An adjourned meeting and a regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on September 11, 2013, Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. The adjourned meeting was held at 3:30 p.m., and was adjourned from September 4, 2013. The regular meeting was held at 6:00 p.m.

PRESENT: Mr. Kenneth C. Boyd, Mr. William B. Craddock (arrived at 4:11 p.m.), Ms. Ann Mallek, Mr. Dennis S. Rooker, Mr. Duane E. Snow and Mr. Rodney S. Thomas.

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 3:38 p.m., by the Chair, Ms. Mallek.

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Agenda Item No. 2. **Work Session:** CPA-2013-01. Comprehensive Plan Update.

Ms. Elaine Echols, Principal Planner, said the Board last met on August 14th and talked about how it wanted to review the Comprehensive Plan with staff, however, at that time, the Planning Commission had not finished its recommendation. She reported that the Commission finished its recommendation on August 27th and staff provided the same kinds of changes which were identified at the earlier meetings. Ms. Echols said that, when they put the summary together with only goals, objectives and strategies, they found that some of the strategies couldn't stand by themselves without the text – so the Planning Commission asked staff to clarify those strategies so the Board would have a clearer strategy and those items could stand alone. She stated that, since that time, staff has updated the first three chapters of the plan and have provided a side by side comparison with both old and new language for the goals, objectives and strategies, and anything else that stood out to staff and the Commission in the review.

Ms. Echols stated that staff would like to take the Board through two to four chapters at a time during their reviews, with more time dedicated to the bulkier chapters such as Rural Areas. She said that, if there's something in an appendix that relates to the review, staff would also pull that out and go through it with the Board. Ms. Echols reported that, at this meeting, staff would review the background, values, vision and growth management chapter, and would stop at the end of each chapter for questions and discussion. She suggested that, if some chapters take additional time to come to resolution, those chapters could be moved to the end of the process which would give the Board more opportunity to concentrate more fully on that topic in particular.

Mr. Boyd said he would like to go through some items individually, such as the Neighborhood Model, rather than continuing to go back to it as a reference to a comment in one particular section. He stated that a lot of the comparison information provided is from the appendices, not the chapters, and asked how staff might handle that process. Ms. Echols explained that staff would bring the appendix into the discussion, but currently the only appendix that was related to the topic matter was the cash proffer policy – and staff would plan to go through the appendices for community facilities when they get to that chapter.

Mr. Boyd asked at what point a discussion on the neighborhood model, as an example, would occur. Ms. Mallek said it's been adopted as an ordinance, so the Board wouldn't change it during this Comp Plan review.

Mr. Cilimberg clarified that there is the policy language of the Neighborhood Model, then there is the Neighborhood Model district in the zoning ordinance, and this refers to the policy language.

Mr. Rooker said he didn't bring his entire book to the meeting because he assumed it would match up to what the Board would be covering today and said that, if they were going to discuss other things, he would rather have the book with him.

Mr. Boyd said he didn't say they necessarily needed to proceed that way, he was simply asking when they were going to address the policy issues in the appendices. Ms. Echols responded that staff was planning to go through the Neighborhood Model policy when they get to the development areas chapter.

Mr. Cilimberg said staff does plan to cover the cash proffer policy today because it is referenced in Chapter Three.

Ms. Echols noted that the cash proffer policy is in the Development Areas chapter, as well as the Growth Management chapter appendix.

Ms. Echols also suggested that the Board give staff non-substantive editorial comments anytime, but the substance comments would be received when they get to those sections.

Mr. Boyd expressed concern that people might only read the summary chapter, and he would like to make some changes to some of the verbiage. Ms. Mallek said they were going to address it, just not at this particular meeting.

Ms. Echols reported that they would review the first three chapters at today's meeting, noting that the summary is just goals, objectives and strategies – and they've got the plan called the "20-Year Plan," along with the appendix. She stated that those three components are really the Comprehensive Plan, and the appendix has the weight of the plan and includes more of the details that aren't included in the 20-year plan bulk document. Ms. Echols said reference documents are not part of the Comp Plan, but were used to help create it or to clarify parts of the plan.

Ms. Echols said one of the things that's different about this background chapter from the others is information on regional planning – not just the Planning District Commission but the other regional planning groups in which staff participates. Ms. Echols stated that there's also information on Area A and B, which they participate in regularly in PACC and PACC-TECH, and this information is now provided in the Comp Plan in a single place, rather than in the individual Area B plans. She said the map presented is a new map created by PACC-TECH, taken from other older maps and put together on one page. Ms. Echols emphasized that this becomes very important with the southern and western neighborhoods, and the Board would see the map again when it talks about the areas in the County on this map.

Mr. Rooker said it would be helpful to have a north/south indicator and to label at least the major roads on that map, so people can immediately orient themselves.

Ms. Echols stated that there was a lot of interest and discussion related to the sustainability accords and, with this particular Comprehensive Plan, staff thought of them as continuing to be important aspirational principles to the County. She said the existing strategy said "review and support as appropriate the following Sustainability Council statements of accord," and while there's not a huge difference in that statement, there is a slight difference in how the sustainability accords are addressed. Ms. Echols said the Livability Project also had a lot of interest early in this process, and both the City and County Planning Commissions worked together over several months to come up with some joint goals for the community. She stated that, for each chapter, the relevant parts are noted – the first one dealing with growth management. Ms. Echols said, as they go through these, if there are issues the Board members want to discuss about those relevant parts, it would be a good time to bring them up. She said the City has already adopted their Comp Plan and the pieces that come from it.

Ms. Mallek asked for clarification of the "livability goals." Ms. Echols explained that staff took each goal and fit them into the sets of strategies under each chapter, which is why it's important for the Board to review them and make sure that it would endorse them. She said this was the work of the individual Planning Commissioners working together, and then both the City and County commissioners came together and said both entities wanted to endorse these items and put them in the plan.

Mr. Boyd said the statement in this section, "strive for the size and distribution of human population" bothers him as far as it being something the County is trying to control, and he suggested changing it to "housing" or "development" would be more palatable. He also stated that he isn't sure how the County could guarantee that everyone has a good-paying job, as he doesn't see that as a function of government.

Mr. Rooker said, given what Mr. Boyd just said, he didn't know what the Economic Vitality Action Plan is all about then, because that plan exists to help provide good jobs in the community by which families can live and sustain themselves. He also said the plan points out that these are the 1998 Sustainability Accords as part of the County's history.

Mr. Boyd said the plan should clearly state that it has nothing to do with the current plan, and is just historical information.

Ms. Mallek said that it's in the "Background" chapter, which is essentially the history. She stated that the second statement, in her interpretation, refers to the growth area and how it's more efficient for government to supply services if people are living closer together, which is what the Board has talked about for a long, long time.

Mr. Thomas said that it sounds to him like the County is trying to control the population.

Mr. Rooker stated that the Board makes decisions all the time that will impact the population, and it points out their impact on resources but doesn't try to "control" the population.

Mr. Thomas said that's how he interprets it.

Ms. Mallek said, in order to encourage more people to live in the growth areas, the County would try to use capital investments to make those areas agreeable places to live as is possible – and thus make the area more appealing to people. She stated, unless it shows up as a strategy for implementation, that kind of statement is offered for historical purposes which is indicative that the community was being thoughtful. Ms. Mallek said there was a lot of community input into this, and it was not a one-sided effort.

Ms. Echols suggested that, for clarification purposes, staff include a paragraph which explains what is intended by those particular statements related to the sustainability accords.

Mr. Rooker said some of these things are referenced within the plan, so it seems they should be altered where they become implementation measures rather than prefacing the historic document with a paragraph.

Mr. Boyd said he would be comfortable with staff identifying those statements and taking out references to them as being part of the strategy.

Mr. Rooker stated that they should just address those things as they appear in each chapter.

Mr. Boyd said it bothers him that the Comp Plan is treated like a "bible" whenever anyone comes in with an application, citing the Neighborhood Model as an example.

Mr. Rooker said the Board made it clear many times when the Neighborhood Model was voted on that it was not intended to be the only model for development in the County, that it was a preferred model for community service areas.

Mr. Boyd said he wants to work on the language so that it's not a direction to staff which indicated that, if it doesn't meet the Neighborhood Model principles, staff is not going to consider it – and if an applicant is told that, they might not move forward.

Mr. Rooker stated that the Neighborhood Model principles are set out for each development proposal, and staff says whether or not they're met – and they may or may not recommend approval, depending on how those elements fit together. He said there is an application coming before the Board at this meeting in which the applicant didn't meet the relegated parking requirement, and sometimes things don't fit together neatly. Mr. Rooker emphasized that these are just guidelines.

Mr. Cilimberg stated that the Planning Commission was pretty purposeful with the sustainability accords in stating that these aren't goals, objectives and strategies – these were actually adopted a number of years ago and are described as "aspirational principles" for the County, not a means of evaluating projects. He said these are essentially guiding principles for the County and City in terms of how it looks at itself as a community.

Ms. Mallek said it certainly is a list of many of the complex issues the Board has had to face, and many are contradictory – so all the Board can do is to try to do the best it can.

Mr. Cilimberg stated that the Comp Plan can also bring in conflicting strategies, and ultimately the decisions are made by the Board based on what it feels is important as various factors are being weighed.

Mr. Thomas asked if consideration of the Sustainability Accords has ever figured into a decision-making process in the Comp Plan itself. Mr. Cilimberg responded that staff does not actually go back to the accords when projects are being reviewed and, when staff looks at the Community Development work program, they rely on the strategies in the plan. He said, when the Board sees development proposals, staff is using guiding goals, objectives and strategies – and the Neighborhood Model has been important for development area projects, but staff recognizes that not every principle can be achieved in every case. Mr. Cilimberg stated that staff has to balance it with the reality of the circumstance.

Mr. Snow suggested that, in the future, the Board just note these types of items as concerns and then come back to them if they are affecting the rest of the plan, rather than bogging down the process as it goes along.

Ms. Echols said she would set this item aside and see if the strategies are affected by it, then come back and see if the Board would like to revisit it.

Mr. Boyd stated that, under the Livability Project goals, the fourth bulleted item under "Economic Development" which talks about supporting a range of businesses that came from the target market study also should reference the "job multiplier" factor – with related jobs created along with professional career-track jobs.

Ms. Mallek said that it should go in the economic vitality chapter in the Comp Plan.

Mr. Rooker agreed that it would be appropriate to put it in that section.

Mr. Cilimberg stated that staff would note it for their discussion during that part of the plan.

Mr. Boyd said he had recalled already discussing "explore the idea of a regional housing authority," and thought the Board had already decided it didn't make any sense to pursue that.

Ms. Echols said both planning commissions had felt it was important it be included in this document.

Mr. Boyd said he'd like to note that this is a "Planning Commission" report, because it may be in contrast with the Board's position.

Ms. Mallek stated that it says at the top of the document, "Livability Project Goals," and not the Board's Comp Plan goals. She said the Board needs to focus on this background chapter as the history of how the County got to where things are now, and the Comp Plan chapters would be crafted by the Board.

Ms. Echols said Mr. Boyd's concerns would come up in the Housing chapter, and there is a strategy in there – so if the Board doesn't agree with it, that's the time to change it. She stated that, if

there are things that come out of this part of the plan that translate into strategies and the Board disagrees with those, it would have the opportunity to re-characterize them in the plan for consistency.

Mr. Rooker said staff could include language which says the City of Charlottesville and County of Albemarle's planning commissions recommended certain things, rather than implying that it's somehow mandatory.

Mr. Cilimberg said that "will be considered" could be an intro, and these items would appear in different parts of the document as potential strategies for the County to endorse.

Mr. Boyd noted that, under the 20-Year Plan section on natural resource protection, there is text which states, "scenic, historic and cultural resources represent the highest priorities of the residents' citizen survey" and, while that is an accurate assessment, it is a bit of a given.

Ms. Mallek said it doesn't hurt to make that statement and, during the last survey, citizens were asked if they would spend more money on these issues – and that's where the majority of them said yes.

Mr. Rooker said the County is actually doing that by implementing granulated carbon for the water supply.

Ms. Echols reported that the next chapter to discuss was "Values and Vision," and it includes items that have come out of plans and surveys conducted over the years. She said these have not previously been emphasized in the plan on how closely the County is affiliated with the City of Charlottesville, as people consider this one community. Ms. Echols stated that this issue arose during the Livability Project process, along with how important individual property rights are – and the Planning Commission wanted to be sure it was made clear that those were reflected in the County's values.

Board members mentioned a few suggested language changes to the document.

Ms. Echols stated that the Board may have prepared for today's review using the older document, but emphasized that staff would be giving them new pages with corrections reflecting the Planning Commission's changes and the edits for the Board to add to their notebooks for more review.

Ms. Echols agreed to add "University of Virginia and other governmental entities" to the statement regarding economic drivers. Ms. Mallek wanted to ensure that agriculture be included somewhere in the industry category.

Mr. Cilimberg pointed out that the vision statement is essentially the same vision statement which the County has for itself, and was one which the Planning Commission felt was important to use as the lead piece in the Comp Plan – so staff is comprehensive planning from that same vision.

Ms. Mallek pointed out that many counties don't adopt a vision statement and, at VACo classes, it is emphasized as being an important part of goal-setting.

Ms. Echols said the next chapter is "Growth Management," stating that the County has had a growth management policy for a very long time and was based on the desire to pass down the features that are important to the community to future generations, and to efficiently expend the taxpayers' money. She said that is partly how they set up their growth management policy, sending new development to the development areas and focusing funding and infrastructure on the development areas, and recognizing a joint responsibility for funding growth. Ms. Echols said those things come from the existing Comp Plan and have been re-worded, and offered to share her hard copy with Board members if they needed it.

Ms. Echols said "joint responsibility" refers to the County funding capital improvements, with the developer also paying for capital improvements through cash proffers. She stated that the Planning Commission recommended a clarification on how to calculate affordable units in terms of cash proffers: if developers provide cash in lieu of affordable units, then the developer has to also pay the cash proffer on those units that aren't really affordable because they provided cash instead. Ms. Echols said some of the feedback from the Commission indicated that the plan didn't provide enough clarity on those responsibilities, the joint roles of the development community and the public to pay for infrastructure – and the change made between versions addressed those concerns about providing greater clarity.

Ms. Mallek commented that the shared obligation means not all of the costs are being offset by proffers, and a considerable amount is being paid for by the general tax revenue.

Ms. Echols confirmed that not all of the costs are being covered by proffers, so the County shares in those expenses.

Mr. Rooker stated that, if there's infrastructure for development areas, it's done for existing residents, and that should be a shared responsibility – with proffers covering at least some portion of the increased infrastructure which results from the additional development.

Mr. Boyd said the Fiscal Impact Committee was charged by the Board with looking at that, and they may have some suggested changes to the proffer policy. He stated that he wasn't certain when that committee would be meeting again, and he is waiting for them to call a meeting.

Mr. Foley said staff was planning to address that today.

Mr. Boyd stated that he is getting a lot of feedback from the development community that the proffers are the cause of the affordable housing problem, because adding $19,000 per single-family detached home, etc. is causing developers to do things by-right instead.

Mr. Foley said these are the issues that have been raised, and the question is what group and process are most appropriate to look at amending that policy – because it wasn't developed by the Fiscal Impact Committee, it was developed through roundtables and a committee that had many other people involved in that process.

Mr. Cilimberg explained that what the Planning Commission did, from a policy standpoint, was to suggest adjustments to the wording but, if the Board feels that more needs to be addressed regarding the actual cash proffer policy, that's a Board decision based on policy considerations that could either be undertaken with the Comp Plan or separately by staff on a parallel track. He said that's not really the Fiscal Impact Committee's charge, as they're more involved with calculating what the proffer will be based on in the policy.

Mr. Boyd said he served on that committee when they enacted the cash proffer policy, and they calculated the amounts that were recommended back to the Board, and they basically just did the math. He stated that the problem now seems to be the math, and he wondered if they would want to go back and evaluate that.

Mr. Rooker said he is fine with the language as it's included, and one suggested measure of fairness has been to assess the cash proffer amount on the existing permitted units under the zoning. He stated that the question has been raised as to whether the proffer amount should only be assessed on the increase and, if so, that's something the Board should consider.

Mr. Boyd stated that he's concerned about the economics of it, and he'd like to get some feedback from the development community as to whether they're avoiding certain projects because the math won't work with the proffers.

Ms. Mallek suggested that perhaps the lack of projects with proffers is related to the economic slowdown, and said that a constituent explained to her that, if the value of the land is $15,000 per unit, then a $19,000 per unit proffer is too high because it cuts into the ability for someone to develop it. She said she would like to have more discussion and perhaps a new session of roundtables, parallel to the Fiscal Impact Committee meetings.

Mr. Rooker said, if you only assess cash proffers on the number of units above existing allowed zoning, that affects the economics substantially. He said part of rezoning property does create wealth, and Hunter Craig testified in court that, when the Board approved the Biscuit Run rezoning, the property made $70 million. Mr. Rooker stated that the cash proffers are intended to recognize the infrastructure impacts and, with the change, it would only be on the part that created additional value by rezoning.

Mr. Cilimberg stated that, if the Board feels the policy and how the calculations are made need to be revisited, then it should identify it as a separate item that needs review – and the question is how staff would proceed with it.

Mr. Foley said there was a broader discussion with different stakeholders around the table when they looked at this before and, if the Board agrees that proceeding with that on a parallel track with the Fiscal Impact Committee is the right approach, then staff will come back to the Board with a proposed process and some alternatives. He stated that the direction needed from the Board is whether the Fiscal Impact Committee alone should look at this, or whether the issues are broader.

Mr. Boyd stated that the Fiscal Impact Committee has a fairly diverse makeup – with people from the development community, the environmental community, etc. – and they are probably the ones that would be invited to a roundtable anyway. He said he would like to see specific numbers as to why it does or doesn't work.

Mr. Rooker said the Board needs to be careful about setting policies in boom times and recession times and, at the time when the proffer policy was adopted, no one seemed to have a problem with cash proffers.

Mr. Boyd stated that it was uncertain before, and a developer would just come in and get the best deal possible – and the whole reason the Board went to this policy was for consistency.

Mr. Foley said that it would be helpful for the Board to have the charge of the Fiscal Impact Committee in front of them, and staff would bring that back to the Board as soon as possible, along with some other information related to the proffer policy.

Mr. Snow said he would like to talk about strategy 1-A, noting that it had been changed fairly significantly from the copy he has adding that, over the last year or so, there have been several individuals who have wanted to have a parent or child live on their property – and he would like to find a way in the plan to make it easier for something like that to happen.

Mr. Rooker commented that that's a rural areas strategy.

Ms. Echols said that it's in the housing section.

Mr. Cilimberg said that one of the things in the housing section that they'll address is the "accessory apartment" that's not in the unit, but is a separate unit.

Mr. Snow said he would like to cover the situation where someone has three or four acres but no development rights, and would like to have a family member there.

Ms. Mallek clarified that this would be a situation where it can't be sold separately once it's established.

Mr. Snow agreed, stating that this would be a huge factor as the population continues to age.

Ms. Echols said staff would set it aside for discussion.

Mr. Boyd stated that page 3.3 talks about "limited service delivery," which is also addressed in overall strategy. He pointed out that the school system isn't getting that point because there is a huge school bus fleet that goes everywhere in the rural area. He said, if this is going to be a strategy, then it needs to be addressed because it doesn't seem the policy is really being followed, given the County's efforts to put expanded fire, rescue and police services into rural areas.

Mr. Rooker said it's different depending on the service, and there are different response times for fire and rescue – but people still expect a fire truck to come if their house is on fire. He said the question is how intense the service is being provided in an area, and they don't generally have basic services like water and sewer. Mr. Rooker also stated that, if they said they would no longer provide bus service to children that live in the rural area, there would be an uprising. He said he often sees buses go down every road and cul-de-sac and, at times, it seems almost like a taxi service instead of a situation where children walk to bus stops.

Ms. Mallek stated that Josh Davis with the School Division worked to change that situation over the last several years, encouraging kids to come to the end of the road in a subdivision. She noted that the schools were able to save about 1,000 miles off of routes with a new strategy, adding that she received a lot of criticism from constituents who wanted to see their children picked up at the end of the driveway for security reasons. Ms. Mallek said her response was that children are better off at a bus stop with a group of kids and a few parents supervising.

Mr. Boyd said that he is simply facilitating the discussion so that the Board can talk about its service delivery strategy.

Mr. Cilimberg said the Board would have an opportunity to address that topic in the Community Facilities section, which is where the plan talks about service delivery and the differences between urban and rural area services.

Mr. Foley noted that the fire and rescue response standards are contained in that section.

Ms. Echols asked if Board members were comfortable with the process of having staff meet with them every month and go through chapters with them. She said, if the Board continues at that pace, they will be done with the chapters in February.

Board members agreed that they were, and said they would be even more comfortable as the process continued.

Ms. Echols went over a list of what the Board would be reviewing, by month and by meeting, and said that the Board is scheduled to review Natural Resources, Historic and Cultural Resources, and Economic Development in October.

Mr. Boyd asked if it would make sense to incorporate the implementation section of each chapter as it moves forward, because that is a key component.

Ms. Echols confirmed that it was already in there, noting that Growth Management only had three strategies – which were essentially the same as they were before.

Mr. Cilimberg clarified that staff would provide the priority implementation strategies in each chapter that have been identified, noting that there were many more strategies identified beyond just the priorities.

Mr. Rooker mentioned that there was a recommendation from ASAP that they have an annual report on population growth in the County, suggesting a summary of population-related changes in the rural and development areas of the County, as well as any modification of the growth area boundaries. He said that their recommendation is that it should include recent population estimates and sketches of regulations and changes that affect density, an update on the ACE Program, and changes in County population as projected by the Virginia Employment Commission – as well as an assessment of the impact of growth on public services such as schools, fire departments, etc. Mr. Rooker said this information is generated internally already; it's just not put into a single report and thought it could be provided when Mr. Steve Allshouse presents his quarterly report.

Mr. Boyd asked how it would be done accurately without a census. Mr. Rooker said they could look at the number of new students in rural areas schools versus growth areas schools, and said that it's just helpful to have this kind of information in one place at one time.

Ms. Mallek said she liked the idea of a combined presentation.

Ms. Echols stated that the Planning Commission has proposed providing an annual report that gives information on change and also tries to track any data generated within a given year to see if there have been any changes. She said staff does population estimates annually based on building permits, and that would probably be part of this – with one recommendation from the Commission being a "residential capacity analysis," and update that information every two years.

Mr. Boyd said, in order to get a realistic report, you'd have to survey the actual landowners and look at those who have gotten rezoning approvals to get an accurate evaluation of capacity.

Mr. Rooker said that capacity indicates what the potential for the development of an area is, as well as when/if the person who has it decides they want to move forward with it.

Mr. Foley asked if there was a request that staff begin to track population change in rural versus development areas, because that's not quite as simple as it seems. He said it's not certain how many people move into a household, but it can be estimated based on housing type.

Mr. Rooker said he isn't asking staff to spend a lot of time creating a different piece of data, he is just suggesting bringing together reports that are generated by schools, etc. on an annual basis.

Mr. Boyd asked if it would suffice if, each year during strategic planning when they get the demographics, to add some categories to the report.

Mr. Rooker agreed that it would work.

Mr. Foley said that would be feasible for staff and said that, between Weldon Cooper's estimates, there's activity going on which would be a little more number-crunching.

Mr. Rooker reiterated that he isn't asking for anything that would take up additional staff time.

Mr. Foley said that he didn't think it would.

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Agenda Item No. 3. Closed Meeting.

At 4:58 p.m., Mr. Craddock offered a **motion** that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (3) to discussion the acquisition of real property for public park land because an open meeting discussion would adversely affect the bargaining position of the County; under Subsection (3) to discuss the acquisition of real property for court facilities because an open meeting discussion would adversely affect the bargaining position of the County; and under Subsection (7) to consult with legal counsel and staff regarding specific legal matters requiring legal advice relating to the negotiation of an agreement for implementing a cooperative cost recovery program for emergency service transports. Mr. Boyd **seconded** the motion.

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

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

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Agenda Item No. 4. Call to Order. At 6:13 p.m., the meeting was called to order by the Chair, Ms. Mallek.

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Agenda Item No. 5. Certify Closed Meeting.

At 6:12 p.m., Mr. Craddock **moved** that the Board certify by recorded vote that to the best of each Board member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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

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NonAgenda. Ms. Mallek **moved** to appoint Mr. E.N. Garnett to the Acquisition of Conservation Easement (ACE) Committee, with said term to expire August 1, 2014. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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Ms. Mallek opened the meeting by remembering the events of September 11th.

Agenda Item No. 6. Pledge of Allegiance.
Agenda Item No. 7. Moment of Silence.

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Agenda Item No. 8. Adoption of Final Agenda.

There being no additions to the agenda, the Board accepted the final agenda, as presented.

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Agenda Item No. 9. Brief Announcements by Board Members.

Ms. Mallek suggested that Mr. Foley speak with City Manager Maurice Jones to get notifications of lane changes on the Route 250 bypass to be much further north, as the current notice does not give drivers sufficient time to change lanes or get off at Dairy Road.

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Ms. Mallek reported that there have been some articles recently in the Washington Post about people losing their homes over erroneous claims of unpaid bills, and requested that the Finance Department was ensuring that they were being as careful as possible for these types of circumstances.

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Ms. Mallek said that an advertising company had dropped cups by every mailbox in several Earlysville neighborhoods on September 5, and she did not think it was an appropriate way to advertise.

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Agenda Item No. 10. Recognitions. Ms. Mallek **moved** to adopt the proclamations as presented recognizing Women's *Equality Day, National Emergency Preparedness Month*, and *World Alzheimer's Awareness Month*. Mr. Snow **seconded** the motion.

Mr. Snow said that several weeks prior, he had suggested forming a committee and writing a resolution for women's equality that would be "more suitable for our area" rather than part of a national agenda. He stated that he asked Becky Wainbright of SARA, Pat Napoleon, and Ella Jordan to be a part of that committee – and the resolution before the Board was written by them. He reiterated that he supports the proposed proclamations and the motion.

Ms. Mallek said that she had a hard time finding the differences between this one and the one presented several weeks ago, and she would have supported either measure.

Mr. Snow said that this one is "positive" and "applicable to our area."

Mr. Rooker stated that he supported the longer resolution that was previously before the Board and that he would support the current resolution.

Mr. Thomas said that he would also support the resolution.

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

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

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a. Proclamation recognizing September, 2013 as *National Emergency Preparedness Month*.

Ms. Mallek read the following proclamation recognizing September as National Emergency Preparedness Month, and recognized Kirby Felts and Tom Hanson as the local leaders in emergency preparedness efforts.

NATIONAL PREPAREDNESS MONTH

WHEREAS, "National Preparedness Month" creates an opportunity for residents of Albemarle County to prepare their homes, businesses, and communities for any type of emergency from natural to man-made disasters; and

WHEREAS, investing in the preparedness of ourselves, our families, businesses, and communities can improve our resilience as we protect against, respond to, recover from, and mitigate hazards; and

WHEREAS, Ensuring the health and safety of the community is a strategic goal for Albemarle County and a community priority to fulfill the vision of a thriving County; and

WHEREAS, Promoting individual responsibility and citizen ownership of community challenges is a strategic goal for Albemarle County; and

WHEREAS, emergency preparedness is the personal responsibility of every citizen of Albemarle County; and

WHEREAS, all citizens are urged to make preparedness a priority and participate in local activities to educate themselves on how to take action and work together to ensure that individuals and families in Albemarle County are prepared for disasters and emergencies of any type; and

WHEREAS, all citizens of Albemarle County are encouraged to review the Federal Emergency Management Agency *Ready* campaign Web sites at ready.gov or listo.gov (in Spanish) and become more prepared;

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby proclaims

September 2013
as
National Preparedness Month

and encourages all citizens and businesses to develop their own emergency plan, build an emergency kit, and work together toward creating a more prepared community.

Ms. Kirby Felts, Emergency Management Coordinator, addressed the Board and thanked them for the recognition, as well as providing tips on how to prepare a kit for emergencies and encouraging the public to sign up for the community emergency alert system or join the community response team class.

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b. Proclamation recognizing September, 2013 as *World Alzheimer's Awareness Month*.

Ms. Mallek read a proclamation and presented to Ms. Sue Friedman, President of the Central and Western Virginia Chapter of the Alzheimer's Association:

2013 World Alzheimer's Month

Whereas, the nation and the County of Albemarle observe ***World Alzheimer's Awareness Month*** during the month of September; and

Whereas, Alzheimer's disease, a progressive neurodegenerative brain disorder, tragically robs individuals of their memories and leads to progressive mental and physical impairments; and

Whereas, more than 5 million Americans have Alzheimer's disease with as many as 200,000 of those are individuals under age 65 who have younger-onset Alzheimer's; and

Whereas, Alzheimer's disease is the sixth leading cause of death in the U.S., more than prostate cancer and breast cancer combined; and

Whereas, the human cost of Alzheimer's disease is staggering. In 2012, 15.4 million caregivers provided an estimated 17.5 billion hours of unpaid care, a contribution to the nation valued at more than $216 billion; and

Whereas, every 68 seconds, someone in America develops Alzheimer's disease and by mid-century someone will develop Alzheimer's every 33 seconds; and

Whereas, in recognition of the individuals, families, friends and caregivers dealing with Alzheimer's disease, the researchers who are seeking a cause or cure; and

Whereas, the County of Albemarle recognizes the efforts of the Alzheimer's Association to raise funds to support research and promote awareness of Alzheimer's disease and asks its citizens to find ways to *Do A Little Big Thing* in the fight to end the disease;

Now, Therefore, Be It Resolved, that the Albemarle County Board of Supervisors does hereby proclaim the month of September 2013, as ***World Alzheimer's Awareness Month***.

Ms. Sue Friedman thanked the Board for its recognition and encouraged the public to observe the 10 warning signs and support those who are caregivers.

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c. Proclamation recognizing *Women's Equality Day*

Ms. Mallek then read the following proclamation:

WOMEN'S EQUALITY DAY

WHEREAS, Women's Equality Day is intended to draw attention to the fact that women were given the right to vote in 1920; and

WHEREAS, it is incumbent upon all of us to work within our communities to be advocates for the rights of all women, men and children; and

WHEREAS, it is important that we encourage everyone to take advantage of the resources and services that are available in this community, such as schools, law enforcement, local government, and human services agencies to help guarantee those rights; and

WHEREAS, knowledge empowers women, men and children, which then strengthens families, the fundamental unit of society; and

WHEREAS, the Albemarle County Board of Supervisors strongly supports equal pay for equal work for all citizens, regardless of gender;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Albemarle County, Virginia, does hereby recognize

WOMEN'S EQUALITY DAY

in the County of Albemarle in remembrance of all women and men who have worked to develop a more equitable community, and one which advocates for all its citizens.

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Agenda Item No. 11. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Ms. Kobby Hoffman addressed the Board, stating that she is the President of the National Organization for Women's Charlottesville chapter. Ms. Hoffman said that while they are grateful that the Board has passed a proclamation recognizing Women's Equality Day, they are still a bit aghast and confused and disappointed because after more than a decade of the Board passing the NOW proclamation, they now have had it rewritten. She stated that she really does not understand the big deal about it, and why their lives are brushed off as a national issue because it's an individual issue. Ms. Hoffman said that this makes her really question her officials and where they are in their support of women in the County, and encouraged them to do a scientifically defendable survey in the County to get a full picture of any roadblocks that may exist – then address them.

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Ms. Donni Long addressed the Board, stating that she was before them to address the special use permit request by the Field School of Crozet for a facility on Polo Grounds Road. Ms. Long said that the proposed special use permit would be in opposition to the expressed goals of their Comp Plan with regard to the use and preservation of rural areas, and also raises concerns over safety to the residents and others served by the road. She stated that the Comp Plan states that the rural areas are to be protected and to serve as buffer zones for areas that are more developed in nature, and Polo Grounds Road is designated as a buffer between the developed areas between Carrsbrook and Hollymead. Ms. Long said that granting a special use permit to allow a private school – a for-profit business – to be built is in direct violation of the stated purpose of the rural areas in the Comp Plan. She encouraged Board members to drive out Polo Grounds Road around the time that students would be arriving or departing the proposed school entrance, noting that lying just 500 feet from that entrance is a sharp, blind curve. Ms. Long said that the issue before them is not one of character or the worthiness of the Field School, as it is a worthy endeavor to educate young men, but whether the Board intends to respect and uphold the stated goals of the County for the use and protection of rural land, and whether they will safeguard residents who use the land around Polo Grounds Road.

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Ms. Ann Eddins addressed the Board and thanked them for passing the resolution recognizing Women's Equality Day. She said that when her grandmother gave birth to her father in 1917, she still could not vote, but she must have been pretty excited when August 26, 1920 came around – and that is who she thinks of with this action.

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Mr. Tim Leroux addressed the Board, stating that he is director of operations for the Local Energy Alliance Program (LEAP), a nonprofit advocating for energy efficiency in buildings – particularly public buildings that the County owns and uses. Mr. Leroux said that the LEAP Board, which includes Mr. Snow and Ms. Mallek, and stated that he was here to tell the Board about a partnership LEAP is undertaking with Dominion Power. He reported that over the years, LEAP has conducted low-cost energy assessments of residents' homes, and they are currently partnering with Dominion to do direct installs of energy-efficient gear such as CFL light bulbs, weatherization of doors, and smart strips. Mr. Leroux said that they are excited about this effort and feel that they may be able to achieve a market penetration they haven't experienced before, and their strategy is to conduct neighborhood sweeps. He stated that they would work with PTOs and neighborhood associations and other local organizations to get into neighborhoods, and as a resident of Hollymead he joined the team on his street and found that 9 out of 17 residents of Tinker's Cove Road were excited about this opportunity. Mr. Leroux said that as part of their

neighborhood effort, they would donate a portion of the proceeds they receive to the local elementary PTO or whatever organization is helping out.

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Ms. Nancy Carpenter addressed the Board, stating that she believes it is part of the responsibility of a County Supervisor to listen to resolutions brought forth by the public, and they are the modern equivalent of peasants coming to the seat of government asking for redress. She said that when the Board adopts these resolutions, they are effectively saying that they are hearing their constituents when it comes to national and global policies that affect them on the local level. Ms. Carpenter said that these resolutions can express sorrow, show support for organizations or people, direct public policy to County employees, etc., and Congress adopts non-binding resolutions on all types of things, all the time.

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Ms. Claire Johnson addressed the Board, stating that she moved to the County in 1986 and has generally found it to be a delightful place to live, but recently has wondered who is making certain decisions and why, particularly when it comes to working with VDOT. Ms. Johnson said that she is aware of at least three locations that have left turn-arrows that make it very dangerous, and in speaking with VDOT they said to talk to the Board of Supervisors. She stated that the turn coming out of Stonefield across from the post office is absolutely asinine, and the other locations include Berkmar Drive heading south from the credit union as you try to turn into Lowe's or Kroger, Commonwealth Drive as you're heading south from the Comcast area to turn left onto Greenbrier Drive, and coming out of Cedar Hill across from Stonefield where you are forced to go to 29 instead of turning left on Hydraulic.

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Ms. Amy Sarah Marshall addressed the Board, stating that she is president of the Charlottesville Pride Community Network and believes there may be some misconceptions about how many people care about this issue. She presented a picture from the first annual Pride Festival held the previous year, noting that there were thousands of people attending – not all of whom were gay or from the Charlottesville region. Ms. Marshall asked those in the audience who support the Pride Festival and what it stands for to stand up. She said that there are gay people in Albemarle County who face discrimination on a daily basis, and she knows those who have lost their children or their jobs and were turned away from housing just because they are gay. Ms. Marshall said that a lot of these people have money and they vote, and there is growing acceptance in the region. She stated that this is not a special interest, it is a human rights interest, and invited Board members to come to the Pride Festival.

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Mr. Rit Venerus addressed the Board, stating that he would be addressing them regarding the Costco at Stonefield proposal. He stated that as a daily user of the Hydraulic Road area and Route 29 corridor, he has seen the traffic go from bad to worse and at times it can be a complete nightmare, and adding a new store of this size will only add to the traffic and make it worse.

Ms. Mallek said that the Board would take public comment on the proposed modifications during that item on the agenda.

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Mr. David Schmitt addressed the Board, stating that he is addressing them regarding the Field School proposal for a special use permit. Mr. Schmitt said that most of what he has heard in favor of the proposal has to do with the personal characteristics of Dr. Barnett and the merits of the school, but the decision the Board makes has nothing to do with those factors. He stated that the overwhelming majority of the people affected by this do not favor the awarding of the special use permit, and the consideration must be made that this is a private school serving a relatively small number of young men who will pass through the school in a few years – in contrast to residents in the area who will live there for many years to come. Mr. Schmitt also noted that Dr. Barnett may come and go, and while the school may not persist, the special use permit will.

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Ms. Letie Bien addressed the Board, stating that she lives in Bentivar off of Polo Grounds Road and is here in regard to the special use permit for the Field School. Ms. Bien said that the Board seems to believe that the only issue related to the SP is the light at Route 29, and the assumption is just plain wrong. She stated that a right turn lane has been proposed, and the approximate costs were estimated by VDOT and staff at about $200,000 – with the school proffering $25,000 toward that purpose. Ms. Bien said that 39 vehicles were backed up at the light on Sunday afternoon waiting to enter 29, and most of them turned left to head south – not north – so a right turn lane would hardly impact this. She stated that this traffic was generated in part from MONU and SOCA, and the special use permit for MONU stipulated that they were going to work with SOCA and not have events at the same time. Ms. Bien also asked where the funding for the new right turn lane would come, noting that most of the County's secondary road priorities remain unfunded at this time. Ms. Bien encouraged Board members to recommit themselves to safety and to following the Comp Plan, as most of them seem to have ignored or discounted the reasons why to deny this special use permit.

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Agenda Item No. 12. Consent Agenda. **Motion** was offered by Ms. Mallek, **seconded** by Mr. Snow, to pull Item 12.1, to approve Items 12.2 through 12.4 (as requested) on the consent agenda, and to accept Item 12.5 as information. Roll was called and the motion carried by the following recorded vote:

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

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

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Item No. 12.1. Approval of Minutes: July 3, 2013.

Ms. Mallek stated that she had not read the July 3, 2013 minutes and asked that they be pulled.

By the above-recorded vote, the minutes were pulled and carried forward to the next meeting.

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Item No. 12.2. Resolution to accept road(s) in The Farms at Turkey Run Subdivision into the Secondary System of Highways.

By the above-recorded vote, and at the request of the County Engineer, the Board adopted the following Resolution

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the September 11, 2013, adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **The Farms at Turkey Run Subdivision,** as described on the attached Additions Form AM-4.3 dated **September 11, 2013**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **The Farms at Turkey Run Subdivision,** as described on the attached Additions Form AM-4.3 dated **September 11, 2013**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

* * * * *

The road(s) described on Additions Form AM-4.3 is:

1) **Courtenay Glen Way (State Route 1348)** from (Route 1347) Jordan Run Lane to 0.28 miles north, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 4368, page 651, with a 50-foot right-of-way width, for a length of 0.28 miles.

2) **Jordan Run Lane (1347)** from (Route 795) Blenheim Road to 0.57 miles east to Route 1348 (Courtenay Glen Way), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 4368, page 651, with a 50-foot right-of-way width, for a length of 0.57 miles.

Total Mileage – 0.85

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Item No. 12.3. Resolution to adopt a revised Administrative Plan for the Housing Choice Voucher Program.

The executive summary stated that the Albemarle County Office of Housing ("Office") is the designated local agency for the administration of the Housing Choice Voucher Program ("Program"), formerly known as the Section 8 Rental Assistance Program. The Office is considered a part of the executive branch of local government and not a public housing authority. Although not a housing authority, the Office must comply with U.S. Department of Housing and Urban Development ("HUD") requirements for Public Housing Agency ("PHA") activities, including the development and implementation of a 5-Year PHA Plan with annual updates as necessary and an Administrative Plan ("Plan") which specifies policies adopted by the County.

The Board approved a revised Plan on June 6, 2012, which was submitted to HUD for review and comment. On August 1, 2012, HUD submitted its comments on the Plan to the Office, which made revisions to the Plan reflecting those comments and guidance provided in PIH Notice 2011-54 (HA). This revision was approved by the Board on September 5, 2012, and the Office sent the revision to HUD for its review.

A letter from HUD dated July 19, 2013, a copy of which was provided to the Board at its August 14, 2013 meeting, identified an additional fifty-four items that HUD requested be addressed in the Plan. Because most of the items addressed non-discretionary regulatory requirements and are not required as a part of the Plan based on guidance for Plan development, the Office challenged HUD's comments. In a letter received on August 8, 2013, HUD reiterated that all of the items must be addressed in a revised Plan. All of the items are part of Chapter 20 of the Plan, specifically addressing Project-based Vouchers. The Office has revised Chapter 20 (Attachment A) and will insert the chapter, once approved, into the previously-approved Plan. Board members may wish to focus on those areas where the Office has discretion. Any section of the Plan in which the Office has discretion will reference the relevant ACOH Policy.

There is no budget impact anticipated because of this action. HUD provides annual budget authority for the voucher program from which any project-based vouchers may be funded.

Staff recommends that the Board adopt the attached Resolution (Attachment B) to approve the revisions to Chapter 20 of the Administrative Plan and to authorize the Chief of Housing to implement the Program in accordance with the approved Plan.

By the above-recorded vote, the Board adopted the following Resolution to approve the revisions to Chapter 20 of the Administrative Plan and to authorize the Chief of Housing to implement the Program in accordance with the approved Plan:

RESOLUTION

WHEREAS, the County of Albemarle is a Public Housing Agency ("PHA") as defined by the U.S. Department of Housing and Urban Development ("HUD") for the administration of the Housing Choice Voucher Program (HCV); and

WHEREAS, federal requirements for the HCV Program include that each PHA maintain an Administrative Plan which sets forth policies for the administration of the program; and

WHEREAS, the Albemarle County Board of Supervisors ("Board") approved an updated Administrative Plan on June 6, 2012, which was submitted to HUD for review and comment; and

WHEREAS, HUD's comments required revision of the Administrative Plan; and

WHEREAS, the Administrative Plan was revised based on HUD comments and guidance provided in HUD's Notice PIH 2011-54(HA), was approved by the Board on September 5, 2012, and was resubmitted to HUD; and

WHEREAS, HUD requested additional revisions on July 19, 2013, specifically to Chapter 20, pertaining to Project-based Vouchers; and

WHEREAS, the Office of Housing is required to have the requested revisions to Chapter 20 approved by the Board and inserted into the Plan that was previously approved on September 5, 2012.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County hereby approves the revisions to Chapter 20 of the Administrative Plan and authorizes the Chief of Housing to implement the policies set forth in the plan.

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Chapter 20

PROJECT-BASED VOUCHERS
(24 CFR 983)

20.1 INTRODUCTION

The County of Albemarle considers the use of project-based vouchers as critical in supporting housing opportunities that address one or more of the following objectives:

i. Deconcentrating poverty
ii. Preserving and Expanding housing availability
iii. Supporting nonprofit housing initiatives (owner and partnership ventures)
iv. Supporting housing with long-term affordability commitments
v. Supporting special populations (elderly, disabled, homeless)
vi. Ensuring financial viability of housing

20.2 PROGRAM AUTHORITY

The Albemarle County Office of Housing (ACOH) operates its project-based voucher (PBV) program as a component of its rental assistance activities and will comply with all regulations found in 24 CFR 983 and applicable regulations found in 24 CFR 982. In the event that certain provisions in 24 CFR 982 differ from those in 24 CFR 983, the provisions in 24 CFR 983 shall govern. ACOH shall use the definitions found at 24CFR983.3 and attached hereto and comply with all cross-cutting Federal requirements found in 24CFR983.4, also attached) and associated citations as noted in 24CFR983.4.

Funding for the program comes from the annual budget authority for the Housing Choice Voucher Program. ACOH may select owner proposals to provide PBV assistance for up to 20% of the amount of budget authority allocated by HUD under the Housing Choice Voucher Program. ACOH is not required to reduce the number of PBV units under a Housing Assistance Payment Contract (HAP) if the amount of budget authority is subsequently reduced. ACOH may take other actions to stay within the allocated funding such as discontinuing funding upon vacancy or reducing assistance to voucher holders and project-based units.

ACOH shall monitor the usage of the budget authority available for PBVs on a monthly basis and no owner proposals shall be solicited for additional PBVs if sufficient budget authority does not exist. Since HAP contracts do not assign a specific budget authority to each property, the total of the previous month's PBV payments shall be used to determine if additional budget authority exists.

20.3 HOUSING TYPES

ACOH will consider owner proposals for the following types of housing for the use of PBVs.

1. preservation of existing affordable units likely to be lost due to sale, refinance, and/or opt-out of federal contracts by the owner(s); and,
2. creation (construction) of new affordable rental housing when a nonprofit agency is a partner and has executed a first right-of-refusal that may be exercised within 15 years or, if a tax credit deal, owner has agreed to an extended compliance period of 30 years.
3. existing housing which address one or more of the objectives listed in **20.1**, meet HQS standards at the time of selection and received other funding which requires rent and occupancy restrictions.

ACOH shall not provide assistance for any of the special housing types listed in 24CFR983.9, ineligible units found in 24CFR983.53 or subsidized units found in 24CFR983.54.

ACOH's policies govern the use of PBVs in privately-owned housing units only. ACOH does not own nor does it anticipate owning public housing units or any other type of housing units (24CFR983.59).

20.4 RELOCATION REQUIREMENTS [24 CFR 983.7]

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. ACOH may not use voucher program funds to cover relocation costs, except that ACOH may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of ACOH to ensure the owner complies with these requirements.

20.5 EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]

ACOH must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, ACOH must comply with ACOH Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

20.6 OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51]

ACOH must select PBV proposals in accordance with the selection procedures in ACOH administrative plan. ACOH must select PBV proposals by either of the following two methods.

ACOH request for PBV Proposals. ACOH may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to ACOH request. ACOH may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

ACOH may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires

competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(b) and (c)]

ACOH procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by ACOH. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of ACOH request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

ACOH Policy

ACOH Request for Proposals for Rehabilitated and Newly Constructed Units ACOH will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals:

The Daily Progress

In addition, ACOH will post the RFP and proposal submission and rating and ranking procedures on its electronic web site (www.albemarle.org/housing).

ACOH will publish its advertisement in the newspaper mentioned above one time. The advertisement will specify the number of units ACOH estimates that it will be able to assist under the funding ACOH is making available. Proposals will be due in ACOH office by close of business 14 calendar days from the date of the last publication.

In order for the proposal to be considered, the owner must submit the proposal to ACOH by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

ACOH will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

Owner experience and capability to build or rehabilitate housing as identified in the RFP;

Existence of a nonprofit partner or first-right-of-refusal to a nonprofit entity in the event of a future sale;

Extent to which the project furthers ACOH goal of deconcentrating poverty and expanding housing and economic opportunities;

If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

Projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, ACOH will rate partially assisted projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

ACOH Requests for Proposals for Existing Housing Units

ACOH will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

The Daily Progress

In addition, ACOH will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site (www.albemarle.org/housing).

ACOH will publish its advertisement in the newspaper mentioned above at least one time. The advertisement will specify the number of units ACOH estimates that it will be able to assist under the funding ACOH is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;

Existence of a nonprofit partner or first-right-of-refusal to a nonprofit entity in the event of a future sale;

Extent to which the project furthers ACOH goal of deconcentrating poverty and expanding housing and economic opportunities;

If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

Extent to which units are occupied by families that are eligible to participate in the PBV program.

ACOH Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

ACOH will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis.

ACOH may advertise that it is accepting proposals, in the following newspapers and trade journals:

The Daily Progress

In addition to, or in place of advertising, ACOH may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. ACOH will evaluate each proposal on its merits using the following factors:

Extent to which the project furthers ACOH goal of deconcentrating poverty and expanding housing and economic opportunities;

Existence of a nonprofit partner or first-right-of-refusal to a nonprofit entity in the event of a future sale; and

Extent to which the proposal complements other local activities such as the HOME program, CDBG activities, other development activities.

ACOH-owned Units [24 CFR 983.51(e) and 983.59]

ACOH-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that ACOH-owned units were appropriately selected based on the selection procedures specified in ACOH administrative plan. If ACOH selects a proposal for housing that is owned or controlled by ACOH, ACOH must identify the entity that will review ACOH proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of ACOH-owned units, the initial contract rent must be approved by an independent entity based on an appraisal by a licensed, state-certified appraiser. In addition, housing quality standards inspections must be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for ACOH jurisdiction (unless ACOH is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity. ACOH may only compensate the local independent entity and appraiser from ACOH's ongoing administrative fee income (including amounts credited to the administrative fee reserve). ACOH may not use other program receipts to compensate the independent entity and appraiser for their services. ACOH, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

ACOH Policy

ACOH does not own and does not intend to own any housing units. If, however, ACOH acquires housing units, it will follow the prescribed requirements herein.

ACOH Notice of Owner Selection [24 CFR 983.51(d)]

ACOH must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

ACOH Policy

Within 10 business days of ACOH making the selection, ACOH will notify the selected owner in writing of the owner’s selection for the PBV program. ACOH will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, ACOH will publish its notice for selection of PBV proposals once in the same newspaper ACOH used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. ACOH will also post the notice of owner selection on its electronic web site.

ACOH will make available to any interested party its rating and ranking sheets and documents that identify ACOH basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. ACOH will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner. ACOH will make these documents available for review at ACOH during normal business hours.

20.7 HOUSING TYPE [24 CFR 983.52]

ACOH may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance

payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of ACOH selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

ACOH must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. ACOH choice of housing type must be reflected in its solicitation for proposals.

20.8 SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, FR Notice 11/24/08]

ACOH may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements.

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

ACOH must submit the necessary documentation to HUD for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies, ACOH may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD (or an independent entity approved by HUD) has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

20.9 CAP ON NUMBER OF PBV UNITS IN EACH PROJECT 25 Percent per Project Cap [24 CFR 983.56(a), FR Notice 11/24/08]

In general, ACOH may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 25 percent of the number of dwelling units (assisted or unassisted) in the project.

Exceptions to 25 Percent per Project Cap [24 CFR 983.56(b), FR Notice 11/24/08]

Exceptions are allowed and PBV units are not counted against the 25 percent per project cap if:

The units are in a single-family building (one to four units);

The units are *excepted units* in a multifamily building because they are specifically made available for elderly or disabled families or families receiving supportive services (also known as *qualifying families*).

ACOH must include in ACOH administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. ACOH may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

ACOH Policy

Supportive services must be appropriate to the population to be served and help residents stabilize and improve their health, incomes, and housing.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in ACOH administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

ACOH must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. ACOH administrative plan must state the form and frequency of such monitoring.

ACOH Policy

ACOH will provide PBV assistance for excepted units and monitor the continued receipt of services annually at the time of recertification

Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]

ACOH may establish local requirements designed to promote PBV assistance in partially assisted buildings. A *partially assisted building* is a building in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

ACOH may establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single-family building. ACOH may also determine not to provide PBV assistance for excepted units, or ACOH may establish a per-building cap of less than 25 percent.

ACOH Policy:

ACOH will provide PBV assistance for excepted units and partially assisted buildings consistent with all policies set forth in this Chapter.

20.10 SITE SELECTION STANDARDS

Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]

ACOH may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless ACOH has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with ACOH Annual Plan under 24 CFR 903 and ACOH administrative plan.

In addition, prior to selecting a proposal, ACOH must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

ACOH Policy

It is ACOH goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal ACOH will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, ACOH will grant exceptions to the 20 percent standard where ACOH determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;

A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;

A census tract where there has been an overall decline in the poverty rate within the past five years; or

A census tract where there are meaningful opportunities for educational and economic advancement.

ACOH will use the criteria for existing units and new construction of units in the selection of PBV sites. For existing housing units and housing units proposed for rehabilitation, the following apply:

- Site must be adequate in size with adequate utilities and infrastructure to serve the units;
- The proposed site must promote a greater choice of housing opportunities and avoid undue concentration of assisted families in areas with a high proportion of low-income families;
- Site must be accessible to social, recreational, educational, commercial, and health facilities/services;
- Be located such that travel time and cost via public transportation or private vehicle from the site to places of employment with a range of jobs for lower-income workers is not excessive. This requirement may not be rigidly adhered to for elderly housing proposals.

For new construction, ACOH will consider the following criteria:

- Site must be adequate in size with adequate utilities and infrastructure to serve the units;
- The site must not be located in an area of minority concentration;
- The proposed site must promote a greater choice of housing opportunities and avoid undue concentration of assisted families in areas with a high proportion of low-income families;
- Site must be accessible to social, recreational, educational, commercial, and health facilities/services;
- Be located such that travel time and cost via public transportation or private vehicle from the site to places of employment with a range of jobs for lower-income workers is not excessive. This requirement may not be rigidly adhered to for elderly housing proposals.
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable condition predominate.

20.11 ENVIRONMENTAL REVIEW [24 CFR 983.58]

ACOH activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). ACOH may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until ACOH or the responsible entity has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

ACOH may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and ACOH, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

ACOH must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. ACOH must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

20.12 HOUSING QUALITY STANDARDS [24 CFR 983.101]

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. These requirements can be found in Chapter 10 of this Plan. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

Lead-based Paint [24 CFR 983.101(c)]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

20.13 HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. ACOH must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

20.14 INSPECTING UNITS

Pre-selection Inspection [24 CFR 983.103(a)

ACOH must examine the proposed site before the proposal selection date. If the units to be assisted already exist, ACOH must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, ACOH may not execute the HAP contract until the units fully comply with HQS.

Pre-HAP Contract Inspections [24 CFR 983.103(b)]

ACOH must inspect each contract unit before execution of the HAP contract. ACOH may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

Turnover Inspections [24 CFR 983.103(c)]

Before providing assistance to a new family in a contract unit, ACOH must inspect the unit. ACOH may not provide assistance on behalf of the family until the unit fully complies with HQS.

Annual Inspections [24 CFR 983.103(d)]

At least annually during the term of the HAP contract, ACOH must inspect each unit for which it is providing assistance.

Other Inspections [24 CFR 983.103(e)]

ACOH must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. ACOH must take into account complaints and any other information coming to its attention in scheduling inspections.

ACOH must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting ACOH supervisory quality control HQS inspections, ACOH should include a representative sample of both tenant-based and project-based units.

20.15. AGREEMENT TO ENTER INTO HAP CONTRACT

In order to offer PBV assistance in rehabilitated or newly constructed units, ACOH must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)].

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and ACOH agrees that upon timely completion of such development in accordance with the terms of the Agreement, ACOH will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(b)].

Content of the Agreement [24 CFR 983.152(c)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

Site and the location of the contract units;

Number of contract units by area (size) and number of bedrooms and bathrooms;

Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;

Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;

An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;

Estimated initial rents to owner for the contract units;

Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by ACOH, specifications and plans. For new construction units, the description must include the working drawings and specifications.

Any additional requirements for quality, architecture, or design over and above HQS.

Execution of the Agreement [24 CFR 983.153, FR Notice 11/24/08]

The Agreement must be executed promptly after ACOH notice of proposal selection to the selected owner. Generally, ACOH may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, ACOH may not enter into the Agreement until the environmental review is completed and ACOH has received environmental approval. However, ACOH does not need to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

ACOH Policy

ACOH will enter into the Agreement with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

20.16 CONDUCT OF DEVELOPMENT WORK Labor Standards [24 CFR 983.154(b)]

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. ACOH must monitor compliance with labor standards.

Equal Opportunity [24 CFR 983.154(c)]

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

Owner Disclosure [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

20.17 COMPLETION OF HOUSING

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

Evidence of Completion [24 CFR 983.155(b)]

At a minimum, the owner must submit the following evidence of completion to ACOH in the form and manner required by ACOH:

Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and

Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At ACOH's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

ACOH Policy

ACOH will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. ACOH will specify any additional documentation requirements in the Agreement to enter into HAP contract.

ACOH Acceptance of Completed Units [24 CFR 983.156]

Upon notice from the owner that the housing is completed, ACOH must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. ACOH must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, ACOH must not enter into the HAP contract.

If ACOH determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, ACOH must submit the HAP contract for execution by the owner and must then execute the HAP contract.

20.18 HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

ACOH must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

Contract Information [24 CFR 983.203, FR Notice 11/24/08]

The HAP contract must specify the following information:

The total number of contract units by number of bedrooms;

The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;

The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;

Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;

Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;

Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;

The HAP contract term;

The number of units in any project that will exceed the 25 percent per project cap, which will be set-aside for occupancy by qualifying families; and

The initial rent to owner for the first 12 months of the HAP contract term.

Execution of the HAP Contract [24 CFR 983.204]

ACOH may not enter into a HAP contract until each contract unit has been inspected and ACOH has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after ACOH selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after ACOH has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

ACOH Policy

For existing housing, the HAP contract will be executed within 10 business days of ACOH determining that all units pass HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of ACOH determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

Term of HAP Contract [FR Notice 11/24/08]

ACOH may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 15 years.

ACOH Policy

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At any time before expiration of the HAP contract, ACOH may extend the term of the contract for an additional term of up to 15 years if ACOH determines an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

ACOH Policy

When determining whether or not to extend an expiring PBV contract, ACOH will consider several factors including, but not limited to:

The cost of extending the contract and the amount of available budget authority; The condition of the contract units;

The owner’s record of compliance with obligations under the HAP contract and lease(s);

Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and

Whether the funding could be used more appropriately for tenant-based assistance.

Termination by ACOH [24 CFR 983.205(c)]

The HAP contract must provide that the term of ACOH’s contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by ACOH in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, ACOH may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

Termination by Owner [24 CFR 983.205(d), FR Notice 11/24/08]

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to ACOH. In this case, families living in the contract units must be offered tenant-based assistance.

At their discretion ACOH may specify in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

Remedies for HQS Violations [24 CFR 983.207(b)]

ACOH may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If ACOH determines that a contract does not comply with HQS, ACOH may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

ACOH Policy

ACOH will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Chapter 10 of this Plan.

AMENDMENTS TO THE HAP CONTRACT Substitution of Contract Units [24 CFR 983.206(a)]

At ACOH's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Before any such substitution can take place, ACOH must inspect the proposed unit and determine the reasonable rent for the unit.

Addition of Contract Units [24 CFR 983.206(b)]

At ACOH's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of ACOH's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

ACOH Policy

ACOH will consider adding contract units to the HAP contract when ACOH determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and

Voucher holders are having difficulty finding units that meet program requirements.

Hap Contract Year, Anniversary and Expiration Dates [24 Cfr 983.206(C) and 983.302(E)]

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.208 and 983.209]

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;

The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;

Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by ACOH, and the lease is in accordance with the HAP contract and HUD requirements;

To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;

The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;

The amount of the HAP the owner is receiving is correct under the HAP contract;

The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;

Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and

The family does not own or have any interest in the contract unit.

ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(a)]

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with ACOH and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

ACOH may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

ACOH Policy

ACOH will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. ACOH will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

Vacancy Payments [24 CFR 983.352(b)]

At the discretion of ACOH, the HAP contract may provide for vacancy payments to the owner for ACOH-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by ACOH and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

ACOH Policy

ACOH will not provide vacancy payments to the owner. Language regarding the allowance for a vacancy payment will not be a part of the HAP contract.

20.19 ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

ACOH may select families for the PBV program from those who are participants in ACOH's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and ACOH, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to ACOH's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. An applicant family must also meet HUD requirements related to current or past criminal activity.

ACOH Policy

ACOH will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 2 (Eligibility for Admission), Chapter 3 (Applying for Admission) and Chapter 15 (Denial and Termination of Assistance).

In-Place Families [24 CFR 983.251(b)]

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by ACOH is considered an "in-place family." These families are afforded protection from displacement under the

PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on ACOH's waiting list. Once the family's continued eligibility is determined (ACOH may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and ACOH must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

Organization of the Waiting List [24 CFR 983.251(c)]

ACOH may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. ACOH may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by ACOH. If ACOH chooses to offer a separate waiting list for PBV assistance, ACOH must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If ACOH decides to establish a separate PBV waiting list, ACOH may use a single waiting list for ACOH's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

ACOH Policy

ACOH will establish and manage separate waiting lists for each of the projects that are receiving PBV assistance.

Selection from the Waiting List [24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from ACOH's waiting list. ACOH may establish selection criteria or preferences for occupancy of particular PBV units. ACOH may place families referred by the project owner on its PBV waiting list.

Income Targeting [24 CFR 983.251(c)(6)]

At least 75 percent of the families admitted to ACOH's tenant-based and project-based voucher programs during ACOH fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

Units with Accessibility Features [24 CFR 983.251(c)(7)]

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, ACOH must first refer families who require such features to the owner.

Preferences [24 CFR 983.251(d) , FR Notice 11/24/08]

ACOH may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. ACOH must provide an absolute selection preference for eligible in-place families as described in Section 20-VI.B. above.

Although ACOH is prohibited from granting preferences to persons with a specific disability, ACOH may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;

Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and

For whom such services cannot be provided in a non-segregated setting.

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If ACOH has projects with more than 25 percent of the units receiving project-based assistance because those projects include "excepted units" (units specifically made available for elderly or disabled families, or families receiving supportive services), ACOH must give preference to such families when referring families to these units [24 CFR 983.261(b)].

ACOH Policy

ACOH may establish, at its discretion, selection criteria or preferences for occupancy of particular PBV developments, buildings, or units based on the nature of the development and services offered and consistent with the goals established for the PBV program as stated in Section 20.1.

In the event that ACOH establishes a preference for homeless persons/families the following definitions shall apply:

An individual or family who ***lacks a fixed, regular, and adequate nighttime residence***, meaning:

a. An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground; ***or***

b. An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low- income individuals); ***or***

c. An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

Any individual or family who:

i. Is ***fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking***, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; ***and***

ii. Has no other residence; ***and***

iii. Lacks the resources or support networks, e.g., family, friends, and faith- based or other social networks, to obtain other permanent housing

20.20 OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

ACOH is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

Refuse to list the applicant on the waiting list for tenant-based voucher assistance;

Deny any admission preference for which the applicant qualifies;

Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under ACOH's selection policy;

Remove the applicant from the tenant-based voucher waiting list.

Disapproval by Landlord [24 CFR 983.251(e)(2)]

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

Acceptance of Offer [24 CFR 983.252]

Family Briefing

When a family accepts an offer for PBV assistance, ACOH must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, ACOH must provide a briefing packet that explains how ACOH determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

Persons with Disabilities

If an applicant family's head or spouse is disabled, ACOH must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, ACOH must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency

ACOH should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

20.21 OWNER SELECTION OF TENANTS

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(b)].

Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by ACOH from ACOH's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on ACOH's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify ACOH of any vacancy or expected vacancy in a contract unit. After receiving such notice, ACOH must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. ACOH and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

ACOH Policy

The owner must notify ACOH in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

ACOH will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, ACOH may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

ACOH Policy

If any contract units have been vacant for 120 days, ACOH will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. ACOH will provide the notice to the owner within 10 business days of the 120th day of the vacancy. The amendment to the HAP contract will be effective the 1st day of the month following the date of ACOH's notice.

20.22 TENANT SCREENING [24 CFR 983.255]

ACOH is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, ACOH may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

ACOH Policy

ACOH will not conduct screening to determine a PBV applicant family's suitability for tenancy.

ACOH must provide the owner with an applicant family's current and prior address (as shown in

ACOH records) and the name and address (if known by ACOH) of the family's current landlord and any prior landlords.

In addition, ACOH may offer the owner other information ACOH may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. ACOH must provide applicant families a description of ACOH policy on providing information to owners, and ACOH must give the same types of information to all owners.

ACOH Policy

ACOH will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before. ACOH will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

Payment of rent and utility bills;

Caring for a unit and premises;

Respecting the rights of other residents to the peaceful enjoyment of their housing;

Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and

Compliance with other essential conditions of tenancy.

20.23 LEASE [24 CFR 983.256]

After an applicant has been selected from the waiting list, determined eligible by ACOH, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin. The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

Form of Lease [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as ACOH model lease.

ACOH may review the owner's lease form to determine if the lease complies with state and local law. If ACOH determines that the lease does not comply with state or local law, ACOH may decline to approve the tenancy.

ACOH Policy

ACOH will review the owner's lease for compliance with state or local law in cases when a standard lease form is not used.

Lease Requirements [24 CFR 983.256(c)]

The lease for a PBV unit must specify all of the following information:

The names of the owner and the tenant;

The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);

The term of the lease (initial term and any provision for renewal);

The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;

A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and

The amount of any charges for food, furniture, or supportive services.

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

The program tenancy requirements;

The composition of the household as approved by ACOH (the names of family members and any ACOH-approved live-in aide);

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for "good cause," or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, ACOH must provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

Changes in the Lease [24 CFR 983.256(e)]

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give ACOH a copy of all changes.

The owner must notify ACOH in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by ACOH and in accordance with the terms of the lease relating to its amendment. ACOH must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257]

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for "good cause" does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c), FR Notice 11/24/08]

If a family is living in a project-based unit that is except from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by ACOH policy. According to program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days.

Security Deposits [24 CFR 983.258]

The owner may collect a security deposit from the tenant. ACOH may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

> ACOH Policy
>
> ACOH will allow the owner to collect a security deposit amount the owner determines is appropriate and is consistent with the area market. The security deposit amount must be in compliance with the Virginia Residential Landlord and Tenant Act.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance form the tenant. ACOH has no liability or responsibility for payment of any amount owed by the family to the owner.

20.24 MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]

If ACOH determines that a family is occupying a wrong size unit, based on ACOH's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, ACOH must promptly notify the family and the owner of this determination, and ACOH must offer the family the opportunity to receive continued housing assistance in another unit.

> ACOH Policy
>
> ACOH will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of ACOH's determination. ACOH will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project;
- PBV assistance in another project; and
- Tenant-based voucher assistance.

If ACOH offers the family a tenant-based voucher, ACOH must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by ACOH).

If ACOH offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by ACOH, or both, ACOH must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by ACOH.

ACOH Policy

When ACOH offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, ACOH will terminate the housing assistance payments at the expiration of this 30-day period.

ACOH may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.260]

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to ACOH. If the family wishes to move with continued tenant-based assistance, the family must contact ACOH to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, ACOH is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit,

ACOH must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

20.25 DETERMINING RENT TO OWNER

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the tem of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

Rent Limits [24 CFR 983.301]

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

An amount determined by ACOH, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;

The reasonable rent; or

The rent requested by the owner.

Certain Tax Credit Units [24 CFR 983.301(c), FR Notice 11/24/08]

For certain tax credit units, the rent limits are determined differently than for other PBV units. These different limits apply to contract units that meet all of the following criteria:

The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;

The contract unit is not located in a qualified census tract;

There are comparable tax credit units of the same bedroom size as the contract unit in the same building, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

The tax credit rent exceeds ACOH-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard);

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

The tax credit rent minus any utility allowance;

The reasonable rent; or

The rent requested by the owner.

However, ACOH is permitted to use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. In these cases, Section 8 rent reasonableness requirements must continue to be met.

Definitions

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Tax credit rent is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]

When determining the initial rent to owner, ACOH must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, ACOH must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, ACOH may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment stand amount for use in the PBV program.

Likewise, ACOH may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

ACOH Policy

ACOH will use the most recently published FMR and utility allowances in effect at the time of the execution of the HAP contract subject to budget allocations and availability of funds.

Redetermination of Rent [24 CFR 983.302, FR Notice 11/24/08]

ACOH must redetermine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

Rent Increase

If an owner wishes to request an increase in the rent to owner from ACOH, it must be requested at the annual anniversary of the HAP contract. The request must be in writing and in the form and manner required by ACOH. ACOH may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

ACOH Policy

An owner's request for a rent increase must be submitted to ACOH at least 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

ACOH may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

Rent Decrease

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment. However, ACOH may stipulate in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

Notice of Rent Change

The rent to owner is redetermined by written notice by ACOH to the owner specifying the amount of the redetermined rent. ACOH notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

ACOH Policy

ACOH will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

20.26 REASONABLE RENT [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by ACOH.

When Rent Reasonable Determinations are Required

ACOH must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

There is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;

ACOH approves a change in the allocation of responsibility for utilities between the owner and the tenant;

The HAP contract is amended to substitute a different contract unit in the same building; or

There is any other change that may substantially affect the reasonable rent.

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, ACOH must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by ACOH. The comparability analysis may be performed by ACOH staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

Owner Certification of Reasonable Rent

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, ACOH may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

20.27 EFFECT OF OTHER SUBSIDY AND RENT CONTROL

In addition to the rent limits discussed in Section 20-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 20-II.D).

Other Subsidy [24 CFR 983.304]

At its discretion, ACOH may reduce the initial rent to owner because of other governmental subsidies, including grants and other subsidized financing.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

An insured or non-insured Section 236 project;

A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;

A Section 221(d)(3) below market interest rate (BMIR) project;

A Section 515 project of the Rural Housing Service;

Any other type of federally subsidized project specified by HUD.

Combining Subsidy

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

Rent Control [24 CFR 983.305]

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

20.28 PAYMENTS TO OWNER

Housing Assistance Payments [24 CFR 983.351]

During the term of the HAP contract, ACOH must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and ACOH agree on a later date.

Except for discretionary vacancy payments, ACOH may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by ACOH is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

20.29 VACANCY PAYMENTS [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if ACOH determines that the vacancy is the owner's fault.

ACOH Policy

If ACOH determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, ACOH will notify the landlord of the amount of housing assistance payment that the owner must repay. ACOH will require the owner to repay the amount owed.

At the discretion of ACOH, the HAP contract may provide for vacancy payments to the owner. ACOH may only make vacancy payments if:

The owner gives ACOH prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge); and
The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed; and
The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
The owner provides any additional information required and requested by ACOH to verify that the owner is entitled to the vacancy payment.

ACOH Policy

ACOH does not provide for vacancy allowances except as noted above for the calendar month in which a move-out occurs. Language in the HAP related to vacancy allowances shall not be a part of the contract between ACOH and the owner.

20.30 TENANT RENT TO OWNER [24 CFR 983.353]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by ACOH in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in ACOH notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by ACOH is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by ACOH. The owner must immediately return any excess payment to the tenant.

Tenant and ACOH Responsibilities

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by ACOH.

Likewise, ACOH is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. ACOH is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. ACOH may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

Utility Reimbursements

If the amount of the utility allowance exceeds the total tenant payment, ACOH must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

ACOH may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If ACOH chooses to pay the utility supplier directly, ACOH must notify the family of the amount paid to the utility supplier.

ACOH Policy

ACOH will make utility reimbursements to the family.

20.31 OTHER FEES AND CHARGES [24 CFR 983.354] Meals and Supportive Services

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

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Item No. 12.4. ZMA-2013-0006. Este Park - Proffer Amendment (deferred at applicant's request to October 2, 2013).

Discussion: Mr. Davis said that the Clerk has advised him that the applicant has requested indefinite deferral, and he suggested that the item be moved to the approval part of the Consent Agenda and modified to permit the deferral.

At the request of the applicant, the Board indefinitely deferred ZMA-2013-0006.

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Item No. 12.5. Board-to-Board, September, 2013 *Monthly Communications Report from School Board,* School Board Chairman, **was received for information**.

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Agenda Item No. 13. **SP-2013-00006. Commonwealth Offices (Sign #24).**
PROPOSAL: Construct a professional office building on 1.15 acres under Section 18.2.2.11 of zoning ordinance. No dwelling units proposed.
ZONING: R-15 Residential – 15 units/acre, Professional Office by special use permit; AIA Airport Impact Area – Overlay to minimize adverse impacts to both the airport and the surrounding land.
COMPREHENSIVE PLAN: Urban Density Residential – residential (6.01 – 34 units/acre); supporting uses such as religious institutions, schools, commercial, office and service uses in Neighborhood 1.
LOCATION: The property is located on Commonwealth Drive (State Route 1315), approximately .35 mile north of the Hydraulic Road-Commonwealth Drive intersection.
TAX MAP/PARCEL: 061w0030001400.
MAGISTERIAL DISTRICT: Jack Jouett.
(Advertised in the Daily Progress on August 26 and September 2, 2013.)

Mr. David Benish, Chief of Planning, said that this is a proposal to construct a 13,500 square foot, three-story building, on a property that is zoned R-15 residential – and under that zoning professional office are permitted by special use permit. He said that the property is 1.415 acres and is located on Commonwealth Drive approximately ¼ mile south of the Greenbrier Commonwealth Drive entrance. Mr. Benish said that there have been two approvals for residential uses on this site in 2007, there was approval for 14 townhouses; and in 2010, there was an approval essentially amending that plan to allow for a 14-unit apartment. He presented a map showing the location of the proposed SP, Commonwealth Drive, and the parking area and entrance to that road.

Mr. Benish stated that Places 29 recommends the area for urban density residential, which is 16-34 units per acre, and also considers that retail, office and commercial uses are appropriate under this designation as a secondary use. He said that staff opinion is that the scale of the office is compatible with the surrounding area, and the scale of development will ensure that it remains a secondary use when considering the context of the greater Commonwealth Drive area – which is almost exclusively high-density residential. Mr. Benish said that staff also sees a positive factor in that the office use would provide services for that residential area.

He said that the only significant issues with this proposal include two principles of the Neighborhood Model that were not met onsite, the relegation of parking and orientation of the building to Commonwealth Drive. Mr. Benish stated that based on the information provided to the Planning Commission regarding the complexities with developing the site, the applicant provided information showing that relegating parking to the rear of the building would create extensive fill and retaining wall construction. He also provided an aerial view to give the Board the context of the location.

Mr. Benish said that the other issue with the site pertains to stormwater detention onsite, which was originally proposed to be in an old existing basin in the northwest quadrant of the site and at one time that was intended for a regional stormwater management facility, but there is no funding or schedule to upgrade it to a public facility, so the stormwater facilities shown in the concept plan would need to be located fully onsite. He stated that the other issue related to that is the location of a pipe under Commonwealth Drive that is in disrepair, and it has been replaced but the calculations are not known – so further study is needed to ensure that the stormwater detention provided onsite can adequately detain it. Mr. Benish said that could be done as a matter of course with the site plan review process. He confirmed that any approvals would be contingent upon a successful plan, and providing the facility can be fit on the site, and this would be needed with by-right development of the site as well.

Mr. Benish stated that favorable factors include provision of a mix of uses within a high-density residential area, there are no anticipated detrimental impacts to adjacent properties with the change to a non-residential use, and there are no more significant impacts to the site than what was previously approved for the residential developments onsite. He said that unfavorable factors include the presence of a deteriorating outfall condition that will need to be addressed with the storm water management plan for the site, and the site layout does not provide for the optimal orientation of the parking and building to Commonwealth Drive.

Mr. Benish stated that the Planning Commission reviewed the request on July 30 and recommended approval with the conditions as presented in the staff report, and the applicant has offered a fourth condition which would augment the landscaping along the frontage of Commonwealth Drive. He said that the new condition would state that in addition to landscaping required per the ordinance, there will be ornamental street trees planted every 25 feet across the frontage of the site in addition to street tree requirements.

Mr. Snow asked Mr. Benish if staff agreed with the Planning Commission's contention that it was impossible to turn the building so it has a better face to the road. Mr. Benish responded that it is a small and difficult site to work with, and there are advantages to their proposed building location in terms of it functioning, such as the fill and retaining wall that would be required to establish the parking area.

Ms. Mallek asked if the parking requirements would have any adjustments due to the fact that there is transit at the site, or if it's still one spot per 200 square feet. Mr. Benish said that the applicant has met the minimum parking requirements, and there may have been some adjustments but that has not been calculated.

Ms. Mallek said that it might reduce the parking disturbance, and she was alarmed by all the slopes – and the only reason it is diffused is the prior approvals. Mr. Benish stated that the net result is

that this is not very different from the apartment building that was approved, and if you look at the footprint of that proposal it is the same organization and area of development as the current one.

Mr. Craddock asked if all the stormwater would be contained onsite. Mr. Benish said there would need to be further analysis of the outfall but there was probably sufficient area for that to be undertaken, and ordinance requires that they meet that threshold.

The Chair opened the public hearing.

Mr. Justin Shimp, Engineer for the project, addressed the Board, stating that this proposal is fairly straightforward and the impacts are about the same as with the prior plans – with a little less disturbance of the sloped area. He stated that the stormwater items was discussed with staff and have been taken care of. He also said that they are equal for the by-right plan of the SP so it is really just a matter of the use. Mr. Shimp said that the landscaping condition is reasonable and consistent with the streetscape in that neighborhood. He offered to answer questions.

Ms. Claire Johnson addressed the Board and asked for clarification of where the project is proposed. Mr. Benish explained that the project is planned for a section of Commonwealth Drive just north of the assisted living facility and the Turtle Creek Apartments on Commonwealth Drive.

Ms. Johnson asked how much traffic this would generate and how it would impact the residents that live in those apartments. She stated that the area is already quite congested. Mr. Thomas explained that Commonwealth Drive has been designated for the most part as a parallel road.

Ms. Mallek acknowledged that it does make it difficult for existing residents.

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

Mr. Rooker said that this proposal is located in his district. He said that he has spent time looking at the current plan and the prior plan, and explained that every piece of property has certain zoning rights inherent in it – and if the Board turned it down, the applicant would be able to build a 14-unit apartment building as a matter of right. He said that in looking at the two plans, he feels this is a better plan for the area, and people who have lived in the area longer can always say that they would prefer that nothing be built, and that is always the case. Mr. Rooker stated that the proposed plan will fit in the neighborhood better than the old plan, and his office is one-quarter mile away from the project. He said that the only issue the staff had was with the parking, and he wanted to ensure that the plantings done along Commonwealth make the property tie in better to existing plantings and the look and feel of the neighborhood. Mr. Rooker stated that he had shared a list of native plants and ornamental trees that might be used with Mr. Snow, who chose forest pansy and he would like staff to consider it.

Mr. Rooker **moved** to approve SP-2013-0006 subject to the four conditions recommended by staff as presented. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

(The conditions of approval are set out below:)

1. Development of the use shall be in general accord with sheet C4 of 4 (Concept Plan) of the plan entitled "Application Plan for Commonwealth Office," prepared by Shimp Engineering, P.C., revision 1, dated 5/6/13, as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Plan, the development and use shall reflect the following major elements as shown on the Conceptual Plan:

   - Total building square footage of thirteen thousand, five hundred (13,500) square feet.
   - Entrance location.

   Minor modifications to the plan which are in general accord with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. Stormwater management facilities shall be located, designed and built completely on the subject property (Tax Map/Parcel 061W0-03-00-01400) as approved by the County Engineer.
3. The use shall commence on or before September 11, 2015 or the permit shall expire and be of no effect.
4. In addition to the landscaping required per Section 32 of Chapter 18 of the County Code, for every twenty-five (25) feet of street frontage one ornamental tree selected from the County Recommended Plant List shall be planted along the street frontage of Commonwealth Drive. The minimum height of the ornamental trees at planting shall be six (6) feet.

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Agenda Item No. 14. **ZTA-2013-00004. Family Day Homes.** Ordinance to amend Secs. 3.1, Definitions, 5.1.06, Day care centers, family day homes, 10.2.1, By right (RA), 12.2.1 By right (VR), 13.2.1, By right (R-1), 14.2.1, By right (R-2), 15.2.1, By right (R-4), 16.2.1, By right (R-6), 17.2.1, By right (R-10), 18.2.1, By right (R-15), 19.3.1, By right (PRD), 20.3.1, By right (PUD), 20A.6, Permitted uses (NMD), and 20B.2, Permitted uses (DCD) of, and add Sec. 5.1.56, Family day homes to, Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 to revise the definition of "family day home," amend Sec. 5.1.06, to reorganize the section and revise it to apply only to day care centers but not family day homes, add Sec. 5.1.56 to establish regulations and performance standards for family day homes providing care for 6 to 12 children related to traffic generation, parking, entrance and access, State licensure, and fire official inspections, and establish procedures for the review and approval of family day homes, and amend the district regulations delineated above (10.2.1 through 20B.2) to allow family day homes as a by right use subject to the substantive and procedural requirements of Sec. 5.1.56. *(Advertised in the Daily Progress on August 26 and September 2, 2013.)*

Ms. Rebecca Ragsdale, Senior Planner said the she would be joined by Glenda Best from DSS. She explained that Family Day Homes is in-home day care which is essentially babysitting. She said that there are requirements for family day homes through state code and DSS as to how the use is regulated. Ms. Ragsdale said that they are not proposing any changes with commercial daycare centers or anything related to caring for five or fewer children in a residence as state code does not allow additional restrictions on that use because it is a by-right residential use. She said that what is being proposed is to create a new process, breaking out family day homes from daycare centers, because the ordinance currently lumps them in with daycare centers and requires them to get a special use permit.

She said that the family day homes are licensed by the State Department of Social Services, and they initiated a change last summer requiring family day home providers to contact zoning and have a form signed. Ms. Ragsdale stated that Zoning was not informed of the process by DSS, and began hearing from day home providers about the requirement. She said that there are currently about 10 licensed day home providers caring for 6-12 children each, and throughout the process they have all been notified and solicited for input about the zoning changes. Ms. Ragsdale stated that Community Development has collaborated with the local DSS on the issue, as well as consulting with the state licensing division – which led to the zoning text amendment initiated with the Planning Commission in April. She said that the Planning Commission had their work session in June and a public hearing in August, recommending approval of the draft ordinance that is before the Board.

Ms. Ragsdale presented a list of things that family day homes must meet in order to comply with the State Department of Social Services regulations and become licensed, mostly related to the safety and health aspects of the facilities. She said that what staff is focusing on with the ZTA are a few additional regulations that would address any land use considerations with this type of use. Ms. Ragsdale presented a table comparing the existing family day home regulations to the proposed regulations, and the primary recommendation is to go through a different process for this particular use – as staff does not feel it is of the size and scale that necessitates a full blown special use permit process. She explained that going to the zoning clearance process would mean up to two months for that type of permit and a $50 fee.

Ms. Ragsdale said that there are supplemental regulations already in the ordinance that staff is adding for family day homes to address some of the safety and land use considerations with regard to parking, the entrance and access to sites, and traffic. She stated that the ordinance already stipulates that family day home providers have inspections by the fire marshal, comply with the building code and health department requirements, and be licensed by social services. Ms. Ragsdale said that the ordinance would also require a notice for abutting property owners to give them 30 days to contact the County, get information, or make comments on the proposed family day home.

Mr. Rooker said that the permits cannot be denied, so people will get notice but their input won't change anything.

Ms. Ragsdale confirmed that was the case and Zoning has had experience with that situation related to the home occupation requirements, but what is different is that Zoning can't approve an application administratively if there is a neighbor objection. She said that staff has suggested the special exception process whereby it would then be heard by the Planning Commission and come before the Board for approval or denial based on a finding of whether there is a substantial detriment to abutting property owners.

Ms. Glenda Best addressed the Board, stating that she is the Senior Childcare Services Worker with Albemarle Department of Social Services. Ms. Best relayed a story of a woman who was the only licensed childcare provider at U-Heights and the only provider in the area, and she had already been shortchanged by the state requirement for card-swiping – and after hearing about the new zoning requirements she called DSS and said she could no longer afford to operate her business. Ms. Best said that the woman was a licensed provider for 15 years and charged the maximum reimbursement rate that DSS pays to help make childcare more affordable to parents, and even did after-school care.

Ms. Best stated that DSS have lost several providers like this woman because they can't afford to pay the proposed zoning fees, and most licensed in-home providers that accept DSS subsidy kids charge the maximum reimbursement rate, which means the parents only have to pay 10% of the co-pay – and the average cost for an in-home provider to care for an infant and a 3-year-old is $1,075 compared with $2,100 for a daycare center. Ms. Best said that the County and City DSS, along with Children, Youth and Family Services and the United Way are members of the Childcare Quality Initiative, and they have been trying hard to encourage volunteer registered and unregulated providers to become licensed.

Ms. Best said that some in-home licensed providers have let their licenses expire, have gone down to volunteer register unregulated, and some have gone underground. She stated that in-home providers are not doing this to get rich, and they can't afford to lose these providers – as they are more affordable and often cover evening and weekend hours that centers do not.

Mr. Rooker asked if the "card-swipe problem" related to a lag in getting paid. Ms. Best responded that it was, and a lot of the early learning centers have had issues getting paid, along with in-home providers.

Mr. Craddock asked if providers would have to have the card swipe with the new regulation. Ms. Best said that they would.

Mr. Rooker stated that the $2,000 fee plus delay in receipt of payment has made it very difficult for these operations to continue.

At this time, the Chair opened the public hearing.

Mr. Shannon Hofer addressed the Board, stating that his youngest daughter attends Gentle Care daycare and has been there about four months. Mr. Hofer said that it is the best place for her next to home, and encouraged the Board to adopt the zoning text amendment to relieve the centers from this additional burden.

Ms. Kerin Yates addressed the Board, stating that she is President of the League of Women Voters for the Charlottesville area. She said that the League supports community-based efforts to improve the quality, affordability, and accessibility of childcare in the Thomas Jefferson Planning District – and home care providers offer the least expensive form of licensed childcare available in the area. Ms. Yates stated that the County needs to help them remain licensed and in business, and encouraged the Board to adopt the proposed amendment.

Mr. Ryan Davidson addressed the Board, stating that he is in favor of the ZTA and noted that he is a County resident and a City employee. Mr. Davidson said that he has seen firsthand how important high quality childcare is for the families in this community, and the shortage of facilities that offer part-time care for low income families. He stated that he and his wife send their 2½ year old son and five-month-old daughter to Gentle Care, which provides the flexibility that many of the larger daycare facilities cannot offer. Mr. Davidson said that most of those larger centers only offer daytime hours and are not as flexible with part-time hours. He stated that the smaller centers also support the local economy by buying supplies and food locally, rather than ordering it from big companies that might even be out of state.

Ms. Betty Sevachko addressed the Board, stating that she was a single parent and is in favor of the ZTA and it is important to support families so they can work and provide for their own and not rely outside assistance.

Ms. Linda Shaw addressed the Board, stating that she is owner of Shaw's Family Daycare in Keswick and has been offering childcare in her home for 16½ years. Ms. Shaw said that she enjoys caring for children and does so around the clock, and asked the Board to pass the amendment so that she can keep the number of children needed to operate her center.

Ms. DeLois Grady addressed the Board, stating that she has been doing childcare for 34 years and noting that in-home childcare offers many things that big centers don't, especially flexible morning and evening hours. Ms. Grady said that she would continue her center regardless of how many kids she can keep, but 12 is the ideal size for her business.

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

Mr. Rooker **moved** to adopt Ordinance No. 13-18(5) to approve ZTA-2013-00004. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

(The adopted ordinance is set out below:)

ORDINANCE NO. 13-18(5)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE II, BASIC REGULATIONS, AND ARTICLE III, DISTRICT 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, Article II, Basic Regulations, and Article III, District Regulations, are hereby amended and reordained as follows:

By Amending:

Sec. 3.1	Definitions
Sec. 10.2.1	By right
Sec. 12.2.1	By right

Sec. 13.2.1 By right
Sec. 14.2.1 By right
Sec. 15.2.1 By right
Sec. 16.2.1 By right
Sec. 17.2.1 By right
Sec. 18.2.1 By right
Sec. 19.3.1 By right
Sec. 20.3.1 By right
Sec. 20A.6 By right
Sec. 20B.2 By right

By Amending and Renaming:
Sec. 5.1.06 Day care centers

By Adding:
Sec. 5.1.56 Family day homes

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

. . .

Family day home: A child day program offered in the dwelling unit of the provider or the dwelling unit that is the home of any of the children in care for one (1) through twelve (12) children under the age of thirteen (13), exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. For the purposes of this definition, a child day program is a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of thirteen (13) for less than a twenty-four (24) hour period. (Added 10-3-01)

. . .

(§ 20-3.1, 12-10-80, 7-1-81, 12-16-81, 2-10-82, 6-2-82, 1-1-83, 7-6-83, 11-7-84, 7-17-85, 3-5-86, 1-1-87, 6-10-87, 12-2-87, 7-20-88, 12-7-88, 11-1-89, 6-10-92, 7-8-92, 9-15-93, 8-10-94, 10-11-95, 11-15-95, 10-9-96, 12-10-97; § 18-3.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01; Ord. 01-18(9), 10-17-01; Ord. 02-18(2), 2-6-02; Ord. 02-18(5), 7-3-02; Ord. 02-18(7), 10-9-02; Ord. 03-18(1), 2-5-03; Ord. 03-18(2), 3-19-03; Ord. 04-18(2), 10-13-04; 05-18(2), 2-2-05; Ord. 05-18(7), 6-8-05; Ord. 05-18(8), 7-13-05; Ord. 06-18(2), 12-13-06; Ord. 07-18(1), 7-11-07; Ord. 07-18(2), 10-3-07; Ord. 08-18(3), 6-11-08; Ord. 08-18(4), 6-11-08; Ord. 08-18(6), 11-12-08; Ord. 08-18(7), 11-12-08; Ord. 09-18(3), 7-1-09; Ord. 09-18(5), 7-1-09; 09-18(8), 8-5-09; Ord. 09-18(9), 10-14-09; Ord. 09-18(10), 12-2-09; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 10-18(5), 5-12-10; Ord. 11-18(1), 1-12-11; Ord. 11-18(5), 6-1-11; Ord. 11-18(6), 6-1-11; Ord. 12-18(3), 6-6-12; Ord. 12-18(4), 7-11-12; Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 13-18(1), 4-3-13; Ord. 13-18(2), 4-3-13; Ord. 13-18(3), 5-8-13)

State law reference – Va. Code § 15.2-2286(A)(4).

Article II. Basic Regulations

Sec. 5.1.06 Day care centers

Each day care center shall be subject to the following:

a. *State licensure*. Each day care center shall acquire and maintain the required licensure from the Virginia Department of Social Services. The owner or operator of the day care center shall provide a copy of the license to the zoning administrator. The owner or operator's failure to provide a copy of the license to the zoning administrator shall be deemed to be willful noncompliance with the provisions of this chapter. (Amended 10-3-01)

b. *Inspections by fire official*. The Albemarle County fire official is authorized to conduct periodic inspections of the day care center. The owner or operator's failure to promptly admit the fire official onto the premises to conduct an inspection in a manner authorized by law shall be deemed to be willful noncompliance with the provisions of this chapter. (Amended 10-3-01)

c. *Relationship to other laws*. The provisions of this section are supplementary to all other laws and nothing herein shall be deemed to preclude application of the requirements of the Virginia Department of Social Services, Virginia Department of Health, Virginia State Fire Marshal, or any other local, state or federal agency. (Amended 10-3-01)

(§ 5.1.0.6, 12-10-80; Ord. 01-18(6), 10-3-01)

Sec. 5.1.56 Family day homes

Each family day home shall be subject to the following:

a. *Care for five or fewer children*. Each family day home providing care for five (5) or fewer children under the age of thirteen (13), exclusive of the provider's own children and any children who reside in the home, shall be regulated as a single-family residential use.

b. *Care for more than five but not more than twelve children*. Each family day home providing care for more than five (5) but not more than twelve (12) children under the age of thirteen (13), exclusive of the provider's own children and any children who reside in the home, shall be subject to the following:

1. *Traffic.* The additional traffic generated by a family day home, excluding trips associated with the dwelling unit, shall not exceed twenty-four (24) vehicle round trips per day. For the purposes of this section, a "vehicle round trip" means one vehicle entering and exiting the site. The limitation on the number of vehicle round trips per day may be waived or modified by special exception. In acting on a special exception, the board shall consider whether the waiver or modification of the number of vehicle round trips per day will change the character of the neighboring agricultural area or the residential neighborhood, as applicable, and whether the additional vehicle trips per day will be a substantial detriment to abutting lots. Notice of the application for a special exception shall be posted as provided in section 33.4(m)(2).

2. *Parking*. Each family day home shall provide one (1) parking space plus one (1) parking space for each additional employee. The parking spaces may be located on-site, on the street where authorized by law, or in a parking lot safe and convenient to the family day home.

3. *Entrance and access*. In conjunction with each application for a zoning clearance, the zoning administrator shall identify, if necessary, the applicable design and improvements required that are at least the minimum necessary to protect public health and safety by providing safe ingress and egress to and from the family day home site, safe vehicular and pedestrian circulation on the site, and the control of dust as deemed appropriate in the context of the use. The zoning administrator may consult with the county engineer or the Virginia Department of Transportation regarding the minimum design and improvements for the entrance and access.

4. *State licensure*. Each family day home shall acquire and maintain the required licensure from the Virginia Department of Social Services. The owner or operator of the family day home shall provide a copy of the license to the zoning administrator. The owner or operator's failure to provide a copy of the license to the zoning administrator shall be deemed to be willful noncompliance with the provisions of this chapter.

5. *Inspections by fire official*. The Albemarle County fire official is authorized to conduct periodic inspections of the family day home. The owner or operator's failure to promptly admit the fire official onto the premises and into the dwelling unit to conduct an inspection in a manner authorized by law shall be deemed to be willful noncompliance with the provisions of this chapter.

6. *Waivers or modifications by special exception*. Except as provided in subsection (b)(1), no requirement of this section may be waived or modified.

7. *Zoning clearance and notice of request*. No family day home shall commence without a zoning clearance issued under section 31.5, subject to the following:

(a). *Notice to abutting lot owners*. At least thirty (30) days prior to acting on the zoning clearance, the zoning administrator shall provide written notice of the application for a zoning clearance to the owner of each abutting lot under different ownership than the lot on which the proposed family day home would be located. The notice shall identify the proposed family day home, its size and capacity, its location, and whether a special exception under subsection (b)(1) is requested. The notice shall invite the recipient to submit any comments before the zoning clearance is acted upon. The notice shall be mailed or hand delivered at least thirty (30) days prior to the action on the zoning clearance. Mailed notice shall be sent by first class mail. Notice mailed to the owner of each lot abutting the site 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 to be compliance with this requirement.

(b). *Special exception*. If the zoning administrator receives a written objection to the family day home from the owner of an abutting lot within thirty (30) days after the notice was mailed or delivered, the zoning clearance shall not be approved until after the applicant obtains a special exception for the family day home as provided in sections 33.5 and 33.9. In acting on a special exception, the board shall consider whether the proposed use will be a substantial detriment to abutting lots.

8. *Relationship to other laws*. The provisions of this section are supplementary to all other laws and nothing herein shall be deemed to preclude application of the requirements of the Virginia Department of Social Services, Virginia Department of Health, Virginia State Fire Marshal, or any other local, state or federal agency.

(§ 5.1.0.6, 12-10-80; Ord. 01-18(6), 10-3-01)

Article III. District Regulations

Sec. 10.2.1 By right

The following uses shall be permitted by right in the RA district, subject to the applicable requirements of this chapter:

. . .

28. Family day homes (reference 5.1.56).

. . .

(§ 20-10.2.1, 12-10-80; 12-16-81; 7-6-83; 11-1-89; 11-8-89; 11-11-92; 5-12-93; Ord. 95-20(5), 11-15-95; Ord. 98-A(1), § 18-10.2.1, 8-5-98; Ord. 02-18(6), 10-9-02; Ord 04-18(2), 10-13-04; Ord. 06-18(2), 12-13-06; Ord. 08-18(7), 11-12-08; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 11-18(1), 1-12-11; Ord. 12-18(3), 6-6-12)

Sec. 12.2.1 By right

The following uses shall be permitted by right in the VR district, subject to the applicable requirements of this chapter:

. . .

19. Family day homes (reference 5.1.56).

(§ 20-12.2.1, 12-10-80; 9-2-81; 11-1-89; 11-11-92; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04; Ord. 10-18(4), 5-5-10)

Sec. 13.2.1 By right

The following uses shall be permitted by right in the R-1 district, subject to the applicable requirements of this chapter:

. . .

14. Family day homes (reference 5.1.56).

(§ 20-13.2.1, 12-10-80; 9-2-81; 11-1-89; 5-12-93; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04)

Sec. 14.2.1 By right

The following uses shall be permitted by right in the R-2 district, subject to the applicable requirements of this chapter:

. . .

14. Family day homes (reference 5.1.56).

(§ 20-14.2.1, 12-10-80; 9-2-81; 11-1-89; 5-12-93; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04)

Sec. 15.2.1 By right

The following uses shall be permitted by right in the R-4 district, subject to the applicable requirements of this chapter:

. . .

16. Family day homes (reference 5.1.56).

(§ 20-15.2.1, 12-10-80; 9-2-81; 11-1-89; 5-12-93; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04)

Sec. 16.2.1 By right

The following uses shall be permitted by right in the R-6 district, subject to the applicable requirements of this chapter:

. . .

17. Family day homes (reference 5.1.56).

(§ 20-16.2.1, 12-10-80; 9-2-81; 11-1-89; 5-12-93; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04)

Sec. 17.2.1 By right

The following uses shall be permitted by right in the R-10 district, subject to the applicable requirements of this chapter:

. . .

17. Family day homes (reference 5.1.56).

(§ 20-17.2.1, 12-10-80; 9-2-81; 3-5-86; Ord. 03-18(1), 2-5-03; Ord. 04-18(2), 10-13-04)

Sec. 18.2.1 By right

The following uses shall be permitted by right in the R-15 district, subject to the applicable requirements of this chapter:

. . .

17. Family day homes (reference 5.1.56).

(§ 18.2.1, 12-10-80; 9-2-81; 11-1-89; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04)

Sec. 19.3.1 By right

The following uses shall be permitted by right in the PRD district, subject to the applicable requirements of this chapter:

. . .

13. Family day homes (reference 5.1.56).

(§ 20-19.3.1, 12-10-80; 9-2-81; 11-1-89; 5-12-93; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04)

Sec. 20.3.1 By right

The following uses shall be permitted by right in the PUD district, subject to the applicable requirements of this chapter:

. . .

13. Family day homes (reference 5.1.56).

(§ 20-20.3.1, 12-10-80; 9-2-81; 11-1-89; 5-12-93; Ord 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04; Ord. 13-18(2), 4-3-13)

Sec. 20A.6 Permitted uses

The following uses shall be permitted in an NMD, subject to the regulations in this section and section 8, the approved application plan and code of development, and the accepted proffers:

a. *By right uses*. The following uses are permitted by right if the use is expressly identified as a by right use in the code of development or if the use is permitted in a determination by the zoning administrator pursuant to subsection 8.5.5.2(c)(1):

. . .

11. Family day homes (reference 5.1.56).

. . .

(Ord. 03-18(2), 3-19-03; Ord 04-18(2), 10-13-04; Ord. 09-18(9), 10-14-09; Ord. 10-18(4), 5-5-10; Ord. 13-18(2), 4-3-13)

Sec. 20B.2 Permitted uses

The following uses shall be permitted in the DCD, subject to the regulations in this section:

. . .

D. *By right uses; residential*. The following residential uses are permitted by right, provided that the first floor of the building in which the residential use exists is designed for and occupied only by a use permitted by subsections 20B.2(A), (B), (C) or (E):

. . .

8. Family day homes (reference 5.1.56).

. . .

(Ord. 08-18(3), 6-11-08; Ord. 10-18(4), 5-5-10; Ord. 13-18(2), 4-3-13)

NonAgenda. The Board recessed at 7:37 p.m., and reconvened at 7:48 p.m.

Agenda Item No. 15. **ZMA-2012-00004. Avon Park II (Signs #89&91).**
PROPOSAL: Rezone 5.262 acres from R-6 zoning district for which allows residential uses at a density of 6 units per acre to PRD zoning district which allows residential uses with limited commercial uses at a density of 3 - 34 units/acre. 32 maximum units proposed for a density of 6 units/acre.
ENTRANCE CORRIDOR: 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.
LOCATION: 1960 Avon Street Extended. Approximately 1000 feet north of the intersection of Avon Street Extended and Route 20, south of existing Avon Court.
TAX MAP/PARCEL: 09000000003100.
MAGISTERIAL DISTRICT: Scottsville. **(deferred from August 14, 2013)**.
(Advertised in the Daily Progress on August 26 and September 2, 2013.)

Ms. Claudette Grant, Senior Planner, addressed the Board, stating that the property for the ZMA is located at 1960 Avon Street Extended and the purpose of the request is to rezone 5.262 acres from R-6 residential zoning district to planned residential development zoning district (PRD). Ms. Grant said Avon Park II was originally rezoned and approved in 2007 for 31 residential units, inclusive of seven single-family detached units and 24 condominium townhouse units. She stated that the applicant now proposes 32 residential units, with 20 single-family detached units and six condominium townhouses that will also have six apartments within them. Ms. Grant said the applicant has had difficulty completing the currently approved project and anticipates a better outcome with the proposed changes. Ms. Grant presented slides showing the proposed application plan, stating that the single-family homes will be along the main road and noting open space at the end of the main road which includes a play area. She highlighted a slide showing the approved application plan and noted the location of the proposed townhouses.

Ms. Grant said the Planning Commission staff report explains that the proposed changes are not very different than what was approved in 2007 and, on March 19, the Planning Commission held a public hearing for the rezoning request and recommended approval with proffers to be amended. She explained that the recommended amendments eliminate the fifth proffer regarding certificate of occupancy and include the addition of a proffer restricting uses to those that are residential and what staff feels are necessary in a PRD district. Ms. Grant said that, in addition to the technical fixes to the proffers, staff feels the applicant should work with the adjacent neighbors regarding the fence type. She stated that the proffers have not changed significantly from the approved proffers, and the previous affordable housing proffer had included for sale, for rent, and cash in lieu options. Ms. Grant stated that the proposed affordable housing proffer provides a specific unit type with the apartments within the townhouse unit, therefore eliminating the need for various options. She said the proposed affordable housing language was reviewed and acceptable to the housing director, and proposed proffer three related to cash proffers is revised for the new updated cash proffer amounts; proposed proffer four related to erosion and sediment control is updated to provide additional erosion and sediment control measures; proffer five is new and was added as a result of the Planning Commission meeting.

Ms. Grant stated that one of the major issues with the proposal has to do with the incomplete Arden Drive, which is proposed to be the only access for the development. She said Mark Graham has been working on this issue and could answer questions about it. Ms. Grant stated that the application plan has been revised to change setbacks for Lots 1-4, and the rear setbacks would be increased to 30 feet from 20 feet, and for Lots 9-10, the applicant is showing an increase in the side setback to 20 feet from 15 feet. She reiterated that the proffers have been revised per staff and the Planning Commission's recommendations.

Ms. Mallek asked for clarification as to the statement "incidental in PRD," and "plus what staff feels is necessary." Ms. Grant responded that there are items which Zoning usually keeps in proffers, such as certain types of daycare centers or dry cleaners, etc.

Mr. Rooker said utility facilities would be a typical example.

Ms. Grant stated that staff and the Planning Commission recommend approval of ZMA 2012-0004 with the revised proffers and plan.

Ms. Mallek asked if it was official that Lots 9-10, 11-12, and 13-14 are moved to some other location on the property. Ms. Grant confirmed that it had not been brought forward officially yet.

Mr. Rooker asked if the setback items had been addressed since the Planning Commission meeting, as the applicant had indicated a willingness to deal with those. Mr. Davis said the plan stands as a submittal requirement and is approved as part of the property's rezoning, adding that the plan must reflect those elements in order for it to be part of the approval.

Mr. Snow stated that he would like to see a plat that shows which side of the property line has been increased and which side has been decreased, and how it affects the residents that are already there.

Ms. Grant illustrated the changes to setbacks for Lots 1-4 on a map provided, noting the location of the existing Avon Park I, and said that the setbacks were increased to 30 feet. She said the plan before the Board is what was discussed at the Planning Commission meeting and what the applicant has revised at this time. Ms. Grant stated that the other change to the side setback happened with one particular townhouse unit, and that was increased to 20 feet as discussed at the Commission meeting.

Mr. Rooker said there had been discussion of moving that three-story unit to the other side of the road so it wouldn't be towering over the properties behind it in the existing Avon Park, and asked if that had been done yet. Ms. Grant stated that it had not been done officially.

Mr. Snow said there had also been discussion on a full privacy fence, and then going to a three-rail fence, and asked Ms. Grant to show him where the fence would be located.

Ms. Grant explained that it's been shown with the approved plan, and staff has had discussions with the adjacent property owners to the south noting that the proposed fence would be along the entire south side of the property. She said the proposed fence changes in two areas, with one area being a "country fence" with three boards located to the rear of the property, and the area located closest to Avon Street would be more of a typical board-sided fence. Ms. Grant noted that the fence was changed based on the requests of adjacent property owners.

Mr. Rooker asked about Stratford being opened up to Avon Street Extended at least for a potential emergency exit, and asked if that was still being discussed. Ms. Grant said, although it was not in the current plan, it had been discussed, however, staff had not been involved in those conversations.

Ms. Mallek asked if there was an existing road that goes through the open space and comes out on Avon Street. Ms. Grant confirmed that was the case.

Mr. Craddock said there seemed to be a lot of tentative items in the plan, and asked Mr. Graham to speak to the bond issues.

Mr. Graham explained that, with Avon Park Section I, the developer did not finish the roads and went into bankruptcy, and the project still has a bond on it which was requested by the County a little over a year ago. He said the bonding company is Assurity, and has the option under the agreement to complete the improvements themselves or give the County the money to complete the improvements. Mr. Graham said the bonding company has completed their analysis and told him verbally that it's their intention to complete the projects themselves, and he has requested that in writing. He stated that Assurity has said they would do that, but they have not done it to date. Mr. Graham said they are planning to start the work very soon and hope to be finished by the end of the calendar year.

Ms. Mallek said that would address the surface of the road, but asked about the wall.

Mr. Graham responded that the wall was not an improvement on the road itself, as it was on private property, was improperly constructed and encroaches into the right of way. He said staff has made it clear to the bonding company that the wall needs to be removed from the right of way. He said another option would be to come to an agreement between the community association, the insurance company, the County, and VDOT – who would ultimately take over maintenance of the road so as to allow the encroachment to continue. Ms. Mallek asked about the drainage issues onsite.

Mr. Graham said that the drainage issues are part of the solution for completing the improvements, and have been a large part of the focus of the discussions – both the water running across Avon and water going over the retaining wall. He stated that both the construction manager and the contractor have identified solutions to those problems, and it's just a matter of getting them done now.

Ms. Mallek asked if the County had any leverage with completion date. Mr. Graham said the County has the stipulations under the bond agreement, but he wasn't certain how much leverage they have and Mr. Davis would need to clarify. Mr. Graham said that, after a lot of initial delays by the insurance company as far as addressing the bond, they appear to be showing diligence in terms of completion of the improvements – and the schedule they've provided the County indicates they plan to stay on task.

Mr. Craddock asked if there would be a time lag before they can actually start doing work. Mr. Graham said they can start doing the work now but they ultimately need the County to sign off on the work; however, the County has said they need VDOT to sign off on the work also.

Mr. Snow said he has read the Planning Commission minutes and it doesn't seem that there's any way to get a road directly to Avon Street due to the narrowness and steepness of the lot.

Ms. Grant said her understanding is that it's pretty steep to get to Avon Street from where the lot is located.

Mr. Rooker stated that several neighbors had discussed having a second exit there for emergency vehicle purposes, and those exits don't have to meet the same standards as a regular road would – so the question is whether it would even be adequate for that purpose as the roads are fairly steep for fire trucks coming into that neighborhood, whereas Stratford is almost a straight shot.

Ms. Grant said the Fire and Rescue Department reviewed the application and didn't say anything about needing to put an entrance there, and seemed to think that the existing access would work for them.

Mr. Benish stated that the grade could have some impact depending on the type of vehicle, as a large, heavy pumper might have difficulty negotiating it whereas an ambulance or small squad vehicle may not. He said that is something staff could pursue if the Board so desires.

Mr. Thomas asked if the roads were sufficient to handle a 19-foot engine. Mr. Benish said Stratford is in excess of 20 feet, which is the standard, and Hathaway running north and south is wide enough but also shows parallel parking, so fire and rescue would need to evaluate that. He stated that thus far, they have been OK with the zoning proposal but noted that some of the details would need to be rectified during the site planning process.

Mr. Rooker asked if the turnaround at the end of Stratford was adequate to allow the fire truck to turn around and come back out. Ms. Grant said they didn't comment on that but, when it comes in for site plan review, the details will be ironed out further for fire and rescue.

Mr. Benish stated that a "hammerhead" concept has been acceptable to them at other locations, but planning staff does not have a specific comment related to turnarounds.

The Chair opened the public hearing.

Mr. Vito Cetta addressed the Board, stating that he had met with fire and rescue officials and they were perfectly happy with the plan. He thanked Ms. Grant for her work and said she had done a wonderful job with the project. Mr. Cetta said the proffers should all be in good shape, and he didn't plan to negotiate them further.

Mr. Cetta said part of the issue with this application is dealing with the Avon Park neighbors, stating that the park is property he bought many years ago, designed it, and it's now all built out. He mentioned that it was one of the first developments with affordable housing. Mr. Cetta stated that he has met neighbors to the south of the property, answered their questions on several occasions, and met with the neighbor to the north of the site, who was also happy with changes. He said that he contacted the Avon Park residents and offered to answer their questions; however, it did take the owners there a long time to get back to him.

Mr. Cetta stated that he just met with them the previous Monday and agreed to make three relatively simple changes – increasing the setbacks, adding more landscaping, and installing street lights. He said the Board could approve the application with those three changes made to the plan, but he realizes they can't do it that way any longer. Mr. Cetta stated that his understanding is that now he has to change his plan and come back to the Board in three months. He said one of the main goals of the Neighborhood Model and master plan is to preserve farms, woods and scenic roads, and driving south from Avon Street to Scottsville, it looks the same as it did 40 years ago – and the development areas are very limited.

Mr. Rooker asked if some of the changes just discussed can be done by the developer without violating the plan, even though those changes are not in the proffers or the plan. Mr. Davis said the landscaping shouldn't be a problem, but moving houses from one location to another to increase setback would probably have to have a compliance finding with the application plan.

Mr. Benish stated that staff hasn't looked at the potential implications of the re-location and, while there's a reference to a certain lot, staff doesn't know if the revised setbacks and grading could fit there. He also said that there's a note on the application plan which indicates "no street lights will be provided" so, if the applicant wants to provide those, it's inconsistent with a specific note on the plan – and some of the landscaping areas are probably OK because it doesn't mention what additional landscaping can be provided. Mr. Benish emphasized that staff hasn't had a chance to vet the additional requests, and this is just a quick assessment.

Mr. Cetta said that, if the buildings were moved, he could see why he needed to come back, although he hated to wait another three months.

Mr. Davis stated that staff is requesting that what's being proposed is shown on the application plan before it's approved.

Ms. Nancy Schlichting addressed the Board, stating that she represents the Avon Park homeowner's association and they have had several meetings with Mr. Cetta. Ms. Schlichting said they do not think this should be approved at this point, because the homeowners have been dealing with two failed developers, an unfinished community, and now a new development. She stated that they feel approval is a bit premature, although they're encouraged by the activity on the part of the insurance company – however, the County should be cautious about the scope of work because the retaining wall encroaches into the right of way. Ms. Schlichting said they believe the issues can be addressed and that Mr. Cetta can submit an amended plan, however, his engineer can't say for certain whether the townhouses can be moved because he is still working on the logistics. She stated that the provisions would improve this plan as it would prevent congestion coming up the one entrance to Avon Park II, and the lighting and landscaping would also be improvements. She said the plan significantly affects the setbacks and the homes located along the common wall, and the character of the townhomes is different from those in Avon I.

Mr. Snow asked if the increased setbacks to 20 feet would change anything compared to the old plan. Ms. Schlichting responded that the back setbacks were changed to 20 feet after homeowners met with Mr. Cetta, but what they're talking about now are the side setbacks on the common row with Avon I – which could be addressed by moving the townhomes catty-cornered down to be symmetrical to the existing townhomes, which would allow the side setbacks to be increased. She added that the additional benefit of moving them would be eliminating the traffic and congestion at the entrance to Stratford.

Ms. Linda O'Connor addressed the Board, stating that she is a resident of Avon Park and a member of their board. Ms. O'Connor referenced the current proposed plan and the 2008 approved plan, along with a border adjustment from February 2008. She said that, with the proposed plan, the multi-family homes are directly behind her house and would sit on a rise that would place them higher than all the Avon homes below Hathaway. Ms. O'Connor stated that she has only 21 feet with her rear setback, and the combination of the elevation with the height of the homes would have people looking right into her house. She said they also have concerns that a fire occurring on Lots 9-14 could cause downward spread of fire into Avon I because of the elevation. Ms. O'Connor said Mr. Cetta's agreement to move Lots 9-14 to Lot 4 addresses several community concerns, including the elevation issue, the encroachment on their privacy, the potential traffic congestion, and the setback issue. She said the homeowners are requesting that the replacement home – the one that would be placed on the multi-family home spot – be somewhat underground so as to eliminate elevation concerns.

Mr. Dennis O'Connor addressed the Board, stating that he is a resident of Avon Park and indicating that Mr. Cetta has also agreed to increase the rear setbacks and, as shown on the plan submitted, the rear setbacks for Lots 1-4 are now 30 feet. Mr. O'Connor said that Mr. Cetta has tentatively agreed to increase the rear setbacks to 30 feet also for Lots 21-24 as well as for the home that will replace the multi-family homes. He stated that the submitted plan also shows that no retaining wall will be built next to Avon Lot 44 and, if grading is determined to be needed in the future, they request that an exceptionally strong retaining wall be built and that it have a multi-year guarantee since it took years for the current Avon I retaining wall problems to develop. Mr. O'Connor said Mr. Cetta has also agreed to put in street lighting in Avon II and landscaping along the Avon I/Avon II border, and has tentatively agreed to move a fire plug and extend Stratford hammerheads to allow for turnaround of emergency vehicles.

Ms. Sue Mantz addressed the Board, stating that she is a long-time resident of Avon Park and a licensed realtor in Charlottesville. She said the homeowners are not opposed to having Mr. Cetta replace the townhomes from the 2008 plan with more lucrative homes, but not at the expense of Avon Park I. Ms. Mantz said Avon Park II is replacing townhomes with larger homes but is then decreasing the side setbacks below Hathaway, despite the fact that townhomes are clearly selling in the Charlottesville area. She stated that the second quarter market data shows that townhouses were up almost 25% in the Charlottesville area and, in Avon Park over the last year, they had eight townhomes that were listed – seven of them sold at 93% or higher. Ms. Mantz said that, from 2012 to 2013, townhome sales in the area are on the rise. She stated that the side setbacks in the new proposed plan for Avon II are significantly reduced over the old plans, encroaching on Avon I residents' privacy and impacting property values. Ms. Mantz said a boundary adjustments plat dated February 2008 specified side setbacks were at 15 feet for Avon Park II and the approved July 2008 site plan had setbacks reduced to 10 feet, or 67%. She stated that Mr. Cetta has proposed to increase the side setbacks to 7.5 feet, but that's still less than 10 in the old plan and the side setbacks for Avon I. Ms. Mantz said these small setbacks are clearly not similar to any neighboring developments such as Mill Creek South or Lake Reynovia, both of which have side setbacks of about 20 feet. She stated that the setbacks in the new plan don't uphold the promise to homeowners that there would only be one home behind their single-family homes, and the 2008 plan does uphold that promise. Ms. Mantz said the Avon II homes planned for Lots 22 and 31 are about 1,000 square feet larger than their neighbors, and homeowners are requesting that the side setbacks be 10 feet for Lots 21-24, and for the home replacing the multi-family home as well.

Mr. Brian Lee addressed the Board, stating that he is the owner of Lot 44 in Avon Park and is a degreed civil engineer. He said Lot 44 directly abuts Hathaway Street, and he also owns the 20-foot grading easement granted for construction of Avon Park II. Mr. Lee said there is intent for grading to be done in that easement and, while Mr. Cetta has eliminated the retaining wall, he still intends to slope in that grading easement in order to get down to proposed extension to Hathaway. Mr. Lee said he has concerns about that as a homeowner, as there is already erosion shown on that same slope and, if it is continued, there will be further erosion on that hill which could potentially undermine the foundation of his home and some of the neighbors on that side of Avon Park I. He stated that the February 2008 border adjustment plan shows a sliver of land going to Avon Park II, and that starts at approximately nine feet behind the water tower, passes through his property and down into the common area behind the single-family homes on the other side, and decreases to about three feet. Mr. Lee said the border between Avon I and II is not clearly delineated on that plan, and the borders are shown using only bearings and some physical markers, not specific borders determined with GPS clarity. He stated that the surveyor who performed the adjustment said there was no loss of land to Avon Park I, and the affected homeowners have hired a surveyor to identify the border per the recorded plats. Mr. Lee said when Mr. Cetta agreed to increase the rear setbacks for Lots 1-4 to 30 feet, the square footage on the plan has remained the same, and residents are asking for clarification as to whether his intention is to put a home of the same square footage there.

Mr. Justin Conger addressed the Board, stating that he is the longest-serving board member at Avon Park, a 59-lot community which has seen two home-builders go bankrupt and has had to foot a lot of the bills. Mr. Conger said their roads were never completed, and the small community pays for snow plowing as well as various other maintenance projects. He stated that the HOA has been actively pursuing a performance bond, and they are concerned that more homes will be added to this development when there are still huge issues which need to be remedied. Mr. Conger presented photos he had taken during a heavy thunderstorm over the summer, and noted that the retaining wall is clearly not doing what it's meant to do – with no evidence presented as to whether it was properly inspected. He said the sinkholes and erosion have also caused problems, and the right of way authority has also not been clarified. Mr. Conger stated that Avon Park I has been strapped with almost $30,000 in expenses due to defunct plans started by developers and bankrupt homeowners, which averages to about $500 per homeowner. He said they shouldn't bear the brunt of the expenses, nor should the County, and they should be incurred by the bond company. He said Avon I is not complete, and they should not move

forward with another rezoning request until Avon I is complete. Mr. Conger stated that homeowners are requesting that any rezoning amendment approved would be contingent upon completion of Avon Park I and the retention wall.

Ms. Corinne Lauer addressed the Board, stating that stormwater management on Avon I and II land is insufficient at this point, leading to more erosion despite the thick vegetation on Avon II and the silt fence near the Avon I and II border. Ms. Lauer said dirt and soil are being pushed through, and the silt fence that was constructed to prevent the spillage and runoff near that border is mostly destroyed. She stated that flooding and erosion runoff from Avon II are a problem in Avon I, and backyards are flooded despite the landscaping and mulching that has been put in place. Ms. Lauer said Mr. Cetta has described the stormwater and erosion management systems for Avon II, and has tentatively agreed to put landscaping barriers near the Avon I border which will help with the erosion. She stated that, given the stormwater problems experienced over the years, residents there feel it would be prudent for the County to perform a formal hydrology study to ensure that the stormwater systems and erosion control plans are sufficient.

Ms. Tara de Cardenas addressed the Board, stating that she would address parking concerns already existing in Avon Park I and concerns for Avon II. Ms. De Cardenas presented a photo of Arden Drive taken on a Saturday morning, noting the limited parking available on the street and stating that both Arden and Hathaway are single-sided parking. She said that, given the parking issues with Avon I, residents would like to request that a no parking waiver be granted to Avon II in the future – and they would like to have staff ensure that parking in Avon II adhere to the County Code, specified in Chapter 18, Section 4.12.6 regarding the number of parking spaces and Chapter 18, Section 4.12.16 on the minimum parking space requirements.

Ms. Maryam Tatavosian addressed the Board, stating that she is representing the Avon Park Homeowners Association and wanted to address traffic and safety issues. She stated that there is currently no interconnectivity with Avon Street Extended, contrary to Neighborhood Model principles and, at the Planning Commission hearing in March, Mr. Cetta said he was amenable to creating direct access to Avon Extended if the County says it's possible. Ms. Tatavosian said that, without interconnectivity, Avon II will add a considerable load to Arden Drive with the only access under the current proposal and the 2008 plan is through Arden Drive. She stated that using ITE trip generation rates, Arden Drive will have over 740 daily trips – and it's only .1 mile in length, with Hathaway being .3 miles, before the entrance to Avon II. Ms. Tatavosian stated that these are short roads for the traffic load, and residents are unclear whether the County has pursued alternative approaches from Avon II to Avon Street Extended. She said safety for children in Avon I is an issue today even without Avon II added traffic on Arden, and they've placed two signs on that road to try to protect kids from speeding cars. Ms. Tatavosian said that, despite those efforts, speeding is an issue today in Avon I and would be even more of a concern with Avon II traffic added. She stated that Avon construction vehicles and emergency vehicles would need to go up Arden, creating additional traffic and safety issues. Ms. Tatavosian said that curvature of Arden Drive does not provide oncoming traffic a clear view of children who are crossing the street and vice versa, and Avon I has a growing number of families with young children. She stated that the lack of interconnectivity here is contrary to the Neighborhood Model and puts the safety of children at risk with Avon II added traffic onto Arden Drive, and does not allow easy flow for emergency vehicles. Ms. Tatavosian said that, since Mr. Cetta is amenable to creating direct access to Avon II from Avon Street Extended, homeowners request that the County study other alternatives to see if it's possible.

Ms. Nancy Schlichting addressed the Board, stating that there was a petition signed by 110 homeowners as well as local residents regarding the rezoning, and provided the Board with the original signed petition. She also said that the homeowners are passionate about their neighborhood, but they have also been realistic and conscientious, and respectful as well as transparent. Ms. Schlichting stated that the homeowners association is very fearful given the past history of trouble with builders and bankruptcy, and it's important for the scope of work to be nailed down – without the homeowners being stuck with the bill.

Mr. Cetta addressed the Board, stating that it's unfortunate that the builders went bankrupt, but that was due to the economy. He also said these communities are tight, and homeowners need to insist that people park in their garages, pointing out that there will always be parking issues with the Neighborhood Model. Mr. Cetta stated that about half the homes sold are townhouses, adding that he was prepared to defer.

Ms. Mallek asked if Mr. Cetta was willing to work on following through with the items previously discussed. Mr. Cetta said he was, and that he would work with the neighbors as well.

Mr. Benish stated that, if the Board has specific expectations for the applicant, it would be helpful to articulate those, but otherwise the applicant is prepared to move forward with the items already discussed and staff will come back with a revised plan.

Mr. Thomas suggested to Mr. Cetta that he go to the planners and make sure that they know everything discussed with the homeowners, so he won't have to go through another deferral.

Mr. Cetta said the homeowners didn't get involved early enough in the process and, if they had been, this probably would have been resolved earlier.

Mr. Thomas stated that Mr. Cetta would need to transfer the homeowners' thoughts back to the Planning Commission.

Mr. Cetta said neighborhood representatives should also meet with staff so they're satisfied with what's being decided.

The Chair then closed the public hearing.

Mr. Rooker said there are obviously stormwater drainage problems onsite, and there was mention of doing a hydrology study. He asked how Mr. Cetta could ensure that the drainage problem doesn't get worse during and after construction.

Mr. Graham stated that the hydrology study would be required anyway under the Water Protection Ordinance which would have a minimum standard, however, the homeowners are probably asking for something above that minimum standard. He said staff could work with the homeowners and with the developer to craft some language that would assure concerns were being addressed related to the Avon Park II water coming onto them, but they have to be responsible for the existing slopes on their property themselves.

Mr. Craddock said he would like to get the letters from the bond company along with the other things Mr. Cetta has agreed to do.

Ms. Mallek said that it would provide a lot of comfort to the process to get the letters.

Mr. Graham stated that he was doing everything possible to get that from the bonding company in writing, and he feels there's an obligation under the bond for them to provide that.

Mr. Rooker said that, although there's not a connection between the two developments, Mr. Cetta has an interest in seeing that the work gets done because ultimately there will be a single homeowners association that will have to deal with any lingering, unsolved problems. He added that it also makes the new development less attractive if these issues are still going on.

Mr. Davis asked if Mr. Cetta was requesting an indefinite deferral or deferral to a specific date. Mr. Cetta responded that he wants to move forward, and Mr. Benish had said there might be space on the Board's December agenda.

Mr. Rooker asked if it needed to come back to the Planning Commission or have another public hearing. Mr. Davis said that, provided the changes wouldn't make the development more intensive, there would be no legal requirement for an additional public hearing – and it would not have to go back go to the Planning Commission unless the Board wants them to review the changes.

Mr. Snow stated that, even though it would not come back for public hearing, people could still make comments at the beginning of the meeting.

Mr. Craddock then **moved** to defer ZMA-2012-0004 to December 9, 2013. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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Agenda Item No. 16. SDP-2013-31. Stonefield-Special Exception to Authorize Variations from Application Plan and Code of Development (ZMA-2011-7).

Ms. Sarah Baldwin, Senior Planner, reported that the applicant is proposing two variations containing multiple elements in Blocks F and G, and noted the blocks on the existing approved application plan. Ms. Baldwin said the original rezoning always contemplated larger power-center buildings in Blocks F and G, and depicted this area as major retail. She said the code of development specifically states that the buildings in those blocks are intended for larger single tenants, but nothing requires the buildings in these blocks to be two buildings or side by side – and the applicant can build one single big-box by right under the code of development.

Ms. Baldwin stated that the applicant is proposing many variations, including the square footage, but a variation is not needed for the change as the code of development already allows for flexibility in square footage. She said the applicant is proposing a total of 190,000 square feet of buildings in these blocks, and the approved code of development allows for a range of square footages – and block group three, which contains Block F and Block G, allows a minimum of 125,000 square feet and a maximum of 210,000 square feet. Ms. Baldwin stated that the applicant is proposing to construct 190,000 square feet in these blocks, which is 20,000 square feet under their current maximum square footage allowed. Since the 190,000 square feet is within the limits of the approved rezoning, she said staff is comfortable that there will be no increase in traffic intensity.

Ms. Baldwin said the code of development allowed for transfer of dwelling units and gross leasable area within the three block groups, and also contemplated square footage limitations in block groups one and two of 70,000 square feet, but not in block group three. She stated that Places 29 designates this area as commercial mixed use, with retail as the primary land use designation, and recommends a maximum footprint of 80,000 square feet. Ms. Baldwin said the original rezoning approved in 2003 pre-dates the approval of Places 29, which incorporated specific language regarding Albemarle Place into their plan that permits the square footage approved with the rezoning. She stated that Places 29 specifically states: "The northern portion of the development north of Sperry Marine has been

designed as a more conventional retail development. The land use pattern approved during the rezoning has been incorporated into the future land use map. Places 29 does not further address building location, orientation, or allocation of square footage in this area."

Ms. Baldwin stated that variations are authorized and routinely granted for the types of changes referenced in section 8.5.53 to allow for flexibility in planned developments, and the applicant is proposing variations that include such changes as those referenced. She said all variations are analyzed by staff using specific criteria, and the exhibits for the variations shown are slightly modified versions of what was received in the staff report and Board packets. Ms. Baldwin stated that the area shown closest to Rt. 29 has had a travel way removed, which is the case with all of the exhibits, and variation 16 contains elements A-E. She explained that element A proposes to alter the block boundaries to accommodate change in building location and contain the parking area to serve block F as well as other issues, and the phase is consistent with the application plan. Ms. Baldwin said element B modifies the alignment of District Avenue as well as lane configuration changes; Area A is being modified from four lanes to a three and two-lane configuration; Area B is being modified from four lanes to a three-lane configuration; and Area C contains additional right of way where District Avenue can ultimately be widened. She stated that it was determined that the roads as proposed will be able to handle the generated traffic.

Ms. Baldwin presented an enlarged copy of the approved plan showing the original District Avenue alignment with the proposed variation. She said element C moves the eastern most future connection point to align with the changes to District Avenue, and the future connection point – which is consistent with the plan – will allow the possibility to serve as an inter-parcel connection.

Mr. Rooker pointed out that it's not an approved connection from the other side, it's just a potential future connection if the Comdial property ever redevelops.

Ms. Baldwin reported that staff found the building changes to be acceptable, and the Architectural Review Board (ARB) reviewed the orientation and will be having a work session on September 16 at which time they will review more details. She said the proposed 6,000 square foot retail building adjacent to Route 29 is shown over the former stormwater basin, which is consistent with the approved grading and stormwater management plan where it was removed. Ms. Baldwin stated that the future pad site as shown is not part of this variation, but is being addressed as part of the rezoning amendment to add a use to the code of development.

Ms. Baldwin said staff analysis of variation 16, elements A-E is that the variations are consistent with the goals and objectives of Places 29; density is not increased, it is merely shifted with the development as is allowed by the code of development; the timing of phasing of the development is not affected; a special use permit is not required; the variation is in general accord with the purpose and intent of the approved rezoning application. Ms. Baldwin said that variation 17 includes the modification and location of the Café Plaza area, and the applicant is proposing to construct an enhanced pedestrian corridor area. She stated that staff found the proposed pedestrian area to be more appropriate, and it would also provide pedestrian access into the development from Route 29 and the bus stop. Ms. Baldwin said staff found variation 17 to be consistent with the Comp Plan and Places 29; density is not increased, it is merely shifted; the timing and phasing of the development is unaffected; a special use permit is not required; and the variation is in general accord with the application plan.

Ms. Baldwin stated that staff has two recommendations for approval of variation 16, elements A-E with the exhibits; and variation 17 with the exhibits.

Ms. Mallek commented that the code of development for this particular project takes precedence over the more general Comp Plan square footages, and she had initially been confused by that.

Mr. Rooker said the Comp Plan actually incorporated by reference the Code of Development in it when speaking about this area.

Mr. Boyd asked if the numbering of the variations meant there had already been 15 other variations on this project. Ms. Baldwin said there had been 15 others, and they had all been located on the Town Center portion – and these were the first two variations on Blocks F and G.

Mr. Boyd said the whole project had changed quite a bit from the originally approved project.

Ms. Mallek said they may have been small, and she'd like to have some examples of what they were.

Mr. Rooker said every variation request stands on its own, which is true on this project and every other project. He said shifting a sidewalk location by 10 feet would necessitate a variation. He stated that they have also had a rezoning approved for the project and an amendment to the rezoning approved for any extensive changes, which were approved unanimously by the Board.

Mr. Boyd said his point was that the project had changed substantially over the evolution of the project.

Mr. Benish stated that the variations are looked at as minor changes, such as the orientation of Trader Joe's being modified, as well as one of the other buildings in that general block, and modification of stormwater detention in that block area as well.

Mr. Boyd asked if the prior variations were done mostly by staff, prior to the recent court case. Mr. Benish responded that they're done by staff, and the variation process is to allow for some flexibility in the actual development of a site under the larger concepts of a rezoning, to meet the intent of the zoning but allow for efficient and flexible changes for the development of the site. He stated that the flexibility has become important for developers who are looking at making changes on a site when the changes are relatively minor, providing they are consistent with the intent of the zoning.

Mr. Thomas asked if that's what the special exception was all about. Mr. Benish clarified that it's the variation process, which is now required to go through a special exception process since the Sinclair case.

Mr. Rooker mentioned that the 5th Street Avon shopping center came before the Board and had changes of proffers, building in the floodplain, changes in building orientations, etc., with approval of two boxes of 160,000 square feet each. He said Mr. Boyd's quote then was that he didn't want to put too much specificity in the plan such that the applicant would have to come back and seek a variance from the Board. Mr. Rooker stated that the variance process for minor items was a staff-approved process up until the Sinclair case and, after that, the Board said that when staff recommended approval of a variance it would come to them on a Consent Agenda. He said this was part of the streamlining of the development review process, which Mr. Boyd championed, and it's clear that the Board has taken the position that variances are matters that staff should approve and that should be on the Consent Agenda – not requiring experts to come in after staff has reviewed and recommended approval. Mr. Rooker said that, for some reason, this applicant is being singled out.

Ms. Mallek said that the process is king, and the primary goal should be treating each applicant fairly and consistently.

Mr. Craddock asked if the blocks have a certain amount of square footage allotted to them, and it seems that this variation takes up some of the square footage from one of the buildings in Block G to add to Block F. Mr. Benish confirmed that was the case.

Mr. Craddock said there was a lot of strife at the Planning Commission level over putting a big box at Stonefield, and that's why the original drawing for Albemarle Place showed two buildings – because a big box was not thought to be in keeping with the development.

Ms. Mallek recalled that the plan was to have the big box on the road, which is why it caused concern as opposed to being in the back corner.

Mr. Thomas and Mr. Craddock said that it was in the back corner in the original drawing.

Mr. Rooker said he was on the Planning Commission when this development was originally approved, and he was on the Board of Supervisors when it was approved at the Board level. He stated that there were two different elements to the plan initially – a town center element, which is to the south; and the traditional shopping center element, which is to the north. Mr. Rooker said both the Board and the Commission wanted to see a town center development built, and it was clear at the time that the developer would not go forward with a plan that didn't have a normal shopping center element on the north side.

Ms. Mallek noted that they were going to do that part first.

Mr. Rooker confirmed that was the case originally, but this developer came in and did the town center section – but it was clearly contemplated in the language of the approval that they could mass square footage and move it around in the northern section, which is why this is consistent with plan of development. He said Target is currently operating with 147,000 square feet, and Avon Park was just approved with two 160,000 square foot boxes, potentially. Mr. Rooker stated that the code of development clearly allowed them to move around the square footage within the northern section of the plan.

Mr. Craddock agreed, but said he thought two buildings were proposed at Stonefield.

Ms. Mallek said two buildings were proposed in the first drawing, with potential for modification depending on who the tenants would be. She stated that she was very hesitant to have staff approvals for the changes based on this flexibility but, if the developer is meeting the requirements and the allowance written into the code of development, then they've done their job.

The Chair opened the public hearing.

The applicant's representative, Brad Dumont, addressed the Board on behalf of Stonefield's owner and operator, Edens Development. He asked Mr. Steve Blaine to speak to the Board about the project.

Mr. Steve Blaine addressed the Board, stating that he is representing both Costco and the applicant, and his remarks are on behalf of the applicant. Mr. Blaine said they are asking the Board for minor variations from the application plan for an actual site plan for Phase II, which is the northern part of Stonefield. He explained that this phase of the project has always been envisioned, since the rezoning 10 years ago, as a conventional retail development. He said the proposals include changes in the orientation and location of the buildings; changes in the boundary between Blocks F and G; and two connection points to adjoining projects – as well as internal road alignment. Mr. Blaine said variation 17 has to do

with amenities that will not be shown on the ultimate plan, and he presented an overview of the approved application plan. He stated that they broke the variations down into sub-categories dealing with specific issues, and he noted on the plan provided how the variations had changed the building orientation and locations, the boundary adjustments between the blocks, and the realignment of District Avenue. Mr. Blaine explained that the realignment is largely to accommodate the change in the building orientation as well as the block boundary. He showed boundary adjustments to the future extensions and noted that there would only be changes to two potential connections to the adjacent property.

Mr. Blaine reported that the variations do not have to do with the size of the square footage of the buildings themselves, and the proposed site plan doesn't require a variation in the size of the square footage because it's already dealt with in the code of development – which allowed for changes in building orientation and location, as well as adjustments of square footage, as long as the plan remained within the range of 125,000 square feet up to 210,000 square feet. He said the applicant is within that range, with a total of 170,000 square feet of major retail, which is 20,000 square feet below the maximum. Mr. Blaine stated that, if the code of development had intended a building size limitation, it would have said that expressly – and there is an express limitation in the code of development that pertains to the south side of the project, which was clearly intended to be an urban style neighborhood development. He said the applicant has, in essence, a by-right ability to build major retail in a single building up to 210,000 square feet – and this proposed building for a Costco is 155,000 square feet.

Mr. Blaine stated that, on 15 prior occasions, the applicant has received approval from the Director of Planning and, in each of those instances, the applicant followed the rules and procedures that applied – as was the case with their proffer amendments also. He mentioned that a traffic analysis was requested and provided for these variations, and the results indicate that there is no additional trip generation by the proposed uses on this plan, and the total build-out is less than the projected traffic impacts from the original rezoning. Mr. Blaine said that, when this was approved 10 years ago, there was "negotiation" both at the Planning Commission and the Board levels as to the dichotomy of the two uses in the project. He stated that there was vigorous debate about traffic and its impacts, and the applicant has already invested $7.6 million in traffic improvements to address this type of development, so it was already built into the original zoning. Mr. Blaine said traffic impacts cannot be a basis for denying the variations, as the projected impacts are less than what would occur under the existing zoning.

Mr. Blaine stated that the variations are consistent with the Comprehensive Plan, and the proposal supports the primary goals of the Economic Vitality Action Plan as adopted by the Board in August 2010 as part of the Comprehensive Plan, by expanding the commercial tax base and by supporting the creation of quality jobs for residents. Mr. Blaine said the Places 29 recommendations came into effect well after the rezoning, in 2012, and there cannot be a Comp Plan recommendation that is inconsistent with the underlying zoning, particularly where there is a proffered zoning as the applicant has a vested right in those uses. He stated that recommending 80,000 square feet is effectively a down-zoning or taking. Mr. Blaine said the applicant has lived up to his end of the bargain made at the original zoning by investing over $7 million in road improvements, not including the $800,000 in road improvements contributed to the City for improvements along Route 29.

Mr. Blaine said the Board should not lose sight of the contributions to the community that Costco will bring, with average sales at a Costco store equaling $155 million per year, resulting in an estimated $5 million in new annual sales tax revenue for the County and the Commonwealth. He stated that the real estate tax base on this property will put an additional $78,000 in the County's annual budget. Mr. Blaine said Costco stores employ an average of 242 people, and is consistently rated as one of the best retail employers in the U.S. – paying an average hourly wage of $20.51 as compared to the U.S. average of $10.24. He stated that a full-time cashier's salary after five years is $50,000, and there are numerous benefits along with salary including college student retention, mental health coverage, life insurance, dental, and a 401k plan.

Mr. Boyd asked how many additional trips would be added to the Hydraulic Road/Route 29 intersection with the changes, and what the traffic count was when this was initially approved. Mr. Rooker said he has those numbers from VDOT, and clarified that the project was approved in 2003. He explained that additional traffic improvements since that time have actually reduced the traffic on Route 29.

Mr. Boyd asked how much more traffic would this development add.

Mr. Eric Strohacker addressed the Board, stating that he is a traffic engineer with Bowman Consulting. He said there was an original study done in April 2001 which was revised in January 2002, and the latter study was used for the Comp Plan and the rezoning. Mr. Strohacker said the 2002 study had a total of 7,404 vehicles during weekday PM peak hour at the intersection of Hydraulic and Route 29. He stated that, around 2010 or 2011, they were asked by VDOT to validate those numbers, so VDOT provided traffic count information at that intersection – and his firm confirmed that the numbers had dropped to 6,777 in 2009. Mr. Strohacker said they then projected the number out to a build-out year of 2012, and the actual projected number from the original 2002 study had 8,476 vehicles – but with existing conditions, the number is about 1,500 less, and that was used in the 2003 rezoning. He stated that the trip generation for the entire site is essentially being reduced over what was approved.

Mr. Rooker said he was very interested in this as well, given that it's in his district, and the developer has a right to build this as approved. He stated that, based upon the traffic analysis at the time of approval, there were $7.5 million in traffic improvements required through proffers in order for them to go forward with the development. Mr. Rooker said traffic has actually been reduced, and the potential use of this property as designed in the variations generates slightly less traffic than the original build-out.

Mr. Boyd asked the traffic engineer to find out the additional traffic generated by this particular development at that intersection. Mr. Blaine said it is important because the improvements the applicant was responsible for depended upon those projections, and they've already made those improvements and have lived up to their part of the bargain – anticipating that this phase can be developed as contemplated in the code of development.

Mr. Jim Morris addressed the Board, stating that he has lived in the Jack Jouett District for 30 years and recalls that this development was built on the premise that it would be a neighborhood development which their website says has been "carefully crafted to be both innovative and appealing as it blends with the individual look of each retailer…intimate gathering places for neighbors to sit and reconnect…another way to build vibrant environment that invites shoppers not only to visit but to return again." Mr. Morris said that the term "power center" then surfaces in the ARB meeting, which is a "retail killer of like kind businesses…[and] functions similar to traditional shopping malls, but are primarily built around movement and access capabilities of private vehicles rather than pedestrian foot traffic." He stated that the term he was seeking was "category killer," as retailers seek to dominate particular categories of products or services offering large numbers of SKUs or stock-keeping units at prices consummate with high-volume turnover. Mr. Morris said the code of development states that the "overall design of buildings should have a human scale…integral to the building and the site design." He stated that this is described as a minor variation, but the size and scale of the development generates high traffic volume.

Ms. Betty Sevachko addressed the Board, stating that she has lived in Albemarle for 27 years and is entirely in favor of the Costco store coming. Ms. Sevachko said she is a senior citizen on a fixed income, and Costco will be great competition for Sam's Club, Wal-Mart, and Kroger. She stated that residents need to have good quality at competitive prices and if they want to deal with the traffic problems they need to get the bypass through. Ms. Sevachko said Costco will be a good employer and good for the tax base of the County, and asked the Board to let this go through – as it would benefit the County, the taxpayer, and the neighborhood.

Ms. Claire Johnson addressed the Board, stating that she didn't know who was involved in the planning of Stonefield, but it is not car friendly and it is difficult to park in order to access shops and restaurants. Ms. Johnson said that the traffic study was done before Whole Foods was put in across the street, and she is appalled by the traffic and what they are letting happen in that corridor.

Mr. Rich McPhillips addressed the Board, stating that he is with Johnson Development Associates – developers of Stonefield Commons, an apartment complex next to the shops. He said his company has worked with Edens over the last few years and has had a very positive experience, as they have a great reputation of creating vibrant, mixed-use communities. Mr. McPhillips said Costco would be a very positive addition to the overall development, and would provide residents an alternative to other retail. He added that his company is very supportive of it and is confident they will do a good job with that building.

Ms. Mary Knapp addressed the Board, stating that she is president-elect of the Rotary Club of Rockingham County and is the Membership Marketer for Costco in Harrisonburg. Ms. Knapp said she worked in the nonprofit fund-raising and marketing sector prior to working for Costco, and found the company to be supportive of local human service charities through donations made to the Rotary Club's annual raffle and silent auction. She stated that, when the Rotary Club joined a UVA project to help construct a water filter factory in South Africa, Costco donated items for their silent auction – and to date, Costco has helped the Rotary Club raise over $39,000 for that project. Ms. Knapp said Costco's warehouses across the east coast donated items for victims of Hurricane Sandy, including the Harrisonburg location. She stated that the company and its employees are proud to actively give back and be a community resource for more than just quality products at low prices. Ms. Knapp said a Costco business member who owns a small café outside of town commented that the company treats their employees well and is a real asset to the community and, in her eyes, the company is a "local business and an asset to her community." She stated that the company's resources and spirit leaves the community better for the investments its makes year after year.

Ms. Cindy Harman addressed the Board, stating that she is an 18-year employee of Costco in Harrisonburg, starting at age 18 with the idea of having a job just to get her through college. Ms. Harman said that, since graduating, she has had several positions within the company and was promoted three years ago to assistant general manager of the Harrisonburg location. She said Costco is actively involved in the local United Way, and she has represented the company on the United Way Volunteer Council – and since 2002, their store has raised over $194,000 to help fund organizations throughout the community. Ms. Harman reported that, in 2011, the store received the "Dynamic Community Award" for its efforts in the United Way campaign that year, and employees have been actively participating in the United Way "Day of Caring" for the last three years. She stated that over that time period, her store and its employees have donated over 1,400 backpacks for children in need. Ms. Harman recounted a recent incident in which a traveling Boy Scout troop was able to shop at the store for supplies after regular business hours, and was also fed at no charge through the assistance of employees who prepared food for them.

Ms. Carolyn Hopper addressed the Board, stating that she has been an employee at Costco since 1996 and was initially hired as a seasonal employee – but is now administration manager. She stated that many companies do not hire within, but Costco does, and the Harrisonburg store is always looking for ways to give back to the community. Ms. Hopper said she received the United Way Volunteer of the Year award for Rockingham County in 1996, and served as chair the following year. She stated that employees are very active in fundraising for charities such as the March of Dimes, the Boys and Girls Club, and the Autism Walk. Ms. Hopper said one of her favorite nonprofit activities is the Children's Miracle Network and, this year, the Costco in Harrisonburg presented a check to the UVA Children's

Hospital for $23,800. She stated that, since 2001, they've raised a total of $187,000 for the hospital.

Ms. Anita Schwartz addressed the Board, stating that she is General Manager of the Costco in Harrisonburg and a 29-year employee of the company. Ms. Schwartz said she began working for the Price Club in Richmond in 1984 as a seasonal employee to earn extra money for Christmas, but ended up staying on as a full-time employee because it paid more than her bank loan officer job. She stated that, during the last 25 years, she has worked her way up through management positions at Costco – and almost 99% of the company's promotions are from within. Ms. Schwartz said she, along with her husband and her brother have worked for Costco, and employees love the company – which has excellent pay unmatched by other retailers, great benefits and insurance for both full and part-time employees, generous vacations, a 401k plan, and advancement opportunities. She stated that the store is closed on major holidays, allowing employees to be home with their families.

Ms. John Pritzlaff addressed the Board, stating that no one has an issue with Costco coming to Albemarle County, and the issue is with the process by which "the largest and tallest box ever in the history of Albemarle County" has been pushed through the process with a series of variations that no one has really heard about. Mr. Pritzlaff said, as he understands it, any variation going forward has to follow the existing Comprehensive Plan, and that plan says that a mixed commercial box size can go only up to approximately 80,000 square feet per variation. He asked for some clarification regarding that issue.

Ms. Mallek said that relates to her earlier question about the code of development overriding the Comp Plan numbers.

Mr. Rooker said the Comp Plan incorporated the code of development and, during the Places 29 discussion, there was a lot of concern and Mr. Boyd was very interested in making certain that no existing zoning rights were taken away by the Comprehensive Plan, and that is always the case. He stated that you don't lose existing zoning rights because of a Comp Plan change, but if you wanted to rezone later, you would look to the Comp Plan to see if it was an appropriate rezoning.

Mr. Michael Hughes addressed the Board, stating that he is a long-time resident of Albemarle County and is currently the Facility and Real Estate Manager at Northrup Grumman. Mr. Hughes said, over the last 10 years since selling this property, they have been closely involved in the project and he has worked very closely with the current developer to ensure that the many contractual, legal and financial obligations have been met. He stated that Edens has done a very good job of meeting those obligations, as there have been some very extensive property agreements and amendments. Mr. Hughes said they have also been very good neighbors and have made his life much easier in dealing with employees moving around the Stonefield construction site, by being proactive and efficient in working with Northrup to address those issues and solve problems. He stated that they have further agreements pertaining to the north side of the property, and he is confident that they will be just as professional and timely in meeting those obligations. Mr. Hughes stated that he spends a lot of time in traffic on Rt. 29 going north to the big box stores, and he would be happy to have a much shorter commute by having Costco as a neighbor.

Mr. Mark Baker addressed the Board, stating that he is a member of the Richmond law firm, Roth Doner Jackson. Mr. Baker said his firm has a local client who is opposed to the special exception adding that this is not about Costco, it's about the process. He stated that Section 8.5.5.3 must be consistent with the Comp Plan and must be in general accord with the intent of the approved application, and he disagreed that there is a "right" to do this because it is in the code of development. Mr. Baker said the code of development stipulates that there can be flexibility in the blocks of up to 15%, so this is not a down-zoning, and this request for a special exception gives the Board the right to look at the Master Plan, the Comp Plan, and also the intent of the original plan. He stated that the Comp Plan is a sophisticated document with a lot of work invested in it, and all of those elements were in place before this ZMA. Mr. Baker said it's been bolstered since then with an 80,000 square foot cap in the Places 29 Master Plan and reinforcement through the Neighborhood Model, and there was lots of discussion and public input during the 29 master planning process which talked about maximum footprints. He said, given all of these factors, the Board should send this request back for a ZMA amendment, as dictated by code based on his interpretation.

Mr. Rooker asked if Mr. Baker could disclose the name of his client. Mr. Baker responded that he is not at liberty to disclose his client's identity.

Mr. Dan Venable addressed the Board, stating that he is in charge of real estate for Costco and has been working this market for a number of years and has toured it numerous times. Mr. Venable said the president and CEO of Costco, Jim Sinegal, has visited the market, and everyone at Costco involved is excited about coming to Charlottesville and to this particular location in Albemarle County. Mr. Venable said they have selected the location because it is the center of retail and where the retail traffic is, and they don't anticipate adding much traffic because everyone is passing by this location anyway. He stated that they are so sure it's the best location for Costco to operate, they're willing to commit that if they don't get this particular site, they will pack their bags and not enter the Charlottesville market.

Mr. J.P. Williamson addressed the Board, stating that his comments aren't negative toward Costco but relate instead to the process. Mr. Williamson said the question is what's minor versus major, and his understanding of the process of going through a neighborhood model and code of development is that it allows for minor variations as a way to facilitate unforeseen conditions. He stated that, in his mind, this crosses into "major," and the process by which to deal with that is a zoning map amendment – and that's his understanding as well as the community's. Mr. Williamson said, if the Board is changing the direction of that, it's a "precedent-setting event," and cautioned the Board to be careful in the decision.

Mr. Blaine addressed the Board again and said that Mr. Strohacker would respond to the earlier question regarding traffic data for that particular intersection.

Mr. Strohacker said the earlier question was how much site traffic would be added to the intersection of Hydraulic and Route 29 and, in the original 2002 study, there was a total of 1,044 vehicles per hour added to that intersection during PM peak hour conditions under the total build-out of the development. He said that the current plan would add a total of 886 vehicles per hour during PM peak hour conditions.

Mr. Thomas asked if that 800+ would be added to the existing 7,000 on Hydraulic. Mr. Strohacker said that would be an accurate estimate, with the actual original study showing 1,044 on top of 8,500 vehicles, and the second study reducing the number to about 7,500 total.

Mr. Blaine stated that the applicant has met with adjoining property owners and Northrup Grumman and, unlike similar rezonings, there has been no neighborhood opposition to this. He said the attorney representing an undisclosed client referenced Planning Commission minutes, but the final action on zoning is the Board of Supervisors. Mr. Blaine stated that there was a compromise at the Board level to allow that applicant to build what the County wanted – the town center model – first; and the bargain was that the owner/developer would be able to develop a more conventional shopping center in the second part of the development. Mr. Blaine said this is not a "category killer," as Costco sells a wide variety of products which will actually help reduce traffic from having to make other stops. He stated that, if an applicant has battled through a rezoning, they're not going to let a subsequent Comp Plan amendment – which has general recommendations – take away the earned property rights of an applicant. Mr. Blaine said he would advocate that for any developer, whether it was here or 5th Street or any another location.

Mr. Snow asked Mr. Davis for clarification of Section 8.5.5.3 and asked him to explain what it means and what it legally provides for.

Mr. Davis explained that those are the parameters for what can be granted as a variation as set out in the zoning ordinance, and staff has identified the types of changes that are allowed by variation in regard to this particular application. He said this includes "changes to the arrangements of buildings, provided the major elements and relationships remain the same," and staff's analysis was that those major elements were not affected by the re-orientation and relocation of buildings as shown on the proposed plan. Mr. Davis said there was a change to the phasing of plans related to the moving of the lines between the blocks, which would allow the phasing, and staff determined there were minor changes to the street design and street location, which was the changing of the road alignment by moving it closer to Route 29 but not substantially.

Mr. Snow asked about the comment made that this was the largest and tallest building in the County. Mr. Benish said the applicant could comment on that, but urged the Board to keep in mind that there are no limitations established in the code specific to the building square footage or height other than the normal zoning requirements – which this building would comply with.

Mr. Rooker noted that the Hyatt Hotel is much higher than this building would be, pointing out that buildings are subject to code height limitations applied generally throughout the County. He said Costco would not be anywhere near that height.

Mr. Boyd said that this is different than what the ARB originally approved.

Mr. Rooker said the ARB has already looked at this proposal and approved it and, if they require something that's within their parameters, then the applicant would need to meet it in order to move forward.

Mr. Boyd asked if there was already some discrepancy between the ARB and the developers regarding colors of the exterior and the height.

Mr. Rooker said he had contacted Amelia McCulley to check on that and found out that the material is weathered copper, which was material approved by the ARB, and it will age and eventually go to one color. He stated that, if there is a violation, the applicant would be cited and would have to correct it.

Mr. Davis clarified that there is not a variation being requested on the size of the building and, under the code of development, it allows the building size to be what is being presented by the applicant – so it is consistent with the code of development and does not require the Board to act. He said that what's before the Board tonight is orientation and location of the buildings.

Mr. Rooker said that this is in his district, and most of the calls he has received about this application have been positive. He stated that there is not a room full of people complaining about the fact that Costco might come into this center. Mr. Rooker said he was on the Planning Commission and the Board that approved it, and there was considerable discussion about the balance in the style of development of a neighborhood center and a traditional shopping center. He said that is what was approved, and the current application is a minor request for variations having to do with design and layout on the northern section of the development. Mr. Rooker said it is not a change or amendment to the zoning on the property; it is not something that increases the square footage of commercial development allowed – it is actually 20% less than allowable build-out; it does not approve any size building that isn't already allowed under the code of development; and staff has assured him that the variations would result

in less traffic impacts than the original plan. He stated that they can't go back to 2003 and re-litigate what the Board previously decided. He said everything the applicant has done is consistent with the plan that the Board approved. Mr. Rooker said the variations do not give rise to an increase in traffic, and actually reduce it. He stated that staff has determined that this is consistent with the Comp Plan, and these minor changes have been looked at and approved by the ARB.

Mr. Rooker said one would have to ask why this applicant is being treated differently, and he has to question why this isn't a Consent Agenda item, and wondered why it was added to the regular agenda. He noted that, when they approved the Avon development, there was concern about "too much specificity" in the plans that would cause applicants to have to come back and spend more time, effort and money. Mr. Rooker said this is the only developer that has actually built a town center of any size, despite the unfulfilled promises of other developers. He stated that this Board has strongly supported economic vitality, seeking to attract quality jobs to this community – and Costco is coming before them in accordance with an approved plan, offering to bring 250 jobs to the community that pay an average of over $20 per hour, paying comprehensive benefits to all employees regardless of full and part-time status. Mr. Rooker noted that Costco's intention is to set up a training program with the Chamber to train local people to take those jobs immediately, and the company is regularly recognized as one of the best employers in the country to work for – and he asked if the Board is prepared to snub this based on reasons that aren't even in line with what's recognized in the ordinances. He said that, in looking at County tax data, Stonefield has had a significant impact on the increases taking place in 2011 and 2012, and one store's move can have a major impact on tax revenues.

Mr. Rooker emphasized that this is not a case where the Board is being asked to bend the rules – it's a case of the Board being asked to follow the rules.

Mr. Boyd thanked the Harrisonburg Costco employees for being here and said he knows that it is a terrific company that would bring great jobs to the area, adding that his position has to do more with the density and intensity of a particular site and location. He said he didn't appreciate the "threat" from the Costco representative about not locating elsewhere in the community, as it's not something that this community has allowed before. Mr. Boyd said he doesn't think the density and intensity of this particular request is something he can vote for, so he will oppose this particular location. He stated that he is willing to take the chance of them not locating here.

Mr. Rooker asked Mr. Boyd to comment on the fact that the staff report has said the variation request actually reduces the traffic load from the development over the plan without the variation. Mr. Boyd said he doesn't happen to agree with staff on this, pointing out that he was elected to represent the people of the community and staff wasn't. He said he wouldn't continue to argue it, because he would vote against it.

Mr. Rooker stated that he didn't expect Mr. Boyd to change his position, because he knows who's opposing it and it's more about who's opposing it than the plan itself.

Ms. Mallek said she was hoping for the residents of Crozet and western Albemarle that it would be located in a site closer to there but, in talking to staff, it was clear that the County doesn't have the power to tell people where they have to invest – and as long as they follow the rules, they can locate where they want. She stated that it's not their job as a Board or a staff to say "you can come over here but you can't come over here."

Mr. Boyd said, in looking at the Comp Plan amendments earlier today, both Ms. Mallek and Mr. Rooker said they had every intent of doing zoning and applications around where the proper location is for people in the community.

Ms. Mallek said that means the general zone and pertains to commercial versus rural locations.

Mr. Rooker stated that this is not a rezoning.

Mr. Boyd said that it was an opportunity for Board members to say whether this was the proper place to put that kind of density and intensity.

Mr. Rooker stated that another store could come in and build a 200,000+ square foot building, and it wouldn't require a variation.

Mr. Boyd said that it's a very difficult intersection there.

Mr. Snow said he tries to be consistent in his decisions, and his original reasons for voting against it have been met and would vote in favor of the variation.

Mr. Rooker **moved** to approve the variations as stated in the application for variations #16, #17 and Exhibits A-E, as recommended by staff. Ms. Mallek **seconded** the motion.

Mr. Thomas said the County can use the tax revenue from this type of store, and he would rather have the store on the south side of town but, as a Board, it cannot dictate that, and he would support the variation.

Mr. Boyd said this is about whether or not this is the right location.

Mr. Craddock stated that the attorney representing the “unknown client” had the best points and, to him, this opens the door because a big box shouldn’t go in that location, adding that the plan was vetted in front of the Commission and Board many years ago.

Mr. Rooker said the Board did not pass what the Planning Commission endorsed, and what’s binding on the plan is what the Board of Supervisors approved.

Mr. Craddock stated that the drawing still shows two separate buildings.

Mr. Rooker said the Code of Development says you can move around the square footage.

Mr. Boyd stated that this should have been a full public hearing with proper public notification because, without that, people aren’t paying attention to the meetings.

Mr. Rooker said someone put flyers in every mailbox in the community talking about “New York developers” coming in, and that person has even put up a website against it. He stated that there has been a funded campaign against this, and that wasn’t done by everyday citizens.

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

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

Ms. Mallek commented that she is glad this was approved because, if the Board hadn’t gone ahead with it, they would have overturned the entire process the Board has spent years developing – which included setting up the variation process to begin with.

Mr. Rooker said, had this not been approved, the precedent this would have established in undermining future developments which have already been approved and where money has already been invested on the front end would have been catastrophic.

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

There were none.

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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 10:40 p.m., with no further business to come before the Board, the meeting was adjourned.

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Chairman

Approved by Board

Date: 05/14/2014

Initials: EWJ