

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on September 5, 2012, at 9:00 a.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia.

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

ABSENT: Mr. Christopher J. Dumler.

OFFICERS PRESENT: County Executive, Thomas C. Foley, County Attorney, Larry W. Davis, Clerk, Ella W. Jordan, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. The meeting was called to order at 9:05 a.m., by the Chair, Ms. Mallek.

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

Agenda Item No. 4. Adoption of Final Agenda.

Mr. Boyd said he had distributed a resolution for the Board's consideration regarding eminent domain, but given Mr. Dumler's absence, he would like to add it to the agenda for the September 12, 2012 meeting.

Ms. Mallek indicated that she had a few questions on the status of EMS cost recovery – billing residents for ambulance services.

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

Mr. Thomas reported that Rockydale Quarry was awarded the contract for the Airport gravel – 13,000 cubic yards – but the County's ordinance could stop them from fulfilling the contract. They are working on an alternative.

Ms. Mallek asked if this was due to hours of operation. Mr. Thomas responded that the work has to be done in the middle of the night.

Ms. Mallek commented that the work and stockpiling could be done during the day, with the delivery at night. Mr. Thomas responded that the stockpiling cannot be done during the day because the consistency of the material deteriorates if they move it from one place to another and stockpile it. It has to be put in place. He said that the quarry indicated it would take at least four nights to complete the process, so they are going to pursue another avenue. Mr. Thomas said all the County can do is recommend an ordinance amendment be filed.

Mr. Boyd asked if there were any provisions for a temporary permit. Mr. Thomas responded that he did not know, but could ask the County Attorney. He added that the County has received so many complaints about the quarry, he does not know how far a permit would go.

Ms. Mallek asked if Mr. Willis has spoken with neighbors about the effort to get a contract. Mr. Thomas said that he did not advise Mr. Willis to do that, but he could – although it is up to them how to proceed. He added that he hates to see Rockydale lose all that business, but the County does have a touchy situation out in that area anyway.

Ms. Amelia McCulley, Zoning Administrator, stated that the ordinance currently prohibits operation of equipment of an industrial type between the hours of midnight and 7:00 a.m. on property that is zoned for natural resource extraction, with the only exemption being a case of public emergency as determined by the Director of Emergency Services. This operation does not qualify for that exemption. Ms. McCulley said that nighttime work may be going on in other locations, but the County does not receive complaints about it.

Mr. Rooker said he does not understand why the Rockydale operation had to happen during those hours. If Culpeper gets the contract he is doubtful they would be extracting the rock during the middle of the night and shipping it down here.

Mr. Thomas said that he was told they would already be mining and would just be putting the rock into the trucks.

Ms. McCulley explained that the loading is "power equipment of an industrial type," and apparently the hour of limitation is given by the Airport because those are the hours that they do not have flights.

Mr. Thomas reiterated that the reason they cannot stockpile it is because the consistency of the rock has to stay a certain specification.

Ms. Mallek reported that she has sent several emails to VDACS and DEQ regarding a substance being sprayed by VDOT contractors along the roadways, through agricultural areas, along the Moorman's River. She said that she has been "completely dissed" by VDOT despite her questions to them about the spray, even though the CTB member has directed them to answer. Ms. Mallek stated that she was going to file a FOIA request through VDACS to get the report from Mr. Burke on his response from her citizen assistance complaint. She said that hopes VDOT will step up and inform the public as to what procedures were used to make the decision, the rationale behind the choices made, and whether the contractors are certified to do this work. Ms. Mallek said that foresters she has spoken with have indicated the process is "complete overkill," and farmers are quite upset because the spray trucks went by vineyards and hayfields. She added that the chemicals VDOT says it is using are "completely contraindicated," and are not allowed to be used near water. Ms. Mallek stated that she also never received responses from VDOT as to where they were spraying and what their plans were.

Ms. Mallek said that she thinks the County has been left completely in the dark, as are the citizens, and she does not like that situation. She said that she will be stirring the pot more on this and she hopes that they will have some answers soon. Ms. Mallek added that anywhere you are driving along and you see leaves starting to turn brown, at the end of the branches, is a result of the spray. The potential consequences are tens of thousands of dollars.

Mr. Rooker stated that this is described as a serious situation, and the Board should request VDOT to provide full information on this so citizens understand what is being used, how it is being used, and what the effects of it might be. He said he would support sending a letter from the Board asking for full information on this.

Other Board members agreed.

Mr. Foley said that staff would send a letter as a request on behalf of the entire Board.

Agenda Item No. 6. Recognitions:

Item No. 6a. Proclamation recognizing September 2012 as *Alzheimer's Month in Albemarle County*.

Ms. Mallek read and presented the following proclamation to Ms. Mary Pat Hansen, Alzheimer's Annual Walk Director:

**PROCLAMATION
ALZHEIMER'S MONTH**

Whereas, *the nation and the Commonwealth of Virginia observe World Alzheimer's Awareness Month during the month of September; and*

Whereas, *Alzheimer's disease, a progressive neurodegenerative brain disorder, tragically robs individuals of their memories and leads to progressive mental and physical impairments; and*

Whereas, *an estimated 5.4 million Americans have Alzheimer's disease. As many as 200,000 of those are individuals under age 65 who have younger-onset Alzheimer's; and*

Whereas, *Alzheimer's disease is the sixth leading cause of death in the Commonwealth of Virginia. This eventually fatal disease is a serious and growing threat to the health of our world; and*

Whereas, *the human cost of Alzheimer's disease is staggering. More than 15 million caregivers provided over 17.4 billion hours of unpaid care in 2011; and*

Whereas, *the annual cost to our country in total payments for healthcare, long-term care and hospice for people with Alzheimer's disease was \$210 billion in 2011; and*

Whereas, *in recognition of the individuals, families, friends and caregivers dealing with Alzheimer's disease, the researchers who are seeking a cause or cure; and*

Whereas, *the County of Albemarle recognizes the efforts of the Alzheimer's Association to raise funds and promote awareness to fight Alzheimer's disease and related disorders, thereby improving the quality of human life for those living with Alzheimer's disease and their caregivers;*

NOW THEREFORE, BE IT RESOLVED, THAT, I, Ann H. Mallek, Chair, on behalf of the Albemarle County Board of Supervisors, do hereby proclaim the month of **September 2012, as Alzheimer's Awareness Month in Albemarle County, Virginia.**

Signed and sealed this 5th day of September, 2012

Ms. Hansen thanked the Board for the proclamation. She then invited the community to attend the Walk to End Alzheimer's at Lee Park in Charlottesville. She said that the walk is the nation's largest fundraiser to raise funds for awareness, care and support and research, and 11% of every dollar raised goes directly to research. Ms. Hansen noted that Alzheimer's is the sixth leading cause of death in the U.S. and of the top ten, it is the only one with no cure, no prevention, and no way to slow it down. She

added that September 21, 2012 is Alzheimer's Action Day, and she encouraged the community to wear purple on that day in support.

Ms. Mallek asked if the other 89% of funding was allocated to helping families. Ms. Hansen responded that it was, and said that all of the money raised in the central and western Virginia chapter stays in the local chapter.

Item No. 6b. Proclamation recognizing September 2012 as *National Preparedness Month in Albemarle County*.

Ms. Mallek read and presented the following proclamation to Ms. Kirby Felts:

NATIONAL PREPAREDNESS MONTH

WHEREAS, "National Preparedness Month" creates an important opportunity for every resident of Albemarle County to prepare their homes, businesses, and communities for any type of emergency from natural disasters to potential terrorist attacks; and

WHEREAS, investing in the preparedness of ourselves, our families, businesses, and communities can reduce fatalities and economic devastation in our communities and in our nation; and

WHEREAS, the Federal Emergency Management Agency's *Ready* campaign, Citizen Corps and other federal, state, local, private, and volunteer agencies are working to increase public activities in preparing for emergencies and to educate individuals on how to take action; and

WHEREAS, emergency preparedness is the responsibility of every citizen of Albemarle County and all citizens are urged to make preparedness a priority and work together, as a team, to ensure that individuals, families, and communities are prepared for disasters and emergencies of any type; and

WHEREAS, all citizens of Albemarle County are encouraged to participate in citizen preparedness activities and asked to review the *Ready* campaign's Web sites at ready.gov or listo.gov (in Spanish) and become more prepared;

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby proclaims

SEPTEMBER 2012
as
NATIONAL PREPAREDNESS MONTH

and encourages all citizens and businesses to develop their own emergency preparedness plan, and work together toward creating a more prepared society.

Ms. Felts thanked the Board for the recognition, and encouraged them to point constituents to www.ready.gov, www.readyvirginia.gov, and www.listo.gov (Spanish) for information and resources.

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

Mr. Jonathan Lee, a resident of 565 Black Cat Road, said he and his family live adjacent to the railroad property and on the north side of the bridge. Their primary concern is the aesthetics of the bridge design. He said they would lose a lot of trees in front, and the railroad would take down a lot of trees during construction – leaving them with a full-blown view of the new bridge. Mr. Lee stated that the design calls for a chain-link fence structure that will encase the whole length of the bridge, which is not really in keeping with the natural beauty and historic value of the area. He said that his kids described the view as "looking at a prison." He added that a number of people are present at the meeting to address truck traffic as the road is not really wide enough to support truck traffic. Mr. Lee noted that there are usually two types of trucks that he meets on the road with both of them attempting to turn around in his front yard as a result of avoiding the bridge: those who are entirely lost and those who cannot speak English. He suggested having global positioning providers let people know it's not a good road for a truck as well as Spanish verbiage on the sign.

Ms. Ann Taylor said her farm is located on Routes 22/231 with the driveway almost opposite Black Cat Road where it intersects with those roads. She said that the road is not appropriate for trucks, and she often sees them attempting to make a tight turn to go off Black Cat either south or north on to Route 231. About six years ago one truck didn't make it – crashing into her neighbor's stone gate. Ms. Taylor stated that the site lines coming south on Route 231 do not permit oncoming traffic to realize a truck is turning off of Black Cat until it is too late, and there are continuing accidents there. She said that truck traffic has been an ongoing problem on that road, and she appreciates the Board's attention to it in the past. Ms. Taylor said that neighbors are now requesting that VDOT "not compound the problem" by constructing a new bridge over the railroad tracks that would encourage more trucks to use Black Cat Road. She said that as trucks over a certain length are not permitted on Routes 22/231, they should also be prohibited from using Black Cat Road. Ms. Taylor added that the residents are also asking for VDOT to design the bridge so that it conforms to the rural character of Black Cat Road, and should not be an "off the shelf VDOT design that does not fit into the community.

Ms. Mallek said that the bridge at Advance Mills is a good example of a context-sensitive bridge, so it certainly can be done.

Ms. Ann Vanderwalker said that she has lived on Routes 22/231 for 15 years, and driving on the roads there can be a terrifying experience. She cited several examples of dangerous encounters with trucks on the road, and the last thing the residents need is more trucks on those routes. She asked for the Board's assistance in helping to make sure the new bridge does not encourage more truck traffic.

Ms. Terry Lockhart said that she lives on Route 22 but has a back entrance onto Black Cat Road where the two roads intersect. She said that she is very concerned about the plans for the bridge. Increased truck traffic will make the narrow country road even more dangerous because there are no shoulders to pull over onto. Ms. Lockhart also stated that there are impoverished people living along the road, and some of their homes are very close to the road – so having truck traffic go along there will be extremely loud for those residents.

Mr. Tony Vanderwalker addressed the Board, stating that he lives on Routes 22/231. As Chair of the Piedmont Environmental Council, they have been working for many years trying to strike a balance between retaining community character and meeting transportation needs. He said they were currently working with Warren and Clarke counties and VDOT on a low-water bridge over the Shenandoah River. Mr. Vanderwalker said that the community's point of view is similar to those in Keswick: that a bridge that significantly varies from the existing structure could increase local traffic, with potential significant increases in through-truck traffic. He emphasized that the bridge should be designed as a rebuild of what is already in place in order to retain the community character. Mr. Vanderwalker said that VDOT's policy on bridge replacement is a "think ahead approach," designed to accommodate future changes – and citizens need a consensus from the Board that Black Cat Road is not going to be a major thoroughfare between Routes 22/231 and I-64. The plans for the new bridge should not reflect that approach. VDOT has plenty of bridge designs, and the residents would like the Board to request that VDOT present them with a design that will not open Black Cat Road and Routes 22/231 to more truck traffic and will help retain the character of our community.

Dr. Charles Battig addressed the Board, stating that in a recent paper in the *Journal of American Planning Association* – "Growing Cities Sustainably" – pointed out that no one ever questioned the premise implied in growing smart. He stated that the current planning policy strategies for land use and transport had virtually no impact on the major long-term increases in resource and energy consumption, and smart growth principles should not unquestionably promote increasing levels of compaction on the basis of reducing energy consumption without considering negative consequences. Dr. Battig said that in many cases, this means less housing choice, crowding, congestion, and increased costs. He asked why smart growth and sprawl remain in County policies in spite of proven negative impacts by a key study on this subject. He noted that fossil fuels to power appliances such as air conditioners are sustainable, adding that doing without just "leaves people groping for a source of reliable energy." Dr. Battig indicated that the Sierra Club accepted \$26 million from gas company Chesapeake Energy to "bad mouth coal" until that "turned sour." He said that EPA regulations are helping to fulfill the Sierra Club's goal of closing 522 coal-fired plants, and Germany is in the process of building 23 new ones.

Mr. Bill Johnson said that he has lived on Black Cat Road for 40 years. Mr. Johnson said there are more problems there than just a bridge – it is the right style of bridge, aesthetics and it does not need to be made bigger as it will draw more traffic and bigger vehicles. He stated that VDOT should try to consider where the traffic is coming from, which is often off of I-64 racing down Black Cat Road and exceeding the 45 mph speed limit. Mr. Johnson mentioned that two people have been killed on that road in the last 12 months, which should be a concern to VDOT.

Mr. Bob Garland addressed the Board, stating that he is representing the board of the Canterbury Hills Neighborhood Association, and will be speaking about Agenda Item No. 14. He said that the proposal is to add Albemarle County to the list of localities enabled to regulate the outdoor storage of inoperable vehicles on private property pursuant to Virginia Code 15.2-905. Mr. Garland stated that the County currently regulates the storage of inoperable vehicles on private property under Section 18-4.12, which states in part, "no inoperable vehicles should be parked or stored on a lot within any agricultural/residential district including the rural areas zoning district unless the vehicle is within a fully enclosed building or structure, whereas otherwise shielded or screened from view from all public roads and adjoining properties. No more than two inoperable vehicles may be parked or stored on a lot."

He presented photos of inoperable vehicles taken from the street, in his neighborhood. The problem for residential neighborhoods is that having them in the midst of small lot sizes creates a visual blight for the adjacent neighbors and causes a loss of property value and subsequent loss of tax base. Mr. Garland said that their board is requesting that the Board pursue adding Albemarle County to the list of localities enabled to regulate storage of inoperable vehicles, and once that is done, it requests that the Board amend the previously mentioned ordinance to state: "no inoperable vehicles should be parked or stored on a lot within any residential district unless the vehicle is within a fully enclosed building or structure." He emphasized that the residents are not requesting a limit on the number of vehicles or a

change in the agricultural/rural district, but feel that open storage of junk cars in residential areas is clearly not appropriate.

Mr. Jeff Monroe, a resident of 1608 Inglewood Drive, said that he is President of the Hessian Hills Neighborhood Association – which is comprised of about 150 homeowners between the area of Georgetown Road, Hydraulic Road, Barracks Roads and the City limits. He seconded Mr. Garland's recommendation that the Board ask for an amendment to §15.2-905. Mr. Monroe said this is not a huge problem from the number of property owners in his neighborhood, only about two percent of the properties, but having disabled vehicles creates a drain on property values in the area and creates greater turnover in home ownership– as well as promoting additional rental housing in areas adjacent to those properties. Mr. Garland said that it can also create a traffic hazard by making streets more congested with the operable vehicles. He recommended that Board members drive down Solomon Drive, just before Commonwealth Drive, to see examples of the problem.

Mr. Ron Mallury, a resident of Keene, said he had read in the paper that the Board was considering banning the burning of trash by residents. Mr. Mallury said he is 60 years old and has been burning trash since 1959, and does not burn anything he should not burn and thus should not be penalized. He stated that he has not had a raise in three years and recycles everything, with items taken to the dump over the last seven months amounting to less than \$7.00. Mr. Mallury said he lives from pay day to pay day and cannot afford anything more. Mr. Mallury said that if he leaves trash outside without burning it, animals such as bears will get into it. He said that putting a burden on people who obey the law is not right. He added that the Fire Marshal said that as long as people are burning paper and things like that, there is nothing wrong with burning. Mr. Mallury stated that he and his wife recycle as much as possible. He cannot afford to pay monthly for a hauler to come down his narrow road and pick up their trash.

Ms. Colleen Keller, a resident of 675 Black Cat Road, emphasized what had previously been said about the character of the road. Ms. Keller said there are many, many children boarding the busses from that road, and the kids often wait out there alone. She stated that there are an enormous number of residents who are not present at this meeting, including two women who walk to church every Sunday on that road. It is a matter of safety.

Mr. Jeff Werner, of the Piedmont Environmental Council, addressed the Board, stating that there are several questions the PEC feels the Board needs to get VDOT to address immediately regarding the Western Bypass. Mr. Werner said that the questions pertain singularly to the northern terminus as presented in the Skanska preliminary design. In terms of safety improvements south of Ashwood Boulevard, he said that the community was told that the vertical profile would be re-graded on northbound Route 29 as it approaches that intersection, but this is not shown in the Skanska design – nor is it mentioned in VDOT's RFP. In terms of delays at Ashwood Boulevard, Mr. Werner said that Skanska's traffic analysis projects that turning left out of Ashwood onto southbound Route 29 will face delays of 12 minutes more during peak morning hours, and the firm states that the delays will occur even after future improvements which are not part of the bypass or the future widening. He stated that the improvements include three turning lanes for people leaving Ashwood and going south on Route 29. Mr. Werner said that the question is what the projected delays there are for the year the bypass opens, and for each successive year until those improvements are actually made.

He added that another question is what the impact will be to other intersections as people try to divert away from the Ashwood intersection and go to other roads north in Forest Lakes. Mr. Werner noted that there was a promise to widen Route 29 from four to six lanes between Polo Grounds Road and Town Center, and last summer the TIP was amended to specifically state this. However, he said, the Skanska design does not show six continuous lanes between Polo Grounds Road and Ashwood Boulevard – probably because VDOT removed that condition in their RFP. Mr. Werner said the question is will that work be completed and why VDOT didn't tell the County they were removing the condition. He also stated that he had reviewed the design proposals from the other bidders, and five of the seven included the six continuous lanes.

Ms. Sarah Lee Barnes addressed the Board, stating that she is a resident of Keswick. She said that many of the residents in the Black Cat Road neighborhood are successive generations that take pride in that community. She said that of the neighbors she talked to, one was not informed and two were horrified at the design of the bridge. Ms. Barnes stated that no one doubts that the bridge needs replacement, but she does not understand why VDOT needs to go to the expense of putting up an "urban ghetto suicide fence." She said that the one at Shadwell and Route 250 was a disgrace, and she is appalled that VDOT is doing this around the state. Ms. Barnes said there should be consideration for the Southwest Mountains Rural Historic District, and the height of the bridge is unnecessary for double-stacked trains because they cannot fit through the Blue Ridge tunnel anyway. She asked the Board to consider sending a stern letter to VDOT.

Mr. Thomas said they have a bridge on Rio Road that includes the protective screening also.

Mr. Boyd pointed out that at its last meeting, the Board decided to write a letter to VDOT asking for improvements to the bridge and improvements to the road that would prevent the truck traffic. He asked if the letter had ever been sent.

Mr. Foley responded that he would need to follow up, as Community Development was planning to do that.

Mr. Boyd said he agree with the speakers today that the Board needs to send a stern letter representing the wishes of constituents, as the Route 231/22 truck traffic has been an issue for many years – with his own involvement dating back to the time when Charles Martin was Supervisor of this district. He stated that the truck lobbyists in Richmond have tried to prevent the County from doing as much as it would like, but he does not think that is a reason for giving up.

Mr. Rooker noted that the Board supported a “no through truck traffic” on Routes 231/22 10 years ago, and the Commonwealth Transportation Board did not designate it as such because Orange opposed it – as did Wal-Mart. He said that the Board could go back and try to get it done again, as the road is not built to standards to handle truck traffic nor is Black Cat Road. Mr. Rooker said one constituent who commented by email sent some pictures of the proposed Broomley Road bridge, which is more aesthetically pleasing and was approved by both VDOT and the railroad company.

Mr. Boyd said that the unanimous consensus of the Board should be to try to accommodate some traffic calming on the road to keep Black Cat Road from becoming a cut-through for I-64.

Mr. Rooker stated that he would support that.

Mr. Foley said staff would provide the Board with a status update.

Mr. Boyd also said that he had also received emails noting truck size restrictions on that road.

Ms. Mallek said there was a large sign on Route 250 that limits trucks by footage.

Mr. Boyd noted that it is difficult to police that road, but if there is anything that could be done to enforce the limits it would be helpful.

Ms. Mallek asked that staff circulate the proposed letter to Board members, along with her letter regarding the spraying.

Mr. Rooker stated that he would support another request to the CTB to designate Routes 22/231 a “non through-truck” route. Ms. Mallek and Mr. Boyd agreed.

Mr. Boyd asked if this was something they should include in their legislative agenda.

Mr. Rooker responded that the request goes to the CTB, but the letter should start with Mr. Jim Rich.

Mr. David Benish, Chief of Planning, reported that he has sent a letter to Mr. Jim Utterback, Mr. Joel Denunzio, and the project manager, requesting that the Black Cat Road bridge be designed at as minimum as possible a width for two lanes at a design concept similar to the existing narrow two-lane width. Mr. Benish said that he spoke with both of them before sending the letter, and while they did not make any commitments they were aware of the issues and concerns.

Ms. Mallek asked if the design hearing has already been held. Mr. Benish responded that it has.

Mr. Rooker said the first problem is there is a bridge that needs to be replaced, and secondly, the bridge must be able to accommodate emergency vehicles of all sizes, school buses, etc. The Board could possibly cure one problem and cause another problem. Building a narrow bridge may make it difficult for those larger vehicles to use it – and there is no way to accommodate pedestrians crossing the bridge. He stated that at Broomley Road, the County decided in favor of a bridge with two full lanes and a four-foot shoulder on one side so pedestrians and cyclists could cross the bridge while vehicle traffic is crossing. Mr. Rooker said that the question is whether a bridge can be built to be aesthetically pleasing and still accommodate travel but limit truck traffic, and maybe the bridge is not the best way to limit truck traffic. Mr. Rooker said he thinks there are other ways to keep trucks off the road than perhaps that constriction point.

Mr. Boyd reiterated that the Board lost the battle to restrict truck traffic on Routes 22/231, but it has not lost it yet on Black Cat Road and perhaps VDOT would agree to that – so pedestrian and vehicle traffic could be accommodated.

Mr. Thomas noted that Meadow Creek Parkway has a sign banning truck traffic, and asked if the County could do that on Black Cat.

Mr. Rooker explained that the City controls its own streets; it designated the road a no through truck-traffic road – but the County’s roads are owned by the state, and the CTB has to make the designation.

Ms. Mallek said there is a petition process that could be reactivated with this.

Mr. Boyd said he would like staff to move forward with that, and to start a separate process of designating Black Cat Road as a no through truck-traffic road.

Mr. Rooker commented that he does not think the limit would garner much opposition.

Mr. Foley said that a letter has already been sent as Mr. Benish mentioned, but staff would put one together that asks for restrictions on the road altogether.

Mr. Boyd said that could be a separate request.

Ms. Mallek stated that the "monstrosity" VDOT built on a small road in Madison County gave the state "a huge black eye" a few years ago, and supposedly is now more responsive to citizen concerns.

Mr. Davis explained that there is a process for requesting that a road not be subject to truck traffic. It includes notice, a public hearing, and a resolution that must be passed by the Board after the hearing – and a number of specific findings that have to be made, including determination of an alternate route for truck traffic that can avoid that road. He said that Mr. Benish has been through this process before, so staff could work on gathering information on how to move forward.

Mr. Boyd noted that the County could indeed demonstrate the availability of an alternate.

Ms. Mallek said she was planning to pursue it for Earlysville Road also, as 18-wheelers and tandem trailers are now using the road to go from Hydraulic Road to the industrial area by the Airport, instead of staying on Route 29.

Mr. Foley stated that staff would bring it forth on the next agenda, and copy the Board on the letter that went to VDOT.

Agenda Item No. 8. Consent Agenda. **Motion** was offered by Mr. Rooker, **seconded** by Mr. Snow, to approve Items 8.1 (as read) through Item 8.13 on the consent agenda and to accept the remaining items as information. (**Note:** Discussions on individual items are included with that agenda item.) Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Dumler.

Item No. 8.1. Approval of Minutes: July 11 and August 1, 2012.

Mr. Thomas had read his portion of the minutes of July 11, 2012, pages 1-28 (end at Item #11), and found them to be in order.

Mr. Rooker had read his portion of the minutes of July 11, 2012, pages 71 (begin w/Item #17) – 93 (end at Item #22), and found them to be in order with some typographical errors.

Mr. Snow had read his portion of the minutes of July 11, 2012, pages 93 (begin w/Item #22) – end, and found them to be in order.

Ms. Mallek had read her portion of the minutes of August 1, 2012, pages 1-20, and found them to be in order.

Mr. Boyd asked that his portion of the minutes of August 1, 2012, be pulled and carried forward to the next meeting.

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

Item No. 8.2. Set public hearing on Ordinance to Amend the Open Burning provisions in Chapter 6, Fire Protection, of the County Code.

The executive summary states that on July 11, 2012, the Board received an executive summary on the issue of open burning of household refuse by owners and tenants of property in the County (Attachment A). The Board instructed staff to draft an ordinance prohibiting such open burning of household refuse for its consideration. A proposed draft ordinance is attached (Attachment B-copy on file).

The proposed ordinance:

1. prohibits the open burning of household waste, refuse, and garbage throughout the County; and
2. updates the definitions in Section 6-403 to parallel definitions set forth in the applicable sections of the Virginia Administrative Code.

If the Board adopts the proposed ordinance, staff expects only a minor increase of 10-20 hours of Court time annually if the County continues to follow a complaint-driven model, and

believes this is manageable within current budget and staffing, as set forth in the July 11, 2012 Executive summary (Attachment A).

Staff recommends that the Board set the attached draft ordinance (Attachment B) for a public hearing. After the public hearing, staff will request that the Board reach consensus on the proposed ordinance and authorize staff to submit the consensus proposed ordinance to the Air Pollution Control Board for its approval. After such approval the ordinance will be presented to the Board for final consideration and adoption.

(Discussion: Mr. Thomas asked if the proposed language is available. Ms. Mallek commented that the proposed language is attached to the executive summary.

Mr. Boyd noted that they were only setting up a public hearing date with this action.

Ms. Mallek stated that there is a draft that could be revised as needed, and, if adopted by the Board, it would then go to the State Air Pollution Control Board for final approval.

Mr. Snow asked where the public could find the draft ordinance.

Mr. Foley said it is available in the Board packet, the Clerk's office and online.

Ms. Mallek noted that it would also be advertised once a hearing date is set.)

By the above-recorded vote, the Board set the proposed ordinance for public hearing on October 10, 2012.

Item No. 8.3. 2012 Agricultural Disaster Declaration Resolution.

The executive summary states that Michael Lachance, Virginia Cooperative Extension ("VCE") Agent, corresponded with a number of fruit orchard owners in Albemarle and Nelson Counties regarding damage they sustained to their crops and orchards due to the high winds associated with the derecho that occurred on June 29, 2012. He reports his findings in the attached Storm Damage Report (Attachment A). The report indicates that Central Virginia fruit producers are reporting 20% to 100% losses on apple and peach crops, as well as tree losses that will become multi-year losses, and that requests from local governments could encourage the reopening of the United States Department of Agriculture (USDA) Tree Assistance Program (TAP), which is currently closed.

A Resolution requesting that Albemarle County be declared an Agricultural Disaster area is attached for the Board's consideration and adoption (Attached B). If the County is declared an Agricultural Disaster area, local farmers who have suffered monetary losses due to tree and fruit loss may be able to pursue tree replacement and rehabilitation through the USDA TAP. The Program is currently closed. The attached Resolution requests the Governor to pursue reopening the Program.

There is no budget impact to the County.

Staff recommends that the Board adopt the attached Resolution requesting that Albemarle County be declared an Agricultural Disaster Area and requesting the Governor to pursue reopening the USDA TAP Program.

By the above-recorded vote, the Board adopted the following Resolution requesting that Albemarle County be declared an Agricultural Disaster Area and requesting the Governor to pursue reopening the USDA TAP Program:

RESOLUTION REQUESTING THAT ALBEMARLE COUNTY BE DECLARED AN AGRICULTURAL DISASTER AREA DUE TO DERECHO LOSSES

WHEREAS, the derecho on June 29, 2012 severely impacted the County of Albemarle, including significant impacts on its fruit producers; and

WHEREAS, Central Virginia fruit producers reported losses from 20% to 100% of their 2012 apple and peach crops due to the high winds associated with the June 29, 2012 derecho; and

WHEREAS, Central Virginia fruit producers also reported trees blown over or damaged due to the derecho's high winds, which will become a multi-year loss of production; and

WHEREAS, the tree fruit specialist from the Agriculture and Natural Resources Division of the Virginia Cooperative Extension has reported up to 100% fruit loss to individual orchard blocks in some localities; and

WHEREAS, requests from local governments could encourage the reopening of the United States Department of Agriculture Tree Assistance Program that provides assistance for tree replacement and rehabilitation; and

WHEREAS, the Board of Supervisors finds that the declaration of an Agriculture Disaster in Albemarle County is appropriate and necessary to address the damage, loss, hardship and suffering of fruit producers in the County.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle County Board of Supervisors hereby requests that the County of Albemarle, Virginia be declared an Agricultural Disaster Area as recommended by the Virginia Cooperative Extension due to fruit loss and tree damage from the June 29, 2012 derecho.

BE IT FURTHER RESOLVED, that the Clerk forward this Resolution to the Governor of the Commonwealth of Virginia with a request that he takes all necessary steps to pursue reopening the USDA Tree Assistance Program.

Item No. 8.4. Resolution to accept road(s) in Ivy View Subdivision into the State Secondary System of Highways.

At the request of the County Engineer and by the above-recorded vote, the Board adopted the following resolution:

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 5th day of September 2012, adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **Ivy View Subdivision**, as described on the attached Additions Form AM-4.3 dated **September 5, 2012**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Ivy View Subdivision**, as described on the attached Additions Form AM-4.3 dated **September 5, 2012**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

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

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

* * * * *

The road(s) described on Additions Form AM-4.3 is:

- 1) **Langford Drive (State Route 1637)** from .2 miles west of Route 1630 (end of F177) west to the end of the cul-de-sac as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3064, pages 357-364, with a 50-foot right-of-way width, for a length of 0.19 miles.

Total Mileage – 0.43

Item No. 8.5. Resolution to accept road(s) in Fray's Grant Subdivision into the State Secondary System of Highways.

At the request of the County Engineer and by the above-recorded vote, the Board adopted the following resolution:

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 5th day of September 2012, adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **Fray's Grant Subdivision**, as described on the attached Additions Form AM-4.3 dated **September 5, 2012**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Fray's Grant Subdivision**, as described on the attached Additions Form AM-4.3 dated **September 5, 2012**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

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

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

* * * * *

The road(s) described on Additions Form AM-4.3 is:

- 1) **Fray's Ridge Court (State Route 1881)** from Route 1880 (Fray's Ridge Crossing) west to the end of the cul-de-sac as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3074, pages 166-182, with a 50-foot right-of-way width, for a length of 0.19 miles.

Total Mileage – 0.19

Item No. 8.6. Resolution to accept road(s) in Montgomery Ridge Subdivision into the State Secondary System of Highways.

At the request of the County Engineer and by the above-recorded vote, the Board adopted the following resolution:

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 5th day of September 2012, adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **Montgomery Ridge Subdivision**, as described on the attached Additions Form AM-4.3 dated **September 5, 2012**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Montgomery Ridge Subdivision**, as described on the attached Additions Form AM-4.3 dated **September 5, 2012**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

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

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

* * * * *

The road(s) described on Additions Form AM-4.3 is:

- 1) **Natali Lane (State Route 1790)** from the intersection of Route 1788 (Montgomery Ridge Road) to .095 miles east as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2824, page 461, with a 50-foot right-of-way width, for a length of 0.10 miles.
- 2) **Montgomery Ridge Road (State Route 1788)** from the intersection of Route 1789 (Monet Hill) to 0.138 miles north as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2824, page 461, with a 50-foot right-of-way width, for a length of 0.00 miles.
- 3) **Montgomery Ridge Road (State Route 1788)** from the intersection of Route 1791 (Michelangelo Court) to 0.144 miles north as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2824, page 461, with a 50-foot right-of-way width, for a length of 0.14 miles.
- 4) **Monet Hill (State Route 1789)** from the intersection of Route 1788 (Montgomery Ridge Road) to 0.253 miles west as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2824, page 461, with a 50-foot right-of-way width, for a length of 0.25 miles.

- 5) **Montgomery Ridge Road (State Route 1788)** from the intersection of Route 643 (Polo Grounds Road) to .243 miles north as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2824, page 461, with a 50-foot right-of-way width, for a length of 0.24 miles.
- 6) **Michelangeo Court (State Route 1791)** from the intersection of Route 1788 (Montgomery Ridge Road) to 0.240 miles east as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2824, page 461, with a 50-foot right-of-way width, for a length of 0.24 miles.

Total Mileage – 0.97

Item No. 8.7. Resolution to accept Peter Jefferson Parkway Ext and Martha Jefferson Drive into the State Secondary System of Highways.

At the request of the County Engineer and by the above-recorded vote, the Board adopted the following resolution:

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 5th day of September 2012, adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **Peter Jefferson Parkway Ext and Martha Jefferson Drive**, as described on the attached Additions Form AM-4.3 dated **September 5, 2012**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Peter Jefferson Parkway Ext and Martha Jefferson Drive**, as described on the attached Additions Form AM-4.3 dated **September 5, 2012**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

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

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

* * * * *

The road(s) described on Additions Form AM-4.3 is:

- 1) **Martha Jefferson Drive (State Route 1100)** from Route 1140 (Peter Jefferson Parkway) north to Route 1117 (State Farm Blvd) as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 4077, page 311, with a 50-foot right-of-way width, for a length of 0.35 miles.
- 2) **Peter Jefferson Parkway (State Route 1140)** from Route 1100 (Martha Jefferson Drive) to Route 1117 (State Farm Blvd) as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 4077, page 311, with a 80-foot right-of-way width, for a length of 0.49 miles.
- 3) **Peter Jefferson Parkway (State Route 1140)** from /38 miles southwest of Route 250 to Route 1100 (Martha Jefferson Drive) as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 4077, page 311, with a 80-foot right-of-way width, for a length of 0.09 miles.

Total Mileage – 0.93

Item No. 8.8. FY 2012 Budget Amendment and Appropriations.

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

The total of the requested FY 2012 appropriations itemized below is \$61,705.14. A budget amendment public hearing is not required because the amount of the cumulative appropriations does not exceed one percent of the currently adopted budget.

This request involves the approval of three (3) FY 2012 appropriations as follows:

- One (1) appropriation (#2012089) to reappropriate proffer revenue offsetting affordable housing programs and de-appropriating the equivalent amount in use of fund balance. This appropriation will not increase the County budget ; and
- Two (2) appropriations (#2012090 and #2012091) totaling \$61,705.14 for various school division programs.

Appropriations 2012090 and 2012091 include an itemization of the School Division's receipts. We note that this process is streamlined for FY 13 appropriations as approved by the Board on July 11, 2012.

Staff recommends approval of appropriations #2012089, #2012090, and #2012091.

Appropriation #2012089 **\$0.00**

This appropriation will not increase the County Budget

Revenue Source:	Other Fund Balance (Proffers)	\$ 111,385.21
	General Fund Fund Balance	(\$ 111,385.21)

This request re-appropriates \$58,009.66 from the Belvedere proffer, \$20,359.50 from the North Point proffer, and \$33,016.05 from the Poplar Glen proffers for a total of \$111,385.21 to the Office of Housing's Community Development Fund, formally titled the Community Development Loan Fund for affordable housing programs. These proffer funds are specifically dedicated to affordable housing and were originally appropriated on February 2, 2011 as part of appropriation #2011063.

The funding has been expended and this request is to properly account for the affordable housing proffer funds in FY 12. This action replaces the use of General Fund monies, and does not increase the budget.

Appropriation #2012090 **\$58,883.23**

Revenue Source:	Local Revenue (non-tax)	\$ 27,610.11
	Federal Grant Revenue	\$ 31,273.12

This request is to appropriate various FY 12 School Division funds as approved by the School Board on June 14 and June 28, 2012. This appropriation request of \$58,883.23 includes the following:

- Murray Elementary School received a donation in the amount of \$2,642.81 from the Murray Elementary PTO. The donor has requested that this contribution be used to fund the cost of SOL tutoring for March and April 2012 at Murray Elementary School.
- Stone Robinson Elementary School received a donation in the amount of \$2,351.08 from the Stone Robinson PTO. The donor has requested that this contribution be used to reimburse the school budget for paying teachers in the Enrichment Program during the winter of 2012.
- Hollymead Elementary School received donations totaling \$1,520.00. The donors have requested that these contributions be used to help offset expenses incurred in FY 12 for the Destination Imagination Globals competition at Hollymead Elementary School.
- Stone Robinson Elementary School received a donation in the amount of \$671.74 from the Stone Robinson PTO. The donor has requested that this contribution be used to reimburse the school budget for paying teachers in the Enrichment Program during the spring of 2012. These funds were used to fund the the Mad Science (K1) and Mad Science programs at Stone Robinson Elementary School.
- Henley Middle School received two donations from Henley's Parent and Teacher Support Organization totaling \$4,646.88. The donor requested that their first contribution of \$2,066.88 be used to help fund the "Enrichment Time before 9" program for the month of May, 2012 at Henley Middle School. The second contribution in the amount of \$2,580.00 was to help fund the At-Risk After Study program at Henley.
- The Building Services Department received a check in the amount of \$1,008.00 from Dunbar Milby Williams Pittman and Vaughn Consulting Structural Engineers. This payment represents a refund to the County as the county made a duplicate payment to the above mentioned business.
- The Building Services Department received payments totaling \$347.52. These checks were from Cycle Systems and they are to reimburse the County for items such as hand rails, duct work, chair legs, etc. that have been replaced with funding from their operational budget. Building Services takes the unused metal to be recycled and Cycle Systems sends a check for those items.
- Albemarle High School (AHS) reimbursed its School Division budget in the amount of \$3,304.46 for expenses incurred by student activities and athletics. The funds to reimburse the School Division budget came from the Activity Accounts at AHS.

- The Albemarle Resource Center (ARC) received a check in the amount of \$26.00 to reimburse their budget for festival posters.
- Western Albemarle High School (WAHS) reimbursed its School Division budget in the amount of \$5,591.62 for expenses incurred by student activities and athletics. The funds to reimburse the School Division budget came from the Activity Accounts at WAHS.
- Marie White, a teacher at Red Hill Elementary School, has been awarded a Learning & Leadership grant in the amount of \$4,500.00 from the NEA Foundation. The purpose of this grant is to lead a study group that will focus on the use of differentiation through the discussion of proactive, purposeful, responsive and learner centered instruction. These funds were used to purchase study materials, meeting refreshments, cover costs of substitute teachers and stipends for participating teachers.
- The Charlottesville Area Community Foundation (CACF) is a permanent endowment dedicated to improving the quality of life for the people of the City of Charlottesville and the counties of Albemarle, Buckingham, Fluvanna, Greene, Louisa, Nelson and Orange. Albemarle High School was awarded a grant in the amount of \$1,000.00 from the Community Endowment Fund in the CACF. The Community Endowment Fund is the Foundation's unrestricted grant making program that provides support to nonprofit organizations working to improve the quality of life in the CACF service area. These are local funds. These funds were used to purchase resources and supplies for a field trip to Germany this past summer.
- Greer Elementary School was awarded a federal USDA Fresh Fruit and Vegetable Program grant in the amount of \$31,273.12. These funds were used to provide students with nutrition education and a fresh fruit or vegetable snack twice a week.

Appropriation #2012091 **\$2,821.91**

Revenue Source: Local Revenue (non-tax) \$ 2,821.91

This request is to appropriate the following School Division donation and reimbursement as approved by the School Board on July 12, 2012. This appropriation request of \$2,821.91 includes the following:

- The Department of Instruction received a donation in the amount of \$25.00. The donor requested that this donation be used for teaching materials to be given during Teacher Appreciation week.
- Albemarle High School (AHS) reimbursed its School Division budget in the amount of \$2,796.91 for expenses incurred by student activities. The funds to reimburse the School Division budget came from the Activity Accounts at AHS.

By the above-recorded vote, the Board approved the following appropriations #2012089, #2012090, and #2012091.

APP #2012-089 DATE 08/05/2012 BATCH NAME							
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: Re-appropriate Affordable Housing proffers Related to APP 2011-063 Office of Housing's Community Development Loan Fund							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	1000	51000	351000	512068	9999	58,009.66	Trs Fr Belvedere Proffers
3	1000	51000	351000	512069	9999	20,359.50	Trs Fr North Point Proffers
3	1000	51000	351000	512070	9999	33,016.05	Trs Fr Polplar Glen II Proffers
3	1000	51000	351000	510100	9999	(111,385.21)	GF Fund Balance
3	8536	51000	351000	510100	9999	58,009.66	Belvedere-App Fund Balance
4	8536	93010	493010	930009	9999	58,009.66	Belvedere-Trsf to GF Fund Balance
3	8538	51000	351000	510100	9999	20,359.50	North Point-App Fund Balance
4	8538	93010	493010	930009	9999	20,359.50	North Point-Trsf to GF Fund Balance
3	8546	51000	351000	510100	9999	33,016.05	Poplar Glen II-App Fund Balance
4	8546	93010	493010	930009	9999	33,016.05	Poplar Glen II-Trsf to GF Fund Balance

APP #2012-090 DATE 09/05/2012 BATCH NAME							
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: Appropriations from the School Board meeting on June 14 and June 28, 2012							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION

3	2000	62000	318000	181109	6599	5,591.62	Contributions
3	2000	62000	318000	189900	6599	4,685.98	Misc. Revenue
3	2000	62000	318100	181109	6599	11,160.77	Contributions
3	2000	62000	318100	189909	6599	671.74	Trust Receipts
4	2000	62100	461740	138000	6599	5,186.15	PT Wages - Laborer
4	2000	62100	461740	210000	6599	405.47	FICA
4	2000	62114	461320	601700	6502	26.00	ARC - Copy Supplies
4	2000	62205	461101	580100	6105	1,520.00	Hollymead - Dues & Memberships
4	2000	62210	461101	152100	6110	2,808.00	Stone-Robinson - Sub Wages
4	2000	62210	461101	210000	6110	214.82	Stone-Robinson - FICA
4	2000	62215	461101	152100	6114	2,455.00	Cale - Sub Wages
4	2000	62215	461101	210000	6115	187.81	Murray ES - FICA
4	2000	62252	461101	160300	6252	4,316.66	Henley - Stipends/Cur. Dev.
4	2000	62252	461101	210000	6252	330.22	Henley - FICA
4	2000	62301	461101	137100	6301	752.74	AHS - PT Wages Bus Driver
4	2000	62301	461101	210000	6301	57.57	AHS - FICA
4	2000	62301	461101	301210	6301	1,240.00	AHS - Contract Services
4	2000	62301	461101	420100	6301	796.40	AHS - Field Trip Mileage
4	2000	62301	461101	600260	6301	106.28	AHS - Food for Meetings
4	2000	62301	461101	601300	6301	351.47	AHS - Ed/Rec Supplies
4	2000	62433	462420	600700	6505	347.52	Bldg. Svcs. - Repair/Maint. Supplies
4	2000	62433	462410	312400	6505	1,008.00	Bldg. Svcs. - Prof. Svcs. Engineering
3	3010	63010	333000	330001	6599	31,273.12	Grant Revenue - Federal
4	3010	63010	460204	129300	6520	3,000.00	OT Wages - Food Service
4	3010	63010	460204	210000	6520	250.00	FICA
4	3010	63010	460204	600200	6520	1,000.00	Food Supplies
4	3010	63010	460204	600220	6520	24,413.00	Student Snacks/Meals
4	3010	63010	460204	800100	6520	2,610.12	Machinery/Equipment - Adtl
3	3104	63104	318000	181240	6599	1,000.00	CA. Commun. Foundation Grnt
3	3104	63104	318000	189900	6599	4,500.00	Misc. Revenue
4	3104	63104	460700	420100	6301	1,000.00	AHS - Field Trip Mileage
4	3104	63104	460700	152100	6107	1,151.42	Red Hill - Sub Wages
4	3104	63104	460700	160300	6107	2,054.58	Red Hill - Stipends/Cur. Dev.
4	3104	63104	460700	210000	6107	242.00	Red Hill - FICA
4	3104	63104	460700	600260	6107	302.00	Red Hill - Food for Meetings
4	3104	63104	460700	601300	6107	750.00	Red Hill - Ed/Rec Supplies
TOTAL						117,766.46	

							APP #2012-091 DATE 09/05/2012 BATCH NAME
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: Appropriations from the School Board meeting on July 12, 2012							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	2000	62000	318000	189900	6599	2,796.91	MISC REVENUES
3	2000	62000	318100	181109	6599	25.00	CONTRIBUTIONS
4	2000	62301	461411	301210	6301	1,500.00	CONTRACT SERVICES
4	2000	62301	461411	601600	6301	500.41	DATA PROCESSING SUPPLIES
4	2000	62301	461411	350000	6301	796.50	PRINTING & BINDING
4	2000	62111	461311	601300	6501	25.00	EDUC. & RECREATION SUP.
TOTAL						5,643.82	

Item No. 8.9. FY 2013 Budget Amendment and Appropriations.

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

The total of the requested FY 2013 appropriations itemized below is \$1,046,050.49. A budget amendment public hearing is not required because the amount of the cumulative appropriations does not exceed one percent of the currently adopted budget.

This request involves the approval of nine (9) FY 2013 appropriations as follows:

- One (1) appropriation (#2013031) totaling \$3,206.65 for rental income and expenses related to the Old Crozet Elementary School;
- One (1) appropriation (#2013032) totaling \$7,355.00 for City-funded programs provided by the Virginia Cooperative Extension Service;
- One (1) appropriation (#2013033) totaling \$74,947.00 for a Department of Criminal Justice Services grant awarded to Offender Aid and Restoration;

- One (1) appropriation (#2013034) to appropriate \$53,640 from the Reserve for Contingencies to Virginia Supportive Housing fund. This appropriation will not increase the total budget;
- One (1) appropriation (#2013035) totaling \$9,560.38 to re-appropriate a grant and contributions to the Sheriff Department's volunteer reserves programs;
- One (1) appropriation (#2013036) totaling \$15,608.00 for a grant awarded to the Police Department;
- One (1) appropriation (#2013037) totaling \$67,986.00 to re-appropriate three public safety grants;
- One (1) appropriation (#2013038) totaling \$817,387.46 to appropriate and re-appropriate Emergency Communication Center projects; and
- One (1) appropriation (#2012039) totaling \$50,000 for revenue associated with School Division grants, donations, and School Activity Funds.

Staff recommends approval of appropriations #2013031, #2013032, #2013033, #2013034, #2013035, #2013036, #2013037, #2013038 and #2012039.

Appropriation #2013031 \$3,206.65

Source:	Local Revenue (Rent)	\$	3,206.65
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This request is to appropriate \$3,206.65 in rental income revenues to fund costs of the Old Crozet Elementary School and is intended to be used for major capital replacements and repairs (e.g., roof repairs and asbestos abatement.) The terms of the recently renewed leases with the Field School of Charlottesville and the Old Crozet School Arts (OCSA) resulted in an increase of \$3,206.65 in annual total rent revenues over the amount budgeted in FY 12.

Appropriation #2013032 \$7,355.00

Revenue Source:	Local Revenue (Contribution from City of Charlottesville)	\$	7,355.00
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This request is to appropriate \$7,355.00 in revenue from the City of Charlottesville for services provided for the City by the Virginia Cooperative Extension Service (VCES). This funding was approved by the City after the adoption of the FY12/13 budget. The City's contribution to the VCES is received by the County. The County is billed by the VCES for services provided to the County and City.

Appropriation #2013033 \$74,947.00

Revenue Source:	Federal Revenue	\$	71,200.00
	Local Revenue (Contribution from CCJB)	\$	3,747.00

This request is to appropriate a Department of Criminal Justice Services grant (#13-C2156AD11) that will be managed by Offender Aid and Restoration with the County of Albemarle as fiscal agent. The grant includes \$71,200.00 in federal funds and \$3,747.00 in matching funds that will be provided by the Community Criminal Justice Board (CCJB) for a total award of \$74,947.00. The grant will support the Criminal Justice Planner position which provides training for Crisis Intervention Treatment (CIT) teams. The goals of the project are to organize all participating CIT teams and programs (mental health and criminal justice) within the Commonwealth, to develop data and statistical collection documents and to use a software database system to collect and organize the required data mandated by the General Assembly. Once appropriated, the County Executive will sign the necessary grant award documents for submission to the funding agency.

Appropriation #2013034 \$0.00

This appropriation will not increase the County Budget

Revenue Source:	Reserve for Contingencies	\$	53,640.00
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This request is to appropriate \$53,640.00 from the Reserve for Contingencies to the Virginia Supportive Housing (VSH) fund for the specific purpose of funding monthly contributions to VSH to provide rental subsidies at The Crossings for nine homeless persons that would otherwise be funded through the federally-funded Housing Choice Voucher (HCV) Program. This appropriation provides funding for the remaining 10 months in FY 12/13, however, once final approvals are received from the U.S. Department of Housing and Urban Development, and HCV vouchers are issued, local funding will be discontinued. At its August 1, 2012 meeting, the Board approved this contribution pending staff developing an agreement with VSH. This agreement is being presented to the Board for approval under a separate executive summary on the Consent Agenda on September 5, 2012.

Appropriation #2013035 \$9,560.38

Revenue Source:	Federal Revenue	\$	5,315.03
	General Fund Balance	\$	4,245.35

This request is to re-appropriate the following items related to the Office of the Sheriff:

- \$5,315.03 for a grant (#154AL-2012-52108-4486) awarded in FY 11/12 by the Virginia Department of Motor Vehicles. The purpose of this grant is to assist in the purchase of radar units as well as funding overtime hours for DUI checkpoints and speed enforcement.
- \$4,245.35 in contributions that were received to support the Sheriff's volunteer reserve programs. These contributions will support the various reserve programs such as Project Lifesaver, TRIAD,

Search and Rescue, child fingerprinting, and any other programs/activities that the Reserves are involved in within the community.

Appropriation #2013036 **\$15,608.00**
 Revenue Source: Federal Revenue \$ 15,608.00

This request is to appropriate \$15,608.00 for a grant (#2012-DJ-BX-0571) from the U.S. Department of Justice awarded to the Police Department. The purpose of this grant is to assist in funding overtime hours of current officers in support of reducing crime and improving public safety through additional community policing. There is no local match.

Appropriation #2013037 **\$67,986.00**
 Revenue Source: Federal Revenue \$ 67,220.75
 Special Revenue Fund Balances \$ 765.25

This request is to re-appropriate the following public safety grants:

- \$9,001.00 for a grant (#154AL-2012-52193-4571-Highway Safety Grant) awarded by the Virginia Department of Motor Vehicles to the Police Department. The purpose of this grant is to assist in the purchase of equipment and training, and to fund overtime hours for DUI checkpoints and speed enforcement.
- \$2,985.00 for a grant (#12-B2149AD09) from awarded by the Department of Criminal Justice Services to the Police Department. The remainder of this grant will support software maintenance costs for the Evidence Unit's records management system.
- \$56,000.00 for a grant awarded by the Federal Emergency Management Agency (FEMA) to the Fire Rescue Department. While this four-year grant ended in FY 11/12, FEMA has provided the County a continuance through October 2012 to use the remaining funds for the recruitment of fire and rescue volunteers. These recruitment efforts will be targeted primarily for the Ivy Station.

Appropriation #2013038 **\$817,387.46**
 Revenue Source: ECC Fund Balance \$ 817,387.46

The Emergency Communications Center (ECC) requests that the County, acting as fiscal agent for the ECC:

- Re-appropriate \$527,387.46 from the ECC Mobile Data Project 4115 Fund Account for an undelivered FY 11/12 purchase order for the ECC's Mobile Data Project. The Mobile Data Project is a joint project between the County, the City, and the University of Virginia that puts mobile computer capabilities in public safety vehicles while on the road. Some of the current operational functions include: access to complete CAD call for service information in near real-time; Department of Motor Vehicle, license and wanted checks through the local, state and federal records systems; and automatic vehicle location information for equipped vehicles.
- Appropriate \$50,000 for the Emergin Paging/Notification System Replacement Project. The ECC is replacing its current Emergin Wireless Office text messaging system, which will move the current text messaging system to a platform that can handle current data needs. The current software is at the end of its life and is no longer being maintained by the vendor.
- Appropriate \$240,000 for the ECC Network Upgrade Project. This is the first of a two phase project which will replace the ECC's network and server infrastructure. The first phase will replace the core network switching equipment and transition the network from one gigabit Ethernet to ten gigabit Ethernet. With the newer network in place, this phase will also replace legacy servers with a virtualized server and data storage platform, which is necessary to allow continuing system growth without running out of physical space and resources. The second phase to complete the project is scheduled for FY 13/14.

Appropriation #2013039 **\$50,000.00**
 Revenue Source: Local Revenue (Donations) \$ 50,000.00

At the July 11, 2012 Board of Supervisors meeting, the Board approved the streamlining of the appropriation process for anticipated FY 12/13 School Fund revenue for grants, donations, and School Activity Funds. On August 1, 2012, the Board approved an initial appropriation that included \$17,500.00 in anticipated donations. The School Division has already exceeded this amount of donations by \$1,224.00 before the school year began. The School Division anticipate there will be a number of donations throughout the school year. This request is to appropriate an additional \$50,000.00 in donations. Funds will not be expended until the revenues are actually received.

By the above-recorded vote, the Board approved the following appropriations #2013031, #2013032, #2013033, #2013034, #2013035, #2013036, #2013037, #2013038 and #2012039.

APP #2013031 DATE 09/05/2012 BATCH NAME							
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: Old Crozet Elementary School Rent							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION

3	8610	15000	315000	150262	9999	\$3,206.65	Rental Income
4	8610	91081	496010	800666	9999	\$3,206.65	Old Crozet Sch Operating Maint
TOTAL						6,413.30	

							APP #2013032 DATE 09/05/2012 BATCH NAME
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: Virginia Cooperative Extension Service - Additional City Revenue/Funding							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	1000	19000	319000	190308	9999	\$7,355.00	
4	1000	83000	483000	390000	1008	\$7,355.00	
TOTAL						14,710.00	

							APP #2013033 DATE 09/05/2012 BATCH NAME
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: CIT Grant							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	1519	33000	333000	330400	1003	71,200.00	Federal Revenue (DCJS)
3	1519	18110	318000	181310	1003	3,747.00	Community Criminal Justic Bd
4	1519	29412	421090	566122	1003	74,947.00	Community Criminal Justic Bd
TOTAL						149,894.00	

							APP #2013034 DATE 09/05/2012 BATCH NAME
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: Contribution to VA Supportive Housing for The Crossings							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
4	1000	81030	481030	568815	1008	53,640.00	Virginia Supportive Housing
4	1000	99900	499000	999990	9999	(53,640.00)	Reserve for Contingencies
TOTAL						0.00	

							APP #2013035 DATE 09/05/2012 BATCH NAME
COUNTY OF ALBEMARLE APPROPRIATION							
EXPLANATION: Sheriff Reappropriations - Donation balance not reappropriated in July and a grant							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	1000	51000	351000	510100	9999	4,245.35	Fund Balance
4	1000	21070	421070	301230	1002	4,245.35	Reserve Programs
3	1587	33000	333000	330011	1002	\$5,315.03	Grant Revenue - Federal
4	1587	21070	421070	120000	1002	\$3,158.63	Overtime
4	1587	21070	421070	210000	1002	\$344.58	FICA
4	1587	21070	421070	600800	1002	\$1,809.82	Vehicle Fuel
4	1587	21070	421070	800311	1002	\$2.00	Radar Equipment - New
TOTAL						19,120.76	

COUNTY OF ALBEMARLE APPROPRIATION							APP #2013036 DATE 09/05/2012 BATCH NAME
EXPLANATION: Police Grant							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	1594	33000	333000	300001	1003	\$15,608.00	Grant Revenue - Federal
4	1594	31013	431010	120000	1003	\$14,499.00	Overtime Wages
4	1594	31013	431010	210000	1003	\$1,109.00	FICA
TOTAL						31,216.00	

COUNTY OF ALBEMARLE APPROPRIATION							APP #2013037 DATE 09/05/2012 BATCH NAME
EXPLANATION: Public Safety grant reappropriations							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	1525	33000	333000	330214	1003	\$56,000.00	DEPT OF HOMELAND SECURITY
4	1525	31092	412020	580000	1003	\$56,000.00	Miscellaneous
3	1586	33000	333000	330412	1003	\$2,835.75	DCJS Byrne JAG Categorical Aid Fed Byrne JAG
3	1586	51000	351000	510100	9999	\$149.25	App fund balance
4	1586	31013	431010	312716	1003	\$2,985.00	contracted services-software maintenance
3	1589	33000	333000	330011	1003	\$8,385.00	Grant Revenue - DMV Federal
3	1589	51000	351000	510100	9999	\$616.00	App fund balance
4	1589	31013	431010	120000	1003	\$8,060.00	Overtime
4	1589	31013	431010	210000	1003	\$616.00	FICA
4	1589	31013	431010	800100	1003	\$325.00	Machinery & Equipment
TOTAL						135,972.00	

COUNTY OF ALBEMARLE APPROPRIATION							APP #2013038 DATE 09/05/2012 BATCH NAME
EXPLANATION: ECC PO Reappropriation							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	4115	51000	351000	510100	9999	\$527,387.46	App fund balance
4	4115	31065	435600	800316	1003	\$527,387.46	mobile data project
3	4100	51000	351000	510100	9999	\$290,000.00	App fund balance
4	4100	31040	435600	800727	1003	\$50,000.00	Emergin Paging
4	4100	31040	435600	800728	1003	\$240,000.00	ECC Network Upgrade
TOTAL						1,634,774.92	

COUNTY OF ALBEMARLE APPROPRIATION							APP #2013-039 DATE 09/05/2012 BATCH NAME
EXPLANATION: Provide additional authority of \$50,000 for anticipated donations to the School Division							
ACCOUNT NUMBER							
TYPE	FUND	DEPT	FUNCTION	OBJECT	LOCATION	AMOUNT	DESCRIPTION
3	2000	62000	318100	181109	6599	50,000.00	Donations
4	2000	62101	461101	601300	6599	50,000.00	Reserve - Donations & Activity Funds
TOTAL						100,000.00	

Item No. 8.10. Resolution to Establish Policy for Constitutional Officer Employees Regarding Compensation, Benefits and Personnel Policies.

The executive summary states that Constitutional Officers and their operations are legally separate and independent from localities, except that localities are required by State law to provide office space and certain limited benefits. State law only requires that localities provide constitutional officer employees two weeks of annual paid leave, seven days of annual sick leave, and health insurance.

Pursuant to prior direction from the Board, the County offers Constitutional Officers the opportunity to include their employees in the County's pay and classification system. Inclusion in this market based pay and benefits plan can assure that Constitutional Officer employees are paid comparable salaries to County employees and can be eligible for County approved pay raises rather than the State raises that are typically less than market. One condition of this significant commitment by the County to compensate Constitutional Officer employees at market salaries rather than at the level that the State funds is that Constitutional Officer employees must be subject to and follow certain very basic County personnel policies. The primary reason for this commitment is to assure that employees of Constitutional Officers receive an annual performance review on the same basis and conditions as that of County employees. This creates a clear link between Constitutional Officer employees' job performance and the County's compensation system.

The Department of Human Resources, the County Executive's Office, and the County Attorney's Office have worked with the Sheriff, the Commonwealth's Attorney, and the Circuit Court Clerk to develop and/or update Memorandums of Understanding (MOUs) to establish the application of certain County compensation, benefits and personnel policies to the employees of the Constitutional Officers. On July 11, 2012, the Board approved the MOUs for the Sheriff and Circuit Court Clerk, and those agreements have been fully executed. The Board deferred action on the Commonwealth's Attorney's MOU to allow more time for the Commonwealth's Attorney to review the agreement and the applicable HR policies. Consistent with the MOUs for the Sheriff and the Circuit Court Clerk, the proposed MOU between the County and the Commonwealth's Attorney (Attachment A) includes provisions that the employees of the Commonwealth's Attorney will be covered under the County's Classification and Pay Plan and will be subject to all of the County's personnel policies except for the Grievance Policy, several policies related to hiring, discipline and the termination of employment, and any policies or provisions that are superseded by State law. The policies that will apply to the Commonwealth's Attorney's employees include those related to salary administration, leave, benefits, merit pay evaluations, and course reimbursement, among others. Benefits will accrue to the Commonwealth's Attorney's employees, but not to the Commonwealth's Attorney.

Absent a MOU or other Board approval, Constitutional Officer employees are not entitled to compensation and benefits provided to County employees.

The County offers the employees of the Constitutional Officers whose offices are on the County pay and benefits plan substantial salary supplements and benefits beyond those required by State law. To establish and clarify what employment regulations, procedures, and benefits apply to Constitutional Officer employees, the common practice is for the Constitutional Officers to enter into an MOU with the locality. Examples of such MOUs are available on the Virginia State Compensation Board website. Staff has also received examples of MOUs from other localities, including peer localities such as Lynchburg. The County MOUs are consistent with MOUs used by other localities.

Another approach used by localities, such as Roanoke County, is to establish a policy for constitutional officers who request that their employees receive county compensation and benefits. In the absence of a MOU, such a policy legally authorizes the payment of such compensation and benefits and establishes how County compensation, benefits and personnel policies apply to the Constitutional Officer employees. This approach establishes clear policy on how County compensation can be applied to Constitutional Officer employees going forward for all future Constitutional Officers so that there is consistency and fairness in how compensation and benefits are provided.

Staff does not recommend providing pay and benefits for employees of Constitutional Officers that exceed that funded by the State Compensation Board without either a MOU or formal policy assuring that the compensation is linked to comparable standards of performance of County employees. The proposed Resolution (Attachment B) would formalize a Policy that establishes the same framework as the MOU if the Constitutional Officer chooses that the office's employees be on the County's pay and benefits plans. It would authorize and establish the compensation, benefits, and personnel policies applicable to Constitutional Officer employees for the Commonwealth's Attorney's Office or for any future Constitutional Officer who does not wish to enter into a MOU while still allowing for the development of a MOU to address any additional exceptions that may be appropriate. Regardless of the approach taken by the Commonwealth's Attorney, staff strongly recommends approval of the attached resolution to establish clear County policy for all Constitutional Officer employees going forward.

This action does not increase the FY 13 Budget.

Staff recommends that the Board adopt the Resolution to Establish Policy for Constitutional Officer Employees Regarding Compensation, Benefits, and Personnel Policies (Attachment B).

By the above-recorded vote, the Board adopted the following Resolution to Establish Policy for Constitutional Officer Employees Regarding Compensation, Benefits, and Personnel Policies:

**RESOLUTION TO ESTABLISH POLICY FOR
CONSTITUTIONAL OFFICER EMPLOYEES REGARDING
COMPENSATION, BENEFITS, AND PERSONNEL POLICIES**

WHEREAS, the Board of Supervisors desires to adopt a policy to establish the application of certain County compensation, benefits and personnel policies to the employees of the Commonwealth's Attorney, Clerk of the Circuit Court, and the Sheriff (hereinafter "Constitutional Officers"); and

WHEREAS, the Board recognizes that employees of the Constitutional Officers and County employees all serve the residents of the County and it is desirable to establish a uniform personnel system so that employees of the Constitutional Officers and employees of the County can have the same compensation opportunities and benefits and can be subject to the same policies, procedures, and regulations except as provided herein; and

WHEREAS, under state law, the pay scale and salaries for employees of Constitutional Officers are set by the Virginia Compensation Board ("Compensation Board"), however, the Board of Supervisors has the authority to supplement such state funded salaries if it deems it appropriate; and

WHEREAS, although not legally required to do so, the Board endeavors to maintain parity among County and Compensation Board funded positions; and

WHEREAS, Constitutional Officers will be subject to this policy upon their written election to include their employees under the County's compensation and benefits policies or by entering into an individually agreed upon Memorandum of Understanding.

NOW THEREFORE, BE IT RESOLVED THAT the Albemarle County Board of Supervisors hereby establishes the following policy:

1. Employee Status. Individuals employed by the Constitutional Officers are, and shall remain, appointees of the Constitutional Officers rather than employees of the County. Nothing in this policy shall alter or diminish the Constitutional Officers' duties and rights with respect to their employees under the Virginia Code, Title 15.2, Chapter 16, Article 5. The Constitutional Officers' employees shall not be covered by the County's grievance procedures.

2. Compensation. Employees of the Constitutional Officers shall participate and be included in the County's pay plan and merit evaluation system. Future compensation increases offered by the Commonwealth of Virginia through the Compensation Board will not be passed automatically to the employees of the Constitutional Officers because their employees will be covered by the County's pay plan and merit evaluation system. Notwithstanding the above, compensation for the employees of the Constitutional Officers will be no less than the compensation approved by the Compensation Board.

3. Benefits. All benefits of employment, including but not limited to health insurance, annual and sick leave (except as limited by state law, including Va. Code Section 15.2-1605), insurance protection, retirement programs, participation in deferred compensation programs, and other benefits available to Albemarle County employees will be available to the employees of the Constitutional Officers and governed by the personnel policies and procedures of Albemarle County.

4. County Personnel System. Without diminishing the Constitutional Officers' authority to appoint, hire or discharge their employees, Constitutional Officers must follow the County's personnel policies in force during the period of this policy except as otherwise required by law (such as the six-week vacation leave accrual limit imposed by Va. Code § 15.2-1605) and except as specifically excluded by this section. A list of the County's personnel policies in effect as of the date of this Resolution is attached. (Attachment A) The Constitutional Officers must follow all such policies except the following:

1. Assignment and Transfer (Policy P-38)
2. Employee Reduction in Force Procedures (Policy P-30)
3. Employee Discipline (Policy P-22)
4. Employee Grievance Procedure (Policy P-03)
5. Employee Relations Principles (Policy P-01)
6. Termination of Employment (Policy P-26)

The Constitutional Officers must comply with all Albemarle County Administrative Policies except AP-1 (Grants Process) and AP-5 (Media Relations) and all applicable state and Federal laws regarding FLSA, FMLA, and other such applicable statutes as applied to appointees of elected officials.

The County will provide assistance and services to the Constitutional Officers concerning the personnel matters referenced in this Resolution through its Department of Human Resources and its Finance Department. The Department of Human Resources will maintain all documents related to the employment of the employees of the Constitutional Officers except for documents related to payroll, which shall be maintained by the County's Finance Department. The Constitutional Officers will forward any such documentation to the appropriate County department in a timely fashion.

5. Limitations on Benefits to Constitutional Officers. The Constitutional Officers' employees will receive the compensation and benefits as set forth herein. Such compensation and benefits will be available to the Constitutional Officers only to the extent required by applicable State law, such as Va. Code § 15.2-1517(B) regarding group life, accident and health insurance.

6. Application of policy. This policy shall apply to Constitutional Officers upon their written election to include their employees under the County's compensation and benefits policies and shall remain in force for the duration of the Constitutional Officer's term in office (including terms for which such Constitutional Officer is re-elected), unless amended by the Board upon thirty (30) days prior written notice or upon the Constitutional Officer's election to remove the office's employees from the County's compensation and benefits policies upon thirty (30) days prior written notice. This policy may be modified or supplemented to address particular circumstances of a Constitutional Officer by an individualized written Memorandum of Understanding properly executed and approved by both the Constitutional Officer and the Board of Supervisors.

Item No. 8.11. The Crossings at Fourth and Preston - Agreement between the County and Virginia Supportive Housing to provide interim funding for nine housing units at The Crossings.

The executive summary states that at its March 3, 2010 Board meeting, the Board agreed to designate nine federally-funded rental project-based vouchers to assist County homeless persons to become residents of The Crossings at Fourth and Preston (The Crossings). The Crossings is a 60-unit efficiency apartment development with 30 of the units receiving rental assistance (21 from the City and 9 from the County). On or about April 28, 2011, the County's Office of Housing executed an Agreement to Enter Housing Assistance Payment Contract (AHAP), which is required for the commitment of vouchers for to-be-constructed developments. The development was completed and ready for occupancy in early March 2012 and the Office of Housing had approved nine individuals for the units. Questions raised by Housing staff regarding allowable rent amounts resulted in discussions between Housing staff and HUD. HUD staff informed Housing staff that all requirements had not been met in order for HUD to approve the designation of the nine vouchers as planned. Most of the requirements were outlined in a notice from HUD to Housing staff dated September 20, 2011, well after agreements to commit the vouchers had been made.

In subsequent communications with HUD staff, it was determined that the County would have to submit a Housing Choice Voucher (HCV) Annual Plan including the proposed commitment of project-based vouchers. In addition, the County was directed to update its HCV Administrative Plan, which describes policies for the use of vouchers, including designating vouchers as project-based. On June 6, 2012, the Board approved the County's submission of the Annual Plan and approved the Administrative Plan. Although HUD has approved the Annual Plan, they provided a number of comments suggesting a number of revisions/additions to the Administrative Plan. The revised Administrative Plan will require Board approval and is scheduled as a separate agenda item for the September 5, 2012 Board meeting.

On August 1, 2012, the Board voted to provide local funding as a contribution to Virginia Supportive Housing (VSH), the nonprofit owner of The Crossings, to allow the nine County designated homeless persons to move into The Crossings units due to the uncertainty of the timing of final approval from HUD for the use of the nine vouchers at The Crossings. The Board agreed that it would commit funding for up to twelve months or until HUD approves the use of the project-based vouchers, whichever occurs first. This will require the Board to appropriate local funds for this initiative. That appropriation request will be presented to the Board for approval as part of the FY 13 Appropriation request on September 5, 2012. The Board requested that staff develop an agreement between the County and VSH providing for County contributions to begin in September, 2012 for the sole purpose of providing this rental assistance.

Pursuant to the Board's direction, staff prepared an agreement (Attachment A) between the County and VSH in which the County agrees to contribute to VSH up to a maximum of \$5,364 per month, beginning in September 2012, to be used by VSH to provide rental subsidies for up to nine previously homeless County residents at The Crossings. This contribution will continue until the nine project-based housing choice vouchers from the County can be approved by HUD and the vouchers are assigned to VSH for payment, or for twelve months, whichever occurs first. The agreement sets forth the terms and conditions for this contribution.

The maximum County contributions based on current rents would be \$5,364 per month, or \$53,640 for the balance of the current fiscal year, and an additional \$10,728 in FY14, for a total of \$64,368. The actual amount of subsidy required for September 2012 is \$4,932, factoring in the amount the tenants are required to contribute for rent based on ability to pay.

Staff recommends that the Board authorize the County Executive to sign the agreement for the use of County dollars for Single Room Occupancy (SRO) rent subsidies (Attachment A) on behalf of the County contingent upon the Board's approval of the appropriation to fund this contribution.

(Discussion: Mr. Boyd asked for a status update including the time frame.

Mr. Ron White, Director of Housing, said he continues to target December 1 to have the Crossings issues resolved. The plan is to get the revised Administrative Plan back to HUD for its review. He stated that he has been trying to schedule a face-to-face meeting with HUD staff, but because of vacations and training it has been hard to coordinate. Mr. White said that he would like to terminate the existing agreement and start the process all over, which will eliminate a lot of the requirements that HUD said the County did not meet in the first place. He stated that he wants to know that HUD will approve this other alternative and help expedite its approval. Mr. White said there are some set-aside funds at HUD, and he plans to submit an application by Friday for that. He noted that the Richmond field office is backing the County on the need for additional funds to ensure there is enough cushion to take over the nine vouchers.

Mr. Boyd asked if there could be more frequent reporting on the nine residents who are being helped by this beyond the annual update, as they have been taken on as an expense to the County.

Mr. White responded that they are recertified annually for the voucher program, and that would be the same process used in the interim period – so he could certainly get information from the Crossings on how they are doing. He stated that he would like to see how they are doing as far as supportive benefits, such as SSI, which they now qualify for because they have a residence.)

By the above-recorded vote, the Board authorized the County Executive to sign the agreement for the use of County dollars for Single Room Occupancy (SRO) rent subsidies on behalf of the County contingent upon the Board's approval of the appropriation to fund this contribution:

August 3, 2012

Rev. Kathryn F. Talley
Deputy Executive Director
Virginia Supportive Housing
5008 Monument Avenue, Suite 200
P.O. Box 8585
Richmond, VA 23226

Re: Agreement for use of County dollars for SRO Rent Subsidies

Dear Reverend Talley:

As you are aware, the Albemarle County Board of Supervisors has agreed to allocate funds to The Crossings at Fourth and Preston, LLC to provide affordable housing for certain qualified Albemarle County residents. This letter shall serve as an Agreement between the County of Albemarle (hereinafter referred to as the "County") and The Crossings at Fourth and Preston, LLC (hereinafter referred to as the "Recipient") regarding the terms and conditions that must be agreed upon to receive the County contribution. If there are any questions involving any of the following information, please do not hesitate to contact me.

The following terms and conditions concerning these funds shall apply:

Funding: The following funds, if approved by the Board of Supervisors on or before September 5, 2012, will be available for the Recipient:

The County will contribute up to a maximum of \$5,364 per month (hereinafter "Monthly Payment") for fiscal year 2012-13. The Monthly Payment shall begin effective September 2012 and extend for up to a maximum of twelve (12) calendar months, subject to future appropriations by the Board of Supervisors, and shall be used solely to provide rental subsidies for up to nine (9) previously homeless County residents located at The Crossings at Fourth and Preston. This Monthly Payment is the maximum to be provided in the current fiscal year and is subject to adjustment due to actual occupancy, resident's ability to pay, and off-set by future County Project-Based Housing Choice Vouchers (as they become available).

This Monthly Payment shall be applied to the rent for previously homeless persons who are very-low to low-income households earning less than fifty percent (50%) of median income under current income guidelines as provided by the U.S. Department of Housing and Urban Development.

The minimum rent to be paid by such previously homeless persons will be \$50 per month or 30% of their income (whichever is more). Any monthly rent amount, including subsidies, shall not exceed \$646 unless such rent increase is requested in writing by the Recipient and approved by the County. In all cases, any rent increases must be consistent with U.S. Department of Housing and Urban Development regulations and policies for Housing Choice project-based vouchers.

Term: This Agreement shall remain in effect (1) until such time as nine (9) Project-Based Housing Choice Vouchers from the County can be approved by the U.S. Department of Housing and Urban Development and vouchers are assigned to the 9 units and processed for payment, or (2) for a twelve-month term; whichever occurs first.

Payment: The method of payment will be by check issued by the County payable to the Recipient, contingent upon receipt of a written request from the Recipient, which request shall document the intended use of the funds (to include the funds due for the number of individuals being assisted for that month, less rent payments by the tenant) (hereinafter "Invoice"). Upon the request of the County, the Recipient shall provide written documentation, including but not limited to lease agreements or cancelled checks, demonstrating how funds provided pursuant to this Agreement were expended by the Recipient.

Alterations: The Recipient agrees that its obligations to expend funds for the purposes specified, and in accordance with the terms and conditions referenced under "Funding" above, will not be modified or altered without the prior written approval of the County.

Quarterly Reports: The Recipient agrees to submit to the County's Chief of Housing quarterly program progress reports at the end of each calendar quarter after funding is provided to the Recipient. In addition, on the 30th day of June of any year this Agreement is in effect a comprehensive report covering the agreed upon objectives, activities and expenditures will be submitted covering the entire Agreement period.

Monitoring: The County Housing Office will schedule one (1) monitoring visit each fiscal year to evaluate the program's progress and performance. At this time, staff shall be provided access to all program-related records and materials.

Subcontracts and Assignments: No part of this Agreement may be assigned or subcontracted without prior written approval of the County, which approval may be granted or withheld in the sole discretion of the County.

Termination of Agreement: The County may terminate this Agreement at any time by providing written notice to the Recipient of such termination and specifying the effective date thereof, at least 120 days before the effective date of such termination. If the Agreement is terminated, the Recipient will promptly return all unexpended funds provided pursuant to this Agreement.

Insurance to be Provided by the Recipient: Upon execution of this Agreement the Recipient shall file with the County certificates of policies of public liability, automobile liability (including non-ownership and hired vehicles) and property damage insurance satisfactory to the County and in compliance with the law, and in form and amount sufficient to protect the County. Each certificate or policy shall carry the provision that the insurance shall not be canceled or reduced without prior notice to the County. All insurance required by this paragraph of the Agreement shall be and remain in full force and effect for the entire Agreement period, or until such time as all units leased with funding provided herein have been sold. THE COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER SUCH INSURANCE CONTRACTS, which shall contain a stipulation that the insurance provided shall not terminate, lapse or otherwise expire, prior to the thirty (30) days written notice to that effect, given by the insurance carrier to the County.

The Recipient shall not perform any work or services under this Agreement during any period of time in which the Required Insurance is not in effect. The Recipient's failure to comply with the requirements of this section shall constitute a material breach of this Agreement entitling the County to terminate this Agreement without notice and without penalty to the County.

- (A) The Minimum Limits of Liability Coverage shall be as follows:
Comprehensive General Liability, including Premises and Operations, Elevator Liability;
The Recipient Protective Liability, Products Liability, including completed Operations
Coverage; and Contractual Liability, for this Agreement.

Limits: \$1,000,000/\$2,000,000

- (B) Comprehensive Automobile Liability, including all owned Automobiles; Non-owned
Automobiles; Hired Car Coverage (if applicable).

Limits: \$500,000/\$1,000,000
(per occurrence/annual aggregate)

Indemnification: To the extent permitted by law, the Recipient hereby agrees to defend, indemnify and save the County (including its officers, agents, officials, employees, and agents) harmless from and against any and all liability loss, claim, suit, damage, charge or expense which the County may suffer, sustain, incur or in any way be subjected to, on account of death or of injury to any person (including, without limitation, County officers, agents, employees, licensees, and invitees) and for damage to, loss of, and destruction of any property whatsoever, which arises out of, results from, or is in any way connected with actions taken by the Recipient in the performance of its obligations under this Agreement, or which occurs as a consequence of any negligence, omission or misconduct of the Recipient and any of the Recipient's subcontractors, agents or employees in the performance of the Recipient's obligations under this Agreement.

Public Disclosure of Agreement Documents: The Recipient acknowledges and understands that this Agreement, and all related public proceedings and records, shall be open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Va. Code § 2.2-3700 *et seq.*) to the extent that those laws apply. Notwithstanding the foregoing, the County and the Recipient agree that they will not release any information that would be protected under Va. Code Ann. § 2.2-3800, the Government Data Collection and Dissemination Practices Act.

County Access to Records: The Recipient agrees that duly authorized representatives of the County shall have access to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

The County and Recipient acknowledge and agree that for the purposes of this section that Va. Code Ann. § 55-248.9:1 of the Virginia Residential Landlord and Tenant Act allows for the release of tenant information to a government entity where such records are defined as Public Records herein: "Public records" mean all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, Photostuffing, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a

public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.” Va. Code Ann. § 2.2-3701 (2012).

Non-Discrimination: During the performance of this Agreement the Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Recipient agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provision for employees placed by or on behalf of the contractor, that it is an equal opportunity employer.

Drug-Free Workplace: During the performance of this Agreement the Recipient agrees as follows: (i) to provide a drug-free workplace for its employees; (ii) to post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Recipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Recipient that it maintains a drug-free workplace. For the purposes of this paragraph, “drug-free workplace” means a site for the performance of work done in connection with the contract awarded to a contractor in accordance with this transaction, where the contractor's employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

No Waiver of Rights: No failure on the part of the County to enforce any of the terms or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and conditions. No waiver by the County of any default or failure to perform by the Recipient shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. The acceptance of the performance of all or any part of this Agreement by the County for or during any period(s) following a default or failure to perform by the Recipient, shall not be construed as or deemed to be a waiver by the County of any rights hereunder, including, without limitation, the County's right to terminate this Agreement.

Independent Contractor: Neither the Recipient nor its agents, employees, assignees or subcontractors shall be deemed employees or agents of the County by virtue of any services performed pursuant to this Agreement of the contractual relationship established hereby. The Recipient shall have sole responsibility for its staff, employees and volunteers, including their work, personal conduct, directions, and compensation.

Severability: In the event that any term, provision or condition of this Agreement, or the application thereof to any person or circumstance shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement and application of any term, provision or condition contained herein to any person or circumstance other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

Modification: This Agreement may be modified by the parties during performance, but no modification shall be valid or enforceable unless in writing and signed by each of the parties hereto in the same manner and with the same formality as this Agreement.

Non-Appropriation: The payment obligations of the County in future fiscal years are expressly conditioned upon the availability of and appropriation by the Board of Supervisors of sufficient public funds therefore in succeeding fiscal years. When public funds are not appropriated or are otherwise unavailable to support continuation of payment by the County in any fiscal year, this Agreement and the County's obligations hereunder shall automatically expire without liability or penalty to the County. Within a reasonable time the County shall provide the Recipient with written notice of any non-appropriation or unavailability of funds affecting this Agreement. The County will notify the Recipient within ten (10) business days of the failure to appropriate additional funds. The County shall seek approval of appropriations one hundred and fifty (150) days in advance of the termination of the current fiscal year such that the County can meet the notice requirements referenced herein.

Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. All litigation arising out of this Agreement shall be commenced and prosecuted in the federal, state or local court(s) having jurisdiction within the County of Albemarle, Virginia.

Entire Agreement: This Agreement represents the entire agreement between the parties and there are no other agreements or understandings between the parties, either verbal or written, which have not been incorporated herein.

If all of the terms and conditions set forth herein are acceptable to the Recipient, please sign both copies of this letter and return them to me for approval by the County.

Sincerely,

Ronnie L. White
Chief of Housing

The signatures below represent an agreement to all terms outlined in the above agreement:

THE CROSSINGS AT FOURTH & PRESTON, LLC

Name: _____
Title: _____
Date: _____

COUNTY OF ALBEMARLE, VIRGINIA

Name: _____
Thomas C. Foley
Title: County Executive
Date: _____

Approved as to form:

County Attorney

Item No. 8.12. Housing Choice Voucher Program - Administrative Plan.

The executive summary states that the Albemarle County Office of Housing ("Office") is the designated local agency for the administration of the Housing Choice Voucher Program ("Program"), formerly known as the Section 8 Rental Assistance Program. The Office is considered a part of the executive branch of local government and not a public housing authority. Although not a housing authority, the Office must comply with U.S. Department of Housing and Urban Development ("HUD") requirements for Public Housing Agency ("PHA") activities, including the development and implementation of a 5-Year PHA Plan with annual updates as necessary and an Administrative Plan which specifies policies adopted by the County.

On June 6, 2012, the Board held a public hearing on the County's Annual Plan for its Program and approved both the Annual and Administrative Plan. HUD has formally approved the County's Annual Plan and provided comments on the Administrative Plan. On August 1, 2012 HUD submitted its comments on this Plan to the Housing Office which has subsequently made revisions to the Administration Plan reflecting these comments and guidance provided in PIH Notice 2011-54 (HA). The Office is required to have the revised Administrative Plan (Attachment A) approved by the Board and submitted to HUD for review.

Most of the HUD comments are associated with the Administrative Plan related to Chapter 20 (Project-based Vouchers). Only one item in the Plan, which dealt with maintaining waiting lists, was determined to be unacceptable without a waiver from HUD. That item has been revised to require that the Office maintain the waiting lists in order to comply with HUD regulations. The other changes add more detail to certain policies. The June 6 approved Administrative Plan stated that the Office would comply with the applicable federal regulations; however, HUD requested that some of those regulations be detailed in the Plan.

There is no budget impact anticipated because of this action. HUD provides annual budget authority for the voucher program from which any project-based vouchers may be funded.

Staff recommends that the Board adopt the attached Resolution (Attachment B) to approve the revised Administrative Plan and to authorize the Chief of Housing to implement the Program in accordance with the approved Plan.

By the above-recorded vote, the Board adopted the following Resolution to approve the revised Administrative Plan and authorized the Chief of Housing to implement the Program in accordance with the approved Plan:

RESOLUTION

WHEREAS, the County of Albemarle is a Public Housing Agency ("PHA") as defined by the U.S. Department of Housing and Urban Development ("HUD") for the administration of the Housing Choice Voucher Program (HCV); and

WHEREAS, federal requirements for the HCV program include that each PHA maintain an Administrative Plan which sets forth policies for the administration of the program; and

WHEREAS, the Albemarle County Board of Supervisors ("Board") approved an updated Administrative Plan on June 6, 2012 which was submitted to HUD for review and comment; and

WHEREAS, HUD's comments required revision of the Administrative Plan; and

WHEREAS, the Administrative Plan has been revised based on HUD comments and guidance provided in HUD's Notice PIH 2011-54(HA); and

WHEREAS, the Office of Housing is required to have the revised Plan approved by the Board.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County hereby approves the revised Administrative Plan and authorizes the Chief of Housing to implement the policies set forth in the plan.

Item No. 8.13. Resolution to Support Restoration of State Funding For Aid to Localities.

By the above-recorded vote, the Board adopted the following resolution:

Resolution to Support Restoration of State Funding For Aid to Localities

WHEREAS, state financial assistance for mandated and high priority programs, including public education, health and human services, public safety and constitutional officers, was \$800 million less in FY12 than in FY09 and almost \$500 million less in FY13 than in FY09; and

WHEREAS, cities and counties must balance their budgets during a time in which future state assistance is unreliable, federal stimulus dollars are depleted, and real estate assessments are either stagnant or in decline; and

WHEREAS, the Appropriation Act contains \$50 million in across-the-board cuts to cities and counties for FY13 and \$45 million in FY14, under which localities are required to either elect to take reductions in particular state aid programs, or to send the State a check for the amounts determined by the Department of Planning and Budget ("Local Aid to the Commonwealth"); and

WHEREAS, the reductions are applied to essential services, including law enforcement, jail administration, foster care and child protection services, election administration and social services; and

WHEREAS, the County of Albemarle does not have the authority to unilaterally decide to discontinue providing services such as election administration or to refuse to house and care for state prisoners in local and regional jails; and

WHEREAS, the state budget cuts are not accompanied by any reductions in state-imposed mandates, standards and service requirements, nor do they provide any administrative flexibility for local agencies; and

WHEREAS, the County of Albemarle remitted \$592,574 in FY12 and will be required to remit another \$490,565 in FY13; and

WHEREAS, cities and counties will have provided the state with \$270 million by the close of FY13 for this "Local Aid to the Commonwealth" program; and

WHEREAS, these reductions shift state costs to local taxpayers and artificially increases the amount of state surplus revenue; and

WHEREAS, state revenues have continued to recover and the state has experienced a budget surplus for the third consecutive year; and

WHEREAS, revenue collections for the County of Albemarle continue to reflect the struggling housing market; and

WHEREAS, the state should not shift its share of the costs for mandates and responsibilities to local governments.

NOW, THEREFORE BE IT RESOLVED, that the Board of Supervisors of the County of Albemarle asks Governor Bob McDonnell to submit a budget amendment to the 2013 session of the General Assembly to reverse the \$50 million-a-year reduction for the current year, FY13, and to eliminate the aid to localities reduction in FY14;

AND BE IT FURTHER RESOLVED, that the members of the General Assembly are requested to support a budget amendment in the 2013 session of the General Assembly to reverse the \$50 million-a-year reduction for the current year, FY13, and to eliminate the aid to localities reduction in the budget for FY14.

Item No. 8.14. Native Plant Database - Inclusion into the County's Design Standards Manual.

The executive summary states that General Services staff, working in cooperation with a member of the County' Natural Heritage Committee, has prepared a database which catalogs plant species native to the Piedmont region of Virginia, including Albemarle County. They have also built an application for this database which guides users on plant selection based on how the plants will be used and other factors (e.g. sunny or shady, wet or dry soils). This database is being released as the [Piedmont Virginia Native](#)

[Plant Database](#). Now that the initial work has been completed, staff is proposing to make this material available to the public and encourage its use with development by referencing the materials in the County's [Design Standards Manual](#), which is a guidance document to help design professionals.

By referencing this database in the Design Standard's Manual, staff hopes to provide the development community an easy to use guide for selecting plants that fit their situation and promote protection of natural resources in the County. The use of this database will be strictly voluntary and is provided to help those property owners or developers interested in promoting native vegetation within their projects. For example, developers interested in obtaining LEED certification can benefit from this list, as it simplifies obtaining credit for use of native species. This database will not be a static document. General Services staff will revise and update it as staff and the community gain more experience with this information.

No action is required from the Board, but staff would appreciate any comments Board members may have as to how this material can be improved.

This work is being done with existing staff resources and no additional funding is needed.

This is for information only.

Item No. 8.15. VDOT – Culpeper District, *Monthly Report for Albemarle County*, **was received for information**.

The following special issues were provided in the report:

- Bridges on Route 745, Arrowhead Valley Road—The road will be closed at the Rail Road Bridge on the southern end of the road beginning on June 25th. The anticipated completion date quoted by the contractor is September 1, 2012. The bridge is currently owned and maintained by the Rail Road. Once the construction is completed the maintenance will become the responsibility of VDOT.
- Bridge Replacement Project on Route 637, Dicks Woods Road over Ivy Creek. The road will be closed to through traffic at the bridge for an estimated two week period beginning on August 27 with an estimated completion date of September 7.

Item No. 8.16. Board-to-Board, *A monthly report from the Albemarle County School Board to the Albemarle County Board of Supervisors*, **was received for information**.

Item No. 8.17. County Grant Application Report.

The executive summary states that pursuant to the County's Grants Policy and associated procedures, staff provides periodic reports to the Board on the County's application for and use of grants.

The attached Grants Report provides a brief description of one grant application submitted by the County and ten awards received between May 15, 2012 and August 15, 2012. Four grants awarded are continuation grants, which were also received in the two previous years. An eleventh grant has qualified to move to the second phase of the application process, which makes it likely to be funded in the near future.

All grant funds are subject to appropriation by the Board prior to the expenditure of any funds awarded to the County.

The budget impact is noted in the summary of each grant.

This report is for information only.

GRANT REPORT ACTIVITY THROUGH August 15, 2012

The following grants were awarded since May 2012. Continuation grants are those that have been funded in previous years but required reapplications.

SOURCE	GRANT NAME	AMOUNT	MATCH	DEPARTMENT	PURPOSE
VA Department of Criminal Justice	Byrne Justice Assistance Grant – continuation grant Federal Funds	\$40,725	\$2,144 County Grant Matching Funds	Police	Evidence Collection-purchase of surveillance and monitoring equip
VA Department of Criminal Justice	Byrne Justice Assistance Grant – continuation grant Federal Funds	\$71,250	\$3,750 Department Budget	Commission on Children and Families	Wilton Farms After School Program – prevention and control of crime; YMCA provides teachers and staff
VA Department of Criminal Justice	Byrne Justice Assistance Grant – continuation grant Federal Funds	\$71,200	\$3,747 CCJB Budget	Community Criminal Justice Board	Crisis Intervention Team – Data collection and evaluation

VA Department of Criminal Justice	Byrne Justice Assistance Grant – continuation grant Federal Funds	\$706,090		OAR	Probation and Pretrial Services
VA Department of Criminal Justice	Byrne Justice Assistance Grant Federal Funds	\$15,068	0	Police	Community Policing – overtime funding for crime prevention & problem solving activities
VA Department of Criminal Justice	Internet Crimes Against Children Special Funds	\$23,602		Police	Equipment, Staffing, and Training
SOURCE	GRANT NAME	AMOUNT	MATCH	DEPARTMENT	PURPOSE
VA Department of Criminal Justice	Expansion Grant – Pretrial Services Federal Funds	\$112,500	\$28,175 Central Va Regional Jail \$9,325 OAR	OAR	Pretrial Services for Fluvanna, Greene, Louisa, Madison, & Orange
VA Department of Criminal Justice	Victim Witness Program Federal Funds State Special Funds	\$63,380 \$21,126		Police	Staffing, training, & supplies for Victim Witness Program
FEMA SAFER Fire Grant	Fire Rescue SAFER Grant Federal Funds	\$1,261,305		Fire/Rescue	Funding for staffing Ivy and Seminole Trail stations (9 firefighters)

The following grant was selected to advance to Phase 2:

Dept. of Conservation & Recreation Selected to advance to Phase 2-Pending Award	Federal Highway Administration Federal Funds	\$86,250	\$40,000 County Grant Matching Funds	Parks and Recreation	Provide 7 miles of new and restored trails and work at Preddy Creek Trail Park
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Applications were made for the following grants:

Charlottesville Area Community Foundation	BAMA Works Fund	\$10,000 Private Funds		Department of Social Services	Funding summer camp for Family Support and Bright Stars children
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Item No. 8.18. 2012 Second Quarter Building Report, **was received for information.**

During the second quarter of 2012, 89 building permits were issued for 89 dwelling units. There were no permits issued for a mobile home in an existing park. There were no permits issued for the conversion of an apartment to a condominium.

(Discussion: Ms. Mallek commented that while there were criticisms earlier in the meeting about walkable communities and smart growth, the building reports reflect that the highest number of building permits and highest values, except for Martha Jefferson Hospital, are in Old Trail – which is an example of the type of neighborhood that people like.)

Item No. 8.19. 2012 Second Quarter Certificate of Occupancy Report, **was received for information.**

During the second quarter of 2012, 88 certificates of occupancy were issued for 129 dwelling units. There was one certificate of occupancy issued for a mobile home in an existing park, at an exchange rate of \$2,500, for a total of \$2,500. There were no certificates of occupancy issued for the conversion of an apartment to a condominium.

Item No. 8.20. Revised 2011 Year End Building Report, **was received for information.**

The report states that there have been revisions to the data in Section III (Comparison of All Building Permits) - Table V (Estimated Cost of Construction by Magisterial District and Construction Type). The revised reports reflect changes to the amounts associated with the Estimated Cost of Construction. There was also a decrease (255 to 239) in the number of New Non-residential and Alteration to Residence permits that were issued a certificate of occupancy. These revisions have no impact on the 2011 quarterly Building and Certificate of Occupancy Reports.

Item No. 8.21. Revised 2011 Year End Certificate of Occupancy Report, **was received for information.**

Agenda Item No. 9. **PUBLIC HEARING: SP-2011-00011. Lewis Bridge over Doyle's River (Signs #92&95).**

PROPOSAL: Bridge crossing for driveway, fill for abutments, under sections 30.3.03.2, 30.3.05.2.1, 30.3.05.2.2, 30.5.5.2d6 of zoning ordinance.

ZONING: FH Flood Hazard - Overlay to provide safety and protection from flooding. RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).

COMPREHENSIVE PLAN: Rural Areas – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources. Residential uses allowed at a density of 0.5 unit/acre in development lots.

LOCATION: East side of Browns Gap Turnpike (Rt. 810) approximately 0.22 miles south of Slam Gate Road (Rt. 673).

TAX MAP/PARCEL: 02700-00-00-006B0.

MAGISTERIAL DISTRICT: White Hall.

(Advertised in the Daily Progress on August 20 and August 27, 2012.)

Mr. Glenn Brooks, County Engineer, said that this special use permit is for a proposed private driveway bridge located off of Route 810, in the vicinity of Slam Gate Road. He provided a rendering of the general location, noting the confluence of a tributary stream and the river and pointing out its close proximity to the property corner. Mr. Brooks said the applicant tried to make this very much like the upstream bridge, another private bridge that belongs to the Nagel's – but it is a longer span and more difficult section of floodplain so they went with a steel infrastructure faced with wooden beams for consistency. He then presented an aerial map of the proposed bridge location and a depiction of how the driveway will need to turn immediately after crossing the river to avoid the slope. Mr. Brooks also presented an engineering drawing of the bridge itself and a photo of the general location, noting the discrepancy in height of the far bank versus the near bank – which is about the same level as Route 810. He said that most of the floodwaters go onto the road side, and presented a picture of the upstream bridge they are attempting to emulate.

Ms. Mallek commented that the tributary stream comes in south of that bridge, so there is a greater waterflow than the one being considered today. Mr. Brooks explained that it actually comes in just downstream, but the floodwaters are joined at that point so the floodplain confluence encompasses the bridge location.

Mr. Brooks said that the request was unanimously approved by the Planning Commission on July 31, 2012, subject to five conditions recommended by staff.

Ms. Mallek asked why – in the context of the Water Protection Ordinance – this is being recommended, given that there is an alternative that does not require this that has been used for years. She said it is unquestionably an intrusion into the floodplain and can have consequences, and asked if there was a building application or subdivision plan that goes along with this.

Mr. Brooks responded that he has only the information the applicant provided, and was told by the applicant that he does not have access to the property currently from Route 810 and was using access through another property owned by someone in the rear of the parcel.

Ms. Mallek commented that there are many properties that have access easements across other properties.

Mr. Boyd asked if this was just changing access to an existing home on the property.

Mr. Brooks clarified that there is no residence on the property currently.

Mr. Rooker explained that there is consideration of this property being put into conservation easement, that the current access would severely limit the ability to develop the property – which limits its value for appraisal purposes. He said that he is speculating that the applicant is trying to get better access in order to obtain an appraisal that makes it more worth their while to put the property in a conservation easement.

Mr. Boyd said that he didn't have a problem with that.

Ms. Mallek noted that there would be considerable improvements in the floodplain in order to get up to high ground, and expressed concern that a future owner could certainly develop it and the fact that it sets a precedent for other property owners. She is concerned that the County is potentially diminishing its water protection ordinance if the Board is setting this kind of example as being something that is acceptable when there may be alternatives.

At this time, the Chair opened the public hearing.

Mr. David Wyant, the applicant's engineer, stated that the applicant wants to ensure that the look of the bridge is in keeping with the environment. They started with a wooden structure but to stay out of the streambed they had to change to steel construction. Mr. Wyant explained that he has surveyed the grade going up to the driveway, and there is a 16% grade – with critical slopes avoided. He said that many years ago, the Board approved a pond on the Mountfair Farm, which helps to do some flood control. Mr. Wyant stated that they access the farm now through another parcel of land that comes out on Bluffton Road. This will be the only bridge up through Doyle's built to accommodate fire trucks in that area.

Ms. Mallek asked how that would work, given that there is no connection on this farm to Bluffton. Mr. Wyant responded that he would have to put a road around the edge of the property.

Mr. Wyant explained that the applicant wants to put the property in easement, as well as putting a pond on the property to help with fire control. He said that he has been doing some advanced planning for the applicant, and has already designed a dam for the pond if necessary.

Mr. Rooker asked what the existing access to the property is currently. Mr. Wyant responded that they go on Bluffton Road up through another parcel of land that he owns, but wants a separate access for this parcel – an approved entrance – in order to obtain approval for the conservation easement on the 115 acres.

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

Motion was then offered by Ms. Mallek, **seconded** by Mr. Thomas, to approve SP-2011-00011 subject to the five conditions recommended by staff and the Planning Commission. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Dumler.

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

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

Agenda Item No. 10. **PUBLIC HEARING: SP-2012-00009. Southwood Boys & Girls Club Expansion (Signs #84&85).**

PROPOSAL: Request to allow the expansion of the existing Community Center on approximately 1 acre. No dwellings proposed.

ZONING: R-2 which allows residential uses at a density of 2 units/acre. Section 14.2.2.1 Community Center.

ENTRANCE CORRIDOR: Yes.

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

LOCATION: Southwood Mobile Home Park. 387 Hickory Street. Northeast corner of the intersection of Hickory Street and Bitternut Lane. Hickory Street approximately 2,100 feet from the intersection of Old Lynchburg Road and Hickory Street.

TAX MAP/PARCEL: 090A10000001D0.

MAGISTERIAL DISTRICT: Scottsville.

(Advertised in the Daily Progress on August 20 and August 27, 2012.)

Mr. David Benish, Chief of Planning, reported that this is a request for a special use permit to allow for expansion of the existing community center at Southwood, which is used primarily by the Boys and Girls Club. He stated that the site is located in the Southwood Mobile Home Park, on the northeast corner of Hickory Street and Bitternut Lane and is about 2,000 feet from Old Lynchburg Road. Mr. Benish said that the request is to expand the community center to accommodate up to 120 children in the center, which is currently operating at capacity with 80 children. He explained that in order to increase the capacity, the applicant is proposing a transportable modular building up to 1,900 square feet along with a small addition – approximately 360 square feet – to the existing community center. Mr. Benish said the proposal will provide much needed comprehensive youth development services in the Southwood community and will provide for a larger community center and a place to serve that community. Renovations will enhance the current site. He stated that staff found no unfavorable factors to the application.

Mr. Benish said the Planning Commission reviewed the request on July 31, 2012 and has recommended approval with the conditions as outlined in the action letter. Mr. Benish said that staff recommends approval of the proposal with the conditions as recommended by the Planning Commission.

Mr. Rooker commented that he is glad to see this happening.

Ms. Mallek commented that it is wonderful they have so many kids who want to come.

At this time, the Chair opened the public hearing.

Mr. James Pierce, Executive Director of the Boys and Girls Clubs of Central Virginia, addressed the Board, stating that they have a waiting list which is why they are proposing this change. He thanked the Board for everything they have done for the Boys and Girls Club over the years. He said that between the Jouett Club and Southwood Club they have over 400 members, although not attend every day. Mr. Pierce stated that they are looking to expand the space primarily to accommodate teens, who do not necessarily want to come when their younger siblings are there. This addition will allow for segmented space for an additional population that is vital to have in the club. He said that over the past summer they had 70 kids who did not lose ground in their reading achievement, due to a partnership between the Boys and Girls Club and County schools. Mr. Pierce stated that the Police Department is also a strong partner, and he thanked Colonel Sellers for their help. He also thanked Ms. Claudette Grant for all her work.

Mr. Snow stated that he had toured the facility over the summer, and the work they are doing is terrific. He said that he fully support the request.

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

Motion was then offered by Mr. Rooker, **seconded** by Ms. Mallek, to approve SP-2012-00009 subject to the five conditions recommended by staff and the Planning Commission. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Dumler.

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

1. Development shall be in general accord with the concept plan titled Southwood Boys and Girls Club Expansion, dated April 13, 2012 (hereafter "Concept Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Concept Plan, the proposed building and existing building renovation and use shall reflect the following major elements within the site essential to the design of the site, as shown on the Concept Plan:
 - Location of buildings, uses, and structures, inclusive of the minimum setback for the new structure from Bitternut Lane must be fifteen (15) feet;
 - Location of parking areas; and
 - Location of outdoor play areaMinor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance; and
2. The parking study is based on a maximum of one hundred twenty (120) children. There shall be no more than one hundred twenty (120) children at any one time served at this location of the Boys and Girls Club.

Agenda Item No. 11. **PUBLIC HEARING: SP-2012-00012. Regents School of Charlottesville (RSC) (Signs #81&82).**

PROPOSAL: Special Use Permit for School of Special Instruction. Utilize existing structure, no additional buildings proposed.

ZONING CATEGORY/GENERAL USAGE: CO Commercial Office – offices, supporting commercial and service; residential by special use permit (15 units/acre).

SECTION: Chapter 18 Section 23.2.2(6) of the Albemarle County Code, which allows for School of Special Instruction.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Area 1 - Rural Areas – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/acre in development lots).

ENTRANCE CORRIDOR: Yes.

LOCATION: 3045 Ivy Road Charlottesville VA.

TAX MAP/PARCEL: 05900-00-00-023G1.

MAGISTERIAL DISTRICT: Samuel Miller.

(Advertised in the Daily Progress on August 20 and August 27, 2012.)

Mr. Benish addressed the Board, stating that this is a request for a special use permit for a school of special instruction on a 12.5-acre parcel zoned Commercial Office, and no new structures are proposed as the school will use existing structures on the site and will have a limit of 60 students and a staff of nine. He said that the school serves grades K-8. The property is located on the corner of Broomley Road and Route 250 West/Ivy Road. Mr. Benish said that the surrounding properties are zoned C-1, Highway Commercial, and the Farmington development north of the railroad is zoned Rural Areas. Mr. Benish stated that the school is located in the rural areas as designated in the Comp Plan, but this is old zoning from prior actions in the 60s and 70s.

He said that the Christian Aid Mission Complex, where the site is proposed to be located, consists of four buildings on 12.5 acres – and the administrative building is the proposed structure for the use, with the basement of the building currently used by the Korean Church and the Regent School planning to use the first and second floors. Mr. Benish said that the recreation, play and physical education activities

would take place in a designated area, as shown on the concept plan provided. He also presented a photo of the building that is proposed to be used, with six classrooms and a multi-purpose room on one floor and seven classrooms on the second floor.

Mr. Benish said that favorable factors include: the use is consistent with the current land use plan, and is principally consistent with the current zoning of the development in that area; it provides alternative school options for people who live and work in the area; it is using under-utilized structures; and there are no anticipated detrimental impacts to adjacent properties. He noted that staff found no unfavorable factors. The proposed conditions of approval are provided to the Board – with the Commission having unanimously recommended approval of the proposal.

Ms. Mallek asked if “school of special instruction” was a zoning term or an education term. Mr. Benish responded that it is a zoning term that refers to a school as opposed to a daycare. He noted that one of the conditions for the age limit of 2.5 is to distinguish it from a nursery school.

Mr. Boyd asked why there was a condition restricting food preparation.

Mr. Benish explained that the site is on a septic system, and there are some limitations given all the buildings on the site and the total potential of the septic system. He said that the applicant did not intend to cook meals at the class, but this protects them from those limitations. Mr. Benish stated that the condition stipulates that they get Health Department approval to ensure they have the capacity for kitchen activity.

At this time, the Chair opened the public hearing.

Mr. Chris Fornay addressed the Board, stating that he is a Board member of Regent School of Charlottesville, which is a “classical Christian school” that educates children K-8. Mr. Fornay said that they have outgrown their current facility in Jefferson Park Baptist Church next to Frye Springs Beach Club. The Christian Aid Mission has allowed them use of their property for their expanded enrollment. He stated that students bring in brown bag lunches almost every day, but occasionally do have a pizza day or hot lunch brought in. They have no problem with the condition regarding no food preparation on site because of concerns from the Health Department.

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

Motion was then offered by Mr. Snow, **seconded** by Mr. Rooker, to approve SP-2012-00012 subject to the five conditions recommended by staff and the Planning Commission. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Dumler.

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

1. The school is limited to the existing administrative building and grounds, as shown on the concept plan (Attachment A). All parking for the facility shall be located in spaces designated on the concept plan as P1, P2, and P3. Any additional buildings or other site changes beyond those shown on the approved site plan for SDP1992-052 titled “Christian Aid Mission Administration Building” prepared by William W. Finley and date approved July 14, 1994 require an amendment to this Special Use Permit.
2. Maximum enrollment shall be sixty (60) students.
3. All students shall be over the age of two and one-half (2 ½) years old.
4. Hours of operation for the school shall be between 7:45 a.m. to 4:00 p.m., except that occasional school-related events may occur after 4:00 p.m.
5. No food preparation is permitted onsite without an amendment to this Special Use Permit.

Agenda Item No. 12. **PUBLIC HEARING: ZTA- 2012-00009. Site Plan Process Improvements.**

Amend Secs. 3.1, Definitions, 32, Site Plans, 35.1, Fees, and 35.2, Calculation of fees in special circumstances, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would add and delete definitions (3.1), repeal existing site plan regulations (32.1 through 32.7.10.2) and add new site plan regulations in Sec. 32 pertaining to general provisions (32.1 *et seq.*), applicability (32.2 *et seq.*), administration (32.3 *et seq.*), procedures for submittal, review and action on site plans (32.4 *et seq.*), the form and content of initial site plans (32.5 *et seq.*), the form and content of final site plans (32.6 *et seq.*), minimum standards for improvements (32.7 *et seq.*), and the completion of on-site improvements and providing surety (32.8 *et seq.*). This ordinance also would amend Sec. 35.1 to add a \$500 fee for pre-application plans but this fee would also be applied toward the initial site plan fee which remains unchanged from the current preliminary site plan fee, add a \$240 fee for resubmitting a final site plan within 15 days after it has been disapproved for being incomplete, change references to fees from “preliminary” site plans to “initial” site plans, and change cross-references to revised section numbers to which fees pertain. This ordinance also would amend Sec. 35.2 to change references from “preliminary” site plans to “initial” site plans. The proposed fees are authorized by Virginia Code §§ 15.2-2241(9) and 15.2-2286(A)(6).

(Advertised in the Daily Progress on August 20 and August 27, 2012.)

The following executive summary was forwarded to Board members:

"The Action Plan adopted by the Board of Supervisors on January 6, 2010 directed staff to bring forward recommendations for "reducing unnecessary and burdensome regulations and shortening approval times." On August 4, 2010, the Board adopted an Economic Vitality Action Plan. Objective 2 of that plan stated: "Simplify and create certainty in the development review process, giving the applicant a reasonable expectation for the time and cost needed for development review when applicants are adhering to the regulations appropriately." One of the stated strategies to achieve Objective 2 was to "consider amendments to the development ordinances to reduce complexity of plan approval."

At the conclusion of the August 3, 2011 joint work session among the Board, the Planning Commission and the Architectural Review Board (the "ARB"), the Board directed staff to develop proposed amendments to the County's site plan and subdivision regulations to address the following:

1. Preapplication submittal with review in 10 days to determine main issues and required waivers.
2. Reduced plan content to minimum necessary for review.
3. Public notified of Site Review Meeting and asked to attend and provide comment.
4. Establish clearer submittal requirements for the final site plan.
5. Establish that any comment not responded to within 6 months deems the project withdrawn.
6. Allow the issuance of grading permits with the approval of the initial (preliminary site plan).
7. Agent approval instead of PC approval. ARB reviews projects in Entrance Corridor Districts prior to preliminary approval.

In addition to the August 3, 2011 joint work session, the Planning Commission held two work sessions, the ARB held two work sessions, and staff conducted two public roundtables to develop and discuss potential ordinance amendments. On July 17, 2012, the Planning Commission held a public hearing on the zoning text amendment for the Site Plan Process Improvements (the "ordinance"). The Commission unanimously recommended approval of the ordinance, with four recommended changes noted in the section immediately below.

The proposed ordinance (Attachment A) would completely revise and reorganize the County's site plan regulations.

A. The Ten Key Elements of the Zoning Text Amendment

The ten key elements of the zoning text amendment are addressed below. The first seven elements address the directives from the Board at its August 3, 2011 joint work session with the Planning Commission and the ARB.

- 1. Establish a preapplication process with staff review within 10 days to identify the main issues and the need for any required variations, exceptions and special exceptions.**
The preapplication process established in the ordinance will allow staff and developers to quickly and easily identify major issues with a development proposal and the need for any required variations, exceptions and special exceptions. This is expected to streamline the review process because formal applications, when made, will be more complete. This should also eliminate delays in the review process caused by confusion over requests for more information or the lack of necessary information to review a proposal.
- 2. Allow grading permits to be issued upon approval of the initial (preliminary) site plan.**
The ordinance will allow grading permits to be issued upon approval of the initial site plan. This will shorten the total time required to build out a development and bring the site plan regulations in line with the County's current subdivision and planned development regulations on this issue. Grading permits to allow the construction of streets within a subdivision may occur after approval of the preliminary plat and the road plans. In planned developments, grading permits may be issued upon approval of an erosion and sediment control plan that is consistent with the application plan.
- 3. Establish clear submittal requirements and review procedures for final site plans.**
The current regulations do not provide clear guidance about the final site plan submittal requirements and the approval process. The ordinance will establish clear submittal requirements and a review procedure, which will reduce the burden on the developer and the time required for final site plan approval.
- 4. Significantly reduce the detail required for minor site plan amendments.**
Minor changes to a site plan occur frequently. Currently, a small change to a site plan affecting only a portion of the site still requires all the information for a full site plan showing the entire project. The ordinance will allow the agent to reduce the amount of detail required for a minor site plan amendment by allowing the proposed amendment to focus only on the area of change and allowing the agent to require sufficient information to review only that change.

This change addresses the directive of the Board at its August 3, 2011 joint work session to reduce plan content to the minimum necessary for review. It is staff's opinion that only a limited reduction in plan content is possible for initial or final site plans and that

significant reductions in plan content could result in a reduction in the quality of the resulting developments.

- 5. Provide for an administrative review process solely by the agent.**
Under the current regulations, most site plans are reviewed and acted upon by the site plan agent. However, abutting landowners and members of the Planning Commission and the Board of Supervisors may “call up” any site plan for review and action by the Planning Commission. Because the review and approval of site plans is ministerial in nature, site plans that satisfy the minimum requirements of the County’s site plan regulations and other applicable regulations *must* be approved. Given the ministerial nature of site plans, this process has extended the time for site plan review but has not brought corresponding value to the process. The ordinance will provide that all site plans will be reviewed and administered by the agent and site plans will no longer be able to be called up to the Planning Commission for review and action. However, the agent’s decisions will continue to be appealable to the Planning Commission and thereafter to the Board of Supervisors. This change should reduce the time required to process an application and reduce the Planning Commission’s workload and allow it more time to spend on other planning and zoning matters.

The ordinance will continue the current requirement that staff provide notice to abutting landowners that an initial site plan for the abutting site has been submitted and allow them to attend the site review committee meeting and submit comments.
- 6. Incorporate the Architectural Review Board review earlier in the process.**
The ordinance establishes the role of the ARB at the initial site plan stage. Staff believes that this change will reduce the number of site plan submissions the developer will have to make and reduce the developers’ re-engineering and redesign costs. The role of the ARB is discussed in more depth in Section B, below.
- 7. Establish that any comment not responded to within 6 months deems the project withdrawn.**
Revisions to a site plan that are received long after staff comments have been made requires considerable time for staff to refamiliarize themselves with the project. In addition, the project may need to essentially be re-reviewed in order to ensure that no regulatory changes have occurred since the comments were provided. Only a minimal fee is required for re-activating a project. The ordinance provides the failure of a developer to submit a revised site plan in response to staff comments within 6 months after the comments are provided will cause the initial site plan to be deemed withdrawn. This change will allow staff to be more efficient in reviewing projects.
- 8. Improve organization to make regulations easier for staff to administer and the development community and public to understand and follow.**
This is the first significant reorganization of the site plan regulations since they were adopted in 1980. Although the regulations’ organization has never been ideal, piecemeal amendments over the years have resulted in a body of regulations that are awkward and disjointed. This ordinance reorganizes the regulations in a more logical manner and uses consistent terminology. This reorganization should make the site plan regulations easier for staff to administer and for the development community and the public to understand and follow.
- 9. Use language similar to that used in the Subdivision Ordinance.**
The state enabling authority for site plans is, for the most part, identical to the state enabling authority for subdivision plats. Thus, the ordinance incorporates the provisions required to be included in the County’s site plan regulations under the State Subdivision Law using, where appropriate, the language already within the County’s Subdivision Ordinance. As with improving the organization of the site plan regulations, enhancing the commonality between the site plan regulations and the Subdivision Ordinance will make the site plan regulations easier for staff to administer and for the development community and the public to understand and follow.
- 10. Update the terminology and standards to be consistent with state enabling authority.**
The ordinance will update the terminology and standards to ensure that the site plan regulations are consistent with state enabling authority. For example, the current site plan regulations allow the Planning Commission to grant modifications, waivers and substitutions of certain provisions of the site plan regulations and establishes the applicable standards. The ordinance will replace “modifications, waivers and substitutions” with “variations” and “exceptions,” the terms used in the state enabling authority, and incorporate the standards for variations and exceptions in the state enabling authority. These changes are technical in nature and have no effect on how applications have or will be processed, but they will facilitate administration of the site plan regulations.

B. The Role of the ARB at the Initial Site Plan Stage

At the August 3, 2011 joint work session, the Board directed staff to proceed with a zoning text amendment that would have the ARB review site plans within any entrance corridor overlay district before preliminary (initial) site plan approval. As staff explained at the work session, this approach

would allow the ARB to have input early in the process on issues related to site layout. Addressing these major site design issues early in the process would eliminate or significantly reduce the developer's costs to re-engineer and redesign a site at the final site plan stage.

The ARB is authorized to review site plans "to assure consistency with applicable design guidelines." (County Code § 18-30.6.4(c)). In order to make the finding of consistency, section 18-30.6.4(c) authorizes the ARB to specify its requirements in order to satisfy these seven areas of review: architectural features, the size and arrangement of structures, the location and configuration of parking areas and landscaping, landscaping measures, the preservation of existing vegetation and natural features, the appearance of signs, and fencing. The ARB is also authorized "to impose conditions to assure development is consistent with the applicable design guidelines." (County Code § 18-30.6.4(d)) A site plan cannot be approved by the agent until the ARB has issued a certificate of appropriateness. (County Code § 18-30.6.4(a)(2))

The proposed ordinance establishes the role of the ARB at the initial site plan stage, but does not expand the ARB's authority.

1. **Review the initial site plan to identify requirements and recommendations.** Initial site plans for sites within an entrance corridor overlay district would be referred to the ARB for review. The ARB would review the plan to consider issues related to site layout such as the location, configuration, area and orientation of structures and the location and configuration of parking areas. Because all of the information for this review would be provided on the initial site plan, the developer would not need to submit any other information. The ARB would not consider structure-specific issues at this stage of the process. Upon completion of its review, the ARB would transmit its requirements and recommendations in order to assure consistency with the applicable guidelines. A developer dissatisfied with the requirements of the ARB could appeal the decision to the Board of Supervisors. (County Code § 18-34.2.2(b))
2. **Effect of satisfying the ARB's requirements.** An approved initial site plan incorporating the ARB's identified requirements would be deemed to be consistent with the design guidelines on the issues the ARB considered. (County Code § 18-32.4.2.8(a)). When the developer seeks a certificate of appropriateness at the final site plan stage, the site layout issues considered by the ARB at the initial site plan stage would not be subject to further consideration by the ARB, provided that the final site plan is consistent with the approved initial site plan. (County Code § 18-32.4.3.3(b))
3. **Flexibility at the final site plan stage at the developer's option.** There may be reasons why, at the final site plan stage, the developer needs or desires to have the final site plan vary from the approved initial site plan. The variation may cause the final site plan to no longer incorporate the ARB's site layout requirements. In that situation, the ARB would consider the site layout issues, as well as the other issues it reviews under section 30.6.4, during its review of the application for a certificate of appropriateness. (County Code § 18-32.4.3.3(b))
4. **Effect of the ARB's recommendations.** Recognizing the distinction between requirements and recommendations, the failure of a final site plan to incorporate a recommendation of the ARB made at the initial site plan stage could not be the basis to deny a certificate of appropriateness. (County Code § 18-32.4.3.3(c))

The ARB held a work session with staff on June 18, 2012 to review the proposed ordinance and the ARB's role during the initial site plan stage as described in the first two bullets above. The ARB supported the Ordinance's proposed approach.

The specificity of the ARB's role, combined with the resolution of the site layout issues by the ARB at the initial site plan stage, should streamline the process, reduce developer costs, and increase predictability in the outcomes.

C. Changes Recommended by the Planning Commission

The Planning Commission recommended four changes to the ordinance as follows:

1. **Address bicycle paths separately from sidewalks and other pedestrian ways.**
The ordinance was revised to move improvements pertaining to bicycle paths from section 32.7.2.3, Sidewalks and pedestrian paths, to section 32.7.2.2, Streets and travelways composing the internal road network
2. **Ensure that the Ordinance allows for conditions being placed on grading permits issued after approval of the initial site plan.**
The ordinance was revised to clarify that, in conjunction with their review of the initial site plan, members of the Site Review Committee and the ARB may recommend to the program authority conditions to be imposed on the issuance of grading permits.
3. **Clarify that a member of the Architectural Review Board's (the "ARB") staff will serve on the Site Review Committee, not the ARB itself.**
The ordinance was revised to add a planner to the Site Review Committee whose sole role will be to evaluate the issues relevant to certificates of appropriateness that will be

considered by the ARB. This role is limited only to those site plans for sites within an entrance corridor overlay district.

4. Address the ARB's authority to require changes to the layout of the site.

The ordinance was revised to clarify the role of the ARB in its review of initial site plans. This issue is addressed more thoroughly in the Section B, above.

D. Delayed Effective Date

Staff recommends that this ordinance have an effective date of January 1, 2013. The delayed effective date will allow site plans currently under review to continue to be processed under the current regulations, allow time for staff training on the new regulations, allow new checklists, forms and letters, and online information to be developed, and allow time for staff to communicate with the professionals in the development community to ensure that the new procedures are understood. Preliminary and final site plans submitted before January 1, 2013 will be reviewed under the current regulations and must be approved by April 1, 2013 or be subject to the new regulations. A final site plan submitted after January 1, 2013 will be reviewed under the new regulations, even if its related preliminary site plan was approved prior to January 1, 2013.

Staff does not anticipate that this ordinance will result in the need for additional staff or funding.

Staff recommends that the Board adopt the attached ordinance (Attachment A) after the public hearing with an effective date of January 1, 2013.

Mr. Bill Fritz, Chief of Special Projects, said that this is the zoning text amendment for the site plan process improvements. He said that the goals with this effort are to shorten the approval times, cost of development review, maintain opportunities for public input, maintain quality, and avoid unnecessary and burdensome regulations. Mr. Fritz stated that as part of trying to accomplish these tasks, staff held eight different meetings – a joint Planning Commission, ARB and Board of Supervisors work session, two Planning Commission work sessions, two ARB work sessions, two roundtables, and one Planning Commission public hearing.

He reported that the direction the Board included having a pre-application submittal with a 10-day review period to determine the main issues and require waivers that will also allow staff to identify any information that needs to be submitted in order to process those waivers, and what process will be followed. Mr. Fritz said that it reduces plan content to the minimum necessary for review, and the public is notified at site review meetings and asked to attend. He said that it gives for the first time clear submittal standards for the final site plan. Mr. Fritz explained that staff has a backlog of projects for which they never received responses to comments, and this would establish that after six months of no communication from an applicant, the project is deemed "withdrawn" although they can apply for an extension. Mr. Fritz stated that it allows the issuance of grading permits with the approval of the initial plan instead of having to get final site plan approval, and it is a purely administrative review not a Planning Commission review – with the ARB involved in the initial review of the project.

Mr. Fritz said that they will have a voluntary pre-application process, and within ten days staff will go through a checklist provided to the applicant with any major issues causing concern. He added that it would also help them identify items that need to be submitted such as traffic studies, information on easements, waivers or modifications, variances, etc.

Ms. Mallek asked if there would be a separate fee for that step. Mr. Fritz responded that there would be, but the pre-application fee would be reduced from the larger application fee when the process moves forward. There is no punishment by doing that.

He said that grading permits could be issued upon approval of the initial plan prior to approval of the final site plan, as long as items such as erosion and sediment control plans were included. Mr. Fritz stated that currently it is not possible to get a grading permit until the final plan is signed, and this would allow things that are not significant to the grading plan to be set aside and reviewed after the grading plan is issued.

Ms. Mallek asked if there were protocols for what is significant and what is not. Mr. Fritz responded that those would be identified during the review of the initial plan, and each site review committee member could emphasize specific points to address.

Mr. Rooker said the concern is that you end up with sites that are graded that nothing moves forward on. Mr. Fritz said it is a possibility that an applicant could grade the site and then never get the final site plan approval. That can also happen right now where they get their final site plan approval, grade the site, and then never pursue the final development of the property.

Mr. Snow stated that they would still have to have an erosion control plan to ensure that it is seeded, and to ensure that the grading is being done properly with the right control measures in place. Mr. Fritz added that they would have to put a bond in place to ensure stabilization should they stop the project.

Mr. Rooker said that the downside is there may be more cases where sites are partially graded but never go forward, but there are some positives to this as well.

Mr. Snow noted that it could happen that way now.

Ms. Mallek responded that it would be much further down the road. Mr. Rooker said the applicant would have invested much more in the project at that point.

Mr. Rooker said that where there is an application plan he can understand not running into this problem, but asked what happens when there is grading that turns out not to be consistent with final site plan approval. Mr. Fritz replied that if there are changes between the initial and final that result in the site being different it could cause the project to have to go back through the review process just like today.

Mr. Mark Graham said that happens all the time currently, whereby applicants start a project and then make revisions to it with changes.

Mr. Rooker commented that it is a lot more likely there would be changes between the initial and final site plan than after someone does a final site plan.

Mr. Fritz said that staff does not typically see significant changes between a preliminary and final site plan. He also said that staff sees the issuance of grading permits at the time of initial approval as bringing the site plans more in line with other types of projects, and currently with a subdivision plat you can start grading the roads once there is preliminary approval. He explained that with a planned development approved with an application plan, you can grade as long as that grading is consistent with the application plan. Staff is trying to make site plans more like planned developments and subdivisions.

He stated that the next major change is that it establishes clear submittal requirements and review procedures for final site plans, a process that has always been a little bit disjointed and pretty complex for people to understand. Mr. Fritz said that these modifications would make that system much improved for everyone.

He pointed out that it significantly reduces the detail required for minor site plan amendments, and the focus would be placed exclusively on where the area of the change is occurring instead of having to show the entire site. Mr. Fritz noted that this would make it easier for applicants to prepare their site plan amendments and easier for staff to approve site plan amendments – as well as reducing the possibility for changes not to carry over between plan versions.

Mr. Fritz explained that the review process would be purely administrative, and there would be no more Planning Commission review of site plans. He said that the only way they would review it is if the project was denied or had conditions placed on it that the applicant found objectionable, at which time it could be appealed. Mr. Fritz said that the ARB is involved earlier in the process, and that should avoid the problems that arise whereby the preliminary gets approved and the first time the ARB comments is at the final stage. He stated that the process establishes comments not responded to within six months as deeming a project “withdrawn,” but there is an extension process at the applicant’s request.

Mr. Fritz commented that there is a general improvement in the organization of how the whole ordinance is laid out, and it makes it much easier to follow. He said that it also uses language similar to that used in the subdivision ordinance and updates the terminology and standards to be consistent with the State-enabling authority. Mr. Fritz stated that there have been a lot of changes to State Code, and the site plan provisions have not really undergone any significant alterations in quite a long time. Staff have cobbled things together, but there has been no comprehensive rewrite of the provisions of Section 32 that really brings it all in line with the State Code which has actually gone on for 20+ years. This re-codifies it, brings it in line, and makes it easier to read. He added that it is a technical change, not a substantive one.

In terms of the Architectural Review Board, Mr. Fritz explained that the process does not change the ARB’s authority, and there is no alteration of what they can do – but this brings them into the review process earlier, trying to minimize conflicts that now occur at the end. He said that under the new process, the ARB would review the plan to consider issues related to site layout such as location, configuration, area and orientation of structures, and the location and configuration of parking spaces. Mr. Fritz said the ARB would not be considering structure-specific issues at the initial stage, such as the window treatments, color of building, roofline, and other elements.

Mr. Rooker asked if the full ARB would consider the application at the early point, or just a member of staff sitting on a site review committee.

Mr. Fritz read an email that was sent attempting to address that issue: “A new site plan review process is proposed and incorporates the ARB review earlier in the process than is currently required. The first step of the process is the initial site plan. The ARB review of the initial site plan as we have discussed is: design planner reviews initial plan and sends comments to the ARB; ARB has opportunity to make additional, alternate comments; design planner updates comments with ARB additions, alterations; comments are sent to lead planner for site review meeting. The scope of the initial review is limited to three areas: 1) the location, configuration, area and orientation of structures under Section 30.6.4.(c)(2); 2) the location and configuration of parking areas and location of landscaped areas under Section 30.6.4.(c)(3); and 3) to identify the existing trees, wooded areas and natural features that should be preserved under Section 30.6.4.(c)(5).” He clarified that it would be a staff review, and at their last work session the ARB determined that the design planner would provide comments to them – and they in turn can provide information back to the design planner.

Ms. Mallek emphasized that “they won’t be together to hear and discuss this,” which is very different when it comes to people’s understanding. She stated that she is very concerned about this.

Mr. Snow said that his concern is that it becomes a moving target, with some staff members saying they like certain aspects of a plan and others deciding later that they don't. He asked what safeguards are in place when the applicant thinks he has fulfilled the requirements, and then all of a sudden the target is moved.

Ms. Mallek said that is resolved by the fact they are not really allowed to look back at it, which is another concern.

Mr. Thomas expressed concern about Section 32.4.2.2 and asked why the ARB needed to be included from that point anyway.

Mr. Greg Kamptner, Deputy County Attorney, explained that the ordinance has evolved over the months, and the design reviewers' role, as Mr. Fritz described, is correct – but the ARB itself would be taking the action that identifies the requirements.

Ms. Mallek said the ARB is being knocked out of four of the seven review parameters.

Mr. Kamptner stated that the reason their role at the initial site plan stage is limited is because staff wanted the ARB to jump in at that stage to deal with the "big picture issues," the general site plan issues, because that kind of information is provided on the initial site plan – and at that stage the applicant does not need to submit any other information. He said that the general requirements for the contents of the site plan provide the ARB and the design planner all of the information they need to deal with the major site layout issues, and the more detailed information comes after the initial site plan. Mr. Kamptner said at that point the developer fully engages in the application for the certificate of appropriateness, and under the ARB's regulations there are submittal requirements at that stage that will require the developer to provide information that deals with landscaping-specific issues and building-specific issues such as window treatments, roof lines, and architectural styles.

Mr. Kamptner said staff wanted the ARB only to do the big things early, and part of the reason for that is staff identified that there are redesign and re-engineering costs that developers are experiencing under the current process. The major site issues come to the ARB after the initial site plan has been approved.

Ms. Mallek stated that she understood that, but one of the things this proposal does not allow the ARB to address in phase one is the size of a building. The impact to the corridor from buildings can be very different in terms of the amount of screening needed – and yet they are being required to make a decision on location, parking and natural features without having the ability to know what it is going to be.

Mr. Rooker said the scope of the review of the ARB is stated to be to consider "the location, configuration, area and orientation of structures." He stated that the ARB already has that authority and the question is when they exercise it, adding that it is better for the applicant to provide that input early rather than late. Mr. Rooker said that his concern is similar to Ms. Mallek's with the language stating, "neither the mass, shape, bulk and height of structures...nor the specific types of landscaping shall be considered by the Board." He asked how they could consider the location, configuration, area and orientation of structures without considering the mass, shape and bulk of them.

Mr. Fritz emphasized that the ARB would know the size of the building because the site plan requires that the location footprint be shown on the site plan, and that the maximum height be shown on the initial site plan.

Mr. Rooker asked why it was being excluded here then. Mr. Fritz responded that during the initial phase they would have the opportunity to look at the location of the structure, and during the final they would be dealing with the treatment of that building and its architectural style.

Mr. Rooker reiterated his concerns about not considering mass and shape when considering configuration, area and orientation of structures.

Mr. Boyd said in the case of the Wegman's shopping center, the applicant has gone back and requested site plan changes – because when developing a center like that you do not know who your tenants are going to be, and thus you do not know the size, shape, or orientation of the building. He stated that the Planning Commission and ARB are not elected bodies and are not the final decision makers, so their opinions about color, design, landscaping, etc. require another process for the applicant to have to come back to the Board and appeal. He said that he would like to see that get all done up front so that when it comes to this Board, the Board makes the final decision. The Board listens to the applicants' opinions, listens to the public opinions, and then makes a decision – and after that move forward.

Mr. Rooker said the change for Wegman's was a zoning change, not a site plan change. There was an approved application plan for that project and the applicant needed a zoning change.

Mr. Davis clarified that whatever is delegated pursuant to the law, and consistent with the Sinclair case, are ministerial decisions that can be delegated to the staff and/or the ARB. He said that the ARB is a decision maker in these types of processes, although they are subject to an appeal if the applicant appeals the ministerial decision of staff or the ARB.

Mr. Rooker said if you want to increase the cost of applications, start having all of the decisions go through the Planning Commission and Board of Supervisors.

Mr. Boyd said he do not want them to go through the Commission and ARB more than once.

Mr. Rooker stated that the goal here is to involve the ARB earlier in the process, and the scope of their authority has not changed under this proposal. He emphasized that the recommendation from staff is to make this process less onerous for the applicants by allowing them to get the feedback from the ARB on things such as location, configuration, etc. at the initial site plan application stage instead of late in the process when bringing a site plan forward.

Mr. Snow said that his understanding is that once the decision is made by staff that the buildings are correct and properly oriented, then the ARB addresses the window treatments and signage later.

Mr. Davis pointed out that it is not just a staff person's decision; it is subject to a decision by the ARB. He said the staff person would be involved in the site plan review meeting, but that recommendation and comments would go to the ARB – which would meet as a body and decide on whether they approve of the location, configuration, area and orientation of structures in the initial plan.

Mr. Rooker and Ms. Mallek said that needs to be spelled out in the ordinance.

Mr. Rooker said it wasn't clear to him whether the ARB as a whole would still be making the same decisions it makes now, or whether it would be a staff person.

Mr. Davis pointed out that under Section 32.4.2.2.(b)(1), it states: "The Architectural Review Board shall review the plan for consistency with the design guidelines. The scope of the Board shall be to consider the location, configuration, area and orientation."

Ms. Mallek said the Planning Commission changed it verbally to say "one ARB person and staff."

Mr. Davis emphasized that it is not in the ordinance and the ARB cannot act except as a body.

Mr. Kamptner stated that staff realized that the ARB needs to take the action, and the effect of their decision is that it puts the issues of area, orientation and location aside. He said that if the initial site plan is approved and the final site plan comes in and is consistent, the decision on those particular ARB-related issues that are now off the table. The developer can now be confident that when it comes before the ARB for a certificate of appropriateness that those issues are resolved, and so the risk of redesign and re-engineering those big site layout issues [is] no longer in play.

Ms. Mallek said she is fine with that as long as there was a proper decision at the first phase, and it would make a lot more sense to have a phase one certificate and then a phase two, so it is clear there will be some definitive action. She added that there is also confusion between the language of "recommendations" and "requirements," as well as "ARB" and "staff" as the words for both seems to be interchangeable. In addition there is nothing in the proposed ordinance regarding the ARB's current authority where there has to be agreement in the first phase before the final site plan can be done.

Mr. Kamptner stated that in Section 32.4.2.2.(b)(3), the heading is "Transmittal of Requirements and Recommendations," and that subsection directs that the ARB is to send its requirements – the site layout issues that need to be addressed in order to satisfy the design guidelines – to the agent, and are imposed as part of the agent's review and conditional approval of the initial site plan. He said that the ARB can also present the agent with recommendations, but their requirements are stipulated by enabling regulations and design guidelines – and they must determine what has to be satisfied in order to find consistency therein. Mr. Kamptner added that the decision of the ARB can be appealed to the Board of Supervisors, just as developers have under current procedures.

Mr. Rooker said it is important to clarify that the ARB must act as a full body.

Mr. Davis pointed out that the requirements have to be incorporated into the initial plan, and then at the final site plan stage the ARB still has to issue a certificate of appropriateness. He said that the only things that are off the table at the final approval of the certificate of appropriateness are those items related to location, configuration, area and orientation. Mr. Davis stated that in the final certificate of appropriateness decision, they look at mass, shape, bulk, height of structures, etc. It does differentiate at what point in the process they take those under consideration.

Mr. Rooker noted that it helps that the applicant can see the ARB's recommendations early in the process. He added that he thinks that is a good idea.

Mr. Snow said that this would save significantly on the applicant's expenses. He thinks it could help expedite the process and make it less expensive to get the project started.

Ms. Mallek said she supports that but does not want to subtly or accidentally dilute an important part of the process with the ARB.

Mr. Rooker said that Mr. Morgan Butler had sent out some comments, but they seemed to be comments for clarification rather than substantive changes. Mr. Rooker said he supports those clarifications. For example, under the definition for "requirements", Mr. Butler clarifies that it is "special use permits and conditions thereof". Mr. Butler also added the language: "[The term shall also include all changes to initial site plans required by the site review committee or by the architectural review board pursuant to sections 32.3.2 and 32.4.2.2.](#)" Mr. Rooker said it makes sense to include those requirements for clarification purposes.

Mr. Boyd stated that he would like for Mr. Kamptner to review those comments.

Mr. Kamptner said that he and Mr. Fritz had discussed the comments and agreed on most points.

Mr. Kamptner said that in the definition section, regarding Mr. Butler's suggestion that special use permits include the reference to "and conditions," conditions are part in parcel of the special use permit and thus did not need to be expressly spelled out there. He said that in the initial site plan submittal requirements, staff does require the initial site plan to not only list the special use permits but any conditions – and that is a direction to the developer that they need to identify the special permit but also to provide the conditions on the site plan.

Ms. Mallek said it seems harmless to include that language.

Mr. Kamptner said that regarding Mr. Butler's suggestion to add the sentence to the end of the definition of "requirements," he and Mr. Fritz felt the regulations already require the site review committee and ARB to identify the requirements and transmit them to the agent, who then informs the developer what is required. He stated that in this way, the communication from the site review committee and the ARB is to the agent, and the agent directly communicates the requirements in order for the applicant/developer to obtain initial site plan approval. Mr. Kamptner said that staff does not feel that needs to be in there, and there is additional concern that the language could be construed to expand the meaning of "requirements" to beyond the applicable regulations. He stated that because these are ministerial acts, whatever they are requiring must be in the regulations. Staff does not think it is necessary, and thinks it could be interpreted in a way to expand or confuse the definition of "requirement."

Mr. Rooker said he does not know that it hurts to point out that the "conditions" are also requirements. It seems that this would help a lay person to understand it.

Mr. Kamptner said that as far as Mr. Butler's comment regarding proposed additional language to Section 32.4.2.2(a) pertaining to changes to the initial site plan, staff found the language to be redundant since the site plan must satisfy all of the requirements – and that is also addressed in Section 32.4.2.5, which allows the agent to approve the initial site plan only if the applicant has satisfied all of the requirements.

He said that regarding Mr. Butler's suggestion about (b)(1) of that same section for "should" to be changed to "must," staff felt that "should" was acceptable because this subsection was merely describing the ARB's scope of review. The ARB will need to determine whether something is to be required in order to satisfy the regulations under subsection (b)(3).

Mr. Kamptner said they have already addressed his comments regarding "mass, shape, bulk, height."

Mr. Rooker stated that his question on that was really never answered, and this was a practical question for the ARB – "How do you consider area and orientation, configuration, et cetera, without considering at all the mass, shape and bulk?"

Mr. Fritz clarified that the area is the place on the land, and the location is the orientation.

Mr. Rooker said as long as that is clear to the ARB that is fine, but it is not clear to him as he reads the language now.

Ms. Mallek commented that it is very important to be consistent from project to project, and that there is perception from the community that it is being done all the time.

Mr. Rooker said that he wants someone like Ms. Margaret Maliszewski who works on these things regularly to state that they understand what the ARB would be considering in step one and step two.

Mr. Thomas said that the words "location, configuration, area and orientation" make sense to him.

Mr. Rooker agreed, but questioned how they would all be considered without considering the mass, shape and bulk. He said that part of this is the term "area," and whether it refers to the area occupied by the building or the area it is located in – and if it is the latter, he could understand where mass is something different.

Mr. Davis stated that this is an important issue, and staff should provide some examples of what that means so that everyone is comfortable with the distinctions.

Ms. Mallek commented that in addition to the images, there needs to be something written down so that this issue does not have to be rehashed in the future.

Mr. Boyd commented that the Board's discussion has jumped ahead of the public hearing.

Mr. Kamptner said that Ms. Maliszewski said the language was fine but did not elaborate on the particulars that are of concern to the Board.

Mr. Snow asked if Ms. Maliszewski could provide some input after they get through the public hearing portion.

Mr. Foley responded that staff could try to provide Ms. Maliszewski with their concerns so that she could comment.

Mr. Kamptner said that in subsection (b)(2), Mr. Butler had suggested adding some language, but staff felt that the other information required to be submitted with an initial site plan as set forth in sections 32.5.3.5.4 and 32.5.3.5.5 are not germane to the ARB's review. He added that it is really the initial site plan drawing itself and the related information that is required under Section 32.5.2 – the initial site plan – that contains all of the information necessary for the ARB's review at that stage. One of staff's goals was to not require the developer to have to submit any additional information related to the ARB's review.

He said that in subsection (b)(3), the additional language of having the authority require changes to the initial site plan is not necessary because the ARB transmits their identified requirements to the agent – and the agent is the one who acts with the developer.

Mr. Rooker said the suggested language is: "The architectural review board's review shall be based on the initial site plan and the developer shall not be required to submit any other information [not required to be submitted with the initial site plan](#)." In his opinion what is being suggested to add there is an important point of clarification, and asked if the initial site plan by definition includes everything in the package that is required to be submitted to make an application.

Mr. Kamptner responded that it is all part of the application.

Mr. Rooker said they are talking about the initial site plan, not the application, in terms of this submittal requirement. It does not make sense to him when he reads that language in isolation because it means that the developer is not required to submit anything other than his initial site plan.

Mr. Boyd stated that developers do not know when they are going in to the initial site plan exactly what kind of tenants they are going to have. The goal here is to be able to get conceptual designs without having to come up with a code of development. The Board has seen project after project that comes in with a code of development that so locks them in that the Board has to go back with zoning changes because tenant A wants something different than what they thought they might be able to get for that particular thing.

Mr. Rooker said that was not his point, and what he is talking about is not a substantive change as it does not require anything additional from a developer. This is just a point of reference to what the Architectural Review Board's review is based on. He said that by adding, "not required to be submitted with the initial site plan," it is making it clear that the developer has to submit what is required with the initial site plan – and that they can base their decision on those submissions. He does not think the initial site plan includes the application by definition.

Mr. Kamptner said that clause can be changed.

Mr. Boyd stated that it is different depending on the application.

Mr. Rooker said he is not talking about that. He thinks this language needs to be included that they are not somehow undercutting the requirements of the application process.

Mr. Davis responded that staff is fine with that, and what they were trying to accomplish here is to solidify that this was not an opportunity for requirements beyond what was stipulated in the initial application plan to be brought into the process at that time. At that point it is premature to consider extraneous factors, but clearly they did want all information that was required as part of the application plan to be available and to be considered by the ARB.

Mr. Rooker said it may be redundant, but it also adds clarification.

Mr. Davis and Mr. Fritz said it was acceptable to include it.

Mr. Kamptner said that with subsection (b)(3) staff had a similar comment to Mr. Butler's recommendation regarding the added language at the end. He said that the process already provides for the ARB to transmit the information to the agent.

Mr. Rooker asked where that was required now.

Mr. Davis responded that it was found in 32.4.2.2.D(3), on page 42 at the top.

Mr. Kamptner said that in Section 32.4.2.5.C, the proposed additional language is redundant because the same subject matter is covered immediately in the line above, which provides for those conditions which must be satisfied prior to approval of the final site plan.

Ms. Mallek said that she does not have enough understanding of the consequences of the early grading permit to feel comfortable with it unless the same process is going to be followed through before the grading permit is issued.

Mr. Rooker stated that the language in "C" deals with the initial site plan requirements, and the language added deals with the issuance of a grading permit – and he understood those to be two different things.

Mr. Kamptner explained that the site review committee and the ARB would be providing recommended conditions to the agent, which will be forwarded to the Program Authority – and the Program Authority is the County Engineer, who issues the grading permits.

Mr. Rooker asked if he is saying there should not be a reference to grading permits here, and if so, where is the authority to issue conditions.

Mr. Davis explained that that's under the Water Protection Ordinance and is a separate process from the site plan although they are sequenced. He said that it is in the ordinance that there will be recommendations made to the County Engineer who will be issuing the permit and that he will consider the recommendations being made by the site plan review committee and/or the ARB.

Mr. Mark Graham, Director of Community Development, added that within the Water Protection Ordinance, there is a requirement for approval of a site plan prior to issuance of a grading permit, and that is where the initial site plan becomes important. Without approval of that initial site plan, he said, staff cannot issue a grading permit. He also noted that with the initial site plan, it could be "conditionally approved," and the ARB may come back and say there is not enough detail for them to determine whether an early grading plan will protect natural features – and request that a grading permit not be issued prior to approval of the final site plan.

Ms. Mallek asked if that could happen. Mr. Graham responded that it could very easily happen, as it could be a condition of the ARB's approval of the initial site plan – that no grading permit will be issued prior to the final site plan.

Mr. Graham then apologized for the complexity of the ordinance, and explained that this dates back to the original economic vitality roundtables. One of the things staff clearly heard from the development community is the need to be able to create early grading permits to be able to create pad-ready sites, to be what they felt was competitive with other markets. He added that as part of doing an early grading permit, staff recognized that if it did not bring the ARB into the process early, they would effectively be eliminating them from consideration of important issues – which is clearly undermining some of their authority. Mr. Graham said that the choice with having early grading permits is to get the ARB into the process, but if you do not you can hold off to a final site plan.

Mr. Rooker said this really goes to what is in the letter, and if it wouldn't be the case that they would inform the applicant of the conditions that would exist in connection with a grading permit issuance, then it could be left out. His question then would be when the applicant is informed of what those conditions are, if not in this letter.

Mr. Fritz replied that it would go out in that letter, and the agent's action based on the comments from the site review committee would include any conditions that would be required for either issuance of an early grading permit and what is required for the final site plan submittal.

Mr. Rooker commented that this would be for the applicant's benefit. There are also some conditions that apply to the issuance of the grading permit that are not in the letter, and he thinks that both should be in the letter.

Mr. Thomas asked about the role of the site review committee, and whether they could authorize early grading.

Mr. Fritz explained that they are not unilaterally authorizing it, but are saying what needs to be done in order for early grading to occur – and the simplest would be an erosion and sediment control plan, with the most complicated being not granting the grading permit until final site plan approval. He said that the latter is what is in place today, and it would become the worst case scenario.

Mr. Rooker said if he were an applicant, he would want a letter explaining what the requirements were.

Mr. Thomas said that made sense, but he is trying to save time.

Ms. Mallek asked if there is already a well-defined protocol, so staff isn't in the position of who gets to go fast and who takes longer. She said that flexibility could mean future headaches for the staff, along with bad perception from the public.

Mr. Fritz responded that staff is asking for delayed implementation so they can develop those protocols, but based on what they have historically been doing with site review meetings, they are pretty certain most plans could get a grading permit. He said that it is pretty obvious which are which, but the difficulty with writing parameters is that every site is unique. Most sites are going to qualify for an early grading permit in our opinion.

Mr. Kamptner stated that the comments on Section 32.4.2.8 suggest three proposals, with the first two related to excluding the RA district from the early grading permit – and he and Mr. Fritz feel that if an initial site plan has been approved, regardless of the zoning district, it is slated for development. He said that staff does not recommend excluding the RA district.

Mr. Fritz said that staff saw no distinction between a rural area site plan and development area site plan. The only way a site plan would have been approved is if the proposed use has already been approved by right, by special permit or another action. It has already been decided that the property is

going to be developed, so staff does not see why the County would penalize rural area and treat them any different than it would development area. He emphasized that the decision to preserve a particular property in the rural areas is made at a zoning stage, not at a site plan stage.

Mr. Kamptner said that the last comment in that subsection was similar to the one previously discussed about adding the language with reference to the grading permit. He stated that the comment regarding subsection "C" would have the same solution in terms of adding language for clarification.

Mr. Fritz reported that the idea behind the effect of satisfying the ARB's requirements is that once a decision is made, the applicant can rely on it and move forward; although there is some flexibility and if the applicant decides they want to change it they have the opportunity to do so. He said that the ARB's recommendations would be just like any other recommendation, but would not be considered a factor in the issuance of a certificate of appropriateness later. They either meet the requirements of the ordinance or they do not. Mr. Fritz added that they may have to do different treatments to the architecture of the structure to address concerns, so they are given the information up front so they know what the recommendation is and can adjust accordingly.

Mr. Fritz noted that the Planning Commission made some recommendations to amend the ordinance, and staff has incorporated those – treating bicycle paths differently than sidewalks; allowing for conditions to be placed on the grading permit; and changing the ARB's authority.

He said that staff is asking for the Board to approve this, but delay the effective date, adding that this would allow current projects to continue on and be completed in a "known process" – as well as allowing staff to prepare all of the letters and checklists previously discussed and conduct training for staff and constituents. Mr. Fritz stated that staff is recommending that the Board adopt the proposed ordinance with an effective date of January 1, 2013.

Mr. Snow asked how much time will be saved by implementing the new procedures versus what is being done now.

Mr. Fritz responded that staff has been hesitant to include specific timeliness because they do not know what the Board is going to do, or how it wanted staff to proceed. By County ordinance and State Code, he said, staff has 60 days to process an application, but it does believe it will reduce the application time period.

Mr. Snow commented that he thinks it will help significantly reduce the cost of these projects also.

Mr. Fritz said that staff feels there will be savings in staff time and in the applicant's cost to prepare a project, because the initial submittal will go to site review committee members and will be reviewed – and at that point it will be either approved or denied. He explained that the current process is it goes to the site review committee, then revisions are done and then reviewed again before an action is taken. Staff would be cutting out one round of review by going to this process, and they think that will be a staff-savings and, also a reduction in the work that the applicant needs to submit.

Mr. Rooker stated that site plans would not be called up at the Commission level, which is a significant time saver. He added that it is an administrative function, not a discretionary function, and the public often gets the impression that the Commission can stop a project at the site plan point but they really cannot. It is a tremendous savings for applicants to eliminate site plans going to the Commission. Mr. Rooker said that by having the ARB weigh in earlier in the process, they will avoid having cases where something gets to the point of certificate of appropriateness and they haven't looked at it – but suddenly they want to make changes that would affect the initial site plan had they weighed in at that point, given the chance.

Mr. Fritz mentioned that when items come in with a site plan number, waivers and modifications – such as waivers of parking standards – still fall under the normal Board process until there is a new approach developed.

Mr. Thomas commented that the time saved by bypassing the Commission would be taken up by the ARB having an opportunity to review the final site plan. Mr. Fritz responded that staff does not feel it would, because staff has not increased nor decreased the ARB's authority – they have simply changed when it is exercised.

Ms. Mallek said she hopes there would be an attitude on the part of the applicants that they now know what the requirements are, and if they are going to do the project they just step up and do it – rather than having everything be a negotiation and an attempt to get around requirements.

At this time, the Chair opened the public hearing.

Mr. Neil Williamson, of the Free Enterprise Forum, addressed the Board, stating that he has attended all eight of the work sessions, roundtables and discussions. When this first came up he raised concerns about a "super ARB" looking at initial site plans. Mr. Williamson said his concerns were alleviated when it was said to be a staff person moving forward and not the ARB – and they actually said that in their meeting. He stated that he understood the legal reasons behind this, but he is confused as to whether the ARB meetings will be open and public since they are required to take action as a body. Mr. Williamson asked if the meeting would have to be advertised, and how it fits into the 60-day state mandate. He said that he was very concerned about the ARB being in the position that it is in, and not having sunlight – which is the best disinfectant – for everyone to see what is going on.

Mr. Williamson stated that the vast majority of the ordinance is really helpful, and he thinks the intent of having the ARB in the front end of this is good – but the implementation is problematic, and he is asking to have the ARB removed from this entirely. He said that there could be an ARB staff member on the review committee, and they would be allowed to voice the policy of the ARB without hidden email meetings or a delay in the 60-day process. All of a sudden the ARB is becoming the super-ARB that he warned about over a year ago. Mr. Williamson thanked the Board for their positive and good discussion of this issue.

Ms. Valerie Long addressed the Board and thanked them for their thorough discussion of the issues, adding that the success of development projects is often affected by whether they can navigate through the site plan and ARB processes in a reasonable amount of time. She said that she has seen too many projects get mired down in those delays, and she commended the Board for issuing this directive to staff and staff for working diligently with the development communities to help improve the process. Ms. Long said that the intent is incredibly worthwhile, but like Mr. Williamson she has concerns about how it will be implemented. She suggested that the Board consider a commitment to “check in” with the development community at six months and one year after implementation of the ordinance, to see how it is going and see if any of the fears expressed have materialized – and if they have, fixing the process. Ms. Long said that she is concerned about how to fit a round of ARB reviews and site plan committee into 60 days, but she does not want those concerns to overshadow the many positive benefits of the ordinance. She added that the ARB has so much discretion right now, even with by-right projects – and that discretion could completely undermine the legality of a by-right project.

Ms. Mallek asked her to clarify what she means by undermining the legality of a by-right project. Ms. Long explained that an example would be a case in which a building has been permitted without limitation under the underlying zoning and the approved zoning application plan and the ARB recommends a smaller size so it fits in better with the Entrance Corridor.

Ms. Mallek asked for a specific instance in which this has occurred. Ms. Long replied that there have been issues where the ARB has, with by-right projects, objected to the size and scale of buildings.

Mr. Rooker said that does not change with this ordinance, because the ARB’s authority is not being changed. The issues they are allowed to consider in issuing a certificate of appropriateness are not changing; the only change here is that certain of those issues they will look at earlier, rather than later.

Ms. Long stated that by bringing the ARB’s role to the forefront, that enhances their authority in a significant way. It takes a by-right project, and all of a sudden there is so much more discretion involved on the front end, not just the back end.

Mr. Rooker said it is the same discretion, and it seems Ms. Long is implying that because it is at the front end it has some additional weigh.

Ms. Long responded that it absolutely does, especially if you are a landowner trying to get a project done and bring a prospective business to the community. She said that she has had plenty of clients walk away in those situations if they perceive the project is going to be a challenge because of the ARB’s review. Ms. Long added that the discretion of the ARB has evolved over the last few years, and it is now much broader than just reviewing the architectural design of a building and the colors. It is almost more that they’re part of the site plan review board, and this moves that even more in that direction.

Mr. Foley noted that it also allows an early grading permit.

Ms. Long said that if the ARB has that much discretion, it might undermine the benefit of getting an early grading plan.

Ms. Mallek said once the protocols are laid out, it will be a lot better.

Mr. Rooker asked who has the authority to issue the grading plan. Mr. Fritz responded that it would be the Program Authority, and Ms. Mallek said it would be someone like Glenn Brooks.

Mr. Rooker emphasized that the ARB does not have the authority to issue or not issue a grading permit.

Ms. Long said the ARB might decide they don’t have information to support an early grading plan and thus could add as a condition of approval of the preliminary site plan that no grading permit be issued.

Mr. Fritz said the site review committee could do that.

Mr. Rooker said that the site review committee could do that under today’s policy.

Ms. Long stated that it could take some time for everything to work out, and the intentions are good, but it is important to revisit the ordinance in six and twelve months.

Mr. Rooker said that this intends to make the process more efficient while retaining characteristics to have quality projects in the community.

Ms. Long commented that that is a very tough balance.

Mr. Boyd commented that he is concerned that the ARB has that much discretionary power, and perhaps the Board needs to revisit their purview.

Mr. Thomas agreed.

Dr. Charles Battig said that he empathizes with the Board members regarding their confusion over the terms "area" and "location," adding that area is usually associated with square footage. He suggested that the word location could be used instead, and the language needs to be cleaned up.

Mr. Thomas asked if the word "location" made it more specific, and "area" referred to general area of where it is going to be.

Mr. Fritz stated that "area" refers to square footage and would show the location and footprint, so you would know where it is, its orientation, its size, and its maximum height.

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

Mr. Rooker said there are two different things going on. Mr. Fritz was referring to the information available – but this section of the ordinance talks about what the ARB can consider in its first round of comments on a project. He said that in one place it says they "shall consider the area," but in another place it says they "cannot consider the mass." Mr. Rooker stated that he would have difficulty if he were on the ARB to distinguish between those two things.

Ms. Mallek asked if all of these terms are in the definitions.

Mr. Davis stated that area is not a defined term, and he thinks staff needs to do some more work on this to dispel any ambiguity.

Mr. Rooker commented that staff did a terrific job with this ordinance, but he agrees there needs to be clarification on a few terms.

Ms. Mallek agreed.

Mr. Foley said that staff understands the need to work on the language.

Mr. Snow asked if the Board needed to move for deferral.

Mr. Davis said that staff needs to bring it back, but the question is whether staff needs more than a day – and it could be brought back to the day meeting in October. It is not going to affect the implementation schedule.

Mr. Boyd then **moved** to defer consideration of ZTA-2012-0009 to October 3, 2012. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Dumler.

(At 12:05 p.m., the Board took a brief recess, and reconvened at 12:13 p.m.)

Agenda Item No. 13. Regional Legislative Program, David Blount.

Mr. Blount summarized the following first draft of the 2013 Thomas Jefferson Planning District Legislative Program:

**Thomas Jefferson Planning District
2012 Legislative Priorities**

(Counties of Albemarle, Fluvanna, Greene, Louisa and Nelson & Charlottesville City)

SECONDARY ROAD DEVOLUTION

- We are strongly opposed to any legislation or regulations that would transfer responsibility to counties for construction, maintenance or operation of current or new secondary roads.

STATE/LOCAL FUNDING and REVENUES

- The state should honor its funding obligations to localities and resist cost-shifting to localities.
- Facing continuing budget woes and funding cuts to localities, the state should relax state requirements or provide flexibility for meeting requirements, and not further restrict local revenue authority.
- The state and localities should examine contractual relationships for services required by the state.

PUBLIC EDUCATION FUNDING

- The state should fully fund its share of realistic costs of the Standards of Quality (SOQ) without making formula changes that shift the funding burden to localities.

CHESAPEAKE BAY TMDL

- The state and federal governments must provide major and reliable forms of financial and technical assistance for comprehensive water quality improvement strategies.
- We urge fairness in applying requirements for reductions in nutrient and sediment loading across source sectors, and accompanying authority and incentives for all sectors to meet such requirements.
- We will oppose actions that impose monitoring, management or similar requirements on localities without providing sufficient resources. Any expansion of the Nutrient Exchange Program should be contained within and be relevant to a particular watershed.

TRANSPORTATION FUNDING

- We request separate and dedicated state revenues for all transportation modes.
- The state should restore formula allocations for secondary/urban construction and provide stable and increasing dollars for cities and towns to maintain roads within their boundaries.

LAND USE and GROWTH MANAGEMENT

- We request additional tools to manage growth without preempting or circumventing existing local authorities in this area.
- We support making the use of urban development areas optional for localities.

COMPREHENSIVE SERVICES ACT

- We urge a better partnership between the state and localities in containing the costs of CSA, and in balancing CSA responsibilities. We support additional state funding for administering CSA, as localities foot the bill for most of these costs.

Mr. Blount said that the above list of priority items were contained in the 2012 program along with ongoing concerns. He reported that he would be meeting with the local governing bodies here in September to get input and recommendations into the program, and would be drafting the program for review in the beginning of October – with final approval slated for November.

Mr. Blount said that the Mayors and Chairs CEOs group, which is composed of the chief elected and appointed officials from each of the local governing bodies in the region, has met twice recently and the issue of mandates and cost-shifting has boiled to the top very quickly. He stated that there is a need to educate the citizens about the actions that take place in Richmond that impact local governments. At the legislative forum this fall they will try to focus education of legislators on unfunded mandates and cost-shifting.

Mr. Blount noted that there is an existing priority position having to do with state budget and local revenue authority that speaks to the state meeting its funding obligations. He thinks there is some opportunity now to enhance and expand on that position.

Mr. Rooker said that the Board passed a resolution and said that they would want to follow the specific wording in the resolution.

Mr. Blount agreed and said they would seek the restoration of those reductions.

Mr. Davis noted that it would need to be in the form of a budget amendment.

Mr. Blount explained that for the last few years there have been budget amendments submitted, and in the current biennium there has been some pullback as to the “clawback” the state would get. He said that there is a six-year financial forecast at the state level with the introduction of each biennial budget, and by 2017-18 it indicates the program would be phased out by that time. Right now, he said that he thinks it is the thing to try to do to make that happen.

Mr. Foley said that the resolution came from VACo, so the question is whether they are planning to sponsor something.

Mr. Blount responded that VACo and VML had probably done this jointly, and are asking localities to either write a letter and/or pass a resolution and send it to the Governor. He confirmed that they would be preparing an amendment.

Ms. Mallek stated that the general feeling at the Mayors and Chairs meeting was that VACo has been way too gentle with the legislature, and localities felt the need for a much stronger position. She also said that Mr. Blount had provided examples from other counties around the state regarding changes they had made in their tax rates to accommodate the devolution, and the Mayors and Chairs group is hoping to have visual aids such as posters that enumerate those facts.

Mr. Blount said that the aid to localities item would show a \$300+ million clawback by the time the six-year period is done, but over the last three years state budget revenue surpluses have exceeded \$600 million.

Mr. Rooker noted that the state ended the last fiscal year with an almost \$1 billion surplus.

Mr. Blount reported that the top legislative priority last year pertained to state devolution of secondary road responsibilities, which the General Assembly did not move forward. However, he said

it would remain an important issue and he might try to mesh that position in with the transportation funding position – and there appears to be some pressure building to try to address that this year.

Mr. Blount mentioned that the TJPDC legislative forum is scheduled for Thursday, November 29, 2012, and would be an evening event, with a focus on educating legislators about the impacts of cost shifting and unfunded/underfunded mandates.

He reported that he has worked with staff on legislative priorities, and he would incorporate the new ones into the regional program.

Mr. Rooker commented that the problems of funding secondary roads are two-fold: maintenance, which has been discussed as being put on localities; and the loss of secondary road construction funds, which are funded by the state only from cell phone tower rental fees – going from \$5.5 million per year to \$300,000 per year. He said that Fairfax went from \$20 million a year down to \$1 million, and everybody is being hit. Mr. Rooker stated that this is being disguised somewhat because there is still a runoff of secondary road projects that were previously funded, but those projects will be gone in a year, and there is hardly a dime for secondary road projects throughout the state.

Mr. Blount said there is a statement in the current priority list, perhaps in the supporting text, and it could be moved up in priority.

Mr. Snow pointed out that there is an MPO meeting on November 28th, and Mr. Blount said the legislative forum was on the 29th.

Ms. Mallek commented that there was a change in discussion on the biosolids issue at VACo's Agricultural Committee meeting, and there will probably be many counties signing onto the small changes still being sought.

Mr. Blount responded that there could be some more legislation than the one bill last year that very quickly went away.

Ms. Mallek said that everyone wanted to give DEQ a chance to see what they could do.

Agenda Item No. 16. Albemarle County Service Authority Quarterly Update, Gary O'Connell, Executive Director.

Mr. O'Connell summarized the following highlights of current items for the ACSA which was forwarded to the Board:

1. Conversion to Granular Activated Carbon- You probably learned a lot, and thought a lot about the water quality issues of our public water supply given the recent debates; maybe learning more about the complexity of water than you ever thought you needed to know. Now that a decision has been made to go with Granular Activated Carbon (GAC) as part of the water treatment process to help reduce disinfection by-products (DBP's), the ACSA will be doing its part to help implement this over the next several years. There are a number of changes in our system that will need to be made as part of the larger conversion to GAC, including new water quality testing requirements that go into effect on October 1, 2012.
2. FY 2013 Budget and Water and Sewer Rates- The new budget and rates were adopted by the ACSA Board that went into effect beginning on July 1, 2012. The average residential rate increased 3.3%. This primarily was due to the major wastewater projects at Rivanna Water and Sewer Authority (RWSA). We have been planning for this rate increase for several years, and the ACSA was able to hold down the rate increase from being double digit to our customers as the RWSA wholesale rate increased 12%.
3. Environmental Management System- The ACSA was recently certified by the Virginia Tech Environmental and Sustainability Management System institute after a detailed 1 ½ year process and audit. We also recently received the Large Business Champion award sponsored by the Better Business Challenge, to promote sustainability initiatives in area businesses. We are proud of these recognitions, which very much reflects the ACSA's vision to "Conserve today, sustain tomorrow, and protect water and environmental resources forever."
4. Strategic Plan- We are in the third and final year of our current Strategic Plan. These items ranged from the ACSA financial position; rate structure; new technology; water leak detection; sewer system improvements and evaluation that protects our streams and rivers from sewer overflows; automated controls on our facilities; major capital projects; water conservation initiatives; new Fats, Oils and Grease (FOG) reduction program to keep grease out of sewer lines; updating our Geographic Information System (GIS) for utility mapping and system engineering models; updating to our website; water audit; new management systems and others. We will be updating the Strategic Plan this winter. We would welcome any comments you would have on strategic areas you think we should be addressing.

5. Annual Water Quality Report- We annually send out a very detailed water quality report in June of each year to each of our customers. We continue to have very good public water in our community, and as we said in the report's letter to our ACSA customers, "the quality of your drinking water meets and exceeds all regulatory requirements." There are many employees at the ACSA and RWSA that work hard and are very committed to safe, high quality drinking water. This report is on our website, or if you haven't seen, we're glad to provide you with one.
6. Customer Newsletter- Our summer edition of the customer newsletter is attached that is sent twice a year to our 17,000 customers.
7. North Fork Regional Sewer- We are nearing completion of this \$10 million project, the largest one the ACSA has undertaken. This includes a new sewer line and two new pump stations, one of which replaces the obsolete Camelot Treatment Plant. A final short section of sewer line across the Rivanna River should be completed by the end of the year. This will provide new sewer capacity in this area that has not been available in the past. This project is being paid back by a Special Rate District, a fee on all future development in the area. This area covers both sides of the Route 29 corridor from Proffit Road/Airport Road to the Boulder's Road, and Briarwood areas. A Public Hearing on the final Special Rate District rates will be held on October 18, 2012. Approximately 600 properties in this area would be served by this new sewer line/pump stations.
8. Capital Project Updates-
 - West Leigh Water Line Replacement- completed
 - Berwick Road Water Line Replacement- completed
 - Western Ridge-Foxchase Water Line Connection- in design
 - Scottsville Streetscapes Water Improvements- under contract through VDOT; line upgrades
 - Key West Water Line Replacement- in design
 - St. George Avenue/ Buck Road Water Line Replacement- ready to be bid next week
 - Ashcroft Water Line Replacement/ New Pump Station- final design; nearing bidding
 - Crozet Water Line Replacements (Tabor, Hilltop Streets)- final design
 - Hardware Street Water Main Extension- new Scottsville line to connect downtown to the tank (second feed); under contract
 - Buckingham Circle Water Main Replacement- under contract
 - Woodbrook Sewer System Improvements- system testing to determine the extent of rehabilitation that is needed
 - Oak Hill New Sewer- sewer work completed; fall landscaping to complete the project
 - Hollymeade Water Line Replacements- completed Redwing; next street in this phased replacement is Robin Lane.

In terms of the Special Rate District, Mr. Boyd asked if it only applied to the new development. Mr. O'Connell said that it only applied to the new development, and said they had received a few calls from residents about it. He clarified that it would only apply to increased density on property, much like a connection fee for the future.

Mr. O'Connell reported that regarding sewer system improvements, the Service Authority is doing rehabilitation work in the Woodbrook drainage basin and has just finished the first phase of the Oak Hill sewer project, which was funded primarily through CDBG funds that came through the state to the County. He said that they are continuing a phase program of water line replacements in Hollymead, having just finished Redwing and getting ready to start Robin Lane.

Referring to the water line replacements in Hollymead, Ms. Mallek asked about the life expectancy of the water lines. Mr. O'Connell responded that a fair number of water lines weren't built up to standards, so their life has not been as long. He said that some of the lines are 40 or 50 years old, and design wise they are looking at 30-50 years out.

Ms. Mallek asked what the new pipes are made of. Mr. O'Connell stated that the newer pipes are ductile iron and have a wrapping inside that helps protect the pipe and maintain water quality. He said that some of the older lines are plastic and small, and deteriorate to the point where they are leaking – with priority replacement given to the pipes with the most problems.

Ms. Mallek asked if the ACSA can require restaurants to have filters for fat, oil and grease, as well as reporting on their disposal.

Mr. O'Connell responded that there are about 200 restaurants in the ACSA's Fats, Oil, Grease program that have grease traps they inspect, and the participants must do an annual application to show that they are maintained, and an inspection follows up. He stated that some of the larger apartment complexes had grease getting into the lines, so the authority is working with them to get information to the residents and explain the problems they will create in their own systems by dumping grease in the lines.

Agenda Item No. 17. Rivanna Water and Sewer Authority Quarterly Update, Tom Frederick, Executive Director.

Mr. Frederick summarized the following information which was forwarded to Board members:

1. Disinfection Byproducts: In a joint meeting of the “four boards” on July 25, 2012, each of the boards agreed unanimously following a public hearing to “take chloramines off the table” and pursue granular activated carbon (GAC) technology as the means to assure our drinking water is in continuous compliance with future Stage 2 EPA regulations on disinfection byproducts. Many citizens who spoke at the public hearing advocated that they wanted the best quality of water achievable with GAC technology and were willing to pay more for their drinking water to use this technology, asking that this community set a very high standard for drinking water in support of future public health. Those statements would support building and operating GAC at the full capacity of water produced all the time. A few of the public comments, and some of the discussion among the “four boards” after the hearing, expressed an interest in reviewing more economical GAC approaches, or “hybrid” approaches, and the RWSA Board authorized a quick “desk-top” analysis by Hazen and Sawyer to provide some initial concept-level ranges of potential costs for “hybrid” approaches. This report is scheduled for review by the RWSA Board on August 28 and will be available on RWSA’s website by August 24. As stated, this report will be concept-level; to refine approaches into a more definitive cost-estimate will require additional pilot testing and preliminary design over a period of several months.

We define “hybrid” approaches to include building the GAC units at less than full treatment plant capacity and/or operating GAC to treat less than the full volume of water treated. The approach saves capital costs, operating costs, or both by not treating all of the water through GAC, extending the life of the carbon so that costly regeneration or replacement is performed less often. All water would continue to be treated using the conventional facilities presently in operation, but not all conventionally treated water would receive GAC treatment. “Hybrid” water is a step better than the excellent water we produce today, but will contain more byproducts of disinfection than if GAC is provided to 100% of the water

2. South Fork Reservoir Dredging: RWSA has received proposals for dredging the South Fork Reservoir, and after identifying if each proposal met the RFP requirements, as required by RWSA’s PPEA Guidelines and in consultation with RWSA’s counsel, one proposal has been accepted for publication by Orion Marine Group. That proposal is now on our website for public review, and we are also receiving public feedback through our website. We are planning a public meeting in September (date presently pending) to receive further comments and will send an e-mail to a project e-mail distribution list when the date is finalized (citizens not on the list can send an e-mail to info@rivanna.org to be added to the list). An Evaluation Committee has been formed (Lauren Hildebrand is representing the City and Mark Graham the County) and has held a Pre-Evaluation Conference. It will meet to complete an evaluation of the Orion proposal following the public meeting, with a recommendation to the RWSA Board anticipated in October.
3. Ragged Mountain Dam and Mitigation Plan: The Virginia Supreme Court has dismissed an attempt to appeal the favorable ruling RWSA received from the County Circuit Court, thereby validating the sale of revenue bonds to finance this project. Our Finance and Administration Director is now moving through the process to complete a bond closing this fall. Construction of both projects is in progress, with construction of a tunnel for the new Ragged Mountain intake tower now underway and construction of the new dam’s grout curtain (part of the foundation) to begin within the next 4-6 weeks. A section of restoration of Buck Mountain Creek has been completed for the mitigation plan and site grading is now being performed at the Franklin Street constructed wetland site. When completed, the new wetland site will be an excellent opportunity for environmental education for both students and adults, and it is RWSA’s plan to achieve that outreach.
4. Moores Creek Advanced Wastewater Treatment Facility: RWSA is pleased that the upgrade of our advanced wastewater facility is now complete, within budget and ahead of schedule. The facility is producing outstanding quality water for our streams and is significantly contributing to a better Rivanna River, better James River, and better Chesapeake Bay. DEQ Director David Paylor was warmly received from Richmond and delivered guest remarks at a dedication of this facility on July 9, 2012. Following his remarks, a new co-generator was started. The co-generator uses gas from the anaerobic digestion of biosolids to produce renewable energy in the form of electricity to help power the operation of the treatment facility. The construction cost was \$48 million, of which \$21 million was in state WQIF grants, and the project was originally scheduled for completion in January 2013.

Mr. Frederick addressed the Board, stating that they were present at the July 25 meeting regarding granular-activated carbon and indicating that the RWSA was moving forward on the basis of that decision. Mr. Frederick said that a number of citizens at the public hearing said they wanted the best water quality that GAC can deliver, which to RWSA means operating at 100% of the treatment plant. He stated that this leads to the high end of the cost range for this project, estimated at a conceptual stage at about \$18 million for the three urban water plants – with operating costs close to \$1 million per year in additional costs.

Mr. Frederick said that some public comments suggested looking at some alternative, more economical approaches such as a hybrid system that would operate at less than all of the treated water and blending some water that's been conventionally treated with water that's been both conventionally treated and GAC treated. He stated that it could range from meeting the minimum EPA Stage II rules up to the full-scale best water possible, and all options being considered are on the very, very high end of the range. Mr. Frederick said that the water quality today is excellent, and there is no backsliding of any kind with the treatment processes used today, so the debate is how much better do we want to get and how much money do we want to pay for it.

Mr. Rooker commented that there is a sliding scale by which you reach a point where you are spending a lot of money to achieve a very minute improvement in water quality. Mr. Frederick responded that there was a law of diminishing return at work here, with each step to get the next increment having a bigger and bigger spending gap.

Mr. Rooker said that among the Board, City Council, and Authority participants, there was significant interest in looking at hybrid approaches. Mr. Frederick said that's what he understood, and the RWSA Board would have to provide some direction as to a goal for quality.

Ms. Mallek said that the testing parts that failed were at the dead ends, and asked if there were structural changes to those delivery systems that could cut out the water that stands so long.

Mr. Frederick stated that every water system has a distribution network whereby water is at various ages, due to distance from the water treatment plant and other factors. He said that ACSA has designed and invested a very significant amount of money, and developers have helped them with those investments. He stated that to completely redo the distribution system would be an enormous, unfathomable amount of money. Mr. Frederick added that to some extent, RWSA would need to work with the ACSA and with the City to best use the resources available. He said there are programs that can be taken advantage of to a greater extent than they have in the past, which incorporates finding areas of the system where there is higher water age and doing some selective flushing of water lines. Mr. Frederick stated that he suggested doing that when he first assumed his position at RWSA, as most utilities do that, but he encountered resistance here because people felt it was wasting water.

He emphasized that there are other things that could be done, but changing the way water moves through a distribution can be very expensive because it involves putting more pipes in the ground. Mr. Frederick said that much of the improvement can be planned through modeling a system, which ACSA now has the capability of doing, and doing tests to confirm that the model is making reasonable predictions – as well as doing some selective flushing of the system. He noted that RWSA staff had a meeting with ACSA staff just a few weeks prior, so that process is continuing.

Mr. Frederick stated that a report was issued on August 24 and was reviewed by the RWSA Board the previous week, and the Four Boards had agreed to have them spend \$9,500 to get a best guess whereby an engineer does a desktop analysis. He said that it is not an ultimate or final answer, but it did suggest that the hybrid range be from 40%-100% of the capital and operating costs he had mentioned previously. Mr. Frederick stated that a lower end target would mean capital costs of about \$8 million and operating costs of about \$1/2 million, but the numbers may change as the process is refined. He said that the RWSA Board also authorized pilot-plant testing, bringing GAC columns – small prototypes – and taking a sample on both ends to see how the system is doing. Mr. Frederick stated that this would help establish how big the final columns need to be in the full-scale plant, how long they're expected to operate before the carbon is spent, and how fast the carbon degrades. He added that he hoped to have the columns in place within 30 days so that testing could begin.

Mr. Frederick reported that the RWSA Board had approved a milestone schedule and would be submitting to the Virginia Department of Health later that week to pursue a two-year time extension, as suggested by Mr. Moore.

Mr. Snow said that he had read an estimate for the GAC at \$15 million, not \$18 million.

Mr. Frederick responded that the RWSA only have conceptual-level cost estimates from an engineer at this point, not bids, and the \$18 million would be refined as the design process moves forward.

Ms. Mallek asked if any part of this could be modular, with incremental increases achieved by adding modules rather than an entire new system.

Mr. Frederick replied that it is not infinitely scalable, but there are options. He said that the layout of the facility during preliminary design would be laid out for 100% GAC, and they use future operations as the basis for the layout. Mr. Frederick added that they do not have to blend at the same rate at each of the three water plants, with pilot plant data used to help establish the ranges at different plants – provided that the policy decision is to use a hybrid.

Mr. Rooker commented that at the end of the day, you need the cost and the incremental improvement in water quality achieved through increased investment, so the information is needed to establish what the dollars spent equate to in terms of improved water quality.

Mr. Frederick stated that he had included some information in his report about the dredging project and Ragged Mountain Dam construction, and they are moving forward with getting an official statement prepared – a series of steps with bond counsel leading toward a bond sale that would likely happen in the fall. He said that this would complete the financing of the project, and the mitigation plan is

proceeding. Mr. Frederick noted that there is work taking place in the Franklin Street and Buck Mountain Creek areas, and he feels it will be one of the stellar environmental projects of this community when it is completed. He said that a section of badly eroded stream was being restored there, and riparian buffer planting should begin this fall – with bids taken within the week.

Mr. Rooker asked if there was a time of year it was optimal to dredge, and if the RWSA were on a schedule that would allow dredging to take place during an optimal period.

Mr. Frederick said that most contracts like to start in spring, but he wasn't aware of any impediments to operating during other times of the year – although bitterly cold temperatures can be a hindrance. He stated that the RWSA is moving forward with the process based on the way the process was laid out, noting that the RWSA Board had received a lot of public input from advocacy groups about a year ago on how to do this process. Mr. Frederick said that people asked for a very open process, allowing dredgers to say how they wanted to do it, and through PPEA, RWSA found a structure that Virginia law allows that will permit some of that openness.

He stated that the RWSA would hold a public meeting on September 20th, which was requested when there was deliberation about the process, and no one realized there would only be one proposal submitted at this stage. Mr. Frederick noted that two of the three proposals received were found not to be fully responsive to the requirements of the RFP, and under the advice of counsel they could not be further reviewed. He said that the RWSA is reviewing one proposal by Orion Marine Group, and the way the evaluation plan was developed limits staff comment so the hearing wouldn't be an educational-type meeting. Mr. Frederick said that the evaluation committee – with Mark Graham being the County's representative – is not to be judging the proposals at this meeting, but will hear what people say. He suggested that those who are interested review the Orion proposal online, and said the RWSA would clarify any questions they might have. Mr. Frederick reported that they are expecting the evaluation committee to make a recommendation to the RWSA Board in October.

Mr. Rooker asked if the RWSA was in a position now to negotiate with the one qualified bidder. Mr. Frederick replied, yes.

Ms. Mallek asked at what point in the process the location of where the dredged material would be placed would come into the timetable.

Mr. Frederick responded that Orion has included in their conceptual proposal the use of Panorama Farms for the material, but conceptual-based proposals are not commitments so there is still an opportunity for negotiation. He said that commitment had to be made at the time of contract, and the RWSA wouldn't enter into a contract without knowing the dredged material's placement location.

Mr. Rooker asked if it was up to the contractor to include the material placement within the contract.

Mr. Frederick responded that, that was part of the flexibility that citizen groups asked the RWSA Board to please let contractors determine their own sites and not dictate sites to the contractor, so that's how the RFP was developed.

Mr. Rooker commented that other circumstances might dictate the site.

Ms. Mallek said she was disappointed that it didn't work out for someone who would dry the material and remove it, instead of stockpiling it.

Mr. Frederick stated that the removal option was on the table, and was left to the bidders to decide how they wanted to deal with it.

Mr. Snow asked for an update on the dam.

Mr. Frederick explained that construction was very close to on schedule, maybe two weeks behind, and the contractor is working on the tunnel and the foundation for a new intake tower – both critical components to have in service by next spring so the water can be completely diverted to the new tunnel, allowing the footprint of the lifts of the earthen dam to come up without any piping conflicts. He said that a good amount of clearing around the reservoir within the footprint of the new reservoir has been done, and the contractor has done an excellent job of sticking to construction limits. Mr. Frederick noted that the contractor had put together an excellent erosion and sediment control plan, and County staff has agreed that it is very good quality.

Mr. Frederick reported that the RWSA held a dedication of their wastewater facility on July 9, with David Peddler as speaker, and it was a great opportunity for this community to take pride in what RWSA has invested in. He said that the RWSA put real resources, not just lip service, into improving the quality of our rivers and streams, by virtue of that project.

Agenda Item No. 14. 2013 Legislative Priorities.

The following executive summary was forwarded to Board members:

Each year the Board considers and approves its legislative priorities and submits them to the Thomas Jefferson Planning District Commission (TJPDC), the Virginia Association of Counties (VACo)

and the Virginia Municipal League (VML). Generally, the TJPDC's legislative program incorporates the County's legislative priorities. Other initiatives are sometimes added prior to the General Assembly session. This executive summary will provide a review of the Board's 2012 Legislative Priorities and request the Board to review and approve the 2013 Legislative Priorities.

A review of the County's 2012 Legislative Priorities is provided in the attached "2012 Legislative Priorities Report" (Attachment B). The report details previous action taken on the priorities, an assessment of what priorities should be continued in the future and links to the final legislative reports of the TJPDC, VACo and VML.

Many of the proposed 2013 Legislative Priorities (Attachment A) carry forward the 2012 Legislative Priorities. The following two new priorities have been identified for 2013:

Growth Management, Land Use and Transportation

Request legislation to add Albemarle County to the list of localities enabled to regulate the outdoor storage of inoperable motor vehicles on private property pursuant to Virginia Code § 15.2-905.

Background: The County regulates the storage of inoperable vehicles on private property under its zoning powers in County Code § 18-4.12 and under its police powers in County Code § 9-500. The enabling authority under which the County regulates inoperable vehicles under its police powers is Virginia Code § 15.2-904.

Reason for Requested Legislation: Virginia Code § 15.2-904 allows an unlimited number of inoperable vehicles to be stored on private property outside of a fully enclosed building or structure as long as the vehicles are shielded or screened from view. Section 15.2-904 also allows localities to limit the number of inoperable vehicles stored outdoors that are shielded or screened from view by covers. "Shielded or screened from view" means "not visible by someone standing at ground level from outside of the property on which the subject vehicle is located."

Virginia Code § 15.2-905 provides broader enabling authority to 17 localities (12 cities, and 5 counties). Section 15.2-905 enables localities to "limit the number of inoperable motor vehicles which any person may keep outside of a fully enclosed building or structure," even if the vehicles are shielded or screened from view by covers or any other means.

Approximately 20% of all complaints received by Zoning have included inoperable vehicles. Recent citizen complaints from neighborhood watch groups and homeowners associations have brought several issues to staff's attention. The outdoor storage of inoperable vehicles, whether shielded or screened from view as defined by state law or not, has been a source of conflict in urban and suburban neighborhoods where lot sizes are small. Although an inoperable vehicle stored outside may not be visible by someone standing at ground level, it, nonetheless, may be visible from nearby properties and homes. In addition, staff has found situations where the outdoor storage of inoperable vehicles on small lots has caused owners to have to park their operable vehicles on the street because there was no room to park on-site. Sometimes these public streets are not designed for on-street parking and this creates further conflict. Lastly, vehicles are not subject to setback requirements under the Zoning Ordinance, so inoperable vehicles can be stored very close to the lot line and close to the abutting lot's improvements or active outdoor areas.

As parts of the County are urbanized with smaller lots, the County needs to assure that its regulations can appropriately address the adverse impacts that may arise from that urbanization. Requesting an amendment to Virginia Code § 15.2-905 to enable Albemarle County to limit the number of inoperable vehicles that may be kept outside of an enclosed building or structure will allow the County to more appropriately address the potential adverse impacts from the storage of inoperable vehicle on small lots.

Local Government Administration and Finance

Request legislation to permit Albemarle County and other localities to retain the civil penalties collected from illegal sign removal in VDOT right-of-ways by amending Virginia Code § 33.1-373.

Background: Virginia Code § 33.1-373 allows all localities to enter into agreements with VDOT to act as VDOT's agents in removing illegal signs from VDOT right-of-ways. Virginia Code § 33.1-375.1 specifically authorizes Fairfax County to enter into an agreement with VDOT for the removal of such illegal signs and to retain the penalties and costs collected from removing those signs. All other localities that remove illegal signs from VDOT right-of-ways are not enabled to retain any related civil penalties collected and must pay those civil penalties into the state's Highway Maintenance and Operating Fund.

Reason for Requested Legislation: An amendment to Virginia Code § 33.1-373 to enable Albemarle County and all other localities to retain the penalties and costs collected from illegal sign removal would provide funding to those localities enforcing and actively removing illegal signs in the right-of-ways.

After the Board's review, input and approval of the proposed 2013 Legislative Priorities, staff will submit the Board's 2013 Legislative Priorities to the TJPDC, VACo and VML for consideration for their respective legislative programs. The 2013 TJPDC Legislative Program will return to the Board for additional input and approval.

The County's legislative priorities seek to ensure that the state adequately funds its mandated responsibilities and does not jeopardize the County's ability to effectively and efficiently implement the

policies (including fiscal) and programs that it deems necessary. There are no specific, identifiable budget impacts.

Staff recommends that the Board approve the proposed 2013 Legislative Priorities (Attachment A), and any additions it feels are appropriate, for submission to the TJPDC, VACo and VML.

Mr. Davis reported that staff has prepared for the Board last year's legislative priorities and what activity has occurred under each, and most of those priorities are carried over again this year. He said that the highlights are keeping an eye on biosolids legislation; transportation funding; comprehensive services act funding; full funding of state mandates; and legislation regarding split voting precincts. Mr. Davis stated that in addition, there are two new items that have been brought forth by staff. He explained that zoning staff has been dealing with zoning complaints and an initiative to update the inoperable motor vehicles ordinance in the County code, and when staff started looking at that they found that the enabling legislation does not provide the flexibility to address some of the issues being raised.

Mr. Davis said there was another enabling section that only 17 localities are authorized to use, which would give greater flexibility and more innovative approaches, so staff is asking the Board to support enabling legislation to add Albemarle under Section 15.2-905 to address that issue. He stated that if they get that enabling legislation, staff will bring forth proposals as to how to implement it. Mr. Davis said that staff is also looking at ways to be innovative in addressing other enforcement issues and funding of them, with a priority on dealing with signs in the right of way. He noted that one restriction by state law is that any fines for a violation go to the Highway Maintenance and Operating Fund at the state level, even if the County is implementing an agreement to enforce the restrictions locally. Mr. Davis said that currently Fairfax County is the only county that has the enabling authority to receive the fines if they do the enforcement, and staff thinks it would be a reasonable approach for Albemarle to be included in the legislation – so they are asking that the Board support requesting enabling legislation to permit the County to receive the fines as well. He said that if they receive that, staff would look at whether a more aggressive policy could be put in place and funded by fines to support other staff resources so they could be more effective at dealing with signs in the right of way.

Ms. Mallek asked if the County would have to collect the fines. Mr. Davis responded that the County would have to collect them as part of a civil enforcement process. He said that the other item not on the 2013 priority list currently is a budget amendment request regarding the composite index pertaining to revenue sharing, and because the School Board has not yet discussed it staff didn't include it in this year's agenda. Mr. Davis said it could be added in the fall if there's consensus for the initiative to move forward, but staff has no recommendation on it at this point.

Mr. Rooker said that before the Board goes down that road, there should be a discussion with legislators about the potential for such a bill passing given what has happened with the last two attempts. He stated that he does not want to spend a huge amount of time, effort and money unless there is a change of climate at the state level.

Mr. Davis agreed with those comments.

Mr. Davis then concluded his presentation by requesting that the Board adopt the 2013 Legislative Priorities, with the understanding that between now and the time the next General Assembly session begins there could be new priorities.

Mr. Boyd asked if it was worth keeping the request for scenic protection and tourist enhancement the County has been asking for through enabling authority.

Mr. Davis responded that this was opportunity legislation and came out of the Mountain Protection Ordinance initiative. He said that Sally Thomas went to the General Assembly and served on an independent body that tried to explain to the legislature that given localities' limitations on aesthetics, perhaps there could be more practical legislation in dealing with the problem rather than restricting the uses. Mr. Davis stated that it has been on the agenda for several years but hasn't moved forward as something approvable. He said that staff still thinks that visual protection in the County is a high priority, but they're just waiting for the right proposal to come forward that they could support.

Mr. Rooker clarified that Mr. Davis was saying is that it is an important matter for the County, but there is no proposed legislation at this time – nor does the County plan on proposing their own.

Ms. Mallek said that another locality might come up with a proposal that Albemarle could be a part of and added that the tourist money is important and a few catastrophic occasions could really change things.

Mr. Boyd said that he didn't any have strong feelings about it one way or the other, but wanted to bring it up.

Mr. Rooker said that since no time or money is being spent on it, it is really just a placeholder.

Board members agreed.

Motion was then offered by Mr. Boyd, **seconded** by Ms. Mallek, to approve the proposed 2013 Legislative Priorities (set out below). Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Dumler.

Albemarle County 2013 Legislative Priorities

Growth Management, Land Use and Transportation

Biosolids—Support legislation enabling localities, as part of their zoning ordinances, to designate and/or reasonably restrict the land application of biosolids to specific areas within the locality based on criteria related to the public safety and welfare of its citizens and the environment. In addition, support legislation regarding land application of biosolids that protect the environment, public health and safety.

Inoperable vehicles—Request legislation to amend Virginia Code § 15.2-905 to include Albemarle County as a locality enabled to restrict the number of inoperable vehicles which may be kept outside of an enclosed building or structure on residential or commercial property.

Local Authority—Support legislation to 1) strengthen localities' authority by enabling them to utilize adequate public facilities ordinances; and 2) not pass legislation that preempts or circumvents existing local authority to regulate land use.

Impact Fee Authority—Support impact fee legislation that allows for 1) a fair allocation of costs representing a "pro-rata" off-set of new growth on public facilities; 2) impact fees for facility costs related to transportation, schools, fire, police, emergency medical services, libraries, stormwater management, open space and parks/recreation lands; 3) effective implementation through simple locally-based formulae and reasonable administrative requirements; 4) does not cap or limit localities' impact fee updates; and 5) does not diminish the existing proffer system.

Conservation Easements—Support legislation that augments local efforts in natural resource protection through 1) continuing to fund the Virginia Land Conservation Foundation (VLCF) for locally established and funded Purchase of Development Rights programs (e.g. ACE Program in Albemarle County); 2) continuing to provide matching funds to localities for their Purchase of Development Rights programs through the Office of Farmland Preservation; 3) retaining provisions in transient occupancy tax legislation so that funds can continue to be used to protect open-space and resources of historical, cultural, ecological and scenic value that attract tourism; and 4) increase incentives for citizens to create conservation easements.

Scenic Protection and Tourist Enhancement—Support enabling legislation for Albemarle County to provide for a scenic protection and tourist enhancement overlay district. As the County pursues options to protect the visual quality of land as an aesthetic and economic resource, this legislation would provide a method to ensure full consideration of visual resources and scenic areas when the County makes land use decisions in designated areas.

Transportation Funding—Support legislation to 1) establish stable and consistent state revenues for Virginia's long-term transportation infrastructure needs; 2) direct funding efforts at all transportation modes; 3) coordinate planning for transportation and land use, being mindful of local Comprehensive and regional Transportation Plans when planning transportation systems within a locality; and 4) strongly oppose any legislation or regulations that would require the transfer of responsibility to counties for construction, maintenance or operation of new and existing secondary roads.

Health and Human Services

Comprehensive Services Act (CSA)—Request that the legislature assist localities' implementation of CSA in a consistent, financially stable manner by: 1) fully funding the state pool for CSA with allocations based on realistic anticipated levels of need and a cap on local expenditures for serving a child through CSA; 2) enhancing state funding for grants to localities to create community-based alternatives for children served in CSA; 3) establishing state contacts with CSA providers to provide for a uniform contract management process, improve vendor accountability and control costs; and 4) encouraging the state to be proactive in making service providers available and to support local and regional efforts to address areas of cost sharing among localities by procuring services through group negotiation.

Child Care for Low Income Working Families—Request that the legislature provide additional funds to local governments to assist low-income working families with childcare costs. This funding helps working-class parents pay for supervised day care facilities and supports efforts for families to become self-sufficient.

Local Department of Social Services (LDSS)—Request that the legislature increase funds for LDSS to match all available federal dollars to assist LDSS staffing needs in order to meet state mandated services and workloads.

Local Government Administration and Finance

Sign removal in the right-of-way—Request legislation to amend Virginia Code § 33.1-373 to enable localities to retain the civil penalties collected from illegal sign removal in the right-of-way.

Voting Precincts—Request legislation to eliminate split precincts to the extent possible. The Virginia Senate and House of Delegates redistricting plans have created split precincts in the Jack Jouett, Rio and Rivanna Magisterial Districts. The Jack Jouett precinct is split between the 17th and 25th Senate Districts in three places. The Woodbrook precinct is split between the 17th and the 25th Senate Districts. The Free Bridge precinct is split between the 57th and 58th House Districts; and the Stony Point precinct is split between the 17th and 25th Senate Districts.

Full Funding of State Mandates—Request that the state budget provide full funding for its mandates in all areas of local government including the Standards of Quality (SOQs), positions approved by the Compensation Board, costs related to jails and juvenile detention centers and human services positions.

Local Control of Local Revenues—Oppose legislation that restricts or limits the existing local control of local revenues so that local government leaders can take appropriate measures to generate sufficient revenues to sustain and improve services.

Drug Court Funding—Request that the legislature fully fund the Drug Court Program, which provides effective treatment and intensive supervision to drug offenders through the Circuit Courts of several Virginia localities.

Cost to Compete Pay Differential—Due to the documented high cost of living in Albemarle County, request that the legislature include Albemarle County Schools in the “Cost to Compete Pay Differential” so that the County may reach and maintain competitive compensation to help recruit, develop and retain a highly qualified and diverse teacher workforce.

Agenda Item No. 18. Closed Meeting.

At 1:06 p.m., Mr. Boyd offered **motion** that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under subsection (1) to discuss and consider appointments to specific boards, committees, and commissions; and under subsection (7) to consult with legal counsel and staff regarding specific legal matters related to the negotiation of an interjurisdictional agreement for regional library services. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Dumler.

Agenda Item No. 19. Certify Closed Meeting.

At 2:04 p.m., the Board reconvened into open meeting. **Motion** was offered by Mr. Boyd 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 Mr. Snow. Roll was called, and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Dumler.

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

Mr. Snow offered **motion** to make the following appointments/reappointments:

- **appoint** Mr. Charles Newton to the Local Board of Building Code Appeals with said term to expire November 21, 2017;
- **reappoint** Mr. John Murphy and Mr. Lonnie Murray to the Natural Heritage Committee with said terms to expire September 30, 2016;
- **appoint** Mr. Charles Newton to the Places 29 Community Advisory Council with said term to expire January 31, 2013;
- **reappoint** Ms. Bonnie Samuel to the Route 250 West Task Force with said term to expire September 5, 2015; and
- **appoint** Ms. June Tate to the Route 250 West Task Force with said term to expire September 5, 2015.

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

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

NAYS: None.

ABSENT: Mr. Dumler.

Agenda Item No. 15. Fire Rescue FEMA SAFER Grant Award.

Mr. Dan Eggleston, Chief of Fire and Rescue, summarized the following executive summary which was forwarded to Board members:

The Federal Emergency Management Agency (FEMA) Staffing for Adequate Fire and Emergency Response (SAFER) Grant was established to provide funding directly to fire departments and volunteer firefighter organizations in order to help them increase the number of trained, "front line" firefighters available in their communities. The goal of the SAFER Grant is to enhance the local fire departments' abilities to comply with staffing, response, and operational standards established by the National Fire Protection Association (“NFPA”) and the Occupational Safety and Health Administration (“OSHA”).

In February of 2012, the Department of Fire Rescue applied for a SAFER Grant to fund a second daytime crew consisting of five firefighters at the Seminole Trail Volunteer Fire Department (“STVFD”) and four additional firefighters to staff the new Ivy station.

An additional career daytime crew at STVFD has been requested by both volunteers and the career staff serving this station for many years as part of Strategic Initiatives and Below Core Needs assessments, primarily due to the limited daytime availability of volunteer staffing at the station and the demand for service generated by the coverage area for this station. Currently, the three person Albemarle County Fire Rescue (ACFR) crew that is there from 6:00 a.m. to 6:00 p.m. is able to respond with either an engine or a ladder truck, but not both at the same time. This meets the NFPA standard roughly 30% of the time (10 firefighters on-scene in 10 minutes 80% of the time). With the additional crew, the Department should be able to meet the standard closer to 50% of the time. In addition, availability of a second crew at STVFD during daylight weekday hours will enhance the County's ability to respond to calls in the Rio/Georgetown/Barracks Road area of the County.

The Ivy station is budgeted for eight career staff. A volunteer recruitment plan is in place, led by volunteer Chief Bob Larsen, to recruit at least 24 volunteers. This paid and volunteer staff would enable the station to meet the minimum staffing requirement of having three firefighters on-duty twenty-four hours per day, seven days per week for one engine. Currently Chief Larsen has between fifteen and twenty volunteers committed to joining the station. About 50% of the interested volunteers currently volunteer at other County volunteer fire stations and the remainder need minimum training and will attend an upcoming fire academy in order to achieve full training in time for this station to open. Chief Larsen agreed that in order to support 24/7 minimum staffing on the Ivy engine, the four additional requested career staff at Ivy would support the volunteer effort, could fill specialty roles, such as driver-operator, and support the additional training necessary for the volunteers.

By letter dated July 27, 2012, staff was informed that the County's application for funding was approved by FEMA for a two year period in the amount of \$1,261,341. Acceptance of this Grant would provide funding for the second daytime crew at STVFD and for additional firefighter positions at the Ivy Station. Additional local funds would be required as discussed below. The County Attorney's Office has reviewed the Grant documents and finds them acceptable. Acceptance of this Grant for this purpose is contingent upon the Board's approval.

The Grant amount for the two year period is \$1,261,341. The four additional staff for Ivy will be used to provide coverage while the volunteer recruitment effort for the station continues with the goal of staffing being provided predominantly by volunteers for nights and weekends. If the Grant is accepted by the Board, the FY14 (\$81,540) costs listed below will be included in the FY14 budget process.

Should the Board agree to support this grant, the projected ongoing costs to continue these staff beyond FY14 will be proposed in the County's Five-Year Financial Plan, along with offsetting revenues or expenditure changes to potentially offset the impact. The period of the Grant is October 18, 2012 – October 17, 2014. If the Grant is accepted, it is likely that the County would not hire these additional personnel until January 2013, in which case an extension can be requested so that the County can receive the full 24 months of funding through January 2015.

Although no local match is required, SAFER Grants provide funding for only salary and benefits. Additional estimated costs are set forth below and would require local funding support should acceptance of the Grant be approved.

Operating	F13 9 FF One time	FY14 9 FF On-going
Line of Duty Act		1,836
Training (Training & Ops divisions)	4,725	4,725
Health Services (Physicals)	7,200	3,600
Overtime Wages	14,625	58,500
FICA (for OT impact)	1,119	4,475
Advertising	500	0
Water & Sewer Services	351	1,404
Laundry/Janitorial Sup.	250	1,000
Uniforms & Apparel:	13,500	3,600
F/R Turnout Gear: on-going		2,400
Total Operating	42,270	81,540
Capital		
F/R Turnout Gear - initial purchase	21,600	
Total Capital	21,600	
Total	63,870	81,540

Staff recommends that the funds associated with the start up and the FY 13 operating costs (\$42,270) be provided by the Grants Opportunity Fund. The current unreserved balance of the Grants Opportunity Fund is \$44,508. Additionally, staff recommends that the one-time capital costs (\$21,600) be provided from the Capital Reserve.

If the Board accepts this Grant, staff will present an appropriation request for the Board's approval in October.

Staff recommends that the Board approve the County's acceptance of the SAFER Grant.

Mr. Eggleston said that last year Albemarle County Fire and Rescue staff applied for a FEMA Safer grant to fund additional staff for Ivy and Seminole Trail volunteer fire departments. He said that the staff had requested four additional staff for Ivy to ensure there is 24/7 coverage there, and five additional staff to add a second daytime crew at Seminole. Mr. Eggleston stated that they had been recently notified of the grant's approval by FEMA of \$1.2 million over a two-year period, and the grant does not require matching funds nor is there any requirement to keep staff on board past the grant period. He said that he would briefly discuss the justification process used, ongoing project costs, and implementation – and then ask for the Board to approve the grant.

Mr. Eggleston reported that with Seminole Trail, staff is working with the Chief to put forward a request for additional crew. He said that the justification for the crew was based on their ability to meet NFPA standards, adding that for a structure fire they try to have 10 firefighters on the scene within 10 minutes, 80% of the time. Mr. Eggleston stated that they are currently only able to meet the response standard about 30% of the time, and the additional staffing would bring that up to about 50%. He said that the justification for four additional Ivy staff is based on their ability to staff a single-engine company 24 hours a day, seven days a week. Mr. Eggleston said that Bob Larsen was doing a wonderful job recruiting volunteers, and there are about 20 volunteers signed up – about 2/3 of the goal – with many of them in the training process currently. He stated that this would allow additional staffing to close the small gap, and allow them to help train and prepare the volunteers for Ivy. Mr. Eggleston added that they still need to get the word out in order to get more volunteers for that station, and Mr. Snow has been helping in that regard.

Mr. Eggleston reported that although the grant requires no matching funds, there are some ongoing costs – with salary and benefits funded through the grant. He stated that staff recommends that the funds to outfit the personnel and provide additional financial support be taken out of the grants opportunity fund, with one-time costs taken out of capital reserve. Mr. Eggleston commended staff for their work on the grant, and asked the Board for their approval in accepting the grant so staff can begin the implementation phase.

Mr. Boyd said that the biggest additional expense is an overtime cost of \$58,500, and asked how that was established. Mr. Eggleston responded that there was a certain amount of overtime inherently built into the 24-hour schedule that is required, and unexpected overtime if there is a late call. He said that staff hoped to see an overall downturn in the amount of overtime once the additional personnel are in place, because there will be staff available to fill gaps created by injury, illness, etc. Mr. Eggleston stated that additional overtime is built into this schedule and is reflected in the expenses.

Mr. Boyd said he does not usually support spending one-time money for ongoing operating costs, and something would be needed in the budget for the future in order to maintain the staff members. Mr. Eggleston responded that he has already discussed with Chief Tawney and Chief Larsen what happens at the end of the grant period, and both are doing a very good job in recruiting additional volunteers so the hope is there would be some other options.

Ms. Mallek said that there may be some turnover in the department that these personnel would be able to backfill. Mr. Eggleston stated that Fire/Rescue have about 10-12% of turnover annually in their department through attrition, and the positions could be eliminated that way.

Mr. Foley said that staff would have some type of preliminary plan in the five-year plan presented in November, with staff either being eliminated or covered through some other revenue source.

Ms. Mallek asked for clarification on the \$13,500 in uniform costs for the nine firefighters. Mr. Eggleston explained that it covered raincoats, pants, boots, shirts, etc.

Mr. Rooker noted that the biggest expense by far is the overtime, as Mr. Boyd had mentioned.

Ms. Mallek asked if the \$58,500 in the next year would only be needed if these personnel were not pulled into replacing staff that had retired or left.

Mr. Eggleston said that the only obligation in this grant was keeping them employed for the two-year period.

Ms. Mallek asked if the FY14 totals reflected the second year of the grant. Mr. Eggleston confirmed that they did.

Ms. Mallek asked if they had two over-hires now that float between stations, in keeping with the plan of adding one each year to help with overtime.

Mr. Eggleston said that they help to fill in when there are vacations and other types of leave, adding that they are currently reevaluating what kind of impact that had and doing some benchmarking with other localities to find out if the department is within reason. He noted that their preliminary data shows the department does not have anything out of whack, but they still want to drive down overtime costs as much as possible.

Mr. Rooker asked for clarification that they are considering using the grant to fund something that was not planned – it was not in the budget to provide the staff at those locations. He added that he has difficulty understanding why – if that service wasn't planned to be provided – they would incur almost \$60,000 of overtime in year two, related to that – we're talking about, again, adding staff that would not have been there other than for the grant."

Mr. Davis pointed out that some of that circumstance results from OSHA regulations requiring that there be a complete crew to run calls, and if you're short a person the station couldn't run calls at all.

Ms. Mallek said that the station could call an extra truck or a volunteer to take a second seat.

Mr. Eggleston mentioned that there has been no contingency plan for Ivy, and although the department has been successful there is still a gap in coverage there. He said that they were going to have to hire some folks, so this relieves that need. He added that the staffing for Seminole has been a need for quite some time, but they've been unable to fund it.

Mr. Rooker said he wasn't arguing over the acceptance of the grant, but it seemed odd to him that in bringing on additional people there is more in overtime costs; it seems that with more people you could staff in a way that you would not be scheduling overtime.

Mr. Eggleston explained that there is a certain amount of overtime inherently built into that schedule, and he could bring something back to explain how that is allocated. He emphasized that their discretionary overtime is a small slice of that pie, and they are certainly trying to drive that down.

Mr. Snow said he understood Mr. Rooker's concerns, and asked what the overtime would be if they hadn't hired four people.

Mr. Rooker responded that Mr. Eggleston was saying the cost would be nothing – that this was actually driving the need for overtime.

Mr. Foley said that an example of this would be bringing on a police officer who was writing tickets – so there would be expanded service because there would be more tickets, but that officer would have to go to court on those cases which is overtime. He added that the situation with the firefighters is the same.

Mr. Eggleston agreed, stating that the word overtime conjures up the idea of additional funding but it is actually built into their schedules. He noted that some localities pull that forced overtime out and put it into salary and benefits, with the true overtime associated with illness, leave, etc. reflected in the overtime line item. Mr. Eggleston reiterated that he would bring something back to the Board to explain exactly where overtime is allocated.

Mr. Thomas pointed out that the overtime figure is time and a half, which also drives the cost up.

Mr. Boyd asked if firefighters were scheduled for 42 hours per week. Mr. Eggleston responded that a 24-hour firefighter works about 54 hours per week average, and would incur overtime because the Fair Labor Standards Act establishes a threshold just below how many hours they work – so when they work a full week, inherent overtime is built into their schedule. He said that half of the field staff works 12-hour shifts, and the other half works 24-hour shifts.

Mr. Foley noted that the County had to make an additional appropriation last year, and as a result of that is doing an analysis and staff would bring it back to the Board.

Mr. Boyd suggested that it be a part of the budget report for the ensuing year.

Ms. Mallek commented that if it was ready sooner, then she would rather have it sooner so that it does not get swallowed up in a lot of other numbers.

Mr. Foley suggested bringing it back as part of the Board's five-year plan discussion.

Motion was then offered by Mr. Rooker to approve the County's acceptance of the SAFER Grant. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Dumler.

Board members congratulated Mr. Eggleston on the grant.

Agenda Item No. 21. Wireless Policy/Regulations Update.

The following executive summary was forwarded to Board members:

The Board of Supervisors directed staff to research the need to change the County's existing Wireless Policy and regulations. In an effort to determine the needs and desires of the wireless community, staff conducted a roundtable with representatives of the wireless industry on June 7, 2012. A summary of the comments made at the roundtable are included as Attachment A. The County also

retained the services of a consultant to provide information and analysis regarding several issues identified by the Board. The report of the consultant is included as Attachment B.

CityScape Consultants Inc. was selected to provide information regarding the following issues:

1. Describe how technology may be changing deployment.
2. Describe the court decisions that are influencing the regulating of deployment and why.
3. Describe the FCC rulings, programs and policy initiatives that may impact regulation of deployment and why.
4. Describe how changes in wireless will impact the regulation of deployment.
5. Describe how Albemarle County's policy should change and list those sections in the County Code that need to be revised on the basis of technology, court cases and the recent FCC rulings.
6. Determine how the County could encourage broadband deployment into portions of the County not currently served.

Staff has reviewed the consultant's report, considered the comments of the wireless industry made at the roundtable, and conducted its own research. Through this work staff finds, and the consultant agree, that with the exception of the regulatory changes listed below, that the County's current Wireless Policy and regulations are consistent with existing technology, case law and FCC rulings, and that newer technology can be deployed within this framework.

Staff recommends a number of changes to the County's Ordinance and Policy that fall into four general categories, as follows:

Changes designed to address recent changes in federal law:

1. Add definitions for terms such as "collocation," "substantial change," and "existing facility."
2. Allow equipment to be replaced on existing towers (regardless of how they were permitted), with only building permit review.
3. Other changes to ensure wireless regulations are consistent with recent FCC rulings and changes in federal law.

Changes to the design of sites:

1. Remove the limitation on the number of arrays permitted on any individual tower.
2. Investigate potential changes to the antenna mounting and size limitations.
3. Remove or modify setback requirements.
4. Remove antenna design requirements for antenna located within a structure.
5. Investigate modifications to the maximum monopole width permitted to ensure interior cable routing can occur.
6. Increase the number of facilities permitted within 200 feet of each other from 3 to 4 before a Tier III special use permit review is required.

Changes to the review process:

1. Allow wooden poles to be replaced with metal poles, with only building permit review.
2. Allow monopoles of up to 60 feet by right, regardless of their proximity to any tree.
3. Allow Tier II monopoles to be 15 feet above the reference tree.
4. Allow Tier II facilities to be approved administratively by staff rather than continuing to be approved by the Board by special exception.
5. Exempt wireless facilities from the critical slopes provisions.
6. Exempt wireless facilities from review by the Architectural Review Board.
7. Remove Rural Historic Districts from the list of Avoidance Areas, which requires the facility to obtain a Tier III special use permit.

Changes to submittal requirements:

1. Amend submittal requirements so that only trees or other screening material near the facility or disturbed areas are shown.
2. Eliminate mandatory annual reporting requirement and instead require the service provider to submit a report upon the request of the County.

Prior to presenting a zoning text amendment to the Board for consideration, staff recommends that the wireless industry and the general public be further engaged in the process.

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012

One recent change in federal law requires preliminary consideration by the Board. Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 states in part that "Local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." Section 6409 does not alter localities' processes for approving an application for a change that is not substantial; the statute only requires that the application be approved.

At the June 7, 2012 wireless roundtable, representatives from the wireless industry urged that a definition of the phrase "substantial increase in the size of the tower" contained in a federal document known as the "Nationwide Programmatic Agreement for the Collocation of Wireless Antennas" (the "Programmatic Agreement") (Attachment C) be used to define "substantially change" as used in Section 6409. At this point, staff has concerns and doubts as to whether the definition in the Programmatic Agreement should be used to define a "substantial change" under Section 6409, including the following:

1. Although the Programmatic Agreement preceded Section 6409, Congress chose to use the phrase "substantially change" instead of "substantial increase in the size of the tower".

2. The Programmatic Agreement was entered into between federal agencies and its purpose was to establish guidelines for the speed by which changes to wireless facilities located on historic federal buildings would be acted upon by a federal agency; Section 6409 applies to localities and the exercise of their zoning and police powers.
3. The FCC relied on the Programmatic Agreement in a declaratory ruling directing localities to expedite action on wireless facilities by acting on those that would not require a substantial increase in the size of the tower within 90 days; Section 6409 does not pertain to the speed by which a locality must approve a facility.
4. Extensions to towers that do not increase the height of the tower by more than 10% and new equipment mounted that would not protrude more than 20 feet would not be a "substantial increase in the size of the tower" under the Programmatic Agreement. Thus, under the Agreement's definition, a mountain ridge monopole could be extended so that it would become skylighted in violation of the County's Wireless Policy, and a 40-foot monopole could have a 20-foot protrusion mounted to it, and neither of these changes would be considered a substantial change. In addition, the Agreement does not address whether the 10% and 20 foot thresholds pertain only to those towers in existence when the Agreement was entered into, whether they pertain only to towers as they were originally approved, or some other iteration. The Agreement also does not restrict the number of expansions to which the 10% or 20 feet threshold might apply. Thus, a wireless facility could be extended multiple times in a series of applications to whatever height the structure would bear. The picture below shows a facility with an array at the top that would not be considered a "substantial increase in the size of the tower".



Photo from <https://www.law.upenn.edu>

As can be seen from the photograph, accepting the Programmatic Agreement definition could result in facilities that do not comply with the County's Wireless Policy by simply adding equipment to an existing monopole. The initial applicant for a wireless facility would comply with the County's wireless regulations and be required to use flush mounted antennas. If the Programmatic Agreement definition applied, subsequent additions to the wireless facility would not have flush mounted antenna. Staff believes that Section 6409's failure to use the terminology of the Programmatic Agreement was intentional. Therefore, staff requests that the Board direct staff to develop a reasonable alternative definition of "substantial change" that implements Section 6409 and is consistent with the County's Wireless Policy.

Broadband Deployment

The Board also requested that the consultant determine how the County could encourage broadband deployment into portions of the County not currently served. The consultant addresses this issue on pages 36-37 of Attachment B. Staff notes that in 2011 the FCC was estimating that over 71% of the County's residences had access to broadband service and Centurylink has estimated that over 90% of the County residences will have access by the end of 2012. For the remainder, there appear to be limited options for encouraging broadband deployment. The recommended changes to the wireless regulations should somewhat reduce the requirements that service providers must meet to establish new facilities, but this ultimately becomes a business decision where the cost of providing service must be weighed against the potential revenue, with these remaining low density areas proving an economic challenge.

This does not prohibit the County from considering other options. The School Division is investigating options to provide broadband to all of its students within the Rural Areas, but is in the very preliminary stages of developing a plan. At this time it is not known if that service could be provided to the general public or to students only. Further, the system to be used and the number and location of sites required to provide coverage is presently unknown. It is anticipated that more information on the School's project will be available in approximately six months.

The proposed changes to the County's wireless regulations are not anticipated to require additional County funding, and may result in less staff time spent on wireless facility review.

Staff recommends:

- 1) That the Board direct staff to prepare a Resolution of Intent for adoption to initiate the regulatory changes recommended by staff and any additional changes as directed by the Board. Unless otherwise directed by the Board, the process of ordinance development would include engaging the wireless industry and public to gather input on ordinance concepts before bringing this forward for public hearings. This work will need to be prioritized against other staff efforts and a recommendation for prioritization will also be submitted to the Board for consideration with the Resolution of Intent; and

- 2) That the Board directs staff to develop a reasonable alternative definition of “substantial change” that implements Section 6409 and is consistent with the County’s Wireless Policy.

Mr. Fritz addressed the Board, stating that he would be going through the consultant’s report and providing staff’s recommendations along with gathering input from the Board.

He explained that in December 2000, the current wireless policy was adopted; in 2004, the Board adopted the ordinance; and in 2010, they made some minor changes. Mr. Fritz emphasized that the Board has not really changed it much since the original version in 2000, and the 2004 ordinance really just implemented things that were done in that policy. He reported that staff held a roundtable in June 2012, which the Board has results from. Since 2004, he said, the County has had 74 approvals and two denials, with 43 Tier II applications and 33 Tier III applications. Mr. Fritz said staff are not able to provide Tier I application numbers because those are handled simply as a building permit. He said that if you get a Tier II approved, you then apply for the building permit to do it so it would be double-counting.

Mr. Fritz reported that the Board provided some direction so staff hired a consultant to help understand how technology was changing deployment, what court decisions are influencing regulations, what the FCC is doing and what their policy initiatives are, how changes in wireless will impact regulation of deployment and how County policy should change to address those changes, and how broadband deployment can be encouraged for portions of the County not currently served.

Mr. Fritz provided a map from the FCC’s website that shows mobile deployment, with lower to higher speeds and no service areas. He said that Virginia really stands out when compared to other surrounding states with higher speeds, and significant portions of Albemarle County are not served with mobile broadband – and those areas have low population density as well as fairly rugged terrain. Mr. Fritz stated that if you account for terrain, the level of deployment in Albemarle County appears to be the same as it is in other counties, so regulation does not seem to be having that big of an impact just based on coverage and speed of coverage. He said that the question of whether County regulations have an impact on filling in some of the voids is a harder question to answer, but in looking at the map nothing really stands out.

Mr. Fritz presented a map of unserved census blocks that are eligible for the Connect America funds, and the FCC shows the unserved mobile portion as a population of 2,219. He noted that the expanded Connect America funding is all in Southside and southwest Virginia – but not here. He also showed a map of fixed wire line access to broadband, noting areas considered rural and those considered urban, as well as those that are unserved. Mr. Fritz said that 71% of the County has access to fixed wire line broadband service, with the population without access at about 20,500. He noted that Century Link states that their extension to the south would increase coverage to 90% of the County.

Mr. Fritz stated that in their research and with the consultant’s input, staff arrived at three key things that could be done to encourage broadband deployment: the first is to work with the School Board, which is investigating providing access via school sites.

Mr. Boyd said he was curious as to what the schools are doing, and whether they are looking at expending school funds to bring broadband to rural areas.

Mr. Fritz explained that that’s his understanding – but they are in the very early stages of doing this, and they need to hire someone to do a propagation analysis to establish how big the unserved areas are as well as what would be needed to cover those areas. He said the schools would have to inventory what assets the schools have, what assets the County has, what assets the industry has – as well as investigating public/private partnerships.

Mr. Boyd said he hoped the schools would talk to the Board about this.

Mr. Snow said that in his conversations with the schools, he understood them to say that they had access to money and grants that the County wouldn’t have as a government.

Mr. Fritz stated that the schools also had access to bandwidth, and recommended that staff just continue to work with them and bring information back to the Board.

Mr. Boyd commented that he just wouldn’t want to see it buried in a technology budget.

Mr. Foley said that the schools had talked about putting in a CIP request, and staff has reviewed it but isn’t sure it is ready to be considered in a CIP – particularly in an amendment year. He said that there needs to be some study done before staff could even be ready for the CIP.

Mr. Rooker stated that the summary indicates that the schools would be providing free, high-speed internet access to some part of the County, yet to be defined. He said that his concern is having people who are still paying for it while 30% of the County is getting it for free.

Mr. Boyd added, and paying the taxes that’s funding the other.

Mr. Rooker said the schools would be competing with private carriers as well, and the question is who is going to pay for it if you’re getting it for free.

Mr. Snow asked if Century Link had said they would have 90% of the County covered.

Mr. Fritz said that was reported in the press. Mr. Foley said that figure was once Century Link has completed their expansion. Mr. Fritz stated that it would likely be in the western and northwestern part of the County.

He reported that staff's second idea as to what can be done to encourage broadband deployment is to amend the ordinance to make construction of new facilities easier, and the other would be to work with public agencies to determine the availability of public facilities where collocation could occur – federal, state or local resources that might exist.

Mr. Fritz explained that staff has broken down the changes into four categories – changes to address law, changes to the design of sites, changes to the review process, and changes to the submittal requirements. He said that to address changes in law, staff recommends adding definitions such as collocation, substantial change, and existing facility. He said that part of the approach allows equipment to be replaced on existing towers regardless of how the tower was originally permitted, with only a building permit. Mr. Fritz stated that there are some other changes to ensure that the regulations are consistent with the FCC rulings, changes in federal law, and whether the shot clock ruling should be formalized.

Regarding recommended changes to the design of sites, Mr. Fritz said they would remove the limitation on the number of arrays permitted on any individual tower – currently limited to three before pushing an application into another tier category.

Mr. Rooker asked if that was required by any change in the law. Mr. Fritz responded that it was not.

Mr. Rooker asked how an unlimited number of antennae would impact visibility. Mr. Fritz replied that it would probably be limited, because an applicant would be bringing those down closer into the tree line or at a lower height.

Mr. Rooker noted that one of the recommendations is increasing height, and eliminating the need for tree screening. Mr. Fritz said that was true for some towers, and one of the recommendations is that 60-foot structures be permitted by right.

Mr. Rooker asked, anywhere? Mr. Fritz responded, anywhere.

Mr. Rooker said, your next door neighbor's yard? Mr. Fritz responded yes.

Mr. Rooker stated that he is not going to support this.

Mr. Fritz reported that the recommendations include investigating the potential changes to mounting and size limitations, based on the new types of antennae being used – which are tilted more than the old flush-mounted antennae. He said that another suggestion is to remove or modify setback requirements.

Mr. Rooker said that was based on the distance to the property line.

Ms. Mallek said it provided a fall zone.

Mr. Rooker said that this suggests eliminating a fall zone.

Mr. Fritz said either eliminated or modified.

Mr. Fritz stated that other recommendations include removing antenna design requirements for an antenna located within a structure; investigating modifications to the maximum monopole width to ensure that the cable can still be routed inside the monopole. He noted that the cabling needed for the technology can be a little larger, and difficult to adhere to the size limitations currently in effect. Mr. Fritz said that staff is suggesting increasing the number of facilities permitted within 200 feet of each other from three to four before a Tier III application is required.

Mr. Rooker said that he can understand some of the recommendations as stand alone approaches, but when combining things like higher towers and more antennae with elimination of tree cover, staff is really talking about creating cellular antennae farms – in some cases as a matter of right – and that's troubling. He stated that he has spoken with several people in the industry, and all electronic and communications equipment is becoming more and more capable of doing this in a smaller profile – but this seems to assume the need for bigger and bigger equipment.

Mr. Thomas said that the terrain is the largest impact.

Mr. Rooker said that the terrain has not changed.

Mr. Thomas said the height gets them above the trees.

Mr. Rooker said that when the Board did the original ordinance that was considered, and what exists today is much more sophisticated and could generally be done in a smaller profile than when the ordinance was originally passed.

Mr. Fritz agreed that was generally the case, adding that the roundtable discussions revealed a desire to increase the height above the trees in order to reduce the impacts on the trees on the propagation of the signal. He said there was also a desire to have more antennae located on an individual structure to accommodate changing technologies.

He reported that changes in the review process would allow for wooden poles to be replaced with metal poles with only a building permit review, as a number of those are starting to rot because of their age. Mr. Fritz said that monopoles would be allowed up to 60 feet by right, and Tier II monopoles would be up to 15 feet above the reference tree; Tier II facilities would be approved administratively by staff rather than the Board; wireless facilities would be exempted from the critical slopes provisions and ARB review. He explained that the latter recommendation was because they are already being reviewed for visibility by staff and have standards by which they are being reviewed. Mr. Fritz stated that the recommendations also include removing the rural historic districts from the list of avoidance areas, as they have been able to be sited there under visibility criteria.

Mr. Fritz said that changes in the submittal requirements would be amended to include any significant features near the facility as trees or screening material. He said that the recommendations include eliminating the mandatory annual reporting requirement, and instead request that service providers submit a report upon request of the County. Mr. Fritz stated that staff has to keep track of those reports, and it is difficult at best.

Ms. Mallek asked if the reports were the basis for the use tax for those facilities. Mr. Fritz responded that he didn't believe they were used in that way, as staff is not turning that information over to anyone.

Mr. Fritz reported that there was a major change in law that affected local review – Section 64.09 of the Middle Class Tax Relief and Job Creation Act of 2012 – and that was the specific language changed within the act: “Local government may not deny and shall approve any eligible facility's request for a modification of an existing wireless tower or bay station that does not substantially change the physical dimensions of such tower or bay station”.

Mr. Fritz said the problem is that the law does not contain a definition for what a substantial change is, although it does define eligible facility.

He noted that there was a preexisting agreement called the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, that existed prior to the tax relief act, and it was an agreement with federal agencies impacting how facilities were reviewed against impacts on historic resources. Mr. Fritz said that there are many who believe that the definition contained in the Nationwide Programmatic Agreement should be used to clarify what a substantial change is. He stated that the tax relief act uses does not substantially change the physical dimensions, but there is no definition contained in the law; the programmatic agreement uses the term substantial increase in the size of the tower.

Mr. Fritz stated that they don't use the same terminology, and the programmatic agreement would allow a tower to be increased by 10% or 20 feet, whichever is greater – and would allow up to four cabinets or one new equipment shelter; it would allow antennae to protrude from the tower a distance equal to the width of the tower or 20 feet, whichever is greater, and limits excavation outside the lease area. He said that part of the problem is it does not define what an existing facility is, and the question is whether it is existing when the programmatic agreement was adopted – in March 2001, when the adoption of Section 6409 was effective, or at the time an application is made.

He presented a Photoshopped depiction of a facility, stating that it meets current requirements with flush-mounted antenna – and stating that under the programmatic agreement it could be increased 20 feet in height with antenna protruding up to 20 feet from the tower; and if the existing facility is at the time an application is made, providers could keep doing that until the tower can't accommodate it anymore – and the County must approve it, if you use the definition of what a 'substantial change' is by how it is defined in the programmatic agreement.

Ms. Mallek asked how those changes could be non-substantial. Mr. Fritz responded that the way he is reading the agreement, it says that is not a substantial increase in the size of the tower.

Mr. Rooker said you could keep going up 20 feet at a time and keep adding new antenna array.

Mr. Fritz stated that the programmatic agreement would say that is a permitted use, but the law says that the County has to approve something that does not substantially change the physical dimensions. He said that the language between the two provisions differs, but in the roundtable discussion when the issue was raised, there was comment made that the programmatic agreement should be used to determine what a substantial change in the physical dimensions is.

Mr. Rooker said that the programmatic agreement is not binding on the County, and regardless anyone could look at the picture and see a substantial change. He stated that using a different array and much higher antennae would constitute a substantial change.

Mr. Fritz stated that staff is recommending that the Board direct them to return with a proposed resolution of intent for adoption to initiate regulatory changes, develop a definition for substantial change, and engage the wireless industry and general public while developing the ordinances. He said that it would need to be prioritized along other staff efforts, and that schedule would be included when the resolution is brought back to them.

Ms. Mallek asked Mr. Fritz if he is going to go over the suggestions that he presented at the beginning of his presentation. Mr. Fritz replied however the Board wanted to proceed.

Mr. Rooker said that he didn't personally have any problems with the recommendations that are at the end of the presentation. He said that he thought definitions for collocation, substantial change and existing facilities must be determined in order to have the ordinance meet federal requirements and that they could be defined in a way that is consistent with the things the Board has considered important in the past.

Mr. Fritz pointed out that some of the provisions in the original ordinance – such as the seven-foot height limit above the trees and the number of arrays on a pole – were compromises by which an applicant must prove there wasn't significant increase in visibility. He emphasized that there was no magic to those numbers, they were reached on compromise.

Mr. Davis stated that the discussion was centered on acceptable visual impact, and that's what the Comp Plan talks about and the 360 Communications litigation addressed, and that's the appropriate consideration for the Board.

Mr. Rooker said the industry wanted more leeway, but the public wanted less visibility – and now it seems that the line is being moved. He said that he does not know who we're compromising with.

Ms. Mallek stated that this was in the very early stages of finding out what the public wants.

Mr. Boyd said the other part of the equation was the consumer who wants increased capacity and facilities.

Ms. Mallek noted that she wasn't sure consumers understand what the proposed differences are.

Mr. Thomas said that consumers want to push a button and have it work.

Mr. Rooker stated that there's no guarantee of more service just because of higher visibility towers in a community, adding that surrounding areas with high-speed wireless don't necessarily rely on higher towers.

Mr. Boyd asked why the industry would want to increase tower height. Mr. Rooker responded that the industry wants to put one tower up high to achieve lower cost, adding that the community spent a lot of time developing a policy that allowed for more towers but with minimal visibility. He also said that there were no towers in Albemarle that had the giant arrays found elsewhere, only the ones that preceded the ordinance such as that at Fashion Square.

Mr. Thomas said there was one at Airport Road, and the one behind the phone company on Rio Road had many antennae added to it.

Mr. Rooker commented that it is very ugly.

Mr. Thomas said it is operable.

Mr. Snow stated that 2/3 of the County has coverage, and the Board is not talking about adding towers all over the County.

Mr. Rooker said what the Board is considering is changing the whole standard for what kind of towers are allowed, and what level of visibility is permitted.

Mr. Snow asked why the standards needed to be changed for areas that already have adequate cell coverage. Mr. Rooker responded that in his mind the Board does not, although there are some recommendations here that make sense – such as the size of the monopole.

Mr. Snow asked how many additional towers it would take to cover the unserved areas in the southern part of the County. Mr. Fritz responded that there is no way of knowing.

Mr. Rooker added that the Board has already approved some in the south that haven't been built yet.

Mr. Snow said that he would like for the people in his district to have access to a better network, and would be interested in looking at this on a case by case basis rather than changing requirements for the entire County.

Mr. Rooker stated that you wouldn't really be allowed to do that.

Ms. Mallek said that would be like spot zoning, where there are different rules for different people, and that probably wouldn't fly.

Mr. Rooker said that Century Link is already going down into that area.

Mr. Snow stated that Century Link told him that they could get cable into his district for about \$350,000.

Mr. Rooker noted that Comcast has even higher speed cable than Century Link.

Mr. Thomas agreed that Comcast was faster.

Mr. Davis said that the same issues apply to all providers – density of users and a profit margin to make it worth it. He said that they all evaluate their expansion based on the number of customers they can get in a square mile.

Mr. Rooker stated that it would be helpful to know how the towers approved on Route 20 would impact the area Mr. Snow has expressed concern about.

Mr. Snow agreed, and wondered how many more towers it would take to complete coverage there. He said that the Board could grant the towers by permit.

Mr. Davis said that's what the County does now, and a Tier III tower can be any size by special use permit – that's under the existing ordinance, and you're not getting applications for those towers.

Mr. Rooker said that providers don't have enough customers to warrant spending money to provide that service. He added that the only reason electricity is in rural areas is because of the Rural Electric Act required it.

Mr. Boyd asked what led staff to propose that much relaxation of our current rules and regulations.

Mr. Fritz stated that the Board had asked staff to go meet with the wireless industry, so they did, and combining those comments with the consultant's review led them to this point – as did a review of past actions that had been approved. He stated that staff believes that there may be some change in attitudes towards wireless. He added that the strongest recommendation out of this is to have the Board to direct staff to investigate these further and speak to a broader audience.

Mr. Thomas asked what reasons did the industry representatives give for having the towers go higher. Mr. Fritz responded coverage area. He explained that the providers are wanting to be able to use one facility to provide 4G service, and they need to put multiple antennae on there.

Mr. Rooker said that the Board has approved those – they've had probably 10 of those come by them in the last three or four months, and they've all been approved. He stated that they've been approved within the County's standards.

Mr. Rooker said that there's part of this that must be done under federal law to clean up the ordinance. He stated that the Board has to create some definitions – if you want a supportable ordinance, you need the substantial change definition.

Mr. Davis stated that there are some process changes that are also important, because the approvable applications should be approved efficiently – within the 90-150 day guidelines the County operates under. He emphasized that the bigger picture though is whether there is a new viewpoint of the Board as to encouraging a more rapid deployment of wireless in the County, as its previous position with visibility created some high standards. Mr. Davis said that this made the County a leader in the visibility aspects, but the consultant has pointed out that times have changed and more people are relying on wireless telephone now, and the trend appears that hard line phone lines may be the dinosaurs of the future.

He added that it may become necessary for everyone with a land line phone to replace it with a wireless phone to be able to get adequate telecommunications service, so the question is how the County – within its visual standards and Comprehensive Plan and priorities – advances a technology. Mr. Davis stated that some of these suggestions recognize that there are tradeoffs in being able to accomplish that. He said that this is a check in point with the Board to see whether or not they're ready to start making some of those tradeoffs, as is being pushed by the industry – and perhaps by some consumers of the service.

Mr. Rooker asked if there is there any guarantee that if the Board makes any of these changes, somebody's going to go down and put in a tower someplace. Mr. Davis and Mr. Fritz responded no.

Mr. Davis said there is no guarantee anyone would have a telephone or computer. Mr. Rooker said that was a little more predictable than whether a company would make an investment to serve 20 customers.

Mr. Fritz asked if the Board wanted to go through the suggested changes one by one.

Ms. Mallek responded that it would be helpful to approach it that way.

Mr. Fritz said that the updating of equipment to current standards had Board support.

Ms. Mallek clarified that it didn't include doubling the size of the pieces.

Mr. Fritz stated that it referred to replacement.

Mr. Davis said that this would be towers that are currently nonconforming, prior to the ordinance or special use permit requirements.

Ms. Mallek said it would be helpful to have a map denoting the location of those when the Board starts to do public information sessions.

Mr. Fritz said staff has a map of the ones that have been approved, but not those predating approvals.

He said there were some other changes, including considering whether the processes with shot clock need to be codified.

Mr. Rooker said to him the approval of antennae requests would depend on the kinds of arrays being pursued, as the Board has generally approved requests for flush-mounted antenna.

Mr. Foley pointed out that these are just items that should go the community roundtables, not that the Board has to decide on now. He added that the community may come out and voice opinions that staff will bring back to the Board.

Mr. Fritz asked about the suggestion to remove or modify setback requirements.

Ms. Mallek said she wasn't thrilled with that proposal, and Mr. Thomas said it needed to be considered for modification.

Ms. Mallek asked to revisit the suggestion regarding single-mounted antennae versus multiple. Mr. Fritz explained that currently the ordinance says the face of the antenna can't be more than 12 inches from the face of the tower, and it has a size limitation on the total square footage of the antenna, but staff is recommending that the Board look at the current state of technology of antennae design.

Mr. Rooker commented that in general you can get more out of less with all electronic equipment, but all that comes forward are proposals to increase the size.

Mr. Fritz asked for their input on the suggestion to remove or modify setback requirements.

Board members agreed to look at it.

Mr. Rooker said that he didn't know where the Board would get the standards for sizes of cables.

Mr. Fritz responded that staff would need to do some research to figure that one out.

Mr. Fritz also said the Board had some debate on the limit of three antennae per pole.

Mr. Boyd asked why it was decided to be three.

Mr. Rooker responded that the Board was trying to avoid visual circumstances that look like antennae farms.

Mr. Davis said that Carter's Mountain had been thrown in as being an example.

Mr. Rooker said he probably wouldn't support going beyond what's in place now, especially if the Board is talking about by-right approvals.

Mr. Fritz asked if the Board wanted staff to keep the item regarding a by-right height.

Ms. Mallek said that if there is no tree, it changes the whole basis of the County's policy – which is based on a reference tree and not being backlit.

Mr. Fritz said that the 60-foot height was pulled completely out of the air. He explained that as a system matures, antennas come down in size because they are covering a smaller geographic footprint – so staff was proposing that a 60-foot by right would allow for sites to be constructed because they don't have to cover as much ground, and it increases capacity.

Mr. Rooker said that if there was an appropriate set of standards in place, it could be considered – but the thought of allowing a monopole on any residential lot in the County does not sit well with him.

Ms. Mallek stated that it hasn't sat well with citizens either, adding that when you get to 60 feet there are plenty of five-story buildings it could be mounted on.

Mr. Thomas suggested that staff adjust the wording regarding to a pole's proximity to a tree.

Mr. Davis said that this does not address coverage, it addresses capacity, and with more customers wanting data and other services, there need to be more facilities closer together to be able to provide the capacity to cover all the phones being used at the same time.

Mr. Rooker said that the ability to send out a signal with smaller equipment has improved dramatically, and he does not support this concept but does support a way to look into providing additional in-field signals to make it simpler and easier for the industry without impacting visibility.

Mr. Snow asked if there was any way to put arrays or antennas on existing telephone poles.

Mr. Fritz responded that the poles didn't have the surplus weight capacity and were too short in many cases.

Ms. Mallek said that at the Keene Landfill the County would want to have communications for police and the training facility, and maybe that location could accommodate higher towers to cover that area.

Mr. Fritz noted that one of staff's recommendations involves working with public agencies to use their sites and facilities.

Ms. Mallek said that Congress has prohibited discussions of health, but citizens haven't forgotten about those impacts and there is a big argument in the public debate as to whether these towers should be placed on schools.

Mr. Davis stated that it has been very clearly established by law as not being a proper consideration for the approval process.

Mr. Fritz asked if staff should investigate changing the definition of a Tier II facility to be 15 feet.

Mr. Rooker responded that he didn't think he could support it, and the Board should explore as many ways as possible to improve coverage without negatively impacting visibility.

Mr. Boyd said he didn't have a problem with looking at it, because every item would have a discussion of favorable and unfavorable factors.

Mr. Fritz stated that in looking at Tier II facilities, whatever the Board defines it as is being done administratively instead of coming to the Board as a special exception.

Mr. Thomas said he had no problem with that.

Mr. Fritz said the most common Tier II facility the County sees, by far, is the stand alone treetop facility.

Mr. Boyd commented that some of the issues can't be considered in isolation.

Mr. Rooker said he would support looking at the Tier II changes, as there would still be a small equipment box on the ground.

Ms. Mallek said the box isn't the problem, it is the road needed to do the construction.

Mr. Fritz clarified that staff considers the road part of the facility, and most of the time there have been critical slopes it's been related to the activity going around the tower itself because they're utilizing an existing road that accesses it. He reminded the Board that they are reviewed as facilities, from where they start developing it with the road to get to the tower to the top of the tower – so if they are crossing critical slopes, the road itself could be a visibility issue.

Mr. Davis pointed out that there could be standards – by-right conditions – related to this to ensure there are no impacts that wouldn't otherwise be considered during the current waiver process.

Mr. Fritz said that staff could go back and look at the number of waivers that have occurred with the wireless facilities.

Mr. Boyd commented that it is clear that most of the issues here have been considered through a roundtable process that included the public.

Mr. Fritz said the roundtable staff held was just industry representatives. He also said that what staff is saying here is that they don't know what the design standards should be – but need some guidance from the Board as to the broader issues, such as whether wireless facilities should be exempt from ARB review.

Ms. Mallek stated that she would not support that, because the last thing the County needed was a tower like the one in Gochland.

Mr. Fritz said that the reason staff recommended that is because wireless facilities are already reviewed primarily for visibility, and their recommendations are more critical than the ARB's recommendations because they are using design guidelines whereas staff is relying on the ordinance and wireless policy – which are more focused on visibility.

Ms. Mallek stated that she would keep it in for discussion then.

Mr. Rooker said that he would like to get some feedback from the ARB also, and have them look at proposed changes to the ordinance and how they might impact visibility in the Entrance Corridors.

Mr. Fritz said the ARB could be invited to the roundtable discussions.

Mr. Fritz asked the Board about the suggestion to allow towers in the rural historic districts without going to Tier III, which is currently automatic for towers in an avoidance area.

Mr. Boyd noted that a lot of towers were that way.

Ms. Mallek said that she is not likely to support this because there is a huge community investment in time and effort creating the historic districts, and to take away the possible protection of the Tier III process is not appropriate in her view.

Mr. Snow said he would still be willing to look at the issue as part of further discussions.

Mr. Boyd said if the restrictions are tightened, these applications could be administratively approved as Tier II.

Mr. Rooker mentioned that he hasn't seen a case where location in a historic district made a difference in the decision making, but that's with the current visibility standards – and if those are changed, that might make a difference.

Mr. Boyd emphasized that that's why he stated earlier that the pieces of this are interrelated.

Mr. Fritz stated that the recommendation to amend submittal requirements was somewhat similar to amending what's on a minor site plan, and the criteria now is currently so broad it could be refined so that bulky information is omitted. He said that an example of this would be not to show every tree in the area, only those within the tower area.

Ms. Mallek said she wanted to be sure there was enough information provided, and perhaps a good quality photograph rather than a hand-drawn sketch would be helpful.

Mr. Rooker agreed that looking at a radius would be acceptable, and he wants to make certain that there is an aerial photo or something that shows the context.

Mr. Fritz said that staff feels the information could be tailored without any loss in quality of information.

Mr. Fritz also stated that staff strongly recommends not having reports submitted regularly, and doing them by request instead.

Ms. Mallek said that it would be more chasing around after them than just getting a routine report.

Mr. Fritz stated that the ordinance says providers are supposed to provide an annual report that indicates they are still using a particular facility, but they don't remember to do that and staff has a hard time keeping track of the submittals. He said that this reporting requirement does not really accomplish anything, and could instead request from providers a periodic report that was a list of facilities operating.

Mr. Rooker said there seems to be a lot of reporting taking place for something that isn't really necessary, and if staff wanted to they could request from service providers a list of towers not being used.

Mr. Fritz agreed, noting that this was a recommendation from zoning staff.

Mr. Thomas asked when staff was in roundtable discussions with the industry representatives, did they give any indication of what other localities require as far as reporting.

Mr. Fritz explained that industry representatives recommended getting rid of the mandatory reporting requirement. He also stated that staff and the industry are in total agreement on this matter.

Mr. Fritz concluded his report by stating that staff would bring back a resolution of intent along with a prioritization as to where this would be in their workload.

Mr. Thomas said that staff had done a terrific job on this.

Mr. Fritz said that staff envisions a similar process for this as what was done in adopting the original wireless policy, talking with a broad group of people and meeting with the ARB and the Planning Commission, then bringing it back to the Board.

Mr. Boyd suggested separating the items that are mandatory in order to conform with regulations from the local items.

Mr. Fritz agreed that it could be broken into parts.

Mr. Snow said he would still like some feedback on getting Century Link and/or Comcast down into the lower part of the Samuel Miller District, and to involve them in discussions of what it would take to get cable down into those areas.

Mr. Foley said that the County Executive's office would work on that aspect of this, as this involves having the private sector expand service in other ways.

Mr. Snow commented that he receives three or four emails a week regarding businesses trying to operate in the County, and schools trying to get better service.

Mr. Boyd asked if the best approach was going through staff, or if Mr. Snow would be better off reaching out to major suppliers of service and asking them directly.

Mr. Snow agreed with that approach.

Mr. Rooker commented that there was a huge amount of money available through Connect America, and perhaps if a vendor would move forward if they had a supplement to offset their costs the County could apply for a grant to get that done. He explained that it is just the initial capital cost that keeps them out in most cases; the operating cost is not generally huge. He said that if the schools bring forward a plan as they are suggesting, there are schools in Mr. Snow's area – and perhaps the proposal could focus on currently unserved areas.

Agenda Item No. 22. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Mallek said that her earlier question about the cost recovery process resulted from knowledge that the issue of County residents receiving a bill had not been addressed.

Mr. Davis explained that staff had substantially prepared the request for an Office of Inspector General opinion. The reason the Board needs it is because federal laws require billing to be applied equally in order not to violate Medicare and Medicaid reimbursement laws. He said that the OIG opinions are fact-specific, and based on the facts presented they determine whether you are in violation of those acts. Mr. Davis emphasized that localities that have been prosecuted have had very substantial liabilities associated with violating those acts. He said that staff delayed submitting the request because the opinion is only as good as the fact situation, and it appeared that the County would be moving ahead more quickly on a determination as to whether or not there would be billing by all volunteer agencies in the County, and that would substantially change the facts as to how the funding is going to be provided and who would be billed potentially. He said that he and Mr. Foley have discussed this and determined that it is possible to go ahead and submit the letter for opinion, but if they do that and the negotiations go forward they may end up needing to send another letter seeking protection of a second opinion. Mr. Davis stated that staff has been prepared to send it out, but the negotiations continued beyond the point they thought they would be.

Ms. Mallek commented that she continues to hear about exorbitant bills.

Mr. Davis said that the compassionate billing policy allows anyone to determine that they would only be billed for the insurance amount.

Ms. Mallek said it would be helpful to see a copy of what is sent out to people, because people are missing the number to call if they can't pay the bill. She stated that some of the longer distance trips and higher levels of care were more costly, with a minimum of \$500.

Mr. Rooker said he thought there were fixed fees.

Mr. Davis noted that there are tiered fees depending on the level of service provided, but under federal law everyone must be billed – which is being done, along with standards for compassionate billing that allow people to self-certify their ability to pay.

Mr. Rooker said that if the County is stagnant on expansion of billing services, staff should go ahead and send the letter in and get the approval so no one would have to be billed upon approval.

Mr. Davis stated that the basis for that opinion approval would be that the County is supporting emergency services being provided with taxpayer dollars, so that any resident would no longer have to pay the co-pay because that is being covered by taxpayer dollars. He said that opinion would not relieve them from having to bill people in the City or surrounding counties.

Mr. Rooker said he would be in favor of sending the letter so the policy could be instituted.

Mr. Boyd suggested holding off until the position is clarified for the opinion.

Mr. Foley said that staff had a meeting last night and are hopeful to reach a conclusion in the next several months. He stated that they needed to make a decision soon, because if it goes beyond January there is concern about the revenues they collect.

Mr. Davis stated that all staff would need to do at this point is verify the facts of the letter, which was drafted back in March.

Mr. Foley said that staff would proceed, and if the process does not work the letter may take care of the situation.

Mr. Rooker noted that if approval is granted from the submittal, it may help in talking with the recalcitrant companies, to be able to say there is a letter confirming it.

Mr. Boyd suggested deferring the decision until next week when the Board could get an update.

Mr. Foley said that was all he had for an update, and not much more could be discussed until their next meeting the following month. He said the plan is to go out to the volunteer boards that are involved with this and share the proposal with them to garner their reaction then finalize a proposal they would have to approve. He said that no one is showing their cards at this point, so it is hard to tell how it is going to play out.

Mr. Rooker said it sounds like a longer time frame for that.

Board members agreed to go ahead and send the letter out.

Agenda Item No. 23. From the County Executive: Report on Matters Not Listed on the Agenda.

There were none.

Agenda Item No. 24. Adjourn.

There being no further business to come before the Board, the meeting was adjourned at 3:49 p.m.

Chairman

Approved by Board
Date: 10/03/2012
Initials: EWJ