A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on May 8, 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: Assistant County Executive, Bill Letteri, 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 6:05 p.m., by the Chair, Ms. Mallek.

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

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Agenda Item No. 4. Adoption of Final Agenda.

Hearing no changes, the Board accepted the final agenda.

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

Mr. Rooker announced that there would be a public information meeting on May 23, 2013 at 5:00 p.m. at the Emmett Street Holiday Inn, which would focus on alternative designs for the southern interchange of the Route 29 bypass.

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Ms. Mallek reported that there had been comments from citizens on state news regarding trips and donations, etc. provided to elected officials, and asked fellow Board members to really give special attention to any of those types of activities in our financial disclosures and make sure that we're doing everything right.

Ms. Mallek stated that the economic development staff had brought the Virginia Bio State conference to Albemarle County, and said it was a day-long event held the previous week that included presentations from start-up businesses focused on biotechnology. She added that it was a great start for the County.

Ms. Mallek reported that there would be a Memorial Day celebration held May 27 at 10:00 a.m. at the Earlysville Post Office and encouraged everyone to attend.

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Agenda Item No. 6. Recognitions. There were none.

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

Dr. Charles Battig addressed the Board, stating that he has asked questions regarding the health impacts of WiFi radiation levels in Albemarle K-12 classrooms, but the School Board has been very careful with no forthcoming public response as to determine answers to any of these questions. He asked what ever happened to the precautionary principle, as the schools do not seem concerned about the radiation from cell towers. Dr. Battig referenced 1,400 pages of studies from about 12 different countries pointing out problems with radiation on health, adding that the Federal Communications Commission has set two docket items to determine what the safe levels are. But he said, "Don't worry, the School Board is bathing your children every day." Dr. Battig stated that the World Health Organization classifies WiFi radiation as Class 2B, the same category as lead and auto exhaust. He reported that people can now opt out of having smart meters, and Siemens – the company that produces them – has publicly stated that they can convert this massive amount of data into actionable information for multiple purposes across enterprises. Dr. Battig said that means 'make money from your private data.' He presented a contact phone number at Dominion Power to ask for the opt-out forms so the public will no longer be a guinea pig.

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Mr. Lonnie Murray addressed the Board stating that, at its day meeting the previous week, the staff report on secondary road projects listed Castle Rock Road as a road to be paved. He said that, as one of the people who would be impacted by that paving, he would suggest that the Board instead authorize spot paving of small problem areas and leaving the vast majority of the road as it is. Mr. Murray stated that those in the neighborhood use that road as one of the few safe places to walk or exercise with their families, and when the roads are paved to rural rustic road standards there are no shoulders to use when cars come barreling down. He said that since there is little policing of speed limits on rural roads, Craig's Store Road where Castle Rock crosses is already unsafe to walk or run on. Mr. Murray said that there have already been two accidents immediately in front of his home and, despite repeated requests, he has not been able to get the police to come out even one day to catch the more egregious speeders, including those who actually drag race on the road. He stated that the County's Comprehensive Plan seeks to protect the rural area, and Castle Rock is currently surrounded by hundreds of acres of farms

and, if it is paved, it would be a defacto rezoning which will cause more subdivision and putting even more cars on the already dangerous road. Mr. Murray presented photos of a rural road that was paved where a homeowner had to put up signs in both directions to get people to slow down. He said this is not a desirable result when a resident has to go to this length to protect their family, when the right thing to do is not to pave in the first place. He added that, once the road is paved, it is gone forever and encouraged the Board to keep the rural areas safe for recreation and its children.

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Mr. Steven DeYoung addressed the Board, stating that he lives on Redwood Lane in Earlysville and was before them to talk about the blasting at the airport. He stated that he is president of Lohman Corporation & Subsidiaries, a manufacturing company located in Orange that employs 150 people. Mr. DeYoung said he mentioned that fact because many of the things that are happening with the airport are getting into a legal area, and he understands the reasons for many of the actions that the airport and Maine Blasting are taking. He stated that the comments being made indicate that the blasting is within the limits of the specifications and, while he has seen the data and agrees with it, no one has been able to demonstrate the effects of repetitive blasting. Mr. DeYoung asked the Board to consider what could be done to show the effects of repetitive blasting four or five times a day for months.

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Mr. Jonathan Boersma addressed the Board, stating that his property is immediately adjacent to the airport to the west, stating that Virginia State Fire Prevention Code 3303.4 states that "accidents involving the use of explosives, explosive materials, and fireworks which result in injuries or property damage shall be reported to the code official immediately." He stated that the fire marshal was not notified by the blasting company or by the airport, only by homeowners. Mr. Boersma also said that the groundwater contamination at Avionics has not been remediated, as was reported, and a remediation plan has not even been approved yet by the EPA. He stated that some homeowners have installed filters, but this is not the same as remediation. Mr. Boersma said that no one knows what the blasting will do at the Avionics site, because the airport failed to do any assessments or notify the EPA, which is overseeing the cleanup. He commented that this is an issue which reaches beyond the boundaries of our neighborhood, as the contaminants could further be dispersed by the repeated blasting. Mr. Boersma said that the Board had taken action the previous week on a dusty road and an unsightly cell tower, yet their homes are being damaged on a daily basis and no action was taken. He said that the City Council took action, and the neighborhood is not even in the City, requesting that the Board instruct Mr. Foley to call for an emergency meeting of the airport authority to address these issues – and for the airport to take responsibility for its actions and compensate homeowners for the damages it has caused. He added that, by taking no action, the Board is failing to protect the residents that it was elected to represent.

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Mr. Bob Garland addressed the Board, stating that he is representing the Canterbury Hills Homeowners Association and wanted to indicate the Association's support of Consent Agenda Item #8 regarding the County's ability to further control the storage of inoperable vehicles. Mr. Garland stated that current regulation allows for storage of these vehicles up to two on a residential lot as long as they are shielded or screened from view, but that can mean just covering with a tarp. He referenced photos he had sent the Board earlier in the day, adding that having an inoperable vehicle in a residential area creates a visual blight for adjacent neighbors, causing a loss of property values and the tax base. He asked that the Board approve the resolution of intent and change the applicable ordinances so that no inoperable vehicles shall be parked or stored on the lot within any residential district unless the vehicle is within a fully enclosed building or structure. Mr. Garland stated that they are not requesting a limit on the number of vehicles stored within a fully enclosed building, nor are they requesting a change in the agricultural, rural or commercial areas of the County. He added that the Association thinks that open storage of junk cars in residential areas is not appropriate.

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Ms. Nancy Carpenter addressed the Board, stating that she is trying to understand why two project-based vouchers are not being funded at the Crossings and noting that the Comprehensive Plan states that the County wants a "future housing supply that allows for all income levels to thrive." Ms. Carpenter said that she also looked at the plan for housing strategies objective one – "Continue to support efforts of nonprofit organizations to ensure safe, decent and sanitary housing is available, and available equally to all populations." She stated that the funding of nine project-based vouchers had arbitrarily been reduced to seven, and the implementation of housing strategies chart shows an action item of "Fund programs of the County's housing department to implement housing policies" as being the primary responsibility of the Board of Supervisors. She said the Board should be doing this again for two project-based vouchers at the Crossings adding that the County should give them house keys instead of handcuffs.

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Mr. Reo Hatfield addressed the Board, stating that he is an Earlysville resident and noting that he and his wife Roxanne's home is probably the farthest away from the blasting area, but the blast force was so great that it knocked a humidifier off of a shelf in their home where they usually keep their dog. He asked what it would take to stop the blasting and reevaluate it. He said the real issue is money, not the people – but there are a lot of ways to move the property without blasting the rock, and that should be considered. Mr. Hatfield stated that it's been suggested that their group has gotten together to try to get money for repairs on their homes, but nobody in the area would do that and it would be "nonsense" to think so. He said what he wants is no invasion of our rights and our property due to blasting, and there are potential safety issues that may arise – including water contamination due to the blasting.

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Ms. Constance Stevens addressed the Board, stating that an Air Force officer was recently arrested for sexual battery in northern Virginia, and President Obama emphatically condemned the instance as well as other sexual assaults by military personnel. Ms. Stevens said the President said that the violators should be held accountable, prosecuted, stripped of their positions, court-marshaled, fired, and dishonorably discharged. She stated that the officer who was arrested was in charge of the Air Force's Sexual Assault Prevention Unit and, several weeks before his arrest for forcible sodomy, Mr. Dumler hosted a fundraising event for the Sexual Assault Research Agency. She said both men are violent sexual offenders preying on women, and both men have brought dishonor to the military. She added that Mr. Dumler's continuing presence on the Board brings disgrace to this County and all of its residents, and it's time for him to go.

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Ms. Lilly Anderson addressed the Board, stating that she is a Monticello High School student and has made construction of the 5th Street Station the topic of a group citizen action project, because they saw there was some debate over whether it would be a negative or positive addition to its surrounding community. She said that, after many weeks of research, interviews and phone calls, they have come to the conclusion that the station will have an overall positive effect on the community. Ms. Anderson stated that even though the possible pollution and floodplain issues pose a potential problem, there is more for the community to benefit from as it will create jobs and provide easy access to a quality shopping center for people in that area. She said that the new Bent Creek Parkway would also provide a link between 5th Street and Avon without having to get on I-64, and it's currently in the construction plans to fix some of the erosion damage in Moore's Creek.

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Mr. Walt Bracca, Ms. Tracy Craft, Mr. Dixon White, and Ms. Ariana Fleet addressed the Board regarding the proposed firing range. Mr. Bracca stated that their group has come to the consensus that the Keene landfill as an option should be taken off the table because the environmental consequences could be problematic.

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Mr. Rit Venerus addressed the Board, stating that he was before them to address the airport blasting issue and to thank Mr. Rooker for coming out to their neighborhood and inspect the damages himself. Mr. Venerus said that, despite protests from their neighborhood and reports of damages, no one from the airport authority or the airport executive director have bothered to come look at the damages. He stated that Maine Drilling and Blasting has a history of denying claims using the same defense they are telling residents here: the blasts are within safe limits, so they can't be causing damages. Mr. Venerus said that, while the company may be investigating claims, they are not processing claims and won't until the blasting is done sometime in October. He said it is a lot to ask of residents to sit and wait for seven months to see if their claims are actually going to be paid, adding that it shouldn't take seven months to process claims that are already two to three months old. He stated that, given what they've read about Maine Drilling's history and the lack of response by the airport to date, neighbors do not have a lot of confidence that their claims will be addressed. Mr. Venerus asked about when residents were given an opportunity to oppose this very different use of the airport property, as there was no public notice or hearing that he's aware of. He added that the airport engineer told him recently that the blasting would be "a part of life" as future phases of the project would require blasting. He stated that this situation has been created by the airport due to their poor planning, lack of proper assessments and failed oversight. He said residents are being made to suffer solely because stopping will cost the airport money and are being made to pay for the airport's mistake. Mr. Venerus called on the Board to act and stop the blasting to protect the residents of Earlysville.

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Ms. Sarah Donnelly addressed the Board, stating that she was here to talk about Love Canal, which was envisioned by William Love in the 1890s to connect the Niagara River with Lake Ontario although it was never finished. Ms. Donnelly said that, in the 1920s, the City of Niagara Falls used Love Canal for a dump and, in 1942, Hooker Chemical Company got permission from the Niagara Power and Development Company to dump chemical waste into the canal. She stated that Hooker began placing 55-gallon barrels in the site and, in 1947, they bought the site. Ms. Donnelly said that the dump operated until 1953 and then the canal was covered with earth and vegetation grew over the site. She said that the Niagara Falls City School District wanted to buy the dumpsite but Hooker refused, citing safety concerns. Ms. Donnelly said that the Board of Education was adamant, and Hooker finally agreed to sell the whole property for $1. She stated that, in 1975 and 1976, heavy snow and rains caused part of the site to crumble with the bowels of the site coming up to the surface. She provided the Board with a written report of the incident.

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Mr. Bob Garland addressed the Board and thanked Mr. Rooker for his years of service on the Board, representing the Jack Jouett District. He said Mr. Rooker has been loyal to the core, and he appreciated that personally.

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Ms. Denise Horbaly addressed the Board, stating that she lives in the Walnut Hills community neighboring the Charlottesville Airport. Ms. Horbaly stated that, since the expansion project began at the airport in the fall of 2012, many of their homes have experienced a vast array of damage. She said that beyond what they can see on the surface, they will not know the true extent of the damage that the 100+ blasts will inflict upon their homes and water supply. Ms. Horbaly stated that the airport did not conduct any community impact studies prior to the blasting project and failed to contact the EPA regarding the environmental contamination cleanup at the nearby Avionics site. She asked if the airport cares what

impact their blasting may have on this already compromised geological area. She noted that this is the water table that surrounds Walnut Hills, and those residents registered their concerns to the airport early on about home damages resulting from the blast brought forth by Maine Drilling and Blasting. Ms. Horbaly said that, for weeks, the airport ignored their concerns and now that they are listening, neighbors would like to know who will compensate them for damages and lost property values. She stated that Maine Drilling and Blasting has a long history of denying claims, hiding behind their statistics of "working within safe limits." Ms. Horbaly said that Walnut Hills residents are hearing the same claim now and, while each blast may be within safe limits, the question remains as to what the cumulative effect of multiple blasts is. She stated that they want the airport to take responsibility for damages done by their contractor, Maine Drilling and Blasting, and wants the Board to hear their concerns and protect their property and water supply, adding that responsibility needs to be determined prior to the blasting company packing their bags and leaving the area.

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Mr. Randolph Byrd addressed the Board, thanking Mr. Rooker for his many years of service. Mr. Byrd also stated that he thought Mr. Dumler should settle with the court, as he is able to do that as a plea bargain or settlement. He said that the gun range should be put in Mr. Dumler's backyard so that when he hears gunfire, he'll know where it's coming from, and know that it's not a danger to him. Mr. Byrd stated that he would also like the Board to consider putting a dog park in Crozet, as there are a lot of dog owners that live there and it's the largest growth area in the County. He added that there are a lot of elderly housing units in the Crozet area, and those residents need a place to exercise their animals. Mr. Byrd offered to help raise 50% of the funding if the County could match it.

Ms. Mallek responded that Crozet Park is already working on that and has a group established to get a dog park put in.

Mr. Boyd asked if it would be appropriate for the school system to provide research on the WiFi issue, given the public concerns and some of the evidence presented on the dangers of WiFi. He said he has not seen any data. Ms. Mallek said that she would be very happy to have support from the Board to ask for that.

Mr. Snow said he also had jotted that down to talk about.

Mr. Rooker indicated that Dr. Battig had sent him the information, which he forwarded to the school system and requested that they look into it. He said they did, and he didn't get the result that he wanted after they did that. He added that it would be helpful for the Board to see the information they were looking at, at the time they made the determination.

Mr. Boyd also commented that he thought there needed to be 100% approval on a road in order to do rural rustic roads.

Mr. Davis clarified that, for rural rustic roads where no right of way is required, it doesn't require property owner approval at all, however, there is a process for getting public input about the roads to determine whether or not there are objections, which the Board would then consider.

Mr. David Benish explained that, once a rural rustic road gets to the point of actually getting funded in the six-year secondary plan from VDOT, the County will then notify the property owners along that segment to let them know there's a proposed project and see if they have any concerns. He said that staff then takes those concerns and reports them to the Board. Mr. Benish noted that, with regular road construction projects that require right of way to be acquired, they have looked for donation of right of way. He said staff uses that process to get the consensus for those particular projects, but the County has not done one of those in a number of years.

Ms. Mallek commented that, within the last few months, there have been many neighbors that came forth from Blenheim Road, and she thought it was their objection that allowed the Board to put a stop to their road improvements. Mr. Benish said that is correct.

Mr. Davis stated that it's a decision of the Board as to whether it approves projects going forward but, under the Board's policy for rural rustic roads, consent is not a requirement. He said the Board has a policy to solicit opinions on that, and then the Board takes those opinions into consideration as to whether or not it goes forward with a project.

Mr. Boyd asked when that process is done if there isn't a specific project on the agenda. Ms. Mallek said that one thing the Board could do would be to develop a process by which it would determine that these roads would be gravel, adding that when new residents move in they will sometimes request that their road be paved. She said that, for orderly process, it might be something to be considered along with getting in touch with people where the roads are on the list. She added that she didn't really want something sitting on the list for 10 years when the Board knows there's adamant opposition.

Mr. Boyd agreed, stating that perhaps that should be moved to the front of the process rather than having it at the end.

Mr. Benish stated that staff does try to solicit and find out if there's more than one individual supporting it but, because of limited funding, it may take 10 years to get to a project and there may be different residents. He said that is why staff goes through this final check. He explained that, when it starts to reach a point where it is decided that it's still a priority and there's funding, staff will check with the

current property owners. He added that staff is certainly understanding of that issue and tries not to put projects back on when there has already been a decision not to do that.

Mr. Snow said he had spoken with Lonnie Murray about Castle Rock, and most residents there do not want it to be paved. He said they want spot paving on problem areas, but not the whole road done.

Mr. Benish stated that the Board provided staff with that same guidance at the worksession on secondary roads.

Ms. Mallek said there may be a funding change whereby the Board will need to seek legislative approval for, because currently the County is required to use rural rustic funds from "end to end" adding that is a waste of money and money is not being focused in areas where the work should be done.

Mr. Rooker said that, in the past, the County has been able to do spot paving with maintenance money.

Mr. Davis pointed out that the Board holds a public hearing on their six-year road plan which includes an additional check-in when the road is actually funded. He said, before funds are committed to a particular project, staff does go out and solicit whether the neighbors still want the project. He said the Board can then take that into consideration before it signs off on the project for VDOT to do the construction.

Mr. Rooker said that seemed to be a good approach, as people have an opportunity to provide feedback along the way instead of moving forward with a project that reflects the will of people from five years earlier. Mr. Boyd responded that he's dealing with that situation at Stony Point Pass, and suggested that the County put up signs that say "your road is being considered for paving, if you have an objection, contact this number."

Mr. Benish said that staff typically solicits the people along the roadway by letter and, if they get enough feedback, they schedule an open house to go over the project. He said that if they see an inconsistency in support for the project, they report it back to the Board.

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

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

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Item No. 8.1. Resolution of Intent to amend County Code § 18-4.12, Parking, Stacking and Loading; and set a public hearing to consider an ordinance to amend County Code Chapter 9, Motor Vehicles and Traffic.

The executive summary states that an inoperable vehicle is any motor vehicle, trailer or semitrailer which: (1) is not in operating condition; (2) has been partially or totally disassembled for a period of sixty (60) days or longer by the removal of tires and wheels, the engine, or other essential parts required for the operation of the vehicle; or (3) does not display either valid license plates or a valid inspection decal. Certain licensed businesses, such as automobile dealers and scrap dealers, are exempt.

The County regulates the storage of inoperable vehicles on property zoned or used for residential purposes, and on property zoned commercial and agricultural under County Code § 9-500 (police powers) and County Code § 18-4.12.3 (zoning). The enabling authority under which the County currently regulates inoperable vehicles under its police powers is Virginia Code § 15.2-904. Section 15.2-904 allows an unlimited number of inoperable vehicles to be stored on private property outside of a fully enclosed building or structure provided that the vehicles are shielded or screened from view. Section 15.2-904 also allows localities to limit the number of inoperable vehicles stored outside that are shielded or screened from view by covers.

Virginia Code § 15.2-905 provides broader enabling authority to 17 localities (12 cities and 5 counties). Section 15.2-905 enables localities to "limit the number of inoperable motor vehicles which any person may keep outside of a fully enclosed building or structure," even if the vehicles are shielded or screened from view by covers or any other means. In response to concerns raised by neighborhood watch groups and homeowners associations in the County's urban and suburban neighborhoods regarding the impacts arising from storing inoperable vehicles outside, the Board sought and obtained enabling authority for Albemarle County to regulate inoperable vehicles under Virginia Code § 15.2-905. The new enabling authority becomes effective on July 1, 2013.

Citizen complaints from neighborhood watch groups and homeowners associations informed staff that storing inoperable vehicles outside, whether they are shielded or screened from view or not, is a source of conflict in urban and suburban neighborhoods where lot sizes are small. Although an inoperable vehicle stored outside may not be visible by someone standing at ground level, the vehicles may be nonetheless visible from nearby properties and homes. In addition, staff has found situations where storing inoperable vehicles outside on small lots has caused owners to park their operable vehicles on the public street because there was no room to park on-site. Sometimes these public streets are not designed for on-street parking, creating further conflict. Lastly, because vehicles are not subject to setback

requirements under the Zoning Ordinance, inoperable vehicles can be stored very close to the lot line and close to the abutting lot's improvements or active outdoor areas.

The proposed ordinance amendments would implement Virginia Code § 15.2-905 by limiting the number of inoperable vehicles that may be kept outside of an enclosed building or structure, clarify the existing regulations, and ensure that County Code § 9-500 and County Code § 18-4.12.3 are consistent with one another. It is staff's opinion that these proposed amendments will allow the County to more effectively address the potential adverse impacts from storing inoperable vehicle outside, particularly in neighborhoods having small lots. Violations of County Code § 9-500 are enforced by either pursuing a criminal penalty or by the County's removal of the vehicle after reasonable notice is provided to the owner. Violations of County Code § 18-4.12.3 are enforced by pursuing either a civil penalty or injunctive relief. In its development of the proposed regulations, staff will examine the effectiveness of its current enforcement tools.

A reduction in the number of inoperable vehicles allowed would cause an increase in the number of zoning violations. However, staff expects the impact to be of such a low level that it can be accommodated with existing staffing levels. Implementation of a towing program would save time and therefore tax dollars spent enforcing continuing inoperable vehicle violations.

Staff recommends that the Board adopt the attached resolution of intent to consider amending County Code § 18-4.12.3, prohibiting activities in parking, stacking and loading areas, and any other related sections determined to be necessary for amendment. Staff also recommends that the Board set the proposed ordinance amending County Code § 9-500, which will be developed concurrently with the zoning text amendment for County Code § 18-4.12.3, for a public hearing to be held concurrent with the zoning text amendment.

By the above-recorded vote, the Board adopted the following Resolution of Intent to consider amending County Code § 18-4.12.3, prohibiting activities in parking, stacking and loading areas, and any other related sections determined to be necessary for amendment and set the proposed ordinance amending County Code § 9-500, which will be developed concurrently with the zoning text amendment for County Code § 18-4.12.3, for a public hearing to be held concurrent with the zoning text amendment:

RESOLUTION OF INTENT

WHEREAS, County Code § 18-4.12.3, which is part of the Albemarle County Zoning Ordinance, includes regulations pertaining to keeping inoperable motor vehicles ("inoperable vehicles") on private property; and

WHEREAS, County Code § 9-500, which is not part of the Zoning Ordinance, also includes regulations pertaining to keeping inoperable vehicles on private property; and

WHEREAS, County Code § 9-500 and County Code § 18-4.12.3 currently establish generally similar standards for keeping inoperable vehicles on private property, including the number of inoperable vehicles that may be kept on private property, how they are to be shielded or screened from view, and that shielding or screening may include vehicle covers under Virginia Code § 15.2-904; and

WHEREAS, effective July 1, 2013, Albemarle County will be among those localities enabled to regulate inoperable vehicles under Virginia Code § 15.2-905, rather than Virginia Code § 15.2-904; and

WHEREAS, under Virginia Code § 15.2-905, localities may limit the number of inoperable vehicles that may be stored outside of a fully enclosed building, regardless of whether they are shielded or screened from view; and

WHEREAS, in order to promote the efficient and effective administration of the County's regulations, it is desirable to have County Code §§ 9-500 and 18-4.12.3 be consistent with one another and to implement, as appropriate, the enabling authority in Virginia Code § 15.2-905 in order to address the impacts resulting from the accumulation of inoperable vehicles, particularly those on small lots in the County's urban neighborhoods.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to consider amending the regulations pertaining to inoperable vehicles in Albemarle County Code § 18-4.12.3, and to consider amending any other sections of the Zoning Ordinance deemed to be appropriate, to achieve the purposes described herein; and

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on the zoning text amendment proposed pursuant to this resolution of intent, and make its recommendations to the Board of Supervisors at the earliest possible date.

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Agenda Item No. 9. **Appeal:** ARB-2013-10. New Hope Church Initial Plan.

The following executive summary was forwarded to Board members:

On March 18, 2013 the Architectural Review Board (ARB) reviewed an initial site plan (ARB-2013-10) for the New Hope Church at the intersection of Dickerson Road and Dickerson Lane. The

proposal is to construct a church with associated site improvements, including an entrance off of Dickerson Road. The New Hope Church parcel is located approximately 350 feet west of the Route 29 North entrance corridor. Therefore, only the easternmost 150 feet of the parcel, a strip at the southeast corner of the site parallel to Dickerson Road and Route 29 North, is within the EC Overlay District. The entrance drive to the church will be located within this area. The visibility of the site from the Route 29 North EC is limited. A map showing the New Hope Church parcel in relation to the EC Overlay District is included as Attachment D. A photograph taken from the Route 29 North EC and showing the site is included as Attachment E.

Under the County's new site plan regulations, the ARB's review of New Hope Church's initial site plan was governed by County Code § 18-32.4.2.2(b), which limited the ARB's review at this stage of the site plan process for consistency with the applicable design guidelines to the following: (i) the size, location and configuration of structures; (ii) the location and configuration of parking areas and the location of landscaped areas; and (iii) identifying existing trees, wooded areas and natural features that should be preserved.

After consideration of the matter, including the staff report that provided staff's recommendations on the proposal (Attachment A) and comments by the New Hope Church representatives and the appellant, the ARB voted to transmit its recommendations on the initial site plan to the agent, as provided in County Code § 18-32.4.2.2(b)(3). The ARB will review the New Hope plan again at the final site plan stage because a Certificate of Appropriateness is required prior to final site plan approval.

ARB Review of the Plan

During the March 18, 2013 review, the ARB discussed the proposed entrance location, the character of the existing trees that are proposed to be removed, the steepness of the slope along the entrance drive relative to the amount of trees to be removed, and the degree to which a natural appearance would be achieved with re-planting slopes of varying degrees. The ARB considered in its discussion sensitivity to the existing natural landscape and the need to blend into the surrounding landscape, as provided by Guideline #6, and maintaining visual order within the EC, as provided by Guideline #7 (Attachment F). The ARB concluded that no requirements were needed to satisfy the guidelines at the initial site plan stage of review. The ARB agreed with staff's recommendation that planting along the entrance drive and re-planting the graded slope with a mix of trees to re-integrate the development into the surroundings to meet Guideline #7 would be required to be shown on the final site plan stage. The ARB did not require that the details of that planting be provided with the initial site plan (See Attachment G for the minutes of this item at the March 18, 2013 ARB meeting).

Information regarding the grounds for appeal

In a letter of appeal, the appellant identified four grounds for appeal (Attachment H). The grounds are listed below in *italics*. Staff's response to each item follows in standard text.

1. *The appellant states that no requirements were imposed to satisfy the design guidelines under County Code § 18-30.6.4(c)(2), Size and arrangement of structures; County Code § 18-30.6.4(c)(3), Location and configuration of parking areas and landscaping; and County Code § 18-30.6.4(c)(5), Preservation of existing vegetation and natural features.*
   a. County Code § 18-30.6.4(c)(2) does not apply in this case because the proposed structures are located outside of the EC overlay district.
   b. County Code § 18-30.6.4(c)(3) applies, and the ARB determined that trees would be required along the entrance drive and on the slope adjacent to the drive. However, sufficient area was shown on the plan for the required planting, and the ARB did not require that the details of the planting be provided with the initial site plan. Consequently, no requirement was necessary with the initial site plan, but the ARB made these requirements of the final site plan.
   c. County Code § 18-30.6.4(c)(5) applies; however, the ARB did not find the trees in question to be significant, so their preservation was not made a requirement of the initial plan.
2. *The appellant states that the entrance is not in keeping with the rural character of the area.* There is no EC guideline specific to entrances and rural character. The guideline that most closely relates to this statement is Guideline #6, which reads in part: "Site development should be sensitive to the existing natural landscape and should contribute to the creation of an organized development plan. This may be accomplished, to the extent practical, by preserving the trees and rolling terrain typical of the area; planting new trees along streets and pedestrian ways and choosing species that reflect native forest elements…" The ARB did not find the trees that were proposed to be removed for the entrance drive to be significant, nor did the ARB find it practical to retain those trees. The ARB found that planting trees along the entrance drive and adding trees to the graded slope would be sufficient to re-integrate the site into the surrounding environment. This planting was made a requirement of the final site plan.
3. *The appellant states that alternate entrance locations were not considered.* The applicant and the appellant both informed the ARB of alternate entrance locations that had been considered or attempted, or that might be available. The ARB discussed these alternate locations in detail, noting that shifting the location within the relatively small area available wouldn't change the view considerably, but that it wasn't really possible to review an entrance location not drawn on the plan. The ARB also noted that the goal of the ARB's review was to determine whether the proposal meets the guidelines, not to determine all possible options. Because no guidelines were identified as being deficient with the entrance location that was proposed, the ARB did not require an alternate location.
4. *The appellant states that continuity of the Entrance Corridor is not being preserved by the*

ARB's action. The EC guideline that most closely relates to this statement is Guideline #7, which reads: "Landscaping should promote visual order within the Entrance Corridor and help to integrate buildings into the existing environment of the corridor." The ARB did not find that the trees to be removed for the entrance drive were significant. Instead, the ARB found that trees along the entrance drive and trees added to the graded slope would be required to re-integrate the site into the surrounding environment. Continuity would be maintained with the planting of those trees, and this planting was made a requirement of the final site plan.

This item has no budget impact.

Staff recommends that the Board affirm the ARB's decision.

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Ms. Margaret Maliszewski, Principal Planner, addressed the Board, stating that on March 18 the Architectural Review Board (ARB) reviewed an application by the New Hope Church to construct a new church with associated site improvements, and the ARB's action was to forward comments on the plan as recommended by staff to the agent. Ms. Maliszewski stated that the action has been appealed by an adjacent owner, and the parcel in question is located approximately 350 feet west of Route 29, between Dickerson Road and Piney Mountain Road. Because the parcel is not adjacent to the Entrance Corridor, she said only the portion that falls within 500 feet of the right of way of the EC is included in the Entrance Corridor Overlay District. She presented an image showing the position 500 feet from the Route 29 Entrance Corridor, and the ARB reviews only that portion of the development to the right of the red line. Ms. Maliszewski noted the location of everything on the parcel that is not subject to ARB review.

Ms. Maliszewski presented an image of the grading plan from the initial New Hope site plan proposal, and mentioned that it includes part of the entrance drive to the church. Ms. Maliszewski also presented a photo of the parcel taken from Route 29, noting that the visibility of the site is limited by the width of Dickerson Road and the 350-foot distance from the highway. She explained that, as a result of new regulations that went into effect in January, the ARB reviewed the proposal as an initial site plan. She mentioned that the ordinance limits the review to three specific items: the size and arrangement of structures, the location and configuration of parking and landscaping, and the identification and preservation of trees and other natural features.

Ms. Maliszewski reported that, in the order of appeal, there were four particular items identified as grounds for appeal. She said that the first item stated that the ARB "imposed no requirements to satisfy the guidelines as per the relevant zoning ordinance sections," and the first of those sections relates to the size and arrangement of structures which doesn't apply here because none of the proposed structures are located inside the Entrance Corridor Overlay District. She said that the other sections do apply and are related to landscaping and existing natural features, but the ARB did not find that existing trees were significant so there was no need to require preservation of those trees. Ms. Maliszewski stated that the ARB did determine that new trees would be required along the proposed entrance drive and along the slope adjacent to the drive, and there was sufficient area shown on the plan for that planting and, therefore, there was nothing additional required at the initial site plan stage.

Ms. Maliszewski said that the second grounds for appeal stated that alternate entrance locations were not considered, but they were discussed at length at the ARB meeting. However, she said, the ARB did not find any guidelines to be deficient relative to the entrance location that was proposed, so no additional requirements were needed. She stated that the last two grounds for appeal relate to the entrance drive and rural character, and to continuity within the Entrance Corridor. She said the same issues apply here as in the first grounds for appeal, with the ARB finding that the trees were not significant so no preservation was required; new trees would be required along the drive and along the slope adjacent to the drive, and those trees would be sufficient to reintegrate the site into the surrounding environment.

Ms. Maliszewski stated that several other issues have been discussed in recent weeks related to the overall church proposal, and many of those issues are not relevant to the ARB review or to the action that is the subject of the review at this meeting. She said the ARB's action is based on ordinance requirements for ARB review of the initial site plan and on the Entrance Corridor design guidelines, and so the recommendation for tonight is to affirm the ARB's decision.

Ms. Mallek asked how there was a "dramatic change in the plan" from what the Board saw in July when it was approved and what's now in process does not affect ARB deliberations. She said the Board had lots of discussion in the public hearing about the pines at the corner, which do not belong to the church. She said the trees actually belong to VDOT, and VDOT told the Board that they could all be cut down tomorrow, which wipes out the viewshed protection for the corner that Ms. Maliszewski alluded to as being the property. She expressed concern that that was significant to the Board's decision, and would open up the visibility and she was having trouble reconciling those.

Mr. Rooker said it seems Ms. Mallek is raising a legal issue, and asked how the County can require VDOT to maintain trees in the right of way. Ms. Mallek responded that the trees are not in the right of way, they're on a separate property, outside 16 feet from the center line.

Mr. Davis clarified that there is no condition that requires the preservation of these trees, as it was part of the approved special use permit. He said it may have been discussed, but there was no condition to that effect.

Ms. Mallek stated that this issue was talked about it in the public hearing and it was very important in the adoption of the vote, and the Board was told it would be taken care of at the site plan stage, and now that this project is at that stage, the people doing the site plan say "well you didn't write it down, so we're not going to bother." Ms. Mallek stated that is the way the rules are operating right now, which is why we're here today and added that it is all related.

Mr. Rooker responded that Ms. Mallek's comments are getting overly general about the way the Board operates. He said that he remembers the project coming forward with the primary issue being whether they were going to put in a soccer field, and that came off the table shortly before it came before the Board. Mr. Rooker stated that he didn't remember it being contentious, nor did he recall anything about the trees in this spot other than discussion that it had to get ARB approval. He said that they are limited by the scope of the review of their decision, and asked Mr. Davis on what areas the Board might be able to second guess the ARB as well as the standards for doing that.

Mr. Davis replied that the review before the Board is very limited because the review by the ARB is a very limited review at this point. He said that this is the review by the ARB of the preliminary plan, which is limited to a general finding by them on the design guidelines that may be impacted by the project. He said that is the only thing that is before the Board today and, while the Board has the authority to affirm, reverse or modify the ARB's decision, they are bound by the same rules and procedures which is a very limited review. He said the Board cannot revisit the special use permit as part of this process and cannot require them to move the features on the site plan unless they're in conflict with ARB guidelines.

Ms. Mallek said the ARB is also supposed to take the critical slopes into account, as they have changed dramatically from what the Board approved.

Mr. Davis stated that it may be a site plan issue if there are critical slopes waivers required, as the applicant will have to comply with site plan requirements to get final site plan approval – but the fact that there are critical slopes there doesn't put any additional requirements other than those required by the County's ordinances on the site plan. He said that there were no special use permit conditions attached to critical slopes, and the County's ordinance regulates critical slopes and relies on those regulations to address critical slopes issues.

Mr. Rooker asked if there was a critical slopes waiver sought as part of the initial approval. Ms. Mallek said that there was, and noted two places that were represented during the special use permit process as "site plan #1."

Mr. Rooker stated that, if they come back with a final site plan that disturbs different critical slopes, they would have to come back with a waiver for the areas of critical slopes that was not approved in the first waiver. He added that the Board does not have that issue before it today. Mr. Davis confirmed that it was not an issue that was before the ARB, because it wasn't part of their review.

Ms. Meghan Yaniglos, Senior Planner, addressed the Board, stating that she reviewed the initial site plan and indicated that the critical slopes waiver they may need might be exempt for access ways per the ordinance so it might not come before the Board.

Mr. Rooker asked if the entrance way had moved from the proposal the Board saw. Ms. Mallek said that the difficulty was that the identification of critical slopes was changed because they did a field topo instead of relying on the County's computer model. She said there's an enormous difference in the critical slopes. She added that the Board looked at a tiny piece of acreage during the hearing, and recalled that Mr. Benish did talk about that extensively.

Ms. Yaniglos responded that that portion may come back, but engineering hasn't reviewed the request yet as it would be part of the condition of the final site plan. She said that the engineers have provided staff with the new information, it just hasn't been reviewed yet.

Mr. Rooker said staff would normally review that at the time of the final site plan, and the ARB doesn't really have anything to do with the critical slopes. He said that is what the Board is looking at today, which is the ARB's approval, and is based upon the criteria that are in their guidelines and the ordinances.

Mr. Davis stated that it also pertains to a very limited portion of the site, which is just the site within 500 feet of Route 29 – which only captures a very small corner. He said where the buildings are and this other disturbance is outside of the ARB review entirely and reiterated that what is before the Board tonight is very limited and just addresses those general guidelines for that preliminary review. He stated that the issues the Board may have with the site plan are not before it tonight, and that will be taken up in the site plan review process, which has not been completed.

Ms. Mallek asked if the Board could still call a site plan up. Mr. Davis responded that they could not.

Mr. Rooker said that, even if the Board were able to call up a site plan, under the old ordinance, there would still be a difference between administrative and a discretionary decisions. He stated that the decision regarding the site plan is an administrative determination as to whether or not an applicant satisfies all the objective criteria – and the same holds true with critical slope waivers, which are based upon the criteria set out in the ordinance.

Ms. Mallek stated that she wanted to hear comment from the public as well as the applicant.

Mr. Ed Blackwell of Blackwell Engineering addressed the Board as a representative for the church, stating that the entrance shown on the plans now is the entrance that was brought to the Planning Commission, Board and ARB the previous year, and was also the same entrance on which the initial site plan review was done. Mr. Blackwell stated that they have looked at numerous entrance locations and found one that was acceptable, and he met with VDOT onsite several times and entrance #4 was the one he got VDOT's blessing on through the staff review process. He said that the church is more than willing to replant trees, and his understanding is they need to go back to the ARB with their landscape plan. Mr. Blackwell stated that some of the verbiage in their special conditions was that the replanting must be spaced and located to achieve a natural appearance. He said he is certain that they will be held to a very tight standard on that, and does not object to replanting heavily. Mr. Blackwell said that the trees there now are bull pines, and they would plant whatever level and style of trees that is acceptable to the neighborhood and to ARB staff. He stated that they feel the entrance location is the most cost efficient for the church, and it's been reviewed by numerous bodies, so they'd like to move forward with it.

Mr. Rooker said he didn't think the Board was here to make a decision about where the entrance should be tonight. Mr. Davis responded that is the case unless it conflicts with an ARB guideline, and the finding of the ARB and the staff was that it did not.

Ms. Miriam Pitts addressed the Board, stating that the process for the church has been lengthy, costing time and energy, very frustrating, and confusing to say the least. Ms. Pitts said that the process has been fraught with multiple layers of deceptive misinformation that requires minute attention to detail and translation from "legalese and engineer speak" to lay language. She stated that the major culprits are the lack of transparency and seemingly reluctance of the County staff and ARB to regulate the design of development within the County's Entrance Corridors and adjacent rural land. Ms. Pitts said that the Entrance Corridor is quickly moving further north and closing in on Ruckersville, and neighborhood concerns are real and directly related to current changes taking place. She stated that the County and the ARB seem to be suffering from paralysis caused by incompetence, inability and improper application of guidelines and rules that are in place to protect our County's land. Ms. Pitts said that citizens feel as if they didn't get the in-depth expertise they needed from County employees, and she never imagined that the County's lack of careful scrutiny for approval of the church's initial plans would ever make them feel as helpless, vulnerable, and unprotected as landowners.

Ms. Joyce Walker addressed the Board, stating that recently her neighbors Chuck Boldt and Greg Quinn filed an appeal requesting denial of the ARB's certificate of appropriateness for New Hope Church – and she stands firmly behind them in full support of this request. Ms. Walker stated that they do not agree that the proposal meets the intent of the special use permit with regard to critical slopes and extent of woods now being removed. She said that, when turning off of Route 29 North onto Dickerson Road, upon rounding the bend on the right is a forest of Virginia pine trees – the foothills of Piney Mountain. Ms. Walker stated that she has traveled the road for 35 years, and when she sees the stand of pines she gets a sense of peace and harmony with nature and knows she's nearing home. She said she cannot imagine rounding that bend and not seeing those woodlands. She pointed out that Mr. Boldt has worked tirelessly in suggesting options and seeking solutions and suggested now is the time to accept some of his assistance. She requested the Board think carefully about reconsidering this matter and make the right decision.

Mr. Greg Quinn addressed the Board, stating that he would like for the Board to consider revoking the certificate of appropriateness for the New Hope Church site plan and reject it as it stands now. Mr. Quinn said that the church should be allowed to build under the Establishment Clause, but there should be equal protection for the neighbors under the 14th Amendment. He stated that, when the church comes in and builds their building and parking lot, it's a big commercial thing. He said he is not against the church, but just downsize it because the church's parking lot would provide clandestine access to his property and, in turn, a safety issue for him. Mr. Quinn added that he thinks gospel's a good idea, but he'd like to see a good neighbor downsize this project, make it more rural, and think about the considerations and safety. He mentioned that he attends one of the other three churches in the area and they are small and low-profile – but this church is just like a big old commercial project on a little piece of property.

Mr. Chuck Boldt addressed the Board, stating that he's extremely frustrated by what he's heard, adding that it seems they are doubling down and waiting for the final plans before doing anything and, at that point, the church has an investment. He stated that the ARB didn't want to consider a separate entrance because only one entrance was proposed, and staff refused to allow other options. He said the Board can consider other things, it is not limited. Mr. Boldt said that it's sad that after every turn they're getting rules and regulations thrown in their face that say they don't know what they're talking about. He stated that he doesn't disagree that the church should be there, but they were not given an opportunity to speak when the Board voted on the special use permit and the conditions on that SP are no longer valid. He said this entrance is larger than what was approved adding that the ARB admitted it wasn't the best entrance, but they said it was the 'only entrance,' and that is a false statement. He said that Ms. Mallek has worked with neighbors to try to find something different but has been rebuffed by the staff at every turn. Mr. Boldt stated that he's spoken about this five times in the last three months, and the "before and after" he sent them via email should give them pause. He encouraged the Board to vote against the certificate of appropriateness, adding that the church does not control the land between Dickerson and Route 29 – Tax Map 2115. Mr. Boldt said that, if the trees go away with an approved use, the entire site will be visible from 29 and that is not the impression you get when you look at that picture that Margaret showed you.

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

Ms. Mallek said that there were four questions sent that relate very directly to the ARB question about the fact there's no obligation to replace the trees that's written down anywhere. She asked how they can require the site to remain buffered, and said she would like to have a record established that deals with this.

Mr. Thomas said that he understood the applicant to state that he would replace all the trees once they were taken out.

Mr. Rooker responded that Ms. Mallek's concern is that the trees be of a size and type that would restore the visual aspects of the property.

Mr. Boyd stated that that's not the issue before them and that should have been dealt with at the special use permit stage as a condition of approval.

Ms. Mallek said that they thought they had discussed it, but it never got written down and so now it doesn't exist. Mr. Boyd replied that he doesn't recall that being discussed.

Mr. Rooker said there is a bifurcated ARB process now, and this is the first part of the process – which is a very limited review to only the things specified when the Board amended the ordinance. He stated that the idea was to have the ARB weigh in early with things like the location of the buildings onsite, and then, at a later stage make certain that landscaping and other features under their control will be dealt with. He said the landscaping will come back to the ARB, as he understands it so it would seem to him, if this Board expresses a strong interest in seeing heavy landscaping in that area where trees are being removed, that is a factor the ARB can take into consideration when this comes back for their final approval. Mr. Rooker added that the neighbors can attend the ARB meeting and speak, and said that the Board should make it clear in this meeting that they support the applicant's offer to plant in any way he's directed to plant in order to restore the visual aspects of the property. He stated that they could even take a vote to send a letter to the ARB about the conversation at this meeting on that issue.

Mr. Davis clarified that the guidance on landscaping the ARB has given is outlined in the third bullet and, if that's not acceptable to address the Comp Plan guideline, the Board could amend that statement but staff's position is that the statement is adequate to compensate for the lost wooded area at this point in the plan. He said that this would be subject to a detailed plan coming in as part of the final site plan that would show exactly the type of trees and where they would be located and, at that time, staff or the ARB could evaluate that as to whether the applicant has met the guidance that was given at this point in the process.

Mr. Snow said the third bullet seems to address all of the things we're talking about.

Ms. Mallek said that 2" caliper trees at 40 feet apart would take a very, very long time to provide any actual screening.

Mr. Rooker said that the ARB conditions for landscaping on the final site plan say "at a minimum," so the Board just needs to make it clear that they'd like the ARB to take a very hard look to make certain that is not the minimum to be achieved here.

Mr. Snow agreed and stated that 2"-caliber trees would never provide the privacy that the pines were giving, so the mixture of other trees worked in with the larger canopy makes the difference. He said it is the smaller trees that are going to create that visual barrier. He added that he thinks it's appropriate to send a letter to the ARB to make sure they're achieving what the Board is trying to do.

Ms. Mallek asked if there was any agreement to address the focus of staff to investigate further the increases in critical slopes, because the detailed information was not presented to the Board last year. She said, if this map had been presented, the Board would not have had a discussion about how it was .03 of an acre, adding that quite a lot of the land is critical slopes which is going to be in jeopardy. She said that staff's feedback has been "this is fine the way it is," which means they didn't really focus in on the changes between what the Board approved in July and what's now being sent in.

Mr. Rooker said, if a final site plan comes back and shows that there is disturbance of critical slopes and materially different than what was approved by the waiver, they would need to come back for a waiver with respect to the new disturbance.

Mr. Davis clarified that any critical slopes beyond what are necessary for the entrance would be subject to a critical slopes waiver, which would have to be approved as a special exception by the Board under the current ordinance. He pointed out that any critical slopes that have not already been approved by a waiver is not an issue that [the ARB] can address.

Mr. Rooker agreed that it's not an ARB matter, adding that there were a few areas of critical slopes that were approved for a waiver and, if there's a material difference, they would have to come back for another waiver.

Ms. Yaniglos explained that there were some small critical slopes waivers that were approved with the special use permit, but staff hasn't done a comparison to see what has changed and to what extent.

Mr. Davis stated that if it's changed, any critical slopes waiver that wasn't previously approved will be subject to a critical slopes waiver process which would likely come before the Board. He said that, under the existing ordinance, it would come before the Board with the entrance being exempt. Mr. Davis

stated that it's in the planning staff's work plan to address the critical slopes requirements but, at this point, a special exception from the Board would be needed.

Mr. Rooker stated that whenever they capsulate an ordinance and it no longer comes before them, they lose a little flexibility in how they shape plans.

Ms. Mallek asked if there was interest among fellow Board members in showing any kind of concern that something more needs to be done in this circumstance. Mr. Rooker responded that he did join in Ms. Mallek's concern, which is why there was discussion about beefing up the landscaping component of the project. He said Mr. Paul Wright of the ARB had talked about orienting the building toward the entrance corridor which was an important factor from the ARB's perspective and that would also, in this case, take a lot of the pressure off the neighboring properties as opposed to having all the parking facing Piney Mountain Road instead of Rt. 29.

Ms Mallek said she would like to figure out some way to deal with conditions that apply to other people's property in the future so that the County does not fall into this trap again. She said the Board was relying on the pine trees to visually protect the entrance corridor from the very wide cut that is being made. She visited the property and was able to see how much is being proposed to be removed and felt that there was very little room to replant any kind of visual barrier on the property and that is the kind of dilemma the County has found itself in.

Mr. Rooker agreed and stated he would like to beef up the landscaping requirements. He added that the County has ordinances in place, and the Board has to follow the ordinances and those are meant to be objectively applied.

Ms. Mallek said that there have been some statements about this being the only entrance that would be allowed, which is not true because Joel DeNunzio of VDOT stood on the site and indicated he would approve the entrance wherever the County wanted it to be. She stated that she'd ask for the entrance to be 50 feet further from the stop sign to improve the traffic flow and also to remove the cut into the property from the view of the opening on Dickerson Road.

Mr. Boyd asked Ms. Maliszewski if staff had looked at other entrances. Ms. Maliszewski responded that staff did not look at other entrance locations, but other entrance locations were discussed at the meeting. She said that the applicant went through a process to get to the fourth choice for an entrance, and there were no other entrances illustrated for review.

Ms. Mallek said they controlled the information that was given.

Mr. Boyd asked at which meeting the entrances were discussed.

Ms. Maliszewski said that alternatives were discussed at the ARB meeting.

Mr. Davis stated that there's no requirement for the applicant to provide alternate entrances, as long as they provide an entrance that meets all the County requirements and the site plan ordinance, and is acceptable to VDOT. He said the County does not require people to do any more than that adding that it is a ministerial process and, if the applicant meets the ordinance requirements and the special use permit requirements – which staff has determined that they've met – then they are not obligated to change the location of their entrance.

Mr. Rooker said that is a legal matter, not a discretionary decision.

Ms. Mallek stated that that's because the County has essentially designed it that way.

Ms. Mallek **moved** to uphold the appeal as presented and overturn the decision.

Mr. Rooker said that he can't support that because there's no legal basis to do it.

Mr. Snow reiterated that there is no legal basis for it.

Ms. Mallek commented that it's the history of what's gone on.

Mr. Boyd then **moved** to affirm the ARB's decision. Mr. Snow **seconded** the decision.

Mr. Rooker noted that the ARB only reviews certain very limited things at this point in a plan, and they have done that here, and he sees no legal basis for second guessing the limited review that the ARB performed at this stage of the process. He said that there's not a legal requirement in the ordinance or in state law to allow the Board to come in and say "we think you should move your entrance," nor does it allow the ARB to do that.

Mr. Boyd agreed, and said that is why he made the motion.

Mr. Rooker said there were a number of these issues that could have been addressed at the special use permit consideration stage but, once that's granted, the Board is locked in by it and, after that, there's a process for approval of a plan, which is mostly ministerial. He said that, if the critical slopes issue differs from what was approved by waiver, it would have to come back, and the Board has expressed an interest in making sure it did. Mr. Rooker added that they also expressed interest in making certain that the planting is such that it provides adequate and good screening to the extent feasible.

Ms. Mallek asked if the site plan would have to be done before any clearing or grading permit is given because, if that's not required, then all this effort is for nothing.

Mr. Graham explained that, under the new process, typically one can get a grading permit after an initial site plan and, in this particular case, condition #4 with the ARB requires a tree conservation plan that would have to be reviewed and approved prior to the issuance of a grading permit. He said that in addition, if there are differences in the critical slopes from what are approved, staff would have to have that verified and, if a critical slopes waiver was required, that would have to be approved before issuing the grading permit. He pointed out that, once the initial site plan is approved, the only two things between a grading permit [are] the tree conservation plan and the verification on the critical slopes.

Mr. Rooker mentioned that it doesn't include the landscaping plan that ultimately gets imposed.

Mr. Graham agreed, noting that it would be a requirement with a certificate of appropriateness and would be done as part of the final site plan.

Mr. Rooker added that, whether we like it or not, there's nothing under state law that prevents anybody from cutting trees down on their property; it's only when they come forward with a plan that we actually can assert some control.

Ms. Mallek pointed out that the legislation just changed last year that forestry rules do not apply once an application has been made to do something else, so they are under development rules now, therefore, he cannot just go and clear cut the property and pretend it is forestry regulations.

Mr. Graham said that there are the special use permit conditions that apply.

Mr. Rooker agreed, but said it's only the filing of a plan that puts them in a position where they do have control over what's cut on the property.

Mr. Boldt addressed the Board, stating that regarding the special use permit approval, he and his neighbors were not allowed to come to that meeting. He said they asked staff when it would be held, and they were never told. Mr. Boldt said staff stood up here and represented their interest without our approval. He said the Board does have a little more leeway, and it would be a shame to let the decisions regarding this application left up to staff. Mr. Boldt said that it is way more, and it's been misrepresented and, if it cannot be stopped tonight, please give he and his neighbors something that gives them some hope that they will be heard.

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

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

Mr. Rooker clarified that, if there is a material difference in the critical slopes that were approved by waiver before and what ultimately turns out to be disturbed pursuant to the final site plan, it would still come back to the Board.

Mr. Davis confirmed that there would have to be a critical slopes waiver granted for any additional disturbance that wasn't already approved.

Ms. Mallek asked what the definition of "significant" and "minor" and how they deviate from the plan the Board voted on last July.

Mr. Davis responded that he didn't have the conditions in front of him, but he recalled that it had to be "in general accord," which means that the major features of the plan have to be consistent. He added that the zoning administrator would make the determination as to whether they are, and the determination has been that the preliminary site plan is in general accord with the special use permit approved by the Board. He said he thought that is a decision that's already been made.

Mr. Rooker asked if there was a determination made yet with respect to critical slope disturbance.

Mr. Davis responded that there had not been, adding that it would be shown on the final site plan. He confirmed that the plan that was found to be "in general accord" would not preclude critical slopes waivers still being applied.

Agenda Item No. 10. **Public Hearing: PROJECT: SP-2012-00030. The Peabody School (Sign #51)**.
PROPOSAL: Amend Special Use Permit (SP1996-046) to expand enrollment of a private school, to increase maximum number of children in facility from 140 to 210 (70 additional students) within Peabody School. No residential units proposed.
ZONING CATEGORY/GENERAL USAGE: PUD- Planned Unit Development-residential (3-34 units per acre), mixed with commercial, service and industrial uses. SECTION: 20.4.2 and 23.2.2 School of Special Instruction.
COMPREHENSIVE PLAN LAND USE/DENSITY: Industrial Service- warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing

activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre).
ENTRANCE CORRIDOR: No. LOCATION: 1232 Stony Ridge Road, at the intersection of Stony Ridge Road and Southern Parkway.
TAX MAP/PARCEL: 076M1000001500.
MAGISTERIAL DISTRICT: Scottsville.
MAGISTERIAL DISTRICT: Rio.
(Advertised in the Daily Progress on April 22 and April 29, 2013.)

Ms. Megan Yaniglos addressed the Board, stating that this is a special use permit to amend the existing special use permit which is to increase the maximum number of students from 140 to 210, and a multi-purpose building and additional parking are also proposed with the request.

Ms. Yaniglos reported that, at the Planning Commission meeting on this item, a new plan was presented and recommended for approval showing the proposed multi-purpose building with a 10-foot setback, and condition #1 has been revised to reflect the revised date. She said that a variation was also submitted in order to get the setback, which the Board would need to act on also.

Ms. Yaniglos noted that the Peabody School is located on Southern Parkway and Stony Ridge Road off of Avon Street, and presented pictures of the existing site and pointing out the existing entrance and the parking lot. She also presented the new site plan that was presented at the Planning Commission meeting, noting that the building will be 72 feet from the road and they would maintain a 10-foot landscape buffer.

Ms. Yaniglos said that staff recommends approval and has found favorable factors such as the proposal provides more educational opportunities for children in the community, and no detrimental impacts to adjoining properties are anticipated. She stated that staff has three conditions as listed in the Executive Summary.

Ms. Mallek asked if the 10-foot change from 30 feet to 10 was along southern parkway or up to the north and the neighbor on the other side. Ms. Yaniglos confirmed that it is along southern parkway, adding that there is an existing open space area maintained on that side and the new building is going in front of the trees, so none of them are being cut down.

The Chair then opened the public hearing, and asked the applicant to come forward.

Ms. Valerie Long addressed the Board, stating that she is representing Peabody School. Ms. Long said that Diane Krameyer would introduce the proposal on behalf of the school.

Ms. Diane Krameyer addressed the Board, stating that the school was founded in 1994 with 13 students and was created to serve the needs of academically advanced children with a differentiated curriculum and tailored programs. She said that the school currently serves 155 students, comprised of 113 families in pre-K through 8th grade. Ms. Krameyer said that their admissions demand continues to rise, thus their request to increase enrollment to 210 students. She reported that they are seeking approval for a multi-purpose space on the property for performing arts, athletics and community gatherings.

Ms. Krameyer stated that the school has a fairly diverse population, with 33% of families receiving financial aid and 12 nationalities represented with 20% being minority students. She said that they primarily serve Charlottesville and Albemarle, but have students that come from as far away as Staunton, Lexington and Gordonsville. Ms. Krameyer said that, at the time the school was founded, academic research showed that 25% of academically advanced kids – particularly those of a lower socioeconomic status "wash out" of mainstream education. She said Peabody was created to help stop that trend.

Ms. Krameyer presented a photo of their current multi-purpose space, the one remaining trailer on the site, and stated that they really have no gymnasium or space for events. Ms. Krameyer presented an artist's rendering of the proposed multi-purpose space, noting the current location of an outdoor basketball court. She said that the goal is to build on top of that space and also include a courtyard for outdoor gatherings, and the building will include a gym and bleachers, a mobile stage for drama and music, new classroom space for middle school students, storage, and community gathering space which is much needed.

Ms. Long addressed the Board, stating that the prior zoning approval, when the park was originally approved, established a 30-foot building setback, and the school is asking that it be reduced to 10 feet so they can preserve as much of the outside play area as possible for the outdoor recreation area. She said that the area to the left is steep slopes down to the creek and was also designated open space when the subdivision was created, so there's no other place for the building to be located other than close to the street.

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

Mr. Dumler **moved** to approve SP-2012-00030 subject to the revised application and three conditions as recommended by staff. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Mr. Dumler **moved** to approve the variance request to allow the multipurpose building to be located 10 feet from the property line by allowing the reduction in setbacks from 30 feet to 10 feet, for the reasons recommended by staff. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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

1. Development of the use shall be in general accord with the conceptual plan titled "Peabody School Application Plan for Special Use Permit," prepared by Collins Engineering, with the latest revision date of **March 18, 2013,** as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Plan, development shall reflect the following major elements within the development essential to the design of the development:

   - Location of parking areas and turn arounds
   - Open Space
   - Landscape Buffer
   - Location of multi-purpose building addition

   as shown on the plan.

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

2. The maximum enrollment shall not exceed two hundred ten (210) children.
3. Landscape buffer adjacent to the Southern Parkway shall include screening in accordance with Section 32.7.9 of the Zoning Ordinance for the parking, turn around, and the multi-purpose building.

_____

Agenda Item No. 11. **Public Hearing: PROJECT: ZMA-2012-00006. Church of Our Saviour.**
PROPOSAL: Rezone 0.487 acres from R-2 Residential, which allows residential uses at a density of two units per acre, to C-1 Commercial which allows commercial-retail sales and service; residential by special use permit uses at a density of 15 units/acre in order to allow an existing building or a replacement building to meet a 50-foot setback requirement of the C-1 zoning for buildings adjacent to residential zoning districts. No dwellings proposed.
ENTRANCE CORRIDOR: Yes.
AIRPORT IMPACT AREA: Yes.
PROFFERS: Yes.
COMPREHENSIVE PLAN: Neighborhood Density Residential – residential (3 – 6 units/acre) supporting uses such as religious institutions, schools and other small-scale non-residential uses and Urban Mixed Use (in areas around Centers) – commercial and retail uses that are not accommodated in Centers in Neighborhood 2 - Places 29.
LOCATION: 1165 Rio Road East and 2412 Huntington Road.
TAX MAP/PARCEL: 06100000014400 and 061000000146D0.
MAGISTERIAL DISTRICT: Rio.
(Advertised in the Daily Progress on April 22 and April 29, 2013.)

(Note: Mr. Rooker recused himself from the discussion and the vote, as he is a member of the church and serves on the Board of Trustees. He then left the meeting at 7:47 p.m.)

Mr. Wayne Cilimberg stated that this matter is somewhat of a "housecleaning" ZMA dealing with the location of the zoning lines separating the residential zoning from the commercial zoning. He explained that there are two properties that are involved which the church owns – 144 and 146-D – part of which is zoned C-1 and part as residential. Mr. Cilimberg stated that there were setback requirements in the C-1 zoning district that have made the existing building on the edge of the property nonconforming, so any expansion of that or replacement with a new building necessitate that zoning be modified to provide for the proper setbacks. He said that the request is less than ½ acre zoning from R-2 to C-1 and will provide the existing building or a replacement with a 50-foot setback from the adjacent residentially zoned property. He noted that the requirement in the C-1 zoning district for buildings adjacent to residential districts have driven the need for the change, and pointed out the location of the area of changes from R-2 to C-1. Mr. Cilimberg added that the church hasn't decided yet whether to replace what's there or utilize that building.

Mr. Cilimberg reported that all factors are favorable and are consistent with the Comprehensive Plan, as this is a permitted use in the C-1 district and corrects the nonconformity while allowing the church flexibility in continuing its operations and service. Mr. Cilimberg said that staff recommends approval with the only change, since the Commission meeting, being an amendment to the proffer for clarity regarding the cemetery, and is thus recommending approval of the ZMA subject to the proffer dated and signed April 24, 2013.

The Chair opened the public hearing.

Mr. Jeff Kilmer addressed the Board, stating that he is co-chair of the renovations committee at Church of Our Savior. He said that they purchased the C-1 lot from Associated Steel several years earlier and have been using the building for church school, modifying it for use, and said that they also had a site plan amendment to the original R-2 to enable them to access the lot from Huntington Road. Mr. Kilmer stated that their intention, based on staff's recommendations, is to combine the lots but keep the zoning line in the same place, so they're simply moving that line to accommodate the existing building. He said that they would likely raise it and put up a building in the same spot, adding that the relative location of the building is important because it would be connected to the main building with a covered walkway to facilitate the classrooms and other activities. Mr. Kilmer stated that they would also have an outreach center there facilitating the food closet that they operate.

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

Mr. Thomas **moved** for approval of ZMA-2012-0006, subject to the proffer amended for clarity regarding the cemetery, signed and dated April 24, 2013. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Original Proffers ___X_____
Amendment _____

PROFFER STATEMENT

ZMA No. 201200006- **Church of Our Saviour**

Tax Map & Parcel Number(s): **T.M.P. 61-144** (partial), **T.M.P. 61-146D** (partial)

Owner(s) of Record: **Trustees for the Church of Our Saviour, D. B. 3893-132, D.B. 1923-547**

Date of Proffer Signature: **April 24, 2013**

.487 acres to be rezoned from **R2** to **C1**

Trustees of the Church of Our Saviour, is/are the owner(s) (the "Owner") of Tax Map and Parcel Number(s) T.M.P. 61-144 (partial), T.M.P. 61-146D (partial) (the "Property") which is the subject of rezoning application ZMA NO. 201200006- Church of Our Saviour, for a project known as "Church of Our Saviour" (the "Project").

Pursuant to Section 33 of the Albemarle County Zoning Ordinance (Chapter 18 of the Albemarle County Code), the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the zoning district identified above. These conditions are proffered as a part of the requested rezoning and the Owner acknowledges that the conditions are reasonable. Each signatory of the Owner for this Proffer Statement.

1. Any cemetery on the Property shall be accessory to the Church use.

OWNER

By: **Grace Carpenter, Trustee**
Tax Map & Parcel Number: **T.M.P. 61-144, T.M.P. 61-146D**

OWNER

By: **Charles Mason, Trustee**
Tax Map & Parcel Number: **T.M.P. 61-144, T.M.P. 61-146D**

(Note: Mr. Rooker returned to the meeting at 7:53 p.m.)

Agenda Item No. 12. **Public Hearing: ZTA-2013-00001. Wireless Phase 1.** Amend Secs. 3.1, Definitions, and 5.1.40, Personal wireless service facilities, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend the regulations pertaining to personal wireless service facilities by amending Sec. 3.1, by adding and amending definitions pertaining to personal wireless service facilities, and Sec. 5.1.40, by allowing equipment to be collocated and replaced by right if it does not result in a substantial change to the facility; allowing Tier II facilities to be up to 10 feet taller than the reference tree and to be approved administratively; requiring balloon tests at the request of the agent, rather than in all cases; eliminating the requirement that service providers submit annual reports; codifying the times by which applications shall be acted upon; eliminating certain design requirements for equipment located entirely within a structure; codifying the procedures and standards for changes to facilities approved prior to the adoption of Sec. 5.1.40 on October 13, 2004; and making other minor clarifications.
(Advertised in the Daily Progress on April 22 and April 29, 2013.)

Ms. Sarah Baldwin, Senior Planner, addressed the Board, stating that this is the zoning text amendment to update the wireless ordinance, with definitions that are necessary to incorporate collocation requirements and implement proposed process changes for previously constructed towers. Ms. Baldwin said that the ordinance currently requires all sites to submit an annual report stating that the site is still in use, but this process has proved to be time-consuming and cumbersome for the Zoning Administrator. She stated that the proposed ordinance allows a report to be submitted upon Zoning's request. Ms. Baldwin mentioned that amending existing sites has also been time consuming and difficult, and this ZTA would bring old sites into the tier structure and simplify processing which has been one of the most requested revisions from the industry. She said that review times are also brought into the ordinance, as currently they are only by policy, and the recommended times are consistent with the Federal Communications Commission (FCC) review recommendations and is more commonly referred to as "the shot clock." Ms. Baldwin stated that there is currently a court case under review by the Supreme Court to consider whether the shot clock can be imposed on localities by the FCC.

Ms. Baldwin reported that the text amendment did not deal with the provision of wire line or wireless broadband, and the ZTA does not change the maximum height of Tier II facilities which is still a maximum of 10 feet above the reference tree. Ms. Baldwin stated that no change occurs on the design requirements, and the tower must still be a monopole of wood, metal, concrete, or any other suitable sturdy material provided that the maximum dimensions are met in addition to other requirements that are appropriate for the setting of the facility.

Ms. Baldwin reported that several sections related to tree conservation are changed, but the changes only modify the requirements for tree conservation to a different section for organization standards and otherwise modifies the language to make it more understandable. Prior to the approval of a Tier II or Tier III facility, she said a finding must be made that adequate opportunities for screening exist, and the ordinance also states that trees within 100 feet of the facility may not be removed by the applicant unless authorization is granted by the agent. She said that this is the same in the existing ordinance and in the proposed ordinance, and does not mean that if a facility is located less than 100 feet away from a property line that an imposition is placed on the adjoining property owner limiting tree clearing. Ms. Baldwin stated that the County has consistently reviewed sites to determine if trees and vegetation under the control of the applicant are adequate to maintain the visual quality of the site within 100 feet. She said that, if the visual quality cannot be maintained, the facility would be denied, required to be relocated, or would necessitate easements. Ms. Baldwin stated that, as of this date, the County has not required easements for tree preservation.

Ms. Baldwin stated that, in cases such as this, balloons cannot be flown and, in the proposed ordinance, balloon tests would be required upon request of the agent – who would require them where the site permit is testing, but making this change eliminates the need to process any special exceptions for balloon tests. She reported that, under the proposed ordinance, Tier II sites would become administrative, and, at this point, staff has nine years of experience in processing towers. Ms. Baldwin said that the height could be 10 feet above the reference tree, and public notice is still maintained along with all design requirements. She stated that Section 64-09 does not alter how localities process an application for a change that is not substantial; the statute only requires that the application be approved. Ms. Baldwin said that the act contains no definitions aside from "an eligible facility is an existing wireless-based station or tower."

Ms. Baldwin pointed out that Section 64-09 requires approval of the change if a site does not represent a substantial change, and staff believes that by-right changes to a site should be permitted if the changes are not substantial, and thus has developed standards that are not considered substantial changes. Ms. Baldwin said all of the changes require that design requirements are met, and changes that exceed these limits – such as adding lighting, changing color, or not meeting any other design requirement – would be considered a substantial change. Ms. Baldwin said that there is agreement that they need to define the term "does not substantially change the physical dimensions," and some believe that the nationwide programmatic agreement for the collocation of wireless antennas should be used as this definition.

Ms. Baldwin said that the Middle-Class Tax Relief Act and the programmatic agreement use different terms – with the act including the terminology "does not substantially change the physical dimensions," however, no definition is contained in the act. She stated that "substantially changed" in the act only applies to processing which tier category a tower is reviewed under the proposed ordinance. Ms. Baldwin said that using the programmatic agreement would allow antennae on facilities that would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with the separation from the nearest antenna not to exceed 25 feet – whichever is greater. She stated that it could allow more than the standard number of new equipment cabinets for the technology involved, not to exceed four. Ms. Baldwin said that the antenna could protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater – or even allow excavation outside the current tower site. She noted that "substantially increase" in the programmatic agreement only applies to review time pertaining to the shot clock requirements, which is what is proposed with this amendment. Ms. Baldwin clarified that this meant collocations would have to be acted upon within 90 days, and new facilities would have to be acted upon within 150 days.

Ms. Baldwin said staff opinion is that the County can and should develop a definition for what "does not substantially change the physical dimension" means, and it is possible that some sites that previously could have collocated by-right with a building permit will now require additional review. She stated that a treetop facility within 500 feet of a dwelling on an adjoining property will require a Tier II review and, while the review would be administrative, it would require notice to abutting owners. Ms.

Baldwin said that a facility located within a rural historic district or some other avoidance area would require a Tier III review, which is by special use permit. She noted that there are many facilities currently located within the avoidance areas.

Ms. Baldwin concluded by stating that the proposed changes are the result of cumulative review of the comments received during roundtables and work sessions and, during the Phase II amendment of the ZTA, the County will be revisiting the definition of "avoidance area."

Mr. Davis noted that the errata sheet distributed for the last two pages of the ordinance simply made the definition relating to the size of an existing monopole or tower consistent, and is not a substantive change but a grammatical one to make the ordinance consistent.

Mr. Rooker commented that the legislation the Board is responding to is one of the reasons people hate government. He said that there was a Middle Class Tax Relief Act, and the cell tower industry found a way to squeeze in an entire section dealing with cell towers – which is something that most people feel should be addressed on its own merits, however, that is what we get.

Mr. Davis said that this is a procedural ordinance, not for substantive requirements, and is somewhat complicated by the federal acts that have been addressed by the procedural changes. He said the thrust of this ordinance is to streamline the process for things that would otherwise have to be processed in a more cumbersome manner.

Ms. Mallek added that it is coming to the Board so that's a pretty substantial change.

Mr. Davis said it is process change. He explained that Tier II applications now come to the Board for a special exception, but those were previously approved by the Planning Commission prior to the Sinclair decision. Mr. Davis said they now come to the Board by special exception, and those would be administratively approved. He said that is a significant procedural change, and there are other procedural changes which would apply to some applications that otherwise would have been previously subject to Tier II or Tier III reviews that will now be allowed as an administrative approval.

Mr. Bill Fritz, Chief of Special Projects, clarified that they have not changed any of the design standards – antenna, sizes, mounting standards, dimensions of the towers, heights of the towers, when it's a Tier II or when it's a Tier III, no lighting allowed, etc. He added that all those rules stay exactly the same; the differences are in how a Tier II or a Tier III and collocations are processed, but not in the design of the actual site. He noted that is being left for discussion at a later time.

Mr. Boyd asked if it was true that about 85% of the existing towers would fall outside the ordinance changes since they are in the Entrance Corridor or historic districts.

Mr. Fritz responded that a significant portion of the sites are in avoidance areas or would be within 500 feet of a dwelling, but he isn't sure of the exact percentage although it is very high. He said that staff is planning to come back as a second phase to look at avoidance areas, and this ordinance proposes that it would be deemed a significant change if the collocation is occurring within 500 feet of a dwelling.

Mr. Davis pointed out that the significance of that is, if an application proposes to make changes to the facilities that are not a significant change, they are approved as an administrative approval with a building permit. He said the way this proposed ordinance defines "substantial change," the vast majority of the applications will not be subject to the expedited process that would apply to facilities which did not create a substantial change. Mr. Davis stated that those applications would continue to be reviewed based on what tier they're in, so a Tier I would require administrative approval with an application for a Tier I permit; a Tier II would require a Tier II application to be applied before it could be approved; and a Tier III would require a special use permit amendment. He said that is the significance of that definition, which has great impacts because of the process, not because of the standards.

Ms. Mallek said that, in the past, the Board has simply blessed it and set it on a consent agenda if the ARB had said the visibility was addressed, and that would continue because the Entrance Corridor ones would still be in the old process.

Mr. Davis explained that those towers in EC districts are still subject to an ARB approval process, and some of those are countywide permits – which is a streamlined ARB process – but they are still subject to design guidelines and ARB approval. He said that this ordinance amendment proposes that any tower within an Entrance Corridor proposed to be changed would be deemed to have "a substantial increase" and thus would be subject to the tier requirement that otherwise would be applicable to it.

Mr. Fritz noted that Entrance Corridors are not listed as "avoidance areas" and have never been. He said that the primary avoidance areas the County deals with are the rural historic districts or within 200 feet of a scenic byway. Mr. Fritz stated that a significant change for a collocation site would be avoidance areas, Entrance Corridor districts, within 500 feet of a dwelling, or would result in the removal of trees. He emphasized that there are things being added to "enhanced review" that are not currently part of the review process for collocations.

Ms. Mallek asked if that also pertained to old towers prior to the 2004 regulations. Mr. Fritz explained that, if there's a facility that was approved prior to the current tier structure and an applicant wanted to collocate on it – and it was within 500 feet of a dwelling unit or another criteria – that would be deemed a significant change and staff would look at it as to whether it would qualify as a Tier II or a Tier III structure. He said that, if it qualified as a Tier II, the applicant would submit a Tier II application that would

be reviewed and processed administratively; if it were a Tier III, they would have to apply for a special use permit, which would come before the Board.

Mr. Rooker asked what criteria would be applied administratively by staff under the Tier II level in deciding whether or not to approve it. Mr. Fritz responded that staff is proposing to use the same criteria as always, with the difference being it will be acted on administratively instead of by the Board.

Ms. Mallek asked if the Bellair application brought before the Board the previous week would have meant different notice to the neighbors and more tree conservation, etc. Mr. Fritz responded that staff looked at that particular application because they anticipated the question coming up, and that facility was approved by special use permit prior to the existing tier structure. Based on the information staff has right now, he said, it would qualify as a Tier II facility – which would be reviewed by staff for determination as to whether it met the criteria of the ordinance.

Mr. Snow asked if the Bellair tower wouldn't qualify because of the need for a 100-foot buffer. Mr. Fritz responded that, for nine years, there has been a 100-foot requirement as a conservation plan in the ordinance, but it only applies on the property of the application. He said it has always been that way and the County has never extended it beyond the boundaries of the property.

Mr. Rooker said that what's really being said is that the applicant doesn't have to control the 100 feet and, if he doesn't, then he doesn't have a responsibility to preserve the trees on the abutting property

Mr. Fritz said that staff goes out and does balloon tests with the applicant, and will sometimes say "that's not going to work" due to factors such as tree preservation or siting issues. He said that's why they've never seen an application where staff has said there isn't adequate protection of trees on an abutting property. He said staff has done that consistently and will continue to do so, because the ordinance already says there has to be adequate opportunities for screening and, if there aren't adequate opportunities for screening that are under the control of the applicant, staff cannot make the positive findings necessary to approve the application.

Mr. Snow commented that that's what 13 years of experience has taught them.

Mr. Fritz noted that it's been nine years with the current ordinance, and 20+ with wireless facilities in general.

Ms. Mallek said it would seem that there would be a discontinuance of the applications where there was fewer than 100 feet protected, just in general policy. She said the Board found out just last week what a bad idea it is because bad things happen. She asked if the County should make a change to require that the applicant control the 100 feet. Mr. Fritz responded that decision would be up to the Board. He said that staff could very easily – and the Board has already – approved applications where the tower is located much less than 100 feet from the property line, with a fall zone easement but not as a tree conservation easement. He said that has been done a number of times.

Mr. Rooker said that, if there's any hole in the policy based on what the Board saw last week, that's definitely it, and he said they should consider requiring the applicant to obtain an easement to protect the trees within the 100-foot area. He pointed out that there's nothing that prevents the applicant from siting the tower so there is clearly a hundred-foot radius around the pole. He added that the ARB is not concerned about what homeowners see, they're concerned about what is seen from the Entrance Corridor area, the street. Mr. Rooker said that the ARB wouldn't have been any help with the application from the prior week, because it's not their purview to determine how it looks from a neighborhood.

Mr. Snow stated that he could approve it as it is, with the stipulation that the easement or a required 100-foot buffer under their control be part of it.

Mr. Davis suggested that the Board discuss it as part of the second phase of ordinance requirements, when it gets into substantive changes to the ordinance. He said this ordinance before the Board tonight is not intended to deal with these types of substantive requirements. He added that is an issue which is coming though, and is going to have issues like this and other issues that are going to be on the table as to whether or not the standards that apply to wireless facilities are adequate or not, based on the experience of staff.

Mr. Thomas asked what would happen if a property was 190 feet wide and they wanted to put the tower right in the middle pointing out that is not 100 feet either way.

Mr. Rooker said they would need to find another 10 feet or get an easement, as they need to require a fall easement now anyway based on the height of the tower. He stated that he did not see where there would be many circumstances under which one would have an appropriate tower site where they wouldn't be able to find a 100-foot area that they can control for tree protection purposes.

Ms. Mallek said that there's no public hearing or Planning Commission hearing under the ordinance amendment, and asked how public comment would be received and what would be done with the information that is received. Mr. Fritz responded that it would be much like it is now, whereby staff takes the information provided by the public, and they can sometimes provide better information as to what the visibility is going to be, or get permission to come onto their property to determine what the impacts will be.

Mr. Boyd said that the County needs to be very careful about how it micromanages neighbors' property, because the people who came before the Board last week would probably not have been able to put a septic field in and probably wouldn't have been able to build a house. He added that they would be the ones who would be penalized by the ramifications that the Board is talking about where it would micromanage every single piece of property all around.

Ms. Mallek stated that they would have been happy if they had known what was going to happen next door. She said that they were very clear about that and stated "we didn't know this was going to be the result."

Mr. Boyd said the Board cannot legislate bad decisions. He added that it would have made it an unbuildable property, and there will be unintended consequences.

Mr. Rooker said that perhaps the lot might not have been created.

Mr. Boyd stated that it would have taken more property out of the area to be built. As an example, he said the County could micromanage the entire county and tell everybody what they can do with all their property and he is just concerned about overregulation.

Ms. Mallek said that the landowners could have installed a different septic system had they understood the ramifications of clearing 30,000 square feet of their backyard.

Mr. Rooker said they could have used an alternative septic system as a matter of right. He said that requiring a 100-foot buffer area for visibility protection but not really requiring it because perhaps only half of that is in their control is certainly misleading at best.

Mr. Boyd commented that he just wants to make sure the Board considers all the pros and cons, and said that it's appropriate to deal with it in the next phase of the ordinance.

Mr. Davis clarified that comments on Tier II applications, which are going to be subject to administrative approval, would be received by staff and evaluated – but the only ultimate requirements are those set forth in the ordinance. He said there is not the ability of staff or of this Board, under the current process, to add additional requirements that are not required in a Tier II approval.

Mr. Rooker said that was true of the Planning Commission before, as the Commission was technically acting in an administrative capacity.

Mr. Greg Kamptner, Deputy County Attorney, said it has always been that way, and all an applicant needs to do is show they meet the requirements for Tier II, and the current regulations direct the Commission to approve the application.

Mr. Davis said that it's similar to the site plan process wherein the public can raise issues with staff so they can make sure the ordinance requirements are met that address those issues.

Ms. Mallek asked if there are conditions pertaining to how to access the site, when an applicant is collocating or upgrading, such as changing out the ground equipment or improving the access road. Mr. Fritz responded that staff looks at these as "facilities," not just as towers, and considers the facility from the entrance on the public street to the top of the tower – the access way, electricity, clearing needed for equipment, and the tower itself. He said that staff would look at the particular application being made to see what they are doing, and the Board directed staff at the work session to add the tree-clearing item, which would be part of any application.

Ms. Mallek asked if there might be more planting afterwards if trees that had to be cut in order to allow access for new machinery onto a site. Mr. Fritz explained that staff cannot put conditions on a Tier II application, although staff can look at the tree conservation plan and, if they're proposing to remove trees, it can be denied because it doesn't afford adequate opportunities for screening. He added that, if trees are being cut but there is no impact on the screening of the facility, staff would authorize those trees to be removed. Mr. Fritz said that the applicant may propose, of their own accord, ways to mitigate that, because the ordinance stipulates there must be adequate opportunities for screening. He said that, if an applicant proposes fencing around the equipment area, that may be a screening measure and usually, once an access easement is put in, they aren't moved ever again, like a driveway.

Mr. Rooker asked if the addition of unlimited amounts of additional ground equipment wouldn't be a substantial change. Mr. Fritz explained that you can add ground equipment as much as you want and can increase the size of the lease area up to two times the original, but not to exceed 1,000 square feet.

Mr. Davis pointed out that it's not a substantial change, but you'd still have to comply with the ordinance requirements for ground equipment. He confirmed that that's the case today with a Tier II application.

Mr. Fritz also mentioned that, under the current ordinance, there is no limit on the size of the lease area.

Ms. Mallek asked if he would explain the old conditions prior to 2004, as noted on the bottom of page 10 in Attachment B. Mr. Kamptner explained that staff has had a very difficult time administering the preexisting special use permits, particularly in light of the Tier I, II and III standards – especially the Tier II standards that have been in place since 2004. He said that what they are doing with the provisions for the

preexisting special use permits is, if they meet the requirements of a Tier II facility, they will be deemed to be Tier II facilities. He stated that, if they are a by-right use, the special use permit conditions that were attached with the old SP would no longer apply. He stated that that is consistent with other situations in which we've had uses that at one time were allowed by a special use permit and, through amendments to the zoning ordinances, those uses became by-right. Once they became by-right, the conditions just go away he said.

Ms. Mallek responded that those have been replaced with other processes that get the same result.

Mr. Rooker said that, if the conditions are more restrictive, then the ordinance applies; if they're less restrictive, the conditions apply.

Mr. Davis stated that this is consistent with how staff has been administering the ordinance, because if someone has a facility now that's subject to a special use permit and wanted to change it, they could simply come in today and apply for a Tier II approval for the tower with changes and, if that tower would meet all the current ordinance requirements for a Tier II tower, the County would be obligated to approve it and the SP would no longer apply.

Mr. Rooker commented that what they're saying is, if the SP has less restrictive conditions than the ordinance, they apply to the extent they want to keep them.

Mr. Davis said that is true if they have vested rights for those conditions, which is a legal requirement that we have to address.

Mr. Fritz stated that one of the problems is that staff has been doing this for 20+ years now, and for the first 10 years they were feeling their way just like everyone else, so there are lots of special use permits out there with very different conditions – including some that don't make sense. He said, now we have much clearer design standards and regulations adding that all those things that we learned over the years have been rolled into what we do. He said that, for example, they finally got to the point of "flush-mounted," and began inserting it as a regular condition and, when they adopted the tier-structure ordinance, they simply carried that knowledge forward, along with diameter of poles, size of ground equipment, etc. Mr. Fritz stated that this will make the ordinance a whole lot easier than trying to administer a bunch of hodgepodge older applications.

Mr. Rooker said the County still has to live with the conditions that are more lenient than the ordinance. Mr. Fritz responded, "To the extent that they're vested, yes."

Mr. Rooker asked when it wouldn't be vested. Mr. Davis said if the tower's built, then most likely it's vested.

Mr. Rooker stated that it appears this is what legally takes place anyway, because someone can come in with an old tower and seek approval under the existing ordinance with Tier II provisions and they would have a right to have that approved today.

Mr. Fritz added that we have done that.

Ms. Mallek asked if there were pretty strict requirements as to when a site plan was or wasn't required. Mr. Fritz explained that a site plan is not required, but the applicant is required to submit the information outlined in the ordinance that's very similar to what a site plan requirement is. He said that is not a change at all; the applications under this proposed ordinance will show exactly the same information that they showed in the old ordinance adding that there is no change in the application requirement.

Ms. Mallek asked what "hand-delivered" means in the context of "mail or hand delivery," as sticking flyers in paper boxes may not be effective based on past experience. Mr. Fritz responded that there is no change, as that's in the existing ordinance, and the only time he can recall hand delivering an application was when an abutting owner happened to be in the zoning office. Regarding mail delivery times, he said he can't address the issue specific to wireless applications, but there are people who have said they've never received notices, however he could not recall anything recent that has come up.

At this time, the Chair opened the public hearing.

Ms. Jennifer Greeson addressed the Board, stating that she and her neighbors had addressed them the previous week regarding the wireless policy changes and the Bellair tower specifically. Ms. Greeson said that, in speaking with her neighbors, she has three main concerns about the proposed changes, including screening and siting to minimize visibility for Tier II facilities and the language which states "the site shall provide adequate opportunities for screening." She stated that this seems to mean almost nothing, as it could simply mean planting saplings that have an opportunity of growing tall enough to screen the tower 80 years from now. Ms. Greeson encouraged the Board to strike the words "opportunities for," and just leave it as "this site shall provide adequate screening." She said that neighbors would also request that the Board specify that the screening must exist on the parcel where the tower is situated in the ordinance.

Regarding the requirement that homeowners within 500 feet of existing towers must be notified of a pending tower increase, Ms. Greeson said that the Board has already discerned that this is simply a notice of a pending inevitable administrative approval of the increase. She stated that, while they appreciate the required notification, there is no real opportunity and a structure for the effective

surrounding homeowners or the Board to have input, and they would appreciate a structure for "negotiating competing interests" between industry and residents on this matter. Ms. Greeson said that she is particularly concerned about all of Part G in the ordinance, the move to standardize the future administration of towers constructed by special use permit before 2004 like the tower they're dealing with in Bellair. She said that she sent each of them a longer statement earlier in the day regarding what she sees as the legislative and moral hazard of weighing all the conditions attached to these permits except the conditions that are favorable to industry, which she finds "shameful." Ms. Greeson stated that there is a procedure for amending special use permits, and they are under the Board's authority – and thus cannot or should not be ordained by staff. She said it is possible for the Board to consider amendments to these special use permits, according to their established procedures adding that this would only apply to several dozen permits, not hundreds.

Ms. Greeson said that, in the few years prior to 2004, the Board would often hear 10 or more cases for approval or amendment of facilities as a single line item in a single session and, if industry and staff want these permits to effectively be amended, this procedure should be followed again and the permits should be amended according to their own procedures.

Mr. Tim Dykstra addressed the Board, stating that he is the Director of Engineering for Verizon Wireless in Virginia. He thanked the Board for working with the industry to try to streamline things in the County, adding that the company's interest is to try to improve wireless for all customers and constituents. Mr. Dykstra said that the growth in the wireless industry continues to be "unprecedented," Verizon is grateful to the County for allowing it to streamline some of these processes and add new technologies for enhanced coverage in various places around Albemarle County.

Mr. Dykstra emphasized that Verizon is committed to following all local guidelines and policies, adding that he knows it takes a lot of time to develop them. He said that Verizon's goal is to provide the best possible service where they are licensed and, to do that, they have to consistently increase capacity in the network and increase coverage – which means locating antennas on new structures. Mr. Dykstra said they don't have coverage everywhere in Albemarle County, or across the country, so they would continue the trend to build out coverage and provide service to customers based on demand.

Mr. Dykstra said that, in Albemarle County specifically, coverage is their number one issue, and Verizon serves the majority of the roadways and corridors, but does not have service everywhere and, in order to do that, they look for existing structures such as water tanks and buildings. He said if that is not an option, Verizon would follow the guidelines the County has in place to allow them to expand coverage. Mr. Dykstra said that, in order to add new technologies to existing structures, they may have to add additional lines and antennas, as well as radio equipment down on the ground. He said Verizon appreciates the streamlining or possible streamlining of those processes, to allow them to do that as long as it's not deemed significant to the existing plan that's out there. He added that he volunteers his services for open sessions or questions related to the wireless industry.

Ms. Lori Schweller addressed the Board, stating that she is an attorney with LeClair Ryan and represents Verizon Wireless, which does support adoption of this amendment. Ms. Schweller said that it's imperative for the County to bring the ordinance into compliance with recently enacted federal law, and believes that's been facilitated by the ordinance. She noted that there are no changes to siting and design provisions, and what the wireless industry was hoping for is administrative approvals for all the sites they have "routinely approved" and that the Planning Commission has routinely recommended for approval. Ms. Schweller stated that there are a number of specific items that are important to explain, because the definition of "substantially increasing the dimensions" is something that affects almost all of the sites. She said that, by definition, a collocation or replacement of an existing tower is by definition "a substantial increase in dimensions," and the result would be more stringent than the existing ordinance when it comes to simply adding a flush-mounted antenna array onto an existing Tier III site. Ms. Schweller noted that adding onto a Tier III site would again require special use permit amendments, so they would be coming to the Board over and over again for simple collocations. She provided an example of the Keswick tower site on I-64 going east toward Richmond, stating that all they did was add flush-mounted antennas, but it required a full special use permit amendment process. She said a lot of the Verizon sites are in avoidance areas and pointed out that public hearings are required to do all of these things if a site is in an avoidance area or is classified as Tier III for any reason which is different.

Mr. Rooker asked if they were replacing an antenna with one that is virtually identical, would that be a change. Mr. Davis responded that it wouldn't be if it was just the replacement of existing equipment that's approved by the terms of the existing special use permit. He said that what Ms. Schweller is pointing out is, if they add an additional antenna that is not allowed by special use permit, and it's in an avoidance area, an Entrance Corridor, or within 500 feet of a residence, it would be required to go through whatever tiered process it would otherwise have to go through. Mr. Davis stated that if the definition of "substantial change" did not include that as criteria, it could be done by a building permit as long as there wasn't a substantial increase. He said that's a significant difference in process, not in standards.

Mr. Fritz said that replacing a monopole with one of the same height is carved out separately from any evaluation as to whether or not it's a substantial change under the definition of the Tier I wireless facilities.

Mr. Rooker said that would not require a special use permit.

Mr. Fritz stated that replacement of a wooden monopole with a metal monopole of the same dimensions would also be a Tier I.

Ms. Mallek stated that they want to encourage safety so, when equipment gets old, it needs to be replaced even if it is in an avoidance area. Mr. Fritz responded that a lot of the wooden poles are old and are starting to rot. He said that an applicant can replace at the same height, even if it's in an avoidance area, within 500 feet, etc.

Ms. Schweller said that the reason she mentioned replacements, collocations and extensions was because the definition of "substantial increase" directly addresses that class of modifications. She mentioned that she had been before the Board in the past year and half for 19 Tier II and Tier III sites, and some of those were by special use permit and only seven of those sites would actually benefit from the new provisions. Ms. Schweller said that a Tier II approval is administrative, and the Board is already not reviewing those as they fall on the consent agenda. She stated that the administrative approval for the Tier II site just means that applicants won't be sitting in the meetings.

Ms. Valerie Long addressed the Board, stating that she is with the law firm Williams, Mullen, and represents AT&T and Ntelos wireless. She thanked the Board and staff for the many years of work spent on this ordinance. She said Mr. Fritz and other county staff have always reached out to the industry representatives with input and guidance. Ms. Long said that the industry agrees with a lot of the changes before the Board because they make sense for the public, the County, industry representatives, and wireless customers in the community. She also stated her support and endorsement for the comments made by Lori Schweller and Tim Dykstra, stating that they are all supporting staff's recommendations for procedural changes and improvements. Ms. Long said that the comment was made about throwing out the old conditions of approval, but some of those conditions were very specific such as the pole "must be made of wood" or "shall not exceed 80 feet." She emphasized that the goal is bringing a site up to current standards, where a pole would be "10 feet above a reference tree," with all design requirements being the same, and replacement of outdated equipment.

Ms. Long said there are a lot of things like that that will be of no less protection for the public or neighbors, but will dramatically improve the safety of these sites and certainly will improve their function for the benefit of everyone.

Ms. Long clarified that there are a very small number of collocation sites that will actually benefit from the ordinance because, by definition, it excludes collocation on any facility that is within an Entrance Corridor. She said almost every major road in the County is in the Entrance Corridor, and that's where the towers are for the most part. Ms. Long said that, of Ntelos' 51 sites in the County, five of them would benefit from the ordinance fix; and nine out of 87 AT&T sites would benefit. She said that is a significant issue, however, we will take it if that the best we can get. She said we think it's a very important first step; these are very smart changes, but unfortunately they're only going to apply to a very small number.

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

Mr. Thomas asked what might be done to address the Entrance Corridor issues raised. Mr. Rooker said that this would be coming back to the Board with the idea of some substantive changes possibly being considered.

Mr. Fritz stated that those changes would address the definitions of avoidance areas, design standards, etc., and currently Entrance Corridor districts are not included in the definition of avoidance areas. He explained that the things which are being added as new concepts of protected areas are Entrance Corridor districts, facilities within 500 feet of a dwelling, and changes involving the additional clearing of trees.

Mr. Boyd said that he understood Ms. Long to say that, if a tower is in an Entrance Corridor and an applicant wanted to collocate on it, it would take a Tier III application which would require a special use permit coming back to the Board.

Mr. Fritz explained that that fact alone would not trigger it being a special use permit, it would simply say "that's a substantial change" and thus would need to be determined to be a Tier II or III by definition of the ordinance. He said that, if it were a treetop facility that wasn't in an avoidance area, it would be processed as a Tier II.

Mr. Thomas commented that there are too many exceptions.

Mr. Rooker said that those exceptions are what allow the industry to do what they want to do, under appropriate circumstances.

Mr. Davis noted that, if they eliminated the two additional criteria for "substantial increase," the 500-foot requirement from residential properties and the Entrance Corridor requirement, then more existing towers could be collocated with additional facilities by simply having a building permit rather than having to go through a Tier II or Tier III process application.

Mr. Rooker said that the Tier II or Tier III process is determined by "substantial change."

Mr. Davis stated that the standards would be the same regardless of the process, but the process itself would be different although, with a special use permit, additional standards could be added. He said that Tier I applications would always be administrative approvals, Tier II would always be administrative approvals, and the most dramatic impact would be for something that has a substantial increase that would be a Tier III, which would kick in the special use permit process.

Ms. Mallek asked if being in the Entrance Corridor was automatically a "substantial change" and therefore would be a Tier III. Mr. Davis responded that that's not the case explaining that, if there's a tower that is in the Entrance Corridor, that would be a substantial increase so that would kick in the process to then look at it and determine what category of the tiers it would fall in. He said, if it was a Tier I, it would be administratively approved. If it was a Tier II, an application would have to be filed for a Tier II but it would be administratively approved. If it was a Tier III, because it exceeds the Tier I or Tier II requirements, it would have to be approved by special use permit, then it would require a special use permit by the Board. He said that may include a lot of the towers being referenced.

Mr. Davis noted that there are still other criteria within "a substantial increase" that would limit some towers to be approved by right. He said that if it's replacing an existing monopole with a tower of equal or lesser height and certain standards are required, it would not be a substantial increase.

Mr. Fritz said that, under that scenario, it would not even be analyzed as to whether it's a significant change because it's by right.

Mr. Davis emphasized that, if the pole was more than 10 feet taller than the reference tree, it would be a substantial change, and those types of criteria are overlapped by the 500 feet within a residence, the Entrance Corridor, and the avoidance area criteria. He said, regardless of what they're doing with the tower itself, if they are within those 500 feet of a residence, an avoidance area or an Entrance Corridor, then by definition it's a substantial change and would be subject to the tier approval processes rather than having a building permit administrative process.

Mr. Boyd commented that it sounds as though those things would be addressed in the next phase, so they should move ahead with what's before them tonight.

Mr. Rooker said that there were some comments from the public that the applicants are getting "special treatment" by having their conditions dropped off and being placed under the ordinance. He said that he was also concerned about that, but what that viewpoint fails to consider is that any applicant can take that site today and go in and automatically get approval under the ordinance and then they would be subjected to the ordinance. He said every tower that's out there that was approved pre-2004 today has a right to come under the existing ordinance instead of utilizing the conditions that were applicable to that special use permit. He said it would just require that the applicant exercise a process in doing so, which seems to me to be meaningless since there couldn't be any additional conditions imposed.

Mr. Snow said that he agreed with Mr. Rooker's statement, and also agreed that, in the next phase of this, the Board should consider how to eliminate the loopholes that led to the situation in Bellair.

Mr. Boyd stated that he would like to hear from Ms. Long again, as there still seemed to be some uncertainty on what qualifies and what doesn't qualify as it relates to the special use permit process.

Ms. Mallek said that Mr. Davis explained the different layers of qualification, but she asked Ms. Long to clarify her concerns as well.

Ms. Long said that her example was a reference to a tower that was approved as a Tier III because it was not a Tier II for whatever reason, such as being in a historic district, which made it a special use permit process. She said the vast majority of applications that she has brought forward in the last three years have been like that. She explained that the Scottsville School site was in the historic district, was 10 feet above the reference tree, was closer than 200 feet to the scenic byway, and thus required a special use permit. Ms. Long said that, if another carrier wanted to come along and collocate on that tower, it would not be a by-right or administrative collocation, it would be treated as a Tier III application because it is in an avoidance area and thus is "a substantial increase." She stated that, if another company came along and wanted to collocate on it, it would be a special use permit which is a $2,000 application fee. She said all the industry is asking for is that collocations be a building permit. Ms. Long said that the difference in the time and the cost of a Tier II application versus only having to do a building permit is substantial.

Mr. Snow asked if all of the collocated antennas would be flush-mounted. Ms. Long replied, "Absolutely, because again, nothing changes the design guidelines" and that is all they are asking for…that collocations be a building permit."

Mr. Snow said that they've been encouraging collocation so there are fewer towers needed.

Mr. Rooker said that, in the past, the industry has said that in order to collocate they need to add 10 feet to the tower, and asked if Ms. Long was suggesting that they be allowed to increase the tower height without going through the process.

Ms. Long responded, "Not by right…a collocation that does not involve increasing the height of a tower should be by right." She said that there are some cases in which a collocation does not work without increasing tower height, but there are some when it does work and whenever it can, we jump on it. Ms. Long mentioned two Ntelos collocations over the last few years – one on the AT&T site at the St. George Catholic Church on Route 20 just north of Scottsville Elementary. She said that AT&T had built that site and Ntelos wanted to collocate on it, but it was quite a challenge for the staff to muddle through the various procedural questions to figure out whether that was by right or not. She said this ordinance has the potential to clarify that that's a by-right tower but, if it's adopted the way it is now, that would be a special use permit all over again.

Mr. Rooker asked if there is a situation where a tower couldn't comply today, such as Keswick, if an applicant could come in and collocate under the ordinance rather than the existing special use permit conditions. Mr. Fritz responded that it would still be a Tier III because of its height.

Mr. Rooker said that the towers Ms. Long is referring to are Tier III towers, and Ms. Long's point about process makes sense but he doesn't want to create a situation where there are big, ugly towers with a lot of things hanging on them.

Mr. Snow said that's why he asked the question about flush-mounting adding that, if they can collocate towers without raising the height, it makes it more economical to put a tower up in a remote area and get coverage into areas where it's needed. He said that, if possible, he'd like that covered in the changes tonight.

Mr. Rooker said they all seem to be in agreement that it makes sense, so it could be addressed in the next phase because it will require rewriting of the ordinance.

Mr. Davis stated that it could be addressed in the next phase, however, if the Board knew what areas it wanted to designate as a "substantial increase," it could be struck in the ordinance tonight. He said that it all falls into paragraph six on page 10 of the ordinance, and the way it's structured now there are certain changes they can make to a facility that, if you can comply with all the ordinance requirements, it is not a substantial change. He said that, even if an applicant can comply with all those requirements, if the application is within an Entrance Corridor or avoidance area, or within 500 feet of a residence, it is deemed to be "a substantial change" even though it doesn't increase the tower height above the reference tree, and the antennas are consistent with the ordinance requirements, the ground equipment complies, etc. He said even though it can do all those things, if it's in one of these three designated areas, it can't collocate just with a building permit. Mr. Davis added that none of the standards would change, but the process would change.

Mr. Rooker said that he would be fine with the Entrance Corridor and avoidance areas, but was more concerned about the 500 feet from houses.

Mr. Davis said that, if the Board wants to strike the avoidance area and Entrance Corridor Overlay District criteria for "substantial increase," it would only involve striking a portion of lines four and five of paragraph six. He said the 500-feet requirement would remain, and could be reviewed in the phase two review if the Board chooses to do that.

Mr. Rooker then **moved** to adopt the proposed ordinance as presented, with the changes as described by Mr. Davis. Mr. Thomas **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Mr. Rooker explained that this process started out with some cell tower proposals that were not good for the County from the standpoint of citizens who were interested in protecting aesthetics and, as the result of several work sessions, the ordinance got whittled down to things that were procedural, rather than substantive and many of those changes are the result of changes in federal law that must be complied with. He said he thought staff has done a very good job of kind of threading the needle between complying with the requirements of federal law and leaving in place the substantive aesthetic protections we have in the community.

Mr. Davis clarified that the motion included the errata pages on 11 and 12 of the ordinance, and the one change to paragraph six on page 10 that deleted the reference to avoidance areas or Entrance Corridor Overlay Districts.

(The adopted ordinance is set out below:)

ORDINANCE NO. 13-18(3)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, AND ARTICLE II, BASIC REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, and Article II, Basic Regulations, are hereby amended and reordained as follows:

By Amending:
Sec. 3.1 Definitions
Sec. 5.1.40 Personal wireless service facilities

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

. . .

Collocation: As used in section 5.1.40 and any definitions pertaining to personal wireless service facilities, the mounting or installation of one or more antennas for the purpose of providing personal wireless services on an existing personal wireless service facility, the addition of related cables, wiring, supporting brackets and other structural equipment, and the addition of transmission equipment.

. . .

Existing building: As used in section 5.1.40 and any definitions pertaining to personal wireless service facilities, a building that was lawfully constructed or established and complies with the minimum applicable bulk, height, setback, floor area, and other structure requirements of the district in which the building is located.

Existing structure: As used in section 5.1.40 and any definitions pertaining to personal wireless service facilities, a structure, other than a flagpole or an existing personal wireless service facility, that was lawfully constructed or established and complies with the minimum applicable bulk, height, setback, floor area or other structure requirements of the district in which the structure is located.

Existing personal wireless service facility or existing facility: As used in section 5.1.40 and any definitions pertaining to personal wireless service facilities, a personal wireless service facility that was approved under section 5.1.40 or by special use permit prior to October 13, 2004, was thereafter established, and has continued in existence since being established, and which provides personal wireless services.

. . .

Personal wireless services: Commercial mobile services, unlicensed wireless services, common carrier wireless exchange access services, as those services are defined by federal law and, for the purposes of this chapter, unlicensed wireless broadband internet access services.

Personal wireless service facility: A facility for the provision of personal wireless services and which may be composed of antennas, cables, wiring, supporting brackets and other structural equipment, grounding rods, transmission equipment, one or more ground equipment shelters, and a self-supporting monopole or tower. (Added 10-17-01; Amended 10-13-04; Amended 6-1-11)

. . .

Replacement: As used in section 5.1.40 and any definitions pertaining to personal wireless service facilities, the replacement of one or more antennas, cables, wiring, supporting brackets and other structural equipment, transmission equipment, and ground equipment shelter, all of which is for the purpose of providing personal wireless services on an existing personal wireless service facility.

. . .

Tier I personal wireless service facility or Tier I facility: A personal wireless service facility that: (i) is located entirely within an existing building but which may include a self-contained ground equipment shelter not exceeding one hundred fifty (150) square feet that is not within the building or a whip antenna that satisfies the requirements of subsection 5.1.40(c); (ii) consists of one or more antennas, other than a microwave dish, attached to an existing structure, together with associated personal wireless service equipment; (iii) is located within or camouflaged by an addition to an existing structure determined by the agent to be in character with the structure and the surrounding district; (iv) is a collocation or a replacement that does not substantially change the physical dimensions of an existing personal wireless service facility as that phrase is used in subsection 5.1.40(f); or (v) is the replacement of a wooden monopole with a metal monopole that does not exceed the maximum dimensions permitted under subsection 5.1.40(d)(5). (Added 10-13-04)

Article II. Basic Regulations

Sec. 5.1.40 Personal wireless service facilities
(Amended 10-13-04)

The purpose of section 5.1.40 is to implement the personal wireless service facilities policy, adopted as part of the comprehensive plan. Each personal wireless service facility (hereinafter “facility”) shall be subject to following, as applicable:

a. *Application for approval*: Each request for approval of a facility shall include the following information:

1. *Application form and signatures.* A completed application form, signed by the parcel owner, the parcel owner’s agent or the contract purchaser, and the proposed facility’s owner. If the owner’s agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner’s written consent to the application.

2. *Plat or survey of the parcel.* A recorded plat or recorded boundary survey of the parcel on which the facility will be located; provided, if neither a recorded plat nor boundary survey exists, a copy of the legal description of the parcel and the Albemarle County Circuit Court deed book and page number.

3. *Ownership.* The identity of the owner of the parcel and, if the owner is other than a real person, the complete legal name of the entity, a description of the type of entity, and written documentation that the person signing on behalf of the entity is authorized to do so.

4. *Plans and supporting drawings, calculations and documentation.* Except where the facility will be located entirely within an existing structure or an existing building, a scaled plan and a scaled elevation view and other supporting drawings, calculations, and other documentation required by the agent, signed and sealed by an appropriate licensed professional. The plans and supporting drawings, calculations and documentation shall show:

   (a) *Existing and proposed improvements.* The location and dimensions of all existing and proposed improvements on the parcel including access roads and structures, the location and dimensions of significant natural features, and the maximum height above ground of the facility (also identified in height above sea level).

   (b) *Elevation.* The benchmarks and datum used for elevations. The datum shall coincide with the Virginia State Plane Coordinate System, South Zone, North American Datum of 1983 (NAD83), United States Survey Feet North American Vertical Datum of 1988 (NAVD88), and the benchmarks shall be acceptable to the county engineer.

   (c) *Design.* The design of the facility, including the specific type of support structure and the design, type, location, size, height and configuration of all existing and proposed antennas and other equipment.

   (d) *Color.* Identification of each paint color on the facility, by manufacturer color name and color number. A paint chip or sample shall be provided for each color.

   (e) *Topography.* Except where the facility would be attached to an existing structure or an existing building, the topography within two thousand (2,000) feet of the proposed facility, in contour intervals not to exceed ten (10) feet for all lands within Albemarle County and, in contour intervals shown on United States Geological Survey topographic survey maps or the best topographic data available, for lands not within Albemarle County.

   (f) *Trees.* The height, caliper and species of all trees where the dripline is located within fifty (50) feet of the facility that are relied upon to establish the proposed height or screening, or both, of the monopole or tower. All trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted, regardless of their distances to the facility.

   (g) *Setbacks, parking, fencing, and landscaping.* All existing and proposed setbacks, parking, fencing and landscaping.

   (h) *Location of accessways.* The location of all existing accessways and the location and design of all proposed accessways.

   (i) *Location of certain structures and district boundaries.* Except where the facility would be attached to an existing structure or an existing building, residential and commercial structures, and residential and rural areas district boundaries.

   (j) *Proximity to airports.* If the proposed monopole or tower will be taller than one hundred fifty (150) feet, the proximity of the facility to commercial and private airports.

5. *Photographs.* Photographs, where possible, or perspective drawings of the facility site and all existing facilities within two hundred (200) feet of the site, if any, and the area surrounding the site.

6. *Balloon tests.* For any proposed monopole or tower, photographs taken of a balloon test, which shall be conducted, if requested by the agent, as follows:

   (a) *Scheduling.* The applicant shall contact the agent within ten (10) days after the date the application was submitted to schedule a date and time when the balloon test will be conducted. The test shall be conducted within forty (40) days after the date the application was submitted, and the applicant shall provide the agent with at least seven (7) days prior notice; provided that this deadline may be extended due to inclement weather or by the agreement of the applicant and the agent.

   (b) *Marking key boundaries and locations.* Prior to the balloon test, the locations of the access road, the lease area, the tower site, the reference tree and the tallest tree within twenty five (25) feet of the proposed monopole shall be surveyed and staked or flagged in the field.

   (c) *Balloon height.* The test shall consist of raising one or more balloons from the site to a height equal to the proposed facility.

   (d) *Balloon color or material.* The balloons shall be of a color or material that provides maximum visibility.

(e) *Photographing balloon test.* The photographs of the balloon test shall be taken from the nearest residence and from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and other properties and locations as deemed appropriate by the agent. The applicant shall identify the camera type, film size, and focal length of the lens for each photograph.

7. *Additions of antennas.* If antennas are proposed to be added to an existing structure, existing building or an existing facility, all existing antennas and other equipment on the structure, building or facility, as well as all ground equipment, shall be identified by owner, type and size. The method(s) by which the antennas will be attached to the mounting structure shall be depicted.

8. *Site under conservation or open space easement.* If the proposed facility would be located on lands subject to a conservation easement or an open space easement, a copy of the recorded deed of easement and the express written consent of all easement holders to the proposed facility.

b. *Exemption from regulations otherwise applicable*: Except as otherwise exempted in this subsection, each facility shall be subject to all applicable regulations in this chapter.

1. *Building site.* Notwithstanding section 4.2.3.1, a facility is not required to be located within a building site.

2. *Setbacks.* Notwithstanding section 4.10.3.1(b), the agent may authorize a facility to be located closer in distance than the height of the tower or other mounting structure to any lot line if the applicant obtains an easement or other recordable document showing agreement between the lot owners, acceptable to the county attorney addressing development on the part of the abutting parcel sharing the common lot line that is within the facility's fall zone (*e.g.*, the setback of an eighty (80) foot-tall facility could be reduced to thirty (30) feet if an easement is established prohibiting development on the abutting lot within a fifty (50) foot fall zone). If the right-of-way for a public street is within the fall zone, the Virginia Department of Transportation shall be included in the staff review, in lieu of recording an easement or other document.

3. *Area, bulk and minimum yards.* Notwithstanding the requirements of the district in which the facility will be located, the area and bulk regulations, and the minimum yard requirements of the district shall not apply.

4. *Required yards.* Notwithstanding section 4.11, a facility may be located in a required yard.

5. *Site plan.* Notwithstanding section 32.2, a site plan shall not be required for a facility, but the facility shall be subject to the requirements of section 32 and the applicant shall submit all schematics, plans, calculations, drawings and other information required by the agent to determine whether the facility complies with section 32. In making this determination, the agent may impose reasonable conditions authorized by section 32 in order to ensure compliance.

c. *Tier I facilities*. Each Tier I facility may be established upon approval by the agent of an application satisfying the requirements of subsection 5.1.40(a), demonstrating that the facility will be installed and operated in compliance with all applicable provisions of this chapter, and satisfying the following:

1. *Compliance with subsection 5.1.40(b).* The facility shall comply with the applicable requirements of subsection 5.1.40(b).

2. *General design.* The facility shall be designed, installed and maintained as follows: (i) guy wires shall not be permitted; (ii) outdoor lighting for the facility shall be permitted only during maintenance periods; regardless of the lumens emitted, each outdoor luminaire shall be fully shielded as required by section 4.17; provided that these restrictions shall not apply to any outdoor lighting required by federal law; (iii) any ground equipment shelter not located within an existing structure or an existing building shall be screened from all lot lines either by terrain, existing structures, existing vegetation, or by added vegetation approved by the agent; (iv) a whip antenna less than six (6) inches in diameter may exceed the height of the existing structure or the existing building; (v) a grounding rod, whose height shall not exceed two (2) feet and whose width shall not exceed one (1) inch in diameter at the base and tapering to a point, may be installed at the top of the facility, the existing structure or the existing building; and (vi) within thirty (30) days after completion of the installation of the facility, the applicant shall provide a statement to the agent certifying that the height of all components of the facility complies with this regulation.

3. *Antennas and associated equipment.* Antennas and associated equipment that are not entirely within a proposed facility, an existing facility, an existing structure, or an existing building shall be subject to the following: (i) the total number of arrays of antennas shall not exceed three (3), and each antenna proposed under the pending application shall not exceed the size shown on the application, which size shall not exceed one thousand one hundred fifty two (1152) square inches; (ii) no antenna shall project from the facility, structure or building beyond the minimum required by the mounting equipment, and in no

case shall any point on the face of an antenna project more than twelve (12) inches from the facility, structure or building; and (iii) each antenna and associated equipment shall be a color that matches the facility, structure or building. For purposes of this section, all types of antennas and dishes, regardless of their use, shall be counted toward the limit of three arrays.

4. *Tree conservation plan; content.* Before the building official issues a building permit for the facility, the applicant shall submit a tree conservation plan prepared by a certified arborist. The plan shall be submitted to the agent for review and approval to ensure that all applicable requirements have been satisfied. The plan shall specify tree protection methods and procedures, identify all existing trees to be removed on the parcel for the installation, operation and maintenance of the facility, and identify all dead and dying trees that are recommended to be removed. In approving the plan, the agent may identify additional trees or lands up to two hundred (200) feet from the lease area to be included in the plan.

5. *Tree conservation plan; compliance; amendment.* The installation, operation and maintenance of the facility shall be conducted in accordance with the tree conservation plan. The applicant shall not remove existing trees within the lease area or within one hundred (100) feet in all directions surrounding the lease area of any part of the facility except for those trees identified on the plan to be removed for the installation, operation and maintenance of the facility and dead and dying trees. Before the applicant removes any tree not designated for removal on the approved plan, the applicant shall submit and obtain approval of an amended plan. The agent may approve the amended plan if the proposed tree removal will not adversely affect the visibility of the facility from any location off of the parcel. The agent may impose reasonable conditions to ensure that the purposes of this paragraph are achieved.

6. *Discontinuance of use; notice thereof; removal; surety.* Within thirty (30) days after a facility's use for personal wireless service purposes is discontinued, the owner of the facility shall notify the zoning administrator in writing that the facility's use has discontinued. The facility shall be disassembled and removed from the site within ninety (90) days after the date its use for personal wireless service purposes is discontinued. If the agent determines at any time that surety is required to guarantee that the facility will be removed as required, the agent may require that the parcel owner or the owner of the facility submit a certified check, a bond with surety, or a letter of credit, in an amount sufficient for, and conditioned upon, the removal of the facility. The type and form of the surety guarantee shall be to the satisfaction of the agent and the county attorney. In determining whether surety should be required, the agent shall consider the following: (i) whether there is a change in technology that makes it likely that the monopole or tower will be unnecessary in the near future; (ii) the permittee fails to comply with applicable regulations or conditions; (iii) the permittee fails to timely remove another monopole or tower within the county; and (iv) whenever otherwise deemed necessary by the agent.

7. *Creation of slopes steeper than 2:1.* No slopes associated with the installation of the facility and its accessory uses shall be created that are steeper than 2:1 unless retaining walls, revetments, or other stabilization measures acceptable to the county engineer are employed.

8. *Ground equipment shelter; fencing.* Any ground equipment shelter not located within an existing building shall be fenced only with the approval of the agent upon finding that the fence: (i) would protect the facility from trespass in areas of high volumes of vehicular or pedestrian traffic or, in the rural areas, to protect the facility from livestock or wildlife; (ii) would not be detrimental to the character of the area; and (iii) would not be detrimental to the public health, safety or general welfare.

d. *Tier II facilities.* Each Tier II facility may be established upon approval by the agent of an application satisfying the requirements of subsection 5.1.40(a) and demonstrating that the facility will be installed and operated in compliance with all applicable provisions of this chapter, and satisfying the following:

1. *Compliance with subsections 5.1.40(b) and 5.1.40(c)*. The facility shall comply with the applicable requirements of subsection 5.1.40(b) and with the requirements of subsections 5.1.40(c)(2) through (8).

2. *Screening and siting to minimize visibility.* The site shall provide adequate opportunities for screening and the facility shall be sited to minimize its visibility from adjacent parcels and streets, regardless of their distance from the facility. The facility also shall be sited to minimize its visibility from any state scenic river, national park or national forest, regardless of whether the site is adjacent to the river, park or forest. If the facility would be located on lands subject to a conservation easement or an open space easement, or adjacent to a conservation easement or open space easement, the facility shall be sited so that it is not visible from any resources specifically identified for protection in the deed of easement.

3. *Open space plan resources.* The facility shall not adversely impact resources identified in the county's open space plan.

4. *Horizontal separation of multiple facilities.* The facility shall not be located so that it and three (3) or more existing or approved personal wireless service facilities would be within an area comprised of a circle centered anywhere on the ground having a radius of two hundred (200) feet.

5. *Diameter of monopole.* The maximum base diameter of the monopole shall be thirty (30) inches and the maximum diameter at the top of the monopole shall be eighteen (18) inches.

6. *Height of monopole.* The top of the monopole, measured in elevation above mean sea level, shall not be more than ten (10) feet taller than the tallest tree within twenty-five (25) feet of the monopole, and shall include any base, foundation or grading that raises the monopole above the pre-existing natural ground elevation.

7. *Color of monopole, antennas and equipment.* Each monopole shall be a dark brown natural or painted wood color that blends into the surrounding trees. The antennas, supporting brackets, and all other equipment attached to the monopole shall be a color that closely matches that of the monopole. The ground equipment, the ground equipment shelter, and the concrete pad shall also be a color that closely matches that of the monopole, provided that the ground equipment and the concrete pad need not closely match the color of the monopole if they are enclosed within a ground equipment shelter or within or behind an approved structure, façade or fencing that: (i) is a color that closely matches that of the monopole; (ii) is consistent with the character of the area; and (iii) makes the ground equipment, ground equipment shelter, and the concrete pad invisible at any time of year from any other parcel or a public or private street.

8. *Placement of cables, wiring and similar attachments.* Each wood or concrete monopole shall be constructed so that all cables, wiring and similar attachments that run vertically from the ground equipment to the antennas are placed on the monopole to face the interior of the site and away from public view, as determined by the agent. Metal monopoles shall be constructed so that vertical cables, wiring and similar attachments are contained within the monopole's structure.

9. *Building permit application; submitting certification of monopole height and revised plans.* The following shall be submitted with the building permit application: (i) certification by a registered surveyor stating the height of the reference tree that is used to determine the permissible height of the monopole; and (ii) a final revised set of plans for the construction of the facility. The agent shall review the surveyor's certificate and the plans to ensure that all applicable requirements have been satisfied.

10. *Completion of installation; submitting certifications of monopole and lightning rod height.* The following shall be submitted to the agent after installation of the monopole is completed and prior to issuance of a certificate of occupancy: (i) certification by a registered surveyor stating the height of the monopole, measured both in feet above ground level and in elevation above mean sea level, using the benchmarks or reference datum identified in the application; and (ii) certification stating that the lightning rod's height does not exceed two (2) feet above the top of the monopole and width does not exceed a diameter of one (1) inch.

11. *Notice.* Notice of the agent's consideration of an application for a Tier II facility shall be sent by the agent to the owner of each parcel abutting the parcel on which the proposed facility will be located. The notice shall describe the nature of the facility, its proposed location on the lot, its proposed height, and the appropriate county office where the complete application may be viewed. The notice shall be mailed by first class mail or hand delivered at least ten (10) days before the agent acts on the application. Mailed notice shall be mailed to the last known address of the owner, and mailing the notice to the address shown on the current real estate tax assessment records of the county shall be deemed compliance with this requirement. The failure of an owner to receive the notice as provided herein shall not affect the validity of an approved facility and shall not be the basis for an appeal.

12. *Disapproval of application; appeal.* If the agent disapproves an application, he shall identify which requirements were not satisfied and inform the applicant what needs to be done to satisfy each requirement. The applicant may appeal the disapproval of an application to the board of supervisors. An appeal shall be in writing and be received in the office of the clerk of the board of supervisors within ten (10) calendar days after the date of the disapproval by the agent. In considering an appeal, the board may affirm, reverse, or modify in whole or in part, the decision of the agent, and its decision shall be based upon the requirements delineated in this subsection (d).

13. *Agent approval of increase in height of monopole based on increase in height of reference tree.* Upon the written request of the applicant, the agent may authorize the height of an existing Tier II facility's monopole to be increased above its originally approved height upon finding that the reference tree has grown to a height that is relative to the requested increase in height of the monopole. The application shall include a certified survey of the reference tree's new height, as well as the heights of other trees to be considered by the agent. The agent shall not grant such a request if the increase in height would cause the facility to be skylighted or would increase the extent to which it is skylighted.

e. *Tier III facilities.* Each Tier III facility may be established upon approval of a special use permit by the board of supervisors, initiated upon an application satisfying the requirements of subsection 5.1.40(a) and section 33.4, and it shall be installed and operated in compliance with all applicable provisions of this chapter and the following:

1. The facility shall comply with the applicable requirements of subsections 5.1.40(b), the requirements of subsections 5.1.40(c)(2) through (~~9~~8), and the requirements of subsections 5.1.40(d)(2), (3) and (7), unless modified by the board of supervisors during special use permit review.
2. The facility shall comply with all conditions of approval of the special use permit.

f. *Collocation, replacement or removal*. Any collocation, replacement or removal of antennas or equipment is subject to the following:

1. *Collocation or replacement that would not substantially change the physical dimensions of a facility approved as a Tier I, II or III facility*. Upon receipt by the agent of an application satisfying the requirements of subsections 5.1.40(a)(1), (3), (4) and (7), any collocation or replacement that would not substantially change the physical dimensions of an existing facility approved as a Tier I, II or III facility shall be approved by the agent. The agent shall approve the application regardless of whether the proposed antennas or equipment are different from those shown on, or were not shown on, the previously approved application under subsection 5.1.40(a)(4)(c) or any condition imposed in conjunction with a special use permit for a Tier III facility.

2. *Collocation or replacement that would substantially change the physical dimensions of a facility approved as a Tier I, II or III facility*. Any collocation or replacement that would substantially change the physical dimensions of an existing facility approved as a Tier I, II or III facility shall be reviewed and acted upon as a Tier I, II or III facility, as applicable.

3. *Collocation or replacement that would not substantially change the physical dimensions of a facility approved by special use permit prior to October 13, 2004 or a facility that is a nonconforming structure*. Upon receipt by the agent of an application satisfying the requirements of subsections 5.1.40(a)(1), (3), (4) and (7), any collocation or replacement that would not substantially change the physical dimensions of an existing facility approved by special use permit prior to October 13, 2004 or that is a nonconforming structure shall be approved by the agent. The agent shall approve the application regardless of whether the proposed antennas or equipment are different from those shown on any plans approved or condition imposed in conjunction with a special use permit.

4. *Collocation or replacement that would substantially change the physical dimensions of a facility approved by special use permit prior to October 13, 2004 or a facility that is a nonconforming structure*. Any collocation or replacement that would substantially change the physical dimensions of an existing facility approved by special use permit prior to October 13, 2004 or that is a nonconforming structure shall be subject to, reviewed and acted upon as a Tier I, II or III facility, as provided in subsection 5.1.40(g)(2).

5. *Removal of antennas or equipment on any Tier I, II or III facility, any facility approved by special use permit prior to October 13, 2004 or any facility that is a nonconforming structure*. Any antennas or equipment on any existing Tier I, II or III facility, any existing facility approved by special use permit prior to October 13, 2004 or that is a nonconforming structure may be removed as a matter of right and regardless of any special use permit condition providing otherwise.

6. *Meaning of "collocation or replacement that would not substantially change the physical dimensions of an existing facility."* A collocation or replacement that would not substantially change the physical dimensions of an existing facility is any change to the physical dimensions of an existing facility that is not within five hundred (500) feet of a dwelling unit located on a parcel under different ownership than the parcel on which the facility is located, that would: (i) add one or more antennas to the facility provided that the requirements of subsections 5.1.40(c)(1), (2), (3), (6) and (8) are satisfied; (ii) replace an existing monopole or tower with a monopole or tower of an equal or lesser height, provided that the requirements of subsection 5.1.40(d) (1), (5), (7), (8) and (10) are satisfied; (iii) replace an existing treetop facility with a monopole that is not more than ten (10) feet taller than the reference tree, provided that the requirements of subsection 5.1.40(d) (1), (5), (7), (8) and (10) are satisfied; (iv) strengthen an existing monopole or tower without the use of guy wires, provided that the requirements of subsection 5.1.40(d)(5), (7) and (8) are satisfied; or (v) expand the lease area or add ground equipment either within or outside of a ground equipment shelter, provided that the expanded lease area does not exceed twice the square footage of the original lease area, and further provided that the requirements of subsections 5.1.40(c)(7) and 5.1.40(d) (2), (4), (5), (8) and (9) are satisfied. Any change to the access to the facility that results in the removal of any tree shall be deemed to be a substantial change to the physical dimensions of an existing facility.

g. *Administration of special use permits for facilities approved prior to October 13, 2004*. The following applies to the administration of any special use permit for an existing facility approved prior to October 13, 2004:

1. *Conditions*. If any condition of the special use permit is more restrictive than a corresponding standard in subsection 5.1.40(c) or (d), the corresponding standard in subsection 5.1.40(c) or (d) shall apply. If any condition of the special use permit is less restrictive than a corresponding standard in subsection 5.1.40(c) or (d) and the applicant establishes that vested rights have attached to the approved facility, the special use permit conditions shall apply.

2. *Change to a facility that would substantially change the physical dimensions of a facility approved by special use permit prior to October 13, 2004.* Any proposed change to a facility that would substantially change the physical dimensions of the facility approved by special use permit prior to October 13, 2004 under subsection 5.1.40(f)(4) shall be subject to the procedures and standards for a Tier II facility if the facility would qualify as a Tier II facility, or a Tier III facility if the facility would not qualify as a Tier II facility.

3. *Effect of changes*. Any change to a facility by collocation or replacement under subsection 5.1.40(f)(3) shall not reclassify the facility as a Tier I, II or III facility. Any change to a facility by collocation or replacement under subsection 5.1.40(g)(2) shall reclassify the facility as a Tier II or Tier III facility, as applicable. If the facility is approved as a Tier II facility, the prior special use permit conditions shall have no further force or effect.

h. *Time for action*. Each action on an application for a Tier I, II or III facility shall be taken within the following periods:

1. *Applications for Tier I and Tier II facilities and applications for existing Tier III facilities that would not substantially increase the size of an existing monopole or tower*. Any application for a Tier I or Tier II facility, and any application for an existing Tier III facility that would not substantially increase the size of the existing monopole or tower, shall be approved or disapproved within ninety (90) days, as calculated under subsection 5.1.40(h)(3).

2. *Applications for new Tier III facilities and applications for existing Tier III facilities that would substantially increase the size of an existing monopole or tower*. Any application for a Tier III facility, and any application for an existing Tier III facility that would substantially increase the size of an existing monopole or tower, shall be approved or disapproved within one hundred fifty (150) days, as calculated under subsection 5.1.40(h)(3).

3. *Calculating the time for action*. The time for action on an application shall be calculated as follows:

(a) *Commencement*. The time for action under subsection 5.1.40(h)(1) or (h)(2) shall begin on the date the application is received in the department of community development.

(b) *Determination of completeness*. Within thirty (30) days after the application is received, the department of community development shall determine whether the application includes all of the applicable information required under subsections 5.1.40(a) through (e). If any required information was not provided, the department shall inform the applicant within the thirty (30) day period about which information must be submitted in order for the application to be determined to be complete.

(c) *Tolling*. The running of the time for action under subsection 5.1.40(h)(1) or (h)(2) shall be tolled between the date that the department informs the applicant that its application is incomplete under subsection 5.1.40(h)(3)(b) and the date on which the department receives all of the required information from the applicant.

(d) *Extension of running of time for action*. The time by which action must be taken under subsection 5.1.40(h)(1) or (h)(2) may be extended upon request by, or with the consent of, the applicant.

4. *Effect of failure to approve or disapprove within time for action*. The failure to approve or disapprove an application within the time for action shall not be deemed to be approval of the application but, instead, shall only create a rebuttable presumption that the failure to timely act was not reasonable under 47 U.S.C. § 332(c)(7)(B)(ii).

5. Meaning of "substantially increase the size of an existing monopole or tower". The phrase "substantially increase the size of an existing monopole or tower" means: (i) the mounting of the proposed antenna would increase the height of the monopole or tower by more than ten (10) percent, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth herein if necessary to avoid interference with existing antennas; (ii) the mounting of the proposed antenna would include installing more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4), or more than one new ground equipment shelter; (iii) the mounting of the proposed antenna would involve adding an appurtenance to the body of the monopole or tower that would protrude from the edge of the monopole or tower more than twenty (20) feet, or more than the width of the monopole or tower structure

at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth herein if necessary to shelter the antenna from inclement weather or to connect the antenna to the monopole or tower by cable; or (iv) the mounting of the proposed antenna would involve excavation outside the current boundaries of the leased or owned property surrounding the monopole or tower and any access or utility easements currently related to the site.

(§ 5.1.40, Ord. 01-18(9), 10-17-01; Ord. 04-18(2), 10-13-04)

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(Note: At 9:13 pm., the Board recessed and reconvened at 9:21 p.m.)

(The next two agenda items were heard concurrently.)

Agenda Item No. 13. **Public Hearing:** An ordinance to amend **Chapter 6, Fire Protection, Article III, Fireworks**, of the Albemarle County Code. The proposed ordinance, authorized by Virginia Code § 15.2-974, would clarify who may be granted permits for displays of fireworks. *(Advertised in the Daily Progress on April 22 and April 29, 2013.)*

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Agenda Item No. 14. **Public Hearing:** An ordinance to amend **Chapter 7, Health and Safety, Article I, Noise**, of the Albemarle County Code. The proposed ordinance would clarify that fireworks displays for which a permit is issued, pursuant to chapter 6 of the County Code, are exempt from the noise ordinance. *(Advertised in the Daily Progress on April 22 and April 29, 2013.)*

Chief Howard Lagomarsino, the County's Fire Marshal, summarized the following executive summary which was forwarded to Board members:

Fireworks displays are allowed in Virginia subject to compliance with the provisions of the Virginia Statewide Fire Prevention Code (SFPC). Virginia Code § 15.2-974 allows localities to further regulate these activities, provided that any local enforcement provisions be as stringent as the Code of Virginia and the SFPC. Virginia Code § 15.2-974 specifically enables localities to require a permit for fireworks displays.

Chapter 6, Article III of the County Code governs fireworks in the County. County Code § 6-303 (A) requires a permit for fireworks displays. Other provisions within this section and article define exceptions to the permitting requirement and permitting procedure.

Noise is regulated in County Code Chapter 7. County Code § 7-106 (H) exempts certain fireworks displays from the provisions of the noise ordinance.

These proposed ordinance amendments are housekeeping matters to clarify the fireworks provisions and to eliminate any ambiguity in how they are applied.

Drafts of the proposed ordinances are attached (Attachments A and B).

SFPC § 3302.1 defines fireworks displays as presentations of fireworks for public or private gatherings. The SFPC requires adherence to safety measures, liability insurance, and Virginia licensing for the display operator/pyrotechnician conducting the fireworks.

Virginia Code § 15.2-974 enables localities to issue permits for fireworks displays. It allows permits to be issued to fair associations, amusement parks or any organization or group of individuals requesting to have a fireworks display.

The County regulates fireworks within Chapter 6, Article III of the County Code. Except for "permissible fireworks" (those that do not rise into the air or explode), all other fireworks require a permit from the County Fire Official. County Code § 6-303 specifically provides that a permit is required for a fireworks display. County Code § 6-303 (A) provides that public displays of fireworks may be given by fair associations, amusement parks or any organization or group of individuals in accordance with a permit from the Fire Official. County Code § 6-303 (B) requires that fireworks displays conform to the requirements of the SFPC.

The term "public displays of fireworks" in County Code § 6-303 has historically and consistently been interpreted to mean fireworks displays by fair associations, amusement parks or any organization or group of people issued a permit to do so by the Fire Official. For example, Farmington Country Club has a fireworks display every July 4th. Several of the wineries that offer wedding services have fireworks displays as part of wedding celebrations. There were a total of fifteen permits issued in 2012 (Attachment C) and all of those were for fireworks displays on private property.

Upon review of County Code § 6-303, it was found to exactly parallel enabling legislation in Virginia Code § 15.2-974, except that the County Code provision uses the word "public" in its reference to fireworks displays. This creates a possible unintended and unnecessary ambiguity in the County Code. The proposed ordinance (Attachment A) would conform the County Code to the State enabling legislation and eliminate any arguable ambiguity by removing the term "public."

County Code Chapter 7, Article I is the County's Noise Ordinance. County Code § 7-106 exempts certain noises from the requirements of the ordinance. County Code § 7-106 (H) specifies that sounds

produced by officially sanctioned fireworks are exempt, but that "private" fireworks displays are not exempt from the noise ordinance. This ordinance has historically and consistently been interpreted to mean fireworks displays that have been issued a permit by the Fire Official are exempt from the noise ordinance. Because the term "private" fireworks displays is not used elsewhere in the County Code, the proposed amendment eliminates the use of that term and clarifies that only fireworks displays that have been issued a permit by the Fire Official are exempt.

These proposed ordinances would have no budget impact.

After the public hearing, staff recommends that the Board adopt the attached ordinances (Attachments A and B) to amend County Code Chapter 6 – Fire Protection, Article III, Fireworks, and Chapter 7 – Health and Safety, Article I, Noise.

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Ms. Mallek said that she thought private fireworks were not exempt from noise regulations now, and asked what would happen to that. Chief Lagomarsino responded that a private fireworks display is interpreted now as getting fireworks, coming back home, and shooting them off. In their current interpretation, if you hire a pyrotechnic person to do a show and get a permit from the Fire official, that would be considered a public display. He said that where the confusion arises is when an officer goes out to try to enforce a complaint, and is caught between a rock and a hard place as to how to interpret the Code. He stated that the change brings it into a consistent standard and an easily enforceable standard.

Mr. Davis said that the terms "public" and "private" have created some confusion about interpretation of the Code. Under the noise ordinance the consistent interpretation has been that permitted fireworks displays are not subject to the noise ordinance – but private displays were always interpreted as not being subject to a permit. He stated that those types of activities would be a violation if they violated the noise ordinance, but if the County approves a display it has been an exemption from the noise ordinance because it's unlikely you could have that type of display and still meet the noise ordinance standards. Mr. Davis said that under the permitting process, the term "public" has never been interpreted to mean anything other than a permitted display**.** He stated that this change would remove the unnecessary language and makes it consistent with the State Code enabling legislation, which just addresses "displays of fireworks" without any adjective of "display."

Ms. Mallek said that shooting off a handful of fireworks is very different from a backyard private party that has 45 minutes of stuff going off. Mr. Davis responded that if there's a private party that does not have a permit from the Fire Marshal and they are shooting off fireworks, that could be charged as violation of the noise ordinance, if they exceed the noise levels. If they are shooting off fireworks that are illegal without a permit, they could also be cited for a fireworks violation. There are some fireworks that can be discharged without a permit that are privately-owned and others that require a permit.

Mr. Snow asked how long the permit would be valid. Chief Lagomarsino responded that the permit is just for that show. He said that in the permit process an applicant would need to specify date and time for the show, and there is also a place for a rain date. If they do not do it during that timeframe, they need another permit.

Ms. Mallek asked if there is any reference to duration of the show in the permit. Chief Lagomarsino responded that there is not, but historically they have been 15-20 minutes. He also said that there were about 15 permitted in 2012, with two permitted thus far in 2013. Chief Lagomarsino added that they are almost all done around the 4th of July, with the exception of a few for wedding ceremonies.

Ms. Mallek commented that one of the wineries in the White Hall District has 85 weddings scheduled for this year, and if every one of them had fireworks it is different from 4th of July or New Year's Eve. She added that she is not really thrilled with that much activity.

Mr. Thomas said if they get a permit, they are OK.

Mr. Rooker commented that it is a difference when they do it once or twice a year, but another thing when it is being done every weekend.

Ms. Mallek said that this is the time to address whether that would be acceptable. She said that she just does not think that is compatible with residential areas. This is what they are opening themselves up to.

Mr. Boyd commented that that has not been the history.

Ms. Mallek responded that most people do not even know it's a possibility, and that may change once they find that out.

Mr. Rooker said that the question is whether State law allows the County to limit the number of fireworks displays any location can get during a calendar year.

Mr. Davis stated that the Board has the authority to require permits, and probably within that authority there would be some flexibility as far as how many permits could be granted for a particular site – but that type of change is not before the Board tonight. He suggested that the Board adopts this ordinance, and suggested that if it wants to have a further discussion about changing where fireworks permits are appropriate it be brought back at another time with some additional information. He said that he thinks the Board does have the authority to consider that.

Mr. Rooker said he would like to see that brought back, because if a place like Keswick Cidery has fireworks every time it has an event, the impact on people in the rural area would be substantially greater. These things should have balance. He added that right now it's not a problem, because few places apply for more than two or three a year – and if that practice continues it would not violate a restriction.

Chief Lagomarsino stated that on the list that he researched and put together Keswick had the most events with fireworks.

Ms. Mallek asked if there is a notification process for people around where the fireworks events would happen. Chief Lagomarsino responded that in the process he inherited, there was not, but in the new process the applicant is required to provide some sort of proof that they notified people. He said that there is a place on the application form as to how they notify and who they notify

Ms. Mallek asked how the applicant knows who to notify and is the applicant provided with a list of names and addresses. Chief Lagomarsino replied that the onus is on the person holding the event to find that information. Ms. Mallek said that it probably will not happen then. She said that she would like to hear suggestions as to ways to improve the process for notification of neighbors so people can make plans for themselves, their animals, etc.

Mr. Snow asked how big the area should be, because the sound carries for miles. Chief Lagomarsino said that the burn ordinance addresses this by stating a specific distance, and the same thing would need to be stipulated here to keep it consistent – and that would be something they could do procedurally rather than having to codify it.

Mr. Boyd stated that it is quite expensive to hire a pyrotechnics person, and the cost is probably what's keeping people from doing it.

Chief Lagomarsino explained that the State Code changed two years ago where you must have a licensed pyrotechnician do the actual show, and the person must be licensed through the State Fire Marshal's office. He said there are only a finite number of those people and companies doing business in Virginia.

Mr. Boyd said that he is not opposed to considering the issues Ms. Mallek has raised, but it is likely cost prohibitive and will limit the number of firework displays.

Chief Lagomarsino noted that the fireworks display at Keswick over the weekend was $20,000.

The Chair then opened the public hearings on Items 13 and 14. With no one coming forward to speak, the Chair closed the public hearings and placed the matter before the Board.

Mr. Rooker **moved** to adopt the amendments to the Fire Protection Ordinance, as presented. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

(The adopted ordinance is set out below:)

ORDINANCE NO. 13-6(2)

AN ORDINANCE TO AMEND CHAPTER 6, FIRE PROTECTION, ARTICLE III, FIREWORKS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 6, Fire Protection, Article III, Fireworks, is hereby amended and reordained as follows:

By Amending:

Sec. 6-303 Fireworks permits--Required
Sec. 6-309 Disposal of unused fireworks after public display

Chapter 6. Fire Protection

Article III. Fireworks

State law reference--As to fireworks generally, see Va. Code §§ 15.2-974 and 27-95 to 27-100.1.

Sec. 6-303 Fireworks permits--Required.

A. Notwithstanding the other provisions of this article, displays of fireworks may be given by fair associations, amusement parks or by any organization or group of individuals in accordance with a permit from the fire official. Except as provided in section 6-302, it shall be unlawful for any person to hold, present or give any such display of fireworks without first having obtained such a permit from the fire official.

B. Except as provided in section 6-302, any person, business, organization or other entity engaged in the sale, storage, distribution, manufacture or display of fireworks anywhere in the County of

Albemarle must obtain a permit from the fire official and must comply with all terms and conditions imposed by the fire official in connection with the permit prior to engaging in any sale, storage, distribution, manufacture or display of fireworks. The fee for such permit shall be as established in the fee schedule maintained by the fire official, as may be amended from time to time.

(Code 1967, § 10-6; 4-13-88; Ord. No. 97-9(1), 1-8-97; Code 1988, § 9-12; Ord. 98-A(1), 8-5-98; Ord. 01-6(1), 6-6-01)

State law reference--For state law as to authority of county to adopt this section, see Va. Code § 15.2-974.

. . .

Sec. 6-309 Disposal of unused fireworks after display.

Any fireworks remaining unfired at the end of any display shall be immediately disposed of in a manner safe for that particular type of fireworks.

(Code 1967, § 10-12; Ord. No. 97-9(1), 1-8-97; Code 1988, § 9-18; Ord. 98-(A), 8-5-98)

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Mr. Rooker **moved** to adopt the amendments to the Noise Ordinance, as presented. Mr. Boyd **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

(The adopted ordinance is set out below:)

ORDINANCE NO. 13-7(1)

AN ORDINANCE TO AMEND CHAPTER 7, HEALTH AND SAFETY, ARTICLE I, NOISE, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 7, Health and Safety, Article I, Noise, is hereby amended and reordained as follows:

By Amending:

Sec. 7-106 Exempt Sounds

Chapter 7. Health and Safety

Article I. Noise

Sec. 7-106 Exempt sounds.

The following sounds are not prohibited by this article:

. . .

H. *Parades, fireworks and similar officially sanctioned events*. Sound produced by parades, fireworks or other similar events which are officially sanctioned, if required. This exemption shall apply only to fireworks displays duly issued a permit pursuant to chapter 6 of the Code.

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Mr. Davis said that there appears to be consensus on the Board that it wants to have an examination of the number of permits that should be issued for any one property in a calendar year. He stated that that's probably an issue that Fire staff and Community Development will have to look at to determine impacts on uses, and nuisances.

Ms. Mallek asked if the fees that are charged recoups the cost of three visits to the site, to see the plan, to be there during the display and to help people with the applications. Chief Lagomarsino responded, "no"; the County's fee currently is $75, and the State Fire Marshal fee is more than double that.

Ms. Mallek asked if $250 would be more appropriate to cover the expense to process these applications. Chief Lagomarsino said that is one item on his "to-do list" to look at the whole fee schedule, as it has not been reviewed since 2005. He also said that they are looking at the inspection issue on certain hazmat permits. If they inspect a small gas station it is $175 – but that is the same fee for a company as large as GE Fanuc. Chief Lagomarsino said that they are looking at basing it on square footage, which is allowable by State Code.

Ms. Mallek asked if Fire/Rescue inspects gasoline stations when there are leaks and other issues. Chief Lagomarsino responded that they do inspect a portion from the standpoint of environmental crimes and from the hazardous materials permitting process.

Ms. Mallek said her issue has to do with people hosing into the storm drain gasoline spills at a gas station.

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Agenda Item No. 15. Discussion: Rivanna River Basin Commission's Request to RWSA for FY 2013/14.

The following memorandum to Mr. Foley, from Mark Graham, Director of Community Development, was received:

"Thank you for the opportunity to sit in with Leslie Middleton and others to better understand the subject. From this meeting and a review of the RRBC request, I believe there is good alignment between the County's goals and this request. To help everyone understand how I reached this conclusion, I am offering the following analysis.

First, RRBC has stated four outcomes, which I have paraphrased below

1. **Identify priority restoration sites and stream reaches to meet partner's objectives**. This should result in pairing stream sections where water quality standards are not being met with particular sites on those stream sections that could improve water quality through restoration.

2. **Develop a portfolio of priority locations for restoration projects**
This should result in a ranking of possible stream restoration projects from 1. Presumably, this will include consideration of factors such as benefits from the project, ease of access, and the interest of property owners.

3. **Develop a community-wide understanding of opportunities, benefits, and challenges for nutrient trading**
This outcome should improve community interest in the possible benefits of stream restorations on private property. This could include payments to interested property owners through a nutrient trading program, cost savings for developers who would otherwise need to invest in expensive urban stormwater management, and community improvements in stream quality that might not otherwise occur.

4. **Engage water supply planners involved with the Rivanna watershed in an attempt to find a consensus based water supply plan.**
This outcome seeks to avoid much of the controversy and permitting issues with future water supply issues. By doing this outside of a project specific permit review, we can minimize the controversy when new projects are brought forward and view the watershed in a more holistic manner. . .

Next, I noted several objectives in the Natural Resources Section of the Comprehensive Plan that appear to closely match these outcomes.

OBJECTIVE: Maintain the integrity of existing stream channels and networks for their biological functions and drainage. Protect the condition of state waters for all reasonable public uses and ecological functions. Restore degraded stream and wetland ecosystems where possible.

OBJECTIVE: Protect the safety and welfare of citizens, property owners, and businesses by minimizing the negative impacts of increased stormwater discharges from new land development.

OBJECTIVE: Facilitate the integration of stormwater management and pollution control with other programs, policies, educational efforts, and Comprehensive Plans of jurisdictions in the region.

OBJECTIVE: Encourage voluntary techniques to protect drinking water supplies.

I also noted two recommendations within the Public Utilities section of the Comprehensive Plan that match these outcomes:

Protect the County's surface water and ground water supplies through the enforcement of existing regulations and identification and preservation of significant resources that protect the reservoirs and groundwater recharge areas.

Continue a long term effective coordination between the Albemarle County Service Authority, the Rivanna Water and Sewer Authority, the City, the University of Virginia and County through the utilization of open communication channels, the ACSA's, RWSA's and City's Capital Improvement Programs and the Master Water and Sewer Study.

Finally, I noted the County's Strategic Plan includes the following objective under the Natural Resources Goal:

Work in conjunction with key stakeholders to protect the health of our local waterways and other critical natural resources

In summary, I recognize this request is to the Rivanna Water and Sewer Authority rather than the County, but I found it closely aligns with County policy. Additionally, while the State has not yet defined all of its expectations for local governments in response to the Chesapeake Bay TMDL, I anticipated much of this work will closely mesh with the anticipated local government mandates and save the County considerable funding in the long-term. The limited amount of funding being requested, combined with the stated outcomes, appears to provide very good value for the County."

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The Board also received a copy of the following letter from Mr. Marvin Moss, RRBC Chair, to Mr. Mike Gaffney, Chair, RWSA:

"The RRBC is writing to provide additional information regarding the RRBC's request for RWSA funding support in FY14 for specific work products that we believe will benefit the RWSA's ratepayers as well as help the authority continue to serve as an exemplary steward of the Rivanna watershed.

From 2009 through 2012, RRBC has focused on helping our member local governments and partners understand and meet the requirements of the Chesapeake Bay TMDL, especially the Watershed Implementation Plans of Phase II. With the completion of the 2012 Rivanna Watershed Snapshot, we are now beginning to develop the Rivanna watershed management plan, which will include tools for local (Rivanna) governments and local agencies including RWSA that will help them navigate the increasingly complex regulatory requirements and opportunities that range from water supply planning to nutrient trading.

Specific aspects of this planning work will directly benefit RWSA ratepayers by

- Supporting the protection of capital assets through identifying opportunities for stabilizing stream banks, thus minimizing erosion, reducing repairs to infrastructure;
- Identifying priority locations for cost effective restoration projects that will result in protection of drinking water sources;
- Providing forum for watershed---wide water resource planning (water supply and conservation) building on Virginia DEQ's statewide water supply analyses; specifically for the Rivanna watershed; and
- Providing forum for watershed---wide discussion regarding nutrient trading within/outside of the Rivanna watershed in order to maximize the potential for savings to ratepayers though efficient and environmentally acceptable nutrient trading both within and outside of the Rivanna watershed.

We propose to use the $25,000 contribution from RWSA as follows:

1. Utilize methodology developed by RRBC and partner organizations (including StreamWatch and The Nature Conservancy) to identify priority restoration sites and stream reaches to meet partners' objectives, including protection of water and sewer infrastructure.

2. Develop a portfolio of priority locations for restoration projects for future mitigation by RWSA as needed.

3. Work with state and local partners to plan, coordinate, and host a series of meetings and workshops during FY14 to develop a community---wide understanding of the opportunities, benefits, and challenges of utilizing nutrient trading between point and nonpoint sources within the Rivanna watershed.

4. Engage water supply planners at DEQ, USGS, and local Rivanna partners (Rivanna local governments, The Nature Conservancy and StreamWatch) to develop a consensus---based water supply plan for the entire Rivanna watershed. FY14 output will be a project planning document based on discussions and meetings facilitated by the RRBC.

The budget for these activities is:

Personnel & Benefits	$21,400
Travel	$990
Printing	$550
Contractual	$700
Supplies	$760
Other	$500
TOTAL	**$25,000**

We recognize that RWSA's income comes almost entirely from local ratepayers and that expenditures must accrue to the benefit of those ratepayers. We believe that this work will ultimately result in lower costs of infrastructure repairs and water treatment.

We believe that the RRBC is able to provide a unique benefit in supporting the localities and Rivanna partners by developing tools that consider the Rivanna in its entirety."

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Ms. Mallek referenced the above letter received with Mr. Mark Graham's memo and letter to Mr. Mike Gaffney from Mr. Marvin Moss. She said that she likes the proposal and looks forward to hearing what other Board members think.

Mr. Rooker said that it was helpful to have Mr. Graham's analysis of this, which basically concluded that it would provide very useful information to staff and would ultimately help save money in complying with TMDL requirements. He said that he will support the request.

Mr. Boyd asked where the money would come from for this, adding that the scientific data Mr. Graham was referring to is already provided by StreamWatch. The County funds StreamWatch at $10,000, the City funds them at $10,000, and Rivanna funds them at $10,000. He said that it sounds as though this would be a duplicative effort. He added that he had written to Mr. Tom Frederick and said there was no money in the budget for this. Rivanna does not set aside money for agency support. Mr. Boyd said that Mr. Frederick stated that this year it would come out of Rivanna's reserves and in the future it would have to be included in the rate structure.

Mr. Rooker said that from what he read, the money was there to be able to do this.

Mr. Boyd stated that it depends on how you look at it. Normally when there are surplus dollars like this Rivanna puts them back into pay as-you-go capital projects – so some money will be withheld from that. He said that this is not a lot of money, but it is a little bit unprecedented for the Board to direct Mr. Foley and himself on how to vote on an issue when they do not even know how it is really going to be funded. He added that Mr. Frederick said it would be up to the Rivanna Board as to how it would be funded.

Ms. Mallek said that there is a difference between what StreamWatch does and what Rivanna does, as StreamWatch may be counting the number of insects and using that as an indicator of the health of the stream, and the River Basin Commission will likely develop policies and ways to implement improvements.

Mr. Boyd said he would suggest hiring the Rivanna River Basin to do that for the County and not through Rivanna, because Rivanna is not the one that needs that. The County needs that data for its stormwater management.

Ms. Mallek commented that it is definitely important to Rivanna.

Mr. Boyd suggested that the RRBC bring the application to this Board, and then it can decide whether to take $25,000 out of Board reserves for this.

Mr. Rooker responded that the County shares the watershed with the City, and their user fees would pay for part of this. He said that City Council has indicated that it would support this, and if it does not, then it won't go through.

Mr. Boyd said that this is kind of a moot point then, because Rivanna will have the votes needed.

Ms. Mallek said that she would hope the County would actually vote on this, because Mr. Graham has clearly laid out the benefits to the ratepayers, and the benefits of the knowledge.

Mr. Boyd asked if the County would pay the RRBC to gather that knowledge. Mr. Rooker said that Mr. Snow and Mr. Thomas are both on the board of RRBC, and the organization has a goal of providing information on the watershed that's useful to the member communities. He stated that there is a specific project being funded by this, and that project will provide very useful information with respect to satisfying TMDL requirements. Mr. Rooker said that the watershed is something shared with the City, and the County would share in the expense this way. He noted that Mr. Graham has set forth a number of reasons why this would be valuable information for the County to obtain. Ms. Mallek added for RWSA to implement the policies going forward.

Mr. Rooker added that the City is supporting the request and he thinks the County should also support it.

Mr. Thomas asked if the RRBC will be charging the City for each transaction. Ms. Mallek responded that the request the Board would be supporting is to ask RWSA, which is combined City/County, to have the RRBC work on a whole series of different things as outlined in a letter from Ms. Leslie Middleton and Mr. Graham's letter.

Mr. Boyd asked how much money of Rivanna is the County going to designate that they spend on the County's behalf. It is sort of a procedural thing here. This Board is saying that it is going to vote on budget decisions by the Rivanna Water and Sewer Authority. Mr. Rooker responded that the Board has voted in the past that people on committees are supposed to carry out the will of the Board, and this discussion is the will of the Board on this issue. He said that the funding through RWSA, which ultimately falls on water users, is a reasonable way to fund this project and share that expense with the City.

Mr. Boyd said that if the Board is going to take a position on this, it should also take one on the revenue-sharing agreement with the City and the ACSA. The County is being forced to be part of a $40 million City project whereby the City wants the County to pay one-half. Mr. Rooker responded that the Board can certainly weigh in and express an opinion, but the ACSA is a separate authority with separate powers, and Mr. Boyd could talk to his district's appointee on that body – but the RWSA has a Board member serving on that body.

Mr. Boyd said that he and Mr. Rooker were the only ones on the Board when the RRBC was established, and the only reason they got his vote was because they were not going to be a publicly-funded agency. They were going to get their money from grants and from The Nature Conservancy. He said at the time his concern that they would come back to the public for funding for this, and the Board is at that point now.

Mr. Rooker said that he does not recall the RRBC saying that they would never come to localities and ask for money, but he could be remembering incorrectly. He stated that this situation is one funding item for one specific series of tasks, and the question of whether the County will receive value from that.

Mr. Boyd asked what that task would be if the County did not have the RRBC to provide it.

Mr. Rooker responded that it is outlined in Ms. Middleton's letter and Mr. Graham's analysis.

Mr. Boyd reiterated that he does not agree.

Mr. Rooker then **moved** to direct its RWSA Board representatives to support the Rivanna River Basin Commission's request to the RWSA for $25,000 as requested in the letter from Ms. Leslie Middleton and analyzed by Mr. Mark Graham. Ms. Mallek **seconded** the motion.

Mr. Thomas asked what the County and City would be receiving back for the amount of money going to RRBC as a share.

Ms. Mallek responded that it is intended to be a joint effort to help analyze where the RWSA will get the best "bang for their buck" in meeting a whole lot of requirements that are coming down the pike.

Mr. Davis said that it would be information that Rivanna would be receiving, rather than the City and County.

Ms. Mallek stated that Rivanna is the one being held accountable, and if they do not accomplish what they need to, Moore's Creek will be penalized. She said that she distributed an article about the "low-tech, natural systems" as the cheapest way to meet these requirements, and that has been proven all over the place.

Mr. Thomas said that he can support the specific jobs the RRBC will be doing.

Mr. Boyd stated that this does not indicate that the County is going to save any money or that this will prevent the County from having to do its own analysis or use Community Development staff time or enact a stormwater management fee. None of that stuff is being avoided or prevented by the items on Mr. Graham's list. He said that he just does not see anything of tangible value that the County will be getting. He suggested that the Board wait it gets the MS-4 report and know what it has to do, and then contract for that information.

Mr. Rooker read the conclusion of Mr. Graham's letter: "In summary, I recognize that this request is through Rivanna Water and Sewer Authority rather than the County, but I find that it closely aligns with County policy. Additionally, while the State has not yet defined all of the expectations for local governments in response to Chesapeake Bay TMDL, I anticipate much of this work will closely mesh with the anticipated local government mandates and save the County considerable funding in the long term. The limited amount of funding being requested combined with the stated outcomes appears to provide good value for the County."

Mr. Rooker added that if Mr. Graham's conclusion had been that the County did not need any of this nor that it would be helpful, he would not support it.

Mr. Snow said that he thinks this is a great project. The RRBC does a terrific job and he has enjoyed serving on its board. He added that Rivanna is responsible for its own budget, and he would rather have this Board direct Mr. Boyd to work with the rest of the Rivanna Board and see where it can get the funding and see where the budget works out "rather than just saying do it." Mr. Snow added that there is a difference there.

Ms. Mallek said that Mr. Frederick has already said that there are funds available, so that is his and the RWSA Board's decision to work out. This Board is just saying to Mr. Foley and Mr. Boyd that it thinks this is a good idea.

Mr. Snow responded that he's fine with that, but to say "cough up the money" does not sound kosher to him.

Ms. Mallek said that Mr. Foley asked for direction as to what to do.

Mr. Rooker said that Mr. Frederick has already indicated that the money is available, and said that he would **amend** his **motion** to reflect "subject to the availability of funds at RWSA".

Mr. Letteri stated that he would certainly expect there to be discussion at the Rivanna Board level about what the deliverables would be for that contract.

Mr. Snow said that was the only thing bothering him since the Rivanna Board had not had a discussion as to where the money would be coming from and how it would be replenished.

Ms. Mallek asked how this is different from the four boards sitting here and deciding – after hearing information – that they were going to require the RWSA to take chloramines off the table and find the money to do something more expensive. It is exactly the same category of suggestion; this is what this Board wants to have happen.

Mr. Boyd said that they had had a discussion with all four boards, with lots of information provided, unlike this proposition.

Mr. Davis clarified that the difference here is that this Board is not directing Rivanna to do anything with this decision; it is directing its Rivanna Board members to support a position of this Board. It may end up being the same result, but this Board has a Board policy that says that if the Board takes a position, the members that represent them on boards and commissions are supposed to follow the Board's position in implementing that decision on their boards and commissions. Mr. Davis explained that if the policy is followed, then Mr. Boyd and Mr. Foley will be expected to support this if it comes before the Rivanna Board. He emphasized that this Board cannot direct the Rivanna Board to do anything other than have its representatives vote the way they want them to vote.

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

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

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Agenda Item No. 16. Discussion: Sunset Avenue to Biscuit Run State Park Trail Corridor Project.

Ms. Mallek said that Board members received a copy of a map creating trails to be developed over the next several decades to connect Biscuit Run, Avon Park, and all the neighborhoods in between. She said that Parks & Rec did not feel they had much direction from the Board to move forward with this plan. She said that part of the reason the urban areas are succeeding is because the County is making it possible for trails to develop and be included in new approvals. Ms. Mallek stated that if the County has willing landowners who will donate easements, she hopes the Board will give support for starting that work.

Mr. Dumler said that most of this trail system is located in his district although it will serve the City and the Samuel Miller District. He commented that this is timely because there is about $125,000 in proffer money associated with the 5th Street Station project for bridge repair, trail networks, etc. There's a definite economic development opportunity associated with connecting thousands of residents in these dense apartment complexes off 5th Street as well as along Avon Street, to that new development. He said that there may also be opportunities for other private money for conservation easement acquisition. Mr. Dumler said there is a date set for the 5th Street Station project, and the City would also have an interest in connecting people there to the new state park. He added that this is a quality of life issue, an economic development issue, and he hopes the Board will direct staff to start to put the pieces into place – while people are still willing to dedicate parcels to the County in fee simple.

Mr. Boyd said he does not have a problem with the idea, but in the Rivanna District, the North Town Trail has been on the books for a very long time as well – with proffer money available from Hollymead Town Center – and he would like that studied in concurrence with this.

Ms. Mallek commented that the TJ Planning District has worked on that trail along with the greenway project.

Mr. Boyd stated that it is of tremendous interest to the people, particularly in the Forest Lakes areas, and this would be an ideal time to do it as they work on widening Route 29 and the Western Bypass. He added that he would like to see it studied with the same earnest.

Ms. Mallek said that it is important to convey to staff that the Board is interested in these urban projects, and it is crucial not to let the pieces get away – even though the entire project may take years. In addition, some of the homeowners' associations are interested in participating.

Mr. Snow said he is also in support of the project. He supports asking staff to put this on its list of projects.

Mr. Davis said that staff shares the Board's enthusiasm for trails, but the budget that the Board just approved does not include much funding for this. He does not think that the workplan has made this a high priority. He said that staff seizes opportunities and tries to get easements whenever possible, but a lot of time the delay is that there is not a specific enough plan as to where it needs to be and how it needs to be dedicated. That usually requires some planning and that type of planning has not happened on all these properties. Mr. Davis said that in order to get an easement dedicated, you normally must have a

plat – and that plat has to designate the dimensions of the trail. There is some money that has to be spent to accomplish that planning.

Mr. Dumler said that would not stop the County from getting the fee simple parcels though. Mr. Davis responded that they would still have to figure out what fee simple parcels they are getting. It becomes more important with a fee simple parcel.

Mr. Rooker said that some proffer money could be allocated from the 5th Street Station project.

Mr. Davis clarified that his point is that staff needs to come back to the Board and connect with them on the resources necessary to make this a priority, and what funding is available in next year's budget, what proffer funds might be available, and other funding sources. He said that staff has not done that analysis and he does not want the Board to be "misled" by what resources are available or are not available to implement this priority project. Mr. Davis stated that it would be helpful for staff to work on a plan for how this could be implemented going forward.

Mr. Letteri stated that there are some complications in terms of connectivity and issues about what costs would be involved in upgrading various trails to make them work, so Mr. Davis' suggestion is a good one. Staff will work with Parks & Rec and the OFD staff to analyze what the various pieces are.

Mr. Boyd said that the Board is really just directing staff to restart the process tonight, because this started a long time ago.

Ms. Mallek said that she thinks staff has felt that this isn't a priority for the Board. It just needs to get back on the list.

Mr. Rooker said that what has happened with Biscuit Run is somewhat new, and that changes how the area is viewed.

Mr. Dumler stated that there may be private money available for acquisition of easements, but no one is going to convince anyone to spend money on something that the County is going to wait for the pieces or has no plan for.

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Agenda Item No. 17. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Mallek asked if Board members had an opportunity to review the fracking letter.

Mr. Snow said he was fine with it, with Mr. Rooker's proposed change. Ms. Mallek commented that the change has been incorporated in the letter.

Board members concurred with the Chairman sending the following letter to the Governor:

The Honorable Robert F. McDonnell
Governor of Virginia
P.O. Box 1475
Richmond, VA 23218

Dear Governor McDonnell:

The Albemarle County Board of Supervisors is concerned about an upcoming decision of the Department of Interior to permit hydrofracking for natural gas in the George Washington National Forest. All the ground water resources on the eastern slope of the Blue Ridge Mountains are connected to the mountain aquifers.

When the price of natural gas is falling due to rapid expansion of the industry, this is not the time to jeopardize the drinking water of the central Piedmont today or the loss of natural and recreational resources for our grandchildren by rushing to exploit potential reserves in the GW.

While some forms of hydrofracking have been used for decades, neither the scientific community, the regulatory community, nor local governments know enough at this time to permit the 2013 version of this exploitation. With deep vertical shafts and extended horizontal shafts there is significant risk of interactions with aquifers.

The Albemarle County Board of Supervisors does not support hydrofracking being promoted at this time and opposes this process in Virginia until there is proof that this process will protect safe drinking water resources today and for future generations. Thank you for your consideration of this matter.

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Ms. Mallek asked if Board members had any lingering concerns about the County encouraging the Governor again to sign the regulations supporting the work his own staff did on biosolids. Board members concurred with resending the following letter.

The Honorable Robert F. McDonnell
Governor of Virginia
P.O. Box 1475
Richmond, VA 23218

Re: Regulations approved by the State Water Control Board pertaining to land application of biosolids (9 VAC 25-32)

Dear Governor McDonnell:

The Albemarle County Board of Supervisors supports the regulations relating to the land application of biosolids (9 VAC 25-32) that were approved by the State Water Control Board on September 22, 2011. These new rules will allow wastewater agencies to land apply biosolids to agricultural and forestry operations in a manner that will protect the environment, public health and safety.

The regulations were developed with the assistance of a Regulatory Advisory Panel (RAP) comprised of diverse stakeholders that included the VA Association of Municipal Wastewater Agencies, the VA Biosolids Council, the VA Agribusiness Council, VA Association of Counties, the VA Municipal League, and the VA Farm Bureau.

In addition, local government representatives worked diligently with staff at the Department of Environmental Quality to achieve a workable next step in this important issue to local citizens. This RAP met over a period of two years. The many meetings held by the RAP included detailed discussions and debate over a large number of difficult technical issues.

Upon completion of this process, we agreed that the final rule approved by the State Water Control Board on land application of biosolids represents the fairest possible balance of all concerns expressed by stakeholders.

We believe it is in the best interest of the Commonwealth for the regulations approved by the State Water Control Board to go into effect as soon as possible. We, therefore, respectfully urge you to sign and approve these regulations in an expeditious manner.

Your approval of these regulations will allow local governments and your administration to work as partners in the development and implementation of a safe and effective program that provides regulatory predictability for the recycling and land application of biosolids.

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Ms. Mallek said that Mr. Foley and Mr. Davis will help craft the statement on the blasting at the Airport. She suggested waiting until Mr. Foley is available before proceeding.

Mr. Boyd asked what Mr. Rooker's impressions were when he visited the area during blasting.

Mr. Rooker responded that when he was out there, the blast he heard was not very loud. He would compare it to someone shutting a car door outside while you are inside a house. He said that the seismic effects are obviously different, and the damage he saw to homes was primarily cosmetic issues – with one window and one floor tile cracked. He reiterated that he only visited one house and was there for one blast, but he did not think the noise was bad especially if the people know that the blasting is going to occur on a certain day, otherwise they would wonder about the noise. He stated that the Board also needs to make certain that this particular insurance company is actually going to pay claims.

Mr. Snow said that the allegations have been made that the company has a history of saying that damages are preexisting, then leaving the site and being done with it.

Ms. Mallek said that proving it in court is the hard part, and it is a pretty high standard, especially since there is information missing from the State on the effects from repeated blasts.

Mr. Boyd stated that it is a concern, but he is not sure what the Board can do about it. It seems to him that the real fallacy is in the State Code that never takes into consideration continuous blasting. He added that he does not know whether that is in the Board's purview to change.

Mr. Rooker said that the Board is surmising what the standard is based on, but they do not really know.

Ms. Mallek said that Mr. Bibb at the Department of Mines, Minerals and Energy told her that the standard was based on one single blast. She said that Mr. Bibb said they had been using seismograph measuring for many years, and felt it was good data, but only for single-blast situations.

Mr. Davis stated that the Board needs to direct Mr. Foley as the Airport Authority representative, as to how he should vote on these matters. He said that the Board can request that the Airport do certain things, but the Board cannot mandate that they do anything specific. Mr. Davis said that the Airport is aware of the concerns, but at the end of the day it's an Airport Authority decision.

Mr. Rooker said that the Board talked before about having the Airport Authority make sure there is a system in place to help assist homeowners in having their damages assessed and collecting on them. He would like to have a meeting with the Authority to discuss that issue. He added that the concern he

heard most often is that people are afraid they won't be compensated, or will have to go to a lot of trouble to be compensated. He thinks the Board needs to do what it can to make certain that situation has an easy process in place for people to get compensated. Mr. Rooker also questioned whether cosmetic damages should be repaired now, when there might be further damage as the blasting continues. These are not situations that are life and death; they are cosmetic.

Mr. Boyd said that it is too late for a baseline, but it is not too late to take an assessment as to what damage there is today, if any. He said that he has no problem with requesting that there be a meeting of the Authority with Mr. Foley representing the County so that they can address these issues.

Mr. Rooker said that someone needs to take a look at the contract to make sure that the standard for recovery is not difficult, because there could be a process in place but the responsibility could be shirked by one party onto another. The Airport Authority needs to make certain that there is a good process in place when honest claims are made and that they are paid in a good faith manner.

Mr. Snow said that somewhere along the line, the residents think that they are considering keeping that quarry open even after the runway is completed.

Ms. Mallek commented that the borrow pit will remain.

Mr. Thomas responded that it is not a quarry, it is a borrow pit. Ms. Mallek said that the effect is the same; it is a big hole in the ground.

Mr. Snow said that the residents need some sort of assurance that the County is not going to open it up and start blasting again.

Mr. Boyd said he would not approve that.

Mr. Thomas said that as long as it is on the construction site and if they have to do more to the runway, they can go back to that pit again. It does not shut down.

Mr. Snow said that one of the reasons for not stopping the blasting now is the contract in force. If more stone is needed in the future that would be a new contract – and somewhere along the line the County can provide direction to the Authority that this should not be an ongoing operation.

Ms. Mallek said this is direction to the Airport Authority that this should not be treated as a quarry.

Mr. Rooker stated that he agreed strongly with Mr. Snow's point that a new contract requiring blasting in the area be brought back to the Board for discussion before it is entered into. He thinks that should the Board do this over, it would probably have some discussion about how the blasting would proceed, and the Board probably would have initially directed them to do baselines at the houses at the beginning.

Mr. Boyd said the Board can ask Mr. Foley to do that, but that is all it can do. The County does not contribute any money to the Airport.

Mr. Rooker agreed, stating that there was a $5 million difference in having 250,000 truck trips bringing in outside dirt – which would also have been a nightmare – and the $5 million is no longer available now that the project is locked in as it is.

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Ms. Mallek suggested that the Board request that Mr. Foley ask the School Board to send information on WiFi, as previously requested. Board members concurred.

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Mr. Rit Venerus said that the EPA does periodic testing because the Avionix site has already contaminated some wells in the area – and would be testing the following week, so there would be data as to whether those levels changed after the blasting. The residents will have data on whether the increase in level of contaminants could be caused by the blasting. If there is an increased levels, the residents may ask for action on that basis.

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Mr. David Benish, Chief of Planning, asked if the Board wants the rural rustic road process information back by their public hearing in June, or at some later date. He said that from a staff standpoint, it would be better to take that up when they have time to spend on it.

Mr. Boyd said that he was only looking for a bullet-item procedure as to how the process works. Mr. Benish responded that staff could provide that, adding that with a little bit of time they can bring together one master list of primary and secondary roads. Ms. Mallek agreed.

Ms. Mallek added that Mr. Benish would be sending in writing the County's list for the six-year plan rather than going to the CTB hearing in Richmond.

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Agenda Item No. 18. From the County Executive: Report on Matters Not Listed on the Agenda.

There were none.

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Agenda Item No. 19. Adjourn.

At 10:22 p.m., with no further business to come before the Board, the meeting was adjourned.

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Chairman

Approved by Board

Date: 08/07/2013

Initials: EWJ