

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on February 22, 2013, at 11:30 a.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. The meeting was adjourned from February 6, 2013.

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 11:30 a.m., by the Chair, Ms. Mallek.

---

Agenda Item No. 2. Presentation on County Executive's FY 2013-2014 Recommended Budget.

Mr. Tom Foley addressed the Board, stating that he would like to present the proposed budget as it relates to the County's strategic goals that have been previously established. He said staff would answer questions the Board may have throughout the presentation as well as at the end of the presentation. He pointed out that there will be several work sessions held over the course of the next several weeks and includes a public hearing scheduled for the evening of Monday, February 25.

Mr. Foley presented the proposed budget for FY-14 which is the combined capital and operating budgets and totals \$321,153,000. He said the budget is balanced on the existing tax rate of 76.2 cents and results in a slight decrease in the tax bill for the average homeowner. Mr. Foley pointed out that the County's theme this year is building resilience and creating capacity to advance strategic priorities. He stated that last year's theme of progress and opportunity put more emphasis on where the County had been, which included the recession, coming out of the recession, trying to take some steps forward, taking advantage of opportunities, and being more creative so the County could pull itself out of the recession and the difficult times. He added that the previous budget was more about catching up and recovering more than anything else.

Mr. Foley pointed out that, last year, the County was able to unfreeze three police officer positions. In addition, he stated that the County identified projected year-end monies which enabled the County to move forward on the long-delayed Crozet Library and the Ivy Fire Station, and included the start of the renovation and addition to the Seminole Trail Fire Department. Mr. Foley explained that, in order to achieve those savings, staff looked for areas where money was left over in other projects, end-of-year monies, etc., which enabled those projects to move forward. He reported that the County was able to offer Emergency Medical Service (EMS) at Pantops, which was a critical need that had been identified for quite some time, and was accomplished through a creative partnership with Martha Jefferson Hospital – running calls out of the basement of their new facility instead of out of a fire station. Mr. Foley said that the County also expanded its use of EMS billing to generate the revenue to pay for the staff at that location.

Mr. Foley said that, by contrast, the FY14 budget leaves the recession behind and addresses the fact that it is time to move forward into the future, and think about what the County would want to accomplish and not how to get over what it has been through. He stated that the recommended budget takes a much more forward-thinking and proactive approach, and focuses on the future rather than the past. Mr. Foley said that it is not about catching up and recovery, but about building, investing and advancing. In developing this budget, he said staff looked at the vision of being a thriving County and the strategic goals of trying to make more significant steps forward and, in doing so, established three goals to guide that thinking: (1) to build the County's resilience and support its ability to respond to change while sustaining core operations which includes moving forward and building resilience; (2) investing and creating organizational capacity that yields a positive return, improving ability to perform and produce over the long term; and (3) advancing strategic priorities that position the County for the future. He pointed out that this is the first year the County has had a fully-adopted strategic plan.

Mr. Foley said that building, expanding and investing reflect that the County continues to be an organization committed to excellence and, even as conditions improve, staff is not losing sight of the transformational efforts that have been made over the last several years. He said staff is focused on the hallmarks of an excellent organization, reducing costs, repositioning resources, and streamlining operations to be as efficient as possible. Mr. Foley stated that the County has learned to tighten its belt and look for new ways of doing things because of the recession, but that is the kind of organization Albemarle County is.

Mr. Foley reported that the County's expenditures in this budget are less than FY09 expenditures, despite growth in population and mandates and obligations since that time. He said that the number of General Government positions on a per-capita basis is roughly equivalent to FY03, which was more than 10 years ago. He said the tax burden is less than the 2010 level for the average homeowner, and provides a slight reduction from last year, making it the fifth year in a row of reductions in taxes for the average homeowner. He pointed out that the County is certainly moving forward in a very different environment, but continues to be committed to efficiency in its expenditures. He said staff's commitment to excellence is a foundational effort and continues to be reflected going forward.

Mr. Foley stated that total revenues in the proposed budget are at \$321 million and include all funds, i.e., the General Fund, School Fund, and Capital fund, as well as Special Revenue Funds. He said that, in looking at total revenues which support this level of expenditure, the largest source of revenue

continues to be property taxes at about 45%, other local revenues at 21%, and state revenues at 23%. He added that Federal Revenue and Bond Proceeds come in at smaller amounts in the total. Mr. Foley stated that local revenues have increased by approximately 2% in this budget over the current year; state revenues at approximately 4%; and federal revenues at approximately 3%.

Mr. Foley said, in terms of total expenditures, the School System makes up about 60% of total expenditures, which is fairly typical for the County; General Government comprises 35% and includes Public Safety, Human Services, Public Works, and General Government Administration. Mr. Foley said that the next largest expense is Revenue Sharing with the City followed by Debt Service and some capital expenses. He noted that the revenue-sharing amount is changing but still makes up about 5% of total expenditures.

Mr. Foley said the budget shows an increase of approximately 2.3%, or \$7.2 million total, and the tax burden is less than the 2010 level with a slight reduction from last year for the average homeowner. He pointed out that existing property values fell a little over 2%. He stated the County has been able to overcome that decline with some new construction, which is strong this year, as well as a modest recovery of the economy for the first time in four years. Mr. Foley added that the County has also enhanced tax collections which has helped off-set the reduction in property values.

Mr. Foley stated that total expenditures in local government operations are up \$3.8 million, including shoring up and improving core services and some investments. He added that school operations are up 2.2%, with all funds included; and the Capital Improvement Program (CIP) has declined 4.9% as a result of the fluctuation in some major projects.

Mr. Foley reported that the General Fund is where the majority of County revenues, including local tax revenues, are received and are allocated out to support the Schools and all other funds and serves as a central hub for expenditures. Mr. Foley stated that revenues for general property taxes comprise the largest share at 62.8%; other local tax revenues are 20.5%; and state revenue is approximately 10%. He said that General Fund revenues are up approximately 2.7% overall, and property taxes have increased \$2.6 million – or 1.9% - primarily due to new construction and increases in personal property taxes. Mr. Foley said that other local taxes have increased \$1.6 million – or 3.5% - due to increases in sales tax, food and beverage taxes, and motor vehicle registration fees. He stated that other local revenues are just about flat.

Mr. Foley noted that EMS billing revenues have almost doubled in this budget as a result of changes the County started to make last year, and the reason for the doubling is that the County is expected to come in under the original projection in the current year and pointed out that efforts going forward would add about \$700,000 in revenue to this. He reminded the Board that the Office of Facilities Development (OFD) was moved to a separate enterprise fund, taking it out of the General Fund, because that department generates money to support itself.

Mr. Rooker asked if the personal property tax increase was due to the increase in the value of used vehicles, as those vehicles have been rising in price recently. Mr. Foley responded that there are several factors involved, with a lot more car sales that have driven up values, and also because the County has put new effort into collecting delinquencies. He added that state revenues are essentially flat, with federal revenues up 9.8%, but mostly because of Social Services revenue pass-throughs. Mr. Foley clarified that staff has built in some reserves to prepare for any sequester issues with federal revenues.

Mr. Boyd commented that federal revenue is a very small portion of the County's budget, and asked how much the 9.8% represented in terms of dollars. Mr. Foley responded that it is not a large part of the budget, and said Ms. Allshouse could provide that information to the Board.

Mr. Rooker added that a lot of the federal reserve money is pass-through, so it doesn't really hit County operations if it's reduced but those people receiving the pass-through funds would be affected, such as those who receive food stamps.

Ms. Mallek said that there would ultimately be an impact on the County if that were to happen.

Mr. Rooker said it would be a hardship for certain citizens, but that's not reflected in general operations.

Mr. Foley said that the Social Services area is one that will need to be monitored, as well as some Title I funds in the Schools. Those are areas where sequestration could have some impacts but there are some services that would be excluded.

Mr. Foley reported that staff has looked at maximizing revenue opportunities in this budget, such as the \$700,000 EMS recovery increase. Mr. Foley said that there is a lot of money in the budget to pay for enhancing services, so the increased income would go to pay for services that help improve response times. He said that the budget also uses, for the first time, Economic Development Authority revenues generated from financing, to help offset some of the County's economic development costs.

Mr. Foley reported that the percentage of collection of real estate taxes is projected at a higher level, however, that does not necessarily mean it is a large increase because it was also done last year. He pointed out that the County is collecting at a higher level of percentage collection. He said the County continues to focus on sales and business tax collection improvements and, based on the discussions with the School Board last fall, there are some year-end school fund balance numbers being used to support the capital program.

Mr. Foley indicated that the average taxpayer with a single-family home will have paid, over time, less taxes because of the decline in property values, and the FY14 budget takes the level back to 2010 on a starting point of just under \$300,000 with the tax bills dropping by \$104 on average. He explained that there are different classes of property and, even within the magisterial districts, the values have changed up or down on average. Mr. Foley emphasized that this is relative to what has been going on with property values dropping continuously, and certainly lowers the tax bill on average.

Mr. Foley reported that the largest expenditure in the General Fund is mostly a transfer to the school fund, where Schools pay for its operations and totals 45%. In total, the money that goes to operations and debt and capital is about 51%. He said public safety is about 16% in total; health and welfare comprises 8%; and revenue-sharing comprises about 7% of the County's General Fund. He said the largest increases in expenses are \$1.8 million to support public safety and \$2.6 million additional to Schools. He added that another large difference in the budget is an additional \$377,000 to support libraries which is considered a continuing education expense even though it is tracked under Cultural/Recreation.

Mr. Foley stated that the City fire contract is reduced by over \$700,000 and those funds will be shifted over to cover the cost of opening the Ivy Fire Station which will replace some of the services that were previously provided by the City. He said regional jail costs decreased about \$200,000, which reflects a short-term trend.

Ms. Mallek said that the opening of the facility in Grayson is intended to reduce the number of state prisoners that have been housed locally.

Mr. Foley said City revenue-sharing is down \$589,000, but still comprises \$16.9 million of the budget, noting that there is a delay from when the County's values are assessed and the payment. He pointed out that this year and the next couple years, the City will see what the County has been dealing with in the past.

Mr. Foley noted that the County received a \$1 million grant to pay for firefighters with \$500,000 of that grant being budgeted next year and is in a special revenue fund that could be used for public safety.

Mr. Boyd asked what the plan is to cover the shift of the school buses into the Capital Improvement Program (CIP) in terms of additional revenues to Schools. Mr. Foley said the County is covering more than \$2.6 million increase because \$1.4 million of an obligation out of the School's operating budget was freed up. How much the Schools actually budgeted the year before and how much real savings Schools are getting is unclear at this time, however, \$1.4 million is the obligation that went to the CIP. He pointed out that the Board's action on this matter was done to relieve pressure on School expenditures so it could reallocate to other things.

Mr. Rooker asked how much money would be moved over to the CIP from the school fund balance. Mr. Letteri said the amount would be approximately \$2.1 million. Mr. Foley added that those funds will be off-set in the first year. He said staff will provide actual language for the policy change to the Board for their approval in the next couple of months.

Mr. Foley pointed out that the public safety expenditures are up more than what is reflected in the General Fund because the grants are in a different fund to pay for some of the firefighters. He added that the FEMA grant and new EMS revenues are being used to support the dramatic increase in service.

Mr. Foley reported that the County's first goal of building on and strengthening core services is reflective of a lot of the investments in public safety, with FY14 being the first full year of the Pantops EMS service and the opening of the Ivy Fire Station. He said this budget includes the addition of three fire and rescue positions for daytime coverage and, for Route 29 South in the Ivy area, the calls will run out of the Ivy Station in response to some of the changes in service that the Charlottesville/Albemarle Rescue Squad (CARS) has put in place going forward. Mr. Foley said the budget funds a Division Chief of Volunteer Services to improve communication and interaction with volunteers who are providing a significant, valuable service. He stated that there would be a full year of 24/7 EMS coverage on Route 29 by relocating an ambulance from CARS to the Seminole station, which is the busiest part of the County, noting that the service is currently just daytime until July 1st. Mr. Foley pointed out that the County is currently running an ambulance out of the CARS station, and that is an expense already in the budget but with no revenue generated to offset it. He said that the ambulance moving to Rt. 29 North is all new revenue that was not otherwise being generated when it was operating out of CARS, because CARS did not support EMS billing.

Ms. Mallek said it was her understanding that the ambulance would be staffed by volunteers on nights and weekends, so this is a change. Mr. Foley responded that further discussion would occur during the budget process, adding that this is a very significant improvement in service as well as a revenue generator. He presented information on previous ambulance coverage, much of which was run from the City, and there are now EMS services at Hollymead, at Monticello in addition to Scottsville Rescue Squad helping with coverage and is billing. Mr. Foley emphasized that what is being done in this budget for the first time in a full year is adding strategic locations for service, which will dramatically improve service in the most densely populated areas by putting that resource in the area to respond, in addition to also producing revenue to help offset expenses. He stated that the Board's decision last year to start moving forward more aggressively in this effort is being fully realized in terms of revenue in the budget and dramatic improvement in service because of the change in location. He said that responding from the middle of the City to provide service to County residents is a lot different than going out to the County where people live and being there to respond more quickly. Mr. Foley also mentioned that staff did not

have full cooperation previously in reporting response times, and now will have complete reporting which should yield much better data in the year ahead. He noted that this is why there is a 24% increase in fire and rescue expenses, and the net is not nearly that high due to the FEMA grant and EMS revenues that are coming in.

Mr. Snow asked for the exact amount of the offset. Mr. Foley responded that he would be able to provide that information when the public safety item is discussed in detail, noting that the FEMA grant would need to be offset in FY15 and 16.

Ms. Mallek said it takes a few years to recruit night and weekend volunteers. Mr. Foley responded that the FEMA grant has allowed the County to continue its recruiting efforts for the Ivy Station.

Mr. Foley stated that the FY14 budget has two new police officers to keep up with population growth, which was identified by the Board as a priority last year, and goes a step further in trying to make up ground. He said that this strategy does not implement geo-policing to the level the Chief is hoping to reach, but it is moving in the right direction.

Mr. Foley reported that the budget includes the addition of a Bright Stars position where the grant money had run out and maintains the current level of service. Mr. Foley said that it funds one eligibility worker and eligibility supervisor, as well as an adult protective services worker to address core human service needs and these positions are partially offset by state revenues. He stated that, during the recession, staff saw a dramatic workload increase in this area and these efforts will provide some much needed relief.

Mr. Foley said that the budget increases maintenance funding for General Services to protect the County's investment in new facilities such as the libraries and fire stations, and increases resources to Parks maintenance to keep up with the two new parks that have been recently added.

Mr. Foley stated that, in order to be more agile and responsive to core services, staff has included an innovation fund and an intern fund with one-time monies for start-up on organizational improvements that would save the County money in the long run or improve services to citizens. Mr. Foley said that the intern fund would help with workload issues, and the goal is to get students with strong educational backgrounds to help move the County forward. He noted that the FY14 budget would invest fairly significantly in employees' professional development, as staffing has been down, and this additional investment will help pay for core training needs along with some enhanced level training and increased tuition reimbursement.

Mr. Foley said, in order to meet the County's second goal of investing to create capacity to ensure a positive return and ensure that the County is providing high quality services, this budget adds a new traffic safety officer from Photo Safe revenues. He said the County is adding another intersection to that program which will address on-going concerns about traffic safety.

Mr. Foley reported that the budget puts one-time use of storm water capital funding to establish a stand-alone storm water program to meet growing compliance needs, and anticipates the implementation of a storm water utility district in the next fiscal year.

Mr. Dumler asked about the line item total. Mr. Foley responded that the amount is approximately \$260,000, funded with money that is currently in the storm water program. He said, with anticipated mandates on the horizon, there will need to be a source to replace that operating cost as well as putting money aside in capital to pay for the facilities that will have to be put into place. He said that the County currently has two staff members who work on the storm water program, and they would be paid for out of the fund which is being reallocated from capital. Mr. Foley emphasized that the County is currently in a holding pattern with capital money because it is not currently clear what the mandate will require of the County. Money has been set aside to study those issues, however, the funds will sit idle until staff has a better understanding of what is going to be required. Once that happens, the County will need new inspectors and capital money. He pointed out that this is a first step and a start-up to a separately-accounted program.

Mr. Boyd asked if this was the same principle that was being done with project management, when funds were shifted over to capital. Mr. Foley responded that is correct, and is structured as if it were being moved to an enterprise fund with the only difference being there aren't any revenues yet to pay for it. He said that, in facilities development, there is a charge to everyone they're building for but, in storm water, it's going to be a decision as to how the County will want to approach generating revenues that aren't in the budget now to pay for storm water mandates. Mr. Foley said it could be done through a separate utility fee, or perhaps an increase in the tax rate that goes straight to the storm water fund program. He stated that the Board will need to address that question, along with addressing the scope of services the Board will want to provide. Mr. Foley stated that he has wrestled with the decision about moving capital money to that fund for one year but, given all that is going on, it seems to be a reasonable step going forward.

Ms. Mallek said, after the budget, she would like to see the utility discussion accelerated. Mr. Foley said staff will make sure that happens. He added that staff will need to work with the Board on those matters this summer and that will also be a major topic at the retreat in the fall.

Mr. Rooker pointed out that the Board will need to have a good understanding of the costs that will be needed to meet the minimum of those mandates, and those have been a bit of a moving target thus far. He said that, in looking at this previously, the Board considered three potential levels of service –

mandated, intermediate, and a higher level. Mr. Rooker commented that it would be easier if the City and the County establish a program that is very similar so that, when discussions take place about storm water management, those issues are discussed on a comparable basis.

Mr. Foley said the County had these similar discussions about five years ago and, like most localities, the plan didn't get approved the first time but now every locality is revisiting it because of the mandate. He commented that staff now has good background and pointed out that it will also be helpful to see how Charlottesville handles this, and the County can draw from their experience and information.

Mr. Foley reported that the budget also invests in a grants management position which is a half-time position that will be off-set somewhat by the recovery of grants administration costs. He said that this person would also look at opportunities for grants as a way to bring in more revenues.

Mr. Snow asked if that person would work in conjunction with departments. Mr. Foley explained that this person would work out of the Office of Management and Budget (OMB), which works with all the departments on grants and manages the grants.

Mr. Rooker asked if this person would have a role in both seeking grants and meeting their compliance requirements. Mr. Foley confirmed that compliance will be a big part of this position, adding that the County's departments are doing a good job in this area but this person might be able to help the departments identify grant opportunities which could be pursued.

Mr. Dumler asked if the grant administration was currently done by the departments or by OMB. Mr. Foley responded that the administration of grants is through OMB now. This process was once not as organized through a central point but has been transitioning to a more centralizing process over the last few years. He said that it makes the process a bit more challenging administratively, which is why the position is necessary.

Mr. Rooker said that it also helps to assess which grants are profitable to bring in, as the administrative costs can sometimes consume the benefit gained.

Mr. Boyd said he is concerned about going after matching grants that will increase the County's expenditures on things the County is currently not funding. Mr. Foley responded that there is a grants report for the Board now, and currently there are not a lot of enhanced services with most grants helping to pay for core services.

Mr. Foley stated that the budget makes an investment in establishing an economic development program to further stimulate jobs and investment, and there is some money for a half-year to pay for additional staffing if desired. He said that the budget also centralizes the risk management position, a half-year position that is projected to do more than off-set through savings and insurance costs, and to generate additional savings in the future. Mr. Foley stated that this is a significant area staff feels they need to move forward on from an organizational standpoint and, with the savings generated just this year, it will likely pay off pretty dramatically in managing our risk better going forward. He emphasized that an organization of this size needs a centralized effort on risk management.

Mr. Rooker agreed strongly, adding that this is even more important now because the County has taken on the Line of Duty Act insurance.

Mr. Foley reported that the budget has a new information technology position to improve technology solutions organization-wide, and this is an investment that will help generate savings in the long term through efficiencies in technology.

Mr. Foley said that the budget also includes funding to prepare for a bond referendum to increase the capacity of the capital budget. He said there is a small amount of funds set aside for the County's financial advisers to help work through the process and prepare for that, and to certainly do some analysis as to what the Board thinks is most appropriate to move forward.

Mr. Rooker pointed out that one doesn't necessarily increase debt capacity by having a bond referendum, so unless there are funds that can only be obtained through a bond referendum, what we're really looking at is comparing the cost of borrowing by way of a bond referendum versus borrowing in other ways that are already available to the County. He stated that, thus far, he has not seen a great advantage in incurring the expense of the bond referendum approach.

Mr. Boyd said that, at one time, it didn't seem to make sense to take the bond referendum approach but, in a recent meeting with bond counsel, it was noted that times have changed now because of interest rates and using the AAA rating may be more advantageous. He said it is worth taking another look at the option.

Mr. Rooker said that the difference stated was about ¼%, and the question is whether the cost of achieving that is worthwhile.

Mr. Foley said that, when bond counsel is talking about the difference, he is talking about the total cost, including the cost of issuance. He said that the more significant question is does the Board have projects it wishes to put out to the voters with a query as to whether or not to borrow for those projects, which may involve raising taxes. He said the capital program is very severely underfunded and, as we look to the thriving County, the Board will need to talk a lot more about what those priority issues are. He noted that some of those things are right on the horizon, and others may be less imminent, but the

question for the Board is whether there are projects that should be pitched to the citizens for funding. Mr. Foley said there will need to be more discussion about the consideration of a bond referendum and assistance will be needed from the financial advisers in an effort to work through this issue, which is what the money is set aside for at this point.

Mr. Foley reported that the third goal addresses advancing strategic priorities and positioning the County for the future, and is according to the strategic plan that was just adopted. He said that the first goal is to provide for excellent educational opportunities, and transfers to the Schools have been proposed. Mr. Foley noted that the school bus replacement funds are moved out of the Schools' General Fund and into the capital fund, which has freed up some resources and helped the School Division in this budget cycle. He said that this budget also supports school facility improvements including the Agnor Hurt renovation and addition, some improvements to Murray High School, and adds a school resource officer to the school system, which is split 50/50 between Local Government and Schools.

Mr. Foley stated that the budget increases support to the libraries – \$377,000 – or an 11.6% increase, which increases the general contribution to the library by \$190,000. He said that is primarily being driven by the new regional agreement, which has shifted some costs related to reference materials, and there is also a position for Crozet Library along with a salary increase for library personnel.

Mr. Snow asked if any of that amount was offset by out-of-county fees. Mr. Foley responded that \$30,000 is expected to offset this, but that number may be higher. He stated that the other large increase in the budget is in General Services budget, which pays for the electrical costs, the utilities, cleaning and maintenance, etc.

Mr. Foley said that staff has moved the library utilities into the Virginia Association of Counties (VACO) agreement in order to take advantage of discounted power rates and is also through the General Services budget. He mentioned that the Library had asked for two positions, and the budget funds one. He said the Library also asked for some other enhanced library services at a cost of \$66,000, which are not included in the budget.

Mr. Foley reported that the budget increases the capital transfer according to the formula because revenues have grown, which comes to approximately \$1 ½ million, and use of year-end funds from both Schools and Local Government are already factored in to help offset costs. He said that the budget does have an increased capital reserve of approximately \$2.6 million after five years, or about \$500,000 per year. Mr. Foley noted that, while that may sound like a lot, however, given the County's unmet needs, it isn't very much.

Mr. Foley stated that goal three - supporting a diverse and vibrant economy - is addressed in the budget through funding of memberships and marketing with assistance through Economic Development Authority (EDA) funds, and also pays for some increases in regional economic development efforts through the Thomas Jefferson Partnership for Economic Development (TJPED) which recently changed its name to the Central Virginia Partnership for Economic Development. He said the budget continues to fund the Economic Opportunity Fund each year and, if any of that money is used, it is replenished. Mr. Foley said the budget also includes some increased funding for the Small Business Development Center, and sets money aside for one-half year for the County's economic development program.

Mr. Rooker asked what revenues are projected from the EDA fund. Mr. Foley responded that it's about \$40,000 per year and any new financings would help generate more than that.

Mr. Foley said that goal four of protecting natural, historic, and scenic resources is addressed in the budget through the provision of mandated Chesapeake Bay TMDL study funding, exploration of a stand-alone storm water program, and some maintenance for county parks.

Mr. Foley said that the fifth goal regarding health and safety was addressed in the budget through 100% funding of volunteer fire and rescue agencies, based on expenditures over the past three years. He noted that six of the ten organizations are getting 100% of their funding request. He added that there has been no difference in what the County has proposed and what has been requested and that is based on three years of funding. He said three of the other agencies have received at least a 10% increase. Mr. Foley said that staff would continue to look at this with volunteers to ensure it is at the right level, adding that there is a reduction to Charlottesville Albemarle Rescue Squad (CARS) based upon the change in service that CARS will provide in the County.

Mr. Foley mentioned that the FY14 budget has a 35% increase for JAUNT - \$136,000 - because of increased ridership which is a pretty significant commitment.

Mr. Foley reported that the last two goals related to individual responsibility and citizen ownership are supported by the reallocation to create a volunteer coordinator position, which means there is no additional money in this budget. He said staff is in the early stages of developing that program, which continues to support citizens' advisory councils and other volunteer efforts. He stated that there was a position in the budget at one point that helped with volunteer efforts, but that was eliminated and this budget does not add that position back.

Mr. Foley said that the final goal of encouraging a valued and responsive workforce has been difficult to support over the last few years, with no merit raises, and this budget reflects moving forward with a 2% merit increase for both School and Local Government employees. He added that an employee may get up to 4% depending on performance and mentioned that, as jobs change and grow, there would also need to be money set aside for reclassifications. Mr. Foley said that the County has been able to

hold off rising health care costs for four years but, in order to maintain the current self-insurance pool, a 7% increase is included by the employer and the employee. In March, he said, they will have a joint work session with the School Board to talk about the latest information on claims experience and what may be appropriate going forward, but currently 7% has been budgeted.

Mr. Foley said staff has reviewed and planned expenditures in the budget based upon some goals that were felt to be appropriate going forward, i.e., building, investing and advancing. He said that some other funding obligations that are somewhat cross-departmental include funding for the Line of Duty Act (LODA) mandate that was put on the County last year, with a projected cost in FY14 of about \$200,000 and includes administrative costs. He said that the budget meets the County's contractual obligations to agencies, such as the Emergency Communications Center (ECC) and the SPCA. Mr. Foley pointed out the nearly \$17 million City revenue-sharing obligation, and said they have set aside reserves to ensure that the bond rating is protected as well as guarding against sequestration, if that comes to fruition, and federal cuts. He said that the budget provides an operating reserve for contingencies in the General Fund of \$250,000.

Mr. Snow asked if everything is resolved with sequestration, how much money would be freed up. Mr. Foley responded that there would be \$1 million in one-time money that would go to the capital program adding that, last year, they had discussed this and earmarked it for capital.

Mr. Foley reported that the recommended school operating budget is about \$154 million, a \$2.8 million increase, with the County supporting a \$2.6 million transfer increase based on the formula, and school buses would also free up some funds so that the amount is actually more than \$2.6 million. He said that the School Division's budget request exceeds funding by \$1.4 million because the policy is to fund simply through the 60% of revenues.

Mr. Rooker asked if the Schools had built in some increased revenues from the state for teacher salary increases. He said there is often miscommunication on that issue from the state as the Governor will announce that he is providing for 3% raises when, in reality, the actual allocation is much less.

Ms. Mallek noted that it also doesn't reflect the increased cost in retirement contributions that fall on localities. Mr. Foley said that it hasn't amounted to a whole lot for the County, and it is always run on a formula basis.

Mr. Foley reported that the School budget is more than \$154 million, as there are special revenue funds where they pay for food service and other items, so the total is around \$180 million, making the entire County budget \$321 million.

Mr. Foley reported that the capital budget for FY14 totals \$21 million, focused primarily on maintenance and on projects such as Agnor Hurt. He added that the CIP Oversight Committee made a recommendation to improve the transportation revenue-sharing dollars. Mr. Foley said the Board has moved some end-of-year monies anyway, so this recognizes that process in an effort to match state funds. He stated that the budget continues to reflect the reality of an underfunded capital program.

Mr. Foley reiterated that the budget builds and invests and advances by improving fire and EMS response significantly, sustaining core operations in Police and Social Services, creating centralized risk management, establishing an economic development program and advances by increasing funding to the Schools and library system and in establishing the storm water program.

Mr. Foley said this budget lays the groundwork for several major decisions for the Board, as referenced throughout the presentation, and these are decisions that are critical for positioning the County for the future such as storm water management and the bond referendum. He said these are issues that will impact the FY15 budget. Mr. Foley clarified that this would include direction on the storm water utility and how that will be funded, direction on court renovations and how that will be funded, and direction on the bond referendum. He said that the Schools did a lot of work on their capital program last year, identifying \$54-\$56 million in need but, because it is an amendment year, only the critical needs were moved forward, totaling about \$12 million, so that means the remainder of that \$54 million would come in for funding in FY15 and beyond. Mr. Foley emphasized that, currently in the CIP, there are no court projects, no Pantops fire station, no libraries, or any of the \$100+ million in items cut out during the recession.

Mr. Foley stated that the Board has done a lot of good things during really hard times, cutting back but also scouring projects and project balances to scrutinize expenditures and help redirect some monies and those efforts have saved the County money but also helped make progress.

Mr. Foley noted that a growing population and increased economic activity will drive workload demands. He described the state of the staff right now as being at capacity. He said that does not mean they are in crisis, however, as things pick up in areas such as Community Development, it would impact that department, which has been reduced by 33% over this timeframe.

Mr. Foley said that the last item on the list is quality of life issues, including funding of some agencies that the Board would have to grapple with during the budget process. Based on the criteria that the Board had previously approved, he said there are some agencies that have fallen off the funding page.

Mr. Foley stated that the FY 14 budget moves the County forward in a proactive and strategic way, rather than looking back and being in a catch-up and recovery mode. He added this budget looks at

building, investing and advancing within the current tax rate and with a continued commitment on excellence and fiscal accountability. He noted that the current and future challenges are not being addressed in a significant way in this budget, and there are unmet needs that still remain. Mr. Foley said that the Board's goal of community facilities and the vision of being a thriving County will be a huge issue and have some big impacts in FY15 and beyond.

Mr. Thomas said he would like to pat staff on the back for executing the County's initiatives during the last three years, and said staff has done a great job under Mr. Foley's leadership.

Mr. Foley said that everyone has worked extra hard, and he appreciated the Board's feedback.

---

**NonAgenda.** At 12:47 p.m., the Board recessed. The Board reconvened at 12:54 p.m.

---

Agenda Item No. 3. Mountain Valley WPO Exception.

The following executive summary was forwarded to Board members:

The Mountain Valley Subdivision was approved in 2005. A mitigation plan was approved as part of the development that committed the developer to provide access to four lots (TMP 89-73, Lots G3, G4, G5 and G6) from Ridgetop Drive in order to avoid a stream buffer disturbance within the proposed subdivision. This is noted on the approved plans and the recorded subdivision plat that created these four lots. Attachment A is a map of the property from the County's GIS system showing the existing driveway from Ridgetop Drive and the start of a proposed driveway from Ambrose Commons Drive for Lot G5. Selected excerpts from the previously approved subdivision plan are provided as Attachment B that show the approved access for Lot G5.

Another mitigation plan was submitted by Collins Engineering on behalf of the owners, Jessco LLC and Piedmont Realty & Construction, LLC, on September 25, 2012 proposing a stream crossing for Lot G5. That plan is provided as Attachment C. On October 1, 2012, the County notified Collins Engineering that the plan could not be approved because the lot had access on Ridgetop Drive (in existence, and provided on previously approved plans). The Water Protection Ordinance (WPO) does not authorize the Program Authority to approve a stream buffer crossing when there is an approved existing access to the lot. Collins Engineering submitted the same plan again on January 4, 2013, and the County again notified Collins Engineering on January 10, 2013 that the plan could not be approved. On January 24, 2013, the County notified Jessco LLC and Piedmont Realty & Construction, LLC that any further disturbance of the stream buffer was prohibited. That notification letter is provided as Attachment D. On February 4, 2013, the County received a letter dated January 30, 2013 requesting a WPO exception to allow the stream crossing and driveway. That letter is provided as Attachment E. Section 17-308 of the WPO authorizes the Board to approve exceptions to the stream buffer requirements when specified findings are satisfied. Normally, this request would be presented to the Board for consideration at its March 6, 2013 meeting. This request is being presented to the Board on February 22, 2013 because the property owners have indicated a need for a decision prior to March 1, 2013.

The applicant's exception request letter cites County Code §§ 17-308 and 17-321.

Section 17-308 lists criteria in paragraph C:

**Sec. 17-308 Exceptions.**

Except for requests to develop in the stream buffer made pursuant to section 17-321, a request for an exception to the requirements of this article shall be made and granted as provided herein:[...]

C. A request for exception may be granted provided that:

1. A stormwater management/BMP plan has been submitted to the program authority for review in accordance with this article; the plan demonstrates that reasonable alternatives to the exception have been considered and determined to not be feasible through attempts to meet the provisions of this article, the use of non-structural measures as provided in section 17-313, the use of a mitigation plan as provided in section 17-322, or by other means;
2. The exception requested is the minimum necessary to afford relief;
3. Reasonable and appropriate conditions are imposed as necessary to ensure that the purposes of this article are satisfied; and
4. The basis for the request is not economic hardship, which shall be deemed an insufficient reason to grant an exception.

The plan does not demonstrate that there are no reasonable alternatives under item (1). There is an existing approved alternative. In addition, the plan is not the minimum necessary to afford relief under item (2). The plan disturbs stream buffer that would not otherwise be disturbed.

Section 17-321 includes the following condition:

**Sec. 17-321 Types of development which may be allowed in stream buffer by program authority.**

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

3. on a lot on which the development in the stream buffer will consist of the construction and maintenance of a road, street or driveway that would not satisfy the requirements of section 17-320(D) and the program authority determines that the stream buffer would prohibit access to the lot necessary for the lot to be used and developed as permitted in the underlying zoning district and under the applicable regulations of the subdivision ordinance, or to establish more than one stream crossing;

The stream buffer does not prohibit access to the lot. There is existing access approved as part of the original mitigation plan. That access was platted and is currently being used.

Section 17-320D3 was cited in the County's January 24, 2013 letter to the owners:

**Sec. 17-320 Types of development authorized in stream buffer.**

If otherwise authorized by the applicable regulations of the zoning ordinance, the following types of development shall be allowed in a stream buffer, provided that the requirements of this section are satisfied: [...]

D. Stream crossings of perennial and intermittent streams for roads, streets or driveways, provided the following requirements are addressed to the satisfaction of the program authority: [...]

3. The stream buffer disturbance shall be the minimum necessary for the lot(s) to be used and developed as permitted in the underlying zoning district and under the applicable regulations of the subdivision ordinance. Stream crossings shall not disturb more than thirty (30) linear feet of stream for driveways and sixty (60) linear feet for roads or streets, provided that the program authority may allow additional length of stream disturbance where fill slopes or special conditions necessitate additional length;

The proposed stream crossing would not be the minimum necessary for the lots to be used and developed. The existing driveway(s) from Ridgetop Drive have eliminated the necessity for stream crossings and buffer disturbance.

Based on this analysis of the property owner's request, staff believes that the findings required to approve an exception have not been satisfied and that this buffer disturbance is better defined as a matter of convenience rather than necessity. The property owner's engineer has indicated he believes the road with this stream crossing would be safer, but staff has found no evidence to support that position and notes that there are steep slopes leading down to the stream crossing, which would make this access difficult. Staff further notes that, while the existing access from Ambrose Commons is claimed to be part of "...an old gravel farm road...", that access was not shown on the approved subdivision plan as required by the Subdivision Ordinance, and appears to have been constructed at approximately the same time that Ambrose Commons was created.

No budget impacts anticipated. If an exception is granted, a revised mitigation plan must be conditioned with the approval, but the fees for that review are intended to recover the cost.

Staff finds that the necessary criteria for granting an exception request have not been satisfied and recommends denial of the request.

Should the Board determine the necessary findings have been satisfied and desire to approve the exception, staff recommends the following conditions be included with this approval:

1. Prior to construction of the stream crossing, the property owner must submit a mitigation plan for the disturbance and the plan must be approved prior to commencing construction. The mitigation plan shall be revised to include mitigation for the prior disturbances of graded access from Ambrose Commons Drive and the new stream crossing, with the Program Authority having the authority to determine if the proposed mitigation plan adequately addresses this impact.
2. Associated with reviewing the mitigation plan, the property owner shall demonstrate to the Program Authority's satisfaction that all federal and state permits associated with the stream disturbance are in place.
3. Associated with reviewing the mitigation plan, the Program Authority shall determine if a revised Erosion and Sediment Control Plan is needed for compliance with the approved Erosion and Sediment Control Permit. If a revised plan is needed, no land disturbance associated with the driveway crossing shall be allowed prior to approval of a revised plan and the permit including the plan.

---

Mr. Glenn Brooks, County Engineer, said that this item is a Water Protection Ordinance exception request for a lot in Mountain Valley. Mr. Brooks said that each section in the staff report has a pertinent section in the ordinance to which it refers.

Mr. Brooks reported that from a staff perspective, they are discussing four parcels – with the applicant owning two of them – and he noted their location on a map provided. He stated that one of the parcels is right at the cul-de-sac, where a house is currently being built, and the others all have frontage on a neighboring subdivision. Mr. Brooks clarified the location of the lot that is the subject of the request, noting the location of Ridgetop Drive in Mosby Mountain, the neighboring subdivision. He pointed out the subdivision with the larger lots, Mountain Valley, and said that the road serving that subdivision wraps back around and comes in so that the neighborhoods adjoin. Mr. Brooks stated that the four lots all have frontage in both Mountain Valley and Mosby Mountain.

He explained that there was a plan in 2005 that showed all four lots in a slightly different configuration, accessing Ridgetop Drive, to avoid stream disturbances to the corridor leading into a pond that has been there since the original farm was in place.

Mr. Snow asked Mr. Brooks to point out the location of the power lines. Mr. Brooks noted the location of a transmission power line in an easement running across the lots in front.

He said that some of the lots shown as buildable areas in 2005 were shown in front of the power line, and some were shown in back.

Mr. Rooker commented that the lots are very close to the power lines.

Mr. Brooks explained that the most often used section of the ordinance, Section 17-321, is applied when people are disturbing the buffer in its allowable limits – within the outer 50 feet, given certain criteria. He said that the key phrase typically followed is that if a stream prohibits access to a lot, it is allowed to be disturbed and crossed. The stream buffer in this case would prohibit access to the lot. He added that subdivisions that are platted before the ordinance often have lots that are totally taken over by the stream buffer.

Mr. Brooks said that the next section is the section added later to the ordinance after staff expanded the stream buffers into the rural areas, to allow by-right stream crossings. The key phrase here is “minimum necessary for the lots to be used and developed.” He stated that the idea was if there are development rights on the other side of the stream, people should be able to get to them and there should not be a process that needs to be undertaken.

Mr. Rooker asked if all of these require a mitigation plan. Mr. Brooks responded that this one does not and is sort of a glitch in the ordinance, because it was added as an afterthought when stream buffers were expanded in the rural areas. He said there was a subsequent Board meeting in which citizen concerns were brought up that they could not access some development rights or develop to full potential. Mr. Brooks stated that Section 27-320 was added – to allow by-right stream crossings to the ordinance. He said that the result is a section of the ordinance that cannot be enforced from a practical standpoint, because if it is by-right there is no permit required with the County. Mr. Brooks stated that even though the section of the ordinance has criteria – you must use a box culvert, and you must use an arch, as well as an engineering calculation that says it has to pass the 10-year storm – but there is no mechanism by which the County can get it.

Ms. Mallek said that was not clearly understood by her and perhaps other Board members. Mr. Brooks said that this is something that will hopefully be corrected with ordinance revisions this year, based on the new state mandates. He added that it is not a real concern with this lot because the applicant has offered to build a bridge.

Mr. Brooks stated that the other section is the more general section about exceptions to the ordinance, and the key phrase in that is “are there reasonable alternatives that are feasible?” He said that the alternatives to the crossing must be deemed “not feasible,” which is a difficult criteria to meet. Mr. Brooks presented a depiction of the Water Protection Ordinance, with a stream on the property, a typical lot with road along the frontage to serve three or four lots, avoiding the stream buffer. He said that is the ideal situation. There is also the situation staff attempted to plan for when the County made the revision to the ordinance to allow by-right stream crossings which is to allow one stream crossing if the lots are inaccessible. Mr. Brooks stated that where it gets difficult is when there is one development right on one parcel and a choice of whether to build a house in the back of the stream or in the front of the stream. He said the question then is whether it is a matter of necessity or a matter of preference, and the directive up to now has been to allow one crossing.

Mr. Brooks stated that the question arises as to whether an alternative is not feasible, when one road requires a stream crossing and one does not, and whether it is the minimum necessary to develop under the underlying zoning district. He said that staff has conveyed to the applicant that it does not see how it could approve this request because the ordinance has the conditions that do not appear to be met.

Mr. Brooks said that staff have recommended some conditions should the Board choose to approve the request, but staff’s recommendation is that it does not see how the ordinance criteria can be met. He stated that he was not sure that Water Protection Ordinance exceptions are totally discretionary, but changes to the ordinance could make them that way if desired or criteria could be developed. For instance, in this application, the transmission power lines are located on the applicant’s side of the stream. The driveway that was originally proffered goes under the power lines and is rather a steep incline, but is doable under the ordinance. He noted that it exists now, and that is what they used to build the house that is there now. Mr. Brooks said that the second entrance is more grand, and comes in from the subdivision of which the parcel in question is a part – so it has some attractive qualities. As far as the ordinance criteria, he noted, it is still just a preference as to which side of the road to come in from. Mr. Brooks said that if the County were to make new criteria to adopt in the ordinance revisions, it could cite avoidance of a power line as a need for a reasonable alternative.

Mr. Davis pointed out that that’s not what is before the Board today. There is not a different standard for the Board to find on an appeal. The Board has the same criteria as Mr. Brooks has in making his interpretation. The applicants disagree with Mr. Brooks’s interpretation, and under the ordinance they have the right to appeal to the Board and make the decision that otherwise [Mr. Brooks] makes. He said that in order to meet the requirements of the ordinance, the Board has to make the finding that there is not a reasonable alternative and that it is the minimum amount that is necessary to

provide reasonable access to the lot. Mr. Davis stated that staff has looked at it and cannot make those findings, so the applicant is asking the Board to make those findings instead.

Mr. Snow asked if one stream crossing was already granted, even though the applicant still had access from the other road.

Mr. Dumler said that there were stream crossings approved with the original subdivision plat.

Mr. Brooks pointed out the location of the driveway on the neighboring parcel versus the one being discussed now.

Mr. Snow asked why they were not held to the same standard. Mr. Brooks responded that staff should not have approved that driveway.

Ms. Mallek commented that staff did approve it.

Mr. Snow said that the second question he has is whether there is a paper trail showing that this was explicitly denied throughout the process. He said that the applicants have built a \$1.2 million house with anticipation they would be granted a stream crossing and now through a misunderstanding are having to come through a subdivision. The subdivision itself is quite beautiful, with wide open spaces, and to come up through the power lines is not the same subdivision.

Ms. Mallek added that it is not what the purchasers thought they were buying.

Mr. Brooks said that the driveway was approved in 2006-07. The process has changed in Community Development and there is a part-time person looking just at single-family housing permits for things such as erosion control. He stated that the position did not exist at the time this subdivision was approved. The claim at the time was that this was an existing farm road and the crossing already existed in some form.

Mr. Snow asked if there was any way that a misconception could have occurred whereby there is a \$1.2 million house facing the other direction, and asked if there is any kind of paper trail that confirms that this driveway might not have been allowed. Mr. Brooks responded that they have an electronic paper trail via emails, and said that the fact that the County approved a building permit could have been taken as an approval for a driveway location. He said the building permit section is required to issue a permit if there is legal access, and there was.

Mr. Rooker commented that at that stage, they are not approving the entrance. Mr. Brooks responded that from what they have said, they are not expressly approving a driveway at that time.

Mr. Snow said that it is certainly an opportunity for misconception. Mr. Rooker agreed, stating that he is trying to determine what gave rise to that misconception.

Mr. Brooks noted that the applicants did include both accesses with their building permit.

Mr. Rooker asked if it was still the process to approve a building permit even though one of the entrances may not be approvable, and a stream crossing permit would have to be obtained. Mr. Brooks said that they have an access off of Ridgetop Drive, under the power line, and the County would be obligated to approve the building permit under that circumstance.

Ms. Mallek stated that nobody struck out the access that crossed the stream and said it could not be used. Mr. Brooks said that staff could have said it should be taken off the building permit before it was approved, but there is no criteria for that. Staff could have also advised the applicants that they could not use that access.

Mr. Rooker asked if the question about it only arose after the house had been built. Mr. Brooks responded that it appears to be the case. The house is still under construction. He said that the applicant knew about the criteria, as it is written on the final plats for the subdivision in 2005. Mr. Brooks stated that if they go back to how the lots were platted in 2005 and look at the approved plats, a prominent note on the recorded plat shows that the lots will be accessed from Ridgetop Drive. He emphasized that the attorney handling the sale or the person buying the lot would have seen this on the final plat. He reiterated that staff made an effort to have it a recordable feature on the plat. The County did try to make it such that any new buyer would see it.

Mr. Rooker said that the plat only shows the access to Ridgetop Drive. Mr. Brooks responded that that's not a binding feature on a plat, and all that is required to get a plat approved is showing "a buildable area."

Mr. Boyd said that the way he read the waiver request is that the applicants came to him in September or October and left that meeting thinking that they could get their plan approved if they completed a checklist of items.

Mr. Brooks said if Mr. Boyd is referring to their request letter, he was not at that meeting. He indicated that his involvement started when he received a Water Protection Ordinance application for the driveway and the crossing. He sent his response to the design engineer that he couldn't approve this. Mr. Brooks said that he repeated that twice, and then decided to go directly to the owner because he was not

sure he was getting the message. He then sent a letter to the consultant and specifically sent a letter to the two listed owners.

Ms. Mallek commented that the diagram regarding the preference choice of one side of the stream or another is pretty telling to her. She added that there is a previous scheme without the entrance in the back and the other option.

Mr. Rooker said that if they only had one access here, they would not be here, but they have two accesses.

Mr. Dumler said that the approved subdivision plat from 2005 indicated appropriate building sites on it, and those were all on the east side of the stream.

Mr. Brooks presented what the County had on the original application, noting that it was a different entity at this time, not this builder.

Mr. Rooker noted that they all accessed off of Ridgetop Road.

Mr. Andrew Halsworth addressed the Board, stating that he is the owner of Piedmont Realty & Construction. He said that his company has always played by the rules. He said that Mr. Brooks and Mr. Graham have done their jobs in this case, but he wants the Board to hear a few important points. Mr. Halsworth stated that in the fall when he started working with his client, they became enamored with Lot #36. They went out to look at the lot and noticed the driveway that was cut in down to the stream onto the lot, which has been there quite some time. He said that when they did the research early last summer, they found the note on the site plan that Lot #36 needed to be accessed off of Ridgetop. Mr. Halsworth said that Mr. Chip Royer, whom they worked with on the process, pointed that fact out prior to closing. He stated that they were aware of the farm crossings that the neighbor used to access his home – with culvert pipes in ditches and gravel on top. Mr. Halsworth said that they knew an exception had been made at some point, because this lot was supposed to be accessed from Ridgetop also. He stated that he hired Mr. Scott Collins to come in and meet with staff to find out what was needed to build the home.

Mr. Halsworth said that they did show the driveway coming off the main road of Mountain Valley Farm, and they then went to the state because they have jurisdiction over waterways. In September they received approval to build a bridge. He stated that the plan was to build a 30-foot bridge, not touching the wetlands. Mr. Halsworth said they made the assumption that an exception had been made, and they had a permit and were under construction with a home, receiving approval from the state to cross a waterway. He stated that in the end of November, Mr. Collins received denial from the County, and he himself received the letter from Mr. Brooks in December. Mr. Halsworth said that the house is done, and the only thing holding up the owners is getting the approval for access to the driveway.

Mr. Halsworth emphasized that he feels they have taken the necessary steps to get this approved and feel they are being responsible in terms of earth disturbance. He said that he was shocked to find that they have this beautiful home built, facing the mountains, but might have to cross the power lines and come down a steep slope to come into the back of the home.

Mr. Rooker asked how the home was accessed during construction. Mr. Halsworth said that everything from construction is coming from Ridgetop which is the reason for showing both entrances on the site plan.

Mr. Rooker asked if there was a driveway there now off of Ridgetop. Mr. Halsworth responded that it is a gravel path, and it is pretty steep. He said that the grade of the proposed driveway is 7%, and the existing path is 10% to 12%. Mr. Halsworth noted that the County has a limit of 16% for a driveway.

Mr. Rooker said that it seems the Board might want to consider an ordinance change to allow for a different result when there are mitigating circumstances, and total mitigation is undertaken by the owner. He said that he has a hesitancy to vote for something based upon an ordinance change that has not occurred, although he said he has no problem with this application from a practical standpoint. Mr. Rooker asked if the applicant could wait out a potential change in the ordinance, as it may take a few months.

Mr. Halsworth said that the home was to be delivered in February, and they slowed everything down to wait to get on the Board's agenda. Any further delay would mean significant burden and ultimately expense. He also pointed out that when they went to the State DEQ, they approved the crossing but did so by requiring the applicant to get an easement, so this one bridge is now going to access both of these lots. Mr. Halsworth said that he went back to the Jessup family and recorded an easement so when the bridge is installed it will serve two lots.

Mr. Snow commented that the proposed crossing is a lot less invasive than the existing one.

Mr. Rooker said that the fact someone may have violated the ordinance before it existed is not an issue to him.

Mr. Boyd stated that staff has indicated that if the Board decides to approve this waiver, there are three conditions that should accompany the approval, and asked if the applicant has a problem with those. Mr. Halsworth responded that he did not, and had the buyers known it was an issue they would have picked a different lot.

Mr. Rooker said that the applicants went for a period of time during the planning and building of this house when they thought a waiver was possible.

Mr. Snow said that he understood Mr. Brooks to have entered the process about halfway in, after some decisions had already been made.

Ms. Mallek said that Attachment E, item #4, indicates that "a clear procedure was established in that meeting for how this driveway access would be processed and approved, and include a resubdivision of the overall development plot to remove this requirement, resubmission of a water protection plan, and approval from DEQ on the crossing and mitigation." She said that this is the most compelling point to her – that they were told by staff what to do, and then denied approval.

Mr. Rooker emphasized that the County should not tell someone they can go through a waiver process and then say there is no waiver possible.

Mr. Brooks said that was the Planning group, and they were talking about the plat with the note that says you cannot access from this area. He said that when it comes to his process, he looks at the approved mitigation plan behind the note which is not as easy to change.

Ms. Mallek said that she understands the bind Mr. Brooks is in, but it needs to be more straightforward. Mr. Snow agreed.

Ms. Mallek stated that she finds several things compelling in this case: the fact that the applicants was led to believe they were following procedure, the fact that preference exists in other cases, the existence of an old road going from Ambrose Commons down the 7% grade to the stream, and the idea that there would be a bridge span now that would not interfere with the waterway. Given those factors, she is supportive of the request.

Mr. Brooks said that that's not a farm road; it is a fill placed when they built the main drag.

Ms. Mallek said it has been used to take care of the stream and water management there.

Mr. Brooks commented that it was the construction access to get to the pond.

Ms. Mallek said that putting the span in would make it a crossing.

Mr. Brooks said that the crossing the applicant is proposing is not that one. He then noted the location of the existing fill area. Mr. Scott Collins, with Collins Engineering, noted the location of the existing fill area.

Mr. Brooks stated that the applicants want to come in further up the road, along the contour to the neighboring lot, and then come down in a different location and place the bridge. He said that there will definitely be disturbance, with new fill area on either side of the bridge.

Ms. Mallek asked if they were putting it where Mr. Collins showed her yesterday. Mr. Collins confirmed that they are, noting that because the road was in, they had the other topo from when the project was first planned out.

Mr. Halsworth said that the bridge was moved to be pushed against the property line between lots 36 and 37, taking it completely out of the wetlands and shortening the length of the bridge. He stated that they are moving it now, but for the right reasons because the gravel driveway ends and shoots over where there are wetlands and they are moving it south to avoid them.

Mr. Rooker asked staff if this were approved with the conditions as proposed, if there would be total mitigation of the disturbance that is occurring, or if there is something else that should be done to ensure that mitigation. Mr. Brooks said that he does not know what "total mitigation" is, because once you disturb a stream it is disturbed. He stated that they certainly could plant an area twice the size of the disturbed area.

Mr. Rooker said that is not one of the conditions.

Ms. Mallek said that if they are filling on the outside and not entering the stream, they could control that with great care as they put in the new access.

Mr. Rooker said that there is disturbance in the stream buffer areas, but given everything he has heard he could support it with planting twice the disturbed area so the stream will not be put in worse shape than before. He said that the applicant could have indeed been misled to think he was following a waiver procedure, only to find out there is not one. He also thinks that anyone looking at the lot would agree that the value is substantially diminished by the power lines. He thinks that is a mitigating circumstance here. He will support the request with an additional condition regarding the planting.

Mr. Snow then **moved** to approve an exception to the Water Protection Ordinance to allow the stream crossing on TM 89-73G5 in Mountain Valley Subdivision subject to the three conditions outlined and an additional condition stipulating the planting as mentioned by Mr. Rooker.

Mr. Mark Graham, Director of Community Development, said that the shared access is an important point, because the next lot could essentially necessitate this same discussion, and currently the conditions do not include anything for that situation. He suggested amending condition #2 to say "...with the stream disturbances are in place, including necessary easements to allow Lot G6 to use this driveway."

Mr. Snow then **amended** his **motion** to include that language.

Mr. Rooker said that the language for his additional condition would stipulate "...planting satisfactory to staff equal to twice the disturbed area."

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

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

NAYS: None.

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

1. Prior to construction of the stream crossing, the property owner must submit a mitigation plan for the disturbance and the plan must be approved prior to commencing construction. The mitigation plan shall be revised to include mitigation for the prior disturbances of graded access from Ambrose Commons Drive and the new stream crossing with plantings equal to twice the disturbed area, with the Program Authority having the authority to determine if the proposed mitigation plan adequately addresses this impact.
2. Associated with reviewing the mitigation plan, the property owner shall demonstrate to the Program Authority's satisfaction that all federal and state permits associated with the stream disturbance are in place including necessary easements to allow Lot G6 to use this driveway.
3. Associated with reviewing the mitigation plan, the Program Authority shall determine if a revised Erosion and Sediment Control Plan is needed for compliance with the approved Erosion and Sediment Control Permit. If a revised plan is needed, no land disturbance associated with the driveway crossing shall be allowed prior to approval of a revised plan and the permit including the plan.

---

Agenda Item No. 4. From the Board: Matters not Listed on the Agenda.

There were none.

---

Agenda Item No. 5. Adjourn to February 25, 2013, 6:00 p.m.

At 1:39 p.m., Mr. Boyd **moved** to adjourn until Monday, February 25, 2013 at 6:00 p.m., Lane Auditorium. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

---

Chairman

Approved by Board
Date: 05/01/2013
Initials: EWJ