

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held at 6:00 p.m., on April 10, 2013, Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 6:04 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.

Mr. Foley commented that Agenda item 6c, and Consent Agenda item 8.4, were added to the final agenda.

The Board accepted the final agenda

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

There were none.

Agenda Item No. 6. Recognitions:

Item No. 6a. Proclamation recognizing the Monticello District Boy Scouts of America.

Ms. Mallek read the following proclamation recognizing the Monticello District Boy Scouts of America. Mr. Jim Lansing, President of the Stonewall Jackson Area Council; Jackie Newton, the Monticello District Chair; Nancy (mother) and Diego Guzman (son), Pack 10; and Patrick Corwin, Eagle Scout Troop 114 were present to receive the commendation:

Monticello District Boy Scouts of America

WHEREAS, Boy Scouts of America was established February 8, 1910 and has, for over 103 years, created a strong foundation of leadership, service and community for millions of American youth; and

WHEREAS, the program of the Boy Scouts of America builds character, trains in responsibility, participates in citizenship, and develops personal fitness; and

WHEREAS, every rank advancement or badge achievement recognizes new challenges, new adventures, and new friends for scouts and all those, including friends and family, who accompany the scouts along the path; and

WHEREAS, the Monticello District, Stonewall Jackson Area Council, Boy Scouts of America has, for over Seventy-Five years, provided valuable service and leadership training to scouts in Charlottesville/Albemarle and five neighboring counties; and

WHEREAS, scouts of the Monticello District continue to demonstrate citizenship by providing over 11,000 hours of community service annually in all fields, including business, education and government using the confidence gained through scouting values to make ethical choices and realize full potential as citizens; and

WHEREAS, sixty-six local young men earned the rank of Eagle Scout in 2012, the most in a single year in the Monticello District Boy Scouts of America; and

WHEREAS, the Monticello District will continue to share lifetime values and lifetime memories as it celebrates its legacy and reaffirms the commitment to inspire and prepare future generation;

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle County Board of Supervisors hereby recognizes, commends and congratulates the Monticello District Boy Scouts of America in accomplishing such high standards as an organization.

Mr. Lansing thanked the Board for the recognition and support.

Item No. 6b. Proclamation recognizing May 2013 as Fair Housing Month.

Ms. Mallek read and presented the following proclamation to Ms. Karen Reifenberger, Deputy Director of Piedmont Housing Alliance:

FAIR HOUSING MONTH

WHEREAS, *April 2013 is Fair Housing Month, and marks the forty-fifth anniversary of the passage of the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988); and*

WHEREAS, *the Fair Housing Act provides that no person shall be subjected to discrimination because of race, color, national origin, religion, sex, disability, or familial status in the rental, sale, financing or advertising of housing (and the Virginia Fair Housing Law also prohibits housing discrimination based on elderliness); and*

WHEREAS, *the Fair Housing Act supports equal housing opportunity throughout the United States; and*

WHEREAS, *fair housing creates healthy communities, and housing discrimination harms us all; and*

WHEREAS, *Albemarle County supports equal housing opportunity and seeks to affirmatively further fair housing not only during Fair Housing Month in April, but throughout the year*

NOW, THEREFORE, BE IT RESOLVED,

that in the pursuit of the shared goal and responsibility of providing equal housing opportunities for all men and women, the Board of County Supervisors of Albemarle County, Virginia, does hereby join in the national celebration by proclaiming

**APRIL, 2013 as
FAIR HOUSING MONTH**

and encourages all agencies, institutions and individuals, public and private, in Albemarle County to abide by the letter and the spirit of the Fair Housing law.

Ms. Reifenberger thanked the Board for the recognition. She announced that the 2013 Fair Housing Forum will be held on April 23, 2013, from 10:00 a.m. until 12:00 noon. This year the focus is on whether there is a fair housing gap in the Charlottesville area. It will be a panel presentation and interactive discussion designed to identify the fair housing gaps and work together towards solutions. HUD's Director of the Office of Fair Housing and Equal Opportunity; Sylvia Berry, will be present to discuss HUD's role in enforcing fair housing, and the role of local jurisdictions in affirmatively furthering fair housing. A representative from the Thomas Jefferson Planning District Commission will also be present to talk about its fair housing equity assessment. The Piedmont Housing Alliance will be talking about a recent housing compliance testing report that identified some different treatments based on race, family status, and disability. She encouraged local government officials, planning staff, housing and economic development staffs, and individuals in the housing industry to join them on April 23rd. They also have another forum scheduled on April 24th that focuses on fair and accessible housing for people with disabilities which is in partnership with the Independence Resource Center, from 1:00 p.m. until 3:00 p.m. 24.

Ms. Reifenberger added that the Piedmont Housing Alliance Fair Housing Program works year round with individuals to educate them about their rights and responsibilities under the fair housing laws. If someone has a question or a concern about fair housing or housing discrimination, they should contact PHA.

Item No. 6c. Certificate Recognizing First Tech Challenge (FTC) Robotics Team #5903 – Defying Gravity.

Ms. Mallek read and presented the following recognition to the FTC Robotics Team #5903:

On behalf of the Board of Supervisors of Albemarle County, we recognize and congratulate

FTC Robotics Team #5903 - Defying Gravity

**Henley Middle School – Heidi Han (7th grader)
Albemarle High School - Luc Bailey, Eli Bosley, Alex Bowen and
Wade Foster (10th graders);
Eric Hahn, Meghana Illendula and Thomas Teisberg (12th graders)
St. Anne's Belfield School - Rachael Bosely (12th grader)
Coaches – Trish Kenney and Stephen Bosley**

*for winning the First Tech Challenge Virginia Championship and being one of two teams from Virginia invited to the First World Championship in St. Louis, Missouri, April 24-28, 2013.
FIRST (For the Inspiration and Recognition of Science and Technology) was founded in 1989 to inspire young people's interest and participation in the fast-growing fields of science and technology.*

FIRST combines the rigors of science with the excitement of competition to create an extraordinary learning experience, where students of all ages learn to design, build and program a robot to perform a different challenge every year. Teamwork is essential to its success.

This team of young students has demonstrated innovative programming and creative thinking for use in future endeavors in the STEM fields and future careers in engineering and computer science.

We offer our sincere congratulations and commend "Defying Gravity" in setting such a high standard of excellence both individually and as part of a team.

Board members congratulated the team and wished them well in the next trip.

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

Dr. Bill Tunner, a resident of Esmont, said that he wanted to address the issue of a covered firing range and the other phases of a first responder training at the toxic Keene Landfill. He said that if you disturb the "sleeping giant" of a toxic landfill, which is likely leaking toxic compounds, carcinogens, and heavy metal toxins into the groundwater surrounding it, seepage of poisonous materials from the unlined landfill will accelerate and cause an expensive Superfund cleanup. Dr. Tunner said that in the past, the County sunk wells into the landfill and was able to pump out material and get rid of some of the toxins. All but one of the monitoring wells has been removed. He added that he would like to see the documentation on the wells, and offered to help find toxicology consultants if the County is so inclined.

Ms. Nancy Carpenter addressed the Board, stating that housing is a stabilizer. Last summer the County took on the moral obligation to house "the Albemarle nine," as well as the legal obligation to fund the housing vouchers because the County did not have a housing plan in place that met the various HUD requirements. She said that the obligation did not end with those nine, and through attrition there are now two open units at The Crossings, which she had hoped would be the stabilizing force for two more homeless persons from the County. She said that she shocked and hurt to learn a few weeks prior that the Board is not going to honor a legal and moral obligation for continued funding of the vouchers.

Ms. Carpenter stated that the County Executive reported on the vouchers at their April 3 meeting, as well as indicating that a letter would be sent to HUD along with a copy to Rep. Hurt. She also suggested involving Senator Mark Warner and Senator Tim Kaine, as they have influence in D.C. The situation again is derailing the mission of The Crossings that the Board accepted several years ago. Their moral obligation is to help our fellow human beings and she asked that the Board make the decision to resume the funding.

Ms. Paula Beazley, a resident of Esmont, said she was present to speak as an individual and on behalf of Save Rural Albemarle, which now has over 2,000 members. Ms. Beazley said that she is before the Board to continue registering their objection to any type of police training facility at the Keene site, as there are issues related to the environmental impact and the site's geography and topography. She stated that they are also concerned about the cost of the facility, as the numbers are significantly more than have been estimated. With respect to the Scottsville site, Ms. Beazley noted that there is a Phase I and II environmental study that was done by the previous owner and the Board should have that information available to them as well as the cost of developing that building.

Dr. Charles Battig, a County resident, said that the budget process seems puzzling to him and perhaps it is puzzling to some Board members as well, based on recent radio interviews. Dr. Battig said that in looking at the \$312 million budget, he suggested taking out one-half percent overall – which would total about \$1.6 million, and could be used to fund some educational needs. The one-half percent reduction would basically result in \$1 less in budget line items, and would not cause a department to fail. He added that the Thomas Jefferson Health Department requested \$561,771, and asked where the \$1 comes from. He asked where these numbers come from across-the-board, and who generates them. He said that he does not know how these numbers were justified and doubts that all the Board members are looking closely at them. He added that Board members could correct him, if he is wrong.

Mr. Rooker responded that he will correct him because he is wrong. He said that the people on the Board read the budget in detail and go through every department.

Dr. Battig asked if the Virginia Organizing was known to all of them. Mr. Rooker responded that it was known to him.

Ms. Betty Sevachko, a 28-year resident of the County, said that she has been a faithful taxpayer all of her adult working life. She asked the Board to ensure that the core responsibilities of the County are met and that funds are spent properly, fiscally and responsibly. She said that she does not understand how Virginia Organizing would be a responsible use of taxpayers' money, especially when the Board cut the School's budget. She asked the Board to say no to their request. She said that she does not believe this is a good use of County taxpayer funds.

Ms. Carole Thorpe, speaking on behalf of the Jefferson Area Tea Party and its newly re-elected Chair, thanked the Board for honoring the Boy Scouts of America. She said that the ABRT recommended funding in the County budget of the Virginia Organizing initiative for \$4000. At a time when the County is stretched to the limit to fulfill its core obligations such as funding the schools, providing an adequate size police force and keeping up with infrastructure, this seems to be an odd request. Taxpayer dollars should not go to funding political organizations – that includes the Jefferson Area Tea Party. Ms. Thorpe said that Virginia Organizing's 2011 IRS Form 990 lists total assets of nearly \$3 million and paid two key employee salaries in excess of \$153,000 each, with savings and cash investments of nearly \$2.3 million. She reiterated that political organizations should not be funded by taxpayer dollars, as that is up to individual citizens. This is a totally inappropriate request and a more inappropriate allocation, and she asked that it be removed from the County budget.

Mr. Chuck Boldt said he was present to make the Board aware of how the stream buffer section of the Water Quality Ordinance is being administered on their behalf by Community Development. Mr. Boldt said that what is being done may not be having the consequences the Board intended and may be placing an unnecessary burden on the County and the landowners to comply with the regulations. He stated that the Water Quality Ordinance outlines stream restoration options, but as administered by Community Development it is the last option considered – not the first – and it is aggressively discouraged. Mr. Boldt added that practically speaking, it is not looked at all. He asked why someone would look at it if they are told it is not an option to consider. He suggested that this approach is wrong and that stormwater management efforts in the County and Chesapeake Bay have been hindered as a result and that cost effective opportunities to improve streams have been lost forever during the time this policy has been in effect. He encouraged the Board to take steps to change this.

Mr. Boldt explained that the current policy draws a 100-foot buffer on each side of a stream, defined as flowing waters, and designates it as a “no disturbance area.” He said that no evaluation is made of stream function, no options are evaluated – “just draw the hundred-foot line and stay out” is the message a landowner receives from County staff. A potential development makes choices based on the unavailability of that land, and what results may not be the best development possible, but one that conforms to this arbitrary rule. Mr. Boldt stated that innovation and stewardship are professed core values of the County, but they do not seem to apply in this situation.

He asked the Board to revisit the issue and get stream restoration the standing it deserves as an allowed and appropriate tool that can be used. It should be promoted, rather than not even considered, as is the current situation. The citizens and streams of Albemarle County deserve better.

Mr. Randolph Byrd said that one of the things he tried to get across in his previous presentations was to try to get Board members to “negotiate for Mr. Dumler's removal” and replace him. Mr. Byrd said that Mr. Dumler is a good legal person and stands behind the notion that he is going to remain in office on the basis of upholding the legal right of the voters who put him into office. He stated that *Scottsville v. Dumler* now allows them the opportunity for Mr. Dumler to negotiate with the judge so he can make his resignation occur on the very day that a special election could also happen. Mr. Byrd said that he would like to encourage Mr. Dumler to run for reelection under that special election, as he seems to think that he has the support of his constituents in Scottsville. Mr. Byrd said that he thinks Mr. Dumler's arrest and conviction has changed everything in terms of how much they actually support him and how much they actually want him in office now. He added that Mr. Dumler will be in jail for 10 days straight, and that seems much more like punishment than just serving weekends.

Mr. Mike Basile said that it is a problem in having a sexual batterer on Board. Mr. Basile said that the problem with having this type of immorality on the Board is “you are untrustworthy as a Board,” especially when it comes to money or children. In regards to Virginia Organizing, they are a very political organization and to say otherwise is to enable bad behaviors, progressive behaviors, anti-American, and anti-capitalist. Mr. Basile said that the Board needs to do a better job of protecting taxpayer monies. Mr. Basile requested that the Board not fund Virginia Organizing.

Mr. Steve Peters addressed the Board, stating that for all the advertising done in this county to tell people it's a beautiful place to live, they have Mr. Dumler's mugshot. Mr. Peters asked if there is anyone present who will stand up to show they are happy with Mr. Dumler's behavior, wants their children to emulate him, or want Mr. Dumler to represent them; the response is still zero.

He said that the proposed Comprehensive Plan and all its changes are in essence a written contract between the citizens of Albemarle County and the government. No one in their right mind would ever sign, accept or discuss modifications of any contract without full disclosure on every proposed change. It would be malpractice for any attorney to allow his client to sign such documents. He asked the Board to not proceed without full disclosure of every change. If the staff does not want to provide it, it is either too complicated and should not be there or they do not want the citizens to know what it is. Mr. Peters said that if Planning cannot take the time to list it all out, it should not be in the plan.

Mr. Peters said that Virginia Organizing does not behave like a nonprofit organization. He stated that if the County is going to allow funding for such a left-leaning group that constantly goes after conservatives, gives town halls to Tom Periello, and sends out accolades to liberals that pass Obamacare, in spite of the majority of Virginians that did not want it, then this Board is funding his enemy.

Mr. Peters added that if the Board is going to allow that, the Jefferson Area Tea Party and many others will be coming before the Board to ask for money too.

Mr. Brian Washington said that his wife works for County schools and he is here to support them. Mr. Washington said that it is his understanding there is a \$500,000 budget shortfall and a good way to bridge this gap is to allow businesses to erect banners for \$50 a week, and taxes would not have to be raised. There are already provisions in the County Code that would allow banners.

Agenda Item No. 8. Consent Agenda. **Motion** was offered by Mr. Rooker, **seconded** by Ms. Mallek to approve the consent agenda. Roll was called and the motion carried by the following recorded vote:

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

Item No. 8.1. Approval of Minutes: December 5, 2012.

Ms. Mallek had read her portion of the minutes of December 5, 2012, and found them to be in order.

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

Item No. 8.2. FY 2013 Budget Amendment and Appropriation.

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

The total increase to the FY 13 budget due to the appropriations itemized below is \$73,000.00. A budget amendment public hearing is not required because the amount of the cumulative appropriations does not exceed one percent of the currently adopted budget.

This request involves the approval of one (1) FY 2013 appropriation as follows:

- One (1) appropriation (#2013085) to appropriate \$73,000.00 for Emergency Communication Center projects.

Staff recommends approval of appropriations #2013085.

Appropriation #2013085		\$73,000.00
Source:	ECC Fund Balance	\$ 73,000.00

The Emergency Communications Center (ECC) requests that the County, acting as fiscal agent for the ECC, appropriate funding from the ECC's fund balance for the following requests, which have been approved by the ECC Management Board:

- Requests \$30,500.00 to fund the impact of related benefit costs for the state mandated change requiring employees to pay a 5% contribution to VRS and for local governments to provide current employees with a salary increase to offset the cost of current employees' VRS contribution.
- Requests \$20,000.00 for HVAC equipment replacement. Over the previous three years the ECC has replaced one of its aging HVAC units, this will be the equipment replacement for the fourth unit, which is 13 years old. Because air conditioning (AC) units at the ECC run constantly year round to maintain a specific temperature for equipment, its actual usage is 3 times a normal AC unit. The City of Charlottesville's maintenance division has worked with the ECC to develop a usage replacement plan for this equipment.
- Requests \$20,000.00 for bi-directional amplifier (BDA) equipment replacement. The ECC is responsible for 26 BDA units that are within government buildings throughout the City, County and University. These units provide in-building radio coverage for the public safety providers when they are within these buildings. This funding will replace 8 units found to be not working properly and beyond repair during an annual inspection.

- Requests \$2,500.00 for the purchase of additional batteries for the 800 MHz regional radio cache which is maintained by the ECC. This is for replacement batteries for the 80 handheld units.

By the above-recorded vote, the Board approved appropriation #2013085.

COUNTY OF ALBEMARLE			
APPROPRIATION SUMMARY			
APP#	ACCOUNT	AMOUNT	DESCRIPTION
2013085	3-4100-51000-351000-510100-9999	73,000.00	APPROPRIATION-FUND BAL
2013085	4-4100-31040-435600-221000-1003	30,500.00	VIRGINIA RETIREMENT SYS.
2013085	4-4100-31041-435600-800700-1003	22,500.00	ADP EQUIPMENT
2013085	4-4100-31041-435600-331800-1003	20,000.00	R&M BUILDINGS
TOTAL		146,000.00	

Item No. 8.3. Authorize the County Executive to Execute Site Development Easements across Public Property Involving Improvement of Property Owned by the County.

(Discussion: Mr. Boyd asked if action on this item is intended to give the County Executive authority to sign leases and easements on behalf of the County, and if approval of this would mean that matters like Items 9 and 10 would no longer need to be brought to the Board. Mr. Davis responded that that would not actually be the case. The Code requires that whenever the County grants an easement a public hearing must be held before the Board can grant it. The exception to that is if the easement is across County property to serve County development. In the past, he said, those easements were brought before the Board because the County Executive did not have the authority to execute them. This resolution would apply to the subset that does not require public hearings.

Mr. Boyd said one of the agenda items involves the Fontana neighborhood, and he asked what process the County undertakes to notify the residents of the subdivision. Mr. Davis stated that the easements are advertised and a notice is provided in the paper of the easement itself, but as far as notifying people of when the work happens, there is no process for that. He said that typically these things do not come before the Board because if the street is in the State system it would be handled by VDOT by a permit, and no easement would be required. Mr. Davis said that in the case of the Fontana item, the road is still owned by the County and not in the State system so an easement is necessary prior to the State taking it over and having the permit process available.

Mr. Boyd commented that the ACSA has met with his neighborhood several time to explain a project they are going to do. Since Fontana has a very active homeowner's association it would be good if they were involved in a similar fashion. He added that it is much smoother when that is done.

Ms. Mallek asked if the hundreds of miles of utility and fiber work done by Comcast and others is all within the VDOT right of way. Mr. Davis responded that it would all be done within easements. Sometimes Comcast has shared easements with other utilities like electric companies. None of this work would be done outside of an easement or a VDOT-approved pathway.

Mr. Rooker said that this is the granting of an easement, not the beginning of actual work, and you could always contact the company and ask them to notify homeowners – but that would be a private contact and in most cases people are not bothered by utility work. He added that he does not know if the County would know when they are doing work all the time, because they have a right to do it anytime.

Mr. Boyd used as an example work that is ongoing on Proffit Road. Nobody seems to know who is doing the work or what they are doing. They seem to be just digging trenches and pushing cables through. There were some cases where the workers went on people's properties because they went up to their doors, and the people were not real happy about it. He asked if it would be possible to require these companies to notify the persons whose yard they would be going through the front of.

Mr. Rooker commented that the County does not have the right to demand that the company send a letter because they are a private company and have a private easement. The County could send letters to the companies that regularly hold easements – such as cable and telephone companies – and ask them to notify adjoining landowners when they are beginning work.

Mr. Boyd said that in the cases where the County has to approve easements for it, then they could put a notification requirement. Mr. Rooker asked if he was talking about the homeowner's association. Mr. Boyd responded "yes", at the least.

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

**RESOLUTION TO AUTHORIZE THE COUNTY EXECUTIVE
 TO EXECUTE SITE DEVELOPMENT EASEMENTS ACROSS PUBLIC PROPERTY
 INVOLVING IMPROVEMENT OF PROPERTY OWNED BY THE COUNTY**

WHEREAS, the County of Albemarle grants site development easements across public property, including, but not limited to, easements for ingress, egress, utilities, cable, telecommunications, storm water

management, and other similar conveyances, that are consistent with the County's capital improvement program, involving improvement of property owned by the County; and

WHEREAS, the deeds of easement for such conveyances set forth the rights and responsibilities of the grantee(s) and the rights and remedies of the County; and

WHEREAS, a public hearing is not required for the conveyance of site development easements across public property, including, but not limited to, easements for ingress, egress, utilities, cable, telecommunications, storm water management, and other similar conveyances, that are consistent with the local capital improvement program, involving improvement of property owned by the locality pursuant to Virginia Code § 15.2-1800(B); and

WHEREAS, a number of site development easements for such conveyances are presented to the Board for approval; and

WHEREAS, the efficiency of government would be improved by delegating the authority to the County Executive to execute such site development easements on behalf of the County.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors authorizes the County Executive to execute site development easements across public property, including, but not limited to, easements for ingress, egress, utilities, cable, telecommunications, storm water management, and other similar conveyances, that are consistent with the County's capital improvement program, involving improvement of property owned by the County, that do not require a public hearing on behalf of the County provided that such deeds of easement are approved as to form and content by the County Attorney.

Item No. 8.4. Reappointments to Rivanna Solid Waste Authority and Rivanna Water and Sewer Authority.

By the above-recorded vote, the Board reappointed Mr. Tom Foley and Mr. Mark Graham to the Rivanna Solid Waste Authority, with said terms to expire April 2015; and reappointed Mr. Tom Foley and Mr. Gary O'Connell to the Rivanna water and Sewer Authority, with said terms to expire April 2015.

Agenda Item No. 9. To consider granting easements to Central Telephone Company of Virginia, d/b/a CenturyLink, across property owned by the County located on Boulders Road (Parcel 03200-00-00-005C3). The easements are necessary for the installation and maintenance of underground cables across Boulders Road. *(Advertised in the Daily Progress on April 1, 2013.)*

Mr. Jack Kelsey, Transportation Engineer, Office of Facilities Development, summarized the following executive summary which was forwarded to Board members:

Central Telephone Company of Virginia, doing business as CenturyLink, has requested that the County grant 10-foot wide easements within Boulders Road, a public right-of-way owned by the County (TMP 003200-00-00-005C3), in the locations shown on the attached plat (Attachment A). The proposed deed of easement (Attachment B) would allow CenturyLink to install and maintain underground cables and related facilities or structures within the easement area to serve NGIC and would also grant CenturyLink the right of ingress and egress to the easement area. Boulders Road is currently not in the secondary system of state highways.

Virginia Code § 15.2-1800 requires that the Board hold a public hearing prior to conveyance of any interest in County-owned real property. Staff prepared the proposed deed of easement. CenturyLink has submitted a plat depicting the exact location and dimensions of the easements.

The proposed deed is based on the deed form used for easements within County-owned rights-of-way that are not in the secondary system of state highways, and it includes provisions that will assure that granting the easements will not prevent Boulders Road from being accepted into the state-maintained secondary system.

There is no budget impact.

Mr. Kelsey said that staff recommends that, after holding the public hearing, the Board adopt the attached resolution (Attachment C) to approve the proposed easements and to authorize the County Executive to sign the deed of easement on behalf of the County after the deed has been approved in substance and form by the County Attorney.

Mr. Rooker asked what was keeping this road from being taken into the State system. Mr. Kelsey responded that NGIC is the only facility on that road. He said that he is not sure if it has met service requirements for being taken into the system.

Mr. Boyd said that he heard with some other cases that VDOT has a requirement for a certain number of houses/places to be on a street before they will take it in. Ms. Mallek responded that there must be three houses at a minimum.

Mr. Rooker said that it seems that a road with thousands of employees using it would qualify, but it is not a big deal to him as the developer continues to pay the maintenance expense.

Mr. Davis stated that staff's preference is to get the road in the State system as well. He added that he believes that it is the service requirement that is affecting the road being taken into the system. Sometimes VDOT does make exceptions under special circumstances, and this may indeed be one.

At this time, the Chair opened the public hearing.

Since no one came forward to speak, the Chair closed the public hearing and placed the matter before the Board.

Motion was then offered by Mr. Boyd to adopt the following resolution to approve the proposed easements and to authorize the County Executive to sign the deed of easement on behalf of the County after the deed has been approved in substance and form by the County Attorney. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

**RESOLUTION APPROVING DEED OF EASEMENT BETWEEN
THE COUNTY OF ALBEMARLE AND THE CENTRAL TELEPHONE COMPANY OF VIRGINIA
(d/b/a CenturyLink)**

WHEREAS, the County of Albemarle owns the public right-of-way located on Boulders Road (Parcel 03200-00-00-005C3); and

WHEREAS, easements are necessary for the Central Telephone Company of Virginia to extend telecommunications service to the National Ground Intelligence Center.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves granting easements to the Central Telephone Company of Virginia, and authorizes the County Executive to sign, in a form approved by the County Attorney, a Deed of Easement with the Central Telephone Company of Virginia for easements within Parcel 03200-00-00-005C3.

This document was prepared by:
Albemarle County Attorney
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902

Tax Map and Parcel Number 03200-00-00-005C3 (Boulders Road right-of-way)

This deed is exempt from taxation under Virginia Code § 58.1-811(C)(4).

DEED OF EASEMENT

THIS DEED OF EASEMENT, is made and entered into on this _____ day of _____, 2013, by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, Grantor, hereinafter referred to as the "County," and **CENTRAL TELEPHONE COMPANY OF VIRGINIA**, doing business as **CENTURYLINK**, whose address is 100 Century Link Drive, Monroe, Louisiana, 71203, Grantee, hereinafter referred to as "CenturyLink."

WITNESSETH:

That for and in consideration of the sum of One Dollar (\$1.00), cash in hand paid, receipt of which is hereby acknowledged, the County does hereby GRANT and CONVEY with SPECIAL WARRANTY to CenturyLink, subject to the terms and conditions set forth herein, permanent easements and rights-of-way (hereinafter, the "Easements") to install, construct, operate, maintain, expand, replace and remove underground cables and related facilities or structures as are reasonably necessary for CenturyLink to exercise the rights granted to it herein, upon, over, through, under and along the real property of the County known as Boulders Road and identified in the tax records of the County as Tax Map and Parcel Number 03200-00-00-005C3, in Albemarle County, Virginia, and more particularly described as follows:

Permanent easements in the public right-of-way known as Boulders Road in Albemarle County, Virginia, as shown on the plat of Kerry L. Skinner, dated March 25, 2013 (the "Plat") entitled "Plat Showing Fiber Optic Utility Easements on the Property of County of Albemarle, Virginia" showing two C/L 5' fiber optic utility easements; the said roadway shown as Boulders Road is on a plat of record in the Albemarle County Circuit Court Clerk's Office in Deed Book 1590, page 359.

Reference is made to the Plat, a copy of which is attached hereto to be recorded herewith, for the exact location and dimensions of the permanent easements hereby granted and the property over which the Easements cross.

These Easements shall be subject to the following:

1. Location of Improvements. CenturyLink may install, construct, operate, maintain, expand, replace and remove underground cables and related facilities or structures (hereinafter, the "Improvements") only within the Easements. The Improvements shall be underground.

2. Right to Enter; Ingress and Egress. CenturyLink shall have the right to enter upon the Easements for the purposes of installing, constructing, operating, maintaining, expanding, replacing and removing the Improvements within the Easements. CenturyLink shall have the right of ingress and egress thereto as reasonably necessary to install, construct, operate, maintain, expand, replace and remove the Improvements.

3. Excavation and Restoration. Whenever it is necessary to excavate earth within the Easements, CenturyLink shall backfill the excavation in a timely, proper and workmanlike manner so as to restore the surface conditions to the same condition as they were prior to excavation, including restoration of all paved surfaces that were damaged or disturbed as part of the excavation.

4. Vegetation and Obstructions. CenturyLink may cut any trees, brush and shrubbery, remove obstructions, and take other similar action reasonably necessary to provide for safe installation, construction, operation, maintenance, expansion, replacement and removal of the Improvements. CenturyLink shall not be responsible to the County or its successors and assigns, to replace or reimburse the cost of replacing or repairing any County-owned trees, brush, shrubbery or obstructions that are removed or otherwise damaged if such vegetation or obstructions prevent CenturyLink from installing, constructing, operating, maintaining, expanding, replacing or removing the Improvements.

5. Ownership of Improvements. The Improvements shall be the property of CenturyLink.

6. Obligations of CenturyLink if and when Boulders Road is Proposed for Acceptance or is Accepted into the State-Maintained System. If and when the segment of Boulders Road in which the Easements lie is proposed for acceptance or is accepted into the state-maintained or other publicly-maintained system of highways, CenturyLink shall comply with the following:

a. Permits. CenturyLink shall obtain all permits required by the Virginia Department of Transportation (hereinafter, "VDOT") or such other public entity that becomes responsible for the maintenance of Boulders Road (hereinafter, "such other public entity") to authorize the Improvements to exist or remain within the Boulders Road right-of-way (hereinafter, the "Permits") and shall comply with all applicable requirements of VDOT or such other public entity.

b. Acts Required of CenturyLink to Assure Acceptance of Boulders Road into the State-Maintained System. Until CenturyLink quitclaims its interest in the Easements to VDOT, such other public entity, or the County as required in conjunction with the acceptance of Boulders Road into the state-maintained or other publicly-maintained system, CenturyLink, at its sole expense, shall, promptly alter, change, adjust, relocate or remove the Improvements from the Boulders Road right-of-way if VDOT or such other public entity determines that such alteration, change, adjustment, relocation or removal is required in order for VDOT or such other public entity to accept Boulders Road into the secondary system. Neither VDOT, such other public entity, nor the County shall be responsible or liable to CenturyLink or its successors or assigns for any costs associated with such alteration, change, adjustment, relocation or removal of the then-existing Improvements. In addition, neither VDOT, such other public entity, nor the County shall be obligated to compensate or reimburse CenturyLink or its successors or assigns for any increased or decreased cost or value associated with either the Improvements or Boulders Road resulting from such alteration, change, adjustment, relocation or removal.

c. Continuing Obligations of CenturyLink to the County. After VDOT or such other public entity has issued the required Permits, CenturyLink shall be subject to the following conditions, notwithstanding any quitclaim of its interests to VDOT or such other public entity, and these conditions shall be continuing obligations of CenturyLink:

1. CenturyLink, to the extent authorized by law, shall at all times indemnify and save harmless the County, its employees, agents, officers, assigns, and successors in interest from any claim whatsoever arising from CenturyLink's exercise of rights or privileges stated herein.

2. In the event that the County or such other public entity becomes responsible for the maintenance of Boulders Road and the County or such other public entity requires, for its purposes, that CenturyLink alter, change, adjust, or relocate the Improvements, across or under Boulders Road, the cost to alter, change, adjust, or relocate the Improvements shall be the sole responsibility of CenturyLink. Neither the County nor such other public entity shall be responsible or liable to CenturyLink or its successors or assigns for any costs associated with altering, changing, adjusting or relocating the then-existing Improvements as may be required herein. In addition, neither the County nor such other public entity shall be obligated to compensate or reimburse CenturyLink or its successors or assigns for any increased or decreased cost or value associated with either the Improvements resulting from such alteration, change, adjustment or relocation. The requirements of this paragraph 6(c)(2) shall not apply if VDOT, such other public entity, or the County is either required by law to pay for such costs or is authorized and elects to pay for such costs.

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

By its acceptance and recordation of this Deed of Easement, CenturyLink acknowledges that it, its successors and assigns, shall be bound by the terms herein.

WITNESS the following signatures.

GRANTOR:

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Thomas C. Foley, County Executive

GRANTEE:

CENTRAL TELEPHONE COMPANY OF VIRGINIA, doing business as CENTURYLINK

By: _____
Name: _____
Title: _____

Agenda Item No. 10. To consider granting an easement to the City of Charlottesville, Virginia within a public road owned by the County known as Fontana Drive, (adjacent to Parcel ID 078E0-00-00-000A0). This easement is necessary for the installation and maintenance of a gas line. (*Advertised in the Daily Progress on April 1, 2013.*)

Mr. Jack Kelsey summarized the following executive summary which was forwarded to Board members:

The City of Charlottesville has requested that the County grant a 15-foot wide easement within Fontana Drive, a public right-of-way owned by the County (adjacent to Parcel 078E0-00-00-000A0), in the location shown on the attached plat (Attachment A). The proposed deed of Easement (Attachment B) would allow the City of Charlottesville to install a natural gas line to serve the Fontana subdivision. The easement is located within the County-owned right-of-way. Fontana Drive is not currently in the secondary system of state highways.

Virginia Code § 15.2-1800 requires that the Board hold a public hearing prior to conveyance of any interest in County-owned real property. Staff has reviewed the proposed deed of easement, prepared by the City Attorney. The City of Charlottesville has submitted a plat depicting the exact location and dimensions of the easement.

The proposed deed is based on the deed form used for easements within County-owned rights-of-way that are not in the secondary system of state highways, and it includes provisions that will assure that the grant of the easement will not prevent Fontana Drive from being accepted into the state maintained secondary system.

There is no budget impact.

Mr. Kelsey said staff recommends that, after holding the public hearing, the Board adopt the attached resolution (Attachment C) to approve the proposed easement and to authorize the County Executive to sign the deed of easement on behalf of the County after the deed has been approved in substance and form by the County Attorney.

Ms. Mallek asked if the major criteria from VDOT are that there not be gas and utility lines under the asphalt, and that it needs to be in the right-of-way to the side. Mr. Kelsey responded that that's VDOT strong preference, and VDOT discourages utilities from being installed underneath its asphalt – as is the case with this roadway. However, he said, VDOT has informed him that the gas line was already installed, prior to the base asphalt being put in about three years ago.

Ms. Mallek said that this brings up the continual issue of asking for forgiveness rather than permission and following the procedures. When there are no consequences for that behavior it happens over and over again.

Mr. Boyd asked what area the line will serve, specifically. Mr. Kelsey responded that it extends from the Fontana/Verona intersection up the hill to Highland Ridge.

Mr. Davis added that it is beyond where people will be impacted.

Mr. Boyd agreed, stating that perhaps Mr. Nichols house will be the only one affected.

Mr. Rooker commented that this is another case where the road has not been taken in the State system for a long time. He said that he has at least one situation in his district where this went on for many years – then the developer went away, the road was continuously deteriorating and the State would not take it into the State system. In addition the posted bond posted was not able to cover all the work that needed to be done. He added that the County needs to keep an eye on these things.

Mr. Boyd said that this case is a new road, the section of Fontana that is beyond Verona which is an entirely new subdivision. Mr. Kelsey responded that that was correct. Mr. Boyd added that the other roads in Fontana have been taken into the State system, and it is just this one section that is currently not included.

At this time, the Chair opened the public hearing.

Since no one came forward to speak, the Chair closed the public hearing and placed the matter before the Board.

Motion was then offered by Mr. Boyd to adopt the following resolution to approve the proposed easement and to authorize the County Executive to sign the Deed of Easement on behalf of the County after the deed has been approved in substance and form by the County Attorney. Mr. Snow **seconded** the motion.

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

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

NAYS: None.

**RESOLUTION APPROVING DEED OF EASEMENT BETWEEN
THE COUNTY OF ALBEMARLE AND THE CITY OF CHARLOTTESVILLE**

WHEREAS, the County of Albemarle owns the public right-of-way located on Fontana Drive (adjacent to Parcel 078E0-00-00-000A0); and

WHEREAS, an easement is necessary for the City of Charlottesville to extend natural gas service to the Fontana subdivision.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves the granting of an easement to the City of Charlottesville, and authorizes the County Executive to sign, in a form approved by the County Attorney, a Deed of Easement with the City of Charlottesville for an easement within Parcel 78E0-00-00-000A0 in order to provide natural gas service.

This document was prepared by:
Albemarle County Attorney
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902

Tax Map 78A (Fontana Drive right-of-way)

This deed is exempt from taxation under *Virginia Code* §§ 58.1-811(A)(3) and 58.1-811(C)(4).

DEED OF EASEMENT

THIS DEED OF EASEMENT, is made and entered into on this _____ day of _____, 20____, by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, Grantor, hereinafter referred to as the "County," and the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia, Grantee, whose address is Post Office Box 911, Charlottesville, Virginia, 22902, hereinafter referred to as the "City".

WITNESSETH:

That for and in consideration of the sum of One Dollar (\$1.00), cash in hand paid, receipt of which is hereby acknowledged, the County does hereby GRANT and CONVEY with SPECIAL WARRANTY to the City, subject to the terms and conditions set forth herein, a permanent easement and right-of-way (hereinafter, the "Easement") to construct, install, maintain, repair, replace and extend certain natural gas line improvements over, under, and across the real property of the County known as Fontana Drive in Albemarle County, Virginia, and more particularly described as follows:

Permanent natural gas line easement in the public right-of-way known as Fontana Drive (50' R.O.W.) in Albemarle County, Virginia, as shown on the plat made by the City of Charlottesville Gas Division, dated August 6, 2012 (the "Plat"), identified as "A 15.0' Wide Easement for a 2" P.E. Gas Line"; the said roadway shown as Fontana Drive is on a plat of record in the Albemarle County Circuit Court Clerk's Office in Deed Book 4163, page 434.

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

This Easement shall be subject to the following:

1. Location of Improvements. The City shall construct, install, maintain, repair, replace and extend the natural gas line improvements (hereinafter, the "Improvements") only within the Easement. The Improvements shall be underground and may be within the travel lanes on Fontana Drive only if such a location does not prevent the acceptance of Fontana drive into the Virginia Department of Transportation (hereinafter "VDOT") or other publicly-maintained system.

2. Right to Enter; Ingress and Egress. The City shall have the right to enter upon the Easement for the purpose of installing, constructing, maintaining, repairing, replacing and extending the Improvements within the Easement. The City also shall have the right of ingress and egress thereto as reasonably necessary to construct, install, maintain, repair, replace and extend the Improvements.

3. Excavation and Restoration. Whenever it is necessary to excavate earth within the Easement, the City shall backfill the excavation in a timely, proper and workmanlike manner so as to restore the surface conditions to a condition necessary for the acceptance of Fontana Drive into the VDOT or other publicly-maintained system, including restoration of all paved surfaces that were damaged or disturbed as part of the excavation.

4. Vegetation and Obstructions. The City may cut any trees, brush and shrubbery, remove obstructions, and take other similar action reasonably necessary to provide economical and safe installation, operation and maintenance of the Improvements. The City shall not be responsible to the County or its successors and assigns, to replace or reimburse the cost of replacing or repairing any County-owned trees, brush, shrubbery or obstructions that are removed or otherwise damaged that would be inconsistent with the proper maintenance, operation or use of the Improvements.

5. Ownership of Improvements. The Improvements shall be the property of the City.

6. Obligations of the Grantee if and when Fontana Drive is Proposed for Acceptance or is Accepted into the State-Maintained System. If and when the segment of Fontana Drive in which the Easement lies is proposed for acceptance or is accepted into the state-maintained or other publicly-maintained system of highways, the Grantee shall comply with the following:

a. Permits. The Grantee shall obtain all permits required by the Virginia Department of Transportation (hereinafter, "VDOT") or such other public entity that becomes responsible for the maintenance of Fontana Drive (hereinafter, "such other public entity") to authorize the Improvements to exist or remain within the Fontana Drive right-of-way (hereinafter, the "Permits") and shall comply with all applicable requirements of VDOT or such other public entity.

b. Acts Required of Grantee to Assure Acceptance of Fontana Drive into State-Maintained System. Until the Grantee quitclaims its interest in the Easement to VDOT, such other public entity, or the Grantor as required in conjunction with the acceptance of Fontana Drive into the state-maintained or other publicly-maintained system, the Grantee, at its sole expense, shall, promptly alter, change, adjust, relocate or remove the Improvements from the Fontana Drive right-of-way if VDOT or such other public entity determines that such alteration, change, adjustment, relocation or removal is required in order for VDOT or such other public entity to accept Fontana Drive into the system. Neither the Grantor, VDOT, nor such other public entity shall be responsible or liable to the Grantee or its successors or assigns for any costs associated with such alteration, change, adjustment, relocation or removal of the then-existing Improvements. In addition, neither the Grantor, VDOT, nor such other public entity shall be obligated to compensate or reimburse the Grantee or its successors or assigns for any increased or decreased cost or value associated with either the Improvements or Fontana Drive resulting from such alteration, change, adjustment, relocation or removal. The alteration, change, adjustment, relocation or removal of such Improvements shall not be at Grantee's sole expense if VDOT or such other public entity is either required by law to pay for such costs or is authorized and elects to pay for such costs.

c. Continuing Obligations of Grantee to the County. After VDOT or such other public entity has issued the required Permits, the Grantee shall be subject to the following conditions, notwithstanding any quitclaim of its interests to VDOT or such other public entity, and these conditions shall be continuing obligations of the Grantee:

1. The Grantee, to the extent authorized by law, shall at all times indemnify and save harmless the Grantor, its employees, agents, officers, assigns, and successors in interest from any claim whatsoever arising from the Grantee's exercise of rights or privileges stated herein.

2. In the event that the Grantor or such other public entity becomes responsible for the maintenance of Fontana Drive and the Grantor or such other public entity requires, for its purposes, that the Grantee alter, change, adjust, or relocate the Improvements, across or under Fontana Drive, the cost to alter, change, adjust, or relocate the Improvements shall be the sole responsibility of the Grantee. Neither the Grantor nor such other public entity shall be responsible or liable to the Grantee or its successors or assigns for any costs associated with altering, changing, adjusting or relocating the then-existing Improvements as may be required herein. In addition, neither the Grantor nor such other public entity shall be obligated to compensate or reimburse the Grantee or its successors or assigns for any increased or decreased cost or value associated with either the Improvements resulting from such alteration, change, adjustment or relocation. The requirements of this paragraph 6(c)(2) shall not apply if the Grantor, VDOT, or such other public entity is either required by law to pay for such costs or is authorized and elects to pay for such costs.

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

The Grantee, acting by and through its City Attorney, the City official designated by the City Manager pursuant to authority granted by resolution of the City Council of the City of Charlottesville, does hereby accept the conveyance of this easement, pursuant to Virginia Code § 15.2-1803, as evidenced by the City Attorney's signature hereto and the City's recordation of this deed. By its acceptance and recordation of this Deed of Easement, the City acknowledges that it, its successors and assigns, shall be bound by the terms herein.

WITNESS the following signatures.

GRANTOR:

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Thomas C. Foley, County Executive

GRANTEE:

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____
S. Craig Brown, City Attorney

Agenda Item No. 11. **SP-2012-00028. Stoner (Sign #5).**

PROPOSED: Special Use Permit for one additional development right to create a second dwelling unit on the parcel.

ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).

SECTION: 10.2.2.28 Divisions of land as provided in Section 10.5.2.1.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/density (.5 unit/ acre in development lots).

ENTRANCE CORRIDOR: No.

LOCATION: 240 Chestnut Oak Lane.

TAX MAP/PARCEL: 076N00000013A0.

MAGISTERIAL DISTRICT: Samuel Miller.

(Advertised in the Daily Progress on March 25 and April 1, 2013.)

Mr. Scott Clark, Planner, said that this is a special use permit request for an additional development right to create a second dwelling unit on a parcel in the rural areas. He said that the property is located in the Sherwood Farms Subdivision, noting on a diagram provided where the County and City development areas are located. Mr. Clark pointed out the property, which is a 10-acre parcel on Chestnut Oak Lane, noting the location of the driveway and existing dwelling. He said that the map also shows from the four-foot contour lines and critical slope areas that it is a very steep property, and is almost continuously downhill from the road at the top down to the bottom property line. Mr. Clark stated that the request is for an additional development right for a dwelling to be located on the same property, as a second dwelling on an undivided parcel.

Mr. Snow asked Mr. Clark to point out the location for the small addition. Mr. Clark responded that there are several potential locations, and Mr. Stoner could provide more detail as to which will work best for their needs. The staff has not tried to tie this down to any particular location.

Mr. Clark said that the property is designated as rural areas in the Comp Plan. The rural area policies call for a reduction in the rate of residential development – so typically additional development rights are not considered to be consistent with those policies. He stated that in the past the Board has approved additional development rights, usually for the creation of a new lot for a family member when other rights have been used up on creating lots for other family members. Mr. Clark said there was a similar case (SP-2010-034) whereby the Board approved an additional development right to allow for care for a disabled child, and that one was actually for an additional lot so it is not a direct comparison. He noted that usually in the case where a family dwelling is needed, there would be an accessory apartment within or attached to the existing dwelling. Mr. Clark said that the applicant did not feel that this was practical on this site, largely due to the steep topography and because of the design of the current dwelling.

He stated that in forming a recommendation of approval for this request, staff attempted to make the additional dwelling as similar as possible to an accessory apartment – exterior to the dwelling, but in most other respects similar to an accessory apartment. Mr. Clark stated that the proposed dwelling can be substantially similar to an accessory apartment by:

1. Limiting the gross floor area of the additional dwelling to the same maximum applied to accessory apartments (35% of the gross floor area of the main dwelling).
2. Prohibiting the subdivision of the parcel, so that the new dwelling cannot become a separate property. (The current Zoning Ordinance would not permit further subdivision of the property, but is subject to change in the future.)
3. Prohibiting any reduction in size of the parcel, so that other properties do not become closer to the additional dwelling.
4. Prohibiting any accessory apartment in the additional dwelling, as it would be for a standard accessory apartment.
5. Prohibiting any accessory apartment in the main dwelling. The additional dwelling would effectively replace the property's potential for an accessory apartment.
6. Prohibiting the rental of the additional dwelling, which would limit its uses to those typical for accessory apartments. (However, the current Zoning Ordinance does not prohibit the rental of by-right accessory apartments.)

Mr. Clark said that staff had originally proposed prohibiting the rental of the building and limiting its use to family members and short-term guests, but those measures can be difficult to enforce, except by complaint.

Mr. Rooker said that is true of just about everything in the Zoning Ordinance.

Mr. Clark also reported that staff is requiring a condition of approval that would require inspection of the dwelling by Fire and Rescue, the Health Department, and the Building Official. The only unusual issue is that Fire and Rescue wanted to ensure there was a turnaround area and ambulance parking area near the proposed dwelling so they can approve the site and design once it gets to that point.

In summary, Mr. Clark said there are two central reasons for recommending approval:

1. There is precedent in a previous approval for permitting an additional development right for the purpose of housing family members who are in need of care.
2. The additional dwelling can be made substantially similar to a by-right accessory apartment by conditions of the approval, except for the fact that the dwelling would be separate from the main house.

Mr. Rooker asked if all the restrictions placed on accessory apartments would apply here. Mr. Clark responded that they would, by condition, as the conditions recommended emulate what would be required in the Ordinance for an accessory apartment.

Mr. Rooker said that the only difference as he sees is the attached versus detached nature of the accessory structure. Mr. Clark said what was correct.

Ms. Mallek asked if another development right would be required to put an accessory apartment in for a mother-in-law apartment, because that's what this really is versus another unit that could be sold in the future with a division right. She said that she thinks it is a bit of a misnomer to say the County is giving somebody a development right when it is giving them the ability to have an accessory apartment. Mr. Cilimberg clarified that it is the only way it can be considered under the current Zoning Ordinance.

Mr. Rooker said that when it is physically separated, under the Zoning Ordinance, you are essentially exercising another development right. As a legal matter it has to be done this way.

Mr. Cilimberg added that there are situations with two or more houses on one parcel, and each one must have a development right if they are dwelling units. This case is a dwelling unit separate from the house.

Mr. Boyd asked if the only thing that disqualified it from being an accessory apartment is the fact it is not connected. Mr. Clark replied, "yes".

Mr. Rooker commented that the concept of an accessory apartment is that it is an actual accessory to the building. The County does not typically allow people to build separate buildings on their property and rent them out in an area where it is zoned single family residence.

Mr. Boyd asked about family subdivision. Mr. Rooker said there must be development rights for a family subdivision. There are no development rights being exercised here. Mr. Rooker said that not creating a separate division right on the property argues for the approval of this.

Mr. Snow stated that the conditions being offered also help address concerns. Mr. Rooker added that he is comfortable with the proposed conditions.

Ms. Mallek commented that she believes the seven-year restriction is unreasonable.

At this time, the Chair opened the public hearing.

Mr. Frank Stoner, the applicant, said that he is before the Board with his mother-in-law, Ann Bondurant. He explained that they have tried to make this work within the confines of their home. He said that he understands the technical problems with the Zoning Ordinance, which to him is a separate issue, and what they have demonstrated with the conditions is that they are not trying to get around the law or create the opportunity to sell a separate unit in the future. They are trying to create the opportunity to build a unit that will serve his mother-in-law and father-in-law, and allow his wife to help care for them as they age.

Mr. Stoner said that they do have some trouble with the seven-year restriction, because if the occupant left for whatever reason, they could be stuck paying a mortgage on the accessory unit with no way to legally occupy it. He stated that this seems unreasonable to him given the fact they are not asking for a division right or the ability to sell this as a separate lot in the future.

There being no further comments, the public hearing was closed.

Mr. Cilimberg noted that there were six conditions recommended in the staff report. He added that staff included a seventh condition because of the recent change in the legislative zoning text amendments – where the "two years to commence activity or build under a special use permit" is no longer in the Ordinance. He said that the seventh condition is essentially accomplishing what the Ordinance provided for previously, but the reason for that change is that the Ordinance could not prohibit it, only the conditions could.

Ms. Mallek asked Board members if they would consider eliminating the third condition relating to the seven-year time limit.

Mr. Boyd said that he could support that, adding that this is a special situation.

Mr. Rooker said that he would support it, but pointed out that every time the Board grants one of these it becomes a precedent for the next application. He stated that this applicant has a proposed use that is a family use, and it is understandable why he would not want this limitation. Mr. Rooker said that if the Board views it as a separation of an accessory apartment, the applicant could rent an accessory apartment.

Mr. Davis said that's true as long as the main house is owner-occupied.

Mr. Rooker stated that it seems fair to treat this as an accessory apartment and remove the restriction.

Ms. Mallek said that the telling difference for her is that it is not becoming a separate lot.

At this time, Mr. Snow **moved** to approve SP-2012-00028 subject to the addition of condition #7 and the deletion of condition #3, as discussed, for a total of six conditions. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

(The conditions of approval are set out below:)

1. One (1) single-family dwelling unit in addition to the existing single-family dwelling unit may be built on Tax Map Parcel 076N00000013A0.
2. The additional single-family dwelling unit shall not exceed one thousand three hundred (1,300) square feet of gross floor area.
3. No accessory apartment shall be established within the existing single-family dwelling unit or the additional single-family dwelling unit.
4. Construction of the additional single-family dwelling unit shall not commence without approval from the Building Official, the Fire Official, and the Virginia Department of Health.
5. Tax Map Parcel 076N00000013A0 shall not be subdivided or reduced in acreage.
6. Construction of the dwelling unit shall commence on or before April 10, 2015 or the permit shall expire and be of no effect.

Agenda Item No. 12. **ZMA-2010-00013. Hollymead Town Center (A-2).**

PROPOSED: Request to amend proffers for 44.29 acres on property zoned Neighborhood Model District zoning district which allows residential (3–34 units/acre) mixed with commercial, service and industrial uses. No new dwellings proposed.

ENTRANCE CORRIDOR: Yes for TMP: 03200000004500; No for TMP: 03200000005000.

AIRPORT IMPACT AREA: Yes.

PROFFERS: Yes.

COMPREHENSIVE PLAN: Urban Mixed Use (in Centers) – retail, residential, commercial, employment, office, institutional, and open space; Commercial Mixed Use – commercial, retail, employment uses, with supporting residential, office, or institutional uses; Light Industrial – manufacturing from prepared materials, processing, fabrication, assembly, and distribution of products and Urban Density Residential – residential (6.01–34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses in Hollymead-Places 29.

LOCATION: Hollymead Town Center Area A-2, the southwest quadrant of Seminole Trail (US 29) and Towncenter Drive to the west of Area A-1 in the Hollymead Development Area.

TAX MAP/PARCEL: 03200000004500, 03200000005000.

MAGISTERIAL DISTRICT: Rio.

(Advertised in the Daily Progress on March 25 and April 1, 2013.)

Mr. Cilimberg reported that the Board is aware that this originated as a request for some changes to proffers from the applicant, specifically regarding a pocket park requirement and some phasing changes. He said that this began at a time in 2010 and 2011 when the applicant was dealing with some specific development potential on Area A-2. He noted the location on a map as being the subject area for the proffers of this ZMA. Mr. Cilimberg said that originally Area A-2 was covered by this application plan, but there was a modification to it granted by the Board that changed a section of the plan to the area on the southwest corner of Town Center Drive and Meeting Street in the Hollymead Town Center.

He explained that in February 2011, the Planning Commission unanimously recommended approval of the ZMA with three areas to be addressed before it came to the Board. Mr. Cilimberg emphasized that the applicant has not yet addressed those three areas, for reasons they have cited and included in the Board's report. He said that staff is not recommending approval, as the Commission's recommendations have not been addressed and there are no updated proffers to be accepted.

Mr. Cilimberg stated that the applicant is requesting deferral due to "uncertain market conditions," and they have the potential to have it reviewed along with another ZMA that is currently and indefinitely deferred for Hollymead Town Center A-1. He reminded the Board that after the recommendation for approval by the Commission, there was an indefinite deferral by the applicant, then an extension of the indefinite deferral by staff, and then another extension of that deferral by the Board in December.

Mr. Cilimberg said it is now approaching the deadline in which an action needs to be taken by the Board. The applicant is requesting a deferral as that action.

Mr. Cilimberg stated that staff feels reasonable time has been provided to reach a decision on this application, as it dates back to the Planning Commission's recommendation in early 2011. If the item is deferred, staff would request that it be based on the proposal as presented to the Commission and the work necessary to address the Commission's recommendations. He said that staff has also noted substantive changes beyond those necessary to those recommendations would likely involve additional staff and Planning Commission review, and would most likely necessitate a new application if those changes were to occur. Staff is focused on this application as per what the Planning Commission recommended to the Board.

Mr. Rooker said he does not understand why the applicant would want a deferral if it is going to require a new application. If it is not going to require an application and would basically come back to the Board as previously applied for, what difference does the deferral make. Mr. Rooker said that if it just comes back six months from now as the same application, it would save time as opposed to applying for something different.

Mr. Cilimberg said that if the applicants are deferring as presented, then it would come to the Board with the staff report representing what they have done to respond to the Planning Commission.

Mr. Rooker asked what is the reason why anyone would be put in a worse position by granting the deferral?

Mr. Thomas commented that the applicant would have to pay another fee if the Board does not grant the deferral.

Mr. Rooker again asked why a deferral would not be granted though. Mr. Cilimberg said that staff noted that the deferral could be granted, and could be done to the point in time the Board feels is reasonable.

Ms. Mallek said that staff has used up the deferrals it is allowed to grant because this has been going on for three years.

Mr. Rooker said he does not see a reason why not to defer it.

Mr. Boyd added that the deferral could be indefinite as far as he is concerned.

Mr. Davis explained that the policy of the Board and the ordinance itself discourages long deferral periods because applications become stale. In a general fashion the review by staff is largely dependent upon how it impacts adjacent properties – and if something is deferred for years, adjacent properties change, impacts change, traffic changes – and it requires staff to do a new analysis at a later point in time without an additional fee. It is a repetitive review of the same application, and as a policy the Board has strongly supported timely reviews of applications for that very reason. He said that the revised Zoning Ordinance does allow the Board to grant one additional deferral after it comes to the Board if the staff has already granted one deferral. Typically the Board has not granted indefinite deferrals at the Board stage, but if it does that to a date certain it would have to be heard on that date or the application would have to be withdrawn.

Mr. Rooker said that would be a reasonable approach.

Mr. Boyd said that the property is all controlled by the same individual, so there are not the same impacts with adjacent landowners, etc. He stated that he does not have a problem with indefinite deferral, because given the economic conditions the owner may not be able to find tenants. They are sort of in unprecedented economic times here.

Mr. Rooker said that the only difference is whether he has to pay a fee or not. As a matter of policy, he said that he does not know that it is a good idea to defer these things forever.

Ms. Mallek said she agrees. She also stated that the policy as it currently exists was developed after multiple times of five-year projects with the applicant only paying the initial fee and a lot of repeated effort and staff time. Instead of decisions being made, people were sent back to do more changes. It puts the public at a real disadvantage, because sooner or later when nobody is looking then drastic changes will be made and things will go through."

Mr. Boyd asked where she gets that viewpoint. He asked what her precedent is for that. Ms. Mallek responded that it has happened before, and she wants to make sure the Board is not just allowing things to expire. She said that the Board has complained about the "stale zoning" issue because projects like this have not evolved with what is happening around them. She said that she is concerned about going on and on with this. There were very good reasons why the policy was put in place in 2005.

Mr. Boyd said that stale zoning is not a factor in this case.

Mr. Cilimberg said that this is the reason why staff stipulated that the deferral was for the application as it stands now, what the Planning Commission recommended.

At this time, the Chairman opened the public hearing.

Mr. Wendell Wood, the applicant, said that this is a pretty large project. It took the applicant five years to get it approved the first time. He said that the development is over 800,000 square feet, and

there have been changes in economic conditions. The property probably cannot be developed in the presentation it was originally made. He said he sold the property to a Washington, D.C. developer who was going to build high-rises, etc. – but this is not going to happen. Mr. Wood stated that he has spent \$6 million off-site on improvements to widen Route 29, improvement of a road to go from Route 29 to the airport, installation of public utilities on Airport Road to provide pressure for the ACSA, and extension of water and sewer lines to adjoin neighboring properties. He said that they lost a tenant because they could not get a proffer changed – the theatre wanted a public park and front door, but they could not do it.

Mr. Wood said he thinks they have been good citizens and are asking for a deferral. He said there is not any harm being imposed upon the County. He asked for the Board's concurrence with the deferral.

Mr. Rooker asked if it could be granted for a year. Mr. Wood responded that he would like it to be longer, as it is a pretty big project and only about 25% of it is complete.

Mr. Snow asked him what a reasonable timeframe would be. Mr. Wood replied that he would like two years, adding that the entire project is a 12-15 year build out.

Mr. Rooker and Ms. Mallek said they would be comfortable with two years. Mr. Rooker commented that he thinks the Board needs a date certain so that it does not go on indefinitely.

Mr. Wood thanked them.

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

Mr. Thomas then **moved** to defer ZMA-2010-00013 until not later than April 15, 2015, based on the proposal presented to the Planning Commission and the work necessary to address the Commission's recommendations. Mr. Rooker **seconded** the motion.

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

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

NAYS: None.

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

Ms. Mallek **moved** to appoint Ms. Janice Applebach to the Crozet Community Advisory Council, fill the Old Trail seat, with said term to expire March 31, 2015. Mr. Snow **seconded** the motion.

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

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

NAYS: None.

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

There were none.

Agenda Item No. 15. Adjourn.

At 7:31 p.m., with no further business to come before the Board, the meeting was adjourned.

Chairman

Approved by Board
Date: 07/10/2013
Initials: EWJ