major things needed for water quality, both in the urban and rural areas, it would need to go to a different level. At such time, the Board would have to consider a different funding mechanism. Staff thinks it will be at least two more years before this program is ready to go to another level.

Mr. Slutzky asked if the County put into place a Stormwater Utility, and if it decided to take on the responsibility of maintaining Lake Hollymead, would that cost be dispersed to all those landowners who contribute to the flow into that body of water? Mr. Foley suggested that the County Attorney address that question. He forgot to say that the boundaries of any district have to be established first.

Mr. Davis said if the Board created a Stormwater Utility it would normally be a countywide program, but certain properties could be exempted. The utility would apply to both business and commercial property based on an equivalent residential unit basis, usually based on impervious surface. A commercial property with a lot of impervious surface might pay a larger fee than a residential unit.

Mr. Slutzky asked if an inventory of projects were prepared how that cost would be spread. Mr. Davis said it would be spread against every property owner in the County.

Mr. Slutzky asked on what the contribution is based. Mr. Davis said it would be based on their contribution to the total budget of the stormwater programs, not any individual stormwater project. It would fund the entire program unless the Board set out special service districts.

Mr. Slutzky said he did not understand the difference between the Service District and the Utility. Mr. Davis said the utility is based on its' per unit cost, not based on the value of the property. The City is already proposing a fee between \$5 and \$10 per equivalent residential unit, whereas a service district is an *ad valorem* add on. Either one of them would be shown on the tax bill, but it would be a separate line item on that bill.

Mr. Slutzky asked if it were done through a utility if the Board gets to determine the formula for allocating the proportionate share of the impacts, or is that proscribed by legislation. Mr. Davis said there has to be a reasonable basis, and every program he has seen has been based on impervious surface, then there can be a proscribed residential equivalent based on an average amount of impervious surface.

Mr. Slutzky asked if the County could do restoration projects and fund them in this way. Mr. Foley said the Board directed that to be the type of program put into place.

Mr. Boyd asked if this budget is based on existing revenues. Mr. Foley said it is based on existing allocations, either appropriations or future CIP allocations.

Mr. Boyd asked if it is based on the funds coming from the General Fund. Mr. Foley said the things before the Board today are Capital expenditures. There is just under \$400,000 in General Fund operating expenditures for the staffing and educational programs to meet both mandates and plan some capital projects

Mr. Slutzky said that at this time all of these projects are buried in the budget process and funded along with everything else. If the Board is going to make an increased commitment to stormwater management and impact mitigation, this would be a way to separate them from the regular budget dialogue so the public could hone in with their comments. These costs would then not be buried in the tax rate. He thinks that is a healthy way to handle this type of expenditure. Mr. Foley said basically staff would handle this in work sessions with the Board. Staff did a stormwater master plan a few years ago which is what led to this discussion.

Mr. Wyant said to think about Lickinghole Creek in Crozet as an example. He asked if a district would contain every piece of land that drains to the creek. Mr. Davis said that is not what staff envisioned when this was discussed with the Board previously. The discussion centered on it being a countywide district, although there was some discussion of having a separate district for rural areas versus the urban areas.

Mr. Boyd said he thought the Board decided it did not want to do multiple districts. Mr. Davis said the preference of the Board at that time was for a single service district.

Mr. Foley said the Board decided to have a countywide program since a large base is needed to fund a comprehensive program. He said the next subject for discussion pertains to a Transportation Service District, not a Transportation District, which is separate entity. A Service District is similar to what the Board just talked about for stormwater. It is created by ordinance and has an additional tax rate applied on the assessed value of nonresidential property. The revenues must be used for improvements made within the district. The district does not have the ability to independently issue bonds. The County would have to issue the bonds to fund capital projects. A year or so ago the Board discussed a CDA (Community Development Authority) versus a Service District. The Board concluded at that point that it was more efficient to use a service district.

Mr. Slutzky said if the County formed a Service District and it cannot issue bonds, could the County issue the bonds based on the revenue stream from the service district and tie that revenue to the bonds. Mr. Davis said bond counsel has said those bonds are hard to sell and in most localities that does not work. However, the Board can anticipate revenue and use another entity, such as an IDA, to issue bonds. With the County's AAA bond rating, there are probably ways to make that work. The previous discussion was based on applying this to nonresidential property. It could be applied to all property, residential and commercial, but in discussing this with other localities, it is somewhat complicated to do it on nonresidential property because the County would have to create in some areas "a Swiss cheese" type of district. It is possible to do, but most localities attempted to apply it to all property that is within a reasonable district.

Mr. Slutzky said if there is a district with mixed uses it becomes almost impossible. Mr. Davis said it makes it very difficult.

Mr. Foley said the Board previously discussed this matter and it was the Board's direction to look at nonresidential uses. Based on that direction staff did an analysis based on Places29 (the 29 North corridor), and gave the Board some revenue estimates. At that time, the Board said to look at development areas to get some sense of how much revenue could be generated. He displayed a map colored to represent all of the areas that are commercial properties in the Development Areas where this potential tax could be applied. That was done through GIS in order to derive current values of properties and make an estimate of revenues. This estimate does not include residential; it does reflect growth in values of properties or additional commercial properties (not likely to be significant except on Pantops and in the Places29 area). This revenue could help to fund debt service for some transportation projects from the various master plans. The funds would have to be spent in the district in which they were generated if individual service districts were set up in all of the development areas. He does not know if there could be one district composed of just the development areas. Mr. Davis said the district has to be within a contiguous area so it would have to be drawn in a way that all the areas were connected.

Mr. Slutzky said the MPO has been studying the idea of a regional transit authority and he thinks the recommendation will be to establish a funding mechanism of service districts in the growth areas of the County and the City to fund that specific purpose. Could it be done because the service area would be the whole of the growth area? Mr. Davis said it has to be a contained area so there are challenges to drawing that service district. There could be several service districts, but the challenge is that all of the funds collected in a service district must be spent within the boundaries of that district.

Mr. Slutzky asked what happens when the service district is spending money on a function that crosses boundaries. He said the MPO has been given the impression that the service district is a legitimate means for funding it and it could be set up to fund a regional transit authority. Mr. Davis said that could be done as long as the service district boundaries included all of the areas in the transit system.

Mr. Rooker said there could be a service district that is the entire area of the County. Mr. Davis said he thinks that is what is envisioned.

Mr. Slutzky asked if there could be a service district for the purpose of funding the regional transit authority that has one geographic definition, and a separate service district (or series of) for a different transportation purpose. He asked if there could be both simultaneously without any consequences. Mr. Foley said there could also be a stormwater district on top of that. Mr. Davis said all would have to be listed separately on the tax bill.

Mr. Wyant asked why there is a different definition for stormwater than there is for transportation. Mr. Foley said the purposes are different, but the way revenue is generated in those districts is the same. It is based on the assessed value of property. Staff had used 25 cents to determine how much revenue could be generated.

Mr. Rooker said he did not think residential properties would be charged anything for a transportation district no matter how the district was drawn. He said the Board had discussed only charging commercial properties in a transportation district, but on the stormwater side the Board had

discussed charging all. Mr. Tucker said the Code of Virginia allows the Board to give responsibility for stormwater to the Albemarle County Service Authority.

Mr. Slutzky asked if there is a limit to what can be charged in a service district as opposed to a CDA. Mr. Foley said "yes."

Mr. Slutzky asked if both capital and operating costs can be funded with service district revenues. Mr. Davis said "yes." For stormwater and transportation, use of revenue is pretty broad.

Mr. Foley said this overview will give the Board a sense of potential revenue at 25 cents. If a countywide district were considered, the total amount could be used for projects. Next, he will discuss road impact fees. Then, staff would like to have some directions from the Board as to the next steps in this process. Road impact fees will present some opportunities and some challenges. They would provide a long-term funding source for road projects. They would be applied at the time of subdivision or site plan, which is different from the proffers which have been discussed. They would be charged in addition to proffers. At the actual time of development of the lots, or subdivision or site plan, there would be an additional amount due based on the road impact fees. Credits would need to be given where the development had previously provided road proffers.

Mr. Foley said the County Attorney has done extensive work on this subject. He has some questions based on the legislation which allows these fees. It requires a commitment from the County to move forward aggressively with completing projects once the impact fees are paid; they would need to be spent within 15 years. Some of the impact fees could be applied to six-year road projects planned to be done in the near future. That might supplant some State Revenue-Sharing money freeing it for other projects. It would need to be recognized that impact fees would not complete a road so the County would need to be ready to do other types of financing, such as bonds. This program would be complex to establish and administer, but the obstacles are not insurmountable. Staff thinks additional analysis is needed if the Board decides to move forward with this idea. Legal and administrative issues need to be studied further.

Mr. Foley said the impact fee legislation only became effective on July 1, 2007. At this time, it appears that Chesterfield County is the only county moving forward with a program. It is important that the Board have a proffer amount, and then there would be an impact fee due at the time of development of the lots.

Mr. Davis said the fee has been fluctuating between \$3,000 and \$5,000 based on different assumptions. It is not as much as some people would have expected. That is because State law requires that it be calculated on a road improvement plan with estimated values for specific road projects needed to benefit the development that is within the road improvement service district created. The total amount of those projects must be calculated over a planning period that could be as long as 20 years. Then, that amount is divided on a "standardized service unit" taking into account all the residential, commercial and industrial uses to provide the generator of the amount of traffic generated by those uses. That amount is then the denominator which determines the ultimate rate that could be charged. As Mr. Foley indicated, by design it does not pay the entire cost. In Chesterfield it is only paying for a small amount of the road improvement plan. It is just a piece of a larger revenue stream that must be provided so the county can get into road building.

Mr. Davis said the other part of the statute is that the roads included in the road improvement plan have to be completed within a 15-year period, or if those projects cannot be completed there is a fail-safe that the money can be spent on the Six-Year Road Plan. It is complicated but it is something staff is looking at. Some people think there is a potential benefit to the legislation, but the major issue would be deciding in which parts of the County it would be applied. For the entire County there would have to be a determination that there are reasonable road service districts which can work legally. The projects in one part of the County would have to meet the standard that they benefit development in other parts of the County. It will require analysis and a consultant will be needed. Chesterfield is having a consultant substantiate the boundaries of a service district, or justify a countywide service district. Depending on how many road projects were included, it could be complicated to administer because of the credits that are applied to offset the fee once it is put into place.

Ms. Thomas asked if it can only be applied to certain properties and not to every property in the rural area. Mr. Davis said the statute grandfathers existing lots, so it can only be applied to land that must have subdivision or site plan approval. Existing lots in the rural area are exempt under this enabling legislation.

Mr. Slutzky said it might have a "chilling effect" on new developments being platted in the rural areas. There are so many mitigating offsets that challenge the effectiveness of this legislation that he would suggest that the Board sit on the sidelines until it sees what happens during the next Legislative Session. Let Chesterfield get further along before investing a lot of staff time in this.

Mr. Rooker said it is helpful that Chesterfield is moving ahead and providing a test case. Obviously one of the attractive features of this legislation is the fact that instead of just getting proffers on rezoned land, it could help "level the playing field" between rural and urban development. He asked if in estimating the cost of a project, the money the County gets from VDOT can be counted. Mr. Davis said the total cost of the project is estimated. The system envisions the number of units anticipated over a 20-year period, so the County would never collect all of the money necessary to complete the road within a 15-year period; the VDOT revenue and other sources of revenue would pay for it.

Mr. Boyd asked if it is the consensus of the Board today to just sit back and wait until giving staff directions to move forward with this legislation.

Mr. Rooker said he would like to wait and see what Chesterfield ends up doing. Mr. Davis said they had intended to have this adopted as early as August, but he recently read in the newspaper that they have deferred it an additional 30 days so apparently they have run into a few snags. He said the State was engaging a consultant to put together a model ordinance; that would get a unified approach to doing this across the state. It could also clear up some ambiguities in the enabling legislation. He has not seen any of that work yet.

Mr. Foley said from the sentiment of the Board today staff will not consider this in terms of a long-range financial projection. He would suggest that it be brought back next year if there is new information.

Mr. Wyant said because there might be right-of-way acquisition required, and although it might look like a revenue source, it could end up being a major expenditure for the County. He feels a great deal of analysis is needed before jumping into road building.

Mr. Rooker said he understands the legislation does not require the County to get into road building. The County could supplement its Six-Year Road allocations with the impact fee money. It does not mean the County has to oversee those projects. He assumes VDOT would do that. Mr. Foley said staff had concluded that some of the State Revenue Sharing money could be supplanted by these funds. Mr. Tucker said it is a little early to make any assumptions. He reminded the Board that it only had about 10 minutes left in this session.

Mr. Foley said here are still issues on which the staff needs directions as to whether they should be pursued. For stormwater program funding, the question is whether to establish a revenue alternative to the General Fund. The real question is whether the Board wants to entertain potentially establishing a stormwater utility which would charge a new fee to all residences and businesses based on projected impacts. A stormwater service district would assess a separate real estate fee on all property in the district. The Board needs to say which one they want staff to pursue. It will not be worked into the five-year plan at this time, but staff would look at it for the future.

Mr. Boyd suggested that each Board member state his preference.

Mr. Slutzky said he would like to see a stormwater utility move forward as quickly as possible. He is not enthusiastic about the alternative approaches. He thinks it presents a tax burden depending on the assessed value of the property.

Mr. Rooker agreed.

Mr. Wyant said he had a question. He asked the definition of "impacts." Mr. Davis said it is usually based on the amount of impervious surface which generates a certain amount of stormwater.

Mr. Wyant said if he had 21 acres the impact would be just from the impervious area. Mr. Davis said that is correct. There are ways to deal with rural area properties.

Mr. Wyant said he raising an objection to this early. He said those folks generate a lot of stormwater runoff. But, if it is based on projected impacts, he can agree because they do create a small impact.

Mr. Rooker said he understands that most of these are done on a residential unit basis, so you don't necessarily differentiate between one residence and another. Mr. Davis said sometimes that is done, but it is based on some broad theory. An evaluation of each lot is made. In most of the ordinances he has looked at, the typical fee for a house on a large lot in the rural area and a lot in the urban area, both having a standard sized house, would be similar.

Ms. Thomas said the impact for an individual is greater in the rural area than it is in the urban area. She agrees with what has been said. Mr. Foley said the standards and calculations must be worked out.

Ms. Thomas said she would prefer a utility.

Mr. Dorrier asked who would administer a stormwater utility.

Mr. Boyd said that would have to be determined.

Mr. Dorrier said he would be in favor of a fee over a tax on real property.

Mr. Foley said there is another issue related to Transportation Service Districts. The question is, does the Board want to pursue creation of service districts to fund transportation improvements. In this case, the revenue would be generated based on assessing a separate real estate tax on nonresidential property in the district.

Mr. Dorrier asked if nonresidential means commercial property. Mr. Foley said "yes." Mr. Davis said it could capture some residential property. If there is a single parcel of land with mixed-use, it would apply to that parcel. It would need to be decided if it would apply to apartment houses and similar uses which can be deemed to be either residential or commercial.

Mr. Dorrier said impact fees appeal to him because they are fees assessed against the user of the service rather than all people. He thinks that would be better than a real estate tax.

Mr. Boyd asked if Mr. Dorrier is then in favor of pursuing the transit district.

Mr. Dorrier said "yes."

Mr. Foley said a transportation district would be based upon real estate values so it would be an additional real estate tax. It is not a fee-based system. Staff just needs to know if the Board members support that. The Board previously had said to limit this to commercial property.

Mr. Dorrier said he supports it because he thinks the roads need to be improved.

Ms. Thomas said she assumes this could be for transit as far its operations, improvements and maintenance lie within the district. The Board is not just talking about roads. Mr. Foley said that is correct. Ms. Thomas said she is then in favor of the service district.

Mr. Wyant said he has heard from residential people who think the Board is just "taking the money from one pocket and putting it in the other." He thinks the owner should pay for whatever impact they create. If they are impacting stormwater, they should be paying the bill for that impact. In the matter of transportation, if he were making a choice now he would say to stay with the commercial. He said everybody impacts the transportation system. Because the Board has been worried about its property owners this is being passed to the commercial side, so he will approve of the commercial side if he has to make a choice.

Mr. Rooker said he would support the Transportation Service District approach. If the Board had legislative authority, he would prefer that it be funded with a gas tax rather than an additional property tax on commercial property because that would be a direct user fee on the people who use the facilities. Since the Board does not have that authority, he will support it as is.

Mr. Slutzky said he thinks there is likely to be a separate service district to fund the transit system, so he assumes the Board will ultimately be talking about roads and other non-transit projects. So long as transit is being funded through a different transit authority he would be supportive of the Board still doing it to cover roads. If it is blended into one, he is fine with that also. He would be comfortable with a service district burdening both commercial and residential properties. He is happy to go with either one, or both.

Mr. Boyd said he would give a qualified okay to this since he is concerned that what the Board is talking about doing is raising the real property tax rate for commercial people, or for everybody. He thinks it is worth pursuing if revenue sources are needed. He would suggest that staff consult with the business community to get an idea of how much this would impact what they call "retail bleed." The Board already knows that in Crozet a lot of people go across the mountain to shop. If county entities are taxed so much that their prices can't compete with those in Waynesboro, that will be a big problem.

Ms. Thomas said in addition to the impact on economic development, when staff deals with this question they include planning in the discussions. Today, the Board is discussing just the impacts of these things on the financial plan, but she hopes all the other impacts will also be studied.

Mr. Foley said staff will bring this item back for discussion before it approaches the business community. He said this has been just a broad look at the subject today.

Mr. Rooker asked if the other Board members would support trying to get the idea of a local gas tax for transportation service districts included in the local legislator's plans for the next Session of the General Assembly. He finds that to be a more palatable way to fund a transportation district. The State is putting more and more of the burden for transportation funding on localities.

Mr. Slutzky said it is a great idea.

Mr. Foley said Mr. Davis wants to clarify that there is a difference between a service district and a transportation district. Mr. Davis said there have been discussions in the past with the Legislature, particularly concerning transportation districts. The General Assembly has given taxing authority for a gas tax only to the Northern Virginia Transportation District. Service districts are not set up in legislation now to have any taxing authority other than an *ad valorem* taxing authority. Given how the General Assembly has dealt with these things in the past, they are probably not going to do it for a single jurisdiction, and it would probably require a lot of effort by VACo and VML to promote it. It is not in their Legislative agenda this year. He thinks this is a serious issue the General Assembly has to tackle some time in the future. Whether it is in Albemarle's Legislative Program or a larger program, he thinks it is important to localities to have that debate.

Mr. Foley said staff has gotten the advice it needed today. Information on these subjects will be included on a future agenda.

(Note: At 3:50 p.m., Mr. Boyd called for a 10-minute recess. He said Mr. Slutzky had given the Board members a copy of a resolution he would like for them to consider. This will give everybody a chance to read it before discussion takes place. The Board reconvened at 4:03 p.m.)

Non Agenda Item: Mr. Boyd said he would not read the proposed resolution regarding “Albemarle County’s Commitment to Address Community Mobility Challenges” aloud.

Mr. Slutzky said last week Charlottesville City Council approved the easements that make it possible for the Meadow Creek Parkway to go forward. They attached some conditions which have nothing to do with Albemarle County, but they also want a commitment from the County that it is serious about the things set out in this resolution. He drafted a resolution to say the County is serious and with the help of staff identified some information that shows how much the County has already committed to those things. This resolution codified those facts and is a good gesture to the City.

Mr. Rooker suggested that the last paragraph of the resolution be read aloud.

Mr. Boyd did so, and called for a motion to adopt.

Mr. Slutzky **moved** to adopt the following resolution to Continue Albemarle County’s Commitment to Address Community Mobility Challenges. The motion was **seconded** by Mr. Rooker and carried by the following recorded vote:

AYES: Mr. Slutzky, Ms. Thomas, Mr. Wyant, Mr. Boyd, Mr. Dorrier and Mr. Rooker.

NAYS: None.

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

**Resolution to Continue Albemarle County’s Commitment
To Address Community Mobility Challenges**

Whereas, the Charlottesville City Council has recently approved an important construction easement, with conditions, relating to the construction of the Meadow Creek Parkway; and

Whereas, the Charlottesville City Council further expressed the expectation that Albemarle County will:

- 1) commit to a continued and substantial increase in funding for public transit;
- 2) commit to making extensive pedestrian and bicycle improvements within the urban ring;
- 3) commit to building a transportation connector between Sunset Avenue and Fontaine Research Park/29-250 Bypass that would divert traffic from Old Lynchburg Road; and
- 4) commit to continued development of alignment and funding scenarios for the Eastern Connector; and

Whereas, Albemarle County has provided the following funding for JAUNT and CTS :

<u>JAUNT</u>		<u>CTS</u>	
FY03	\$418,481	FY03	\$174,729
FY04	\$443,481	FY04	\$234,751
FY05	\$487,741	FY05	\$241,793
FY06	\$555,663	FY06	\$299,344
FY07	\$622,579	FY07	\$367,374
Appropriated in		Appropriated in	
FY08	\$704,382	FY08	\$666,248; and

Whereas, Albemarle County has recently provided the following funding for additional Transit related projects:

- Alliance for Community Choice in Transportation (ACCT) \$ 6,500
- Regional Transit Authority Study \$50,000
- CTS Transit Study \$20,000; and

Whereas, Albemarle County has accepted transit proffers from Biscuit Run, North Pointe, Hollymead Town Center A-1, Martha Jefferson, and Albemarle Place valued well in excess of \$2,000,000; and

Whereas, Albemarle County has funded \$3,486,527.61 over the last five years for Pedestrian/Greenway/Biking Projects, including: Hillsdale Drive Safety Improvements (sidewalks and pedestrian crossings with raised medians); Rio Road Sidewalk Project; Route 20 North Sidewalk Project; and the Avon Street Sidewalk Project; and

Whereas, Albemarle County has, with respect to the Fontaine/Sunset Avenue Connector:

- worked with the Biscuit Run project to get an alignment that would support the proposed alignment of the Connector;
- accepted a proffer from the Biscuit Run applicant of \$1,550,000 towards the connector;

- included in the County's Comprehensive Plan as a recommended road improvement project;
- the project is already identified in the County's Primary Road Priority List; and
- staff will be including this project on the County's "Strategic Priorities for Albemarle County Priority List for Secondary Road Improvements"; and

Whereas, Albemarle County is funding half of the current \$500,000 Eastern Connector alignment study.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Albemarle County does hereby reaffirm its commitment to further significant investments in public transit; to making extensive pedestrian and bicycle improvements within the urban ring; to building a transportation connector between Sunset Avenue and Fontaine Research Park/29-250 Bypass that would divert traffic from Old Lynchburg Road; and to continued development of alignment and funding scenarios for the Eastern Connector.

Agenda Item No. 3. **Public Hearing:** SP-2007-0025, First Christian Church (Signs #1 & 2).

Proposal: Special use permit amendment for church, to change location and size of proposed picnic pavilion and change boundary of wooded area not to be disturbed.

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

Section: 10.2.2.35 Church building and adjunct cemetery.

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

Entrance Corridor: Yes.

Location: Northeast corner of Richmond Road (U.S. 250) and Keswick Road (Rt 731).

Tax Map/Parcel: Tax Map 79, Parcel 24A.

Magisterial District: Scottsville.

(Notice of this public hearing was published in the Daily Progress on September 24 and October 1, 2007.)

Mr. Cilimberg presented the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this is a follow-up to special use permit approval a year ago where the location and size of the proposed picnic pavilion would be changed, and the boundary of the wooded area not to be disturbed would not be changed. The location of the property is on Route 250 East at its intersection with Keswick Road. The first condition of the original approval referenced a certain plan and the picnic shelters were to be on the left side of the building. There was also an area which was not to be disturbed identified around the development (he showed a photograph of the area). The request is to change the location of the picnic shelter to a northern area of the property above the parking lot essentially in an area already shown as cleared for what was to be a detention pond. That is not the intention now since it is not necessary. There would be an expansion of the undisturbed area on the west of the property to allow for drain fields. There would be additional area not disturbed in the northeast portion of the site.

Mr. Cilimberg noted some factors that are favorable to the request in staff's report, and he did not see any additional impacts from the change. There were no objections raised by the Architectural Review Board. There is a .39 acre reduction in the protected wooded area, which is minimal, and the changes in the area not to be disturbed would increase buffering on the northeast side of the property. It is a nominal change.

Mr. Cilimberg said staff and the Planning Commission both recommended approval subject to changed conditions which would supersede conditions from the prior approval.

With no questions for staff, Mr. Boyd opened the public hearing. With no one from the public rising to speak, the hearing was closed and the matter placed before the Board.

Motion was offered by Mr. Dorrier to approve SP-2007-0025 subject to the nine conditions recommended by the Planning Commission. The motion was **seconded** by Mr. Wyant. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Slutzky, Ms. Thomas, Mr. Wyant, Mr. Boyd, Mr. Dorrier and Mr. Rooker.

NAYS: None.

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

1. The church's improvements and the scale and location of the improvements shall be developed in general accord with the conceptual plan entitled "First Christian Church, Albemarle County, Virginia – Minor Amendment to the Special Use Permit" prepared by McKee Carson, and dated May 29, 2007;
2. The area of assembly shall be limited to a maximum three hundred and six (306) seat sanctuary;
3. No grading or tree removal shall take place within the area marked "area not to be disturbed" on the conceptual plan or within the seventy-five (75) foot setback adjacent to Route 250 East;

4. No erosion and sedimentation control plan nor building permit shall be approved for the area marked "area not to be disturbed" without prior approval of a tree conservation plan complying with section 32.7.9.4 of the Zoning Ordinance;
5. All parking setbacks and undisturbed buffers required by Zoning Ordinance section 21.7, Minimum Yard Requirements, shall apply if this use is developed;
6. All outdoor lighting shall be arranged or shielded to reflect light away from the abutting properties;
7. The existing prescriptive right-of-way along this parcel's Keswick Road (Route 731) frontage shall be replaced with a public right-of-way at least twenty-five (25) feet wide and dedicated to public use;
8. There shall be no day care center or private school on site without approval of a separate special use permit; and
9. If the use, structure, or activity for which this special use permit is issued is not commenced within sixty (60) months after the permit is issued, the permit shall be deemed abandoned and the authority granted there under shall thereupon terminate.

Agenda Item No. 4. **Public Hearing:** CPA-2006-003 and ZMA-2006-0019, Willow Glen (Signs #27 & 29).

Proposal: Amend Comprehensive Plan from Industrial Service which allows 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) uses to Urban Density Residential which allows residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses. Also, rezone 23.681 acres from Rural Areas which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) to Planned Residential District which allows residential (3-34 units/acre) with limited commercial uses for a maximum of 234 units.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Industrial Service which allows for (see uses above) in the Hollymead Community.

Entrance Corridor: No.

Location: Property is east of Dickerson Road (Rt 606) across from Charlottesville-Albemarle Airport and approximately 1500 feet south of intersection with Airport Road (Rt 649) in the Hollymead Community.

Tax Map/Parcel: Tax Map 32, Parcels: 49F, 49G, 49I, 49J, 49K.

Magisterial District: Rio.

(Notice of this public hearing was published in the Daily Progress on September 24 and October 1, 2007.)

Mr. Cilimberg read from the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said the Board held a work session on this Comprehensive Plan amendment and rezoning. The applicant's request is to amend the Comprehensive Plan from Industrial Service to all Urban Density Residential, and to rezone property from Rural Areas District to a Planned Residential District. The purpose of this request is to address a legitimate need for affordable housing in the County including both affordable and moderate-priced housing units. The request involves several parcels in the vicinity of the Charlottesville-Albemarle Airport in the Hollymead Community.

Mr. Cilimberg said the proposal is to construct 234 residences of various types, 15 percent of which would be affordable. It would include amenities and would connect to Hollymead Towncenter by a connection to Towncenter Drive. He said staff noted in its report that to accomplish the connection, Towncenter Drive will need to be completed. Under the HTC rezoning, that completion is supposed to take place within a year. If for some reason it is not completed, the applicant has been made aware that under site plan provisions, this project would not be able to develop more than 50 units until that connection were made.

Mr. Cilimberg said two issues were raised in the Board's work session; the commitment to affordable and below market rate housing, and the County's need for industrially-designated and zoned land. The applicant is proffering to construct 15 percent of the units as affordable; that would meet the Board's policy. The applicant is not proffering other housing price levels below market rate although they have not indicated they will try to provide for price tiers. That has been an understanding from the early stages of the project, but it is not proffered. There is no assurance that the project's affordable and below market rate housing will be different from other recently-approved residential rezonings. That calls into question the justification for a change in the Comprehensive Plan Land Use Plan from industrial to residential. The need for industrially-designated land has been a point of discussion from the Planning Commission through the Board's work session. In the staff's report there is information provided by the Business Development Facilitator that reduction of industrial service land is a concern, such loss of subject parcels will contribute to the County's potential inability to provide sufficient land not located in an Entrance Corridor which is more affordable.

Mr. Cilimberg said in the northern development areas (the Places29 area) there are currently 266 acres designated, zoned and vacant. That includes acreage in mixed-use districts. In designated residential land, there are up to 6,500 additional units possible under the Comprehensive Plan as it currently exists. Industrial is much more limited than residential in terms of its availability for future development.

Mr. Cilimberg said the cash proffers now provided by the applicant satisfy the County's Proffer Policy expectations. It would be a little less than \$2.5 million based on current single-family and

townhouse condo rates for the entire development. There is a yearly change in that rate that is also a part of the proffers.

Mr. Cilimberg said the Planning Commission recommended approval of the Comprehensive Plan amendment, but considering the comments of the Board at its work session on September 5 regarding project characteristics that might warrant a Comprehensive Plan change, the applicant is not proffering housing price levels below market rate other than that meeting the County's Affordable Housing Policy. Based on information provided by the County's Business Development Facilitator, staff does not believe a change in the Comprehensive Plan is warranted. Regarding the Zoning Map Amendment, the Commission recommended approval essentially as the project is now proposed. Should the Board approve the Comprehensive Plan amendment, staff recommends approval of the rezoning inclusive of the proffers that are dated October 9, 2007, and the Application Plan dated September 17, 2007.

Mr. Cilimberg said there are up-to-date final proffers that get all of the dates "squared away" and all of the language clear. Basically they are the proffers which were sent to the Board with the materials for today's meeting.

Mr. Rooker said his copy of the proffers had a couple of pages missing.

Mr. Davis said before the Board today is the updated proffers. A copy was provided with today's agenda. There is one additional change to that proffer statement correcting the date of the plan, which should be September 17, 2007, instead of August 28, 2007. He just received a corrected signed copy of that. He said the proffer document before the Board has all the changes staff requested as far as clarification of terminology and making the right references to plans and other things. Instead of specifically proffering the 35 units, that language has been changed to proffer 15 percent of the approved units, which equals 35; that was not a change requested by the County, but it is an equivalent amount assuming they build out the development.

Mr. Rooker asked when the affordable units would be built. Mr. Davis said there is a proffer which requires that at least 12 percent of the lots in each phase must be affordable units.

Ms. Thomas asked the timing of the County receiving the proffers. Does it meet the Board's policy? Mr. Davis said the policy says the signed proffers have to be received nine days in advance of the meeting. Technically, it did not meet that policy; the County had a draft of the proffers and they have not been substantially changed so it did not impede staff review. Other than the oversight, at the last second, of the date, it has not been a problem for staff to review the proffers under this timetable.

Mr. Boyd said he needs to understand staff's recommendation. He asked if this is a change since the Planning Commission meeting. Are they not going to offer more below-market housing? Mr. Cilimberg said it is more a product of the Board's discussion at the work session on September 5. The Board indicated that because the applicant was doing a standard affordable housing proffer and cash proffers rather than a proffer for additional below-market rate priced housing (with some cash going to the Housing Fund), it wanted to see a residential project that would justify changing the industrial designation to a residential designation.

Mr. Rooker said part of the recommendation was based on an analysis which showed there is a deficit of industrially-zoned property in this corridor than there is residentially-zoned property. This is a six-acre parcel that is somewhat stranded from other industrially-zoned property.

Mr. Boyd said this area is somewhat of an island anyway. Mr. Cilimberg said it is an island based on Comprehensive Plan amendments that showed it as industrial.

Mr. Slutzky asked if there had been a large area in this part of the growth area zoned Light Industrial that was scaled back over a period of time to the small amount left along Dickerson Road. Mr. Cilimberg said the mobile home park was industrial and much of Hollymead Towncenter was industrial; those were both changed in the last 17 years.

Mr. Slutzky said because the other parcels were changed from Light Industrial, the Board had an impact on the speculative value of this parcel and that inherently compromised its opportunity to ultimately function as light industrial. If the Board concludes there is sufficient light industrial land to satisfy the marketplace, then that should be addressed throughout the master planning. It is a separate question as to whether the Board wants to hold this particular parcel hostage to this zone when it is priced because of the Board's earlier actions. He does not deny there is an insufficient amount of light industrial available, but he is not sure the solution to that is to deny this application on that ground.

Mr. Boyd said he agrees. The Board has created a situation in this area where it makes good sense to go ahead and approve the rezoning. He said there are other such situations in the County, such as the Earlysville Industrial Park which is in the rural area and cannot be used for industrial purposes.

Mr. Dorrier suggested holding a separate work session to deal with that question.

Mr. Boyd said Places29 should address the need for additional industrial property. Mr. Cilimberg said for Places29 that was emphasized by the Commission and the Board during work sessions. Also, the Board will be discussing the County's Economic Development Policy in the future, which in part is about that question. As concerns Earlysville Park, there is an enablement there for activities to incur industrially. There has been some desire on the part of the owner to do different things.

Mr. Slutzky said it is the desire of the neighbors that the owner of Earlysville Park not undertake different uses. That might be a separate conversation.

Mr. Boyd said that is probably similar to this question. If there were to be an industrial use put in there the neighbors around Hollymead Towncenter on both sides of that island would not be happy.

Mr. Slutzky said due to the market value of this land it probably would end up as a vacant industrial property.

Mr. Rooker said there is a difference because property along Route 29 is not priced so it could be used for industrial uses. This property is along Dickerson road and is close to the Airport; in a lot of communities this is the location of many industrial uses. He said the report from staff points out the existing deficit and the Board is about to take an action to worsen that deficit. He does not know where that deficit could be made up without increasing the growth areas. It is a difficult issue. This project is well done; the applicant has done a good job on this project. He questions whether it is a wise decision to pull more property out of the Industrial Service category in this corridor.

With no further questions for staff, Mr. Boyd asked the applicant to speak.

Ms. Valerie Long was present for the applicant, Sugaray Two, LLC. Also present was Mr. George Ray, principal of the owner's entity, Ms. Marilyn Young, with the mortgage banker, and Mr. Steve Edwards, Terra Concepts, project engineer, architect, and site planner. She said that since the work session they have followed up on the issue of industrial inventory in the community. She then made a visual presentation of the project. She said the property is surrounded on three sides; there is the Deerwood community at a Neighborhood Residential density, the developing Abingdon Place, a community of townhomes, and the mobile home park.

Mr. Dorrier asked if there is other land in the area zoned Light Industrial. Ms. Long said there is a small amount to the north of the Willow Glen property. Mr. Cilimberg pointed out on a Places29 map land that is shown for industrial.

Mr. Rooker asked what is shown in Places29 for the University Research Park. Mr. Cilimberg said it generally reflects their Application Plan because a lot of that land is in the Open Space category.

Mr. Rooker asked if there is a difference between areas shown on the map in dark purple, and areas shown in light purple. Ms. Judy Wiegand said Places29 is changing the land use designation slightly in an attempt to recognize types of industrial users. Places29 has divided it into basically three categories; heavy industrial, light industrial and research and development offices.

Mr. Rooker said in an industrial area there can be a lot of things other than just a light industrial use. He assumes in looking at the potential use of this property there was some thought given to other potential uses. Was it determined that this residential development would have the best chance at success? He is just wondering why the highest and best use of the property is residential as opposed to other uses.

Mr. George Ray said from an economic point of view there were two considerations. Even though this property is not located on Route 29, there is the acquisition price and the cost of carrying it for almost three years while they have been dealing with this project. He said prices are beyond what the usual small light industrial user can afford to pay. His biggest consideration as the developer is the absorption rate. It would take a long time for the market to absorb 23 acres of light industrial property.

Mr. Rooker said office uses could be put in an industrial designation. Mr. Ray said they do not develop and rent, but develop and sell. They have to decide if someone would want their office to be next to a contractor's yard with outside storage. It may be allowed, but he does not think that in the marketplace it is very practical.

Mr. Rooker said the applicant could have put in high-end office space. There is no contractor's yard there now. He does not understand that comparison. If the whole area were developed as R&D, etc., that is allowed by-right in the light industrial area. He wondered if any consideration was given to doing something like that.

Mr. Ray said they began this project by trying to meet the affordable housing needs in the County. While they looked at alternative ways to develop the property, it was not their vision to do an additional office park or R&D park. He is a little resentful that this project is being cast into this mode of not being a different project. It is a different project. They decided to withdraw their proffer for the moderate-priced houses because of all the actions that have taken place since they first presented this project to the Planning Commission three years ago. All of the additional costs that have been stacked on these units by actions of the County made it not practical to build something at \$235,000. They need to let it float to about \$245,000 because they have been tagged with extra costs of \$600,000 of interest (they accepted that risk), but with the due cash proffers it is working contrary to them being able to deliver a product of a moderately-priced house. He said the size of these units will dictate the sales price and they are committed to building the size unit shown on their site plan. They cannot build a \$245,000 house and sell it for \$400,000, so in that sense they are still dedicated to doing the tier, but there is only so much of the cost they can absorb.

Mr. Rooker said he does not object to the affordable housing proffer at all. His whole issue has been whether it makes sense to take this property out of industrial use. Mr. Ray said there is something

that has not been mentioned. There was a huge piece of industrial property south of their land which was moved voluntarily, with no discussion, from the Places29 study. That begs the questions of why the "lightning is striking them" when the County's consultants were reducing the amount of light industrial. He thinks this land should have been rezoned at the time the whole Hollymead rezoning occurred. That would have been good planning.

Mr. Rooker said the Board can only rezone land when there is a request put before them. Mr. Ray said they are trying to come up with a project to meet the affordable housing needs of the County.

Mr. Boyd asked that Ms. Long continue with her presentation.

Ms. Long pointed out on a map the area that Mr. Ray had just referred to. She then showed a slide representing the industrial inventory of land in Albemarle. There is Tier 1 land which is already zoned industrial, is unimproved and is immediately available. Tier 2 is ripe for redevelopment; it is improved in some fashion and is zoned industrial; it is in use but is ripe for redevelopment. Tier 3 is land which is designated for industrial use in the Comprehensive Plan, but requires a rezoning. They identified the parcels in each of the three categories along with their acreages. The land in Tier 1 is 61 parcels totaling 343 acres. Tier 2 land contains 16 parcels totaling 39 acres. Tier 3 land contains 49 parcels totaling 312 acres. They also looked at the potential companies which were listed in the staff's report who were looking for land in Albemarle. They were not involved with those companies so do not know the reason they did not locate here. They feel strongly that the way the area around the Willow Glen property has developed, that it is not the appropriate location for industrial land.

Mr. Rooker said for a person to walk from Willow Glen to the Hollymead Towncenter, how would they do that, and will there be a sidewalk the entire way? Ms. Long pointed out Towncenter Drive on a map and said there is a proffer in the Towncenter Area "A-1" and "A-2" projects to finish constructing within one year of their rezoning approval which they got about one month ago. By this time next year, they are obligated to have completed the Towncenter Drive road all the way to Dickerson Road. The Willow Glen proffers provide that Willow Glen will build "this" connection at its own expense no later than 18 months after getting site plan approvals, easements from the Hollymead Towncenter owner, etc. There is a sidewalk there, and she assumes that Towncenter Drive will have sidewalks also.

Mr. Rooker asked if Hollymead has a right to make that connection. Mr. Cilimberg said "yes."

Ms. Long said the Hollymead Towncenter proffers include a paragraph speaking to this connection. It says that upon a request by the County they will dedicate the land for the connection, and they will grant easements to Willow Glen. They are saying that as soon as they get all the easements, they will start construction. There has to be site plan approval to build their portion of the road, which is in the first phase of their phasing plan. They voluntarily took on that obligation. They were told by staff early in this process that technically that would be an obligation of the Hollymead Towncenter to build that connection since the current policies and rules require interconnections to the edge of the developer's property line. She said there is also an extensive trail network available for use.

Ms. Long said she would address the comment in the staff's report about changing the proffers to not proffer the moderately-priced units. They are still committed to the tiered pricing system for the project. That has been the crux of the project from the beginning. They discussed with the Board last month an affordable housing fund. The prices they have shown today are what they expect to sell the units for. The actual price will depend on the market and how fast the units sell. Without having the benefit of the reduction in proffers they originally asked for, it is more difficult to commit to low prices. She said their Application Plan will guide development; all site plans and subdivision plats will be reviewed for conformance with the plan. Even if they could change the size of the units, the market will only bear so much for the units. The units will vary in size and price point throughout the project. The project has the Neighborhood Model Plan as conceived and uses its principles, everything from walking trails, to mixture of units, a variety of housing types, amenities, a central green and interconnections in several places. The fact that they are no longer proffering the 24 moderately-priced units does not indicate a lack of commitment to those units. They may need some flexibility on the pricing of them. As Mr. Cilimberg indicated, the cash proffers are now in compliance with the County's policy expectations. The full amount for the 234 units and the proffers state they are to go toward Capital Improvement Fund projects.

Mr. Boyd asked if the Board members had questions for Ms. Long.

Mr. Rooker said that after hearing the presentation and the information and maps provided, he is supportive of the Comprehensive Plan change. He thinks it is a close case, and thinks it will be difficult for this property to develop as light industrial. He thinks the alternative use would be high-end office. He hopes the applicant's analysis of the economics of the project is correct. There is a lot of residential already approved in the County. There is a substantial amount of light industrial to the south of this area that is in a large block of land, not as isolated as this land is. Places29 has already re-categorized this property and he hopes the Board respects that process.

Mr. Slutzky said the staff comment included a statement "that should the Board decide to move forward with this request in spite of the light industrial issues that the Board pull out the language about the cash proffers being restricted." Mr. Cilimberg said their proffers now address that statement.

Mr. Boyd said if there were no further comments from Board members he would open the public hearing. With no one from the public rising to speak, the hearing was closed, and the matter placed before the Board.

Mr. Davis stated two votes are required. One vote would on the change to the Comprehensive Plan and the second would have to do with the rezoning.

Mr. Slutzky said he would **move** to approve and adopt CPA-2006-003 which will amend the Comprehensive Plan, Land Use Plan, from Industrial Service to Urban Density Residential as part of Places29 as recommended by staff.

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

AYES: Mr. Slutzky, Ms. Thomas, Mr. Wyant, Mr. Boyd, Mr. Dorrier and Mr. Rooker.

NAYS: None.

Motion was then offered by Mr. Slutzky to approve ZMA-2006-0019, Willow Glen, subject to the proffers dated October 9, 2007. The motion was **seconded** by Mr. Dorrier. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Slutzky, Ms. Thomas, Mr. Wyant, Mr. Boyd, Mr. Dorrier and Mr. Rooker.

NAYS: None.

(**Note:** The proffer statement is set out in full below.)

PROFFER STATEMENT

Date: October 9, 2007

ZMA#: 2006-19 Willow Glen

Tax Map and Parcel Numbers: Map 32, parcels 49F, 49G, 49I, 49J and 49K

23.681 Acres to be rezoned from Rural Areas to Planned Residential Development in accord with the Application Plan entitled "Willow Glen" prepared by Terra Concepts, PC, dated September 17, 2007

Dickerson Ridge LLC, a Virginia limited liability company, is the fee simple owner (the "Owner") of Tax Map 32, Parcels 49F, 49G, 49I, 49J, and 49K (the "Property") which is the subject of the zoning map amendment application #ZMA-06-19 known as "Willow Glen." The Applicant for Willow Glen is Sugaray Two, LLC, a Virginia limited liability company. The Willow Glen community is herein referred to as the "Project."

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, Owner hereby voluntary proffers the conditions listed in this Proffer Statement, which shall be applied to the Property if the rezoning is approved by Albemarle County. These conditions are proffered as part of the rezoning and it is agreed that the conditions are reasonable.

1. **Affordable Housing.** The Owner shall provide affordable housing equal to fifteen percent (15%) of the total residential dwelling units within the Project in the form of for sale or lease affordable dwelling units (the "Affordable Dwelling Units" or "Affordable Units"). The Affordable Dwelling Units shall be comprised of one or more of the following unit types: single-family attached housing (townhouses or duplexes) or condominiums. The Owner or its successor in interest reserves the right to provide the Affordable Dwelling Units in a variety of ways, utilizing the above mentioned unit types alone or in combination as outlined below.

A. **For-Sale Affordable Units.** The for-sale Affordable Dwelling Units shall be affordable to households with incomes up to eighty percent (80%) of the area median family income (the "Affordable Unit Qualifying Income"), such that the housing costs consisting of principal, interest, real estate taxes, and homeowner's insurance (PITI) do not exceed thirty percent (30%) of the Affordable Unit Qualifying Income, provided, however, that in no event shall the selling price of such affordable units be required to be less than the greater of One Hundred Ninety Thousand Four Hundred Dollars (\$190,400) or sixty-five percent (65%) of the applicable Virginia Housing Development Authority (VHDA) maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced below. The Owner or his successor in interest may at its option facilitate the provision of down payment assistance loans to reduce the out-of-pocket cash requirement costs to the homebuyer, such as, but not limited to a "silent" second lien Deed of Trust, so that the resultant first mortgage and housing costs remain at or below the parameters described herein. All financial programs or instruments described herein must be acceptable to the primary mortgage lender. Any "silent" second lien Deed of Trust executed as part of this paragraph shall be donated to the County of Albemarle or its designee to be used to address affordable housing. For purposes of calculating the price of the Affordable Dwelling Units, the value of Seller-paid closing costs shall be excluded from the selling price of such Affordable Dwelling Units.

B. **For-Lease Affordable Dwelling Units.**

(i) The initial net rent for each for-rent Affordable Unit shall not exceed the then-current and applicable maximum net rent as published by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent Affordable Unit may be increased up to three percent (3%). For purposes of this proffer statement, the term "net rent" means that

the rent does not include tenant-paid utilities. The requirement that the rents for such for-rent Affordable Units may not exceed the maximum rents established in this Proffer 1B shall apply for a period of ten (10) years following the date the certificate of occupancy is issued by the County for each for-rent Affordable Unit, or until the units are sold as affordable units as defined by the County's Affordable Housing Policy, whichever comes first (the "Affordable Term").

(ii). Conveyance of Interest - All instruments conveying any interest in the for-lease Affordable Dwelling Units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this Paragraph 1(B). In addition, all contracts pertaining to a conveyance of any for-lease Affordable Dwelling Unit, or any part thereof, during the Affordable Term, shall contain a complete and full disclosure of the restrictions and controls established by this Paragraph 1(B). Prior to the conveyance of any interest in any for-lease Affordable Dwelling Unit during the Affordable Term, the then-current owner shall notify the County in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this Paragraph 1(B)(ii) have been satisfied.

(iii). Reporting Rental Rates. During the Affordable Term, within thirty (30) days of each rental or lease term for each for-rent Affordable Unit, the then-current owner shall provide to the Albemarle County Housing Office a copy of the rental or lease agreement for each such unit rented that shows the rental rate for such unit and the term of the rental or lease agreement. In addition, during the Affordable Term, the then-current owner shall provide to the County, if requested, any reports, copies of rental or lease agreements, or other data pertaining to rental rates as the County may reasonably require.

C. Phasing of Affordable Units. Each subdivision plat and site plan for land within the Property shall designate the lots or units, as applicable, that will, subject to the terms and conditions of this proffer, incorporate Affordable Units as described herein, and the aggregate number of such lots or units designated for Affordable Units within each subdivision plat and site plan shall constitute a minimum of twelve percent (12%) of the lots in such subdivision plat or site plan. Notwithstanding the foregoing, however, the Owner may "carry-over" or "bank" credits for Affordable Units in the event an individual subdivision plat or site plan designates affordable units that in the aggregate exceed the twelve percent (12%) minimum for such subdivision plat or site plan, and such additional Affordable Units may be allocated toward the twelve percent (12%) minimum on any future subdivision plat or site plan, provided however, that the maximum number of Affordable Units that may be carried over or banked shall not exceed twelve percent (12%) of the total units on any subdivision plat or site plan.

D. Notification Period: County Cash Option.

(i). Notification Period. All purchasers of the Affordable Dwelling Units shall be approved by the Albemarle County Office of Housing or its designee. The then-current owner/builder shall provide the County or its designee a period of ninety (90) days to identify and pre-qualify an eligible purchaser for the Affordable Unit(s). The ninety (90) day period shall commence upon written notice from the then-current owner/builder that the Unit(s) is within one hundred twenty (120) days of completion and, that on or before the end of such one hundred twenty (120) day period shall be ready for occupancy. If the County or its designee does not provide a qualified purchaser who executes a contract of purchase during this ninety (90) day period, the then-current owner/builder shall have the right to sell or lease the Unit(s) without any restriction on sales or lease price or income of the purchaser(s), provided, however, that any Unit(s) sold or leased without such restriction shall nevertheless be counted toward the number of Affordable Units required to be provided pursuant to the terms of this proffer. The requirements of this proffer shall apply only to the first sale of each of the Affordable Dwelling Units that are purchased. Nothing herein shall preclude the then-current owner/builder from working with the County Housing Department prior to the start of the notification periods described herein in an effort to identify qualifying purchasers for the Affordable Units.

(ii). County Option for Cash In Lieu of Affordable Units. If at any time prior to the County's approval of any preliminary site plan or subdivision plat for the Property which includes one or more for-sale Affordable Dwelling Units, the Housing Office informs the then-current owner/builder in writing that it may not have a qualified purchaser for one or more of the for-sale Affordable Dwelling Units at the time that the then-current owner/builder expects the units to be completed and that the Housing Office will instead accept a cash contribution to the Housing Office to support affordable housing programs in the amount of Nineteen Thousand One Hundred Dollars (\$19,100) in lieu of each affordable unit(s), then the then-current owner/builder shall pay such cash contribution to the County prior to obtaining a certificate of occupancy for the unit(s) that were originally planned to be Affordable Dwelling Units, and the then-current owner/builder shall have the right to sell the Unit(s) without any restriction on sales price or income of the purchaser(s). If all of any portion of the cash contribution has not been exhausted by the County for the stated purpose within five (5) years of the date it was contributed, all unexpended funds shall be refunded to the party that contributed the funds. For the purposes of this proffer, such Affordable Dwelling Units shall be deemed to have been provided when the subsequent owner/builder provides written notice to the Albemarle County Office of Housing or its designee that the Affordable Unit(s) will be available for sale.

E. Inspections. The County shall have the right, upon reasonable notice and subject to all applicable privacy laws, to periodically inspect the records of the Owner or any successors in interest for the purposes of assuring compliance with this paragraph 1.

2. **Cash Proffer.**

A. The Owner shall contribute cash to the County in the following amounts for each dwelling unit constructed within the Property that is not an Affordable Dwelling Unit. The cash contributions shall be used to address the fiscal impacts of development on the County's public facilities and infrastructure (i.e., schools, public safety, libraries, parks and transportation) identified in the County's Capital Improvements Program. The cash contributions shall be paid prior to issuance of a building permit for the category of units described in this paragraph 2 in the following amounts:

(i). Seventeen Thousand Five Hundred Dollars (\$17,500) for each single-family detached dwelling unit;

(ii). Eleven Thousand Nine Hundred Dollars (\$11,900) for each single family attached dwelling unit that is not an Affordable Dwelling Unit.

(iii). Zero Dollars (\$0.00) for each Affordable Dwelling Unit

The cash contribution for each such unit shall be paid prior to or at the time of issuance of the building permit for each unit, as applicable.

B. **Annual Adjustment of Cash Proffers.** Beginning January 1, 2008, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Comparative Cost Multiplier, Regional City Average, Southeast Average, Category C: Masonry Bearing Walls issued by Marshall Valuation Service (a/k/a Marshall & Swift) (the "Index") or the most applicable Marshall & Swift index determined by the County if publication of the specific index referenced herein is discontinued. In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the year preceding the calendar year most recently ended, and the denominator of which shall be the Index as of December 1 in the preceding calendar year. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

3. **Connection to Town Center Drive.** The Owner shall complete construction of an extension of "Road D" as shown on the Application Plan as a vehicular connection to the future Town Center Drive in the area shown on the Application Plan, to the standards contained in Sections 14-410H and 14-422 of the County Code and shown on the sheet of the Application Plan entitled "Conceptual Road Sections" (the "Town Center Drive Connection"). The Town Center Drive Connection shall be completed by the later to occur of: (a) eighteen (18) months after issuance of a final site plan approval for the first phase of the Project; or (b) eighteen (18) months after the owner of tax map parcel 32-50 dedicates to public use the public right-of-way determined to be appropriate by VDOT and the County Engineer for the Town Center Drive Connection, and also dedicates to the Owner all drainage, construction and other easements necessary for the Owner to construct the Town Center Drive Connection. For purposes of this proffer 3, construction of the Town Center Drive Connection shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the Owner has obtained from the County Engineer a written determination that the Town Center Drive Connection is safe and convenient for traffic. The Town Center Drive Connection may be shifted from the area shown on the Application Plan to a location more suitable to both the Owner and the County which still provides access from Willow Glen to Town Center Drive, upon approval of the County Engineer and the Owner.

WITNESS the following duly authorized signatures:

Owner:
DICKERSON RIDGE LLC,
A Virginia Limited Liability Company
By: (Signed) George W. Ray, Jr.
Printed Name: George W. Ray, Jr.
Title: Manager

Agenda Item No. 5. CPA-2007-04, Cash Proffer Policy for Public Facilities. **Public Hearing** on a proposal to amend the Growth Management and Facilities Planning Sections of the Albemarle County Comprehensive Plan, Land Use Plan Chapter, and other appropriate sections as necessary, to incorporate expectations for addressing the fiscal impacts of development on the County's public facilities and infrastructure and to adopt a policy to address the impacts on schools, public safety, libraries, parks and transportation (the "public facilities") caused by residential development resulting from a rezoning through a voluntary cash contribution proffered by the landowner seeking the rezoning (the "cash proffer policy"). The cash proffer policy establishes general guidelines, the methodology for calculating the cost of the impact each new dwelling unit has on the public facilities, and the maximum cash proffer that will be accepted for various types of dwelling units. (Notice of this public hearing was published in the Daily Progress on September 24 and October 1, 2007.)

Mr. Cilimberg said this policy reflects the outcomes of several work sessions by the Board over the last few months. It captures changes in the Comprehensive Plan language (Attachment D of the staff's report); the policy is in Attachment E. The Policy will become an attachment to the Comprehensive Plan. It has been recommended for approval by the Planning Commission. There is one change that needs to be made. In the Policy document in Section C6(a), Land and Infrastructure, it should say "Department of Facilities Development" instead of "Departments of Facilities Management." He offered to answer questions.

Mr. Rooker noted Page 1 of Attachment E, Paragraph B1, where it says "The maximum cash proffer that the Board will accept for public facilities" and asked if legally it has to be stated that way. Mr. Davis said "yes." That was a significant part of Chesterfield County's Policy that allowed them to defend themselves from two Federal lawsuits. For the facilities that were included within the proffer methodology, the Proffer Policy had a maximum amount. He said this only applies to the five categories being addressed by the Cash Proffer Policy. Proffers that address other impacts can be in addition to the amount that is included in this policy.

Mr. Slutzky asked if there could be other proffers in addition to the cash proffers for which no credit is given that could compound the value. Mr. Davis said it does not limit the scope of the proffers; only for these impacts.

Mr. Rooker said on Page 3, Paragraph 6, Credits, it states: "Staff calculates a credit to apply against the gross cost for each public facility. The County has issued and plans to continue to issue general obligation bonds to finance the construction of public facilities. New development will generate real estate and other taxes to the County and staff assumes that a percentage of these taxes will go to help retire this debt. So that new dwelling units are not paying twice (once through payment of a cash proffer and again through real estate taxes) a credit is computed. For FY '08, that percentage is assumed to be six percent. Credits are authorized for the following." He asked if that is percentage of taxes that go to retire debt? Mr. Davis said that is correct. That is the assumption the Board accepted during the work session. Mr. Cilimberg said the Fiscal Impact Committee recommended ten percent.

Mr. Wyant said the Committee removed mobile homes in this. Mr. Cilimberg said they had the same dollar amount as single-family detached, but staff assumed that mobile homes will always be affordable so are not subject to the cash proffer.

Mr. Boyd said this document calls for \$17,500 for single-family dwellings. If it is an affordable house, it does not call for them to pay \$19,200 on top of that. Is it the difference between the two? Mr. Davis said affordable units are exempt from this fee by this policy.

Mr. Boyd asked what amount they would pay in lieu of an affordable unit. Mr. Davis said the \$17,500 would apply to every unit built that is not classified as affordable. If they paid cash in lieu of and then built affordable units in the place of providing affordable housing, they would pay the cash proffer on each market-rate unit built.

Mr. Boyd asked if the developer would also pay the \$19,200 on top of that amount. Mr. Davis said "yes"; that is the way staff has applied the policy for the last several months. Mr. Cilimberg said that is the cost if affordable units are not being provided in the project. Mr. Davis said that was an issue for the Biscuit Run project, and that is the way the Board accepted the proffer. Mr. Cilimberg said many of the affordable housing proffers being submitted now give the option to the County to ask for cash versus instead of providing a unit. In those cases, staff does not consider that unit for the application of the proffer. That is the exception where the County makes the decision, not the developer.

Ms. Thomas said she has been impressed by the non-profits dealing with the affordable housing issue because they would rather have the cash than the unit on the ground. She still agrees with the Board's policy to require the unit. She has softened in her feelings to not be disappointed if there is cash because they feel the money is needed for a second mortgage or to help with the initial payment.

Mr. Boyd said that is the reason he asked the question. He fears this policy will dry up any down-payment moneys. Mr. Cilimberg said the County will not apply the cash proffer to those units where they give cash because the County asks for cash.

Mr. Wyant asked who makes the decision that cash will be requested instead of a unit. Mr. Cilimberg said it is up to the Housing Director. He asked Mr. Mark Graham to comment.

Mr. Mark Graham, Director of Community Development, said that decision is made at the time of site plan approval. Mr. Davis said that option would be exercised only if it was impossible to place people in those units at that time, or there was a need for cash to provide assistance for people to get in units that were already "in the pipeline."

Mr. Boyd asked for an example of when the County would ask for cash in lieu of a unit.

Mr. Rooker said in certain cases the County has the right to say it would prefer that the developer pay cash instead of providing an affordable unit based on the reality of market circumstances.

Mr. Slutzky said it will only come up when a unit has been discounted to accommodate the affordable requirement but there is not a person to move into the unit. In that case, in order "not to lose the deal" the County would take the \$17,000.

Mr. Wyant said that decision is made at the time the site plan comes in for approval. He wants to be sure the developer has ample time to make his plans. Mr. Cilimberg said as an example, the site plan might show two affordable units, and the County would say it wants the cash so the developer could build market-rate units instead.

Mr. Boyd said he is glad that provision is a part of this policy. He was worried the County might never get anymore downpayment money. Mr. Cilimberg said this was done at the recommendation of the Planning Commission and the Board's concurrence that there be an opportunity for the Housing Director to use his discretion.

Mr. Slutzky said he thinks fabulous work has been done in taking all the input over the last couple of years and boiling it down to the policy presented tonight.

Mr. Boyd said if there were no further questions for staff, he would open the public hearing.

Mr. Neil Williamson of the Free Enterprise Forum said he appreciates the effort of staff in drafting this document. It reflects the conversations that have taken place over the last couple of years. When originally contemplated it seemed this policy would provide more predictability to the development community. Instead, it seems what has been practiced without the policy has been a shift in whether it is a number for cash, or what credits are worth. He continues to have a concern about this and thinks it would be nice if it could be solved.

Ms. Valerie Long asked the Board to expand upon the basis on which it would grant a credit against the cash proffers for properties that have underlying zoning. The proposal before the Board tonight provides for flexibility for projects where no increase in density, or only a small increase in density is proposed, or if the project uses the Neighborhood Model. There are a number of circumstances where a project could have underlying zoning and it would be appropriate to give credit for that. She is working on one at this time where that property is zoned R-6; there could be 52 units by-right on the property. Her client proposes to rezone it to Neighborhood Model so it can conform to the Neighborhood Model guidelines. They are proposing to increase the density from the 52 by-right units to 109 units with a mixture of housing types. The proposal would have a sensitive treatment of some environmental features on the property and provide a mixture of uses including a small amount of commercial. Under the current policy they would be required to proffer the full amount for all 109 units. They think that in such situations it is to the County's benefit to provide incentives for owners to rezone to some type of planned district.

Ms. Long said she thinks the exceptions are too narrow. Under this policy the plan she is talking about would not get a credit for any of the 52 units that could be built by-right. That could be a disincentive to this project which is already challenging. They hope the Board will expand the exceptions so such projects will not have a disincentive to pursuing a rezoning to some type of planned district in order to have the flexibility needed to incorporate the Neighborhood Model principles more effectively.

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

Mr. Slutzky asked if because of the inherent merits of a particular proposal the Board would have the right to hold a work session and compromise on this policy if it was in the County's best interest. Mr. Davis said the policy on Page 4, Subsection E, specifically addresses the situation mentioned by Ms. Long but only if there are substantial upgrades to current design and development standards expected in the Comprehensive Plan.

Mr. Boyd said he was going to ask the same question. He asked if Mr. Graham would like to address that question. Mr. Graham said the Board can always adjust what they expect of the applicant. At least, it sets the maximum expected to be provided.

Mr. Boyd said the Board wanted to have some flexibility depending on circumstances. Unfortunately that does not establish a hard core to go by, but it is the prerogative the Board wanted to have. Mr. Graham said that in Section "C" under "Credits", there was discussion about allowing a percentage for small increases to density; last June it was decided not to put a number to that percentage because that decision will have to be made on a case-by-case basis.

Ms. Thomas said that along with flexibility comes increasing demands on staff; Mr. Graham told her this policy might require additional staff to administer. In terms of full disclosure to Board members and the public, she asked that he discuss that at this time. Mr. Graham said he mentioned this when the Board was considering the Biscuit Run request. Their proffers tried to follow this policy. The administration of those proffers will create a significant burden on staff. One project unto its self probably does not justify additional resources, but if that becomes the standard for all projects, staff will need to discuss this issue with the Board in the future.

Mr. Rooker said the more the County strays from cash proffers to creative solutions for credits, the more difficult it becomes to administer the proffers. If the Board can deal with cash proffers, it will be easier for staff to monitor.

Mr. Dorrier asked if this will depend on the economic conditions existing in the next ten years. Projections for the next 10 years say transportation projects will amount to \$95.0 million. Albemarle's budgeted transportation costs come to about \$82.0 million, and this is all just based on projections. Mr. Graham said that is correct. The projections are based on what is in the current CIP. Improvements are identified in the Strategic Plan, and also the anticipated level of development.

Mr. Dorrier said, as the years go by, the Board will know if it is anywhere near projections. Mr. Graham said in earlier work sessions it was noted that this number will most likely go up as new master plans are approved. Mr. Davis said this proffer policy actually envisions an annual inflation adjustment that will be done automatically. It also includes an expectation that on an annual basis staff will bring an updated number for the Board to consider adopting based on the then approved CIP and projected CIP over that 10-year period.

Mr. Dorrier asked if the Biscuit Run proffers will change over a period of time. Mr. Davis said those proffers will only change based on the cost-of-living adjustment they proffered. In this policy, the numbers would adjust to any new development that came before the Board for consideration.

Mr. Wyant asked if Mr. Graham has a way to track when the proffers are triggered. Mr. Graham said his department uses the Microsoft ACCESS Program, which is a fairly sophisticated database program. An employee has to enter the information in the program, and then every time there is a request for a building permit there are built-in triggers for the proffers. Proffers are easier to administer when they give "x" dollars per building permit.

At this time, Mr. Rooker offered **motion** to adopt CPA-2007-04, Cash Proffer Policy for Public Facilities, to amend the Growth Management and Facilities Planning Sections of the Albemarle County Comprehensive Plan, Land Use Plan Chapter, and other appropriate sections as necessary, to incorporate expectations for addressing the fiscal impacts of development on the County's public facilities and infrastructure and to adopt a policy to address the impacts on schools, public safety, libraries, parks and transportation (the "public facilities") caused by residential development resulting from a rezoning through a voluntary cash contribution proffered by the landowner seeking the rezoning (the "cash proffer policy"). The motion was **seconded** by Mr. Slutzky. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Slutzky, Ms. Thomas, Mr. Wyant, Mr. Boyd, Mr. Dorrier and Mr. Rooker.

NAYS: None.

(Note: The CPA amendment is set out in full below.)

GROWTH MANAGEMENT AND FACILITIES PLANNING GOALS

ALBEMARLE COUNTY LAND USE PLAN

Growth Management

GOAL: Protect and efficiently utilize County resources by:

A. Emphasizing the importance of protecting the elements that define the Rural Area:

- 1) Agricultural and forestry resources
- 2) water supply resources
- 3) natural resources
- 4) scenic resources
- 5) historic and cultural resources
- 6) limited service delivery

Of these, the protection of agricultural and forestry resources is the highest priority.

B. Promoting the Development Areas as the place where a variety of land uses, facilities, and services exist and are planned to support the County's future growth, with emphasis placed on infill development.

Introduction

(As Amended July 10, 2002)

The County's primary growth management goal directs development into designated areas and conserves the balance of the County for rural areas and resource protection. Resource protection is the basic theme behind the County's growth management approach. To this ongoing theme are added new emphases on intelligent use of Development Areas, public facilities and resources. Thus, planning efforts aim to channel growth into designated areas to facilitate economical service delivery in those areas, to promote a sense of neighborhood-style development as the preferred design in those areas, and to conserve the Rural Areas.

Planning efforts also focus on means to discourage development in the Rural Areas and support activities consistent with the character of the Rural Areas. This is accomplished through education, incentives, and voluntary and regulatory measures. Agricultural and forestal resources have been identified as the most critical County resources and the desired primary land use in the Rural Area. Such uses play an important and long standing role in the environment, heritage, and economy of the County. Loss of these resources to development is irreversible and irreplaceable. Maintenance of these resources also provides an opportunity to conserve and efficiently use other resources such as: (1) water resources (with use of property conservation techniques); (2) natural, scenic, and historic resources with the maintenance of pasture land, farmland, and forested areas; and, (3) fiscal resources by limiting development and lessening the need to

provide public services to wide areas of the County. In the interest of this growth management strategy, residential development is considered a secondary use in the Rural Areas.

It is important that this and future Comprehensive Plans make adjustments that can influence development patterns to better meet the growth management goals. Such adjustments can include more active County support of Development Areas development, adjustments to location and/or holding capacity, and additional protective or support measures for the Rural Areas. This plan emphasizes the County's role in providing necessary new and amended ordinances, regulations, support services and infrastructure for development, and more efficient use of Development Areas, including more urban and pedestrian oriented development styles. It must be recognized that the desired increased densities in the Development Areas will also require an increased commitment by the County for public infrastructure improvements. It must also be recognized that provision of infrastructure that successfully implements the Development Areas is highly dependent on the availability of adequate funding from a variety of sources. Traditionally such infrastructure has been programmed in the County's Capital Improvements Program (CIP) and funded primarily through County property taxes on a pay as you go basis. But the scale and scope of the impacts of new development on this infrastructure necessitate greater financial participation by new development in addressing these needs. Furthermore, the provision of infrastructure that is more concurrent with needs may be best realized through longer term debt that utilizes the excellent bond rating of the County and can be financed through property taxes and funding commitments from new development.

Facilities Planning

GOAL: Strongly support and effectively implement the County's growth management priorities in the planning and provision of transportation infrastructure, public facilities and public utilities.

Introduction

Residents of the County expect high quality facilities and services. It is recognized that the provision of such facilities and services significantly affects the location, timing, and extent of development.

By their very nature, public facilities are capital-intensive, requiring significant funding not only for the initial development of the facility, but also for its continual maintenance and operation. It is becoming increasingly difficult for communities to find adequate fiscal resources to pay for new or improved facilities, as well as maintenance of existing facilities. Therefore, to provide facilities in a fiscally responsible and equitable manner, adequate planning is necessary to ensure that the highest benefit is provided to the citizens in exchange for the cost required to provide the service. The policies, objectives, and strategies presented in this chapter outline an active process to assure this success.

The Nature of Public Service Delivery (As Amended July 10, 2002)

The County's growth management goals are to be supported through the appropriate provision of transportation, public utilities, and public facilities and services to designated Development Areas. The provision of fire, rescue, and police protection, roads, utilities, school bus service, and other governmental activities and functions to a large, dispersed rural population is viewed as inefficient and contrary to the overall public interest in guiding new development to the designated Development Areas.

Emphasis is placed on providing a level of public service delivery that will support development in, and direct development to, designated Development Areas. To accomplish this, service and facilities will be provided at a much higher level in the Development Areas than in the Rural Areas. Those persons living in the Rural Areas should not anticipate levels of public service delivery equal to services provided in the Development Areas.

Capital Improvements Program

The Capital Improvement Program (CIP) serves as the major financial planning guide for County expenditures towards capital facilities and equipment over a five-year period. It is primarily based on the physical needs of the County as identified in the Comprehensive Plan. It is one of the primary tools used to implement the Comprehensive Plan. Albemarle County adopted its first CIP on March 5, 1978. The CIP is reviewed annually by the Planning Commission, as authorized by Virginia Code § 15.2-2239, and is approved by the Board of Supervisors.

The CIP establishes a five-year funding schedule for the purchase, construction or replacement of the physical assets of the community. A capital project typically requires a minimum expenditure of \$20,000 and has a useful life of a minimum of ten years. County departments and affiliated agencies initiate their capital project requests, which span the five-year period of the CIP. A CIP Technical Committee reviews all requests. Recommendations are then made by this Committee to the Planning Commission, which subsequently makes its recommendation to the Board of Supervisors for adoption as part of the County's budget.

In conjunction with the CIP process, the County develops a comprehensive long-range capital needs assessment that forms the basis for the county's five-year capital improvement plan. This ten-year needs assessment is updated every other year as part of the CIP process when departments are asked to submit capital requests spanning a ten-year planning period.

Impact of Development on Public Facilities

The CIP and capital needs assessment are a function of both the desire to provide facilities that support and implement the County's Comprehensive Plan and the need for such facilities in response to the impacts of new development. As such, the funding necessary to support this program must be a shared obligation of the County and new development creating the impacts. In an effort to determine how to appropriately and equitably pay for the cost of growth to the County, the County Board of Supervisors directed the County's Fiscal Impact Advisory Committee (FIAC) to analyze the fiscal impacts of development on the County's public facilities and infrastructure and make recommendations as to the appropriate cash proffers to offset these impacts. On May 2, 2007, the Board accepted the cash proffer methodology recommended by the FIAC to calculate the impacts of residential development resulting from re-zonings on a per-dwelling unit basis. With the exception of affordable housing, there is an expectation that all new re-zonings that include residential development will pay for the equivalent of their full impact as determined by the cash proffer methodology and as implemented pursuant to the County's cash proffer addendum to the Comprehensive Plan (see Appendix B: ALBEMARLE COUNTY, VIRGINIA CASH PROFFER POLICY FOR PUBLIC FACILITIES).

* * *

COUNTY OF ALBEMARLE, VIRGINIA CASH PROFFER POLICY FOR PUBLIC FACILITIES

A. General

1. Authority: Virginia Code § 15.2-2303 enables the County to accept proffers as reasonable conditions to address the impacts resulting from a rezoning. This authority includes the authority to accept cash contributions to address impacts to public facilities generated by new residential development.
2. Policy: It is the policy of the County to require that the owner of property that is rezoned for residential uses to provide cash proffers equivalent to the proportional value of the public facilities deemed necessary to serve the proposed development on the property. Accordingly, the Board will accept cash proffers for rezoning requests that permit residential uses in accordance with this policy. However, the Board may also accept cash, land or in-kind improvements in accordance with County and State law to address the impacts of the rezoning.
3. Reasonableness: This cash proffer policy must meet a "reasonableness" test, which requires the Board to determine for each rezoning whether the amount proffered is reasonably related both in nature and extent to the projected impacts of the proposed development on public facilities. Through this policy, staff will recommend a maximum cash proffer in each case that meets this test of reasonableness.
4. Public facilities covered by this policy: The following public facilities will be funded by cash proffers: schools, transportation, parks, libraries and public safety. The County does not currently calculate a cash proffer value to fund public facilities such as water and sewer improvements, jails, landfills and other government facilities.

B. Maximum Per Unit Cash Proffer Amount

1. Maximum: The maximum cash proffer that the Board will accept for public facilities from residential rezoning applicants is \$17,500.00 per SFD; \$11,900 per SFA/TH; and \$12,400 per MF unit, to be adjusted annually without any further action by the Board according to the most applicable Marshall and Swift Building Cost Index, as determined by the Director of Community Development, and as expressly provided in the proffer statement.
2. Annual adjustment: Adjustments to the cash proffer amount due to projected public facilities costs may be considered every fiscal year. Staff will re-compute net costs based on the current methodology and recommend adjustments.

C. Calculation of Per Unit Cash Proffer Amount for a Rezoning

1. General: Pursuant to this policy, staff will (i) calculate the annual net cost of public facilities; (ii) calculate the fiscal impact of a rezoning request that permits residential uses on those public facilities; and (iii) administer the collection and expenditure of the proffered funds in accordance with State law.
2. Assumptions made in calculating the cash amount: Staff determines the cost of public facilities generated by new residential development by relying on the assumption that any revenue derived from growth (residential and commercial real estate taxes, sales taxes, fees, etc.) will pay the normal operating costs for services to residents of new developments and a percentage of the County's Capital Improvements Program (CIP).

3. Determining number of dwelling units in rezoning: A rezoning's impact on public facilities will be evaluated based on the gross number of proposed dwelling units. When calculating the gross number of dwelling units, staff will:

- a. Use the upper end of the density range allowed by the rezoning.
- b. Not give credits for those dwelling units permitted under existing zoning regulations (except as provided in sections C(6)(c) and (e)) or on agricultural lots, and will not consider the transferring of allowable units from other properties.
- c. Exclude dwelling units qualifying as affordable housing under the County's definition of affordable housing.

4. Use of averages: In determining the net cost per dwelling unit of a public facility, staff relies on countywide averages, where possible. For certain public facilities, staff relies on averages established for geographic service areas or districts established in the County.

a. Parks, libraries and public safety facilities: Since parks, libraries, and public safety facilities serve the entire County, the geographic service districts for these facilities are determined to be countywide. Rezoning requests will be analyzed on a countywide basis to determine impacts on these facilities and proffers may be spent to fund these facilities countywide.

b. Schools: The impacts of a residential development on schools will be analyzed on a district basis to determine impacts on schools. In order to ensure that the cash proffered by an applicant is used to fund the public facilities impacted by or required for the development, the County is divided into three geographic service districts corresponding to the attendance zones of high schools. District 1 corresponds to the attendance zone for Albemarle High School, District 2 corresponds to the attendance zone for Western Albemarle High School, and District 3 corresponds to the attendance zone for Monticello High School. Funds collected from a development within a District will be spent on school improvements within that District or for any school improvement that provides relief for the District the development is in.

c. Transportation: With respect to transportation, the fiscal impact of rezoning requests will be analyzed on a countywide basis, with cash collected from a rezoning expended on transportation projects in the County's Comprehensive Plan and associated Master Plans, CIP/CNA, Strategic Plan, or VDOT Six Year Improvement Plan that relate to the impacts resulting from the rezoning.

5. Consideration of demand, service level and cost: In addition to the use of averages, staff will consider the four "components" involved in calculating what a new dwelling unit will cost the County in terms of providing public facilities. These components are as follows:

a. Demand generators: Staff uses the average for single family detached (SFD), Single Family Attached / Townhouse/Condominium (SFA/TH) and Multi-Family/Apartment (MF) to determine the number of persons per dwelling unit, the number of students per dwelling unit (for elementary, middle and high schools) and the number of daily vehicle trips per dwelling unit to calculate demand generators (population, population portion of population plus jobs, pupils, and daily vehicle trips) associated with a new dwelling unit.

b. Service levels: Staff assumes that the public facilities contained in the County's CIP/Capital Needs Assessment (CNA) and Strategic Plan will accommodate ten years' worth of new development in a manner that will maintain present levels of service. Service levels are calculated on a per-person, per-pupil, and per-daily vehicle trip basis. (Service levels are calculated annually).

c. Gross cost of public facilities: Staff calculates the gross cost of public facilities. The term gross cost is used because a credit (described in C(5)(d) below) for anticipated future revenues from a new dwelling unit will be applied against the gross cost. For example, to calculate the gross cost of park facilities, the average persons per dwelling unit is multiplied by the County's per-capita CIP/CNA/Strategic Plan amount for park facilities.

d. Net cost: Staff calculates the net cost per public facility or maximum cash proffer. This is the gross cost [(C)(5)(c)] per public facility minus the applicable credit [(C)(6)] per public facility.

6. Credits: Staff calculates a credit to apply against the gross cost for each public facility. The County has issued and plans to continue to issue general obligation bonds to finance the construction of public facilities. New development will generate real estate and other taxes to the County and staff assumes that a percentage of these taxes will go to help retire this debt. So that new dwelling units are not paying twice (once through payment of a cash proffer and again through real estate taxes) a credit is computed. For FY 08, that percentage is assumed to be 6%. Credits are authorized for the following:

a. Land and public infrastructure: In some cases, a rezoning applicant may wish to mitigate the development's calculated impact on public facilities by dedicating property or doing in-kind improvements in lieu of all or a portion of the cash proffer. The dedication of land

and the construction of public facilities recommended by the County's CIP or its master plans, or otherwise identified as being necessary to address the impacts resulting from the proposed development. Land and improvements that are not identified in the CIP or in a master plan should be entitled to a credit only when it is found that the proposed development creates an immediate need for the land or improvement that is better addressed by the applicant dedicating the land or constructing the improvement than by receiving the cash equivalent. Credit for transportation may be allowed for off-site land dedication or improvements, as recommended by the Department of Facilities Management.

(1) Determining value: The value of donated land generally will be based on the current assessed value of the specifically proffered property (not the assessed value of the property as a whole), not to exceed the cost per acre used in the calculation of the proffer. The value of improvements shall be the estimated cost as if constructed by a governmental entity. If the dedication or in-kind improvement does not fully mitigate the development's calculated impact on public facilities, then the dedication and/or improvement's value may be applied as a credit against the development's calculated impact on the applicable public facility.

(2) Maximum credit: The credit cannot exceed the development's calculated impact on the applicable public facility.

b. Operational expenses: Operational expenses where the Board determines that the cash contribution reduces the demand for public facilities. For example, a cash proffer for the operational expenses of public transit that eliminates the need for planned road improvements could be entitled to a credit, which would be an amount comparable to the reduction in infrastructure costs.

c. No increase or small increase in density: In rezoning applications where there is a minimal increase in density, a credit may be given for the number of residential units allowed under the existing zoning and the cash proffer amount will be based only on the estimated density increase resulting from the rezoning. This credit may be allowed only for those rezoning applications where the rezoning seeks the design flexibility allowed by the Neighborhood Model zoning district or seeks to amend a prior rezoning with no increase in density. The credit should not be allowed if the rezoning application seeks to increase density in a conventional, rather than a planned, zoning district.

d. Small infill development with existing dwellings: In rezoning applications for small infill developments, a credit may be given for each existing dwelling that will remain. For example, if a rezoning application would rezone a lot with an existing house to allow three lots, only two new lots would be created allowing two new dwelling units. If the existing dwelling unit will remain after the rezoning, the cash proffer policy should apply only to the two new dwelling units.

e. Substantial upgrades to design/development standards: The Board may consider development proposals that include substantial upgrades to current design/development standards and ordinance requirements as justification for granting a credit to the pre-existing lot yield. Pre-existing lot yields will be calculated using average actual recorded lot yields provided the applicant has not otherwise submitted documentation indicating higher lot yields in conformance with existing ordinances and reflective of site specific physical features.

f. Unique circumstances: The County considers any unique circumstances about a proposed development that: (i) mitigate the development's projected impact on public facilities; and (ii) create a demonstrable reduction in capital facility needs. Unique circumstances may include, but not be limited to, such projects like an age-restricted housing project. Staff, the applicant or any other person may identify such mitigating circumstances.

7. Applicable policy: A rezoning's fiscal impact on public facilities shall be established under the cash proffer policy in effect on the date of the last public hearing prior to the Board of Supervisors' decision on the rezoning.

D. Timing of Contribution and Expenditure of Cash Contributed

1. Timing: Payment of the cash proffer for residential development must occur prior to release of a building permit. Timing for dedication of property or in-kind improvements should be specified in the proffer.

2. Expenditure: The cash contributions shall be expended in accordance with State law. Cash contributions received under this policy must be used for projects identified in the Comprehensive Plan and associated Master Plans, CIP/CNA, and/or Strategic Plan. For public facilities having a countywide service area (parks, libraries and public safety), the cash contribution may be spent countywide.

(Note: At 5:16 p.m. the Board recessed and reconvened for the regular meeting at 6:00 p.m.)

Agenda Item No. 6. Call to Order. The regular meeting was called to order at 6:03 p.m. by the Chairman, Mr. Boyd.

Agenda Item No. 7. Pledge of Allegiance.
Agenda Item No. 8. Moment of Silence.

Agenda Item No. 9. Recognition: Proclamation recognizing October 15 through October 19, 2007, as Teen Driver Safety Week.

Mr. Boyd read the proclamation into the record and then presented same to Mr. Gary Albert, State Farm Insurance Company Agent. The proclamation reads:

Teen Driver Safety Week

- Whereas,** motor vehicle crashes are the leading cause of death for adolescents and young adults in the United States, and many of these deaths are preventable; and
- Whereas,** almost 7,500 drivers between the ages of 15 and 20 years were involved in fatal crashes in 2005 throughout the United States; and
- Whereas,** the fatality rate in the United States for drivers between the ages of 16 and 19 years, based on miles driven, is 4 times the fatality rate for drivers between the ages of 25 and 69 years; and
- Whereas,** the majority of teen driver crashes in the United States are due to driver error and speeding, and 15 percent of the crashes are due to drunk driving; and
- Whereas,** roughly two-thirds of the teenagers killed in motor vehicle accidents in the United States each year do not use seatbelts; and
- Whereas,** approximately 63 percent of teen passenger deaths in the United States occur while other teenagers are driving; and
- Whereas,** it is necessary to explore effective ways to reduce the crash risk for young drivers by focusing research and outreach efforts on areas of teen driving that show the most promise for improving safety; and
- Whereas,** the National Teen Driver Survey, developed with input from teenagers and administered by The Children's Hospital of Philadelphia, demonstrates a national need to increase overall awareness about the safe use of electronic handheld devices, the risk of nighttime and fatigued driving, the importance of consistent seatbelt use, and the practice of gradually increasing driver privileges over time as a young driver gains more experience under supervised conditions; and
- Whereas,** in 2005, 1,553 crash fatalities involving a teen driver occurred in the fall, when teenagers are in the first months of the school year and faced with many decisions involving driving, including whether to drive with peer passengers and other distractions; and
- Whereas,** designating the third week of October as **Teen Driver Safety Week** is expected to increase awareness of these important issues among teenagers and adults in communities throughout the United States, as additional research is conducted to develop and test effective interventions that will help teenagers become safer drivers;
- Now, Therefore, Be It Resolved,** that the Albemarle County Board of Supervisors does hereby support the goals and ideals of **National Teen Driver Safety Week** and encourages the residents of Albemarle County to observe the week with appropriate activities that promote the practice of safe driving among the state's licensed teenage drivers.
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Agenda Item No. 10. From the Board: Matters Not Listed on the Agenda.

Mr. Wyant handed to the Board members copies of a petition containing 1,771 signatures of residents in support of retaining the porches on the La Cocina del Sol/Modern Barber Building in Crozet.

Agenda Item No. 11. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Ms. Pat Cook said she lives at 832 Mallside Forest Court. She is present tonight with people from the IMPACT group. She is well educated and worked from the age of 15 to the age of 66. She and her husband retired to another state, had a nice income, but unfortunately she had a medical catastrophe that put her in a nursing home for seven and one-half months. She was not eligible for Medicaid because of their income. Her children brought her here so she could get better medical care. She was happy to see

there was affordable housing being built in Albemarle County, but shocked to learn that it cost \$240,000. There is nothing available to someone who now has an income of about \$25,000. Even with help from her children she could not afford a house here. She considers herself lucky to live where she does. Her apartment is in a restricted income apartment complex. She has a two-bedroom apartment which costs \$800.00 per month. She is still a valuable member of the community volunteering and is active in her church. She said there is a need for affordable housing in the community. She is happy the Board has created a City/County/UVA task force to address this problem. She came to urge the Board to put aside moneys in next year's budget to implement an affordable housing plan.

Mr. Tom Toomey said he was speaking on behalf of IMPACT. He thanked the Board for putting together a task force to begin to address the problem of affordable housing. He knows that in the Planning District that out of the 6,000 people making less than \$20,000 per year, there is a deficit of 4,000 housing units. He has heard that by 2010 there will be an additional 10,000 renters in the area. If the situation is not addressed now, it will only get worse. He encourages the Board to get money in the budget this year to begin to address the 150 housing units IMPACT has requested.

Agenda Item No. 12. Consent Agenda. **Motion** was offered by Mr. Slutzky, **seconded** by Mr. Rooker, to approve the Consent Agenda as presented. Roll was called, and the motion carried by the following recorded vote:

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

Item 12.1. Approval of Minutes: November 1, 2006 and April 4, 2007.

Mr. Boyd had read the minutes of November 1, 2006, Pages 1 through 17 ending at Item No. 11, and found them to be in order as presented.

Mr. Dorrier had read the minutes of April 4, 2007, Pages 1 through 18 ending at Item No. 9, and found them to be in order as presented.

Mr. Slutzky had read the minutes of April 4, 2007, beginning at Item No. 9 on Page 18 to the end and found them to be in order as presented.

By the recorded vote set out above, these minutes were approved.

Item 12.2. Amendment to Commission on Children and Families (CCF) Agreement.

It was noted in the Executive Summary that on August 6, 2007, City Council appointed the City's Director of Budget and Performance Management as the City's representative on the Commission on Children and Families (CCF) in lieu of an Assistant City Manager serving as the City representative. The current City/County operational Agreement for this Commission stipulates that an Assistant City Manager serve on its governing body. The City Manager is requesting that the Agreement be amended to allow him the flexibility to appoint a senior level staff designee to represent the City rather than only an Assistant City Manager.

The City is requesting that the CCF Agreement regarding City representation be amended to provide that flexibility. Both the City and County are required to approve this amendment for it to be effective. Staff recommends that the Board approve the amendment of the operational Agreement and authorize the Chairman of the Board to execute an Agreement to replace the existing July, 2006 Agreement regarding the Commission on Children and Families.

By the recorded vote set out above, the Board authorized the Chairman to execute the following amended Agreement to replace the July, 2006 Agreement regarding the Commission on Children and Families.

**AGREEMENT BETWEEN THE
ALBEMARLE COUNTY BOARD OF SUPERVISORS
AND THE CHARLOTTESVILLE CITY COUNCIL ON
THE COMMISSION ON CHILDREN AND FAMILIES**

The Albemarle County Board of Supervisors (the "County") and the Charlottesville City Council (the "City") agree to join together to form the Commission on Children and Families (the "Commission") whose sole responsibility shall be to plan, coordinate, monitor and evaluate a community wide system of children and family agencies. The intended goal of the Commission is to improve services to children, youth and families, to be accountable for the efficient use of public/private resources and to be responsive to the changing needs of the community. In doing so, we agree to the following:

- 1) With respect to the STRUCTURE OF THE COMMISSION, the City and the County agree that:

- a) The Commission shall consist of twenty-eight voting members. Eleven of the voting members shall be citizen representatives ("Citizen Members"): five appointed by the County, five appointed by the City and one jointly appointed private service provider. Of the eleven citizen members, at least one appointee from each jurisdiction must be a parent, and at least one appointee from each jurisdiction must be a youth under the age of eighteen years at the time his or her appointment takes effect. Fourteen of the voting members shall be as follows ("Agency Members"): the School Division Superintendent from both the City and the County; one elected School Board member from both the City and the County; the Director of the Department of Social Services from both the City and the County; the Chief of Police from both the City and the County; the Director of Parks and Recreation from both the City and the County; the Director of the Sixteenth District Court Services Unit; the Director of the Thomas Jefferson Health District; the Director of Region Ten Community Services Board; a representative of the University of Virginia; an Albemarle Assistant County Executive; a City representative that represents senior management/leadership, as designated by the City Manager; and the President of the United Way – Thomas Jefferson Area.
 - b) Terms of Appointment. Each Citizen Member of the Commission shall be appointed for a term that shall expire three years from the first day of July of the year of appointment, except the youth Citizen Members shall be appointed for a term that shall expire one year from the first day of July of the year of appointment. With the exception of the private service provider representative, each Citizen Member shall be eligible for reappointment to one additional term of the same length as the initial appointment. The private service provider shall not be eligible for reappointment to a second term. Notwithstanding the foregoing, any Citizen Member, including the private service provider, who is initially appointed to fill a vacancy, may serve an additional successive term. Appointment shall be staggered for continuity. Each Agency Member of the Commission shall serve for as long as they hold their public office or until replaced by the appointing authority.
 - c) Manner of Appointments. The City and/or County shall appoint the specific individuals representing that locality who will serve on the Commission, unless the member is solely designated by his position or office, and by identifying the date upon which that individual's appointed term will expire, if applicable. The representative of the University of Virginia will be jointly appointed by the City and the County.
- 2) With respect to the RESPONSIBILITIES OF THE COMMISSION, the City and the County agree that the Commission shall:
- a) Adhere to the responsibilities of the Community Policy and Management Team set forth in the Virginia Code Section 2.2-5200 et seq.;
 - b) Provide comprehensive short and long range planning for children and family services within the Charlottesville/Albemarle community;
 - c) Make program and funding recommendations to the City and County governing bodies within the budgetary procedures and guidelines set by each jurisdiction;
 - d) Review and evaluate current service delivery systems to ensure that the needs of children and families are being met effectively and efficiently;
 - e) Identify and encourage new and innovative approaches to program development for children and families;
 - f) Identify additional public and private funding sources for children and youth programs;
 - g) Participate in the yearly evaluation of the director of Commission staff;
 - h) Provide structured opportunities for community input and participation on the needs of families, e.g. public hearings workshops focus groups and work teams;
 - i) Provide an annual report to the Board of Supervisors and City Council to insure that the County and City are in agreement with the policy and direction set by the Commission.
- 3) With respect to STAFFING OF THE COMMISSION, the City and the County agree that:
- a) Staff will be hired, supervised and evaluated as mutually agreed upon by the City and the County with assistance and input from the Commission;
 - b) Staff will be employees of the County of Albemarle subject to all personnel policies and entitled to all its benefits; provided, however, that one current CCF

employee will remain a City employee, subject to all City policies and benefits, until his retirement.

- 4) With respect to FUNDING OF THE COMMISSION, the City and the County intend to:
 - a) Provide an annual contribution as mutually agreed upon for the operation of the Commission;
 - b) Direct the Commission on Children and Families to actively seek funding for children and family projects from other sources, including public and private grants, local service groups and the business community;
 - c) Pool all Comprehensive Services Act (CSA) administrative funds for the operations of the Commission. Each jurisdiction will continue to provide the required matching funds for CSA services according to the state formula subject to annual appropriation;
 - d) The County of Albemarle will provide fiscal and legal services to the Commission for an administrative fee equal to one percent (1%) of the Commission's operating budget for a period of five (5) years beginning January 1, 2007. At the conclusion of the five year period the City and County will negotiate a fiscal agent fee consistent with the fee charged for other joint City – County agencies.

Agenda Item No. 13. **Public Hearing:** ZMA-2006-00015, Glenmore – Livengood (Signs #26 & 30).

Proposal: Rezone 32.24 acres from RA - Rural Area zoning district which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) to PRD - Planned Residential District - residential (3-34 units/acre) with limited commercial uses to allow for 43 dwelling units. This proposal is an expansion of the Glenmore PRD and does not include commercial uses. Proposed density is 1.4 units per acre.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses.

Entrance Corridor: No.

(Notice of this public hearing was published in the Daily Progress on September 24 and October 1, 2007.)

Ms. Elaine Echols presented the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. She said this is an addition to the Glenmore Planned Residential District. She then showed a map featuring the Glenmore development and the Livengood parcel. They propose up to 43 single-family detached dwelling units on 32 acres. It is to be part of the gated community at Glenmore. The Planning Commission recommended approval of this petition, but left some items that needed to be addressed; those have been addressed since that meeting.

Ms. Echols said factors favorable to the request are: It provides greater density than the existing Glenmore development; the applicant has reserved area for a future vehicular connectivity option; the applicant has provided roughly 1.5 acres of shared and usable open space in the form of a common green and an additional 11 acres in common area; the cash proffers meet the Board's expectations; and, the affordable housing proffers meet County policy. She said there are no affordable units proposed; cash is proposed. The Housing Director said this approach is suitable due to the nature of this community.

Ms. Echols said staff found no factors which were unfavorable to this request, but there was one outstanding issue the applicant was to work out with the Glenmore Homeowners' Association. The Commission did not ask for a proffer of money for the Homeowners' Association so they could do some pedestrian and other improvements to help them deal with the impacts of this new portion. She has not seen it but heard that the agreement had been worked out and signed; there are citizens present tonight who can address this question.

Ms. Echols said the final proffers were laid on the table earlier tonight. Those revised proffers deal with the dates of some plans. The proffers are dated October 9, 2007. She said staff and the Commission recommended approval of the rezoning with the Application Plan dated September 10, 2007, and the proffers dated October 10, 2007, signed October 9, 2007. In the staff report there is a reference to the need for waivers. That should not have been in the staff report; the only waivers needed were Subdivision Ordinance waivers and a critical slopes waiver and the Commission has already approved them. She then offered to answer questions.

With no questions for staff at this time, Mr. Boyd asked the applicant to speak.

Mr. Don Franco with KG Association was present to represent Glenmore Associates and present the plan. He said the plan was introduced to the public about 12 months ago. Since that time they have held "town hall" meetings with the residents of Glenmore and adjacent property owners, and held work sessions and a public hearing with the Commission. He said they have the support of the GCA and the Planning Commission for approval of their plan. He offered to answer questions.

At this time, Mr. Boyd opened the public hearing.

Ms. Terry Kent said she lives in Glenmore. She is concerned about overall growth, specifically the density proposed. She will speak in broad terms first. She would like the County to fully implement the Rural Area Protection Plan that was approved in 2005. She said three of the six members of the Board refused to support two key proposals, phasing and clustering. She would like to see greater emphasis on green space in the County, even in the designated Growth Areas. She attended one of the Rivanna Village meetings and everyone at her table was interested in seeing a trail from the Rivanna Village to Pantops. She would also like to see the County become more of a leader in energy conservation and water conservation. She said it has been 90 degrees this past week, and the County is in a serious drought, so the citizens of the County need to change their behavior. She would like to see the County support the Cool Counties Initiative. Then she spoke about the density proposed for this request, feeling it is too great.

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

Mr. Dorrier said it appears that the applicant has complied with County requirements, so he will **move** to approve ZMA-2006-015 subject to acceptance of the applicant's proffers dated October 10, 2007, signed October 9, 2007, and the amended Application Plan dated September 10, 2007.

Mr. Rooker **seconded** the motion. He said the density recommended in the Comprehensive Plan for this area is three to six units per acre, so this density is less than one-half of the lower range in the Plan. He thinks the density is appropriate because it affects the surrounding neighborhood and will become a part of the Glenmore development.

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

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

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

PROFFER FORM

Date: October 10, 2007

ZMA # 2006-015

Tax Map and Parcel Number(s) Tax Map Parcel 94-1 and 80-48

32.24 Acres to be rezoned from RA to PRD

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property from the RA to the PRD zoning district as requested, the Owner shall develop the Property in accord with the following proffered development conditions (each, a "Proffer," and collectively, the "Proffers"), which the Owner acknowledges are reasonable, pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. If rezoning application ZMA 2006-015 is denied, these proffers shall immediately be null and void and of no force and effect.

This Proffer Statement shall relate to the Application Plan entitled "Master Plan, Glenmore", dated November 2, 1990, and prepared by Clower Associates, Inc., the Application Plan entitled "Glenmore Planned Residential Development Application Plan for ZMA 99-016, dated April 12, 2000, and more specifically the plan entitled, "Glenmore Section S-5 Rezoning Plan", dated May 10, 2007, last revised September 10, 2007, and prepared by Roudabush, Gale, and Associates, Inc.

1. The development of the Property shall be limited to those uses allowed by right under Section 19.3.1 (1), (5), (6), (7), (8), (9), (10) and (11) and those uses allowed by special use permit under Section 19.3.2(2), (4), (8), (9), (10) and (11) of the Zoning Ordinance of Albemarle County, Virginia (hereinafter referred to as the Zoning Ordinance) as that Section is in effect on October 10, 2007, a copy of which is attached hereto. The residential development on the Property shall not exceed forty-three (43) single family units. These forty-three (43) single family dwelling units are in addition to, and not counted as part of, the eight hundred thirteen (813) units authorized in Glenmore RPD by ZMA 99-016.
2. To offset public expenditure on Capital Improvement Projects, the Owner shall contribute seventeen-thousand five-hundred dollars (\$17,500) in cash for each dwelling lot on the Property for the purposes of funding transportation, public safety, school, parks and library improvements. The per lot cash contribution shall be paid to Albemarle County prior to the issuance of a building permit for each lot.
3. To provide capital for Albemarle County's Affordable Housing Program, the Owner shall contribute two-thousand six-hundred sixty-five dollars (\$2,665) in cash for each dwelling lot on the Property. The per lot cash contribution shall be paid to Albemarle County prior to the issuance of a building permit for each lot.
4. Beginning January 1, 2008, the amount of cash contribution required by Proffer number 2 shall be adjusted annually until paid, to reflect any increase or decrease for the preceding

calendar year in the Comparative Cost Multiplier, Regional City Average, Southeast Average, Category C: Masonry Bearing Walls issued by Marshall Valuation Service (a/k/a Marshall & Swift) (the "Index") or the most applicable Marshall & Swift index determined by the County if Marshall & Swift ceases publication of the Index identified herein. In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the year preceding the calendar year most recently ended, and the denominator of which shall be the Index as of December 1 in the preceding calendar year. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

(Signed) Robert D. Livengood Robert D. Livengood 10/9/2007
Signatures of All Owners Printed Names of All Owners Date

(Signed) Carolyn S. Livengood Carolyn S. Livengood 10/9/2007
Signatures of All Owners Printed Names of All Owners Date

(Note: The following three ordinances were heard concurrently.)

Agenda Item No. 14. **Public Hearing: WPTA-2007-00001, Water Protection Ordinance;** applicability of erosion impact area; agreements in lieu of plans; stream buffers on other rural land. Amend Sections 17-104, Definitions, Sec. 17-200, Applicability, Sec. 17-317, Duty to retain or establish stream buffers, and Sec. 17-321, Types of development which may be allowed in stream buffer by program authority, of Chapter 17, Water Protection, of the Albemarle County Code. This ordinance would amend the definition of "perennial stream" and add a definition of "rural areas" (Sec. 17-104); would clarify the chapter to expressly make activities otherwise exempt from erosion and sediment control regulations subject to such regulations if an erosion impact area is determined to exist (Sec. 17-200); would require that development on "other rural land" comply with the same stream buffer requirements as development in water supply protection areas by making those requirements applicable to intermittent streams in addition to perennial streams and non-tidal wetlands contiguous thereto (Sec. 17-317); and would allow development within a stream buffer on other rural land, subject to a mitigation plan, only under certain prescribed circumstances (Sec. 17-321).

(Notice of this public hearing was published in the Daily Progress on September 24 and October 1, 2007.)

Agenda Item No. 15. **Public Hearing: ZTA-2007-00003, Zoning Ordinance; critical slopes; safe and convenient access.** Amend Sec. 4.2.3, Location of structures and improvements, Sec. 4.2.6, Exemptions, and Sec. 4.6.6, Lot access requirements, and repeal Sec. 4.2.4, Location of septic systems, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 4.2.3 by reorganizing the section and, for each structure for which a permit is required or an improvement shown on a site plan or subdivision plat, or a septic system, driveway or other improvement associated with a required permit: requiring on a lot in all zoning districts that each structure and improvement be located within an approved building site or on slopes determined by the county engineer to be slopes of less than 25%, prohibiting on a lot in the rural areas zoning district the disturbance of slopes of 25% or greater ("critical slopes") in order to establish or maintain a street or driveway, deleting the exemption for fill and waste activities on critical slopes, authorizing the county engineer to waive the section's requirements in specified circumstances and establishing an appeal procedure related thereto, establishing a procedure by which a landowner could establish that slopes are not critical slopes, and defining "land disturbing activity" for purposes of Sec. 4.2.3; would repeal Sec. 4.2.4, which was a directive that the Dept. of Health be mindful of the intent of Sec. 4.2 and to discourage siting septic tanks and drain fields on slopes of 20% or greater; would amend section 4.2.6 by eliminating the conditional exemption for lots within the rural areas zoning district allowing the disturbance of critical slopes to establish accessways (including streets, driveways and alleys) and stormwater management facilities, and prohibiting on lots in the rural areas zoning district public utility lines and appurtenances and any other necessary public facilities to be located outside of the building site and/or on critical slopes unless the landowner demonstrated that no other reasonable alternative location or alignment existed; and would amend Sec. 4.6.6 by establishing vehicular access requirements (minimum standards for driveway grade, width, distance from dwelling unit, clear zone) for lots in the rural areas zoning district to assure that safety vehicles have safe and reasonable access to dwelling units, authorizing the county engineer to waive the driveway grade standard under prescribed criteria, and exempting lawful lots of record existing on the date of the amendment of this section from the minimum driveway standards for the first single family dwelling on the lot.

(Notice of this public hearing was published in the Daily Progress on September 24 and October 1, 2007.)

Agenda Item No. 16. **Public Hearing: STA-2007-00002, Subdivision Ordinance; family divisions; contour intervals; individual lot grading.** Amend Sec. 14-212, Family subdivisions; conditions of approval, and Sec. 14-302, Contents of preliminary plat, of Chapter 14, Subdivision of Land, of the Albemarle County Code. This ordinance would require that the lands from which lots are created by family subdivision be held by a member of the immediate family for 15 years, which may be required before or after subdivision, and recordation of a restrictive covenant prohibiting transfer of the lot to a non-

family member for such period (Sec. 14-212); and would amend the contour intervals at which topography must be shown on a preliminary subdivision plat and require that, in the rural areas zoning district the preliminary subdivision plat include the proposed grading showing all individual lot grading, including access, clearing and all other lot improvements (Sec. 14-302).

(Notice of this public hearing was published in the Daily Progress on September 24 and October 1, 2007.)

Mr. Mark Graham, Director of Community Development, said there are three ordinances before the Board tonight which carry out part of the County's Rural Area Strategies that are part of the Strategic Plan, and also deal with the Water Resources part of the Plan.

Mr. Graham said he will first discuss the Water Protection Ordinance, and then the Zoning Ordinance change which deals with critical slopes and safe and convenient access. He will then turn the presentation over to Mr. Glen Brooks, County Engineer, who will discuss critical slopes and why protection is important. Finally, he will discuss the Subdivision Ordinance text and then Ms. Joan McDowell will discuss the family subdivision provisions.

Mr. Graham said there are three changes in the Water Protection Ordinance; the definition of "perennial stream" is being updated to match guidance from the Chesapeake Bay Local Assistance Department to insure consistency with State regulations. It is important to note that the Water Protection Ordinance Stream Buffer Program is authorized as part of the Chesapeake Bay Preservation Act. Second, it clarifies erosion impact areas to insure consistent treatment of erosion problems found in both development and rural areas. Third is the most important and that is to add intermittent streams in the rural areas to the stream buffer program. That program restricts the types of disturbances that might occur next to the stream. At this time, in the Water Supply Protection Area, all the perimeter and the intermittent streams are protected that way. In the remainder of the County, all the perennial streams are covered. This amendment adds the remaining intermittent streams in the rural area to that level of protection. He then referred to a map which was shown on a screen. He said that currently within the stream buffers in the rural areas there are 1,045 stream miles covered. The other perennial streams in the rural areas account for 682 stream miles. Adding the other intermittent streams is an additional 414 stream miles, or a 24 percent increase in the amount of streams covered by the ordinance.

Mr. Slutzky asked if the Board had not recently added to the Water Protection Ordinance some areas which were not included previously. Mr. Graham noted a portion of the North Fork of the Rivanna River on the map which was added earlier in 2007.

Mr. Slutzky said when the Board did that there was no real discussion; the Board just voted to do so. Mr. Graham said that was correct. He said because the County has already been administering this with intermittent streams on approximately one-half of the County, staff thinks any issues concerning administration of the program have been worked out. It is fairly simple to administer.

Mr. Dorrier asked if this will prevent development within 200 feet on either side of a stream. Mr. Graham said it will on 100 feet on either side of a stream. He said the ordinance will allow reductions in certain circumstances. There are limitations as to a building site on a lot, etc. Nothing is being changed in that regard with this proposed amendment to the ordinance.

Mr. Wyant asked what database was used to show the intermittent streams on the maps. Mr. Graham said the U.S.G.S. mappings were used, and where "dashed" streams are shown on those maps, they were used as the intermittent streams.

Mr. Rooker asked if that were proved to be inaccurate, could a landowner have that stream removed from the map. Mr. Graham said that is a fairly routine matter, and design professionals understand how it is done. Staff will meet them in the field and the matter can be resolved right there.

Mr. Wyant, Mr. Rooker and Mr. Graham discussed for a short time the different lines on the maps and what the lines signify.

Mr. Graham said there are two provisions in the Zoning Ordinance text dealing with critical slopes. One has to do with restricting the placement of roads or driveways across critical slopes. The existing ordinance has provisions that exempt those, but it also provides that the exemption is limited to circumstances where it is necessary. He said it has been said that this new ordinance will place new restrictions on rural area land, but it actually reduces the current restrictions in a couple of circumstances. Administrative waivers have been added, things which staff can implement during normal plan review. The first waiver has to do with providing access to a dwelling unit on an existing lot. The second waiver has to do with allowing land-disturbing activities up to 2,500 square feet. For example, if the owner wanted to build a garage beside his house, but there were critical slopes in that areas, staff could grant an administrative waiver for a small disturbance that did not affect overall natural resource protection. The third waiver has to do with allowing the County Engineer to waive the disturbance when it is really necessary, such as stabilizing an erosion area. The fourth waiver will recognize circumstances where there is less impact by crossing the critical slope versus going around it. The fifth waiver is to let everyone know it will not restrict ability to farm or do forestry operations on the property. The sixth waiver will recognize that there are circumstances where there are manmade slopes. This is important when a driveway accesses onto an existing roadway.

Mr. Graham said there have been circumstances where firefighters or EMS personnel could not get to a house. Staff has tried to make sure every new house built will be assured that kind of access. This will not require anyone to go back and modify their driveway to satisfy this requirement; it is only for new development. He said this regulation would not be applied to an existing lot, only to a new lot. He said Mr. Glen Brooks would speak next about the importance of critical slopes.

Mr. Boyd said he would like to remind those in the audience who are standing that there are seats available in the balcony.

Mr. Slutzky said Mr. Graham had said the ordinance would not apply to existing lots and he asked if that means it would not include a platted two-acre lot that does not have a house built on it yet. Mr. Graham said that is correct.

Mr. Wyant asked where the 16 percent number came from. Mr. Graham said Fire and Rescue was looking for a number and felt comfortable with 16 percent which is the maximum possible slope for a public road. Currently, VDOT does not allow 16 percent slopes on public roads in Albemarle County, although they do allow them in other parts of the state.

Mr. Rooker said people have raised issues about minor improvements on property such as mailboxes, fences, etc. He understands this proposed ordinance would not prohibit the location of those minor improvements in a critical slope area. Mr. Graham said that is not correct. That is a longstanding zoning interpretation. It does not apply if things do not require a permit from the County. It is intended to cover improvements associated with the house such as a septic field, a swimming pool, a tennis court, or a garage.

Mr. Rooker said that under the existing ordinance one could not build a house on critical slopes. Mr. Graham said that regulation has been in existence for a long time. The only change is that the driveway to that building site would not be allowed to cross the critical slopes, except for the waivers.

Mr. Brooks gave some information which had been presented to the Planning Commission about why the changes are proposed. He gave a history of the subject which had been excerpted from the Board of Supervisors' minutes back as far as the 1970s. In the early 1970s the Soil & Water Conservation Service created their Soil Survey for Albemarle County; that survey categorized slopes. They did that for agricultural purposes. They defined a sloped area as being 15 to 25 percent, with any percentage over that being a severe slope. In 1975, concerns about the South Fork Rivanna Reservoir brought forth an amendment to the County's Erosion & Sediment Control Ordinance. That ordinance used the Soil Survey study and proposed a 15 percent limit on development except for utilities. During public hearings on that ordinance, 25 percent was brought up as a compromise figure. They felt 15 percent had too much impact, it was too severe. At that time people had the same concerns as have been expressed recently about the effect of this regulation on their property.

Mr. Brooks said that in the late 1970s that was carried through on applications made during rezonings. The Planning Department made various maps of critical areas that were consistent with the 15 percent slope. The term "critical slopes" first comes up in the Board's minutes in an application for the Northridge development. It refers to slopes of 15 percent, rather than 25 percent. The Commission discussed this matter and said the critical slopes referred only to septic fields. That is not clear in the Board's minutes except on the application of Ashcroft Subdivision which proposed a limit on septic fields of 25 percent.

Mr. Brooks said that in 1980 the current Zoning Ordinance was adopted with largely the language seen today. During the discussion that occurred that year Mr. Tucker said "the purpose of this revision is to reduce the amount of soil erosion to protect streams and watersheds." Another quote states: "To effectuate the Comprehensive Plan recommendation in regard to reservoir watersheds and mountainous areas" That is the first time he found a reference to mountainous areas. In the later 1980s it took a different form because there were concerns about "buildable areas." In 1989 the ordinance was slightly amended to more clearly reflect its original intent to control improvements and grading to steeper areas.

Mr. Brooks said the Zoning Ordinance was adopted in 1980 and then amended in 1989 to add a few lines. It contains things pertaining to protection of and conservation of steep slopes, public drinking water supplies and floodplain areas. He then spoke about several things regarding slopes and showed illustrations of things which have occurred due to lack of adequate regulations, one at The Rocks.

Mr. Rooker said the illustration would not have occurred without a waiver from the Engineering Department. Mr. Brooks said if an application met one of the administrative criteria, it could be approved. Mr. Graham said that is true if it were an existing lot, but if a lot were being created, staff could say it was not an appropriate lot unless a driveway could be made without crossing a critical slope.

Mr. Boyd said he thought there was language to the effect that if there were no other practical way to reach the lot, it could be approved. Mr. Graham said that applies only to an existing lot.

Mr. Brooks then showed pictures of a driveway in the rural areas where a 100-foot swath was cut out of a hillside on the way up the mountain, but the driveway itself was only 12-feet wide.

Mr. Dorrier asked if that driveway was built to public road standards or private road standards. Mr. Brooks said the road is not built to any standard. Mr. Graham said the County does not currently regulate the building of driveways; driveways are under "safe and convenient access" rules. Mr. Brooks

said this road was constructed with a building permit, but Engineering did not find out about it until after it was completed.

Mr. Wyant said the permit is for the building itself, not the driveway. Mr. Davis said an erosion control permit would be required. Mr. Brooks said the building inspector went out to inspect the house and found the roadway. An erosion control inspector was then called out and found it was not permitted.

Mr. Wyant asked if an erosion control permit was required because they were grading more than 10,000 square feet. Mr. Brooks said for most residential lots in the rural areas when there is a building permit issued an erosion control agreement is signed in lieu of an erosion control plan. It requires that the builder install appropriate erosion control measures. He said the request for a building permit only shows a house plan, it does not show a plan for land disturbance.

Mr. Boyd asked if the County could request such a plan under current regulations. Mr. Graham said it could be requested. The Board discussed this at an earlier meeting, as far as a policy change.

Mr. Rooker said there was a consensus reached among Board members on this question; staff was to stop doing agreements in lieu of plans. As a practical matter, without an Erosion & Sediment Control Plan, there is no way to tell how much clearing will take place.

Mr. Boyd said he was trying to see if there are existing ordinances in place that could prevent this from happening if the County checked it. If a new ordinance is adopted it will only mean that more checking is required. Mr. Brooks said existing ordinances require an Erosion & Sediment Control Plan, but that does not limit the amount of disturbance. The Erosion Control Plan only requires that the right methods are used for the disturbance.

Mr. Boyd asked if the original thought of the Board was to protect areas with proper erosion control, not to prevent building. That is what he thought the idea was when these discussions first began. Mr. Graham said staff heard that it was about protection of sensitive natural resources, particularly critical slopes, and to limit the disturbance associated with development on those areas. Even if there is high quality erosion and sediment control on the critical slope, the impact cannot be mitigated to as low a level as there would be with development that occurred on less sensitive lands.

Mr. Boyd said if the real intent of changes to these ordinances is to prevent that person from building on that lot that should be said upfront now. That is what he thinks staff is saying. If a person can apply for a waiver, what is the difference between that and doing more adequate checking now?

Mr. Slutzky said he does not think Mr. Boyd's statement is accurate. The purpose of the ordinance is not to prevent somebody from building a house, but to prevent somebody from doing the disturbance. If they can build the house in a way that does not disturb the critical slope, "more power to them." It is about the disruption of the ecological conditions of the site.

Mr. Boyd asked Mr. Brooks to continue with his presentation.

Mr. Brooks continued with a photo array of a driveway found by staff recently. He said it crosses a large number of critical slopes above the Reservoir in an area just off of Woodburn Road. It starts on a fairly flat area, but gets increasingly steep as it crosses the critical slopes. He said the driveway itself is not that steep, but the slopes on either side are fairly steep and most of the trees that were cut were left in a ravine.

Mr. Dorrier asked if the owner is responsible for design of the driveway. Mr. Brooks said it is usually left up to the contractor as the County has no regulations at this time affecting driveways.

Mr. Wyant asked the concern about that driveway when the drive itself does not have a steep grade. Mr. Brooks said there are portions of the drive which are very steep (exceeding the current safe and convenient access of a 16 percent maximum). He said it is a disturbance of critical slopes and is what the proposed ordinance talks about limiting. Mr. Graham said this driveway was found by staff "after the fact." There was no permit ever issued for it and there was no sediment control done on this land which lies just above the South Fork Reservoir.

Mr. Wyant asked if staff gets a plat showing the location of a home which contains no contours does staff check the GIS database. Mr. Brooks said in this particular case it was an existing parcel and there was no recent plat done. The owner probably heard about this contemplated ordinance amendment and built the driveway so they would not be limited in the future. Mr. Graham said that is ironic because this proposed ordinance amendment would exempt existing lots and allow a driveway to be built for that lot.

Mr. Boyd asked if Mr. Graham was saying the driveway could have been built under the new ordinance. Mr. Graham said because it is an existing lot they could have created a driveway. But, as part of permitting, staff would have assured there were good sediment control measures in place.

Mr. Dorrier asked how different this is than some Rural Rustic Road Projects recommended today for rural subdivisions. Mr. Graham said Rural Rustic Roads provisions deal with existing public roads. This is a driveway which is a totally different thing. "Safe and convenient access" specifies a cleared area of a width and height to show that fire trucks and other equipment can get in and out of a site. It does not specify road widths.

Mr. Wyant asked the frequency of these occurrences. Mr. Brooks said he has no way of knowing; people can build these roads and the County does not keep track of them.

Mr. Boyd said he would like to know the magnitude of the problem. Mr. Brooks said he has talked to a lot of people who have lots on steep slopes who would like to build on those lots, but they need to cross the critical slopes to access their property.

Mr. Wyant said the only way to build a road which uses the terrain under what is proposed is through a waiver. To get across a critical slope would be forbidden under this proposed ordinance. The only way to do it would be to meet one of the criteria in the waiver process. Mr. Brooks said if the property owner had an alternative site below the critical slopes, they would be asked to use that alternative site. If they wanted to build in an area above the critical slopes, they would go before the Planning Commission and ask to do that.

Mr. Rooker said he thought that was an engineering waiver. Mr. Brooks said if there was no lower area where they could build a house and they had to go through the slopes, that would be allowed through an administrative waiver.

Mr. Wyant asked about an existing ag-forest road. Mr. Brooks said if there were an existing ag-forest road, or a logging road, or a former driveway, they could improve that road and use it.

Mr. Wyant asked if that road had to be in place prior to 1980. Mr. Brooks said 1980 is when the ordinance was adopted which affects building houses and septic fields. It would be a date of the Board's choosing if it imposed a new one. He said that concluded his presentation.

Mr. Graham said the last part of the presentation has to do with the Subdivision Ordinance amendment. He said Ms. Joan McDowell would make the presentation.

Mr. Slutzky thanked staff for answering the question about where the 25 percent standard came from. He found it to be very helpful

Mr. Rooker said he had asked Mr. Davis about it, and was told that it is the standard used by many localities around the country. Mr. Graham said the soil sensitivity analysis mentioned by Mr. Brooks uses that figure. A lot of good scientific work was done to determine those erosion factors.

Mr. Wyant asked if that was based on agricultural activities. Mr. Graham said those numbers have been used by a lot of engineers for similar purposes.

Mr. Slutzky said it sounds like there was an ecological foundation to support 15 percent, but it was a political issue to compromise at 15. Mr. Graham said some localities use 15 percent; localities such as Fairfax County.

Mr. Boyd asked for an explanation of the Family Division provisions.

Ms. McDowell said it has been mentioned by the public many times that a family division is the only way to subdivide in the rural areas. She then presented a chart showing the differences between a family division and a conventional rural division. Rural divisions have more stringent requirements than a family which is intended to promote family cohesiveness. It is not intended to allow circumvention of the requirements of the ordinance, and it is not for a profit motivation. She said the existing ordinance requires ownership in the immediate family no-years before the division and two years after the division. This applies to the parent parcel and the newly-created parcel.

Mr. Boyd asked if this proposed language has been made available to the public. Ms. McDowell said that one version has been, and the other has not. The issue of family divisions originally came up during discussions of phasing and clustering because phasing and clustering exempted family divisions. This issue was also discussed with the Mountain Overlay District, which also exempted family divisions. The Board brought up the subject again and decided family divisions should be included in the overall package subject to this public hearing tonight. The Board's proposal was that it be no-years before the division, and 15 years after the division. State law now allows 15 years before and 15 years after the division. She said Alternative "A" (shown on a chart) sets it at five years before the division and five years after. The Planning Commission came up with Alternative "B" (shown on a chart) which would require the immediate family to hold the property for five years after the division as long as the entire 15 years was met. She then offered to answer questions.

Mr. Boyd noted Page 6 of an Executive Summary dated May 2, 2007. Item 6 talks about family subdivisions and it says "Staff believes the Board's consensus was to adopt ownership for five years." He said that was his recollection also. He was surprised that the Planning Commission recommended 15 years. Ms. McDowell said that report was presented at that meeting, but the Board then did something different.

Mr. Davis said that report came to the Board, but the Board's direction was to go to the Planning Commission with an ordinance that would create a 15-year holding period after the date of the recordation of the family subdivision. The Commission modified that direction. Staff's original recommendation was a five-year holding period before, and a five-year holding period after. His office has drafted a third alternative which was the staff's original alternative, so there are now three alternatives before the Board.

Mr. Dorrier asked if these alternatives are based on any analysis. How did staff arrive at five versus 15? Ms. McDowell said the five came from a discussion held at staff level with phasing and clustering before the State allowed the 15. There are a variety of counties which have no provisions; an owner can divide and sell immediately to someone outside of the family. When she did the research, it was up to five years.

Mr. Rooker said the State now allows 15 years before the division, and 15 years after. He said Greene County is doing five years before and five years after. The ordinance is extremely simple; the Board just has to decide on the number.

Mr. Wyant said he thinks what the Board got today (no-years before, and two years after) is that the parent parcel is bound by that. He has been looking at this and if he gave land to one child, he would not be able to give to a second child until he had gone through the entire period again.

Mr. Rooker said that is not correct. There is no holding period on the parent parcel at this time.

Mr. Wyant said he does not want to penalize someone who has two children. Mr. Davis said the ordinance does not do that.

Mr. Boyd said if there were no further questions for staff, he would go over the rules for holding a public hearing, and then **open the hearing**.

Mr. John Martin said he lives in Free Union in the White Hall District. He supports the Comprehensive Plan and the three provisions to implement that plan. He hopes this hearing will not be acrimonious. Those who live in the rural areas are neighbors with some differences, but there is no need for acrimony which can only be destructive. He does not know how the Board will vote, but the appearance leading up this evening is that there will be a 3:3 split in the vote, minds are already made up and nothing will be done tonight. That would be a real waste. He is 65 years and needs to plan soon where he will be living when he is 75. The Comprehensive Plan helps him, but if it is not implemented to protect the rural area, he needs to know. It is time to stand up and govern. Next month there will be an election. Incumbents running for office will be reelected or not, so be it. That is the nature of democratic government. In the meantime, the Board needs to stand up and govern.

Mr. Joe Fellini said he has lived in Sugar Hollow for 27 years building his house, a shop and a studio there. He and his wife built on a 40 percent slope, they dug holes by hand, mixed footings by hand, and put posts in the holes; the building went up from there. He said the dirt, leaves and pine cones which were on site when they started are under that building, not washed down the hill. When they extended their driveway they planted crown vetch before the contractor had packed up his grade. They have been good stewards of the land. He believes that if the water protection ordinances are amended as proposed, three-quarters of their land would become a landlocked island accessible only by bureaucratic loops and hurdles, if at all. Waivers would have to be applied for and granted. The burden would be on him to justify them and he does not think the burden should be on the landowner. The Board should go after the developers if they want to slow down development. Mr. Fellini said he was chair of The Sierra Club in Charlottesville for two years which shows that he is an environmentalist. He thinks these rules are an invasion of property rights. If these changes are adopted, he will start a class action suit to get real property taxes reduced by an amount proportionate to the percentage of land affected. He wants to build a house on his lower 10 acres for his oldest son, not a family subdivision, but just another house on the same plot, but he has to cross a slope to get there, and the site is 50 feet from an intermittent stream which only one and one-half years ago was deemed a perfect spot by two zoning officials who stood on it. He is ashamed of this Board.

Mr. Mark Bedigne said he has lived in White Hall for a long time; his family owns 114 acres there on Pidgeon Top Mountain, and almost all is on a 25 percent slope. He built a house on a 25 percent slope in 1972 so he has seen the changes which have taken place. His house has a driveway which does not look like any of the examples shown; he is a steward of his land. They have no water nearby so the driveway did not affect sediment to any creek or reservoir. He does not plan on building anything in the future. If the ordinance is passed for the critical slopes, Frank Lloyd Wright could not have built Falling Water and Thomas Jefferson could not have built Monticello and people could not build sensible homes. His land was purchased in the 1950s by his father-in-law who bought it as a family investment and to pass it on to his family. If the ordinance is passed it will severely limit the marketability of that land. They would not be able to sell lots to raise money for college or for his nursing care. He agrees with the previous speaker that property taxes need to be reduced if more stringent requirements are placed on land like his. He has taken forestry classes and knows about best management practices and any building he would do would be environmental. Many of his friends have moved to other localities because they have lower taxes and do not have these kinds of provisions. He thinks it would be unfair to pass the critical slopes ordinance. If the Board worries about land-disturbing activities they should look at what is happening in Old Trail in Crozet. His father-in-law does not have a computer, but he wrote down his thoughts and asked that they be passed to the Board members.

Ms. Jerry McCormick-Ray said she is president of Citizens for Albemarle. They urge passage of the critical slopes ordinance, the buffer stream ordinance and the zoning/subdivision ordinance. Although these ordinances are insufficient to sustain indefinitely Albemarle's streams and water supply, they are a necessary first step toward protecting the sensitive water system. With a severe drought Albemarle streams and water supplies are shrinking. Shallow wells have gone dry. Water managers are asking citizens to conserve their water while the County escalates in growth. Where is the rural area protection promised in the latest Comprehensive Plan? Mr. Fredericks of the Rivanna Water and Sewer Authority has said the cost of developing Albemarle County is expensive. The RWSA has estimated the cost of

implementing its water supply plan at \$142.0 million, or about \$1,500 for every Albemarle citizen. If the watershed is not protected and precipitation fails, or rain falls in torrential amounts and floods streams and reservoirs with loads of sediment, how will the average citizen afford the increased cost of water? Not protecting the County's water source, its forests, mountain slopes and protective vegetative cover could lead to hotter, drier conditions, and higher water costs for its citizens. The County has not lived up to its promise of keeping development within designated areas while protecting its rural land. The County deserves more from its leadership.

Ms. Ellen Fellini asked that the Board look again at the existing regulations governing critical slopes and the Subdivision Ordinance concerning family divisions. She thinks the proposed ordinances place unnecessary and restrictive provisions on families and the landowners who have made Albemarle County a place where people want to live. She has been a good steward of the land for over 30 years. She would not develop land, build a barn or a road without first taking into consideration the ramifications to her own property. The land she lives on now is almost 75 percent of acreage designated in the 25 percent critical slope criteria. About 11 years ago a member of County staff walked with she and her husband over a building site they had selected to build a new home for their son. The site is accessible only by a new road that would have to be built across a critical slope. In addition, the site was within 50 feet of an intermittent stream. Both the road and the site were verbally approved at that time. Only time and money prevented them from building. If this new ordinance is passed, this new house project will never happen. It appears that most of her land will forever remain unusable so the real estate value will significantly change. If the purpose of passing the critical slopes ordinance is to protect the County's natural resources from soil erosion and stream pollution, then apply the ordinance to new developments in the County. Target the developers who are more likely to disturb. Do not create administrative burdens for homeowners and landowners who have been good stewards. To get variances for things they have always done on their land would place harsh and restrictive burdens on them. She asked that the Board vote "no" on the critical slopes ordinance. She does not think more regulations are needed.

Ms. Lillian Massie urged the Board to implement these three vital provisions as a rural areas plan. This portion of the Comprehensive Plan was unanimously approved by the Board in 2005. There was broad support of the provisions by County citizens who are about proposing sensitive natural resources. She asked that the Board support stream buffer protection in order to meet the goal of protecting water quality and stream health throughout the County. She asked that the critical slopes initiative be implemented in order to protect critical slopes, public drinking water supplies, flood areas and reduce soil erosion, sedimentation, water pollution and septic disposal problems associated with the disturbance of critical slopes. She also asked that the Board implement the change to the family subdivision regulations requiring a longer period of ownership before subdividing in order to discourage abuse of the regulations. The Board adopted the Rural Areas Plan so she asks that it take meaningful action to implement it.

Mr. R. Michael Erwin said he is a resident of Keswick. He urges the Board to accept the proposed changes in both stream buffer protection to include intermittent streams as well as strengthening the critical slopes protection in the rural area to limit circumstances under which a new road or driveway may be built across critical slopes. The quality and quantity of the water supply is dependent in large measure on the conditions of the forests in the watershed. He thinks the County needs to add both measures at an absolute minimum to protect these resources. The County continues to grow and with growth comes greater water demand, land alteration and increased sedimentation. The water issue is one of great concern. With a doubling of the population in 35 to 40 years, it will soon reach a tipping point. The environmental quality of both the County and the Chesapeake Bay will continue to deteriorate if immediate measures to protect the streams, river and critical slopes are not taken.

Ms. Liz Palmer said her parents own land on the Reservoir and have an additional lot on their property. Her mother recently expressed her feeling that Ms. Thomas was too much of an environmentalist and was trying to take away their development rights. Ms. Palmer said she received the letter sent to citizens about these proposed changes, had read them, and knowing her parent's property explained to her mother that they had nothing to worry about. Her mother expressed concern that they would not be able to put a cottage on the lot for her brother. She explained that the family division rights just mean they have to live in their house for five years instead of no years and because they have lived in the house for over 30 years they would not be affected; the County is trying to stop the practice of using the family division rights provisions to gain the system. She explained that zoning laws are used to protect future generations from people who build in ways that result in damage to natural resources. Waterways don't recognize property lines and it is necessary to protect them from sedimentation. Ms. Palmer said The Daily Progress recently ran an article picturing three members of the Board of Supervisors on one side, and three on the other. Above the title read "Water Protection against Property Rights." The article portrayed property rights activists pitted against environmentalists. Her mother formed her opinions based on that article and the letter she received from the County which was written by planners in planning language. She said The Daily Progress framed this debate incorrectly and caused her 80 year old mother a lot of grief. None of these changes affect her, but because her lot has critical slopes and because she wants to have her family live nearby, she became fearful it would affect her. This debate is being framed this way for financial and political reasons. It is cruel to stress her mother for political gain. The debate should be framed around the concept of sustainability which asks the citizens to recognize the value of being good stewards of their land for the benefit of present and future generations. She said this community has paid for multiple studies and countless committee meetings. The conclusion of all is that intermittent streams need at least a 100-foot buffer and the critical slopes have special needs because buffers don't work when the slopes are too steep. She urged the Board to vote "yes."

Mr. Carleton Ray said the ordinances before the Board today are necessary steps toward protecting the watershed and water supply. However, citizens must recognize that documented, scientific findings are minimal. Disturbing any slope and failing to buffer any stream will have consequences on

sedimentation, percolation and filtration to the water supply. Restrictions placed on critical slopes and stream buffers are density-dependent. Twenty-five degrees and 100 feet respectively are adequate only for low-density development. Albemarle's population may not be able to afford the luxury. Ardent opponents recognize that clearing of land over past centuries has resulted in massive siltation and diminished watersheds. Even though forests have partially recovered, both erosion and siltation continue. What has been done to conserve the rural areas and watersheds? The efforts of the Mountain Protection Committee were rejected. The Mountain Overlay District Committee's recommendations were diluted by making their proposed regulations applicable to the County as a whole. Phasing and clustering were voted down. Stuffing people into development areas as an alternative to passing ordinances that protect the rural areas directly is ludicrous. The changes these ordinances call for are simple and straightforward, yet the Farm Bureau and others oppose them. The Farm Bureau's assertions that these ordinances restrict building rights and limit the value of property are highly debatable. Mr. Ray said he belongs to the American Farmland Trust, and its warnings are clear. Farms are being lost. Most farmers are good land stewards. Albemarle's streams, rivers and landscapes are not anyone's private business. They belong to all. It is the Board's promise and obligation to take significant, realistic action to help maintain a sustainable rural environment by approving these ordinances.

Mr. Jack Marshall said he was present on behalf of the 300 members of ASAP (Advocates for a Sustainable Albemarle Protection). They support these three modest revisions for the reasons which have been stated by others, including Planning staff and the Planning Commission. These measures would strengthen existing rules to protect the environment. For years the Board has professed that it values the rural areas and wants to protect them. Those running in the last two elections said they seriously considered their constituents wishes to discourage development and environmental threats in the rural areas.

Mr. Marshall said the Board's decision on these three measures is complicated by the fact that it is not a simple issue of good and bad. There are two worthy but conflicting values represented. On the one hand there are those who do not want to see their ability to use their land as they see fit taken away by government. On the other hand there are many who cherish the County and do not want to see the government fail to restrict activities that are destroying the rural environment piece as growth and development continue. The members of ASAP believe these three revisions to the Zoning Ordinance represent a fair and thoughtful compromise of these two positions. Will the measures proposed tonight take away property rights as opponents argue? Perhaps in small ways these provisions will constrain where some landowners can build. Despite the outcry expected here tonight, there will be few developable parcels, if any, that will be entirely eliminated. Built into the proposed ordinance are generous options for cases where the landowner simply cannot work around the regulations. The three steps in these ordinances represent a compromise. He said the Board members have said repeatedly that they want to preserve the environmental resources throughout the County's rural areas. Good intentions are not enough. Sometimes tough choices are necessary.

Ms. Nancy Dresner said she would give a PowerPoint presentation (Copy is on file in the Clerk's Office). She presented data on family divisions which has occurred during the last ten years which shows there is no problem with family divisions so there is no justification to penalize the families of Albemarle County. Comparing the number of new lots created in 1998 and in 2003 for family divisions and all other divisions, shows that the number of new family lots dropped from 67 in 1998 to 36 in 2003. However, the total of new lots in the County went up from 435 to 608. As to the question of "flipping" family lots for development purposes, there was high retention of family lots. Of 105 family lots created in 1998, 91 were still retained as of September, 2007. Of the 59 lots created in 2003, 54 were still retained as of September, 2007. There has been no increase in family divisions over the last nine years. The highest year was 1998 with only 35 family division plats approved. From there the number dropped to 17 in 2002 and 22 in 2006. At the end of September, 2007 there had been only 17 applications made for family divisions. The number of family divisions is insignificant to the growth of the County, but is of critical importance to the families that request them. Because the County has old roads and property lines, many tax parcels are not eligible for regular residential divisions, and can only request a family division. She challenged the Board to get the facts on the critical slopes issue. Focus should be on ways to manage critical slopes while protecting the rights of property owners. She believes that both the environment and the rights of property owners can be protected, but not with these regulations.

Mr. Dorrier asked if these statistics came from the Planning Department. Ms. Dresner said she got the raw data from the Planning Department and then she went through every record in the Real Estate Department to trace every property that had been subdivided between 1998 and 2003. She did a lot of tracking. The actual number of new lots from 1998 to 2003 came from the County's Development Activity Report((the Planning Department did not make these reports after 2003).

Mr. Morgan Butler said he was present on behalf of the Southern Environmental Law Center. They urge the Board to adopt the changes to extend the County's current buffer protections to all intermittent streams located in the rural areas, and to reduce the number of new roads built on steep rural slopes. He thanked County staff, the Planning Commission, and members of the Mountain Overlay District Committee for the hours of work they put into these proposals. This hearing has been framed by some as a battle between environmentalists and property rights advocates. He does not think a battle is necessary. Any meaningful environmental protections or land use provision requires some reasonable limit on what can be done with property. However, the stream buffer and critical slopes provisions before the Board tonight do not represent the all out assault on property rights that has been suggested. Rather, these are fair and balanced provisions that enact needed environmental protections while at the same time providing ample safeguards to landowners to fully protect their constitutional and legal property rights. He said protection of intermittent streams is critical to the health of the watershed. To expand current

buffer protections to more intermittent streams is an essential step toward protecting all of the County's waterways. It is a simple and straightforward change to the existing ordinance.

Mr. Butler said protection for intermittent streams has not proved over burdensome or unmanageable in areas of the County where these provisions currently apply. This provision means that the rules currently being applied to one subset of rural property owners would now be applied equally throughout the rural areas. For these reasons, they urge the Board to adopt this change without further delay. As to steep slopes, the County's current ordinance was intended to discourage development on critical slopes in order to avoid a number of environmental harms. However, an unintended loophole in the ordinance still allows roads and driveways to be built through steep hillsides. The proposed change is intended to tighten that loophole and ensure that steep slopes receive the protections originally intended. In addition, through public feedback a number of waivers have been included in the amendments to cover situations when services to critical slopes might be justifiable. The Board has before it tonight years of balanced deliberation and compromise. The amendments represent needed improvement to the current critical slopes ordinance and one which they urge the Board to adopt tonight.

Mr. Jon Cannon said he and his wife own land in the rural area which has steep slopes and streams and they support the proposed amendments before the Board tonight. Someone had asked if any member of the Planning Commission owned land in the rural areas which had steep slopes and he does, as do several other members of the Commission. He said the Commission unanimously recommended the amendments before the Board. Several years ago he co-chaired the Mountain Overlay District Committee which was a group of citizens appointed by the Supervisors to address protection of lands in the mountain areas. That committee worked for two years to bring forth a set of recommendations. It did so in a report dated April, 2006. That report was agreed to by all 12 of the highly diverse members of that committee. The committee suggested applying its recommendations not just to the mountain areas, but to the rural areas generally. That committee's recommendations on steep slopes and stream buffers are essentially what the Board has before it tonight as further refined by deliberations of this body and the Commission.

Mr. Cannon said the recommendations were a compromise. If anything, the Committee's recommendations have been weakened in the proposed amendments now before the Board as applying to the rural areas. The Committee would have had the prohibition on new roads or driveways across steep slopes apply to all lots after December, 1980. The proposed amendment would have that provision apply only to lots created after the effective date of the amendment sometime in the future. The committee recommended that the stream buffer protection extend 200 feet on either side of perennial streams. The proposed amendments call for a buffer of only 100 feet. The waiver and modification provisions for the steep slope requirements are more generous to landowners in these amendments than recommended by the committee. The Board has the power and responsibility to set reasonable and fair rules for the use of property to protect the community's interests over the long term. He hopes the Board will exercise that power tonight and approve these amendments. If the Board does not, he thinks there will be widespread disappointment and a number of people on that committee will wonder why they spent two years of hard work on their recommendations. He urged the Board to adopt the amendments as proposed.

Mr. Neil Williamson of the Free Enterprise Forum said he attended 24 of the 26 Mountain Overlay Committee meetings as well as serving on the Rural Area Focus Group. He commends staff for their tireless work over the past three weeks preparing these documents and making the changes discussed at two Planning Commission meetings. Unfortunately, Friday afternoon was the first time the public had to review the documents. He cannot support these ordinances. He said that rezoning applications have proffers submitted in final form long in advance of a public hearing. In this case the applicant, Albemarle County, presented the documents 126 hours prior to this hearing. He learned an hour and 15 minutes into this hearing that there is another ordinance under consideration. Early in this process one member of the Board suggested that these proposals be forwarded with all deliberate speed. The Free Enterprise Forum believes that the speed at which these ordinances are being considered is reckless. They request that after the public hearing a decision be deferred to a Board meeting in December, or there be an explanation for the urgency in voting this evening.

Ms. Margie Maupin Paul said she was born in Free Union. She came to oppose the plans set forth by the Board to take away her rights to use her property to house and feed her family. She sees these three items as a back-door sneak move to take away her property rights and to cover for the Board's recent voting mistakes. When the people of Albemarle say they do not want anymore development and that the water supply is not sufficient to support the people who already live here, why does the Board continue to grant special permits for the building of thousands of new homes? She said the Board has given away too much land to development. Now it appears that the Board wants to take it out of the hides of the rural property owners. It appears the Board wants to preserve its view of her mountains and prevent her from building on her property so it can give away more special permits to the developers. She has one property containing 150 acres which is entirely in critical slopes and streams according to County maps. She has nine grandchildren who in the next 20 years will need housing. If these restrictions are adopted, they would not be allowed to build there, yet the Board has allowed developers to hang houses off of cliffs that Billy goats would not want to climb.

Ms. Maupin asked if the Board can honestly say the houses of Ashcroft, Hollymead or the new 3200 lots in Biscuit Run will all have level lots that do not cause erosion. Will the new lots be subjected to this new proposed zoning? Did the Board think about runoff and stream buffers as it approved all of these houses that will bring 9,000 more cars to overcrowded roads? Why is the Board singling out rural property owners who are trying to make a living off of the land? If the Board is going to put these restrictions on her rural land, they better put them on every lot in Albemarle County. She finds the proposed limits on the

family division to be unreasonable in this day and age when companies move their employees around like chess pieces. The 15-year restriction does nothing but punish a family for trying to house all of its members. Please leave the two-year limit as it is today.

Ms. Ann Mallek said she lives in Earlysville. She urged the Board to work together to adopt the critical slopes and stream buffer ordinances to protect the waterways and reservoirs. Although the proposed ordinance is not perfect, it is a start. Future assessments will lead to slight reductions in the value of land which does not receive requested waivers. Waivers will insure that property owners have choices in using their land while meeting the community's concerns by having erosion controls in place before work takes place. This will protect the water supply and the rights of those downstream owners. The citizens cannot pretend they have learned nothing about soil erosion and sediment control since the South Fork Reservoir was built in the 1950s. The Reservoir is filling with dirt and water users in the County are facing \$90.0 million in expenses because it was not known at that time what is known now. The citizens cannot pretend they have learned nothing since 2004 when the grading plans for the Hollymead Towncenter were approved. Expensive consequences to residents in Hollymead and Forest Lakes are now known. Because of what has been learned there are new requirements in place for the Biscuit Run development.

Ms. Mallek said a stricter set of guidelines for steep slopes construction would control soil and sediment if it required that roads be built in stages with each part finished before the next link were opened. She suggests that this alternative be added to reduce the demands on the waiver process. If the owner adopts strict construction guidelines, she believes their work should be allowed. Under the proposed rule to protect critical slopes, the County could accommodate activity desired by landowners if it controlled runoff. She said owners would have an opportunity to show that they can use their terrain without threatening others by using a higher performance standard in higher risk areas. Decreasing erosion would improve water quality and save millions of dollars in the future. She said the citizens are the County of Albemarle, and each resident has the right to not be adversely affected by the actions of others.

Mr. Bill Abbott said he lives in Free Union and came to speak in favor of adoption of the three ordinances. He said there has been a lot of talk recently about property rights, but there is another word that goes with owning property, and that is responsibility. One has to be responsible to his neighbors, his county, his state, his nation, and the planet. He and his wife lived in Fairfax County and felt that the builders had more rights than the property owners. When they moved to Albemarle in 1983 it did not seem that way here so they built what they thought was a responsible house. It is a passive, solar house, with solar hot water, solar heating and uses only one-half of the energy of a standard house of its time. They also gave the Virginia Outdoors Foundation an easement that said they would not subdivide or built upon the land further. They believe the Supervisors also have rights and responsibilities. He ended with a quote from the Comprehensive Plan which is posted on the door of the Auditorium.

Ms. Elizabeth Berdash, who had signed to speak, was not present at this time.

Ms. Laura Loftin, who had signed to speak, was not present at this time.

Mr. Nick Evans, Chairman of the Thomas Jefferson Soil & Water Conservation District, said he is a landowner in Albemarle County with land containing critical slopes and perennial and intermittent streams. He came tonight to support the Water Protection Ordinance that would extend riparian buffer requirements currently in place in the water supply protection areas to the remaining rural area of the County. He said this amendment supports the County's long held goal of protecting water resources while providing for equal treatment for landowners throughout the rural area. Until recently, Albemarle was the only county west of Tidewater that had adopted the ordinance language in alignment with the Chesapeake Bay Preservation Act. He thinks this policy has served the County well. Some say it has been a needless restriction on the property rights of landowners and that the Reservoir would have silted up regardless of the restrictions. He believes that if the County and S&WCD had not protected riparian buffers along many streams over all of these years, the degradation and water quality of the waterways would be far more widespread and advanced than it is today. The benefits of riparian buffers to water quality have been exhaustively studied and documented as referenced in the staff's report.

Mr. Evans said not pursuing additional riparian buffers throughout the rural area, or abandoning the program altogether, contradicts longstanding principles of environmental stewardship embodied in both the Comprehensive Plan and the County's Strategic Plan. This is not about whether or not riparian buffers are good for water quality. This is about the perceived rights of individuals to do as they wish with their land, versus the responsibility of individuals to the community and the collective good. He thinks the responsibility today to prevent environmental degradation over the long term trumps the individual's right to do as he pleases in the short term.

(Note: At this time (approximately 8:20 p.m.) Mr. Boyd called for a short recess. The Board reconvened at 8:30 p.m. and the hearing continued.

Mr. Jim Lark said he lives in the Buck Mountain section of the County. He said he is chairman of the Jefferson Area Libertarians but is present to speak for himself. He said if any of these ordinances are adopted, they will have no financial impact on him, his property or his family, but he urges the Board to oppose the ordinances. He thinks they are an impermissible restriction on the legitimate property rights of others to the extent that they are intended to deal with real problems of trespass. There are other ways to deal with these matters. He wants Albemarle to stay beautiful and green, but he does not think these ordinances will bring about the results the Board wants, and they should be rejected.

Mr. Dave Phillips thanked staff for getting out letters to all the property owners who would be affected by adoption of these ordinances. He is the CEO of the Charlottesville Area Association of Realtors and is present to speak on behalf of CAAR. They do not have a position on these three proposals but have some standing positions which are directly related to these proposals. First, they are strong advocates of protection of the rural area. They have a vested interest in keeping the community a good place to live. They also are champions of private property rights and those property rights need to be protected. When you buy land, the value in the land is only there if the rights purchased in that land remain. They have had calls from people asking if the value in their property would be devalued with these changes, and it would be devalued through some of the changes proposed. If the Board is going to take away some peoples' property rights for the greater good, they must be compensated for that taking. He does not think the County has enough money to compensate some of the people present tonight. Reducing their taxes probably would not do it. He said encouraging growth in the development areas the last few years has helped to decrease the number of building permits issued in the rural area. That protects both the rural area and peoples' property rights; he encouraged the Board to stay the course with that type of policy rather than come up with harsh regulations that take away property rights.

Mr. John Grady said he lives in the North Garden area. He has come to express his concern about the proposed changes to the ordinance concerning the family subdivision. He knows the staff and the Board are both trying to correct some unfair situations which happened in the past in the rural area. He does not think most of the landowners in the rural area are trying to circumvent the ordinance or change the rules. He believes the majority will subdivide their land for their family, their children and their security later. He asked that the Board vote "no" or defer action on this ordinance until measures are found that will not affect the majority of rural property owners or the use of their property.

Mr. David Lewis gave a handout to the Board. He said he received a notice that most of his 20 acres is on slopes of greater than 25 degrees, therefore, it is useless. He said that slopes on land have no relationship to soil erosion. He said that three-quarters of the Japanese people live and farm land on slopes of greater than 25 percent. Soil erosion cannot be allowed there or they would lose their farms and livelihood. The Mississippi River drops one foot every mile. Although it slopes less than one percent it continues to erode its entire length. In Albemarle, developers build houses on slopes of greater than 25 percent. Examples of this are in Forest Lakes, Mill Creek and the proposed Biscuit Run. The Albemarle land code is not needed for land erosion control means. It appears that the purpose is to allow those who have money to develop subdivisions simultaneously preventing small landowners from building a few houses. If the Board supports this strange 25 percent (or should it be one percent or 12 percent or some other non-engineering related slope), at the least it should support a downshifted land appraisal. He asked that the Board not pretend it is trying to control erosion when it knows the code is simply promoting large developers who will continue to build on land with slopes greater than 25 percent.

Mr. Will Yancey urged the Board to reject the proposed amendments. He said he is only 34 years old, but this is the fourth such meeting he has attended in the last decade. The names have changed, but the emphasis behind the various ordinances is always the same, that is to use the power of government to restrict the rights of property owners under the guise of "the greater good." He said the greater good is connected to things such as construction of roads, schools and bridges. Those are things that all pay for and use. The difference here is that the proposed amendments seek only the benefits of the proposed changes leaving others to bear the costs. Similar ordinances have been proposed and rejected over the past decade.

Mr. Yancey said a look at the County's website will show how much staff time has been spent on this issue when nothing has been done to secure the future of the County's water supply. Many of the sons and daughters of Albemarle have already been priced out of the urban ring around Charlottesville and forced into the County's hinder lands where nearly all of the critical slopes are located. The County has been discussing affordable housing but taking 22 percent of the land off the market in one action will exacerbate that problem. He thinks Albemarle has enough real problems to deal with. The amendments before the Board tonight are a solution in search of a problem.

Mr. Paxton Banham said he is with Martin-Marietta Materials which operates the Red Hill Quarry. He said Martin-Marietta is the second largest producer of construction aggregates in the country. They have over 40 active sites in 35 states and two foreign countries. They began operation in Albemarle County. Red Hill was their first quarry starting in 1939. They were getting along pretty well until they read the proposed ordinance amendments. They wrote a letter to Mr. Boyd asking that properties covered by a Natural Resource Overlay and a valid DMM mining permit be exempted from these ordinances. He said Red Hill operates on a mountainside. Much, if not most, of what they do is on a slope of greater than 25 percent. He thinks this ordinance is directed at new housing developments. They operate a mine site and have over 360 acres permitted for that operation. There will be no houses built there. He thinks it would be almost impossible for them to comply with this ordinance if it is applicable to them. He requests that properties covered by a Natural Resource Overlay District and a valid mining permit be exempted. He said the mining permit places great emphasis on sediment and erosion control; it seems that is a significant point of these ordinances. It would be very difficult for them to comply with this ordinance.

Mr. Boyd asked if any thought had been given to that aspect of the ordinance. Ms. McDowell said it has. She checked with the Zoning Administrator who said Martin-Marietta is exempt at that location. Mr. Banham said they would love to see that in writing. Mr. Boyd said he has a letter written by Mr. Banham and will be sure that Mr. Branham gets an answer in writing.

Mr. Jason Bablock said he has been covered by the exemption, and did not speak.

Ms. Ellen Popkin said at the last Planning Commission meeting a person asked for data concerning family divisions. A staff person said about 96 people got family divisions in the last three years. She said the Board does not seem to have that backup data before it tonight. She her husband Josh own property in the mountain rural area that will be affected by all of the ordinances before the Board tonight. They are strongly opposed to adoption of these restrictions. The land was bought 11 years ago and contains 238 acres. It is a place to retire, build their dream home, have family division rights and provide financial security. The site they chose for this home is across critical slopes, but conforms to existing rules. They have spent hours clearing the site and have pictured themselves living there with their children and grandchildren around them. They are 61 years old now and have been stewards of the property for 11 years at a great financial cost. They knew and accepted the limitations of the land as reasonable and positive and planned life accordingly. They wondered why energy has not been expended on exploring the impact these decisions would have on landowners who have extended themselves financially and the people who bought their land for their security. She said this land represents a good part of their financial worth. They know the proposed regulations would affect this condition. She said a 15-year covenant reduces the value of their land to nothing and virtually destroys their ability to handle bad times, and will be disastrous. What happens if they have to sell? Buyers would not be able to get financing. She said they got a mailing saying someone wanted to buy division rights. Land can be preserved along the city byways, but what about the land that is not wanted? She asked that the ordinances not be passed.

Mr. Jim Lansing thanked the Board for its hard work on behalf of this beautiful County and its citizens. He said this is done in service to the citizens; it is obvious that this is a service when looking at the Board's salary and the long hours required for the necessary tasks. He came to offer an alternative solution to the problem of the irresponsible developer. He said several developers have misused both the rules and responsibilities of good land stewardship. The ordinances proposed might have the intended consequence of stopping irresponsible development, but they have the unintended consequence of hurting farmers and rural landowners, about 14,000 landowners. He believes the ordinances create the most significant downzoning in the history of the County. It is also insulting to propose ordinances that suggest the Board is a better steward of the land than the farmer. Why not institute proper mitigation standards that farmers and rural landowners already apply in their everyday lives? There is a farmer and civil engineer on the Board who participated in developing those same standards for the Virginia Department of Transportation, Mr. Wyant. There are simple, inexpensive steps people can take to mitigate soil erosion and other unwanted results from poor development standards. He asked that the Board investigate mitigation standards thoroughly and then offer measures that accomplish the goal of stopping irresponsible developers.

Mr. Jeff Werner said he came to speak on behalf of the Piedmont Environmental Council (PEC). Along with the many residents who have expressed their support to the Board in E-mails, letters, phone calls, and comments tonight, the PEC supports adoption of the proposed stream buffer and steep slope regulations. He wants to make it clear that these regulations do not affect agricultural use of the land in any way. During the past several years, the Board has expressed support of the Rural Areas Plan and unanimously endorsed the development of these new regulations. The PEC hopes the Board will continue that support by enacting these measures tonight. Tonight's debate did not come about through the work of a few individuals, but these proposals are the result of years of community work and community input. They are intended to implement specific policies that the Board has adopted, and are in response to specific directions the Board gave staff.

Mr. Werner said that between February, 2002 and October, 2003, a Rural Area Work Group was convened to discuss and draft a Rural Areas Plan. Members were representatives of many different organizations. Between April, 2004 and April, 2006, he served as a member of the Mountain Protection Committee which met over 30 times to work out a proposal which was unanimously supported. After review of those recommendations, the Supervisors decided to move forward with steep slope provisions and to apply stream protections to the entire Rural Area. Between 2002 and 2006, there were almost 50 meetings of the Rural Area Work Group and the Mountain Protection Committee. Between 2002 and tonight there have been almost 60 work sessions, open houses and hearings by the Planning Commission and the Board of Supervisors. He implored the Board to honor the time and commitment of County staff, citizens and its own endorsement by approving these measures.

Mr. Eddie Gibson said he has lived in the County his entire life. He thinks it is sad that the Board is trying to take everyone's property rights away. He said everything he owns is in critical slopes. He read from the notice letter that he had received. He said if he owned 600 acres he would have to build in a place that had the least amount of critical slopes, but not where he wanted to build. He said the Board would take away all of his division rights and devalue all of his property. It is not right. He owns it, but the Board says what he can do with it, and that is sad.

Mr. Fred Ivory, Jr. said he represents 14 heirs of the Wesley property in the White Hall District. He said a document was E-mailed to the Supervisors which gives a great deal of information as to why they oppose the ordinance. He said the stated goal of these ordinances is to protect the environment and to protect the watershed. He thinks there are better ways of doing what the Board is trying to accomplish. He referred to the pictures of degradation of the land which were shown earlier in the meeting. He said that type of thing should not be allowed, but he should not have to be punished for something done by another person. In the past six months of observing this process, he has been amazed at how much this has evolved. Some people think these measures should be approved tonight; he does not agree. After seeing how much it has changed in the past six months, don't rush to judgment. The goal is an honorable goal, but the means by which the Board is trying to accomplish that goal is not the way to do it.

Mr. W. J. Kirtley, Jr., said he is 91 years old, so he has a special privilege to use up one more minute. He said Colthurst Farm is where he lives, where he built a home and where he now has six or seven lots available. but he has been informed they are not lots. That puts the Board against him 100 percent. The roadway there was put in before the Jessups owned the property. The place was divided and the drainage pipes were put under all of the roads. There is a two-foot diameter of pipe on the north road that drains all of that area. Stormwater runs under the road. He thinks it was planned well. In addition, the lots that he has have all been surveyed, and all have water to them, and all have service to them. He has that number of children who are all now in their 30s or older. He had the idea he was going to give a lot to each of them, but they won't have anything on a slanting slope. He objects to it from a selfish standpoint. During his time of work, he tried to prepare for this time and he does not have that much more to use. He would appreciate if the Board would give it a selfish look from his standpoint because he is not talking about any other place.

Mr. Rudy Turner had signed to speak, but was not present at this time.

Mr. Granville Valentine said he was present to represent the Penthe Land Corporation as a family member. He said this corporation was founded by his father-in-law and it owns 1,400 acres in several large tracts on Bucks Elbow Mountain. In 1969 he and his wife built a vacation home there which has become a family meeting place. They expect family members will want to build several additional dwellings in the future. They have been good stewards of the land for the last 38+ years. They want to provide the opportunity for future generations to inhabit it and enjoy it while continuing to preserve its rural nature. His family is here tonight as environmentalists, landowners and property rights' advocates. He said over-development of the County affects all its citizens. They want to see the rural nature of Albemarle County preserved, but in a fair way.

Mr. Valentine said the critical slopes ordinance is presented as a way to preserve water quality. It appears it could be about preserving the view of the mountains from the valley. He mentioned this because water quality is an acceptable legal reason that allows government to take away or restrict landowner's rights. They want to enjoy their property, as opposed to those who might want to sell to a developer. They should have the right to select their own building site rather than have the County Engineer tell them where they can build unless there is a legitimate and significant negative affect on the environment. He said the proposed critical slopes ordinance prohibits the construction of access roads leading to relatively level building sites in both the mountains and hills of the County. He said most of these driveways would need to cross areas with slopes of 25 degrees or more. The changes to the ordinance would not say you cannot build on a given site, but would cut off access to the site of choice. Large lots are at a significant disadvantage in this proposal. The ordinance tries to deal with all road construction across critical slopes to dwelling sites under one rule and does not allow for common sense and reason. Their property has existing roads that are regularly used by vehicles and maintained by the owners. These existing roads require no land-disturbing activity, provide access for emergency vehicles and provide for the family's enjoyment of the property with no negative effect on the environment. He encouraged the Board to allow all existing roads to be used as access to future dwelling sites if it feels this ordinance must be passed. His family does not support the ordinance.

Mr. Ron Kerber said he lives in the Stony Point area. He has owned this property for ten years and has a cattle and hay operation there. He urged the Board to vote down these provisions. If the intent of the proposed restrictions is to improve the environment and water quality, it can be handled by proper erosion and drainage control plans. Also, for the family split options, they are for small parcels with family division objectives, and not for use by developers. When considering the long time being asked in that provision, the fact that bad things can happen in any family must be considered. He said it has been suggested that many of the provisions can be handled by waivers. Waivers do not exist in this county; whatever is written down is what happens, so why is the Board considering it. He hopes the Board knows that rural people are stewards of the land; they know how to take care of it. He said they pay taxes on the land, and those taxes increased recently because the assessed value of the land increased. He asked that the Board consider why these restrictions are needed. Will the Board support these provisions so people can drive by his property and enjoy it while he pays for it and maintains it and pays the taxes on it? What is the reason for the provision? He urged the Board to stop hurting those who are paying the bills.

Mr. Milton Moore said he has lived in Albemarle for 18 years. He generally supports all of the Rural Area protection measures, particularly those that involve water, like buffers on the streams. Water is and will continue to be the area's most precious resource. It will be more so in the years ahead. According to the latest newscast, the current drought is the worst in the southeast states in 150 years. The price of neglecting to protect streams in the runoff areas will increase dramatically and will be paid in ways that cannot be imagined. In closing he would like to mention that the reason property is so valuable in Albemarle County is because of the work of this Board of Supervisors which had lawsuits brought against it when they tried to protect the watershed. Fortunately, they won those lawsuits.

Mr. George Larie said he has lived in the County for 19 years. He came to ask the Board to support the regulations which would enact the restrictions on stream buffers and critical slopes. He has attended a number of meetings and listened to people on both sides of the issue. He has listened to many arguments, many of which are very good. The Board has a difficult decision to make tonight but he would like to suggest that the real decision is to make a choice based on the greater good for the largest number of people. By doing that, the Board would enact the two ordinances on buffers and critical slopes.

Mr. James Maupin said he is a lifelong resident of Albemarle County. The critical slopes and stream buffer issues center on trying to keep runoff from filling up the water supply areas, particularly the South Fork Rivanna Reservoir. He took information from Albemarle's website and it does not support enacting these restrictions as an effective way to keep the Reservoir from filling up (he showed on a

screen some information which he extracted from that website). Information from the Thomas Jefferson Water Resources Advisory Committee on sediment sources and mitigation says that although Albemarle has restricted residential and industrial development within the watershed for many years, it is not clear at what rate these measures have reduced sediment accumulation in the Reservoir. That group ends their report by saying that although previous studies provide a basis for beginning to understand the sedimentation problem. In some respects they raise as many questions as they answer. There was no consensus on the website that these restrictions are needed unless the Board takes the recommendations of StreamWatch who wrote a letter to the Planning Commission saying "The critical slopes and stream buffers must be approved." StreamWatch does not normally give recommendations, but when the science is clear, and if all StreamWatch partners are in agreement, they can participate in management discussions upon request. StreamWatch has not performed a study of buffer effectiveness in Albemarle and does not believe such a study is needed in order for the County to make a well-informed decision about improving buffer protection." He asked if the Board was going to base its decision on this letter. He challenged the Board to produce the studies done in Albemarle that show that the critical slopes and stream buffer issues will keep the Reservoir from filling up.

Mr. Roger Ray said he is a resident of Albemarle County and has been a land surveyor for the past 35 years. He can read and understand the County's rules and assess how they apply to real properties. He thinks these rules are most overwhelming to properties, and there will be an erosion of property rights and property values, if adopted. He thinks there has been a gross misrepresentation of what these rules will do. The public has been told there are waivers which would allow a property owner to build on his property, but he thinks they are only applicable if there is no low land on which to build or if you have to traverse steep slopes. They will not allow the property owner to exercise any property rights to create new lots and get a waiver in order to get to those new lots within the property. He feels that is a gross misrepresentation because there is no provision for a waiver to create parcels of land.

Mr. Ray said if this ordinance is adopted, the Board needs to make some provision for exempting areas of land to allow people to exercise their property rights. He suggested that the Board look at a disturbance of 10,000 square feet or greater which would be a roadway 200 feet long by 50 feet wide. He said the family division provision is overwhelming. The person who thought this up must have been an orphan. This is so overwhelming that he can't comprehend it. Greene County has a five-year holding period after the lot is created, with no penalty to the parent tract of land. Fluvanna County has a three-year holding period after the lot is created with no holding period for the parent tract of land. If the Board needs to do anything with the family division, come up with something reasonable.

Mr. Berkeley Gray said he is employed by the Augusta Cooperative Farm Bureau. Their members have a property just a few thousand feet north of Scottsville. He will address their board's concern about the issue of critical slopes. They think what is proposed is overkill to accomplish the water quality and soil erosion standards the County is looking for. Farmers are stewards of their soil and their water. They feel this has the potential to reduce the value of their property and could restrict their ability to grow their business; they have plans to rebuild the structure on the property. They are concerned that they may not be able to do that. Part of the property is both rural and highway commercial.

Mr. Clark Moser had signed to speak but was not present at this time.

Mr. Hank Martin read a statement made by President James Madison about the importance of guarding society against the oppression of its rulers and to guard one part of society against the injustices of the other. He is reminded of that as these ordinances are discussed. Up until now there has been a respect for the ownership and personal use of private property free from restrictive and invasive regulatory regulations. He continued by quoting from several of the early United States presidents concerning the question of property rights. He said the alleged need to preserve and protect the rural areas cannot be allowed at the expense of the individual rights of landowners. Virginian's witnessed this a century ago when the rights of hundreds of families were marginalized to create the Shenandoah National Park. These protective measures are not necessary. The last Quarterly Building Report showed that both rural building and family subdivisions are dwindling while growth is occurring in those areas where the Board wants growth. If the Board votes against these measures, the Board will be standing alongside the great minds that created this nation and supporting the core ideas of America. Voting to support these measures will put the Board in direct defiance of both the intentions of the forefathers and the history of the Commonwealth and the Nation. This is a Republic, not a people's democracy. Before there was a Piedmont Environmental Council or a Charlottesville Tomorrow, individuals like Mr. Martin were paying taxes in Albemarle. Today they do the working, the paying, the living and the dying in the community. He beseeches the Board to respect their rights. He has been told that waivers can be obtained, but he is skeptical because the County recently reneged on already-issued building permits to John and Amy Harris on their property on Turner Mountain. How can he have faith in a waiver that is yet to be given?

Mr. Graham Adelman said he lives in Boonesville. He said the previous speaker mentioned that thousands of people were evicted from their mountain homes in the 1930s when the Federal Government created the Shenandoah National Park. Many were relocated to areas targeted by these proposals. For them and their families to again be singled out for elimination of their property rights seems to be insensitive and certainly unfair. People who live in the rural areas, unlike their suburban neighbors, have kept their land in their families. Developers do not regard development in the mountains as good business compared to building on flatter land which is less remote. That is why mountain property is generally less expensive per acre. Generally speaking, per capita income goes down in the County as the elevation increases. The fact that for generations people in the rural areas chose to live frugally rather than sell their land for development or quick money should be evidence that they want to hold onto their property. If the Board wants to see less rural land change hands, it should simply stop increasing property

taxes in the rural areas. He then asked some questions concerning the proposals (See copy of letter on file in the Clerk's Office with the permanent records of the Board of Supervisors).

Mr. Adelman said these proposals are vague and arbitrary. If adopted, they will involve the County in many years of expensive class-action litigation. This would subject the County to claims it could not afford to pay running into hundreds of millions of dollars based upon appraisals of the difference in land values before and after adoption. It seems apparent that some members of the Supervisors and some special interest groups are out to preserve for personal aesthetic reasons rural areas as they are and at no cost to the County. If adopted, these proposals will put mountain landowners in the same position they would be in if they agreed to sell conservation easements, but without the financial benefit to them or cost to those in the business of obtaining such easements.

Mr. Ed Gibson said he and his family have been here in the Blackwell Hollow area for about 250 years. They came when King George owned all of the land. It has already been said that there was a significant land grab by the Federal Government and the mountain folk were vilified when their families were thrown off of the Blue Ridge. He hears the same thing now as the wolf of socialism creeps in under the lamb's clothing of environmental protection of the watershed, and that somehow landowners are against all of that. The fact that they want to protect their rights as citizens of America who fought a war to get rights to own their land are contrary to all of the things which have been said. The fact is that they have lived on the land for 200 years and built their houses on the side of the mountain (his land is totally on the side of a mountain), and managed not to have the house fall off the side of the mountain, or have the land wash away, or the well go bad, or the horses get one-legged. He thinks that is a slanderous thing to do to justify this kind of a grab. He does not think that any of the Board members truly believe that a driveway or a septic system causes erosion. If they did, they would do away with farming or anything that breaks the soil's surface of the land.

Mr. Gibson said this is the Piedmont, and most people live on hills. The decision today is not about whether or not there is water or dirt in the Rivanna. His family has watched the red rivers run in every rainstorm for 200 years and that had nothing to do with driveways or septic systems. That is the way the nature of the Piedmont works. If people are concerned about the water supply, don't take away his rights, go down and dig out the Reservoir and stop protecting something in the Buck Mountain area and put in a reservoir. He said it is his property; he used to think he owned it but is beginning to believe he does not. He can't do anything with it except rent it from the Board with taxes. If he does not give the taxes, the County owns it all, so he says this is bad for everybody.

Mr. Randy Layman said he lives in Batesville. It is hard to believe what Albemarle County has done in the past 50+ years. He started school in a three-room school in Batesville with no electricity and no running water. He said they had outdoor toilets. That schoolhouse was on a hill. They did not have a problem with water. He thinks the issue here is controlling growth and growth cannot be controlled. This Board cannot implement birth control. The County has failed miserably by not putting a gate on Route 29 North. If those two things had been done, the County would not have the problems it has today. He said his family has been on the same piece of property for over five generations. He has two grandsons and would like to give them each a piece of property, but if the Board puts a 15-year limit on it, if he does not leave them enough money to build a house, they would never be able to borrow the money because no bank would touch it. His son works in the Sheriff's Office; he can't give him the property because he cannot afford to pay the taxes on it. Mr. Layman said he sold his business and took early retirement but has now gone back into business to try to create enough money to create a trust fund so he can give those kids that piece of property. If the Board can't control birth and cannot put the gate on Route 29 North, don't come out and strangle those in the rural areas.

Mr. Tom Olivier said he is the Conservation Chair of the Piedmont Group of the Sierra Club. He speaks for that organization. The Sierra Club is more than 100 years old. The Piedmont Group, the local chapter, has over 1,200 members. The Sierra Club understands that the well-being of current and future generations depends on the protection of natural resource systems found in the rural areas. They also know that individuals pursuing their short-term interests can endanger natural systems. The proper role of government is to acquire protection of essential natural resources; governments should not shrink from this responsibility. The Sierra Club supports extension of the 100-foot stream buffer requirement to all the rural areas. Clean streams should be the right of all citizens. They support the proposed constraints on all critical slope disturbances and the revision of the Subdivision Ordinance. They believe the proposals before the Board tonight significantly advance necessary natural resource protections while avoiding unreasonable hardships on individuals.

Mr. Olivier said these proposals are consistent with the 2005 Rural Areas chapter of the Comprehensive Plan. This chapter recognized the need to actively protect natural resources in rural areas. Five of the current Board members voted to adopt that chapter. Some say the proposals endanger agriculture but rural residential development threatens farms as well as natural resources. Those who seek to maximize ease of build-out in the rural areas would undermine the landscape basis for the agricultural sector. He said it is show time for the environment. The Board has the opportunity this evening to implement natural and environmental protection measures of the kind called for in the Comprehensive Plan. Not long ago, similar proposals for phasing and clustering were defeated by an outcry from those who would maintain ease of build-out. The Sierra Club urges the Board to implement these environmental protections needed for a sustainable future. Speaking personally, he and his wife produce livestock on their farm in the Scottsville District. Their property includes intermittent streams and steep slopes, and they will be affected by this ordinance if it is adopted. As individuals, he and his wife support the proposed ordinance before the Board tonight.

Mr. Lonnie Murray had signed to speak, but was not present at this time.

Mr. H. E. Young Jr. had signed to speak, but was not present at this time.

Ms. Mary Ford said she is a resident of the County. They own land and most of it is in critical slope areas. She asked that the Board consider this ordinance as an infringement on their rights as a property owner. They have taken good care of the land. She does not see why all of a sudden there is a rush to say they cannot build on the land anymore, that there can be no driveway on the 25 percent critical slope. She does not know what issue caused this to be an immediate concern. She said they take care of their land and she hopes the Board will take this into consideration. She is trying to speak for a lot of people she has spoken with who will not come forward to talk. She lives in Blackwells Hollow and it is supposed to be steep. They live here because they love the Blue Ridge Mountains. She asked that the Board be open-minded about what everyone has said tonight, and hopes the Board has not already made its decision.

Mr. Keith Ford said he does not believe anybody should be bothered if he is not polluting the streams or causing soil erosion. He has noticed that a majority of the people wanting to take control of his land don't have any land. If for some reason the Board passes this, he thinks everybody in this room who owns land should know immediately what the formula is for cutting the tax rate down because they know that if they buy a piece of property that won't perk, they can't build on that land. He knows the Board members are tired and worn out, but they need to give some strict thought to it. All of these fellows who dream up this stuff should go out and look at the Sugar Hollow Reservoir. There is a drought right now, but when God sent down the mountains and washed all the stumps and rock into the mountains, nobody worried about it and they opened the gate up and filled it back up with water, but now all the stumps that were left in it can be seen. He said these fellows were not there when the Gypsy Moths ate the mountain down and he used over \$20,000 worth of spray. He urged the Board not to pass this thing because he wants to give his grandchildren a couple of acres of land, and if this is passed he can't give it to them.

Mr. Odell Coran had signed to speak but was not present at this time.

Ms. Shirley McNulty said she owns some property in Stony Point that she would like to deed to her grandchildren. He thinks the 15 years is an excessive amount of time. However, in listening this evening, she would like to thank Ms. Nancy Dressner for her time and effort to get the family subdivision numbers. Obviously, no one on the Planning Commission or the Board of Supervisors had those figures. She said family subdivisions seem to have a minimal impact and lots of time and money has been spent on these amendments already. She asked that the Board reconsider and just leave things as they are, or otherwise the Board is favoring developers and are against families.

Ms. Ann Thurmond had signed to speak, but was not present at this time.

Ms. Heather Stokes said she is a native of Albemarle, a parent, a landowner and a taxpayer. She asked that the Board vote "no" to the proposed changes in the Subdivision Ordinance regarding family subdivisions, and also the Critical Slopes Ordinance. She said the proposed changes are unclear and have changed with each mailing she received from the County. After listening tonight, she is no clearer on what is going on. She is the recipient of a piece of land from her family which contains critical slopes. She has owned it for eight years and would like to be able to build a house on the property someday or for her children to build a house there. She has not been able to get a clear answer as to whether she can build a driveway on the property if these changes are enacted, or is her land grandfathered. Would she have to incur expenses to get a variance? If she cannot obtain a variance, will the County compensate her for the devaluing of her land? She asked about the discussions of affordable housing. If the Board passes these changes, she thinks the cost of land and the cost of housing will skyrocket. She asked that the Board vote "no" to these proposed changes.

Ms. Bessie Birckhead said she has been around for 82 years. She knows some members of the Board because she taught them during her 40-year career as a teacher. She wrote last year stating her objection to the proposed critical slope amendment. She thought that would be her only involvement in this issue until she got a response from a member of the Board. The most unsettling aspect of the letter was the reference to protecting residents from the danger of fires. She said she knows something about fire safety from personal experience. Her old family mountain home burned to the ground 70 years ago, and she does not need the Board to protect her. Certain Board members speak passionately about the need to increase affordable housing in the County which is a legitimate concern. However, these same Board members tirelessly seek to pass new and more onerous zoning regulations which actually work to decrease the available supply of land in the County, thereby driving up the cost of land. This results in higher and less affordable home prices. She realizes the proposals the Board is making are part of a current fad. She was here when the Board's predecessors made a decision to zone Route 29 North all business. That was a fad in those days. That was supposed to cure all of our problems. Their goals were well-intentioned but the results were less than desirable. She said the real issue is: who is better suited to making decisions about how to live our lives? The question is not the slope of the land built on, rather about who is better in determining how to use that land. The Board makes decisions with no personal consequences resulting from those decisions. The owners of the land have personal consequences. She is glad Mr. Jefferson did not need to deal with a critical slope when he was building Monticello. With that, she will retreat back to her retirement while the younger folks seek this out.

Mr. Donny Foster said he has lived in the County for 56 years and owns approximately 650 acres. He does not think it is fair for the Board to tell him what to do with his property. He thinks most of the people who are in favor of this proposal do not own much land. If they did, they would be here tonight opposing this ordinance. He has been in the audience since six o'clock tonight and thinks that 85 to 90 percent of those who spoke have spoken against the ordinance. He does not want this ordinance passed. It not only takes away property rights, but takes away the potential retirement income for a lot of people.

He said he can sell a track of timber tomorrow morning containing 318 acres and they can go in and clear cut the property. Why can he have a timber company come in tomorrow morning and clear cut 318 acres when the Board is concerned about crossing a creek? To him, that is not preserving the property. He bought and paid for his land, and pays the County taxes dearly for what he owns. He is also paying the Board's salary. He did not buy that property to tear it to pieces and have soil erosion. He also owns Foster Well Company in Albemarle, and he thinks there are far more critical issues in the County than trying to take his land. He said people should be worried about where water will come from in the next few years. The Board has been talking about getting water for five or more years but has done nothing about it. He believes that some day the Rivanna Reservoir and the Sugar Hollow Reservoir will dry up and he will be rich from drilling wells.

Ms. Reagan Kerr said she is a sophomore at Washington & Lee University. She was born in Albemarle and she is a ninth generation native of the County. Her grandparents own property in the mountains where she spent her childhood playing and dreaming of one day having a home there. Eight years ago her grandparents gave her a lot on the property. They gave her a lot and a future site to build a home. With this new ordinance in place, years from now when she goes to build her home, how will she build a driveway? If the ordinance is in place, the dream of having this home on this property will be taken away. This is not fair. Do not force her to give up her dream and take her property away.

Mr. Dale Spozerman said he is a landowner in the County. He has property in Scottsville and feels he is a good steward of his land. He just finished a program with the TJS&WCD where they fenced cattle out of critical streams and spring areas. They also drilled a well for a new water source. He came to address the critical slope issue. He also has a 110-acre tract in the Coveseville area. Approximately 40 acres is fairly level, but the remaining 70 acres is heavily wooded with beautiful mountain streams. He would like the ability to locate a home farther back on the property, not just on the front part. He does not think of this as property that he will ever want to cut up. As the previous speaker said, he does not understand how he could go in and literally destroy that land by harvesting 7,500 year old timber. He just wants the ability to put a house back farther on that property. He asked that the Board vote against the critical slopes proposal.

Mr. Jake Thaxton had signed to speak, but was not present at this time.

Mr. Gordon Merrick said his family has owned property in the County for about 60 years. His great grandfather actually bought property in the County in 1867. His family has already placed over two-thirds of their property in a conservation easement to prevent any type of development thus insuring the land remains protected. They have also fenced off streams on the property to protect the Chesapeake Bay. They are stewards of the land. The passing of this ordinance adding intermittent streams to the same buffer requirements for the perennial streams diminishes their property rights and property values without any fair compensation. He and his three brothers ask that this ordinance not be passed because it adds another layer of restrictions on their rights as property owners in Albemarle County. He said rural landowners already have appreciation for the natural environment and the environmental impact of building driveways, etc. and he hopes they will be able to preserve that right.

Mr. Ridge Schuyler said he is director of the Nature Conservancy's Piedmont program of Virginia. He grew up in the rural areas of Orange County. He does not appear before the Board often because as a science-based organization the Nature Conservancy seeks to address the issues affecting the health of the forests and streams in a cooperative and non-confrontational manner. Conflicts which can seem intractable, like providing enough of a water supply for humans while restoring flows to rivers, can be solved if perceived differences can be set aside and all work together toward a common goal. He was sad when he saw the headline in the Daily Progress on Sunday "Rural Protection against Property Rights" which cast today's public hearing as a fight between two sides. He said this is one community. Virtually all in this room tonight are private property owners. Likely, none in the room want to see the rivers and streams die slowly from suffocation caused by excessive sediment.

Mr. Schuyler said he will focus on topics where he thinks there is broad agreement. Water is essential for life and everyone benefits from healthy rivers and streams. The major threat to the health of the streams and the abundant life they contain is excessive sediment which literally chokes the life out of freshwater systems. Stream ecologists say the best way to protect a stream is to start at its headwaters. Headwater streams are small and prone to natural drying each year which is why they are commonly called intermittent streams. These intermittent headwater streams feed perennial, streams throughout the watershed, not just in the mountains. Scientific literature is conclusive that intermittent and headwater streams are a critical component of a healthy river system. Scientific literature is equally clear that the single most effective, low cost and least intrusive way to protect streams, both intermittent and perennial, is to buffer them with a wide strip of vegetation, preferably forest. This provides the stream with its first line of defense. Building in the buffer has affects, not just adjacent to the disturbance, but downstream. There are certain places where no building should occur. He thinks it is prudent to provide some buffer to protect the headwaters of rivers and streams on which life depends. Tonight, the Board will be asked to decide between hoping streams are protected and making sure they are.

Mr. Ronnie Morris said he has lived in the County for 57 years and his family members collectively own 450+ acres of land in the rural area of the County, most of it is on 25 percent or greater slopes. He said the 15-year restriction on family divisions is too long. It would create difficulties for those who want to build on their lots. If there were any kind of family hardship, the land could not be sold. He said the intermittent stream buffer will severely impact the use of property. Every small parcel in the western part of the County would be rendered useless by this ordinance. The 25 percent critical slope ordinance is too restrictive, especially in the western portion of the County. He owns two parcels on the western mountain range that are completely in slopes of 25 percent or greater. The greatest erosion of which he is aware

took place in June of 1996 on both sides of Pasture Fence Mountain. There was serious flooding which caused landslides, etc. The reservoir at Sugar Hollow was greatly diminished by the debris that was washed in from undeveloped land, mostly owned by the National Park Service and the City of Charlottesville. He has been following the progression of downzoning and restrictions on mountain property for ten years. This is just another try to take away his rights. He asked that the Board vote against these ordinances. He then handed to the Board a petition begun by Mary Sheridan.

Mr. Roger Ruth had signed to speak, but was not present at this time.

Ms. Robby Savage said she is Executive Director of the Rivanna Conservation Society. She came to urge that the Board extend the County's current stream buffer protections to intermittent streams located in rural areas and to preserve steep slopes from access by roads and driveways. She said she would affiliate the Society with the remarks made by Mr. Morgan Butler, Mr. Ridge Schuyler and Dr. Kim. They urge the Board to pass these provisions recognizing that these are not a block of provisions, but three separate individual issues the Board has to consider. Intermittent streams are invaluable natural resources and play a critical role in the overall health of the stream system. They often represent the headwaters in a watershed stream and river network. During storms, intermittent streams can contribute to large volumes of sediment and other pollutants in the stream system. Buffers along intermittent streams help reduce these threats by keeping stream banks from eroding, by trapping sediments before they reach the streams, and by reducing the severity of floods. Currently, the County's intermittent streams only receive protective buffers against new disturbances if they are located on land that drains into the public water supply, reservoirs or intakes.

Ms. Savage said that under the proposed amendments to the Water Quality Ordinance, buffer protection would be extended to all intermittent streams located in the County's rural areas. Without this protection, many other efforts to protect the health and welfare of local streams could be seriously undermined. They see this proposal as amounting to a simple and straightforward change in the County's existing buffer ordinance. It would simply increase the number of intermittent streams that receive protection under the ordinance. In practice it would involve application of the same County staff survey procedures currently used to identify intermittent streams on lands located within the County's water protection areas.

Ms. Savage said the County recognized water quality benefits of protecting and conserving streams and steep hillsides when they passed the Critical Slopes Ordinance in 1989. This is not a new issue. She said the preamble to that ordinance enumerates many of the dangers that disturbances to critical slopes present to the environment, as well as public health and safety. It makes clear that the ordinance intends to discourage development on critical slopes. They encourage the Board to pass these two provisions.

Ms. Robyn Hoffman said she has been in Virginia only about one and one-half years. She bought an existing home off Huntington and came today to learn about the process. She presented an injunction to the County Clerk because her neighborhood has been inundated with construction debris being burnt. Smoke has come into their homes for two months and those in the neighborhood who are infirm, retired, or the children who pick up the soot, have not had any help from the planning board or the Supervisors. She said everybody knows about it and nobody has told them how to take care of themselves. She said if the Board is talking about individual matters, then each has to take care of himself. She is a retired school nurse and an artist. She has been involved in the community, and her neighbors are suffering. She asks where their compensation is, where their communication is, and will the County look and talk to the individual neighbors. They have tried to tell their Supervisor to do so. The Fire Marshal has been reported to. She said people in the audience have individual reasons to complain and the Supervisors should listen to each individually. She said the Supervisors should not let Belvedere and StoneHaus burn and take down 200-year old trees. She is confused because this has been permitted.

Mr. Eric Morris said he lives in White Hall. He said this seems to be an issue that will never go away. He lives on a dead-end dirt road that is State-maintained, but it is worse than the picture of the driveway shown earlier. His land was given to him by his family, and came about through a family division. If the current proposals had been effect at that time, he would not have been able to develop his property. Almost all of it is on a slope greater than 25 percent, his driveway, his septic field, his house site, etc. He asked the Board and everyone present where the County would be if it were not for the Southern Environmental Law and the Piedmont Environmental Council. He thinks it is time for the County and the Board of Supervisors to realize that the discussion is not about public land being rezoned, this is private property.

Mr. Jay Willer said he was present to represent the Blue Ridge Homebuilders' Association. He said a lot of the discussion about these three issues seems to characterize them as environmental issues. That may not be the right way to look at the matter. It is not an issue of environmental control, but the proper role of government to balance out the needs of the citizens of the County. He said the family division issue is not an issue which needs resolving. The issue of the 25 percent slopes may be a similar issue. All know there are hundreds of driveways in the County that are on a 25-percent slope that do not cause erosion. There is one on this property between two parking lots. Just because it is a 25 percent slope does not mean it should be banned, it simply needs additional controls. Finally, many articulate people tonight have spoken about the value of having additional buffers on streams. This provision would increase the miles of stream control to intermittent streams by 414 miles. Many have talked about the impact on their land rights. He asked that the Board take those things into consideration.

Mr. Marvin Baker said he and his wife moved here from Detroit in 2001 and have 155 acres. He said the proposals crafted are an overreach when it comes to the slope proposal. There are many

engineering remediations possible, some as simple as planting grass. He is surprised at the value of his property and the tax assessments since he bought it. He probably has six to eight building sites on the property, but does not intend to develop it. He lives in an 1856 cottage which was probably built on a 25 percent slope and is still there. He wants to build a house somewhere on his property and he does not want the County picking where to build it. The way the words have been crafted, he cannot do that. He does not know what process was used because he had not paid attention to what was going on until he got the letter. He does not understand the process that let the Board get to this point with the wording proposed. It is ridiculous. He said building can take place on 25 percent slopes without having an environmental impact. He cannot support the proposal as worded. According to tax assessments his property is worth about \$2.0 million. He has a reliable broker in town who said this proposal will cut that value in half.

Mr. Montie Pace said he has served on the Land Use Board for Albemarle County for a good while. He was born and raised in Albemarle, has a fourth generation being brought up here and has paid taxes in the County all of his life. He has never been really upset about the way his property was assessed and appraised. He has been able to make his farm an affordable place to live and raise his children. He has a lumber operation, and the State Forestry Department gives him rules (BMPs) that must be followed. They check to see if he complies, and if not, it must be made right. He wants his children, or grandchildren, to be able to build a home on his farm if they want to. You have to get a building permit and be inspected all through construction so why not run an inspection on site preparation for a house if it is a critical zone issue? He thinks there are many ways to control growth without these restrictions. He just finished working on a piece of land owned by the State. He got a letter about the quality of work he did, and the erosion control measures used. These measures work in the woods, and they will work so people can retain possession of their land.

Mr. David Hamilton said he is from Bundoran Farm but will address the Board as a private concerned citizen. He is encouraged by the change in rhetoric during the last six months. He had begun to feel he was part of a lunatic fringe of moderates on this issue. He will not address the "get your mitts off my land" versus the "save the planet" logic of this argument. He understands that something needs to be done to protect these resources, but he wants it done right. The proposal is better than it was before it went to the Planning Commission, but he thinks there are still major issues that need to be addressed before the Board votes to enact these measures. First has to do with communication. The staff's report lists about 20 different communications which have been made to the public on this issue, so you might assume that every valid argument that needs to be made has been made.

Mr. Hamilton said an earlier speaker noted that about one-third of tonight's work might be irrelevant or unneeded. Second, he showed a copy of the FAQ document which was included with the letter mailed a couple of weeks ago to all County landowners affected by these proposals. The second page of it states that "the proposed regulations will NOT affect you if you are establishing the first home on an existing lot." That reassurance is not true if you look at Section 4.2.6(b) which says "The requirements may be enforced on a lot of record if there are other alternative sites" so he understands the waiver is not administrative. In the same section, the ordinance refers to the date of adoption of the amendment and then again in that section it refers to date of adoption of the chapter, which he reads as 1989. This lack of clarity is not what would be expected on the night before voting. There are a number of other issues which he does not have time to address including use of the word "super-adjacent" which his education has not prepared him to understand. He hopes the Board will take its time and not vote at one in the morning on this issue.

Mr. Corky Shackelford said he is a farmer and life-long resident of the Rivanna District. These are complex issues. He wonders why this public hearing was rushed to this meeting in less than two weeks after the Planning Commission's report. Yesterday he tried to read the executive summaries on the County's website, but two of the three only brought up an announcement of this public hearing. The one published executive summary was about the Water Protection Ordinance. The word "protection" sounds good, but small lots are exempted. Is that because the rooftop runoff from these lots does not affect water quality or because those homeowners are being encouraged to support this amendment without any cost to them? A requirement for 100-foot buffers on intermittent streams is actually 200 feet of total width. It would take away acres of currently productive farmland. Are farmers not exempted because they are ignorant or oblivious to the loss of soil on which their livelihood depends?

Mr. Shackelford said as to Critical Slopes, tonight's agenda announcement contained a one-sentence description consisting of about 412 words. He does not understand it, but it seems that he would not be allowed to have a road on a slope greater than 20, or is it 16, percent. In the County's rolling countryside that takes in a considerable part of the County. If this requirement disallowed house sites on hilltops, it would force them onto the flatter, more agriculturally productive land. Why not utilize current engineering methods and best management practices in road construction on slopes instead of this broad-brush restriction? Why not use civil engineering rather than social engineering? Finally, there is the Family Subdivision Ordinance. The attempt to discourage developers and a few abusers of current requirements will punish the legitimate family homeowners who must move because of emergencies like job transfers, divorces and financial failures. The most alarming feature of this amendment, freezing division of the parent parcel, would mean that a farm owner who needs to sell a small portion of land to meet an emergency must dispose of the whole property and quit farming as the only recourse in order to remain solvent. Does the Board really want to drive farmers off of their land? Why should landowners, whose taxes already supply the largest portion of County revenue, be subject to oppressive land use proposals and overly restrictive policies?

Mr. Stuart Kessler said what the citizens have been seeing the last few weeks is trying to kill a mosquito with a sledge hammer. He is involved with development and is an architect. He has had land in

the rural area for over 30 years. When he first got the property he could have planned it for a large number of units, but because he did not, he can now have nine sites on it. If any of these provisions are passed, he will be dead long before anything can be done with the land. He thinks everybody is overacting. In pushing for urbanism in the growth areas, somebody should have traveled around to see what had been done, how it worked and where it did not. Suddenly there are 1,000 units here and 2,000 units there and everybody is panicking. The Board had good intentions but this is a reaction to Northern Virginia type of development. He does not think these ordinances need to be passed, they are counterproductive, and prevent people who want to live in the rural area from doing so. That should not be what is done to protect rural zoning.

Ms. Charlotte Shelton said she and her family live at North Garden where over the last couple of decades they have bought four parcels of land. She is speaking against these provisions tonight as she spoke against the Mountaintop Protection Plan a few years ago. She said development is a problem and needs to be managed, but it is not development on individual parcels of land. The larger issue is that this is an attempt to legislate aesthetics which is something that cannot be legislated. If her family wanted to develop land, the easiest thing to do would be to "carve up" Route 29 from North Garden almost to Red Hill and put nice little two-acre lots with ranch-style houses. If they need to build on their property there are little flat plateaus back in the woods where the houses would not be seen, and which could be reached with an engineered road, across a 20 or 25 percent slope. That can be done if done effectively. She said legislating this is an unfortunate way of addressing an issue that relates to other parts of the County more so than where they live

Ms. Shelton said in listening to the County Engineer tonight, she wondered where the numbers came from. She does not think there was a lot of original research. She understands that VDOT recommends a 10 to 15 percent slope for grades in subdivisions. In talking about mountain land that is not a practical application; it is transferring what might make sense in a Biscuit Run or a similar place, but not in North Garden and Tom Mountain where she lives. They do not plan to build on every site there, but if they did it could be done effectively and with respect for the environment. She urged the Board to take a fresher lot at this issue and rehash this attempt to put a lid on development in areas where there is not a huge amount of development anyway. Growth will not be stopped; growth is already happening. People talk about putting gates on Route 29, but that is a lunatic idea. Albemarle will continue to grow, and the issue is how to manage that growth. Freezing any creative handling of rural properties works against people like her family who have gone to considerable expense to put together property. Why do it?

Mr. Carl Tender said he is the manager of Adventure Farm, L.L.C. located in many areas of the County. He is also the owner of Tender Cattle and Vineyard Company located in Albemarle and Nelson County. They have almost 3,500 acres in Albemarle, and he came to speak for those acres. Adventure Farm owns 1,100 acres in the White Hall District and some acreage in the Rivanna District near the Airport. He has been listening and counting speakers tonight; at this time, it is about 50 to three opposed to these amendments. The three who spoke for the amendments actually represent special interest groups. In order to engage emotions in this matter, he said the easiest way to do so is to talk about the environment, and then about the Chesapeake Bay. He is a farmer and knows about saving the environment and protecting resources. Do not label this as environmental-friendly; it is really a measure to backdoor restrictions for development in the rural areas and it will not do that, but will restrict the private landowners and those families who have lived on the land their whole lives. All of these landowners want to possibly pass on what they worked for their whole life to the next generation. If a restriction of 15 years is put in the family subdivision ordinance, what would happen in the event of a divorce or a job transfer?

(Note: At 10:31 p.m. Mr. Boyd called a recess. The Board reconvened at 10:38 p.m. and continued with the hearing.)

Mr. Michael Boggs said he has six children who are ninth generation County residents. He is also a road builder and rural subdivision developer. He said he would submit his remarks in writing because they are long, and he asked that the Board consider them when making its decision. In regard to the proposed requirement for showing all individual lot grading on the preliminary plat, most rural subdivision lots are sold to individual owners or to individual builders as single transactions. It is impossible to predict what driveway alignment or site grading will be needed until a house plan is chosen. Many times this occurs years after the final plat is recorded. To prepare this information and have the County review same is a waste of time and money for both parties. At least 95 percent of such grading plans would have to be substantially revised, resubmitted and reviewed again.

Mr. Boggs said curtailing the "Agreement in Lieu" policy for only those lots containing 25 percent slopes is unfair to those property owners and ineffective in substantially reducing siltation. All building sites need erosion control measures. Unprotected disturbance on or near slopes of less than 25 percent can result in far greater siltation problems than protected disturbance on or near slopes of 25 percent or greater. What is needed is inspection and enforcement of erosion control measures on all sites in conjunction with the footing excavation inspection. There is no justification for drawing a line at 25 percent and calling everything above that a critical slope. Slopes are not a concern until they reach much steeper gradients and even then proper construction methods can mitigate those concerns. Section 2 of Rosemont Subdivision which was developed 15 years ago is an example of where effective construction methods were utilized to construct three miles of roadway on mountainous terrain with no off-site siltation. A substantial portion of this construction was on slopes between 25 and 50 percent and there have been no settlement problems, no slope problems and no drainage problems.

Mr. Boggs said that not only does the proposed ordinance as advertised prohibit the disturbance of so-called critical slopes to establish a street or driveway, it also prohibits the disturbance to maintain a street or driveway. Does the County want to prohibit the maintenance of existing streets and driveways on

steeper slopes especially when the next part of the proposed change deals with providing safe and convenient access for emergency vehicles? There are numerous subdivision roads at Wintergreen and Stoney Creek (Nelson County) with 22 to 23 percent grades which are serviced by snow plows and emergency service vehicles without a problem because the equipment matches the application. Instead of over-regulation of the size and grade of driveways, the size and use of fire trucks needs to be regulated. Despite the individual and public notices, he thinks the great majority of rural landowners have no idea how far-reaching these proposed ordinance changes are, or the enormous impact they will have on their existing property rights and values. Taken as a whole, these changes will kill 90 percent of rural development on both moderately sloping and steeper land in Albemarle County. It will not kill rural development because people will still insist on the quality of life it offers.

Mr. James Guba said he was present to represent the Leadership Board of St. Nicholas Orthodox Church, and by default, all churches built on rural parcels. He said most speakers this evening have represented either residential or commercial interests. The church's concerns were presented to their Supervisor by letter and by E-mail. He appreciates the efforts of the Board to provide for waivers for septic tanks, driveway modifications, etc. However, in reading the proposed amendments, the church is on a parcel that has major critical slope issues. They are concerned about the possibility of future development of their land and cannot foresee what it might be a generation or so in the future. The ambiguities that remain in the language are such that they are not supportive of the measures as stated in terms of how their property could be expanded in the way of classroom facilities and other things that might be needed.

Ms. Ginger Ashcom said she is a lifelong resident of Albemarle. She remembers her father talking about the preservation of erosion control around the current reservoirs. He was sued by people who tried to stop it then, and nothing happened. The community is in the same place today. Trying to protect the critical slopes is a good idea. Each thing needs to be looked at individually before just saying *carte blanche* that slopes are not usable. She thinks the Building and Planning Departments of the County should be smacked. They have allowed things to go on in the County which were not to the benefit of the County and the people who live here. People come here because it is beautiful, but that is slowly going away. She lives in the Buck Mountain area. It has the cleanest water in the County. Bureaucracy is stepping into things that are already in place, upsetting things, and she thinks it is a big mistake. The family division ordinance is an abomination. She thinks the Supervisors need to control development in the County. If developers have a whole lot of money, they buy what they want. She is anti-development, and although she is a realtor, she does not want to see even one more house built in the County. She said the Supervisors are charged with making the internal structure of the County government work for what the people want, not for a handful of developers.

Mr. Joseph Jones said he is a resident of White Hall, current president of the Farm Bureau, and he was a member of the Mountain Committee. They did approve a narrative that came to the Board. Several members reserved judgment on this until they could see the ordinance language. After looking at the ordinance he asked how it would apply to him. About three years ago he built a house and driveway of seven-tenths of a mile in length. Two-tenths of a mile lies beside an intermittent stream. He would invite all to look at his driveway and show him what environmental damage he has done. Driveways can be built correctly. It has been said the ordinances are not good for farmers – it was not said they are not good for farmland. There are thousands of acres on critical slopes and with stream buffers that would be affected by these ordinances. He thinks the Board should consider value because nine percent of take-home pay is spent on food. Eighteen percent of take-home pay is spent on health care. The law of diminishing return tells him that at some time in the future he might have to sell some property and he may not have as many development rights after this as he has now. There has been talk about sediments and streams – there are a lot of VDOT roads in the County that run parallel within 100 feet of streams – there are three roads that cross streams in open fords. He has not heard an environmental outcry to stop the sediments from running in the streams off of state-maintained roads. The Sugar Hollow Reservoir filled up roughly 33 percent in the flood of 1995 and not 1996 as mentioned earlier. There is not a single house in that watershed. When there is enough rain, there will be sediment. If the Board passed an ordinance that said you must hold stock or bonds for fifteen years before giving them to your children, see how that would tie up family assets.

Mr. Larry Abell had signed to speak, but was not present at this time.

Mr. Noah DeFalco had signed to speak, but was not present at this time.

Mr. David Zimmerman said the Board and staff had done what the people asked them to do and they should not be penalized for that. He has lived in the County since 1986. He only represents himself and his wife. If the Board enacts the ordinance, it will be doing an injustice to the County and its citizens. Virginia's history is based on freedom and the small property owner. Family farmers grew the Nation and their rights should be protected. The Board is taking away their rights by saying they have to hold their property for so many years before they can give it their "young uns." Don't enact this ordinance. Leave it alone, it ain't broke. The Board does not need an ordinance for critical slopes. There are plenty of regulations already. One cannot get a building permit without having a certified land disturber to sign off on it and show where a silt fence has to be placed. He asked where the 16 percent figure came from and was told it came from VDOT. He understands slopes have to be protected, but stop eroding property rights in the name of environmentalism. He needs his property in order to live and for his children to live. The developer can afford to hire lawyers and advocates, but he can't do that. The Board cannot legislate responsibility. Stop raising taxes and stop taking property rights.

Mr. John Murphy said he is the director of Stream Watch which was asked by Albemarle County to provide information about the science of stream buffers. They did that last April. The letter was vetted

through the entire Stream Watch organization which is composed of Albemarle County, Fluvanna County, the Rivanna Water & Sewer Authority, the Nature Conservancy, the Rivanna Conservation Society, and the T.J. Soil & Water Conservation District. He said the letter was referenced earlier tonight by one of the speakers and he wants to comment on the distortion that speaker promoted. Taken out of context, the first sentence of their second paragraph, the speaker noted: "Stream Watch has not performed a study of the buffer effectiveness in Albemarle. We do not believe such a study is needed in order for the County to make a long-term decision about improving buffer protection." What the speaker neglected to provide to this body are the following sentences. "The buffer is perhaps the most intensively scrutinized aspect of stream management. Literally hundreds of studies document the importance and effectiveness of buffers." He said the debate about whether or not buffers are effective is the crux of the comments tonight. He was asked to give commentary from a scientific perspective and tonight finds himself wanting to comment on the social aspect of the evening. The most important thing the community can do is to speak clearly and honestly and without distortion about the issues in front of it. One earlier comment that resonated with him was to try to do the greatest good for the greatest number of people.

Ms. Betty Mooney said she appreciates all of the people who came tonight who are taking care of their land. Unfortunately, not all landowners act responsibly and when those here tonight sell, the driveway that was seen in the earlier slides may show up on the land they have cared for. She believes those who develop responsibly will still be able to do so and build houses for their families under these flexible and modest proposals. Landowners have brought up some good points. She hopes the County will stop the clear-cutting. If these landowners experience hardship, as many have said they will, they are fairly compensated. She said everyone in the room tonight will be gone some day; some sooner than others. Others will follow, and what will be left. She has lived here 35 years. The leaders she will remember are those with the courage to see beyond their short lives and plan for future generations. She now lives in the City, but she asks the citizens of the County to elect officials who support these modest proposals and who support rural habitat protection and the protection of the watershed. Consider the greater public good both now and for future generations, and consider how short individual time on this earth is. If the Board votes against these modest legacies, what legacy does it leave behind?

Ms. Margaret Maupin said she lives near Free Union. Her husband's family settled in Albemarle in the mid-1700s. She is proud to be a part of their heritage. She asks that the proposals before the Board tonight be rejected. Look after the folks who have lived in the County for generations. She and her husband own a small parcel of land on critical slopes and they wanted to hold on to the land and eventually share it with their children. Continued restrictions will make their ability to ever build a home on the property impossible. She said it is easy to move here and then put restrictions on future residents. What would happen to all those who moved to Albemarle County in the last 50 years had those who lived here then restricted driveways and family division rights? She asked why everyone cannot work hard to resolve the environmental issues without punishing the people who built the County. She asked that the Board reject the proposal and respect the lifetime residents.

Mr. Charles Morris said he lives in the Scottsville District. He wants to speak against it. He bought 96 acres years ago for himself and his children in the hope that someday they would have homes there. For the last two years he has tried to divide two homes that sit on one piece of family property. With the change in the law, there is no way the property he bought years ago for his kids who were small at the time will ever be able to build on it with all the regulations. Right now he could buy property somewhere else because he does not feel like dealing with the problems just dividing property under the family division rights. As far as erosion, he thinks a lot of this is duplication of legislation. Permits are required whenever you disturb the soil. Someone tells you every step of the way how to do it when you build a house or put in a road. This all seems to be a waste of one's energy when there are already laws in place.

Mr. Montie Duncan said he waited until the last to sign up because he likes to listen to what people have to say. He is a lifelong resident of the County and a property owner for over 35 years. All of his property is in the critical slope overlay in the Totier Creek Reservoir watershed. His home was intentionally built on a slope in order to have a walkout basement with minimum digging. The actual land disturbance was greatly minimized by thoughtful placement with the slope. The septic drainfield ditches were dug with the slope. They were installed in the mid-1970s and to this day you would not know the drainfield exists. There is no erosion from the house site all the way to the creek that feeds the Reservoir. By properly working with the slope the property owner can generally co-exist with nature with little or no impact. He said there should be regulations to insure property stewardship of the land. This can be done without the type of closed-door regulations that have been brought up in these proposals.

Mr. Duncan said he thinks there would be outcry from the citizens if the heavy-handed reach of these proposed regulations was fully understood. Few people he has talked with realize that a 25 percent slope regulation would prohibit most natural on-grade building sites for walkout basements or basement garages. In many cases, driveways to basement garages would be prohibited. He said there are already burdensome regulations on structures, improvements, land-disturbing and water protection in all areas of the County, especially those with critical slopes. The property owner is already greatly burdened by the expense to survey, plot, locate and protect. If existing regulations are enforced, more burdensome ones might not be needed. When people are constantly losing their rights, they reach the point where they reject anymore regulations whether they are good or bad. That point is nearing for Albemarle County owners. He is here to voice support for property rights and to support the Supervisors who show their concern for property rights and citizens' rights in general. He will also campaign against anyone who votes for these ordinances.

Ms. Frances Lee Vandell said she owns 150 acres. Her land is on critical slopes. She does not see her friends represented here tonight because she feels they trust the Board to do the job it is doing

well, and they would agree if the Board did pass the ordinances. She said they own land in the County and farm it and she cannot oppose the Board if they propose this for her and her critical slopes. She will say that with critical slopes, roads and houses and the inspections that are done for them, there is already too much that the County has to watch during the different phases of building. She thinks fees would have to be added to the house being built to the fees for the road inspections in order to do it properly. She has built roads and feels they do need to be inspected more. She had a problem and thought the County would help her, and the inspections should have been more often and quicker.

Ms. Clarabell Wheeler said she is a resident of the County. Her family was here before the American Revolution. Her grandfather started the real estate board, and his sons were members of that board and sold many houses and many pieces of land. She is proud to say there is not one developer anywhere in her family. They have been stewards of the land. They have been farmers. Her father had a dairy farm on Route 250. His father had a farm in Batesville. They took care of the farm; there was no erosion. The house in which she lives was completed in 1862, strategically placed on top of a hill on a critical slope in the middle of deciduous trees. It is cooled in the summertime and warmed by the sun in the wintertime and nowhere around it is there any erosion. She said people take care of the land and plant their houses where their families can grow. Most of what has been heard tonight follows the tenet of learning. That tenet is that repetition is the cornerstone of adult education. She said many people stood here tonight in opposition to this proposal. This same proposal, in a different name, has been brought by someone to this Board at least three or four different times. It has not been supported by the populace. She said slopes don't cause erosion. Misuse causes erosion; look no further than Hollymead. That weeping, horrible sore probably dumped more Albemarle red clay into Route 29 North than every other individual house built in the County in the last 10 years. The Board rewarded that developer by letting him build more houses. The problem is with the water supply. There is not enough water supply. No matter what is done; if it doesn't rain there will not be any water. People cannot keep on going into Albemarle County. The developers are ruining the critical slopes and the County, not the individuals.

Mr. Rick Byer said the County Engineer, Mr. Brooks, stated that a 25 percent grade was not structurally unsound. He said it did not get to that point until it got to 50 percent. Standard highway banks are 2:1 slopes. Interstate highway banks are 2:1 slopes; that is 50 percent. You will not see highway banks that are eroding, and they stand up to fairly abusive mowing. A 25 percent slope is arbitrary. There is no scientific basis for saying it will erode at 25 percent. In the rural areas where roads went from horse and buggy to gravel and then to paved, because there was not much right-of-way, they generally took the bank and made it steeper and steeper as the road got wider. There are banks in the rural area which are 1:1 which is very steep. They are making it with minimal care. He said 25 percent is arbitrary and cannot be justified.

Mr. Lee Shultz said he lives on Stony Point Road where he has a two-acre lot with a vast ravine on half of it. He suggested getting a reduction in his taxes because that part of the lot is not usable. He is not in favor of any of these proposals. Although he only has two acres, it is his land. He mows it and keeps it clean. He said America is made on the landowners, people who are registered and vote like he does. He has been on that property for more than 30 years and taxes keep going up. He does not think these proposals do anything to help increase the advantages to the landowner. As to the critical slopes, that will only increase the need for additional staff to go out and look at the slopes and tell the landowner he cannot do anything with it. That will create a need for more revenue, so there go the taxes again. He thinks these things could be recommendations to the landowners, but not made a law.

Mr. Robert Humphris said he lives in Albemarle. When the County was founded in 1744, the people were few and far between. Property rights were king and the ecology and streams were in pristine condition. There were no growth problems. Today, about 90,000 people later, the quality of life has decreased dramatically. There are inadequate regulations to protect the rural areas and even the Chesapeake Bay watershed which includes Albemarle County. There are severe growth problems. Along with the good features of growth there are also not so good consequences such as traffic congestion, higher property taxes for increased cost of services, threatened ecology, polluted streams with erosion problems, and loss of family farms and other consequences. There has been a loss of rural character and a lot of bio-diversity. It does not matter how many people were present tonight on each side to speak to these rural amendments; however, what does matter are the independent and unbiased citizen survey results which have been overwhelmingly consistent for the past 15 years in favor of more protection for rural areas.

Mr. Humphris said the Supervisors are the caretakers of Albemarle County. It is up to them to protect the ecology and the values and quality of life of the residents already here and to prevent the erosion of land, as well as wisely planning for new growth; 70 to 90 percent of residents are requesting it. Unlike 50 years ago, what one does today greatly affects others in many ways. The Board has made some good decisions over the years, but there is still more work to be done to protect the rural areas. The amendments to the ordinance before the Board tonight are necessary to further protect the precious areas and natural resources. The Board previously adopted a resolution of intent to adopt these measures. He urged the Board to act now and adopt these protection amendments to the Zoning Ordinance, especially the 100-foot stream buffer and the critical slopes.

Mr. Art Watson said it seems as if all the problems of growth come back to asking the rural areas to fix them. In this case, all three of the proposals have good intentions, and he is terrified of good intentions. There are other ways to solve the problems. All of the people speaking against these proposals tonight are farmers and rural landowners. Those speaking for the proposals are members of interest groups or smaller landowners. There seems to be a mismatch of speakers. He assumes that as a political issue environmentalism is really good. Reducing the possibility of uncontrolled growth in the rural areas is good for a political issue. He is concerned that this is just a cheap political issue. There are

other ways to fix this. He suggested buying development rights in specific areas. He thinks there are ways for this to evolve rather than trying to solve the problem all at one time. He said people asked a number of legitimate questions and that is disturbing since this has been worked on for so long by so many people. It is not that it be rejected as it is now, but that it is postponed until some of those questions are answered and the proposals made better.

Mr. Paul Byer said these issues are very emotional. Some of the experts who spoke tonight had valid things to say. However, he does not feel this could be voted on tonight because there are a lot of holes in it. He asked that the County do a cost-benefit analysis of what these things will mean in real time engineering fees and the delays that will be caused.

Mr. Bud Smith said he is a landowner north of White Hall. He asked that no decision be made based on how people will vote next month. Do what is right. Do what makes sense. He sits in Crozet and watches the fire trucks go under the bridge and he does not think it is 12 feet high. Someone suggested requiring smaller trucks or fixing the bridge. That makes sense to him. He asked that the Board members think about it long and hard and use their common sense. It would save everybody a lot of time and money if the Board would just turn this thing down. He does not want sediment in streams. He suggested that the Board go out to Old Trail, and go through Crozet after even a small rain. Although sediment traps are in place, they are not maintained.

With no other member of the public rising to speak, Mr. Boyd closed the public hearing at 11:26 p.m. and placed the matter before the Board.

Ms. Thomas asked if there is any portion of this proposal that might get more than three votes tonight. She believes the buffers are the least controversial proposal because almost half of the County is already under this provision. She has a petition with approximately 85 signatures of people who know what happens when someone undertakes to build a pond; the County Engineer can only give advise but has no way to enforce anything because it is done in the name of agriculture. There is a provision in the buffer ordinance that talks about an erosion impact area. That provision would make a tremendous difference and it could have saved one stream in the Ivy area that has been almost ruined by activities upstream. That is an area that already has the 100-foot buffer requirement because it lies in the drinking water watershed. She asked Mr. Boyd if he would take a "straw" vote on that issue so the Board members could talk about whether there are any amendments that might garner more votes.

Mr. Rooker said many people were present tonight who have not attended prior meetings of the Board when this matter was discussed. He said the Comprehensive Plan calls for additional protection of streams. The Board approved the Rural Areas Section of the Comprehensive Plan and one strategy in that plan is to protect the natural, scenic and historic resources of the County; to preserve large forest areas; to create forest and stream buffers; and, to support good soil management in order to protect watershed resources. Numerous areas of the Comprehensive Plan were adopted in order to do a better job of protecting water resources. This Board appointed the Mountain Protection Committee which met about 40 times. That was a balanced committee and they presented a recommendation to do a number of things; those recommendations were compromises. Then, the Planning Commission and the Board had a number of meetings on this issue over four or more years. These are not new issues.

Mr. Rooker said when the mountain protection recommendations were presented to this Board, the Board, by consensus, decided to take out several recommendations and send those to the Planning Commission. The Commission then made a unanimous recommendation for approval of what is before the Board tonight. This has been a long, long process; it did not happen suddenly. A lot of good points were made tonight by the public and those points need consideration by the Board. When the stream buffer part of this recommendation was discussed by the Board every member supported a resolution of intent to bring it forward for a hearing. Some members expressed reservations about the critical slopes component but expressed no reservations about the stream buffers. Those stream buffers already apply to about one-half of the rural area. It is not new, but just applies the same regulations to the rest of the rural area and there are good reasons for doing it.

Mr. Rooker said the County asked the Stream Watch group for their opinion of this proposal. As was indicated earlier, there is virtually nothing that can be done for protection of water resources in the County other than extension of the stream buffers. He hopes the stream buffer component of this ordinance, which every member of this Board has expressed support for in the past, will go forward. He supports voting for the stream buffer component of this proposal tonight.

Mr. Slutzky said he thinks the stream buffer proposal is the easiest of the components to discuss. Many people came tonight to express their good stewardship of the land. He does not think anyone would build a building in the setback of a stream so he does not see the controversy in that item. As was pointed out by Ms. Thomas and Mr. Rooker, that provision has already been imposed; in fact, a few months ago it was imposed on a significant watershed in the northwestern part of the County. No one on the Board objected to that action, and no member of the public objected. He suggested voting on this issue, and then discussing the more difficult issues.

Mr. Boyd said it is now twenty-five minutes of twelve, and the Board has been in session since 2:30 p.m. this afternoon. The watershed thing was not supported by everybody who spoke; for one thing the County did not send notices to every property owner who would be impacted by the 200-foot buffer requirement. He has heard from a number of people who said their land was narrow so this would take a large part of it away. In concept he thinks the Board would want to support the change, but he does not think it has been vetted. He said only those landowners whose land is on the critical slopes list were notified of this hearing, not those on the buffer list. He said one farmer had remarked that it would restrict

what farmers might want to do on their land and he does not have an answer to that remark. Mr. Graham said it would only affect row crops, there could still be a pasture and there could be cattle, even in the stream.

Mr. Boyd said there is confusion about it. He wants to know why any Board member wants to vote on these items after 11:30 at night without giving some thought and consideration to what was said tonight.

Mr. Slutzky said Mr. Boyd did not advocate for not taking a vote on the Biscuit Run petition at one o'clock in the morning. He does not understand why 11:30 at night is somehow a magic number. Normally after holding a public hearing, the Board goes ahead and makes a decision; since he has been a Board member he does not remember the Board delaying any votes.

Mr. Boyd suggested looking at the December 13, 2006, report from the MOD Committee. That group said their recommendation was a "three-legged stool"; they said the only reason they got a consensus was that public acquisition of interest in the land must be part of this process and he does not see that "on the table" today. If the Board is going to take away people's property rights because of critical slopes or stream buffers, there is nothing in the proposal to take care of that.

Ms. Thomas said Mr. Boyd is misrepresenting the MOD's report so she would like to speak since she was the Board's liaison to the Committee. They had a number of recommendations which tried to deal with incentives. Some of those have gone to the ACE Committee which will be bringing a recommendation to the Board to change the point system for mountain land. There have been a number of things which have already happened which followed those recommendations.

Ms. Boyd said he was just reading from the report.

Ms. Thomas said those reports have not been updated; a number of things have happened since they were written.

Mr. Boyd said in the minutes of the Board's January 10, 2007, meeting with the Commission and the MOD Committee it states: "Some Board members wanted it understood that while they are agreeing to move forward they are not committing to be favorable to any of these particular provisions until they have had time to see the details of the ordinance." He thinks the Board is just seeing some of the details tonight.

Mr. Rooker said the Stream Ordinance is about three pages long; few changes were made in that ordinance which has applied for years. He said there have been open houses dealing with these issues and staff has manned telephone banks answering questions on these issues. If the Board does not make a decision tonight, when will that decision be made? Will there be another public hearing on the same issues?

Mr. Boyd said he would like another work session.

Mr. Slutzky said there was a joint work session with the Planning Commission and the Board agreed on a subset of the body of work that came out of the MOD Committee.

Mr. Boyd said he did not want to argue about that at this time of the evening. It is late and the Board has been here for a long time. He is not in favor of taking a vote tonight. If he is forced to a vote tonight, he will not support any of the three proposals. He wants to think about it, go over it in more detail and do it at a reasonable hour. He wants to consider what he heard from the public tonight.

Mr. Slutzky asked if tomorrow would work or after the November elections.

Mr. Rooker said there were a number of speakers on each side of the issue who spoke tonight. He did not keep a tally, but there were also a lot of people who did not attend this hearing but who send letters and e-mails to the Board. He had 152 letters and e-mails which expressed support for all three proposals, as compared to 46 that were against them. He thinks most of the Board members got those same e-mails.

Mr. Boyd suggested that instead of Mr. Rooker and himself debating, other members of the Board express their thoughts.

Mr. Dorrier said he listened to everybody who spoke tonight, and it confirmed some of his suspicions about the ordinance. Someone mentioned that he had built his house using the slope in his favor. To him, that shows that the slope is not always working against the landowner or the public. The road going up that mountain did not look very attractive, but he thinks that with the right approach it could be made better. Another person mentioned the fact that roads go across intermittent streams. He thinks that all are familiar with those streams which are non-existent in dry weather, but run with water during a rainy season. He does not have all the answers on the slope. He said there was mention of waivers tonight, but there is dependence on the engineers to waive the requirements for the right issues. That puts too much power in the hands of the bureaucrats, and he does not like that. If there were 13,000 people for whom this ordinance was advertised, there would be 13,000 waivers. He thinks that is too much to handle. He is concerned about the GIS review of critical slopes. He said the critical slopes have been inaccurate in the past. He does not know why that issue should rush forward. The Board is trying to fix a lot of things tonight, and he does not know that they are all broken. The Board needs to be sure of what it is doing, and he cannot support the situation as it is now.

Mr. Dorrier said he would be willing to consider something he has talked about with Mr. Wyant, and that is transfer of development rights. That may be a compromise solution to some of the problems. He thinks of himself as an environmentalist and thinks that other members of the Board are also. But, taking away peoples' property rights is not right, and the Board does not want to devalue the land in Albemarle. Jefferson built Monticello on the flat areas of the mountain and that has worked well over the years. He said there are flat areas on the mountains that could be built on without being seen from below or above, so he does not think the Board needs to think about fixing those areas now. He sees no rush to go ahead with this and agrees with Mr. Boyd that a work session to look at setback issues without being judgmental would be best. He thinks the Board can continue to learn and maybe it will come up with something good.

Mr. Wyant said a speaker said tonight that there seemed to be two sides on the Board, and that was a shame. He is an environmentalist, a conservationist and an engineer so he understands a lot about erosion control. He thinks there are many problems with what has been proposed. There are three issues: family divisions, water protection and critical slopes. He does not think there is a problem with the existing family division provisions. There are a lot of problems with granting a waiver and it puts a burden on staff. He was in support of provisions regarding buffers in the watersheds flowing into the South Fork Rivanna because it drains out of Greene County into Albemarle. He said there are already 41,000 acres in the stream buffers. The addition of 414 miles adds about 10,000 acres of buffered land. He is concerned about that.

Mr. Wyant said when the Planning Commission approved their recommendation to the Board on this matter, only four members of that body were in attendance at that meeting. He did not think that was a fair representation of the Commission. He agrees with Mr. Slutzky that this steals land. A member of the public said recently that the more regulations imposed, the higher the cost to the landowner. At this time, he does not favor moving forward with any of the three recommendations. He said the problem with each one has not been identified to his satisfaction. If this comes to a vote tonight, he will not be in favor of the three.

Ms. Thomas asked if Mr. Wyant realized that half of the waterways in Albemarle County are impaired. The Board recently got a report which showed that at least 13 segments of the Rivanna River are designated as impaired. Maybe staff did not start with a definition of the problem because the problem long ago ceased to be anything that had to do with aesthetics, if it ever did. One of the things that came from the Mountain Protection Committee, which was composed of many diverse people, was that the environmental issues should be made clear and those issues attacked head-on, not in a roundabout way. A buffer is the most head-on protection a stream can get. She thinks that the Board members who ask that this go to staff and are saying they could not support it owe staff and the taxpayers a big apology.

Mr. Wyant said there needs to be a clarification. Urban development is a big culprit of the degradation of the streams. There is a lot of fertilizing that goes on in an urban setting. There are studies which show that the use of curbs and gutter send that runoff directly into the streams, and then into the river. He thinks this is the same as "shooting a nat with a cannon." He said stream sediment is the natural erosion of stream banks. He thinks that is a bigger issue than disturbance on the land.

Mr. Boyd said he remembers that the Stream Watch report said streams are degraded because of the high density of development in the urban areas.

Ms. Thomas said if one dwelling unit is put on 27 acres there will be an impaired stream.

Mr. Boyd asked if this proposal goes after the area where there is not one dwelling unit on 27 acres. The Board is going after the rural area to solve an urban area problem.

Mr. Rooker said there are too many things being said in a broad way which makes it difficult to respond. This Board adopted a Comprehensive Plan which says that development should take place in the five percent of the County designated as growth area and natural resources in the rural area should be protected. This Board has voted for many developments in the growth area based on that concept. Several members of the Board have opposed spending taxpayer dollars to attract growth to the area; others have supported spending taxpayer dollars to bring growth to the area. Growth continues to come so the question is where will it take place, in what form, and how much will it impair resources? Fairfax County was the biggest dairy farm area in the State in the 1950s. He does not think there are any dairy farms in Fairfax now. The question before the Board is whether 50 years from now it wants to have development spread all over the County or in a reasonably defined area.

Mr. Dorrier said only one speaker tonight said they were in favor of large-scale development. They talked about one or more houses for their children, and that is all they talked about.

Mr. Rooker said there is little in the proposed ordinance that would prevent one, two or three houses on the land being talked about.

Mr. Boyd said the people are not convinced of that.

Mr. Rooker said he does not think it makes sense to lump the three provisions together, they are separate. Concerning the family division proposal, he is convinced that 15 years is too long. He thinks the Board should adopt something similar to what Greene County adopted, and that is five and five. That is what this Board started with and there seemed to be support of all members for that provision. He said there was pretty much of a consensus that the intermittent stream portion of this proposal should be

adopted. There are numerous sections in the Comprehensive Plan which say streams should be protected.

Mr. Dorrier asked if that is the blue stream approach (a blue line on the map indicates it is a flowing stream).

Ms. Thomas said that has already been done.

Mr. Rooker said intermittent streams are already protected in half of the rural areas. The question is whether there is some reason not to extend that to the other half of the rural areas. When the Board decided not to go forward with mountain protection, everybody present said stream protection should apply throughout the rural areas. Maybe there were people who did not mean that, but there has been a lot of time and effort spent going forward with that provision based upon what seemed to be a consensus of the Board that it should be done.

Mr. Boyd said he does not think that was a waste of time and effort. There just needs to be a little more work on it.

Mr. Slutzky asked Mr. Boyd what he thinks needs more work.

Mr. Boyd said he would like to know how many people would be impacted by this provision, particularly when talking about 10,000 acres. He asked if notices had been sent to all of these property owners explaining what the Board is proposing to do. He learned a lot tonight from the speakers about being good stewards of the land and its rural character.

Mr. Slutzky said they won't be punished because he thinks they are folks who would not be doing that.

Mr. Boyd said he does not believe a lot of those people are convinced of that. He heard from about 50 of those speakers that they feel they will be harmed.

Mr. Slutzky said a number of people stated that they will be harmed because they believe their property values "will go into the dirt." As it turns out, in the case of conservation easements where their development rights are removed voluntarily, the value to the land contiguous to those parcels inherently goes up. There was a significant downzoning in the County in 1980 and property values went up. He is not sure there is a persuasive argument that by taking property rights away in an even way across the rural areas of the County to protect them from ecological disruption, it will impair property values. He is convinced it will enhance property values because when the property is protected it will make it more desirable to buy. People live in Albemarle County because of its beauty and pristine nature. What some are trying to do with these ordinances is ensure the continued protection of those valued ecological systems.

Mr. Boyd said that is a valued goal for the Board.

Mr. Slutzky asked if it is one the Board will never act on.

Mr. Boyd said it is now midnight and he does not want to act on it tonight.

Mr. Slutzky asked if Mr. Boyd would act on it tomorrow.

Mr. Boyd said "no."

Mr. Slutzky asked when Mr. Boyd would intend to act on it.

Mr. Boyd said he has a regular life and a business to run. He could not come back tomorrow morning.

Ms. Thomas said the Board already has a meeting scheduled for tomorrow.

Mr. Slutzky said it sounds as if Mr. Boyd wants more feedback from more people, and there have been many public hearings by both the Planning Commission and the Board. A significant number of people invested their time to come tonight and share their views on this subject. How much more does the Board need to hear? What else does the Board need to know in order to act?

Mr. Dorrier said he has a question about roads. He understands that the rules presently governing road building on slopes is not enforced. He would like to have more information about that situation. Mr. Graham said the County does not presently regulate the building of driveways.

Mr. Boyd asked if the County can regulate sediment control on that property. Mr. Graham said erosion and sediment control protection can be required as part of building a driveway.

Mr. Rooker said in order to protect against erosion and sediment outflow from properties and drives, there has to be an erosion and sediment control plan. In the past, nightmares were created because there were "Agreements in Lieu of Plans." He said the Board can at least give the staff clear guidance that it is terminating "Agreements in Lieu of Plans", which he thought it had already done. He said staff has asked for clarification again on that point and he would like the Board to leave this meeting tonight with an understanding that it expects to have E&S plans on rural development so staff can give

suggestions as to the building of driveways, etc. If there is no plan showing topos, the County needs an assurance when the plan is approved that the house will be built in the same place where it was approved. The people who spoke tonight against these ordinances agreed that the County needed to put in erosion and sediment control measures so properties do not create a problem.

Mr. Dorrier said several also said they could build and respect the land.

Mr. Slutzky said if someone wants to build a roadway or a house in a place where it can cause sedimentation, and they are not good stewards of the land, that is what the Board is trying to prevent with these ordinances. A large percentage of the parcels in the rural areas are not owned by people who came to speak tonight, and they are not owned by good stewards of the land; that is the problem. That is why such a large percentage of the stream systems have received so much sediment.

Mr. Wyant said he believes a good percentage of the people who spoke are good stewards of the land and that implies to him that there is no need for these regulations. He could give the County that "agreement in lieu" stating the erosion control measures needed. There is no need for a plan. There has been no cost analysis done on erosion control plans because they require surveys, topos, determination of slopes, and the flow, and it is a major undertaking.

Mr. Rooker said Mr. Wyant actually spoke in favor of those plans when the Board discussed this previously.

Mr. Wyant said he has gotten additional information since that time on which to base his opinion.

Mr. Slutzky asked Mr. Wyant if he was not certain that development should be stopped within 100 feet of an intermittent stream.

Mr. Wyant said that is not what he said.

Mr. Slutzky asked why the Board does not just pass that one simple ordinance.

Mr. Wyant said he thinks there is a better way to do it. He said the agreements can be handled in a better way than they have been handled previously.

Mr. Slutzky asked if Mr. Wyant wants to have development within those 100-foot setbacks from intermittent streams. Is that appropriate environmentally?

Mr. Wyant said setbacks and erosion control plans are two different things. Setbacks are the distance from the stream, while erosion control is applied when there is building on the slopes. If the idea is to keep the erosion out of the stream, then the setback should apply.

Mr. Rooker said the Board previously had a presentation from staff on this subject. He asked Mr. Graham if virtually no controls in the rural area can be effective if there is no plan for staff to look at. Mr. Graham said in the case of critical slopes there is no way staff can know there is grading in those sensitive areas without having a grading plan.

Ms. Thomas said she does not believe the County Engineer could require someone building to keep that building 100 feet from an intermittent stream; that is why it is being proposed as an ordinance.

Mr. Wyant said there were 14,000 notices mailed about this meeting, and many of them went to owners who have flat land. The contours used to send out the notices were in error and using that inaccurate data was wrong. He believes there were a number of people who have land with critical slopes who did not get a notice because of this incorrect data.

Mr. Slutzky said he has not been talking about the critical slopes ordinance. He has been talking about the 100-foot setback issue which he thinks is a simple ordinance. The others recommendations are more complicated. He said a number of people made convincing arguments tonight that make him question his commitment to the family subdivision ordinance that he came tonight to support. It was the question by one person as to how he would get a mortgage if he had to hold the property for five years.

Mr. Rooker said the time periods for family subdivisions are presently in place in many localities in the state. Mortgages work in those cases. He thinks 15 years is too long, but he does not think there is a problem with mortgages.

Mr. Slutzky said he did not mean to bring up the subject of the family subdivision issue for discussion, he was only indicating that of the three issues before the Board tonight, the stream setback issue is so simple and basic that he does not understand why the Board members are unable to go ahead and adopt the 100-foot setback. If there was no problem a couple of months ago with adding a total watershed area in the northwest part of the County, he does not understand what happened between the unanimous vote of the Board then and the reluctance to even vote on that issue tonight.

Mr. Boyd said that area flowed into the drinking water impoundment.

Mr. Slutzky asked if other streams don't matter because they are not in the County's drinking water watershed.

Mr. Boyd said Mr. Slutzky asked what additional information he needs before moving forward. He needs for the landowners who came to this meeting tonight who deal with this situation every day to be as convinced as Mr. Slutzky is that this ordinance would do them no harm. He does not know why Mr. Slutzky is convinced that this ordinance does those landowners no harm. He does not know how Mr. Slutzky became convinced of that. When Mr. Slutzky can convince these people of that, he believes the Board will be ready to move forward.

Mr. Slutzky said he would like to clarify what he meant when he made that statement. He assumes that when the people said tonight they are good stewards of the land, they meant it and he has seen evidence to that effect. He does not think there where many people present tonight who would actually build within that setback. He said critical slopes are a different issue, but on the stream setbacks, he does not see many instances of people having a property right usurped by this protective measure which is probably why there was not a ground swell of dissent when the Board did the same thing just a few months ago on the watershed up in the northwest part of the County. The issue here is different from the critical slopes issue. The fact that the Board as a whole is incapable of even implementing that particular provision is stunning; he questions whether it is appropriate for the Board to continue having a Comprehensive Plan that advertises to the world its intentions when he doubts that is the intention of more than three members of this Board. He is shocked that that issue is so difficult that it cannot even vote on it.

Mr. Boyd said this is what fuels the idea that this is an environmental issue.

Mr. Slutzky said it is an environmental issue.

Mr. Boyd said it is an environmental issue that he is not convinced the Board has the best method to correct.

Mr. Dorrier said he would like to have more information about intermittent streams. He is not willing to just rule it out, but he needs to know more about those streams, when do they flow and what is the danger? Does it mean a person cannot build on that land because it may flood at some future date? He needs to know more about the situation. He asked Mr. Graham if he believes intermittent streams are a real threat to Albemarle County.

Ms. Thomas said that is not the real question.

Mr. Graham said the stream is not the threat, but the protection of buffers has been well-documented throughout the country as being a critical part of protecting any waterway.

Mr. Boyd asked if there is scientific information to support a 100-foot buffer rather than a 50-foot buffer. Mr. Graham said staff is following the Chesapeake Bay Protection Act in that regard. The Chesapeake Local Assistance Department set regulations, and that is where staff gets the authority for the program. They used the 100-foot buffer.

Mr. Boyd asked if that is in trees or grass. Mr. Graham said that is in trees. It is supposed to be an undisturbed buffer. Albemarle allows more activity in that buffer for agricultural purposes. If Albemarle were east of I-95, it would have no choice under State law, and would be required to have those buffers, undisturbed.

Mr. Wyant said the slope of the land has to come into play in these buffers.

Mr. Rooker said the Board has been dealing with this question for three or more years since it came out of the Mountain Protection Committee report. In that entire time no one has mentioned a different way of approaching it.

Mr. Wyant said that was because no member of the committee was an engineer.

Mr. Rooker said there are engineers on staff, and this matter has been before this Board for discussion and he has never heard Mr. Wyant say anything about the fact that it should be done a different way.

Ms. Thomas said it is obvious that if it is a steep slope it should be a longer buffer. The Mountain Protection Committee talked about 200-foot buffers. They had a lot of supported evidence for the 200-foot buffers. She said the 100-foot buffer was a compromise of the committee members.

Mr. Rooker said a survey of every stream with a topo would be needed and the ordinance would then be so complex it would be ridiculous.

Ms. Thomas asked if Mr. Wyant was suggesting that a 200-foot buffer would be better.

Mr. Wyant said "no." He thinks it is a combination of slope and distance. He said that next spring the County will have the data necessary to make that determination.

Mr. Slutzky asked if the County will have accurate data on stream buffers next spring.

Mr. Wyant said that information should be available for the whole County. Mr. Graham said there will be higher resolution data, but it will be an aerial survey, not a ground survey.

Mr. Boyd said the Board can continue doing what it is doing, or somebody can pose a motion, or the Board can adjourn and address the question another day.

Mr. Slutzky said he is concerned about what the Board is going to do going forward because it sounds like the Board has nothing further to do. He said staff has basically spent the last few years for naught if the Board cannot even pass an ordinance to set a 100-foot buffer on intermittent streams in the remaining portions of the County, even though it was done without any discussion and without any dissent just a few months ago on a significant portion of the County. That judgment was for some reason different from this question tonight. He is not sure what the Board should ask staff to do. It does not sound like there are enough votes on the Board to do any environmental protection. If that is the case, it should be understood.

Mr. Boyd said the Board just did some environmental protection.

Mr. Slutzky said the Board did the exact same thing it is being asked to do tonight, but for some reason Mr. Boyd does not want to do it tonight.

Mr. Boyd said it is different. That area does not feed into the water supply.

Mr. Slutzky said the issue then was purely to protect the water supply not to protect the ecological systems.

Mr. Boyd said there are many more thousand of acres involved than before.

Mr. Slutzky asked if the problem has to do with the volume of acres.

Mr. Boyd said the Board threw all of these ordinances together, and he thinks most of the people who came tonight had critical slopes in their mind. He does not know what would have happened if the issues had been separated so those landowners who would be affected by stream buffers could have talked just about them during their three-minute time slot.

Mr. Slutzky said this was not an attack on anyone, but was an effort to protect the environment.

Mr. Boyd said people were concerned about it.

Mr. Slutzky said a lot of people sent e-mails because they were afraid the Board would not adopt these ordinances, and they are discouraged because every effort to protect the environment that has come before this Board the past few years has failed 3:3.

Mr. Boyd said it is now 12:20 a.m., and his thinking has not changed since earlier in the meeting. He does not think this conversation is going anywhere. He thinks the Board needs to take this up another day unless some Board member wants to pose a motion.

Ms. Thomas said she would offer a **motion** that the Board adopt the Water Protection Ordinance section that is Section 17-200, Applicability of the Erosion and Sediment Control, on the third page of the ordinance, letter "C" which reads: "Any activity that is otherwise exempt from this article under paragraph "B" shall become subject to this article if the program administrator determines that an erosion impact area exists on the subject property as provided in section 17-202." The motion was **seconded** by Mr. Slutzky.

Mr. Rooker asked if Ms. Thomas is only proposing that the impact area be included.

Ms. Thomas said she would like to get something out of this meeting.

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

AYES: Mr. Slutzky, Ms. Thomas and Mr. Rooker.

NAYS: Mr. Wyant, Mr. Boyd and Mr. Dorrier.

Ms. Thomas said she had thought the Board might have some discussion of the motion. Mr. Wyant agreed.

Mr. Boyd said the language Ms. Thomas read had no meaning for him.

Mr. Rooker said she was proposing that the Board include the impact area which was not the entire stream ordinance.

Mr. Slutzky said he would **move** that the Board **reconsider** the previous vote at a later date so it has the opportunity to discuss it without having to go back to ground zero and readvertise, etc.

Mr. Davis said the Board just took an action to deny that ordinance. If the Board wants to reconsider it at another meeting without having to have an additional advertised public hearing, approval of a motion to reconsider the vote would put it back before the Board, and the Board could then defer the ordinance to another meeting date. Otherwise, legally, it would have to be readvertised for an additional public hearing.

Mr. Rooker said what the Board voted on was a very small part of the ordinance; if the Board had time to discuss it tonight it would not be very controversial. It is not the 100-foot stream buffer section.

Ms. Thomas said it is actually a way to handle something that the entire Board has talked about and been frustrated by which is that there can be major soil-disturbing activities taking place and the County's hands are totally tied, and citizens don't understand why their hands are tied. County staff is frustrated because they can only give advice. Sometimes there are roads, and sometimes there are ponds, but the County can't do a thing about them and they can be terribly damaging.

Mr. Dorrier said he would like to reopen the public hearing so he can hear about the intermittent streams.

Mr. Rooker said he will **second** the motion to **reconsider** the vote.

Roll was called, and the motion to reconsider the previous motion passed by the following recorded vote:

AYES: Mr. Slutzky, Ms. Thomas, Mr. Wyant, Mr. Boyd, Mr. Dorrier and Mr. Rooker.

NAYS: None.

Mr. Davis said that vote places the matter back before the Board so the Board can now take whatever action it desires if the Board wants to discuss the matter at a later date.

Mr. Wyant said he would like to discuss it again to make sure every member is clear on the details of the ordinances. Also, he would like to discuss it at a reasonable hour. He thinks these kinds of meetings are unfair to both the Board members and their constituents.

Mr. Rooker suggested that a work session be scheduled on these items in order for the Board members to develop a consensus so they and the public do not spend more time on something that will not ultimately have the support of at least four members of the Board. It does not do anybody service to do that. He thinks it is unfortunate that the Board members all seemed to support bringing these matters forward; a resolution of intent was passed to do that, and yet it does not appear there are four votes for any of it.

Mr. Boyd said the only reason for bringing anything forward is to flush out the details and get public input; that has been done. He has said all along that he was not ready to vote because the public needed to have a better understanding of the ordinances. He agrees with having a work session. He is not willing to give up on the ordinances because he thinks they can be "massaged" and made effective.

Mr. Rooker said if the standard is that nobody feels like their property rights are impacted, nothing will ever be passed. There would not be zoning in the County if that were the standard; there would be no regulations of any kind. If the standard is that the Board find a way of accomplishing environmental objectives without anybody complaining they might be hurt, the Board might as well "throw in the towel" now. There will always be somebody coming up with a circumstance under which they think their property values might be reduced because they can't do something they could do before.

Mr. Boyd said he thinks the Board needs a motion to adjourn.

Mr. Slutzky said he would like to make a statement. He does not want this brought back to this Board for a work session until such time as the three members who voted against it today tell staff exactly what they want to discuss that was not discussed at the joint work session a few months ago with the Planning Commission and all the other sessions that have taken place over the past several years. If there are specific topics to be discussed, he would like to know what they are before the Board directs staff to invest more time, and taxpayer money, toward a purpose which seems to be going nowhere. If there are real questions that need to be answered, find out what they are, hold a work session, and then go back and vote on it again.

Agenda Item No. 17. From the Board: Committee Reports. There no reports presented at this meeting.

October 10, 2007 (Adjourned and Regular Meetings)
(Page 61)

Agenda Item No. 18. Adjourn to October 11, 2007, 4:00 p.m. for a Joint Meeting with the School Board.

At 12:36 **a.m.**, with no further business to come before the Board at this meeting, motion was offered by Mr. Wyant, seconded by Mr. Rooker, to adjourn this meeting until October 11, 2007, at 4:00 p.m. in this same room.

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

AYES: Mr. Slutzky, Ms. Thomas, Mr. Wyant, Mr. Boyd, Mr. Dorrier and Mr. Rooker.

NAYS: None.

Chairman

Approved by the Board of County Supervisors

Date: 03/05/2008

Initials: EWJ
