

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on February 8, 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, Director of Planning, V. Wayne Cilimberg, and Clerk, Ella W. Jordan.

Agenda Item No. 1. 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.

NonAgenda. Certify Closed Meeting (from afternoon session).

At 6:04 p.m., **motion** was offered by Mr. Dumler that the Board certify by recorded vote that to the best of each Board member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NonAgenda. Mr. Snow then **moved** to appoint the following individuals to openings on various boards and commissions:

- Mr. Kevin Quick to the Equalization Board, with said term to expire December 31, 2012.
- Mr. A. Bruce Dotson, as the at-large representative on the Planning Commission, with said term to expire December 31, 2013.

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

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

Agenda Item No. 4. Adoption of Final Agenda.

Mr. Thomas stated that he would like to discuss Rockydale Quarries; it is not for action.

Mr. Rooker **moved** for adoption of the final agenda as presented. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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

Mr. Rooker reported that for residents who live in the Moore's Creek Watershed there may be some money available. The Thomas Jefferson Soil and Water Conservation District can provide 50-85% cost-share assistance to install conservation measures within the watershed. He said that for farmers this could include stream fencing, alternative watering systems, grazing systems, and vegetation establishment along streambeds; for homeowners it could include repair of failing septic systems, installation of new septic systems and pump out of septic tanks. Mr. Rooker stated that anyone who is interested and lives in the watershed should contact the District at 975-0224.

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

Ms. Nancy Carpenter, a County resident, said that this past Monday night, she and a friend attended a talk given by Mr. John Morton, the Director of Immigrations and Customs Enforcement (ICE) at the UVA Law School. She attended this talk because she wanted to ask Mr. Morton why ICE chose to monitor and intercept the many groups that were protesting the Supreme Court decision Citizens United vs. the FEC. Ms. Carpenter said that groups all over the nation were contacted by self-identified ICE agents both pre- and post-event. Residents in Charlottesville who participated in that action were monitored by agents locally. They were monitored by ICE agents here in Charlottesville as they exercised

the most basic of American rights – the First Amendment to assemble peaceably in a public area to ask for redress of grievances from their government.

Ms. Carpenter said that she asked the question at the lecture, “Why [are] American citizens who are publicly disagreeing with their government being targeted by ICE agents.” She said that the Director of ICE immediately claimed no knowledge of this and dismissed her question, but others asked the same question and got the same public denial of knowledge. Ms. Carpenter asked what ICE had to do with a group of citizens peaceably organizing in their town, adding that Homeland Security was set up to counteract terrorism. She stated that terrorists do not announce their protests by posting flyers all over town; terrorists do not wave colorful signs to get attention, and terrorists do not put the event on Facebook. She expressed her disbelief that this was the natural progression of a country that began with a shot heard round the world.

Ms. Sally Thomas, a County resident, said that when the preceding Board voted to cut relationships with Cool Counties and ICLE, some Board members proposed that the County could adopt its own goals for greenhouse gas emissions reductions. She said that when the Board adopted an energy-saving strategy in October, it had no greenhouse emissions goals. Ms. Thomas stated that staff had been requested to come back with a continuing strategy. At every meeting, this Board makes decisions that affect the world around it, including its climate. A few individuals locally that share a concern for the environment think that climate change and man’s role in it was important. She said that there are renowned scientists in their midst who have worked for years on the science that studies climate change, its changes, causal factors and implications. They asked some U.Va. scientists to come to the Board – reducing their lectures down to three minutes.

Ms. Thomas introduced Professors Howard Epstein and Carlton Ray, both from U.Va.’s Department of Environmental Sciences. She stated that Professor Epstein has degrees from Cornell and Colorado State University in Ecosystem Science and Ecology. Professor Epstein is an Ecologist who studies the interactions and ecosystems of plants, soils and the atmosphere – mostly in the Arctic and in dry-land systems. She said that climate is an essential part of his work, and he is often asked to speak on climate change. She counted 212 listed presentations and abstracts. Courses taught include one on Arctic Ecosystems in a Changing Environment.

Ms. Thomas stated that Professor g. Carlton Ray has degrees from Yale and Columbia University in Zoology. He has authored or co-authored about 300 scientific papers, 50 articles in popular magazines and nine books. She said that in recent years his research has focused on coastal marine animals, especially in the Arctic watching the effects of climate change, sea-ice dynamics, and the affects of these changes on mammals such as walruses and on native hunters. In the mid 1960’s he described the underwater sounds of seals and walruses: the first demonstration of the songs these animals produce – probably having little to do with climate change, but an illustration of the sharp observational skills that marine ecologists possess.

Mr. Howard Epstein addressed the Board, stating that he wanted to convey to them the current state of science in this field. He stated that he was not present to talk about policy, only the facts with regard to the science. He said that in 2010, humans emitted approximately 10 Petagrams (Pg) of carbon – or about 11 billion tons – in the form of carbon dioxide into the atmosphere, mostly from fossil fuel burning. Mr. Epstein said that this was the largest amount ever in terms of human carbon emissions in one year. Not all of this stays in the atmosphere as over one-half of it is taken up in the land and oceans, leaving about 4 Pg in the atmosphere. He stated that the atmosphere currently holds about 750 Pg of carbon in carbon dioxide, so the additional four Pg amount to about a .5 to .6 increase over the course of one year. Mr. Epstein said that the current concentration of carbon dioxide in the atmosphere is 390 parts per million, and makes up a small fraction of the atmosphere – although that is not indicative of its importance. He stated that the concentration is a 40% increase over pre-industrial levels, which is the highest seen in at least the last 700,000 years, based on data extracted from ice cores. The current rate of emissions would put the planet at double the pre-industrial levels by about 2050.

Mr. Epstein explained that carbon dioxide is a rather effective greenhouse gas, which means it traps long-wave radiation emitted by the earth that would otherwise go out to space. He said that the additional energy in the atmosphere can do several things, including raising air temperatures. A study done this past year led by a self-described, climate change skeptic from Berkley analyzed data from over 39,000 climate stations worldwide and found that the average global temperatures had increased by approximately 1 degree Celsius or 2 degrees Fahrenheit over the last century – which is consistent with the most recent report by the Intergovernmental Panel on Climate Change. He said that a warmer atmosphere holds more water vapor, which is also a greenhouse gas, thereby exacerbating the warming. Mr. Epstein said that of the 39,000 stations analyzed, one-third of them showed cooling over the past century – so global warming does not mean that every place on the planet will warm. He stated that a 1-degree warming does matter, and summer sea ice on the Arctic Ocean has declined by 10% per decade since the 1970s. Mr. Epstein posted the question as to whether the 1-degree change was caused by human-induced increases in greenhouse gases. Currently this is the only hypothesis supported by scientific evidence. They cannot explain this increase in temperatures without inducing the effect of increased greenhouse gases. He said that there has been other hypotheses put out there, such as natural cycles and solar activities – as well as data analysis issues – but none of them have any scientific support at this time.

Mr. Epstein said that global warming is real; it is caused by humans, it is important, and it is likely going to get worse. He concluded by stating that he is available to answer any questions from Board members.

Mr. Carlton Ray said he was also present to talk about climate change. In the 1820s a French scientist described the greenhouse effect and a Swedish scientist purported that global warming could occur because of burning of fossil fuels. Mr. Ray said that this has come home to roost on human activities, and it was not trivial – probably the greatest challenge being faced by human society today. He said that according to the International Panel on Climate Change, the IPCC, it is almost 90% certain that if carbon dioxide stabilizes at double the present, level global temperatures would rise about 3 degrees Fahrenheit, the frequency of warm spells and heat waves would increase, the frequency of heavy precipitation would increase – storms – and the ocean's conveyor belt, which controls much of the earth's climate, would weaken or shut down completely. Mr. Ray stated that a study in the proceedings of the U.S. National Academy of Sciences confirmed that more than 97% of climate scientists in the world agree with those findings, but the deniers assert that human-caused climate change was a liberal hoax – and some call it an attempt by the U.N. to redistribute wealth, and contend that cooling has marked recent decades. However, these events are anomalies, not trends; warming in some places can cause cooling in others, and is highly disruptive to both systems. They argue that climate change warming may be a good thing for northerly agriculture; however, what they do not say is that insect pests will follow along – in fact they already have. They observe that climate predictions are mere models, but scoffing at models is not good for health, insurance or personal lives.

Mr. Ray said undeniably human-caused climate warming is a complex business and citizens are looking for leadership. He urged the Board of Supervisors to reverse its earlier decisions on the Cool Counties initiative, and to take up a vigorous and informed part in the local climate action planning process. With the City and University, the Board can lead the citizens to a more sustainable future.

Mr. Ray said that to ignore the overwhelming evidence of human-caused climate change and do nothing is irresponsible.

Ms. Shirley Midyette, a County resident, said that all of the community is aware of the bad traffic flow – and all of the community understands the need for dealing with those issues. It is of enormous importance that VDOT recognize that there is a plan in place for dealing with those problems without constructing an entirely new and poorly designed bypass, using old data that was deemed out of date 20 years ago [and] has not improved with age, and will cost taxpayers an obscene amount of money. Ms. Midyette stated that the plan in place is Places29, and it was unanimously adopted by the Board of Supervisors in 2011 – and that plan includes completion of Hillsdale Drive and Berkmar Drive Extended all the way to Airport Road – and should be compared with the proposed bypass in the preparation of a new and full Supplemental Environmental Impact statement by VDOT. She also said that the SEI process should include an opportunity for the public to provide input and voice concerns.

Mr. George Larie addressed the Board, stating that he was here on behalf of CATCO. The final Environmental Impact Statement for the Route 29 Bypass was completed and approved over 18 years ago. He said that after a federal lawsuit successfully challenged parts of the FEIS in 2000, a Supplemental EIS was completed and approved in 2003 – but there have been substantial changes in the Route 29 corridor since that time, and they require a new SEIS before the proposed Route 29 bypass is constructed. Mr. Larie stated that there had been major new developments in the corridor, including the U.Va. Research Park, Forest Lakes North and South, Hollymead Town Center, the Defense Intelligence Agency and the National Ground Intelligence Center – none of which were there when the EIS was approved. He also said that the traffic studies performed in the late 1980s assumed interchanges on Route 29 in three locations: at Rio Road, Greenbrier Drive, and Hydraulic Road – as well as interchanges on the bypass at Barracks road and Hydraulic Road. None of these interchanges are planned or funded. He said that a completely new traffic study and modeling should be done to account for these changes. CATCO performed a study which indicated that the bypass traffic estimates were overstated by a factor of at least two.

Mr. Larie stated that recent studies have indicated that there are health risks for human exposure to highways and vehicular exhaust emissions, which is particularly significant for six schools and two retirement homes – and that needs to be more fully considered. He also said that noise impact information had been defined and changed, cost-benefit analysis is sorely needed, and CATCO's study of that indicated that Places29 would take more traffic off of Route 29 than the bypass at less than half the cost. Mr. Larie said that the northern terminus of the bypass has not yet been designed and has environmental impacts as well, including archeological impacts. He stated that new studies should be done concerning the federal and state endangered James Spiny mussel, as there are nine tributaries feeding into the proposed bypass that drain directly into Ivy Creek – which serves as a habitat for a small Spiny mussel population discovered in 1997. Since that time the Spiny mussel has been relabeled as critically endangered. Mr. Larie said that CATCO believes a new SEIS should be done to account for these changes as indicated, and traffic studies should be undertaken on the bypass since it is obvious the traffic volumes have been overstated by a factor of two.

Mr. Saunders Midyette, a County resident, asked that on behalf of the Colthurst Neighborhood Board to request VDOT to prepare a full Supplemental EIS that includes the following: 1) an analysis of the impact of the northern bypass terminus upon the traffic in the commercial and residential development

in and around Hollymead Town Center on Route 29; 2) the incorporation of the unanimously-approved Places29 Plan as an alternative to the Western Bypass – including the completion of Hillsdale Drive and Berkmar Drive Extended to Airport Road; and 3) an analysis of the negative health impacts of auto and truck emissions on children in the County schools as well as on senior citizens in assisted living communities like the Colonnades, which are close-by the Western bypass route. Mr. Midyette stated that VDOT's SEIS assessment should prepare traffic modeling for both the bypass and Hillsdale Drive completion, and Berkmar Drive Extension for comparative purposes. The SEIS process should provide the opportunity for public comment via a formal hearing. Mr. Midyette urged the Board to be diligent in its follow-up with VDOT for a thorough, new, full SEIS process and for holding a public hearing of the SEIS findings prior to its finalization.

Mr. John Cruickshank addressed the Board, stating that he was here representing the Virginia Chapter of the Sierra Club. On January 5 they sent to the FHWA a letter requesting that a SEIS be completed prior to the FHWA approving VDOT's plans for the Route 29 Bypass. He stated that he was here to encourage the Board to write a letter also, noting that the Sierra Club's letter cited the changes since the last EIS was completed in 2003. Mr. Cruickshank said that new studies since that time have uncovered the health effects of auto and truck emissions on children and young adults. Included in that the EPA has released a set of school siting guidelines that examine potential hazards and mitigation options to consider when schools are located near roadways. He stated that new information on the condition of local streams had become available in 2010, a great deal of commercial and residential development had occurred since 2003, and the traffic data used then is now outdated. Places29 came up with a good plan for alleviating some of the traffic congestion on Route 29. Mr. Cruickshank added that the Places29 improvements make a bypass unnecessary. He then presented the Board with a copy of the Sierra Club's letter as well as copies of "The 21st Century Green Transportation Report: A Vision for Virginia," which was prepared by Sierra Club transportation experts. He encouraged Board members to read the book because they will learn a lot of where they should be going with transportation which is to put more money into public transit, bike trails and pedestrian walkways.

Ms. Meredith Richards addressed the Board, stating that she was here to ask the Board for support of two items moving through the General Assembly regarding state support for the regional passenger trains. Ms. Richards said that the northeast regional train from Lynchburg to Washington began in October 2009 and had outstanding performance since then. She stated that in its second year of service it carried 162,000 passengers who got on or off at Virginia stations – a growth of 28% over the year before. Ms. Richards said that according to Amtrak's 2011 annual report, that was the largest single increase in ridership of any route in the Amtrak system across the nation. She stated that its revenue performance has been outstanding, more than covering costs, and Amtrak said it was the best system in terms of financial performance and cost recovery – earning \$8.2 million in ticket revenues credited to Virginia in the second year, a \$1.8 million profit over the cost of the train.

Ms. Richards said that the reason for subsidies is that this picture would change fairly dramatically very soon, as the train would reach the end of its three-year contract between Amtrak, Norfolk Southern and the state. She said that federal mandates kicking in at the end of 2013 would change the picture entirely as far as the structure of states supporting trains and Amtrak, noting that the per-passenger revenue credited to Virginia would increase dramatically – with costs going up. Both Amtraks and Norfolk Southern's cost will be increasing substantially - expecting a \$1.5 million loss for the train in its fourth year of service. They are going to need the state to step up to the plate. Ms. Richards added that the state would also be required under federal mandates to pick up the tab for four additional trains, currently not funded, that is working between Richmond and Washington, D.C. She said that the Department of Rail and Public Transportation estimates that in the next biennium they would need over \$26 million to support six Virginia regional trains including the northeast line, and that is provided for in the Governor's biennial budget as a line item; it is money being shifted from one rail fund to another. She stated that it is not sustainable to do this for the long term, but is being done for the second time to support the regional trains. Ms. Richards said that a second item introduced by Senator John Watkins from the Richmond area would shift \$67 million into the Passenger Rail Operating and Capital Fund, which was established and is in the State Code but has no funding. She encouraged the Board to support both pieces of legislation and said she has provided Ms. Jordan with a letter of support. She asked the Board to support the Chair's signature on the proposed letter.

Ms. Mallek asked when the budget committee would be meeting. Ms. Meredith responded that they meet several times a week; they took up some items this morning. She thinks that the crossover is a week from this coming Friday, at which time each respective budget must be finished. Ms. Meredith added that she has also been to Lynchburg and Culpeper, and both localities are support these items, as well as the Chambers of Commerce.

Mr. Scott VandePol, a County resident, said that the Supervisors bought "a pig in a poke" when they approved the bypass, because the novel process by which the road would be constructed could be predicted to maximally shift costs to the County in ways that would not be easily anticipated. Mr. VandePol said that blight, noise, environmental impact, and ugliness would be removed from local control – and there is no motivation for contractors to mitigate or minimize any of these things. He stated that the County should avail itself of every opportunity to protect itself or they will look like really compliant fools. Mr. VandePol said that a full SEIS was required, as the prior impact statements were outdated – with old data, changes in circumstances, and shifts in evaluating environmental impacts over the last 20 years. This is a novel process that once these contracts are out, it's like a bus rolling down the hill. The Board

will not be able to stop it or modify it. There will be no add-ons, no additions, and no changes. He asked the Board to think in advance and get the full impact statement.

Mr. Charles Battig addressed the Board, presenting slide presentation entitled "Climate Etc. Commentary Update" showing snow in Europe. He mentioned a book published in Germany, "Global Warming: the CO2 Lie." Mr. Battig said that a very famous research team claimed that global warming was a catastrophic panic. He stated that the author of the book wrote the book when he found out that hundreds of errors in the IPCC reports were not being acknowledged, adding that the IPCC was a political group, not a scientific institution. Mr. Battig presented a graph showing that the planet was actually below temperature, noting ongoing alternating periods of warming and cooling. He stated that hurricane and cyclone activity had been on the downtrend, and there was no reason to panic. Mr. Battig also mentioned that ocean levels had actually dropped over the years, based on satellite and other data.

Mr. Battig said that biodiversity meant worrying about every living thing on the Earth so if you are a fan of biodiversity, do not step on any bugs.

Agenda Item No. 7. Consent Agenda.

Mr. Davis said that Agenda Item #8 could be added to the Consent Agenda, as it had been addressed in the Board's action when it adopted the Zoning Text Amendment and the policy direction given to staff earlier in the day at their work session with the Planning Commission. This matter was recommended for approval by staff.

Ms. Mallek **moved** to add Agenda Item #8 – SDP-2011-00081- to the Consent Agenda.

Mr. Rooker then **moved** to approve the Consent Agenda as modified. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Item No. 7.1. SDP-2011-00072. Moore's Creek; Verizon Wireless Tier II Personal Wireless Service Facility (PWSF): Appeal of Planning Commission Denial of Tier II Permit. **Proposal:** Request for an extension of an existing steel monopole in order to support the attachment of a new set of antennas mounted on a second array. The new proposed height of the monopole will be approximately 96 feet, a 7 foot extension from the top of the existing antennas which will slightly clear the surrounding tree tops.

The following letter dated February 1, 2012, was received from Ms. Lori Schweller, LeClairRyan:

"Pursuant to Albemarle County Code § 18-5.1.40(d)(12), Verizon Wireless respectfully requests that the Board of Supervisors consider on appeal its application for a Tier II PWSF, SDP2011-072/Moore's Creek (extension of existing PWSF approved by special use permit prior to adoption of the current PWSF Ordinance), on Tax Map parcel 08900-00-00-00400, property of John C. Canody and Anita L. Canody. This application was denied by the Planning Commission without a hearing on January 24, 2012 upon advice by Greg Kamptner, Deputy County Attorney, based on the opinion in the case of Sinclair v. New Cingular Wireless PCS, LLC, et al., 2012 Va. LEXIS 23, which the Supreme Court of Virginia decided on January 13, 2012. Mr. Kamptner advised the Planning Commission that, according to the Sinclair opinion, a planning commission does not have the authority to administer a locality's zoning ordinance unless an enabling statute expressly grants to the local governing body the authority to delegate such power, which, in the County's position, is not the case with respect to Tier II PWSF's. Mr. Kamptner advised the Commission to deny the application because it had no authority to act otherwise on the application and because the only route to the Board of Supervisors' consideration of a Tier II PWSF application is denial by the planning commission.

By separate motion, the Planning Commission recommended approval of the application to the Board of Supervisors. The Commissioners stated that they agreed with and endorsed the conclusions of the staff report and would have approved the application on the merits had they had the opportunity to do so.

On behalf of Verizon Wireless, I request consideration by the Board of this appeal of the Commission's denial at the earliest convenience of the Board. Enclosed is a check in the amount of \$240.00 payable to the County.

Please note that Verizon Wireless does not waive its right to enforce the time for the County to act on the application under the FCC Declaratory Ruling 09-99, which time period expired on January 24, 2012, but has consented to a reasonable extension of time so that the Board can decide on the application."

By the above-recorded vote, the Board approved the 7 foot extension of the personal wireless service facility.

Item No. 7.2. SDP-2011-00074. Turner Mountain Road; Verizon Wireless Tier II Personal Wireless Service Facility (PWSF): Appeal of Planning Commission Denial of Tier II Permit. **Proposal:** Request for an extension of an existing steel monopole in order to support the attachment of a new set of antennas mounted on a second array. The new proposed height of the monopole will be approximately 108 feet, an 8.5 foot extension from the top of the existing antennas which will be approximately 2.9 feet above the reference tree.

The following letter dated February 1, 2012, was received from Ms. Lori Schweller, LeClairRyan:

"Pursuant to Albemarle County Code § 18-5.1.40(d)(12), Verizon Wireless respectfully requests that the Board of Supervisors consider on appeal its application for a Tier II PWSF, SDP2011-074/Turner Mtn. Road (extension of existing PWSF approved by special use permit prior to adoption of the current PWSF Ordinance), on Tax Map parcel OS800-00-00-06IAO, property of Michie P. Bright, Trustee of the Michie P. Bright Revocable Trust. This application was denied by the Planning Commission without a hearing on January 24, 2012 upon advice by Greg Kamptner, Deputy County Attorney, based on the opinion in the case of Sinclair v. New Cingular Wireless PCS, LLC, et al., 2012 Va. LEXIS 23, which the Supreme Court of Virginia decided on January 13, 2012. Mr. Kamptner advised the Planning Commission that, according to the Sinclair opinion, a planning commission does not have the authority to administer a locality's zoning ordinance unless an enabling statute expressly grants to the local governing body the authority to delegate such power, which, in the County's position, is not the case with respect to Tier II PWSF's. Mr. Kamptner advised the Commission to deny the application because it had no authority to act otherwise on the application and because the only route to the Board of Supervisors' consideration of a Tier II PWSF application is denial by the planning commission.

By separate motion, the Planning Commission recommended approval of the application to the Board of Supervisors. The Commissioners stated that they agreed with and endorsed the conclusions of the staff report and would have approved the application on the merits had they had the opportunity to do so.

On behalf of Verizon Wireless, I request consideration by the Board of this appeal of the Commission's denial at the earliest convenience of the Board. Enclosed is a check in the amount of \$240.00 payable to the County.

Please note that Verizon Wireless does not waive its right to enforce the time for the County to act on the application under the FCC Declaratory Ruling 09-99, which time period expired on January 24, 2012, but has consented to a reasonable extension of time so that the Board can decide on the application."

By the above-recorded vote, the Board approved the 8.5 foot extension of the personal wireless service facility.

Item No. 7.3. SDP-2011-0011. Blue Ridge Swim Club-Site Plan Waiver – Request approval to waive requirement to submit site development plan.

The executive summary states that the Board of Supervisors approved a Special Use Permit (SP-2009-35) for a swim club and day camp. The property is located at 1275 Owensville Road (Rt. 678), north of Holkham Drive (TMP 58-75A).

This site plan would have previously been approved administratively; however, due to a recent State Supreme decision, the waiver must now be approved by the Board of Supervisors.

SDP-2011-0011, Blue Ridge Swim Club-Site Plan Waiver; the applicant is requesting a Site Plan Waiver per Section 32.2 of the Zoning Ordinance. The review and approval of this request is based on the determination that the details of the site plan being waived meet the requirements listed in Section 32.2 (c) (i) and (ii).

c. Waiver of certain details of site plan by the agent. In accordance with the procedures stated in section 2.5 of this chapter, the agent may waive certain details of a site plan otherwise required by sections 32.5 and 32.6 if: (i) the site review committee finds that all of the details required by sections 32.5 and 32.6 are not necessary for its review of the proposed development; and (ii) the zoning administrator, in consultation with the county engineer and the manager of zoning enforcement, finds that the details waived are not necessary to determine that the site is developed in compliance with this chapter and all other applicable regulations. The waiver shall identify the details otherwise required by sections 32.5 and 32.6 that are waived.

Staff recommends approval of the waiver request. This recommendation is based on staff's determination that the details of the site plan being waived meet the requirements listed in Section 32.2 (c) (i) and (ii).

Staff recommends approval of the applicant's request to waive the requirement to submit a site plan as per Section 32.2.

By the above-recorded vote, the Board approved the applicant's request to waive the requirement to submit a site plan as per Section 32.2 of the Zoning Ordinance.

Agenda Item No. 8. **SDP-2011-00081. Verizon Wireless/Crossroads/Shifflett Property Tier II Personal Wireless Service Facility.**

PROPOSED: Request for extension of an existing wood 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 94.2 feet, an 8.5 foot extension from the top of the existing antennas, and will be approximately 8.2 feet above the reference tree.

ZONING CATEGORY/GENERAL USAGE: Village Residential (VR) 0.4 units/acre, and Entrance Corridor (EC) Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access.

SECTION: 10.2.1 (22) which allows for Tier II personal wireless facilities in the rural areas.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas in Rural Area 3 - Preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/acre in development lots).

ENTRANCE CORRIDOR: Yes.

LOCATION: 3456 Monacan Trail Rd.

TAX MAP/PARCEL: 08700-00-00-007A0.

MAGISTERIAL DISTRICT: Samuel Miller.

By the above-recorded vote, and at staff's recommendation, the Board approved the proposed extension of the existing monopole with antennas, and associated ground equipment.

Agenda Item No. 9. **PUBLIC HEARING: PROJECT: ZMA-2011-00006 and SP-2011-00014 Albemarle Health and Rehab Center (Sign #28).**

PROPOSAL: Rezone 5.38 acres from R-1 zoning district which allows residential uses at a density of 1 unit per acre to PD-MC Planned Development Mixed Commercial zoning district which allows large-scale commercial uses; residential by special use permit at a density of 15 units/acre and special use permit under Section 24.2.2(7) of zoning ordinance for hospitals, nursing homes, convalescent homes uses. No dwellings proposed.

ENTRANCE CORRIDOR: No.

PROFFERS: Yes.

COMPREHENSIVE PLAN: Transitional – neighborhood-scale commercial uses, offices, townhouses and apartments (6.01-34 units/acre) and Urban Density Residential – residential (6.01-34 units/acre); supporting uses such as religious institutions, schools, commercial, office, and service uses and located in Neighborhood 4 in the Development Area.

LOCATION: 91 Galaxie Farm Lane.

TAX MAP/PARCEL: 09100000001200.

MAGISTERIAL DISTRICT: Scottsville.

(Advertised in the Daily Progress on January 23 and January 30, 2012.)

Mr. Cilimberg said that the Board had considerable discussion about this project in December. It does involve a zoning map amendment and a special use permit for the Center along with waivers needing approval. He stated that the property was located behind the Monticello Fire Station off of Mill Creek Drive, and the rezoning would be for a little over five acres to allow for a nursing home facility. Mr. Cilimberg reported that at their December 14 hearing, the Board deferred at the applicant's request the rezoning, special use permit, and waivers – indicating at the time they were willing to accept the project as proposed with its application plan for development of facilities and the necessary waiver that would accompany that approval. He said that the Board did have an expectation that the applicant would work with staff and commit to build the public street on County property that would access their facility and provide ultimate access to the rear of the Monticello Fire Station that was County property and would meet needs and design expectations in doing so.

Mr. Cilimberg referenced a copy of the application plan, noting that it included the applicant's offer in terms of building the road – with the addition of pavement, curb, planting strip and sidewalk along the section that is built now along with access to their facility with the sidewalk and planting strip. He said that they would build essentially a half section of the ultimate road with the east side of the road left for future completion with development of the County property. Mr. Cilimberg stated that there would be pedestrian access provided back to the facility through installation of the sidewalk. He said that the applicant had agreed to build the street to County and VDOT standards, with proffers provided being legally acceptable. There are other matters to be addressed during the subsequent development process and the site plan phase. Mr. Cilimberg stated that any need for offsite grading easements or reduction of the area to be developed onsite would have to be addressed at that time, and any easement or acquisition of County land for private access would also be subject to a future approval, if necessary. He said that final location of water and sewer lines would also need to be determined during the development process.

Mr. Cilimberg noted that the street location would essentially be fixing where the County's access would be in the future for development of its property, but the County does not have a plan for the development and thus cannot address how this might impact ultimate development of that land. He added that the County is at least getting the street in the form and location that can work based on its best knowledge today of how subsequent development would occur.

He said that the recommendations from staff are for the Board to approve the ZMA inclusive of the proffers dated January 25, 2012, to approve the special use permit that has no conditions, and to find that the waivers can be granted based on the ordinance sections for which the waivers apply. Mr. Cilimberg said that he found that the applicant has addressed the Board's expectations as laid out in the December public hearing.

At this time, the Chair opened the public hearing.

Mr. Bruce Hedrick addressed the Board on the applicant's behalf, and introduced Mr. Justin Shimp and Mr. Steve Blaine, who were also present to respond to any questions. The applicant has come a long way since December. They appreciate the staff's time and effort, attention and support for the project. There have been numerous meetings and discussions, and staff has responded very timely. He commented that it was refreshing to work with a municipality that works with local businesses for common goals. He added that Mr. Cilimberg has touched on all the things that have changed. They are present to answer any questions and provide further clarification in case anyone has any questions.

Mr. Rooker and other Board members recognized the applicant's resolution to the questions raised and thanked him for his efforts.

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

Mr. Dumler then **moved** to approve ZMA-2011-0006 inclusive of proffers dated January 25, 2012. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Mr. Dumler **moved** to approve SP-2011-0014 with no conditions. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Mr. Dumler **moved** to approve waivers to Section 21.7 (b), Minimum Yard Requirement; Section 21.7 (c), Required Buffers; Section 32.7.9.8(c), Required Screening; and Section 4.12.4(a), Exceeding the maximum parking by more than 20%. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Proffer Statement
Albemarle Health Care Center

Date: January 25, 2012
Owner: Galaxie, LLC, a Virginia limited liability company
Property: 91 Galaxie Farm Lane, PIN 09100-00-00-01200 (portion)
Application: ZMA -2011-00006

This Proffer Statement accompanies and relates to the application by Albemarle Health Care Center, LLC for a zoning map amendment (the "Application"). The Owner is Galaxie, LLC, a Virginia limited liability company, or its successors (the "Owner").

The Application applies to approximately 5.38 acres in Albemarle County, Virginia (the "County") known as a portion of tax map parcel 09100-00-00-01200 (the "Property"). The Property is presently zoned R-1 in accordance with Section 13 of the Albemarle County Zoning Ordinance (the "Ordinance"). The Application seeks to designate the zoning for the Property as Planned Development Mixed Commercial (PD-MC) in accordance with Section 25A of the Ordinance.

Conditions. Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance and subject to the reservations and clarifications that follow, the Owner hereby voluntarily proffers the conditions listed in this Proffer Statement, which shall be applied to the Property if the proposed Application is approved by the Board of Supervisors of Albemarle County. If the Application is denied, these conditions shall be immediately null, void and of no effect. These conditions are proffered as a part of the requested Application and it is agreed that: (1) the uses described in the Application itself give rise to the need for the conditions; and (2) such conditions have a reasonable relation to the uses described in the Application. The following shall be the sole proffers applicable to the Property.

1. Permitted Uses. The use of the Property shall be limited to those uses allowed by right under Section 25A.2.1(2), (3) and (4); those uses allowed by right under Section 24.2.1(45); and those uses allowed by special use permit under Section 24.2.2(7) and (16); of Chapter 18, Zoning, of the Albemarle County Code, as those sections are in effect on January 13, 2012, copies of which are attached hereto and incorporated herein as Attachment A.

2. Public Street. As a condition for the issuance of the first Certificate of Occupancy for any structure on the Property, the Owner shall design and complete construction of a public street between Mill Creek Drive (Point A) and to a point just beyond the private access road to the Property (Point C), as shown on Sheet 3 of the Application Plan ("Public Street"). The Public Street shall be designed and constructed to County and VDOT standards, including the design and construction of related drainage, slope and utility easements, as applicable; provided however, that with the approval of the County Engineer, the ultimate vertical alignment may be adjusted once final engineering has been developed and submitted as part of the Owner's final site

plan. Construction of the Public Street shall be deemed complete when the County Engineer determines that the roadway is safe and convenient for traffic.

A. The Public Street from Point A to Point B on the Application Plan entitled "Application Plan for Albemarle Health & Rehabilitation Center, Tax Map 91, Parcel 12, Scottsville District, Albemarle County, Virginia," prepared by Shimp Engineering, P.C., dated 06/20/11, last revised 01/19/12, (the "Application Plan") shall be constructed to follow the same horizontal and vertical alignment, including sidewalks and planting strips, for the connecting portion of road on the Fire and Rescue Facility, as shown on the approved final site plan for the Monticello Fire and Rescue site (SDP 200100089, approved January 3, 2002, (the "Fire Station Site Plan")) The segment of the Public Street from Point A to Point B also shall be designed and constructed to the full section as shown on Sheet 5.0 of the Fire Station Site Plan. The minimum requirements for the sidewalks and planting strips shall be as provided in Proffer 2(E).

B. The Public Street from Point B to Point C shall be constructed as shown on Sheet 3 of the Application Plan, including a sidewalk and planting strip. The segment of the Public Street from Point B to Point C shall be designed and constructed to a twenty (20) foot VDOT half section. The minimum requirements for the sidewalk and planting strip shall be as provided in Proffer 2(E).

C. Upon request by the County and at the Owner's sole expense, the Owner shall prepare, or cause to be prepared, a subdivision plat meeting the requirements of the Albemarle County Subdivision Ordinance (Chapter 14 of the Albemarle County Code) to create a special lot composed of the right-of-way for the Public Street. The plat shall identify the Public Street right-of-way as being dedicated to public use. The plat shall be prepared for approval by the County under the Albemarle County Subdivision Ordinance, and shall identify the County as the owner and signatory.

D. Until the Public Street is accepted into the secondary system of State highways, the Owner shall be responsible for all maintenance, repairs, bonding and insurance for the Public Street. To satisfy this requirement, the Owner shall either: (1) enter into an agreement between the Owner and the County setting forth the Owner's obligations under this Proffer 2(D), which agreement shall first be approved as to substance and to form by the County Engineer and the County Attorney; or (2) provide surety for the maintenance of the Public Street as provided in Albemarle County Code § 14-435.1 or its successor in effect at the time the final subdivision plat required by Proffer 2(C) is approved.

E. Each sidewalk required by Proffers 2(A) and (B) shall be a minimum of five (5) feet in width. Each planting strip required by Proffers 2(A) and (B) shall be a minimum of six (6) feet in width. Each planting strip shall be located between the curb and the sidewalk.

Witness the following signature and seal.

Galaxie, LLC
By: David S. Witmer, Manager

Agenda Item No. 10. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Mr. Thomas said that he has been working with the Planning Department and Rockydale Quarries officials, and they have decided to hold a community meeting that would include Ms. Amelia McCulley, VDOT, the Department of Environmental Quality and the Department of Mines, Minerals and Energy in an effort to satisfy ongoing resident concerns stemming from a neighborhood petition.

Mr. Dumler asked if Ms. Meredith Richards' letter should be moved along quickly, as it was on a tight timeline.

Mr. Rooker suggested signing it and sending it on. Mr. Thomas concurred.

Note: The following letter was signed by the Chair on behalf of the Board:

"I am writing on behalf of the Board of Supervisors and the citizens of Albemarle County to request your support for two budget items that have been introduced in the 2012 General Assembly. Both items are necessary to maintain Virginia's financial support for the Lynchburg-DC passenger train, which links Charlottesville and Albemarle County to the commercial, government and population centers in the Northeast and has proven to be of vital benefit to the economy and mobility of the Culpeper region.

The train is integral to recent strengthening of our local businesses and government agencies, whose personnel travel the corridor frequently. The train is taking over 100,000 cars off the busy Rt 29 corridor.

The Lynchburg-DC Northeast Regional train has set national records for both ridership and revenue performance. In its second year ending September 30, 2011, the train served 161,970 passengers at stations on the Lynchburg-DC corridor, an increase of 28% over the first year. This was the *largest ridership increase of any Amtrak route in the nation*, according to Amtrak's 2011 Annual Report.

The Lynchburg train was also the best performing regional route in the nation in terms of cost recovery. In 2011, the train earned \$8.2 million in Virginia passenger revenues and was second only to

Amtrak's Acela in overall financial performance. VDRPT reports that the Lynchburg train's revenue exceeded its operating costs by \$1.3 million in the first year and \$1.8 million in the second year.

Unfortunately, according to VDRPT, the Lynchburg train will not cover its costs beyond FY 2012. Both of Virginia's state-supported trains (Lynchburg-DC and Richmond-DC) will finish the three-year Demonstration Period on September 30, 2012. New agreements with Amtrak, as well as upcoming Federal requirements under the 2008 Passenger Rail Improvement and Investment Act (PRIIA), will have a significant negative impact upon the financial performance of these trains. Both trains are expected to operate at a net loss due to reduced per-passenger revenues credited to Virginia, coupled with additional route and third-party operating costs. In addition, Virginia will be required to assume the full costs of four existing Richmond-DC regional trains currently funded by Amtrak. VDRPT is projecting that a net subsidy of \$26.1 million will be required to meet these needs in FY 2013 and FY 2014.

The Problem: Although the Virginia Legislature established the landmark Passenger Rail Operating and Capital Fund (IPROC) in 2011, no initial capital was provided for the fund. There is currently no identified source of revenue to implement IPROC and cover the costs of operating Virginia's regional trains in the FY 2012-2014 Biennium.

SUPPORT SB30 and HB30, Item 442 D (FY 2012-2014 Biennial Budget)

Sponsors: Senator Charles Colgan and Delegate Lacey Putney.
Budget item 442 D: Notwithstanding any other provision of law, in implementing the provisions of the Intercity Passenger Rail Operating and Capital Fund created pursuant to § 33.1-221.1:1.3, Code of Virginia, the Commonwealth Transportation Board may allocate such funds as it deems necessary from the Rail Enhancement Fund, created pursuant to § 33.1-221.1:1.1, Code of Virginia. Such funding shall not exceed \$6,700,000 the first year and \$19,400,000 the second year.
Language is included in Senate Bill 29 and House Bill 29

Description: Authorizes up to \$26.1 million from the Virginia Rail Enhancement Fund (REF) to be used to support the operation of Virginia's regional trains.

The Problem: A previous Budget Amendment in 2010 appropriated \$6 million from the REF for the purpose of operating Virginia's regional trains. DRPT is requesting an additional \$26.1 million from the REF for this purpose in FY 2012-2014. Since the REF has a dedicated source of revenue which provides \$21-\$23 million annually, this strategy is not sustainable. The REF is an infrastructure fund and is not sufficient to cover the costs of both capital projects and operations in the long-term. It is critical that IPROC receive initial capitalization if Virginia is to continue to support intercity passenger rail.

SUPPORT SB29 (FY 2012-2014 Biennial Budget) (see attached)

Sponsor: Senator Watkins

Description: Directs that \$67.2 million from the FY 2011 General Fund surplus be deposited on a permanent, non-reverting basis for the one-time capitalization of the Intercity Passenger Rail Operating and Capital Fund (IPROC).

We appreciate your past support for the Lynchburg-DC Northeast Regional train. Maintaining this train and providing for its long-term future is a priority for Albemarle County. To that end, we strongly urge you to support the above budget items.”

Ms. Mallek noted that there had been a number of citizens expressing concern about interactions they were having with dogs running on their property and antagonizing them, and this issue would be before the Board the following month. It is important for the Board to have a good understanding of what is good on regularly.

Ms. Mallek said that in Crozet there have been issues with burning trash in barrels, and she is working to find out how the DEQ and local ordinances treat this practice. She will be bring more information on this to the Board in the future.

Ms. Mallek also stated that this was the last time the Board would be convened before the SEIS statement request was due to VDOT, and wanted to ensure that items mentioned today along with their committee list items were reflected.

Mr. Graham said that he and Mr. Cilimberg were working to gather that information, and stated that it included everything that had happened since the last SEIS was done, all major rezonings, the Hollymead Town Center, the expansion of the UREF property, North Point, Places29 Master Plan, etc. – and staff would likely be running right up to the deadline for completion. Staff hopes to provide a summary to the Board during the last week of what they plan to forward to VDoT.

Mr. Boyd asked if it would be purely factual and not opinionated. Mr. Graham confirmed that staff wasn't providing any recommendations or analyses – just data, example, rezonings that were approved, proffers, what is allowed to be built, Places29 approved master plan, etc.

Ms. Mallek asked if it is expected that VDOT would send this onto the FHWA.

Mr. Rooker suggested sending it to Irene Rico, who was the FHWA representative for Virginia.

Mr. Graham said that he assumes VDOT would take this information along with all the other data that is collected and include it as an attachment to their EIS, and what weight would be given to the information he could not predict.

Ms. Mallek stated that that's why she felt it was important to send the County's own unadulterated documents to the FHWA.

Mr. Boyd said that he wasn't sure how much would be addressed with the dog ordinance next month, but said that he had communicated with the only person who had been tried under the dog barking ordinance – and she had made some useful suggestions for improvements. He stated that this person's neighbor had stood at the edge of her yard line and put her under surveillance, and her dog under surveillance. The neighbor also set up cameras that run constantly on her back yard where her sliding glass doors are to put her dog under surveillance. Mr. Boyd said he did not think that was the intent of the County's ordinance.

Mr. Rooker asked if he had talked to the neighbor. Mr. Boyd indicated that he had not, but emphasized that he wanted to pass that information on.

Mr. Davis said that the Board would be reviewing data on what had happened since the ordinance was adopted and what impact it had on complaints and on animal control investigations, but not a specific discussion of the ordinance itself – which has apparently worked well, having been copied by other jurisdictions.

Mr. Foley indicated that staff would provide a summary of all three issues – tethering, barking, and leash laws.

Ms. Mallek said that the boundary created from their prior actions was the growth area versus the rural area, and the ACOs would be addressing the difficulty of enforcement under that scenario.

Mr. Davis stated that the noise ordinance pertained to the growth area and rural area and properties that were five acres or smaller – and the leash law applied to all of the growth area and those areas in the rural area specifically identified.

Ms. Mallek commented that most of the dog intimidation is going on in the rural areas.

Agenda Item No. 11. Adjourn to February 24, 2012, 11:30 a.m., Room 241.

At 7:02 p.m., Mr. Rooker **moved** to adjourn to February 24, 2012 at 11:30 a.m. in Room 241. Mr. Thomas **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Chairman

Approved by Board
Date: 05/09/2012
Initials: EWJ