

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on March 13, 2013, at 6:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 6:01 p.m., by the Chair, Ms. Mallek.

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

Agenda Item No. 4. Adoption of Final Agenda.

Ms. Mallek said that based on the Board's action during the earlier special meeting, Item #12 is being removed from the agenda.

The Board accepted the final agenda.

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

Ms. Mallek distributed some information on native plants. She stated that a very successful native plant symposium sponsored by the County – Community Development and the Inspections Department, along with the Natural Heritage Committee was held. The purpose of the symposium was to try to expose more people involved in environmental engineering, planting, and green infrastructure businesses about using native plants. She said there were more than 130 attendees and she was very impressed with staff's efforts.

Ms. Mallek reported that "Defying Gravity," the robotics team comprised of Albemarle middle and high school students, won the state championship – all ten of the competitions. This is the first time that any team has won every challenge. The team is on its way to the first world championship in St. Louis in April 2013. She has other information available should anyone be interested. The team is involved in fundraising efforts to pay for this trip.

Agenda Item No. 6a. Recognition: Proclamation recognizing March 20 through March 24, 2013 as the 19th Annual Virginia Festival of the Book.

Ms. Mallek read and presented the following proclamation to Ms. Susan Coleman, Director of the Virginia Center For The Book:

VIRGINIA FESTIVAL OF THE BOOK

WHEREAS, Albemarle County is committed to promoting reading, writing, and storytelling within and outside its borders; and

WHEREAS, our devotion to literacy and our support of literature has attracted over 1,000 writers and tens of thousands of readers to our **VIRGINIA FESTIVAL OF THE BOOK**; and

WHEREAS, the **VIRGINIA FESTIVAL OF THE BOOK** celebrates the power of books and publishing; and

WHEREAS, businesses, cultural and civic organizations, and individuals have contributed to the ongoing success of the **VIRGINIA FESTIVAL OF THE BOOK**; and

WHEREAS, the citizens of the County of Albemarle and Virginia, and the world, have made the **VIRGINIA FESTIVAL OF THE BOOK** the best book festival in the country;

NOW, THEREFORE, BE IT RESOLVED, THAT, I, Ann H. Mallek, Chair, on behalf of the Albemarle Board of County Supervisors, do hereby proclaim

**Wednesday, March 20, 2013 through Sunday, March 24, 2013
as the
Nineteenth Annual**

VIRGINIA FESTIVAL OF THE BOOK

and encourage community members to participate fully in the wide range of available events and activities.

Ms. Coleman stated that almost every public and private school in the City and County is participating in the Book Festival. Thanks to the County, they also have over 80 partners. She said that they are one of the very few book festivals in the nation that has events throughout the community. She again expressed thanks for the support of the Board and other partners, and encouraged people to visit their website at www.vabook.org.

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

Ms. Mallek stated that her responsibility as Chair of the Board is to ensure the smooth running of this meeting in order to effectively conduct the items on the agenda. She said that while she understands and respects citizen concern associated with any issue, the Board's rules do not allow disruptive, verbal demonstrations during the meeting. They will show respect for everyone involved – both citizens and Board members. In order to effectively conduct Board business and to create accurate recordings and podcasts of the meetings, she asked the public to respect their procedures, or she will ask the individual to leave the meeting.

Ms. Jamie Morgan said that she is before the Board to speak about community self-determination. You must admit that you have hurt someone, that you have compromised their dignity and self-worth, and that you used power over someone in the worst of ways. This is what it will take to start overcoming abusive tendencies. Ms. Morgan said that to know that you have wronged someone and deny it is to further perpetuate your actions. It will take honesty, self-investigation and compassion to start to overcome your abusive tendencies. Taking responsibility for your harmful actions is an integral part of the healing process. You will need to respond to the wishes of the survivor and the community, not just for their healing but yours as well. Ms. Morgan said that you need to show the survivor and the community that you are acting in good faith and that you are ready to deal with your problems of abuse. She added that you need to show the survivor and the community that you respect their autonomy, which means that the survivor of abuse "calls the shots" concerning how abusive behavior is dealt with. This means she calls the shots and you live with her decisions. Only then, the ability of the survivor and the ability to make decisions that meet their needs and desires for safety, healing and ending oppression can be met. If you want to live in a world free of abuse, rape and oppression, you will support survivor autonomy and community self-determination. Do not engage in the silencing behavior of attacking the demands and process of the survivor or the community. This is what abusers and their supporters typically do to create a smokescreen of issues to take the heat off of themselves. You must resign your position and respect survivor autonomy. (Audience members applauded.)

Ms. Mallek stated that the Board does not permit applause during the meeting, as it takes more time and interferes with others having their turn.

Mr. Snow added that they are united as a Board for that type of action.

Mr. Jordan McNeish said he is present to speak about the Christopher Dumler rape scandal. Mr. McNeish said that he is not a fan of the criminal justice system, but in this instance Mr. Dumler's only chance to clear his name would have been to go to trial – and now all the evidence against him has been sealed. Mr. McNeish stated that Mr. Dumler needs to understand the public outrage and why he needs to resign. The victim and victim's sister were heard on the radio and should be taken at their word because without a trial that is what the public has to go on. He said that he does not understand how Mr. Dumler can think the public still wants him around after hearing the nature of what he did. He said that he finds it sad that it took a fiasco to get the entire Board to call for his resignation and not the offense itself.

Ms. Carrol Kastanza said that she is a resident of the Scottsville District and, though she does not know Mr. Dumler personally, she finds that this "heinous crime against women" to be unforgivable, especially for an elected official. She said that when you rape someone, regardless of what you plead it down to, you become unqualified to make choices for others anymore. The plea bargain has ensured that two victims will not be heard from. This is not a political statement. It is not about Democrat or Republican; it is about rape. She reiterated that she is a resident of the Scottsville District, and she strongly does not want him representing her. She said that she cannot bear looking at his smirking face at one more meeting. She said that she has signed the petition, and has encouraged everyone in her district to do the same.

Ms. Kastanza thanked Mr. Rooker and Ms. Mallek for publicly asking for Mr. Dumler's resignation, and approves of the Board's action to strip Mr. Dumler of his duties as a Board member and from the committees and commissions to which he has been assigned. She said that this means all other Supervisors will have to take over his assignments and split those duties, which is an untenable situation as it increases the workload of the other Supervisors and will no doubt lessen the effectiveness they have for their district.

Ms. Nancy Carpenter, a resident of the Scottsville District, said that one of the "Albemarle nine," who she will call "T," passed away Sunday night. She said that "T" was one of the most critically vulnerable homeless individuals approved for supportive housing at The Crossings. Each day that he remained on the street increased his vulnerability and chances of dying on the street. Ms. Carpenter said

that for the last seven months, "T" had a place. He had four walls, he had a place to keep his belongings, he had a roof, he had a place to eat a meal, and he had a door to lock when he needed. "T" took a lot of joy in having this apartment – his apartment. It made a difference. "T" did not have to spend another winter sleeping in a tent in the woods or on some cold concrete steps. "T" had a huge window in his apartment where he could watch the weather and be dry and safe. She stated that the Board assisted with that happiness. Last summer each Board member looked beyond the boundary and challenged themselves to do what was right, and gave unanimous approval to temporarily fund those nine desperately needed housing vouchers. Ms. Carpenter said that Mr. Thomas commented to her that "it was the right thing to do," and it was the right thing to do last summer – and is still the right thing to do. She thanked each Board member for the difference they made in T's life, and are continuing to make in others.

Ms. Dayna Bruzille addressed the Board, thanking them for unanimously calling for Mr. Dumler's resignation. Ms. Bruzille urged the Board not to limit public comment time at meetings, as "two women were already silenced by Mr. Dumler's actions." She stated that the first step in County business needs to be the removal of Mr. Dumler from the Board, and perhaps if they had collectively come together the meetings would not be consumed by this distraction. Ms. Bruzille said that she resents the accusation that her motive is politically driven and is personally insulted by that. If being ideologically opposed to him means that she holds her elected officials to a higher standard, including upholding the law, then yes – she is ideologically opposed. Ms. Bruzille stated this also holds true if it means that when pleading guilty to a crime you do not get to proclaim your innocence, or your private life cannot be separated from your public life. She added that she is a resident of the Charlottesville, but asked all residents of the Scottsville District present who are calling for his resignation to stand.

Mr. Snow announced that the Board decided earlier in the day to leave the comment period alone, and have not changed it. Earlier today in a closed meeting, Mr. Dumler resigned from all committees and commissions, and replacements have been made.

Ms. Anna Freshwater, a County resident, said she has two college-aged daughters. She said that she is before the Board to express concern that there is a Board member that has abused women yet refuses to resign, even though he pleaded guilty to a sexual misdemeanor. Ms. Freshwater said that he does not seem embarrassed at what he has done, and even as he goes back and forth to Jail, he just smiles like everything is okay. In addition, he had to be asked by the Judge to apologize. She also stated that she asked her daughter why he would have had sex with the woman "in the rear end," and her daughter explained that it is so she won't get pregnant. Not only did he not use a rubber, but he did this on purpose, to satisfy only himself.

Mr. Charles Winkler, a resident of Mosby Drive, addressed the Board, stating that a County custodian starts at about \$20,000 per year – a few bucks more than a Supervisor. He said that according to the County's personnel policies, that custodian can be fired immediately for unacceptable conduct such as acts of physical violence and criminal convictions for acts of conduct occurring on or off the job which are plainly related to job performance or, when continuing the employee in the assigned position, could constitute negligence in regard to the County's duty to the public or its employees. He asked when is a Supervisor "on the job" versus "off the job," and what is the County's duty to the public with regard to the conduct of Supervisors – and where does negligence begin in the County's duty to the public. Mr. Winkler said that the manual forbids sexual harassment on the part of that custodian, and forbids him from creating an intimidating, hostile, abusive or offensive work environment with unwelcomed conduct of a sexual nature. He said that the custodian may be fired when there is a finding of sexual battery, which may include unwanted kissing, grabbing, pressing against, or fondling of the intimate parts of another body or rape – or forcing another to touch the intimate parts of one's body.

Mr. Winkler said that Section 2 of the Personnel Manual lists "salaried Board members" under definitions of employees along with regular employees, and the IRS considers County Supervisors employees for tax withholding purposes, and Supervisors receive a County salary from the General Fund, so it sure sounds like somebody is employing them. He asked if it is really the will of the people and just that the employee mopping the floors outside Lane Auditorium is held to higher standards of conduct and more severe punishments than those on the dais inside Lane Auditorium.

Mr. Snow said that attendees were welcome to stand to show their support, but asked again that they hold their applause.

Mr. Kevin Morris addressed the Board, stating that it's disappointing" to find the need to speak here again, but Mr. Dumler continues to demonstrate a complete disregard for the effect his ongoing presence on the Board is having. Mr. Morris said that not only has the Board and every political entity in the area asked Mr. Dumler to resign, but his own party has declared a lack of faith in supporting him. He stated that the vast majority of people in this community have called loudly, clearly and repeatedly for his resignation or removal. At this point Mr. Dumler seems much more invested in giving the appearance of being in control and of staying in a position of power than in actually serving the residents of his district. Mr. Morris said that by refusing to step down, Mr. Dumler is clearly saying that he does not care what the people want, nor what disruption his presence causes – and he is not even serving his potential future political interests at this point. Mr. Morris stated that this defiance will make Mr. Dumler politically and professionally radioactive in any future political endeavors. Mr. Morris said that Mr. Boyd asked recently what Mr. Dumler was holding out for and suggesting it was arrogance. A psychiatrist friend opined that it goes well beyond arrogance and into the realm of sociopathy. He stated that the narcissism Mr. Dumler

exhibits in his over-inflated estimation of his own self-worth is stunning, and his glib dismissal and disregard of the harm and chaos he has called, his failure to accept responsibility for his actions, his lack of his remorse, and his glaring lack of empathy for those he has hurt speak volumes about him. A man who can describe sexual assault as being discourteous is much more than arrogant. He urged Board members to compromise or this will drag on forever.

Dr. Charles Battig, a County resident, addressed the Board, stating that there is a book by William Voegeli entitled *Never Enough: America's Limitless Welfare State* that purports that there is never enough money for everything. He said that the EPA announced earlier this year that 43 communities would be on the dole to get money from them to "put into place the EPA's dreams of control," and Lynchburg is one of those localities. Dr. Battig explained that EPA staff and national experts will conduct one or two-day workshops that focus on a specific sustainability goal, and each community chose their initial application. He said that the Supervisors in December voted unanimously to support the application for the Thomas Jefferson Planning District Commission for a regional ground fuel assessment and planning grant. Dr. Battig stated that the first evidence he's seen that the area is "world class" was the presence of Mr. Dumler's story in the UK media.

Ms. Lena Marie said that one in three women will be the victim of violence in their lifetime – and sexual violence is "a different class of violence." She said that sitting here is someone who has been criminally convicted and has admitted guilt to sexual violence. They need to think about what is going on here, why Mr. Dumler is still here.

Mr. Steve Peters stated that he is from the Scottsville District, and asked those who condone Mr. Dumler's activities and want to be represented by him to stand up. Mr. Dumler has one supporter. Mr. Dumler has done more for this community on bringing them together than anybody else in history - the Socialist Party, the Democratic Party, the Republican Party, and the Jefferson Area Tea Party. These people want Mr. Dumler to leave. Mr. Dumler does not represent much of anybody anymore. They had to put him in a private cell with a glass front with the lights on 24/7 so that they could keep an eye on him. He said that Mr. Dumler has been arrested, convicted, jailed, shunned by this Board of Supervisors, and rejected by the voters. He needs to step down so the community's reputation can be regained. They have spent a lot of time and money to building up that reputation and when someone goes on the net and looks at Mr. Dumler as being a convicted sex offender on this Board of Supervisors, he does not think they want to bring their children here into the County's world class schools.

Mr. Tim Dodson addressed the Board, stating that he is a sophomore at Western Albemarle High School. He said that he was present to say there is tainted leadership on this Board. As a youth in the community he is concerned about the example being set by the present situation of sexual battery. Mr. Dodson said that a whole generation is being sent a message that it is Okay to commit heinous acts and that you can get away with them as long as consequences do not have to be faced. He stated that he serves in an elected position in his school student government, and if he were to commit such a shameful act he would resign out of respect to his peers and to himself. Mr. Dodson said that there is an assertion that this situation only applies to people in the Scottsville District, and that would be so if only the vote of the member in question did not affect the entire County – including its families, schools, businesses, parks, et cetera. To suggest that a leader doesn't have to be held to a common set of standards is simply arrogant. He said that he cannot trust someone if they cannot display trust for someone else. He said that the community needs someone who apologizes and shows it. According to the National Crime Victimization Survey, around 232,000 women in the U.S. were raped or sexually assaulted in 2006 – which is more than 600 women every day. It is disheartening that Albemarle's local government has officials who stand for these statistics and not against them. He then asked Mr. Dumler to resign from the Board.

Mr. Joe Draego addressed the Board, stating that he had come to address the issue of traffic cameras increasing accidents not decreasing them – but the business of the County has come to a grinding halt until the issue of Mr. Dumler is resolved one way or the other. Mr. Draego said that he has three daughters and he stands here on their behalf. Mr. Dumler has violated a precept of society that cannot go unanswered. He stated that Mr. Dumler only has one path to remedy this and regain his honor as a man. That is to resign and apologize to the three women he has assaulted, and go on with his life. There is no other path for him. Mr. Draego asked Mr. Dumler to resign from this unpleasant situation. He added that he would return on another day to address the issue of the traffic cameras. Mr. Draego also asked what moral authority Ms. Mallek has to tell people that they cannot clap, as there must be a balance between free people being able to express themselves and the protocol of this assembly being able to move forward efficiently.

Mr. Randolph Byrd said that the petition of signatures is going to be delivered to the court. A part of the case on which Mr. Dumler's removal hinges is the fact that there would be "material adverse effects in him doing his job," and tonight is an example of one of those effects and another is when Mr. Dumler resigned from the commissions, boards and committees on which he serves as a member of the Board. That has to do with his ability to do his job, and that is a material adverse effect. He said that Mr. Dumler's week of leave from going to any public events following his arrest is also an adverse material effect that

compromises his job. There will be more and more protestors at Board meetings as long as Mr. Dumler remains on the Board. This will materially affect the entire Board and its ability to do its job.

Mr. Tom Olivier said that he is representing himself. He has high regard for Mr. Dumler's ability and would be delighted if Mr. Dumler was his representative, but he no longer lives in the Scottsville District. Mr. Olivier asked if the fact that one Supervisor is unavailable for weekends for several months makes that individual unable to meet his requirements to serve on the Board. Former Supervisor, David Wyant, was an NFL official – and they have 16 games per year on weekends. He also pointed out that the previous speaker suggested that some who have been unhappy with Mr. Dumler's service would continue to appear over and over to the point that it disrupts the functioning of the Board. Mr. Olivier likened this approach to a hacker situation in which individuals attack a computer with one request after another for a request for a response. It is against federal law to mount a denial of service attack and you can go to jail for doing it – and the blame is not for the target of the attacks, but the attackers. He said that he is also aware that members of this Board have been mounting a very public harassment campaign against Mr. Dumler, hoping to force him to resign, and that is an attempt to override the judgments of the electorate of the legal system. It is way out of bounds, and it should stop.

Mr. Michael Basile, a resident of the Samuel Miller District, said that he is present to discuss the proposed tax increases and revenue increases for the School Board. He stated that the schools' success rate in working with parents and the public is worth them getting additional income this year for a multitude of reasons. Mr. Basile said that they brought people together in town hall meetings and asked how they could make the school system better and more responsive, and his question was what problems the schools have now – but he was told that they would deal with the problems later, "we are just looking forward now." He stated that there are teachers that need to be removed, there are schedule problems for some of the parents in the community, and other problems that need to be addressed – so their logic in trying to make the system does not warrant additional money. The School system needs to come back and address the problems that they have. Mr. Basile stated that there is a trust problem with the Board because of one member, and for that reason financial issues before the Board are now suspect.

Ms. Carole Thorpe, a resident of 1318 Oak Tree Lane, and the parent of a son who attends Albemarle High School said that she was "one of the infamous 13" who spoke at the last meeting regarding Mr. Dumler's possible resignation, and was also one of the smaller group who showed up at the very first morning meeting to do that. Ms. Thorpe said that the issue has united everyone in the community. It is not about ideology, it's about propriety; it's not about politics, it's about decency; and that is why she has come to every meeting – to speak as a mother, a woman, and a member of the County. She thanked the Board for its vote to remove Mr. Dumler from boards and community appointments, because to have him go forth as a representative of the County would be very difficult.

Ms. Kali Cichon addressed the Board, stating that a lot of people say that this is an act that society in general agrees is wrong and frowns upon. That would be really nice if that was true, but they actually have a society that's very permissive of sexual assault and violence against women. She said that even men who are sexually assaulted are usually portrayed as effeminate or weak in some way, because in order to abuse someone you have to see them as less than a person who is worthy of your respect. Ms. Cichon stated that it is not up to a board of elected officials to say that rape is wrong, or a group of troublemakers in a meeting. That should not have to be said. She said that the Board's job is speaking out against oppression, and it is everyone's job to say that. After all of this is over, keep saying that – everybody.

Mr. Richard Lloyd said that the courts and Mr. Dumler have adjudicated the charges, and now it is time for the people. He stated that the people have the right to choose their representatives, and people are calling for a referendum to decide this. Mr. Lloyd said that they all ought to work for signing that petition and for that referendum. It has nothing to do with the courts.

Ms. Clara Belle Wheeler addressed the Board, stating that she is a surgeon and resident of the County. Ms. Wheeler said that she has cared for many women who have sustained sexual battery, abuse, rape and violence – and it's not about sex, it's about violence, it's about imposing your will on someone else when they have said "no." Ms. Wheeler said that a representative of this community should never be in a position when they feel it is appropriate to say "my will will survive, and your will will not." She stated that a representative is there to represent, not to override or force his or her will on someone else. Ms. Wheeler said that the victims in this case are not just the women who are being abused, but the rest of the community. They are not being represented, and they cannot have the business of the County go forth as long as Christopher Dumler is sitting on this Board. She stated that he needs to be removed either by court order or resignation, and then let the due process of a special election for a new person to fill out his term. The County has been subjugated to this problem and she hopes that they can make a change and get on with County business.

Mr. Lewis Recler, a resident of the Scottsville District, said he is here not only as a husband to a wife, a father to a daughter, a brother to a sister, and an uncle to nine nieces – but also as a father to two sons and a grandfather to a grandson. Mr. Recler said that he is here as a man who is far more distressed about Mr. Dumler's employment on the Board of Supervisors, adding that to say he is serving

the people of the Scottsville District is simply not true. He stated that every minute this saga continues is a minute that women have to live with the uncertainty of "an acceptable disclosure." Mr. Recler said that he stands with all who have come out and insisted that Mr. Dumler resign.

Agenda Item No. 8. **Public Hearing:** To consider granting a water line easement to the Albemarle County Service Authority across property owned by the County located on Berkmar Drive adjacent to Agnor-Hurt Elementary School (Parcel 04500-00-00-09400). This easement is necessary for the replacement of a water line along Berkmar Drive that provides water service to Greenfields Trailer Park. (*Advertised in the Daily Progress on March 4, 2013.*)

Mr. Foley summarized the following executive summary which had been forwarded to Board members:

In preparation of the start-up of the new Rivanna Water and Sewer Authority's Stillhouse Pump Station, the Albemarle County Service Authority ("ACSA") has identified a 4-inch diameter water main in need of replacement. The existing water main is comprised of thin-walled plastic pipe and currently serves the Greenfields Trailer Park. With the increased water pressure from the new pump station, this water main has been identified by ACSA as vulnerable and should be replaced. The ACSA has identified an alternative water main route along Berkmar Drive that will provide water service to Greenfields Trailer Park at a lower pressure. ACSA's proposed alternate route would include the southern tip of Parcel 45-94, a 5.9-acre County-owned property on Berkmar Drive just to the south of Agnor-Hurt Elementary School. A copy of the proposed Plat showing the location of the easement is included as Attachment A.

The proposed water line easement would allow ACSA to proceed with its water line replacement project. County staff, in consultation with the Schools' Director of Building Services, has determined that the requested easement would not unreasonably restrict the future use or value of the property. Virginia Code § 15.2-1800 requires that the Board hold a public hearing prior to conveyance of any interest in County-owned real property.

There is no budget impact.

Staff recommends that, after receiving public comment, the Board approve the proposed easement and authorize the County Executive to sign a deed of easement on behalf of the County after the deed has been approved by the County Attorney with any necessary changes.

The Chair opened the public hearing. Since no one came forward to speak, the public hearing was closed.

Motion was then offered by Mr. Rooker to approve the proposed easement and to authorize the County Executive to sign a deed of easement on behalf of the County after the deed has been approved by the County Attorney with any necessary changes. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

TM 45 Parcel 94

PREPARED BY: St. John, Bowling, Lawrence & Quagliana, LLP

This deed of easement is exempt from taxation pursuant to Va. Code §58.1-811 (A) (3) and §17.1-266

This **DEED OF EASEMENT**, made this 18th day of January, 2013 by and between **BOARD OF SUPERVISORS OF ALBEMARLE COUNTY, VIRGINIA**, ("Grantor"), and the **ALBEMARLE COUNTY SERVICE AUTHORITY (the "ACSA")**, ("Grantee"), whose address is 168 Spotnap Road, Charlottesville, Virginia 22911.

WITNESSETH:

That for and in consideration of the sum of ONE DOLLAR (\$1.00), receipt of all of which is hereby acknowledged, the Grantor does hereby GRANT and CONVEY with SPECIAL WARRANTY of TITLE unto the Albemarle County Service Authority a perpetual right of way and easement to construct, install, maintain, repair, replace and extend one or more water lines consisting of pipes and appurtenances thereto, over, under and across the real property of the Grantor located in Albemarle County, Virginia, the location of the easement granted and the boundaries of the property being more particularly described on the following plat:

A (625 sq. ft.) variable width water line easement, shown and described as "New A.C.S.A. Waterline Easement" on that certain plat of Roudabush, Gale & Associates, Inc., titled "Plat Showing New Variable Width Waterline Easement Dedicated to the Albemarle County Service Authority to be Added to Existing Easement, Parcel 94 of Tax Map 45, Located on Berkmar Drive, Albemarle County, Virginia," dated January 23, 2013, a copy of which is attached hereto as Exhibit A (the "Plat"), as it crosses property of the Grantor shown and described on the Plat and acquired by the Grantor by the instrument recorded in the Office of the Clerk of the Circuit Court of Albemarle County, Virginia, in Deed Book 467, Page 623.

Reference is made to the Plat, a copy of which is attached hereto to be recorded herewith, for the exact location and dimension of the permanent easement hereby granted and the property over which the same crosses.

As part of the easement the ACSA shall have the right to enter upon the above described property within the easement for the purpose of installing, constructing, maintaining, repairing, replacing and extending a water line and appurtenances thereto, within such easement and the right of ingress and egress thereto as reasonably necessary to construct, install, maintain, repair, replace and extend such water line. If the ACSA is unable to reasonably exercise the right of ingress and egress over the right-of-way, the ACSA shall have the right of ingress and egress over the property of Grantor adjacent to the right-of-way.

Whenever it is necessary to excavate earth within such easement, the ACSA agrees to backfill such excavation in a proper and workmanlike manner so as to restore surface conditions to the same condition as prior to excavation, including restoration of such paved surfaces as may be damaged or disturbed as part of such excavation.

Grantor, its respective successors or assigns, agree that no new trees, shrubs, fences, buildings, overhangs or other improvements or obstructions shall be placed within the easement conveyed herein without the agreement of the ACSA, its successors or assigns.

The easement provided for herein shall include the right of the ACSA, to cut any trees, brush and shrubbery, remove obstructions and take other similar action reasonably necessary to provide economical and safe water and/or sewer line installation, operation and maintenance. The ACSA shall have no responsibility to the Grantor, its successors or assigns, to replace or reimburse the cost of said trees, brush, shrubbery and obstructions that are removed or otherwise damaged.

The facilities constructed by ACSA within the permanent easement shall be the property of the ACSA which shall have the right to inspect, rebuild, remove, repair, improve and make such changes, alterations and connections to or extensions of its facilities within the boundaries of the permanent easement as are consistent with the purposes expressed herein.

The County, acting by and through its County Executive, duly authorized by action of the Albemarle County Board of Supervisors on March 13, 2013, does hereby convey the interest in real estate made by this deed.

WITNESS the following signature and seal:

GRANTOR:

**BOARD OF SUPERVISORS OF
ALBEMARLE COUNTY, VIRGINIA**

BY: _____
Thomas C. Foley, County Executive

Agenda Item No. 9. **Public Hearing: SP-2012-00029. 5th Street Station (Sign #120).**

PROPOSED: Special Use Permit - fill in the flood plain on approximately 87.0+/- acres. No dwellings proposed.

SECTIONS: 30.3.05.2.1(2), 30.3.05.2.2(1), 30.3.05.2.2(3), which allows fill of land in floodways.

ZONING: PD-SC Planned Development Shopping Center – which allows shopping centers, retail sales and service uses; residential by special use permit (15 units/acre).

ENTRANCE CORRIDOR: Yes.

COMPREHENSIVE PLAN: Community Service/Mixed Use-community-scale retail wholesale, business and medical offices, mixed use core communities and/or employment services, and residential (6.01-34 units/acre) Neighborhoods 4 & 5.

LOCATION: Northeast intersection of Interstate 64 and Fifth Street Extended (Rt 631), bounded on the east by Avon Street Extended. Access is Bent Creek Road.

TAX MAP/PARCEL: TMP076M1000002A0, 076M1000002B0, 076M1000004A0, and 077000000011E0.

MAGISTERIAL DISTRICT: Scottsville.

(Advertised in the Daily Progress on February 18 and February 25, 2013.)

Mr. Glen Brooks, County Engineer, addressed the Board, presenting the conditions that were part of the approval of the ZMA and noted that the second condition applies to the floodplain. He said that the Planning Commission (PC) action had nine suggested conditions, and they had unanimously voted to recommend approval of the plan – which was slightly different than the plan that was with the rezoning. Mr. Brooks said that the conditions were then modified based on the Commission's wish and on new information supplied by the applicant, and that resulted in the memo sent by Mark Graham to the Board which had six conditions which replaced the Planning Commission's conditions.

Mr. Brooks presented the plan that was approved with the rezoning and he super-imposed the FEMA floodplain map over it, noting where it encroaches into the ZMA plan. He said that he would highlight the sections where the ZMA plan necessitates fill in the floodplain, which was expected when the approval came for rezoning. Mr. Brooks said he would then take away the rezoning plan and replace it with the plan shown to the Commission as part of the special use permit, stating that the plan had evolved and become more specific with the area to be developed being shaded. He noted the addition of the floodplain that the applicant showed to the Planning Commission, which is slightly different than what's on the FEMA map and shows a more exact floodplain according to their models. He also noted the areas

proposed to be filled and said those were shown to the Commission, noting that areas 2 and 3 became part of the PC discussion because those weren't part of the rezoning idea and were added. Mr. Brooks clarified that the applicants had pulled back the areas shown in red and were just proposing now the areas in blue, so they've essentially scaled back their proposal.

Mr. Snow asked if the areas in blue were the proposed fill areas. Mr. Brooks confirmed that they were, and presented information that showed the entire area as it fits into the community concerns. He reported that the area is not just what is considered with the ordinance requirements for a special use permit in this particular site, but what happens cumulatively over the years that tend to affect the creek more. Mr. Brooks said that he uses the County's GIS database which includes old aerial surveys, and highlighted one from 1996 that showed the warehouse and some development on 5th Street and I-64. He stated that the 2007 aerial is the first good topography they have on their system, and he would use that to get a baseline of where the floodplain might have been historically. Mr. Brooks said that he tried to identify all of the natural, sloping topography that bounds the creek, both Biscuit Run and Moores Creek, and has tried to pinpoint all of the natural features that might limit the floodplain. He stated that they can draw a general red line as to where the floodplain might have been before any development occurred by going back to 1980 with a USGS topographic survey but, even then, there was some development in the City and also the warehouse on this site.

From the 2007 aerial, Mr. Brooks said that I-64 and 5th Street were filled in as well as the floodplains of Biscuit Run and Moores Creek and, in the recent past, 5th Street was improved to add an entrance for what was a power company and is now a school. He stated that the City filled in a small section in phases to add to the areas below Hardee's and, on aerials, there appears to be some fill in a small section where a road was cut in as well as a large portion filled in for the rest of the shopping center next to Food Lion on the City side next to 5th Street and opposite of the road there. Mr. Brooks said that, on the County side, there was a large landfill on the Avon Street side and he's not sure about the extent of those but the embankment is all part of the landfill, so that was probably all filled directly next to the creek. He stated that there are also some areas that contain old bridges across Biscuit Run and Moores Creek, and the video sent by the Willoughby neighbor shows one of the bridges in that area. Mr. Brooks said that one bridge was proposed to be a walking bridge, and that might have already been approved as part of a County development.

Mr. Brooks stated there has been fill on the particular site they are considering now for the warehouse and for the road itself along the edge of the property and the bridge. Mr. Brooks added that there was also fill for the Holiday Inn parking lot, and the Board approved a larger amount of fill for the site next to the hotel – the "Moores Creek Yacht Club" application – which comes in at the confluence of Biscuit Run and Moores Creek.

Mr. Rooker asked if that fill had already been done. Mr. Brooks responded that the fill had begun and was a waste area application currently, so there are some stockpiles there, but it's not nearly complete. He said that the applicant got a conditional letter of map revision or amendment from FEMA and, when they finish the fill and verify it by survey, they will get an official map change.

Mr. Snow asked Mr. Brooks to point out the location of the landfill. Mr. Brooks noted its location on the map, stating that they are currently proposing some improvements.

Mr. Dumler asked if Area 3 was associated with the proposed pedestrian connection to Willoughby, or whether it was fill generally required for the completion of Bent Creek. Mr. Brooks responded that the applicant should probably answer that, as Area 3 is debatable as to whether it's necessary for the road or transitioned from a proposed walking trail area.

Ms. Mallek asked what latitude the County would have for pulling back the banks and making them less vertical and less apt to be blasted away by water velocity, if this work were done. Mr. Brooks replied that it wouldn't apply specifically to this fill and, along the area where the bridge approaches, they would certainly have to armor the bank – probably close to vertical because it's right on the creek – and that would include a concrete wall or large stone right at the bridge to funnel the water through without erosion. He said that the City development has created a steep bank already, and there is some armoring near the creek on the County side but the applicant wouldn't have the ability to do that unless the property owner volunteered. Mr. Brooks emphasized that the bridge itself constricts the flow and causes that potential scour, and this may not create much more than what's occurring there now since that constriction is already in place. He said that they would follow as much as possible the VDOT standards for scouring and bridge abutments.

Mr. Dumler asked if the enhanced erosion and sediment control proffers that were associated with the application and rezoning were associated closely with the proposed fill areas, or whether they were related to the low-interest DEQ loan. Mr. Brooks responded that it applies mainly to the transition into the landfill area, but wouldn't apply to the other side of the project to his knowledge.

Mr. Rooker commented that the conditions require a stable, non-erodible surface for fill materials; approval of an erosion and sediment control plan and a land disturbance permit; obtaining all necessary federal and state approvals; and approval from the County's program authority for a mitigation plan. He said that the applicants seem to have reduced the disturbance between the Planning Commission action and the County's consideration, and asked if – given what they're proposing to disturb and the proposed conditions imposed here – the County is comfortable that there will not be negative impacts to the stream generally from the fill that's occurring here. Mr. Brooks responded, within the parameters staff is supposed to be following with the zoning ordinance, that would be true. He added that this incremental increase in fill – or reduction in the floodplain area – will not have a significant impact on the creek.

At this time, the Chair opened the public hearing.

Ms. Valerie Long addressed the Board, stating that she is representing the applicant and introduced Daniel Hines with Bohler Engineering, the project's civil engineer; and Dan Tucker, with SJ Collins Enterprises, one of the co-developers of the project.

Referencing a slide that Mr. Brooks had presented, Ms. Long said that the areas proposed for fill are only those shown in purple, and the pink areas underneath are the worst case scenario, and is what was originally thought to be the maximum fill amount areas.

Ms. Long stated that there have been concerns expressed about the health of the creek and surrounding areas, and the applicants have spent some time with the neighbors and have tried to keep lines of communication open with them. She said that they wanted to remind the Board of some of the provisions of the rezoning approval that are designed to stop the damage that's been occurring to the stream over many years but also fix some of those problems. Ms. Long added that, on the whole, it's clear that the project will actually improve the conditions on Moores Creek. She said there are a number of things that the project will do that will minimize any impacts and actually remedy impacts that have existed for a long time. She said that there is a proffer that specifically requires implementation of stream bank and buffer projects, adding that the County did a study of this exact area in 2004 that generated a map which is proffered with this project, and the applicant has agreed to implement those plans.

Ms. Long stated that the second improvement is for the landfill, which has been in place for many years, with the applicants stepping up to fix those problems. She said that they've received DEQ approval for the landfill work plan and, among other things, it will cover the exposed waste located on a steep bank along the creek with a natural material and minimize further erosion and scouring of the stream bank. Ms. Long stated that there's also a provision in the proffers and on the application plan to build a water quality clean-up station in part of Area 4, which will capture and clean the water that runs off from the interstate – which is currently flowing unimpeded from the interstate. She said there's also a proffer mandating that they implement enhanced erosion and sediment control provisions as part of the site plan, so they have to exceed the basic County standards to limit the amount of erosion and sediment control. Ms. Long stated that there's a proffer regarding rainfall harvesting measures that is also to be part of the site plan design.

Mr. Snow asked what was meant by 'rainfall harvesting area.' Ms. Long responded that the proffer states the applicants must incorporate rainfall harvesting measures into the site plan, so it could be roof cisterns, additional planting areas in the parking lot, bio-filters, so the site plan would be reviewed for conformance with that proffer.

Mr. Dumler asked if the BMP proposed to put down in Area 4 has been engineered, and asked whether it was going to be a concrete BMP or a bio-swale. Mr. Long replied that Mr. Hines would be able to provide information on that.

Mr. Hines explained that they are currently working on that design and, with Mr. Brooks' help, they've explored a number of options in that area. He stated that there were some challenges with obtaining a permit from DEQ to disturb that stream significantly and try to build some pools along the side of the stream, but the direction they're leaning toward now is to have a structure that allows the stream water base flow to continue. Mr. Hines explained that, as the water level rises, it would actually pick up the additional water and pull it off into a side basin that has landscaping and perhaps a constructed wetland type scenario where it would be treated and then returned back into the stream.

Mr. Dumler asked whether the fill in Area 3 was necessary for Bent Creek or for Willoughby's proposed bridge. Mr. Hines responded that there are several reasons for that, as there are retaining walls that are running there and they've provided a gap in the retaining walls to allow for access down to the trail that's proffered to run along the creek and, should another pedestrian bridge ever be constructed across Moores Creek for the Willoughby community, that would be a great spot. He said that it is also where a water line is coming into the site, and they're trying to minimize the water line from having to come underneath a wall and come up. Mr. Hines stated that if they were to install just the one wall, which is required for the roadway improvements, it would be just a narrow sliver extended across. He added that it would be multi-purpose.

Mr. Dumler stated that he has heard from several homeowners in the area that interconnectivity might be something they are opposed to and if, at some point, there's information from a lot of them indicating they might not want that connection, he wouldn't want them to fill in an area for a bridge that the Board later decides to abandon.

Ms. Mallek asked if the wider area in Area 3 would be done for the future bridge, and might not be done right now and potentially could wait. Mr. Hines responded that they are proposing that it now be constructed for the waterline and for the ability to put the bridge in, because the road is going to be one of the first things to get constructed on this site and the wall would need to be installed for the road construction. He explained that it would be best to install it in its final location.

Ms. Mallek asked if the wall was on the side of the blue closest to the road, or on the other side. Mr. Hines explained that the wall is actually on both sides, and that's where the two-tiered wall would be. He confirmed that the water pipe would go between the two walls built and would be buried, with the path going over it down to the water.

Ms. Long asked if the Board had any further questions.

Mr. Snow said that, in their first presentation, they had a system for covering the landfill slopes that were being eroded and sloughing off, and asked if she could share that with the Board again. Ms. Long responded that she would distribute it again when she could.

Mr. Rooker said that was an important element in stabilizing the bank.

Mr. Thomas said it would make a world of difference.

Ms. Mallek commented that it was hard to watch the kayak film that showed 100 years worth of abuse on that stream. She added that the brown water is not all coming from this site, and the engineered improvements could make a substantial improvement if done well.

Mr. Michael Meintzschel addressed the Board, stating that the only thing he would add to Mr. Brooks' presentation is that there are a lot of subdivisions that have gone up since 2000 and, since Brookwood went up right next to the creek, that's really when he started seeing a lot of the erosion happen. He said he has lived in Willoughby for 20 years and hikes the trail almost every day, and he wouldn't be before the Board if he hadn't noticed an erosion problem. He said he disagrees with Ms. Long that what's proffered will make it better. He pointed out that the data used for the proffer, for the erosion and the buffer projects is data that's 10 years old and a lot of the erosion problems have happened within the last six or seven years. He said that the areas proposed are really across Area One and Area Two on the City side and the GIS maps that show the area of concern stop at the Willoughby subdivision. Mr. Meintzschel emphasized that the kayak cam was shot going down Area Two and Area Three, yet none of that has been shown on the GIS map to have any erosion problems. He said that, while he appreciates how the landfill is being stabilized, he doesn't understand how they will harden one whole side and then not have anything happen on the Willoughby property.

Mr. Meintzschel said he is asking the Board to really, really pay attention to the proffer as this project goes forward. He said it is not adequate, and does not address anything on the Willoughby side. It is his intention – and the only thing the neighborhood can really do – is to photograph, measure, take some snapshots of exactly where the creek is now, and measure where it's going to be and how it's impacted by the 5th Street Station mall.

Ms. Mallek asked him to point out the Brookwood neighborhood in relation to the map. Mr. Meintzschel responded that Brookwood is off the map, and has another tributary called Lodge and Rock Creek, and is shown in the very beginning of the video, further downstream, and east of Willoughby.

Mr. Boyd asked who owned the Willoughby side of the creek. Mr. Meintzschel responded that it's owned by the homeowners association and contains 57 acres of trail, which is private to the neighborhood but used by many other neighborhoods, i.e. the UVA Running Club, etc. He said that the City is interested in purchasing the land to incorporate it into the Rivanna Trail System, and have already made an offer to buy it.

Ms. Mallek asked if there had been any historic improvement in the corner. Mr. Meintzschel responded that there has been some improvement where the landfill is, which is on the opposite side, and the water is cutting into the landfill but, once you stop that, it has to go someplace else, and has to go to the opposite side of the creek. He said that is why the landfill is eroding to begin with; it's because the creek takes a 90-degree turn and has nowhere else to go.

Ms. Joan Albiston addressed the Board, stating that she lives in Willoughby and her property is directly across the creek from the project. She said that she is a landscape architect and a Willoughby Board member, but today she is speaking as a homeowner. Ms. Albiston said that she has lived overlooking Moores Creek for nearly 18 years, first in Frye Springs and now in Willoughby, and she frequently walks along the banks and appreciates the creek's beauty. She stated that she appreciates the work that development staff has done to minimize disturbance to the site, to reduce proposed fill in the floodplain, and to communicate with the Willoughby neighborhood and looks forward to continuing to work with them. Ms. Albiston emphasized that she is concerned about the well-being of Moores Creek and its native riparian buffer. She said she understood that the health of the creek is "poor," and both the City and County have stated a desire to improve its water quality. She said that the Virginia Department of Environmental Quality has introduced a watershed improvement plan for Moores Creek as one of four degraded streams in this area and, in particular, would like to reduce its sediment load.

Ms. Albiston said that she is sure the developer will use measures to reduce the sediment load through stormwater management and establishing improved grades along the creek, but is concerned that filling in the floodplain may cause further erosion downstream as the flow of Moores Creek is concentrated. She stated that she asked Mr. Brooks about that possibility, and he told her that possibility is not considered in the zoning ordinance special use permit criteria. Ms. Albiston said that she is asking the Board to consider whether the fill is absolutely necessary at the risk of erosion downstream, particularly along the Willoughby common area. She also asked if the County has any leeway in its development standard, such as reducing required parking, to aid in protecting Moores Creek and ensuring that its water quality is improved.

Mr. Logan McKinley addressed the Board, stating that he lives in Willoughby and is on the neighborhood association board, but is speaking as a neighbor today. He thanked the developers, stating that they've done a lot to engage us and have done a good job answering our questions. Mr. McKinley said that he didn't have a background in stormwater management, but he likes to think he has a logical perspective in looking at this project. He stated that it seems the developers are trying to reduce the fill and are doing a lot to harden and armor their side of the bank, but his concern is what that's going to do to

his side of the bank. Mr. McKinley said he walks the trail a few times a week, and those who do are really having a big problem with it being undercut – they've actually had to move it more than once already, and have seen that accelerate. He stated that his concern is that this is a relatively small development, but this one and others stack up and must be considered altogether, especially their impacts downstream. Mr. McKinley asked if there was something that could be done on the Willoughby side of the creek, and if the developer would be willing to help them address erosion concerns that they have.

Ms. Mallek asked if the areas are mostly between Area 3 and 4, or somewhere else. Mr. McKinley responded that most of them are probably in between those areas, but there are erosion problems on the majority of the bank but it's gotten a lot worse between 3 and 4, and they are losing significant land to the creek.

Ms. Mallek commented that there has certainly been a change in storms in the last several years, and those produce a much higher velocity.

Mr. Bill Faust addressed the Board, stating that he is a Willoughby resident and that what they've heard thus far is the shopping center will not be causing any impact, but everybody knows that runoff from a parking lot is one of the major problems in polluting. He said that, just because there has been fill in all the rest of the area, it doesn't mean that they should allow fill in this situation. Mr. Faust said he thinks of the County's critical slopes program as a 'slippery slopes' program because one thing leads to another. He stated that Willoughby has a trail that goes all around the subdivision, and the water's going to have to go somewhere so he is concerned about potential erosion to the trail. Mr. Faust suggested that, instead of filling in the floodplain, that they move the road down into the middle area, as it looks to him as though the shopping center had been designed somewhere else and the developers didn't look at the property they're putting it on. He said that they need to change it a little bit and plan differently and, if they did that, they wouldn't have to fill at all. Mr. Faust stated that Area 3 is being proposed as an area which may have a pedestrian bridge over to Willoughby, but that hasn't been decided one way or the other and neighbors have also expressed concern about that possibility. Mr. Faust stated that if they fill that area, they're going to lose a bunch of trees and more erosion would be caused because they're building a wall to divert all the water. He said that, if there's no bridge built, all those trees and all that stuff has been destroyed for nothing.

Mr. Patrick Healy addressed the Board, stating that he lives in Willoughby and indicated that he has worked over the last few years with the design team for the Old Lynchburg Road project which was very complex and went through many changes. Mr. Healy said that what impressed him with the design team was their ability to listen and adjust to the various stakeholders, and the City found that they ended up with a better project that cost less money by accommodating what seemed like trifling desires. He stated that he hopes everyone could make the Willoughby project the best project possible, and clarified that the City is interested in purchasing an easement of the trail and not buying it outright.

Mr. Jeff Maurer addressed the Board, stating that he lives in Willoughby and is not traditionally a big pro-development guy, but it seems that this development – if done correctly – could improve the health of Moores Creek and make the trail system a more attractive option for community recreation. He stated that he is concerned that shoring up the bank on the development side of the creek could result in worsening erosion on the community side of the creek, and he is hopeful that the Board, the County, the neighborhood and the developer could come up with a solution to minimize the erosion on the community side of the creek.

Ms. Long re-addressed the Board, stating that there were a few references to hardening of the streambank on the project side of the creek, but that's not necessarily what's going to be taking place as the design for the stream bank restoration has not yet been done. She stated that they would be hiring consultants to help assess the situation in a site-specific fashion and design remedies for each of the areas that are appropriate and would comply with the guidelines and standards that are referenced in the proffers. Ms. Long said that, in some instances, rip-rap and hardening are not recommended, but it could be plantings, grasses, and other things besides hard armoring but that has not been determined yet. She stated that the design of those restoration plans would be subject to all state, federal and local regulations, and the design would be reviewed as part of the site plan approval. She said the County will have an opportunity to ensure that whatever measures we're using are appropriate and comply with the standards referred to in the proffers.

Mr. Rooker asked if it would be possible to design a plan that perhaps includes some mitigation for the community side of the stream. Mr. Brooks replied yes and identified on a map the location of Willoughby, noting that it comes off of the Fifth Street exit and occupies the entire bluff above the creek.

Mr. Rooker asked Mr. Brooks to confirm that it would be possible to design a mitigation plan that would include some mitigation on the other side of the stream, if the property owner there is agreeable. Mr. Brooks responded that anyone who has done these types of stream restoration projects would never armor just one side of a channel and, with a large flood plain like this, there is the main channel itself – which carries the low flow and is where one can canoe - the overbanks – which carry the flood waters, and the slopes to either side of the landforms coming into the flood bank. He stated that most of this fill area is up above on the overbank and those fill slopes way off the main channel, and most of the erosion observed is in the main channel itself – which isn't really the subject of this fill area except for the landfill. Mr. Brooks said that they would be shoring up the landfill on one side, and could possibly do something on the other side to balance that. He stated that the other areas are far enough off the channel that it's not a major concern but, as part of the stream restoration project itself, they would look at work in the channel and try to get that so the channel doesn't continue to erode.

Mr. Boyd said that, during Ms. Long's presentation, she mentioned a plan that was developed by the City and the County some years ago, and said he assumed that that plan would have included both sides of the creek.

Ms. Long responded that it is in some areas, and the proffers state that "a plan has to be in general conformity with the Virginia Stream Restoration and Stabilization Best Management Practices Guide, which is published by the State Department of Conservation and Recreation." She said that there's reference to document the riparian buffers modification and mitigation guidance manual, prepared by the Chesapeake Bay local assistance department. Ms. Long said that those manuals talk about the methods for designing a stream bank restoration project, and the last thing the development team wants to do is cause any adverse impacts on the Willoughby side of the creek. She stated that it may be that, during the assessment that is part of the design of the restoration plan, it would be determined appropriate that, to avoid adverse impacts, work on the opposite side of the creek would be necessary as well. Ms. Long noted that it's difficult for them to say exactly what they can do when they haven't yet reached the point of engaging consultants and doing onsite assessments with those consultants to figure out what the plan says.

Ms. Long said the developers proffered exactly what the County asked them to do, which was staff giving them a map and indicating, 'this is what our County study says need to be done, we want you to proffer that you will implement this plan.' And the developers said they would. Ms. Long emphasized that this application went through numerous rounds of review with the County staff, and even through rounds with the City planning staff and was revised based on some of those comments. She said that they are simply hesitant to say exactly what they're going to do until they know what their consultants recommend based on the standards and guidelines in the handbooks which they are obligated to do.

Mr. Snow asked if the water coming off I-64 now was currently coming off untreated, and asked how they would be capturing that and letting it loose. Ms. Long confirmed that they would be retaining the water long enough to slow it down and then releasing it back into the stream at lesser velocity, and without the pollutants that are part of it. She said that they would capture and detain the water, which enables the water to be filtered with sediments removed.

Mr. Snow asked about the direction of the water that is flowing off of the property that is to be developed now. Ms. Mallek said that it crowns in the center at the moment, so it goes to all three sides. Mr. Hines responded that it does crown in the middle, and there is water to the eastern side that drains east into Moores Creek, with the water on the west draining west into Moores Creek, and coming around to the site as well.

Mr. Snow asked how it would flow after the property is developed, and how the force of water coming off the parking lot would be controlled. Mr. Hines explained that they are planning to construct three separate facilities to control the water within the site, within the parking lot and the buildings, and there are two separate facilities that then handle the water for I-64 and also for the landfill but, on the site itself, one drains to the west and will be released at a rate at or below the current rate of water going to the west. He said that there's one that will drain to the northeast toward the top of the bell, and that would discharge into the creek also, at a slower release rate than would normally occur.

Ms. Mallek asked if they had 100% capture rules for this area. Mr. Brooks responded, we do not have 100%, however, we have as much as they can do, practically.

Mr. Hines said they are required to release it at a lesser rate than what it's going to at the pre-development flow rate.

Mr. Snow stated that the mitigation measures should slow the volume of the runoff down and reduce the amount of water flowing into the creek.

Mr. Hines said the mitigation measures would slow the water down from what is coming from the development site.

Ms. Mallek stated that, if they do a constructive wetland project, the plants will actually absorb a lot of the pollutants.

Mr. Thomas asked if they were having a retention pipe and then a smaller release pipe to let it out. Mr. Hines responded that they are proposing to filter all of the water on the site through two systems, first going through a sand filter and then going into a detention system underground that also allows infiltration into the ground, and reduces it at a slower rate. He said they are planning to treat the water twice prior to it then leaving the underground detention to get to the creek.

Mr. Hines stated that, for the rainwater harvesting requirement, they are planning to do a cistern to capture some of the rooftop water for a number of the retail areas, and then using that water to irrigate the landscape islands.

Mr. Dumler asked Mr. Brooks what is meant in the proffers by "enhanced E&S," and how they go above and beyond what's normally required. Mr. Brooks responded that it's different for every site, and the things he typically looks for are those beyond "standard stabilization," which is temporary or permanent seeding and stone on the roadways. He explained that "enhanced" requirements would be things such as more matting, additives used in basins or seeding mixtures, and products like Filtrex for diversions and traps. Mr. Brooks said that he often looks for redundancy in the system, which is not required by the state, so if there's a failure in a silt fence or a failure in a sediment basin in a large storm, that typically results in

a large plume that travels downstream. Mr. Brooks stated if there are two systems in series, they hope to catch those kinds of failures. He stated that, in some downstream waterways, they've required turbidity curtains, such as in places on the reservoir and in Forest Lakes, and recently with Estes Park.

Mr. Dumler asked, if the plan goes forward and there's an E&S approval process and the hydrology alters the Willoughby side of the creek substantially, how would that be mitigated in case that happens to an extreme degree? He asked if there is regulatory protection there, or would it need to be something beyond just the stream channel requirements associated with Zone 4? Mr. Brooks explained that the County would hold two bonds – an erosion and sediment control bond, and a mitigation plan that would include the stream restoration proposal. He stated what it would not cover is a catastrophic event such as a large flood.

Mr. Dumler asked to what extent this could change administratively after this meeting. Mr. Brooks responded that they would try to follow the plans approved by the Planning Commission and the Board as closely as possible.

Mr. Brooks explained that the concept the applicant worked out with staff is to take the creek that comes off of I-64 and capture it in a large basin in front of the road, and then a large basin in the back of the road that would capture the remaining runoff from the road itself. Mr. Brooks said that the initial plan was to capture that creek, treat it, and then release it, but what they've ended up with is something a lot different – and that is the road crossing, with the applicant proposing a stream diversion to send water into a stormwater treatment system or device beside the stream. He said we are no longer capturing the whole stream because it wasn't feasible and the Army Corps wouldn't let us do anything in the stream. So we have to think of something else and it does get very difficult because, trying to shunt some of water from the stream into a system is a lot different than capturing the whole stream.

Mr. Brooks said the Board had mentioned enhanced erosion and sediment control, but that might be difficult unless the project is phased in some way, because they are at the boundaries of the hillside and, if they want to provide large basins at the perimeter of the project, they must do it in the floodplain and then try to remove it later. He pointed out that those kinds of things might be difficult from a practical level to accomplish as much as we'd like, but we do the best we can, given the plan.

Mr. Rooker stated that staff has heard a desire by everyone here to make certain when the mitigation plan is designed – assuming that the Willoughby neighborhood agrees – that efforts will be made a part of that plan in order to stabilize that side of the creek.

Ms. Mallek asked that a notation to be added to the memo of the six most recent conditions as a reminder to ensure that is remembered going forward.

Mr. Boyd said that he keeps coming back to the fact that they've agreed to do the plan that the County and City put together, and that's the 'hook' in his mind.

Mr. Rooker said there's flexibility for the applicant to approve a plan that meets those requirements, but all the ones they're going to have to meet with a mitigation plan are not in the manuals they're referring to. He stated that, as a part of designing the mitigation plan, they can design the mitigation plan that is all on one side of the stream or includes both sides – and it can't be required without the other property owner agreeing to it, and it has been made clear tonight that they are in agreement. Mr. Rooker said that the neighborhood residents have said they are not opposed to it, as it brings some good things to the area, but they want to make certain that their side of the stream is reasonably protected.

Mr. Boyd stated that he doesn't want to put too much specificity in this to where the applicant would have to come back and seek a variance from the Board.

Ms. Mallek said her intent is to ensure that they don't fall into the familiar trap where the Board has thought it would be taken care of at the site plan but, because it wasn't written into a condition anywhere, the staff was not able to bring it about. She said what she is asking for is a general reminder to staff and County as much as to applicants to say this needs to be remembered.

Mr. Snow stated that he doesn't want the developers to proffer something that's going to end up costing them another two or three million dollars.

Mr. Rooker said that's not what's being talked about here, as there are standards that must be met with respect to a mitigation plan and that could happen with work on one side of the stream or both and it doesn't necessarily cost more money.

Mr. Snow said he would like to see it more defined.

Ms. Mallek said that's Mr. Brooks' role as the project goes forward.

Mr. Rooker stated that it's defined by what's required in the ordinance combined with the program authority working with the applicant to come up with a plan that is best for the site, and one that will meet those requirements. He noted that Condition #5 is not specific, it is general.

Ms. Mallek reiterated that she just doesn't want it to be forgotten as they move forward.

Mr. Davis suggested adding to Condition #5 the following sentence: "Stream bank mitigation of the Willoughby subdivision property shall be included in the mitigation plan if deemed necessary by the

program authority, and the property owner consents to the improvements in the mitigation plan being constructed on its property.”

Ms. Long said that they could live with that, but would like “if deemed necessary by the program authority” to relate back to the proffers, and their original intent and goal of the proffers – which was to implement the County’s stream bank restoration plan. She stated that the work on the opposite side of the creek could undermine the goals of the proffer, and they don’t want to have the box where they’re obligated to do one thing and end up in a situation where they can’t achieve the goals of the proffers and the project gets held up unless they invest a lot of money. Ms. Long said that, once consultants carry out their analysis and design a restoration plan, it may be that the mitigation plan guidelines would ultimately require that almost by definition. She said the developers would rather see that play out that way so we know that we’re being judged by the rules and standards of the proffers, and not by new obligations that were not anticipated and ones where we were not made aware of.

Ms. Mallek suggested adding that language.

Mr. Davis said the wording “consistent with the proffers” could be added.

Ms. Long said that would be helpful.

Mr. Davis suggested adding a third sentence that states: “Such mitigation plan shall be consistent with the intent of the proffers.”

Mr. Dumler then offered **motion** to approve SP-2012-00029 subject to the six conditions as outlined in the staff report and Condition #5 modified to state: “Stream bank mitigation of the Willoughby subdivision property shall be included in the mitigation plan if deemed necessary by the program authority, and the property owner consents to the improvements in the mitigation plan being constructed on its property. Such mitigation plan shall be consistent with the intent of the proffers.” Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Mr. Hines thanked Mr. Brooks and said he has been a tremendous help in working through this process as well as through the site plan.

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

1. Disturbance of the floodplain shall be limited to that part of the attached exhibit which is labeled as “Proposed fill areas as of 27 Feb 2013”. This area may be increased if determined necessary to accomplish the grading associated with an approved variation to plan. The County Engineer shall have the sole authority in making the determination if this modification to the disturbed area is necessary.
2. Final plans and construction shall provide a stable, non-erodible surface for fill materials, subject to County Engineer approval.
3. The applicant shall obtain Program Authority approval for an erosion and sediment control plan, and obtain a land disturbance permit according to the Water Protection Ordinance requirements prior to the start of construction.
4. The applicant shall obtain all necessary federal and state agency approvals (Army Corps of Engineers, Department of Environmental Quality, etc.) prior to commencing construction in the floodplain
5. The applicant shall obtain Program Authority approval of a mitigation plan, and provide mitigation according to the Water Protection Ordinance prior to commencing construction in the County regulated stream buffer. Stream bank mitigation on the Willoughby subdivision property shall be included in the mitigation plan if deemed necessary by the Program Authority and the property owner consents to the improvements in the mitigation plan being constructed on its property. Such mitigation plans shall be consistent with the intent of the proffers.
6. The applicant shall obtain approval from FEMA for changes to the floodplain prior to commencing construction in the floodplain and shall submit all documentation needed by FEMA to accurately reflect the as- built construction for a map revision following construction, Community Development shall not release erosion and sediment control bonds for this area until FEMA has all information needed to update the maps to reflect this change.

(Note: The Board recessed at 8:17 p.m. and reconvened at 8:29 p.m.)

(Note: The next two items were held concurrently.)

Agenda Item No. 10. **Public Hearing: ZTA-2010-00004. Industrial Uses.** Amend Secs. 3.1, Definitions, 4.14.5, Certified engineer’s report, 5.1.10, Junk yards, 5.1.15, Sawmill, temporary or permanent, 5.1.20, Sale and/or storage of petroleum products including kerosene, gasoline, and heating oil, 5.1.21, Dwellings in commercial and industrial districts, 5.1.31, Body shop, 8.5.5.2, Review of site plans and subdivision plats, 26.1, Intent, where permitted, 26.3, Permitted and accessory uses and structures, 26.6, Height regulations, 26.10, Minimum yards requirements, 27.1, Intent, where permitted, 27.2, Permitted uses, 27.4, Additional requirement, 28.1, Intent,

where permitted, 28.2, Permitted uses, 28.4, Additional requirements, 29.1, Intent, where permitted, 29.2, Permitted uses, 29.5, Additional requirements; by adding Secs. 26.3 (renumbering current 26.3), Independent office and general commercial uses; additional factors when considering special use permits; 5.1.49, Dry cleaning plants, 5.1.50, Foundries, 5.1.51, Outdoor activities, 5.1.52, Outdoor storage, 5.1.53, Rendering facilities, 5.1.54, Slaughterhouses, 5.1.55, Tire recycling yards, 26.6, Site development and use; and by repealing Secs. 26.2, Application, 26.4, Standard ratios, 26.5, Off-street parking and loading requirements, 26.7, Performance standards, 26.8, Sign regulations, 26.9, Minimum landscaped area, 26.11, Utility requirements, 26.12, Site planning – external relationships, 26.12.1, Vehicular access, 26.13, Building separation, 27.2.1, By right, 27.2.2, By special use permit, 27.3, Minimum area required for establishment of district, 28.2.1, By right, 28.2.2, By special use permit, 28.3, Minimum area required for establishment of district, 29.2.1, By right – Category I, 29.2.2, By special use permit – Category I, 29.2.3, By right – Category II, 29.2.4, By special use permit – Category II, 29.3, Minimum area required for creation of district, 29.4, Number of permitted uses; of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend the regulations pertaining to industrial uses by adding definitions pertaining to certain industrial and common use classifications (3.1); amend the requirements for the certified engineer's report (4.14.5); amend and add supplemental regulations applicable to several uses that are industrial in character (5.1.10, 5.1.15, 5.1.20, 5.1.21, 5.1.31; 5.1.49, 5.1.50, 5.1.51, 5.1.52, 5.1.53, 5.1.54, 5.1.55); amend the regulations for the review of site plans and subdivision plats within the PD-IP zoning district (8.5.5.2); and amend the industrial zoning district regulations by revising each district's stated intent, the uses allowed by right and by special use permit, the area of certain uses allowed by right and by special exception, the accessory uses allowed and prohibited, and other uses prohibited, by renumbering and reorganizing those district regulations, and by repealing certain regulations (26.1 through 29.4).

(Advertised in the Daily Progress on February 25 and March 4, 2013.)

Agenda Item No. 11. **Public Hearing: ZTA-2012-00013. Industrial Uses in Commercial Districts.** Amend Secs. 3.1, Definitions, 20.3.1, By right, 20.3.2, By special use permit, 20A.6, Permitted uses, 20B.2, Permitted uses, 22.2.1, By right, 22.2.2, By special use permit, 23.2.1, By right, 23.2.2, By special use permit, 24.2.1, By right, 24.2.2, By special use permit, 25.2.1, By right, 25.2.2, By special use permit, 25A.2.1, By right, 25A.2.2, By special use permit; of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend the regulations by updating terminology for several use classifications in all of the above-referenced sections; deleting the "medical center" use classification in the Downtown Crozet (20B.2) and Commercial (22.2.1) districts with the use to be absorbed into the "office" or "hospital" classifications; adding Laboratories/Research and Development/Experimental Testing and Manufacturing/Processing/Assembly/Fabrication and Recycling as by right uses up to 4000 sq. ft. and requiring a special exception to exceed 4000 sq. ft. (22.2.1) and adding Storage/Warehousing/Distribution/Transportation as a special use (22.2.2) in the Commercial district; adding Laboratories/Research and Development/Experimental Testing as a by right use up to 4000 sq. ft. and requiring a special exception to exceed 4000 sq. ft. (23.2.1) and adding Manufacturing/Processing/Assembly/Fabrication and Recycling and Storage/Warehousing/Distribution/Transportation as special uses (23.2.2) in the Commercial Office district; and adding Laboratories/Research and Development/Experimental Testing, Manufacturing/Processing/Assembly/Fabrication and Recycling and Storage/Warehousing/Distribution/Transportation as by right uses up to 4000 sq. ft. and requiring a special exception to exceed 4000 sq. ft. (24.2.1) in the Highway Commercial district. These uses would also be allowed in those planned districts (20A.6, 25.2.1, 25A.2.1 and 25A.2.2) that cross-reference uses allowed in the commercial districts.

(Advertised in the Daily Progress on February 25 and March 4, 2013.)

The following executive summary was forwarded to Board members:

On December 5, 2012, the Board of Supervisors held a work session on this proposed zoning text amendment intended to *modernize regulations to provide greater flexibility for today's industrial uses while preserving the integrity of the industrial districts and accommodating target industries*. In summary, the draft zoning text amendment reviewed at that work session provided the following:

- Definitions of several of the new uses proposed in the industrial districts to facilitate their understanding and implementation (Sec. 3.1).
- Further clarification of the information required in a certified engineer's report based on the proposed uses (Sec. 4.14.5).
- Clarification and addition of supplemental regulations pertinent to certain proposed uses to address their potential impacts on surrounding areas (Sec. 5.1).
- Authorization of the proposed uses within the planned development industrial park zoning district (Sec. 8.5.5.2).
- Clarification of the statement of intent for industrial districts (Sec. 26.1).
- Delineation of permitted and prohibited uses and structures, including a table of industrial and non-industrial uses allowed by-right, by special use permit and by special exception (Sec. 26.2).
- Further clarification of structure height, setback (Sec. 26.3) and minimum yard (Sec. 26.4) standards to be consistent with the terminology used elsewhere in the Zoning Ordinance.

After staff's presentation, the Board agreed to proceed to public hearing, but requested that staff first address the following:

- **Remove multi-family dwellings as a use permitted in industrial districts.** Board members who spoke at the work session stated that such residential uses were not appropriate in areas of industrial use and could compete with industrial uses for available land.
- **More tightly define what constitutes supporting commercial and supporting office uses.** Board members who spoke at the work session stated that the ordinance did not clearly describe what type of businesses would be "supporting."
- **Further address allowances for independent offices and general commercial uses.** Board members who spoke raised concerns that the retention of independent offices and the introduction of general commercial uses (i.e., uses allowed by-right or by special use permit in the commercial districts) were not consistent with the Economic Vitality Action Plan's intent to pursue "*strategies to stop the conversion of properties zoned light industry (LI) to commercial, office and other uses that are not "core" industrial uses.*" There was general acceptance by the Board to maintain an allowance for independent offices in existing buildings, but not in building expansions and new buildings, except by special use permit. There also was Board willingness to consider allowing general commercial uses in existing buildings only (not in building expansions and new buildings), but only by special use permit. There was an interest in establishing limitations to the location and extent of allowed space for independent offices and general commercial uses when permitted.

The revised ordinance (Attachment A), which addresses input provided by Board members at the December 5, 2012 work session, includes the following:

- Multi-family dwellings have been removed as a proposed permitted use in the industrial districts.
- "Supporting office" has been removed as a separate new use category and has been merged with the "supporting commercial" use category. The definition of "supporting commercial" has been further clarified to identify use types that would be within the definition (see *Section 3.1 Definitions*).
- The regulation of "independent office" use has been clarified to allow the use by-right within structures existing or vested on the date of adoption of this ordinance; by special use permit within structures not established or not vested until after the date of adoption of this ordinance; and by special use permit within the expanded portion of structures where expansion is not established or not vested until after the adoption date of this ordinance (see *Offices in Table under Section 26.2 a. Primary uses and structures*). In addition, planned development industrial parks are explicitly grandfathered for uses (such as independent office) permitted at the time of their rezoning (see *Section 26.2 b. Planned industrial parks approved on or before March 13, 2013*).
- The regulation of general commercial uses would be allowed by special use permit in the industrial districts **only** within structures existing or vested on the date of adoption of this ordinance. They would **not** be permitted in building expansions and new buildings (see *Commercial Uses in Table under Section 26.2 a. Primary uses and structures*).
- Special use permits for independent offices and general commercial uses would be evaluated for consistency with specific factors, including: (1) the use should not be located on the lowest floor having exterior access (to reserve this floor for industrial use); (2) the gross floor area of each establishment should not exceed 3,000 square feet (to limit the size of each non-industrial establishment); (3) the aggregate floor area of uses should not exceed 24,000 square feet and should not exceed 25% of the total floor area (to limit aggregate area of non-industrial uses); and, (4) whether the structure is constructed to building code standards for industrial structures (to provide availability of appropriate building space for industrial use). (See *Section 26.3 Independent offices and general commercial uses; additional factors when considering special use permits*).

A comparison of current ordinance provisions to those proposed in both this ZTA and ZTA201200013 Industrial Uses in Commercial Districts, which is concurrently before the Board of Supervisors, is provided in Attachment C. Several sample use approval scenarios comparing current requirements to provisions under the proposed ordinances are provided in Attachment D. In summary, as Attachments C and D indicate, these ordinances provide greater opportunities for industrial uses to locate by-right on industrially zoned land. On-site subordinate retail sales of an industrial use's products and on-site commercial uses that directly support the industrial uses are also more permissive (up to 25% of gross floor area by-right; over 25% by special exception). Office uses directly affiliated with industries remain by-right, but independent offices are more restricted unless they are located in existing or vested structures or are within a previously approved planned development industrial park under current or prior zoning regulations. General commercial uses will be allowed when appropriate, but only in existing or vested structures with an approved special use permit.

Paired with ZTA201200013 Industrial Uses in Commercial Districts, the amendments in this ordinance collectively remove certain barriers and provide industrial uses, including the County's target industries and smaller scale "Mom and Pop" enterprises, greater location opportunities. Of particular note, small scale enterprises and "start-ups" are typically less capable of absorbing higher costs for market-constricted available space and/or development review fees/carrying costs associated with permit processing. The provisions in the proposed ordinance which allow a broader range of by-right industrial

uses help small scale enterprises by opening up spaces where such uses are currently either not allowed or required to have a special use permit. This proposed ordinance also builds on prior zoning text amendments that liberalized allowances for Home Occupations in the Rural Areas, giving those that are "cottage industries" more location alternatives for growth and expansion.

Categorized by-right industrial uses and greater definition of uses subject to special use permit and special exception should reduce the staff time necessary to make determinations and administer the Zoning Ordinance. The County's tax base can also benefit from the expanded location opportunities for business and industry the proposed ordinance provides.

Staff recommends approval of ZTA201000004 Phase III Industrial Uses as presented in Attachment A.

Mr. Cilimberg reported that last month they had discussed the prior work that has gone into this amendment and some other amendments regarding industrial uses. He said that the last work session on this was in December, and staff has tried to address some of those comments in these amendments. Mr. Cilimberg said that the objective is to modernize the regulations for flexibility, be reflective of what industrial uses are like today, preserve the integrity of the districts and accommodate the target industries in particular that have been identified for the County.

Mr. Cilimberg stated that the new ordinance language in its general form moves to a broad category of by-right industrial uses, and specifically lists the uses that are not by-right in those categories – but otherwise industries that fit those categories would be considered by-right. He said that it provides for target industries and broadens some of the other by-right uses and expands some opportunities for blending industrial and commercial uses. Mr. Cilimberg stated that there is some limited provision for introduction of commercial and industrial, as well as the introduction of industrial uses in commercial districts. He said that the changes cover both of the zoning text amendments.

Based on the work session in December, Mr. Cilimberg said, there are several things staff has done to address Board comments. He explained that multi-family dwellings have been removed now as a use, as they were a potential use by special use permit. He stated that supporting office is now considered to be part of the supporting commercial category, which has existed in the ordinance for some time but has been further defined with example use types so they can now better identify what supporting commercial uses might be. He stated that independent office now is indicated only by-right within structures existing today or those vested on this date, which they assume to be the adoption date of the ordinance. Mr. Cilimberg said that, otherwise, independent offices would be provided through special use permit. He noted that general commercial uses would only be allowed by special use permit within structures that exist today or are vested today through some prior action of the County that is considered a significant action. Mr. Cilimberg said staff has introduced the factors that these special use permits for either independent office or general commercial would be evaluated to include considerations in review of an SP – the lowest floor of a building would have exterior access reserved for the industrial uses; the size of the non-industrial establishments would be limited to 3,000 square feet; the aggregate area of non-industrial uses would be limited to up to 24,000 square feet or eight of the non-industrial establishments; and building space would be constructed for an industrial use ultimately – which can include factory-type industrial construction but also construction that is considered mercantile. He said that the amendment also grandfathers planned development industrial zoning so that those approvals would retain the rights that they have currently under existing zoning.

Mr. Cilimberg reported that the three categories are manufacturing, processing, assembling, fabrication and recycling; storage, warehousing, distribution and transportation; and laboratories, research and development, and experimental testing. He said those are the three basic categories of industrial use, all of which would have a by-right allowance in the various districts. Mr. Cilimberg said there had been questions raised previously regarding some of the changes, particularly regarding office uses, and the industrial office type of use – which is basically the office associated with an industry – has been by-right under the ordinance, and would continue to be. Independent offices, he said, such as doctors' offices, have been by-right in the LI District, and it would be by-right in existing and vested structures under the proposal.

Ms. Mallek asked if any current structure used as an office would fall into that category.

Mr. Cilimberg explained that any current industrial building would be considered as having that possibility and would retain that possibility for office use. He said it could flip back and forth between office and industrial activity in the future. He stated that new buildings and building expansions of independent offices are by-right today, and they would, under this proposal, only be allowed by special use permit and would be subject to the factors he mentioned earlier in review of the special use permit. For commercial uses in industrial districts, he said subordinate retail sales are currently allowed by-right in the LI District at less than or equal to 15% of gross floor area and by special use permit above 15%. He added that, under this proposal, those uses would be by-right at or below 25% of gross floor area and by special exception over that limit. He stated that supporting commercial activities are currently allowed at less than or equal to 5% of gross floor area by special use permit and, as proposed, they would be allowed in the same way as subordinate retail sales.

Mr. Rooker asked him to explain the difference between special use permit and special exception.

Mr. Greg Kamptner explained that the special exception device was created after the Sinclair case, and they're using the special exception to provide the process for what they used to call "waivers

and modifications” and, by definition in the zoning ordinance now, the special exception process is used to increase the area whereas a special use permit is defined to allow a use that is not otherwise allowed. He clarified that a special use permit deals with use, and a special exception in this case deals with area and, process-wise, they’re both legislative acts and are both acted on by the Board of Supervisors as the final decision-making body.

Mr. Davis noted that a special use permit would require a public hearing by the Planning Commission and the Board; a special exception is not subject to a public hearing requirement.

Mr. Cilimberg added that they don’t advertise special exceptions.

Mr. Davis confirmed that they may attach conditions to the special exceptions.

Mr. Cilimberg stated that one allowance being proposed would be for the general commercial uses noting that, for subordinate retail sales, they could now be available in all the districts under the proposal. He said that, while independent offices have only been allowed by-right in the LI District, they now could be by-right in the existing and vested structures in both the LI and HI districts – which is part of generalizing the allowances in the ordinance.

Mr. Cilimberg said that, on the general commercial side, most of what would be considered general commercial uses are not permitted today and they’ve had a few that have come through zoning asking for the possibility of locating in industrial areas that have some characteristics that might even be considered industrial – such as a dog kennel. Mr. Cilimberg stated that they have made allowance based on the Board’s comments in December for existing and vested structures to have general commercial uses through a special use permit, so that is the big change occurring regarding general commercial uses in this ordinance.

Mr. Cilimberg reported that the residential uses in industrial districts are not changing other than being further clarified, but basically they are being considered “individual units or sleeping quarters for an owner or an employee at the site of the industry.”

Mr. Cilimberg stated that, in the second ZTA, they are addressing the allowance of industrial uses in commercial districts, which generally don’t occur today but, under this proposal, there would be a much greater opportunity for industrial uses, particularly start-up types, to locate in commercial space. In Highway Commercial Districts, he said, the most allowance there – because it is the most intense of the commercial districts – would be the possibility either through by-right allowance, special exception, or special use permit, for industrial uses of different categories to locate in the commercial districts. He said that this is new and is intended, based on comments they heard, to broaden opportunities for industrial-type uses in commercial areas.

Mr. Cilimberg said that there are other uses, but they are not really changing from what’s currently allowed, and there is a list of prohibited uses. He stated that the desired outcomes are providing flexibility, providing options that are attractive and affordable for the target industries, protecting what has been considered a limited supply of industrial land from encroaching uses, and encouraging the opportunity for research and development and start-up companies.

Mr. Cilimberg noted a few corrections that are provided to the Board: an incorrect reference to the farmer’s markets date, and a sentence being removed for the planned development industrial parks item as it would have inadvertently not grandfathered independent offices.

Mr. Cilimberg stated that staff recommends approval of ZTA 2010-0004 in Attachment A for the zoning text amendment regarding industrial uses and other uses in industrial districts, and also recommends approval of ZTA 2012-00013 as Attachment C.

Mr. Snow asked if the ordinance was being changed to the point that people who have invested in property would not be able to use the land for which they intended to use it for when they purchased it. He further asked if we have possibly reduced the value of someone’s property by what we’ve done.

(Note: At 8:45 p.m., due to a fire alarm in the building, the Board recessed and then reconvened at 9:13 p.m.)

Mr. Cilimberg responded to Mr. Snow’s question prior to the fire alarm. He said that he couldn’t speak to the value. He said, depending on the status of the property’s zoning, we have added some allowances and we have removed some of what can be done under current zoning. He said that, if a property was zoned but not vested with its development rights and did not have a building on the property, then the general office category is no longer available to them by-right; it’s now by special use permit if they are a light industrial property. He said, if they’re a heavy industrial property, they’ve actually gained the possibility of getting a special use permit that they didn’t have any right to do before. Mr. Cilimberg said it would depend on what uses someone might want to have on that particular piece of land. He added that the planned development industrial park zonings have not changed at all, as they are grandfathered and retain the previous zoning rights.

Ms. McCulley stated that in terms of available uses, she counted 63 uses that have expanded permissions in the draft ordinance over what is currently allowed. She said that staff has talked a lot about office, but there is a whole host of other uses that are now more readily available by-right that were not allowed or are allowed by special use permit.

Ms. Mallek stated that was the goal. To deal with the bleeding out of light industrial, heavy industrial properties to all these other uses that have other places to go, and protect the light industrial space that we have.

Mr. Boyd said that this might have created a situation where people had bought a piece of property with the intent of doing something to it and no longer can do that without having to get some additional zoning or special use permit for it. He said this would be the case of a light industrial property where you can no longer build an office on it without a special use permit.

Ms. Mallek stated that the whole point of what the County has been trying to do for the last two years is to stop that slide of industrial property, because everybody complained for years that we didn't have enough.

Mr. Boyd said that the problem is that people have invested in property for a certain use and now they can no longer use it in the way they had intended.

Ms. Mallek said that if they have started the process, they are grandfathered.

Ms. McCulley explained that planned development industrial park is specifically grandfathered, so the independent office use change does not affect them, and with LI or HI, if the property has a structure that exists as of the date of the adoption of the ordinance or is vested with the right to build a structure, then they are entitled to the independent office use throughout that structure.

Ms. Mallek noted that the property owner would need to have an approved site plan for that new structure if it were not constructed yet.

Ms. McCulley responded that that is one way to vest, but there are also ways to vest through rezoning – which is a multi-prong test that gets into some legalities, but both of those things can vest property.

Ms. Mallek commented that if it is just raw land then there has not been enough carry-forward on a plan to make it qualify for being grandfathered, which makes sense.

Mr. Cilimberg stated that the raw land has gained some greater allowances for the sale of products that are made by the industry, supporting commercial activity, and even the opportunity to potentially accommodate a commercial use for a special use permit in the building that might be built or was vested.

Ms. Mallek said that this seems to be looking forward and trying to be more flexible to have combinations of light industrial, commercial, walls being able to move, and companies being able to change all within the same structure without a lot of legislative work to be done.

Mr. Cilimberg stated that from what staff has heard that sometimes it is the commercial space that those types of industrial users can't get into right now – which this opens up.

Ms. McCulley said that these spaces are prime incubator or start-up spaces for the small biotech company that's getting on its feet.

Ms. Mallek stated that it is also something big. She said that when she toured NGIC it was a lot of combinations of labs and experimental prototype rooms and some small offices. She said that it is not just a whole building full of cubicles, it is a sort of a testing place more than anything. So it seems that it would fit in by-right in the light industrial category.

Ms. McCulley stated that in commercial districts staff is introducing for the first time some by-right industrial use.

Mr. Boyd said that his concern is that someone might have paid a premium price for a property based on the assumption that under the old ordinance they could build an office complex there – but now the County is saying that they can't do that – which greatly reduces the value of the property, at least in terms of what might be developed on the property.

Ms. Mallek said that light industrial is an exploded list of possibilities now so it isn't just a construction yard.

Mr. Boyd said that there is no pent up demand for light industrial property.

Mr. Rooker commented that this whole undertaking of the ordinance was premised upon the fact that the County did not have enough industrial property. He said that staff has now proposed that you can have LI uses in commercial areas, and you could convert an industrial site to a commercial site with special use permit, which you couldn't do before. He stated that there are 63 additional uses that are allowed in industrial and commercial areas.

Mr. Boyd said that that was one of the arguments from the very beginning is that the County doesn't define light industrial the way modern day light industrial's needs are.

Mr. Rooker said that we do now.

Ms. Mallek added that after this is adopted the County certainly would because of the whole different framework.

Mr. Boyd said that that may be true but it also took away other availabilities. He stated that in addition to adding the 63 additional uses, office use was taken away.

Mr. Rooker said that one of the problems that led to this point was that industrial property was being converted to retail either by rezonings or to office.

Mr. Boyd commented that Mr. Rooker meant "to residential." He said that the Board was moving some LI to retail and residential.

Mr. Rooker said that part of the idea was to try to preserve our existing industrial property for industrial uses, and the only way he can see that getting accomplished is to at least have some control over the conversion of the use. He said that the special use permit provides that control, but there are also a whole lot of other additional uses that were not previously allowed. Mr. Rooker said that there may be changes in value both up and down, but there is probably no example of changes in zoning where people feel it hasn't helped them.

Mr. Cilimberg stated that the way staff has structured this most specifically as it regards to independent office is to hold harmless the existing uses, through a building or a vested use, or grandfathering the PDIP. He said that staff did not propose grandfathering in the proffered zonings that have occurred, which the Board could certainly consider.

Ms. Mallek asked for an example of that.

Mr. Cilimberg explained that Mr. Hurt has property out on 29 North that's proffered, that could be grandfathered through the same provision that the PDIPs are grandfathered – just as an example.

Mr. Rooker asked Mr. Cilimberg to clarify the difference between "proffered zoning" and all existing industrial zonings.

Mr. Cilimberg responded that the proffered zoning are properties that have gone through a rezoning and have offered proffers, but there is a lot of conventional LI/HI without proffers. He presented a table of acreage in various districts – with HI and LI without proffers totaling about 1,000 acres; proffered land held by a total of 11 property owners totals a little over 100 acres. Mr. Cilimberg said that some of those proffers restrict office use, and that would not be something they would change through grandfathering if the proffer already restricts office use. He added that there are eight property owners with 78 acres total that have proffers allowing office use.

Mr. Rooker asked if the proffers specifically mention office use. Mr. Cilimberg clarified that Barnes Lumber only allows one use in its proffer – and it's not office – and there are several other owners that cannot have office uses today.

Mr. Rooker asked if the proffers for the 78 acres of property specifically mention office. Ms. McCulley said that some are written in the prohibitive, and some are written in the affirmative. She said that if the Board is inclined to grandfather LI and HI proffered property, that it be limited to properties with use proffers, because those that don't specify the use are opened up much more – and there clearly was not an intent to allow for office use.

Mr. Rooker asked if the 78 acres is in the category that is being mentioned. Ms. McCulley responded that it is. Mr. Cilimberg replied yes – the eight property owners of 78 acres.

Mr. Rooker commented that if the Board heard from people on that issue then it might be reasonable to consider grandfathering the category.

Mr. Cilimberg said that would be a way to address some of the concerns about people who had expectations from zoning – that they either received or had assumed they would have based on buying their property.

Mr. Rooker stated that if you bought a property and you made proffers that were basically given with the concept in mind that they were potential office, it would certainly be reasonable to grandfather those.

Ms. McCulley noted that it is possible that some of those properties would qualify for vested rezoning. Staff would just have to do a case assessment.

Mr. Cilimberg noted that property owners would not have to qualify any longer.

Ms. McCulley added that they wouldn't have to be vested.

Mr. Thomas asked if Mr. Hurt's property was the only example that could be given. Ms. McCulley responded that there are seven other property owners.

Ms. Mallek pointed out that there are 1,000 acres of scattered sites zoned LI and HI in the Comp Plan, and others that are not zoned yet.

Mr. Cilimberg said that that's the next step, and when this amendment is in place he is to contact property owners who don't have the zoning to ask them if they'd like to be a part of County-initiated land to HI or LI.

Ms. Mallek stated that this is a far cry from the 125 available acres that Board members was told were available for LI, and she's glad to see there is more. She said that there was a lot of hysteria about rezoning and changing everything because the County didn't have any, and now it looks like there is a lot. She added that it may not be well organized yet.

Mr. Thomas commented that it is not in the right place. Ms. Mallek replied that that's not our problem.

Mr. Boyd said that it is our problem if we're going to start zoning property for LI uses and are going to start telling them what they can and can't do with their property. He said that it is a government problem because the County is forcing them into what they can do with their land...it's purely a government problem.

Ms. Mallek stated that the basis of zoning is having the uses developed, and this is an expansion of uses with the exception of one or two in particular.

Mr. Boyd emphasized that modern day manufacturing is very similar to office space.

Ms. Mallek responded that is what staff has achieved – that combination of manufacturing, retail and office.

Mr. Boyd said that it's not, because what they've done is taken LI property and said you can no longer put more than 3,000 square foot of office on it.

Mr. Cilimberg stated that that's a different category of office – general office, such as doctors' offices – and any offices that are part of a research and development activity, part of a manufacturing activity, are all by-right. He said that if there involved in something that qualifies under one of the three categories as an office use – in support of those activities and those categories, then they're by-right.

Mr. Boyd asked how the Department of Intelligence use would fit into this. Ms. McCulley said that it's very likely that they would fit under the third category – laboratories, R&D, experimental testing – because within the definition it actually includes defense security research, and they wanted to include that kind of use.

Mr. Boyd asked if NGIC and DIA could expand in LI-zoned property without any kind of special use permit. Mr. Rooker responded that so could a private contractor who was in that line of business.

Mr. Cilimberg pointed out that the 1,665 acres are the zoned properties that may have buildings on them, so it is not open acreage; the 120+ acres refers to acreage that's vacant.

Mr. Rooker said that the 120+ acres clearly does not include the UVA Research Park and Fontaine, as the research park itself includes over 500 acres, and you can do any kind of light industrial there, office, etc.

Mr. Boyd said that you couldn't build today under the new guidelines unless you could somehow tie it to laboratories.

Ms. Mallek responded that all of the buildings would qualify for the categories Ms. McCulley just read.

Mr. Cilimberg pointed out that the zoning is being grandfathered, but a new research-park type zoning request is before Board and is a rezoning to decide what uses are appropriate. He added that he does not think that has changed at all with this.

Mr. Rooker said that wasn't done as a matter of right, that was a rezoning process with proffers, and it was zoned as a PDIP. He explained that the applicant came in and presented what they wanted to do, and the Board always has the authority to rezone properties with whatever proffers might be offered.

Mr. Rooker said that there is a concept in the proposal under the definition of industrial offices that says "offices affiliated or in a parent/subsidiary business relationship with the laboratory's research and development." So if there is an industrial operation you can have an office located somewhere else that becomes an industrial office, if there's a combination of ownership going on. He stated that that whole concept makes no sense to him.

Ms. Mallek asked Mr. Rooker if he meant on a separate property – they'd have a standalone office building. Mr. Rooker responded yes.

Ms. Mallek said that that defeats the effort. Mr. Rooker agreed and said that makes no sense to him at all.

Mr. Rooker asked what would happen if they closed down the industrial operation but were left with the office. Is that a nonconforming use at that point? Ms. McCulley responded that if it is in a

structure that's vested because it exists on the date of adoption of this ordinance, then the use becomes independent office, which is a permitted use.

Mr. Rooker said that he wasn't talking about a vested situation. He said that we're speaking prospectively, why even allow this, why do this?

Ms. McCulley explained that if the structure they're in exists on the date of the adoption of the ordinance, then it would convert from industrial office to independent office.

Ms. Mallek asked what happens if it is built next year and the Board adopted the ordinance today. Mr. Rooker stated that he was not concerned about the vested situations because they have a right anyway. He said that what he is referring to is providing someone with a different treatment because there is common ownership – somebody's got an industrial building and they are in Crozet and want to go somewhere else and put up an office building. Why would that make a difference?

Ms. Susan Stimart gave the example of Relay Foods, which has their corporate headquarters on Ivy Road, but uses the old Cadmus space in the City for their distribution and warehousing, so they have a divided operation.

Mr. Rooker said that the Ivy Road area is zoned for office.

Ms. Stimart stated that their operations can be a little bit blended, and sometimes they may need to have assembly and distribution out of the Ivy location. She said that another example would be Nitek, and when they were at the height of their expansion they were divided between four different spaces in the County just to accommodate their growth.

Mr. Rooker said that he still did not understand and used the example of "if he's a developer and just wants to build and lease an industrial site to somebody." He stated that under this provision he could completely skirt the ordinance and go somewhere else and build an office building and say that it is under common ownership. He said that he could build offices anywhere because he owns an industrial site.

Mr. Cilimberg said that that was not the intent. He said that it was not intended to allow for the same owner to be able to put an office on one site and an industry on another that have no relationship. The idea was that there was going to be a relationship between the office operation and the industrial operation, even if they were on separate sites.

Mr. Rooker said that is not what the provision does. He said that the provision basically says that if they're under common ownership, then the limitation doesn't apply. He stated that it is an exception that swallows the rule. Mr. Cilimberg responded that that was not the intent.

Ms. Mallek said that taking out the last phrase would probably solve the problem.

Mr. Rooker said that if you eliminate the exception then you don't even need the definition because you can have an office at the site. He also said that in 26.1, which is Attachment A, it seems that in describing the intent there should be a category that says "preserving existing zoned industrial property for industrial use."

Ms. Mallek commented that the whole point is to try to make it more possible to have sites ready, so when someone appears with the intent of needing a large space, there would already be something ready to go "rather than having to create something from scratch.

Mr. Rooker said that it would be helpful to have staff explain under "commercial uses" the terms "supporting retail sales" and "subordinate retail sales," and how those would be interpreted.

Ms. McCulley responded that subordinate retail sales is the product that the industrial use produces, so if there is a fire extinguisher factory with a showroom you can walk in and buy fire extinguishers. She said that supporting commercial is different, because the idea is to have things that support the employees who are there working in the industrial uses – such as a restaurant in the industrial park, newsstands, beauty salons, daycare centers, dry cleaners.

Mr. Rooker asked if that was something she thought she could actually apply as the zoning administrator. Ms. McCulley responded that it only gets tricky when they serve the outside public.

Ms. Mallek said that an example of that would be the Innovation Café, which was supposed to serve the workers of the industrial park but draws outsiders too.

Mr. Cilimberg stated that one thing to help the zoning administrator is a list of example-type uses that could be supporting under the definition, so staff has tried to be more identifying of those things that could qualify – but in any case, it would be about the level of intensity of employment in a particular location.

Mr. Rooker said that he is fine with the concepts as long as the zoning administrator can interpret it.

Ms. McCulley commented that the scale needs to be appropriate to serve the employees within that industrial center.

At this time, the Chair opened the public hearing.

Mr. Wendell Wood addressed the Board, stating that when NGIC and DIA arrived and he asked for additional space, he was told that he had to zone the land industrial – so that's what he did – and if the County considers the building he leases to DIA, NGIC and SIC industrial, he doesn't see that. Mr. Wood explained that there is nothing but office space, computers and cubicles. He said that they don't make or produce anything they watch their computer – it is office space. Mr. Wood asked how companies like General Dynamics would react if they wanted to come here and locate right next to them and the land next to them would be zoned differently. He said that the County "thinks they've done a great thing" by adding 60 different industries that can go on that land, but in all reality those are industries that would not locate in light industrial.

Mr. Wood asked Board members to ask the University of Virginia if they would open up 50 acres of their land to light industrial – where they could have a tow truck yard; a storage facility; a foundry; and meat packing. He said those are types of industries and are not conducive to industries that the community associates with "a first-class research park."

Mr. Rooker said that all of the target industries would be allowed in there, and said that Mr. Wood is just naming the things that would not be desirable to a high-end industrial site, but the things that are high-end light industrial are allowed as a matter of right.

Mr. Wood said that they are restricted to the amount of office space that they can have with that. Mr. Snow responded not with this.

Mr. Wood said that his point is how a facility like that is going to want to locate to "undesirable" industries that could potentially be next to that.

Mr. Wood also asked about someone buying 30 acres for industrial property, and then finding out they would be located next to an outdoor display or lumber yard or brick manufacturing plant, which is allowed next to his operation.

Mr. Rooker responded that Mr. Wood could do any of those things on his property today.

Mr. Cilimberg commented that they are allowed today.

Mr. Rooker said that that's not a change. If you've got an industrial-zoned property, you could put a brick manufacturing plant on your property.

Mr. Wood responded that he can do it. He said that he is talking about reality. Mr. Wood posed that question do you think that's really going to happen...you're adding, but you forget what you've taken away. You've taken away the high-end facility, expecting to be an office building there, that can't be done. Mr. Wood said that in the real world a company like Booz Allen is not going to put an office building next to an LI business like that. He stated that he has industrial land on Airport Road that adjoins the UVA Research Park, but he cannot go in there and put a building with a larger base of office space.

Ms. Mallek said that he could have any of the combined uses with the target industries, and he could use 100% of the facility.

Mr. Wood asked how that encourages business when he's spent millions of dollars on getting water and sewer in, and a buyer can't get what they want – and may end up next to a light industrial facility. He stated that the real world is not happening that way. He suggested that the Board ask UVA to take 50 acres of their land and open it up to LI, and see what kind of comments they get back from them.

Ms. Mallek said that as a landowner there is no obligation for you to put a contractor's yard in the middle of your property with research labs.

Mr. Wood said that that is not the issue. He said that the issue is he cannot add another facility that is comparable to what's there, in an LI zone.

Mr. Snow asked Mr. Wood to give him an example of what he would like to do. Mr. Wood responded that he would like to continue with what he's already doing.

Mr. Snow asked Mr. Wood what that was. Mr. Wood responded that it is basically office space – general office space.

Mr. Snow asked if it was general office space for research or just general office space. Mr. Wood said that it is just general office space.

Mr. Snow asked if it was something like NGIC or DIA or any type of research office, all of those things are allowed. Mr. Wood said that they are not allowed in LI.

Mr. Snow replied not yet, but they will be.

Mr. Cilimberg stated that this was intentionally designed to allow that. He said that staff talked about it in the workshop. He said that they were categorizing uses that would capture those Mr. Wood is describing.

Mr. Wood said that Booz Allen is a government contractor, and they don't have a laboratory – they are an office building, not a manufacturing company.

Mr. Cilimberg replied that they are also a target industry covered by laboratories, research and development, experimental testing.

Mr. Wood asked about New York Life – if they were to relocate their headquarters here. Mr. Cilimberg responded no – not under industrial without a special use permit.

Mr. Rooker said that Mr. Wood got his property out there now through rezoning.

Mr. Rooker emphasized that part of the idea of the ordinance is to preserve existing light industrial and industrial property for light industrial and industrial uses, and not have all of them convert to general office.

Mr. Wood said that is why the Board needs to look at the County's land use plan, as it should not be having that type of light industrial next to a shopping center or housing, or a contractor's yard next to multi-family. He said that he is not here against light industrial, but the Board needs it in locations that don't have to compete with the University of Virginia or DIA. He stated that it has evolved to office space and has not evolved to being a contractor's yard.

Mr. Rooker said that the Board does want to make available space in the County for things like contractor's yards, and the owner determines which uses he wants to put his property to.

Mr. Wood said that the owner does not determine that, the marketplace determines that.

Mr. Rooker said that a landowner can say "no" if someone wants to come in and lease that kind of business there, but there are many other high-end businesses that can locate there too.

Mr. Wood said that the reason he would have to say no is because of the requirements. He stated that he had to build public water, sewer and streets and the County assesses it a \$150 – 200 thousand dollars an acre and the tenant can pay \$65 – \$75 thousand dollars an acre. It does not work.

Mr. Wood said that the County needs contractor's yard space, but the question is where they need it – and they don't need it next to the UVA Research Park. He stated that you don't need it to where someone has invested money and relied on having a tenant that was not going to be one of the 60 elements that is added to the program. Mr. Wood said that those 60 elements don't pay. He said that they cannot pay the price of what has evolved around the marketplace and what Albemarle County taxes you add.

Mr. Rooker said that what Mr. Wood is suggesting that someone who has light industrial property that's beside his property shouldn't be allowed to put a contractor's yard in there, because you want to have a higher-end area.

Mr. Snow said that it's some of his land that's zoned LI.

Mr. Wood stated that the market tells you where to go, and the government would not have invested all this money here if they didn't reasonably expect to have some protection around them. He said that that's what zoning is about – markets change, conditions change and they have changed.

Mr. Rooker said that under light industrial zoning today, you can have many, many things – some of which are not high end – and the market determines whether or not the user can afford that particular piece of property.

Mr. Wood said that the surroundings justify it, and "things have happened," so if NGIC and DIA hadn't been built, that may have been a great place for a contractor's yard.

Mr. Rooker said that there are many, many uses.

Mr. Wood said that there are many uses, all at lower standard.

Mr. Rooker replied no they are not. Mr. Wood responded they are.

Mr. Rooker asked Mr. Wood if he is calling all of the items lower-standard uses. Mr. Wood said that the buyer isn't going to know what's going next to it.

Mr. Rooker stated that you cannot control that. Those properties that are zoned industrial today have all those potential uses – you don't control them.

Mr. Wood said they have potential uses, but they are all detrimental to what somebody who's gone in and invested millions of dollars.

Mr. Blake Hurt addressed the Board, stating that he is the owner of light industrial property on Route 29 North, on Northside Drive, which would be affected by the proposed changes to industrial zoning regulations being considered. Mr. Hurt said that while there are several positives, including the liberalization of where industrial start-ups might locate, they are very much against the removal of independent offices that are currently allowed in light industrial district.

Mr. Hurt said that their arguments are both specific and general, and can be summarized in three parts: the provision is short-sighted in its effect, counterproductive in its result, and unfair to those with LI zoning. He explained that it is short-sighted because the intent of the provision is to make industrial property “more available” to possible industrial users, but removing by regulation other possible users for LI property – like offices – in order to lower the price for a manufacturer makes as much sense as trying to feed the poor by telling a grocery store they can’t sell to anybody but poor people. He said that removing the possibility of independent offices will decrease the desirability of LI zoning, and those who have it and will be down zoned will pay the cost of reduced values for the benefit of unspecified ‘industrial users. Mr. Hurt said that their properties will become a “cautionary tale” for everyone considering future LI zoning. He stated that he also has industrial property in the City, and current and past users there are seeking inexpensive, flexible space – such as soil scientists, architects who make models, temporary lighting providers, a professional photographer, a copier company – and none would be allowed under the proposed change in the County’s ordinance. Mr. Hurt said that he is willing to accommodate industrial users, but there aren’t enough of them where the price makes sense, and zoning is one of several factors that determines price – along with access, public water, sewer, topology, ARB approval, and the cost of development. He stated that the property on Northside Drive had not had ready access to public sewer until recent installation of the sewer pumping station, and even without it there are complications with getting County approvals.

Mr. Hurt said that last year, Virginia Power wanted to lease part of their industrial property for a temporary construction yard, and needed it for 12 months; to their surprise, getting a permit from the County would take two to six months. In Greene County he said, they would get approval in 10 days. He also stated that barring independent offices in LI zoning would also be counterproductive in creating more industrial space, and with his property they’d been planning to build two-story buildings with walk-in access on each level, with the lower floor targeted for industrial flex space and the other targeted for independent offices. To make the financing work, he said, it is helpful to have higher priced office space to offset the cheaper price on the flex space. Mr. Hurt stated that prohibition on office space or the restrictive requirement that it must be related to what’s below, would inhibit the rental and would make financing more difficult – making the project less likely. He said that the inevitable result would be less industrial space, and one response from County staff is that independent offices could be held by special use permit, but this argument didn’t hold.

Mr. Hurt said that if the Board wanted to increase the industrial land, it would be more effective to increase the amount of industrial property designated in the Comp Plan, adding that it seems far more equitable to just add some industrial color to the Comp Plan than to take the long green from the owner’s pocket.

Mr. Hurt stated that the third reason not to remove independent offices in the LI zone is that it’s unfair. He said that he has been working on the development of his property for a generation. He said they have negotiated with the County for LI zoning on this property, and made proffers that restricted its use. He stated that they went through the process of planning the property and filed a site plan in order to grade it. Mr. Hurt said they have paid for grading, have invested heavily, and have waited patiently for investments in infrastructure like the sewer. He said they have submitted several preliminary building plans to the staff during the last 10 years, illustrating their ideas, and have explained them thoroughly. Mr. Hurt added that they have made additional concessions and proffers to the County for a road easement in order to bring the side setback in compliance with current County regulation.

Mr. Rooker asked if this would be a vested situation.

Ms. Mallek said that it sounded like Mr. Hurt would be able to do everything he wanted to do if the ordinance was to pass.

Ms. McCulley said that it’s possible that the site plan has been vested, but staff has not done a full analysis at this time.

Mr. Rooker said that the 78 acres that have already been zoned with proffers, which would include this, would be grandfathered.

Mr. Hurt said that that would address the fairness part of his argument, but it has not been passed.

Ms. Mallek said that it sounds like Mr. Hurt is speaking against it, when she thinks it would really help him.

Mr. Hurt stated that he is all for waiving that particular provision. He said that he has done a lot a work on his LI property to make it accommodate offices, and it would be unfair having done all of that work to have the rug pulled out from under them. He added that the general provisions of the idea is good, and his goal is not in one of those categories – as they are designing 2,400 spaces that are 1,200-3,600 square foot spaces, similar to the small businesses found in the City. Mr. Hurts said that independent offices in light industrial provide greater flexibility and allow lower costs for industrial users. He stated that the more small users that you can bring in, the better.

Ms. Mallek asked if the small offices would be considered supporting commercial for other things around it.

Mr. Cilimberg replied that they would more than likely be general commercial or office.

Mr. Snow noted that he also has some LI property, and it is definitely cheaper than commercial.

Ms. Mallek asked if that was current day and it would be addressed in the ordinance.

Mr. Snow replied “no” and said that Ms. McCulley had met with a lady earlier in the week who already has a business that is open. He explained that she wants to add a dog massage parlor to her business but she cannot. Ms. McCulley clarified that she cannot do it now. She said that the proposed ordinance would establish for the first time an opportunity to apply for a special use permit for that instance.

Mr. Snow agreed and explained that the lady’s response was “the reason I’m doing this because I’m trying use the space without spending any more money” and to get a special use permit “she said that she can’t afford to do that”.

Mr. Rooker said that that’s a use that is considered a commercial use and not an office use – that’s beyond what being discussed.

Mr. Snow said that he was just using that as an analogy – that a lot of people are looking for inexpensive space to either start or augment a business. He added that it looks like cheaper LI use land would be a perfect use for it, because it’s hard to find commercial property at an affordable rate.

Mr. Rooker said that the question is whether commercial light industrial property could be used for what’s typically seen in a small shopping center. He stated that you can’t do that now, and you can’t do that under the ordinance. He explained that the light industrial property that you say is less expensive – pretty soon it wouldn’t be, because the market would say let’s buy that and put a shopping center there.

Ms. McCulley said that the hope is a group would come in together for more than one commercial use in a space, through special use permit.

Mr. Boyd asked what made staff decide to eliminate office space in LI, except for the target industry list, because it seems that large manufacturing is not going to happen anymore. Mr. Rooker responded that this arose because they were worried about creating more industrial property.

Mr. Boyd said that there is a need for contractor’s yards and that type of thing.

Mr. Rooker responded that it is just what Mr. Wood said shouldn’t be allowed to go in.

Mr. Boyd said he was not agreeing with that, and his question is why office space was taken away to this degree.

Mr. Cilimberg said that staff understood that it was stated back in the Economic Vitality Action Plan that there was a desire to create more industrial space and not have that space used for other types of uses such as office.

Mr. Dumler said that it specifically stated, “Continue pursuing strategies to stop the conversion of properties zoned light industrial to commercial, office and other uses that are not core industrial uses.”

Ms. Mallek said that they should probably finish the public hearing before any more Board discussion.

Mr. Morgan Butler with the Southern Environmental Law Center addressed the Board, thanking them for putting in such a long day. He also thanked staff for all the work they’ve put into the light industrial amendment, because the two goals they are trying to achieve are “inherently in conflict.” Mr. Butler explained the first goal – to conserve industrial zoning for true industrial uses, or preserving the integrity of industrial districts – arose years ago. He said that the concerns began years ago, stemming from smaller scale industrial users not being able to find an affordable place and a lawnmower repair shop came before the Board. Mr. Butler stated that they could not afford LI property because the price had been inflated by offices allowed there, and as a result of that there was pressure to look to the rural areas to create more industrial land, and pressure to expand uses under the rural zoning category. So it was as much a rural preservation issue as it was about protecting the ability of small-scale, true industrial users to locate on industrial land. He said that the second goal is to provide more flexibility in what they allow in industrial districts, and the list is now an exclusionary list rather than an inclusionary one, with greater flexibility to allow subordinate retail – jumping the cap from 15% up to 25%.

Mr. Butler said that the SELC has concerns about opening up these industrial districts to unrelated retail, and he believes this proposal goes too far because it allows for secondary retail to jump from 5% to 25% - and the definition of secondary retail is “not particularly tight.” He also recommended having it as a special use permit instead of a special exception, and added that he didn’t sense any clear resolution about the industrial office definition issue and the term “affiliated with.” Mr. Butler stated that it makes sense to allow industrial zoning that has proffers for office uses to be vested, and it should be included, but he thinks there should be clarification as to other manifestations “vested” could have. He also said that Mr. Wood expressed concern that by switching to an exclusionary list from an inclusionary list, because there may be things allowed in LI now that may not be appropriate – and he tends to agree that things like “tire recycling centers” may not be ideal. There may be some uses in there that we require be a special use permit in certain zoning categories.

Ms. Mallek noted that the tire recycling would only be permitted if it were in a large enclosed building, not mountains of tires lying around on the hillside.

Ms. McCulley said that the County has added brand new supplementary regulations such as “outdoor activity and outdoor storage associated with an industrial use,” to address the impacts of those uses.

Ms. Valerie Long addressed the Board, expressing support for the ordinance proposals and stating that she shares concerns about conversion and the potential impact on property owner’s values. She said that there seems to be consensus that the Board will at least grandfather in the land that has already been zoned, with proffers, and those landowners should get the benefit of the rights they agreed to in exchange for making those proffers. Ms. Long stated that the ordinance will be very helpful to the local economy, within the confines of the language in the Economic Vitality Action Plan which included the goal of limiting office uses in LI. She said that the amendments offer “flexibility and discretion” because you never know what users might come along, adding that the criteria under 26.3 is “pretty stringent” and she doesn’t want them to underestimate the significance of a potential employer having to come to the County and go through the special use permit process. Ms. Long said that it’s \$2,000, just for the application fee, and there must also be a concept plan – which requires hiring an engineer, architect, or surveyor at the least. She added that she’s never had a project get through on the first round, and she doesn’t want that to be discounted. Ms. Long stated that whether a property is “vested” or not is subject to the provisions of the Virginia code, which is quite lengthy – and it’s very subjective in the way it’s written. She said that she liked the increase in supporting commercial uses, as that provided more flexibility.

At this time, the Chair closed the public hearing.

Ms. Mallek asked if there was an appeal process for the vesting issue. Ms. McCulley responded that there was, and it is a decision made with the zoning administrator in consultation with the County Attorney’s office, and the appeal is to the Board of Zoning Appeals. She said that a few uses that have been mentioned as “by-right” in LI are actually not – such as a foundry, which is expressly prohibited, and tire recycling, which would require a special permit.

Mr. Snow suggested that the Board come back and finish this up at a later date.

Mr. Rooker agreed.

Mr. Boyd asked about New York Life, as he thought that was a target industry. Mr. Cilimberg responded that it’s not a target industry under the present list.

Ms. Mallek said that regardless, the County would work to ensure that they could find space here to locate.

Mr. Boyd said that he agrees with Mr. Snow that they should come back and revisit this for a decision.

Mr. Davis pointed out that if any of the changes make the zoning more intensive, then the Board may need to advertise an additional public hearing, so staff would need some direction as to what changes they are proposing to the ordinance.

Mr. Cilimberg said it would be helpful to have a basic set of things they wanted to have before them for their action, as that would inform whether they needed to re-advertise or just modify language – such as the grandfathering language, which is already written.

Mr. Boyd said that he does not think it’s a good idea to limit putting any kind of office space in LI, and he would like to see that put back in.

Mr. Snow agreed.

Mr. Thomas agreed.

Mr. Snow said that he felt that office space was a target industry.

Ms. Mallek pointed out that general office space would not.

Mr. Snow said something like an insurance company would be a target industry, and if there is a piece of land that fits that, through this action someone like Mr. Wood could no longer use his land for that type of business.

Mr. Rooker said that that’s fine if there is no concern with preserving light industrial property for light industrial uses, because that was one of the whole premises of starting the process.

Mr. Snow said that he cares about it, but does not want to take away someone’s rights if he has planned to use that property for that type of use.

Mr. Rooker said that you cannot discriminate between Mr. Wood and someone else who owns light industrial property.

Mr. Boyd said that he is not, but his concern is that the County would be shutting down a lot of opportunities if they do this – and his issue was not sacrificing LI to retail and residential. He stated that he would like to see office space put back in as a by-right ability of LI, because if not they're creating unintended consequences.

Mr. Rooker stated that if you allow general office throughout light industrial property, you eliminate one of the goals this amendment was seeking to achieve. He also asked if there is anything that prevents a bank from going into light industrial under the current zoning. Ms. McCulley said that it is not currently allowed in LI.

Mr. Rooker said that if all offices were allowed by-right in LI, a bank could locate with four floors – with offices upstairs and retail downstairs – and banks could take up the industrial property. Ms. McCulley said it would matter whether it was mostly a corporate office versus a retail banking function, then it might qualify as an office.

Mr. Boyd said that if they leave the office provision the way it is now currently, with all the other changes that would also solve the grandfathering problem. Mr. Davis responded that that would be a significant change, as the ordinance is built on the premise that there would be limits on offices, and it would require a bunch of changes to the ordinance.

Mr. Rooker said that it is kind of an all or nothing situation – you either allow all office uses, or do what has been done here and allow all different kinds of uses in LI, but not 100% office use. He said that BNB built their office on Pantops on highway commercial property, and if you allow light industrial to be used for those purposes, LI will quickly get gobbled up for those uses.

Mr. Boyd said the County has been telling people for years that if they want to build office buildings, they need to zone it LI instead of highway commercial for an office complex.

Mr. Rooker stated that people have not been told that.

Ms. McCulley said that if someone comes in and wants to do commercial office, staff would not steer them towards an LI designation unless the Comp Plan calls for an industrial service for that property.

Mr. Cilimberg said that as it was noted tonight, the question was for these uses what zoning would be needed, and to be consistent with the Comp Plan, it would need to be industrial zoning – which would allow for office uses – because the plan called for industry in that part of Piney Mountain. He added that it was Comp Plan-driven.

Ms. Mallek said it was that particular property.

Mr. Boyd said that he would like to see the ability to build office complexes in LI put back into the ordinance.

Ms. Mallek said she would support it as a special use permit.

Mr. Snow said he would like to leave it by-right.

Mr. Dumler said that he'd like it to be special use permit.

Mr. Thomas said that he'd like to remove the SP requirement.

Mr. Rooker said the whole thing was based on limitation, and if they don't do that he doesn't even know why they're bothering to do this. He said that the Board has expanded a lot of uses, but he does not know that any of that ultimately helps preserve light industrial, if that is a goal of this.

Ms. Mallek stated that this is a complete change in the philosophy of what has been done so far.

Mr. Davis said that existing LI allows general offices without restrictions, so adding that back in does not make this a more intensive ordinance and thus would not legally require another public hearing. He said that if the only change is to go back and make offices a by-right use, staff could do that and not have another public hearing.

Mr. Cilimberg said that the fallback would be the additional grandfathering provision, which would capture office uses vested with proffers.

Ms. Mallek commented that she thought the Board had already agreed to do that.

Mr. Davis said that Mr. Cilimberg was referring to the eight properties.

Mr. Cilimberg confirmed the 78 acres, eight properties.

Ms. Mallek said that those are the people who have made an effort to do it as oppose to the people who have dreamed about doing it and have not made an effort in the process to do something.

Mr. Snow said that if you have people who have brought electricity, water and sewer into their properties in order to develop their land, they should be allowed to use it as intended.

Ms. Mallek said that those would be vested.

Mr. Snow said that it would not necessarily be the case.

Mr. Foley said that since either of the offices would be less intensive, they could just delay the conversation.

Mr. Davis said that zoning staff would want to know whether the Board wants to move in that direction, because an alternative ordinance is not a simple drafting – as they have to go back through the entire ordinance, and make a bunch of revisions because the whole ordinance is based on limitations to office use. He said that to undo that would not be like a single line in the ordinance it would be multiple changes and will require a little bit of work to get that done.

Mr. Rooker responded that it did not appear there was a decision to do that.

Mr. Davis said that there may not be a decision to adopt an ordinance at all.

Mr. Rooker suggested that the Board come back and discuss it with a fresh eye.

Ms. Mallek said that staff asked questions about specific concerns, such as the limiting of property with proffers, and taking out the industrial office definition.

Board members said that they had agreed with that in general.

Mr. Cilimberg said that he could pass out the changes staff had put together that would actually take care of the 78 acres on the screen.

Mr. Davis clarified that if they wanted to grandfather those properties, there is language to cover that, but based on the motion to defer there is nothing expected of staff at this point.

Mr. Rooker said that he would not even bother to address Ms. Mallek's questions if this is coming back.

Agenda Item No. 12. To give notice of an intent to amend the Board's Rules of Procedure to provide time limit for the initial "Matters from the Public" and to add another opportunity for "Matters from the Public" at the end of the agenda. **Removed from agenda.**

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

Mr. Dumler then offered **motion** to authorize the County Attorney to settle the Bishop lawsuit. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Agenda Item No. 14. From the County Executive: Report on Matters Not Listed on the Agenda.

There were none.

Agenda Item No. 15. Adjourn to March 27, 2013, 6:00 p.m., Auditorium.

At 10:50 p.m., **motion** was offered by Mr. Dumler, **seconded** by Ms. Mallek to adjourn until March 27, 2013. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Chairman

Approved by Board
Date: 08/14/2013
Initials: EWJ