

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on January 11, 2012 at 6:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. Kenneth C. Boyd, Mr. Christopher J. Dumler, Ms. Ann Mallek, Mr. Dennis S. Rooker, Mr. Duane E. Snow and Mr. Rodney S. Thomas.

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas C. Foley, County Attorney, Larry W. Davis, and Clerk, Ella W. Jordan.

Agenda Item No. 1. Call to Order. The meeting was called to order at 6:03 p.m., by the Chair, Ms. Mallek.

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

Agenda Item No. 4. Adoption of Final Agenda.

Ms. Mallek reported that there were several items submitted by Board members to add to the end of the agenda: 1) reelection of the Chairman, 2) consideration of setting joint meeting with the Planning Commission to fast-track Comp Plan industrial land proposals and interstate interchanges after the Board receives the Target Industry Study, and 3) a proposed addition to the appointments list from staff.

Ms. Mallek said that she would like to deal with the appointment item immediately, stating that it was for appointment of Mr. Bryan Elliott as the County Executive's alternate on the Blue Ridge Juvenile Detention Commission. There were no questions from Board members.

Ms. Mallek **moved** to appoint Mr. Elliott as the County Executive's alternate. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Mr. Boyd said that he had received emails from a few Board members as to why he wanted to bring up the item of reelection of Chairman. His interpretation of the Board's Rules of Procedure was the annual election of a Chairman which the Board has not yet done. He believes it is unfinished business because the Chairman had not been officially chosen. He also stated that he wanted to recommend specific joint meetings with the Planning Commission regarding the industrial land and interstate interchange items.

Mr. Boyd then **moved** to add the two items to the final agenda.

Mr. Rooker stated that the Board had been through a long discussion of election of Chairman at their first meeting of the year and said that by default the current Chairman continued to serve if no new Chairman were elected. He said that he could rehash all of the arguments made before, but he wasn't convinced there would be a different result without new information.

Mr. Boyd said he was not interested in rehashing the previous comments, but he was hoping they could come together as a Board and honor the long-standing procedures that have been in place here for 30 years, and the committee assignments had been settled and taken off the table.

Mr. Rooker pointed out that it hadn't really been taken off the table, as committee appointments could be changed at any time. He said that there were four appointments Board members had interest in, and there was a 3:3 split as to who should fill those posts. Mr. Rooker said that the three on one side were willing to say pick your two positions and let the others have two positions, but the other group of three felt it should have all four positions.

Mr. Boyd said that was similar to the composition three years ago.

Mr. Rooker stated that two years ago there was not a split like this, and Mr. Thomas had been serving on the MPO with him [Mr. Rooker].

Ms. Mallek suggested that they put it on the agenda and discuss it at the end of the meeting.

Mr. Rooker said that Board members could put items on the agenda for the end of the meeting, but the question is whether it would be something the Board would vote on. He stated that the fast track concept idea had been brought up before, and his understanding was that staff was going to get back to the Board with proposals as to how certain things might be handled in a quicker way – and what the tradeoffs might be. Mr. Rooker said it would be wise to get that information back from staff so the Board can make an informed judgment about the best course to follow.

Mr. Boyd commented that it was not unprecedented to have someone request a joint meeting with the Commission and the Board, and he wanted to accelerate the meeting timeframe given the very

important report that is going to be presented to the Board from the TJPDC. He stated that there would be three new members on the Planning Commission and they have already looked to the Board for direction on this.

Mr. Foley clarified that the results of the study were going to be presented to the Board on February 1 that would lead into discussion of the Comp Plan, the proposal would be for the Planning Commission to come and hear that report, be in session and consider it at that time.

Mr. Boyd said that there would be some interaction between the Commission and the Board, adding that he was not sure whether just to come to a consensus agreement or to do a vote.

Ms. Mallek said that she was always happy to have more knowledge.

Mr. Rooker stated that he was fine with the second proposal and had just wanted to flesh out exactly what the items were about.

Mr. Boyd also stated that there was an item on the agenda today (Agenda Item No. 17) regarding reallocating some CIP money, and asked if they wanted to move forward with that given that the agreement was not in place yet and negotiations were still going on.

Ms. Mallek responded that she had a draft that had been circulated among everyone. She thinks it should remain on the agenda.

Mr. Boyd stated that the item had not gone through the regular process, seems to have skipped every procedure the Board would normally hold people too, nor has it been adequately vetted or put out for public review, and have a full staff report. He also is not sure how it got on the agenda because the Board does not normally have these type items on night agendas.

Ms. Mallek said that the item had been working its way through the staff for a year and a half and had met the deadlines for having the staff put their information in back in November and December.

Mr. Boyd responded that it was still being worked on a few hours prior to the meeting, and the County would never accept proffers that had not been reviewed and were negotiated at the last minute.

Ms. Mallek stated that she felt it was important to have the discussion to find out if they agree on the concepts involved, adding that it is not a public hearing.

Mr. Boyd said, in that case, he will withdraw the suggestion.

Mr. Rooker said that there was a way to set the agenda – the Chairman, Clerk and County Executive – and the rules the Board adopted addressed items that were not put on the agenda that way. Every item that is on the agenda is not one that the Board voted on to put on the agenda.

Mr. Boyd asked if anyone could put something on the agenda at any time so long as they operate within the published agenda time.

Mr. Rooker said as he understands it, the Chair, the Clerk and the County Executive set the agenda. Now generally things like these things that are on the agenda today, the public hearing items, there is a process for them getting to the Board and being advertised. The Board does not have to vote separately to put them on the agenda.

Ms. Mallek clarified that all of the items had worked their way through the process – they weren't things that she or anyone else had picked to be put on there. She said that the Chair runs the meetings, but does not decide what would be on the agenda and what would not be.

Mr. Boyd said that had been his interpretation, and said he was just trying to understand the new rules and how Board members would get normal items through. The item reallocating CIP funding had not been followed with this approach. He stated that he was just trying to figure out how it would operate in the event he had something he wanted to bring forward.

Ms. Mallek stated that her approach in the past had been to find out if the majority of the Board had an interest in having staff do the work before assigning them a task.

Mr. Boyd commented that it should be done in public session.

Ms. Mallek responded that it should be done in the discussions the Board has at the end of the day, adding that the community and Parks & Rec staff had been talking about this specific item for several years. It is no surprise, and it was not something that she pulled out of anywhere to put anywhere.

Mr. Rooker said that the rules established had to do with how something would be put on the agenda that wasn't on the agenda.

Ms. Mallek added that those were also action items.

Mr. Rooker said that there is a process as to how the original agenda gets established.

Mr. Davis stated that the rules state that the Clerk and the Chairman set the agenda. The Board's rules do not specifically address the issue of how the agenda gets done – but traditionally things were not added to the agenda unless they were routine business matters or the Board had talked about them at some point and asked them to be presented.

Mr. Foley explained that sometimes an item comes up and Board members would send an email out to all other Board members and ask if they were comfortable with the item being added, but that all happens as part of the regular agenda process and not afterward. He added that most of the time that has worked pretty well in the past. The particular agenda item Mr. Boyd is talking about that is on tonight's agenda came to the staff in November, and when it came forward staff assumed it to be on the agenda – and with the Chair in agreement put it on the agenda.

Mr. Rooker commented that the rule changes did not affect this item.

Mr. Boyd said he does not have a problem with that, but reiterated that he wants to understand how in the future if an individual Board member wants to get something put on the agenda, can they work through staff to do a staff report and add the item to the agenda, or should they discuss it in a public meeting, and direct staff to bring it forward.

Mr. Thomas asked if they were saying that if the item was something a Board member wanted to put on the agenda, it should be an action item.

Ms. Mallek explained that she would rather have it be a discussion item first so that Board members could learn about it and not have action items abruptly brought to the Board.

Mr. Rooker said that in the past, a Board member has an idea they want to put on the agenda, it is discussed, and a general consensus is established to put it on the agenda.

Mr. Boyd stated that that didn't happen with this particular item and the first he had heard of it was when Ms. Mallek had mentioned it the previous week.

Ms. Mallek noted that the item had been going through staff for quite some time, but Mr. Boyd's concern was a good point to make.

Mr. Foley said that staff would want to follow up on this issue as there may be some question about the procedure staff used to get things on the agenda. He stated that most of the time there wasn't an issue but occasionally things can come up and that may lead them to more formally send emails out to the Board and say "here's an agenda item." Mr. Foley mentioned that some boards are very formal about what gets on the agenda. He explained that in terms of agenda items, staff maintains a two-month planning calendar, meets with the Chair and goes over it, but the items do not necessarily go through every Board member to see if everyone agrees the item should be on the agenda.

Mr. Rooker said that under the rules, the agenda that goes out is established by the Chair and the Clerk, and it had never seemed to be a problem before.

Mr. Boyd responded that he wasn't aware of many projects that have come forward that weren't the directive of an open meeting of the Board, noting that special use permits and such had a processed that flowed.

Mr. Snow commented that Mr. Foley had a good point that the process normally worked very well. He added that he had not observed a problem with it. He thinks they just need to keep an eye on the process and make sure they follow the procedures.

Mr. Thomas said that he would like to see it defined as to what they are looking for.

Mr. Foley suggested that staff spend some time contemplating the issue and follow up with the Board as to how to address it in the future.

Mr. Boyd then **moved** to adopt the final the agenda with the addition of the two items as mentioned. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Agenda Item No. 5. Brief Announcements by Board Members.

Ms. Mallek reported that at the recent VACo meeting, Albemarle County received the Green Challenge Award for its efforts in energy conservation and investment. She handed the plaque awarded by VACo to staff.

She also stated that the County received a letter from Mr. Butch Davies, the County's previous CTB member, congratulating the County on the opening of the John W. Warner Parkway.

Agenda Item No. 6. ~~Recognitions.~~ **(None-Remove from agenda)**

Agenda Item No. 7. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Taylor Bishop addressed the Board, stating that he and other students were there to address the Western Bypass. Mr. Bishop said that the students believe that the benefits of the bypass were offset by the drawbacks.

Ms. Kathryn Gillette said that there were several environmental issues related to the bypass that they wanted to mention – primarily its proximity to several schools and the Rivanna Reservoir, and runoff from the Reservoir could be a potential problem to people's drinking water.

Mr. Taylor McKenzie said that they believe that the predicted cost of \$244 million is too costly for a 6.2 mile road – and the higher estimate of \$436 million is a lot worse. He said the state's funding of the project seems to indicate that they are going to spend the money just because it is available and not because the County really needs it. Mr. McKenzie stated that after spending the money to build the road, more would need to be spent on maintaining it.

Mr. Austin Wood said that the SELC had released articles to the Daily Progress stating that the traffic estimates released in the RFP were over 200 years off. With an estimate like that the road will not serve a purpose for quite a long time. The article also stated that improving local road networks would be a much more cost effective solution to the traffic problems that the bypass is said to relieve.

Ms. Elisabeth Ainslie said that she was also in attendance with fellow seniors. These members of her Government class group also chose the Western Bypass as their Citizen Action Project. Ms. Ainslie said that they do not believe the bypass is the most effective way to reduce traffic on Route 29.

Ms. Shae Douglas said that they were proposing that a new traffic study be done on Route 29 to reassure that the bypass would be the most effective way to reduce traffic. This is a huge project, and they want to make sure that their money and resources are used in the most effective way.

Ms. Shanell Rush said that the last traffic study was conducted was in 1990 and the population has grown significantly over the last 20 years – meaning there are more cars on the road.

Mr. Jamie Criser said that the project is about \$100 million per mile which means it costs about \$600 million for a 6.2 mile road. This road would only take about 3,000 of the 58,000 cars that travel on Route 29 daily. It does not seem to make much sense to put so much money into something that won't make so much of an impact, and that is a lot of money that can be used in other instances in the community."

Mr. Brandon Seay said that there are other alternatives to lessening traffic on Route 29 such as widening Route 29 from four to six lanes between Polo Grounds Road and Hollymead, as well as extending Berkmar Drive and improving key intersections. He stated that there were other methods of traffic reduction, and by having a traffic study conducted VDOT would have to make a more accurate projection as to the number of cars that travel Route 29 in order to have the bypass more suited for the community.

Ms. Mallek thanked them for their work and for speaking at the meeting.

Mr. John McHugh addressed the Board, stating that he was a member of the Charlottesville Star Swimming Organization, a local nonprofit established to advance competitive swimming in the area. He said that three years ago they proposed a funding model for a pool enclosure at their Fairview location, but after multiple discussions with Parks & Rec, reviews by the School Board and the Board of Supervisors, their proposal received a 3:3 vote and was not approved. Mr. McHugh stated that their proposal included a return on investment by allowing the local high school swim teams to swim for free, management by an organization with 11 years experience in enclosed aquatic facilities and a proven track record of bringing large swim meets to the area – boosting the local economy, and a location ideally suited to supporting a maximum number of County residents. He stated that he had sent a copy of the proposal to the Board the previous night. At the time, the proposal wasn't accepted because of Board concerns about the downturn in the County and the recreational needs of the western side of the County. Clearly, both concerns have been addressed based on tonight's agenda.

Mr. McHugh said that he was encouraged to see the Board voting to re-appropriate funds for Claudius Crozet Park to build an enclosure similar to the one they have at Fairview, and fully supports the re-appropriation to build these desperately needed year-round aquatic facilities. However, he stated, to fully support the recreational needs of the taxpayers of the County, the Board needs to reconsider the funding of Star Swimming's proposal that will address the broader needs of the entire County.

Mr. Rooker asked where the group stood today in the process, as it had been a while since the item had been active.

Mr. McHugh responded that they are a volunteer organization and the denial took a lot of wind out of their sails, and they have just begun another capital campaign for \$1.5 million that is in the silent phase. He said that it is a "shovel-ready project" with plans approved, and they need to break ground.

Ms. Mallek stated that the fund proposal being considered tonight was not for the pool itself but for bathrooms and heating in the pool building as the money for the pool had been raised separately.

Mr. Jose D'Alta said that his group is also seniors from Monticello High School and they are also doing a CAP project on the US 29 Bypass. Mr. D'Alta reported that they had gone out and interviewed numerous community members that were involved in the bypass, including Mr. Snow and Mr. Rooker, and tried to get the most well-rounded view possible. He said that they also spoke with many organizations including VDOT and the Piedmont Environmental Council as part of their research.

Mr. Devin Jones said that the bypass would eliminate about 14,000 vehicles per day and would provide access for U.Va. employees to get on grounds sooner. He said that it would cost about \$250 million to \$300 million and studies have shown that it not have a major impact on traffic flow. Mr. Jones stated that the bypass would be taking land from local schools and would expose students to harmful air pollution. Places29 include a series of local projects that would be completed over a 20-year timeframe. The students believe that that Places29 would be more effective than the bypass. For the cost of around \$57 million the Berkmar Extension would eliminate an estimated 22,000 vehicles per day; for \$30 million the Hillsdale Drive Extension would eliminate an estimated 8,700 vehicles per day.

Ms. Brooke Shaver said that with this information, the group had established that the Western Bypass should not be built to address Route 29 problems. When they reviewed the cost and the benefits, they realized that the bypass wasn't worth it. They realize that there are other options that have proven to be more effective for a fraction of the actual cost of the bypass.

Ms. Brittany Sprinkle said that that the group has joined the PEC and other organizations in an effort to have the Federal Highway Administration to reexamine the bypass and Places29.

Ms. Shaver said that the group asks the Board to reconsider its position on the bypass and make a report that realistically compares both Places29 and the Western Bypass. She also said that the circumstances regarding the vote were somewhat questionable, and they are sure if the Board were to vote on the issue in a normal setting the outcome would become different.

Mr. Boyd thanked the young people for coming and stating that they are very well spoken as it was not easy to come before the Board and speak.

Ms. Debbie Lockman and Mr. Andy Lockman addressed the Board, stating that they were both taxpayers and physicians who are concerned about the obesity epidemic in the country. Ms. Lockman stated that they are parents of two students who swim for the Virginia Gators and the Albemarle High School swim team, as well as being swimmers themselves who participate in the ACAC masters swim program. She said they were here to show their support for the Crozet item coming forth later in the meeting.

Mr. Lockman stated that many local governments in the state have dedicated large resources to build, fund and staff County aquatic facilities that were not financially self-sustaining and it would be more affordable for governments to provide seed money for nonprofits to build and manage these facilities. They can offer affordable programs for County residents as well potentially provide a venue that can generate income for local restaurants and hotels by hosting swim meets.

Ms. Lockman said their hope tonight was that this would be passed to show how the investment would help people get involved in swimming at a reasonable cost.

Mr. J.J. Bean addressed the Board, stating that he is a long-time resident of the County since coming to U.Va. in 1973. Mr. Bean said that he had been a coach at both County and City schools, and in 2000-01 he and another person established the local swim program in the County. He stated that in 2003-04 he worked with a City-County government committee to develop public/private partnerships to build recreational facilities in the County. He noted that he was also been involved in Star Swimming's effort to establish a new facility at Fairview to help the County swim programs. Mr. Bean added that he is also currently Director of the Stars Virginia Gators Swim Club and their mission is to grow the sport of swimming in Central Virginia. He applauded the Board for taking steps to try to help facilitate the growth of swimming and aquatic facilities in all areas of the County. He said that he thinks it is a great way to help the youth.

Dr. Charles Battig addressed the Board, stating that his PowerPoint presentation has been lost in the County's computer and noting that he had printed out his presentation on "Science Updates and Comments." Dr. Battig said that his position on climate change is "unchanged". He added that skepticism is an essential component and hallmark of the scientific process; skepticism equals open-mindedness, and lack of skepticism equals dogma and stagnation. He added that he is a science skeptic by training. Dr. Battig stated that climate change has, is and will continue to change.

Dr. Battig said that the latest "ICLE dropouts" include Monmouth County, New Jersey; Somerset County, New Jersey; Las Cruces, New Mexico; Sarasota County, Florida and Plantation, Florida. Dr. Battig stated that cell phone transmitting and towers are placed to gain maximum coverage and minimize direct human exposure. Cell phones radiate directly against one's brain and multiple studies have failed to

reveal a statistically significant health risk. He emphasized that local school boards provide computers and WiFi – and radiation – to students, yet last month students were present before the Board protesting cell towers. The imposition of smart meters were installed without citizen approval, and they have now been responsible for documented complaints due to their unique radiation character.

Dr. Battig mentioned the School Board's goals: prepare all students to succeed as members of a global community and in a global economy. He said not one word is about being American citizens or the uniqueness of our American heritage in Virginia. He asked if the School Board equates global community with the United Nations one world mindset.

Dr. Battig also mentioned two invitations to upcoming seminars related to global warming on January 23, in Matthews Virginia, and January 24 in Virginia Beach. He will serve on panels entitled "Climate Change Reconsidered".

Mr. Rooker pointed out that the decision to install smart meters was made by Dominion Resources and wasn't a local government action.

Dr. Battig stated that the decision was a response from the State Corporation Commission related to a 2007 enabling law passed by the legislature, and the next step is to file a formal complaint as the meters are intrusive and an invasion of privacy.

Ms. Lynda Harrill addressed the Board and said she was the founder of Quick Start Tennis of Central Virginia, an all-volunteer grassroots community tennis association. She said that Quick Start is the "play to learn" format that the USTA developed about four years ago originally for children 5-10. Ms. Harrill stated that they started programs at Greer and Henley three years ago, and today are in 121 schools in 19 counties – with 57,000 kids participating. She said the organization works with eight Parks and Rec departments, several YMCAs and the Boys & Girls Club, and has a pilot program locally with Head Start kids. Ms. Harrill noted that the USTA began a campaign a year ago for "Ten and Under Tennis," and Albemarle was chosen as a pilot community for the program along with New Orleans and San Diego. She said that the local program would receive \$100,000 from the USTA over three years and would invest that in the "tennis pathway." They have already trained over 900 people, received grants, purchased equipment and received donations for equipment. She said that they really need infrastructure; they have already set up all the programming. Ms. Harrill stated that their first partnership in that regard was working with Crozet Park to build regulation courts with kid-size lines. She added that Quick Start also has a nutritional program to help fight childhood obesity.

Ms. Mallek commented that the courts would be usable as full courts for adults when not in use by children.

Ms. Harrill confirmed that this was the case, and also said that they could be used for people with injuries or who are older.

Mr. Rooker congratulated Ms. Harrill in her work on this program.

Mr. Boyd mentioned the lights the County had put in at Darden Towe Park with the idea that the tennis association would put equipment there, and asked if that was in Quick Start's plans.

Ms. Harrill responded that that is still on the drawing board, but is being handled by the Charlottesville Area Tennis Association – which is a different group. She added that they all have plans for getting more courts and Darden Towe, and the larger project would involve eight 36-foot courts, two additional regulation courts and lights.

Ms. Morgan Russell addressed the Board, stating that she was a student at Monticello High School. Ms. Russell stated that she was here to address "irresponsible spending and inadequate planning" with a large span of issues ranging from the Route 29 Bypass to education. She said that throughout her experience as a student she has witnessed the consequences of this problem, noting that the School Board switched to a new grading and attendance program that offered teachers, parents and students the ability to view reports online. Ms. Russell stated that the program was brand new and had barely been tested, and when implemented during 2010-11 it failed to function properly and resulted in the loss of attendance records and critical grades. She said that the previous grading system had worked perfectly, and asked if research had been done on a new grading system or did the County just have money to spend. Ms. Russell also stated that the school experienced a toner shortage, and the printers are necessary to use with laptops recently received at the school. She said that she does not believe this country has a problem with not having enough money, instead she believes the country has a problem with irresponsible spending. Irresponsible spending and inadequate planning is not only a local issue but as we all know a national issue. She said that her group and others would like to see that programs and organizations that do not demonstrate responsible spending and proper planning procedures not receive more money.

Mr. Brendan Kelly, a County resident, said he is a master swimmer and a parent of a year-round swimmer. Mr. Kelly said that he gives all his money to the City to swim at their new Smith Aquatic Center because the County has no place for him to go. He stated that swimming is part of the social fabric of the area, as about 3,000 kids swim in the Jefferson Swim League each year, which serves as a natural introduction to a fabulous sport, with many kids going on to swim competitively. Mr. Kelly stated that Star

Swimming's previous proposal to the County had come with a heavy dose of politics, pitting Crozet against the Star plan. He said that the people of Crozet should get their pool enclosure and capital improvements, but the County should also fund the Star Swimming proposal as a centrally located aquatics facility is far overdue and should be seriously considered.

Mr. Scott Leake addressed the Board on behalf of Congressman Hurt's Albemarle office. Mr. Leake stated that he was there just to introduce himself and offer any cooperation they could. He also said that driving the John W. Warner Parkway was a pleasure.

Mr. Morgan Butler, Director of the Southern Environmental Law Center's Charlottesville-Albemarle project, addressed the Board and welcomed Mr. Dumler. The SELC promotes sustainable land use and transportation decisions that protect the community's natural resources and quality of life. Mr. Butler stated that he was here to address the series of discussions and negotiations that took place last year and ultimately led to the MPO's change of position on the Western Bypass. He said that Mr. Snow and Mr. Thomas had stated that they made it clear to the Secretary of Transportation that there were at least four other projects that were Board priorities that would be necessary to fund before they could support a bypass. Mr. Butler said that two of those projects were Berkmar Drive Extended and the Hillsdale Drive Extension, and two months later in July after a public hearing they promised the community that they would not vote for the bypass at the MPO until the state made several commitments – including ones to Berkmar and Hillsdale.

Mr. Butler noted that the commitment to Berkmar had been watered down considerably by that point but at least included the promise that the bypass's bridge would also serve as the bridge for Berkmar. He said that they explained that this would eliminate the need to build an expensive bridge over the Rivanna as part of the Berkmar project, and also said that they claimed the state must provide funding to complete construction of Hillsdale. Mr. Butler stated that it has been almost six months since Mr. Thomas and Mr. Snow voted to support the bypass, but there is still not necessary funding for Hillsdale and there has been no commitment from the state to advance Berkmar or even just the bridge for Berkmar in any meaningful way. SELC has long opposed the Western Bypass and continues to oppose it. Mr. Butler urged the Board to work with the state to redirect bypass funding toward less damaging alternatives for improving traffic flow on Route 29, but since their vote on the bypass was supposedly premised on getting enforceable commitments from the state for these other projects, the SELC urges the MPO representatives to at least reengage with the state on those projects and finally ensure that the promises that were made to this community and this Board are kept.

Mr. Neil Williamson stated that the Free Enterprise Forum has been an advocate for the Western Bypass. The Free Enterprise Forum recognizes that this Board voted 4:2 to support the Western Bypass which was passed at the MPO in accordance with the Albemarle's vote. The Free Enterprise Forum hopes that the majority of this year won't be spent revisiting that history.

Agenda Item No. 8. ~~Consent Agenda.~~ **(None-Remove from agenda)**

Agenda Item No. 9. **Public Hearing: SP-2011-00018. Colonial Nissan—Parking Deck (Signs #2&3).**

PROPOSAL: Special Use Permit to allow construction of a rooftop parking deck on new building. No dwellings proposed.

ZONING: HC Highway Commercial – commercial and service; residential by special use permit (15 units/acre).

SECTION: 24.2.2 (11) Stand alone parking and parking structures.

ENTRANCE CORRIDOR: Yes.

COMPREHENSIVE PLAN: Office/R&D/Flex/Light Industrial – commercial, professional office; research and development, design, testing of prototypes; manufacturing, assembly, packaging in Neighborhood 1.

LOCATION: 200 Seminole Trail.

TAX MAP/PARCEL: 04500000094B0.

MAGISTERIAL DISTRICT: Rio.

(Advertised in the Daily Progress on December 26, 2011 and January 2, 2012.)

Mr. David Benish, Chief of Planning, reported that this was a proposal to allow the construction of a rooftop parking deck on a new building at the Colonial Auto Center site located on Route 29 North. He stated that the applicant was requesting approval of the standalone parking structure, which would be used for employee parking and excess inventory for the dealership and would also be located in the back of a proposed new building. He said that the building would also include an indoor display area, an office area and a maintenance facility.

Mr. Benish presented a vicinity map of the area. Places 29 designates the area for office, R&D, flex-Light Industrial – and auto commercial dealerships are a permitted use in that designation. He noted that the site is within the Entrance Corridor Overlay District; the ARB has reviewed and approved the request with conditions as presented. Mr. Benish presented a site drawing of the area in which the building would be constructed, with a view from Route 29 and the access road paralleling to the south. He said that the parking deck would be on top of the structure, and presented a front view rendering of the building from Route 29 as well as a side view.

Mr. Benish stated that the application is consistent with the Comp Plan and has been recommended for approval by the ARB with conditions, and staff has identified those as favorable factors to the request – with no unfavorable factors identified and a recommendation for approval.

Referring to recommended condition #2, Mr. Thomas asked about the requirement for a survey of the drip line of the trees and a mark for temporary fencing.

Mr. Benish replied that that was to ensure there wasn't any storage or damage or backing up over trees intended to be retained.

Ms. Mallek noted that it was to keep the trucks from parking under trees and killing them.

Mr. Snow said that it was a fairly common practice, with plastic fencing and steel poles to be put up temporarily.

Mr. Boyd asked why this was before the Board tonight.

Mr. Benish explained that parking decks are a special use provision to ensure evaluation of impacts of use, traffic circulation issues, and visibility.

Mr. Boyd questioned whether this should have gone through this process. He considers this to be pretty much a "no brainer".

Mr. Dumler agreed, stating that in an effort to simplify approval processes parking decks should be encouraged and probably do not need to go through this type of evaluation.

Ms. Mallek noted that the applicant has made a great effort to meet the performance bar needed by the ARB, which addressed many of the questions that the Board would have.

The Chair opened the public hearing.

Mr. Pete Borches, representing Colonial Nissan, offered to answer any questions.

There being no other comments, the public hearing was closed and the matter placed before the Board.

Mr. Thomas **moved** for approval of SP-2011-00018 subject to the two conditions as presented. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

(The conditions of approval are set out below:)

1. Development and use shall be in general accord with the conceptual plan titled "Special Use Permit 2011-018 Colonial Auto- Parking Deck" prepared by Townes Site Engineering and dated October 17, 2011 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:
 - a. limits of disturbance
 - b. location of buildings and structures
 - c. location of parking areas
 - d. employee parking and inventory storage parking layout

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance; and

2. In areas designated for tree protection, the applicant shall have the dripline of the trees surveyed and shall mark the dripline in the field with temporary fencing. In areas designated for tree protection, no tree removal shall occur. No grading or disturbance shall take place within the driplines of trees located within the tree protection area. Any grading or disturbance within ten (10) feet of any dripline shall necessitate submittal of a "Tree Protection Plan" in accord with section 32.7.9.4 of the Zoning Ordinance. No grading or disturbance within ten (10) feet of any dripline shall be permitted until a) the survey has been completed and the fencing has been installed and b) the Planning Director approves a plan that shows the grading or disturbance and the surveyed dripline of the existing trees.

Agenda Item No. 10. **Public Hearing: SP-2011-00020. L & B Towing-Snows Business Park (Sign #101).**

PROPOSAL: Allow towing company on a portion of 5.78 acres under Section 27.2.2(12) of zoning ordinance. No dwellings proposed.

ZONING: LI – Light Industrial which allows industrial, office, and limited commercial uses (no residential use).

ENTRANCE CORRIDOR: Yes.

COMPREHENSIVE PLAN: Industrial Service – warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre) in Neighborhood 4.

LOCATION: 1833 Avon Street Ext.

TAX MAP/PARCEL: 090000000035X0.

MAGISTERIAL DISTRICT: Scottsville.

(Advertised in the Daily Progress on December 26, 2011 and January 2, 2012.)

(Note: Mr. Snow announced that he owns property adjacent to the site that is subject to the special use permit, and thus was disqualifying himself from participating in the transaction. He has also filed the required Transactional Disclosure form with the Clerk to make the disclosure a matter of public record. He then left the meeting at 7:09 p.m.)

Mr. Benish reported that the applicant has applied to use a one-half acre section of the back of Snow's Business Park, located on Avon Street, for towing and temporary storage of motor vehicles as shown on the map presented. He stated that the property is zoned Light Industrial and this is a permitted use by special use permit. Mr. Benish also said that the applicant is requesting a waiver of a supplemental provision of the ordinance relating to this use. He stated that the site is designated for industrial service in the Comp Plan and is adjacent to other areas designated for industrial use.

Mr. Benish presented the applicant's concept plan and said that the proposed use would be located within a structure, with a tow lot to be located to the rear of the building – which is to the east of the site. He stated that there is an existing landscape area to be retained on the hillside below and to the east of the yard. Mr. Benish presented images of the structure that would host the operation, the fenced area to be part of the tow yard, the gate to the south side of the building, and the planned parking area on the opposite side of the building.

He said that there was some discussion in the staff report about a waiver of a section of the supplementary regulations that indicate that the site of the storage area should not be visible from any adjacent residential property, which is a waiver that the Planning Commission makes. He said that the Commission did review the request and although there is one portion of the site visible from an adjacent residential property, it is only a 16-foot section of fence that is visible, and based on elevation differences some portion of the bumpers would be visible. Mr. Benish stated that staff noted to the Planning Commission that the purpose and intent of the ordinance is met through the existing site conditions, the topography and the existing vegetation, and through the approval of the conditions as proposed for this plan and the concept plan recommended therein. He stated that the Board does not need to act on the waiver unless it disagrees with the Commission's findings for the waiver.

Mr. Benish stated that staff has identified favorable factors as a need for the service in the area, preservation of the industrial character of the area through this use, and consistency with the Comp Plan. He said that staff found no unfavorable factors provided the site was developed in a way consistent with the concept plan. The Planning Commission and staff have recommended approval with the conditions as presented.

Mr. Boyd asked if the ARB would take exception to the fence visibility from the Entrance Corridor.

Mr. Benish responded that the whole property is visible, but it was determined that the site was not visible. It is not a problem with the ARB.

Mr. Dumler inquired about the adjacent residence occupants, and asked if there were renters on the property directly behind the garden center.

Mr. Benish replied that the people who live on either side are renters, and staff spoke with them and got permission to take the pictures that he had presented. They expressed no concerns with the proposal.

Mr. Dumler asked if he had spoken also with the property owner.

Mr. Benish said that they were notified of the plan and did not comment in opposition to it.

Mr. Boyd inquired again as to why this was before the Board, as it could have been handled administratively and with the ARB.

Mr. Benish responded that this is an unusual request as most tow services are part of a larger auto repair type of use subject to a special use permit. He added that this may have been based on concerns of misuse or mismanagement, and there was a feeling that proper oversight was necessary. Mr. Benish said that in this location on this site, it makes good sense to have the use.

Mr. Boyd commented that he wasn't sure that a light industrial use in an industrial area needed to be brought before the Board for decision.

Mr. Rooker said that he could see why this was a special use instead of a by-right use, as there may be situations such as condos being located next door instead of a single residence.

Mr. Boyd stated that at the roundtable discussions with business leaders, they said the way the County classifies some uses should be looked at.

Mr. Rooker agreed that it could be reexamined.

Mr. Benish said that given that it is zoned Light Industrial, perhaps a special permit in an industrial district is something that needed evaluation.

The Chair opened the public hearing.

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

Mr. Dumler **moved** to approve SP-2011-00020 with the conditions as recommended. Ms. Mallek **seconded** the motion.

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

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker and Mr. Thomas.

NAYS: None.

ABSTAIN: Mr. Snow.

Mr. Rooker noted that with special use permits versus by-right, the Board can attach conditions – but with by-right use there could be no conditions.

Mr. Boyd said he was interested in exploring whether there might be some middle ground between by-right and special use permits which the proposal could be handled administratively or by the Planning Commission.

(The conditions of approval are set out below:)

1. Development of the use shall be in general accord with the Concept Plan entitled L&B Towing for SP201100020, prepared by Brian Tate and dated November 17, 2011, (hereinafter, the "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the plan, development shall reflect the following major elements essential to the design of the development:

- location of the area for towed vehicles
- location of additional parking
- location of existing landscaping area

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance;

2. Landscaping shown in the concept plan shall be maintained in its current condition, unless authorized to change by the Zoning Administrator; and
3. Vehicles may be stored on-site for a period of time not to exceed sixty (60) days, unless directed by a law enforcement or state government agency to keep them longer than sixty (60) days.

(Note: Mr. Snow returned to the meeting at 7:18 p.m.)

Agenda Item No. 11. **Public Hearing: SP-2011-00021. Verizon Wireless – Herring Property (Sign #49).**

PROPOSAL: Special use permit amendment to allow replacement of existing 53.5-foot treetop monopole with a 97-foot treetop monopole, with associated ground equipment.

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

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

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas in Rural Area 4 - Preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/acre in development lots).

ENTRANCE CORRIDOR: YES.

LOCATION: 8268 Newtown Heights, approximately 600 feet from its intersection with Green Hill Lane (Route F0174).

TAX MAP/PARCEL: 05300-00-00-00600.

MAGISTERIAL DISTRICT: White Hall.

(Advertised in the Daily Progress on December 26, 2011 and January 2, 2012.)

Mr. Benish reported that this application is a proposed amendment to an existing special use permit to allow the replacement of an existing 53-foot treetop monopole with a 97-foot treetop monopole with new ground equipment. He stated that the uses require a special use permit because there were already four personal wireless service facilities on the site and a provision in the process thus makes the application go from a Tier II to a Tier III facility. Mr. Benish said that the proposed monopole would be the same height as the reference tree, which is located on a steep slope behind the site. He reported that the site is located along I-64 directly north of the VDOT memorial overlook and is designated RA in the Comp Plan, zoned RA, and is located in the Entrance Corridor. Mr. Benish said that there are some steep slopes on the site and it contains other personal wireless facilities, with the property being primarily wooded and the surrounding areas being large forests and small single-family residential lots.

He stated that the lease site sits on an 83-acre parcel. The property is listed in the Mountain Resource area of the Comp Plan, with significant critical slopes on the site but the tower site being fairly flat. Mr. Benish said that the property is also located in the Greenwood/Afton Rural Historic District, which was created after the adoption of the Critical Resources and Open Space Plan. He stated that due to limited visibility of the wireless facility on the site, none of these resources would be adversely impacted by the pole replacement.

Mr. Benish reported that the ARB staff has reviewed the request and attended the balloon test, and has since stated that the proposal would not have a negative impact on the corridor. He said that it is staff's opinion that given the height at the same reference point of the tree on the steep slope behind it and given that the level of visibility is low, the tower is not expected to have a negative impact on the EC or adjacent properties. He presented photographs of the balloon test from several different perspectives.

Mr. Benish stated that the applicant has requested several modifications to the request for supplementary regulations to require a tree conservation plan and for fencing around the structure. He said that staff is recommending approval of the modifications. There is no new clearing activity taking place on the site and no fence is necessary.

Mr. Benish reported that staff has identified the following favorable factors: no visible impact on the Entrance Corridor or adjacent properties, and ARB staff recommendation of the proposal. There were no unfavorable factors identified. He stated that staff recommended approval as recommended by the Commission with the conditions as presented.

Ms. Mallek said that with the mountain as a backdrop instead of the sky, it seems the spectacular increase in height disappears. Mr. Benish agreed.

Mr. Rooker asked about the genesis of the decision to eliminate the tree conservation plan.

Mr. Benish explained that in this case there would be no grading or tree clearing, as it would essentially be replacing the pole in the same location – so there was not a need for a conservation plan.

Mr. Rooker asked if there is a plan in place for the existing pole.

Mr. Benish responded that he believes there is a tree conservation plan in effect for the existing pole.

Mr. Rooker asked if they have a plan in this, if this would be eliminating the conservation of the trees that provide visibility. Mr. Benish said he does not think so; he assumes the condition is in place, but will verify it.

Mr. Boyd asked if the equipment facility would remain the same size.

Mr. Benish responded that none of the equipment would be visible and the area where the replacement work would take place is an area that has already been impacted, so all of the activity is in an existing developed area of the leased area of the site.

Mr. Boyd asked if fencing was required around the site, as it typically was.

Mr. Benish responded that in this case there was no fencing, given the location and the remoteness.

Ms. Mallek asked if the existing roadway was adequate for the bucket truck and heavy machinery to the site. Mr. Benish said that was staff's understanding.

Mr. Boyd commented that this is another application that might have been addressed through an administrative process, and if it is as simple as just raising the height he is not sure if it should be evaluated further.

Mr. Davis responded that these were the easy ones.

Mr. Rooker said these were situations in which there were mountain elevations to help block the visibility. He sees this is a simple application.

Mr. Boyd commented that perhaps if the ARB had approved an application, and there was sufficient backdrop, an application could fall under Tier I or Tier II.

Mr. Davis stated that that's what the Board would be looking at with staff and the consultant during that reevaluation process.

Mr. Benish emphasized that this particular application was driven by the fact that this was the fourth tower – and a replacement tower – on this site.

Mr. Boyd asked if the reason this was before the Board was the height. Mr. Benish stated that under the ordinance provisions, staff wants to evaluate situations where there are a density of towers located together.

Mr. Davis said that often there are applications due to height increases, but this one was due to density added by an additional tower.

The Chair opened the public hearing.

Ms. Lori Schweller addressed the Board, stating that she was an Attorney with LeClaire Ryan representing Verizon Wireless. Ms. Schweller reported that Verizon Wireless was requesting approval for three special use permits – with two being extensions and one being a replacement – as part of a project intended to provide 4G service to the County. She explained that this particular site was only being considered by the Board because there were more than three sites within 200 feet, and even though it was a dramatic increase in height there was no additional visual impact and it was on even par with the reference tree. In no way would it not meet the requirements for a Tier II, except that it is within 200 feet of three other towers. Ms. Schweller stated that the tower is currently the shortest and was a deteriorating wooden pole that needed to be replaced, along with the added capability of providing the 4G service. She said that Verizon was currently licensed to provide three technologies in the County – PCS, or personal cellular service; cell at 850 MHz; and LTE, which is the 4G technology. Ms. Schweller stated that all of those technologies would be provided on all sites being discussed with this project, and this application would be used almost solely to provide 4G to the County. She explained that they were planning to do two flush-mount sets of antenna on each pole in the project, with the taller set of antenna having the 4G. Ms. Schweller noted that all three sites were formerly Alltel sites, acquired by Verizon in January 2009 following their merger.

She explained that the importance of LTE was data transmission, which is where most of the growth in wireless is currently. Ms. Schweller stated that wireless technology today was no longer a convenience but was extremely important for safety, education, government and business – and faster download speeds are crucial to those operations. She presented some statistics of FCC estimates that 70% of 911 calls were made by cell phone, which is significant considering that some parts of the County still do not have coverage. Ms. Schweller said that the purpose of this project was to provide 4G service to all of the areas where Verizon Wireless currently provided service, and they would also be working on improving capacity to handle greater numbers of calls.

Ms. Schweller stated that she hoped the Board would consider three things when reevaluating the ordinance and wireless policy: recognizing the benefits of wireless and balancing those against the desire to keep the County beautiful, shifting the focus from mere visibility to adverse visual impact, and evaluating Tier III by the special use permit criteria and not by Tier II criteria. She then presented photos of a recent balloon test where the balloon was no more visible than the power pole next to it. Ms. Schweller also stated that it was incumbent on the Board to have the procedures for evaluating wireless applications comply with the FCC declaratory ruling. Currently the County's processes do not always comply for several reasons: the date that an application is submitted is not the date it was considered submitted by the County – under FCC guidelines the date of application submission is the date when the clock starts ticking. Basically all of the applications Verizon would be bringing forward for 4G were collocations that would need to comply with the 90-day guidelines. She said that the reason that the timeframe might be violated in the County other than acceptance date is that a special use permit was required for collocations that stand off from the support structure more than 12 inches and for extensions that were more than 10 feet above the reference tree, and like this application a permit was also required for facilities within 200 feet of three others. That takes an applicant through three separate hearings for these very simple changes.

Mr. Rooker asked what three hearings she was referring to, noting the Commission hearing and the Board hearing.

Ms. Schweller noted that the ARB also held a hearing.

Mr. Rooker stated that the ARB was not a public hearing, although it was part of the public process.

Mr. Snow asked how much the coverage area would be increased.

Ms. Schweller said that this would extend the tower above the trees, and generally this type of facility would spread to cover about three miles on average. She said that this facility was on a slope and was intended to serve the Newtown area and I-64.

Mr. Boyd asked if this would help provide data coverage in rural areas.

Ms. Schweller responded that the 4G would provide wireless internet for Verizon Wireless subscribers, and said that the speed was on par with cable and was 10 times faster than 3G. She added that it is state of the art.

Ms. Mallek asked if the cell coverage is strictly line of sight.

Ms. Schweller responded that the antennae would be tilted down to serve areas below. She added that she could not answer the question in detail, but can find out.

Ms. Mallek said that there were very good reasons to have the clock start ticking when materials were submitted in completion, so if those materials could be gathered before an application was filed it would resolve that issue.

Ms. Schweller contended that the FCC ruling addressed that concern, and if there was a need for corrections or resubmission the period of time would toll until the materials were submitted. She stated that as long as the County requested additional materials within 30 days of the actual application date, then after the request the period of time would toll until the applicant puts them in – and at that point the 90 days would begin.

Mr. Boyd asked when Verizon had begun the process for this particular application.

Ms. Schweller responded that she would have to check, but she thought this particular application was compliant.

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

Ms. Mallek **moved** to approve SP-2011-0021 with the conditions as presented.

In response to Mr. Rooker's earlier question regarding tree preservation, Mr. Benish explained that his presumption was that all of the sites before the Board today were requesting a waiver because they were existing sites. He said that his understanding was that requirements for tree preservation were already in place from those prior approvals. He said that these applications were not requiring any tree removal or grading, and do not remove the previous requirements.

Ms. Mallek stated that she would like to ensure that was the case.

Mr. Davis said that he was assuming that the last application would have had the tree preservation plan, and this would not change that requirement.

Mr. Rooker asked if the existing conditions from the old application would carry over.

Mr. Davis responded that he was not entirely certain of that.

Mr. Rooker asked what conditions would be in place if a tower was removed and a new one was put in place through a special permit.

Mr. Davis responded that the conditions from the prior tower that's removed would no longer apply.

Ms. Mallek said she wanted to **amend** her motion to state that there would be standard conditions pertaining to tree conservation.

Mr. Benish clarified that the question was whether the tree conservation plan needed to be submitted with issuance of the building permit, so it would be the modifications of 5.1.40(c)(4) and 5.1.40(c)(5). He added that staff also does not believe the fencing is necessary, so the Board could act on that modification.

Mr. Boyd suggested that the motion be conditioned upon the fact that the existing tree conservation plan would stay in place.

Mr. Benish replied that the ordinance operated as such to require submission of that plan.

Mr. Davis suggested that it be addressed by allowing the existing tree conservation plan to be used in lieu of submitting a new tree conservation plan as a condition of modification #1.

Ms. Mallek said she was supportive of that recommendation.

Mr. Rooker said if all the existing conditions disappeared, it seems they should have a series of conditions.

Mr. Davis said those conditions have been replaced by the Tier II requirements. He added that he was not so concerned about some of the old conditions no longer being in place because those have been covered with the ordinance.

Ms. Mallek then **moved** to approve SP-2011-00021 subject to the condition as recommended by staff. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Ms. Mallek then **moved** to approve granting modification of Sections 5.1.40(c)(4), (c)(5), (c)(9), and (d)(6). Modification to 5.1.40(c)(4) is to grant the ability to use the existing tree conservation plan in lieu of submitting a new tree conservation plan. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

(The condition of approval is set out below:)

1. Development and use shall be in general accord with the conceptual plan titled "I-64 West – Herring Property" prepared by Stuart P. Patterson and dated 8/30/2011 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:
 - Height
 - Mounting type
 - Antenna type
 - Number of antennae
 - Distance above reference tree
 - Color
 - Location of ground equipment

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

Agenda Item No. 12. **Public Hearing: SP-2011-00023. Verizon Wireless/Hudson Property Tier III Personal Wireless Service Facility (Sign #38).**

PROPOSAL: Request for extension of an existing steel monopole in order to support the attachment of a second vertical array with three new flush mounted antennas that will be located above existing antennas. The new proposed height of the existing monopole will be 96.5 feet, an eight foot extension from the top of the existing antennas, and will be approximately 16 feet above the reference tree. Z

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

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

COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential in Neighborhood 5- residential (3-6 units/acre); supporting uses such as religious institutions, schools, and other small scale non-residential uses.

ENTRANCE CORRIDOR: YES.

LOCATION: 1097 Teel Lane.

TAX MAP/PARCEL: 07600-00-00-021A0

MAGISTERIAL DISTRICT: Samuel Miller.

(Advertised in the Daily Progress on December 26, 2011 and January 2, 2012.)

Mr. Benish reported that the applicant was proposing to extend the height of an existing pole by eight feet for a total of 16 feet from the reference tree on this site, so it would be an extension of an existing monopole to support an attachment of arrays that would contain three flush-mounted antennae. He said that the original pole was 87 feet with some ground equipment. The property was a small, mostly wooded site bordered by I-64 and the Norfolk Southern Railroad and Route 29, south of Charlottesville. Mr. Benish presented a map depicting the location of the site and the surrounding properties, adding that the property was designated Rural Area and was within the development area and the Entrance Corridor.

He stated that new ground facilities would be installed, and the pole extends the tower by eight feet for a total of 16 feet above the reference tree. Mr. Benish said that there were proposals for modifications from the regulations for the tree conservation plan and this was another site where no tree clearing was proposed – with the presumption that there was an existing plan. He presented the site plan, noting the location of the proposed pole and reference tree. Mr. Benish also presented photos of the balloon test of the site, which was conducted in October – with staff traveling I-64 and Route 29 and other areas surrounding the site, and only noted visibility for a brief period of time along I-64 and from the ramp connecting I-64 and Route 29 eastbound when stopped. He said that the ARB and staff had reviewed the proposal and recommended approval due to its limited additional visual impact.

Mr. Benish reported that staff had identified favorable factors as limited visibility of existing facility, limited visual impact to the Entrance Corridor, and ARB approval. Staff identified no unfavorable factors and the Planning Commission recommended approval with conditions as provided to the Board. He said that there would need to be two waivers and similar modifications as in the previous application, and he would recommend that same approach as with the prior Board actions.

The Chair opened the public hearing.

Ms. Lori Schweller, representing the applicant, stated that none of the sites were proposed for any clearing and Verizon would not be going any further into the trees – as the compound area would remain the same. The applicant assumed that if they had not noticed any trees on the SUP application to be cut, they could not be cut.

Mr. Davis said that she was correct, but said that C.4 required that a tree conservation plan would be in place, and C.5 required that the maintenance be in accordance with such plan.

In response to Mr. Boyd's question during the previous special permit, Ms. Schweller stated that the three applications were submitted on September 19, 2011. She also said that the reason this application was before the Board was because it was more than eight feet above the reference tree, despite the fact that its visibility was only increased on the off ramp.

Mr. Rooker commented that it was a good site.

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

Mr. Snow moved to approve granting modification of Sections 5.1.40(c)(4), (c)(5), (c)(9), and (d)(6). Modification to 5.1.40(c)(4) is to grant the ability to use the existing tree conservation plan in lieu of submitting a new tree conservation plan. Ms. **Mallek** seconded the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Mr. Snow moved to approve SP-2011-0023 with the condition as recommended by the Planning Commission. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

(The condition of approval is set out below:)

1. Development and use shall be in general accord with the conceptual plan titled "I-64 West – Herring Property" prepared by Stuart P. Patterson and dated 8/30/2011 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:
 - a. Height
 - b. Mounting type
 - c. Antenna type
 - d. Number of antennae
 - e. Distance above reference tree
 - f. Color
 - g. Location of ground equipment

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

Agenda Item No. 13. Public Hearing: SP-2011-00024. Verizon Wireless/Moyer Property Tier III Personal Wireless Service Facility (Sign #39).

PROPOSAL: Request for extension of an existing steel monopole in order to support the attachment of a second vertical array with three new flush mounted antennas that will be located above existing antennas. The new proposed height of the existing monopole will be 89.5 feet, an 8.5 foot extension from the top of the existing antennas, and will be approximately six feet above the reference tree.

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

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

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas in Rural Area 4 - Preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/acre in development lots).

ENTRANCE CORRIDOR: YES.

LOCATION: 1841 Thomas Jefferson Parkway.

TAX MAP/PARCEL: 09200-00-00-056B3.

MAGISTERIAL DISTRICT: Scottsville.

(Advertised in the Daily Progress on December 26, 2011 and January 2, 2012.)

Mr. Benish reported that this was a request for an extension of an existing monopole to support attachments for a second array including three flush-mounted antennae; the original pole was approved with a special use permit condition that limited it to 80 feet in height with ground equipment. He stated that the property was mostly wooded and currently contained two personal wireless service facilities. The property is located on Route 53 west of Milton Road, was zoned RA in the Rural Areas and was also in the Entrance Corridor. Mr. Benish stated that staff had reviewed the proposal and recommended approval based on the minimal visibility of the proposed tower from the EC and/or no change to the visibility from the prior existing pole.

He said that the applicant's proposal was to extend the height by eight feet, which would be 12 feet above the reference tree. The proposal would require the same modifications as in the prior applications. Staff also does not believe that fencing is necessary in this location.

Mr. Benish presented a picture of the new pole and its relation to the reference tree, noting a view from Route 53. He stated that staff and the Commission had recommended approval, with staff finding favorable factors as its limited impact to the Entrance Corridor and the ARB's recommendation – with no unfavorable factors found. Mr. Benish said that the conditions recommended by the Planning Commission were before the Board.

The Chair opened the public hearing.

Ms. Lori Schweller, representing the applicant, pointed out that this application was before the Board for a special use permit not only for the increased height but because it was within 200 feet of a state scenic highway. She stated that this was a great example of how an application might not have any more visual impact than a Tier II, if it was properly sited. Ms. Schweller also noted that this application and the previous one had both received a "no" vote from one of the Commissioners because they were more than 10 feet above the reference tree, and this was an example of how the current ordinance is a little confusing when reviewing a wireless facility.

Ms. Mallek commented that under the current ordinance, anything above 10 feet would make a Tier II become a Tier III.

Ms. Schweller said that if it was over eight feet it would need a special consideration to get to 10 feet, but an applicant could not have the 10 feet at Tier II.

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

Mr. Dumler **moved** to approve granting modification of Sections 5.1.40(c)(4), (c)(5), (c)(9), and (d)(6). Modification to 5.1.40(c)(4) is to grant the ability to use the existing tree conservation plan in lieu of submitting a new tree conservation plan. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Mr. Dumler **moved** to approve SP-2011-0024 with the condition as recommended by the Planning Commission. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

(The condition of approval is set out below:)

1. Development and use shall be in general accord with the conceptual plan titled "Nix Way- Moyer Property" prepared by Clark Nexson and dated 11/9/11 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:
 - a. Height
 - b. Mounting type
 - c. Antenna type
 - d. Number of antenna
 - e. Distance above reference tree
 - f. Color
 - g. Location of ground equipment

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

Agenda Item No. 14. **Public Hearing: SP-2011-00028. NTELOS CV646 Commonwealth Ave. Tier III Personal Wireless Service Facility (Sign #46).**

PROPOSAL: Request for a collocation of antennas and associated ground equipment on an existing tower.
ZONING CATEGORY/GENERAL USAGE: C-1 Commercial – retail sales and service; residential by special use permit (15 units/ acre)
SECTION: 22.2.2 (14) which allows for Tier III personal wireless service facilities in the C-1 Zoning District
COMPREHENSIVE PLAN LAND USE/DENSITY: UDA Places 29 – Office/R&D/Flex/Light Industrial – commercial, professional office; research and development, design, testing of prototypes; manufacturing, assembly, packaging in Neighborhood 1.
ENTRANCE CORRIDOR: NO
LOCATION: 345 Greenbrier Drive
TAX MAP/PARCEL: 061W0-03-00-00700.
MAGISTERIAL DISTRICT: Jack Jouett.
(Advertised in the Daily Progress on December 26, 2011 and January 2, 2012.)

Mr. Benish reported that this special permit was required because the existing tower was built prior to the special use permit process for towers and was not approved by the Commission or Board as a Tier II or Tier III facility. He stated that because of that and the site conditions, it would require some modifications to ordinance provisions. Mr. Benish said that the site was located on Greenbrier Drive west of Route 29. The proposal was to collocate a vertical array with three new flush-mounted antennae that would be located 85 feet in elevation, which was 12 feet below the existing antennae array at 97 feet. He stated that the existing tower is 100 feet elevation and was not proposed to change. The proposal also

included ground equipment, additional parking spaces, a 24-foot wooden retaining wall, one security light and security fencing around the facility. He said that the property was about one-half acre already developed commercially. He presented a schematic of the location for the proposed tower and ground equipment along with the additional parking. He noted that parking is not required for this use.

Mr. Benish stated that the modifications could not really be met given the age and development of the existing site, the color of the tower, the identification for the caliper in the trees had been waived but a conservation plan was provided. He said there were also modifications of parking setbacks and fencing and landscaping, and an easement for the fall area as this tower does not generate that need.

Mr. Benish provided a picture of the facility with the existing view and a simulation of the location of the existing equipment, as well as views from Commonwealth Drive. He said that favorable factors include the fact there was no height increase for the proposal and that it was on an existing facility with no new impacts to adjacent properties; staff found no unfavorable factors. Staff and the Commission recommended approval with the conditions as presented.

The Chair opened the public hearing.

The applicant's representative, Ms. Jessie Wilmer, representing Ntelos, addressed the Board and stated that this was a simple collocation that generated a Tier III process because it was approved prior to the effective date of the ordinance. She said that the retaining wall was 24 inches, not 24 feet, and the parking was a requirement from the landowner as Transco had a very tight parking area there that required Ntelos to use a space for their ground equipment. Ms. Wilmer stated that the additional parking spaces were for that reason, and they are doing a tree conservation plan even though the site is in a parking lot.

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

Mr. Rooker pointed out that the tower did not have a prior special use permit as it was approved prior to the ordinance going into effect and it was not one he would support today, but this change would not increase its visibility with the added antenna actually being smaller.

Mr. Rooker **moved** to approve granting modification of Sections 5.1.40(a)(4d), (a)(4f), (a)(4g), (a)(6), (b)(2), (c)(6), (c)(7), (c)(2vi), (d)(2), (d)(6) and (d)(7) of the Zoning Ordinance for the reasons outlined in the staff report and presentation. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Mr. Rooker **moved** to approve SP-2011-0028 with the conditions outlined in the staff report and mentioned in the presentation. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

(The conditions of approval are set out below:)

1. Development and use shall be in general accord with the conceptual plan titled "Commonwealth CV646 Collocation on an Existing 100' Self-Supported Tower" prepared by James A Bumgarner, Jr and dated 9/27/11 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:

- a. Height
- b. Mounting type
- c. Antenna type
- d. Number of antenna
- e. Color
- f. Location of ground equipment and fencing

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. The following change must be made to the Conceptual Plan: The Conceptual Plan must be amended to provide a light fixture which is fully shielded and meets the definition of Full Cutoff Luminaire, "Any outdoor light fixture shielded in such a manner that all light emitted by the fixture, either directly from the lamp or indirectly from the fixture, is projected below the horizontal plane" as required by Chapter 18, Section 4.17.

(Note: The Board took a break at 8:15 p.m. and reconvened at 8:29 p.m.)

Agenda Item No. 15. **Public Hearing: SP-2010-040. Keswick Lake (Signs #84&85).**

PROPOSAL: Placement of fill in the floodplain to allow the construction of a private street.
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots), PRD - Planned Residential Development - PRD Planned Residential District, which allows residential (3 - 34 units/acre) with limited commercial uses and FH Flood Hazard - Overlay to provide safety and protection from flooding.

SECTION: 30.3.05.2.2 (3), which allows filling of land in the floodway fringe.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Area in Rural Area 4 - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development lots).

ENTRANCE CORRIDOR: No.

LOCATION: This fill is proposed below and adjacent to the dam located southeast of the Clifton Inn.

TAX MAP/PARCEL: 07900-00-00-02300, 07900-00-00-023F0 and 07900-00-00-03600.

MAGISTERIAL DISTRICT: Scottsville.

(Advertised in the Daily Progress on December 26, 2011 and January 2, 2012.)

Mr. Glenn Brooks, County Engineer, said that this was a special use permit for fill in the floodplain occurring on Camp Branch and the Rivanna River. The Planning Commission heard the item on November 15, 2011 and voted unanimously to approve it with the conditions as presented and also took a further action to review a subdivision plat when it came in – as well as considering traffic and road access issues. He presented an aerial view of the area, noting the location of Clifton Lake and Route 250, as well as North Milton Road (Route 729). Mr. Brooks also presented the subdivision plat that accompanied the special permit, showing the new road over the dam and out to North Milton Road. He noted the small parking area for a boat dock that the developer planned to build for the County Parks & Rec Department. Mr. Brooks also presented a view of the floodplain colored in as it exists today, noting that it went over the dam and the lake and pointing out the new road and where it came out to the public road. He pointed out the areas of fill that were addressed by the special permit and said that the majority of fill would be in the dam itself as it has expanded, both to improve the integrity of the dam and to situate the road on top of it. Mr. Brooks said that the smaller areas along the roadway were for roadway embankment and cut, and there was a small area of fill for the driveway down to the proposed boat dock – which were fairly minor in comparison to the fill on Camp Branch and the dam.

Mr. Brooks showed the proposed floodplain and said there were only minor changes on the roadway – some expansion and cut into the floodplain – with the dam itself getting cut out of the floodplain and constricted to the spillway on the dam. He presented a computer simulated view of the proposed spillway that comes out of the dam, which necessitated a stream crossing under the ordinance as part of the special use permit. Mr. Brooks presented the recommended conditions and said they were all fairly standard. He noted that the proposed condition #6, relating to the boat dock, had been removed as the Planning Director and County Attorney felt it was best addressed with the plat and the variation to the approved zoning that relocated the road.

Mr. Rooker asked Mr. Brooks if he felt the impacts resulting from flooding in that area would not be any worse than they were today, if this application were to go through.

Mr. Brooks responded that they would actually be better with regard to the dam itself, as it would be improved and would have less chance of failing. He said there was an added risk of a road in that area. He mentioned that the mitigation plan (condition #5) referred to buffer lost and replaced. Mr. Brooks stated that typically they try to get a 2:1 ratio, and he although has not seen the applicant's proposal – it would have to go in a different location to achieve that ratio and replace lost buffer.

Ms. Mallek asked if the long narrow strip where the road would be moved to was wooded.

Mr. Brooks responded that about one-half of it was wooded, which was the existing Randolph Mill Lane that went into the existing boat launch, and there was about 500 feet in the floodplain that went from there to the dam – which was a wooded hillside.

Ms. Mallek stated that she was thinking about what the impacts would be to the river, for people boating, etc. She asked if they would now see a road as opposed to the woods.

Mr. Brooks responded that in the wintertime a person would be able to see through the trees and see the roadway on the embankment, but with the trees in it may not be visible from the river.

Ms. Mallek asked if there would be a back down launch or a place for people to park their car, and pick up their canoe and carry it.

Mr. Brooks said right now it is a little gravel lot and a person would have to carry their canoe the 500 feet to the river. He said that the road ended and would not lead all the way down to the river, and mentioned that the river itself was about 300-400 feet wide with the floodplain being about 1,000 feet wide.

Mr. Dumler asked if there was anything above and beyond the standard conditions, given that this was on the major river in the County and was located in the rural area.

Mr. Brooks replied that other than the boat dock itself there was nothing extra, and many of the conditions were required by the ordinance.

Mr. Boyd asked who was being referred to as the "Program Authority approval."

Mr. Brooks responded that it was a term in the ordinance that referred to the Community Development Department, and usually it was him although it did not have to be.

In terms of mitigation along the road, Ms. Mallek asked if the applicant would have to keep it where it belongs during construction and then stabilizing it forever. Mr. Brooks responded, "yes".

Mr. Boyd asked if the road went through two separate property owners' parcels.

Mr. Brooks responded that there had been some dispute as to ownership, and he would let the applicant address that.

Mr. Dumler asked if all of the conditions related to erosion and sediment control, not to the fact that some stormwater treatment capacity was being lost.

Mr. Brooks responded that that was the case with the exception of condition #5, which addresses buffer area lost.

Ms. Mallek asked if there was a standard approach as to how the roadway would be supported, because there would be a big drop-off down to the rest of the floodplain.

Mr. Brooks replied that usually that would be accomplished through building up and compacting of earthwork, and if there was a significant drop there could be a guardrail installed. He said that there would most likely be vegetation planted this far from the river, as there would not be a lot of scour from the velocity of the water.

Mr. Snow commented that the dam was a lot better than what was there now.

Mr. Brooks agreed that the dam would be a great improvement, because it would need to be strengthened in order to get the road on top.

Ms. Mallek asked Mr. Brooks to note the location of the spillway. Mr. Brooks said that they did not have a true spillway – as they were designing everything to go through the culvert during a 100-year storm event.

Ms. Mallek said that there had been six 100-year storms since 1980 and asked if it had been approved by the state.

Mr. Brooks responded that it had not been approved by the state yet, adding that it would be reviewed by the County as part of its review of the road system. He clarified that the Board was not approving the specifics of the dam, but was authorizing the fill within the floodplain. Mr. Brooks noted that the County's Subdivision Ordinance required that a 25 to 50-year storm interval to pass under the road; for a primary access, it may go higher. The County does have some discretion with the roadway, but for the most part, the dam is the responsibility of the state.

The Chair then opened the public hearing.

Mr. Andrew Baldwin addressed the Board, stating that he was the developer of Keswick Lake and was happy to answer any questions. In response to Mr. Boyd's earlier question, he said that the lake outflow only went through one parcel. When it leaves their parcel it only goes through Country Inns Extraordinaire's parcel – and Keswick owns the small parcel they were donating to the County for the boat and river launch. They have a signed agreement in place to cover this, of which the County has a copy.

Mr. Dumler said that this led into a major, significant County roadway, and asked Mr. Baldwin if they were planning to do anything beyond the bare minimum threshold due to the loss of stormwater mitigation. There are some scenic impacts and natural habitat being lost.

Mr. Baldwin responded that it was important to consider the current situation and how it would be improved, emphasizing that the road was "terrible" and in need of improvement. He said that they were doing justice by moving the existing dead end up to the front of the road so it could be monitored more closely. Mr. Baldwin stated that they were building the road to required standards, and those requirements were pretty high. He also said that the Dam Safety Act requirements from the State would go well beyond the bare minimum, adding that the road had originally exited at Stone Robinson School and would have directly impacted the Clifton Inn, so they moved it to improve those situations. Mr. Baldwin said that there would not be much vegetation lost, and there were mature trees from the bottom up to the base of the dam.

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

Mr. Rooker stated that this was not an approval of the subdivision, as that was approved in 1978, and would not likely be approved today in this location. He said that on balance, the proposals for the road are probably an improvement over the current circumstance.

Mr. Dumler agreed, adding that he also recognized the benefit of improving the dam and from the developer offering to enhance the boat launch. He noted that the concerns he raised were because this

was unique situation, and Mr. Brooks had indicated to him that he couldn't recall another situation whereby a floodplain was being filled in, in the rural area, under old zoning that would lead to more residential development, along the Rivanna River. Mr. Dumler said that he felt it was appropriate to approach this with a heightened level of cautiousness.

Mr. Rooker stated that this was a special use permit, so the Board had the ability to impose conditions and he looks to staff to come up with conditions that completely mitigate any potential harm. It appears to him that the County would have total environmental mitigation, the road would be a better road, the dam would be a better dam, and there would be better recreational amenities. He reiterated that he would not vote in favor of this subdivision today, but that is not really before the Board.

Ms. Mallek added that it is making improvements where they can and would make it easier to bring up canoes.

Mr. Dumler then **moved** to approve SP-2010-00040 subject to the five recommended conditions. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

(The conditions of approval are set out below:)

1. The applicant shall obtain approval from FEMA for changes to the floodplain, and update the FEMA maps;
2. The applicant shall obtain County Engineer approval of plans for the road, culvert, dam and spillways;
3. The applicant shall obtain Program Authority approval for an erosion and sediment control plan, and obtain a land disturbance permit according to the Water Protection Ordinance requirements, regardless of whether the project exceeds the minimum disturbance limits;
4. The applicant shall obtain all necessary federal and state agency approvals prior to construction (Army Corps of Engineers, Department of Environmental Quality, etc.); and
5. The applicant shall obtain Program Authority approval of a mitigation plan, and provide mitigation according to the Water Protection Ordinance.

Agenda Item No. 16. **Public Hearing: Dedication of Sanitary Sewer Easement to Rivanna Water and Sewer Authority.** To consider granting a sewer easement to the Rivanna Water Sewer Authority (RWSA) across property owned by Albemarle County located on Crozet Avenue (TMP 56-11). A relocation of a sewer line is necessitated by the County's Downtown Crozet Stormwater Wetlands Project. This easement allows the RWSA's existing sanitary sewer line on the property to be relocated and allows RWSA to maintain and operate the new line. (*Advertised in the Daily Progress on January 2, 2012.*)

Mr. Davis reported that the public hearing was required for the Board to consider approving the donation of a sanitary sewer easement to the RWSA. The necessity for the easement results from the downtown stormwater wetlands project – and part of that project requires relocating an existing line, with this sewer easement needed in order to do that. Mr. Davis said the language for the deed of easement had been agreed to with Rivanna and the Board, at the end of the public hearing, would be asked to give authorization to the County Executive to execute the deed of easement in a form that is acceptable to the County Attorney, as well as to execute the necessary plat that would abandon the existing sanitary sewer easement.

Mr. Gregor Pasche said that part of the project design was to optimize the County's property and get as much storm water management as possible out of the property, so in order to do that they had to shift an old line. Mr. Pasche said that the easement would follow that new line, and they would be putting in a sediment forerbay to collect trash and litter before it went into the wetlands.

The Chair opened the public hearing. There being no public comment, the Chair closed the public hearing and placed the matter before the Board.

Mr. Rooker **moved** to authorize the County Executive to sign the following documents on behalf of the County in a form acceptable to the County Attorney: the deed of easement from the County to the RWSA to relocate an existing sanitary sewer line on County property Tax Map Parcel 56-11, and a plat for Tax Map Parcel 56-11 showing the existing RWSA sanitary easement to be abandoned and the new sanitary sewer easement to be dedicated. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

(The Deed of Easement is set out below:)

This document was prepared by:
Rivanna Water and Sewer Authority
695 Moores Creek Lane
Charlottesville, Virginia 22902

Tax Map and Parcel Number 56-11

This **DEED OF EASEMENT**, made this ____ day of January, 2012 by and between **THE COUNTY OF ALBEMARLE**, Grantor ("Property Owner") and **RIVANNA WATER AND SEWER AUTHORITY**, a body politic and corporate created pursuant to the Virginia Water and Waste Authorities Act, whose address is 695 Moores Creek Lane, Charlottesville, Virginia 22902, Grantee (the "Authority").

WITNESSETH:

WHEREAS, the Property Owner has agreed to grant the Authority the easement shown on the plat attached hereto and recorded herewith entitled "Plat Showing A New 30' Sanitary Sewer Easement Across Tax Map 56 Parcel 11", prepared by Lincoln Surveying, dated August 26, 2009, last revised January 12, 2012 (the "Plat");

WHEREAS, as shown on the Plat, the proposed easement crosses a portion of the property conveyed to Property Owner by deed recorded in the Clerk's Office of the Circuit Court of the County of Albemarle in Deed Book 3830, page 168, and Property Owner is the fee simple owner of the said property as of the date hereof; and

WHEREAS, by deed dated May 30, 1985, and recorded in the aforesaid Clerk's Office in Deed Book 839, page 173, the Authority was granted an easement and right of way (the "Existing Easement") 30 feet in width, for the purpose of installing, constructing, and maintaining an underground sewer line and for making connections thereto.

NOW, THEREFORE, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Property Owner does hereby GRANT and CONVEY with SPECIAL WARRANTY of TITLE unto the Authority a perpetual right of way and easement to construct, install, operate, maintain, repair, replace, relocate and extend a sewer line consisting of pipes, equipment, and appurtenances to such pipes and equipment, over, under and across the real property of Property Owner located in the County of Albemarle, Virginia, and to access any other adjacent easement held by the Authority, the location and width of the easement hereby granted and the boundaries of the property being more particularly described and shown on the Plat as Sewer Line Easement (the "Sewer Easement"). Reference is made to the Plat for the exact location and dimension of the Sewer Easement hereby granted and the property over which the same crosses.

Easement Obstructions

Property Owner, its successors or assigns, agree that trees, shrubs, fences, buildings, overhangs or other improvements or obstructions, except for those improvements shown on the plans titled "Crozet Stormwater Management Project" as prepared by Kimley-Horn and Associates and dated 5/2/2011 (the "Stormwater Plans"), shall not be located within the Sewer Easement. The Sewer Easement shall include the right of the Authority to cut any trees, brush and shrubbery, remove obstructions, including any improvements shown on the Stormwater Plans, and take other similar action reasonably necessary to provide economical and safe sewer line construction, installation, operation, maintenance, repair, replacement, relocation and extension. Following the removal of any improvements shown on the Stormwater Plans, the Property Owner may restore said improvements at its expense, and the Authority shall have no responsibility to Property Owner, its successors or assigns, to replace or reimburse the cost of trees, brush, shrubbery, or other obstructions, including any improvements shown on the Stormwater Plans, located in the Sewer Easement if cut or removed or otherwise damaged pursuant to the preceding sentence.

Easement Access and Maintenance

As part of the Sewer Easement the Authority shall have the right to enter upon the above-described property within the Sewer Easement for the purpose of installing, constructing, operating, maintaining, repairing, replacing, relocating and extending the above-described sewer line and appurtenances thereto, within the Sewer Easement; and in addition, the Authority shall have the right of ingress and egress thereto as reasonably necessary to construct, install, operate, maintain, repair, replace, relocate and extend such sewer lines. If the Authority is unable to reasonably exercise the right of ingress and egress over the right-of-way, the Authority shall have the right of ingress and egress over the property of Property Owner adjacent to the right-of-way, and shall restore surface conditions of such property adjacent to the right-of-way as nearly as practical to the same condition as prior to the Authority's exercise of such right to the extent consistent with the provisions of the section titled "Easement Obstructions" above.

Excavation

Whenever it is necessary to excavate earth within the Sewer Easement, the Authority agrees to backfill such excavation in a proper and workmanlike manner so as to restore surface conditions as nearly as practical to the same condition as prior to excavation to the extent consistent with the provisions of the section titled "Easement Obstructions" above.

Ownership of Facilities

The facilities constructed within the Sewer Easement shall be the property of the Authority, its successors and assigns, which shall have the right to inspect, rebuild, remove, repair, improve and make such changes, alterations and connections to or extensions of its facilities within the boundaries of the Sewer Easement as are consistent with the purposes expressed herein.

Abandonment of Existing Easement

The Authority, upon completion of the sanitary sewer relocation shown in the Stormwater Plans and at such time the new sewer is fully operational and accepted in writing by the Authority, shall vacate, release, and extinguish all of its right, title, and interest in and to those portions of the Existing Easement that are shown on the Plat as "Portion of Existing 30' RWSA Sewer Easement To Be Vacated".

WITNESS the following signatures and seals:

PROPERTY OWNER:
COUNTY OF ALBEMARLE
By: _____ (SEAL)]
Thomas C. Foley, County Executive

AUTHORITY:
RIVANNA WATER AND SEWER AUTHORITY
By: _____ (SEAL)
Thomas L. Frederick, Jr., Executive Director

Agenda Item No. 17. Claudius Crozet Park Community Building Improvements.

The following executive summary was provided to Board members:

Claudius Crozet Park (CCP) is a 23 acre community, non-profit recreational facility open for public use that has been serving the Crozet community since 1958.

History of Cooperative Agreements

In 1985, CCP approached the County seeking funding for the ongoing maintenance of their existing park facilities as well as CIP resources for future recreational improvements and amenities. On November 6, 1985, CCP and the County entered into a Restrictive Covenant Agreement for 13.62 acres of the park. This agreement established that this property was to be used solely for recreational and public purposes. The County agreed to consider funding park improvements as part of its Capital Improvement Plan (CIP) process and to have County staff assume responsibility for the maintenance of these improvements. This agreement allowed the CCP Board to place all of its resources toward the operation and maintenance of the pool, and to retire its pool debt of \$50,000 in 1988.

In the mid 90's, the CCP swimming pool was deteriorating rapidly, and the options before CCP were to either renovate the pool for \$200,000 (with no warranty) or to build a new pool for \$330,000. The CCP asked the County to assist with funding the construction of a new swimming facility and to assist with master planning and funding additional recreational facilities at the Park. Recognizing the County's critical need for athletic fields and that a very vital part of Crozet's history and future was in jeopardy, the County agreed to enter into a joint operating agreement with CCP for the Park's operation in 1997. Under the 1997 *Crozet Park Agreement and Restrictive Covenant* the County agreed to contribute \$200,000 to be used solely for the construction of a new swimming facility while CCP agreed that the entire 23-acre park would be solely used for recreational and public purposes in perpetuity, would be open for public use, and if the CCP ever ceases to exist as a legal entity, that fee simple title to the park and all improvements will transfer to the County at no cost upon the County's request. This operating agreement provided CCP and the County, as partners, the opportunity to provide the needed recreational improvements and opportunities to serve the Crozet community and citizens of Western Albemarle.

This joint operating agreement has resulted in over \$1,000,000.00 of improvements to the CCP being constructed and funded by the County, including the construction of baseball fields, a multi-purpose field, and playgrounds. In addition to these capital costs, the County maintains all the fields and playgrounds, mows the entire park, and provides daily trash pick-up. Although these activities are not accounted for in a distinct line-item in the Parks & Recreation operating budget, staff estimates that these maintenance activities translate to approximately \$20,000.00/year; a total of over \$300,000 over the past fifteen years. In exchange, the CCP is solely responsible for the maintenance and operation of the pool and has worked collaboratively with the County in the maintenance of the community center located adjacent to the pool.

In 2004, the County's Department of Parks & Recreation, working in conjunction with CCP, developed a Long Range Master Plan for the property and identified the following improvements:

- Amphitheater
- Aquatics and Recreation Center
- Basketball Courts
- Multi – Purpose Perimeter Trail
- Resource Center
- Skateboard Park
- Tennis Courts

In its adopted FY 2009 CIP, the Board of Supervisors approved the following CCP Master Plan improvements and funding based upon the recommendations of County staff and the CCP long-range planning committee and the recommendations of the CIP technical review and oversight committees:

- \$100,000 Tennis Courts and Skate Park
- \$ 68,000 Multi-Purpose Perimeter Trail
- \$ 32,000 Replacement of existing basketball courts
- \$200,000 Total

Current Proposal

At the request of CCP, Supervisors Mallek and Rooker, along with County staff, met with CCP Park Board members on November 30, 2010 to discuss CCP's proposal for the reallocation of funding for the above projects to the construction of the Park's Aquatics and Recreation Center. The intent of the meeting was to provide County feedback and direction to CCP in their preparation to formally request that the Board of Supervisors re-direct these appropriated funds for previously approved Park Master Plan initiatives to this Center. Subsequent to this meeting, staff submitted to CCP a document which contained seven (7) areas/issues to be addressed in order for this matter to be presented to the Board for consideration (Attachment A). During 2011, CCP aggressively pursued fundraising initiatives for its pool enclosure as well as a partnership agreement with Piedmont YMCA for operation of the proposed Center. On November 15, 2011, approximately one year from the date of the initial meeting, CCP submitted its formal proposal to the County, including its responses to the issues raised by County staff and indicated that its fundraising goals were practically fulfilled (Attachment B). On December 6, 2011 Supervisor Mallek along with County staff met with CCP representatives to review its responses and discuss future considerations. Following this meeting, staff advised CCP of the following actions needed in order for this request to be forwarded to the full Board for consideration:

- Prepare a Memo of Understanding (MOU) between CCP and the County outlining the conditions and requirements associated with the donation and one that all parties can agree upon.
- Staff preparation of an Executive Summary to the Board of Supervisors outlining CCP's request and staff's recommendation.

Staff advised CCP that provided the terms of the MOU could be agreed upon in a timely manner, this matter could be submitted to the Board at its meeting on January 11, 2012 for consideration.

The Crozet Park Aquatics and Recreation Center has been the number one priority of the CCP Long Range Master Plan since 2004. The facility is estimated to cost \$600,484 and will consist of an inflatable removable dome center to cover the existing swimming pool and renovations to the existing community building. CCP has obtained \$422,000 through fundraising, grants and pledges and has allocated \$400,484 toward the Aquatics and Recreation Center, and is requesting that the County convert the CIP appropriation for Park Improvements totaling \$200,000 to a lump sum contribution toward construction of renovations to the existing Recreation Center which are needed in order for the Piedmont YMCA to assume responsibility, on behalf of CCP, for operation of the proposed enclosed pool and recreation facility. CCP has entered into a year-to-year joint operating agreement with the Piedmont YMCA that has not been shared with the County. Staff understands that this agreement allows both nonprofits to work jointly to provide the community of Crozet and residents of the County with year round aquatics and recreational and fitness programs for all age groups. The plan is that the YMCA will begin operating the Recreational Center and the summer pool in May 2012, and begin operating the Recreation Center and the domed pool in the fall of 2012.

The County has enjoyed a long successful working relationship with CCP which has generated positive benefits for the citizens of Crozet and the entire western region of the County. CCP represents a dedicated, energetic and enthusiastic group of volunteers. The Board, through its adopted FY2013-17 Strategic Plan, emphasized the need and desire to pursue and promote community/volunteer partnerships to the greatest extent possible to ensure the County's vibrancy. The proposal by CCP, as well as its passion and commitment to raising private donations for this project, are truly reflective of the spirit and intent of the Board's strategic plan goal.

While the efforts of CCP are extremely laudable and truly reflective of core community spirit and commitment to create positive good for Crozet and Western Albemarle, staff believes that, based on current policy and past direction by the Board, there are several policy matters the Board should weigh as it considers this request. While the Board may ultimately determine that other factors outweigh the issues raised below, based on current policy and past Board direction, staff felt it important to raise these issues for your consideration:

1. **CIP Review & Prioritization Process:**

The Board appropriated funding for the basketball/tennis courts and perimeter trail system upon these projects being vetted against other County-wide priorities through the CIP Technical Review Team and Oversight Committee process. Given that CCP's proposal was received on November 15, 2011, the request to reallocate these funds to assist with construction of the Recreation Center has not been reviewed by the TRT or Oversight Committee to provide a recommendation to the Board on whether this request meets a high-priority capital improvement need for the County as a whole. Other school and local government projects have been directed back to the Oversight Committee for consideration when changes have been proposed. While this proposal does call for completion of the original projects eventually, it delays the completion of those projects for up to seven years in order to complete a project not previously identified for funding or determined to be a priority. The cost of completing all of these projects over seven years is also likely to increase.

2. Previous Discussion Regarding Aquatics and Recreation Centers

While according to the proposal, the County is not being asked to make a long term investment in this facility, the proposal does request a short term investment with a certain level of risk. This risk is being taken on for a facility that has not been identified as a high priority of the County, and results in other higher priorities being delayed. In addition, the County has previously committed to a centrally located aquatics and recreation facility through the proposed YMCA facility in McIntire Park. Finally, other swim clubs have unsuccessfully requested support from the County in the past. While those requests have clearly been different than this proposal, particularly regarding the fundraising efforts of CCP, the Board has focused its efforts on a central facility rather than involving itself in more local efforts.

3. Operation of the Aquatics and Recreation Center

As previously noted, CCP and the Piedmont YMCA have entered into a year-to-year agreement setting forth the terms/conditions for the YMCA to assume operation of the proposed facility. Staff has not reviewed this agreement. As noted in Exhibit D to CCP's November 15, 2011 submittal to County staff, the anticipated cost of operation of this facility is expected to total approximately \$547,000 per year. Should forecasted memberships/revenues not be realized, or should the YMCA decide not to renew this year-to-year agreement, the County's \$200,000 investment in this facility and \$200,000 of future priority improvements could be at risk. Staff is unable to assess the viability of this new venture without understanding the nature of the year to year agreement and, more importantly, is not typically involved in assessing the viability of these types of ventures regarding the use of public funds. Other non-profit proposals for new ventures have come before the County in the past and the Board has decided that the use of County funds was not appropriate.

4. Pending Case before the Virginia Supreme Court

As the Board is aware, the County remains in litigation regarding a challenge to a similar donation made to the YMCA for recreational facilities. While the County feels it has a strong case, this litigation is currently pending before the Virginia Supreme Court and is unlikely to be finally decided until May or June of this year.

Attachment C represents staff's recommended version of a Memorandum of Understanding between CCP and the County should the Board decide to approve this request for converting its CIP appropriation to a donation for the recreation center and delay currently approved projects into the future. While staff understands from Supervisor Mallek that some discussion is still ongoing, the primary area of disagreement between staff and CCP related to this agreement is the manner in which the previously approved park improvements will be completed in the future. Since the concept of converting this appropriation to a donation was first proposed by CCP in late 2010, staff has emphasized the need for CCP to directly repay this amount to the County in order for the tennis/basketball court improvements as well as perimeter trail network to be constructed as currently programmed. (Question 7, Attachment A) Since the County maintains all amenities at the park with the exception of the pool, repayment of these funds to the County is considered by staff to be critical to ensuring that these improvements are constructed in conformance with County standards and procedures. CCP maintains that it is in a better position to accomplish the necessary fundraising to provide these funds without such a requirement and is proposing instead to solicit donations and complete these improvements on its own. Staff is committed to ensuring that construction of these improvements will be made in a very collaborative and cooperative process but that construction of the improvements should be managed by the County as a CIP project pursuant to Paragraph 4 of the *Crozet Park Agreement and Restrictive Covenant*.

The CCP Board is requesting that the Board approve its request at Wednesday's meeting and that the County submit its donation by January 22, 2012 in order for it to complete work on all phases of this proposed project in a timely manner.

There is no direct budget impact to the County should the Board agree to convert the existing appropriation to a contribution by removing this amount from the Capital Fund and reallocating these funds to the General Fund. However, it is recognized that future County support could become necessary in the event CCP, for some unforeseen reason, is unable to continue to fund the operation of the Aquatics and Recreation Center. There is also a risk that in the event the CCP is unable to raise \$200,000 over the next seven years that additional County funding will be required to complete the basketball/tennis court improvements and the perimeter trail system. Additional funds will also most likely be required if the cost of the CIP projects increase over the next seven years because the construction is delayed.

If the Board wishes to contribute \$200,000 to the Claudius Crozet Park Aquatics and Recreation Center Project, staff recommends that the Board 1) authorize the appropriation of \$200,000 from its CIP Fund to its General Fund by approving the attached budget amendment and approving Appropriation #2012050 (Attachment D) in the amount of \$200,000; 2) authorize the County Executive to execute an agreement between the CCP and the County setting forth the financial arrangements after approval to both form and substance by the County Attorney; and 3) approve a \$200,000 donation to Claudius Crozet Park, Incorporated subject to the terms and conditions of this agreement.

Mr. Foley stated that included in the Board's packet of information on Friday were a Memorandum of Understanding originally provided to the Park Board on December 15. After the close of business on Friday and after the Board received their packets, the County received a significantly revised agreement that staff have spent the last couple of days reviewing. Mr. Foley said that the result of staff's review of

the agreement was some suggested changes first communicated to the Board by email, followed up at 12:00 noon with a revised agreement that reflected those issues. He stated that staff is confident that that's the agreement the Board should be considering, but the item the Board received at noon received further significant revisions, as of about 15 minutes before tonight's meeting, from the Park Board's Attorney – which staff had not had time to review. Mr. Foley said that staff recommends that the Board consider the document they received at noon, if they decide to move forward.

Mr. Bob Crickenberger, Director of Parks and Recreation, said that there was a request from the Crozet Park Board requesting that the Board of Supervisors convert \$200,000 of existing CIP funds slated for improvements at the Park to be used to support the construction of an aquatics and recreation center. He said that there was a lot of information in the executive summary, so he would just provide an overview of key issues. Mr. Crickenberger stated that staff and the Park Board had worked in conjunction over several years in developing a long-range master plan, with identified projects. In 2009 the Board appropriated \$200,000 in support of those projects – tennis courts, skate park, a multi-purpose perimeter trail, and replacement of the existing basketball court. He said that the top priority for the Park has been the aquatics and recreation center, and they have been fundraising for it since 2004. Mr. Crickenberger commended the Parks Board for the tremendous amount of fundraising they have done in light of the tight economy. Mr. Crickenberger explained that the aquatics and recreation center was estimated to cost \$600,000, and through the CCP fundraising efforts they have been able to raise \$422,000. He stated that Crozet Park had allocated over \$400,000 of that money toward the center.

Mr. Crickenberger said that staff felt it was also important to address some broader policy issues, such as the fact that this proposal had not had the opportunity to go before the CIP Technical Review Team or Oversight Committee – as the request was not received until November. He also stated that there had been previous discussions with the Board regarding County support to other aquatic and recreation facilities that were currently unfunded, and the potential support from the County if the YMCA does not renew their year to year agreement could mean that the Park Board comes back to the County and asks for funding assistance to operate that facility. Mr. Crickenberger also said that the County's contribution to the YMCA was under litigation with the State Supreme Court, and that would not be heard until May or June, and could also be an issue.

Mr. Crickenberger said that at this point the staff supports the aquatics and recreation center, but the issue now is whether the County wanted to contribute the \$200,000 under the terms of the MOU. He emphasized that the MOU forwarded by Mr. Davis to the Board today is what staff fully recommends, with all of the amendments, but the Crozet Park Board does not fully agree. Mr. Crickenberger said that the primary area of disagreement was the requirement of a performance bond that staff was asking them to place on every improvement to be made.

Mr. Rooker said that the way he read the language was that “unless otherwise agreed to by the County, all work shall be performed pursuant to a contract where a licensed contractor shall provide a performance bond to ensure that the work is completed according to the specifications.” He stated that this was not an absolute requirement, but could be required.

Mr. Foley agreed, stating that they included that flexibility in the final draft.

Mr. Davis noted that some improvements may not necessitate a performance bond, but other improvements where specifications were critical would need them.

Mr. Rooker mentioned that there had been a huge amount of volunteer work showing up for trails, and having the flexibility to require or not require a bond was important because there may be some things that could be done with volunteer effort – and those would be difficult to bond.

Mr. Foley added that a major construction project would require bonding.

Mr. Dumler asked who would have that authority; what entity would waive the requirement.

Mr. Foley responded that it would be done with the project committee established in the agreement – which includes a County staff member functioning as a project manager – would have to agree with the majority on how the process goes in order for it to proceed. In essence, it gives sort of a veto power to the project manager who is the most knowledgeable about that.

Mr. Snow pointed out that Barton Malow was overseeing the project, and volunteering time and energy to make this happen, and they were a multi-million dollar firm with lots of experience.

Ms. Mallek noted that their scope of work related to the building, which would begin soon, and the MOU applied to the basketball and tennis courts that would be done later by the Park.

Mr. Davis stated that it would not apply to the pool or the rec center facility.

Ms. Mallek said the pool had nothing to do with County dollars.

Mr. Foley added that the project management team would not be working on the pool and rec center; this was only on the originally planned County projects.

Mr. Boyd asked what the second issue from the Park Board was.

Mr. Foley responded that they had only had a County staff member on the project management team, and staff felt a Parks and Rec staff person should also be on that team.

Ms. Mallek said that that was kind of a given from their perspective.

Mr. Boyd mentioned that the YMCA would be charging about \$355,000 in fees for the first year, which would increase to \$567,000 and then \$590,000 in fees to use the facility, as presented in the Parks Board proposal. This is not a free service to any of the community. It is not the free use of fields and it is not the free use of tennis courts. As it relates to the building, they will charge fees for that and then there are membership fees too.

Ms. Mallek added that the YMCA would be required to have scholarship programs, and that was part of the YMCA's agreement with the Park.

Mr. Boyd asked if that was part of the YMCA's agreement with the Park.

Mr. Davis said that he had quickly reviewed the YMCA agreement, but a Crozet Park representative should address that more specifically. He also explained that there were requirements in the 1997 agreement between Crozet Park and the County that require some scholarship admissions for pool activities, and that was being honored through the YMCA agreement.

Mr. Snow asked if the pool would also be open to the Western Albemarle High School swim team.

Mr. Crickenberger responded that the agreement stipulates that they would provide swim time for Western Albemarle.

Mr. Davis stated that the YMCA agreement would provide a preference for the team with a preferred time, but would also anticipate that the School Board would have to pay for that time. He said that there was an estimated amount of revenue that they anticipate from the School as reflected in their budget.

Ms. Mallek said that the great advantage was saving the drive to and from Charlottesville.

Mr. Boyd agreed, but said that there was tremendous community support for this in other parts of the County – as both Albemarle and Monticello have the same problem.

Ms. Mallek said that they are at least closer.

Mr. Boyd commented that the students are still traveling at 8:00 p.m. to 9:00 p.m. at night. If the student lives in the southern part of the county and swim on the swim team, they are not close to Fairview pool.

Mr. Rooker stated that the County had a commitment to contribute a substantial amount of money to the completion of the YMCA facility, and hopefully once that litigation is cleared up they would raise the remainder and move forward with the project.

Mr. Boyd said that the County had \$1.25 million additional in the CIP when there were proposals from both Crozet and Fairview to add competitive swimming capacity, but the Board turned it down and re-appropriated it. It is not that he is opposed to this proposal, but it did not go back through the process.

Mr. Rooker stated that the difference here was that the Board had already appropriated in the CIP \$200,000 for park improvements, and this would be an opportunity to multiply the effect of that money by more than three times – and time was a factor here. He said that every proposal should go on its own merits, and he would consider looking at the Star Swimming proposal again. He thinks the County has a good opportunity to help provide a swimming facility in the western part of the County, to greatly upgrade the existing recreational buildings out there that are used in the park, to still get the improvements – the ball field, the trails, et cetera. He added that the County was getting a multiplier effect on improvements because of the private fundraising for the project – going toward a public park; this is not a private facility. Mr. Rooker also said that the pools would be open to the public during the day, and this was a terrific opportunity to maximize private contributions of both in kind and money. If the County walks away from this proposal and spend its \$200,000 to do the list of three or four items, it would end up with a lot less.

Mr. Boyd said that there were many other projects like this, and the County has chosen to allocate funding here without considering other options and uses for it that could accomplish the same thing. He stated that that's why the County had a process with the CIP process.

Mr. Rooker agreed, but said the County had already allocated \$200,000 through that process for some improvements to the park, but the question is what the best way is to leverage that money to end up those things but end up with much more.

Mr. Boyd stated that the Board had also decided to put the \$1.25 million back in the CIP, and what bothered him was the process here. He does not like that the Board was handed a contract a couple of minutes ago that has not been vetted by the legal department. He does not like how this project ended up on the agenda. He said he could not vote against the project because it is great and a good thing to have, but he could not vote for it because of the process. He does not think the Board would circumvent so many of its rules for any other project like this.

Mr. Snow said that by reallocating the \$200,000 the money would go to a different function for the park, and it specifically specified "trails," but that is one thing the County had was trails. He thinks what they need is a building that is heated and air conditioned, and a facility for the western part of the County that they do not have.

Mr. Boyd responded that they do not have it in the eastern part of the County either.

Mr. Snow said that you have got to start somewhere.

Mr. Boyd said he agrees.

Ms. Mallek stated that she hoped groups in other parts of the County would step up and raise the money. That is when County funds can be most used.

Mr. Snow noted that they had raised almost \$600,000 in Crozet.

Ms. Mallek pointed out that this plan had been discussed with Parks & Rec staff and the Park Board before she even came on the Board of Supervisors.

Mr. Snow commented that he wanted to acknowledge the number of volunteer hours that had been put in – thousands and thousands – that would go way beyond the \$600,000.

Mr. Boyd said that there was always a lot of that happening in the County, adding that there was a tremendous amount of work being done to extend the trails to the Rivanna River at Pantops – and there was no money being allocated there.

Mr. Snow suggested having them raise \$600,000 and then the Board would talk to them.

Mr. Rooker commented that this was a little bit different because \$200,000 had already been appropriated, and the County is not abandoning the list of projects – with some of those items such as tennis courts being built faster.

Mr. Boyd said that he could probably be convinced to vote for this if the Board had another month, to give them time to review the agreement.

Ms. Mallek stated that the agreement that Mr. Davis drafted yesterday afternoon was reflective of everything discussed via email.

Mr. Davis said that the issue appeared to be the agreement. The agreement with the Board's executive summary was an agreement that reflected what staff and Ms. Mallek had thought the proposal was – the County making a donation of \$200,000 so the Park Board could advance the center, with the County in return receiving \$200,000 back from the Park Board for the County to construct the improvements identified in the CIP. He stated that that was how the County and the Park had operated under the 1997 agreement for the last 15 years, but at some point in time there was a misunderstanding by the Crozet Park Board as to how that would be put forward – and County staff was unaware of that. Mr. Davis said that they really wanted to undertake the project themselves for various reasons, including use of volunteer labor and fundraising, which might not have been available had it been a County project.

Until Friday, he said, there was no direction from the Board that that approach had been acceptable, as the County was working under the assumption that the deal was what staff thought it was for the last year and a half. Mr. Davis stated that the agreement provided last Friday by Mr. Aldous on behalf of the Crozet Park Board changed that scenario to put it into a proposal whereby the Park Board would undertake those projects instead of returning money to the County – and that was a much more complicated proposal to put into a MOU as there were several issues such as defining the value of projects, guaranteeing that the specifications would be adequate for the County's long-term responsibilities for the park, playground and other facilities, quality control issues, and covering any risks. He explained that after reviewing the document, staff felt that there were some issues that had not been adequately addressed and made some proposed changes to reflect those issues. Mr. Davis stated that he had discussed with Mr. Aldous a revised proposal, and today Mr. Davis said he came up with a revised agreement to capture that conversation – but Mr. Aldous made further changes that were substantial that addressed style rather than substance. He said that they had discussed it this afternoon around 3:00 p.m., and apparently Mr. Aldous had rejected some of the suggested changes. Mr. Davis stated that in looking at these very quickly, there appear to be four substantive issues that were different.

Mr. Foley said that staff could get into revising the document again at the meeting, but the issues in principle were already before the Board – so if they want to take out the requirement for performance bonds even though Mr. Rooker indicated that the flexibility was built in, the Board had the prerogative to do so but he thinks they would be going down a road here that is going to get them into "wordsmithing" a legal document. He added that the issues in principle had remained the same as what was shared with the Board the night prior to the meeting.

Mr. Rooker stated that he had time on break to check with Mr. Davis as to whether the agreement was something he could recommend, and he had said that it was. He does not think the Board can vote on another form of this agreement tonight. If it is important that the Board take action tonight, then he thinks it needs to stick to what is before it. He said that he thinks the agreement covers the primary concern that was raised when the Crozet Park people went around and met with various Board members, which was the timing of the money and the way that it eliminates the loan aspect of the contribution. This

does not automatically require a bond; it gives the County flexibility to require one depending on the circumstances, and he thinks it is a prudent approach.

Mr. Davis emphasized that in attempting to define what the improvement costs are, the agreement referenced that the costs would be determined as though the County itself had made the programmed improvements or renovations – and the word “programmed” has significance, and it is objected to by the Crozet Park Board. He said that the intent of that was that the project costs – which the County would get in return for the equivalent of \$200,000 – would only include the costs that were programmed in the CIP projects, such as the tennis courts. The CIP project envisioned two full sized tennis courts. The Park Board’s proposal is different. There may be a difference in costs between what two full sized tennis courts would cost the County to construct and the improvements that the Park Board would construct. Mr. Davis said that the issue was whether the Park Board gets credit for improvements that are above and beyond what the County intended to build. This agreement would say no. The Park board obviously would prefer that they get credit for the full enhanced project that they are proposing to build and that is an important difference. Some of the money the Park Board is raising may exceed the amount they would get credit for in this agreement.

Mr. Foley said that the reason staff recommended that the language remain as it is was because the County has arrangements with volunteer fire and rescue whereby they will pay for extra amenities on equipment. The County’s policy is that it would not pay for that, and so they step up and they pay for it. It is the same principle and is consistent with what the County has done in other areas.

Ms. Mallek asked about the paragraph that had been added yesterday.

Mr. Davis responded that what was in their staff report had a provision that if the County made a donation to the Park Board and for whatever reason the Park Board chose not to go forward to complete the project within 12 months, the full money would be refunded to the County for it to undertake the projects itself.

Ms. Mallek said she was referring to the paragraph about the projects and their value.

Mr. Davis stated that what was proposed by the Park Board was once they spend \$200,000 worth of effort toward those projects they have no obligation to go beyond that point, and the County’s position was that they would need to have \$200,000 of effort towards the projects the County would have otherwise built.

Mr. Boyd said it appeared to him that staff and the Chair had been negotiating a contract with Crozet Park without the direction of the entire Board, and that is what bothers him about this thing. The Board never directed staff and the Chair to negotiate with them. He stated that he had never been included in those discussions.

Ms. Mallek explained that her whole goal had been to find something that was agreeable to both, otherwise there would be no point in having the Board discuss it. It seemed pointless to bring something in, in disarray.

Mr. Boyd responded that it appears that is what has happened.

Ms. Mallek stated that she wasn’t convinced of that, and asked if there was a representative from the Park Board here to make a presentation.

Ms. Heidi Sonen addressed the Board, stating that she was a member of the Crozet Park Board and noting that there were other members of the Park Board present. This had been a long process for the Park. She said that the Park had a long history of being in the County, deeded and donated to the community in 1957. Ms. Sonen stated that the facilities would be open to everyone, and would only be off limits when there are scheduled activities.

Mr. Boyd asked who would maintain the courts.

Ms. Sonen responded that it would be a joint effort per the 1997 agreement between Crozet Park and County Parks & Rec. She said that the Park had operated the only public pool in the County for over 50 years, funded through their fall and spring arts & crafts festivals – which had been held for 30 years. Ms. Sonen stated that their mission was to fill a gap in the community by providing affordable fitness, aquatics and recreation year round. She said that in 2003 the Park Board members said the park needed to be planned as part of other master planning, and in 2008 they met with County Parks & Rec to talk about inclusion in the CIP – which was where the \$200,000 came in. Ms. Sonen said they had requested funding for the dome in 2008 but were turned down for that request, taking away from the staff recommendations that they should form a partnership with the YMCA and come back to the Board and ask for help in the future. She stated that they decided to do it on their own and started raising money for the dome, with a community match for money raised by the festivals. Ms. Sonen explained that in 2010 they began a capital campaign, and in 2011 they formed a committee that was just focused on this park. She said that they had scaled back the project and determined in 2010 that the money they had raised would be enough to move forward. Ms. Sonen said that the park was now budgeted as a one-year, \$600,000 program – with \$400,000 from the community and the festivals and the remaining \$200,000 from the CIP reallocation. Ms. Sonen said the money from the County would only be used on the building modifications; it will not be used on the pool dome.

She stated that in December of 2011 the community raised \$51,000 toward the facility so the construction could begin in January 2012. Ms. Sonen stated that the Commission on Children and Families determined in 2003 that there was "no place for students and teens in the western part of the County," and not enough jobs for teens. She said that the recreational needs assessment study clarified the need, calling for the facility right in Crozet Park. Ms. Sonen stated that in the study they listed things taxpayers would support with tax dollars – and this project will provide four out of the five top items. She said that with the operating partner in the project, the County's money would go to a facility that was open to everyone. Ms. Sonen stated that ACAC chose to operate in Old Trail, but the YMCA decided it would work with Crozet Park – and their business model was a good fit as they encourage everyone to participate and invest in youth fitness. She added that the YMCA would be in charge of the day-to-day operations and would provide the furnishings and equipment; they are proud of the unique joint venture agreement that they are putting together.

Ms. Sonen presented a slide of information on Park funding, stating that there had been a significant amount of time donated from area professionals in addition to the money raised. She also said that they formed another 501(c)3 partner with Quick Start Tennis of Central Virginia, and they helped with a lot of grants and funding. Ms. Sonen stated that there would be no new tax dollars spent here, and projects funded by the CIP money for basketball, tennis and trails would be completed through partnerships formed. She said that the 1997 agreement commits Crozet Park to a master plan and to further collaboration with the County down the road. Ms. Sonen said that basketball was a big priority, and they wanted to raise money to be able to provide more amenities over time. She stated that the facility would be a 20,000 square foot year-round facility, with supervised child enrichment programs – including free swim lessons.

Ms. Sonen stated that a "yes" vote tonight would help provide 40 jobs for teens and others in the growth area around the facility, a facility with no ongoing operating costs for the County, a project they felt was way more than shovel ready, and a facility open to all regardless of their ability to pay. She said that they would also create a new model of private-public cooperation in the heart of the County's first designated growth area, and she hoped that other areas would follow suit. Ms. Sonen stated that the Parks Board felt that the revised agreement from Mr. Aldous had only minor changes. She added that there were also a number of people present who could respond to questions from Board members.

Mr. Boyd asked about the issue of how the \$200,000 would be spent on future allocations.

Ms. Sonen explained that they want Quick Start to be part of the agreement. All of the changes that happened are changes the County requested. The Parks Board had not had a chance to respond to the County's MOU from the day before. They do not want to have the Fairview problem where they have got tennis courts that just sit there so it is important that tennis and Quick Start and that \$68,000 can be used. Basketball will be added on to that as well. She said that the other issues had to do with the performance bond, as the agreement said that it is required unless the County waived it. The Park Board thinks that requirement is pretty tough. Mr. Ken Thacker, of VMDO, is Chair of the Building Committee. Also present is Mr. Phil Kirby, of Barton Malow, who can address the issue of performance bonds.

Mr. Kirby stated that some of the County's performance requirements might be things other than payment, adding that the issue of performance was on a job by job basis.

Ms. Mallek said that the idea was to have recourse if something wasn't built to specifications.

Mr. Kirby said that in some cases there was more liability than others.

Ms. Sonen reiterated that the Park Board believes that the issues they raised were minor, but they would like to eliminate the performance bond because it is pretty onerous.

Mr. Rooker stated that they are splitting fine hairs here, as there was an implication that the County would be unreasonable. He said that he was very supportive of the concept, but was not in favor of circulating the agreement and having it voted on. Mr. Rooker stated that the primary issue he was concerned with when the Parks Board reps came to visit him was handled in the language Mr. Davis drafted. Ms. Sonen said several times these are minor issues, but they could actually "kill the deal" here tonight over things she has categorized as minor. He will not vote in support of the agreement she just handed out.

Ms. Sonen said that the only thing she felt wasn't minor was the Quick Start portion of the agreement, as they really want that to count. It is her understanding Mr. Davis related information to Mr. Aldous the County did not want Quick Start to count which was something they just found out about today.

Mr. Davis clarified that the agreement proposed that the Park would get credit for the amount of the tennis courts that the County otherwise would have built, so the Quick Start money could very well apply to that as long as those improvements provide two full-size tennis courts. He explained that if the Crozet Park spent more money than what the County had programmed, the additional amount would not apply because the County would be moving from that point to building basketball courts. Mr. Davis stated that the Parks Board should have no problem with the County's proposal, which was designed to protect the County's risk in this project – which was to complete the projects included in the CIP.

Ms. Sonen added that the numbers were from 2008 and they do not reflect current numbers; the \$200,000 does not pay for all of those items.

Ms. Mallek said that the changes made the day before the meeting really protects the park so that the County is not requiring it to do things that end up costing \$500,000. The cost will be determined as though the County itself had made the improvements or renovations, including without limitation what the County would have spent on administration and not the CCP's actual cost.

Ms. Sonen stated that she agreed that the changes were very minor. She then recognized members of the Western Albemarle High School swim team who were present.

Ms. Mallek said that she hoped that swimming would become part of the PE curriculum in all County schools even if it had to be after school because of the extraordinary level of fatalities amongst populations who do not know how to swim.

Mr. Boyd stated that he was absolutely not on the other side of support of aquatic facilities, as he had been fighting since 2000 to get competitive swimming in the community – when he was able to get it into the school system. He applauded the Parks Board for all that they were doing, adding that he appreciated all of the work done on the private side to move this forward. He reiterated that it is needed in more than this one location in the community. He added that he will vote in support of this proposal predicated that he will challenge his colleagues that it is needed in other areas of the County.

Mr. Davis clarified that the three steps the Board was taking was to authorize and appropriate the \$200,000 from the CIP Fund to the General Fund by approving the budget amendment in the Board's packet, to authorize the County Executive to execute the agreement between the Park and the County, setting forth the financial arrangements after approval to both form and substance by the County Attorney with the understanding that the agreement they were authorizing was the one that they had received today from Mr. Foley, and to approve the \$200,000 to Claudius Crozet Park, Inc. subject to the terms and conditions of the agreement.

Ms. Mallek **moved** to approve the recommendations as read by Mr. Davis. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Ms. Mallek commented that this was step one in the strategic plan the Board had discussed, where they talked about getting the community more involved and not just sitting back and wanting government to do everything.

Ms. Sonen thanked members of the Crozet community for coming to the meeting and showing their support.

Mr. Snow applauded the attendees.

Mr. Foley recognized Mr. Davis, Mr. Crickenberger and Mr. Bryan Elliott for their many hours of work on this – much of which happened over the holidays.

Mr. Boyd said that he would like to have Parks and Rec staff step up and work with Fairview on a similar type operation.

Mr. Rooker stated that there were a number of unique things about the Crozet circumstance: the County had already appropriated the money, the facility was on property that reverted to the County, the money would leverage significant other funding, and the money had to be paid back if the contemplated use does not occur. There were some unique circumstances here – this is a public park, and the property comes back to the County if they stop operating.

Mr. Boyd said that it wasn't a public park, although the County maintains the fields.

Ms. Mallek clarified that it was open to the public.

Mr. Rooker stated that the land belonged to the County, and this action wasn't carte blanche to do this everywhere as the circumstances are not always going to be the same.

Mr. Boyd said that there had been \$1.25 million on the table in the approved CIP, and Fairview was a way of getting competitive swimming but Mr. Rooker and Ms. Mallek were against it.

Ms. Mallek said she cannot wait to see the pot of money being built in some other place; that is wonderful.

							APP #2012050
							DATE 01/11/2012
							BATCH NAME
COUNTY OF ALBEMARLE							
APPROPRIATION							
EXPLANATION: Crozet Park Contribution							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION

4	9010	71020	471020	800940	7100	(99,237.00)	Park Enhancements
4	9010	71020	471020	800949	7100	(32,000.00)	Parks & Rec Maintenance
4	9010	71020	471020	950202	7100	(68,763.00)	Greenway, Crozet
4	9010	93010	493010	930009	9999	200,000.00	Transfer from Capital to GF
4	1000	79000	479000	567730	1007	200,000.00	Contribution-Claudius Crozet Park
3	1000	51000	351000	512031	9999	200,000.00	Transfer from GF to CIP
TOTAL						400,000.00	

AGREEMENT

This Agreement is made by and between the County of Albemarle, a political subdivision of the Commonwealth of Virginia (the "County") and Claudius Crozet Park, Incorporated, a Virginia nonstock corporation ("CCP") and is dated as of January 12, 2012.

Recitals

A. CCP is a charitable organization that is organized and operated for the following exempt purposes as stated in its Restatement of the Articles of Incorporation, dated January 9, 1984: "The purpose for which [CCP] is formed is charitable, to promote the health and well being and enhance the general social and cultural welfare of residents of the Community of Crozet and the surrounding area of Albemarle County, Virginia."

B. CCP owns certain property (including the improvements) known as Claudius Crozet Park, located on Park Road in Crozet, Virginia, identified as Parcel IDs 056A2-01-00-07200, 056A2-01-00-072A0 and 56A2-04-00-000A4 on the County tax maps (the "Park").

C. The Park is open to the public. In the Park there are playgrounds, sports fields, open spaces, a pool and a community center. CCP is improving the community center and the pool (the "Facility") at the Park. Renovations to the existing community center will allow for year round fitness equipment and classes, after school programming, camps and community space for healthy lifestyle workshops. The Facility will be a 43,500 square foot year round facility offering aquatics, recreation, fitness and community space for all ages. A removable pool dome will go over the pool in September of each year and come off in May.

D. CCP and Piedmont Family Young Men's Christian Association, Inc., a Virginia nonstock corporation, ("YMCA") wish to enter into a joint venture to operate and maintain the Facility and to conduct recreational programs at the Facility in furtherance of the exempt purposes of YMCA and CCP. The Facility improvements must be complete before the joint venture can begin. The Facility improvements and YMCA's presence at the Park through the joint venture will provide the necessary oversight and growth for CCP to move forward with building, improving and renovating basketball courts, tennis courts, a skate park and a perimeter trail at the Park.

E. CCP and the County entered into an agreement, dated March 25, 1997, in which CCP agreed to make land available within the Park for the County to develop recreational fields and facilities and in which CCP and the County agreed that the Park would in perpetuity be used only for park and recreational and community related entertainment activities for the benefit of the citizens of Crozet and the County.

F. In or around 2008, the County allocated in its budget two hundred thousand dollars for improvements to the Park. The County intended to build, improve and renovate basketball courts, tennis courts, a skate park and a perimeter trail at the Park. The County now believes that its resources will be better spent helping to improve, remodel and renovate the community center, with the understanding that CCP will complete the projects that the County would have done. Improving the community center first will enable the joint venture between YMCA and CCP to move forward and will provide the best foundation for the proper oversight and maintenance of additional facilities at the Park. It will also provide additional and needed supervised recreational opportunities for youth in the Crozet area. For the purposes permitted by section 15.2-953 of the Code of Virginia and Article IV, Section 16 of the Constitution of Virginia, the County will instead now contribute the two hundred thousand dollars to CCP to assist in the building, improvement and renovation of the community center.

Agreement

1. Establishment of Fund. The County will contribute two hundred thousand dollars (US\$200,000) to CCP to establish the Community Building Fund (the "Fund"). The County will make the contribution to CCP by check on or before January 22, 2012.

1.1. Use of Fund. The Fund will be established by CCP upon transfer to and acceptance by CCP of the contribution. CCP shall use the entire principal and the income of the Fund for the purposes described below. The Fund will be held as a restricted asset of CCP, but not segregated as a separate trust. The principal and income of the Fund may be combined with other funds or accounts of CCP for investment purposes, provided that a separate accounting of principal and income is maintained. CCP shall use the Fund only in a manner consistent with its tax exempt purposes under section 501(c)(3) of the Internal Revenue Code.

1.2. Purpose of Fund. The purpose of the Fund is to assist CCP in the improvement, renovation and remodeling of the community center.

1.3. Return of Fund. If within twelve (12) months of the date of this Agreement, should the fulfillment of the purpose of this donation, as described above, become frustrated, burdensome, impossible, or impracticable (or if CCP is for some unforeseen reason unable to raise all of the funds it needs to renovate and improve the community center), then the Fund, including principal and income, shall be transferred back to the County to be used by the County for building, improving, remodeling or renovating basketball courts, tennis courts, skate parks and/or trails at the Park or to make such other improvements or renovations at the Park that CCP and the County deem appropriate and that are consistent with the exempt purposes of CCP. The money shall be returned to the County within thirty (30) days of a written request by the County requesting CCP to do so. Upon the refund of the amount of the Fund to the County, CCP shall have no further obligations under this Agreement.

2. Park Improvements. Before January 12, 2019, subject to the provisions of paragraph 3, CCP will build, improve, remodel or renovate basketball courts, tennis courts, skate parks, trails and/or such other improvements or renovations at the Park that CCP and the County's Director of Parks and Recreation deem appropriate and that are consistent with the exempt purposes of CCP (the "Park Improvements"). In the absence of agreement, improvements and renovations will be made in the following order: tennis courts, basketball courts, trails, skate park. CCP's commitment under this paragraph shall be limited to those improvements or renovations that would have a cost equal to two hundred thousand dollars (US\$200,000) if such projects were undertaken and completed by the County in calendar year 2012. The projects that could be completed by the County for such amount shall be determined through an objective process by the Office of Facilities Development and jointly agreed to by the County and CCP within sixty (60) days after the date of this Agreement. The cost will be determined as though the County itself had made the programmed improvements or renovations (including without limitation what the County would have spent on administration, labor and materials), and not at CCP's actual cost. The aggregate cost of all such improvements and renovations is hereafter called the "Improvement Costs".

3. Project Committee. CCP will establish a Project Committee, to act on its behalf, to oversee completion of the Park Improvements. The County will appoint a member of the Office of Facilities Development and a member of the Parks and Recreation Department to serve as members of the Project Committee. CCP will appoint the other member or members of the Project Committee. The Project Committee will act by majority vote, but CCP shall require that no decision of the Project Committee will be effective unless the County's appointees agree with the majority. The Project Committee will determine the specifications for the improvements or renovations and, if appropriate, request bids. Unless otherwise agreed to by the County, all work shall be performed pursuant to a contract with a licensed contractor who shall provide a performance bond to assure that the work is completed according to the specifications.

4. Potential Payment. On January 12, 2019, CCP shall pay to the County the difference, if any, (but not below zero) between two hundred thousand dollars and the Improvement Costs.

5. Termination of Obligation. CCP's obligation under paragraph 2 terminates, and CCP may disband the Project Committee, at the time the improvements required by paragraph 2 have been completed and the payment described in paragraph 4 is zero.

6. Binding Effect. This Agreement is binding on and shall inure to the benefit of CCP, its successors and assigns, and upon the County, its successors and assigns.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of both the County and CCP.

8. Severability. The provisions of this Agreement are not severable.

9. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Virginia.

Claudius Crozet Park, Incorporated

By: _____

Its: _____

Date: _____

Albemarle County, Virginia

By: _____

Thomas C. Foley, County Executive

Date: _____

Agenda Item No. 18. Boards and Commissions Appointments.

Mr. Dumler **moved** to appoint Ms. Holly Heuston, as the Scottsville District representative to the Albemarle County Service Authority, with said term to expire December 31, 2015. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Mr. Dumler also noted that he has asked the Clerk to advertise for applications for his appointee to the Equalization Board. The current Scottsville District representative, Ms. Rosa Hudson, lives in the Porter's Precinct, which lost through redistricting to the Samuel Miller District.

Agenda Item No. 19. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Mr. Boyd stated that he had hoped the Board would vote for a Chair, as it was unfinished business – but if no one would change their vote there was no need to drag it up again. They still have not elected a Chair for the year.

Mr. Boyd said that the Board would soon be receiving an important report from TJPED on the Target Industry Study. He thinks it would be good to meet with the Commission when the Board receives the report. Some of the Planning Commissioners had looked to the Board for direction based on what was intended for industrial land, and he wanted to move forward in the essence of time to have a joint meeting when the report is presented.

Ms. Mallek asked if this was different from the Target Study presentation meeting.

Mr. Foley clarified that the regular Board meeting would include the update on the Target Industry Study, and at the same time they would be considering the Comp Plan process and the order of considering different changes to that. He said that the Board had directed that last fall when they decided not to move rural interchanges and light industrial until they had heard from the Target Study, and Mr. Boyd had also suggested that the Commission come at the time the report was given.

Mr. Boyd said that his Commissioner was looking for direction as to where this was headed.

Mr. Rooker said he would support having a joint meeting to receive the report and have a discussion afterward.

Mr. Thomas commented that he would like to have his Commissioner, Mr. Don Franco, be a part of the conversation because he had a lot of ideas of how the Board and Commission could work together.

Ms. Mallek asked if this was the meeting with the consultant presenting at the regular day meeting and a work session in the afternoon.

Mr. Foley responded that the only issue was whether it would be presented by the consultant or staff, as the consultant might not be done until mid-February.

Mr. Boyd said that he would have no problem having it done at the second meeting in February.

Mr. Foley stated that it would be held in either meeting depending on available schedules, and staff would have some written information to provide the Board – even if the final report was not yet finalized.

Ms. Mallek said that the Board will be discussing the issue of dogs running at large sometime around March, but she also does not feel that barking dogs were properly addressed, and the fact that the rural areas wasn't included in the regulations had created problems for Animal Control Officers as the delineation of where the growth area ends isn't always clear. She said that it had also created a real problem for people who live next to one another in the countryside, adding that she hoped the Board would be willing to talk about this again.

Ms. Mallek also said that Ms. Stacy Norris, of the House Project for dogs, continues to work in the County and felt that there were still not enough teeth in the ordinance to protect dogs who were not being properly cared for. She believes that if County ordinances were good enough the Animal Control Officers would not have to make repeat visits and still not be able to bring about any change.

Mr. Davis stated that Police Chief Steve Sellers' report in March would include a report from Animal Control Officers documenting the problems she was referencing. He added that the standards in Albemarle far surpassed those of other jurisdictions. There was also some recognition that there may be some further improvements that needed to be done, but Animal Control specifically said to let them experience this to see if they continue to have enforcement issues related to the ordinance. He also noted that the barking dog ordinance does apply in the rural area, but only on lots that were five acres or less. Mr. Davis suggested that the Board be committed to this process as there would very likely be some long public hearings on the issue.

Mr. Boyd said that he didn't know why this should be brought up again as they just went through it – and came up with an ordinance that was crafted largely by Animal Control. He said that he was willing to readdress it if Animal Control has indicated it was an issue.

Mr. Snow suggested waiting for the report.

Mr. Foley suggested that there were different processes for dealing with barking dogs versus tethering, and asked if the Board wanted those items plus running-at-large to all come back to them.

Mr. Boyd said that there was only one person who had been tried in court for a barking dog case, and he spoke with her. Mr. Boyd said that her neighbor had stood next to her fence and filmed them, and that was the evidence used in court. He added that if someone does that to his dog, the dog will bark the entire time someone stands next to his property too.

Ms. Mallek stated that there was much more to this than that one case. She said that she lives in the country – so she was well aware of the fact that problems exist. She believes that rural residents have just as much responsibility to care for their animals. The five-acre minimum is not a solution because there could be 20-acre parcels and the houses are very close together, or one house is way over here and the dogs are penned up right next to their neighbors.

Mr. Rooker said that it would be helpful to distribute the minutes from the meetings that were held on this, because what is being considered here is bringing back the same issues that were heard before. There isn't a reason to keep coming back and rehashing issues unless there is some changes in circumstance.

Ms. Mallek commented that this was occurring because it hadn't been done quite right the first time.

Mr. Boyd said that's because she was hearing from people who didn't think it was adequate.

Mr. Rooker suggested getting the minutes and the report from the County prior to moving forward any further.

Mr. Foley said that earlier in the meeting there was some discussion of special use permits, specifically parking structures being considered under special permits, and it seemed to him that there had been an assumption those evaluations were currently going on but that process is not underway right now. He stated that it could be evaluated but it would become a pretty significant work program item. Mr. Foley suggested that the Board bring some of those items forward in February during discussion of Community Development's work program along with some ideas as to what criteria should be used for things being changed.

Mr. Boyd stated that there were efforts going on as far as budgeting – with an Economic Vitality Plan and staff reductions – which he was using as an example of how issues might be addressed.

Mr. Rooker expressed concern that so many things become "one off," as they end up surfacing as reactive items to specific applications. Using the towing business that was before the Board tonight as an example, he does not remember one coming to the Board. You could go through every one of these and say should this be special use permit or by-right but you need to consider both sides of the fence.

Mr. Boyd said that to him this was a method of zero-based budgeting, and that was a process that County staff should always be working on in its departments.

Mr. Snow stated that someone mentioned to him during the break how one County kept a running record of recurring items, and kept it the whole year, with an evaluation done at the end of the year – with action being taken based on the most frequent items. He suggested running a cumulative list that would be revisited once or twice per year.

Mr. Foley said that that's the kind of process they should use to follow up on the comments the Board had made, but he just wanted some clarity.

Mr. Davis stated that he had been involved with the same types of discussions for 30 years, and businesses like a towing company in the wrong location can have significant impacts to adjacent property.

Mr. Boyd asked if those were issues the ARB could deal with.

Mr. Davis responded that the uses could be made by-right with supplemental conditions to avoid the special use permit process. The Planning staff would need to go through the list of uses to evaluate whether they could be handled that way. He said that in the 1980's when special use permit law developed it gave localities a lot of flexibility to put conditions on special use permits without the risk of being overturned by the courts, and the permits became very popular during that timeframe because the Board has a great deal of discretion in addressing any issue that it thinks is relevant to that use that is proportional to the impacts. Maybe it is time to reexamine how much the County uses that tool, but it's not a simple 'just take it out and make it a by-right use' analysis from staff's perspective.

Ms. Mallek added that much regulation over the years had grown up because of bad experiences.

Mr. Foley commented that there is a new lens to use based on the economic vitality approach, but the whole issue has been balancing quality development with economic vitality.

Mr. Rooker said that the County did this with cell towers by creating the tier system, codifying conditions, etc.

Ms. Mallek commented that it is a good model.

Mr. Rooker stated that the special use permit opportunity allows things to be included in a zoning district that might not otherwise be included.

Agenda Item No. 20. Adjourn.

There being no further business, the meeting was adjourned at 10:33 p.m.

Chairman

Approved by Board
Date: 05/02/2012
Initials: EWJ