

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on April 4, 2012 at 9:00 a.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. Kenneth C. Boyd, Mr. Christopher 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, Clerk, Ella W. Jordan, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order.

The meeting was called to order at 9:03 a.m., by the Chair, Ms. Mallek.

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

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Agenda Item No. 4. Adoption of Final Agenda.

Ms. Mallek asked if Board members had any additional action items for the agenda.

Mr. Foley stated that there was one item added to the final agenda - consideration of a letter to Governor McDonnell in opposition to Senate Bill 497 – VRS Amendments. He suggested adding the item to the consent agenda.

Mr. Boyd said that he has not had time to read it, but would before the end of the day.

Ms. Mallek suggested adding it to the end of the agenda.

Mr. Rooker explained that a bill was passed by the legislature requiring all localities to give employees a 5% raise; then the employee must contribute that 5% to the Virginia Retirement System – which would mean a cost of about \$1.6 million in addition to the \$3 million of VRS increases already shifted to localities this year. He also said that the way it was done requires localities to pay unemployment and Social Security taxes on the raise and requires the employees to pay taxes on the raise. It is incredibly inefficient and increases the unfunded pension liabilities immediately because pensions are based on a higher salary base.

There being no other discussion, it was the consensus of the Board to accept the final agenda.

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

Mr. Thomas announced that staff is in the process of sending out a letter summarizing the status of Rockdale Quarry following their recent meeting.

Mr. Rooker commented that there has been a big increase in trucks on Earlysville Road and Hydraulic Road, and the trucks are frequently leaking rocks.

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Ms. Mallek reported that Rivanna Solid Waste Authority has scheduled an upcoming hazardous waste collection day on April 14<sup>th</sup>.

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Agenda Item No. 6. Recognitions  
a. Proclamation recognizing April, 2012 as Fair Housing Month.

Ms. Mallek presented the following proclamation recognizing Fair Housing Month to Ms. Karen Reifenberger, Deputy Director of Piedmont Housing Alliance:

#### FAIR HOUSING MONTH

**WHEREAS,** *April 2012, marks the forty-fourth anniversary of the passage of the Fair Housing Act of 1968, which sought to eliminate discrimination in housing opportunities and to affirmatively further housing choices for all Americans; and*

**WHEREAS,** *the ongoing struggle for dignity and housing opportunity for all is not the exclusive province of the Federal government; and*

**WHEREAS,** *vigorous local efforts to combat discrimination can be as effective, if not more so, than Federal efforts; and*

**WHEREAS,** *illegal barriers to equal opportunity in housing, no matter how subtle, diminish the rights of all;*

**NOW, THEREFORE, BE IT RESOLVED,**

*that in the pursuit of the shared goal and responsibility of providing equal housing opportunities for all men and women, the Board of County Supervisors of Albemarle County, Virginia, does hereby join in the national celebration by proclaiming*

**APRIL, 2012**  
**as**  
**FAIR HOUSING MONTH**

*and encourages all agencies, institutions and individuals, public and private, in Albemarle County to abide by the letter and the spirit of the Fair Housing law.*

Ms. Reifenberger thanked the Board for the proclamation. She said that April is the time of year to celebrate the passing of the Fair Housing Act and to celebrate everyone's right to live where they choose free from discrimination. Ms. Reifenberger said that HUD's theme this year is "creating equal opportunity in every community" and she thanked the Board for all it does in creating equal opportunities in Albemarle County. She said that PHA's Fair Housing Program works year-round to raise awareness and promote compliance with the civil rights laws that protect everyone from housing discrimination, and to support the "shared value of equal opportunity." She said the PHA educate people about their rights and responsibilities under the fair housing laws, and they work with various people who are discriminated against based on ethnicity, disabilities, age, etc. She mentioned three events scheduled to celebrate Fair Housing Month: April 25<sup>th</sup>, 9:00 a.m. – 10:30 a.m., information session about HUD's new equal access rule; May 2<sup>nd</sup>, 12:00 noon – 1:30 p.m., lunch and learn at PHA on fair housing for people with disabilities, and June 7<sup>th</sup>, Molly Mason, Virginia's Fair Housing Trainer, will teach a fair housing class.

Ms. Reifenberger also mentioned that PHA will be presenting the children's book *The Fair Housing Five* to the School Board and librarians this month, and it will be put in all the County elementary schools.

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

Ms. Ann Neumark, a 20-year County resident and homeowner, said that last Monday evening she attended a planning meeting pertaining to Neighborhoods 4, 5, 6 and 7. At that time she learned about some of the plans for the Somerset Farm property. Ms. Neumark said that she lives in Marshall Manor, located on Route 20 South, and is concerned about the impacts of projects in that area given the limited corridors going into Charlottesville. She commented that she has spoken with several neighbors who has very strong feelings about the possibility of the developer's plans coming to fruition. The neighbors have submitted a petition, which she provided to the Clerk, and she asked that the Board give it consideration when it makes any decisions on these neighborhoods. Ms. Neumark said that she received 19 signatures in one day.

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Ms. Carolyn Cades said that she is a neighbor of Ms. Neumark's in Marshall Manor and is also concerned about the proposed development of Somerset Farm. Consideration is being given to rezoning 312 acres of land – which is rolling farmland and hills. Ms. Cades said that Route 20 South is still a rural and very lovely area and this proposed development threatens that area. She said that many people are drawn to the region because of the beauty of the countryside. She stated that this plan includes several big box stores, up to 1,900 homes within 32 acres, as well as a 350,000 square foot commercial area requiring additional roads, the possibility of a bus route on Route 20 South, and the development is expected to occur over 20 years. That is tremendous disruption for the area. Ms. Cades said that this would begin a very steady erosion of that gorgeous land, not to mention all of the environmental destruction associated with such a project. She is strongly opposed to the proposal.

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Mr. Bill Schrader, a resident of Crozet, said that residents of Western Albemarle are very excited about the activities occurring that day in regards to Agenda Item No. 23, and are looking forward to a positive response from the Board. He said that the Fundraising Committee for the Crozet library is ready to go when the County is ready for them to start with fundraising. He added that if someone connects the Samuel Miller area as being a large part of the Western Albemarle Crozet Library, along with White Hall and the Crozet Master Plan area together, by 2016 there would be an estimated 30,000 people using the new library. He thanked the Board for their continued support for the library. He also asked the Board to support an equalized tax rate.

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Ms. Sally Thomas said that she was here again today as part of a presentation series by U.Va. scientists on climate change – this time with Dr. DeForest Mellon from the Biology Department, whose research areas include neurobiology, ecology and evolution. Dr. Mellon has degrees from Yale and John Hopkins in Zoology and Biology, respectively, and did advance work at Stanford University. Since 1963, Dr. Mellon has lived in this area and been a faculty member of U.Va. Ms. Thomas stated that the major focus of his work has been research into sensory biology and neurophysiology of freshwater and marine invertebrates. Dr. Mellon also previously served on the Board of Directors for Citizens for Albemarle, an environmental group that was active in this area from 1975-2005.

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Dr. Mellon said that since the late 1970s there had been a framed poster in the downstairs of the C&O restaurant proclaiming, "Albemarle County – Where the Country Still Is." He stated that the poster is fading along with the open spaces of the 1970's, much like the Cheshire cat, as the rural landscapes disappear only with the sentiment remaining. As a nearly 50-year resident of the County, he said that he can attest to the dramatic, piecemeal disappearance of the rural landscapes and forest care. He asked why anyone should care about that.

Aside from their potential as a resource for recreation and extractive industries, rural landscapes are nice to look at and may even contribute to the overall sense of well-being. He would like to emphasize that natural landscapes and especially forests have great tangible value in the natural services which they provide essentially free of charge, and which in the U.S. alone, by some estimates, have an equivalent commercial value of \$18 trillion. Dr. Mellon explained that a short list of those services provided by ecological systems and forests, in particular, include water regulation and storage, erosion control and sediment retention, nutrient storage and recycling, waste treatment, climate regulation, and atmospheric gas regulation.

As a pervasive greenhouse gas, carbon dioxide (CO<sup>2</sup>) is much in the news these days. In the scientific community there is little doubt that increasing atmospheric concentrations of CO<sup>2</sup>, methane and other greenhouse gases are being accompanied by mean increases in surface temperatures, directly causing or exacerbating climate change around the world. Dr. Mellon said that he wish to emphasize the role of forest cover in the mitigation of these changes. In the process of photosynthesis in green trees and plants, CO<sup>2</sup> is absorbed from the atmosphere and the synthesis of complex organic compounds, and an equal quantity of gaseous oxygen is released into the atmosphere as a waste product. All of the gaseous oxygen in the atmosphere that ever existed is a product of this process and its production continues to be critically dependent upon the presence of photosynthetic organisms. He added that the critical, dramatic ability of forests in the absorption of atmospheric CO<sup>2</sup> and by deduction, in the production of gaseous oxygen, is dramatically illustrated by the seasonal variations shown on the graph provided (copy on file). It represents atmospheric CO<sup>2</sup> levels measured in the Northern Hemisphere during the period between 1958-2004. The graph shows two things: first during that period the net atmospheric CO<sup>2</sup> levels have increased by 16%, and, alarmingly, at a current rate of increase (indicated by the right-hand red slope) that is three times of that found in the 1950s. Secondly, and most important in the present context, however, are the dramatic seasonal fluctuations (zig-zags) in CO<sup>2</sup> that indicate net rises during the winter, as deciduous forest leaves die (hence, no photosynthesis), and net reductions during the spring and summer with the appearance of new leaves. These highly visible fluctuations are a stunning example of the critical importance of forests to atmospheric gas regulation.

Dr. Mellon said that as citizens of Albemarle County, they can learn that forest cover provides critically important services that maintain ecosystem health, act as a buffer to catastrophic natural changes, and reduces the impact of rising atmospheric CO<sup>2</sup> concentrations. He said that the County must develop policies that protect local forest cover by all practical means so that the ecosystem services they provide remain at a sustainable level. The goals should be to protect, preserve and restore forest cover wherever and however they can.

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Dr. Charles Battig said that he has a less provincial and longer look at where CO<sup>2</sup> has been and where they are. He said that temperatures had "not gone wild" and there was nothing unusual about CO<sup>2</sup> – as it was "low." Dr. Battig stated that there has been 10,000 years of cooling, and temperatures now are no different than they were 3,300 years ago – with warmer temperatures occurring in Greenland before the presence of current levels of manmade CO<sup>2</sup>. He said that the IPCC is not a research organization; it is a politically driven agency that has assumed from the start that CO<sup>2</sup> is a primary driver of climate.

Dr. Battig stated that computer models designed to answer this basic question have failed to test the prediction, especially at a regional scale. The sought-for, man-made climate component is very small, buried amongst the effects of variable atmospheric aerosols, poorly understood cloud of feedback mechanisms, and various solar influences. He also said that the Chesapeake Bay does not have a problem related to sea level; it has a problem with land subsidence. Dr. Battig said that sea levels have not changed their rate of increase. The Chesapeake Bay was created by a meteor 35 million years ago and has been bouncing around geologically ever since. He stated that the Virginia Institute for Marine Science paper states that "absolute sea level in the Chesapeake Bay is rising only about half as fast as the global average rise rate."

Dr. Battig said there is no evidence of a statistically significant increase marking an acceleration in relative sea level rise. The National Oceanic and Atmospheric Administration (NOAA) data is the same – 1.25 feet per 100 years. The VIMS report states that the sea level rise is about one-half of the global average. The ABCs of land-ocean interactions is that the Chesapeake Bay area has had low absolute sea level change/rise, but significant land sinking.

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Ms. Emerald Young, a County resident, said that she was before the Board to raise the issue of ending water fluoridation. Ms. Young said that when she came to a Board meeting in November it was her understanding that a review process on the question of fluoridation had been put before it. She asked when it would begin and what it would be all about. She stated that both fluoride and chloramines were on City Council's agenda on Monday, and asked the Board to provide public notice if there would be a review process. Ms. Young said that the conversion to chloramines will only exacerbate the problems with fluoride. The Virginia Tech study from 2007 documented that chloramines was responsible for the rise in lead in D.C. children.

Ms. Young said that fluoridation is a medication. The Virginia Department of Health receives a block grant for community water fluoridation - \$150,000 in 2012, \$105,000 in 2011 – which paid for one salary and education on the benefits of fluoride. Ms. Young said that with any medication, you are required to disclose benefits as well as side effects. She asked if Dr. Lisa Syrop and Dr. Lillian Peake would bear the liability for not disclosing the side effects of ingesting fluoridated water.

Mr. Foley commented that Mr. Tom Frederick would be sending the Board some information on chloramines and would address this issue at the Board's May 2<sup>nd</sup> meeting.

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Mr. John Martin, a resident of Free Union, said that the Solid Waste Authority would be holding its hazardous waste day on April 14<sup>th</sup>. He said that in the early morning of April 14<sup>th</sup>, he will pack up his car with used gasoline, used oil, pesticides, paint, fluorescent tubes and any other chemical – to head for the landfill 22 miles away. Mr. Martin said the transporting will be dangerous as there will be a lot of other citizens doing the same thing with hazardous chemicals in their vehicles. Mr. Martin said there is only one place to get rid of used gasoline in this community – at the Ivy Landfill once a year – and obviously people are dumping it into the ground, rivers and sewers at other times to get rid of it. He stated that the solid hazardous waste day is a community service, but a higher community service would be to decide what the future of the RSWA would be for the community. Citizens need solid waste services. Mr. Martin commented that the City has just walked away from its responsibility, with the County allowing them to do so, but solid waste handling needs to be decided for the future.

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Agenda Item No. 8. Consent Agenda.

**Motion** was offered by Mr. Rooker to approve Items 8.1 through 8.8 on the Consent Agenda, with Item 8.4 pulled until the end of the meeting, and to accept the remaining items for information. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

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Item No. 8.1. Approval of Minutes: December 7, 2011.

Mr. Snow had read the minutes of December 7, 2011, pages 28 (begin Item #15) – end, and found them to be in order.

Ms. Mallek said that she needed to pull her minutes December 7, 2011, pages 1-28 (ending at Item #15).

**By the above-recorded vote, the Board approved the minutes as read.**

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Item No. 8.2. New Sublease Agreement with UVA for proposed Ivy Fire Station to be located in the Kirtley Warehouse property.

The executive summary stated that on March 9, 2011, the Board approved a Deed of Sublease with the University of Virginia ("UVA") for the use of a portion of the Kirtley Warehouse, located at TMP 59-23B1, as a Fire-Rescue Station to serve the Ivy area.

The existing Sublease allows for UVA to continue to use a portion of the building as a warehouse, requires the County to replace an existing loading dock, imposed a deadline for final plan approval by March 31, 2012, and provides for a 20-year term.

In recent months, UVA has decided to use the warehouse as office space instead of continued use as a warehouse, making the replacement of the loading dock no longer necessary. In addition, the time needed for final plan approvals for the improvements needs to be adjusted as a result of UVA's proposed change of the use of the building.

Both UVA and County staff wish to continue subleasing the property for a Fire-Rescue Station to serve the Ivy area. Because the existing Sublease is about to expire, the parties have negotiated a new Sublease. The proposed new Sublease would no longer require the County to replace the loading dock, but would require other site improvements to be made at the County's expense, and would change the deadlines for required plan approvals. The schedule for opening the Ivy Fire Station remains on track for it to be operational by the spring of 2013.

The direct rental cost to the County of the proposed Sublease would continue to be \$20.00 total over the 20 year term. The larger cost of the design and construction of the new Ivy Fire station is funded in the FY 12 CIP and includes the cost of the site improvements required in the new Sublease. Operation and maintenance of the facility has been programmed into the Five Year Financial Plan and will be addressed in the FY13 budget.

Staff recommends that the Board 1) approve the County's entering into a new Sublease that has been approved as to content and form by the County Attorney and 2) authorize the County Executive to sign the Sublease and associated documents after approval as to content and form by the County Attorney.

**By the above-recorded vote, the Board approved the County's entering into a new Sublease that has been approved as to content and form by the County Attorney and authorized the County Executive to sign the Sublease and associated documents after approval as to content and form by the County Attorney.**

Item No. 8.3. Extension of the Lewis & Clark Exploratory Center lease for office space in the McIntire County Office Building.

In 2005 the Board approved a lease with the Lewis & Clark Exploratory Center, Inc. to temporarily lease office space in the McIntire County Office Building. This space was located on the first floor of the north wing that had been recently vacated when the Police department relocated to COB – 5<sup>th</sup> Street. After the renovation of the north wing for the Community Development Department, the Lewis & Clark Exploratory Center moved into a 169 square foot office on the second floor of COB-McIntire off the lobby. The Center and the County extended and amended the lease in 2011 with the expectation that the Center would move into its new facility in the summer of 2012. The current lease will expire on June 30, 2012, unless extended.

The Lewis & Clark Exploratory Center had expected to move into its new facility at Darden Towe Park when the current lease expired. Due to unforeseen project delays, construction of their new facility will not be completed as originally anticipated. The Lewis & Clark Exploratory center has requested to continue to lease the office space for another year, at the end of which they expect to be able to move into their new facility. The term of the proposed lease shall be from July 1, 2012 through June 30, 2013.

The County Attorney's office has advised that a public hearing is not required prior to the Board taking action on the lease because the 2005 lease and 2011 amendment provide for "renewal for an additional period as may be mutually agreed by the Landlord and Tenant."

Approval of the proposed lease will generate \$3,139.66 in annual revenue for FY2013.

Staff recommends the Board approve the Agreement of Lease and authorize the County Executive to sign the Lease on behalf of the County.

**By the above-recorded vote, the Board approved the Agreement of Lease and authorized the County Executive to sign the Lease on behalf of the County:**

#### AGREEMENT OF LEASE

THIS LEASE AGREEMENT is made as of April 4, 2012 by and between the COUNTY OF ALBEMARLE, VIRGINIA, Landlord, and LEWIS & CLARK EXPLORATORY CENTER, INC., Tenant.

#### ARTICLE I. PREMISES AND IMPROVEMENTS

In consideration of the rents and covenants herein set forth, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the premises described on Exhibit A attached hereto and made a part hereof together with any and all improvements thereon (the "Leased Premises"). The Leased Premises shall be occupied by the Lewis & Clark Exploratory Center, Inc.

#### ARTICLE II. TITLE: QUIET ENJOYMENT

So long as Tenant is not in default hereunder, Tenant shall have peaceful and quiet enjoyment, use and possession of the Leased Premises without hindrance on the part of the Landlord or anyone claiming by, through, or under Landlord.

#### ARTICLE III. TERM

Section 3.1. Commencement and Expiration. The term of this Lease shall commence on July 1, 2012 (the "Date of Commencement") and shall expire June 30, 2013. All references to the "term" of this Lease shall, unless the context indicates a different meaning, be deemed to be a reference to the term described herein.

Section 3.2. Renewal. This Lease may be renewed for an additional period as may be mutually agreed by the Landlord and Tenant. If renewal is not agreed upon by the Landlord and Tenant, this Lease shall expire upon expiration of the initial term.

#### ARTICLE IV. RENT

Section 4.1. Annual Rent. Commencing upon the Date of Commencement, during the first year of this Lease, Tenant agrees to pay to Landlord annual rent of \$3,139.66, payable in equal monthly installments, in advance, on the first day of each month during the term hereof.

After the initial year of this Lease, the rent for any subsequent years of the Lease shall be indexed for inflation and shall be calculated by first establishing a fraction, the numerator of which shall be the level of the CPI Index (as defined herein) as of the first day of that month which is two months before the month in which the Date of Commencement occurs in the subsequent years, and the denominator of which shall be the level of the CPI Index as of the first day of that month which is two months before the initial Date of Commencement. The resulting fraction shall be multiplied by the rent agreed upon or established for the first

year of the term of the Lease to determine the annual rent due for the year. The rental figure shall be revised each year based upon this formula. The CPI Index shall be the U.S. Bureau of Labor Statistics Consumer Price Index (all items, all urban consumers, 1982-1984 = 100). If the CPI Index shall be discontinued, Landlord shall designate an appropriate substitute index or formula having the same general acceptance as to use and reliability as the CPI Index and such substitute shall be used as if originally designated herein. Notwithstanding the foregoing, in no event shall the rent due for any lease year decrease below the rent payable for the first year.

Section 4.2. Address for Rent Payment. All payments of rent due Landlord pursuant to Section 4.1 shall be made to Landlord at the address specified in Section 18.3, or to such other party or at such other address as hereinafter may be designated by Landlord by written notice delivered to Tenant at least ten (10) days prior to the next ensuing monthly rental payment date.

#### ARTICLE V. UTILITIES AND SERVICES

Landlord shall provide water, sewer, electricity, heating and cooling, trash collection and janitorial services at no additional cost to Tenant. Tenant shall provide telephone and all other services.

#### ARTICLE VI. USE OF PROPERTY

Section 6.1. Permitted Use. Tenant shall have use of the Leased Premises for offices. Tenant shall also have use of the lunchroom, restrooms, elevators and main entry corridors, which areas will not be calculated in the gross square footage for rental purposes.

Section 6.2. Parking. Tenant shall be entitled to the use of parking spaces in the lower parking lot and an access easement to the Leased Premises.

#### ARTICLE VII. ALTERATIONS, IMPROVEMENTS, FIXTURES AND SIGNS

Section 7.1. Installation by Tenant.

(a) Tenant may, from time to time, make or cause to be made any interior non-structural alterations, additions or improvements which do not damage or alter the Leased Premises, provided that Landlord's consent shall have first been obtained in writing, and provided that Tenant shall obtain all required governmental permits for such alterations, additions or improvements.

(b) Tenant may, from time to time, make interior structural alterations, additions or improvements, only with Landlord's prior written consent to plans and specifications therefor, which consent shall not be unreasonably withheld. Upon the expiration or sooner termination of this Lease, Landlord shall have the option (exercisable upon sixty (60) days notice to Tenant except in the case of a termination of this Lease due to a default by Tenant, in which case no such notice shall be required) to require Tenant to remove at Tenant's sole cost and expense any and all improvements made by Tenant to the Leased Premises or to elect to keep such improvement as Landlord's property. In the event Tenant is required to remove any improvements, (i) Tenant shall be responsible for the repair of all damage caused by the installation or removal thereof, and (ii) if Tenant fails to properly remove such improvements or provide for the repair of the Leased Premises, Landlord may perform the same at Tenant's cost and expense.

Section 7.2. Signs. Tenant shall have the right to place signs on the interior or exterior of the Leased Premises with the prior written approval of Landlord.

#### ARTICLE VIII MAINTENANCE OF LEASED PREMISES

Section 8.1. Maintenance. Landlord shall be responsible for all repairs and maintenance for the Leased Premises, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, including, but not limited to, plumbing, heating, electrical, air conditioning, plate glass and windows. Notwithstanding the foregoing, Tenant shall be responsible for all maintenance and repairs necessitated by the negligence of Tenant, its employees and invitees.

Section 8.2. Right of Entry. Landlord reserves the right for itself, its agents and employees to enter upon the Leased Premises at any reasonable time to make repairs, alterations or improvements; provided, however, that such repairs, alterations, or improvements shall not unreasonably interfere with Tenant's operations. Such right to enter shall also include the right to enter upon the Leased Premises for the purposes of inspection.

Section 8.3. Surrender of Leased Premises. At the expiration of the tenancy hereby created, Tenant shall surrender the Leased Premises and all keys for the Leased Premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, which Landlord has granted permission to have left in the Leased Premises. At such time, the Leased Premises shall be broom clean and in good condition and repair, commensurate with its age. If Tenant leaves any of Tenant's personal property in the Leased Premises, Landlord, at its option, may remove and store any or all of such property at Tenant's expense or may deem the same abandoned and, in such event, the property deemed abandoned shall become the property of Landlord.

#### ARTICLE IX. INSURANCE

Section 9.1. Liability Insurance of Tenant. Tenant covenants and agrees that it will, at all times during the term of this Lease, keep in full force and effect a policy of public liability and property damage insurance

with respect to the Leased Premises and the business operated by Tenant and any sub-tenants of Tenant on the Leased Premises in which the limits of public liability for bodily injury and property damage shall not be less than One Million Dollars (\$1,000,000) per accident, combined single limit. The policy shall name the Landlord as an additional insured. The policy shall provide that the insurance thereunder shall not be cancelled until thirty (30) days after written notice thereof to all named insureds.

Section 9.2. Fire and Extended Coverage. Landlord agrees that it will, during the initial and any renewal term of this Lease, insure and keep insured, for the benefit of Landlord and its respective successors in interest, the Leased Premises, or any portion thereof then in being. Such policy shall contain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as "extended coverage," as the same may exist from time to time. Landlord agrees to name Tenant as an additional insured on such policy, as its interest may appear.

Section 9.3. Evidence of Insurance. Copies of policies of insurance (or certificates of the insurers) for insurance required to be maintained by Tenant and Landlord pursuant to Sections 9.1 and 9.2 shall be delivered by Landlord or Tenant, as the case may be, to the other upon the issuance of such insurance and thereafter not less than thirty (30) days prior to the expiration dates thereof.

Section 9.4. Waiver of Subrogation. Tenant hereby releases the Landlord from any and all liability or responsibility to Tenant or anyone claiming through or under it, by way of subrogation or otherwise, from any loss or damage to property caused by any peril insured under Tenant's policies of insurance covering such property (but only to the extent of the insurance proceeds payable under such policies), even if such loss or damage is attributable to the fault or negligence of Landlord, or anyone for whom Landlord may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as any such release shall not adversely affect or impair the releasor's policies or insurance or prejudice the right of the releasor to recover thereunder.

#### ARTICLE X. WASTE, NUISANCE, COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Section 10.1. Waste or Nuisance. Tenant shall not commit or suffer to be committed any waste or any nuisance upon the Leased Premises.

Section 10.2. Governmental Regulations. During the term of this Lease, Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Leased Premises or Tenant's use and occupancy thereof.

#### ARTICLE XI. FIRE OR OTHER CASUALTY

If the Leased Premises shall be damaged so as to render two-thirds (2/3) or more of the Leased Premises untenantable by fire or other casualty insured against under the insurance required to be carried by Landlord pursuant to Section 9.2, Landlord may elect to either terminate this Lease as of the date of damage or repair the Leased Premises. Unless Landlord elects to terminate this Lease, such damage or destruction shall in no way annul or void this Lease except that Tenant shall be entitled to a proportionate reduction of the rent payable under Article IV while such repairs are being made, such proportionate reduction to be based upon the proportion of the Leased Premises rendered untenantable as a result of such damage. Notwithstanding the foregoing, if any damage or destruction from any cause whatsoever has not been repaired and such repairs have not commenced within one hundred eighty (180) days of the date thereof, Tenant may, as its exclusive remedy, terminate this Lease upon thirty (30) days written notice to Landlord.

#### ARTICLE XII CONDEMNATION

If the whole or any part of the Leased Premises shall be taken under the power of eminent domain, then this Lease shall terminate as to the part so taken on the day when Tenant is required to yield possession thereof, the Landlord shall make such repairs and alterations as may be necessary in order to restore the part not taken to useful condition; and the rent payable under Article IV shall be reduced proportionately as to the portion of the Leased Premises so taken. If the amount of the Leased Premises so taken is such as to impair substantially the usefulness of the Leased Premises for the purposes for which the same are hereby leased, then either party shall have the option to terminate this Lease as of the date when Tenant is required to yield possession.

#### ARTICLE XIII DEFAULT OF TENANT

Section 13.1. Default. The occurrence of any of the following shall be deemed a "default" under this Lease:

(a) Tenant fails to pay when due any amount of rent, additional rent or other monies due under this Lease, including Articles IV and V, and such payment is not received by Landlord within ten (10) days after written notice of such failure is received by Tenant; or

(b) a default in any of the other provisions of this Lease, and such default continues uncured for a period of thirty (30) days after written notice thereof from Landlord.

Section 13.2. Remedies. In the event of any default or breach hereof by Tenant, Landlord shall have the right (in addition to all other rights and remedies provided by law) to terminate this Lease or to re-enter and

take possession of the Leased Premises, peaceably or by force, and to remove any property therein without liability for damage to and without obligation to store such property, but may store the same at Tenant's expense, and to collect from Tenant all rent then due and which would accrue for the unexpired portion of the term hereof, together with reasonable attorney's fees. In addition, in the event of a failure to pay rent, additional rent or other money within five (5) days of its due date, Tenant shall pay to Landlord the greater of Twenty-Five and no/100 Dollars (\$25.00) or one half (1/2) of one percent (1%) of such sum for each day after the fifth day such rent or other money is late.

#### ARTICLE XIV. HOLDING OVER, ASSIGNS, SUCCESSORS

Section 14.1. Holding Over. Any holding over after the expiration of the term hereof, with the consent of Landlord, shall be construed to be a tenancy from month-to-month at the same rent herein specified (prorated on a monthly basis) and shall otherwise be on the terms and conditions herein specified as far as applicable. If Tenant remains in possession *without* Landlord's consent after expiration of the term of this Lease Agreement or its termination, the Tenant shall pay to Landlord its damages, reasonable attorney's fees and court costs in any action for possession. Tenant shall pay to Landlord as liquidated damages a sum equal to 110% of the Base Rent then applicable for each month or portion thereof Tenant shall retain possession of the Premises or any part thereof after the termination of this Lease.

Section 14.2. Showing the Leased Premises. During the last ninety (90) days of the term hereof, Tenant shall allow Landlord, or its agents, to show the Leased Premises to prospective tenants or purchasers at such times as Landlord may reasonably desire.

Section 14.3. Successors. All rights and liabilities herein given to, or imposed upon the respective parties hereto, shall extend to and bind the heirs, executors, administrators, successors and permitted assigns of the parties. All covenants, representations and agreements of Landlord shall be deemed the covenants, representations and agreements of the fee owner from time to time of the Leased Premises and Landlord shall be automatically released of all liability under this Lease from and after the date of any sale by Landlord of the Leased Premises. All covenants, representations and agreements of Tenant shall be deemed the covenants, representations, and agreements of the occupant or occupants of the Leased Premises.

#### ARTICLE XV. BROKER'S FEES

Tenant and Landlord hereby warrant that there are no brokerage commissions due in connection with this Lease.

#### ARTICLE XVI. NO ASSIGNMENT

Tenant shall not assign this Lease or sublet all or any portion of the Leased Premises, either directly or indirectly, without the prior written consent of Landlord. No assignment, sublease or transfer of this Lease by Tenant shall (i) be effective unless and until the assignee, subtenant or transferee expressly assumes in writing Tenant's obligations under this Lease, or (ii) relieve Tenant of its obligations hereunder, and Tenant shall thereafter remain liable for the obligations of the Tenant under this Lease whether arising before or after such assignment, sublease or transfer.

#### ARTICLE XVII. SUBORDINATION OF LEASE

This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to (1) any mortgages, deeds of trust and building loan agreements affecting the Leased Premises, including any and all renewals, replacements, modifications, substitutions, supplements and extensions thereof, and (2) each advance made or to be made thereunder. In confirmation of such subordination, Tenant shall promptly upon the request of Landlord execute and deliver an instrument in recordable form satisfactory to Landlord evidencing such subordination; and if Tenant fails to execute, acknowledge or deliver any such instrument within ten (10) days after request therefor, Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on behalf of Tenant. Tenant further agrees that in the event any such mortgagee or lender requests reasonable modifications to this Lease as a condition of such financing, Tenant shall not withhold or delay its consent thereto.

#### ARTICLE XVIII. MISCELLANEOUS

Section 18.1. Waiver. The waiver by Landlord or Tenant of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition contained herein. The subsequent acceptance or payment of rent hereunder by Landlord or Tenant, respectively, shall not be deemed to be a waiver of any breach by Tenant or Landlord, respectively, of any term, covenant or condition of this Lease regardless of knowledge of such breach at the time of acceptance or payment of such rent. No covenant, term, or condition of this Lease shall be deemed to have been waived by Tenant or Landlord unless the waiver be in writing signed by the party to be charged thereby.

Section 18.2. Entire Agreement. This Lease, and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises; and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced in writing and signed by them.

Section 18.3. Notices. Any notice, demand, request or other instrument which may be, or is required to be given under this Lease, shall be in writing and delivered in person or by United States certified mail, postage prepaid, and shall be addressed:

- (a) if to Landlord, at  
County of Albemarle  
County Executive's Office  
401 McIntire Road  
Charlottesville, Virginia 22902  
or at such other address as Landlord may designate by written notice;
- (b) if to Tenant, at  
Lewis & Clark Exploratory Center  
Suite 231  
401 McIntire Rd  
Charlottesville, VA 22902  
or at such other address as Landlord may designate by written notice;

Section 18.4. Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease nor in any way do they affect this Lease.

Section 18.5. Partial Invalidity. If any term, covenant or condition of this Lease, or the application thereof, to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 18.6. Recording. Upon request of either party, a memorandum of lease will be executed and recorded. Such memorandum shall contain any provisions of this Lease which either party requests except for the provisions of Article IV, which shall not be included. The cost of recording such memorandum of lease or a short form hereof shall be borne by the party requesting such recordation.

Section 18.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 18.8. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument as of the day and year first above written.

**TENANT**  
**LEWIS & CLARK EXPLORATORY CENTER, INC.**

By: \_\_\_\_\_  
Christopher McLean, President

**LANDLORD**

This Lease is executed on behalf of the County of Albemarle by Thomas C. Foley, County Executive, following a duly-held public hearing, and pursuant to a Resolution of the Albemarle County Board of Supervisors.

**COUNTY OF ALBEMARLE, VIRGINIA**

By: \_\_\_\_\_  
Thomas C. Foley, County Executive

Approved as to form:

\_\_\_\_\_  
Albemarle County Attorney

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

All that certain portion of the Albemarle County Office Building, located at 401 McIntire Road, Charlottesville, Virginia, shown as the shaded "Leased Space" on the attached floor plan titled "2nd Floor Albemarle County Office Building, 401 McIntire Road, Charlottesville, Virginia," and being 168.69 square feet of office space, more or less.

Item No. 8.4. Revised Community Use of County Facilities Policy.

The executive summary states that since first adopting a County facilities rental policy on February 10, 1982, the Board of Supervisors has encouraged the use of County facilities by Local Government and the School Division for their activities, as well as by outside organizations and groups

when their activities have not interfered with the routine business of the County. There have been several revisions to the policy and the application, with the last revision on April 22, 2010.

The substantive changes addressed in the proposed revision are:

- Limiting after-hours rental to no later than 10 p.m., reflecting current practice;
- Eliminating weekend rental, reflecting current practice;
- Including a provision regarding the use of grounds, which is not specifically addressed in the current policy; and
- Adjusting the rental rates - The rates have been adjusted to enable the County to recoup operating expenses while still offering access to our facilities below the local public and private market for similar services.

Also, attached is the revised application to be used in conjunction with the revised policy.

Annual revenue from facility rentals would likely increase based on the rental rate increase and would offset direct costs associated with room rental activities.

Staff recommends that the Board approve the revised Community Use of County Facilities policy.

**(Discussion:** Mr. Boyd said he was curious about the outside grounds and what the impact of that would be for people who wanted to assemble there.

Mr. Foley suggested moving discussion of this item to the end of agenda to allow staff to be present and respond to questions.)

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Item No. 8.5. Resolution accepting Rushia/Fleckles offer to sell conservation easement.

The executive summary stated that on November 2, 2011, the Board of Supervisors accepted the appraisal of the Rushia/Fleckles property and invited the owners to sell a conservation easement to the County. Mr. Rushia and Ms. Fleckles are the last applicants in the FY2009-10 class and have applied to participate in the ACE Program five times, only to miss out on funding because the purchase of other properties exhausted previously available funds. This year, however, sufficient funds are available to purchase this easement (see Attachment B). This 87-acre property occupies the top of Beaver Creek Mountain, which is visible from Crozet. Without an easement, eight new dwellings could be built on the exposed upper flanks of the property.

*Albemarle County Code* § A.1-109(B)(1) restricts building on ACE easements within the Mountain Overlay District (MOD). Since 69 acres or almost 80% of the Rushia/Fleckles property is in the MOD, and most of the rest of the property lies on critical slopes, the strict application of the ordinance requirements to this property would essentially preclude future construction anywhere on the property (see attached "MOD and Critical Slopes Map").

Mr. Rushia and Ms. Fleckles have offered to sell the ACE easement if they are granted a limited waiver from restrictions on the property that is in the MOD.

Given the high visibility of this property, and its potential for more intense development without an easement, County staff and the ACE Committee have discussed whether to recommend a limited waiver of this requirement of the ACE ordinance. Under *County Code* § A.1-111(A), "Requirements and deadlines may be waived. Any requirement or deadline set forth in this appendix may be waived by the board of supervisors if, for good cause, it is shown that exigent circumstances exist to warrant consideration of an otherwise untimely application, or it is shown that the requirements unreasonably restrict the purchase of an easement. Under these circumstances, the board may purchase a conservation easement at any time it deems necessary and subject to only those requirements it deems appropriate."

After discussion, County staff and the ACE Committee are recommending waiving the strict application of the ACE ordinance on this property to allow building around existing structures just above an elevation of 1,200 feet, at the lower limits of the MOD on the property (see Attachments E and F). This approach would minimize the visual impacts of new construction while giving the owners the needed flexibility to add improvements. These exceptions to the MOD would encompass a 200-foot radius around the existing dwelling, a large pole barn and a shed. Within these excepted areas, the owners would be permitted to establish certain primary or accessory structures or other improvements without prior written approval from the County or the Public Recreational Facilities Authority. Even within these excepted areas, by operation of the Ordinance, the deed of easement would still assure that the parcel was used and maintained in a manner consistent with the Comprehensive Plan as it pertains to mountain resources and, in particular, the Mountain Design Standards in the Natural Resources and Cultural Assets Component of the comprehensive plan. In the Mountain Protection Buffer (the rest of the MOD above 1200' elevation), the deed of easement would prohibit (a) the construction of any new primary or accessory structures or other improvements and (b) the enlargement or extension of any existing primary or accessory structures or other improvements.

With this waiver, the ACE Committee recommends that the Board accept the owners' offer to sell a conservation easement to the County for \$203,980. Acquisition of this easement would provide the following benefits and resource protection:

- Protection of 87 acres of farm and forestland
- Elimination of 7 development rights
- 4,768 linear feet of common boundary with three other property owners
- 69 acres in the Beaver Creek Mountain Overlay District
- Watershed of the South Fork Rivanna River Reservoir

After the pending acquisition of the Nash/Violette easement, a total of \$677,114 will be available for acquiring other easements (Attachment B). This funding reflects a combination of re-appropriated County funds (\$619,460) and grants from VDACS Office of Farmland Preservation (\$116,454) that were previously awarded to the County. These funds would cover the acquisition of the Rushia/Fleckles easement at a cost of \$203,980.

Funding for the purchase of this conservation easement comes from the CIP-Planning-Conservation budget (line-item 9010-81010-580409).

Staff recommends that the Board:

- 1) Approve a limited waiver of the ACE ordinance on the Rushia/Fleckles property, to allow the owners to build within the specified excepted areas within the Mountain Overlay District.
- 2) Adopt the attached Resolution (Attachment G) accepting the Rushia/Fleckles offer to sell a conservation easement to the County, for the price specified and subject to the terms and conditions contained in a deed of easement acceptable in form to the County Attorney, and authorize the County Executive to sign the final deed of easement for this property.

**By the above-recorded vote, the Board approved a limited waiver of the ACE ordinance on the Rushia/Fleckles property, to allow the owners to build within the specified excepted areas within the Mountain Overlay District, and adopted the following Resolution accepting the Rushia/Fleckles offer to sell a conservation easement to the County, for the price specified and subject to the terms and conditions contained in a deed of easement acceptable in form to the County Attorney, and authorize the County Executive to sign the final deed of easement for this property:**

**RESOLUTION ACCEPTING OFFER TO SELL  
A CONSERVATION EASEMENT UNDER THE ACE PROGRAM**

**WHEREAS**, the County has received an offer to sell a conservation easement under the ACE Program from the owner of the following property:

**Rushia/Fleckles** TM 39, Parcel 27 86.700 acres (Crozet) and;

**WHEREAS**, the owner offered to sell a conservation easement on the specified property to the County for a fixed purchase price, subject to terms and conditions set forth in the proposed deed of easement enclosed with the County's invitation to offer to sell, subject to any further revisions deemed necessary by the County Attorney and agreed to by the owner.

**NOW, THEREFORE BE IT RESOLVED** that the Board of Supervisors hereby accepts the offer to sell a conservation easement for the property described above and authorizes the County Executive to execute all documents necessary for completing the acquisition.

**BE IT FURTHER RESOLVED** that the Board of Supervisors hereby directs the County Attorney to send a copy of this resolution to the owner of the property identified herein, or her contact person.

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Item No. 8.6. Cville Bike mApp Project Resolution.

**(Discussion:** Mr. Boyd asked if there would be any cost associated with the Cville Bike mApp.

Ms. Sarah Rhodes, Transportation Planner, with the Thomas Jefferson Planning District Commission, responded that it was being developed by the MPO and there are no costs to the County.)

**By the above-recorded vote, the Board adopted the following Resolution:**

**RESOLUTION OF ENDORSEMENT  
CHARLOTTESVILLE-ALBEMARLE MPO *Cville Bike mApp* PROJECT**

**WHEREAS**, the Charlottesville-Albemarle Metropolitan Planning Organization, in conjunction with the City of Charlottesville, Albemarle County, the University of Virginia, and *BikeCharlottesville*, has developed a bike mapping application for iPhone and Android; and

**WHEREAS**, this mapping application will allow the MPO and MPO stakeholders to better understand how cyclists use the transportation network; and

**WHEREAS**, this mapping application will allow the MPO and MPO stakeholders to identify cycling corridors and barriers throughout the region; and

**WHEREAS**, this mapping application will aid the MPO and MPO stakeholders in determining where to invest limited cycling funding for infrastructure enhancements and improvements; and

**WHEREAS**, this mapping application will allow the MPO and MPO stakeholders to gather cycling data using a new and accessible collection method; and

**WHEREAS**, this project provides an opportunity for collaborative, region-wide, transportation planning for cycling:

**NOW, THEREFORE, BE IT RESOLVED** that the County of Albemarle does hereby support the *Cville Bike mApp* project.

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Item No. 8.7. Resolution to accept road(s) in Lambert Point Subdivision into the State Secondary System of Highways.

**By the above-recorded vote, and at the request of the County Engineer, the Board adopted the following Resolution:**

### R E S O L U T I O N

WHEREAS, the street(s) in **Lambert Point Subdivision**, as described on the attached Additions Form AM-4.3 dated **April 4, 2012**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Lambert Point**, as described on the attached Additions Form AM-4.3 dated **April 4, 2012**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

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Item No. 8.8. Solid Waste – Extension of RSWA Agreements and Future County Services.

The executive summary stated that in August 2011, the County and the Rivanna Solid Waste Authority (RSWA) entered into two agreements for solid waste services. The first Agreement is between the County and RSWA for the provision of services at RSWA's Ivy Material Utilization Center (Ivy) (Attachment A). The second Agreement is between the City, the County and RSWA for the provision of services at RSWA's McIntire Road Recycling Center (McIntire) (Attachment B). Both agreements require the County to notify RSWA by May 1, 2012 if services are to be extended for FY 2013.

Staff plans to present options for future solid waste services to the Board in May. In October 2010, staff presented a matrix of possible County service levels and a comparison to several peer communities. (Attachments C & D) At that time, the Board felt the County's interest was best served by maintaining the current services as provided by RSWA. As the state of this industry has continued to evolve since that time, staff recognizes there may be some changes in service expectations for the County. Given this, staff plans to review future service expectations and how to assure those expectations are best met with the Board in May, and to then discuss with RSWA how to implement strategies identified by the Board.

Without an extension of the support agreements, current services provided at Ivy and McIntire are anticipated to end on June 30, 2012. As noted in earlier Board discussions regarding solid waste, there continues to be a significant number of County residents and businesses that rely on Ivy and McIntire for solid waste services. By RSWA's data, Waste Management is removing over 80 tons of solid waste from Ivy per day when the facility is open. This is roughly equivalent to four tractor trailer ("18 wheeler") loads each day. Without the use of the Ivy facility, the next option would be to haul the material to a transfer station at Zions Crossroads, a 50 to 60 mile roundtrip for many of Ivy's customers. Most loads received at Ivy are one ton or less and the current tip fee for garbage is \$66 per ton. The additional transportation costs to haul this material to another transfer station would result in very large cost increases to County residents and businesses currently using Ivy. RSWA finds that the current fees at Ivy are significantly higher than those of other transfer stations, leading staff to believe that Ivy is often used to avoid the cost of transporting material to another transfer station. Pursuant to the Ivy agreement (Attachment A), the County's financial support covers the gap between collected fees and operating costs. An extension of this agreement for one year has been anticipated and the County funding for support of this agreement has been included in the proposed County FY 13 budget. Staff believes that FY 13 will be a year of transition for the County and RSWA as County and RSWA staff work towards a long term strategy.

The County and City jointly fund RSWA's McIntire operations pursuant to the McIntire agreement (Attachment B). As a recycling only facility, there are no fees collected and the operation requires funding of approximately \$108,000 per year to cover the difference between operating costs and revenues generated from collected materials. Of this \$108,000, the County funds 70% and the City funds 30%, which is based on the number of users as determined by RSWA pursuant to the agreement. Based on tonnage reported for 2011, this financial support payment is roughly equivalent to \$50 per ton of recycled material. While costs for this operation have remained fairly stable over the last five years, the tonnage collected is roughly 40% of what was received five years ago. Staff believes this reflects some of the market changes seen in the last few years rather than a reduced interest in recycling. As part of the discussion in May, staff plans to consider how more cost effective alternatives could be provided, but this agreement assures continuity of recycling services until a long term strategy is finalized.

With the extension of the two referenced agreements, the County will work to implement a longer term strategy for solid waste services over the next few months. Staff plans to provide a more thorough analysis of the options in May.

Funding for support payments required by these agreements has been included in the County's FY 13 budget and is unchanged from FY 12.

Staff recommends that the Board authorize the County Executive to extend the RSWA agreements for both Ivy and McIntire through FY 13.

**(Discussion:** Mr. Boyd asked why the County was moving forward with the solid waste contract without any participation from the City, with the exception of the McIntire Recycling Center.

Mr. Foley responded that the matter is now before the Rivanna Board, but in the meantime the County would be coming before the Board in May with solid waste handling issues. He said the agreements are expiring and it makes sense to extend the agreements one more year while the decisions about long term use is being decided and while Rivanna considers amendments to the current agreements. The issue related to the City not participating is not easy to resolve. The City is not following the agreement, but that has been a fact for quite some time. He said that the regional solid waste agreement would be coming before the Rivanna Board shortly, and there is not an easy resolution to the matter.

Mr. Rooker commented that he thought this was an extension to the existing agreement and did not represent a change. Mr. Foley said that was correct.

Mr. Davis confirmed that this maintains the status quo until additional changes can be made.

Mr. Boyd said that he wasn't sure if the County was giving up a bargaining chip by signing the contract for another year.

Mr. Foley said that the County is required to continue it until it is prepared to do something differently, so they really are not giving up a bargaining chip.

Mr. Boyd asked what the impact would be from not signing the contract.

Mr. Davis responded that in terms of the agreement for operating the McIntire Recycling Center, if there was no funding, Rivanna would close it. The Ivy facility is being maintained at the request of the County, and without its funding, Rivanna would also close it.

Mr. Rooker said that the future is in the County's hands and they have not yet made a decision about the direction in which to go. In the interim, it seems to be wise to continue with the arrangement which does result in some cost sharing because the City contributes significantly to the recycling center at McIntire. He stated that the City has no interest in Ivy, and the County wants to keep it open.

Mr. Foley said that currently Ivy is a service for County residents, with City residents paying a higher fee for usage.

Ms. Mallek asked if the extension could be interrupted if a decision was reached in June or July or does it have to go for a full year.

Mr. Davis responded that there would need to be a new agreement with Rivanna, but he does not think it would be an obstacle to making changes prior to the end of the contract.

Mr. Boyd said that with that information, he does not feel the item needs to be pulled from the agenda.)

**By the above-recorded vote, the Board authorized the County Executive to extend the RSWA agreements for both Ivy and McIntire through FY 13.**

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Item No. 8.9. Copy of letter dated March 2, 2012 to Mr. Jeremy Manning-Smith, from Mr. Francis H. MacCall, Senior Planner, *re: LOD-2011-00013 – OFFICIAL DETERMINATION OF PARCEL OF RECORD & DEVELOPMENT RIGHTS – Tax Map 82, Parcel 1 (property of Jeremy Manning-Smith) – Rivanna District, was received for information.*

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Item No. 8.10. Copy of letter dated March 2, 2012 to Mr. Charles Frankfurt, from Mr. Francis H. MacCall, Senior Planner, **re: LOD-2011-00014 – OFFICIAL DETERMINATION OF PARCEL OF RECORD & DEVELOPMENT RIGHTS – Tax Map 82, Parcels 3, 3A, 3B, 3C & 3D (property of Charles and Elfi Frankfurt) – Rivanna District, was received for information.**

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Item No. 8.11. Board-to-Board, April 2012, *A monthly report from the Albemarle County School Board to the Albemarle County Board of Supervisors, was received for information.*

Item No. 8.12 Copy of letter dated March 2, 2012 to Mr. Jasper P. Davis, from Francis H. Mr. MacCall, Senior Planner, **re: LOD-2011-00012 – OFFICIAL DETERMINATION OF PARCEL OF RECORD & DEVELOPMENT RIGHTS – Tax Map 28, Parcel 11 (property of Jasper P. Davis Jr. or Diana J. Kieler) – White Hall District, was received for information.**

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Agenda Item No. 9. **Public Hearing: Keswick Lake -** Request to amend the Albemarle County Service Authority Jurisdictional Area Boundary to provide water service to Tax Map 79, Parcel 23 and Tax Map 79C, Parcel 1 located approximately 2,100 feet southwest of the intersection of Rt. 250 and Shadwell Road. (*Advertised in the Daily Progress on March 19 and March 26, 2012.*)

Mr. David Benish, Chief of Planning, summarized the following executive summary which was forwarded to Board members:

The applicant is requesting Albemarle County Service Authority (“ACSA”) Jurisdictional Area designation for public water to serve a proposed 39-lot Planned Residential Development (PRD) approved by the Board of Supervisors on January 18, 1978 (ZMA 77-24) (see Attachment A-on file). The PRD is located south of the Shadwell Estates Subdivision and east of Clifton Inn (see Attachment B). The site is designated Rural Areas in the County’s Comprehensive Plan and is located in the Scottsville Magisterial District. The original development proposal called for the use of a central water system to provide water service to all of the proposed lots except two, which were to be served by private wells. The Board’s 1978 rezoning approval included Condition #9, which states: “Final subdivision approval will be subject to the County Engineer’s Office approval of central water systems.” The applicant is now requesting public water service in lieu of a central water system or of individual wells. Use of a central water system would require both the County Engineer’s and the Board’s approval. To date, the applicant has not submitted a central water system proposal to the County for review and approval.

In the immediate area, Clifton Inn is in the ACSA Jurisdictional Area for Water Only to Existing Structures and Stone Robinson Elementary School is in the Jurisdictional Area for Water Only. Service was provided to the Clifton Inn because of a documented health and safety issue involving groundwater quantity, consistent with the County’s policies for extending water/sewer service to the designated Rural Areas. The designation does not permit service to any new structure on that parcel.

The Board held a work session to discuss this request on February 1, 2012 and directed staff to set a public hearing and provide additional information regarding: 1) properties that are comparable in circumstance to the Keswick Lake PRD (undeveloped and located in the Rural Areas, zoned for urban development, and adjacent to public utility lines); and 2) the proposed subdivision of the property. In addition, the applicant has provided well reports for two wells drilled on-site. This information can be found in Attachment C.

The Comprehensive Plan provides the following recommendations concerning the provision of public water and sewer service:

- “General Principle: Urban Areas, Communities, and Villages are to be served by public water and sewer (p. 114).”
- “Provide water and sewer service only to areas within the ACSA Jurisdictional Areas (p. 130).”
- “Follow the boundaries of the designated Development Areas in delineating Jurisdictional Areas (p.130).”
- “Only allow changes in the Jurisdictional Areas outside of the designated Development Areas in cases where the property is: 1) adjacent to existing lines; and 2) public health and/or safety is in danger (p. 130).”

By policy, water and sewer services are intended to serve the designated Development Areas where growth is encouraged and are to be discouraged in the Rural Areas because utility services are a potential catalyst for growth. Water supply and system capacities need to be efficiently and effectively used and reserved to serve the Development Areas. Continued connection of properties in the Rural Areas to the public water system results in further extension of lines from the fringe of the existing Jurisdictional Area into the Rural Areas, potentially straining water resources and capacity to serve higher priority needs.

There are no lots developed or platted on the subject parcels (only preliminary plat approval has been obtained to date) and there are otherwise no documented public health or safety issues regarding these parcels. Therefore, designating these parcels as part of the ACSA Jurisdictional Area for public water service would not be consistent with County policy. If there were to be any future documented health or safety issue with water quality or quantity in Keswick (Clifton) Lake, under the County’s utility policies a water service designation could be further considered at that time.

The prior zoning action in 1978 required the use of a central water system to serve most of the development. No proposal for a central water system has been submitted to the County by the applicant for review and approval; therefore there is no evidence that a central system cannot safely and appropriately serve the development. While current Comprehensive Plan policies also discourage the use of central systems in the Rural Areas except in cases where there is a health and safety issue, use of a central water system would be consistent with the existing PRD zoning of the property approved by the Board in 1978. If the Board approves this Jurisdictional Area amendment, the Zoning Administrator must then determine whether a zoning map amendment is required to delete Condition # 9 of ZMA 77-24 requiring that the development be served by a central water system. If she determines that the condition must be deleted, the zoning map amendment to delete the condition must be approved before a final subdivision plat can be approved for the development.

In sum, this request is not consistent with the principles, objectives, and strategies of the Comprehensive Plan for the provision of public water service. Condition #9 of ZMA 77-24 requires that the development be served by a central water system. No proposal for a central water system has been submitted by the applicant for review and approval; therefore, there is no evidence that a central system cannot safely and appropriately serve the development.

The property owner would bear all of the costs for connection to public water service.

Staff recommends that the request to amend the Jurisdictional Area to provide water service to TMP 79-23 and TMP 79C-1 be denied.

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Mr. Benish explained that comparable circumstances are measured by properties located in the rural areas, those zoned other than RA or a more intensive use than RA, entirely undeveloped and adjacent to water lines. He said that with recent action on the Whittington Subdivision there are no other residentially designated properties that are similar to this that entirely undeveloped and adjacent to water lines. A decision has been made to add Whittington Subdivision to the development area with the Comp Plan update; the Board recently took action to provide sewer service to that location.

Mr. Benish stated that Ashcroft, located just north of Pantops, does not entirely meet the criteria but does have some undeveloped future sections and is served by public water. He said that there are three commercially zoned properties located along the Route 250 corridor – one near the Shadwell interchange at I-64 and two on Route 250 West between the Yancey interchange and Western Albemarle High School. Mr. Benish noted the location of the Whittington Subdivision on a map as well as the location of the Keswick Lake. He added that the one commercial property is split by a stream, zoned HC, is undeveloped and has a lot of critical slopes and stream buffers. The other two properties in the Route 250 corridor is also zoned HC and is undeveloped.

Mr. Benish stated that staff cannot recommend approval of the request due to its inconsistency with the rural area policy. In addition there is no evidence provided that the central water system required by the rezoning could not adequately serve the properties. He added that the water supply capacity should be preserved for use and service to the development areas. Mr. Benish said the Board needs to either approve or deny the request for water service.

Ms. Mallek said that when the Board discussed Whittington, it was stressed that there would be no change in the density – which enabled her to make her vote – and that is clearly not the case with this application. If the water service is approved, it allows the possibility of additional homes.

Mr. Benish stated that it is possible, although not known for sure, and water is “suspect in that general area.”

Mr. Boyd asked if the approval could be conditioned for just the 39 homes shown on the preliminary site plan.

Mr. Benish responded that the Board could designate “limited service” to restrict the number of units, which is commonly done for existing structures.

Mr. Davis said that the Board could, but the underlying requirement for this zoning is that there be a central water system and not individual wells. If it wanted to make that link, the Board would have to determine the capacity of the system and then place a limitation on the number of units that could be supported by the central system if they designed and built it. His understanding is that there has been no engineering study done on what a central system could support.

Ms. Mallek said that it was the basis for the prior approval, and she does not understand why it has not been done.

Mr. Cilimberg explained that the subdivision plat is for part of the whole zoned area, not for the entire area, and another part of the area that is not before the Board is under a different ownership. He said that the plat of 29 lots is in accordance with their zoning, so they have the zoning to do the lots if they can get the water supply.

Mr. Rooker asked if the zoning would need to be amended if this were included in the jurisdictional area.

Mr. Davis responded that if the Zoning Administrator determines that a public water system is not a central system, then an amendment would be required to amend the proffer that now requires a central water system.

Mr. Dumler asked for an example of a "health, safety or emergency requirement" where no homes or established development exists.

Mr. Benish said that he does not recall any cases in which the County has given approval for an amendment to the jurisdictional area unless an existing structure has been impacted.

Mr. Cilimberg explained that examples would be cases where there is a failing well or contaminated well with no alternative well onsite.

Mr. Benish pointed out that Key West was added to the jurisdictional area because of the contamination of its water supply, and there may have been some undeveloped lots in that subdivision that got that designation.

Mr. Boyd confirmed that that was the case. He asked if Clifton Inn was on the water supply.

Mr. Benish replied that they were, but for existing structures only. He also said that the Keswick Lake Subdivision is developing 29 of the 39 lots permitted by zoning, and the west side of the lake is the remaining zoned property – under ownership of Clifton Lake.

Mr. Snow asked what Clifton Lake is doing for water. Mr. Benish stated that they have public water to the existing Inn. They had a quantity issue that necessitated the connection. He noted that there was a question of quality, but based on the Health Department's analysis they were not sure if it was a quality issue with the well or the storage system that they had used for the Inn. Mr. Cilimberg added that it was for existing structures.

Mr. Rooker said that does not give Clifton Inn the right to develop those additional lots. Mr. Benish commented that Clifton Inn would have to come in for the same jurisdictional amendment for the additional lots.

Mr. Rooker stated that this request is unusual because there are no existing structures, and there is no demonstrated emergency. He said that the Board has typically limited extension of water service into the rural areas only upon a showing of a demonstrated emergency, otherwise it would be difficult to distinguish this request from any other.

Mr. Boyd asked what process an applicant would have to go through to demonstrate that a central water system was not practical, as the wells they dug did not provide sufficient capacity.

Ms. Mallek said that she has lived for over 40 years in a house with one gallon per minute, and the insistence that there be 500 gallons of storage is a little bit over the top.

Mr. Benish stated that the requirement is from the State Code, but for low volumes you must rely more on the storage system.

Mr. Snow asked what drilling of additional wells does to already established wells in the area.

Mr. Benish responded that it is difficult to determine in local geology. This area has a fractured trace geology and not a predictable water table. Thus far staff has learned from the work it has done on well reports is that it is highly unpredictable. There is a chance there will be an issue with withdrawal but there is no way to predict it.

Mr. Snow commented that there is a pretty good chance that drilling that number wells, it could impact residents in that area. He asked if that would force the other residents to hook up to County water.

Mr. Davis explained that under existing zoning for this property there could only be one well, or enough wells to support a central system – not individual wells on lots. He said that this is an old rezoning from the 1970s, which allowed the development to occur consistent with the Comp Plan, but now it is in an area designated RA – which would not be an appropriate location for this density. The only rights the applicants are entitled to are those rights they obtained in the 1970s rezonings. If they cannot develop that, then their remedy is to come in and request a rezoning of the property for a use that they can develop. The County is not obligated to make changes to allow them to develop it the way it was approved in the 1970s. Mr. Davis added that the Board is not required to grant this change, and if they cannot provide a central system to support the number of lots, their remedy would be to have less lots or to seek a rezoning for some other reasonable use of the property. He clarified that the Board's decision today is whether it wants to extend water service to this rural area property, citing compliance with the Comp Plan.

Mr. Thomas asked if Shadwell Estates and Glenmore have public water. Mr. Benish replied that Shadwell does not, but Glenmore does because it is in the growth area.

Mr. Thomas asked about Shadwell Estates designation. Mr. Benish said that Shadwell is in the designated rural area in the land use plan.

Mr. Boyd said that if the applicant for Keswick Lake drilled by-right one central well, there is the possibility that it could be detrimental to the surrounding neighborhoods that are on wells.

Ms. Mallek stated that in the past the Board has discounted that option when others have the same concern with new subdivisions.

Mr. Snow said that if he were a resident of an adjacent subdivision and his water supply diminished, he would have to spend \$15,000 to hook into public water plus the ongoing expense. If he was living in that area, he would be very concerned about a well that was going in and digging it deep enough to collect enough water and storage to facilitate these other homes.

Ms. Mallek commented that that's why this project has not gone forward since 1978.

Mr. Benish said that the applicant could best address that point.

Mr. Dumler asked what the practical significance was of the limited flow rate and high storage requirements, as they are State regulations.

Mr. Benish explained that under this zoning the applicant's option is to provide a central system, which would be subject to this Board's approval and Health Department approval. He said that the process would be for the applicant to submit a central system proposal to the County Engineer, which would be reviewed by Community Development and Planning for its compliance with the Comp Plan as a public facility. In this particular case, staff has already determined its consistency because of prior action.

The Chair then opened the public hearing.

Mr. Michael Myers, of Dominion Engineering, on behalf of the applicant, addressed the Board. Mr. Myers said that the central sewer that was part of the original zoning for the 30 lots was an issue because of the quantity available not being enough to support the 29 units. Mr. Myers said that the applicant is proposing a "living machine system," which is a green technology to deal with the wastewater, and is proposing to use the effluent for irrigation purposes. He added that the applicant is going for one less lot than what was originally zoned.

Ms. Mallek clarified that the Board was dealing with the water only today, not the sewer.

Mr. Myers said that the applicant has prepared and submitted site plans to the County for the public water to be able to support the 29 units, with the issue being the inadequate water supply and the potential impact to neighboring properties.

Mr. Boyd asked Mr. Myers if the applicant could verify the fact that the wells would impact the groundwater table.

Mr. Myers responded that two wells drilled were a preliminary attempt to determine the groundwater level, and his understanding is that the results showed they were not adequate to support even one unit.

Mr. Rooker and Ms. Mallek commented that at least one house could be supported with well draw. Mr. Rooker said that six or seven units could likely be supported.

Mr. Myers commented that the applicant was not yet present and would be able to address the Board when he arrives.

Mr. Jack Marshall, speaking on behalf of 300 members of Advocates for a Sustainable Albemarle Population (ASAP), said that the staff report on this item is clear, thorough and persuasive in recommending that the request be denied. He said that it concludes that the request is not consistent with the principles, objectives and strategies of the Comp Plan for the provision of public water service.

Mr. Marshall said that he thinks this request is an example of what the Board can expect to see more of as the economy improves. An increasing number of developers, so they can make a buck, will try to convince the County to bend the thoughtful principles and strategies that have evolved in the community over the past few decades. He said that County residents have established in the Comp Plan revisions and in repeated opinion surveys that where growth occurred, particularly growth relying on public utilities, should be in designated development areas. Mr. Marshall stated that the growth areas, as revealed by the recent build-out analysis by staff, have the potential for tens of thousands of additional new residents. He asked the Board to respect residents' wishes and the words of the Comprehensive Plan. He asked the Board to stay steadfast and deny this request.

Mr. David Salzman said that he lives in Shadwell Estates. Mr. Salzman said that his parents were among the first residents, over 45 years ago, in Shadwell Estates. As a kid he played in the woods that are now underwater known as Keswick Lake. He said that as an adult he moved to Charlottesville, but then bought a house in Shadwell Estates when it became available. Shadwell Estates was built in the late 1960s to early 1970s, but meets today's standards. Mr. Salzman said that lots in the Shadwell Estates are about two acres and wooded, and of the 17 original units about half are occupied by original owners or their children. He stated that according to an article on the front page of The Daily Progress, 96.5% of County residents state that rural countryside is important to very important to quality of life; and 65.6% oppose changing the growth areas. In the same article, Mr. Rex Linville, of the PEC, stated that the biggest threat to the rural countryside is creeping development, or allowing small developments here and

there. He has heard that counting all the empty houses on the market, with the number already approved for the development and those potentially approved in growth areas, indicates that there are enough housing to last until 2040. He asked the Board why it would allow more creeping development into the rural areas.

Mr. Bill Perry said that he has lived in Shadwell Estates for over 47 years. Because it is a rural area, it has remained basically unchanged for this period of time. Mr. Perry said that he was submitting a petition signed by every homeowner in the Shadwell Estates area to oppose the extension of public water to the Keswick Lake Subdivision, and provided it to the Clerk for public record. The petition reads: "We, the undersigned residents of the above neighborhood oppose the extension of public water to Keswick Lake Subdivision for the following reasons: 1) Keswick Lake is in the rural area, about three miles from the nearest approved growth area; 2) the area is zoned "agricultural/forestal". Keswick Lake sits on the last strand of forest in the area; and 3) the Comprehensive Plan is designed to protect and preserve the County's rural atmosphere. While we recognize and respect a property owner's right to develop his/her property as allowed by law, we feel that it should be done within his/her own resources. We do not believe the County should be a party to the intrusion into the rural area and the destruction of our forests. We urge the Board of Supervisors to deny this application."

Mr. Perry said this is not a NIMBY (not in my back yard) opposition, but they do not think public water should be allowed to enter into the rural area solely to allow for a more dense development. The residents do respect the developer's right to develop his property as he can, but the County should not be a partner.

Mr. Rick Bowie said that he also is a resident of Shadwell Estates. When he first served on the Board of Supervisors, and a similar item to this one came before the Board, the Chairman at that time, Mr. Fisher, said "once the camel gets his nose in the tent, it is hard to keep the camel out". Mr. Bowie said this is two camels. The first refers to the property which was approved before more stringent zoning ordinances and thus was grandfathered. Mr. Bowie also said that the zoning was grandfathered, and that was PRD – which allows three or more units per acre, or 60-90 townhouses in this case, with water, sewer and a road that is doable. He stated that that in 1973 the first application for development of this property called for dense townhouse development. Secondly, there is 2.5 miles of open rural farmland and forestal areas from I-64 to Rivanna Village. Mr. Bowie noted that with water, any of those parcels could be developed to a high density commercial or residential area, and if water is granted to one parcel the rest will "drop like dominoes" and destroy one of the last remaining rural parts of the County. He urged the Board to deny the application. He said that in Shadwell there seem to be different aquifers, with each home getting a different amount but enough for each. Mr. Bowie stated that he does not believe the property in question to be on the same aquifer, but he is not certain.

Mr. Jeff Werner, of the Piedmont Environmental Council, addressed the Board. PEC is very concerned about development in the rural areas. The staff report states that there are no lots developed or platted on the subject parcels, no documented public hearing or safety issues regarding these parcels, and no evidence that a central system cannot safely and appropriately serve the development. Mr. Werner said that staff also contends that the proposal is not consistent with the principles, objectives and strategies of the Comp Plan. He stated that this is not for an existing development, but instead to allow for the development or the creation of additional lots in the rural areas. This is not a situation where there are existing units where the wells have gone dry or become contaminated. These parcels were acquired for speculative purposes of development and with that the gamble that there would be adequate well water. Mr. Werner said that the facts seemed to suggest that the site doesn't meet the speculative expectation, which is why the applicant came forth with this request. He was told that when the line was run to Glenmore, there was a promise it would not be tapped into. The question he has is how far away do you allow requests to go where there is public service running.

The applicant, Mr. Andrew Baldwin, next addressed the Board. Mr. Baldwin said that the project has taken a fairly drastic turn in the last two months in how they plan to approach the development. The approach will address many of the concerns that have been expressed here today. He requested that the Board defer the item to a later date so they can pull all the information together and come back to the Board at an appropriate time.

Mr. Rooker said that he would be in favor of accepting the deferral.

Mr. Boyd agreed.

Mr. Bowie readdressed the Board, stating that he has lived in Shadwell Estates for 33 years and for much of that time the residents have been going to public hearings on this plot of land. He does not know what else the applicant can add that has not been heard before so the residents would ask the Board to proceed with a decision.

The Chair then closed the public hearing and placed the matter before the Board.

Mr. Rooker said that while he is sensitive to Mr. Bowie's concern, this is not an item that has been deferred before.

Mr. Dumler stated that the proposed request has come before the Board twice before and been denied both times.

Mr. Cilimberg clarified that it has come before the Board twice in the last three years; once it was denied and once it was withdrawn.

Mr. Boyd said that he still is not opposed to the deferral if they can come back with a better plan.

Ms. Mallek pointed out that extending public water to this parcel does not pertain to the new plan regardless of how many lots are requested. She said that she would like to discuss the theory of extending the water service.

Mr. Thomas asked if the Board is in favor of denying the deferral.

Mr. Rooker said that Ms. Mallek wants to discuss the merits of the application prior to discussing that deferral.

Mr. Dumler stated that if the Board has no inclination to approve water extension, deferring it would not really matter.

Ms. Mallek said that she is not in favor of extending water to this area, per the information outlined in the staff report and the applicant's lack of information about the central system design. One well does not tell the Board anything about whether anything will work or not.

Mr. Boyd stated that this would signal the applicant to move ahead with a central well and a by-right development, which they could do. The applicant does not need to get Board approval to do that.

Ms. Mallek said that is their choice, but she does not feel the Board should feel backed into a corner. She added that they will have to come back with a better plan to make their own business model work.

Mr. Dumler said that the question is whether the Board should overturn a long-standing policy pertaining to extending the jurisdictional area to the rural areas. He said that he has not seen any evidence that there was a similar case that would require waiving that policy. He said that he is not particularly inclined at this point to overturn a long-standing policy to allow old zoning to go forward for residential development in the rural area along the Rivanna River, again, for all the reasons that were laid out in the staff report and for a bunch of other reasons – notwithstanding the public opposition to the project.

Mr. Boyd commented that they are not talking about overturning a long-standing policy.

Ms. Mallek said that extending water service to the rural area definitely is doing that.

Mr. Rooker asked Mr. Boyd to show him examples where there are existing structures in an area that is either not in the growth area and intended to be taken into the growth area.

Mr. Boyd stated that he does not know if the proposal the applicant comes back with would include that.

Mr. Rooker asked if the applicant returned with a plan, hypothetically, for 10 lots, would it require a new application for expansion of the jurisdictional area.

Mr. Snow asked if it would also require the applicant to pay new fees.

Mr. Davis responded that the first consideration would need to be whether the proposal was consistent with current zoning on the property, and if it allows for them to develop less than the maximum number of lots in a new configuration the only issue would be whether they would be required to have a central well system to support the reconfiguration or not. He said that if the new configuration requires them to have public water, then the request for the jurisdictional area would be the same unless the Board wanted to restrict the number of lots served.

Ms. Mallek said she thinks that all of the surrounding parcels will then come forth and make the same argument.

Mr. Rooker stated that he does not feel that the Board should overturn a long-standing policy. One of the limiting factors on development in the rural areas is water – and the Board has chosen in the past to consider water capacity, not just the number of development rights. He said that it is not unlike the Crozet sewer line, which goes through a long stretch of rural area before reaching Crozet – and it was built with the understanding that it would not be tapped into to support growth along the way.

He also stated that the developer has acknowledged that there is not sufficient water supply for a central system for the number of homes he had planned, so the question is whether the County would allow water into the rural area to increase density there. That is a decision that he is not aware this Board has ever made and he certainly is not willing to make that leap of policy change. Mr. Rooker said that the issue of wells affecting neighboring properties is moot because the applicant said they cannot do it. In addition there is a petition unanimously signed by people in the subdivision opposing the public water proposal. He stated that if the applicant came back with an argument that they can build eight or nine lots anyway, then the decision is whether to extend water there – and he might listen to that argument. Mr. Rooker said that he would not listen to an argument that allowed the applicant to increase density in the rural area by running public water there because it is a policy decision.

Mr. Boyd asked if he would be willing to accept the deferral.

Mr. Snow said that he does not want the applicant to start over with new fees, etc.

Ms. Mallek stated that the applicant has already used up staff time preparing for today which is what the fees are for. The fees are to recover some of the costs staff spent getting to this point. She said that she does not think it is right to go round and round with this again without requiring people to be thoughtful, plan ahead and do the fees.

Ms. Mallek said she was prepared to make a motion to deny the request for extension of water service.

Mr. Snow said that he would agree to the denial of the extension of the water service, but he does not want the applicant to have to start over from the beginning of the process.

Ms. Mallek stated that all that was advertised for today's meeting was extension of the water service.

Mr. Davis explained that the only matter before the Board is the application for extension of the jurisdictional area, and that fee is not substantial.

Mr. Benish noted that the fee is \$317.

Mr. Davis said that staff time has exceeded that amount to date, and now the applicant has indicated that he wants to change the nature of the request. He stated that if the Board denies the request today, the applicant can apply again with a new proposal and a new fee, with the Board's consideration being whether or not to go forth to public hearing with that different proposal. He noted that it has nothing to do with the development fees for rezoning, and subdivision fees. The subdivision fees have already been paid – with that application unaffected by this action. He added that there is no zoning application before the County on this matter. Mr. Davis added that there is no reason to act on a deferral, there could simply be a motion to deny the request, if the Board is not interested in the deferral.

**Motion** was then offered by Mr. Dumler to deny the request to amend the Albemarle County Service Authority Jurisdictional Area Boundary to provide water service to Tax Map 79, Parcel 23 and Tax Map 79C, Parcel 1. Ms. Mallek **seconded** the motion. Roll was called and the vote carried by the following recorded vote:

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

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Agenda Item No. 10. **Public Hearing: Wayland Easement.** To consider granting a deed of exchange releasing and abandoning certain water rights, including easements, across Parcel ID 03900-00-00-029C0, adjacent to Mint Springs Park, in exchange for a limited conservation easement. *(Advertised in the Daily Progress on March 26, 2012.)*

Mr. Davis summarized the following executive summary which was forwarded to Board members:

Parcel 39-29C, an 8.5-acre parcel adjacent to Mint Springs Park is encumbered by several deeds giving the County water rights over the property. These water rights were acquired by deeds dated April 30, 1947 and April 1, 1952 in anticipation of using Mint Springs as a water supply. The present lakes at Mint Springs Park serve only recreational purposes and do not serve as a public water supply. The County has no present or future plans to use the lakes at Mint Springs Park as a water supply.

The current owners of Parcel 39-29C are interested in selling the property to a third-party. As part of that transaction, the current owners and prospective purchasers are requesting the release of the County's remaining water rights.

While County property (including water rights) may be disposed of, they may not simply be donated. Therefore County staff has suggested releasing the County water rights in exchange for a limited conservation easement on Parcel 39-29C. The proposed conservation easement would limit the development rights of Parcel 39-29C and create a wooded buffer along an existing stream adjacent to Mint Springs Park. This exchange would benefit the County by improving the water quality near Mint Springs Park and downstream, while also benefitting the current owners and prospective purchasers, who seek the release of the County's water rights. Representatives of both the current owners and prospective purchasers are agreeable to the basic terms of the proposed exchange. An agreement has been reached as to the terms of the exchange and language of the proposed deed of exchange is close to being finalized.

No budget impact from this proposed exchange is expected.

Following the public hearing, staff recommends that the Board:

- 1) Approve the proposed acquisition of a limited conservation easement over Parcel 39-29C in exchange for the release of the County's water rights previously acquired by deeds dated April 30, 1947 and April 1, 1952 over that property.
- 2) Authorize the County Executive to execute all documents necessary for completing the exchange, in a form approved by the County Attorney.

Mr. Davis added that the County determined that the development potential was important to the County and that the Park has resources on it that should be protected. The County negotiated with the property owner that in exchange for the water rights that it obtained, if it would get a conservation easement over the property to protect the 8.5 acres from more intensive development than provided under the easement that would be a proper exchange. Mr. Davis said that a deed of exchange has been negotiated which would relinquish the property rights except for the common law water rights over the stream, and would grant a conservation easement over the property that would limit the property to a one lot (the 8.5 acres) and would allow the owner to have development potential of building up to two structures on the property. He stated that it would require in perpetuity a 100-foot stream buffer on the stream running along the property and other typical conservation easement measures.

Mr. Davis stated that if the Board agrees with the request, staff asks that it adopt the resolution provided as an attachment to the executive summary which would authorize the transaction. He noted that there may be a few small tweaks to the deed before the final recording, but the substantive provisions are in the document attached to the executive summary. Mr. Davis said staff would also recommend that the Board authorize the County Executive to execute the deed of exchange.

Mr. Dumler asked if it was known how much the County paid for this originally, and asked if they were getting a good deal with this exchange.

Mr. Davis responded that he does not have the exact purchase amount, but staff analysis indicated that this was a fair exchange.

The Chair opened the public hearing.

Mr. Ed Bain addressed the Board on behalf of the applicants, Charles and Sandra Wayland. Mr. Bain said that there is definitely some history to this property and the establishment of Mint Springs. He was present to answer any questions.

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

Mr. Rooker commented that this was an excellent result.

**Motion** was offered by Ms. Mallek to adopt the proposed resolution approving the Deed of Exchange involving Parcel 39-29C. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

#### **RESOLUTION APPROVING DEED OF EXCHANGE INVOLVING PARCEL 39-29C**

**WHEREAS**, the County has received a request to release its water rights previously acquired by deeds dated April 30, 1947 and April 1, 1952 over Tax Map Parcel 39-29C, adjacent to Mint Spring Park; and

**WHEREAS**, the current owners and prospective purchasers of Parcel 39-29C are willing to convey a limited conservation easement to the County in exchange for the County's release of those water rights over that property.

**NOW, THEREFORE BE IT RESOLVED** that the Board of Supervisors hereby approves the acquisition of a limited conservation easement over Parcel 39-29C in exchange for the release of the County's water rights previously acquired by deeds dated April 30, 1947 and April 1, 1952 over that property, and further authorizes the County Executive to execute all documents necessary for completing the exchange.

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Agenda Item No. 11. **Public Hearing: FY 2012 Budget Amendment and Appropriations.**  
(Advertised in the Daily Progress on March 25, 2012.)

Ms. Lori Allshouse, Director of Budget and Performance Management, summarized the following executive summary which was forwarded to Board members:

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

The total of the new requested FY 2012 appropriations, itemized below, is \$4,128,498.89. Because the cumulative amount of the appropriations exceeds one percent of the currently adopted budget, a budget amendment public hearing is required.

The proposed increase of this FY 2012 Budget Amendment totals \$4,128,498.89. The estimated expenses and revenues included in the proposed amendment are shown below:

**ESTIMATED EXPENDITURES**

General Fund	\$ 306,183.48
Special Revenue Funds	\$ 180,260.00
School Fund	\$ 122,515.45
School Programs	\$ 1,621,964.10
Capital Improvements Funds	\$ 828,494.82
ECC	\$ 1,069,081.04
<b>TOTAL ESTIMATED EXPENDITURES – All Funds</b>	<b>\$ 4,128,498.89</b>

**ESTIMATED REVENUES**

Local Revenue (Non-Tax)*	\$ 161,825.39
State Revenue	\$ 856,678.00
Federal Revenue	\$ 640,894.43
Loan Proceeds	\$ 20,000.00
General Fund Balance	\$ 200,000.00
Other Fund Balances	\$ 2,249,101.07
<b>TOTAL ESTIMATED REVENUES – All Funds</b>	<b>\$ 4,128,498.89</b>

*\*The local revenue in this amendment includes \$63,517.28 in donations and contributions, \$34,600.00 in grants, \$32,500.00 in fines, and \$31,208.11 in miscellaneous local revenue.*

The budget amendment is comprised of thirty-one (31) separate appropriations as follows, 24 of which have already been approved by the Board as indicated below:

Approved November 2, 2011:

- One (1) appropriation (#2012034) totaling \$18,045.11 for various school programs;
- One (1) appropriation (#2012035) totaling \$91,974.00 for the replacement of various servers, modems and batteries at the Emergency Communications Center (ECC); and
- One (1) appropriation (#2012036) totaling \$52,567.82 for various Capital projects.

Approved December 7, 2011:

- One (2) appropriations (#2012040 and #2012042) totaling \$70,150.81 for various school programs;
- One (1) appropriation (#2012041) totaling \$49,175.00 for the State Criminal Alien Assistance Program;
- One (1) appropriation (#2012043) amending the scope of a Police grant approved and appropriated on October 5, 2011 as part of appropriation #2012027. This adjustment will not increase the total budget;
- One (1) appropriation (#2012044) totaling \$60,000.00 for repairs to the Emergency Communication Center's Bi-Directional Amplifiers system; and
- One (1) appropriation (#2012045) allocating \$58,000.00 from budgeted contingency funds for JAUNT. This adjustment will not increase the total budget.

Approved January 4, 2012:

- One (1) appropriation (#2012046) totaling \$18,008.48 for the completion of bonded improvements at Abington Place;
- One (1) appropriation (#2012047) totaling \$203,447.18 for school division programs;
- One (1) appropriation (#2012048) totaling \$102,000.00 for a Virginia Department of Emergency Management grant; and
- One (1) appropriation (#2012049) totaling \$133,087.00 for the Firearms Range.

Approved January 11, 2012:

- One (1) appropriation (#2012050) totaling \$200,000 for the Claudius Crozet Park Aquatics and Recreation Center Project.

Approved February 1, 2012:

- One (1) appropriation (#2012052) totaling \$5,110.00 for a Byrne Grant to support one-time equipment purchases at Offender Aid and Restoration (OAR); and
- One (1) appropriation (#2012053) totaling \$6,500.00 for contributions to the Sheriff Department's volunteer reserves programs.

Approved March 7, 2012:

- One (1) appropriation (#2012051) totaling \$29,540.00 for Scottsville Library Roof Maintenance;
- One (1) appropriation (#2012054) totaling \$13,300.00 to install security windows at Albemarle County Police Department;
- Three (3) appropriations (#2012055, #2012056, and #2012057) totaling \$1,397,393.47 for various school division programs and projects;
- One (1) appropriation (#2012058) totaling \$145,150.00 for a grant awarded to the Commission on Children and Families from the U.S. Substance Abuse and Mental Health

Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP);  
 and

- One (1) appropriation (#2012059) totaling \$30,000 for a Community Development Block Grant (CDBG) Planning Grant awarded to the County.

Approved March 14, 2012:

- One (1) appropriation (#2012060) totaling \$800,000.00 for reimbursements to be paid to the Lewis and Clark Exploratory Center for its Project costs.

The seven (7) new appropriations requested for Board approval on April 4, 2012 are as follows:

- One (1) appropriation (#2012061) to extend funding for a housing counselor position through the end of the fiscal year. This adjustment will not increase the total budget;
- Three (3) appropriations (#2012062, #2012064, and #2012065) totaling \$55,442.98 for various school division programs and projects;
- One (1) appropriation (#2012063) totaling \$32,500.00 to pay court-appointed attorney fees;
- One (1) appropriation (#2012066) reallocating \$20,000.00 for the emergency elevator replacement at the Central Branch Library. This adjustment will not increase the total budget; and
- One (1) appropriation (#2012067) totaling \$815,107.04 for several Emergency Communication Center requests.

After the public hearing, staff recommends approval of the FY 2012 Budget Amendment in the amount of \$4,128,498.89 and approval of appropriations #2012061, #2012062, #2012063, #2012064, #2012065, #2012066, and #2012067 to provide funds for various local government and school projects and programs as described in Attachment A.

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<b>Appropriation #2012061</b>		<b>\$0.00</b>
Revenue Source:	Transfer from CDBG Funds	\$ 11,155.00
	Transfer from Comm. Dev. Fund	\$ 22,000.00

This request is to provide funding for six months of staffing costs totaling \$33,155.00 for the County's homebuyer counselor position. Funding will be provided utilizing CDBG funds and funding from loan repayments from the Down Payment Assistance Program. This position was eliminated from the General Fund budget on December 31, 2010, but has been maintained with a variety of grant sources since then. Duties for the position have been changed, and the position devotes much of the time to grant management and assistance with one active and one proposed CDBG grant. This appropriation will fund the position through the end of FY 12. No future funds are anticipated to maintain this position. Because this appropriation is from existing funding, it will not increase the total County budget.

<b>Appropriation #2012062</b>		<b>\$9,572.28</b>
Revenue Source:	Contributions	\$ 5,072.28
	Miscellaneous Local	\$ 4,500.00

This request is to appropriate various School Division requests as approved by the School Board on February 9, 2012. This appropriation request of \$9,572.28 includes the following:

- A donation received by Greer Elementary School in the amount of \$5,072.28 from the Darden School Student Association at UVa. The donor requested that this contribution be used to help with enrichment program costs at Greer Elementary School.
- Funding from Western Albemarle High School (WAHS), which is reimbursing its school division budget in the amount of \$4,500.00. These local funds are being provided to compensate the County for a boat and accessories purchased for the Western Albemarle Rowing Club. The funds were raised by the Rowing Team and came from their Activity Accounts at WAHS. The Rowing Club obtained a Hudson boat, oars, a boat cover, a roof rack with fastening hardware, a speed coach, and straps.

<b>Appropriation #2012063</b>		<b>\$32,500.00</b>
Revenue Source:	County Fines	\$ 32,500.00

This request is to appropriate \$32,500.00 for Court-appointed attorney's fees utilizing County fines revenues. Many offenses, especially traffic offenses, can be cited as violations of either state law or County ordinance. When this option exists, citing violators under the County ordinance allows the County to collect the resulting fines. However, under this arrangement, the County is also responsible for paying the defendants' Court-appointed attorneys' fees, which may or may not be reimbursed later. Ultimately, the revenues collected in fines far outweigh the costs incurred in unreimbursed attorneys' fees. In recent years, revenues from County fines have increased dramatically, but partly as a result, Court-appointed attorneys' fees have also exceeded budget. The present supplemental appropriation request of \$32,500.00 is to pay Court-appointed attorneys' fees incurred, but not yet paid this year. The recent increase in both fines collected and attorneys' fees incurred will be reflected in future budgets.

<b>Appropriation #2012064</b>		<b>\$41,278.35</b>
Revenue Source:	Contributions	\$ 33,724.86
	Miscellaneous Local	\$ 7,553.49

This request is to appropriate various School Division requests as approved by the School Board on February 23, 2012. This appropriation request of \$41,278.35 includes the following:

**Contributions**

- Cale Elementary School received donations totaling \$23,741.50 from the Cale PTO. The donor has requested that this contribution be used to help fund various programs at Cale, such as the Dalmatian musical, Kids Night Out (month of November), Triple C field trip, and various miscellaneous educational and recreational supplies for the entire School.
- Murray High School received a donation in the amount of \$250.01. The donor has requested that this contribution be used to help with any educational expenses at Murray High School.
- Henley Middle School received a donation in the amount of \$807.38 from Henley's Parent and Teacher Support Organization. The donor has requested that their contribution be used to help fund the "Enrichment Time before 9" program for the month of December and January at Henley Middle School. These local funds are from community members comprised of parents and teachers at Henley Middle School.
- Meriwether Lewis Elementary School received a donation in the amount of \$6,000.00 from the Meriwether Lewis PTO. The donor has requested that this contribution be used to help with any Book Room expenses at Meriwether Lewis Elementary School.
- Red Hill Elementary School received a donation in the amount of \$825.97 from the Red Hill PTO. The donor has requested that this contribution be used to help with purchasing gym mats at Red Hill Elementary School.
- Scottsville Elementary School received a donation in the amount of \$2,100.00 from the Scottsville PTO. The donor has requested that this contribution be used to help with Triple C field trip expenses at Scottsville Elementary School.

**Miscellaneous Local Revenue**

- Western Albemarle High School (WAHS) is reimbursing its School Division budget in the amount of \$4,412.00. These local funds are to compensate the School Division for the purchase of 1,200 student agendas from School Specialty. The funds came from the Activity Accounts at WAHS.
- Albemarle High School (AHS) is reimbursing its School Division budget in the amount of \$3,000.00. These local funds are to compensate the School Division for District Band Honorariums that were paid through their operating budget. The funds came from the Activity Accounts at AHS.
- Albemarle High School (AHS) is reimbursing its School Division budget in the amount of \$141.49. These local funds are to compensate the School Division for expenses from the drama club and strings activities. The funds came from the Activity Accounts at AHS.

<b><u>Appropriation #2012065</u></b>		<b><u>\$4,592.35</u></b>
Revenue Source:	Miscellaneous Local	\$ 4,592.35

This request is to appropriate various School Division requests as approved by the School Board on March 8, 2012. This appropriation request of \$4,592.35 includes the following:

- Albemarle High School (AHS) is reimbursing its School Division budget in the amount of \$3,038.25. These local funds are to compensate the School Division for expenses pertaining to a choral concert on February 10 – 11, 2012. The funds came from the Activity Accounts at AHS.
- Jack Jouett Middle School is reimbursing its School Division budget in the amount of \$1,554.10. These local funds are to compensate the School Division for expenses pertaining to field trips at Jack Jouett Middle School. The funds came from the Activity Accounts at Jack Jouett Middle School.

<b><u>Appropriation #2012066</u></b>		<b><u>\$0.00</u></b>
Revenue Source:	Transfer from Pantops Sidewalk	\$ 20,000.00

This request reallocates \$20,000.00 in CIP funding currently available in the completed Pantops Route 250 Sidewalk project account to help cover the County's share of the emergency elevator replacement at the Central Branch Library which is jointly owned by the City and the County. The Pantops sidewalk project was completed in December and \$10,500 will continue to remain in the Pantops account per an established purchase order for Pantops sidewalk drainage improvements. The emergency elevator replacement project is anticipated to begin this spring and the total project cost is estimated to be \$195,000.00 with the County's share being \$97,500.00. The additional \$77,500.00 in County funding will be provided utilizing \$47,500 in available FY 12 Library maintenance funds and \$30,000 in FY 13 Library maintenance funds. Because this \$20,000.00 appropriation is from existing funding, it will not increase the total County budget.

<b><u>Appropriation #2012067</u></b>		<b><u>\$815.107.04</u></b>
Revenue Source:	ECC Fund Balance	\$ 815.107.04

At its March 15, 2012 meeting, the ECC Management Board approved the following appropriations of funds and is requesting that the County, acting as fiscal agent for the ECC, make an appropriation from ECC's available fund balance as follows:

- \$21,256.08 for the costs of salary and benefits for the new Emergency Management Coordinator during a transition period. This funding will cover the time period that the new employee will be working with the current retiring Emergency Management Coordinator.
- \$97,620.96 for the lease of the Carters Mountain Tower site. The funding is to fulfill the ECC's obligation under the previous lease, which had been under billed over the last ten years.
- \$696,230.00 for the radio system augmentation project to provide better coverage for system users in the Scottsville, Howardsville, Schuyler and Blackwell Hollow areas of the County. This funding has been held in reserve for this project until ECC could procure the additional 800 MHz frequencies needed to allow them to move forward with project completion. The first part of the project will start in the Scottsville area.

The Chair opened the public hearing.

No one came forward to speak, so the Chair closed the public hearing and the matter was placed before the Board.

**Motion** was then offered by Mr. Rooker to approve the FY2012 budget amendment in the amount of \$4,128,498.89 and to approve Appropriations #2012061, #2012062, #2012063, #2012064, #2012065, #2012066 and #2012067. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

							APP #2012-061 DATE 04/04/2012 BATCH NAME
<b>COUNTY OF ALBEMARLE APPROPRIATION</b>							
<b>EXPLANATION:</b> Grant funding to cover 1/2 year of housing counselor position							
<b>ACCOUNT NUMBER</b>							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	1000	51000	351000	510312	9999	8,000.00	Transfer from CDBG-Oak Hill
3	1000	51000	351000	510313	9999	3,155.00	Transfer from CDBG-AHIP
4	1000	81030	481030	110000	1008	23,963.00	Salaries
4	1000	81030	481030	210000	1008	1,833.00	FICA
4	1000	81030	481030	221000	1008	3,628.00	VRS
4	1000	81030	481030	231000	1008	3,523.00	Health Insurance
4	1000	81030	481030	232000	1008	141.00	Dental Insurance
4	1000	81030	481030	241000	1008	67.00	Group Life Insurance
4	1000	81030	481030	563150	1008	(22,000.00)	Community Development Loan Fund
4	1219	81030	481030	300205	1008	(8,000.00)	CDBG-Oak Hill Admin Svcs
4	1219	81030	493010	930009	1008	8,000.00	Transfer to General Fund
4	1224	81031	481030	300205	1008	(3,155.00)	CDBG-AHIP Admin Svcs
4	1224	93010	493010	930009	9999	3,155.00	Transfer to General Fund
<b>TOTAL</b>						<b>22,310.00</b>	

							APP #2012-062 DATE 04/04/2012 BATCH NAME
<b>COUNTY OF ALBEMARLE APPROPRIATION</b>							
<b>EXPLANATION:</b> Appropriations from the School Board meeting on February 9, 2012							
<b>ACCOUNT NUMBER</b>							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	2000	62000	318100	181109	6599	5,072.28	Contribution
3	2000	62000	318000	189900	6599	4,500.00	Miscellaneous Revenue
4	2000	62204	461101	601300	6104	5,072.38	Ed/Rec Supplies
4	2000	62302	461105	800100	6302	4,500.00	Machinery/Equipment - New
<b>TOTAL</b>						<b>19,144.66</b>	

							APP #2012-063 DATE 04/04/2012 BATCH NAME
<b>COUNTY OF ALBEMARLE APPROPRIATION</b>							
<b>EXPLANATION:</b> Funds to reimburse General District Court for payments to court appointed attorneys							

ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
4	1000	21040	421040	312101	1002	34,000.00	Court Appointed Attorney Fees
4	1000	21020	421020	312100	1002	(1,500.00)	Prof. Ser. Legal
3	1000	14000	314000	140101	1000	32,500.00	County Fines
<b>TOTAL</b>						<b>65,000.00</b>	

<b>COUNTY OF ALBEMARLE APPROPRIATION</b>							APP #2012-064 DATE 04/04/2012 BATCH NAME
<b>EXPLANATION:</b> Appropriations from the School Board meeting on February 23, 2012							

ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	2000	62000	318000	189900	6599	7,553.49	Miscellaneous Revenue
3	2000	62000	318100	181109	6599	33,724.86	Contributions
4	2000	62303	461101	601300	6303	250.01	Murray - Ed/Rec Supplies
4	2000	62214	461101	160110	6114	1,287.50	Cale - Stipends/Academic Ldrshp
4	2000	62214	461101	210000	6114	284.00	Cale - FICA
4	2000	62214	461101	160300	6114	100.00	Cale - Stipends/Curr. Dev.
4	2000	62214	461101	301210	6114	1,500.00	Cale - Contract Services
4	2000	62214	461101	420100	6114	4,000.00	Cale - Field Trip Mileage
4	2000	62214	461101	601300	6114	14,570.00	Cale - Ed/Rec Supplies
4	2000	62302	461101	601300	6302	4,412.00	WAHS - Ed/Rec Supplies
4	2000	62207	461101	800200	6107	825.97	Red Hill - Furniture/Fixtures
4	2000	62301	461101	601300	6301	16.49	AHS - Ed/Rec Supplies
4	2000	62206	461101	601200	6106	6,000.00	Meriwether Lewis - Books/Subs.
4	2000	62209	461101	301210	6109	2,100.00	Scottsville - Contract Services
4	2000	62301	461101	301210	6301	3,125.00	AHS - Contract Services
4	2000	62252	461101	160300	6252	750.00	Henley - Stipends/Curr. Dev.
4	2000	62252	461101	210000	6252	57.38	Henley - FICA
4	2000	62214	461101	800700	6114	2,000.00	Cal - ADP Equipment
<b>TOTAL</b>						<b>82,556.70</b>	

<b>COUNTY OF ALBEMARLE APPROPRIATION</b>							APP #2012-065 DATE 04/04/2012 BATCH NAME
<b>EXPLANATION:</b> Appropriations from the School Board meeting on March 8, 2012							

ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	2000	62000	318000	189900	6599	4,592.35	Miscellaneous Revenue
4	2000	62253	461101	210000	6253	67.09	FICA
4	2000	62253	461101	137100	6253	731.36	PT/Wages - Bus Driver
4	2000	62253	461101	420100	6253	755.65	Field Trip Mileage
4	2000	62301	461101	210000	6301	38.25	FICA
4	2000	62301	461101	160300	6301	500.00	Stipends-Staff/Curr. Dev.
4	2000	62301	461101	301210	6301	2,500.00	Contract Services
<b>TOTAL</b>						<b>9,184.70</b>	

<b>COUNTY OF ALBEMARLE APPROPRIATION</b>							APP #2012-066 DATE 04/04/2012 BATCH NAME
<b>EXPLANATION:</b> Central Library Elevator							

ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
4	9010	41350	441200	950516	9999	(20,000.00)	Pantops sidewalk
4	9010	73025	473010	800949	7146	20,000.00	Central Library Maint/CIP
<b>TOTAL</b>						<b>0.00</b>	

<b>COUNTY OF ALBEMARLE APPROPRIATION</b>							APP #2012067 DATE 04/04/2012 BATCH NAME
<b>EXPLANATION:</b> ECC Appropriations							

ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION

3	4100	51000	351000	510100	9999	21,256.08	App fund Balance
4	4100	31045	435600	110000	1003	15,516.16	
4	4100	31045	435600	210000	1003	1,155.95	
4	4100	31045	435600	221000	1003	2,349.15	
4	4100	31045	435600	241000	1003	172.23	
4	4100	31045	435600	231000	1003	1,749.99	
4	4100	31045	435600	232000	1003	69.00	
4	4100	31045	435600	270000	1003	243.60	
3	4110	51000	351000	510100	9999	793,850.96	App fund Balance
4	4110	31060	435600	540000	1003	97,620.96	
4	4110	31060	435600	312105	1003	81,400.00	
4	4110	31060	435600	800305	1003	234,800.00	
4	4110	31060	435600	300204	1003	800.00	
4	4110	31060	435600	800150	1003	332,300.00	
4	4110	31060	435600	999999	1003	46,930.00	
<b>TOTAL</b>						<b>1,630,214.08</b>	

Agenda Item No. 12. **Public Hearing: SP-2011-00031. Greenbrier Emergency Animal Hospital (Sign #52).**

**PROPOSED:** Request to amend SP200900030 to extend veterinary services to include specialty medical care and expand the space in the existing building. The emergency animal hospital use remains. No residential units proposed.

**ZONING CATEGORY/ GENERAL USAGE:** HC Highway Commercial – commercial and service; residential by special use permit (15 units/acre) and C-1 Commercial – retail sales and service; residential by special use permit (15 units/acre).

**AIRPORT IMPACT AREA:** Yes.

**ENTRANCE CORRIDOR:** Yes.

**SECTION:** Sections 22.2.2.5 and 24.2.2.4 of the Zoning Ordinance which allows for veterinary office and hospital uses.

**COMPREHENSIVE PLAN LAND USE/DENSITY:** Office/R&D/Flex/Light Industrial – commercial, professional office; research and development, design, testing of prototypes; manufacturing, assembly, packaging in Neighborhood 1 of the Places 29 Master Plan.

**LOCATION:** 370 Greenbrier Dr. approximately 675 feet west of the intersection of Greenbrier Drive and Route 29 (Seminole Trail).

**TAX MAP/PARCEL:** 061W0-01-0A-00500.

**MAGISTERIAL DISTRICT:** Rio.

*(Advertised in the Daily Progress on March 19 and March 26, 2012.)*

Mr. Cilimberg said that this is a request to expand the operations at the current facility located on Greenbrier Drive, including a designated dog-walking area, which requires amendment to previously approved conditions. He said that the parcel has split zoning, but the building involved is to the rear and currently used in part for services. The request will allow expansion into the entire building. Mr. Cilimberg stated that staff has no objections to the request. The proposal is compatible with the master plan. Another favorable aspect is that it is a service in the development area. There are no unfavorable aspects. He said that staff and the Commission have recommended approval with four conditions.

Mr. Boyd asked why this request was before the Board. Mr. Cilimberg responded that the prior approval was only for part of the space, as other parts of the building were being used for other uses.

Mr. Rooker said that veterinary operations were considered special uses, so establishing or expanding the use requires a formal revision.

Mr. Boyd said he considers this type of special use as being counter to the County's Economic Vitality Plan, as it is a common sense use.

Ms. Mallek said that with veterinary operations, there are questions that need to be answered and operations that should be checked out.

Mr. Cilimberg stated that veterinary clinics operating in mixed use zoning have been acceptable, but there have been a few issues with a few locations about how the particular use compliments other uses and concerns by other businesses – which is why it is a special use permit. The expansion to the entire building requires the amendment.

Mr. Rooker said that Mr. Boyd's objection is to this being a special use. He recalled the request before the Board for a veterinary operation going in near Airport Road and there were a number of people from the Airport Acres community who came forth and objected – so the Board put in conditions on the application to ensure that noise issues were addressed. A special use permit allows the Board to add conditions. In a case like this noise is probably not an issue because it is adjoined by commercial activity. There are different circumstances depending on where these things are going in and who is around them.

The Chair then opened the public hearing.

Speaking on behalf of the applicant, Ms. Jo Higgins said that what might help businesses would be reducing the fees for a revised special permit – rather than paying the full fee. She stated that this special permit was intended to simplify the conditions and allow use of the entire building. She said that

she did a lot of research on this prior to the application to synthesize previous proposals. Ms. Higgins said that the only real change was to remove the restriction of the square footage inside the building, as well as a condition pertaining to hours. There is an existing tenant that opens at night and remains open until the morning for emergencies. This use is going to be for surgeons and specialty veterinarians that will be attached, at the beginning, with the emergency veterinarian suite, not a normal wellness veterinarian. Over time as different specialties are added, the current tenants will be displaced as these leases expire. She stated that the dog walk area is for dogs arriving at the clinic, and is not intended for unsupervised pets. There will be signage provided in this area and possibly a bag dispenser so that people can walk in the area and pick up after their dog, and then go into the building.

Ms. Higgins said another issue mentioned in the staff report was parking. As tenants are displaced, they will leave, and each time a new tenant comes in they have to get a zoning clearance. The parking spaces for that use have to be verified so that will be covered. The parking is based on the net use of the animal housing area so that should not be an issue.

Ms. Higgins said that the applicant asks for the Board's favorable approval of the conditions that the Commission unanimously approved. Ms. Higgins added that there is limited residential area, but within one-quarter mile this might provide walk-in opportunities. She emphasized that more serious surgeries and things like chemotherapy will be offered here. In the past someone would have to go to Richmond, Blacksburg, or Northern Virginia.

Mr. Rooker commented that it is a real service to the community.

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

**Motion** was offered by Mr. Thomas to approve SP-2011-0031 subject to the four conditions as presented. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

**(The approved conditions are set out in full below:)**

1. There shall be no outside exercise area. However, walking of animals is permitted and shall be delineated with either post and cable or fencing to an area in the northwest corner of the parcel as shown on the attachment (described in 3);
2. No animals are to be confined outside;
3. Use is limited to 370 Greenbrier Drive as shown on the attached Land Title Survey Showing Parcel B-1 Section One Westfield created by B. Aubrey Huffman and Associates, LLC, dated April 13, 2005; and
4. No overnight boarding shall be permitted, except for those animals under emergency medical care.

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Agenda Item No. 13. **Public Hearing: SP-2011-00029. VERIZON WIRELESS Keswick Tier III Personal Wireless Service Facility (Sign #49).**

**PROPOSED:** Special use permit amendment request to SP200400039 because the conditions of approval limit the antennas number and size on the tower to those that were shown on the original construction drawing. The proposal consists of collocation of three new antennas and relocation of three antennas in an existing array on an existing tower, as well as the location of 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 service facilities in the RA Zoning District.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas 2 – 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: 4464 Richmond Rd. Keswick.

TAX MAP/PARCEL: 09400-00-00-041A1.

MAGISTERIAL DISTRICT: Scottsville.

*(Advertised in the Daily Progress on March 19 and March 26, 2012.)*

Mr. Cilimberg said that this was an amendment to a previously approved special use permit for the tower near Boyd Tavern. The existing tower is located off of I-64 and was approved for specific arrays. He said that the area on the lowest part of the tower would have the current array replaced with a similar array but more antenna and further extension from the structure of the tower itself. Mr. Cilimberg pointed out the existing antenna on the tower and the proposal, and the increase in the distance from the tower to the antenna.

He stated that there are two modifications involved with this request, resulting in a new LTE antenna array and very minimal visual difference as compared to the existing condition. Mr. Cilimberg said there would be no height increase. The County's Design Planner has reviewed this for its location in the Entrance Corridor. The proposed 24-inch standoff distance is not expected to create additional negative visual impacts. The applicant has indicated that the only viable alternative to the standoff distance would be a full-sectored array.

Mr. Cilimberg said that unfavorable factors are that the standoff distance is more than allowed, but staff feels it is the best solution. Staff and the Planning Commission have recommended approval of the facility. Mr. Cilimberg said the approval includes modifications of two sections of the ordinance as part of that action and one condition of approval as listed.

Mr. Rooker noted that this was a pre-cell tower ordinance approval and would not have been approved once the cell tower ordinance was adopted.

The Chair opened the public hearing.

Ms. Lori Schweller, an attorney with LeClair Ryan, representing Verizon Wireless, said that they are requesting three new antennae, not a new array, for the purpose of adding the LTE service to this facility. Ms. Schweller said that the other change to the array is that the distance from the tower itself would not be within the 12 inches that the ordinance specifies for flush-mounted antennae. Because of the way the mount has a separation for the two antennae it ends up being 24 inches to the farthest point to the tower.

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

**Motion** was offered by Mr. Dumler to approve SP-2011-00029 subject to the one condition as recommended and to approve modification of Sections 5.140(c)(3) and 5.140(c)(3)ii for reasons 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 vote:

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

NAYS: None.

**(The condition of approval is set out below:)**

1. All work shall be done in general accord with what is described in the applicant's request and conceptual plan, entitled "Keswick Johnson Property 4460 Richmond Road Keswick, VA Existing Co-location LTE (4G) Upgrade" prepared by Stuart P. Patterson and dated 2/15/12.

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**(Note:** The Board recessed their meeting at 10:51 a.m. and reconvened at 11:07 a.m.)

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Agenda Item No. 14. **Beard Crozet Property:** Water Protection Ordinance – Appeal of Decision by the Program Authority Under County Code § 17-321.

The executive summary forwarded to Board members stated that Beard Enterprises LLC ("Beard") requested that the Department of Community Development, which administers the Water Protection Ordinance (County Code Chapter 17) as its "Program Authority," authorize it to establish parking spaces and a stormwater management facility in the stream buffer on Tax Map and Parcel Number 056A1-01-00-12200 (the "Parcel") as provided under County Code § 17-321 (Attachment A). The Parcel is 0.64 acres in size, zoned Downtown Crozet District (DCD) and currently has no improvements on it. The Parcel is subject to a portion of a 100-foot stream buffer that originates from an off-site stream behind the Parcel. The Program Authority authorized the stormwater management facility, but not the parking spaces, to be established in the stream buffer (Attachment B). The Program Authority's reason to not authorize the parking spaces was because those spaces that would be located in the stream buffer were in excess of the number of spaces required by the Zoning Ordinance, and therefore, were not necessary to allow a reasonable use of the lot.

Beard has appealed the Program Authority's decision regarding the parking spaces under County Code § 17-311 (Attachment C). County Code § 17-311(B) provides that, on an appeal, "the board of supervisors shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the board to be necessary for a complete review of the matter." County Code § 17-311(B) also provides that the board "may affirm, reverse or modify the program authority's action."

County Code § 17-319 declares that stream buffers retard runoff, prevent erosion, filter nonpoint source pollution from runoff, moderate stream temperature, and provide for the ecological integrity of stream corridors and networks. County Code § 17-317(D) provides that each "stream buffer shall be maintained and incorporated into the design of the land development to the fullest extent possible."

County Code § 17-321 allows the Program Authority to authorize development in a stream buffer for limited purposes, and it provides in relevant part:

Development in a stream buffer may be authorized by the program authority in the circumstances described below, provided that a mitigation plan is submitted to, and approved, by the program authority pursuant to section 17-322:

1. on a lot within the fifty (50) horizontal feet of stream buffer that is the most landward (furthest from the stream) **for necessary infrastructure to allow reasonable use of the lot**. In all cases under this paragraph, any new building site and sewage disposal system shall be located outside the stream buffer; (boldface added)

The terms "necessary" and "reasonable" are fundamental to the Program Authority's decision. In the context of County Code § 17-321 and this appeal, "necessary" means "that which cannot be done without," "essential" or "indispensable" and "reasonable" means "not excessive." *Webster's Third New International Dictionary (2002)*. Because Beard could provide sufficient parking for its proposed use to satisfy the Zoning Ordinance without locating additional parking spaces within the stream buffer, the Program Authority determined that the additional parking spaces were not necessary "to allow reasonable use of the Parcel."

The Program Authority's decision as to what is reasonable in this case is consistent with its longstanding interpretation of County Code § 17-321(1). The Program Authority's decision is also consistent with the directive in County Code § 17-103 in that, because the Water Protection Ordinance "protects paramount public interests," it is to be "liberally construed to effectuate its several purposes." As relevant to stream buffers, those purposes include inhibiting "the deterioration of state waters and waterways resulting from land disturbing activities," controlling "nonpoint source pollution, erosion and sedimentation, and stream channel erosion," maintaining "the integrity of existing stream channels and networks for their biological functions, drainage, and natural recharge of groundwater," and protecting "the condition of state waters for all reasonable public uses and ecological functions." *County Code § 17-102(1), (4) and (6)*.

While it is true that the Program Authority's decision does not allow Beard's parcel to be developed as intensively as it desires, the excess parking spaces are not necessary to Beard's proposed use.

Staff anticipates no budget impact.

Staff recommends that the Board affirm the decision of the Program Authority.

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Mr. Mark Graham, Director of Community Development, reported that this was an appeal of the water protection ordinance, an interpretation of what was necessary for a reasonable use of the property. He explained that this was a determination that surfaced periodically with an application, and there was a process that staff could allow for a reduction of the required stream buffer if it was determined that doing so was necessary for use of the property. Mr. Graham said that while the applicant was focused on their property, the interpretation must be similarly applied to all other property. This is about how we read the ordinance; it's not about the specifics of the property.

Mr. Graham explained that the property was zoned in the Downtown Crozet district and was located on Railroad Avenue. He said that the stream on the north side of the property had a 100-foot protected buffer on each side of the stream that extended onto the subject property, and development within the buffer was restricted and the ordinance limits the circumstances for permitted buffer disturbances. Mr. Graham stated that the building and required parking spaces the applicant provided could be built without intruding into the protected buffer; and the Community Development staff acted as the program authority for administration of the ordinance, denying the request based on the determination that it wasn't necessary for reasonable use of the property.

Mr. Graham presented a map that showed the location of the property, noting that the stream drained into the Beaver Creek Reservoir a few miles to the east of the property. He said that the applicant was proposing a reduction in buffer to 50 feet in order to allow additional parking for their proposed building, and the applicant believed the additional parking was necessary to support their proposed use of the property, offering to provide mitigation for any additional impacts created by the buffer disturbance.

Mr. Graham said that the ordinance provided for the use of the outermost 50 feet for necessary infrastructure to allow reasonable use, and required all property to be treated the same way. He said that the standard is necessary for reasonable use, so staff would have to make some distinction on why it's necessary, and in this case it is not consistent with what staff might see in other cases. He stated that by the applicant's request, the use of the buffer is beyond what is required for a reasonable use. Mr. Graham said that reasonable use could occur with the parking that satisfied the County's requirements, or with a smaller or different building arrangement. He explained that a drawing of the edge of the protected stream buffer was provided by the applicant to demonstrate what use would satisfy the buffer requirement, and it had 11 parking spaces; a subsequent layout illustrated what the applicant had requested, with the extension of parking spaces extended into the buffer, providing about 24 parking spaces.

Mr. Graham stated that he had come up with an arrangement that would accommodate 22 spaces, emphasizing that staff wasn't trying to dictate how the applicant used their property. He confirmed for Ms. Mallek that the parking was set back from the building façade, which was all that was required in the Downtown Crozet district adding that it did satisfy the ordinance.

Mr. Graham said that staff had concluded that a reasonable use of the property could occur without extending into the stream buffer, and a determination of a reasonable use would require staff to reevaluate all similar requests made in the same manner. Mr. Graham stated that with the information presented, staff recommends that the Board approve the decision of the program authority not to allow the extension into the buffer.

Mr. Boyd stated that he was struggling with staffs' interpretation of reasonable use and the criteria that is used; and that it was difficult to draw the line between the property owner's rights and what the program authority believes is necessary for reasonable use.

Mr. Graham responded that staff does not imply that you could have any use of the property that may be allowed by zoning; it just means, is it possible to get a reasonable use of the property. He said that the ordinance becomes so restrictive that it effectively becomes a taking of the property and that's what staff is trying to avoid with the standard.

Ms. Mallek explained that the reason this item was before the Board is because the downtown zone has a maximum in the parking, and in talking about the adoption of a downtown zoning district people were concerned that the maximum was too small because they were trying to encourage walk ability. She said that the applicants' property was right on the edge of the downtown zone and several blocks away without sidewalks to the main core did create a slightly different use of the property.

Mr. Boyd asked how the reason tied into the reasonable use formula deformations.

Ms. Mallek stated that was the reason staff couldn't grant the waiver administratively; but the appeal was the process for the Board to decide how everything blended together. She stated that the land sloped; so for parking to be in the back of the building it had to go in at the lower level. She explained that the zoning also required two stories on the street; so the zoning basically requires a three story building to comply with the downtown zoning ordinance.

Mr. Boyd said that with all of the unique features of the site and what they wanted to do it, he was struggling with why it set a precedent for future review.

Ms. Mallek explained that it was unique because of its location, because of the slope and because of the requirements of the zoning issue. She stated that she was very protective of the buffers and didn't want to abandon them and added that two houses over Greenhouse Coffee had successfully negotiated working in very similar situations with pervious paving.

Mr. Thomas asked about the proximity to the Dairy Queen. Ms. Mallek responded that it was two parcels over to the west.

Mr. Davis clarified that under the water protection ordinance, a 100-foot buffer was required, and it specifically provided that in the outer 50 feet of that buffer there could be encroachment if that was required to provide a reasonable use of the property. He said that Mr. Graham was correct that the intent of that provision was to ensure that a landowner could have use of their property, but without using that outer 50 feet, the property could be developed with a building and required parking. Mr. Davis said that the request was not a request for a waiver; it's simply an appeal of the interpretation by the program authority that under the circumstances the applicant is not being denied a reasonable use of their property, because they can't put the building they want with the required parking that's required by the zoning ordinance on the property without disturbing the outer 50 feet; from staff's perspective this is a pretty clear indication that there is a reasonable use of the property.

Mr. Boyd said that there must be some discrepancy or the owner would have accepted the staff proposal.

Mr. Davis stated that the owner wanted more parking for the property, but that was a different issue than what constituted a reasonable use, for purposes of interpreting the ordinance.

Mr. Snow said that the Neighborhood Model required three stories, and in order to accommodate that lower level it must be retail space, and asked if the staff submitted drawing facilitated retail space on the bottom.

Mr. Graham indicated that the schematic he had done simply explored other ways the property could be developed, and was just trying to show different alternatives, and that the alternatives may arrive at different amounts of parking and different building arrangements.

Mr. Dumler asked what legal mechanisms were available to attach mitigation conditions to an appeal such as this.

Mr. Davis responded that this wasn't subject to conditions; it was an interpretation as to whether there was reasonable use of the property. The interpretation applies to a specific fact situation, so it would be only applicable to the facts that are before the Board. He said that if the encroachment was allowed to go into the 50-foot outer area, the ordinance required that there be mitigation – and Mr. Graham could address what might be included in that.

Mr. Graham said that there were a number of options available, but nothing had been suggested because staff had proceeded with the assumption of no encroachment. He stated that examples might

include enhanced stormwater management, requirement of porous pavement for the parking lot in the buffer, and other features.

Mr. Rooker asked if this stream was perennial.

Mr. Graham responded that this was an intermittent stream, and Crozet was the only place in the development area in which intermittent streams had protected stream buffers because it served the water supply for both Beaver Creek and the South Fork Reservoir. He said that that was a decision done over a decade ago by the Board, but Crozet was treated differently and if this was occurring anywhere else there wouldn't even be a stream buffer.

Mr. Boyd said that was being called an intermittent stream, but that it could actually be just a drainage ditch someone had dug.

Ms. Mallek stated that this was an old channel from the 1890s and was about a foot wide and two feet deep when it was running.

Mr. Dumler stated that it appeared on USGS maps as a stream.

Mr. Rooker asked if there was a provision for seeking a waiver.

Mr. Davis said that there was not.

Mr. Graham pointed out that Section 17.3.21 allowed the disturbance in the outer 50 feet for necessary infrastructure for a reasonable use of the property, so by the ordinance the County had limited the circumstances by which the modification could be granted. He said that even if this was necessary infrastructure, it's not a by-right, it's a judgment call by the program authority as to whether those impacts could be adequately mitigated.

Ms. Mallek said that the appeal was the simplest remedy for the applicant.

Mr. Dumler said that it also created precedent, as the Board would be defining what a reasonable and necessary use of the parcel is. Mr. Graham agreed.

Mr. Rooker said that he felt a bit trapped, stating that if an applicant came in with four development rights but could only put three in because of a stream, that was not denying them reasonable use of the property and had never been interpreted that way. He said that he was troubled by the interpretation here - to say that when an applicant comes in, and can put the building they want on a property. He stated that in the past if a building was too large and required too much parking the Board would have recommended putting in a smaller building - that's not denial of reasonable use of the property. He said that he thought the Board would have to be careful about kind of brushing away what legally has taken place here. Mr. Rooker said that there should be a waiver procedure for this, but he didn't like making an interpretation that reasonable use was denied when less parking was the only issue.

Mr. Dumler asked why there wasn't a waiver provision.

Mr. Davis stated that the theory behind no waiver provision was that there was importance to having a 100-foot buffer, and the ordinance and Chesapeake Bay Act were built on the premise that the buffer provided a significant water treatment area protecting the water supply and the Chesapeake Bay. Mr. Davis went on to say that in certain circumstances you could allow mitigation of that buffer but that mitigation is never as good as the buffer itself - the mitigation is never perfect.

Mr. Rooker said that buffers weren't perfect, and he was convinced that reasonable mitigation could be done on this site for something that appeared to be almost a drainage ditch. What bothers him was that the Board was making a legal interpretation of what reasonable use is, as opposed to simply looking at how to reasonably protect this intermittent stream.

Mr. Dumler added that the Board also needed to be mindful that this was being balanced against a conscious zoning decision to make this parcel in the Downtown district, and there was an intermittent stream in a growth area - so perhaps there could be urban design standards developed for intermittent streams whereby waiver was allowed if mitigation was achieved. He stated that everyone knew that stream water protection was one of his hot button issues and that he does not say it lightly. He said that he knew engineered solutions can never truly mitigate the loss of that buffer, but the Board did have to be conscious of the fact that they did make a zoning decision and that they wanted the applicant to use this property to its best and highest potential.

Mr. Boyd commented that there were already inconsistencies in the ordinance and that this wouldn't be a problem if it was located anywhere other than Crozet.

Mr. Rooker said that from a common sense standpoint the application made sense, but he was concerned that the Board was making a legal interpretation of reasonable use that was not consistent with any prior interpretations and that he would not want to be bound by this interpretation of reasonable use in future decisions.

Mr. Graham stated that his concern was that someone's backyard, for example, was a protected stream buffer, and they came in for an application to build a swimming pool in their backyard - is that necessary infrastructure for a reasonable use of the property?

Mr. Rooker said that years ago he was looking to put in a swimming pool in his backyard and he couldn't do it because it was violating the stream buffer requirement.

Mr. Graham said that there were other options, such as treating Crozet the same as other development areas, but they entailed amending the ordinance rather than reinterpreting this section. Mr. Graham said that another option might be to say that for all circumstances the outer 50 feet could be disturbed provided a mitigation plan was approved by the program authority.

Ms. Mallek stated that they didn't take into consideration topography or anything else; and that's why having a blanket rule is not always the solution. She said that the ditch was also the northern boundary of the growth area of Crozet, so all the properties to the east of it were going to come down to the waters' edge in the growth area.

Mr. Bob Beard addressed the Board, stating that he and his wife bought this lot about three years ago and intended to put an antique store/antique mall onsite. He said that they tore down the old dilapidated apartment building and decided to put the shops in with some office space above, and realized they would need a parking lot in the back because the County disallowed street parking. Mr. Beard stated that they wanted to put a lot in for customers as well as three or four employees, so more parking would be needed beyond the 11 spaces drawn in by the County. He said that people would likely start parking on the grass or the ground if there weren't spaces available.

Mr. Boyd said that he would like the architect to address the positioning of the building.

Mr. Beard responded that there was a drop-off in the lot.

Mr. Bill Owens, the project architect, stated that the applicant wanted a two-story building but the property dropped off immediately so they went with a three-story building. Mr. Owens said that when they had a pre-app hearing with County staff on this, the only question that came up with regard to design pertained to the stream buffer. He stated that the applicant had the parking in the rear and two stories to the front, with the property falling off such that they would have to grade it out significantly in order to put parking on the side as the staff conceptual drawing illustrated.

Ms. Mallek asked how many spaces this would yield if the property were not in the Downtown zone.

Mr. Owens responded that it would have close to 80 spaces, and they were only requesting 24.

Mr. Boyd asked if the applicant had any issues with the mitigation items such as pervious pavement.

Mr. Owens replied that they were open to that, especially across the back parking strip.

Mr. Snow asked if most of the property dropped off right at the beginning of the ditch – so there is 10 feet drop and then it's more of a decline down to the stream.

Mr. Owens responded that the slope fell off initially about 10 feet and then was very gradual back to the stream.

Mr. Rooker asked how long it would take if the Board were to amend the ordinance to allow for an encroachment within the 50-foot zone in Crozet for intermittent streams. He said that he would have no problem with supporting that, but the Board had never said it was denying reasonable use because the applicant couldn't have as much parking as they wanted.

Mr. Boyd said that the Board made unique decisions with land use all the time, and he didn't see it as a precedent. He stated that it fit in with the Crozet Master Plan and fit in with the County's economic plan.

Mr. Dumler stated that it was more of a question for Mr. Davis, and asked if he could defend a constitutional suit saying that the County established a taking if someone else came before the Board and they denied it on relatively similar grounds.

Mr. Davis commented that that makes it more difficult.

Mr. Rooker emphasized that denial of reasonable use had a legal meaning, and that meaning was clearly not satisfied here - and that's all that this is about. He stated that this was a good proposal and this was good for downtown Crozet, but the way to accomplish the project was to amend the ordinance so they're not twisting around an interpretation of reasonable use.

Ms. Mallek stated that it was the maximum parking in the Downtown zone that was putting the cap on it.

Mr. Rooker responded that the cap was being put on by the encroachment into the stream buffer.

Mr. Snow asked how long it would take to get the amendment through.

Mr. Davis replied that it would take a couple of months and would depend on what the Board wanted to amend. He emphasized that the reason why this restriction applied to this particular lot was

because it's in a water supply protection area, and the scheme captured by the ordinance was that perennial streams had a stream buffer countywide, and non-perennial intermittent streams were covered within the water supply protection area and rural area lands. Mr. Davis said that if the Board wanted to carve out an exception for intermittent streams in growth areas to have a reduction in the buffer with a proper mitigation plan that would be a reasonable alternative.

Mr. Dumler asked if it was the legal opinion of Mr. Davis that it is less dangerous than precedential.

Mr. Davis replied that he thought there was a rational basis to treat development in development areas differently than development in rural areas. He said that it would be a reasonable regulation, where as changing the interpretation of reasonable use would put out more significant impacts.

Mr. Rooker said that he would support changing the ordinance and didn't want to twist the interpretation to try to achieve a result based upon a standard that clearly isn't met.

Mr. Dumler agreed and asked if it could go on the agenda for next month.

Mr. Davis responded that reasonably it would take two months to get it done.

Mr. Rooker said that the applicant wouldn't have to push this.

Mr. Owen stated that it would be acceptable to the applicant to wait.

Ms. Mallek commented that the applicant couldn't do anything until the ordinance was changed because they couldn't even submit a site plan to proceed with the building.

Mr. Graham explained that the applicant could come in now with a site plan and get it approved, and get a building permit approved, then they could come back in with an amendment to their site plan to modify it to allow the extra nine spaces. He said that if the applicant wanted to proceed at risk, they could go forward with this plan today – with the hope that the Board would approve an amendment to the ordinance that would allow this plan to be approved in the future.

Mr. Dumler asked what the application fee would be for an amendment.

Mr. Graham responded that it was a couple hundred dollars, and it was the applicant's choice to move forward if they felt it was time sensitive.

Mr. Rooker said that the applicant had some options to move forward with parts of the plan, and he said that he did not want to have to face this issue again so he would like to have it resolved.

Mr. Owen stated that it would be a month or so before they even had a site plan in, and said he would hate to create a drawing and then have to revise it.

Mr. Rooker said that he could submit based upon the change in the ordinance and then wait for staff to approve it until the ordinance was changed.

Mr. Graham indicated that staff would provide comments within 30 days, and one of those comments would pertain to the parking lot encroaching on the stream buffer – and at that point the applicant could address all the other comments and resubmit, or wait for the ordinance amendment and submit at that time.

Mr. Owen asked if they would have to come back before the Board.

Mr. Rooker responded that they wouldn't, adding that the proposed amendment would be permission to encroach on an intermittent stream in the Crozet area if staff approved appropriate mitigation.

Mr. Davis said that the Board would either deny or defer this today, and this amendment would allow the applicant to do the plan they wanted to do without any additional action by the Board.

Ms. Mallek noted that there were many other properties that backed up to the same drainage area, and the County would need to have details pertaining to steep slopes, etc.

Mr. Davis said that he understood the amendment to allow encroachment with a proper mitigation plan for the outer 50 feet of a stream buffer on an intermittent stream within a development area, even if it was in the water supply protection area, to allow for a reasonable use of a property.

Mr. Rooker asked if Crozet would be the only place the amendment would apply to.

Mr. Davis confirmed that it would apply in any development area within a water supply protection area.

Mr. Graham pointed out that it would only be Crozet because it was the only place where intermittent streams had buffers.

Ms. Mallek said that she wanted to make sure this didn't pertain to buildings, only to surface-level improvements.

Mr. Graham stated that the water protection ordinance speaks to water quality, and a parking lot was more harmful to the environment than a building, so it would be difficult to say you could put a parking lot but not a building.

Ms. Mallek said that the run-off from the roof is just as much in high velocity than what would soak through a pervious parking lot.

Mr. Graham explained that and the only thing in the water from the roof of a building would be air particles; what's in the parking lot and would come off of the tires - oil, grease – etc., is by far the dirtier water than the building.

Mr. Dumler asked if there could be some level of specificity to address those through the mitigation plan.

Mr. Graham said that staff could handle that administratively or through the design standards manual or with the ordinance if necessary.

Mr. Davis stated that staff did that now with mitigation plans where there were encroachments, and what Mr. Dumler is suggesting goes beyond what was codified today. He added that staff wouldn't view this as a major problem to handle it as a mitigation issue.

**Motion** was then offered by Ms. Mallek to accept the applicant's request to defer this request appealing the decision by the Program Authority, and to direct staff to draft and bring forward an amendment to the Water Protection Ordinance to allow for development within the outer 50 feet of the 100 foot stream buffer on an intermittent stream within a development area that is within a water supply protection area provided that there is an approved mitigation plan. Mr. Dumler **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

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Agenda Item No. 14. Cedar Hill Mobile Home Estates – Central Sewerage System.

The following executive summary was forwarded to Board members:

Cedar Hill Mobile Home Estates is an existing mobile home park on Route 29 North with 78 homes. The property is identified in the County's tax records as Tax Map and Parcel Number 03200-00-00-02210 and is composed of 25.98 acres ("Cedar Hill"). The property is owned by C. Ray Beard, Trustee of the C. Ray Beard Living Trust (the "Owner").

Cedar Hill is within the Jurisdictional Area of the County, is planned to be served by public water and sewer and is currently served by private septic systems and public water. A new public sewer line is being constructed along Route 29 North to serve the new National Business College site and the Owner of Cedar Hill desires to connect to the new public sewer line while keeping the on-site collection system private. As part of this project, the Owner would install new water and sewer lines and the existing septic system and its lines, along with the existing water lines, would be abandoned.

County Code § 16-104 requires Board review and approval of proposed central water supplies and central sewerage systems. The proposed sewer lines within Cedar Hill are a "central sewerage system" as defined in County Code § 16-101, and that is the sole matter before the Board. The proposed water lines are not a "central water supply" as defined in County Code § 16-101 and therefore do not require Board approval under Chapter 16 of the County Code.

The proposed central sewerage system is composed of a series of privately-owned pipes that would connect the Cedar Hill homes to a single pipeline which, in turn, would connect to the public sewer line.

Review and approval of a central sewerage system by the Board is required to assure that the system is properly engineered. This executive summary serves as the county engineer's recommendation on the request, as required by County Code § 16-104.

Under County Code § 16-105(A), the Board may approve or disapprove the proposal, and if it approves the proposal, it must specify the number of connections that may be made to the central sewerage system. In addition, County Code § 16-105(B) authorizes the Board to condition its approval of the central sewerage system upon the approval of the applicant's final plans by the county engineer, the Virginia Department of Health and the Virginia Department of Environmental Quality, and either approval by or proof of notification to, any other applicable state or federal department or agency.

While the onsite sewage collection system could be part of the public sewer system, the Owner is interested in retaining flexibility for future development and wants to avoid having to abandon public utilities and vacate public easements if and when redevelopment occurs. Staff finds this arrangement similar to that of several other mobile home parks.

Staff recommends approval of the proposed central sewerage system because its design and construction would comply with the Virginia Uniform Statewide Building Code. However, staff is concerned about maintenance problems the County has seen with other central sewerage systems where the owners found it difficult to manage the costs and revenues of the system. Therefore, staff recommends that the Board's approval be limited to the central sewerage system serving Cedar Hill on the single tax map parcel and that it not continue if the property is subdivided in the future. This would assure that the Owner or its successor remains responsible for operating and maintaining the central sewerage system.

The Owner would pay the connection fees required by the Albemarle County Service Authority for connecting to the public sewer system.

Staff recommends that the Board approve a central sewerage system for Cedar Hills Mobile Homes Estates on Tax Map and Parcel Number 03200-00-00-02210 with up to 78 connections, subject to the following conditions:

1. If Tax Map and Parcel Number 03200-00-00-02210 is subdivided in the future, the central sewerage system shall be converted in to a public sewage system, provided that Board may approval a central sewerage system as part of that subdivision.
2. The Owner shall obtain approval of the final plans for the central sewerage system by the County Engineer before starting construction of the system.
3. The Owner shall obtain a plumbing permit from the County before starting construction of the central sewerage system and the system shall not be used until the Building Official has determined the system is operational.
4. The Owner shall obtain all required approvals from the Virginia Department of Environmental Quality and the Virginia Department of Health before starting construction of the central sewerage system.
5. The Owner shall obtain approval from the Albemarle County Service Authority before starting construction of the central sewerage system.
6. The operation of the central sewerage system shall be the responsibility of the owner of Tax Map and Parcel Number 03200-00-00-02210.

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Mr. Graham reported that this was a request for approval of a central sewage system to allow a mobile home park to collect public sewer by means of a privately owned and operated collection system; by County code this is classified as a central sewage system and requires approval from the Board. He stated that the applicant originally had applied for approval of a central water system, but staff determined that it did not require action by the Board. Mr. Graham stated that the mobile home park is an existing use currently served by a privately owned and operated septic system, and a new public sewer was being installed adjacent to the property. He noted that this provided the opportunity to connect this development to the public sewer and said that the property was in the jurisdictional area intended to be served by public water and sewer.

Mr. Graham stated that staff's analysis was that serving this property with public water and sewer was consistent with County policy, and all work would be done at the property owner's expense, and that the County is not expected to fund any of the work. He noted that given the historical problems with central water and sewer systems, conditions were determined to be necessary to protect the County's interest and to protect potential future owners should the property subdivide and redevelop. Mr. Graham concluded that staff had recommended approval with a central sewage system for the cedar hill mobile home estates with the six conditions provided in the executive summary.

Ms. Mallek asked if having both systems going for a while and watching very carefully the successful operation of the private system was the plan.

Mr. Graham replied that what the property owners were proposing is for central sewage - the collection system on the property from the 70 mobile homes. He said that they didn't want to create a public sewer system on their property - because if and when the property redeveloped they would have to abandon those sewer lines and get the ACSA to vacate the easements.

Ms. Marcia Joseph addressed the Board, stating that Mr. Ray Beard had owned the mobile home park since the 1970s and for many years had been trying to work with adjacent owners to get the sewer line up to his property. She said that when the National Business College came in, the owners got together and contributed a bit of money – including Northpointe – and the 78 mobile homes would now be on public sewer. Ms. Joseph said that there was public water out there now but the lines were old, so Mr. Beard wanted to get everything done at the same time for minimal disruption.

**Motion** was offered by Mr. Thomas to approve a central sewerage system for the Cedar Hills Mobile Home Estates subject to six conditions. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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

1. If Tax Map and Parcel Number 03200-00-00-02210 is subdivided in the future, the central sewerage system shall be converted in to a public sewage system, provided that Board may approval a central sewerage system as part of that subdivision.
2. The Owner shall obtain approval of the final plans for the central sewerage system by the County Engineer before starting construction of the system.
3. The Owner shall obtain a plumbing permit from the County before starting construction of the central sewerage system and the system shall not be used until the Building Official has determined the system is operational.
4. The Owner shall obtain all required approvals from the Virginia Department of Environmental Quality and the Virginia Department of Health before starting construction of the central sewerage system.
5. The Owner shall obtain approval from the Albemarle County Service Authority before starting construction of the central sewerage system.
6. The operation of the central sewerage system shall be the responsibility of the owner of Tax Map and Parcel Number 03200-00-00-02210.

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Agenda Item No. 16. VDOT Monthly Report

Mr. David Crim addressed the Board, stating that the Transportation Board would conduct a public hearing to give citizens the opportunity to review and provide comments on projects and programs to be included in the six-year secondary improvement plan. He said that the public hearing for citizens in this region would be held at 6:00 p.m. on May 2 in the VDOT central office auditorium. Mr. Crim stated that written comments and resolutions would be taken into account for those who couldn't attend. He reported that the Route 743 bridge would be open on April 6 with new paving, and the load limit signs would be removed. Mr. Crim said that VDOT had notification of bridge closures for 672 over the Dawes River and would have to do some preliminary work on April 9, 10 and 11 so the bridge would be closed during the day. He stated that the bridge would be replaced beginning at midnight on May 8, with the schedule planned so the work is done by 8:00 p.m. on that evening. Mr. Crim explained that as far as inconvenience to the public VDOT would have a foot bridge and would also be running a shuttle service that was handicapped equipped. He reported that the bridges on Route 745 that belonged to Norfolk & Southern Railroad were initially reported as being replaced, but only the southern-most bridge would be replaced and that would turn the load-limited structure into one that accommodated large emergency vehicles.

Mr. Rooker asked where Arrowhead Valley Road was located, and Mr. Crim explained that it was on US 29, south of town. Mr. Snow said it was near the old Gleco Mills site.

Mr. Crim mentioned that once the bridges were complete, VDOT would be maintaining them through agreement with the railroad.

Mr. Crim reported that Route 627, old Carter's Mountain Road, would be closed due to a bridge infill project. He said that it was their hope that it would be complete by April 6 even though the schedule stated it would be closed through April 10. Mr. Crim also stated that County and VDOT staff had put together a package regarding the Route 250 bridge closure in Shadwell, which was still scheduled for May, and a contractor was working on the project. He noted that it would only be a 70-day closure. He reported that he was leaving VDOT on April 24 because his family was still in South Georgia, adding that he loved working with the Board as they were "totally committed to the matters of the public." Mr. Crim said that Jamie Glass, his assistant in the residency, would step in to answer any questions.

Mr. Thomas said that he appreciated everything Mr. Crim had done for the County, and said he would forward the report on Rio Mills Road to the rest of the Board.

Ms. Mallek asked for an explanation of the decision on that road's speed limit.

Mr. Crim explained that the speed study didn't reflect the need to lower it to 35 mph, adding that what VDOT would do was a traffic calming. He said that the paved portions would get center lines and edge lines, so the lanes would be 10-foot wide – which tended to slow traffic down. Mr. Crim stated that they would also put intersection warning signs up on the road, and when traffic came in from Route 743 there would be another end of pavement sign with a 15 mph plate on it. He stated that VDOT would put trucks entering signs up at the quarry entrance and intersection warning signs up on the dirt portion with 15 mph plates, along with curve warning signs that were already in place. Mr. Crim added that they would also put a 15 mph plate on the pavement end sign coming from US 29, taking down the 35 mph sign.

Ms. Mallek said that she didn't understand why the speed limit was 55 mph on such a short stretch of road – one mile.

Mr. Rooker commented that he hated to see Mr. Crim leave, as he had been extremely responsive to questions and concerns from the Board. He asked Mr. Crim to check on the status of the preliminary design of the Broomley Bridge, as there needed to be a complete design in order to hold an October public hearing.

Mr. Boyd asked Mr. Crim if VDOT had received any response about the barrier on Rio Road, as it covered up the storefront of a business owner on the west side.

Mr. Crim responded that he and Mr. DeNunzio had spoken about that with the bridge department and had made a recommendation, but they are waiting for a reply.

Mr. Snow asked about the designation of the school zone on Route 6 at Yancey Elementary School.

Mr. Crim said that he would submit the request the following morning.

Agenda Item No. 17. **11:15 a.m. - Work Session:** Review of County's Priority List of Secondary Road Improvements and the VDOT Six Year Secondary Road Construction Program Budget.

The following executive summary was forwarded to Board members:

The County's Priority List of Secondary Road Improvements establishes the priorities for road improvements in the State's Secondary Road system (roads with a route number of 600 or higher). The Virginia Department of Transportation (VDOT) Six Year Secondary Construction Program is based on the County's Priority List and reflects available state road funding allocated to the County. The County's Priority List and the VDOT Six Year Construction Program and budget are typically reviewed annually. Based on the direction provided by the Board regarding projects to be funded, VDOT will draft a revised Six Year Construction Program.

Attachment A is the priority list of secondary road improvements adopted by the Board in May, 2011. Staff will revise the list for public hearing based on input received from the Board.

**Available Funding** – VDOT has provided the following projected funding allocations for Albemarle County:

FISCAL YEAR	REG. STATE FUNDS AVAILABLE	MIN. UNPAVED ROAD FUNDS	FEDERAL FUNDS	TOTAL FUNDS
2012-13	\$318,031	\$0	\$0	\$318,031
2013-14	\$350,034	\$0	\$0	\$350,034
2014-15	\$350,034	\$0	\$0	\$350,034
2015-16	\$350,034	\$0	\$0	\$350,034
2016-17	\$350,034	\$0	\$0	\$350,034
2017-18	\$350,034	\$0	\$0	\$350,034

The projected funds for FY12-13 through FY16-17 are allocated to the Black Cat Road bridge project and Bear Creek Road and Pocket Lane Rural Rustic Road paving projects in the current VDOT Six Year Secondary Construction Program (approved last year). One other Rural Rustic Road paving project, Happy Creek Road, was programmed for funding in FY14-15 and FY15-16 in the approved Six Year Road Construction Program; however, VDOT was able to fully fund the construction of this project in FY11-12 because of its lower construction cost and the availability of Revenue Sharing Funds.

FY 17-18 is the "new" sixth year of the Six Year Construction Program and the FY 17-18 funds may be needed to complete funding for the Bear Creek Road and Pocket Lane paving projects. Because the total cost for Rural Rustic Road paving projects in general has been lower than previously estimated in the Six Year Secondary Construction Program, funds may also be available for an additional project(s).

Due to the limited amount of State funding over the next six years, major construction projects identified on the Strategic Priorities list (page 1 of Attachment A) do not appear to be viable projects to include in the VDOT Six Year Construction Program at this time.

**Public Requests** – Staff has received no new requests for road construction improvements (road paving, widening, "spot" improvement, etc.). Most of the comments and requests received over the year have been for roads already listed on the County's Priority List of Road Improvements or were associated with primary roads.

Staff has received several public requests for pedestrian/sidewalk and bike related improvements. Secondary road funds can be used to fund pedestrian and sidewalk improvements. The requested improvements on secondary roads that are not already programmed for funding in the County's CIP or the VDOT Six Year Secondary Program are:

- Crosswalks at Rio Road/Pen Park Road intersection and sidewalk along Pen Park Road
- Sidewalk, crosswalk and streetlight improvements on Old Ivy Road (to connect to Ivy Road)
- New sidewalk on Old Lynchburg Road from Fifth Street (bus stop) to Region Ten Offices/nearby residential areas
- New bike lanes on South Pantops Boulevard, State Farm Boulevard, and Riverbend Drive.

While all of these projects have been identified in the County's CIP as future projects, none are programmed for funding. The above noted projects, particularly the crosswalks and sidewalk on Rio Road/Pen Park Lane should be considered as possible projects for funding with secondary road funds. The Rio Road project would improve pedestrian access and safety in a rapidly developing area of the County that includes a park, two schools and three recently approved developments, including the Treesdale affordable housing project.

**Blenheim Road Paving Proposal** – The County has received a proposal from a property owner on Blenheim Road, Mr. Tom Sullivan, to pave the remaining one-quarter mile section of Blenheim Road (Rt. 795). Mr. Sullivan is proposing to fund the cost of the paving project. Mr. Sullivan has also agreed with CenturyLink to subsidize the installation of a fiber based broadband network in this area. Installation of fiber optic lines could be done in conjunction with the paving project. The road paving project could be done as a VDOT permit project by an individual; however, VDOT will not issue a permit for this paving project until the Board of Supervisors requests VDOT to approve the paving project. The project can be paved under the Rural Rustic Road standards. Staff is utilizing the Six Year Road Plan review work session and public hearing process for the Board to consider and act on this request. Further information regarding this request is provided in Attachment B.

**Road Paving Projects** – Because of changes over time in interpreting project eligibility for paving roads under the Rural Rustic Road Program standards/guidelines, staff requested that VDOT reevaluate the top six projects on the Regular Road Paving Projects List (Attachment A, Page B2) to determine if any of these projects are now eligible for Rural Rustic Road paving. VDOT has determined that Doctors Crossing (Rt. 784), Midway Road (Rt. 688), Keswick Drive (Rt.731), and Gillums Ridge Rd. (Rt. 787) are now eligible for Rural Rustic Road paving, and that Rio Mills Road (Rt. 643) and Burch's Creek (Rt. 689) remain not eligible for Rural Rustic Road paving.

All of the above referenced roads have the highest traffic volumes of any unpaved roads on the two Paving Projects Lists. Should the Board wish to continue funding road paving projects in the Six Year Secondary Road Construction Plan, staff would recommend that future projects come from this group of projects. Doctor's Crossing is the highest priority project on the County Priority List. Staff requests that the Board provide County and VDOT staff further direction regarding its expectations for the funding of unpaved road projects.

The Six Year Secondary Road process establishes the County's priorities for the expenditure of State/VDOT secondary road construction funds and does not impact County funding.

Staff requests that the Board: 1) provide comments on the County's Priority List for Secondary Road Improvements (Attachment A) and VDOT Six Year Secondary Construction Program (Attachment B) and 2) schedule a public hearing on the County Priority List and VDOT Six Year Secondary Construction Program on May 9, 2012.

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Mr. Greg Banks, of VDOT, addressed the Board, stating that in recent years there had been funding reductions for these projects. Mr. Banks said that the funding projections for the first year were \$318,031, with subsequent years being \$350,034. He stated that FY11-12 had \$366,810, with each subsequent year at \$345,568, so the numbers were fairly close but compared to the past it was quite a reduction. Mr. Banks said the funds were generated from telecommunication fees, which were collected from utilities for using VDOT right of way and then disbursed within counties at a ratio of 80% of population and 20% on geographical size. He stated that Albemarle was a fairly large county and thus received a larger portion of that share, noting that there were about 869 miles of secondary roads in the state system in the County – and of that amount, about 679 miles were hard surfaced leaving about 190 miles of gravel roads. Mr. Banks said that 144 qualified for hard surface, meaning they carried at least 50 vehicles per day, and there were 9.2 miles of secondary gravel roads included in the six-year secondary plan.

He provided estimates of the average cost to construct a gravel road, adding that there had been some savings on the rural rustic road projects. Mr. Banks noted that the construction phase needed to be 100% funded within one year of completion of a project. He reported that from a construction standpoint, Meadow Creek Parkway had been completed and there were some auditing finalizations that needed to take place. Mr. Banks said that Jarman's Gap Road was currently under construction and Georgetown Road had also been completed and was nearing the auditing process and final closeout. He stated that several bridge projects were getting federal bridge funds, the first being Dry Bridge Road, which was funded at \$2.3 million and an additional \$1 million needed, and money coming forth through a federal bridge program. Mr. Banks said that the next project had a considerable amount of unpaved road money that had since been transferred to some rural rustic priorities added to the plan last year, as well as some from the revenue-sharing program. He stated that he had looked at the funding for all of the bridge projects, and the ad dates should not change based on his projections.

Mr. Rooker said that his question was making certain that the design was moving along so there would be a design ready for the public hearing, adding that he would like to interact with VDOT on the project before then.

Ms. Mallek asked if the timetable for projects was listed.

Mr. Banks responded that it was below the construction estimates, stating that Broomley Road Bridge was scheduled for December 30, 2014 as the date of advertisement. He said that the project was the County's next priority, as the Board had assigned revenue sharing monies towards it. Mr. Banks said that Dick Woods Road was also a bridge project, and the remaining funding from last year's six-year secondary plan was to be supplied through their federal bridge program also. He stated that Black Cat Road was supplemented with telecommunications fees. Mr. Banks reported that for FY11-12, the federal bridge funds totaled over \$1.25 million with an additional \$255,000 through the tele-fee fund.

Mr. Banks reported that the next three projects were the beneficiaries of money removed from Broomley Road Bridge last year, and the first would be accomplished through hired equipment over the

summer; Fortune Lane was out for bid; the bid package for Bluffton had been completed and sent to Richmond for review with bids expected in May. He said that Happy Creek Road was advanced by looking at some of the estimates getting closer to construction, and they were able to advertise that project also for construction this summer. Mr. Banks said that there were two more gravel road projects on the next page, and they were added last year during the update process – Bear Creek Road and Pocket Lane – and funding from last year's plan was just coming on board. He stated that the two remaining projects were bridge priorities, and a small portion of bridge funds would be used for those; one project had been addressed due to some structures in between the projects and the posting weight being so low. Mr. Banks mentioned that a super-structure had been replaced for the project over Jacob's Run, so the project could be removed from the secondary six-year plan since it was no longer a priority of the bridge program.

Ms. Mallek asked if the bridge was now a full weight bridge.

Mr. Banks replied that he was not sure what the posting was but he believed that it was a full weight bridge.

Ms. Mallek asked if the three ton bridge still existed over the river.

Mr. Banks confirmed that the bridge that remained to be replaced was over the Rivanna, and miscellaneous items that remained were right of way engineering, traffic services, fertilization and seeding.

Mr. Rooker asked if the Broomley Bridge balance of \$720,000 would mean the project would be overfunded if the estimate was met.

Mr. Banks responded that that was correct and would remain so as long as bridge funding stayed the same, adding that some of the numbers may have changed and would be reflected in the upcoming six-year plan.

Mr. Banks referenced the traffic count data for all secondary routes within the County, both paved and unpaved – including those that qualified for federal funding, although that would not be available this year.

Mr. Banks said that he included a statement that said VDOT recommended that the County continue contribution of state tele-fee funds onto existing federal bridge projects identified in the six-year plan so that they could hold the ad dates as shown in the plan. He commented that bridge funds dwindled over the years, and it was laudable that the Board continued to support those projects. Mr. Banks stated that he didn't include Berkmar Drive Extended in the plan and it was not identified in the plan, emphasizing that currently there was no mechanism for it to receive funding, and if it was going to get funding in the future it would have to be identified in an approved secondary six-year plan. He noted the County's priority list and said it included several different types of projects, with Berkmar Drive Extended being the next item on the list that wasn't identified in the six-year plan. Mr. Banks said that there was information on different means by which gravel roads could be hard-surfaced, with rural rustic being the preferred method recently because of the downturn in allocations. He also referenced a document that could be used for acquiring additional right of way, especially on smaller unpaved projects.

Mr. Benish said that they look at the priority list as well as the secondary list in this process, and staff collected public comment during the year on projects the community was interested in doing. He stated that there were no new roads on the list, but there were a number of requests for pedestrian improvements that were related to roads, sidewalks and crosswalks, such as the Rio Road improvements for Treedale. He said that VDOT reviewed the regular road paving projects list and determined that the top six projects were now eligible for rural rustic road paving. Mr. Benish asked the Board if they wanted to move them over to the rural rustic list from the regular paving list.

Mr. Snow asked about the cost difference between rural rustic road paving versus regular paving.

Mr. Benish responded that it was over \$1 million per mile for a regular project, and rural rustic roads were about \$200,000-\$300,000.

Mr. Crim confirmed that the cost was usually two-thirds to three-fourths less for rural rustic projects.

Mr. Boyd asked if there would be any money for rural rustic roads next year, as there were three or four projects this year.

Mr. Benish said that there were four roads going to bid this spring and summer and two projects in the remaining five or six years of the six-year plan that were not fully funded, the Bear Creek Road and Happy Creek Road; and they would begin receiving money in years four and five of the plan, with the sixth year of funding recommended to be allocated to the bridge projects to keep them on schedule from a priority stand point. He stated that the rural rustic roads that are not completely funded would be the next projects that would need to receive funding.

Mr. Boyd asked if that money came out of the \$350,000 for secondary roads.

Mr. Benish replied that it would.

Mr. Boyd asked if the secondary roads, that could now be put on the list for the rural rustic road program would still be years from being complete.

Mr. Benish stated that was correct and explained that if the Board wanted projects queued in to the list, staff could do enter them into the six-year plan – such as Berkmar Drive Extended.

Mr. Rooker commented that it would be interesting to see how VDOT would engineer a bridge connection for that road in the context of the bypass, and they needed to determine whether it was feasible topographically – and financially – as the road would cost about \$38 million.

Mr. Benish pointed out that \$1 million had been reserved in the CIP for Berkmar Drive's design, and perhaps this money could augment that – but they were still some years out from that and would need to know the bypass design.

Mr. Snow noted that if the road was designated as a primary road, it would qualify for additional funding.

Mr. Rooker agreed, adding that part of the road runs through the Sam's Club parking lot.

Mr. Thomas said that he had heard from VDOT that it might be cheaper to do two bridges instead of one.

Mr. Rooker said that it might be challenging to get Berkmar designated as primary, noting the obstacles faced with reclassifying the Meadow Creek Parkway and the Southern Connector.

Mr. Benish asked the Board if they had any changes to priorities other than moving the four roads over to the rural rustic road list.

Mr. Snow responded that he would like to move them over, and Mr. Thomas agreed.

Mr. Rooker said that he didn't object, but the competing priorities were sidewalks and crosswalks – and some of the rural rustic roads only had about 50-60 car trips per day, compared to 22,000 on Hydraulic Road and 16,000 on Georgetown Road.

Mr. Boyd asked when the six-year plan would be adopted.

Mr. Benish responded that it would go to public hearing May 9, and the Board could act at that time. He said that VDOT would like action before June as that's when they reported to the Commonwealth Transportation Board.

Mr. Rooker commented that he didn't know what the cost would be of completing the sidewalk network at Stonefield, as there would be a lot of people walking to that shopping center, and it would be nice to put it in the mix.

Mr. Benish said that the project had also come to staff's attention, given its location next to two schools, an affordable housing project, and a park. He stated that it would be similar to Jarman's Gap or Georgetown Road improvements, and staff could come back with some cost estimates and timing – along with Berkmar Drive and the rural rustic road projects. Mr. Benish said that VDOT was recommending that the emphasis for available funding in the sixth year focus on completing the bridge projects.

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Agenda Item No. 18. Closed Meeting.

At 12:51 p.m., **motion** was offered by Mr. Dumler that the Board go into a closed meeting pursuant to Section 2.2-3.711(A) of the Code of Virginia under Subsection (1) to consider appointments to boards, committees and commissions; under Subsection (7) to consult with legal counsel and staff regarding specific legal matters requiring legal advice regarding the negotiation of an inter-jurisdictional agreement for a regional library; and under Subsection (7) to consult with legal counsel and staff regarding specific legal matters requiring legal advice regarding the negotiation of an agreement with volunteer rescue squads to implement revenue recovery. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

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Agenda Item No. 19. Certify Closed Meeting.

At 2:33 p.m., **motion** was offered by Mr. Dumler that the Board certify by a recorded vote that to the best of each Board member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

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Agenda Item No. 20. Boards and Commissions: Vacancies/Appointments.

**Motion** was offered by Ms. Mallek to reappoint Mr. William (Bill) Schrader, Ms. Nancy Virginia Bain, and appoint Ms. Leslie Byrne, and Mr. George Barlow to the Crozet Citizens Advisory Council, with said terms to expire March 31, 2014. Mr. Boyd **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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Agenda Item No. 21. Presentation: Community Water Fluoridation, Dr. Lillian Peake.

Dr. Lillian Peake addressed the Board, stating that she is the Director of the Health Department and introduced Dr. David Koon, President of the Charlottesville/Albemarle Dental Society; Dr. Allen Bream, spokesperson for the Virginia Dental Society; and Ellen Tobey, Executive Director of the non-profit Community Dental Center. Dr. Peake said also in attendance are three experts from the Virginia Department of Health to answer questions: Jim Warren and Steven Kvech with the Office of Drinking Water and Dr. Lynn Browder with the Virginia Department of Health's Division of Dental Health.

Dr. Koon addressed the Board, stating that he felt strongly about the presence of fluoride in community water as it is considered a safe and effective way to prevent tooth decay and to promote good oral health, which is a critical component to overall health, quality of life and well being. He said that his dental association stands in agreement with the memorandum submitted by the Thomas Jefferson Health District, which offers sound scientific and economic evidence to the benefits of continued water fluoridation. Dr. Koon stated that the purpose of fluoride in respect to dentistry is to strengthen the tooth's enamel and, as a dentist, he advocates the daily use of fluoride toothpaste as well as fluoride treatment during dental cleanings. He said that these topical applications of fluoride help strengthen and protect the enamel by making it more resistant to harmful acids produced by cavity-causing bacteria.

Dr. Koon stated that systemic fluorides, such as those being discussed in drinking water, become incorporated with the enamel in developing teeth in children. He said systemic fluorides are also secreted in the saliva along with other minerals such as calcium and phosphate ions that help make the teeth in children and adults more resistant to the demineralization caused by bacteria. He said that water fluoridation is a time-tested community health measure that benefits citizens of all ages, income levels and ethnicities. Dr. Koon stated that it offers a special level of protection to some of the most vulnerable residents, including children living below the poverty level. He said that many of these children do not receive regular dental care and often do not have access to other methods of preventative dental care such as dental sealants. He pointed out that poor children suffer disproportionately more cavities than middle or upper income children adding that multiple studies over the years done in several countries and the United States show that fluoridation can significantly reduce tooth decay. He stated that when fluoride was discontinued, there were large increases in the instances of tooth decay, especially in children.

Dr. Koon said that, in his practice as a root canal specialist, he sees firsthand the effects of tooth decay, i.e., pain, infection, lost work and wages, loss of teeth, etc. and many of these patients are adults who did not have access to fluoridated water as children, and they speak to the fact that their own children have much healthier teeth because they grew up with fluoridated community water. He said that, while water fluoridation does not eradicate tooth decay, it is proven to be a safe and effective way to promote good dental health in the community. He thanked the Board for their consideration of the matter.

Dr. Peake explained that fluoride is the ion of the element fluorine, and is almost universally found in water and soil but in varying concentrations so the idea of community water fluoridation is to get the correct amount of fluoride in the water. She said water fluoridation remains the most equitable and cost effective method of delivering fluoride to all members of the community. She said that the Virginia Board of Health recommends that all public water systems in Virginia be optimally fluoridated, because it is the most effective public health measure to prevent tooth decay. Dr. Peake stated that, according to the Virginia Department of Health Division of Dental Health, an estimated 5.7 million residents in the state benefit from fluoridated drinking water, representing 93.8% of the population served by public water systems. She said that the hypothesis of dental cavity prevention through adjustment of community water fluoride levels was first tested in 1945 and, during a series of studies, cavities were found to be reduced by 50-70% of children in the communities that went to fluoridated water. Since that time, she said there have been many sound studies to ensure that this is a safe and effective practice. Dr. Peake reported that the prevalence of dental cavities has declined in communities with and without fluoridated water in the U.S., but this trend has been attributed largely to the diffusion of fluoridated water to areas without fluoridated water through bottling and processing of food and beverages in areas with fluoridated water as well as the widespread use of fluoride toothpaste.

Dr. Peake said water fluoridation reduces direct healthcare expenditures through primary prevention of dental disease, and avoidance of restorative care. She stated that one economic analysis estimated that prevention of dental cavities largely attributed to fluoridation and fluoride-containing products saved \$39 billion in dental care dollars in the United States between 1979-1989. Dr. Peake said the only known risk associated with drinking fluoridated water is mild forms of enamel fluorosis, and that made white spots or streaks appear on the teeth. She stated that these spots did not have an effect on the tooth function. Dr. Peake said that the recommended 0.7 mg per liter provides enough fluoride to prevent tooth decay in children and adults while limiting the possibility for children to develop dental fluorosis, and that level is monitored very carefully in the local water system. She stated that, over the past 60 years, because of water fluoridation, tooth loss is no longer considered inevitable and most adults

in the U.S. are increasingly keeping their teeth for a lifetime. Dr. Peake said the percentage of people age 45 to 54 that had lost all of their permanent teeth decreased from 20% in 1960-62 to 9.1% in 1988-94 as a result of fluoridation.

Ms. Ellen Tobey addressed the Board, stating that she is Executive Director of the nonprofit Community Dental Center, which was established in August, 2005 and since that time, the Center has treated more than 11,000 children. Ms. Tobey said that the Center has three dentists working, seeing between 35-45 children each day. She stated that they accept indigent children, those without the ability to access Medicaid. Ms. Tobey said that her organization is deeply concerned about the health of children in the community and wants appropriate public policy in place to ensure the best possible health outcomes. She stated that some members of the community have a sincere concern about fluoridation of the municipal water supply, but fluoride in appropriate doses is beneficial to the overall health of children and adults and has been proven to be true over the course of many years. Ms. Tobey stated that one argument made by opponents is that other countries have found ways to ensure access to fluoride through other means, such as fluoridated salt, milk, and natural water supplies which have benefitted many Europeans. She said that the Pew Center on the States has an excellent fact sheet outlining the pros and cons of fluoridation in water supplies, including alternative products needed should water fluoridation not be done. Ms. Tobey said that, in her work at the dental center, they observe the benefits of fluoridated water on a daily basis, adding that the benefits build on those from fluoride and toothpaste, and the Pew Center study shows that communities that fluoridate water in the years after fluoridated toothpastes became widely available showed a lower rate of tooth decay than communities without fluoridated water. She added that community water fluoridation is the most efficient way to prevent one of the most common childhood diseases which is dental decay.

Ms. Tobey stated that dental decay is five times more common than asthma, seven times more common than hay fever in children aged 5-7 years old. Ms. Tobey said their observation is that the local water supply has appropriate amounts of fluoridation, and it is important to look at peer reviewed scientific evidence, not just one study. She stated that evidence-based reviews consider results as well as the quality of studies leading to those results, and every expert panel that has considered the issue has come to the same conclusion which is water fluoridation is a very safe and effective public health practice that should be continued.

Dr. Allen Bream addressed the Board, stating that he started working as a dentist in the community in 1973 and was associated with Dr. Deputy when he was Director of the Children & Youth Center at UVA's Medical Center. He said, at that point, he was the Director of Dental Services at the Kluge Rehab Center, and they both worked as a team with the entire medical staff, i.e., the physicians, occupational therapists, etc. to ensure the health of children at the hospital. Dr. Bream said that he has also worked at clinics in Greene County, Buckingham County and the City of Charlottesville. He stated that he has also done a missionary project in Honduras where he took out teeth from that population, and does not want to see that happen here. Dr. Bream said he works with the Mission of Mercy projects, which hosts 12 free dental clinics around the state each year. He said that he also works at the local Charlottesville Free Clinic, and has a private practice in Waynesboro. Dr. Bream stated that the Virginia Dental Association, in addition to 110 prestigious national organizations including the National Cancer Society, American Medical Association, American Osteopathic Association, the March of Dimes Birth Defect Foundation, National Association of Social Workers, World Health Organization all hold the opinion that water fluoridation is beneficial to the public. He said that a lot of people believe in the positive effects on a community, and the preponderance of evidence is that fluoride in water systems is a safe and effective means to reduce tooth decay in the population. Dr. Bream stated that, if a population starts from birth with fluoride in their water system, there would be a reduction of 50-60% of decay. He said that other countries choose different methods but, in the United States, fluoridation is a community option. He said there is the suggestion that fluoride is a byproduct of fertilizer, however, the quality of the fluoride is determined by the American Waterworks Association, and thus must meet standards of purity. Dr. Bream said that, in talking with the Rivanna Water & Sewer Authority (RWSA), that entity is committed to the safety of the water supply and monitors it continually. He added that the Environmental Protection Agency (EPA) is not in charge of this policy, and said that fluoridation is viewed by the courts as a proper means of furthering public health and welfare. Dr. Bream stated that no court of last resort has ever determined that fluoride was unlawful.

Dr. Bream reported that Antigua, Washington began fluoridating their water in June 1949 and then ceased that practice in 1960. He said that, after waiting 5 ½ years, researchers found that 2<sup>nd</sup> graders had an increase of over 200% more cavities; 4<sup>th</sup> graders had an increase of over 70% more cavities; 6<sup>th</sup> graders had 91% more cavities than those of the same age group in 1960. Dr. Bream emphasized that a smile is worth a lot and, if teeth are maintained into later years, people lived an average of 10 years longer. He stated that this is a public health issue and should be based on sound, scientific research that demonstrates an increase in health and productivity in communities that choose to fluoridate. Dr. Bream said that the Center for Disease Control (CDC) named fluoridation of drinking water one of the 10 greatest public health achievements of the 20<sup>th</sup> Century. He said parental involvement, diet, hygiene and genetics are certainly important but the biggest contributing factor for lowering tooth decay is water fluoridation.

Mr. Rooker commented that about 40% of the County's population is on wells and most people who have wells do not fluoridate their water, and asked if anyone had observed a difference between the two.

Dr. Peake responded that a lot of pediatricians give fluoride tablets to those children who get their water from wells.

Mr. Rooker said he has never fluoridated his water, and felt it would be interesting to measure any difference in the local population.

Ms. Tobey stated that there is a huge difference, noting that children and adults who come to their clinic from low-income, high-risk populations who are on well water and have not had access to pediatric care or been introduced to fluoride tablets or intervention have exhibited a serious deficit in the enamel on their teeth.

Mr. Rooker said that the body of evidence supports that, but it is interesting to note the local community's statistics.

Mr. Boyd stated that his dentist said that one of the first things he asks families of young children that come into his office was whether they were on well or public water.

Ms. Tobey said that they spend a lot of time on education and nutrition, and also provide children with fluoridated toothpaste.

Mr. Rooker said that, given the body of evidence and the overwhelming support from so many agencies, he is amazed at the opposition to fluoridation that is still out there and he wasn't sure of what gives rise to that.

Ms. Tobey responded that a lot of people want to have a choice and have confused fluoridation with a pharmacological application which it is not. She said the facts are clear that fluoridation is not linked to cancer, not linked to osteoporosis and has never been linked to a lower I.Q. She said that she has done extensive research and found that fluoride is not a negative product, as opponents claim it to be.

Dr. Peake commented that it is also a reflection of the success of public health, adding that people have become accustomed to taking clean water and water fluoridation for granted and don't really remember what it was like to lose all of one's teeth. She said people perhaps take for granted the health gains that have been made through behind-the-scenes public health efforts and don't remember what it was like to have the bad outcomes.

Ms. Mallek asked if people who drink large volumes of water are getting too much fluoride, and noted that, in those cases, the elderly and children could be getting the same amount.

Dr. Peake responded that studies show it is still a safe level with the amount that a person could possibly consume.

Ms. Tobey said it would take 10,000 glasses of water a day for a 200-pound man to experience toxicity from fluoride.

Ms. Mallek stated that people have been told to call their doctor immediately in instances of swallowing a small amount of toothpaste, so there are mixed messages from the materials in the public.

Dr. Peake responded that those are private companies that are putting the information on their labels for other reasons.

Mr. Boyd said he has read that other communities in Virginia had evaluated removal of fluoride from public water, and he wasn't sure what they had decided.

Dr. Steve Kvech from the Virginia Department of Health Office of Drinking Water stated that some smaller communities have approached them, but primarily for economic reasons. He said that, to his knowledge, no communities in Virginia have ever made the decision to discontinue fluoridation.

Mr. Boyd stated that he would like to provide some direction, because this issue is coming before the Rivanna Water & Sewer Authority (RWSA) for a vote soon.

Mr. Thomas said that he hasn't had a cavity for 20 years once fluoride was added to the water, and said that his daughter has never had a cavity.

Mr. Boyd said that he would like consensus to stay the course.

Mr. Rooker commented that he has seen a lot of information come in, but the weight of the scientific evidence indicates it is a positive health benefit for the community and this practice should continue.

Ms. Mallek stated that it might help offset the changes in diet, as the 1960-1980 timeline ushered in excessive use of corn syrup.

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Agenda Item No.22. Economic Vitality Action Plan Quarterly Report.

The following executive summary forwarded to Board members:

The Board of Supervisors adopted an Economic Vitality Action Plan ("Plan") on August 4, 2010, following extensive public discussion and review. That plan established a schedule for staff to provide quarterly reports to the Board on staff's progress and activities related to the Action Plan. Staff will present

the second quarterly report of the Plan's second year of implementation at this meeting. This item is related to one of Albemarle County's Strategic Action Plan Strategic Plan FY 10/11- FY 11/12 –

*Goal 3: By June 30, 2012, the County and its partners will complete the first two year's activities identified in the County's Economic Vitality Action Plan.*

This quarterly update outlines highlights from the last quarter along with key milestones to be achieved by the end of Calendar Year 2012 in order to stay on track for completing all of the objectives, strategies and actions within the Plan's three-year timeframe. A complete report is attached and major items from that report are summarized below.

**Objective 1 - Improve Business Climate and Image**

*Highlights of Progress on the Plan during the last quarter:*

Continued engagement with state and local economic development partners.

*2012 Milestones:*

Communicate target industry information to economic development partners, continue website improvements and quarterly roundtables, improve marketing materials.

**Objective 2 - Simplify and Create Certainty - Continued regulatory reform**

*Highlights of Progress on the Plan during the last quarter:*

Approved Board of Supervisors/Planning Commission process for handling special exceptions, adopted sign ordinance revisions, introduced fast track concept to the Board, distributed Small Business Toolkit.

*2012 Milestones:*

Approve legislative and ministerial process improvements, establish regular drop-in opportunities for entrepreneurs to meet with economic development staff to address their business growth questions, partner with Chamber of Commerce on training.

**Objective 3 - Support Quality Job Opportunities**

*Highlights of Progress on the Plan during the last quarter:*

Completed 46 Albemarle Business First visitations, cosponsored local entrepreneurial workshop, reviewed initial Target Industry Study results with the Board, continued workforce development support.

*2012 Milestones:*

Continue Albemarle Business first visitations establish final target industries and develop marketing and incentives/tool strategies for expanding and attracting targets, align workforce training and development with targets.

**Objective 4 - Expand Industrial Land Options**

*Highlights of Progress on the Plan during the last quarter:*

Completed Planning Commission work sessions on industrial uses zoning text amendment and industrial land/interstate interchange sections of the Comprehensive Plan update.

*2012 Milestones:*

Board approval of industrial uses zoning text amendment, staff continues to work on voluntary rezoning project, complete Comp Plan update including industrial land to the Planning Commission by Fall 2012.

**Objective 5 - Promote Rural Economy/Tourism**

*Highlights of Progress on the Plan during the last quarter:*

Conducted farm winery food service roundtable, obtained Planning Commission direction on rural area uses for Comp Plan update and adopted resolution of intent to study tourist lodging in the rural areas, consultant selected for CACVB marketing plan, cosponsored training for Monticello Artisans Trail, Local Food Hub, and tourism ambassadors, initiated work on USDA Specialty Crop Cider Production Grant.

*2012 Milestones:*

Increased training and marketing support for the Monticello Artisans Trail and the Monticello Wine Trail, implementation of CACVB marketing plan, complete Comp Plan update including rural area uses to the Planning Commission by Fall 2012.

**Data reporting**

As stated in the Plan, it is critical that the County regularly monitor and assess the economy and the local business climate in order to proactively and effectively promote economic vitality. The most recent quarterly indicators report is attached.

There is no budget impact.

No action is required by the Board.

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Ms. Lee Catlin, Assistant to the County Executive for Community and Business Partnerships, addressed the Board, stating that staff would be presenting the second quarter update for the Economic Vitality Action Plan. She said she would provide a quick summary of recent activities that have contributed to economic vitality in the community, review the progress on the five goals and upcoming milestones in year 2012, and present some data on behalf of Steve Allshouse.

Ms. Catlin reported that the community held its first local "Start Up Weekend," a 54-hour marathon event where entrepreneurs, designers, developers, and marketers came together to share ideas, build

products, and launch start-up companies. She said that the event was held at CitySpace and included 30 teams that pitched ideas at the start of the weekend with nine teams going head to head on Sunday Night. She said the winning team was the creators of "Switchbook," an application that synchronizes ebook and audio book so a user can go back and forth between those at the same time. Ms. Catlin said that the winner could choose from a few packages to help launch their business, including time with consultants, venture capitalists, etc. She stated that the University of Virginia had also started "Open Grounds," a new venture for innovation located on West Main Street that is a collaborative, research and working space to provide shared perspectives and disciplines on community issues.

Ms. Catlin reported that, in the recent Governor's Cup, there was a "Governor's Case" competition which included the 12 top scoring wines from across the state. She reported that 11 of the 12 wines were made from grapes grown in the Monticello AVA; eight of those wines were produced by vintners on the Monticello Wine Trail. She noted that the Governor's Cup has become much more rigorous, with judges brought in from across the country and, this year, there were 109 Virginia wineries entering a total of 420 wines. Ms. Catlin stated that the President's Passport Program has recently begun a new partnership with Amtrak, and their northeast regional service as a travel sponsor is now offering 40% off companion fares for anyone coming to and from Charlottesville. She reported that the Charlottesville/Albemarle area was named one of the top 10 "Tasty Towns in the South", by Southern Living Magazine with over 500,000 votes cast online and the area coming in 5<sup>th</sup> because of its history, Blue Ridge Mountains, horse races, lush vineyards, and spectacular ingredients. Ms. Catlin noted that others on the list were Charleston, New Orleans, Louisville and Raleigh.

Ms. Catlin stated that, regarding objective one in the plan which addresses improving business climate and image, there are a number of strategies listed in the staff report but she wanted to review milestones expected by the end of 2012. She reported that staff will be working with the Board on the Target Industry Study next week, and it will be very important to communicate those industries to state and regional partners. Ms. Catlin reported that the new website was presented several updates ago, and improvements are a work in progress so there will be focus groups with businesses over the next quarter to ensure they are meeting expectations. She said that they will be developing general marketing materials for the County as a desirable business location, continuing the quarterly roundtables, and participating in Chamber of Commerce roundtables.

Ms. Catlin reported that, regarding the second objective of simplifying and creating certainty in the development review process, the highlights presented from the last quarter in the Executive Summary include a number of trainings, revisions to the sign ordinance, etc. Ms. Catlin stated that milestones included the legislative and ministerial application changes, which were complex and time-consuming, and have been worked on with the Planning Commission and the ARB. She said the expectation is to have recommendations to the Planning Commission for another discussion on April 24 and then back to the Board in July. She reported that the Small Business Toolkit created by staff is being distributed to a number of partners, and it is a work in progress with only a small batch printed initially.

Mr. Rooker stated that, on page 3 of the Toolkit, there is a statement regarding "25%" in tax payment based on age of ownership. He said there was a property owner who had come before the Board who was adamant that he was paying a tax equal to 25% of the value of the property. Mr. Rooker said that this information needs to be clarified that the tax is \$4.28 per \$100, with the value of the property diminishing at a certain rate.

Ms. Catlin said staff will be working to advertise drop-in office hours with economic development staff that will be available for the public to come in with questions regarding regulations, etc. She reported that the County has talked to the Chamber to set up a regular training on "how to do business with Albemarle County," and it will be offered based on demand. Ms. Catlin stated that working through the single point of contact for application processing is underway in Community Development with Francis McCall working in that capacity.

Ms. Catlin stated that the third objective of providing quality job opportunities, the "Business First" program has about 50 planned visits out of the 75 benchmark, and it has been a very effective program thus far. Ms. Catlin noted that the regional rollout of the Target Industry Study will happen the following week, with the Board holding a work session during the afternoon. She said that, once target industries are identified, they will need to look at existing industry clusters to ensure those are supported in their success and growth, and they would need to think about the marketing approach for new targeted industries. Ms. Catlin stated that this would include a regional and sub-regional approach.

Mr. Rooker asked if the Board will be expected to adopt a target industry report at some point.

Ms. Catlin responded that the regional piece will be presented in the morning, with the consultant presenting the Albemarle County portion of it in the afternoon and staff's hope is that the Board will accept the report with whatever modifications it wishes to make during the work session with the consultant.

Mr. Rooker said the idea is, once the report is accepted, it becomes part of a larger report used to market the County. He stated that there should be some place whereby the public at large could weigh in. He said this is a fairly important issue. He said there have been roundtables with specific groups and it is his opinion that, at some point, the public at large should have an opportunity to weigh in on the study.

Mr. Foley stated that staff didn't expect the Board to formally adopt it the following week, but that the Board would accept the report and then go to the next step. He said staff could work toward getting it ready for formal adoption and, at that point, provide the opportunity for public input.

Mr. Rooker commented that he didn't expect a huge turnout, but there might be people who would appreciate the opportunity to provide comment and have a sense that the Board took that input into consideration before it acted to formally adopt.

Ms. Catlin stated that they have previously discussed identifying any potential incentives that might be appropriate for the community, including the possibility of the fast track process, once the targets are identified. She said the fast track process is tied to one of the strategic plan objectives of assessing and evaluating any incentives that might be helpful.

Ms. Susan Stimart, Economic Development Facilitator, addressed the Board, stating that the Zoning Text Amendment (ZTA) regarding industrial land is wrapping up some of the staff research directed from the Commission, and staff expects to bring back to the Planning Commissions some final recommendations in late spring. Ms. Stimart said that the interstate interchange sections and the industrial land element of the Comp Plan are progressing with several community meetings held, in addition to some work sessions with the Planning Commission. She stated that the target industry discussion on April 11 will provide an opportunity to move forward with the industrial land inventory and the Comp Plan work to see if adjustments are needed. Ms. Stimart said that staff is still on schedule to provide recommendations to the Board by the end of the year on where that inventory can be expanded or changed. She reported that the research on the voluntary rezoning project will begin as soon as the ZTA project is finished. Staff will begin considering how best to reach out to the public moving forward.

Ms. Stimart reported that staff has been working with the Comp Plan update to enhance the vitality of the rural areas, and a lot of that work has already gone forward with further Board review on April 11. She said staff is still actively promoting the Monticello Artisan Trail program, and the management team is moving forward with the backyard vacations program in an effort to bundle those two programs together. She added that staff is working in partnership with the Charlottesville/Albemarle Convention & Visitors Bureau (CACVB) on both initiatives. Ms. Stimart stated that recent work with the Monticello Wine Trail has been very productive in helping to get support for the upcoming wine festival, which will be held in the Charlottesville area on April 21. She said County staff has offered to help the Monticello Wine Trail with some continued work in developing their organizational goals and mission. Ms. Stimart reported that the County has been participating with the Chamber of Commerce's roundtable group for agribusiness, and one of the activities that came out of that is the idea of having a local agribusiness conference specific to Albemarle County farms and is tentatively planned for early next year. She stated that the CACVB is developing their marketing plan and will include a component for the rural economy, and there will be continued work with the USDA specialty crop cider project. Ms. Stimart said that some cideries are also pursuing follow-up USDA production grants and are planning to develop a statewide cider trail. She noted that there are three cideries in the County, with one large one in Nelson County.

Mr. Boyd asked if there are some metrics or goals established for the artisan and wine trails so that progress could be measured such as increases in wine sales. He said it is important to establish a goal with measurables and receive a report periodically.

Ms. Stimart explained that the Artisan Trail project began with a DHCD grant, so the County had to spell out very specific performance metrics. She said staff began with a survey of all potential participants as a baseline condition, and are planning to go back and measure whether they had realized more customers, revenue, etc. She said staff is also able to calculate visits to the new website for this program.

Ms. Catlin said that staff can get the Artisan Trail results for the Board noting that, in September, there will be a re-enrollment – with 98 enrollees initially – so that will also be a measurement of success.

Ms. Catlin reported that the tax revenues are where staff expected them to be, with some movement in the right direction as far as sales tax and meals tax. Ms. Catlin reported that, in looking at jobs and income, there are also some positive signs in the labor market, with the last quarter showing a substantial increase – about 700 positions – and the unemployment rate was down measurably. She stated that the real estate market remains weak, with construction jobs impacted and that part of the economy.

Mr. Rooker said that there is a fair amount of commercial construction when compared to other communities, but residential construction is down.

Ms. Mallek noted that there has been a 50% drop in the foreclosure rate. She also asked when an update is expected from the CACVB regarding their marketing plan.

Ms. Catlin responded that the CACVB has signed a contract and is getting started with a follow-up report which is planned for the Board's May day meeting.

Ms. Mallek said the Board was going to be told who had been hired, what their skills were and there has been no feedback to date. Ms. Catlin said she would send that information to the Board in a follow-up e-mail.

Mr. Dumler mentioned that the contract had been split up into four separate subcontracts.

Ms. Catlin pointed out that the City is the procurement agent on this, so the County had to work through their process. She said that the contracts were being done sequentially; the first one has been completed and the next three will follow shortly thereafter.

Mr. Rooker commented that staff is doing a terrific job in this area. He said the brochure will be very helpful.

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Agenda Item No.23. Crozet/Western Albemarle Library – Update on Bids and Budget for Library Project.

The following executive summary was forwarded to the Board.

The Board directed staff to obtain construction bids on the Crozet Library plans at its December 7, 2011 meeting. The Board requested that additional cost-saving ideas be solicited from prospective contractors due to the preliminary FY13 budget outlook. See attached November 9, 2011 executive summary for additional background information (Attachment A).

The bid documents were completed, with three optional items being identified to allow for certain enhancements to be chosen if funding allows. The RFQ was advertised on February 12, 2012, and a pre-bid conference emphasizing the County's interest in cost-saving ideas was held on February 23, 2012. Eleven bids were received on March 28, 2012, ranging from a low bid of \$5,771,000 to a high of \$6,944,261 with many closely clustered around \$5.9 million. None of the bidders proposed cost saving ideas.

The purpose of this agenda item is to report on the bid results and seek board authorization to proceed with construction of the project. The building and site construction budget on the project is \$6,000,000 with an overall budget of \$6,765,497 to complete the project which includes contingency, project management and other construction related costs. The apparent low bid received on the project for the base scope (building and site construction) is \$5,771,000, or about \$229,000 below our estimate.

The low bidder also proposed a total price of \$39,000 for three alternates with the following scope:

- Roller shades in lieu of horizontal blinds
- Color concrete to sidewalks/entrance areas
- LEED certified wood product

Staff recommends awarding a contract to the apparent low bidder (MB Contractors, Inc.) in the amount of \$5,810,000 which includes the base bid amount of \$5,771,000 plus alternates of \$39,000. Based on this contract amount, the revised project contingency for the project would be \$565,000, or just below 10% which we think is appropriate given the nature and complexity of this project. An additional alternative, not including in the bidding, is the additional excavation in the lower level to allow for future expansion of the facility. If desired by the board, staff can further study the feasibility and cost of this plan modification with our design firm and successful low bidder.

If the Board adopts the budget as recommended, the anticipated schedule is to award the contract in mid May and to give the notice to proceed to the contractor in June, with construction to commence in July and to be substantially completed twelve months from mobilization.

The proposed FY13 CIP includes \$6,765,497 for project completion, and that amount has been maintained in the Board's budget reviews and actions to date.

The portion of the construction cost necessary for the street and stormwater infrastructure is included in the Streetscape project budget. The stormwater connection will be constructed as part of the Library project to ensure proper coordination and to ensure any timing issues with Streetscape construction will not delay the library work, and the money for this component will be transferred from the Streetscape project to this project.

The Friends of the Library are responsible for \$1.6M of the total project cost, which is expected to cover furniture and books.

Staff recommends the Board authorize staff to proceed with executing a contract with the lowest, responsive bidder and proceed with construction of the project. This action is also contingent upon the Board's adoption of the proposed FY 13 budget as recommended and as will be acted upon in a subsequent agenda item.

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Mr. Trevor Henry, Director of the Office of Facilities Development, addressed the Board, stating that bids for the Crozet Library opened last week and there were 11 bidders. He said 10 of the 11 bids were within a grouping of about 7% from a base bid, which is a good indicator of the market and the tightness of the design and specifications. Mr. Henry stated that the low bidder was MB Contractors, formerly Martin Brothers, from Roanoke, a company that has been around since the mid-1900s with lots of commercial experience. He said that their base bid was \$5.771 million, with bid alternates totaling about \$39,000 for a total bid package of \$5.81 million. Mr. Henry stated that the budget was presented a year ago at about \$6 million, and the purpose of today's meeting is to review the bids and answer any questions the Board may have. He said that, if the Board adopts the budget for FY13 with the library included, the library contract could be executed in May with notice to proceed in June and shovels in the ground in July with an estimated 12-month construction timeframe.

Mr. Henry reported that the plan includes 4,800 square feet of unfinished space in the lower level of the library, and the library steering committee suggested that the space be used as a compliment to the library such as a visitors' center, arts and crafts space, or meeting space. County staff has looked at how

that space could be used and believe, if it is the Board's desire, now is the optimum time to make adjustments to the plan. The lower level design was not part of the bid package so staff would have to look at the mechanical, electrical and plumbing to assess structural, HVAC, lighting, and egress all of which will take more work and more money to determine budget impact. He said that, at this point, staff would recommend applying the \$200,000 project cost versus budget difference to construction contingency, which would shore that up to a 10% level and is a typical industry standard.

Mr. Snow asked how much would be generated if the 4,800 sq. ft. space were turned into leasable retail space.

Mr. Foley responded that staff hadn't really calculated that at this point.

Mr. Davis noted that there might be restrictions on doing that, given the use of tax-exempt financing. He said staff looked into that several years ago and found there to be limits.

Mr. Foley said that there may be some flexibility there depending on how the financing is done, and staff could do some analysis on that and bring it back to the Board.

Mr. Rooker stated that, if it brought in \$50,000-\$100,000 per year in revenue, it should be considered.

Mr. Boyd agreed and stated he would like to see that evaluated, noting the \$100,000 deficit to fund the operating costs on this project.

Mr. Rooker said there would probably be a lot of users interested in that space, given the amount of public walk-through use. He pointed out that the public wouldn't be able to enter the library at that level.

Ms. Mallek said that, in the future, there would be an elevator dropped in with an entrance to the library on Crozet Avenue, but not in this phase of construction.

Mr. Boyd stated that there would be a dilemma with rented space financed by tax-exempt dollars competing with private sector retail space, but suggested that there might be expenditures avoided in other areas, such as rented storage facilities which could offset other costs.

Mr. Foley said that Mr. Letteri should perhaps comment on that, as current storage space is at 35,000 square feet versus 4,800 square feet at the library. He said that there is a team looking at the use of the space now, and the input from the Board on leasing that space is useful in order to explore options.

Ms. Mallek commented that any kind of use which involved any type of cooking would not be desirable because the smells would rise up into the library space.

Mr. Dumler said the question to be decided now is whether the project is delayed with the idea of excavating an additional several thousand square feet, or whether it's kept in contingency.

Mr. Rooker stated that he would favor the recommendation to hold the money in contingency and release any unused funds into the Capital Improvement Program (CIP), rather than use that money to create storage space.

Mr. Boyd said he never liked the idea of giving staff the option to spend contingency arbitrarily, \$600,000 in this case, adding that he felt the set-aside money is a good idea, however, that issue should come back to the Board for any final decision on overruns.

Mr. Foley stated that staff could develop some guidelines on when contingencies would be reached into and what level should come back to the Board, but that should be done by policy.

Mr. Letteri said the intent of that contingency fund is to advance the program as defined, to address any unforeseen conditions or opportunities that may occur during the project, or could provide a better way of doing things but not to grow the program or make it more than what was planned.

Ms. Mallek stated that one example of that is the natural gas company trying to bring natural gas to the Square, and that alone is estimated to save about \$5,000 a year in operating for the Library.

Mr. Boyd commented that staff didn't have to come back to ask about saving money.

Mr. Foley said that the question before the Board is whether it is supportive of moving forward with the low bidder, noting that the actual adoption of the budget will come before the Board later in the afternoon or perhaps delayed until next week but that will not prevent the process from moving forward if that is the direction of the Board.

**Motion** was then offered by Ms. Mallek to authorize staff to proceed with executing a contract with the lowest, responsive bidder and proceed with the construction of the project. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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Agenda Item No. 24. Calendar Year 2012 Tax Rate Resolution.

Ms. Allshouse summarized the following executive summary:

On March 28, 2012, a public hearing was held on the Board of Supervisors' proposed budget for FY 12/13. A public hearing also was held on the calendar year 2012 tax rates.

The attached resolution to set the calendar year 2012 (tax year) tax rates must be approved by April 15, 2012. However, adoption of the tax rate at the April 4<sup>th</sup> meeting would assist in the timely printing and mailing of the tax bills that are due on or before June 5<sup>th</sup>.

Strategic Plan: Develop a comprehensive funding strategy/plan to address the County's growing needs.

The attached resolution sets the tax rates for calendar year 2012. The proposed rates are set at \$0.762/\$100 assessed valuation for real estate, public service, and manufactured homes and at \$4.28/\$100 assessed valuation for personal property, including machinery and tools.

Unless there is a change based on the public hearing, staff recommends adoption of the attached resolution to set the proposed calendar year 2012 tax rates.

Mr. Foley noted that the tax rate adoption could be considered today or next week when any final changes are brought back.

**Motion** was offered by Ms. Mallek to adopt the proposed resolution to set calendar year 2012 tax rates. Mr. Rooker **seconded** the motion.

Mr. Boyd said that he would not vote in favor of the tax rate, as he was in favor of giving more of a break to the citizens.

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

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

NAYS: Mr. Boyd.

#### **RESOLUTION TO SET CALENDAR YEAR 2012 TAX RATES**

**BE IT RESOLVED** that the Board of Supervisors of Albemarle County, Virginia, does hereby set the County Levy for Calendar Year 2012 for general County purposes at Seventy-Six and Two-Tenths Cents (\$0.762) on every One Hundred Dollars of assessed value of real estate; at Seventy-Six and Two-Tenths Cents (\$0.762) on every One Hundred Dollars of assessed value of manufactured homes; at Seventy-Six and Two-Tenths Cents (\$0.762) on every One Hundred Dollars of assessed value of public service assessments; at Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars of assessed value of personal property; and at Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars of assessed value of machinery and tools; and

**FURTHER** orders that the Director of Finance of Albemarle County assess and collect the taxes on all taxable real estate and all taxable personal property.

Agenda Item No. 25. Adoption of FY 2012/2013 Operating and Capital Budgets.

Ms. Allshouse summarized the following executive summary:

On February 24, 2012, the County Executive presented his recommended FY 12/13 Operating and Capital Budgets to the Board of Supervisors. On February 29, 2012, the Board held a public hearing on the Recommended Budget and then held four public work sessions. On March 14, 2012, the Board authorized the advertising of a \$0.762/\$100 real estate tax rate for the 2012 Tax Year. On March 28, 2012, a Public Hearing was held on the Board of Supervisors' Proposed FY 12/13 Operating and Capital Budgets and on the Calendar Year 2012 Tax Rates.

The proposed FY 12/13 Operating and Capital budgets currently total \$311,438,139. This reflects the County Executive's Recommended Budget and changes made during the Board's work sessions. The changes made during the budget work sessions are summarized below:

- The County Executive's Recommended Budget included a \$1,497,000 reserve for Board decisions. The Board used the reserve to fund the following:

Unfreeze 3.0 Police Officers	\$236,068
Restore funding for TJEMS	19,257
Fund the Healthy Transitions Program at Region Ten	42,500
Restore funding for Literacy Volunteers	6,287
Restore funding for VPI Extension Service	27,492
Restore funding for OAR	10,798

*Provide funding to JMRL for salary and medical increases	**67,771
Transfer to the School Division to be used for school bus replacements	648,250
Transfer to Capital Improvement Fund	117,561
Add to Reserve for Contingencies	21,396
<b>Subtotal</b>	<b>\$1,197,380</b>
***Reduction of Budget (Return to taxpayers)	299,620
<b>Total Use of Reserve for Board Decisions</b>	<b>\$1,497,000</b>

\*Additional funding for JMRL is contingent on a 1% salary increase actually being provided to JMRL staff and the other localities also providing additional funding for this purpose.

\*\*During the March 14 work sessions, the Board approximated JMRL staff salary and medical costs at \$65,000 based on the information they had available to them at that time. The actual impact in FY 12/13 is \$67,771.

\*\*\*The use of the Board reserve funds and the \$299,620 returned to taxpayers results in a decrease in the planned real estate tax rate from \$0.764/\$100 to \$0.762/\$100.

- Provide \$60,000 to the Commonwealth's Attorney's budget in FY 13 based on an equal amount of offsetting revenue associated with the Commonwealth's Attorney's delinquency collections.

On March 28, 2012, the Board held a public hearing on the Board of Supervisors' Proposed FY 12/13 Operating and Capital Budgets and on the Calendar Year 2012 Tax Rates.

During his presentation on the proposed budget, Mr. Foley noted the following outstanding budget issues that were unresolved at that time:

- 1) Potential new Virginia Retirement System (VRS) mandate
- 2) Commonwealth's Attorney's funding
- 3) Seminole Trail Volunteer Fire Department Addition
- 4) Library out-of-area-reimbursement accounting

Also, on March 28, 2012, Board members requested staff provide additional information on the following:

- Jefferson Madison Regional Library's (JMRL) additional funding requests
- JABA – Woods Edge Apartments
- JABA – Mountainside Senior Assisted Living Center
- CIP – Seminole Trail Volunteer Fire Department (STVFD)
- CIP – Acquisition of Conservation Easement Program (ACE)
- Performance-based recognition pool

Attachment A provides additional details on these items.

Staff recommends the Board:

- 1) Items with offsetting Revenue:
  - a. Continue to include the \$60,000 increase in the Commonwealth's Attorney's budget in FY 13 per the Board's decision on March 14, 2012, based on an equal amount of offsetting revenues associated with the Commonwealth's Attorney's delinquency collections. Additional information about the collection process and options to consider moving forward for FY 14 will be discussed with the Board in May 2012.
  - b. Increase the amount budgeted for JMRL by an additional \$30,000, to be offset by \$30,000 in out-of-area fees.
- 2) Unfunded VRS Mandate: Remain mindful of the potential financial impacts of SB497 to the County's on-going operating budget when making any final changes to the FY 12/13 budget. Since the Governor may make changes to this bill as part of the veto process, staff expects the County will know the full impact of this change prior to the Board's appropriation of the budget and will recommend needed adjustments at that time.
- 3) March 28, 2012 funding requests from JMRL and JABA:
  - a. JMRL – Additional \$15,572 for rent increase at Northside Branch
  - b. JABA – Additional \$30,000 for Woods Edge Apartments and an additional \$15,539 for Mountainside Senior Assisted Living Center

These items do not have an identified funding source and staff strongly recommends that the \$250k contingency must be maintained. Staff recommends the Board consider these requests against those funding changes the Board already made at the March 14 Budget Work Session. As stated above, staff again emphasizes the need to be mindful of the unfunded VRS mandate which is likely to have further impact on the budget.

- 4) Performance-based Recognition Pool: Review information and provide direction to staff on April 4 if the Board believes changes are warranted.
- 5) Adjustments to CIP: Review the CIP information in Attachment A. Staff recommends the Board not make any changes to the Proposed CIP budget at this time. Staff proposed to bring back more comprehensive information to the Board in June 2012 that will provide a clearer picture of the available revenues and funding mechanisms, watch list items, as well as more in depth information on the Seminole Trail Volunteer Fire Department project. The Board would consider any adjustments to the FY 13- FY 17 CIP program at that time.
- 6) Staff recommends the Board provide final direction on the FY 12/13 Operating and Capital Budgets on April 4 and that the Board formally approve the FY 12/13 Budget on April 11.

Ms. Allshouse said she would provide information on the four outstanding issues needing further discussion as well as some other items the Board had requested for consideration. She stated that staff is requesting decisions on these items today so the Budget Office can put the numbers together and bring the budget adoption information to the Board the following week, noting that the School Division must send contracts to teachers no later than May 2.

Ms. Allshouse said that items with offsetting revenues or fees were brought forth during the Board's work session. She said the Commonwealth's Attorney came forward and the Board agreed to put \$60,000 into that budget with offsetting revenues from delinquency collections. She said that staff recommended the Board continue to do that, and the Board asked for more information about how the process works and delinquency collections, which will be brought back to the Board in May.

Ms. Allshouse stated that the second item is related to library funding noting that, during the five-year financial planning process, the issue was raised that out-of-area fees were not collected from those localities, and staff is recommending that the Board increase the budget for the library by \$30,000 to be offset by out-of-area circulation fees.

Mr. Rooker said that he would support the Commonwealth's Attorney item, but he would approach the library item differently based on information received from staff. He stated that he would prefer that the libraries keep the out-of-area circulation revenues.

Mr. Foley said that is the way it was originally proposed, and said this is exclusively an accounting issue.

Mr. Dumler commented that it's a far more efficient allocation of incentives.

Mr. Foley agreed, stating that it shows the Library getting \$30,000 less; however, it is really a flat budget.

Mr. Rooker said that this gives other localities incentive to maximize the revenues from out-of-area circulation.

Board members agreed with the process of having libraries keep the revenues.

Ms. Allshouse reported that there was an unfunded VRS mandate associated with Senate Bill 497, with the estimated cost to Local Government to implement at \$350,000 and additional costs for the Jail, the Emergency Communications Center (ECC), the Blue Ridge Juvenile Detention Center, and the School Division. She said the Governor may change the bill, but that would not be known until the April 18 veto session. Ms. Allshouse suggested that no changes in the budget be made now, with any adjustments made at the appropriations phase in May. She said the County might have to use one-time end-of-year monies to cover this, but it would be an ongoing item in the budget.

Mr. Foley stated that the other option would be to anticipate the \$350,000 obligation and offset it with other cuts, but staff suggested the Board wait to see what is decided and whether the cost could be phased in.

Mr. Rooker commented that he would be surprised if the Governor didn't change Senate Bill 497 somewhat, based on the input he was receiving.

Ms. Allshouse reported that the Library requested some additional funding for a rent increase at the Northside branch; Jefferson Area Board for Aging (JABA) requested additional funding for Woods Edge Apartments and Mountainside Senior Living. She said staff recommends the Board consider these requests against the funding changes made at the March 14 budget work session and emphasized that the Board consider the state mandate on VRS previously mentioned.

Mr. Foley noted that staff has a fairly minimal reserve for contingencies in the operating budget in the amount of \$250,000, and that has \$270,000 now because of the balance of the rate issue. He said staff's recommendation would be not to go to the contingency to fund these extra items, stating that the Board could address it through one-time monies.

Mr. Snow said he would propose taking it out of one-time money from the fund balance and proposed taking \$1 million to \$1.5 million to go toward matching revenue sharing for road items.

Mr. Foley stated that staff would address capital later and the Board would need to decide whether it wanted the operating items to be addressed through one-time monies or indicate to those agencies how long the funding was intended to last.

Mr. Boyd said that he was still in favor of excluding those items that had already been excluded during the initial review process, and stated this is not going to be one-time expenses.

Ms. Mallek stated that she looked at it more as a safety net and didn't mind it becoming an ongoing expense, especially the JABA items.

Mr. Rooker said that the issue he had with these subsidies is there isn't a program in place to make objective determinations of who should be subsidized and who shouldn't be. He stated that most affordable housing expenditures are one-time expenses, such as the AHIP federal grant allocation that would be leveraging funding at a 7:1 ratio to improve housing in Crozet. Mr. Rooker said JABA does a wonderful job in the community, and he would be more in favor of increasing the general contribution to JABA and letting them decide how it would be disbursed rather than subsidizing particular people in particular beds at particular locations. He stated that there are thousands of people living elsewhere who also needed subsidies for their housing, and there is no program set up to make a judgment as to who should get subsidies and who shouldn't. He said the County is not in that business; the federal government is in that business.

Ms. Mallek said that the people using the vouchers are referred to JABA by the County's own Social Services agencies.

Mr. Rooker stated that there are people all over the County, not only at Woods Edge and Mountainside, who have bad economic circumstances and could use a subsidy. He said that the County does not have a program set up to evaluate the need, and does not want to go down that road. Mr. Rooker emphasized that the County's initial decision regarding Woods Edge was based on a contribution to make that facility work through a tax credit deal. He said that what the County was really doing was subsidizing a private business that got into the program for tax credits and has already been supported with \$320,000 of County money. Mr. Rooker stated that the tax credits would require low rents anyway, so the subsidy would be for the private businesses to receive some augmented income from the County. He said he did not support it in this way because there is not an objective way of making a determination of who should get a housing subsidy and who shouldn't, nor does the County have the funds to get into that business on an objective, broad-based way.

Mr. Thomas asked if people would be evicted if they didn't get the extra money.

Ms. Mallek responded that the people who are being assisted now who cannot meet the income levels would have to leave, and those who are able to meet the income benchmarks would be able to stay. She said the rent stays the same, it's just that the County has helped some folks to stay in their places.

Mr. Boyd said that JABA would have to figure out another way to fund that program.

Ms. Mallek responded that JABA has already raised \$220,000.

Mr. Rooker stated that the staff report indicated that Woods Edge had to provide those beds per the nature of the project.

Mr. Snow asked what difference it made if the County is giving the money directly to JABA.

Mr. Rooker responded that he had outlined his objections to that, adding that it would be wise for the Board not to make additional expenditure commitments while the \$350,000 VRS item remained unresolved.

Mr. Snow said he felt that this could be funded out of one-time money and the Board could decide next year if it should become a permanent contribution.

Mr. Boyd asked where the one-time money would come from.

Mr. Rooker responded that if the fund balance is used for operating, it then becomes operating money and would have to be split with the School Division.

Mr. Boyd said that the Board was asked for an appropriation to Woods Edge and gave it, and now the Board is being asked again to fund these projects. He said he didn't view this as being something that the County could take on as a core responsibility to help a few people with this type of housing, particularly when there's a lot of need already in the community. He stated that this went through the ABRT review process and was not funded, and now the Board is saying if someone came forward and asked for money the Board would override the nonpolitical process and fund the special projects.

Ms. Mallek asked if JABA goes through the ABRT process.

Ms. Allshouse replied that Woods Edge is paid directly out of the housing budget, and it is now being moved over to JABA so it was actually in the budget. She added that Mountainside went through the ABRT process. She said that JABA goes through the OMB process, but the same staff members were involved.

Mr. Rooker said that there is a statement in the staff report on Woods Edge that said "with or without subsidies, rents are controlled by the IRS because of the tax credits in the project." He emphasized that this meant the County would be subsidizing the developer and not the individuals.

Mr. Thomas asked if the item could be added back into the budget once the Board finds out what is going to happen with VRS.

Mr. Foley responded that the only result with VRS that wouldn't require more money would be that the VRS implementation be put off until the next General Assembly session. He said the County is more likely to have more obligation one way or the other, unless the very unlikely event happens which would mean the Governor steps back from what he pushed through the General Assembly, which was a change in VRS.

Mr. Rooker said that staff has strongly recommended holding off on creating additional expenditures in the budget while the \$350,000 potential expense is outstanding, and the Board needs to also consider the fact that the School Division is also being hit with the VRS issue.

Mr. Boyd added that the real cost is \$1.6 million.

Mr. Rooker agreed and said he is not sure where the School Division will even get their share for VRS which could combine for a total of \$1.6 million.

Ms. Mallek said that she took the conversation as consensus that those items would be left off the budget list.

Mr. Rooker pointed out that the Board recommended a \$68,000 increase to the library to cover salary and medical expense increases, assuming they gave a raise, and Northside is a shared expense with the City so that shouldn't be singled out, given the number of other shared expenses. He said the question is should the County pick up 100% of it, separate from everything else, and it kind of sets a precedent for the County to pick up 100% of what has, in the past, been a shared expense.

Mr. Dumler asked for the circulation breakdown of the shared expense for Northside.

Mr. Davis said that it is 85% County and 15% City.

Mr. Rooker explained that it isn't the amount he objects to; it is more to the fact that the County would be paying 100% of the cost increase.

Mr. Boyd stated that this has been discussed for a long time, and the library representatives have said they shouldn't have to pay for a deal because the County negotiated it, but there were other options reviewed and this was deemed the least expensive alternative.

Mr. Foley pointed out that John Halliday participated in these negotiations along with the County.

Mr. Davis noted that this was year four of a five-year lease that they were considering, and there was an increase in years 3, 4 and 5.

Mr. Foley said that those increases have been laid out in the lease agreement for a number of years.

Ms. Allshouse reported that another item the Board had requested more information on was the performance-based recognition pool, which will be funded with \$150,000 in one-time money to be awarded at the end of FY13 for employees that are doing a very good job in addition to having success in accordance with the mission, values, and strategic plan goals. She clarified that this amount is currently reflected in the budget numbers.

Mr. Snow said that he wanted to pull the item out because he didn't see how there would be winners and losers picked to get the bonus money. He said that everyone is working hard and to recognize one person over another would create more problems than motivation, and he would rather see it assigned to those who generated savings.

Mr. Foley stated that staff realizes that there is no perfect evaluation system, and the Leadership Council spent a lot of time talking about this item. He said that the County is trying to drive performance, so it would be tied to very specific goals with specific outcomes tied to implementing the strategic plan, and every employee in that evaluation process would sit down and develop specific goals that would be an incentive to get the bonus. Mr. Foley stated that the plan was to put the entire organization through a goal-setting training and improvement process, so there would be less subjectivity and more incentive to achieve those goals. He acknowledged that there was the potential for morale issues, but the Human Resources Department felt they had put together a good method by which to implement this. He said staff is trying to drive performance to goals, and that's how this is being viewed.

Mr. Rooker said that cost savings would be one measure of doing this, but he didn't think it could be the only criteria. He said job performance should be other criteria, as some people are in positions to recommend cost savings and others are not.

Mr. Foley stated that goals would have to be set at the beginning of the year.

Mr. Boyd said the County could have the best of both worlds, as it should be a revenue-neutral process if cost savings are realized.

Mr. Foley explained that gain sharing would be a way to create an incentive to save money, with an employee getting a portion of the savings adding that staff would have to put a program around that.

Mr. Snow said that a budget could be inflated and then come in under budget to show success, adding that he liked the idea of gain sharing better. He added that it could be a disincentive if one employee was picked for a bonus and another who was working harder wasn't chosen.

Mr. Foley stated that staff has had the same discussions about this, but it would be tied to achieving goals and would drive the organization to set effective goals that are measurable. He said staff believes it is a beneficial thing that can also give county employees a little more incentive on some specific things for the strategic plan.

Ms. Lorna Gerome said that the Leadership Council had these same discussions including an advantage one employee might have over another. She stated that there were competencies looked for throughout the year such as communication, customer service, initiative, etc. so this can be tied to excellent behavior around all of those competencies and achieving the goal. Ms. Gerome said that this didn't significantly change the current reward system; it just provided a little more incentive. She said staff believes it would be a nice way to continue to reward employees and connect it with our current systems. She noted that there is a different program used for cost savings – employee recognition – which allows for one-time awards that a colleague or manager might want to give to a coworker.

Ms. Mallek asked if there is a parallel program on the school side.

Ms. Gerome responded that the performance management system is for all classified staff, and the employee recognition was piloted on the school side so there are some departments that have it in place such as the Transportation Department but it is not throughout the School Division.

Ms. Mallek said that the School Board had expressed concern about how it would be implemented on their side.

Ms. Gerome said she has discussed the same issue with school leadership and there was consensus that it would be a positive direction.

Mr. Rooker commented that there is a system already in place to accomplish this, and it would cost money to reinvent the wheel through staff time. He said that the question is whether the Board wants to fund the program, not that it should exist.

Mr. Thomas said that the county managers should run the program, and he would like to see it funded, as has been done in the past.

Mr. Rooker stated that he would be in favor of seeing it go forward, but he would like to see an analysis at the end of the year as to whether this was an effective way to incent employees.

Ms. Mallek said she would like to see how many were recognized, and it sounds like there are more details to be decided.

Mr. Foley said staff will begin setting goals in the next few months, and evaluations will be held next May to determine whether the bonus would be awarded based on performance review and goal evaluation.

Ms. Allshouse confirmed it was the consensus of the Board that item would be left in the budget for next week.

Ms. Allshouse reported that there was also a request to bring information back on two CIP projects: the Seminole Trail Volunteer Fire Department and the Acquisition of Conservation Easements (ACE) Program. She said that she provided a summary for the Board the previous Monday, and staff proposed that a more comprehensive CIP package be brought back in June with more project and revenue details. Ms. Allshouse said staff recommended adjusting the CIP program at that time, and is requesting that the additional items be included in the comprehensive review of the CIP.

Ms. Mallek said that both projects are extremely important and appropriate to do right now in lieu of the opportunity costs and savings. She said the Board talked last fall in the strategic planning session about new ways of doing projects and public/private partnerships, etc. She stated that the fire department project, at its size, is the perfect one to attempt to do as opposed to, i.e., a \$20 million school, and she felt it was appropriate to put that project in the budget now. Ms. Mallek noted that 30% of all the calls in the County are run out of this station, and the firefighters currently have extremely inadequate facilities there.

Mr. Thomas stated that he supported that effort.

Mr. Boyd said that he didn't see any lost opportunities by waiting a few months, adding that the Board should have a much better idea of available resources and budget status in a couple of months.

Ms. Mallek stated that the renderings for the new fire station are ready to go out on Monday, and no one can go forward without an affirmative decision from the Board.

Mr. Letteri explained that staff has studied the site and, although the fire station has done conceptual work, further design work is necessary to go beyond this point.

Mr. Boyd said that this item will be in next year's CIP and asked if the project could begin before July.

Mr. Letteri confirmed that the soonest the County could move forward would be July 1.

Ms. Mallek said, if this project is on the list, then there is the confidence to go to the next level and get bidders engaged.

Mr. Rooker stated that the recommendation to wait until June is prudent, because the Board will have a better idea of funding sources, and didn't see anything lost by waiting. He added that the Board just approved an ACE project today, and there wouldn't be anything between now and June that would make a big difference on whether the ACE program is funded. Mr. Rooker commented that he didn't see a total amount recommended.

Mr. Foley responded that there is no amount being recommended for ACE, adding that item came from the Board to include on the list; so staff is waiting for Board direction on a dollar amount.

Ms. Mallek said \$150,000 would allow for the state match.

Mr. Snow asked if there was any deadline for revenue-sharing money from VDOT for roads.

Mr. Foley said the money would be available beginning July 1, so a June recommendation would be prudent.

Ms. Mallek stated that there is a limited amount to be disbursed to localities for ACE, so when it is gone the County might not get any.

Mr. Foley said he didn't believe there was a deadline but stated county staff will not miss the deadline or the opportunity.

Mr. Snow recommended that the County put forth \$150,000 with the City also putting up \$150,000.

Mr. Boyd suggested \$75,000 each.

Mr. Rooker said there is still money in ACE that hadn't been spent yet - \$.285,000.

Mr. Thomas suggested using some of that amount to match the state's \$150,000.

Mr. Rooker said that the point is whether anything would be lost by waiting until June, at which time the Board could then see how much money that is available in the CIP from various funding sources.

Mr. Boyd agreed adding that the Board would be in a much better position if it waited, unless there were deadlines looming.

Ms. Mallek noted that no further work will be done on the fire station until July.

Mr. Boyd asked if the fire station was paying for the design.

Ms. Mallek said that the County is very inexperienced in the public/private process.

Mr. Rooker expressed confidence in Mr. Letteri and his staff.

Mr. Letteri explained that if the Board signals their general support for the project, there is a lot of work that could be done between now and June in terms of drafting an RFP, getting ready to engage a design firm, evaluating various options for delivery systems, etc. He said all of those items could be happening over the next 6 to 8 weeks.

Mr. Foley said the Board does have a fund balance that could go into the CIP well in excess of the amount needed for Seminole Trail, but the question is whether it would go there or to roads or other priorities. He agreed that staff would be better prepared to address this in June.

Ms. Mallek suggested the Board show its support for going forward with the project in advance of the June meeting.

Mr. Rooker said that every Board member expressed some support if the project can be funded, but he also wanted to consider having money for revenue sharing. He said he would prefer to look at all the projects together, understand how much money is available and whether or not it's prudent [to make] allocations.

Mr. Foley stated that there is enough direction from the Board for staff to continue conversations with Seminole Trail Volunteer Fire Department in preparation for moving forward should funding be allocated for that project. He said staff will go as far as it can in order to prepare for the next step quickly.

Mr. Thomas asked Mr. Foley to check on the \$150,000 for ACE.

Ms. Mallek said that she would be happy to propose \$500,000 with \$150,000 of it matched by the state. She said the minimum approach should be to keep ACE alive.

Mr. Foley stated the Board will have good information available in June which will allow the Board to make decisions based on the different scenarios.

Mr. Boyd said he would support Seminole Trail and transportation, as he viewed those as core services and, if there is money leftover, it could go to ACE, but that item was less important to him than the matching transportation dollars and emergency services.

Mr. Rooker said the only reason transportation match money is necessary is because the state had gutted secondary road funding.

Ms. Allshouse thanked the Board for its input, and Board members thanked her for her thorough and complete work.

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Agenda Item No. 26. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Mr. Boyd said that he read the letter to Governor McDonnell and was fine with it.

**Motion** was then offered by Ms. Mallek to authorize the Chair to send the proposed letter to Governor McDonnell regarding SB 497 VRS Amendments. Mr. Rooker **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

**(The letter is set out below:)**

"The Honorable Robert F. McDonnell  
Governor of Virginia  
Third Floor, Patrick Henry Building  
1111 East Broad Street  
Richmond, Virginia 23219

Re: SB 497 VRS Amendments – Petition for Reenactment by 2013 General Assembly

Dear Governor McDonnell:

Cities, counties and school boards of the Commonwealth of Virginia petition you to amend Senate Bill 497 to require reenactment by the 2013 General Assembly. Enactment now will be a setback for the emerging economies of Virginia's localities with no beneficial impact to the Virginia Retirement System.

Senate Bill 497 mandates local governments to enact 5% raises for employees and to, simultaneously, shift 5% of employee retirement costs to those workers. Only on the surface does it appear to be a wash; it is not. Localities must find the funds for 5% raises in their budget, plus other attendant costs: immediate increases in FICA, social security costs, workers' compensation costs; and the rate of pay increase in hourly compensation owed to employees for overtime and compensatory time. The State Fiscal impact statement acknowledges "the requirement for offsetting raises. . . negates [any] savings" to the localities from the shifting of this portion of retirement contributions to their employees."

This bill is a fiscal crush on local governments and their employees. Albemarle County calculates these costs to be \$350,000 in the first year for its direct employees and three times that amount (over \$1.2 million) for school board employees, if fully implemented, a total in excess of \$1.55 million annually. The costs for another county (Roanoke) are \$419,000 for its employees and \$740,000 for school employees, for a total of \$1,159,000 for one year. Other localities calculate similar impacts.<sup>1</sup>

Public employees themselves, many of whom have not had raises for years, will suffer a loss of net income primarily due to increases in FICA withholdings. It is estimated that this net loss of compensation will be approximately 0.75%. We should not play these cruel games with our public or our public servants, particularly when there is no apparent positive contribution to the Virginia Retirement System. The State Fiscal Impact statement indicates the bill "will have no impact on the VRS trust fund . . . because it causes a change to the source of funds, not the amount of such funds." Succinctly, this legislation appears to be smoke and mirrors.

You undertook a study to reduce the mandates on localities. Your efforts to identify burdensome mandates on counties, cities and towns were well received by local governing bodies in the Commonwealth. However, State legislation mandating compensation for local employees would be unprecedented. Please tell the General Assembly that you are troubled by SB 497, which is a large, unfunded State mandate on both localities and their employees. This mandate will stymie

emergence from the deep recession by crippling local budgets, and reducing the purchasing power of employees within their communities.

This mandate appears to be an ill-conceived attempt to address problems with the federal social security and Medicare programs. The federal government is the largest benefactor from the receipt of additional FICA payments, estimated to be 1.5% of local payrolls. These funds will be added to the vast federal budget when they could have been the source of a raise for the employee, additional funding for essential public services or the basis for a tax cut.

At this moment localities are finalizing their budgets for Fiscal Year 2012-13 with tax rates already advertised. We have little ability at this late date to analyze and plan for this unexpected liability. Many of our localities are facing another horrendous budget year; others are hoping for the first catch-a-breath year since the Recession. We cannot afford to have our governmental services further destabilized by this State mandate.

We understand symbolic gestures but this one is fraught with severe negative fiscal implications. Localities can no longer simply submit to State actions seeking to balance the State budget on the backs of the localities. We are considering, in conjunction with other localities, appropriate legal challenges to this legislation if it becomes law.

The State borrowed from VRS. To now tell the localities and their employees that they have to pay the piper for the State is unconscionable and not good government. Localities do not have the ability to engage in this deflection of responsibility; claims of saving the public money while simply pushing the obligations to local tax resources, and the taxpayer homeowner or business. Simply put, SB 497 represents poor fiscal planning, poor government administration and reprehensible political gamesmanship.

We hope that you will hear our petition and amend SB 497 to subject it to re-enactment in the 2013 legislative session so that the full fiscal impact may be fully calculated and understood.

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<sup>1</sup> An amendment, that phases in these percentages at 1% per year, multiplies these costs to localities. The fiscal impact of each 1% raise over the five-year period will not be 5% but will be compounded. Thus, even higher costs will disrupt localities' budgets.

Sincerely,

Ann H. Mallek  
Chair"

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Revisiting Item 8.4 from the Consent Agenda, Mr. Boyd asked about spontaneous events that happen on the county grounds and how they would be dealt with.

Mr. Michael Freitas explained that staff's intent was to document what had been existing practice but, after conversations with legal staff, the current wording might not support that intent and, with the Board's permission, staff would like to pull the item and reconsider the wording.

Mr. Davis stated that the practice has been for County grounds not to be an open public forum, but a limited one, and the long-standing practice has been the grounds have not been open unless it is a use that is either affiliated or sponsored by the County. He said that the exception to that would be sidewalks and parking lots, which are open for spontaneous use provided those functions do not prevent ingress or egress from the property or disrupt County facilities or disrupt the County operation of government. Mr. Davis stated that the language has created some ambiguity and needs to be revised. He said that currently people would be allowed to demonstrate provided there was no disruption of ingress, egress or facility operation. Mr. Davis mentioned that the County had been involved in litigation on this issue in the past, and established the policy not to create an open public forum.

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Mr. Dumler asked about a site in the County currently getting land-use valuation that might have been timbered improperly, and asked what the general procedure was in this type of instance.

Ms. Mallek said that the Department of Forestry (DOF) will need to finish its work there in order for that assessment to be made.

Mr. Davis explained that if there is a change in the use of the property to a non-qualifying use, the property is rolled back the current year plus the prior five years and assessed full tax value.

Ms. Mallek stated that the revalidation process attempted to address that and, in this particular case, it was an improper use of procedures or buffers not being protected. She said this is something the County will need to clarify.

Mr. Foley said that the County didn't revalidate previously, and this is the type of result that might occur.

Mr. Rooker commented that it isn't clear to him that cutting timber from the property automatically disqualified it for land use.

Ms. Mallek noted that it was only the destruction of the buffer that was the issue.

Mr. Rooker said it would be helpful to understand what events might trigger a rollback.

Mr. Dumler stated that a resource management and soil and water protection plan is a one-time thing and, if it was violated one time, it might not come up during revalidation and that property might continue to qualify.

Mr. Foley said that he hadn't seen the email, but staff would like to review it.

Ms. Mallek explained that the DOF has asked the County to wait until it has finished their investigation.

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Agenda Item No. 27. Adjourn to April 11, 2012, 3:00 p.m., Room 241.

Mr. Foley asked if the Board should adjourn to the Target Industry Study announcement meeting.

Mr. Davis explained that if the Board does not discuss or transact business at that meeting, there is no need to adjourn but the complicating factor is whether the Board would participate. If so, the Board would have to adjourn to that meeting and then adjourn to their 3:00 p.m. meeting. He said that his understanding was that the Board would provide feedback at the 3:00 p.m. meeting.

Mr. Boyd said the Board should leave the option open should Board members wish to participate in the discussion.

Mr. Foley said that it was a regional meeting and there would be other elected officials present, so the Board might want to participate in the discussion.

At 4:48 p.m., **motion** was entered by Mr. Rooker moved to adjourn their meeting to April 11 at 10:00 a.m. in the Dickinson Building at Piedmont Virginia Community College. Ms. Mallek **seconded** the motion. Roll was called, and the motion carried by the following vote:

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

NAYS: None.

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Chairman

Approved by Board
Date: 07/11/2012
Initials: EWJ