

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

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 6:02 p.m., by the Chair, Ms. Mallek.

Agenda Item No. 1a. Certify Closed Meeting.

Motion was immediately offered by Mr. Dumler to 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. The motion was **seconded** by Ms. Mallek. 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.

Agenda Item No. 2. Pledge of Allegiance.

Agenda Item No. 3. Moment of Silence.

During the Moment of Silence, Ms. Mallek asked that everyone join the Board in remembering their colleague, Mr. Charles Martin, who passed away on Tuesday, April 10, 2012. Mr. Martin served on the Board from 1992 through 2003.

Agenda Item No. 4. Adoption of Final Agenda.

There being no changes or additions, the final agenda was accepted.

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

There were none.

Agenda Item No. 6a. Recognition: Proclamation recognizing April 21-29, 2012 as National Park Week.

Ms. Mallek read the following proclamation and presented to Ms. Susan Sherman, a Park representative, and Ms. Jennifer Flynn, Deputy Director of Shenandoah National Park:

**NATIONAL PARK WEEK
APRIL 21 – 29, 2012**

WHEREAS, there are 397 national parks across the United States, which provide accessible, safe, and affordable places that allow us to appreciate the bounty of our land and these parks offer opportunities for wholesome outdoor recreation, educational programs and inexpensive family entertainment, which improve our nation's overall health and vitality; and

WHEREAS, Albemarle County is very fortunate to serve as a gateway community to the adjoining Shenandoah National Park, an important component of the National Park system, and we appreciate the abundance of programs and activities that they have to offer; and

WHEREAS, this year's theme is "Picture Yourself in a Park" and encourages outdoor opportunities to get outside, get healthy, and have fun; and

WHEREAS, during National Park Week, there will be a variety of special events and activities that will take place and more importantly, admission to all national parks during this week is free; and

WHEREAS, Albemarle County would like to remind everyone that these national parks would not exist if it wasn't for the foresight, dedication and generosity of those who safeguard these magnificent places and for that we applaud you.

NOW, THEREFORE, BE IT RESOLVED, that, I, Ann H. Mallek, Chair, on behalf of the Albemarle County Board of Supervisors, do hereby recognize April 21-29, 2012 as NATIONAL PARK WEEK, and call this observance to the attention of all our citizens, with particular appreciation to our neighbor, the Shenandoah National Park.

Ms. Susan Sherman accepted the certificate and introduced Ms. Jennifer Flynn, Deputy Superintendent of Shenandoah National Park.

Ms. Flynn thanked the Board for the proclamation on behalf of the park, and encouraged citizens to come visit the park during National Parks Week as all entry fees were waived. She noted that Albemarle had supported the Park's 75th anniversary the previous year, and said the planning group for that milestone was comprised of representatives from nine counties around the park, park staff, and other local officials. Ms. Flynn said that the group had chosen to continue meeting under the new title of Celebrate Shenandoah, to continue to look for collaboration opportunities. She stated that in 2012, visitors spent nearly \$7 million in the local communities in the park, supporting 1,087 jobs. Ms. Flynn emphasized that the future of the park and the surrounding regions were intertwined, and invited Board members to participate in a one-day workshop this spring called Connecting for Prosperity: Charting the Future Together on May 24 at James Madison University. She stated that the speaker would be Ed McMahon, a noted author, attorney, and expert on creating sustainable, livable and prosperous communities. Ms. Flynn reported that the Shenandoah National Park Trust was established in 2004 as the park's official fundraising partner, and Executive Director Susan Sherman was present at this meeting. Ms. Sherman thanked the Board for their recognition of the park and National Park Week, noting that 14,000 acres of the County lay within the park's boundary.

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

Ms. Sally Thomas addressed the Board, introducing Ms. Jerry McCormick-Ray of the University of Virginia, Department of Environmental Sciences. Ms. Thomas said that Ms. Ray received her education at Wake Forest and the Institute of Marine Science, and the University of Alaska in Fairbanks. Ms. Thomas said that Ms. Ray worked under contract for the Office of Naval Research in the 1970s and studied marine mammals' physiology and has since studied what was happening on the ocean coastlines, with a focus on ecosystem science. Ms. Thomas stated that Ms. Ray served as a scientist on U.S. Coast Guard Icebreaker in the Bering Sea benthic studies, and had done research from the Chesapeake Bay to Alaska to the Bahamas.

Ms. Jerry McComick-Ray addressed the Board, stating that scientific data measured over decades and centuries clearly showed long-term trends that global climate was warming, and that the majority of scientists agree. She explained that changing climate caused temperatures to vacillate, warm and cool, and severe climate to occur and that's what the planet was now experiencing. Ms. Ray said that the culprit was carbon dioxide from burning of fossil fuels for over 150 years while increasing intensity that was causing global climate patterns to shift. She said that human activities were adding more CO₂ to the atmosphere, and were removing forests that consume CO₂ and cool the temperature. Ms. Ray said that human activities was not only warming the land and affecting water resources, it was also warming the oceans that affected sea life and sustainable fisheries. She stated that her experience in the Bering Sea, the Chesapeake Bay and the tropics supported measured evidence of rapid ocean change. Ms. Ray said that her observations of polar sea ice melting, receding age-old glaciers and rising sea levels was supported by scientific evidence. CO₂ is increasing ocean acidity, causing shells of some species to dissolve. She stated that long-term warming trends and not single cooling events were forcing such ice-dependent species such as walrus and polar bears to crowd onto shores, Arctic native people to move ancient villages to higher ground, tropical islanders to plead for global climate solutions, and Middle East governments to take precautionary approaches to confront expected water shortages.

Ms. Ray said that many studies indicated the Chesapeake Bay was rapidly changing, with research clearly showing warming water, higher water levels, eroding shores and depleted groundwater. She stated that state and federal agencies along with local governments were taking precautionary approaches to deal with the impacts of climate change, and global forecasts predict that within this century, climate temperature will rise sharply because of increasing human activity. How is our County reducing impact on atmosphere and preparing for climate change? She emphasized that the first step in planning for the County's future and economic well-being was to recognize not deny the potential impacts of a warming climate.

Dr. Charles Battig addressed the Board, stating that global temperatures for 12+ years had no increase and several years had a decrease. He said that satellite data showed the sea levels had not risen for several years, and was presently lower than the historical rate of rise. We have a stall going on. Dr. Battig said that there had been seven years since a major hurricane strike on the U.S., the longest period in history with no long-term trend in severe tornados, and U.S. drought areas below the long-term mean. He stated that polar bear populations were five times what they were about 10 years ago around 15,000-20,000. Dr. Battig said that CO₂ was not a pollutant and plants love it, as they absorb it, they grow and they provide us our dinner. He presented 55 benefits of increased CO₂, claiming that plants used less water, used fertilizers more efficiently, and withstood stress better. He stated that the International Journal of Modern Physics said that the temperature increase was small. Dr. Battig presented information that over 100 years, temperatures had increased just over one degree Celsius, and CO₂ was not being pushed up. Dr. Battig also asked what the cost of the Comprehensive Plan was, and said that trees and forests were doing beautifully with the CO₂.

Mr. Jeff Werner addressed the Board, stating that the Piedmont Environmental Council was opposed to further development along Route 250 east of the Shadwell interchange. He said that between I-64 and Hunter's Fall Industrial Park, there was roughly 4,000 feet of road frontage; on the south side of

Route 250 from this area was Shadwell where Thomas Jefferson was born and it was currently in conservation easement, with 5,000 feet of road frontage and 3,000 feet of it being opposite the 4,000 feet that the Commission was considering expanding uses in. Mr. Werner stated that the PEC was opposed to further uses in that area, as it was entirely in the rural area, within the view shed of Monticello, opposite of the birthplace of a President, and across the street from land in conservation easement. He said the presence of some development there was not a valid reason to allow more, and the PEC did not support allowing additional uses in the rural area unless they had a direct relationship to the agricultural economy. Mr. Werner also expressed concern about the continued efforts to turn the County's wineries into venues for large-scale entertainment, notably the proposed special use permits for Castle Hill Cidery and Keswick Vineyard. He stated that the PEC was concerned about the impact to the quality of life in the Southwest Mountains Rural Historic District, and was also concerned about how that proposal might impact the entire rural area. Mr. Werner said that the Comp Plan stated the rural area was a place for agricultural and forestall activities, but careful consideration must be given to how agri-tourism activities through their scale and intensity will negatively affect the surrounding community. He stated that they fully supported the making of wine and cider, especially when local grapes and apples were used, but the increased traffic, congestion, noise and other impacts were concerns.

Mr. Jack Marshall addressed the Board, stating that he was President of Advocates for a Sustainable Albemarle Population and indicated that he had attended both the Target Industry Study and the subsequent work session. Mr. Marshall stated that it was not clear to him how target industries relates to achieving the vision of our community, and the study did not mention a vision for what it was intended to achieve. There seems to be an implicit vision, but unless this is articulated it will be difficult for residents at a public hearing to know how more and bigger industries will help achieve the vision. He stated that he hoped the Board would precede the public hearing with a description of what kind of community you think we want, and how targeted industries were intended to change this wonderful community we now inhabit. Mr. Marshall said that additional industry could change it in terms of net fiscal impact, the environment, and our quality of life.

Mr. Tom Olivier addressed the Board, stating that he was speaking on behalf of the Piedmont Group of the Sierra Club and thanking them for scheduling the public hearing on the Target Industry Study. He said that the study left a number of unanswered questions, including the question of what it meant for an industry to be a target industry such as changes in policy to accommodate them or major recruitment campaigns. Mr. Olivier added that there was a question too as to how this would fit into the desire to realize a vision for the community, and visioning went back in Albemarle at least 20 years. He mentioned that last June the Sierra Club had developed a one page, 15-line vision statement that addressed many different elements they felt should be characteristic of a community vision. Mr. Olivier asked how the Target Industry Study findings helped citizens realize the vision they had for the area. He also said that the work sessions had precious little discussion about the environmental consequences of some of the proposals, adding that Mr. Rooker had raised that issue in February but there were many potential impacts to the recommendations. Mr. Olivier stated that if the goal to keep University of Virginia graduates here was realized that would mean increased population and any growth of population undermines protection of the environment and sustainability of our community. He said that several people believe there should be a wider-ranging process for evaluating environmental and economic impacts of development proposals, and they would be coming back with more on that.

Ms. Nancy Carpenter addressed the Board, commending the County's partnership with the City on The Crossings facility for the homeless and stating that she had noticed a change in attitude of the people who had been helped by the shelter. Ms. Carpenter said that she was here to address the issue of nine citizens whose chance at stability and transition were being held up by a blockage in HUD funding. She stated that she hoped they would work with Mr. Ron White to resolve the situation, adding that several of the homeless are women and safeguarding their personal safety can be challenging.

Ms. Natasha Sienitsky addressed the Board on behalf of the Thomas Jefferson Foundation, stating that TJF owned and protected 2,600 of Thomas Jefferson's original 5,000 acres and of the 2,600 acres, 1,400 of those were in permanent conservation easement. She said that Monticello was particularly concerned about proposals to expand development area uses to the land between I-64 to the Shadwell Store for possible light industrial use, and mixed use development at Somerset Farm on Route 20. Ms. Sienitsky stated that an increase in the development area, particularly along the Route 250 East corridor, would be visible from Shadwell and from Monticello. She said that the 231-acre Shadwell property which was Thomas Jefferson's birthplace abutted the 250 Entrance Corridor, and the Rivanna River which was dedicated a Commonwealth of Virginia Scenic River. Ms. Sienitsky said that as the Comp Plan process continued, she hoped the Board would consider the views from Monticello and consider stronger language in the Comp Plan to protect the views. She said the strategy there would be a combination of incentive-based programs, but also potentially some regulatory action that would protect and preserve Monticello into the future.

Mr. Kirk Bowers addressed the Board, stating that he was here to talk about the bypass. He said that the bids were due soon, but he was still really unsatisfied and unhappy with the bypass itself. Mr. Bowers said that it only diverted 10% of Route 29 traffic because 90% of traffic was local, so it would not really help reduce congestion on the major highways. He stated that he had recently found a study on the impact of air pollution on students adjacent to highways, noting that the study was done over an eight-year period with 3,677 school children in 12 communities representing a wide range in regional air quality. Mr.

Bowers said that the children were followed for eight years with yearly lung function measurements recorded, and children who lived within 500 meters had substantial deficits in eight-year growth of forced expiratory volume and maximum mid expiratory flow rate compared with children who lived at least 1,500 meters from a freeway. He stated that joint models show that both local exposure to freeways and regional air pollution had detrimental and independent effects on lung growth function and capacities. He said that we were damaging our kids if we put this highway in. He stated that he really thought the Board needed to reconsider the bypass for that reason alone. He said that our children can't get up here and speak for themselves so we have to do it for them. Please protect them.

Mr. Ray Humiston addressed the Board, stating that he lived at Castle Hill Farm in Keswick which he and his wife purchased in 2005 when it was on the block for development of 90-100 homes. Mr. Humiston said that he lived across the street from a vineyard and next door to a cidery, and felt they were tremendous assets but they had been given a limit of 200 people for events, so there was a constant push to expand for commercial reasons. He stated that the owners were smart people who had worked hard on business plans, and he didn't fully understand the process but did know that the area was on the verge of becoming more commercial. Mr. Humiston said that there was awareness and a big community of people who were starting to find out about those things, and some were trying to change those places from vineyards and cideries into event centers and business meeting places, that was not in what had been approved. He stated that they were constantly in violation of those policies, but going forward there would be big issues with noise and traffic. Mr. Humiston said that in the last three or four years he had two fatal accidents on his road frontage, and having 500 people out drinking on such a dangerous roads would be problematic.

Mr. Bert Page addressed the Board, stating that Mr. Humiston and his wife salvaged a good chunk of the County from developers several years ago, and it would be a shame to see that effort spent on commercial activities that are inappropriate and do not lend to the rural atmosphere of the County. Mr. Page asked that the Board give every consideration to the impact that the proposals would have on the neighboring properties adjacent to the winery and the cidery. He said that he lived next door to the winery and across from the cidery, and the commercial efforts would have a huge impact on the area.

Mr. Amory Fisher addressed the Board, stating that he was a student at Albemarle High School and here to talk about the Route 29 Bypass. Mr. Fisher said he was concerned about the bypass and was appalled at the high cost at a time when education funding was being cut. He stated that the road bypasses nothing and instead dumps a whole lot of traffic right at Hollymead where there were still several stoplights to go and a whole area growing near Target and Forest Lakes. He said that the road would also endanger the reservoir and water. Mr. Fisher stated that the main issue he wanted to focus on was the effect of exhaust pollution on developing lungs, noting that the EPA had issued warnings with studies on children growing up within 500 meters of heavily truck trafficked roads. He said that these children had higher risks of developing asthma and impaired respiratory functions, stating that in his environmental sciences class they tied cloth to several car exhaust pipes and within one drive they were completely covered with nasty, particulate black matter. Mr. Fisher emphasized that there were six other schools impacted by this road, and the most common rebuttal was that schools are always next to roads, but his response was that most of the previous roads were designed and built before the risks were known. We need to plan for the future with what we know today, not what we knew decades ago. He encouraged the Board to reconsider the road and take into account all the consequences.

Agenda Item No. 8. Consent Agenda. **Motion** was offered by Mr. Rooker, **seconded** by Mr. Thomas, to approve the consent agenda. 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.

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

Ms. Mallek had read her portion of the minutes of December 7, 2011, pages 1-28 (ending at Item #15), and found them to be in order.

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

Item No. 8.2. Set a public hearing to consider Ordinance to Amend County Code - Chapter 10, Offenses – Miscellaneous, to add Section 10-120.1, Designation of Police to Enforce Trespass Violations.

The executive summary states that over the past several years, there has been an increase in complaints regarding vagrancy and loitering on business properties during non-business hours. This loitering and vagrancy often involves individuals who are drunk in public and often disorderly and is especially prevalent in the urban areas of the County during warm weather. As part of their efforts to remedy this problem, the Albemarle County Commonwealth's Attorney and the Chief of Police are requesting that the Board of Supervisors consider the adoption of an ordinance, to be designated as County Code Section 10-120.1, which would allow the owner, lessee, custodian, or other person lawfully in charge of a property to designate the Albemarle County Police Department as a person lawfully in charge

of such property for the purpose of enforcing the County's trespass ordinance. Designating the Police Department as a person lawfully in charge of a property would allow police officers to order individuals found loitering on such property after hours to leave the property and allow the officers to arrest for trespass anyone who refuses the order to leave or returns to the property without permission. Authorizing the Police Department to act in this capacity is needed since many commercial property owners work outside of the area and are not available to appear in Court to testify when these cases are heard. Many Virginia jurisdictions have enacted similar Ordinances, including the City of Charlottesville.

A draft of the proposed ordinance is attached (Attachment A). This proposed ordinance is authorized by Virginia Code Section 15.2-1717.1.

The proposed ordinance allows a property owner, lessee, custodian or other person lawfully in charge of a property to designate the Albemarle County Police Department as a person lawfully in charge of such property for purposes of enforcing Albemarle County's trespass ordinance. This designation would be in writing on forms developed by the Chief of Police and the County Attorney. The proposed ordinance permits the Chief of Police to accept or reject, in the Chief's sole discretion, the designation of the Police Department as a person lawfully in charge of a property. The Chief can rescind the acceptance of such a designation at any time. Violation of the trespass ordinance is punishable as a class 1 misdemeanor.

This new ordinance would allow Albemarle County police officers greater flexibility and authority in dealing with repeat offenders and ongoing problems at various locations in the County. While the owners or lessees of properties can currently issue no trespass notices against individuals and request that violations of those notices be prosecuted, the trespasses usually occur after business hours by individuals not personally known to the property owners or lessees. By allowing the owners to designate the Police Department as a person lawfully in charge, officers would be allowed to order an individual to leave a property and not return, and to arrest any such individual who violates the order.

The Commonwealth's Attorney and the Chief of Police believe that the proposed ordinance will be an effective and relatively simple additional remedy to combat the vagrancy and loitering issues facing businesses in certain areas of the County. The ordinance authorizes the Chief of Police, with the assistance of the County Attorney and the Commonwealth's Attorney, to set out the rules and procedures concerning the acceptance and rescission of designations in order to provide maximum flexibility to effectively use this enforcement tool permitted by Virginia law.

If an ordinance permitting the designation of the Police Department as a person lawfully in charge of property is adopted, the Chief of Police anticipates the initial impact will be a limited number of requests for such a designation, which will temporarily involve a small increase in administrative time for the Police Department. There may also be an increase in court time for officers to assist in trespass prosecutions. However, no additional staff or officers are anticipated to be hired to handle these matters.

Staff recommends the Board set the attached ordinance (Attachment A-on file) for a public hearing on May 2, 2012, for public input and the Board's further consideration.

By the above-recorded vote, the Board set the proposed ordinance for public hearing on May 2, 2012.

Agenda Item No. 9. Adoption of FY 2012/2013 Operating and Capital Budgets.

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

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. On April 4, the Board of Supervisors approved the tax rates for the 2012 Tax Year and discussed outstanding budget-related items. The Board did not make any future changes to the FY 12/13 Proposed Budget at that time.

The FY 12/13 Operating and Capital budgets 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 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
Subtotal	\$1,197,380
***Reduction of Budget (Return to taxpayers)	299,620
Total Use of Reserve for Board Decisions	\$1,497,000

* 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 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.

- Use \$60,000 in revenue from the collection of delinquent court fines to fund part-time support for the Commonwealth's Attorney.

The attached resolution formally approves the FY 12/13 Budget. Attachment A to the Resolution details the adjustments made to the County Executive's Recommended Budget.

Staff recommends adoption of the attached FY 12/13 Budget Resolution approving the FY 12/13 Operating and Capital Budgets as recommended by the County Executive and amended by the Board of Supervisors.

Ms. Allshouse addressed the Board, stating that she was here to request that the Board adopt the FY12-13 operating and capital budgets. She stated that on February 24, the County Executive presented his recommended budget; on February 29 there was a public hearing; during March, the Board held four work sessions on the budget; on March 14 they proposed some changes to the budget and authorized advertisement of the tax rate; on March 28 there was a public hearing on Board's proposed budget; on April 4, the Board approved the tax rate and made no further changes to the proposed budget. She reported that their FY12-13 operating and capital budgets totaled \$311,438,139 and the Board had mentioned last week that they would consider changes to the CIP in June as more information became available from the state.

Ms. Allshouse said that the motion she would recommend was to adopt the attached FY12-13 budget resolution, approving the FY12-13 operating and capital budgets as recommended by the County Executive and amended by the Board of Supervisors; and to adopt the five-year Capital Improvement Plan for FY12-13-17 as recommended by the County Executive and amended by the Board of Supervisors.

Mr. Boyd asked if the budget had to be passed tonight, knowing that it would have to be modified.

Mr. Davis explained that what was driving the approval of the budget was the need for the School Board to adopt their budget, and without the guidance of the County's budget it was very difficult for them to proceed. He said that they were planning to consider and adopt their budget on April 26 or in early in May as possible so that they could make final decisions about teachers and things of that nature. Mr. Davis stated that it would be helpful for the Board to go ahead and act, noting that there would be adjustments to this based on how funding decisions were made regarding VRS impacts but those could be made later.

Mr. Boyd commented that the schools would be impacted by the same VRS decisions.

Mr. Davis responded that they would probably proceed by making some assumptions.

Mr. Rooker said that the Board always adjusted the budget during the year, and he viewed this as 99.9% complete with .1% information not available yet but that was often the case. He stated that it seemed wise to him to go ahead and adopt the budget.

Motion was then offered by Mr. Rooker, to adopt the FY12/13 budget resolution approving the FY12/13 Operating and Capital Budgets as recommended by the County Executive and amended by the Board of Supervisors and to adopt the Five Year Capital Improvement Plan for FY13 to FY17 as recommended by the County Executive and amended by the Board of Supervisors. Ms. Mallek **seconded** the motion. Ms. Mallek said that she was seconding the motion knowing that the Board would come back and talk about the Seminole Trail Fire Station and ACE as part of the capital budget.

Mr. Boyd stated that he wasn't going to vote on the budget tonight because he had been asking for information from the School Board for the past seven years, and said that he had stated he would not be able to support the budget without that information. I did not get the detailed information on what they projected to end up the year. It was a summary report, which told me very little.

Ms. Mallek clarified that it was the actuals he was looking for.

Mr. Boyd explained that what they got from the School Board was four or five summary items, but not the kind of detail the Board provided in the County budget.

Mr. Rooker said that he had asked for the same type of information from the School Board, but this Board was not adopting the school budget – it was adopting a general government budget that allocated a certain amount of revenues to schools that they then incorporate into their budget. We're not adopting their budget.

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

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

NAYS: Mr. Thomas and Mr. Boyd.

**FY 2012/2013
BUDGET RESOLUTION**

BE IT RESOLVED by the Board of Supervisors of Albemarle County, Virginia:

- 1) That the budget for the County for the Fiscal Year beginning July 1, 2012 is made up of the County Executive's Recommended Budget document and the amendments made by the Board of Supervisors.
- 2) That the budget for the County for the Fiscal Year beginning July 1, 2012 is summarized as follows:

	FY 12/13 Adopted
Administration	\$10,799,308
Judicial	3,979,231
Public Safety	33,003,587
General Services	4,455,921
Human Development (including PVCC)	14,864,856
Parks, Recreation, and Culture	6,061,145
Community Development	6,108,235
Other General Government	1,887,798
General Government Special Revenue Funds	12,466,100
General Government Capital Projects	13,956,430
General Government Debt Service	3,027,757
Stormwater Improvements	131,045
Stormwater Debt Service	31,134
Education - School Operations and Other Funds	163,503,227
Education - Capital Projects	6,673,461
Education - Debt Service	12,967,956
City/County Revenue Sharing	17,520,948
TOTAL	\$311,438,139

- 3) That the budget for the County for the Fiscal Year beginning July 1, 2012 as described in 1) and 2) above is approved.

Agenda Item No. 10. **Public Hearing: ZMA-2010-00011. Estes Park (Signs #88&89).**

PROPOSAL: Rezone 12.75 acres on Tax Map/Parcel 03200000003300 and TMP 03200000003400 from R-1, Residential zoning district which allows 1 unit/acre to PRD, Planned Residential Development zoning district which allows residential (3–34 units/acre) with limited commercial uses and to rezone 0.56 acres on Tax Map/Parcel 046B4000000500 from R-1 Residential zoning district to R-1 Residential zoning district with proffers. Proposed number of units is 66 for a density of 5.33 units/ acre.

PROFFERS: Yes.

EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential – residential (6.01–34 units/acre); supporting uses such as religious institutions, schools, commercial, office and service uses.

ENTRANCE CORRIDOR: No.

LOCATION: in the southeast quadrant of the intersection of Proffit Road (Rt 649) and Worth Crossing, approximately 800 feet south of Proffit Road in the Community of Hollymead.

TAX MAP/PARCEL: TMP 03200000003300, TMP 03200000003400, and TMP 046B4000000500

MAGISTERIAL DISTRICT: Rivanna.

(Advertised in the Daily Progress on March 26 and April 2, 2012.)

(Note: Mr. Rooker filed a Transactional Disclosure Statement with the Clerk disqualifying himself from participating in this transaction because he provides legal representation for the owners of property located at 3401 Worth Xing. This property is adjacent to the property which is the subject of this transaction and the owners of 3401 Worth Xing would realize a foreseeable direct or indirect benefit or detriment from the result of this transaction. He then left the room at 6:47 p.m.)

Mr. David Benish, Chief of Planning, reported that this was a request to rezone 12.75 acres from R-1 to Planned Residential Development, and the concept was to construct 68 single-family attached units in a pedestrian-friendly layout that provided for the required open space for a planned development. He said that the primary access to the development was from Worth Crossing, which intersected with Proffit Road, and it was located off of Leake Lane approximately 100 feet south of Proffit Road in the community of Hollymead. Mr. Benish stated that the Comprehensive Plan recommended the property for Urban Density Residential, and presented a plan that showed the location of the proposal and other nearby developments.

Mr. Benish stated that the Planning Commission first heard the item at a public hearing on August 23, 2011, and among the direction they provided at that time was to eliminate a public road access to Maubry Lane east of the site, to ensure there was right of access to Worth Crossing over the adjacent properties, and to seek an enhanced commitment to erosion and sediment control measures to protect downstream areas. He said that based on that direction the applicant revised the plan, which reflected those changes and some other changes related to site development issues, protection of a cemetery, etc., and all Planning Commission recommendations were incorporated.

Mr. Benish said that the Commission reviewed the revised plan on March 6 and recommended approval subject to assurance that right of access was actually secured, which had been addressed through an agreement made with adjacent properties; and there was a proffer that stipulated the certificates of occupancy would not be issued until that road was constructed and available for dedication. He stated that the second contingency was to revise the affordable housing proffers and erosion and sediment control proffers to address some technical issues identified by the housing director and county engineer, and those had been satisfied. Mr. Benish said that the remaining issue was that the cash proffers for capital improvements be based on the total number of market value units built as per the policy for cash proffers for public facilities adopted by the Board in 2007.

He stated that the applicant in their proffers had indicated they would provide cash proffers in the amount of \$754,000 based on an amount that reflected a deduction of 10 affordable housing units being built reflective of the 15% required under the affordable housing policy. He said that the proffers provided the option to build the affordable units or provide cash in lieu of building those units, and based on the County's policy the reduction of 10 units was based on the construction of the affordable units not a cash in lieu payment for affordable units. Mr. Benish stated that the Commission recommended, along with staff's opinion, that the cash proffers be based on the total number of units that would be constructed at the end of the project. He explained that the adjustment to make the cash proffer fully consistent with the policy was to revise the language to indicate the total of up to \$884,000 reflective of cash in lieu of all affordable housing units, adding that the applicant felt the \$754,000 was consistent with the cash proffer policy and was reflective of their efforts to address affordable housing.

Mr. Benish said that because the impacts to public facilities that would result from this development hadn't been adequately addressed through cash proffers or other commitments, staff could not recommend approval of the request. However, should the Board find that the proffers were acceptable staff would recommend approval of rezoning with conditions, and said there would also be action required on a critical slopes waiver.

Ms. Mallek asked if the Board were to find the higher amount appropriate, if it would have to go back for public hearing because there would be a change to the advertised proffer.

Mr. Davis responded that it would require another public hearing because it would be considered a substantive change.

Mr. Boyd said that this issue had come up in the past, and asked what the previous actions had been.

Mr. Benish explained that the practice had been to apply the County's interpretation of the cash proffer policy and base the proffer on the total amount of market rate units; staff had not provided an exception based on cash in lieu of building the units. He said that they had only provided the exception when the actual units had been built, noting that the Oakleigh rezoning was most consistent with this proposal. Mr. Benish stated that it provided at the developer's discretion the decision to provide either affordable units or cash in lieu. He confirmed that the proffer in that situation was more specific about the amount, a certain amount per unit.

Mr. Boyd said he was having trouble envisioning the access, and Mr. Benish pointed out the location of the property and the road that went offsite of Estes Park. He noted the location of Bright Beginnings daycare and a storage facility, and both of those property owners had agreed to work with the applicant through the agreement to have the road provided. Mr. Benish said that the road would need to be in place before COs were issued, and confirmed that there would be a walking path also. He pointed out that there was only one point of access, which was inconsistent with the Comp Plan goals and state policy for interconnectivity, but there was no other alternative if Maubry Lane was not going to be used. Mr. Benish noted that there were four other stub-outs provided to adjacent properties to allow for future interconnection.

Ms. Mallek confirmed that there would be a way to achieve emergency ingress and egress, but not commuter traffic through the existing neighborhood. Mr. Benish said there would be no vehicular access, only emergency vehicles when necessary.

Mr. Dumler asked at what phase the number of affordable housing units was established.

Mr. Benish responded that as an applicant worked through a development proposal, it was at the building permit issuance phase with every tenth unit triggering an assessment of whether affordable housing units were provided or a cash amount was necessary. He said that the applicant's intent was to construct the affordable housing units, but they want to be able to do the cash in lieu with the maximum amount of cash proffer money available for capital improvements being the \$754,000.

Mr. Snow asked if it would have to come back to public hearing to make any changes.

Mr. Benish confirmed that it would, but if all the substantive issues were available that would be the issue discussed.

Ms. Mallek commented that it was very clear what the expectations had been, similar to other projects that had been done.

At this time, the Chair opened the public hearing, and asked the applicant to come forward.

The applicant's representative, Alan Taylor, addressed the Board and stated that he was Vice-President of Riverbend Management Company a real estate development company based in Charlottesville. He said that this proposal was the culmination of about two years of work, and staff had been great to work with especially Mr. Benish.

Mr. Boyd asked him for clarification of their intent to build affordable housing or provide cash proffers, as they hadn't agreed to do it yet.

Mr. Taylor explained that there was a belief in the development community that the cash proffer system provided for 85% market rate units and 15% affordable units, with cash proffers paid for market-rate units in this instance \$13,000 or a cash proffer on the affordable units which was a little over \$21,000. He said that they were trying to avoid an affordability cash proffer of \$21,250.

Ms. Mallek said that there was no cash proffer for building an affordable house.

Mr. Benish said that's correct.

Mr. Taylor stated that he was referring to cash in lieu, and if a developer was paying the \$13,000 market rate cash proffer and decided to pay the cash in lieu proffer on affordable units, those units effectively kicked over into market rate units and you paid \$21,250 in an affordability cash proffer and another \$13,000 in a market rate proffer. So you're effectively paying a cash proffer or a cash in lieu proffer on 115% of the units that you're getting rezoned.

Ms. Mallek said that the Board's goal had always been to build the affordable units, because that's what actually helped people.

Mr. Taylor stated that his company would be building and selling the lots, so they would like the flexibility to do either.

Mr. Benish explained that the cash in lieu rate was based on the number of units not built that were affordable housing, and it was a different cash amount. He stated that in this particular development, the cash equivalent for that commitment was cash in lieu, which was an entirely separated proffer than the cash proffer for public facilities.

Mr. Boyd asked what it pushed the per-house cost to.

Mr. Taylor said that it was about \$2,000 per lot.

Mr. Davis stated that the policy was to address the impacts of the dwelling units that were built, so if there were 68 dwelling units built they would want the cash to address the impact of those units. The exception was as an incentive to build affordable units; the Board did not require the impact to be addressed for those affordable units for the five capital costs that were the factors accounted for calculating the amount of the cash proffer. He said that the only exception for not providing the cash proffer for units built was if the units built were affordable, and under what's being proposed they have the option to build 58 non-affordable dwelling units plus 10 affordable so the cash amount would be adequate. Mr. Davis explained that they also have the option to build 68 units that were all not affordable, and under that circumstance they would not be addressing the full impact of the last 10 units.

Mr. Dumler asked Mr. Davis if the Board made an exception it would amount to a policy change.

Ms. Mallek commented that it wiped out the affordable housing policy.

Mr. Cilimberg emphasized that it didn't affect that policy, just the capital impact. He said that they had covered the affordable housing aspect by building the unit or paying cash for the unit, but hadn't covered the impacts of those additional market units to capital facilities.

Mr. Boyd said that the impact on roads and schools was the same, but he did see that building the affordable homes would reduce the cash proffer cost a few thousand per house. It works both ways.

Mr. Taylor agreed, but said they were only building the lots and would like to have the flexibility because it wasn't his decision. He also stated that the development community perceives this discussion

as a policy change because every developer believed they paid 85% market rate proffers and 15% in lieu proffers which equaled 100% proffers on the units. Mr. Taylor said that this was an important rezoning because it would appear to be a policy change on one side or the other.

Mr. Boyd said it would be helpful to see what the County had done in the past.

Mr. Cilimberg responded that Mr. Benish had mentioned Oakleigh, which had made the provision for paying cash proffers for the market units and if they had affordable units, they would also pay the cash proffer in addition.

Mr. Davis said that the same was true in the Leake rezoning and the Liven-Goode rezoning, as well as many other cases where the facts were different. The rezonings that had this fact situation, I believe the County has been consistent in the application of policy.

Mr. Cilimberg mentioned that this was a point of contention in the discussions of Biscuit Run.

Mr. Davis pointed out that with the Biscuit Run property, the Board had this discussion and the developer ended up deciding to proffer to build the affordable units because they did not want to pay the impact cost as well as the affordable cash in lieu cost. He reiterated that they made the decision to build them all onsite in the proffer package they presented.

Ms. Mallek commented that that was the true incentive in order to get the units built.

Mr. Boyd said that it was an incentive, but for developers building affordable units it was unsuccessful because there was difficulty in qualifying people for it.

Mr. Cilimberg responded that Mr. White was not at the meeting, but he had provided information that there had been 14 units that had come through as affordable proffered units, and they had all been occupied by qualifying buyers. He added that if it turned back to market rate, the developer would not be charged the cash proffer amount for capital facilities.

Mr. Dumler said that the issue he saw with this was consistency, and if the proffer policy as interpreted by staff was consistent it would be the scenario he would favor. He also stated that there seemed to be some confusion about the proffer policy, and perhaps some updates should be provided to the public so that everyone understood what was expected.

Mr. Taylor mentioned a project he was involved with on Avon, and it was not budgeted as it was being discussed now so he would have to go back and redo terms with banks.

Mr. Boyd asked if that project wasn't proffered as this one was.

Mr. Taylor responded that the language was the same, but he read it to be $85+15=100$, as did the banks and the investors. Everybody thought that if you were rezoning units, you didn't get credit for the units that you already had...and then if you pay the in lieu cash, then you pay on those twice. So you don't get credit for the ones that you've got, and then you're paying twice on the affordable units.

Mr. Cilimberg pointed out that staff could address language in the policy as part of the Comp Plan work, because the cash proffer policy and affordable housing policy were both included.

Mr. Dumler said that it would be helpful to address that moving forward.

Mr. Taylor presented the proffer on Avon Park II for which the proffers stated, if cash in lieu of an affordable dwelling unit is provided, the affordable dwelling unit shall be deemed to have been provided.

Mr. Cilimberg said that that was a clarifying statement to make it clear that if cash in lieu was done, the 15% of affordable housing units proffer requirement was provided. It had nothing to do with the cash proffer application for capital facilities, which is a separate policy matter.

Ms. M. Scott Mampe addressed the Board, stating that she was on the board of the Forest Ridge Homeowners Association and thanking the Board for listening to their request to keep their community as it is. She thanked Scott Collins, Ashley Cooper and Alan Taylor for their creative compromises for Moubry Lane which made residents very happy and thanked the Community Development Department for their help.

Mr. Scott Elliff addressed the Board, stating that he was with the Forest Lakes Community Association Board of Directors. He said that they strongly supported the development at Estes Park, as it was a model of development in the County and perhaps even beyond. Mr. Elliff said that as a community association they had been treated very well and with great respect by the owners and developers and had worked hard with County staff on this. He said that the association wanted protection for Arbor Lake, and this project would require the use of a wide range of leading-edge techniques for erosion and sediment control and prevention to avoid a situation like they had at Lake Hollymead. Mr. Elliff stated that the project included an ironclad commitment by the owners of the property and developers to take full financial responsibility for any damage to Arbor Lake occurring as part of the development work, which was exactly the way all development should be run in the future. He added that there was no reason why a downstream landowner should be at any risk of possible degradation of their property or potential remediation costs.

Mr. Peter Walpole and his son Max addressed the Board, stating that he wanted to reinforce what Mr. Elliff had said and noting that his young son had addressed the Planning Commission on this matter.

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

Mr. Snow said that when this came before the Board last time, a number of things were requested from the County in order to make this go forward the tot park, not hooking up to Moubry Road, etc. and asked what the discussion had been on the proffer amounts.

Mr. Benish responded that it was generally the same, but initially the affordable housing proffer amount was less and the applicant quickly adjusted that after receiving direction from the Planning Commission. I think this issue has really been more of an interpretation issue.

Mr. Taylor said that they had the same discussion with the Commission, which approved it with conditions and said it was a Board issue.

Mr. Boyd asked if the applicant had made a reasonable interpretation of the language in the proffer policy, as that interpretation was shared in the development community.

Mr. Davis said that he had the cash proffer policy in front of him, and Mr. Benish put it on the screen for Board members to see. Mr. Benish said that the intent of the cash proffer policy was to capture costs for the impacts generated by the development for all units, regardless of whether they're affordable housing or not but C allowed for some exception to provide for some credit and incentive for those affordable housing units. He said that it was clear from staff's interpretation that that was based on the dwelling units qualifying and not cash payments in lieu of constructing those units.

Ms. Mallek clarified that this development would have 68 units x \$13,500 the total number of units plus the impact of those units; if they built ten affordable, they wouldn't pay the \$13,500.

Mr. Benish explained that they would get credited for paying less of the cash proffer amount based on this policy, Item C.

Ms. Mallek said if they built 8 affordable units instead of 10, they would still pay \$13,500 on the two market-rate units that took the place of affordable units, and asked if they were paying extra on top of that.

Mr. Benish said they weren't paying extra for public facilities, only from cash in lieu. He also stated that the policies were fairly new and not many had been executed thus far.

Ms. Mallek said that the units between 2004-2008 had gone through with the same formula.

Mr. Cilimberg stated that they went through before the cash proffer policy was enacted, and there had only been a few rezonings since its inception.

Mr. Boyd asked Mr. Taylor for his interpretation of the policy on the screen.

Mr. Taylor responded that Section C said, Exclude dwelling units as qualified as affordable housing, and developers assumed they were excluded under the cash proffer policy. The fact that it doesn't say 'if you build them' in there is where the ambiguity lies.

Mr. Dumler suggested that changing C to units actually constructed it would remove that ambiguity.

Mr. Taylor said it would be perceived as a policy change.

Mr. Scott Collins, the project engineer, addressed the Board. He said that if you look at the County's affordable housing policy it said that you either build the units or a comparable contribution should be made to achieve the affordable housing goals of the County. He stated that it should qualify as an affordable housing unit whether it was constructed or a contribution was paid into the fund, and that's what was perceived as the cash policy for the requirement.

Mr. Dumler clarified that constructing a dwelling unit was different from achieving the affordable housing goals of the County, because when there was cash in lieu it could go toward a number of things related to affordable housing.

Mr. Taylor said that if all 68 homes were built as market rate homes, a developer would pay \$13,000 on 68 of the units; additionally there would be \$21,000 paid on 10 of the units as cash in lieu for a real total of \$34,000.

Mr. Boyd asked if the \$750,000 number was based on 68 units at \$21,000.

Mr. Taylor explained that it was 58 units at \$13,000 per unit, and that was the market rate cash proffer, with the \$21,000 being the cash in lieu.

Mr. Dumler said that this sounded like a great project, but the possibility exists if the Board supports it, as is, they would be essentially be making what amounts to a policy change. He said that

maybe the Board should, but it should be a separate discussion when someone comes in and says there is some ambiguity in the code or someone says there is some ambiguity in the proffer policy. Mr. Dumler stated that maybe there was and maybe it should be corrected, and he thought it should be corrected at a later date, after they've had a staff report on it and have analyzed the fiscal impacts, adding that maybe the \$13,000 plus \$21,250 was the right number, and maybe it wasn't but he'd like a separate report on it. He also stated that the Board would be making a policy change with their decision but it should be a separate discussion.

Mr. Boyd stated that he disagreed. That the Board had to make an interpretation based on less than consistent prior experience with this, and if staff were bringing forth some clear-cut definitions it would be an easier decision. He said that staff had not been able to produce that information, and he would be inclined to approve it based on the ambiguity in the policy or defer it until there was some proof that language in proffers had been included before.

Ms. Mallek stated that Oakleigh was the example given that had been done since the policy was adopted.

Mr. Davis said that part of the confusion here was that a lot of the proffers being discussed were decided before there was a cash proffer policy, and there were a number of years where the County was accepting cash proffers and affordable dwelling units and cash in lieu of affordable units before the cash proffer policy was adopted in October 2007. Since that time, he said, the policy had been consistently applied under the cash proffer policy; in the three rezonings he had referred to earlier specifically Oakleigh Farms and Biscuit Run the issue was discussed by the Board at that time, and there was no question as to what the policy was. Mr. Davis emphasized that Biscuit Run had made the distinct decision to build the units rather than pay the cash in lieu, and in his opinion, thought the policy was clear at this point in time. He said that ultimately what the Board had to address in each rezoning was whether or not they had adequately addressed the impacts of the rezoning, and the cash proffer policy was merely a policy that helped them in that decision making. The legal analysis of this, and the final analysis, will be have they adequately addressed the impacts that are caused by this rezoning and that's a Board decision. Mr. Davis added that the cash proffer policy had a formula that aided staff in determining whether the impacts had been addressed, and they could use it consistently or on a case by case basis.

Ms. Mallek stated that she would rather it be consistent, and more explanation would be needed to clear up any confusion. She said that one option would be to do the re-advertisement, and if the applicants were willing this could proceed quickly. Ms. Mallek stated that the development was great and an excellent example of how developers had worked well with the community, but she also didn't want to throw the policy under the bus.

Mr. Dumler said that he would like the Board to have a discussion on the true fiscal impacts of the policy as it stood, and how it was interpreted by the development community.

Ms. Mallek said that it wasn't the fiscal impacts it was the affordable housing incentive to build or pay a lot not to.

Mr. Dumler stated that it was also under the heading of infrastructure and that it is structured as an incentive to encourage affordable housing by essentially giving a deduction and not requiring them to pay. He also stated that regardless of how the Board discussed it, as an affordable housing issue or as an infrastructure issue, he thought it was a fiscal impact question, and is a little hesitant to make policy decisions on the fly.

Mr. Boyd stated that this was in his district and he thought it was a good project, but he wasn't sure the Board would approve it at this point if he put a motion forward, so a safer approach would be for the applicant to ask for a deferral; and that he needed someone to give him a good, clean interpretation of what the County's policy is.

Mr. Snow asked the applicant if he would prefer the deferral or if he would agree to build the 10 units.

Mr. Taylor responded that he wasn't the developer and he needed the flexibility to do either, but his goal was to build the units.

Mr. Boyd asked if there would need to be another public hearing.

Mr. Davis responded that it would have to be re-advertised if there were substantive changes to the proffers.

Ms. Mallek said that the suggestion on dealing with the flexibility was stating up to a certain amount.

Mr. Benish responded that the Commission had limited discussion on that issue.

Mr. Cilimberg said that Mr. Collins had explained how the policy was being interpreted in this particular case, but staff didn't agree; that was the interpretation others had followed but there hadn't been many applications like this and the missing piece was the assumption that excluding dwelling units qualifying as affordable housing, it applied to units built or cash in lieu given; staff doesn't read it that way. He stated that staff could clarify that for the Board, but nothing else would change between now and

another decision. It's what it is, and he thought that it was just a different way that's been interpreted, and in this case staff believes it has been used and interpreted up to this point.

Ms. Mallek said that her point in coming back for another hearing was to address the other sentence in the description of the proffer, but she didn't hear much interest in doing that.

Mr. Davis pointed out that the cash proffer policy did not speak to in lieu of affordable units, as that was only stated in the Comprehensive Plan section on affordable housing. That is not addressed in the cash proffer policy. What the cash proffer policy simply does is, if you build affordable units then you don't have to pay the cash impact fee on that unit.

Mr. Boyd asked what the affordable housing policy stated.

Mr. Davis responded that it was what was quoted by Mr. Collins, which allowed a developer to build the units or otherwise provide affordable housing.

Mr. Collins read the policy as, at a minimum, 15% of all units developed under rezonings and special use permits should be affordable as defined by the County's Office of Housing and Housing Committee, or a comparable contribution should be made to achieve the affordable housing goals of the County. He said that the cash proffer policy said nothing about construction.

Mr. Taylor stated that he didn't see how C could be read as excluding dwelling units qualifying as affordable housing, yet when you write a check for \$21,000 for an affordable housing cash in lieu proffer that unit does not constitute an affordable house. What did that money go for?

Mr. Benish said it doesn't provide an affordable house, and this cash proffer is to address impacts of houses built.

Mr. Davis added houses built.

Mr. Benish explained that the intent of C was to provide a credit, an incentive to build a house, which was not being committed to in full here.

Mr. Collins said that the contribution was important because people needed that deposit to get into a home, so it was hard to say that it didn't help affordable housing when it helped get someone into a house.

Mr. Dumler said that it wasn't hard to say that a deposit didn't qualify as a dwelling unit.

Ms. Mallek emphasized that there were two separate categories.

Mr. Davis reiterated that the Board's decision needed to focus on whether they had adequately addressed the impacts of this development. That's the legal analysis and the policy decision that needs to be made by the Board. He said that if the Board felt the proffer amount had addressed the impacts, they could approve the rezoning but if they didn't they should deny or defer it until it was addressed.

Mr. Boyd said that he felt the applicant had addressed the impacts of the development through their work with homeowners associations, mitigation processes, etc.

Mr. Boyd offered **motion** to approve ZMA-2010-00011 inclusive of the applicant's proffers dated April 9, 2012. Mr. Snow **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Snow, Mr. Thomas and Mr. Boyd.

NAYS: Mr. Dumler and Ms. Mallek.

ABSTAIN: Mr. Rooker.

Mr. Boyd then offered **motion** to approve a waiver of Section 18-4.2 of the Zoning Ordinance for disturbance of critical slopes. Mr. Dumler **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

ABSTAIN: Mr. Rooker.

Board members concurred that the language for the affordable housing and cash proffer policies needed to be cleaned up.

(The proffers are set out below:)

April 9, 2012

PROFFER STATEMENT

ZMA No. 2010-00011 Estes Park

Tax Map and Parcel Number(s): **03200-00-00-03300 and 03200-00-00-03400**

Owner(s) of Record: **Clifford H. Fox Jr., Benjamin Johnson Estes, and Patricia Ann Paige**

Contract Purchaser: River Bend Management, Inc.
Date of Proffer Signature: April 9, 2012
12.75 acres to be rezoned from R-1 to PRD

Clifford H. Fox Jr. is the owner of Tax Map and Parcel Number **03200-00-00-03300** and **Benjamin Johnson Estes and Patricia Ann Paige** are both the owners of Tax Map and Parcel Number **03200-00-00-03400** (collectively, the "Owner"). Tax Map and Parcel Number **03200-00-00-03300** and Tax Map and Parcel Number **03200-00-00-03400** (the "Property") is the subject of rezoning application ZMA No. ZMA 2010-00011, a project known as "**Estes Park**" (the "Project"), which includes an application plan prepared by Collins Engineering, LLC entitled "Estes Park Rezoning Application Plan" and with a latest revision date of June 20, 2011 (the "Application Plan"). River Bend Management, Inc., the "Contract Purchaser" for both Tax Map Parcels, joins this Proffer Statement to acknowledge its interest in the Property. Where the owner or owners are listed below the Contract Purchaser also shall be included if not stated.

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner and Contract Purchaser hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the zoning district identified above. These conditions are proffered as a part of the requested rezoning and the Owner and Contract Purchaser acknowledges that the conditions are reasonable.

1. Public Street.

As a condition for the issuance of the first certificate of occupancy for any structure on the Property, the Owner shall design and complete construction of the public street identified as "Public Road D" shown on Sheet 3 of the Application Plan but which is located offsite from the Property on Tax Map and Parcel Numbers 046B4-00-00-00500 and 046B4-00-00-005A0.

- A. Design and Construction. At a minimum, Public Road D shall be designed and constructed to the "Typical Street Section Roads A, B, C, D — Public Road (51' Public ROW) Not to Scale" shown on Sheet 3 of the Application Plan but shall, in any event, be designed and constructed to County and VDOT standards, including the design and construction of related drainage, slope and utility easements, as applicable. Construction of Public Road D shall be deemed complete when the County Engineer determines that the roadway is safe and convenient for traffic.
- B. Dedication. As part of the first subdivision plat or in conjunction with the first site plan for the Project, the right-of-way for Public Road D shall be dedicated to public use. If the dedication is not accomplished in conjunction with the first subdivision plat for the Project, the Owner shall prepare, or cause to be prepared, a subdivision plat meeting the requirements of the Albemarle County Subdivision Ordinance (Chapter 14 of the Albemarle County Code) to create a special lot composed of the right-of-way for Public Road D, and the plat shall identify the Public Road D right-of-way as being dedicated to public use.

2. Cash Proffer for Capital Improvements Projects.

The Owner shall contribute cash on a per market-rate dwelling unit basis for the purposes of addressing the fiscal impacts of development on the County's public facilities and infrastructure, i.e., schools, public safety, libraries, parks and transportation. A market rate unit is any unit in the subdivision that is not considered an Affordable Unit as described in Proffer 3. The cash contributions shall be \$13,000 cash for each attached dwelling unit, other than a constructed affordable dwelling unit within the Project qualifying as such under Proffer 3. The Owner's total cash contribution to Albemarle County to address impacts upon the identified public facilities may be up to \$754,000 (58 dwelling units x \$13,000). The cash contribution shall be paid at the time of the issuance of the building permit for each new unit, unless the timing of the payment is otherwise specified by state law.

3. Affordable Housing.

The Owner shall provide affordable housing equal to fifteen percent (15%) of the total residential units constructed on the property as provided under Proffer 3a or 3b:

- a. Cash Proffer. In lieu of constructing affordable dwelling units ("Affordable Units") for fifteen percent (15%) of the total number of Units, which would correspond to ten (10) affordable units, the Owner has the option to make a cash contribution to Albemarle County for the affordable housing program in the amount of Twenty-One Thousand One Hundred Twenty-Five Dollars (\$21,125) (the "Affordable Housing Cash Proffer") for each such unit as follows: the Owner shall pay the Affordable Housing Cash Proffer to the County, in ten (10) increments; after an inspection and prior to the issuance of a certificate of occupancy for each of the seventh (7th), fourteenth (14th), twenty-first (21st), twenty-eighth (28th), thirty-fifth (35th), forty-second (42nd), forty-ninth (49th), fifty-sixth (56th), sixty-third (63rd), and sixty-eighth (68th) dwelling unit within the Project. The Owner's total cash contribution to Albemarle County in lieu of constructing affordable units will be between Q Dollars (for 10 affordable dwelling units constructed) and \$211,250 (for 0 affordable housing units constructed) based on the total number of affordable units constructed within the Property for the purposes. The total cash contribution due to Albemarle County at each of the ten payment periods as noted above shall be based on the total number of affordable units built at that point in time.

- b. For-Sale Units. The Owner maintains the right to construct all or a portion of the ten (10) affordable units. The Owner shall convey the responsibility of initially constructing and selling the affordable units to any subsequent owner or developer of the Property (or any portion thereof), and such subsequent owner(s) and/or developer(s) shall succeed to the duties of the Owner under this Proffer 3, and the term "Owner" shall refer to such subsequent owner(s) and/or developer(s), as applicable.
- (1) Affordability; Credit Thresholds. For the purposes of this Proffer 3(b), "affordable housing" shall mean units affordable to households with incomes less than eighty percent (80%) of the area median income (as determined from time to time by the Albemarle County Office of Housing) such that housing costs consisting of principal, interest, real estate taxes and homeowners insurance (PITI) do not exceed thirty percent (30%) of the gross household income; provided, however, that in no event shall the selling price for such affordable units be more than sixty-five percent (65%) of the applicable Virginia Housing Development Authority (VHDA) maximum sales price/loan limit for first-time homebuyer programs at the beginning of the 180-day period referenced in Proffer 3(b)(2) hereof (the "VFIDA Limit").
 - (2) Sale of Affordable Units. All purchasers of the for-sale affordable units shall be approved by the Albemarle County Housing Office or its designee (the "Housing Office"). At the proposed time of construction of any affordable unit, the Owner shall provide the Housing Office a period of one hundred eighty (180) days to identify and approve an eligible purchaser for such affordable unit. The 180-day qualification period shall commence upon written notice from the Owner to the Housing Office of the approximate date the unit is expected to receive a certificate of occupancy from the County (the "Notice"). Such Notice shall be given no more than ninety (90) days prior to the expected issuance of the certificate of occupancy, and the 180-day approval period shall extend no less than ninety (90) days after the issuance of the certificate of occupancy. Nothing in this Proffer 3(b)(2) shall prohibit the Housing Office from providing the Owner with information on income eligibility sufficient for the Owner to identify eligible purchasers of affordable units for approval by the Housing Office. If, during the 180-day qualification period, (i) the Housing Office fails to approve a qualified purchaser, or (ii) a qualified purchaser fails to execute a purchase contract for an affordable unit, then, in either case, the Owner shall have the right to sell the unit without any restriction on sales price or income of the purchaser(s), and such unit shall be counted toward the satisfaction of this Proffer 3(b). This Proffer 3(b) shall apply only to the first sale of each of the for-sale affordable units.
 - (3) Tracking. Each subdivision plat and site plan for land within the Property shall designate the lots or units, as applicable, that will, subject to the terms and conditions of this proffer, incorporate affordable units as described herein, and the aggregate number of such lots or units designated for affordable units within each subdivision plat and site plan shall constitute a minimum of fifteen percent (15%) of the lots in such subdivision plat or site plan.

4. Moubry Lane Interconnection and Construction Vehicle Access.

- a. The Owner shall design and construct a bicycle/pedestrian and emergency access connection to Moubry Lane to minimum AASHTO standards of a 20-foot wide paved access road and shall place bollards removable only by emergency service personnel, to prohibit any other vehicular access. This will be done to provide a secondary means of access in case of emergency. The number and type of bollards shall be approved in advance by Albemarle County's Division of Fire Rescue.
- b. Moubry Lane shall not be used for construction access associated with the Project, except as necessary for construction of the Moubry Lane Interconnection itself.
- c. All construction traffic for the project shall enter the site through the existing access easement from Proffit Road. Worth Crossing shall be closed and barricaded to construction traffic until such time as the first certificate of occupancy is issued within the Project and Public Road D is constructed with curbing and a base asphalt surface and the Owner has obtained from the County Engineer a written determination that the street is safe and convenient for traffic.

5. Erosion and Sediment Control.

The Owner shall provide additional erosion and sediment control measures above and beyond the standard regulatory requirements as stated in the Virginia Erosion and Sediment Control Handbook. The additional measures to be implemented will consist of erosion control practices as outlined in the attached memorandum from Scott Collins, Collins Engineering to Glenn Brooks, dated February 29, 2012 (Re: Estes Park Rezoning — Additional Erosion and Sediment Control Measures). The County Engineer shall determine, in consultation with the Owner, the appropriate measures to be implemented. Design and implementation of these erosion and sediment controls will be reviewed and be subject to prior approval by the County Engineer.

6. Cost Index.

Beginning January 1, 2013, the amount of each cash contribution required by Proffers 2 and 3 shall be adjusted annually until paid, to reflect any increase or decrease for the proceeding calendar year in the Marshall and Swift Building Cost Index ("MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the preceding calendar year, the denominator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

This Proffer Statement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

WITNESS the following signatures:

OWNER
(SIGNED) Clifford H. Fox, Jr.

OWNER
(SIGNED) Benjamin Johnson Estes

RIVER BEND MANAGEMENT, INC., CONTRACTOR PURCHASER
(SIGNED) Alan R. Taylor, Vice President.

OWNER
(SIGNED) Patricia Ann Paige

MEMO

To: Albemarle County
Attn: Glenn Brooks, County Engineer
From: Scott Collins, PE
Re: Estes Park Rezoning — Additional Erosion and Sediment Control Measures
Date: February 29, 2012

Mr. Brooks:

In an effort to provide erosion and sediment control for the Estes Park development that exceed the current standards and regulations as set forth in the Virginia Erosion and Sediment Control Handbook, the Owner of the development is willing to implement additional erosion control measures. The additional measures that Estes Park will implement upon approval of the County the County Engineer are listed below. (In addition, the County Engineer or Erosion Control Inspector can require the developer to include or implement additional erosion control measures during the site plan approval process or construction phase of development.):

1. Commitment to finishing, stabilizing, and closing out the permit by a given date — Estes Park shall be developed in the (2) phases to ensure timely completion and stabilization of the first phase, prior to moving forward with the second phase of construction. All timelines for construction and stabilization will meet the Albemarle County regulations.
2. Commitment to independent third party professional inspections and documentation, with reporting to the county — Estes Park shall hire a professional consultant to review and inspect the erosion control measures on a weekly basis, document the findings, and provide these reports to the county for review.
3. Installation of a turbidity curtain — the contractors for Estes park shall install a turbidity curtain at the inlet point into Arbor Lake.
4. Installation of reinforced silt fencing — the use of wire-backed silt fence will be used along the streams and environmental areas for added protection. Metal fencing or barriers, or double rows of silt fencing, or other extra requirements will be provided as directed by the county engineer to further enhance mitigation efforts.
5. Provide additional wet storage and dry storage in the traps and basins — Sediment basins will be designed with 50% additional storage volume for the wet and *dry* storage to allow the basins to contain all the run-off, and hold it longer in the basin to allow sediment to filter out. In addition, the sediment basins will have different compartments that will allow sediment to filter out as it moves through these compartments. The contractor will continually clean out the sediment from these compartments on a routine basis.
6. Installation of erosion control matting for all slopes and the use of tackifiers in seeding and soil stabilization applications — measures such as these will be used for instant

stabilization practices for the development, to help prevent erosion during the stabilization of the site.

7. Apply redundancy in the design- Estes Park will have a series of erosion control measures such as diversion ditches, sediment basins, reinforced silt fence, bio-logs, and turbidity curtains designed and installed in conjunction with each other to control the sediment runoff from the site.
8. Use of easily installed pre-manufactured silt control devices —these devices, listed in more detail below, will be installed to assist with erosion control measures.

In addition to these types of erosion control measures listed above, Estes Park is committed to installing additional erosion control measures to assist in the removal of fine particles and colloidal soils from the run-off. These additional measures are proposed with this development to protect Arbor Lake and the downstream environmental features:

1. Filter socks and Floc Logs- These measures are used as a trapping device to filter the run-off through these products which specialize in removing the fine particles and colloidal soils from the run-off. These devices are used downstream of the project in conjunction with the fence and along roadways to protect the drainage inlet structures and remove particles before they enter the Structures. Any erosion control measures that are installed off-site will require an easement or letter from the Forest Lakes HQA allowing the erosion control measures to be installed on the Forest Lakes HOA property downstream of Estes Park.
2. Departmental sediment basins — Design and construction of sediment basins with a series of different chambers to allow run-off to filter through each chamber to the next chamber while removing the fine particles and colloidal soils as the run-off passes through each chamber and filtering device. The first chamber will be cleaned out on a monthly basis, with the other chambers being cleaned out as necessary to remove sediment that has accumulated within the basin Faircloth Skimmer devices — this device is added to the outfall pipe of sediment basins and assists in the filtration and removal of fine particles and colloidal soils from the water before it's released from the basin.
3. Erosion Control blankets and other ADS soil stabilization measures — these devices can be applied to and below denuded areas to prevent erosion by removing fine particles and colloidal soils from the run-off.

Summary:

Estes Park and its owners and developers are committed to design and implementation of additional erosion control measures and devices to protect the downstream properties and environmental features from sedimentation, during and after construction activity is completed with the development. Erosion control measures, as listed above, are to be designed and installed for additional protection above and beyond the standard erosion control design regulations for development and construction activities. These specialized techniques and the redundancy of these control measures are added measures on top of the standard erosion control devices to assist in the removal of sediment, fine particles, and colloidal soils from the run-off from the development.

In addition, the developers of Estes Park will meet with representatives from Forest Lakes Association on a set monthly basis, or other agreed upon meeting schedule, onsite to review and inspect the point at which flow from the Estes Development enters Arbor Lake. Documentation of sedimentation into the Lake, if any, will be noted in the inspections reports from each of the meetings. These documents will be kept as records throughout the construction of Estes Park and used to determine the amount, if any, of sediment that has entered the pond from the Estes Development. At the end of the project, Estes Development will be responsible for removing the amount of documented sediment from Arbor Lake from these inspection reports, as agreed upon by both parties. The intent is to prevent and remove any sediment from Arbor Lake caused by construction development of Estes Park at no financial cost to Forest Lakes for the clean-up of the sediment from the construction activity of Estes Park.

Agenda Item No. 11. **ZMA-2011-00005. Greenbrier Commons (Sign #51).**

PROPOSAL: Rezone 2.000 acres from Light Industry (LI) zoning district which allows industrial, office, and limited commercial uses (no residential use) to Neighborhood Model (NMD) zoning district which allows residential (3-34 units/acre) mixed with commercial, service and industrial uses. No residential units proposed.

ENTRANCE CORRIDOR: NO.

PROFFERS: YES.

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

LOCATION: 340 Greenbrier Drive, Charlottesville, VA.

TAX MAP/PARCEL: 061W0010A00800.

MAGISTERIAL DISTRICT: Rio.

(Advertised in the Daily Progress on March 26 and April 2, 2012.)

Mr. Cilimberg said that Board members had an updated Code of Development dated April 10, and there was nothing substantive therein only wording clarification for enforcement and interpretation. He stated that the request was off of Greenbrier Drive on a property zoned light industrial, generally within an area of commercial development and the closest industrial being the Comdial facility. Mr. Cilimberg said that the building had been occupied by industrial users and there was now space available that hadn't been leasable to industrial users, and their rezoning would be to provide a mixed use district which would come under the Neighborhood Model. He presented the application plan that would go with the code for the zoning, and said it was the site plan that was approved with the facility.

Mr. Cilimberg stated that there were favorable factors in that this rezoning gave a wider range of tenant possibilities to lease space; all was reversible space so it could still be used for industrial purposes in the future; it would maintain a minimum of 75% in industrial uses. He said there were no unfavorable factors and the Commission had unanimously recommended approval, and did want to make sure there was an allowance for parking demand studies which could happen through the site plan process if uses might accumulate the necessary parking beyond what's provided on the site with a demand study showing that the ultimate parking wouldn't be necessary and could provide for the uses that would be locating at the building. Mr. Cilimberg said that the application had included bike racks in the front southwest area of the site, and they had provided in the Code of Development a list of uses by right and by special use permit. He stated that staff and the Commission recommended approval and recommended that the Board move for approval inclusive of the Code of Development last revised April 10, 2012.

The Chair opened the public hearing.

Ms. Sue Albrecht addressed the Board, stating that she was the President of Design Environs Corporation, the Managing Partner of Cedar Bluff Stables, and the owner of several residential and commercial Albemarle County properties held primarily in Anvince Land Trust, of which she was co-trustee and the sole beneficiary. Ms. Albrecht stated that she purchased her first piece of property in 1984 and continued buying until 2006, when she had bought 10 properties. She said that she currently paid over \$60,000 in real estate taxes and \$25,000 in property insurance and \$20,000 in property maintenance on her parcels. Ms. Albrecht said she was here to present a rezoning solution, stating that she was asking for this change in order to eliminate a 25% vacancy rate, adding that the rezoning would increase the property's attractiveness to a broader range of tenants.

She reported that the site was originally developed in the mid-1970s as Charlottesville's first ice-skating rink and had commercial zoning at that point. Ms. Albrecht said that by 1980 the rink ceased operations and Sperry Marine purchases the property and the light industrial zoning was applied, then Sperry spent the next 20 years intensively using the property for research and development, testing, mock-up building, and offices for their engineering group. She stated that that was the only time the property was used in a manufacturing capacity, and in 1999 Sperry's parent company Northrop Grumman elected to consolidate the Greenbrier activities back into the Seminole Trail plant, so they put the property back on the market. Ms. Albrecht acquired the property in 2000 and invested several hundreds of thousands dollars in renovations which nearly doubled the assessed value of the property. She said that the vision for her company was halted somewhat by national economic conditions, so her company experienced a huge drop in commercial sales and funding became difficult to obtain.

Ms. Albrecht said that she was able to lease out everything except the front 8,000 square feet, and that had been on the market since 2002. She stated that there was one tenant but they were deemed to be in violation of light industrial uses and had to vacate the property. Ms. Albrecht said that the property value of Greenbrier Commons demanded a per square footage rental rate that exceeded the ability of a typical manufacturing entity to be able to justify it. She stated that the location of the property seemed to be much more suited to the Neighborhood Model district. Ms. Albrecht said that none of the manufacturing facilities pursued was able to come to fruition, and her calculations indicated that the cost of the location was more than their businesses could support. She stated that she had turned away a list of tenants because they didn't meet the requirements of LI zoning, and they fell predominantly in the category of Highway Commercial such as building material supplies, churches, clubs, factory outlet sales, feed and seed stores, machinery and equipment sales, automotive part sales, athletic facilities, office and business machine sales, home and business services, businesses such as grounds care, extermination, cleaning, landscaping, and other repair and maintenance companies.

She stated that she had been able to come to an agreeable rate and term with them, only to be stalled by the zoning misfit generally connected to the LI restriction for allowable percentage of retail sales; you cannot have more than 15% of retail sales. Ms. Albrecht said that last year's adoption of Places 29 master plan for the northern development area supported flex designation for her building, but there was no such district in place now, so with staff's recommendation she elected to pursue Neighborhood Model zoning. She stated that she was essentially asking for 8,250 square feet to be converted from LI to mixed use, and said that the approval of the rezoning would allow the location to flourish, with full occupancy and positive cash flow.

Ms. Mallek said that this would essentially create flex space similar to that in downtown Crozet.

Mr. Cilimberg responded that this was the only district available to do that under Places 29, and staff was working on some use changes for industrial that might enable them under special use permit.

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

Mr. Rooker said that he lived near the site and his office was very close to it, adding that the change would help improve that area.

Mr. Thomas said that he agreed with the change, and said that the dual use would benefit the owner and who comes into it.

Mr. Thomas offered **motion** to approve ZMA-2011-00005 inclusive of the Code of Development last revised April 10, 2012. Ms. Mallek **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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 Code of Development is set out below:)

GREENBRIER COMMONS ZMA-2011-00005 (For CODE OF DEVELOPMENT- See Section 20A.5)

DATE: NOVEMBER 21, 2011

REVISION: MARCH 18, 2012

REVISION: MARCH 30, 2012

REVISION: APRIL 10, 2012

PROPERTY:

TMP 061WO-01-OA-00800
340 Greenbrier Drive
Albemarle County, Virginia

OWNER/APPLICANT:

Anvince Land Trust
Sue A. Albrecht
255 Ipswich Place
Charlottesville, Virginia 22901

NARRATIVE:

This site is fully developed and is zoned Light Industrial. The application for the Zoning Map Amendment from Light Industrial District to Neighborhood Model District is being applied for in order to broaden the uses of the property. The intent with the change to NMD is to maintain all LI "By Right" and all LI "By Special Use Permit" uses while adding most HC "By Right" and most HC "Special Use Permit" uses. This ZMA will allow for a more productive use of the front portion of the property, as well as better complement the surrounding mix of properties on Greenbrier and Commonwealth Drives.

20A.3 - NEIGHBORHOOD MODEL OF DEVELOPMENT - APPLICATION REQUIREMENTS

20A.3.a — Statement of Consistency with NMD Principles

The proposed development alone does not meet all NMD principles. However combined with adjacent properties the project contributes to NMD principles. The following is a brief overview of the attributes of the development's contribution to NMD principles.

1. Pedestrian Orientation — The development is located in an area of high pedestrian foot traffic. The property is surrounded to the south, west and north with a variety of residential housing inclusive of multi-story apartment units, townhouses, duplexes, single-family homes and an assisted living facility.
2. Neighborhood Friendly Streets and Paths — Pedestrian friendly sidewalks flank both sides of Greenbrier and Commonwealth Drives with a traffic signal located at that intersection as well allowing for safe pedestrian traffic in all directions.
3. Interconnected Street & Transportation Networks — The project is a single building, and interconnected by county sidewalk systems and served by the bus line transportation system. The site has stone steps at the west side of the property connecting this development to the adjacent commercial property situated at the northeast corner of Greenbrier and Commonwealth Drives enabling for a more simplified pedestrian path of travel. Bicycle racks will be added to the front southwest area of the site to further promote non-motor vehicular forms of transportation.
4. Parks and Open Space as Amenities — The development has a green space along the west property line with a picnic area amenity.
5. Neighborhood Centers — The project house businesses that currently serve the neighborhood. The ZMA request would enable additional businesses to locate at this site that would serve the neighborhood well.
6. Building and Spaces of a Human Scale — The nature of the existing development fits the site beautifully.
7. Relegated Parking — The existing parking configuration effectively accommodates vehicular traffic to the building as well as tractor-trailer and local delivery truck access.

- The project's need for parking flexibility may necessitate that parking demand studies be used for future parking evaluation.
8. Mixture of Uses and Uses Types — This development currently and historically has accommodated a variety of LI uses and with the proposed NMD zoning the opportunity to serve the neighborhood in a greater way will be enhanced.
 9. Mixture of Housing Types and Affordability — This development is an existing single building with no opportunity for residential use. Per NMD variances permitted, this development represents an infill project, and is within ½ mile of five affordable housing types as well as many other mixed commercial uses.
 10. Redevelopment — Not Applicable
 11. Site Planning that Respects Terrain — Not Applicable
 12. Clear Boundaries with the Rural Area — Not Applicable

In summary, this existing development is a compact, mixed-use project with an urban scale, massing, density, and an infrastructure configuration that integrates diversified uses within close proximity to each other within the development areas identified in the County Comprehensive plan and in the Places29 Master Plan.

20A.3.b — Parking and Loading Needs Study — Not applicable due to existing conditions (see 20A.3.a #7 above)

20A.3.c — Storm Water — Existing Site Conditions to be maintained

20A.3.d — Application Plan — See Attached

20A.3.e — Code of Development — See Section 20A.5

20A.4 - APPLICATION PLAN

See attached application plan and the following information:

20A.4.a — Gross Square Footage Non-Residential & residential:

Non — Residential- Not to exceed 33,000 gsf
Residential — 0 gsf

20A.4.b — General Allocation:

This project contains one parcel.

20A.4.c — Green Spaces, Amenities, Conservation Areas, Preservations Areas:

This development includes green space, a picnic area, connecting stone steps, an indigenous stonewall, trees and shrubbery all situated along the west property line.

20A.4.d — Building Footprint:

See attached Application Plan

20A.5 CODE OF DEVELOPMENT

20A.5.a - Uses Permitted in the NMD By Right and By Special Use Permit:

Maintains all LI by right uses and all LI by special use permit uses and adds most HC by right uses and most HC by special use permit uses. See list of permitted uses by right and by special use permit in Section 20A.6.

20A.5.b - The Amount of Developed Square Footage:

The amount of developed gross square footage is not to exceed 33,000.

20A.5.c — The Maximum Number of Residential Units:

No residential units to be developed within the district.

20A.5.d — The Amount of Land devoted to Green Space:

The area devoted to green space located on the west property line as shown on the application plan shall be 0.25 acres and 13% of the site.

20A.5.e — Requirements & Restrictions Related to Use:

All the uses are within the one existing building on this existing site with a maximum gross square footage of 25% allowed HC uses and a minimum gross square footage of 75% allowed LI uses. A use that is allowed in both HC and LI districts shall be attributed to the percentage of Li gross square footage.

20A.5.f — Uses Expressly Prohibited:

Any uses not listed in attached listing of permitted uses by right and by special use permit are prohibited as primary uses (see Section 20A.6).

20A.5.g - Architectural Standard:

Existing development's Architectural Character shall be retained and any future improvements to be consistent and compatible with existing neighborhood surroundings.

20A.5.h — Landscape Treatment:

See attached Application Plan

20A.5.i - Blocks

Not Applicable

20A.6 — PERMITTED USES

20A.6.a — By Right and 20.A.6.b — By Special Use Permit

Light Industry By Right:

1. Compounding of drugs, including biological products, medical and chemical as well as pharmaceutical.
2. Fire and rescue squad stations (reference 5.1 .9).
3. Manufacture, processing, fabrication, assembly, distribution of products such as but not limited to: (Amended 12-2-81; 2-20-91)
 - Artists' supplies and equipment.
 - Business, office machines and equipment.
 - Cosmetics, including perfumes, perfumed toiletries and perfumed toilet soap.
 - Drafting supplies and equipment.
 - Electrical lighting and wiring equipment.
 - Electrical and electronic equipment and components including radio, telephone, computer, communication equipment, TV receiving sets, phonographs.
 - Food products, such as bakery goods, dairy products, candy, beverages, including bottling plants.
 - Gifts, novelties including pottery, figurines and similar ceramic products.
 - Glass products made of purchased glass.
 - Industrial controls.
 - Jewelry, silverware.
 - Light machinery and machine parts, including electrical household appliances but not including such things as clothes washers, dryers and refrigerators.
 - Musical instruments.
 - Paper products such as die-cut paperboard and cardboard, sanitary paper products, bags and containers.
 - Photographic equipment and supplies including processing and developing plant.
 - Rubber, metal stamps.
 - Small electrical parts such as coils, condensers, transformers, crystal holders.
 - Surgical, medical and dental instruments and supplies.
 - Toys, sporting and athletic equipment, except firearms, ammunition or fireworks.
 - Watches, clocks and similar timing devices.
 - Wood cabinets and furniture, upholstery.
4. Publishing, printing, lithography and engraving, including but not limited to newspapers, periodicals and books.
5. Preparation of printing plates including typesetting, etching and engraving.
6. Research and development activities including experimental testing.
7. Scientific or technical education facilities.
8. Assembly and fabrication of light aircraft from component parts manufactured off-site.
9. Storage yard. (Amended 11-12-08)
10. Engineering, engineering design, assembly and fabrication of machinery and components, including such on-site accessory uses as machining, babbitting, welding and sheet metal work and excluding such uses as drop hammering and foundry. (Amended 10-3-01)
11. Electric, gas, oil and communication facilities excluding tower structures and including poles, lines, transformers, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations and appurtenances owned and operated by the Albemarle County Service Authority. Except as otherwise expressly provided, central water supplies and central sewerage systems in conformance with Chapter 1 6 of the Code of Albemarle and all other applicable law. (Amended 5-12-93)
12. Public uses and buildings including temporary or mobile facilities such as schools, offices, parks, playgrounds and roads funded, owned or operated by local, state or federal agencies (reference 31.2.5); public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations and the like, owned and/or operated by the Rivanna Water and Sewer Authority (reference 31.2.5; 5.1.12). (Amended 11-1-89)
13. Temporary construction uses (reference 5.1.18).
14. Business and professional office buildings.
15. Dwellings (reference 5.1.21). (Added 4-17-85)
16. Temporary nonresidential mobile homes (reference 5.8). (Added 3-5-86)
17. Warehouse facilities and wholesale businesses not involving storage of gasoline, kerosene or other volatile materials; dynamite blasting caps and other explosives; pesticides and poisons; and other such materials which could be hazardous to life in the event of accident. (Added 12-2-87)
18. Storm water management facilities shown on an approved final site plan or subdivision plat. (Added 10-9-02)

19. Tier I and Tier 11 personal wireless service facilities (reference 5.1 .40). (Added 10-13-04)
20. Farmers' markets that will be conducted outdoors or within a temporary or existing permanent structure (reference 5.1.47). (Added 5-5-10)

Highway Commercial By Right:

1. Building materials sales.
2. Churches, cemeteries.
3. Clubs, lodges, civic, fraternal, patriotic (reference 5.1.2).
4. Educational, technical and trade schools.
5. Factory outlet sales - clothing and fabric.
6. Financial institutions.
7. Fire extinguisher and security products, sales and service.
8. Fire and rescue squad stations (reference 5.1.09).
9. Funeral homes.
10. Furniture stores.
11. Home and business services such as grounds care, cleaning, exterminators, landscaping and other repair and maintenance services.
12. Light warehousing.
13. Machinery and equipment sales, service and rental.
14. New automotive parts sales.
15. Newspaper publishing.
16. Administrative, business and professional offices.
17. Wayside stands - vegetables and agricultural produce (reference 5.1.19).
18. Wholesale distribution.
19. Electric, gas, oil and communication facilities excluding tower structures and including poles, lines, transformers, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations and appurtenances owned and operated by the Albemarle County Service Authority. Except as otherwise expressly provided, central water supplies and central sewerage systems in conformance with Chapter 16 of the Code of Albemarle and all other applicable law. (Amended 5-12-93)
20. Public uses and buildings including temporary or mobile facilities such as schools, offices, parks, playgrounds and roads funded, owned or operated by local, state or federal agencies (reference 3 1.2.5); public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations and the like, owned and/or operated by the Rivanna Water and Sewer Authority (reference 31.2.5; 5.1.12). (Amended 11-1-89)
21. Temporary construction uses (reference 5.1.18).
22. Temporary nonresidential mobile homes (reference 5.8). (Added 3-5-86)
23. Uses permitted by right pursuant to subsection 22.2.1 of section 22.1, commercial, C-1 (Added 6-19-91; Amended 9-9-92)
24. Indoor athletic facilities. (Added 9-15-93)
25. Farmers' market (reference 5.1.47). (Added 10-11-95; Amended 5-5-10)
26. Storm water management facilities shown on an approved final site plan or subdivision plat. (Added 10-9-02)
27. Tier I and Tier 11 personal wireless service facilities (reference 5.1.40). (Added 10-13 -04)
28. Storage yards. (Added 11-12-08)

Light Industry By Special Use Permit:

1. Laboratories, medical or pharmaceutical.
2. Airport, helistop or heliport (reference 5.1.1).
3. Assembly of modular building units.
4. Moving businesses, including storage facilities.
5. Warehouse facilities not permitted under section 27.2.1.17. (Amended 12-2-87)
6. Wholesale business not permitted under section 27.2.1.17. (Amended 12-2-87)
7. Truck terminal.
8. Electrical power substations, transmission lines and related towers; gas or oil transmission lines, pumping stations and appurtenances; unmanned telephone exchange centers; micro- wave and radio-wave transmission and relay towers, substations and appurtenances.
9. Temporary events sponsored by local nonprofit organizations (reference 5.1.27). (Added 7-7- 82)
10. Uses permitted by right, not served by public water, involving water consumption exceeding four hundred (400) gallons per site acre per day. Uses permitted by right, not served by public sewer, involving anticipated discharge of sewage other than domestic wastes. (Added 2-13-85)
11. Body shops (reference 5.1.31). (Added 12-7-88)
12. Towing and storage of motor vehicles (reference 5.1.32). (Added 6-6-90)
13. Uses listed under section 27.2.1 with subordinate retail sales exceeding fifteen (15) percent of the floor area of the main use. (Added 2-20-91)
14. Supporting commercial uses (reference 9.0). (Added 6-19-91)
15. Indoor athletic facilities. (Added 9-15-93)
16. Stand alone parking and parking structures (reference 4.12, 5.1.41). (Added 2-5-03)
17. Tier III personal wireless service facilities (reference 5.1.40). (Added 10-13-04)

18. Heavy equipment and heavy vehicle parking and storage yards. (Added 11-12-08)
19. Farmers' markets that will be conducted in a new permanent structure (reference 5.1.47). (Added 5-5-10)
20. Uses permitted by right in the Heavy Industry (HI) zoning district that are not otherwise permitted by right under section 27.2.1. (Added 6-2-10)

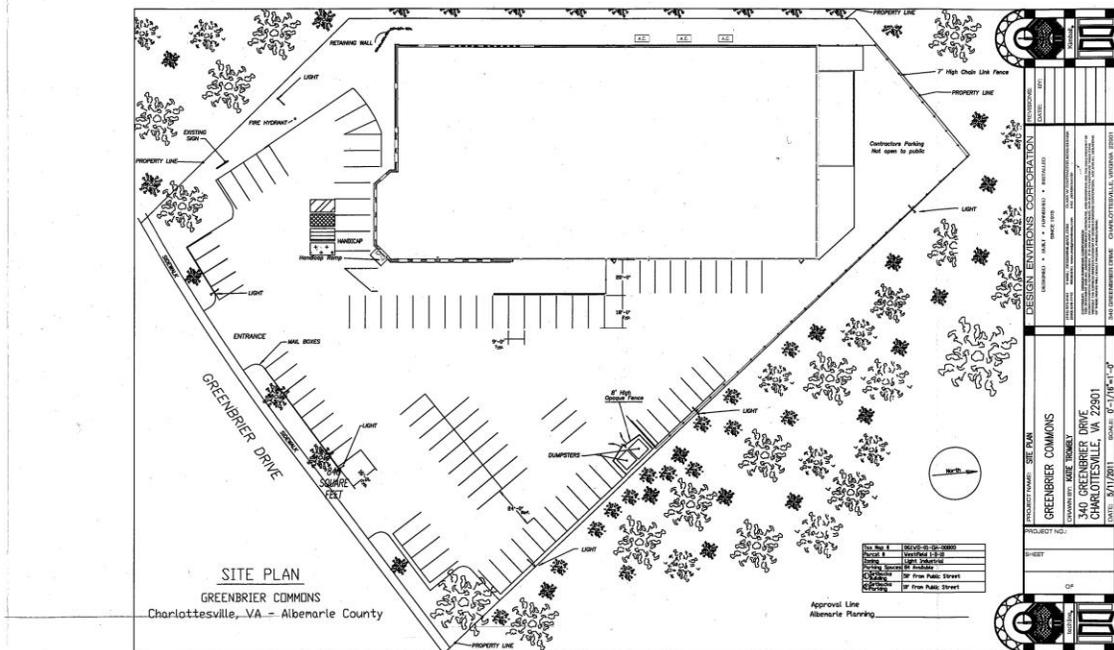
Highway Commercial By Special Use Permit:

1. Commercial recreation establishment including but not limited to amusement centers, bowling alleys, pool halls and dance halls. (Amended 1-1-83)
2. Septic tank sales and related service.
3. Veterinary office and hospital (reference 5.1.11).
4. Hospitals, nursing homes, convalescent homes (reference 5.1.13).
5. Auction houses.
6. Commercial kennels - indoor only (reference 5.1.11). (Added 1-1-83).
7. Stand alone parking and parking structures (reference 4.12, 5.1.41). (Added 11-7-84; Amended 2-5-03).
8. Drive-in windows serving or associated with permitted uses. (Added 11-7-84; Amended 9-9-92).
9. Uses permitted by right, not served by public water, involving water consumption exceeding four hundred (400) gallons per site acre per day. Uses permitted by right, not served by public sewer, involving anticipated discharge of sewage other than domestic wastes. (Added 6-14-89).
10. Warehouse facilities not permitted under section 24.2.1 (reference 9.0). (Added 6-19-91).
11. Animal shelter (reference 5.1.11). (Added 6-16-99).
12. Tier III personal wireless service facilities (reference 5.1.40). (Added 10-13-04).
13. Body shops. (Added 1-12-11).
14. Feed and seed stores (reference 5.1.22).
15. Hardware.
16. Motor vehicle sales, service and rental.
17. Office and business machine sales and service.

20A.7 — RESIDENTIAL DENSITY
Not Applicable

20A.8 - MIXTURE OF USES
See Section 20A.5.e

20A.9 - GREEN SPACES, AMENITIES, & CONSERVATION/PRESERVATION AREA
See Sections 20A.5.d and 20A.5.h



ATTACHMENT D

Agenda Item No. 12. **Ordinance to Amend Chapter 4, Animals and Fowl, Section 4-200, Running at large prohibited** - To restrict dogs from running at large County-wide.
(Advertised in the Daily Progress on March 26 and April 2, 2012.)

Chief of Police, Steve Sellers, summarized the following executive summary which was forwarded to Board members:

On July 8, 2009, the Board adopted a comprehensive amendment to Chapter 4, Animals and Fowl, of the County Code which updated this chapter and brought the County's animal laws into conformance with State law. As part of this comprehensive amendment process, the Board also prohibited dogs from running at large in all areas of the County not zoned Rural Areas District, and in any Rural Areas District that was previously identified as a no running at large area as specifically identified in the ordinance. The running at large ordinance provides an exemption for dogs running at large that are

deemed to be on a bona fide hunt during hunting season accompanied by a licensed hunter or during field trials or training periods when accompanied by its owner. Attached is a map of Albemarle County which marks the current areas of the County where running at large is prohibited. (Attachment A).

On March 7, 2012, the Board directed staff to prepare a proposed ordinance for public hearing and the Board's further consideration that would prohibit dogs from running at large County-wide.

Of the 1,252 dog-related calls-for-service logged between the period April 1, 2011 to January 1, 2012, 43% (538) were regarding dogs running at large (Re: "Stray", "Hazard" and "Running at Large" categories). Of those 538 calls, 49.8% or 268 were found to be in rural areas. The other 50.2% (270) were reportedly in designated "leash-law" areas. The ACO's have identified the following pros and cons for the Board to consider in regard to this ordinance to prohibit running at large County-wide.

Pros:

- Potential reduction in the number of calls related to dog bites, dog versus companion animal complaints, and dog versus livestock incidents
- Potential reduction in the number of stray dog reports received in the rural areas
- Potential decrease in the number of hazard calls received for dogs being in the roadway, and dogs being struck by vehicles in the rural areas
- Elimination of "invisible" boundary lines between areas where dogs can and cannot run at large currently defined by the zoning designation of the property

Cons:

- Potential resistance from dog owners in rural areas because many residing in the rural areas are accustomed to the lack of restrictions for their dogs
- Potential increase in the number of dogs taken to the SPCA due to lack of compliance immediately after a County-wide prohibition
- Expected increase in the number of dogs being tethered, and in the number of calls from citizens regarding the welfare of tethered dogs
- Expected increase in the number of calls regarding running at large complaints, with no additional staff to handle the volume of calls
- Potential confusion and difficulty identifying hunting dogs which may be at large as part of a bona fide hunt, as allowed under the ordinance. Often times dogs used for hunting are not retrieved for several days following a hunt and there is the potential for an increase in calls to report hunting dogs running at large during or after a hunt.

If an ordinance prohibiting dogs from running at large County-wide is adopted, ACO's anticipate the initial impact will be an increase in calls for dogs running at large, and for welfare and tethering issues. However, no additional ACO's are budgeted or planned to be hired to handle the increased calls; therefore, response times may be slowed by the number of calls. Should any change to the running at large ordinance be considered and adopted, the ACO's recommend an education outreach to inform citizens.

The proposed ordinance (Attachment B) would amend Section 4-200 Running at large, to prohibit dogs from running at large County-wide. It maintains the current exemption for hunting dogs.

Should the Board adopt the proposed ordinance prohibiting dogs from running at large County-wide, a significant increase in calls for enforcement is expected, resulting in increased costs and the need for additional ACOs or a decrease in response times. The Police Department currently has four ACOs that are responsible for a heavy call volume. The estimated one-time and annual cost per ACO is as follows:

One time start-up cost (*Operating and Capital Costs*) \$47,600
Annual costs (*Total salary/benefits \$43,246.57 + Anticipated Overtime \$3,000*) \$46,246.57

Total cost for first year: \$93,846.57
Annual cost thereafter: \$46,246.57

Although extending the running at large ordinance to the rural areas of the County is supported by the Police Department conceptually, limited current staffing levels in both the Patrol and Animal Control Officer Divisions would limit the ability of the Police Department to effectively enforce the running at large requirements at this time. The adoption of this ordinance would likely result in a gap between citizen expectations for enforcement and the capacity of the Police Department to respond in a timely manner.

Chief Sellers addressed the Board, stating that typically they handled 538 running at large type calls, and about half of those were in the rural areas of the County with the other half in the urban areas of the County where leash laws and running at large laws were already in place. He stated that at the Board's request, his staff with assistance from the County Attorney prepared an amendment to the ordinance for discussion and public hearing. Chief Sellers said that he currently had four animal control officers that worked Monday through Friday, and those officers usually came in Monday morning to a number of calls that had come in the queue and accumulated over the weekend. For more urgent matters, he said, police officers were dispatched after 9:00 p.m. until 7:00 a.m. to handle animal issues and on the weekends as needed. Chief Sellers said that the additional ordinance could have an impact on staff, but there were ways his department could creatively deal with that. He added that staff had a duty and responsibility to set public expectations in terms of the ability of the Police Department to enforce

these laws through a proactive approach, and the running at large calls had the potential for backing up and being held longer than anticipated.

Ms. Mallek said that an education campaign would be helpful to make sure that owners were informed and knew what their responsibilities would be adding that she was hopeful that after an initial adjustment period there would be a reduction in calls with a drop-off of repeat offenders.

Mr. Rooker asked what happened to the rural area calls.

Chief Sellers said that the department responded when they could, but many of them were mitigated over the phone.

Mr. Rooker stated that the ordinance wouldn't necessarily mean a net increase in calls, because they were already coming from the rural area and needed to be handled.

Mr. Snow asked if Chief Sellers knew how many of those calls involved vicious animals or an uncontrolled animal causing safety problems.

Chief Sellers responded that out of the 538 calls, 68 were related to hazards, 311 were wandering or stray, and the 115 aggressive calls included other issues and could be classified different ways.

Mr. Boyd asked if there was something that could be done in the case of an aggressive dog.

Chief Sellers said that if it could be determined the dog was aggressive police could take the dog into custody.

Mr. Snow asked what rights homeowners had if there was a vicious dog in their yard and they felt threatened.

Mr. Davis said that from a practical standpoint, you have the right to defend yourself from the dog but if you weren't in physical danger, such as in your house, you were beyond your rights to chase the dog down.

Mr. Rooker said that it was a tricky situation for a homeowner because if you had a dog that continued to be aggressive, you could only shoot him if he was coming at you.

Mr. Dumler stated that he has both prosecuted and defended civil proceedings related to animal issues and they were long, miserable ordeals, and if the ACO wasn't there to witness the incident it becomes a he said/she said situation. He said that a lot of times the situation doesn't rise to the level where the judge was uncomfortable releasing the animal, so the animal was just released back to the owners.

Mr. Boyd said that this was such a difficult issue and he had received emails on both sides of the issue, with the latest one stating that they work it out with their neighbors when there was a problem. He added that it may be difficult for the Police Department to enforce the ordinance given staffing levels, so he wasn't sure what was being accomplished by this action.

Chief Sellers said that aggressive dogs were actually separate from the running at large statistics. He explained that if there was probable cause for animal cruelty and animal rules had been broken, the ACO would take action.

Mr. Rooker stated that it wasn't unlawful for a dog just to be aggressive and vicious dog cases took a lot of time, but picking up a dog for violating the leash ordinance was quick and provided some recourse if it was a vicious dog.

Mr. Dumler said that there were probably a lot of cases where that would be preferable, because a lot of owners of dogs declared vicious were letting the animals run loose and an education campaign to encourage owners to keep dogs penned or leashed would be helpful if they understood that if a dog did run free and was found to be vicious it could be euthanized.

Chief Sellers reported that last year there were 10 vicious dog cases that worked through the system, and it was a cumbersome process. He said that if the ordinance passed, the Police Department would have the responsibility to revise their website and educate the public with the understanding that the complaints might be put in a pending queue. Chief Sellers stated that that was how the Police Department handled weekend cases today, adding that the media would need to be partners in educating the public including information on how citizens could seek warrants through the magistrate.

Mr. Boyd said that he was struggling with this, because he had heard situations that work through mitigation but also those on the other side of the issue where people were endangered by dogs every day.

Ms. Mallek agreed, stating that passing this ordinance would do nothing to interfere with a person telling their neighbor to deal with their dog. She said that this ordinance would help protect more vulnerable citizens, such as seniors, whose quality of life was impacted by dogs on their property without any attempt at resolution from the owners, adding that she didn't want to wait until somebody got really seriously injured or killed, as other counties have done before the Board undertook something like this.

The Chair opened the public hearing.

Ms. Charlotte Hogue addressed the Board, stating that she loved dogs and had one for 14 years, but with the increased population and the number of dogs, there are now problems. She said that she was reluctant to go outside because large dogs might jump up looking to play, which could cause an older person to fall. Ms. Hogue stated that dogs also used her porch to relieve themselves, adding that several years ago there was a German Shepherd stalking her and her neighbors. She encouraged the Board to adopt the proposed leash law and enforce the ban on dogs running loose, and also asked them to consider decreasing the number of dogs allowed per household.

Mr. Albert Tyree addressed the Board, stating that he had property on Watts Passage Road and said that the protection of health, safety and welfare also pertained to dog behavior; that included public access to highways, protection from being seized upon by K-9's uncontrolled on his property and preventing egress and ingress into his house. He said that there were individuals that bring their dogs up and down the road unleashed and they use his property to relieve themselves without any indication from the owner to scoop-the-poop. Mr. Tyree said that seniors' medical conditions were not swift-to-foot enough to get away from dogs who are very sophisticated; and that he has seen dogs 300 yards or more from their own residence, near his home, preventing him from doing things. He stated that he encountered dogs twice a day on Route 600 when he walked, and said the owners needed to contain their dogs to protect the quality of life.

Mr. Robert Hogue addressed the Board, stating that he liked dogs but there needed to be a leash law and he had several run-ins with dogs. Mr. Hogue said that in one encounter he had went to check on a neighbor who didn't have a dog, and as he left her home he had nearly been knocked over by a dog. He stated that in another encounter his wife was stalked by a neighbor's German Shepherd, and when they told the owners, she had more trouble with the German Shepherd, adding that it was just a waste of time telling the owners about their dog. He said that several seniors carried sticks for protection from the dog, which eventually was killed in the road by a passing vehicle. Mr. Hogue said that a leash law would have probably saved the dogs life and he and his wife could have enjoyed being outside more. He stated that the County needed a leash law, but it's not the taxpayers' responsibility to provide dog parks.

Mr. William Tyree addressed the Board, stating that he was from the Stony Point community on Watts Passage and had lived there since the 1970s. Mr. Tyree said that he and his family were like prisoners in their own homes, with dogs coming up and attacking people. He stated that he carried a stick when he walked to the mailbox, and it was very difficult because it made him feel like a prisoner in his own home. Mr. Tyree said that he and his wife walk in the mornings, and a neighbor's dog had come up behind his wife several times when she was outside. He also said that a very persistent dog had come at him, but he was able to chase it off with a large stick. Mr. Tyree requested that the Board made a decision that was in the best interest of the community.

Mr. Harold Pillar addressed the Board, stating that he had a dog that used to go out every morning and wake up the neighbor's dog but they called to complain and so Mr. Pillar decided to let the dog out later. He said that his neighbor's dog would come into his yard and chase his duck, so he called the neighbor and asked him if a \$700 dog was worth a \$5 duck, and he never saw the dog again. He stated that the County would have the dog problems 10 years from now, even with the passing of the ordinance, and the key was getting neighbors to cooperate.

Mr. James Barrett addressed the Board, stating that he lived in the Samuel Miller District and was here representing the Charlottesville/Albemarle Kennel and expressing his dismay that the people here have had to deal with irresponsible dog owners. Mr. Barrett said that he was against the proposal coming forward now because the ACOs had a huge amount to do now, and the Kennel Club was already actively working with the ACOs to help provide education including a Spanish language book handed out to some residents. He added that education was needed, and that was the venue to address this problem.

Mr. Charles Carmichael addressed the Board, stating that he lived in Mr. Boyd's district. Mr. Carmichael expressed concern over the stories he had heard tonight, but said the law wouldn't help these people because the problem was irresponsible dog owners. He stated that the law was unnecessary, as these situations could be resolved by calling the neighbor and discussing the situation. I think it's also unenforceable, and I think at this point it's unfunded. He encouraged the Board to reject the proposal.

Ms. Janet Carmichael addressed the Board, stating that she had lived here since 1987 and owned a farm in the Keswick area. She said that she was sympathetic to people who couldn't go down to their mailboxes safely, but a blanket law to try to preserve their safety was not necessarily a good solution because it didn't address the root of the issue irresponsible people. Ms. Carmichael stated that she lived in the 22/231 area and they walked a lot there, with lots of animals around that roamed freely even cows and that's why it was important to know your neighbors and be able to call them. She said that irresponsible owners could be addressed with the laws that were already on the books, and encouraged the Board not to adopt a blanket law for the entire County.

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

Ms. Mallek said that she agreed that the ACOs were wonderful and utilized them frequently, but there was nothing now to hold an irresponsible dog owner accountable because there was no law requiring them to keep an animal on their property or have it under their voice control if it was off their property. She stated that there was nothing the ACOs could do to persuade someone to change their behavior, and the danger to her was too great to leave this ignored. Ms. Mallek said that the neglectful owners experienced no hardship, but the neighbors who were under siege in some circumstances did. She stated that as a farmer she had all sorts of freedom to deal with animals bothering her livestock, but a

resident had no freedom to do the same themselves. And that is not right. Ms. Mallek encouraged fellow Board members to step up on the issue and adopt the ordinance.

Mr. Rooker said that he would support the ordinance, as there was an ordinance in the urban area and in numerous subdivisions in the rural area. He said that he didn't view it as an unenforceable ordinance he views it as one remedy that a person who is being besieged by aggressive animals or animals that are on their property all the time can take advantage of. He stated that very few people would call the police as a first resort, and if they knew their neighbors they could call them. People have to have some remedy. This provides one remedy, and it's not Draconian. Mr. Rooker added that it's important for people to have some means to protect their property and themselves where there were no informal remedies.

Mr. Boyd asked how hunting dogs would be addressed with this ordinance.

Mr. Davis explained that there was an exception for dogs that are hunting dogs during hunting season if they were on a bona fide hunt in the company of a licensed owner or during field trials or training periods when accompanied by its owner. He said that if the dog was not accompanied by its hunter, technically it would be in violation but the practical enforcement would be to return the dog unless it was a recurring problem.

Mr. Boyd stated that he came to the meeting with mixed emotions and he would support it because he was concerned about people whose lives were impacted, but he didn't think passing this ordinance would take away the cooperation between good neighbors, as they would continue to be that way. What it will provide is the ability for people who can't work with their neighbors, whose neighbors are uncooperative, some recourse as to what's going on. He added that it wouldn't hurt law abiding citizens who are good neighbors, and that it would be a benefit to people like the Tyree's who can't walk around on their own property without being accosted.

Mr. Snow said that it wasn't the responsible neighbor that was the concern, it was the neglectful one, and he would support the ordinance.

Mr. Thomas stated that he would not support it.

Mr. Dumler said that he would support it but had concerns, particularly related to the impact on the Police Department, and wanted Chief Sellers to come back with a report on response times.

Ms. Mallek stated that there would certainly be prioritization of calls, and this would likely not be top priority for police.

Mr. Dumler explained that if the staff impact became such that it was detrimental to the Police Department he wanted to know about it.

Mr. Boyd added that essentially this was an unfunded mandate, and agreed that a report would be helpful.

Mr. Rooker agreed.

Ms. Mallek said that she would be happy to help with education on this ordinance.

Ms. Mallek then **moved** to adopt the proposed ordinance to amend Section 4-200 of the County Code. Mr. Rooker **seconded** the motion. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: Mr. Thomas.

(The adopted ordinance is set out below:)

ORDINANCE NO. 12-4(1)

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 4, ANIMALS AND FOWL, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA BY AMENDING ARTICLE II, DOGS, DIVISION 1. IN GENERAL, SECTION 4-200, RUNNING AT LARGE PROHIBITED.

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 4, Animals and Fowl, is hereby amended and reordained by amending Article II, Dogs, Division 1. In General, Section 4-200, Running at Large Prohibited, as follows:

CHAPTER 4. ANIMALS AND FOWL

ARTICLE II. DOGS

State law reference---Va. Code §§ 3.2-6500 et.seq.

DIVISION 1. IN GENERAL

4-200 Running at large prohibited.

A. It shall be unlawful for any dog to run at large in the county.

B. For the purposes of this section, a dog shall be deemed to "run at large" while roaming, running or self-hunting off the property of its owner or custodian and not under its owner's or custodian's immediate control. However, a dog shall not be considered at large if during the hunting season it is on a bona fide hunt in the company of a licensed hunter or during field trials or training periods when accompanied by its owner.

C. Any person who permits his dog to run at large shall be deemed to have violated the provisions of this section.

D. Any dog observed or captured while unlawfully running at large shall be impounded in accordance with Article III, Impoundment, of this chapter.

(7-19-73; 8-22-73; 9-26-73; 11-15-73; 12-19-73; 1-3-74; 1-23-74; 3-24-77; 5-22-74; 10-9-74, 1-22-75; 3-10-76; 4-21-76; 12-7-77; 5-22-78; 6-21-78; 10-7-81; 5-21-86; 5-13-87; 9-16-87; 11-4-87; 12-16-87; 9-8-88; Ord of 1-17-90; Ord. of 8-8-90; Ord. No. 94-4(2), 8-17-94; Ord. No. 94-4(3), 12-7-94; Ord. No. 95-4(1), 1-4-95; Ord. No. 95-4(2), 9-6-95; Code 1988, § 4-19; Ord. 98-A(1), 8-5-98; Ord. 98-4(1), 12-2-98; Ord. 00-4(1), 5-3-00; Ord. 03-4(2), 3-5-03; Ord. 04-4(1), 5-12-04; Ord. 05-4(1), 12-7-05; Ord. 06-4(1), 12-6-06, § 4-213; Ord. 09-4(1), 7-8-09; Ord. 09-4(2), 10-7-09; Ord. 12-4(1), 4-11-12)

State law reference--Va. Code§ 3.2-6538.

Agenda Item No. 13. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Mr. Thomas said that he and Ms. McCulley continued to address Rockydale Quarry, and were getting together on April 23, 24 and 25 to visit three properties and take a noise level reading with the quarry running at full speed.

Ms. Mallek said that a citizen had suggested taking a reading inside the houses as well, because apparently it's even more significant inside the building as well.

Ms. Mallek reported that she and Mr. Thomas held a meeting with residents of Earlysville the previous evening where their districts joined about speed studies, and wanted to ask the Board to request a speed study for Bleak House Road.

Ms. Mallek then **moved** to issue a resolution requesting a speed study for Bleak House Road. Mr. Thomas **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.

Ms. Mallek noted that Congressman Hurt would be having a legislative update meeting on April 13 and asked if the Board could adjourn to that meeting as there would be four Board members attending.

Mr. Davis said it would only be necessary to do that if they were to transact County business.

Agenda Item No. 14. Adjourn.

At 8:49 p.m., **motion** was offered by Ms. Mallek that the Board adjourn to April 13, 2012, 8:00 a.m., Giorgios Room at the Doubletree Hotel, to join Congressman Robert Hurt for a Congressional update and discussion about local governments. 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.

Chairman

Approved by Board
Date: 07/11/2012
Initials: EWJ