

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on November 14, 2012, at 4:30 p.m., Room 241, County Office Building, McIntire Road, Charlottesville, Virginia. The meeting was adjourned from November 8, 2012. The regular night meeting was held at 6:00 p.m.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas C. Foley, County Attorney, Larry W. Davis, Director of Planning, Mr. V. Wayne Cilimberg, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. The meeting was called to order at 4:43 p.m., by the Chair, Ms. Mallek.

Agenda Item No. 2. Closed Meeting.

Motion was offered by Mr. Boyd that the Board go into closed meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to consider appointments to the Albemarle-Charlottesville Regional Jail Authority and the Police Department Citizens Advisory Committee; and under Subsection (7) to consult with legal counsel and staff regarding specific legal matters requiring legal advice relating to the negotiation of an agreement for implementing a cooperative cost recovery program for emergency service transports. The motion was **seconded** by Ms. Mallek.

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

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

NAYS: None.

ABSENT: Mr. Dumler

(Note: Mr. Dumler arrived during the Closed Meeting session.)

Agenda Item No. 3. Certify Closed Meeting.

At 6:00 p.m., the Board reconvened into open session. **Motion** was offered by Mr. Dumler to certify by a recorded vote that to the best of each Board member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed or considered in the closed meeting. The motion was **seconded** by Ms. Mallek. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Agenda Item No. 4. Pledge of Allegiance.

Agenda Item No. 5. Moment of Silence.

Agenda Item No. 6. Adoption of Final Agenda.

Ms. Mallek requested that the Board take action to defer the requests for Castle Hill Cider at the beginning of the meeting.

Mr. Snow said he would like to add to the end of the agenda a report on the VACo Conference.

It was the consensus of the Board to accept the final agenda.

Agenda Item No. 13. **SP-2011-00002. Castle Hill Cider; SP-2012-00018. Castle Hill Cider Pond & SP-2012-00019. Castle Hill Cider Stream Crossing (Signs #30&32). PROPOSALS: SP-2011-00002:** Special Use Permit for farm cidery with special events for up to 3,000 attendees on total of 310.47 acres. **SP-2012-00018:** Request to permit fill in the floodplain for an existing pond and stream crossing on 185.06 acres. No dwellings proposed. **SP-2012-00019:** Request to repair existing stream crossing in the floodplain and repair culverts. ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); FH Flood Hazard – Overlay to provide safety and protection from flooding. SECTION: **SP-2011-00002:** 10.2.2.53 Farm winery uses authorized under section 5.1.25 (c). **SP-2012-00018:** 30.3.05.2.1(1), which allows for dams, levees and other structures for water supply and flood control. **SP-2012-00019:** 30.3.05.2.1(2), which allows for water related uses such as boat docks, canoe liveries, bridges, ferries, culverts and river crossings of transmission lines of all types. ENTRANCE CORRIDOR: Yes. COMPREHENSIVE PLAN: Rural Areas – preserve and protect

agricultural, forestal, open space, and natural, historic and scenic resources/density (0.5 unit/acre in development lots). LOCATION: 6065 Turkeysag Road, Keswick TAX MAP/PARCEL: 049000000018B1, 049000000018B2 MAGISTERIAL DISTRICT: Rivanna. **To be deferred to January 16, 2013, subject to Board approval.**

Motion was offered by Ms. Mallek, **seconded** by Mr. Boyd, to defer SP-2011-00002, SP-2012-00018 and SP-2012-00019 until January 16, 2013. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Agenda Item No. 7. Brief Announcements by Board Members.

Mr. Snow announced that the County received the VACo Green Challenge Award and presented the plaque.

Mr. Thomas stated that when Board members were talking about the bypass with Transportation Commissioner Worley, he mentioned transit help to get busses out to the Airport and that area – and it felt like a pretty positive conversation then, but he has not been forthcoming with an answer now above that funding.

Mr. Thomas said that yesterday he was talking with Deputy Commissioner Charlie Kilpatrick, who said that Mr. Thomas would need to talk to Thelma Drake. He asked Board members if they would support him talking to Ms. Drake and taking it further. He also said that if other Board members would like to go with him, he would love it.

Mr. Boyd said that he wish he had known that, because Ms. Drake was at the VACo conference.

Ms. Mallek said that she is supportive of bringing down VRDP funds for transit.

Mr. Snow said that he would go with Mr. Thomas.

Mr. Thomas reported that he was at the VACo meeting for the Transportation Steering Committee meeting, and the entire meeting focused on toll booths and how badly VACo did not want to support them on I-95.

Mr. Rooker mentioned that the state has just announced that it is looking to put them on I-64 between Newport News and Norfolk.

Mr. Thomas said that I-64 wasn't in the report, but he did ask about it – and the conversation shifted to all interstate highways in Virginia.

He stated that the Committee tabled it in order to get more information on what the Governor is planning to do with the toll booths, with the vote delayed until their January meeting. He said that the Committee does not make the decision – they are just a voice in the room.

Ms. Mallek asked if it was part of the VACo-adopted resolutions.

Mr. Thomas responded that it was, and a lot of counties have already put resolutions out against the toll booths.

Mr. Rooker commented that a lot of constituents in the impacted jurisdictions use those roads for commuting purposes.

Mr. Thomas noted that the counties that have already done resolutions include Brunswick, Caroline, Charles City, Dinwiddie, Greensville, Hanover, Prince George, Spotsylvania and Sussex – as well as the cities of Colonial Heights, Emporia, Hopewell, Petersburg, Ashland, Dumfries, Jarrett, Lawrenceville, Stony Creek, Wakefield and Waverly.

Mr. Rooker offered to go to the transit meeting in the event Mr. Thomas or Mr. Snow could not attend. He said that in the past, all transit money has been allocated based on formulas – so a locality can weigh in on where the routes might be, but they can't generally get any more money from the state or federal government because they decide to do a new route. Mr. Rooker added that if the County could get a grant, that would be a different matter.

Ms. Mallek said that the public hearing for the Best Buy ramp 'U.S. 29(Emmett Street)/U.S. 250 Bypass Interchange' will take place on Tuesday, November 27, from 4:30-6:30 p.m. at the Holiday Inn on Emmet Street. She commented that this is a good step forward in progress.

Ms. Mallek said that VDACS has completed their investigation of the spraying in Sugar Hollow and decided there is no problem. She added that she is glad the Board adopted a resolution requiring notification of spraying.

Mr. Boyd asked if VDACS had determined what chemical was used.

Ms. Mallek responded that VDACS said it was Krenite, not the Roundup that the people in the spraying truck had told residents. She said that Krenite is not registered to be used near water or fields with food products grown on them, or pasture – and next year residents will have the chance to opt out and not have their frontage sprayed.

Mr. Rooker asked if residents had the option of opting out for their frontage.

Ms. Mallek responded that the residents will have a choice and will be able to opt out next year. She added that her personal recommendation is that if someone opts out then they would need to mow it themselves and not have it grow up to where people cannot see.

Ms. Mallek announced that the “Virginia Gingerbread Christmas” is coming, and applications are due by December 5 for people who wanted to enter their houses.

Agenda Item No. 8a. Recognitions: 2011 Clean Farm Award, Dave Norford of Piedmont Farm in Albemarle County.

Ms. Mallek read and presented the following resolution to Mr. Dave Norford:

RESOLUTION

In Recognition of Piedmont Manor For Outstanding Farm Conservation Management Practices

WHEREAS, the Thomas Jefferson Soil and Water Conservation District serves this community through programs and activities that enhance water quality of our surface and ground waters, while conserving and protecting our natural resources; and

WHEREAS, in cooperation with the Virginia Department of Conservation and Recreation, farmers who demonstrate outstanding management practices which conserve our precious natural resources are selected and recognized through the Clean Water Farm Award Program; and

WHEREAS, the Thomas Jefferson Soil and Water Conservation District selected Piedmont Manor as the Clean Water Farm Award Program recipient of Albemarle County for 2011;

WHEREAS, Piedmont Manor demonstrates a commitment to the conservation of the natural resources on its' farm through:

- establishing two wildlife plots totaling 3.5 acres and plans to plant warm season grasses in its riparian buffer areas;
- using natural fertilizer, spot spraying, and rotational grazing;
- completely fencing all the waterways on 600 acres of pasture;
- running a management intensive rotational grazing system with 25 paddocks and 20 automatic watering troughs;
- protecting 2.6 miles of stream, home to the endangered James Spiny mussel, and preserving 33 acres of riparian land; and
- managing 2,000 acres of woods on the western slope of the Southwestern Mountain range with both a forestry and wildlife plan.

NOW, THEREFORE, BE IT RESOLVED by the Albemarle County Board of Supervisors, that Piedmont Manor is hereby commended for its' commitment to protecting and enhancing waters that flow beyond farm boundaries and for the conservation ethic demonstrated through farm management practices.

Ms. Mallek then called up Mr. Irvin White, Director from the Thomas Jefferson Soil and Water Conservation District, to present their recognition from the General Assembly to farm manager Dave Norford.

Mr. White presented a plaque to Mr. Norford from the General Assembly and said that in the last 10 years Piedmont Manor has been doing practices to improve the conservation of our natural resources and in the last 5 years they have been working with the Thomas Jefferson Soil and Water Conservation District, and have received the State award for the entire James River Basin for the year of 2011.

Agenda Item No. 9. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Art Beltran addressed the Board, stating that the Planning Commission took some very relevant steps with Castle Hill, and encouraged the Board to look at the minutes from that meeting

because the points there were very well made. He said that part of the problems wineries are facing is that there are no regulations for them, and there are incidents where spray has come over the property lines – and it's up to the individual operator to maintain whatever is on the can of chemicals being used. Mr. Beltran added that he thinks the 200 number is a very sensible number for farm winery events, and if anything else is granted above 200 it will just be a watershed for every vineyard and every cidery in the County. He said that this would just add more problems to a situation where there is no enforcement, and staff can't enforce on weekends. Mr. Beltran said that he and his wife have lived in Albemarle for 35 years, and he would like to see it still be a place where people who have lived here that long continue to want to reside here. He also encouraged attendees to sign up on a clipboard provided for people to stay in touch regarding the Castle Hill matter.

Ms. Judith Summer addressed the Board, stating that she has lived in the County for 12 years and commenting that it's clear that Albemarle is becoming land of the wedding vendors. She said that mountain and pastoral views come together to create the perfect backdrops for photo ops. Ms. Summer stated that people are simply buying property, putting up wineries, and hiring an event planner. She said that "you do not have to grow or harvest anything, do not have to live here, just rent it out to couples looking for a pretty place in the country to have their wedding reception". Ms. Summer said that this is bad for the County because prospective purchasers are catching onto the fact that Albemarle's rural agricultural zoning is morphing into rural commercial. Ms. Summer added that economic development and viability are becoming excuses for changing the rural character of the County and trampling on the rights of residents. She said that most people who live here want to enjoy and protect the rural amenities, not exploit and overwhelm them. Ms. Summer stated that some people pay lip service to a balance between the interests of residents and businesses, but in fact there is no balance – and Castle Hill Cider is a good example – no one actually lives there. The absentee owner lives in Norfolk, the manager and events coordinator live in a rental house 10 miles away. She said that because of a conservation easement, property taxes are just \$5,500 a year for an 11,000 square foot party barn on 600 acres. Ms. Summers stated that Castle Hill is using the land as if it's zoned commercial and the barn is rented out for parties for up to 200 on Saturdays and sometimes other days. The business is apparently economically viable as they are building a \$1 million rental residence – never-the-less Castle Hill wants to increase to 500 guests, who will make even more noise and traffic. She said the Castle Hill doesn't own a decibal meter and have been cited for excessive noise. Ms. Summer said that agri-tourist may stay for a night or two and spend money while they are here, but residents of the County spend their money seven days week, and support not only the local winery's, but restaurants, grocery stores, dry cleaners etc. She stated that residents give blood, volunteer to clean up rivers, pick-up trash on scenic byways and donate to help needy children and families. Uncertainty about what might happen in Albemarle's rural areas, uncertainty about whether the property next door might turn commercial, for example by means of a farm winery license makes people think twice about investing their life savings in a home in Albemarle. Ms. Summers told the Board that if they continue to allow commercial enterprises to become more intrusive and more dominant Albemarle would become even less habitable.

Mr. Keith Hawkins addressed the Board, stating that he lives on Turkey Sag Gap and has been a resident there for the last 20 years. He said that one of reasons he chose the area to live is because of its quiet, laidback nature – but since the cidery has increased its events there, the activity on the road has also increased. Mr. Hawkins said that he and his eight-year old like to ride bicycles on Saturday mornings, but due to the increased traffic flow of delivery trucks and event preparation they have had to curb their recreation. He added that he is also concerned about the increased traffic of people leaving the events, as he also has an 18-year old who recently got her driver's license. Mr. Hawkins noted that some people leaving the events have consumed alcohol, which is also a concern. He added that he can hear music from the inside of his house now also, not just from the outside.

Ms. Nancy Carpenter addressed the Board, stating that she is a Scottsville District resident here to talk about a few different topics. Ms. Carpenter said that she would wholly support transit movement between the airport and Charlottesville, adding that she participated in the Transit Riders Association of Charlottesville meeting last Saturday – a group that is addressing how to improve public transit, and how to get people to live close to where they work. She added that she hopes Albemarle County can be looked at as a world-class county because it offers a good, strong public transit system. Ms. Carpenter said that she also wanted to address affordable housing, as there seem to be fewer units available for inventory; and Housing Virginia indicates in their "2011 Housing Countdown" that rents have increased 14% statewide over the past three years, and as homeownership rates have dropped there's been an increased demand for rental housing that has not been matched by production. She said that this demand has led to sharp increases in rent that have not been matched by increases in income, and there are a lot of people employed here whose incomes are not enough to maintain their housing needs. Ms. Carpenter said that there are over one million households in the state that are "housing cost burdened," which means they take more than 30% of their income to maintain housing. She stated that seniors are the fastest growing component of the population in Virginia, and renters face housing cost challenges – with more than 1/3 of senior renters paying more than 50% of their income for housing. Ms. Carpenter said that she hopes the County strongly urges developers coming forward to provide actual units instead of cash in lieu.

Mr. Jeff Werner addressed the Board, stating that very few times has he left a meeting in this building where local residents were as absolutely dejected and angry as they were after the Planning Commission meeting held the previous night, regarding the proposed shooting range at Keene. He urged the Board to listen to the podcast and really consider the concerns that the Keene residents expressed, adding that he would share some of his own comments from the meeting. Mr. Werner said that the

Piedmont Environmental Council has several concerns about the site of the shooting range, particularly concerns expressed by residents – and given the site's location in a state and nationally registered historic district. He stated that one reason the site is being pursued is because the rural area is losing the value of its rural character, and now the rural area seems to be where things go when they are not wanted elsewhere. Mr. Werner said that neighbors of the shooting range have been told they should accept the daily “pop, pop, pop” of gunshots, otherwise local policemen will not be properly trained. He stated that similarly, neighbors of wineries are told to accept late night noise because quiet, rural evenings are no longer conducive to economic development.

Mr. Werner said that the staff report indicated that the 165 acres at the shooting range would be preserved as open space, and a large expanse of trees will provide buffer for the neighbors – yet there is nothing in that review about how that open space or those trees will be permanently protected, especially given the fact that there are so many future phases that are planned for this project. He said that staff had also indicated that activity on this site is limited, yet the April staff report said that the facility might be made available to other local governments, federal agencies, and private companies. Mr. Werner stated that it's only fair that the Board acknowledge that the site plan and the approval that's happening at the shooting range is more than they are admitting. He added that the conditions in the waiver presented at the Commission meeting will only last until the facility is expanded there, and the Board is not likely to deny this proposal – so it's safe to assume that when the police come back with the proposal for additional uses, the Board is not likely to oppose those either.

Mr. Werner said that Keene residents are very upset, they're very unhappy, and they're very afraid. He added that he thinks that the Board is really doing the residents a disservice, and thought that it was disappointing that the police would not grant them even a 30-day delay so that they could communicate further with the community.

Mr. Ron Mallory addressed the Board, stating that he understands that the Board wants to completely ban trash barrel burning in Albemarle. He said that he is a “responsible trash burner”, and he doesn't think he should be penalized for a few people that abuse the system. Mr. Mallory said that he doesn't burn oil cans or anything like that, and has a compost heap for other materials. He stated that he recycles cans and everything else, and he doesn't feel that it's right that he is being punished. Mr. Mallory also said that if he can't burn trash, it could attract bears – which compromises the safety of his grandchildren. He stated that his wife had cancer and lost part of her foot, making it difficult for her to drag a trash barrel to the end of the driveway. Mr. Mallory mentioned that for nine months of going to the County dump, his trash bill was \$7.64, and he can't afford \$25 a month or more for someone to haul away his trash. He stated that prohibiting burning is going to encourage people to throw more trash on the side of the road.

Dr. Charles Battig addressed the Board, stating that he was continuing a little investigation into what the County staff/planners have been up to. Dr. Battig said that on page 25 of the planning work session document presented by Elaine Echols in October, it states that an agricultural/forestry support program will exist, staff person will be hired, the number of farms will not decrease, the acreage will not decrease, the districts will not decrease, the number of acres under land use will remain stable or increase, and the total market value of agricultural products produced in the County will increase. He asked how staff knows this. Dr. Battig stated that the pages dealing with natural resources include information that the Nature Conservancy contradicts biodiversity dogma, quoting their chief scientist as saying “as conservation became a global enterprise in 1970s and 80s, the movement's justification for saving nature shifted from spiritual and aesthetic values to focus on biodiversity”. He said that nature was described as primeval, fragile, and at risk of collapse from too much human use, but ecologists and conservations have grossly overstated the fragility of nature, frequently arguing that once an ecosystem is altered it is gone forever. Dr. Battig stated that the chief scientist of the Nature Conservancy has said that “the concept of nature as opposed to the physical and chemical workings of natural systems has always been a human construction”. He added that the trouble for conservation is that the data simply do not support the idea of a fragile nature at risk of collapse. Dr. Battig said that the American Planning Association has said that Smart Growth and population compaction do not achieve claim goals, but do achieve negative impacts.

Ms. Mallek pointed out that the first slide Dr. Battig presented reflected the County's goals, and it's always good to be aspirational.

Dr. Battig responded, “so was the Soviet Union.”

Agenda Item No. 10. Consent Agenda. **Motion** was offered by Mr. Rooker, **seconded** by Ms. Mallek, to approve Items 10.1 (as read) through 10.4, to pull Item 10.2 (for discussion at end of meeting), and to accept Item 10.5 for information. Roll was called and the motion carried by the following recorded vote:

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

Item No. 10.1. Approval of Minutes: September 21, October 3 and October 10, 2012.

Mr. Snow had read the minutes of September 21, 2012, and found them to be in order.

Mr. Dumler had read his portion of the minutes of October 3, 2012, pages 1-47 (end at Item #14), and found them to be in order.

Ms. Mallek and Mr. Thomas said they had not finished reviewing their sets of minutes, and asked if they be removed from the Consent Agenda.

By the above-recorded vote, the minutes were approved as read. The remaining minutes were carried forward to the next meeting.

Item No. 10.2. Road Improvement Priorities for Virginia's Working Draft FY 2012-2019 Six Year Improvements Program (SYIP) (**deferred from November 7, 2012**).

Mr. Boyd said he would like to discuss this item at the end of the meeting.

Item No. 10.3. Brownfield Assessment EPA Grant Application.

The executive summary states that the Thomas Jefferson Planning District Commission (TJPDC) is again seeking \$400,000 in grant-in-aid funding from the Environmental Protection Agency (EPA) to support the Thomas Jefferson Regional Brownfield Assessment Project. No match funding from the County is required for the grant; however, TJPDC has requested that the County provide a letter of support (Attachment A) for this initiative.

On October 5, 2011, the Board was requested to provide a letter of support for the TJPDC's previous grant application for \$4,000,000 in funding for the Regional Brownfield Assessment Project. The Board provided the letter and the TJPDC applied for the grant, but the grant was not awarded to the TJPDC. The 2011 application, while rated quite high, was ranked just below the award cut-off. The EPA was looking for more specificity in a couple of areas, which TJPDC staff have addressed in the current application.

Work under this project is proposed to include identifying properties in the TJPDC that possess good redevelopment potential but are affected by existing or potential environmental contamination which has resulted in the properties being undesirable for redevelopment. This assessment will begin a process that could ultimately transform these properties to more desirable and marketable sites. Specific tasks of the grant include:

1. Outreach and Education: The TJPDC will reach out to elected officials, planning commissioners, economic development organizations, the business community (especially real estate companies, developers, and banking institutions), and the public to educate them on the challenges and opportunities of brownfields remediation.
2. Regional Inventory: The TJPDC will inventory brownfields with a focus on sites that possess potential for redevelopment.
3. Phase I Environmental Site Assessments (ESAs): The TJPDC, with help from an advisory committee to be comprised of representatives from each locality, will develop criteria to guide the selection of sites from the inventory on which to conduct Phase I ESAs. The TJPDC will hire consultants to conduct the Phase I ESAs.
4. Phase II Environmental Site Assessments: With information gathered from the Phase I ESAs, the advisory committee will select sites on which to conduct Phase II ESAs. The TJPDC will hire consultants to conduct the Phase II ESAs.
5. Remediation Plans: Based on the findings of the Phase II ESAs, the advisory committee will determine which sites the TJPDC should contract with a consultant to develop remediation plans.

At the conclusion of this planning work, the TJPDC will be able to apply for state and federal grants and loans to implement remediation plans and possibly to begin redevelopment planning.

Anticipated benefits to the locality from remediation include:

- Brownfield property may be returned to its highest and best use
- Brownfield property may be returned to, or an increased contribution may be made to, the tax base
- A detractor of development for surrounding property is reduced or eliminated
- Jobs are created and/or attracted
- Pressure to grow outward is reduced
- Citizens' exposure risk to environmental contamination is reduced
- Pollution/contamination and the risk of its migration to soil, water, and air is reduced

Because the TJPDC is only seeking a letter of support for its grant application, staff does not anticipate there will be any budget impact to the County through this initiative.

Staff recommends that the Board support the TJPDC's grant application and authorize the Board chair to sign a letter of support on behalf of the Board (Attachment A).

By the above-recorded vote, the Board supported the TJPDC's grant application and authorized the Board Chair to sign the following letter of support on behalf of the Board:

November 14, 2012

Mr. Steve Williams, Executive Director
Thomas Jefferson Planning District Commission
401 E. Water St.
Charlottesville, VA 22902

Dear Mr. Williams:

Albemarle County is pleased to participate in the coalition of localities that are represented in the Thomas Jefferson Planning District Commission's (TJPDC) application to the Environmental Protection Agency (EPA) for the Thomas Jefferson Regional Brownfield Assessment and Planning Grant. Albemarle County shares the TJPDC's commitment to environmental stewardship and community development, both of which will be furthered by this project. We believe the investment in challenging properties made possible by this project will result in reinvestment and job creation that would not otherwise have occurred in Albemarle County. Additionally, the project will help establish the necessary steps to clean up pollution that potentially threatens our natural resources, health, and livelihood.

We are committed to participating in this project. We are excited to assist the TJPDC in the site selection process, and already have sites in mind that would benefit Albemarle County, our citizens, and the environment if determined to be eligible for assessment activities. The County will also participate in the brownfields steering committee by assigning a staff member to the committee, who will help identify brownfield sites in Albemarle with the greatest potential to benefit the community, reduce poverty and reduce blight. Further, we will help TJPDC reach out to our community leadership and community groups to educate them about brownfield redevelopment. We see this project as an opportunity to transform negative aspects of our communities into assets, improving the quality of life for our citizens and attracting positive attention from outside. The TJPDC has assisted the County many times in the past and we have found the organization to be a very capable partner. The Commission's quality of work and comprehensive approach to regional issues uniquely qualifies them to undertake this project on behalf of the coalition members. For these reasons, we hope the EPA will support the TJPDC's proposal to assess and plan for brownfields remediation in our region.

Item No. 10.4. Crozet Avenue North – "Safe Routes to School" Sidewalk and Crossing Improvements.

The executive summary states that the Office of Facilities Development is presently progressing with the completion of the Crozet Avenue North - "Safe Routes to School" Sidewalk and Crossing Improvements. This is a Safe Routes to School (SRTS) grant-funded project that will provide a new crosswalk at the Crozet Elementary School and provide a new curb, sidewalk and storm water system on the west side of Crozet Avenue from the Old Crozet Elementary School to Ballard Drive. The acquisitions of a permanent right-of-way, a permanent drainage easement, and two temporary construction easements across TMP 56B-56, belonging to Agnew and Delois Morris, are necessary to construct this project.

The cost of acquiring the right-of-way and the easements are reimbursable expenses from the SRTS grant. VDOT, pursuant to the SRTS grant, required the County to obtain an independent appraisal to establish the fair market value of the right-of-way and the three easements to be acquired, and to offer just compensation. The appraisal determined the property value to be \$3,179.00, and this information was shared with the owners as required by the SRTS grant. The owners agreed to sell the right-of-way and the easements to the County for \$3,179.00, based upon the appraisal and the compensation estimate, and have signed the Deed of Dedication and the Plat (Attachment A).

Funds in the amount of \$190,000 were previously appropriated for the project to include the project design, right-of-way and easement acquisitions, and construction. The cost of this acquisition is \$3,179, which will be reimbursed by the SRTS grant.

Staff recommends that the Board approve the right-of-way and easement purchase on property identified as TMP 56B-56 at the agreed price of \$3,179, and authorize the County Executive to sign, in a form approved by the County Attorney, all documents necessary for the purchase of the property and the recordation of the Deed.

By the above-recorded vote, the Board approved the right-of-way and easement purchase on property identified as TMP 56B-56 at the agreed price of \$3,179, and authorized the County Executive to sign, in a form approved by the County Attorney, all documents necessary for the purchase of the property and the recordation of the Deed.

Item No. 10.5. VDOT – Culpeper District, *Monthly Report for Albemarle County, November 2012*, **was received for information.**

The following special issues were addressed in the report:

- The Route 637 and 677 Bridge Replacement Public Hearings were postponed due to weather conditions. These will be rescheduled.
- Route 29 crash data was collected and reviewed by VDOT for the corridor within Albemarle County as requested. This data will be sent to the Board for review.
- A request was made to VDOT Traffic Engineering to find potential solutions to the Polo Grounds Road and Route 29 occasional queuing issue.
- Crash data has been collected for Garth Road and will be submitted to the Board for Review and recommendations.

Agenda Item No. 11. **PUBLIC HEARING: SP-2012-00024. Verizon Wireless Va. Dept. of Forestry "Buckingham Circle" Tier III Personal Wireless Service Facility (Signs #115&116).** **PROPOSAL:** Request for installation of a 110 foot tall "steath" monopole structure ("monopine") and associated ground equipment. ZONING CATEGORY/GENERAL USAGE: CO Commercial Office – offices, supporting commercial and service; residential by special use permit (15 units/acre); EC Entrance Corridor – Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access. SECTION: 23.2.2.15 Tier III personal wireless facilities. COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood 6; Office Service – office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre). ENTRANCE CORRIDOR: YES. LOCATION: 76 feet SW of Natural Resources Dr. on the Forestry Dept. Headquarters. TAX MAP/PARCEL: 07600-00-00-017A0. MAGISTERIAL DISTRICT: Samuel Miller.
(Advertised in the Daily Progress on October 29 and November 5, 2012.)

Mr. Cilimberg addressed the Board, stating that this is one of two special use permits for towers, and this particular "mono-pine" is to be located on the Forestry Department property off of Resources Drive behind the Fontaine Research Park to the south of that development. He presented renderings of the proposed mono-pine in generally wooded areas, noting that the balloon test from I-64 showed the balloon briefly to travelers down the interstate, and was also visible from the Fontaine Park itself. Mr. Cilimberg presented a comparison of what would be visible on the Forestry Department site, with a photo-simulation of the mono-pine.

He reported that in discussing this with the ARB, there was not a significant negative visual impact to the Entrance Corridor itself due to the location – and their opinion was specific only to this location, as they do not endorse the general use of mono-pines due to the potential visual impacts to the entrance corridor. Mr. Cilimberg said that the pole does support a larger system of 4G services for Verizon, and there has been no objection from the adjacent property owner, from which the mono-pine is visible – in this case being the Fontaine Research Park.

Ms. Mallek asked about the Buckingham Circle residents. Mr. Cilimberg replied that it was not visible from there, although it will provide service to them. He noted that the field balloon test did not show it being visible from there.

Ms. Mallek said that the balloon test is a little bit different in this case because the normal pole is so tiny when seen from a distance, and this is so massive. Mr. Cilimberg stated that staff did note that an unfavorable factor would be that the mono-pine creates more visual awareness. It's not a monopole any longer it's actually a fake tree. He said that that's generally inconsistent with the intent of the personal wireless service facilities policy, so approval of this request should not be considered a precedent. Mr. Cilimberg said that the height of the mono-pine relative to the surrounding trees increases its visibility – primarily onsite and from the adjacent research park property.

Mr. Cilimberg pointed out that this is being pursued as a mono-pine at the request of the Department of Forestry, and there are two recommendations: one for approval of special exceptions for modifications, which now includes three that are necessary – one for the T-mounts instead of the customary flush mounts, the height of the structure being 47 feet taller than surrounding trees, and for permission for a java-brown trunk antenna array and limbs with the artificial green pine needles; and approval of the special use permit with a condition that development and use to be in general accord with the plan.

Ms. Mallek asked what changes could be made under general accord that the County would never see, as that has been an issue in the past. Mr. Cilimberg explained that be in general accord means the development and use should reflect the following major elements, which are the things that must be provided for and cannot change: height, mounting height, antenna type, number of antenna, color, and location of ground equipment.

Mr. Rooker asked for clarification from Mr. Davis on whether a proposed height that goes slightly higher than what's proposed if it would be in general accord. Mr. Davis responded, for this permit – no.

Ms. Mallek said that it could shift a few feet without a modification. Mr. Cilimberg replied that it is all based on its location as shown, and there are other trees in the area that were part of the factors of consideration – location and general context of the location.

Mr. Rooker asked what the applicant could modify from the conceptual plan if it was required to be in accord. Mr. Davis responded that it would have to be exactly as shown on the site plan. Sometimes there are minor variations needed for moving a tower around that do not effect the five or six elements for general accord, that would be in violation if it was required to be in accord; administratively it can be modified if it is a general accord standard.

Mr. Cilimberg said that the location of the ground equipment is fixed, for example, by the plan –but any fence the applicant would surround the location with isn't fixed, and the general accord provision would allow for it to be adjusted.

Mr. Davis said that staff's position is that the major elements of concern have been defined and cannot be changed, and the experience has been that they don't want to require people to come back through a special permit process for things that are not important.

At this time, the Chair opened the public hearing.

The applicant's representative, Lori Schweller of LeClair Ryan, addressed the Board.

Ms. Schweller reported that Verizon is requesting a special use permit for a Tier III personal wireless service facility, and this particular application requires a visual presentation to avoid fears of a plastic Christmas tree. Ms. Schweller pointed out the location of the proposed tower site and pointed out the state property where the Department of Forestry is located. She said that the reason for this design is that the DOF is requesting a mono-pine design at this location, noting the location of the office and the warehouse.

Mr. Dumler asked why the DOF was requesting a mono-pine.

Ms. Schweller explained that this was their preference visually, as the pole will be seen by the DOF director as he's looking out of his office window. Ms. Schweller explained that the forestry office visited several of Verizon's sites at historic properties in Virginia, including Mount Vernon, Montpelier, Williamsburg, and chose the design of the site at the Greenbrier – which is a historic site on the national registry. She presented an aerial photograph to illustrate the tree coverage in the area and pointed out the Buckingham Circle neighborhood that the tower intends to serve, noting that it would also serve the office park and the I-64 area. Ms. Schweller presented a schematic of the mono-pine, and said that Verizon is proposing a full array with four antennae in each of the three sectors to maximize coverage – which would be better than the typical flush-mounted array. She said that there is room for two more arrays above the tree line, pointing out that the trunk would have a faux-bark cladding created from molds taken from living trees or replicated from photographs with the needles being green. Ms. Schweller presented a close-up of the Greenbrier mono-pine, stating that with this particular design the branches go very far down so there wouldn't be any location where the bare trunk was visible. She also showed photos of the actual construction of the Greenbrier mono-pine, pointing out the faux bark and the branches before assembly – which are invisible to radio waves and can stand up to all kinds of weather.

Ms. Schweller reported that the applicant conducted a balloon test from the site and traveled down the bypass and I-64 as well as through the neighborhoods in the area, and said the mono-pine is not visible except for the areas denoted in red dots. She stated that from the north end of the office park, the tower is far in the distance and thus not very visible; from the south end of the office park it's also in the distance.

Ms. Mallek commented that the trees were all deciduous.

Mr. Snow said that the trees appeared to be evergreens.

Mr. Dumler asked if the balloon test was conducted in September. Ms. Schweller responded that it was done in August, but definitely before the leaves began to fall from the trees.

Ms. Schweller presented a photo of the balloon test taken just above the site on Natural Resources Drive, noting its visibility through the tree buffer between the road and the site. On the subject property from across the parking lot, she said, it is very visible. Ms. Schweller stated that on I-64, the only place that it's visible is on the overpass over the railroad tracks – and that view would be through the trees; westbound the view is also through the trees.

Ms. Mallek noted that there was another site in the northern part of the County which passed its balloon test in the summertime, but is now incredibly visible from every direction. She said that the picture taken in front of the warehouse shows about 20-40 feet of bare trunk, and asked if it was possible to bring the branches down further so there isn't a big gap from the tops of existing shrubs and the bottom of the pole branches. Ms. Schweller responded that she's not sure if that's a possibility, and asked Steven Waller to speak to those points.

Mr. Steven Waller addressed the Board, stating that he is a consultant with GD Insights and had been working with Verizon Wireless on this site since 2008 when they were originally doing their build-out. He said that they could bring the branches down as low as requested, but with the Greenbrier site the area was a lot clearer than this one – it can definitely be done.

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

Mr. Snow asked if the Board could see the sample mono-pine limbs that Ms. Schweller had brought in.

Ms. Mallek asked if the branches were brittle, stating that she doesn't want to see it below the tree because that's when it can become a hazard to wildlife.

Mr. Waller said that the limb presented here is an older generation model, and in speaking to a representative from Saber Towers, he has ensured that the current product is even better. He said that the Greenbrier mono-pine was even more modern than the one here, and over the last few years the structural capacity and the strength of everything from the needles down to the limbs have been upgraded. He noted that the poles at Montpelier and Mount Vernon were built in the period of 2002-2006, and the manufacturer has said the current model is a stronger version.

Mr. Rooker asked about the height above the reference tree.

Mr. Cilimberg responded that the request is for 47 feet above the trees that surround the mono-pine.

Ms. Mallek said that it is at the top of a hill, so there is height from elevation as well.

Mr. Dumler asked what the requested height was based upon. Mr. Waller responded that it's based on propagation needs, and if you were to look at a normal monopole the tower itself would be where the top of the antennae are; in this case, the antennae would be set below the top of the tree itself because it must taper up so the last 8-10 feet would be taken up in limbs where there aren't any antennae now. He said that while the applicant was doing the balloon test, it was determined that no one out there had cell tower coverage and it's nearly impossible to get a site put into Buckingham Circle because of the small lot sizes and its residential status.

Mr. Dumler said that it doesn't bother him if it's visible from the property owner's parcel, but the view from I-64 concerns him a little more – and he wondered if making it 10 feet shorter would reduce that visibility. Mr. Waller explained that as you lower the mono-pine, the coverage footprint would shrink.

Mr. Rooker said that, that was true of any tower.

Mr. Dumler said that a mono-pine at 47 feet above would have the same propagation as a monopole that was 35 feet above. Mr. Waller confirmed that, that was the case, and the applicant is trying to make it look as natural as possible.

Mr. Thomas commented that it looks like it blends in well with its surroundings, and the design conforms to some of the goals in the wireless policy to keep it in harmony.

Mr. Rooker said that there was no stipulation in the policy for these types of poles when it was adopted, and the staff report indicates that – and the ARB did not recommend it for general use, although they did not have an objection to this particular site because the visibility was very limited.

Mr. Snow asked if the DOF went up to Mount Vernon and other sites to look at these poles. Mr. Waller replied that the DOF visited five sites, including Greenbrier, and picked Greenbrier as being the most natural-looking. He said that Saber Tower does a lot of tower design for sites that are put in the Adirondack Mountains in upstate New York, and the designs have evolved considerably.

Mr. Rooker asked how high the Greenbrier mono-pine is above their reference trees.

Mr. Waller responded that the Greenbrier location does not have anything to base it from as far as a particular height, but the goal there was expanded service – and they were more interested in the view from the property and the town.

Ms. Mallek said that regarding the ARB's disclaimer that the Board shouldn't consider this a precedent and asked how do we not have it be a precedent?

Mr. Davis stated that the record and the staff report will indicate that this is viewed as being an exception based on the location of the mono-pine on a property whose owner is requesting this particular type of structure, and the staff report notes that there's no general recommendation for that. He added that the Board's discussion should also reference that in their approval, should they choose to approve it and don't want to establish it as a precedent – that it's based upon the particular facts of this circumstance.

Ms. Mallek said that it seems like a direct run to court for people to say "well you let him do it, why can't I do it"?

Mr. Davis responded that it's based on the circumstances of this particular case, and the legal principle is that the Board is not legally bound or required to approve the same type of application from an equal protection standpoint unless all the facts and circumstances are the same. He said that it would be unusual for these same facts and circumstances to exist in other applications.

Mr. Boyd asked if Ms. Mallek's concern is that another landowner might want to use this format.

Ms. Mallek clarified that it's basically completely different than what the ordinance calls for, and that she wants to make sure that this is a wise exception to make.

Mr. Boyd said that the Board always approved things based on the merits of the individual projects.

Ms. Mallek stated that she's never seen one this extreme, in terms of the 47-foot height above the nearest tree.

Mr. Boyd said that it's mitigated by the fact it has tree limbs on it.

Mr. Rooker said that he hasn't decided yet how he's going to vote on it, and that the mono-pine limbs look like pipe cleaners to him – but some people like them better than a regular monopole. He emphasized that to him the question is visibility, and the Board did approve one for 25 feet above reference because it was basically invisible. He said that this is not invisible and that if it were brought down to 15 feet or something like that, it might virtually be invisible from Interstate 64. He said that the adjoining property owner apparently has no complaint about this, and certainly the visibility is greatest to them other than the property owners of where the tower will be located. Mr. Rooker noted that the state is going to get some revenue from this, and there will be better coverage at the Research Park property as well. He said that he doesn't think the tower has to go 47 feet up, as 10 feet is the normal exception. Mr. Rooker stated that he would probably support this if the pole were brought down by about 15 feet, because it would not likely be visible at all from I-64.

Mr. Rooker said that he is concerned about approving a tower 47 feet above a reference tree where it can be seen.

Mr. Snow pointed out that the Forestry Department is aware that they can lower it by 10 or 15 feet if they have a straight monopole, so they are willing to make that tradeoff for the aesthetic of the tree.

Mr. Rooker said that the state ultimately dictates this and will get revenue from it, and they might have been willing to put one up that was 100 feet higher.

Mr. Snow said that going down the interstate at 60 or 70 miles per hour, no one is going to be looking off to the left to catch a brief glimpse – that couldn't be more than a second long – of that tree. He said that he doesn't see where it is a real issue.

Mr. Rooker said that he understood that point, but he wasn't convinced it would only be visible for a second especially when the leaves are gone. He said that Mr. Snow could be right, but he just doesn't know.

Mr. Snow then **moved** for approval of SP-2012-00024 subject to the conditions as presented, and to grant the special exceptions for modifications to Sections 5.1.40(c)(3),(d)(6) and (d)(7).

Mr. Rooker asked about Ms. Mallek's suggestion of bringing the branches further down the pole, stating that it would help further minimize the visibility.

Mr. Snow said that he was fine with that.

Mr. Davis said that a condition would need to be added, establishing a reference point as to where that branch line would begin.

Mr. Snow asked what the distance is from the ground up to the first level of branches.

Ms. Schweller responded that she did not know exactly.

Mr. Waller said that GD Insights survey the pine tree heights along the road that will be in front of the site, and require that Saber Towers designs enough holes to make sure that the limbs come below the average heights of those trees, adding that it hasn't been established yet for this particular site. He said that with a lot of mono-pines, the limbs don't start until halfway up because of the visibility – but the limbs could be brought down to meet the County's requirements.

Mr. Davis said that there was a note on Attachment B that said "the existing grade at tree line is the elevation of 513 feet," and asked Mr. Waller if that's what he is referring to.

Mr. Waller said that the applicant is just showing the baseline elevation with that, because everything is AMSL elevation as opposed to ground level elevation. He said that the engineers were just pointing out the elevation difference with the trees at the top of the hill, and the base level where they would put the mono-pine is lower than the base level elevation than the trees at the top of the hill.

Mr. Rooker asked if the Board could just include a general statement that the applicant would bring the branches down "as far as reasonably practicable" so as not to leave exposed pole.

Mr. Davis asked from where? Mr. Cilimberg stated that the pole would be most visible onsite, and the simulation shows that bare area at the base as Ms. Mallek mentioned. He said that Mr. Rooker is saying he would want that area to be branched, but he can't determine how far down that is.

Mr. Waller said that the applicant could figure it out with a tree survey.

Mr. Cilimberg stated that he couldn't tell if the trees were deciduous or evergreen.

Mr. Rooker said that the problem is when the trees lose leaves there could be a big area of unusual looking exposed pole.

Mr. Waller said that the trees to the back of the mono-pine at Natural Resources Drive are white pines.

Mr. Davis said that the condition could be that "the monopole branches shall begin at such point on the mono-tower so that the visibility of the tower will be covered by tree branches from the visibility point of...10 feet below the existing tree line".

Mr. Cilimberg said that the Board is addressing the visibility of the mono-pine trunk on the site where it's being located to the owners of the site who are leasing the facility, but beyond that it would not be particularly visible.

Mr. Davis said that the general language could be, "the trunk of the tower shall be covered with branches to make the trunk not visible from any point on the property beyond the existing tree line to the extent practicable".

Mr. Snow then **amended** his motion to reflect that language. Mr. Boyd **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: Ms. Mallek and Mr. Rooker.

(Note: The conditions of approval are set out below:)

1. Development and use shall be in general accord with what is described in the applicant's request and site plans, entitled "Buckingham Circle Rawland Monopine," with a final zoning drawing submittal date of 9/25/12 (hereafter "Conceptual Plan"), as determined by the Director of Planning and Zoning Administrator. To be in general accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:
 - a. Height
 - b. Mounting height
 - c. Antenna type
 - d. Number of antenna
 - e. Color
 - f. Location of ground equipment

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

2. The trunk of the tower shall be covered with branches to make the trunk not visible from any point on the property beyond the existing tree line, to the extent practicable.

(Note: Special exceptions for modifications:)

1. Section 5.1.40(c)(3)-no antenna to project more than 12 inches from a structure (permits T-mounts)
2. Section 5.1.40(d)(6)-height of the structure in relation to the reference tree (permits top of monopine @ 47' taller than surrounding trees)
3. Section 5.1.40(d)(7)-request for equipment attached to the structure to be a color matching the structure (permits java brown trunk, antenna arrays and limbs with artificial green pine needles)

Agenda Item No. 12. **PUBLIC HEARING: SP-2012-00025. Verizon Wireless – Piedmont College – Tier III PWSF (Sign #120). PROPOSAL:** Tier III personal wireless service facility on 157.49 acres. No dwellings proposed. ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots) SECTION: Chapter 18 Section 10.2.2.48 of the Albemarle County Code, which allows for Tier III personal wireless service facilities (reference 5.1.40). ENTRANCE CORRIDOR OVERLAY DISTRICT: To protect properties of historic, architectural, or cultural significance from visual impacts of development along routes of tourist access: Yes. COMPREHENSIVE PLAN: Institutional, Neighborhood 4, Institutional uses allow for a range of public uses including schools, universities and public recreational facilities. LOCATION: 1800 Monticello Avenue (Route 20). TAX MAP/PARCEL: 07700-00-00-02500. MAGISTERIAL DISTRICT: Scottsville.
(Advertised in the Daily Progress on October 29 and November 5, 2012.)

Mr. Cilimberg reported that this proposal would be for a 90-foot monopole, with two arrays and three panel antennae, approximately 14 above top of the reference tree. He said that the property is owned by the UVA Foundation, which also owns Fontaine Research Park, and it would be located in the northwest quadrant of the interchange of Route 20 and I-64. Mr. Cilimberg stated that staff has noted the

location on the site, and presented a photo of the balloon test onsite in the existing lease area. He explained to the Board would not see the balloon test in the photo, as there was very limited visibility from that location. Mr. Cilimberg noted the proposed tower in context with I-64 and Route 20, and pointed out the location of the balloon from the east side of the interchange – appearing just at the tree line. He emphasized that it's only visible right at treetop level and for a short duration along Route 20 and I-64, and ARB recommended approval based on minimum visibility. He noted that it is within the Route 20 Virginia Byways Overlay District, but staff has noted that it's mitigated by the limited visibility. Mr. Cilimberg said that approval of the facility has been recommended at the 14-foot level, but would require one special exception for the height above the tallest tree and approval of the special use permit with the similar condition to the tower they just reviewed.

Ms. Mallek asked if the entrance was just south of Quarry Park. Mr. Cilimberg responded that it's on the north side of I-64/Route 20.

Mr. Dumler said that it's near the Piedmont House and is just south of Quarry Park on the other side of the jurisdiction boundary.

The Chair opened the public hearing and invited the applicant to come forward.

Ms. Lori Schweller stated that this site was actually approved as a Tier II in February 2009 by the Planning Commission, when it was an Alltel site, and when Verizon merged with them and acquired the site they re-surveyed the reference tree and found it was taller than previously thought. She said that the applicant is requesting a Tier III permit because of that, and because they are within 200 feet of a scenic byway – but otherwise the site is exactly the same as the one approved in 2009 as a Tier II. She stated that the pole is still 90 feet and would have two sets of flush-mounted antennae because the applicant is providing LTE on this site also, but otherwise it meets all requirements of a Tier II facility.

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

Mr. Rooker said that he would support this as it has minimal visibility, but pointed out that it would have LTE service but would not be 47 feet above the reference tree.

Mr. Dumler **moved** to approve SP-2012-00025 subject to the conditions as recommended and to approve the special exception for modification of Section 5.1.40(d)(6) to allow the facility at fourteen (14) feet above the tallest tree. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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

1. Development and use shall be in general accord with the conceptual plan titled "Piedmont College Rawland Monopole (University of VA Real Estate Foundation Property) prepared by Justin Yoon latest revision date 9/25/12 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:
 - a. Height
 - b. Mounting type
 - c. Antenna type
 - d. Number of antenna
 - e. Distance above reference tree
 - f. Color
 - g. Location of ground equipment and monopole

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

(Note: Special exceptions for modification:)

- Section 5.1.40(d)(6)-to allow the facility at fourteen (14) feet above the tallest tree.

Agenda Item No. 14. **PUBLIC HEARING: Ordinance to amend Open Burning.** An ordinance to amend Chapter 6, Fire Protection, Article IV, Burning of Brush, etc., of the Albemarle County Code. The proposed ordinance, authorized by 9 VAC 5-130-100, would prohibit the open burning of household waste throughout the County and update the definitions related to open burning to be consistent with definitions set forth in the Virginia Administrative Code.

(Advertised in the Daily Progress on October 29 and November 5, 2012.)

Mr. Davis reported that currently under the County burning ordinance, open burning of household refuse is permitted by homeowners or tenants if certain conditions are met – including that the refuse is burned on their premises, and that there is no regularly scheduled public or private collection of refuse at the curb. He said that what is being proposed in the ordinance is to redefine "household refuse" as

“household waste”, which is consistent with the state regulations on burning, and to prohibit burning of household waste countywide. Because that is a more stringent regulation than that found in the state model ordinance, he said, it would require prior approval of the Air Pollution Control Board. Under current law, he said, counties can adopt the model ordinance without prior approval of the Air Pollution Control Board but anything that’s more stringent requires that approval. Mr. Davis stated that a number of years ago, the County adopted the model ordinance, which has the current provisions in it. He said that the ordinance before them also adds a number of terms and modifies some other terminology that has changed over the years, and those changes are simply to make it consistent with the state regulations that control open burning and to bring the ordinance up to date.

Mr. Davis said that Howard Lagomarsino was present from the Fire Marshal’s office to address any questions about why the ordinance might be necessary at this point, and the circumstances that generated the request for this ordinance change. He said that at the end of the public hearing, if the Board desires to advance the ordinance there simply needs to be consensus from the Board and a motion directing staff to take it to the Air Pollution Control Board for approval, at which time it would be brought back to the Board for final action.

Ms. Mallek noted that tonight is the public hearing. Mr. Davis clarified that tonight is the public hearing and when it comes back from the Air Pollution Control Board, it would just be for action by the Board – no additional process would be required.

Mr. Thomas asked what household waste is defined as. Mr. Davis responded that household waste is defined in the ordinance on page 2 of Attachment B, and it means any waste material including garbage, trash, and refuse derived from households – single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, day use recreation areas – but it does not include sanitary and septic waste as that is regulated by other state agencies. He explained that it is waste material that’s generated from residential use primarily. He said that the proposed terminology also prohibits the burning of garbage, which is defined separately. Mr. Davis stated that the burning of garbage is currently prohibited, and this ordinance would continue that prohibition. He said that the effect of this ordinance would be to prohibit burning of “trash” plus any garbage generated by a household.

Mr. Thomas asked if a person burning trash on their property would have to have the list that’s in the ordinance. Mr. Davis replied that the citizens would simply be prohibited from burning.

Mr. Lagomarsino stated that the biggest thing that’s changed since the adoption of the ordinance is the nature of trash, and the type of trash generated now includes a lot of plastics and materials that emit a noxious smoke – which have generated complaints over the years. With those complaints, he said, the Fire Marshal and deputies have tried to enforce it through the current ordinance, but the court has required that the County establish that the products in the burn barrel are prohibited products. Mr. Lagomarsino said that the code itself also allows for an exception for household waste, but that includes plastics now and this conflicts with the part of the code that says you can’t burn petroleum-based products. He stated that in one case, a person had thrown trash into a pit he had dug and also threw in some tires – but because the tire had not ignited yet, the court would not find him guilty of burning unapproved materials.

Mr. Lagomarsino said that by changing this ordinance, it actually makes it enforceable. He stated that in addition, Fire Marshals are trying to make the laws standard throughout the County and they looked at a lot of different ways to approach this – including separating by rural area versus growth area, but it would not have the desired effect of addressing citizen concerns because growth areas are such a small part of the County.

Mr. Dumler asked Mr. Lagomarsino what type of enforcement policy he envisions citing the example of the dogs running at large ordinance and complaints of excessive animal control enforcement.

Mr. Rooker said it would be nice to ask Police Chief Sellers for his versions of those situations, because they may be a little different than those received anecdotally.

Mr. Lagomarsino stated that Fire Marshals take an “education approach” to enforcement of the fire codes, because an informed citizenry is better than going out and slamming them with the code. He said that they are looking to take a complaint-driven approach, but if the Fire Marshals are having to come out for multiple complaints, then something has to be done. Mr. Lagomarsino said that that’s what has generated the current approach, because Fire Marshals have gone out to the same places for multiple complaints but can’t substantiate a case because of the current ordinance.

Mr. Boyd said that in a four-year period from 2008-2012, there were 37 incidents and only two or three of them were to the point they could be taken to court. He said that he is trying to establish if the County really has a problem. He asked if the cases were all different locations, or multiple incidents on the same location.

Mr. Lagomarsino responded that they were different locations, and when he compiled the report he looked for different examples.

Mr. Boyd stated that he shares Mr. Dumler’s concern about imposing a uniform ordinance based on the complaints of a small number of individuals. He said that none of the cases rose to the level of taking any action against them.

Ms. Mallek said that there is one location, but there are sometimes hundreds of people in a neighborhood who are affected by one burn.

Mr. Boyd said that the County is basically going to impose an ordinance that will affect everyone to cure just a small group of people out there.

Mr. Dumler said that presumably only if someone's neighbors have a problem with it. Mr. Lagomarsino said it would be complaint-driven.

Mr. Boyd said that if someone is burning anything at all, it would be against the ordinance now.

Ms. Mallek stated that if the fire marshal goes by and there's a large fire close to a house, he would jump on it right away – not wait until someone complains. Mr. Lagomarsino said that fire marshals would have to investigate the safety issue, and overall they would try to educate the public as to why this is a bad idea.

Ms. Mallek stated that if the ordinance is adopted and approved by the Board, the first time the fire marshal went to a site they would probably issue a warning and hold the landowner accountable in the future.

Mr. Lagomarsino said that a second step could be going to a notice of violation, which is essentially an additional warning, and then go to the actual court case. He explained that, that is how fire marshals define whether something will be taken to court or not – they educate, give the notice, and then enforce if they have to come back out to the site.

Mr. Boyd said that the point is that the proposed ordinance makes it against the law to burn trash, period, even though there are many people – especially in the rural area – who have been doing it responsibly for a long time. He said that the Board would be taking away that privilege – taking away that right for them to do that. And that's what's bothering him about the proposed ordinance.

Mr. Rooker commented that it is complaint-driven.

Mr. Snow said that it is complaint driven but technically if the Fire Marshal sees smoke he's going after it.

Mr. Rooker said that Fire Marshals are not out looking for violations, only more serious incidents.

Mr. Snow asked if someone could still burn leaves and debris they're cleaning up around the yard such as trees and vines. Mr. Lagomarsino replied that none of that would change, and that you would still be allowed to burn natural vegetation.

Mr. Snow asked how many people he thought actually burned their trash in the County, as he is trying to put it in relation to 37 complaints. Mr. Lagomarsino responded that whenever the Fire Marshal and deputies go out they get complaints, and get a lot of frustration from citizens about the lack of enforcement.

Mr. Rooker stated that he has had a number of people contact him, and has not had one that did not support it. He emphasized that it's complaint-driven.

Mr. Snow said that he could support it if it's complaint-driven, but not if it's "aggressive enforcement" of somebody riding around looking for smoke.

Mr. Rooker responded that there aren't enough officers to be riding around looking for smoke, the problem that Fire Marshals have now is that when residents call it is often unenforceable. He added that several years ago there was some burning going on and there were citizens complaining about it, but there was nothing the County could do.

Mr. Boyd said that his issue is that the County is going to take away the right of people who are responsibly burning trash. He stated that they're not going to know to come before the Board until after the ordinance goes in and they get a ticket for something.

Ms. Mallek stated that Mr. Lagomarsino has already expressed concern about this, and for two years in town hall meetings this has been discussed, and the huge majority – who have spoken have been concerned about this, and the other 198 have been very much in favor of Albemarle joining what almost all communities have been doing for a very long time – which is to prohibit open burning.

Mr. Boyd asked Ms. Mallek if she has had a town hall meeting and advertised the pending ordinance and has had hundreds of people come out in favor of it.

Ms. Mallek said that in her combined town hall meetings it has been discussed, and only two people out of about 200 have expressed concern about it.

Mr. Lagomarsino mentioned that the 37 cases were those that actually had Fire Marshal action, but what he doesn't have good numbers on is the number of complaints where the local Fire Chief or local Fire Department went out and handled the complaint. He said that as the Fire Marshal's office educated those departments, there were times they would go out and handle it and not even call them.

Ms. Mallek said that the space requirements are difficult to manage in neighborhoods, because there are very few people who have 300 feet of distance and yet they're still burning things.

Mr. Lagomarsino responded that those cases would involve a different enforcement, as they would deal with not following the ordinance with regard to distances. He said that if it's within 300 feet of neighbors, you need their permission – and then you can go up to 50 feet from an occupied dwelling.

Mr. Rooker commented that, that's the way it is now.

Mr. Snow asked if the problem was more with small-lot subdivisions, or with people who live on five or more acres. Mr. Lagomarsino replied that most of the cases that required fire marshal action were in rural areas.

The Chair then opened the public hearing.

Mr. Jimmy Dean addressed the Board, stating that he lives on Proffit Road and asked the Board to define "open burning."

Mr. Lagomarsino explained that "open burning" is anything that is burned in the open area, and does not pass through a duct, a chimney or any type of device that smoke would pass through.

Mr. Dean asked if his fire barrel would be an open burn. Ms. Mallek responded that fire barrels would be an open burn.

Mr. Dean commented that this "sounds like a solution that's looking for a problem", and seems very similar to the dog ordinance. He expressed concern that bio-solids can be spread all over the place, developers can burn site debris for days, but he can't "burn a pizza box in the backyard". Mr. Dean quoted Casey Stengal, "Don't anybody here know how to play this game?" He said that he isn't aware of open burning being a major problem, and if there are problems the County should talk to the people involved and see what can be worked out with that. But don't take away everybody's rights because one or two people don't like the neighbors burning trash.

Mr. Mallory said that in cases where neighbors do not get along, people will just call the police because they just don't like each other – and anyone whose stupid enough to burn tires should be locked up. He said that there is more than one person in Albemarle County that burns trash and that there is not a lot of people that show up to Board meetings, but a lot of people burn trash and burn the proper things. He said that he doesn't drink alcohol but going down the road there is a lot of alcohol bottles that are thrown out of the window, but no one will put a 5-cent deposit tax on bottles to help pay for schools and roads. But the County wants to pick on the poor average working man who is trying to get by.

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

Mr. Rooker pointed out that the state allows for "very minimal County influence" on the spreading of bio-solids, and the Board has asked for some additional authority to deal with that issue because there have been many complaints. He said that the Board did get some additional leeway in the last legislative session, and they plan to exercise what additional authority they have.

Mr. Boyd said that he would not support moving forward with this burning ordinance, because there is no clear evidence to him that this is a serious problem in the area. He said that he thinks the Board will be taking away more rights of individuals to deal with their trash and deal with it responsibly. He added that anecdotally, there are more of them than those who do it irresponsibly, and that it is just not balanced enough for him.

Mr. Snow asked if there would be a way to allow for burning of straight trash, to keep the common sense element alive and solve the problem.

Mr. Lagomarsino responded that the problem has been actually establishing what was burned, and said the question is whether Fire Marshals want to take something that's a misdemeanor and spend a lot of time sending stuff off to a lab to establish that it's an unapproved material. He said that the type of trash generated by a household today is much different than years ago, with plastic soda bottles and food containers.

Mr. Boyd asked if fire marshals could take that approach selectively with repeat offenders, as they could probably look at the trash to see if there were banned substances in it.

Mr. Lagomarsino replied that Fire Marshals have tried to do that, and that's where things stand now – with the courts not supporting them in that.

Mr. Rooker said that the problem is the same as saying can police arrest people who don't drive responsibly, without having speed limits? He added that the running at large issue is a good example, because there were situations where people couldn't get to their mailboxes. Mr. Rooker said that sometimes a bad apple can create lots of problems for the people around them, and the question is whether there's a way of stopping it. He said that what you find is that there isn't and that's the problem.

Mr. Rooker asked if just paper could be exempted, and if that would be enforceable.

Ms. Mallek said that coated paper is very bad to burn, as it lets off copper and other materials in the smoke.

Mr. Thomas said that it's usually coated with clay.

Mr. Boyd said that he thinks people are going to turn responsible disposal of trash into irresponsible disposal of trash along the side of the highway.

Ms. Mallek responded that what is put into the air is breathed by everyone around you, yourself and your children.

Mr. Boyd stated that he doesn't see enough evidence to indicate that that's a serious problem.

Mr. Rooker said that most counties around the state of any size have adopted a similar ordinance, and there's a reason for it. He said that he would be willing to exempt paper from the definition of household waste.

Mr. Davis stated that the practical problem with that is that people aren't going to sort paper from the rest of their trash, and the Fire Department would have the same enforcement issue of trying to discern whether or not it was just paper or whether it was McDonald's boxes or cardboard, or other types of derivations of products that would not be considered paper. He emphasized that defining what paper is might be an issue in itself, and when you start drawing those fine lines, that's where enforcement becomes problematic.

Ms. Mallek commented that Fire Marshals are spending a lot of time and effort on this.

Mr. Thomas said that the Fire Marshal is currently looking for a way to enforce, since the courts are saying there is no evidence and asked Mr. Lagomarsino if that is what Fire Marshals are looking for.

Mr. Lagomarsino responded that what they're looking for is a point where if Fire Marshals have to take enforcement action it's not a waste of time. He said that it needs to be sustainable, and the person that they're dealing with needs to have some consequences. He emphasized that Fire Marshals are not wanting to give everybody burning trash a ticket, as that's not the way to go either. Mr. Lagomarsino said that the problem is that there have been repeat offenders, the Fire Marshal does everything possible to substantiate the case, they bring it before the courts, and it's constantly being shot down. He added that Fire Marshals end up going after the same repeat person.

Mr. Boyd asked if Mr. Lagomarsino if he had talked to the courts about what was needed to enforce this. Mr. Lagomarsino responded that he has not actually talked with the judges, but his office had discussed identifying products that could be burned – but staff kept coming back to the same problem of looking in the burn barrel and saying "that's OK, that's not". He said that the issue has been proving to the court which were banned materials and which were not.

Ms. Mallek said that any waterproof paper is coated with plastic, and when it burns it smells nasty – which is why Newark smells the way it does. She said that the County doesn't need that in its' countryside, adding that the health and protection of the County at large could rise if that is done.

Mr. Rooker said that he is convinced the enforcement of this would be done in a reasonable manner, and Fire Marshals are not looking for additional work here. He explained that what Fire Marshals are looking for is some ground to stand on when citing people, and right now they don't have that leverage in dealing with the problem cases. He said that Fire Marshals ought to have a way of dealing with those cases, and he doesn't think that staff is going to find that hundreds of tickets are being given out. Fire Marshals have the ability to cut off those egregious circumstances.

Mr. Rooker then **moved** to approve the ordinance as presented.

Mr. Snow asked the previous speakers if anyone had complained about their burning of trash, and said that those who are not getting complaints would not have a problem if they continue to burn responsibly. He said that for the most part, in most situations the people who have been burning the right way probably won't have a problem.

Mr. Lagomarsino agreed, adding that he doesn't see how the Fire Marshal would end up at a property where a landowner was doing it right.

Mr. Boyd said that in a way this encourages people to violate the law, as long as they don't get caught.

Ms. Mallek said that if someone was burning a barrel right next to his house, he might feel differently.

Mr. Snow stated that he has received several calls asking him to support this ordinance because of the fumes coming off of the neighbors' property, but he also sympathizes with those who have been doing it right and want to continue, adding that, that's the problem he has with the ordinance.

Mr. Lagomarsino said that Fire Marshals didn't take the suggestion of bringing this forward lightly, and those were all factors considered. He stated that Fire Marshals are at a point where they are looking for guidance and this is how they can deal with it as the County.

Ms. Mallek stated that the policy used by Police, Animal Control and Fire Marshal is “educate first”.

Mr. Dumler said that he sent this issue out to his email list of about 1,300 people, and he received seven responses – of the seven people, six were in favor and one was ambiguous. He said that two of the six people cited examples of situations where they were subject to “thick, black, noxious smoke”, which is not what’s produced by responsible trash burners.

Mr. Dumler commented that some of his graduate studies focused on a dioxin substance that was 10,000 times more carcinogenic than arsenic, and is one of the common by-products produced when a lot of the new plastics are burned. He stated that he is prepared to support the ordinance, because he thinks it is a health and safety issue. He said that it would be helpful to have a copy of the enforcement policy, in case people ask.

Mr. Lagomarsino said that the policy would go on the ACFR website.

Mr. Davis said that the recommended motion would be to support the proposed ordinance and direct staff to submit it to the Air Pollution Control Board for its approval, and then it would be brought back to the Board for action after that.

Mr. Rooker **restated** his motion to support the ordinance as presented. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: Mr. Boyd.

Agenda Item No. 15. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Mr. Snow said that in talking with several people at the VACo conference it seems as if devolution is “off the table”, and the state is not talking about going down that road right now.

Ms. Mallek asked if that was mentioned during the legislative session.

Mr. Thomas responded that Delegate Watkins Abbitt had mentioned it in his meeting also.

Mr. Snow stated that he and Mr. Dumler had attended a session on broadband service, hosted by Deputy Secretary of Technology Karen Jackson, and over the last seven years Franklin County has spent about \$100,000 to help get cell coverage out into the county.

Mr. Dumler said that Ms. Jackson was referring to Wi-Max, wireless broadband.

Mr. Snow said that Franklin County is incorporating the Wi-Max technology. He explained that Franklin did an asset assessment where they went out and looked at every “tall thing” in the community – water towers, poles, houses, etc. – and then looked at the resources allocated to help different factions in the community who received money for cell coverage. Mr. Snow said that they sent out an RFQ to smaller, private companies to help pull it together and help support them. He stated that Franklin ended up finding a small, local company to help put it all together and even found an old abbey on the Skyline Drive to use for placement of the broadcasting unit. He said that the company was charging people roughly \$39 per month, and they have expanded coverage into about 75% of the County. Mr. Snow said that Albemarle has sent out an RFQ for what could be done locally, and Century Link has plans to move into more areas – although cell coverage is still a problem. Mr. Snow asked if some staff time could be devoted to issuing an RFQ to see if some smaller companies would take this on, along with an asset analysis to see what the County might have in terms of existing structures for location sites.

Mr. Dumler said that the areas of biggest need are those where the private sector isn’t providing service, and they used the term “the last mile” to refer to that effort. He said that if the County were to analyze it and start working backwards from that last mile to the areas that may be covered soon. He added that the School Board is currently considering exploring wireless internet connectivity for school children as part of the state requirement.

Ms. Mallek noted that in the CIP, the School Board actually has hardwire that’s going into school facilities, which would then provide distribution abilities from each of the schools.

Mr. Foley said that the second phase would do the wireless.

Mr. Boyd asked if the schools are talking about doing fiber optic.

Mr. Rooker responded that it would be fiber in some places.

Mr. Rooker said that in terms of population, about 85% of the population has cellular coverage – so we really are talking about “the last mile”. He said that some counties are more rural overall and they have to take a different approach. He stated that different approaches have to be taken based on what you’ve got. Mr. Rooker said that the question is how to facilitate providing coverage in the areas that don’t currently have it.

Mr. Snow said that Buckingham has a policy of not approving a cell tower unless it's capable of handling six different companies, so they aren't going around building individual towers.

Ms. Mallek said that the school had mentioned using a Buckingham tower for coverage in the southern half of the County, because it's 500 feet tall.

Mr. Rooker said you would have to be willing to allow gigantic towers.

Mr. Davis said that Buckingham basically has unrestricted heights of towers, and a lot of the issues have been debated for the last ten years or so – and it's frustrating not to have service everywhere, but the size and terrain of Albemarle are "significant obstacles" to having easy solutions.

Mr. Snow responded, not any more so than Franklin County. Mr. Davis said that it's much smaller.

Ms. Mallek noted that it's also pretty flat, as it's just west of Lynchburg. She said that rather than putting this on staff, she would propose going back to the Planning District – because two years ago they applied for an ERA grant with Nelson County for one of the Wi-Max facilities. She said that the grant was for subsidized home stations for people out in the rural areas in both counties, and it didn't get funded, so then the approach was to ask companies to do it at a higher cost to households – but what the companies said was that based upon the few people without service, it wouldn't be in their interest to do it. Ms. Mallek said that the great success has been with Century Link because the land lines are going to all the rural places now, so companies have the land lines and can improve them on existing easements. She stated that there have been a lot of great grant programs, but the relative affluence of Albemarle compared to so many other places with 18% unemployment means the County won't get a grant.

Mr. Snow said that there's already money coming into other factions that have money.

Ms. Mallek asked if he meant veterans agencies and social services. Mr. Snow responded that Franklin said they were able to apply for those funds. He said that the County doesn't know what's out there until they do an assessment.

Mr. Rooker said that what he is suggesting is before spending a lot of staff time chasing this down the best thing is to look at what the schools are planning to do, because they are already looking into a project to bring wireless service to underserved areas of the County.

Mr. Snow asked how much the schools are looking to spend. Mr. Foley responded that he wasn't sure how fleshed out phase two of the proposal to provide wireless coverage is, but it would come with a considerable price tag.

Mr. Snow said that before everyone goes down the road of spending the big bucks, it looks like it would be worthwhile to do an assessment to see what money is available through grants and different avenues and then do an assessment of the tallest structures in the community, rather than going around the countryside building towers – to see what existing structures are available that providers might be able to put an array on. He said that perhaps the County could adopt a policy that tower approval would require the ability to host at least two or three more companies.

Mr. Rooker responded that there are collocation policies with respect to existing structures, where the County encourages them to be used – power line structures, church steeples, etc. He suggested that Mr. Snow meet with Josh Davis of the schools so that each know what the other is doing.

Mr. Snow said that his time is limited and staff's time is limited, and he can't track everything down.

Mr. Rooker said that school staff is already working on this.

Mr. Dumler said that Mr. Vince Shiver of the School Division could provide information as to whether the schools have a propagation map. Mr. Foley responded that the schools are nowhere near that far down the road.

Mr. Dumler asked if it was being developed in the future. Mr. Foley said that he appreciates the concerns about staff's time, but he does think staff can spend a little bit of time in determining what Franklin County is doing – and he can get information from that County Administrator to clarify what they're doing and whether it has application locally. He said that he could get with the schools to get a read on the status of where they are with their project.

Mr. Dumler said that if it's targeted toward children, staff would need to make sure that the lines can sustain more than just students and could accommodate the general population.

Mr. Foley said the schools probably have some thoughts on that too, and he also mentioned that 90% of the population was covered – so the 10% was "the last mile" and staff would need to determine what was already planned for that by companies and how accessible those areas are. He stated that he would like to do this as a broad overview.

Mr. Boyd said that one of the County's strategic plan initiatives is to seek out grants, and this would fall into the category of seeing what's available for broadband expansion.

Mr. Rooker also noted that Franklin had coverage for 80% of its population, but Albemarle has 90% so the County is “further along” and that needs to be kept in mind – along with the question of how much will be spent to get that last percent. He stated that it is not a public responsibility and that it is an area where the private sector operates. He also said that when people choose to live in an area with a dirt road, they deal with a dirt road and accept that as part of living there instead of expecting it to be paved. Mr. Rooker added that the same argument could be made for sewer and water lines.

Mr. Snow said that he could understand that for people who are way out, but a lot of these people are not that far out – such as people outside of Esmont who don’t have coverage.

Mr. Rooker asked whose responsibility it was to bring that service to them. Mr. Snow said that someone should, and if need be government should help facilitate it. He said that he is suggesting that someone look and see what the County’s assets are, both in terms of structures and in terms of dollars that might be available and suggesting that an RFQ be issued for “someone to come in and do it”.

Mr. Rooker said that he wasn’t sure what the RFQ would be for. Mr. Snow responded that the responders would take the initiative to contact people to help get coverage in this area.

Mr. Rooker asked if that wasn’t already what cell companies are in business to do, every day. He mentioned that he lived on the edge of the growth area, but didn’t have cell coverage at his house because of the topography. He said that he is not going to move, nor is he going to demand that the County find a way to make sure that he’s got better cell phone coverage.

Ms. Mallek said that she would suggest that the Planning District staff dig out the grant application and see what happened with that, and said that the PDC has the foundation – which is the arm that chases grants, particularly for member governments. She said that she is very concerned about a staff that is already stretched to the gills as far as doing a community analysis, and there may be a whole bunch of different organizations that could be pulled in through the Planning District to pitch in and do their part.

Mr. Rooker reminded the Board that he had brought in information on \$2 billion of grants available for expansion of broadband, but staff looked at that and said the County didn’t qualify.

Mr. Snow asked Mr. Foley if the schools are accessing any grant money to help with their plan. Mr. Foley responded that he wasn’t sure they had at this point, and reiterated that the schools have a concept that hasn’t gone very far yet. He stated that when he gives the Board the update on what the schools are doing, staff could answer that question.

Mr. Snow stated that Karen Jackson the person who pulled everything together in Franklin County has now moved to Richmond and is the Deputy Secretary of Technology, and can be reached at www.wired.virginia.gov. He reiterated that one of the points Ms. Jackson made is that schools are having money made available to them, hospitals and veteran organizations may some available. He said that it would be nice if someone could look at the different areas or come up with a solution of how the County might pull everything together to utilize the money that everyone might have access to.

Mr. Foley said that staff would look at the options and assess what it would take to pursue the last 10%, as well as getting information on private company efforts.

In other matters, Ms. Mallek said that she is becoming increasingly concerned about “agricultural entertainment” and whether the County is heading down a “loss of balance”, as the production of the product is becoming far secondary to the entertainment building. She asked if the farm winery legislation from Richmond had “any interest in production”, or if the County has the enabling ability to say “if you are going to operate under the Farm Winery Ordinance” you have to have a greater investment in your agricultural production than you do in your entertainment. Then that would fix it, but when you have five grape vines and a \$5 million entertainment building, those things are way out of whack.

Mr. Davis said that it is an important issue, and staff would need to look at what the legislation provides for.

Mr. Rooker said that he shares Ms. Mallek’s concern and it would be helpful to know those parameters. He stated that there’s a difference in producing an agricultural product and making a living on the property and sanctioning entertainment venues as a primary use as opposed to an adjunct use.

Mr. Davis said that he thinks that the balance is what everyone has struggled with.

Ms. Mallek said that she wasn’t sure if any procedural measures could be put in that would apply to everyone – that would prevent some things from happening. Mr. Davis said that currently the safeguard is the special use permit, but whether or not the Board wants to have an ordinance that says that “to qualify for a special use permit” it has to be some balance of production versus entertainment, staff could look into that.

Ms. Mallek stated that there has been a lot of discussion lately about nonprofits and tax shelters, and asked if once a local concern is given nonprofit status by the County, is that forever or is there is a way to readdress it when their business model changes.

Mr. Davis responded that there are very few not for profits that have tax-exempt status from the County, so generally not for profits pay taxes like anybody else – but there are certain classifications that do not and those the County has no control over generally. He said that there are very few that have been designated by the County. Mr. Davis explained that County policy on that changed about 15 years ago. However, if they are designated and if they meet the criteria the not for profit status is perpetual.

Mr. Snow reported that VACORP earned \$4.5 million in net income last year and issued a \$1.1 million dividend to its members, and equity grew from \$29.8 million to \$33 million over the last year, with property and casual contributions totaling \$19 million, \$17 million for workmen's compensation, and line of duty was \$4 million. He said that they've had very few claims related to weather-related losses, and the largest was the Louisa County earthquake. Mr. Snow stated that VACORP has started some new initiatives such as a mobile driving simulator to help train fire and police and also have online law enforcement coursework, etc.

Mr. Davis commented that VACORP is the County's general liability insurer also.

Mr. Foley added that most everything is with VACORP because of the line of duty insurance, but VACORP has just taken on a bunch of localities so their claims may increase. He said that VACORP had to take over some claims with the state changes.

Mr. Snow said that VACORP is in very strong financial position, and they may be able to reduce some of their rates.

Revisiting Item 10.2, Mr. Boyd said that his question pertained to Item #6 under "Major Improvements", which is a project that has no funding – the widening of Route 20 from I-64 to Mill Creek Drive. He said the project has been on the outset for a long time and there have been a couple of student deaths along that road. Mr. Boyd stated that the reason he is bringing this project up is that some Supervisors have been approached by a developer who may be willing to pay for the widening of the road if the County is willing to consider the project that he's proposing there. He stated that the project has been put on hold pending Comp Plan amendment changes, but the Commission has already established that they want no further expansion of development areas at this time.

Mr. Boyd said that he would like to see the project move forward, remove the moratorium that's presently put on it, to allow it to come before the Board so Board members can weigh the pros and cons of the project. When Board members already know that the Planning Commission has said they're not going to put forth any recommendation for expanding that growth area.

Ms. Mallek said that the Comp Plan is already coming to the Board in February, so no one is going to gain much.

Mr. Foley asked if this was the "quick thing" Mr. Boyd wanted to cover. Mr. Boyd said that all he is trying to say is that the project has been put on hold for a long time pending the Comp Plan amendment, and he is willing to move it forward and see if it makes any sense – to see if getting the road [widened and] paved is important enough to the Board.

Mr. Rooker asked what project Mr. Boyd is referring to. Mr. Boyd said that it is Item #6.

Ms. Mallek said that it is a scenic road, so widening will be effected by it so the Board will need to get the answer on that first.

Mr. Boyd said that he would like to "take the shackles off the project" and "let it move forward".

Ms. Mallek responded that that is how the Board has gotten into most of their problems over the years, by taking projects one at a time instead of taking a broad view.

Mr. Thomas said that this developer is willing to pay for improving the road, which has some very dangerous curves on it.

Ms. Mallek said that there is "a whole lot of ifs involved in that".

Mr. Rooker said that he remembered that same developer sitting in his office and telling him he was going to build a Berkmar Bridge, but when it came down to it he wasn't interested in building the bridge at all – he was interested in building a road on his own property.

Mr. Boyd said that the developer told him he would never build that bridge.

Mr. Rooker said that about eight years ago, he said he would build it.

Mr. Boyd said that he is simply asking that it move through the process, because right now it is being held in limbo for the CPA. He stated that the Planning Commission has already said no more expansion, and won't look at this one project. Mr. Boyd stated that he was willing as an elected official to look at that project.

Mr. Rooker said that Mr. Boyd said the same thing about the Crozet Industrial Park.

Mr. Thomas commented that the Industrial Park is another one that has been put on hold. Mr. Rooker replied because the votes weren't there to move it forward separately. He stated that someday perhaps it will move forward if people are absent or something.

Mr. Boyd said that he is asking if there is enough support on the Board to allow the project to move forward. He said that if gets voted down then there is not enough consensus opinion to do it. In regards to the Yancey project, the developer has gone away as far as he's concerned – he's not been approaching or trying to push it forward anymore.

Mr. Boyd said that he is just curious to see if any Supervisor besides himself would like to see the project move forward – just to look at.

Mr. Thomas stated that he would.

Mr. Rooker said that the basis for the Planning Commission's recommendation not to expand is what's needed in terms of growth, the number of projects already approved – commercial and residential.

Mr. Boyd said that the Board did it with Northpointe, Hollymead Town Center, and 5th Street Extended.

Mr. Rooker said that those projects were in the growth area, and they weren't pulled out to be looked at separately.

Mr. Boyd said that he didn't want to stay here all night he just wanted to see if there was enough interest to move this forward.

Mr. Rooker said that he had raised the issue and the facts are important, other than in some ideological belief that this should be done.

Mr. Boyd asked if this project was important enough to have it done by the private sector.

Mr. Rooker asked if there was anything in writing to confirm that the developer would widen Route 20 from I-64 to Mill Creek Drive and put in bicycle lanes and sidewalks, if his project is approved as part of that.

Mr. Boyd said that that wouldn't happen unless the project moves forward.

Mr. Rooker said that he would like to see the offer.

Mr. Boyd stated that this citizen has been put on hold pending the Comp Plan update, and he doesn't agree with waiting.

Mr. Snow commented that the County isn't going to know what would happen until the project moves forward.

Mr. Rooker said that that's true of any project, so any project could be pulled out at any time.

Mr. Dumler stated that he didn't feel comfortable moving forward with this project, as consideration of it is outside of the Comp Plan update.

Mr. Boyd said that that kills it.

Mr. Davis said that the Board needed to vote on the six-year plan.

Mr. Rooker **moved** to approve the County's recommended priorities for FY 2014-2019 Six Year Improvement Plan as presented. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

(Note: The Plan is set out below:)

ALBEMARLE COUNTY RECOMMENDED PRIORITIES FOR FY 2014-2019 SYIP
ADOPTED: November 14, 2012

I. MAJOR IMPROVEMENTS

1. Improvements to Route 29 North Corridor:
 - a. Funding of 29H250 Phase II Study, Option B design recommendations, most particularly additional north and southbound lanes on Route 29 from the Hydraulic Road intersection to the Route 250 Bypass and an additional ramp lane from Route 29 southbound onto the Route 250 Bypass West; **Places 29 Priority project; Primary/Revenue Sharing/City funds – Partial funding commitment to design and construct.**

- b. Construct Hillsdale Drive extension from Hydraulic Road to Greenbrier Drive; **Places 29 Priority project; Urban/Revenue Sharing/City funds/Private right of way donations – Designed and being funded to construct.**
 - c. Construct Berkmar Drive extension. **Places 29 Priority project; Portion being constructed in Hollymead Town Center; CIP funding – available for design only (no funding to construct).**
 - d. *Intersection improvements at the Route 29 - Polo Ground Rd. (east)/Rio Mills Rd. (west) intersection to address traffic back-ups on Polo Grounds Rd. Consider signalization improvements and/or construction of turn lanes on Polo Grounds Road; Board request – new project request/not funded.*
 - e. Deployment of an adaptive traffic control system or other equivalent signal synchronization enhancements to US 29, from the Charlottesville city limits to Hollymead.
2. Improve Route 250 East corridor as recommended in the Pantops and Village of Rivanna Master Plans (improvements to I-64 interchange, pedestrian crossings in Pantops, parallel roads, new bridge/crossing at Rivanna River and widening of Route 250 east from the I-64 interchange to Village of Rivanna). **[note: I-64 exit ramp improvements completed] Portions of parallel roads constructed in private projects; no additional funding to design or construct.**
 3. Improvements in accord with the recommendations of the Crozet Master Plan:
 - a. Implement sidewalk plan (per Downtown Sidewalk and Parking Study and Crozet Master Plan); **CIP/Enhancement /Revenue Sharing funds – Crozet Ave. Streetscape project designed and funded to construct.**
 - b. Create bike lanes to and in downtown; **Secondary/Revenue Sharing funds – Jarman’s Gap Rd. complete; Library Ave. partially built.**
 - c. Construct Eastern Avenue, to include the Lickinghole Bridge and a railroad crossing; **Portion constructed in private project; location plan complete. No funding to design or construct.**
 - d. Construct un-built sections of Library Ave. east from Crozet Avenue to Hill Top St. **CIP funds – Portion constructed; No additional funding to design or construct.**
 4. Widen Route 20 North from Route 250 to Elks Drive/Fontaine Drive intersection, including bike lanes and sidewalks. **No funding.**
 5. Undertake improvements recommended in the Southern Urban Area B Study, including improvements to Fontaine Avenue and construction of Fontaine Avenue to Sunset Avenue connector road. **Proffer for a portion of Fontaine Ave. to Sunset Ave. Connector; No additional funding to design or construct.**
 6. Widen Route 20 South from I-64 to Mill Creek Drive, including bike lanes and sidewalks. **No funding.**
 7. Improve two intersections on Route 20 (Valley Street) in Scottsville: the Warren Street intersection and the Hardware Street intersection. **No funding.**

II. TRANSIT IMPROVEMENTS

1. Regional Transit Authority - Funding to establish a regional transit authority to provide expanded transit service to Albemarle County and Charlottesville. **No funding.**
2. Expand Existing Service - Funding to expand existing transit service capacity for CAT, JAUNT and RideShare, including capital projects to enhance capital operations (such as bus pull-outs, shelters, etc.). **Limited funding in CIP for 2-4 bus stops/shelters.**
3. Funding for Transit Operational Costs - Fully fund the State’s existing formula share of transit operating costs or provide fuel subsidies in the face of rapidly escalating fuel costs. **Services provided in County by CAT are County funded.**
4. Inter-City Rail - Maintain increased inter-city rail service initiated to Charlottesville/Albemarle County in 2009. **State funded through 2012.**
5. Provide new service to Avon Street/Urban Neighborhood 4 area. **No funding.**
6. Provide new service in the US 29 North corridor/Hollymead/Airport. **No funding.**

III. SAFETY IMPROVEMENTS

1. Construction of pedestrian walkways and/or bikeways along primary roads in the County’s Urban Neighborhoods and Development Areas as part of road widening/improvement projects. Absent major road improvements, the following are prioritized for pedestrian and/or bikeway improvement:
 - a. Route 240 in downtown Crozet; **Enhancement/Revenue Sharing funds – Crozet Ave. streetscape project designed and funded to construct.**
 - b. Pedestrian crossings at strategic locations on Rt 29 North; **No funding.**

- c. Route 250 East in Pantops - complete existing sidewalk system through extension and connections; provide pedestrian crossings at strategic locations; **CIP funding – sidewalk sections recently completed on Route 250; crosswalks need to be designed/ installed.**
 - d. Route 250 West from the City limits to the 250 Bypass area; **No funding.**
 - e. Route 20 South from City limits to Mill Creek Drive extended. **No funding.**
 - f. **Route 250 West in Crozet (Cloverlawn/Blue Ridge Shopping Center/Cory Farms subdivision area). Limited funding available (County CIP).**
2. Intersection improvements on Route 250 West at: 1) Tilman Road; 2) Owensville Road; 3) Route 240 (at Mechums River Bridge). **Improvements to address traffic control, such as traffic light, round-about, or other such improvements. No funding.**
 3. Full lane widths, paved shoulders and spot improvements on Route 22 and Route 231. **No funding.**
 4. Traffic control improvements at the intersection of Route 250 West and Route 151 (**traffic light, round-about, or other such improvements**). **No funding.**

FOR INFORMATION ONLY:

OTHER APPROVED PROJECTS FULLY FUNDED IN THE STATE SIX YEAR IMPROVEMENT PLAN

- **Rt. 250 Bypass, Construct Interchange with McIntire Road (Charlottesville)**
- **McIntire Road Extended, Construct 2 Lanes (Charlottesville)**
- **Route 29 Corridor Improvements, reconstruction with added capacity from Ashwood Boulevard to Town Center Drive**
- **Route 29 Western Bypass, New Construction**
- **Bridge Replacement, Route 250 over Little Ivy Creek**
- **Various spot and safety improvements--5 projects on Rt. 29, Rt. 53, Rt. 20, Rt. 250 (flashing lights, shoulder widening, signage and guardrail, turn lane improvements)**

Agenda Item No. 16. From the County Executive: Report on Matters Not Listed on the Agenda.

There were none.

Agenda Item No. 17. Adjourn to November 28, 2012, Room 241, 12:00 noon, Annual Legislative Luncheon.

At 8:44 p.m., Ms. Mallek **moved** to adjourn the meeting until November 28, 2012, at 12:00 noon in Room 241 of the County Office Building for the legislative luncheon.

She also noted that the TJPDC legislative forum would be held on Thursday, November 28, 2012, from 6:00-8:30 p.m.

Mr. Foley mentioned that staff sent out a fairly extensive list of updates on transportation issues that Board members had requested, and asked Board members to contact him if they weren't sufficiently addressed in his email.

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

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

NAYS: None.

Chairman

Approved by Board
Date: 01/16/2013
Initials: EWJ