

An afternoon adjourned and a regular night meeting of the Board of Supervisors of Albemarle County, Virginia, was held on May 14, 2014, Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. The afternoon meeting was held at 3:00 p.m., and was adjourned from May 13, 2014. The regular meeting began at 5:00 p.m.

PRESENT: Mr. Kenneth C. Boyd, Ms. Jane D. Dittmar, Ms. Ann Mallek, Ms. Diantha H. McKeel, Ms. Liz A. Palmer and Mr. Brad L. Sheffield.

ABSENT: None.

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

Agenda Item No. 1. The meeting was called to order at 3:03 p.m., by the Chair, Ms. Dittmar.

Agenda Item No. 2. Closed Meeting.

At 3:03 p.m., Mr. Sheffield **moved** that the Board go into a closed meeting pursuant to Section 2.2-3.711(A) of the Code of Virginia under Subsection (1) to discuss the performance standards and evaluation process for specific County employees appointed by the Board, and under Subsection (7) to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice relating to the negotiation of easements on the County Office Building property. Ms. Mallek **seconded** the motion.

Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Palmer, Mr. Sheffield, Mr. Boyd, Ms. Dittmar, Ms. Mallek and Ms. McKeel.

NAYS: None.

Agenda Item No. 3. Certify Closed Meeting.

At 3:51 p.m., Mr. Sheffield **moved** that the Board certify by a 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 passed by the following recorded vote:

AYES: Ms. Palmer, Mr. Sheffield, Mr. Boyd, Ms. Dittmar, Ms. Mallek and Ms. McKeel.

NAYS: None.

Agenda Item No. 4. Review of County's Priority List of Secondary Road Improvements and the VDOT Secondary Six-Year Plan.

The executive summary as presented by staff states that the County's Priority List of Secondary Road Improvements establishes the priorities for County road improvements in the State's Secondary Road system (roads with a route number of 600 or higher). The Virginia Department of Transportation (VDOT) Secondary Six-Year Plan (SSYP) is the funding program for the construction of secondary road projects based on the County's Priority List and reflects available state road funding allocated to the County. A separate program exists for the Primary and Interstate road systems. The County's Priority List and the VDOT SSYP are typically reviewed annually. Based on Board direction regarding projects to be funded, VDOT will draft a revised SSYP. Attachment A is the current County Priority List of Secondary Road Improvements and Attachment B is the current VDOT Six Year Secondary Road Construction Program, both approved by the Board on June 12, 2013.

This work session is focused on receiving Board input regarding the County's Priority List of Secondary Road Improvements. Staff will then prepare a revised County Priority List that reflects the Board's input and VDOT will update the SSYP, both of which will be the subject of a Board public hearing planned for June 11, 2014.

VDOT Secondary Six Year Improvement Program (SSYP)

VDOT has provided the following projected funding allocations for Albemarle County for the FY15-20 SSYP:

FISCAL YEAR	SECONDARY UNPAVED ROAD FUND ¹	CTB UNPAVED ROAD FUND ²	REG. STATE FUNDS ³ (Telefee Funds)	SECONDARY FORMULA FUNDS ³	TOTAL FUNDS
2014-15	\$0	\$208,838	\$298,065	\$0	\$506,903
2015-16	\$0	\$390,726	\$298,065	\$0	\$688,791
2016-17	\$0	\$571,125	\$298,065	\$0	\$869,190
2017-18	\$0	\$578,873	\$298,065	\$0	\$876,938
2018-19	\$0	\$622,461	\$298,065	\$0	\$920,526
2019-20	\$0	\$602,355	\$298,065	\$0	\$900,420
Totals	\$0	\$2,974,378	\$1,788,390	\$0	\$4,762,768

Notes:

- 1- Roads must carry 50 vehicle per day (VPD) or greater.
- 2- Roads must carry 50 vehicle per day (VPD) or greater. This is a change from the previous 200 VPD requirement.
- 3- Funds can be used a broad range of secondary road improvement project (construction, paving, etc.)

Funding for the next six years of the SSYP is projected to be significantly lower than anticipated at the time of the adoption of last year's SSYP because state revenues used to fund the transportation program are lower than what had been projected at that time. Staff provides the following observations and comments:

- For the five (5) common years of last year's SSYP and this year's SSYP (FY2014-15 through FY2018-19) the following funding changes are anticipated:
 - The estimated total funds have fallen from \$8,220,496 to \$3,862,348.
 - The estimated total funds for unpaved road projects have fallen from \$4,970,393 to \$2,372,023.
- Last year, two categories of unpaved road funds were created: 1) Secondary Unpaved Road Funds, and 2) the Commonwealth Transportation Board (CTB) Formula Unpaved Road Funds. No funding is now anticipated for the Secondary Unpaved Road Fund (\$512,376 was anticipated in last year's SSYP), leaving the CTB Formula Unpaved Road Funds as the sole source of unpaved road funding.
- The \$900,420 in the "new" sixth year of the SSYP (FY2019-20) will need to be totally devoted to projects already included in the SSYP to offset the reduction in fund allocations for those projects in the first five years.

Due to the limited available funding, staff proposes that no additional projects be added the SSYP and that available SSYP funding be used to complete the projects currently identified in the SSYP. (Please note that bridge projects included in the SSYP also utilize federal bridge funds.) The projects included in the current SSYP are:

- Dry Bridge Road (Rt. 708) bridge replacement (under construction)
- Black Cat Road (Rt. 616) bridge replacement
- Broomley Road (Rt. 677) bridge replacement
- Dick Woods Road (Rt. 637) bridge replacement
- Dickerson Road (Rt. 606) bridge replacement over the N. Fork Rivanna River
- Pocket Lane (Rt. 703), from Rt. 715 to end state maintenance – paving project
- Midway Road (Rt. 688), from Rt. 824 to Rt. 635 – paving project
- Keswick Drive (Rt. 731), from Rt. 744 to Rt. 22 – paving project
- Rio Mills Road (Rt. 643), from paved section to US 29 – paving project
- Doctors Crossing (Rt. 784), from Rt. 600 to Rt. 640 – paving project

Two paving projects in the current SSYP (and on the County's Priority List) have now been completed: 1) Gillums Ridge Road (Rt. 787), from Rt. 682 to Rt. 708, and 2) Blufton Road (Rt. 672), from Rt. 810 to the end of state maintenance. These projects will be removed from both documents.

County's Priority List of Secondary Road Improvements (Priority List)

Many of the transportation projects on the County's Priority List are derived from the recommendations of the County's Comprehensive Plan and the Metropolitan Planning Organization's (MPO) Long Range Transportation Plan (LRTP). The Comprehensive Plan and the LRTP are currently in the process of being reviewed and updated by the Board of Supervisors and the MPO, respectively; therefore staff does not propose any changes be made to the Priority List this year. In consideration of the anticipated completion of these plan updates in the next year as well as the current status of funding for the SSYP, staff suggests a more comprehensive review of this Priority List and other transportation priorities should be undertaken next year.

VDOT staff has reviewed the Priority List's Regular Road Paving Project list to determine if any of the listed projects are now eligible for the Rural Rustic Road Program (RRRP). Because RRRP paving is of a lower scale than Regular Road paving and does not involve right-of-way donation, those projects cost less and more of those projects can be undertaken with available funds. VDOT staff has found that 11 of the 29 listed Regular Road Paving projects are now eligible for RRR paving (and staff has noted those projects on page B-2 of Attachment A). However, because available SSYP funds are already completely obligated as noted above, none of those projects can be undertaken in the FY15-20 SSYP. Therefore, staff proposes that all RRR eligible projects be moved to the RRR Paving Project List in conjunction with the comprehensive review of the County' Priority List next year.

Public Requests

Staff has received two (2) requests for new road construction improvements. Other requests received over the year have been for roads already listed on the County's Priority List of Road Improvements or were associated with primary roads. The public requests are:

- Midway Road (Rt. 688) — To pave the section of road from Burches Creek Road to Patterson Mill Road, which carries 160 VPD. The section of Midway Road from Millers School Road to Burches Creek Road (310 VPD) is currently in the VDOT SSYP and scheduled for paving this year. It was first listed in the County priority list in 2001 based on citizen requests. Staff notes that complaints have been received in the past about speeding along this road. It is not uncommon for speeding issues to increase once a gravel road is paved. Should the Board decide to pave this new section of Midway Road, both sections should be paved at the same time.
- Ed Jones Road (Rt.728) — To pave the section of road from Rolling Road (Rt. 620) to Buck Island Road (Rt.729) due to damage caused by weather and logging operations. The most recent (2012) VDOT traffic count for this road is 20 VPD, which would make it ineligible for paving. However, it should be noted that VDOT recently made some repairs to this road.

The Six Year Secondary Road process establishes the County's priorities for the expenditure of State/VDOT secondary road construction funds and does not impact County funding.

Staff requests that the Board: 1) confirm the County's Priority List for Secondary Road Improvements (Attachment A) for public hearing, and 2) schedule a public hearing on this Priority List and VDOT's FY15-20 SSYP on June 11, 2014.

Ms. Dittmar reported that the Board would review the priority list for secondary road improvements, which was delayed from the Board's previous week's meeting. She thanked VDOT representatives for returning.

Mr. David Benish, Chief of Planning, addressed the Board, stating that this was the review of the Six-Year Secondary Road Plan. The purpose of the meeting was to provide comments on the County's priority list for secondary road improvements, which was used as the basis for VDOT's development and their ultimate adoption of the VDOT Six-Year Secondary System Construction Program. He said that staff will schedule a public hearing on the VDOT SSYP, which is slated for June 11, 2014. The Board's input will help VDOT finalize that Plan for adoption. Mr. Benish stated that each year, the Board has to adopt the Six-Year Improvement Plan, at which time the Board also takes a look at the County's priority list.

Mr. Benish reported that one of the major changes from last year's plan to this year's plan is the amount of funding assumed over the six-year period, which has seen a reduction in the estimated amount due to the revenues being lower than what was projected in the previous year. He said that there is less funding to deal with, and the staff report went through the totals – noting a reduction from \$8 million to just under \$4 million for the six-year period. Mr. Benish stated that with that circumstance, staff is not proposing to add any new projects but instead is focusing on completing those that are currently in the plan. He noted that the projects currently in the plan include bridge projects, which have federal funding, such as Black Cat Road, Dry Bridge, Broomley Road, Dick Woods Road, and Dickerson Road – and only Black Cat has secondary road funding on it. Mr. Benish said that Broomley is fully funded, with movement toward advertisement and construction. Dry Bridge is also fully funded and under construction. Mr. Benish noted that Black Cat is also close to being funded.

Mr. Benish stated that unpaved projects in the list include Pocket Lane, Midway Road, Keswick Road, Doctors Crossing, and Rio Mills Road. He said that three of those are rustic road projects, but Rio Mills is not eligible for rural rustic road paving. Mr. Benish stated that two projects in the current VDOT plan are now completed – Gillums Ridge Road and Bluffton Road.

Mr. Boyd asked if there was a separate set of funding for rural rustic roads, because it seemed that VDOT had dedicated it as a separate funding source before. Mr. Benish explained that there were two funding sources last year – secondary unpaved road funds, and the CTB unpaved road funds – which were not necessarily allocated specifically to rural rustic roads. Last year one of the funds was limited to projects that had a traffic counts of 200 vehicle trips or greater, and that cap has now been reduced to 50 or greater.

Mr. Boyd said that in looking at the cost of some of the rural rustic road costs, they will not fit in this budget by any means. Mr. Benish stated that there were two rural rustic projects done last year with three programmed this year for funding. He added that those are relatively inexpensive roadways when compared to non-rural rustic. He said that Rio Mills Road will require right-of-way dedication and a design standard that is greater than that for rural rustic roads, so it will be the more costly road to build.

Ms. Palmer asked what pot of money those funds come out of. Mr. Benish said that the regular State funds or "tele-fee funds" are available to the County. The County does not have any allocations for the secondary formula funds because the revenues are not high enough to meet the thresholds or for VDOT priorities for allocating that money. He reiterated that the only monies available to the County are the tele-fee funds and the CTB unpaved road funds for any project.

Mr. Boyd said that they are talking about \$500,000, which will not do much. Mr. Benish said that was correct, with each year amounting to a little over \$500,000 to about \$900,000 in the six year.

Ms. Mallek asked if the County's first priority is Rio Mills Road which would mean not being able to do anything for a long time. Mr. Benish stated that they have two priority lists, including a rural rustic road list for projects with the type of paving preferred, as it fits better into the rural character.

Ms. Mallek said that will not work for Rio Mills Road because of the weight of the trucks. Mr. Benish agreed that it would not qualify. The intent is to do most of the paving projects on the rural rustic road list, but they also have a priority list for those projects that are not eligible – with Rio Mills Road being the highest priority, as it is in the development area, connects development areas, is a parallel road to Route 29, and it has an active quarry with heavy truck traffic. Ms. Mallek said that due to the uncertainty of other state improvements in that block of projects, there needs to be some additional planning time to figure out if that prioritization should remain. She stated that Rio Mills is in rough shape, but she is not sure that it should be the first priority.

Mr. Benish said that it is the first priority on that list, and because of the funding requirement last year for 200 trips, this was one of the higher volume roadways. He reiterated that this restriction has now been lifted.

Ms. Mallek asked about the roads with no cost allocation. Ms. Benish explained that staff simply does not have a cost estimate for those yet.

Ms. Mallek asked how difficult it was to get that. Several years ago Shelton Mill was completely impassable because of the snow and the mud – and neither the gas truck nor the ambulance could access it for weeks and weeks. She said that there are a lot of projects on the list that would probably have better standing if the Board knew how much it would cost to do them. Mr. Benish stated that they can do cost estimates, but one of the things that the Board has attempted to do over time is maintain the relative priority of projects once entered onto the list, so they are not superseded by other projects. He emphasized that projects have slowly worked up the list, and projects that have come in later on the list have stayed as relative priorities.

Ms. Mallek noted that overriding safety issues would cause projects to leapfrog. Mr. Benish agreed, noting that Gillums Ridge Road took precedence because of the closure of Dry Bridge and the detour.

Mr. Benish reported that when Midway Road, from Miller School Road to Patterson Mill Lane, which is about one-half the section of the unpaved road, is ready to be paved or hard-surfaced, Ms. Palmer had requested paving the remaining section of that roadway. VDOT indicated it could be done much more cost efficiently so staff did a quick notification to the property owners along the segment to determine whether they were comfortable having the full section of the roadway to Burch's Creek paved, and there was consensus to do so. Mr. Benish noted that it would be more cost efficient to pave the whole section at one time while they are out there, so they are proposing that Midway Road be constructed to Route 689, Burch's Creek Road.

Ms. Palmer said that Mr. Joel Denunzio of VDOT had felt they could pave the rest of the road with the funds from the first half, so it wasn't taking out funds for any other project. There is an area where it gets washed out regularly. When they went out onsite, VDOT was already out there preparing for the surfacing of the first section.

Ms. Mallek said that when that was in the White Hall District, it was getting scraped all the time because of all the ups and downs.

Mr. Benish noted that there is an intermittent stream channel that regularly washes out, and that washed out the week they did the notification – after having had three days of rain.

Mr. Benish said that from the County priority list, the long-term projects far exceed what there is funding for. Staff is not recommending any major changes to the plan this year. Staff hopes to come back and revisit these priorities to take a bigger picture approach at looking at the improvements after the Board works on the Comp Plan and the long-range transportation plan gets adopted. Mr. Benish said

that there were public requests on two projects – Midway Road as just discussed, and Ed Jones Road, which is in the eastern part of the County just south of Route 53. The traffic volume on Ed Jones Road is below 50 trips per day so it is not eligible for paving. He stated that staff received a request recently on Old Green Mountain Road, which is half-paved, located south of Route 6 and connecting to Howardsville Turnpike.

Ms. Palmer asked what the responsibility of the logging operation to take care of Ed Jones Road, in the event it has been damaged by a logging truck. Mr. Benish said that Mr. Jamie Glass of VDOT might be able to better explain that, and there are permits that they issue for logging operations – with some being broader permits for a larger area, setting an expectation and standard for access to logging sites. Through that permit, VDOT can enforce damage or undue wear and tear on the roadway. He stated that they just had a similar issue with a road located in the Scottsville District a few months ago in which it was rectified.

Ms. Mallek said that she wasn't sure how it turned out on Clark Road, because it was two feet deep with mud because of the logging trucks in the wintertime.

Mr. Benish said that it is always a good idea to contact VDOT if there is damage from a logging or commercial operation, as they do have some control over the entrance permit.

Ms. Palmer asked if the work done by VDOT on Ed Jones Road related to the logging and paid by the logging company. Mr. Benish said that the complaint was based on impacts from the logging operation, and this complaint was forwarded to VDOT.

Ms. Dittmar stated that she had brought the complaint to Mr. DeNunzio, who spoke to the men at the substation in that area – and they went out and looked at it that day. She said that the logging company had to pay for the rocks that came in, and had to scrape the road in order to provide an immediate fix for the people on that road.

Mr. Benish said that staff received a number of requests from the public for paving projects, such as Preddy Creek Road, but they are usually projects that have already been identified. He concluded his presentation, reiterating that this process is to provide direction to staff – particularly on the VDOT Six-Year Secondary Plan. Staff's recommendation is to move forward with the projects as proposed in both lists.

Mr. Boyd asked what happened to Bunker Hill Road. He took a ride with Mr. DeNunzio, who thought that it would qualify as a rural rustic road project. He said that the constituents said they have been on the list for 40 years, and keep getting taken off the list and put on the regular paving list.

Mr. Benish said that the County has VDOT go back to the lists periodically to make sure they are accurate, and he has not gone back to track how it is moved from one list to the other. Bunker Hill is the fourth highest priority on the regular road paving project list, and it was on the list of the ones that VDOT identified as rural rustic road eligible. He stated that staff would propose in the interim year to go back and re-mesh these lists because they want to keep them as priorities, and next year bring the rural rustic roads into the other list.

Mr. Boyd asked how a road like Bunker Hill would be addressed, as the people there have had a pretty rough time for about 60 years.

Mr. Benish stated that staff will look at the criteria used to rank projects – whether they are in the development areas or the rural areas as the highest priority, traffic counts, the category of roadway – either collector or local, and whether they have any particular service to agricultural industries. He said that his first observation is that traffic volume on that road is one of the highest ones of an unpaved road, so that is a factor that would likely place it high on the combined list.

Ms. Palmer asked Mr. Benish to comment on White Mountain Road, which says “not funded section between Route 635 and Route 636, and does not meet VDOT requirements.” Ms. Palmer said that she has been out there with Mr. DeNunzio and has talked to residents. They have been accused of paving the road 500 feet at a time – with some people on the road wanting it paved, and some people not wanting it paved. She noted that they are trying to take care of the washed out areas and some of the places they have paved into ditches.

Mr. Benish said that there is a lot of history with VDOT on that more so than the County. It is a road where there has not been unanimity about whether to pave it. Over the years VDOT has tried to address those more significant issues with “maintenance paving,” so the segments get paved. He said that from his understanding, Mr. DeNunzio felt that they could pave that particular location if there was a decision to pave the larger segment so they would not be leaving little unpaved sections as they go from paved to unpaved. Mr. Benish stated that the notification process that they do for road paving is to get consensus from the community and bring it back to the Board, but this has been a piecemeal approach to address those worst areas. He added that as the projects move through the list and before they go to paving, staff notifies property owners in the area to make sure they are aware that the paving is taking place and if there is not consensus, staff brings it back to the Board to discuss.

Ms. McKeel said that they have five structurally deficient and fracture critical bridges in Albemarle County, and two are on the repair or replacement list – and she is interested in learning the process for how those are determined, as well as how they roll into the plan.

Mr. Benish stated that VDOT is the primary decision-maker as to need and deficiency with bridges, and they typically advise as to which projects need to be funded and completed. Some of the roads may be primary roads. He said that the roads that get funded are primarily dictated by VDOT. If the County has roads of particular interest, the opportunity of this process is for it to identify those important roads – such as Broomley, Black Cat and Dry Bridge – but VDOT is the primary one that schedules based on need and demand and available federal funds. VDOT controls the decision-making because of the federal funds that are allocated statewide for bridges.

Ms. McKeel said that Black Cat Road over the Buckingham Branch Railway and Dickerson Road over the North Fork Rivanna are the two they have right now. Mr. Benish responded that is correct. Ms. McKeel noted that Plunkett Road over the Lynch River, Blenheim Road over the Hardware River, and Secretary Sand over the Hardware River are the others. Mr. Benish said although he is not familiar with those projects, they are probably being done with federal funds. He added that many of those projects are small spans or old culverts that are being replaced, which is done fairly regularly. Mr. Benish said the lists should be consistent so he will make sure those got added to the list.

Ms. McKeel said that she has a ride-along scheduled with Mr. DeNunzio in a few weeks so she will get the list to staff. Mr. Benish pointed out that if they are defined as “critical” by VDOT, they will be done regardless of the County’s positions.

Ms. Mallek said that it will take a while before VDOT might get to it. Dickerson Road, for example, was going to cost \$15 million, and they were so far away from being able to accrue that money that they took it off and put on the other one’s they were trying to finish. It is an 18-ton bridge that currently only has a three-ton capacity, which means no fire vehicles, tractor trailers, etc. can cross it, making the whole parallel road system defunct.

Mr. Benish said that bridge funds do not have to be in the secondary plan.

Mr. Boyd said that VDOT lowered the tonnage on Black Cat as well, but trucks are still going across it, according to people in that area.

Ms. Mallek said that is why Advance Mills Bridge was impassable for about two and a half years, because a concrete truck went across it, even though it had a sign that said “three-ton limit.”

Ms. McKeel said it is also an issue to leave signage on the bridge for a long time.

Ms. Palmer asked if the Board needs to vote on the road plan.

Mr. Benish said that consensus on staff’s recommendations are sufficient, and the staff can update the list based on available funds.

Mr. Boyd asked if the Board needs to vote to establish the public hearing.

Mr. Sheffield then **moved** to set the public hearing on the County’s Priority List for Secondary Road and VDOT’s FY 15-20 SSYP Improvements for June 11, 2014. Ms. Palmer **seconded** the motion.

Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Palmer, Mr. Sheffield, Mr. Boyd, Ms. Dittmar, Ms. Mallek and Ms. McKeel.

NAYS: None.

Ms. Mallek commented that Black Cat is the companion project for the road petitions with Earlysville Road, and she thinks that in early summer the staff should finish what they need to do to take the petition to the Commonwealth Transportation Board for truck prohibition.

Mr. Davis said that the process is a VDOT process, and requires notice being given and a public hearing held by the Board – along with a transcript from that public hearing, and a resolution adopted by the Board, which would request the CTB to take action on whether or not to limit the through-truck traffic. He explained that the next step is to organize notice, public hearing and adoption of the resolution.

Ms. Mallek said that Mr. Jack Kelsey has had the petitions for a long time, and the residents have just been waiting to see what the residents of Black Cat Bridge wanted to do, so they can now begin the procedural items over the next few months.

Mr. Benish stated that regarding the Midway Road project, to do a rural rustic road the Board needs to adopt a resolution that it is a rural rustic road, as one of the steps in order to use that program for paving. He said that the Board adopted a resolution in November, but it was only for the one-half-section of roadway. This needs to do this on a timely basis because VDOT could pave the road within

the next week or two. Mr. Benish said that he has the resolution with the change in length to extend Midway Road to Burch's Creek Road, and asked for an action on the update.

Ms. Palmer **moved** to adopt the resolution to qualify Midway Road from Burch's Creek Road to Miller School Road to designate it as a rural rustic road. Ms. Mallek **seconded** the motion.

Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Palmer, Mr. Sheffield, Mr. Boyd, Ms. Dittmar, Ms. Mallek and Ms. McKeel.

NAYS: None.

(**Note:** The resolution as adopted is set out in full below).

RESOLUTION

WHEREAS, Section 33.1-70.1 of the *Code of Virginia*, permits the hard surfacing of certain unpaved roads deemed to qualify for designation as a Rural Rustic Road; and

WHEREAS, any such road must be located in a low-density development area and have no more than 1,500 vehicles per day; and

WHEREAS, the Board of Supervisors of Albemarle County, Virginia desires to consider whether Route 688, Midway Road, From: Route 689 Burch's Creek Road, To: Route 635, Miller School Road, should be designated a Rural Rustic Road; and

WHEREAS, the Board is unaware of pending development that will significantly affect the existing traffic on this road; and

WHEREAS, the Board believes that this road should be so designated due to its qualifying characteristics; and

WHEREAS, this road is in the Board's Six-Year Plan for improvements to the Secondary System of State Highways.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby designates this road a Rural Rustic Road, and requests that the Residency Administrator for the Virginia Department of Transportation concur in this designation; and

BE IT FURTHER RESOLVED, that the Board requests that this road be hard surfaced and, to the fullest extent prudent, be improved within the existing right-of-way and ditch-lines to preserve as much as possible the adjacent trees, vegetation, side slopes, and rural rustic character along the road in their current state; and

FURTHER RESOLVED, that a certified copy of this resolution be forwarded to the Virginia Department of Transportation Residency Administrator.

Agenda Item No. 5. FY 15 Budget, Update on use of requested one-time funds from School Board.

Ms. Dittmar stated that the following list of potential one-time funding options was received from the School Board:

Priority	Item	Amount
1.2, 5.2	Professional Development	\$300,000
1.1,1.3, 5.3	Design 2015 (Innovation Team)	\$550,000
1.1, 5.2	Learning Resources	\$150,000
5.2	Paperless Evaluation	\$45,000
4.2, 5.2	Interpreter Services	\$50,000
4.2, 5.1	Safe Schools	\$190,000
	Total	\$1,285,000

Professional Development - These funds would be used for CPR training, classified training, AVID training, elementary world language training, new teacher, and digital integration training during the summer and the school year impacting all teachers and classified (Strategic Plan Objective 1.2.) These funds have been reduced from \$200 to \$50 per teacher as a result of recessionary years' reductions (Strategic Plan Objective 1.1 and 5.2) impacting 1100 teachers.

Design 2015 – These funds would be used for phase I and II of the Western High School Environmental Studies Academy (approximately \$400,000 to renovate science labs and add an outdoor greenhouse/environmental classroom) as well as continuation of work to address classroom and library modernization priorities impacting multiple schools in each feeder pattern (Strategic Plan Objective 1.3 and 5.3)

Learning Resources – These funds would be used for both new and replacement contemporary learning resources that support PK-12 curriculum and instruction in all 26 schools. Funding for these resources has been substantially reduced over the past several years from \$1 million, a target for this account in 2002 to \$500,000 today as a result of recessionary years' reductions (Strategic Plan Objective 1.1 and 5.2) These include literacy, math, science, social studies, language arts, fine arts, career/technical education, English as a Second Language, World Languages and physical education and health resources.

Paperless Evaluation – These funds would be used to build an online system supporting the current evaluation and accountability processes replacing the current paper-based filing system. This will yield process efficiencies (Strategic Plan Objective 5.2) in both staff time and resources associated with paper-based evaluation.

Interpreter Services – These funds would be used to provide interpreter resources to schools which are mandated by law. The absence of these funds means that schools, the special education and ESOL departments must use other budget accounts to cover these costs, redirecting funds from student resources (Strategic Plan Objective 4.2 and 5.2)

Safe Schools – These funds would be used to provide specialized middle school mental health services for one additional year after the expiration of the grant in June 2014 while the school system continues to pursue other funding opportunities. (Strategic Plan Objective 4.2 and 5.1)

Mr. Ned Gallaway, Chairman of the School Board, addressed the Board, stating that at their last meeting they had a discussion about the one-time funding request from the School Board. There is a list of items for funding – with some of the items the same as on previous lists reviewed, with one item changed and one item removed. Referencing the above list, he said that the priorities align with the School Board's strategic plan and the numbering is based on where in the strategic plan those would meet, but the items are not in priority order. Mr. Gallaway stated that the School Board reaffirmed its commitment to use of one-time monies for one-time expenses. In the Design 2015 line, the total amount is \$550,000, including the \$125,000 funded in the Schools' approved budget, which would be repurposed if the one-time monies came over. He said that the only difference would be that the Design 2015 went up to \$550,000, which would mean the School Board could do Phase I and Phase II all in one year. The School Board funded the lab upgrades for Western Albemarle in its approved budget. If this list is funded, they will be able to do an outdoor greenhouse and attached classroom as part of the academy work in year two. He said that they would also continue the upgrades to classrooms and media spaces, which had been cut.

Ms. Mallek asked if the \$400,000 in the narrative is for Phase I and Phase II of the Science Academy, and the greenhouse is separate. Mr. Gallaway said that was correct. The piece that was funded allows them to do some lab upgrades by the time the next school year starts – and that is funded at \$125,000 regardless of what the Board decides to do. He stated that since they had the conversation of one-time money, that could be used so they could do both phases, and gets the third academy up and running at the high school.

Ms. McKeel asked if the academy starts with the coming school year. Mr. Gallaway responded that was correct for students who are registering in the spring.

Ms. Dittmar asked the cost of the outdoor classroom and the greenhouse portion. Mr. Gallaway said that the piece that was funded was \$125,000, so the other cost is \$275,000.

Ms. Dittmar said that in their description, it's paired with "continuation of work to address classroom and library modernization." Mr. Gallaway said that the initial request was \$250,000 for Phase I and ongoing media upgrades and classroom renovations. He stated that adding Phase II takes the \$250,000 up to the \$550,000 to get everything in.

Ms. Mallek stated that she is trying to understand what is needed for the academy. Mr. Gallaway said that it is \$400,000. Ms. Mallek said that they already have \$125,000 in the budget, so the remainder is \$275,000 which is a really big greenhouse. Mr. Gallaway stated that the important part of that is the attached classroom for class work, and the lab which serves as the greenhouse. There is more than just one type of facility; it is a true educational setup.

Ms. Mallek said that when other wonderful ideas like this have come forward, she has been scolded for circumventing the CIP process, which is a problem she would have to face.

Mr. Sheffield asked Ms. Mallek to clarify what she meant. Ms. Mallek stated that this is a CIP project, and other classrooms and learning spaces have been working their way through the CIP for a number of years. This element is new.

Ms. McKeel said that there have been occasions when the School Division has paid for projects like this before that have not gone through the CIP, in an effort to just get them done, so the children have the advantage of it rather than waiting for it to go through the long process.

Ms. Mallek said that is why she wants to separate it from the extra \$200,000 for common space renovations, because some of that stayed in the Schools' budget.

Mr. Gallaway said that the School Board cut \$125,000 out of Design 2015. If the full \$550,000 was funded, it would allow them to restore the cut they just made and free up \$125,000 to be repurposed in recurring expenses, and then do Phase II of the lab.

Ms. Palmer asked how many students would be enrolled in the environmental sciences program next year. Mr. Gallaway said that it is typically between 30-50 students in the first year because you are just doing the incoming class, then it grows to two classes, then three. He said that MESA was originally 50 students, but it has grown considerably.

Ms. Dittmar asked Mr. Gallaway to speak about the Safe Schools Program. Mr. Gallaway explained that the Safe School Healthy Students grant has provided a variety of service for initiatives such as reduced bullying, improving school climate, smoking/drinking, teen pregnancy, etc. He said that the School Board looked at which pieces it wanted to continue when the grant ended, and wanted to provide some nursing and Region Ten counselor positions at the middle school in particular.

Ms. Dittmar asked about the success of that program during the grant period. Mr. Gallaway said that school survey data shows that bullying incidents have been reduced, reported usage of substances has declined, smoking has declined, and school climate in general has improved. He noted that he has firm data that he can provide to them.

Ms. Dittmar asked why the School Board chose not to continue that program, versus other programs they kept in. Mr. Gallaway said that it was expense reasons. The grant covered both County and City schools – and they were able to get another year out of the grant because they were deemed to have used the money wisely. He stated that they did not include things like the nursing positions that would have been funded in the initial initiatives, because that is a recurring expense. This is basically increasing their availability to middle schools.

Ms. Mallek commented that curriculum-wise, some of these topics are covered in health class or P.E. class. Mr. Gallaway said that some of the topics are covered there, and this would be an expansion, with a particular focus on just those items.

Ms. Mallek asked if each school now has a nurse on staff. Mr. Gallaway said that not all the nurses are full-time; it depends on the size of the school.

Ms. McKeel added that some of the PTOs at schools are putting money in to pick up the cost difference.

Ms. Mallek asked if there are counselors for all of the schools. Mr. Gallaway said that they are also assigned based on the size of the school. In some cases the Principal's building-level budget or the PTO are able to pick up the remainder.

Ms. McKeel said that she would like for the Board to provide the \$1.285 million in one-time funds to the School Division this year.

Mr. Sheffield asked if Ms. Lori Allshouse could explain the impact of that.

Mr. Foley said that the Board members have information about the fund balance, except the number that the schools have requested is slightly less.

Ms. Palmer stated that she thought the County's audited number was significantly less than that.

Ms. McKeel said that her understanding is that the additional revenue generated from the tax increase realized from June through December could provide this extra money, and asked if that could be allocated to the schools – as money that would normally roll into the CIP.

Mr. Foley said that the simplest approach and staff's recommendation would be to take it from the FY13 audited fund balance, which was designated as \$2.5 million to go to the CIP.

Ms. McKeel **moved** that the Board take \$1,285,000 from the audited FY13 fund balance, and provide it to the School Division as money for one-time expenses. Mr. Sheffield **seconded** the motion.

Mr. Boyd said that they would basically be cutting down their reserves to about \$650,000 based on unaudited funds.

Mr. Foley said the Board would not actually be doing that, because \$2.5 million is designated to go to the CIP and is not part of this calculation. If the Board takes money from the year-end projected balance, it would be the lower amount, but if they take it from what would go to the CIP, it won't affect that calculation although it would reduce funds going to the CIP.

Mr. Boyd stated that it would have an impact on the CIP.

Mr. Foley said that it would reduce the transfer amount to the CIP by \$1,285,000, and they would have to reduce that much from the planned CIP that the Board adopted.

Mr. Boyd asked if the Board would have to adjust some of those projects. Mr. Foley said the Board would have to adjust those projects or live with less of an end of the five-year fund balance in the CIP.

Ms. McKeel stated that it is a five-year CIP that is very fluid, and the Board adjusts it every year.

Ms. Mallek and Mr. Boyd said that is not really the case.

Ms. McKeel said that the Board looks at it every year and readjusts it.

Ms. Palmer stated that the Board has only been doing maintenance projects for the last five or six years from the CIP, and many would say they have a "backlog" of projects.

Ms. McKeel agreed that is the situation.

Ms. Palmer said that when they take money out of the CIP, they are extending other projects onto other years – and some of those are school projects.

Ms. Mallek said that the Board added the new floor for the gym at the last minute this year, and that was a great investment.

Mr. Sheffield asked for a reminder as to how the CIP funds were allocated. Mr. Foley explained that the County's year-end undesignated fund balance goes to the CIP to help fund it, and does not go to either schools or local government, just to resources to help pay for whatever projects are decided on. He said that the Schools' Fund balance policy says that after they keep 2%, anything left would go over to support the CIP and would not go specifically for schools or local government. Mr. Foley stated that based on their circumstances this year, there won't be any money going to the CIP from schools because they do not anticipate any excess fund balance over 2%. In fact, the schools expect almost no excess fund balance. He said that the amount that is already designated based on FY13 is the \$2.5 million, so that would be less resources to fund the projects that are in the adopted CIP from the last time the Board adopted the budget a few weeks ago.

Mr. Boyd asked what the impact would be of taking the \$1.285 million out of the CIP, because they try to keep the CIP fund balance at \$2 million and over the five years it seems to be awfully close to that, and even below in the out years. Mr. Foley explained that the fund balance goal that they have set for the end of the five years is a minimum of \$2 million, and they have a larger fund balance in the CIP than that amount – but it is there in anticipation of the second phase of the court project. This is a CIP that has a three-cent tax increase just to fund what is in there now, which is 60% of what was requested. He stated that there is a stronger fund balance than the \$2 million goal, but it has tax increases in it and anticipates a big impact in year six for the court project.

Mr. Boyd said that without seeing those numbers, it is hard to see what the impact of this school transfer would be. He recalls that the fund balance was right around \$2 million.

Ms. Mallek said that she had a similar recollection, with it dropping below that one year.

Mr. Foley said that staff would have to take a look at that for a year by year assessment, but at the end of five years the fund balance will be stronger than \$2 million.

Mr. Boyd noted that there is another two-cent tax increase built into this CIP model.

Mr. Trevor Henry, Director of the Office of Facilities Development, stated that the recommended CIP is a five-year plan. At the end of the five years the goal is to have at least \$2 million in reserve. The recommendation has \$3.7 million at the end of the five years. He said that this also assumes a two-cent tax increase in year two and another cent in year four, and that is the model that went through the system and came before the Board, so when they go through the CIP process they will look at project changes, differences in fund balance coming in that is based on the assumptions – but the plan currently shows that larger balance at the end.

Mr. Foley said that the fund balance would decrease by \$1.285 million, or to maintain the larger balance, they could go in and cut projects.

Mr. Boyd stated that he was just trying to demonstrate that there would be an impact on the CIP.

Ms. Mallek said that she cannot vote for the larger motion, but because of the extra academy being started, she is inclined to vote for the bricks and mortar portion of the academy building and greenhouse as that is essentially a CIP-type project.

Ms. Palmer stated that the Board cannot really dictate to the schools how they spend the extra money, and they have presented the choices as to what they may spend the money on.

Ms. Mallek said that without that commitment, she cannot vote for it.

Mr. Foley stated that the Board could support that project in the CIP and add it to the CIP if it wanted to designate it for that specific purpose, and it would achieve the same result.

Ms. Dittmar clarified that the motion was for \$1,285,000 to come out of the 2013 allocation of CIP funds to this.

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

AYES: Mr. Sheffield and Ms. McKeel.

NAYS: Ms. Palmer, Mr. Boyd, Ms. Dittmar and Ms. Mallek.

Mr. Foley stated that Ms. Allshouse has calculated that the \$2.5 million to transfer to the CIP is not in the ending year balance yet, based on the timing of the budget being put together, finalizing the audit, and other details. He said that another \$2.5 million would be added to the CIP in addition to that total, over and above the projected \$3.7 million, so that could be seen as a way to reduce the tax increase.

Ms. Palmer asked if that was an audited number. Mr. Foley responded that the \$2.5 million is audited.

Ms. McKeel asked if she could call for another vote with that new information.

Mr. Foley clarified that the CIP in the adopted budget from several weeks ago shows an ending year balance at the end of five years of approximately \$3.7 million. Based upon the FY13 audit, they would anticipate an additional \$2.5 million to be added to the CIP – which therefore will show up in that end of five-year balance: \$2.5 million plus \$3.7 million, so it would be much stronger than what is in the adopted CIP.

Ms. Palmer said they could have the option of using that money to catch up on a lot of CIP projects.

Ms. Mallek said it could also allow them to have a one-penny tax rate instead of two.

Mr. Foley stated that both of those things were important to consider, as there is a CIP that is unfunded by 40% in terms of requests, and there are three pennies added to the tax rate over the five years – and those are all choices the Board has to make.

Ms. McKeel **moved** to again approve moving \$1,285,000 from the audited FY13 fund balance to the School Division as one-time money for one-time expenses. Mr. Sheffield **seconded** the motion.

Ms. Dittmar asked Mr. Gallaway for confirmation that the schools does not want the Board to look at individual projects to see which are attractive, but instead view it as an “all or none” proposition.

Mr. Gallaway stated that with the money that comes over, regardless of the amount, the School Board would have to decide the purpose and how it would be used. He said that they are very careful about selecting things that are important to their strategic plan, and 75% of their strategic plan was impacted by their budget decision. Mr. Gallaway stated that the commitment from the schools is that it would be spent on one-time expenditures, but the School Board has not voted on projects to say what they would do first, second and third.

Ms. Dittmar said that if the Board supported something like Safe Schools at a level of \$190,000, it would not necessarily mean that would be funded, as it would be up to the School Board.

Mr. Gallaway stated that it would depend on how the School Board voted on priorities, similarly to how the Board votes.

Mr. Davis said that the only control the Board has over school spending is appropriation by categories, so if they appropriated it to capital, the School Board would have to approve a project within the capital category in order to spend that money. He stated that the categories are quite broad, and County staff has not done any analysis on the school side as to where they would fit into specific categories, but part of the appropriation request would be an additional request by the School Board as to

which category they would want the money to be appropriated to – and that would be a decision by the Board of Supervisors.

Ms. Mallek asked if the Board is legally allowed to appropriate some money by category, since it approved a lump sum budget. Mr. Foley stated that the Board formally approved it by category. The Board adopted a budget, worked with the schools, and when the appropriation came before them it was divided in categories at that time.

Mr. Davis said that this year's appropriation has not yet occurred and is scheduled for June 4. The budget was adopted but the appropriation would be by category and that is a work in progress between the staffs as to defining amounts in categories, which will ultimately be subject to Board approval.

Ms. McKeel stated that the Board could go in and approve a lower amount although no strings would be attached to that approval.

Mr. Foley said that staff would need to know if it is a lump sum, or a categorical allocation.

Ms. Mallek said she would like to know more about allocating it as a capital project amount for bricks and mortar, which is only one from the schools' list.

Mr. Foley stated that if the Board is going to provide support for a particular project that is CIP-related, staff suggests that it go into the CIP. That is independent of the categorical appropriations, as they would just move it into the CIP, which is how all of those projects are funded.

Ms. Palmer said that in the fall, it would be finalized in the CIP, and the Board would vote to move it to the top of the list.

Mr. Davis explained that the School Board is requesting that it be done for this fiscal year, and how Albemarle does the CIP is a combined school/County fund, so there is not an appropriated CIP amount for the schools. The money could be appropriated to the CIP for this year, and the CIP would be amended for FY15 to include this specific project. Those funds would then be available to do the Design 2015 improvements as a CIP project.

Mr. Foley said that the schools are requesting that it be approved now, not put through the CIP process.

Ms. McKeel and Ms. Mallek noted that they would be wanting to build this summer, so it would be available for students in the fall.

Ms. Palmer said that she thinks all of these projects are wonderful. It would be hard for her to pick one over another and, as far as she is concerned, that is up to the School Board to decide. She stated that her concern is that in looking at the CIP, there are some bricks and mortar projects for the schools that serve a lot more children and are really important – so when the Board pulls that money for one thing, they are taking it away from another.

There being no other discussion, roll was then called, and the motion **failed** by the following recorded vote:

AYES: Mr. Sheffield and Ms. McKeel.

NAYS: Ms. Palmer, Mr. Boyd, Ms. Dittmar and Ms. Mallek.

Ms. Palmer said she is supportive of appropriating a smaller amount than the \$1.285 million. She has no specific reason for the amount. She then **moved** for an appropriation of \$500,000 in one-time money to the School Division.

Ms. McKeel suggested \$550,000, which would get this project done.

Ms. Mallek said she cannot support any of the "soft" inside-the-building items.

Ms. Dittmar stated that this does not get anything done because this Board does not know where the money is going. This is a wonderful discussion for a meeting of the two Boards, because they are now post-appropriation. They have finished the budget. The schools would like more money from other pots of money aside from the formula and the additional already given to them. She said that it is time for the School Board to give the Board permission to figure out where they would like to put more money, just as they did with Bright Stars – and that is the post-allocation period that they are in. Ms. Dittmar stated that she understands they have a full School Board to work with, but they need to figure out a way to work more closely on specific items. There are some things on the list that she really likes. Ms. Dittmar added that she cannot go along with this if it's unknown as to where the funds are going.

Ms. McKeel **seconded** the motion.

Mr. Davis said that the intent of the motion is to amend the School Board budget by \$550,000, and the appropriation would follow that – now scheduled for June 4. If the School Board's budget were to increase with one-time funds, the appropriation would be subject to Board approval by category.

Ms. Palmer noted that the categories are extremely broad.

Ms. Mallek said that her discouragement is that even putting it in capital, there is no guarantee it would go to there.

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

AYES: Ms. Palmer, Mr. Sheffield and Ms. McKeel.

NAYS: Mr. Boyd, Ms. Dittmar and Ms. Mallek.

Mr. Foley said that staff is in the process of developing the agendas for June 4 and 11, and asked if there is a desire to add this to their joint discussion with the School Board.

Ms. Dittmar stated that she would like to talk about what issues they will cover at their retreat, and also how to start working immediately on an improved relationship between the two boards.

Mr. Foley said that the joint meeting on June 11 is for discussion of the health and dental plans. He would suggest that they also discuss their joint retreat as a second topic, to include a conversation about the desired purpose and outcomes. He stated that the discussion of use of one-time money would not be a separate topic.

Board members concurred.

Recess. The Board recessed their meeting at 5:08 p.m., and reconvened at 5:17 p.m.

Agenda Item No. 6. **Work Session:** CPA-2013-01. Comprehensive Plan Update/Amendment, to begin with public comments and possible Board direction.

Ms. Dittmar reported that, because of a decision made the previous week about not splitting particular sections of the Comp Plan into two different meetings, the Board would not be discussing the Natural Resources section tonight – however, if people were present because of that section and couldn't attend the next meeting when that item would be discussed, they could speak on that subject as all comments would be captured.

Mr. Kirk Bowers addressed the Board, stating that he was a resident of the Rivanna District and was before them to speak for the Sierra Club. He reported that the Charlottesville Center for Peace and Justice was also observing. Mr. Bowers said the Sierra Club would like to see a very environmentally sensitive Comp Plan for future use, and believes that current residents of Albemarle County have a responsibility to protect the resources needed in order for future generations to live comfortably in this community. Mr. Bowers stated that a commitment to sustainability should be an important component of the County's Comp Plan and, just in the last month, the Sierra Club has received several reports – one from the Interplanetary Climate Commission and one from the federal government – outlining the impending disaster faced from climate change. He said there is no further need to discuss this issue any further, because they are way behind in getting things done to correct the situation and, just yesterday, they received news that the Antarctic ice shelves are collapsing and breaking apart with icebergs as big as Manhattan. Mr. Bowers said the Sierra Club asks the Board to please keep this in mind, as future generations will be faced with tough times, with degree increases of at least three degrees Fahrenheit by the end of the century and a potential 13-foot increase in ocean elevations.

Mr. Tom Olivier addressed the Board, stating that last week he had asked that the Board to include a commitment to sustainability in the Comp Plan vision statement, and he was dismayed that, in subsequent discussion, the Board pointedly avoided the use of the word "sustainability" in the vision statement – and instead, directed staff to use the term "stewardship of resources." Mr. Olivier said sustainability requires protection of the resources that support us, so stewardship is part of sustainability, but it also requires that together they live within the limits of natural resources so that future generations can enjoy good lives. He stated that sustainability is a demanding but necessary goal for the community. Mr. Olivier said, in the 1990s, he served as one of the County's representatives on the Thomas Jefferson Sustainability Council, and, even then, residents of the region recognized the importance of pursuing sustainability. He said representatives of regional localities met for many weekend afternoons over years to hash out requirements for accomplishing sustainability for the region, and council debates were often "long and spirited," with their best-known product being the Sustainability Accords. He said Accord 2 states: "Strive for a size and distribution of human population that will preserve vital resources of the region for future generations." Mr. Olivier stated that the day the new Comp Plan is adopted will be a dismal one if the new plan distances the County from earlier efforts to become sustainable, and it will be a disappointing day if the planning process still doesn't examine whether population is of a size and distribution compatible with protection of vital resources. He asked the Board to proudly affirm the

County's commitment to sustainability, and make support for sustainability a pervasive element of the plan. Regarding growth management, he said the Natural Heritage Committee had written to the Board noting that the current growth management policy does not protect the County's natural resources. He thanked the Board for its consideration.

Mr. Charles Battig addressed the Board, stating that he didn't understand the comment about the "Interplanetary Commission," and perhaps the speaker meant the "Intergovernmental Panel on Climate Change." Mr. Battig stated that the ice sheet breakaway was "so bogus" that even the *New York Times* had an article which talked about a computer model prediction that this was 800 to 1,000 years in the future, and the National Climate Assessment Report has also been debunked. He said "sustainability" has never been clearly defined, and the definition they have built in allows them to do anything they want to anyone in the County regarding their property – and can be used to destroy private property rights. Mr. Battig said, when the Sierra Club was founded by John Muir, there was a big debate between "conserve" and "preserve," and quoted Peter Carreras of The Nature Conservancy as stating, "The trouble for conservation is that the data simply do not support the idea of a fragile nature at risk of collapse. Ecologists now know that the disappearance of one species does not necessarily lead to the extinction of any others, much less all others in the same ecosystem." He stated that the Board was behind the times, using dogma and not the current science. Mr. Battig said the "air quality" section of the Comp Plan was also problematic, because it focuses on one day of poor air quality over a two-year period that was deemed "unhealthy for sensitive groups." He stated that the Smart Growth village model had also been debunked by the American Planning Association, and the current planning policies for land use and transport have virtually no impact on major long-term increases in resource and energy consumption.

Ms. Carole Thorpe addressed the Board, commending them for taking a chapter by chapter review and stating that her concern is that the Sustainability Accords written in 1998 and reviewed in 2007 were not reviewed before they were sent to HUD as the basis for what was then the Comprehensive Plan of the County. Ms. Thorpe said it is the accords with which she has the greatest problem, and stated that the accords comprise a 17-page document as found on the TJPDC website, covering a variety of things including an objective to maintain a certain size and composition of the County population – using factors such as age, race, ethnicity, income and personal wealth, education and employment status. She stated that some want the Sustainability Accords taken out altogether, others want them revised, and it's unfortunate that the accords weren't considered when the County applied for the grant. Ms. Thorpe said the Board did not need to include the Sustainability Accords now as the basis of the current Comp Plan and, if it decides to do so, she would encourage the Board to have a public hearing on the accords themselves to find out if the 16-year-old document reflects the current view of the people in the County.

Mr. Travis Pietila of the Southern Environmental Law Center addressed the Board, and expressed his appreciation for the opportunity to comment and also for staff's attachment of the SELC's comments on sustainability to the staff report. Mr. Pietila said the SELC is concerned that the draft includes no clear and explicit commitment to environmental sustainability, and it seems that efforts to vilify this concept and associated terminology have clearly left their mark on this draft. He stated that its brief discussion of sustainability amounts to little more than a recap of past efforts to address this issue, and this discussion should start with a clear endorsement similar to the sustainability goals set forth in the current plan, that Albemarle seeks to "achieve a sustainable community that meets the needs of the present without compromising the ability of future generations to meet their own needs." He said, in addition, the SELC understands that specific objectives and strategies related to sustainability outlined in a separate section in the current Comp Plan have now been interwoven within each chapter of the draft, and this point should be clearly stated to reassure the reader that this change in presentation does not reflect a de-emphasis of this important issue by the County. Regarding the draft growth management chapter, he said a key benefit of the County's growth management policy which is missing is its important effect on reducing greenhouse gas emissions in the County, and the City and County Planning Commission's joint livability project goals include encouraging multi-modal transportation and focused development and redevelopment in urban areas that are supported by multi-modal transportation facilities that will help to reduce emissions of air pollutants and greenhouse gasses. He said effective growth management can go a long way toward reducing the distance residents have to drive to and from their homes, workplaces and shopping destinations – with an associated decrease in greenhouse gas emissions and other air pollutants. Mr. Pietila stated that this important connection should be addressed wherever the benefits of the County's growth management policy are mentioned in this chapter.

Mr. Neil Williamson of the Free Enterprise Forum addressed the Board, stating that he has a great deal of concern with the Natural Resources chapter of the Comp Plan and encouraged the Board to compare the "tone" in each chapter. Mr. Williamson said the language in the Economic Development chapter says "in balance with other chapters in the Comprehensive Plan," but that doesn't appear in any other chapter. He stated that the natural resources plan has a primer on habitat fragmentation, including documents and diagrams that would be most appropriate in a science book – which may not fit in a Comp Plan. Mr. Williamson said, if it does, then a better explanation of cash proffers belongs in the Comp Plan, as it currently has one paragraph in 3.8 and fails to mention anything about the Koontz decision and how any cash proffer must be directly tied to the impacts of the community. He stated said that they also fail to say that the County is behind in its funding of the CIP, and instead say that the County and new development have a "shared responsibility" to provide infrastructure. Mr. Williamson said there's a specific infrastructure that new development should be paying for, based upon the impacts of that

development, and he encouraged the Board to provide more details on what a cash proffer is, how it's calculated, and the restrictions imposed by the Koontz decision.

Mr. Jeff Werner addressed the Board, stating that, regardless of what one calls it, people in this community support "sustainability" and, despite the fact that supporters packed the room two years ago, the Cool Counties initiative was derailed by a few voices on the previous Board. Mr. Werner said he wanted to make sure the Board didn't lose sight of things in the growth area that were worth protecting, such as historic sites and natural systems, and not all of that focus should be placed on the rural areas.

Ms. Lee Catlin, Assistant to the County Executive for Community and Business Partnerships, addressed the Board, stating that she would address the Board on the community engagement approach to the Comp Plan update, which is a multi-month effort that would include a transparent and robust public process. Ms. Catlin said the Board had indicated it would like to have an archive of all public comments on the website so that everyone in the public can see those, and would like to have a real-time comment opportunity on the website. She stated that staff would be gathering all emails and documents that have come in to date and in the future related to the Comp Plan update, and would upload those to the website as PDF files. Ms. Catlin said recipient emails would be part of the record, and the documents would be verbatim as they come in without editing, which is laborious especially given the volume. She stated that staff is planning to update those documents to the website on a weekly basis and sort them into weekly folders, so the Board can keep up with those prior to each Comp Plan work session. Ms. Catlin said, if the Board receives emails that come to them individually or to just a few members, without staff copied on them, they would need to pass those along to staff so those can be added to the archive.

Ms. Dittmar asked if people understood that their emails were subject to FOIA and were a public record because, if Supervisors forward those along to staff to publish, people might be surprised.

Ms. Mallek said there is not a common understanding of how this works, because emails sent to Board members' home emails are also FOIA-able. She stated that her understanding from the previous conversation on this is, if people couldn't come to a meeting in person, there would be a place where comments could be received – but what Ms. Catlin is proposing leaves the Board open to getting double and triple comments from people.

Ms. Catlin stated that it is fine if the group agreed on that, but staff had heard there were some comments that weren't getting as much visibility as others, so the goal was to provide a place for people to keep up with the process and what was going on.

Mr. Boyd said he was the one who had brought this up, and what he had in mind was the ability for people to comment on the site, as they do with the 29 Solutions project site. He also stated that they should limit the number of characters in order to keep comments brief. Mr. Boyd said he would also like to eliminate receipt of chain emails.

Ms. Catlin stated that staff was in the process of launching a community engagement software platform called "Mind Mixer," which would allow citizens the opportunity to have comments on the site, which isn't possible today, and the Comp Plan would be the pilot for that. She said users would have to register so they cannot post anonymously, the system allows the comments to be aggregated and mapped – and it would need to be somewhat moderated, with no free speech edited but any obscenities removed.

Mr. Boyd said that is what he had in mind, adding that none of this precludes people from emailing Board members as they wish.

Ms. Mallek said she wouldn't support posting PDFs of emails, primarily because it's too much work for staff.

Ms. Dittmar asked when staff anticipated launching Mind Mixer. Ms. Catlin said they have a kickoff conference call with the company the following Monday, with the target launch for early June.

Ms. Mallek stated that there is time for people to send items in now.

Ms. Catlin said, as an interim fix, they could use the Facebook page for comments, but that is only available for people who have a Facebook login – so the better use of resources is to get Mind Mixer up as soon as possible, because it's a much more inclusive solution.

Mr. V. Wayne Cilimberg, Director of Planning, noted that, when Board members get comments and staff knows nothing about them, staff is not reflecting comments which are made in what is being reported back to the Board, even if those are group emails to the Board.

Ms. Dittmar suggested that Board emails be forwarded to a staff person such as Ms. Echols.

Ms. Elaine Echols, Principal Planner, said that would be good, because one of the challenges for staff is, if the Board is hearing things but staff isn't and then the Board asks questions about them at a meeting they feel very unprepared to respond.

Ms. Mallek said, as long as staff didn't feel the need to respond back to people, just use the information for their own purposes.

Ms. Catlin summarized that staff would be copied on the emails, but would not put an archive of that material on the website, and would focus on getting Mind Mixer up and running as soon as possible.

Mr. Boyd asked if they could limit the amount of words. Ms. Catlin said she would have to ask about that possibility.

Ms. Mallek stated that she was only interested in hearing from County residents, or landowners who own property in the County.

Ms. Catlin and Mr. Foley said they would have to see if it was possible to make those kinds of limitations. Ms. Catlin said they may want to make the conversation more broad depending on the topic.

Ms. Dittmar stated that she had received feedback from a constituent about having one public comment period before each topic.

Ms. Palmer said she had no problem with that.

Mr. Cilimberg stated that what staff decided to do after tonight is assign one chapter per work session.

Ms. Echols reported that she would provide the Comp Plan review process, similar to what they followed with the Planning Commission. She said the first parameter, as directed by the Board, was no splitting of chapters – one chapter per meeting. She said, when the Board provides its desired changes, staff wants to document those in the action memos, so that they can then turn around to the Board within a week what they heard the Board say in terms of direction. Ms. Echols stated that, as an attachment to the action memo, staff would address the direction received from the Board along with comments that might not have been consensus or direction as a group so, at a future date, they will know those changes were made. She said staff would like to have all changes, except for the vision, to be in a draft at the end of the work session process, so staff gives back the action memos and the Board looks at them to ensure that what's included accurately reflects Board intent. Ms. Echols stated that the vision rises to a higher level than the other changes the Board might be making, and staff would like to give that back to the Board in the attachment that documents last week's meeting. She said the next draft would come out soon, and staff would provide a red-line version at the end which would also contain non-substantive editing, so the Board will be able to see what has changed between the current version and what is being asked for.

Ms. Mallek asked if the Board could see the red-line draft version in little stages as it goes along. Ms. Echols said doing so would prolong the review time set aside and, while there's a value in doing that, there is a danger of rehashing everything at each session. She said, as long as staff has reflected what the Board has said appropriately and accurately in the action memos, staff feels that's the easiest way to get through the document.

Ms. Echols stated that she would bring the Comp Plan review schedule to the Board at its next break.

Ms. Echols said the work session on this night was intended for the Board to provide direction in response to the Commission's recommendations on the Background chapter and the Growth Management chapter, the first two chapters. She stated that the Planning Commission was trying to make for an easier-to-use document, and to reduce duplication of content in multiple chapters.

Ms. Echols reported that Chapter One talks about the context and purpose of the Comp Plan, the history, the relationship to the region, information on Planning and Coordination Council (PACC) with updated maps, reference documents with the three-party agreement, the livability project report, the regional sustainability and livability aspects of the livability project and a restatement of the sustainability accords, and the Planning Commission's list of recommended livability project goals. She stated that it includes information on Scottsville, existing and projected socioeconomic information, explanation of the components of the plan. Ms. Echols said the organization of the plan is the summary at the beginning, the plan itself, the appendices, and reference documents which provide additional information but are not policies adopted by the Board, as well as a list of acronyms.

Ms. Echols stated that the first topic for the Board's consideration is Area B, and she referenced the old Area B studies, noting that they are very outdated and stating that part of what this plan is doing is incorporating the Area B information into the new plan. She said, in the Comp Plan, there is a description of the role of PACC in regional planning and the updated Area A and B maps, and she mentioned that there would be a meeting the following day in which PACC would be asked to endorse the land use

recommendations which are in the plan. Ms. Echols presented the Area B map as approved by PACC, and what staff found is, in trying to use that map which came from the City's neighborhood services, staff found that the City's needs were different from the County's. She said the County determined that they needed to adapt the map to their property maps, so this is exactly the same map from a parcel basis, but looks different so the specific areas can be referenced.

Mr. Cilimberg stated that Area B is an area in which the University has interests but they are subject to the County's review, whereas Area A is literally UVA's property.

Ms. Palmer asked if the Board is supposed to provide input on the map, or accept it as it is. Ms. Echols said it is more of an acknowledgment in a prominent place that this exists because, if the Board didn't know about Area A and B and someone mentioned it, it wouldn't know what it was about. She stated that the Comprehensive Plan now identifies what and where Area A and B are, and the three entities that are part of PACC – so it's just setting up information in light of future recommendations which will require comment.

Ms. Mallek said it helps clarify where the boundary is, because a lot of people are unaware of it.

Ms. Echols reported that the Board had wanted to talk about was the Sustainability Accords, which were created in 1998 by the Regional Sustainability Council, and a booklet was created that was larger than the 15 accords. She explained that the 15 accords were adopted into the County's Comprehensive Plan, shortly after 1998, and that same recommendation has not been included in this Comp Plan draft. She said the Planning Commission felt that many of these principles were already in the Comp Plan's goals and strategies, and felt more comfortable referencing them as continuing to be important aspirational principles, but was not necessary to be provided as specific goals or objectives for the plan.

Mr. Cilimberg stated that, when the County recognized the Sustainability Accords in the Comp Plan, it was just the 15 accords – not the full sustainability accord document, which referred to a lot of measures and activities which the Board, at that time, wasn't willing to incorporate.

Ms. Echols said some groups and individuals have asked that the references to sustainability be augmented and strengthened, as well as acknowledging the Sustainability Accords; others have asked that they be deleted altogether because they don't feel they're relevant or important to Albemarle County at this juncture. She said the Planning Commission said they were okay with reflecting the words as aspirational principles, but not as separate goals, and they've made that recommendation as part of this plan. Ms. Echols stated that staff needs direction as to whether the Board agrees this is the right way to go, and there may be other discussion around the concept of sustainability which the Board may want to have. She suggested that staff stop the conversation to let the Board have that discussion and provide some direction.

Mr. Boyd stated that he was opposed to this before and is still opposed to it, because it's not relevant to use a 16-year-old document, as the community has changed over that time. He said, if they were going to incorporate it, they should set up a new sustainability conference and have people assigned to that. Mr. Boyd said item six in the sustainability accords talks about "appropriate scale," and stated that he didn't know what that means and who defines it.

Ms. Palmer said it says "promote the consideration of appropriate scale," which means that you try to decide what the appropriate scale is.

Mr. Boyd asked who does that – the community itself, or the process.

Ms. Mallek asked if that's what the Board does when it holds zoning discussions, determining whether things are compatible with a particular neighborhood. She said there are some pieces in the Comp Plan that are history, which are very important for people to read, and she isn't interested in wordsmithing items on Figure 3 because it is history.

Mr. Cilimberg stated that, ultimately, any of the particular accords and the way they are carried out or not are represented in the goals, objectives and strategies within the different chapters of the plan – such as the Growth Area part of the plan. He explained that how they determine the way that particular accord is carried out is in how they establish where the development area boundaries are, what land uses are within those boundaries, and the basic form and guidelines for how development would take place. Mr. Cilimberg said the Comp Plan is establishing guidance for them in decisions about rezonings.

Mr. Boyd said he didn't have a problem with including it in the document as long as it was in the appendices as a historical item, but he takes exception to statements such as those that ensure everybody's going to have a good job.

Ms. Mallek said that particular one is not in government's realm of responsibility or ability to fix, but it was part of history and it was a very diverse group that generated this. She added that it's a good introduction.

Ms. Palmer said the County is not going to be able to ensure that everyone has a job, but the Board just voted for an economic development department to try to make more jobs for people.

Mr. Boyd stated that he would vote to minimize county regulations to promote good job growth, but it's not the County's job to "create" jobs.

Ms. Dittmar said the Sustainability Accords were developed several years ago by a whole community group, and staff wants to include it as a historical document and wants it to be referenced as aspirational principles. She stated that, if it's going to be historical, then they should put in the box that the accords were developed by a group, and then list the year, and comment that they define aspirational principles as the following.

Mr. Boyd said it should be noted that those were developed by a group, and also in what year.

Ms. Echols said the Board may want to consider putting it in a reference document or appendix, but the reason those words were chosen is because the Commission didn't want to lose sight of the fact that those are good things, and they actually have a lot of strength which has affected the other goals the community has developed. She emphasized that they didn't want to say, "These are today's goals," so the Board could change the wording as to what they are in the text, or put them in a reference document – but, if those are put in the appendix, they have the strength of the plan.

Ms. Dittmar said what she was suggesting is that they pull it out and put it in italics in the gray box, to say where they come from as aspirational principles from that document.

Ms. Palmer stated that it had been suggested by SELC that they include at the beginning of the subsection on regional sustainability and livability: "Albemarle County strives to achieve a sustainable community that meets the needs of the present without compromising the ability of future generations to meet their own needs. Specific goals, objectives, strategies relating to sustainability and environmental stewardship are interwoven within each of the chapters of the Comprehensive Plan."

Mr. Cilimberg asked if that would be the introduction to the section in which they talk about the history.

Ms. Palmer mentioned that what they come up with in the vision statement will direct everything because each chapter relates to it, and it currently says, "Natural resource protection, scenic, historic and cultural resources represent the highest priorities," and then it goes on to mention the economic development chapter and the ordering of the chapters as being "very important." Ms. Palmer said, if natural resource protection is the most important thing, and they are talking about natural resource protection to keep them all going – which is sustainability – then it should be woven more into the whole document and better explained in the beginning. She also said she has an issue with lumping it in with historic and scenic resources, and wondered if they should be defining natural resources – directing it more toward water and air.

Mr. Boyd asked who established natural resources as the most important thing.

Ms. Palmer said that apparently it was done in the past, because it's included here.

Ms. Mallek stated that, in the surveys that are done every two years, it's always in the top, with 95-98% support.

Mr. Boyd said, if you send out a survey asking people if they want a good clean environment, of course, they will say yes.

Ms. Mallek said people understood that the reason the question was being asked was whether this was something to which the County should put assets – and they absolutely said yes.

Mr. Boyd said he isn't disputing that, but he wasn't sure where they were going with this.

Ms. Palmer said it is the County's job is to protect the health, safety and welfare of citizens – so the air they breathe and the water they drink needs to be protected for future generations, which she feels is a core government service. She stated that this started as a land use document and blossomed from there, and it says in the document that it's the most important thing, which brings them back to sustainability. She reiterated that she'd like to weave sustainability in more than it currently is.

Ms. Dittmar said, when the Board had its vision discussion, she made the comment that there were two terms used so often that they shouldn't be in the statement: one was sustainability, and the other was quality of life. She stated that apparently the word "sustainability" is a powerful word which means something very specific to some people so, if this document is supposed to speak for everyone, she isn't sure how to include it.

Ms. Palmer said she thought "protection for future generations" meant the same thing, and Ms. McKeel agreed.

Mr. Cilimberg said the Sustainability Accords, which were supposed to define what sustainability is, covered a lot of ground. He stated that it's not just about natural resources, it's about a variety of aspects of the area's future – ranging from people having jobs, to affordable housing, to transportation systems which support people's needs – so it's a very broad area, and sustainability is fairly complicated in that sense, and the accords help define sustainability.

Ms. Palmer asked if it actually said that. Mr. Cilimberg said not at that point in time, and should simply let the words speak for themselves.

Mr. Boyd said he isn't minimizing the importance of natural resources, but police services, emergency services, and education are equally important in his mind, and he wouldn't put any one above the other. He stated that it's a given that they must maintain natural resources, just for the quality of life, but asked if that means they should spend 60% of their budget for natural resources protection as opposed to education.

Ms. Palmer stated that the land use choices the Board makes should reflect that, and it's not about giving a percentage of the money to that – but it is the thing that keeps them alive, and that needs to be said, because lots of the choices they make in land use affect that. She said education also affects how they protect natural resources because, if people aren't educated, they're not going to know to do that – so it all can go back to that.

Ms. Echols said there may be a way to bring some of those things together, and it may require suspending some of that conversation until they get to the chapters. She said, in the Natural Resources chapter, they talk a lot about the need for clean air and clean water, and can also talk through the particular resources – and they also have what they do in the development areas for quality of life, what they do in the community facilities plan to ensure they have services provided appropriately for everyone. She asked if it might be possible to suspend the decision on how they use the word "sustainability" until they get a little further into the document.

Ms. Echols said her understanding from the Board is to move the first bullet with the explanation of where the Sustainability Accords came from to the page with the accords, to add the wording that talks about sustainability being interwoven throughout the plan, and then she would bring the vision back to see if it captures what the Board had expressed.

Mr. Boyd stated that, under economic development, they talk about supporting the particular target industry study that the County did – but they need to say something about the job multiplier effect, because he doesn't want to give the impression that they're going to turn away electricians and plumbers and others who come here for jobs. He said the reason this is important is because there aren't enough light industrial spaces for things like contractor's yards, and that will come up during the discussion on land use.

Ms. Echols said, if the Board is agreeable, they would talk about that and add it to the Economic Development chapter. She stated that, when the Board looked at this at the end of last year, the Planning Commission language was that these should be goals for the County – and the Board, at that time, felt they needed to specify that these were the Commission's recommendations. She said identifying these as the Planning Commission's recommendations doesn't make them goals for the County, and it was kind of like the "history" as they'd previously discussed.

Ms. Mallek said this was a historical document, and it was adopted by the County and City joint Planning Commission effort, and she likes the idea of emphasizing all of the kinds of employment in the Economic Development chapter.

Mr. Boyd said this should be identified as a Planning Commission document, because he looks at it as being a document that guides their decision-making process as staff members in the Planning Department. He stated that he didn't like the fact that it failed to mention someone like an entrepreneur because that profession does not fit the target market study.

Mr. Cilimberg stated that this is more of a context for goals, objectives and strategies – because they represent the recommendations of the Comprehensive Plan.

Mr. Foley said this is the Background Chapter, noting that the Board sets direction through the other chapters and emphasizes those things the Board would want to emphasize.

Ms. Mallek stated that Chapter 6 includes statements regarding a balance of jobs.

Mr. Boyd said he has spoken with enough people who have gone into the Planning Department and have been told that their project doesn't fit into the Comprehensive Plan, and the County has lost companies because of that.

Ms. Dittmar asked Mr. Cilimberg to explain a scenario in which that has happened. Mr. Cilimberg said they are dealing with land use proposals in which a particular use might want to be in a particular location, and staff is relying on the Land Use Plan – and many of their discussions relate to that when

people come in to talk about a specific business or other kinds of development. He stated that staff is advising them based on what the Land Use Plan calls for in a particular area, and they've had cases where someone might have been proposing an industrial use in an area that's not designated as such, or might be outside of the development areas altogether. He said staff's response would be that the plan doesn't identify that use for that location, and staff would say that, without a change to the Comprehensive Plan's Land Use Plan component, that couldn't happen – so that might be what Mr. Boyd is referring to.

Mr. Boyd stated that the Board could discuss it further in the land use portion of its review, adding that he didn't feel there was enough light industrial area identified, and also it's identified in the wrong places because it's not near where people actually want to grow.

Mr. Foley said staff strengthened the introduction to this chapter for, basically, background information upon which the rest of the Comp Plan is considered, adding that policy direction will come out of the other chapters.

Ms. Dittmar stated that someone coming in who is an entrepreneur would be turned away if what they were proposing was inappropriate for the land use designation for a particular place. She said, in the future, an economic development director would assist someone as an "ombudsman" in an effort to identify resources to kick off an entrepreneurial venture – and that would be looked at in the economic development section.

Mr. Boyd said, just like natural resources, there were many things that are entwined with economic development, but he didn't mind waiting until the land use section. He also stated that, under "The County Today," that was a snapshot in time, and making it an appendix rather than part of the plan would mean they could change that and reference it rather than having to go through a full Com Plan amendment.

Ms. Echols said the reason the Planning Commission wanted it there was because it was the springboard – why they were planning, and who they were planning for – and this is the direction they were seeing. She stated that there should probably be something in the document which references this fact.

Mr. Boyd said staff updates the County's demographics every year during strategic planning.

Mr. Cilimberg stated that staff had planned to make a report on the status of the plan each year which talks about what development trends have been, and what new zoning actions have taken place – and if there have been any amendments. He added that it also points to the importance of revisiting the plan every five years, because they want to make sure the plan is staying current with the changes in the community which occur. Mr. Cilimberg said this is typical of how they would see any plan and it creates the basis for what is recommended, given current conditions.

Ms. Dittmar asked if they could use the document and then reference an appendix section that has current data so that could be updated without a major effort.

Ms. Echols said she understood that they would leave it in there generally, but have a reference to another location where they could see the most current information.

Ms. Echols reported that the Growth Management chapter has a goal and an introduction which provides the growth management policy, the history, how it relates to watershed planning, how the watersheds relate to the development areas; and an objective, which is to continue to apply the longstanding growth-management policy, with three ways to accomplish that: by approving development in the development areas primarily, promoting the development areas as the most desirable places to live and work, and recognizing the shared responsibility of County and developers to pay for growth. She stated that the goal before the Board was worded a bit differently than the one she had sent them, and was the correct one: "By directing growth to the County's development areas, the County's rural area with its agricultural, forestal, historic, cultural, scenic and natural resources will be preserved." Ms. Echols mentioned that there is only one objective, three strategies, and the Planning Commission's recommendations for priorities. Ms. Echols said there are no indicators of progress specifically in this chapter because so many of those indicators relate back to the effectiveness of the growth management policy. She stated that, within the appendices, there is the cash proffer for public facilities that the Board will be working on, and there was a recommendation in this plan that those be looked at it, and it was moved up to being looked at before the Comp Plan is adopted. She noted that there are no reference documents associated with this chapter.

Ms. Echols said she wanted to start out with the goal and then go to objectives and strategies.

Ms. Palmer stated that she would like to put natural resources at the top of the list in the goal statement, as that is supposed to be the most important thing. She also said the language choice of "preserving" water and air is a bit confusing, but it applies well to historic, cultural and scenic resources.

Mr. Sheffield said, under growth management, the objective is to preserve.

Ms. Palmer said it's more to sustain or protect.

Mr. Foley stated that it gets defined further by the objectives, which help to clarify it.

Mr. Boyd asked about the inclusion of a reference to by-right uses of property, although it's a strategy they don't want to push, because there is that protection for people who own property. Ms. Echols said it is mentioned in the Rural Area section, and the Planning Commission spoke to that at length, and they were not recommending any changes to that.

Ms. Palmer asked if there was some effort to change by-right development in the development area. Ms. Echols said the expectation for residential development is that it would be more dense than what they've been seeing in suburban form, and there's by-right activity which encourages people to get the most utility out of the land in the development areas.

Mr. Cilimberg suggested including a sentence which recognizes that people have existing rights on their lands, as just a fact. He said, whatever the growth management policy is, those rights all exist and people have the right to use their land under the current zoning.

Ms. Mallek suggested adding a reference to the Rural Area chapter for expanded details on items like by-right uses.

Ms. Echols said that is what staff would like to do, especially with the online version, and there will be hyperlinks for cross-referencing so people can easily move between sections.

Ms. Echols presented Strategy 1A, stating that the County wants to use development areas for new development, and new development proposals in the Rural Area should be approved if they're supported by the Rural Area goals, objectives and strategies – so it's not saying "no development," it just needs to be in accordance with that section of the plan.

Ms. Mallek suggested using "continue to encourage" new development proposals in the development areas, because she didn't want to give the impression that any application in the development area would be approved.

Mr. Boyd said his comment about the by-right use of land was also in Strategy 1A.

Ms. Echols stated that strategy 1B acknowledges the importance of making sure there is public investment in those places where the County wants people to live and work; 1C continues to recognize the shared responsibility.

Mr. Boyd said he had a slight problem with 1C which related to Mr. Williamson's comment about the proffer statement because, right now, the County is adding the cost of development at a rate which doesn't make sense for people doing the development, and that's why people develop by right rather than more densely. He stated that developers simply pass those proffer costs along to consumers, and developers also have to consider the high water connection costs.

Mr. Sheffield asked if Mr. Boyd would like to consider stating that the Board would like to revise the strategy when it revises the proffers, because that strategy directly ties to the proffers. He said he doesn't disagree with the statement, which is fairly accurate currently, but it should change once the Board examines the proffers.

Mr. Boyd agreed.

Mr. Cilimberg suggested that 1C, along with the paragraph which follows, would be amended when the new policy is approved.

Mr. Sheffield said the timing of the proffer changes isn't really matching up with the timing of the approval of the Comp Plan.

Ms. Mallek said she thought it was coming sooner.

Mr. Cilimberg said that would remain to be seen, however, this particular Comp Plan document comes first. He said the Board still has not gotten to the point of adopting the new proffer policy, and that is being processed as a separate amendment. Mr. Cilimberg stated that, if the Board gets the policy done first before this gets adopted, staff would just change it as part of the ultimate document that they go to public hearing with.

Ms. Dittmar said, in an ideal world, the County might have a cash proffer policy that wouldn't have to be amended but, if they don't, it could be earmarked for a further look.

Mr. Boyd stated that he would like to ensure that it makes sense to do this, and that it's balanced with affordable housing efforts, etc.

Ms. Mallek said that is her take-away on reading the strategy, which is to address the issue of having somebody other than existing residents paying for everything.

Ms. Palmer stated that that's exactly what would happen with things like water connection charges – because lowering those costs for developers would mean existing ratepayers would pay for new people coming on, so it's a fairness issue. She also stated that it's important to encourage people in the development area, adding that green space and protection of natural resources are important in those areas because people want to live next to those amenities.

Ms. Echols stated that that's very heavily covered in the Development Area section in the Neighborhood Model in the Master Plan. She said they start with the environmental features in the master planning process, and identify those which are the most important for preservation in specific development areas.

Ms. Palmer asked if that would be a goal in the Growth Management section to make sure they keep the development areas healthy and attractive for people to live in. Ms. Echols said that's something that could be added to the Growth Management strategy, and there are a lot of things about the development areas which help make them the places where people want to live, and that could be added – but she encouraged the Board to contemplate whether it wants it to be just natural resources, or the other elements also.

Ms. Mallek said it's the aesthetics and quality of life issues, and maybe this could be addressed with a link to the sections which talk about those things more in depth – or to include a few words that address the fact that growth areas must be places where people really want to go and live.

Mr. Cilimberg said there's a place where staff can build on what the Board has already said to cover that.

Ms. Echols reviewed the changes from the Growth Management section, noting that staff will add a sentence which recognizes that rights exist on land to use current zoning; change in Strategy 1A the word "approve" to "encourage"; Strategy 1C depends on the proffer policy discussion and would be earmarked for further consideration; add wording to this section which builds up the things that make the development areas more livable with emphasis on the natural features people need to have, cross-referencing them with what's in the Development Areas section; and rewording and reordering the goals statement.

Ms. Mallek said, with regard to property rights under current zoning, it needs to be very clear that current means not today, but the zoning in effect at the time of consideration. She stated that her understanding of those rights is that those were legislatively created by the zoning at the time, not something provided by God or somebody else.

Mr. Cilimberg said staff would probably write something more generic such as, "rights exist for people who own land."

Ms. Echols presented the upcoming schedule for review of other Comp Plan chapters, stating that, for the rural interstate interchanges, staff would need to bring that forward to the Board as a topic. She said, if the Board stays on track, the plan would be completed in October – at which point, the Board could move it to public hearing.

Mr. Boyd asked if it would be updated on the web page. Ms. Echols said it would be, and she would provide a link for the updated document to Board members also.

Ms. Dittmar stated that some constituents have provided feedback about the start time of the Comp Plan discussion, and she suggested those discussions start at 5:00 p.m. instead of 4:00 p.m. so the Board could have full public input.

Mr. Foley said Board members would need a break somewhere in there too.

Board members agreed with the 5:00 p.m. start time.

Recess. The Board recessed at 7:01 p.m., and then reconvened at 7:17 p.m.

Agenda Item No. 7. Pledge of Allegiance.
Agenda Item No. 8. Moment of Silence.

Agenda Item No. 9. Adoption of Final Agenda.

Mr. Boyd said that he had a problem with Item 18 – Discussion of possible action with Route 29 Advisory Panel – and stated that he felt very uncomfortable moving forward with that without public input, and if there were enough votes he would pull it from the agenda for discussion.

Ms. Mallek said that their discussion at this meeting follows the public hearing they held on February 19, which was about this very issue – and all the things that they’ve seen discussed at the panel are items that were in the long-range plan somewhere or in the Places 29 recommendations. She stated that there was a wonderful turnout for the February 19 hearing on this subject, and she felt there was very good input all along, including very recently.

Mr. Boyd said that he disagreed, and felt that it’s very different than that – with an interchange planned, disruption to businesses, and more of a concrete plan than just a wish list on paper. He stated that before they spend money on this, he would rather have input from people on it.

Ms. Dittmar stated that she has had some requests for a public hearing also, and what they’re faced with is the need to meet the timeline for the CTB’s request and make sure it’s in the plan for the MPO. She said that this could be the beginning of the end of contention about roads in the County, and to not allow them to have an opportunity to speak might prevent them from beginning their “healing” right away. She asked Mr. Foley to talk about how this might impact the timing of the MPO, and also satisfy the need for some who wish to speak about this.

Mr. Foley said that he had distributed a document to them – “MPO process to accommodate Route 29 solutions process,” a document developed by the MPO to look at the whole timeline for their actions. He stated that if May 28 is the date when they may consider a resolution of endorsement of the recommendations, the Board should probably have a public hearing prior to that time – and also give staff time to advertise it. Mr. Foley said that they could possible schedule it for the night before, May 27.

Mr. Sheffield stated that he agreed with Anne that they had held a public hearing in February about not just rescinding support for the bypass as a majority, and in turn pushing the alternatives. He said that the resolution they adopted at that time identified supporting asking for the funds to be shifted to those alternatives.

Ms. Mallek stated that the project that was not on their list in the resolution in February had been in their long-range plan for funding and is not in the vision list, it’s in the actual plan, so it is not something that is pulled out “unknown,” it was adopted by the last MPO and also in the discussions about development of the long-range plan.

Mr. Sheffield said that they weren’t against holding a public hearing, and he and Ms. McKeel would be holding a transportation meeting on May 27 to share the recommendations. He stated that the discussion was not just about the merits of the recommendations, but how they move forward, and a public hearing wouldn’t cover that aspect.

Ms. Dittmar stated that this would cover all but the Rio interchange that’s in the plan in their resolution in February. She said that it was advertised as a “bypass,” but their resolution included all the alternatives that have now been picked up in the plan – and technically the Rio interchange is in the MPO already. Ms. Dittmar said that she’s just wondering if they’d like to give people an opportunity to have a say, and noted that several Board members ran on a platform of allowing public input so she wouldn’t want to abandon that.

Mr. Sheffield said that they would need to clarify the purpose and intent of a public hearing, beyond just holding public meetings. He asked if they were delaying action until they had a public hearing, or if the purpose was just to get comments on record and allowing people to speak. Mr. Sheffield stated that it would be more beneficial in his mind to have people engaged in the process, and it’s not about a decision – but the conversation that needs to be had and where they’re going.

Ms. Palmer asked what the legal requirement was for advertisement. Mr. Foley said that there’s no legal requirement on this, but in the past they’ve tried to allow a few weeks of getting the word out.

Ms. McKeel asked if they would present the information to the public so they know what the facts are and what they’re commenting on, and whether that would be provided ahead of time – because there are a lot of people who would be speaking about it that aren’t clear on what the recommendations are.

Mr. Foley said that the information is available from VDOT, and the County would put it on the website with links.

Mr. Sheffield noted that he didn’t think they would be taking action at the May 28 MPO meeting. Ms. Mallek said that she thought they would be taking action at that meeting.

Ms. Dittmar said that Secretary Layne had said that by September, the MPO must have it in the plan, but the sooner they get it done, the better.

Ms. Mallek emphasized that it’s not just one vote that gets it in the plan, it’s a whole series of public hearings that must happen after May 28, and it would take all summer to get done by September 1. She noted that there are at least two public hearings required to change what they send in, to stay legal with federal requirements. Ms. Mallek explained that on May 28, they would need to decide that they’re

adopting what they have so far, with the disclaimer that in the following month they would be amending based upon the changes the feds have required.

Ms. Dittmar said that the May 28 date on the schedule does say "approval" at the MPO meeting.

Mr. Sheffield said that he hadn't received an MPO packet, and until he receives something that clarifies what they're considering at that time, it's hard to give a yes or no on that. He stated that if they try to do a public hearing before May 28, he wasn't sure there would be enough public notice.

Mr. Foley said that they would put it on the website and A-mail immediately, along with a formal advertisement in the Sunday paper for two subsequent weekends, which would be similar to what they did for the February hearing.

Ms. Palmer stated that it's probably better to have more public hearings than less public hearings, and noted that she would be driving back from Vermont on May 27 and may not be back in time.

Ms. Dittmar encouraged them to consider it, stating that as a panel member she has already indicated her support of this, and said that the public hearing would provide an opportunity for the Board to hear from the public as to what they're concerns are. She asked if there would be a letter coming out of that meeting to let the MPO know the Board's direction.

Ms. Mallek said that it would be a direction at the conclusion of the public hearing for her and Mr. Sheffield to represent the Board's position to the MPO.

Mr. Foley said that the Board should also consider sending a letter to the CTB, which would not decide this until June 18.

Ms. McKeel agreed with Ms. Dittmar that she would like to hear the public's concerns about perceived problems and impacts.

Ms. Mallek said that if it's in the form of suggestions for implementation that would be even more helpful than "no," which is very bad for the community.

Mr. Foley said that on their June 4 agenda, there is an item regarding "road construction business assistance program," which they had talked about at a previous Board meeting.

Ms. McKeel said that would be helpful, as people may have some really wonderful ideas as to how businesses can be helped during construction.

Ms. Mallek said that it would be helpful to have it before the June 4 meeting.

Ms. McKeel asked if they can frame the advertisement as to what the intent of the hearing is, so that it's more than just a "yes" or "no" and encourages ideas from the public.

Mr. Boyd **moved** to remove Agenda Item No. 18 and schedule a public hearing at 6:00 p.m. on May 27, 2014.

Ms. Mallek asked Mr. Davis if this would be subject to the three-step process as required for the February meeting, and she was trying to be consistent. Mr. Davis said that it is not necessary.

Mr. Sheffield noted that he and Ms. McKeel would cancel their transportation meeting.

Ms. McKeel **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Palmer, Mr. Sheffield, Mr. Boyd, Ms. Dittmar, Ms. Mallek and Ms. McKeel.

NAYS: None.

Ms. Dittmar noted that the Monticello High School Capstone group had recommended an expressway as part of their research project in Dr. Honeycutt's civics class, and said that the students Alexandra Fitzgerald, T.J. Tillary, Alex Knudsen, and Wayne Lucatto spent a lot of time reviewing the panel's information.

Agenda Item No. 10. Brief Announcements by Board Members.

Ms. Mallek said that the Henley Destination Imagination team is going to the global competition and is raising money for their trip, and that information would be available in the Board of Supervisors' office.

Ms. Dittmar said that she was on a plane for many hours and read *Scottsville on the James*, which talks about the founding of the County. She stated that she would forward information to the Board on two upcoming classes in the certification program – one on land use management, and one on budgeting.

Agenda Item No. 11a. Recognition: Charles P. "Chip" Boyles, II, Executive Director, Thomas Jefferson Planning District Commission.

Ms. Mallek mentioned that Chip Boyles was the new executive director of the Thomas Jefferson Planning District Commission, coming to the County with experience in planning from Maryland and Louisiana, and already establishing a new atmosphere in working with the public and collaborating with agencies and jurisdictions.

Mr. Foley said that he had invited Mr. Boyles to come to the meeting, but for some reason he couldn't attend so they would recognize him at a future meeting.

On behalf of the County, Ms. Dittmar recognized Mr. Boyd for 10 years of service on the Board. She read a letter to Mr. Boyd written by Ms. Lorna Gerome, Director of Human Resources.

Agenda Item No. 12. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Neil Williamson said that the Board needs to center their microphones so the public can hear them. He stated that when they discussed Places 29, he made a passionate plea to veto it on the basis of the interchanges being included, and the Board voted 6-0 in favor of it. He said that the concerns specifically with the Rio interchange, which is on the Free Enterprise Forum's website regarding construction concerns, include increased challenges on Rio Road and the intersections with these parallel roads and where the cars would go. Mr. Williamson stated that he's very worried about the construction easements, which are temporary, but for businesses a two-year temporary problem could be enough to put them out of business. He said that the solutions panel, which was more of a sounding board than a panel, has heard Mr. Shucet's remarks, and his presentation to the CTB the previous day was quite accurate in saying that he wasn't sure there was consensus, and cited a couple of outliers who said they had issues – and the reason he wasn't sure there was consensus is because there was never a test for consensus. Mr. Williamson stated that he hoped the Board would continue to move forward, and he felt they were making the right choice by hearing from the public again. He said that the issues identified would be critical to the implementation they choose, for what is Albemarle's economic engine.

Mr. Carter Myers addressed the Board, stating that they've had two public hearings on this in the past – the Rio Road interchange, which was rejected in 1986; and in 1984, when he served on the CTB, and there were 3,000 comments received, 8 to 1 against it. Mr. Myers said that they spent \$800,000 on designing the interchanges for Hydraulic, Greenbrier and Rio Road, and he spent a lot of time looking at the traffic movements and how local people would get to businesses. He stated that what they have now for the Rio interchange would take three traffic lights out, which means a person from Lynchburg would stop one time if the traffic lights are sequenced. Mr. Myers said that what it would do to businesses along the whole stretch would be "unbelievable," and the widening of the early 1990s cost his business alone about \$1/2 million. He said that they survived that, but the Rio plans would be even worse – cutting the road down by 22 feet. Mr. Myers stated that this has been sold on the idea that it would be good for local people, and while it might be good for someone in Lynchburg, to save them one traffic light – but it's going to be very difficult during construction. He encouraged them to do the consensus items, the "doables," and get those done so there are alternative routes for commuters and emergency vehicles, and then come back and do the cut and cover later. Mr. Myers said that the interchanges have already been designed and he had copies from 1994, and it was tough – so he hoped the Board would look at it carefully.

Agenda Item No. 13. Consent Agenda.

Mr. Sheffield **moved** to approve the Consent Agenda as presented. Ms. McKeel **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Palmer, Mr. Sheffield, Mr. Boyd, Ms. Dittmar, Ms. Mallek and Ms. McKeel.
NAYS: None.

Item No. 13.1. Approval of Minutes: September 11, October 2 and October 9, 2013.

Ms. Mallek pulled the minutes of October 2 and October 9, 2013

Mr. Boyd said that he had read the minutes of September 11, 2013 and found them to be in order.

By the above-recorded vote, the minutes of September 11, October 2 and October 9, 2013 were approved as read.

Item No. 13.2. SDP-2013-00046. Gillenwater Property – Tier II Personal Wireless Service Facility – Special Exception.

The executive summary states that critical slopes are slopes of 25% or greater. County Code § 18-4.2.3 prohibits a structure, improvement, or land disturbing activity to establish a structure or improvement from being located on critical slopes unless a special exception is approved by the Board.

AT&T is proposing to construct a 119.4' tall monopole and associated ground equipment for a personal wireless service facility at 648 Dry Bridge Road (State Route 708). See Attachment A for location map. AT&T also proposes to construct a retaining wall, with backfill, to provide a platform for the location of the monopole and associated ground equipment. An entrance drive with a parking and backup space is also proposed. In order to construct these improvements as proposed, AT&T is requesting a special exception to authorize the disturbance of a small area of critical slopes.

The site is next to State Road 708, and slopes down towards the remainder of the Gillenwater property.

Areas	Acres	
Total site	15.38 acres approximately	
Critical slopes	10ac.	65% of site
Critical slopes disturbed	0.028	0.28% of critical slopes

Engineering staff reviewed the following factors under County Code § 18-4.2.5(a)(1) and (2):

“movement of soil and rock”

Proper slope construction, control of drainage, and vegetative stabilization will prevent any movement of soil.

“excessive stormwater runoff”

Stormwater runoff will be reduced in this area, as the slopes will be eliminated.

“siltation”

Inspection and bonding by the County will ensure siltation control during construction. Proper stabilization and maintenance will ensure long term stability.

“loss of aesthetic resources”

This area is visible from the road and houses in the neighborhood. The site development as proposed will not have a significant impact to, or cause the loss of, aesthetic resources.

In the event of septic system failure, a greater travel distance of “septic effluent”

There is no septic system associated with this proposal.

Based on the foregoing review, the applicant will address each of the foregoing factors during construction so that the disturbance of critical slopes will not pose a threat to the public drinking water supplies and floodplain areas, and so that soil erosion, sedimentation, water pollution and septic disposal issues will be mitigated to the satisfaction of the County Engineer.

Planning staff reviewed the following factors under County Code § 18-4.2.5(a)(3):

The following are additional factors in County Code § 18-4.2.5(a)(3) to be considered for this application for a special exception:

- a. Strict application of the requirements of section 4.2 would not forward the purposes of this chapter or otherwise serve the public health, safety or welfare;
- b. Alternatives proposed by the developer or subdivider would satisfy the intent and purposes of section 4.2 to at least an equivalent degree;
- c. Due to the property’s unusual size, topography, shape, location or other unusual conditions, excluding the proprietary interest of the developer or subdivider, prohibiting the disturbance of critical slopes would effectively prohibit or unreasonably restrict the use of the property or would result in significant degradation of the property or adjacent properties; or
- d. Granting the modification or waiver would serve a public purpose of greater import than would be served by strict application of the regulations sought to be modified or waived.

It is staff’s opinion that the proposed disturbance of critical slopes would favorably satisfy factors (a) and (b) above because the proposed disturbance would not be of a detriment to public health, safety or welfare and the development, as proposed, will satisfy the intent and purposes of County Code § 18-

4.2 to an equivalent degree. There are no planning concerns with the proposed critical slope disturbance request and resulting development, and staff does not recommend any conditions of approval.

Staff received no objections to the proposed special exception.

Staff recommends approval of the special exception to allow the critical slopes to be disturbed.

(Discussion: Ms. Palmer asked for clarification that the tower at Gillen property has already been approved, and they're just talking about putting in a retaining wall.

Ms. Mallek said that she understood it to be a new application.

Mr. David Benish, Chief of Planning, confirmed that it was, stating that this was the last step before administratively approving it and it was for a retaining wall – which provides a better and safer site on the side of Turner Mountain. He said that this is a steep-sloped area that's fairly well hidden for the antenna, but for a better landing pad the wall is needed, and it faces away from the road. Mr. Benish mentioned that the site is on a property that's landscaped by a nursery operation, and they would supplement the walls with additional plantings. He confirmed that the application was a Tier II so it's approved administratively, and this is a critical slopes waiver as a special exception, which needs to be approved by the Board.)

By the above-recorded vote, the Board granted the special exception for SDP-2013-00046 Gillenwater Tier II Personal Wireless Service Facility to allow the critical slopes to be disturbed.

Item No. 13.3. Set public hearing for June 4, 2014, on an ordinance to amend Chapter 2, Administration, of the Albemarle County Code, **to amend Section 2-202, Compensation of board of supervisors**, to increase the compensation of the members of the Board of Supervisors by an inflation factor of 1% effective July 1, 2014.

By the above-recorded vote, the Board set a public hearing for June 4, 2014 to consider amending the compensation of the members of the Board of Supervisors by an inflation factor of 1% effective July 1, 2014.

(Note: The next two agenda items were heard together:)

Agenda Item No. 14. **PROJECT: Public Hearing: CLE-2014-00025. Tewah's child care.**

Special exception to allow for a family day home to care for up to 12 children in a residence. No employees are proposed.

ZONING CATEGORY/GENERAL USAGE: PUD Planned Unit Development – residential (3 – 34 units per acre), mixed with commercial, service and industrial uses. SECTION: 20.3.1 13. Family day homes (reference 5.1.56).

COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential - residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses in the Places 29 Development Area (Neighborhood 1).

ENTRANCE CORRIDOR: No.

LOCATION: 54 Woodlake Drive. T

AX MAP/PARCEL: 061X2000F00300

MAGISTERIAL DISTRICT: Rio Magisterial District.

(Advertised in the Daily Progress on April 28 and May 6, 2014)

The executive summary as presented by staff states that a “family day home” is 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 through twelve children under the age of thirteen . . . when at least one child receives care for compensation.” (Virginia Code § 15.2-2292; County Code § 18-3.1 (definition of family day home)). Family day homes for five or fewer children are treated as a residential occupancy and, therefore, no zoning-related approvals are required. The provider's own children and any children who reside in the home are not counted in these numbers.

The Virginia Department of Social Services (VDSS) licenses family day homes that care for between six and twelve children. In 2012, VDSS began requiring that providers demonstrate that they are in compliance with local zoning regulations as part of its licensing process. At that time, the County required a special use permit for family day homes for six to twelve children. A number of existing family day homes for six to twelve children operating without a special use permit thereafter contacted the County about coming into compliance with the Zoning Ordinance.

Virginia Code § 15.2-2292 enables localities to administratively approve family day homes for six to twelve children, provided that notice is given to abutting owners and none of them object. If a timely objection is received, a public hearing is required before the governing body. On September 11, 2013, the Board amended its family day home regulations to no longer require a special use permit but, instead, to allow family day homes for six to twelve children to be administratively approved and to require a special exception if an abutting owner objects (See Attachment A for the current regulations). The public

purposes served by the amended regulations are delineated on page 2 of Attachment E, the Planning Commission's August 6, 2013 executive summary.

Because abutting owners objected to Tewah's Child Care's application for a family day home for six to twelve children, it is before the Board as a request for a special exception.

Tewah's Child Care is located at 54 Woodlake Drive (TMP 061X2-00-0F-00300) in the Four Seasons neighborhood in the Rio Magisterial District. The parcel is zoned PUD, Planned Unit Development, and its dimensions are 21' by 86'. This portion of the Four Seasons neighborhood consists of 165 townhomes served by Woodlake Drive, which is a public loop road, located off of Four Seasons Drive (See Attachments C and D). Tewah Sankoh has operated Tewah's Child Care for 10 years. Although it is licensed by VDSS for up to 12 children, there currently are less than five children in care: three siblings arrive at 3:00 p.m. and leave at 11:00 p.m. and one child arrives at 5:00 p.m. and leaves at 10:30 p.m. CLE 2014-41, Ms. Lala's Child Care, also being considered by the Board on May 14, is across the street from Tewah's Child Care.

The objections from abutting owners and the Four Seasons Homeowners Association (HOA) are provided as Attachment B and they raise concerns regarding: (1) traffic; (2) parking/vehicular access in shared driveways behind the units; (3) noise generated by pick-up and drop-off activities and children playing outdoors; (4) property values; and (5) using common areas and other areas for outdoor play.

County Code § 18-5.1.56(b)(7)(b) provides that, in acting on a special exception, the Board "shall consider whether the proposed use will be a substantial detriment to abutting lots." Staff has reviewed Ms. Sankoh's application and the objections under County Code § 18-5.1.56:

- Traffic: County Code § 18-5.1.56(b)(1) limits the number of vehicle round trips that may be associated with a family day home to 24 per day, which is in addition to the trips generated by the residents of the dwelling itself. Although another family day home is located across the street, staff believes that the difference in children pick-up and drop-off times and their staggered hours should preclude any substantial traffic impacts to the abutting lots. Staff also has evaluated the traffic impacts on Woodlake Drive and the neighborhood if up to 48 round trips were added if both this special exception and the special exception for Ms. Lala's Child Care are approved. The increase would not be substantial because the addition of up to 48 round trips would represent approximately a 2% increase over existing traffic on Woodlake Drive.
- Parking: County Code § 18-5.1.56(b)(2) requires that a family day home provide one parking space plus one additional parking space for each employee. The parking spaces must be either on-site, on the street, or in a parking lot. Woodlake Drive is a 50 foot public right-of-way with on-street parking and sidewalks on both sides of the street. Parking for this application is available either on-street or behind the unit, where a shared driveway provides access to two parking spaces dedicated to Ms. Sankoh's townhome. Parent parking can safely be accommodated from either on-street parking spaces or the spaces behind the townhome. Abutting owners are concerned about parents parking in the shared driveway or wherever the closest parking space is available. The Zoning Ordinance requires that parking be provided in a parking space and parking in a shared driveway is not permitted. In order to address the neighbors' concerns that other townhomes' dedicated parking spaces or the shared driveway might be used by parents, staff recommends that only on-street parking be allowed.
- Noise: Abutting owners and the HOA raised concerns regarding the noise that may be generated when children are picked up and dropped off and playing outdoors, particularly in the HOA's common areas. Staff has recommended two conditions (Conditions 1 and 2) to address impacts related to noise.
- Use of common areas: Abutting owners and the HOA raised concerns regarding the use of the HOA's common area by the children attending the family day home. In addition to the noise impacts discussed above, one owner and the HOA expressed concern about the use of residential common area by a commercial activity, and the wear and tear on HOA property this increased use would have. To address this concern, staff recommends a condition requiring the applicant to obtain consent from the HOA before the family day home for six to twelve children uses HOA common area for activities.

Staff opinion is that the family day home authorized to provide care for up to 12 children, as conditioned, would not impose a substantial detriment to abutting lots.

There is no anticipated budget impact with this request.

Staff recommends approval of this special exception with the following conditions:

1. No outside activities before 10:00 a.m. or after 7:30 p.m. associated with this use;
2. Parking for child pick-up and drop-off and any employee not residing in the home shall be on-street only; and
3. Before the family day home for six to twelve children uses HOA common area for activities, the applicant shall provide evidence to the Zoning Administrator that it has obtained the consent of the HOA to use the HOA common area for that purpose.

Agenda Item No. 15. **Public Hearing: CLE201400041 Ms. Layla's child care.**

Special exception to allow for a family day home to care for up to 12 children in a residence and may include one employee on a part-time basis.

ZONING CATEGORY/GENERAL USAGE: PUD Planned Unit Development – residential (3 – 34 units per acre), mixed with commercial, service and industrial uses.

SECTION: 20.3.1 13. Family day homes (reference 5.1.56).

COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential - residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses in the Places 29 Development Area (Neighborhood 1).

ENTRANCE CORRIDOR: No.

LOCATION: 64 Woodlake Drive.

TAX MAP/PARCEL: 061X2000W00800

MAGISTERIAL DISTRICT: Rio Magisterial District.

(Advertised in the Daily Progress on April 28 and May 6, 2014)

A “family day home” is 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 through twelve children under the age of thirteen . . . when at least one child receives care for compensation.” (Virginia Code § 15.2-2292; County Code § 18-3.1 (definition of family day home)). Family day homes for five or fewer children are treated as a residential occupancy and, therefore, no zoning-related approvals are required. The provider’s own children and any children who reside in the home are not counted in these numbers.

The Virginia Department of Social Services (VDSS) licenses family day homes that care for between six and twelve children. In 2012, VDSS began requiring that providers demonstrate that they are in compliance with local zoning regulations as part of its licensing process. At that time, the County required a special use permit for family day homes for six to twelve children. A number of existing family day homes for six to twelve children operating without a special use permit thereafter contacted the County about coming into compliance with the Zoning Ordinance.

Virginia Code § 15.2-2292 enables localities to administratively approve family day homes for six to twelve children, provided that notice is given to abutting owners and none of them object. If a timely objection is received, a public hearing is required before the governing body. On September 11, 2013, the Board amended its family day home regulations to no longer require a special use permit but, instead, to allow family day homes for six to twelve children to be administratively approved and to require a special exception if an abutting owner objects (See Attachment A for the current regulations). The public purposes served by the amended regulations are delineated on page 2 of Attachment E.

Because abutting owners objected to Ms. Lala’s Child Care’s application for a family day home for six to twelve children, it is before the Board as a request for a special exception.

Ms. Lala’s Child Care is located at 64 Woodlake Drive (TMP 061X2-00-0W-00800) in the Four Seasons neighborhood in the Rio Magisterial District. The parcel is zoned PUD, Planned Unit Development, and its dimensions are 31’ by 86’. This portion of the Four Seasons neighborhood consists of 165 townhomes served by Woodlake Drive, which is a public loop road, located off of Four Seasons Drive (See Attachments C and D). Delois Grady has operated Ms. Lala’s Child Care for 14 years and is currently licensed by VDSS for up to 12 children. The family day home hours are typically from 6:00 a.m. to 10:00 p.m., but most children arrive and depart between 10:00 a.m. and 5:00 p.m. CLE 2014-25, Tewah’s Child Care, also being considered by the Board on May 14, is across the street from Ms. Lala’s Child Care.

The objections from abutting owners and the Four Seasons Homeowners Association (HOA) are provided as Attachment B and they raise concerns regarding: (1) traffic; (2) parking/vehicular access in shared driveways behind the units; (3) noise generated by pick-up and drop-off activities and children playing outdoors; (4) property values; and (5) using common areas and other areas for outdoor play.

County Code § 18-5.1.56(b)(7)(b) provides that, in acting on a special exception, the Board “shall consider whether the proposed use will be a substantial detriment to abutting lots.” Staff has reviewed Ms. Grady’s application and the objections under County Code § 18-5.1.56:

- **Traffic:** County Code § 18-5.1.56(b)(1) limits the number of vehicle round trips that may be associated with a family day home to 24 per day, which is in addition to the trips generated by the residents of the dwelling itself. Although another family day home is located across the street, staff believes that the difference in children pick-up and drop-off times and their staggered hours should preclude any substantial traffic impacts to the abutting lots. Staff also has evaluated the traffic impacts on Woodlake Drive and the neighborhood if up to 48 round trips were added if both this special exception and the special exception for Tewah’s Child Care are approved. The increase would not be substantial because the addition of up to 48 round trips would represent approximately a 2% increase over existing traffic on Woodlake Drive.
- **Parking:** County Code § 18-5.1.56(b)(2) requires that a family day home provide one parking space plus one additional parking space for each employee. The parking spaces must be either on-site, on the street, or in a parking lot. Woodlake Drive is a 50 foot public right-of-way with on-street parking and sidewalks on both sides of the street. Parking for this application is available either on-street or behind the unit, where a shared

driveway provides access to two parking spaces dedicated to Ms. Grady's townhome. Parent parking can safely be accommodated from either on-street parking spaces or the spaces behind the townhome. Abutting owners are concerned about parents parking in the shared driveway or wherever the closest parking space is available. The Zoning Ordinance requires that parking be provided in a parking space and parking in a shared driveway is not permitted. In order to address the neighbors' concerns that other townhomes' dedicated parking spaces or the shared driveway might be used by parents, staff recommends that only on-street parking be allowed.

- Noise: Abutting owners and the HOA raised concerns regarding the noise that may be generated when children are picked up and dropped off and playing outdoors, particularly in the HOA's common areas. Staff has recommended two conditions (Conditions 1 and 2) to address impacts related to noise.
- Use of common areas: Abutting owners and the HOA raised concerns regarding the use of the HOA's common area by the children attending the family day home. In addition to the noise impacts discussed above, one owner and the HOA expressed concern about the use of residential common area by a commercial activity, and the wear and tear on HOA property this increased use would have. To address this concern, staff recommends a condition requiring the applicant to obtain consent from the HOA before the family day home for six to twelve children uses HOA common area for activities.

Staff opinion is that the family day home authorized to provide care for up to 12 children, as conditioned, would not impose a substantial detriment to abutting lots.

There is no anticipated budget impact with this request.

Staff recommends approval of this special exception with the following conditions:

1. No outside activities before 10:00 a.m. or after 7:30 p.m. associated with this use;
2. Parking for child pick-up and drop-off and any employee not residing in the home shall be on-street only; and
3. Before the family day home for six to twelve children uses HOA common area for activities, the applicant shall provide evidence to the Zoning Administrator that it has obtained the consent of the HOA to use the HOA common area for that purpose.

Ms. Rebecca Ragsdale, Senior Permit Planner, addressed the Board, stating that she had a suggested approach to moving through the public hearing items since there were two of the same types of uses. Ms. Ragsdale said that this is the first time this type of application had been through the Board, so she would like to present them and then come back for action on both.

Mr. Davis said that they could hold a combined public hearing, but these are two separate applications and there would need to be two separate actions taken.

Ms. Mallek said that it would be fairer to the applicants to have separate public hearings, but they could hear the common information all at once.

Ms. Ragsdale reported that a "family day home" is a separate and distinct use from a daycare center that you would find in a commercial area, and it is a form of in-home childcare or babysitting, and the family day homes before them are those that are required to be licensed by the Virginia Department of Social Services and required to apply for a zoning permit under the ordinance. She said that if there are family day homes where the provider is caring for five or fewer children, they are not required to get a DSS license or zoning permit. She stated that they adopted these regulations in September 2103 to create the distinct category of family day home, and since then have processed a total of five of these applications – three of which have been processed administratively with a zoning clearance, and the two before them must be approved as special exceptions. Ms. Ragsdale said they had a zoning text amendment process that involved input from the local DSS office to create the new use, and it was a unique form of childcare in terms of the category – and one that is needed and valued in the community for its flexibility, hours, small group size, and quality of childcare that comes with being a licensed provider, along with the affordability that some in-home daycare providers can offer when compared to commercial daycare centers.

Ms. Ragsdale said that family day home is a term in the zoning ordinance, and also a license that the state DSS regulates, and there is an extensive set of regulations that applies to the family day home uses that address the health and safety issues of caregivers and the home environment. She stated that providers renew their license periodically, but are inspected twice per year by the state DSS. Ms. Ragsdale presented a list of some of the items from their standards, stating that there are about 120 pages of standards that the caregivers must comply with. She said that in 2012, the Department of Social Services added a zoning requirement to their process, and prior to that providers were not required to contact zoning – so when DSS made that change, that was what led to the new process locally, to make it more streamlined than the previous special use permit requirement for this type of use.

She stated that the zoning clearance application is not something the Board typically sees, but is usually the type of thing that zoning approves administratively. Ms. Ragsdale said that given the state

code provisions, it requires abutting owner notification and 30 days for comments, questions and concerns. Once the application is submitted to staff, she said, they verify a number of things including licensing by social services, a fire marshal inspection and approval, compliance with any other agencies that might be applicable, verification that there is adequate parking – as the ordinance requires one space for the family day home use, entrance and access to the site, traffic limits in the zoning ordinance – with 24 round trips maximum per day and a special exception if those limits are exceeded, and Board review if abutting owners provide written objection, to consider whether the proposed use would be “a substantial detriment” to the abutting property owners.

Ms. Dittmar asked what “substantial detriment” meant. Ms. Ragsdale responded that this is something they would have to talk about in more detail as they go through each of the items, and it is something the Board would have to decide based on their review of the applications.

Ms. Mallek asked if there was a legal definition. Ms. Amelia McCulley, Zoning Administrator, said that it was not defined.

Ms. Ragsdale said that in this particular use, the finding they would make was that it was not a substantial detriment to abutting property owners, and other uses in the ordinance have other criteria – such as the special use permit section – and each of the types of applications they review has language applicable to it in terms of the findings the Board would make.

Ms. Mallek said that “substantial detriment” might include factors such as traffic, crowding, use of open space, incompatibility with the neighborhood, and the same types of considerations used in other land use choices and zoning issues.

Ms. Ragsdale said that in this particular type of use, some of the decisions were made with the zoning text amendment in considering this type of use – compatible with the neighborhood, change the character of the neighborhood, etc.

Ms. McCulley stated that in establishing the regulations to the extent they could, they tried to identify adequacy in terms of parking, a traffic limit that would be appropriate for this kind of use, and that’s what they codified in the standard – but “substantial detriment” comes from the state code and does give some leeway to the Board as they consider objections, but it’s not defined.

Ms. Mallek said that the uniqueness of it is what they must take into consideration – the size of the lots, the traffic circle, etc. She also mentioned that if there is one street and 50 people around a small contained area, it would have to go beyond just abutting properties.

Ms. McCulley said that it can be, and the language they are focusing on is “substantial detriment to adjacent properties.” She stated that they are learning as they go, and this is the first application that has come to this, but it is appropriate to go beyond what’s physically abutting.

Ms. McKeel asked who enforced these once they are approved.

Ms. Ragsdale said that the zoning clearance was typically a one-time application that is associated with that business, so it’s done by staff as part of the review process.

Ms. Mallek asked if Ms. McKeel was asking about ongoing monitoring.

Ms. McKeel asked if the zoning department was reviewing the business for compliance, noting that she had had a commercial business in her neighborhood before that didn’t follow the regulations that they were supposed to follow, and it took years to finally take it away.

Ms. Ragsdale explained that the zoning clearance application was a one-time application, and the social services licensing would happen with a periodic review, as would fire marshal inspections, but unless the family day home would generate complaints or move to a new location, it would be a one-time application – unless there was a condition imposed for review.

Mr. Sheffield pointed out that the Department of Social Services would still do their follow-ups and monitoring for the people performing the daycare services.

Ms. Ragsdale said that when social services implemented their requirement, there were 10 or 12 providers in the community that were not aware of the provision but were already in operation. She stated that both of the facilities in question are located on Woodlake Drive, with the first one located on 54 Woodlake Drive, situated in the middle of a row of townhouses that is served by a public road, Woodlake Drive, which is a 50-foot wide public road with sidewalks and on-street parking on both sides. She stated that it’s off of Four Seasons Drive, which is a loop road that runs between Commonwealth and Hydraulic. Ms. Ragsdale said that the other one is located at 64 Woodlake Drive, and presented a schematic illustrating how the townhomes are laid out and accessed off a public street, with parking being a shared driveway off of each unit and a backyard area that is fenced in and partitioned off with each of the lots. She stated that each row of townhomes faces a common green space area, with about 165 townhomes total in the neighborhood. Ms. Ragsdale said that they reviewed the availability of parking, which is on-

street and the two spaces behind the unit, and said that this is a family day home that has been in operation or licensed for 10 years. He stated that currently the owner is caring for fewer than 12 children, but staff has reviewed the traffic limits should there be a change in enrollment.

Ms. Palmer noted that the owner currently has five kids, and these provisions cover 6-12.

Ms. Ragsdale acknowledged that she is currently within the by-right limits, but would like to have the option to go to 6-12. She said that for someone operating with up to 12 children, staff can get the traffic data by reviewing the sign-in and sign-out sheet, and in this case she doesn't have that many children but the owner is aware of the traffic limitations so she can retain compliance. Ms. Ragsdale explained that there is access from either behind the unit or on-street, and staff has recommended that drop-off be from on street to address neighbor concerns related to noise. She said that because they have received written objection from neighbors, the special exception must be heard by the Board – and one of the issues raised was traffic. Ms. Ragsdale stated that staff has reviewed these individually for making sure they comply with the ordinance, and then taking a look at the additional trips would be one of the things that falls into the “substantial detriment” category. She said that given that the trips would take place at different drop-off and pick-up times, which are staggered throughout the day, and given the capacity and characteristics of this road, staff doesn't believe that traffic is a detrimental issue – because of mitigating circumstances.

Ms. Palmer expressed concern that the times could change if there is an increased number of children.

Ms. McKeel said that with different families, you'd have different times and work schedules.

Ms. Ragsdale said that usually with these types of businesses, it is staggered – and if people do show up at the same time, there is the capacity with the on-street parking and the road to handle the rare circumstance as far as the average pick-up and drop-off times. She stated that Tewa's hours of operation might differ slightly from Delois's, with Tewa's able to provide 24-hour care, whereas Delois only provides care during daytime hours. Ms. Ragsdale said that parking meets the ordinance requirements, and there are spaces available behind the unit or on street to provide for the one space that's required for the family day home use. She stated that they've also recommended a condition of approval that parking be from the street, and staff has heard concerns about noise – both from vehicles coming and going, and children's outdoor playtime – and there are two conditions of approval to address the noise concerns as far as the hours of outdoor activities for the children and the requirement of parking location for the day home use. Ms. Ragsdale said that there is also a condition of approval based on some concerns about use of the common area, and that the applicant obtain approval from the homeowners association prior to using the common areas for any outdoor activities for the children.

Ms. McCulley noted that unlike a commercial daycare center that has peak hours between 6:30 a.m. and 9:00 a.m. in the morning, and again in the evening, the family day home isn't limited to those hours and often serves parents who do shift work – so there isn't the peak traffic coming for drop-off and pick-up.

Ms. Palmer asked for clarification about the reference in one of the letters that there wasn't any parking during certain times of the day, and asked if the parking spots only filled up in the evening. Ms. Ragsdale said that some of the parking concerns seemed to be that people would use the shared driveway and block it, and there seems to be parking available along the front of the units on both sides for the family day home use and any of the other parking that might occur for guests or service vehicles for the neighborhood. She stated that staff has found that the use complies with all of the ordinance requirements, and it could have been approved administratively had it not been for the neighbor objections. She said that based on their analysis of these particular locations and the recommended conditions of approval, it's staff's opinion that they don't arise to the level of being a “substantial detriment” to abutting property owners, and recommends approval with the conditions as presented – specifically addressing the location of parking for pickup and drop-off, and the use of the common area for activities.

Ms. Palmer stated that one of the letters states that the homeowners association doesn't allow commercial activity there, and asked why staff would think they would approve use of the common area.

Ms. McCulley said that the restriction on commercial use is a private one, not one that the County would enforce, and the fact that they had a condition requiring approval for the use of the common areas play area was something to acknowledge they have ownership of that and would have to give permission for it to happen. She stated that it was staff's understanding that they could still meet all of the state requirements in terms of outside space for the children without the use of the common area. Ms. McCulley said that if the Board had specific questions about this, there was a DSS representative present at the meeting, but the way it's written the applicant would have to have the HOA approval for use of the common area.

Ms. Palmer asked if they would have to have HOA approval for a commercial activity. Ms. McCulley stated that it was a private requirement and restriction.

Ms. Ragsdale said that it would be up to the HOA and their covenants and restrictions to determine whether they would consider the use rising to the level of “commercial,” or something that’s still accessory in nature.

Ms. Palmer said that after looking at what the HOA allows, she’s surprised it even got this far.

Ms. Mallek said that when you multiply by two, it changes the impact.

Ms. Ragsdale agreed, stating that it was considered in the recommendations for each – but each application is considered separately, with analysis for the cumulative impact of the two.

Ms. Mallek said that they’re really talking about 24 cars for drop-off and pickup, not 12, because the two places only have access to the same parking spaces. She stated that she would also like to hear from DSS about the fenced-in backyard.

Ms. Ragsdale said that they don’t have the licensing division from DSS, but have the local contact that works with childcare providers.

Ms. McCulley stated that the traffic count is 24 round trips per use, and a round trip is entering and exiting, and that limit would be per application.

Ms. Dittmar mentioned the objection letters received, and asked if there were signs allowed.

Ms. Ragsdale said they were not permitted in the ordinance for this use.

Ms. Glenda Best addressed the Board, stating that she was a child care services worker with the County’s DSS. Ms. Best said that the local department has no control over the fencing, and it was all regulated through state DSS licensing.

Ms. Mallek said that the backyard looked to be about 20’x20’.

Ms. Ragsdale stated that there’s not an explicit requirement for a certain amount of area, and when DSS reviews it they just make sure it’s “adequate.”

Ms. Best said that state DSS is very strict, and does measure the area inside the home as well as the play areas, according to how many children are in the home.

Ms. Mallek said that the home childcare provider up one street is huge by comparison and had almost the same number of children.

Ms. Best noted that Four Seasons is licensed to have far more children than these home childcare centers. She also said that she has made trips to these homes and has made site visits, but the state licenses these centers and inspects them twice per year. Ms. Best added that she has seen nothing of concern, and if she had she would call state licensing.

Ms. Palmer said that she would like to hear the other item before holding the public hearings.

Ms. Ragsdale stated that “Ms. LaLa” is across the street from Tewa’s, and has been licensed for 14 years, consistently caring for up to 12 children. She said that the zoning permits intend to bring into compliance what’s already happening in the neighborhood – not expanding in any way. She said that Ms. LaLa’s family day home is located on an end unit in the townhouse neighborhood adjacent to the street, and presented a view of the front of the townhouse. Ms. Ragsdale stated that each of the townhomes has a sidewalk along the public street and pathways to the front doors of the units, and presented a view of the back of the units. She said that Ms. LaLa’s was operated by Delois Grady, and her townhouse lot was 10 feet wider because it is an end unit, but with a similar setup to other townhouses in the neighborhood – facing the common green space area, having the parking behind the units and the shared driveways. Ms. Ragsdale stated that the children arrive at approximately 6:00 a.m. at that center, which provides childcare primarily during the day.

Ms. Ragsdale reported that the letters received indicate traffic concerns, parking, noise and use of common area, the same concerns received regarding Tewa’s application, and for this application they recommended the same conditions of approval and analyzed it under the ordinance requirements so it is compliant with those sections of the ordinance discussed. She stated that both centers have maintained their licenses from DSS and are subject to inspections by the licensing division as well as the fire marshal. Ms. Ragsdale said that staff’s opinion is that with the conditions of approval, the application does not cause substantial detriment to the abutting property owners.

The Chair opened the public hearing on Tewa’s Child Care.

Ms. Tewa Sankoh addressed the Board, stating that she had been doing childcare for the past 14 years and hadn’t encountered any problem with the neighbors. Ms. Sankoh said that she does 24-hour care, and she chose to do that to avoid traffic and noise, and she doesn’t have 12 kids at any given time

in her house. She stated that she always puts herself in other people's place, and does not let the kids run around and scream and make noise, so she brings them in by 5:00 p.m. Ms. Sankoh said that she had no intention of starting a childcare center when she bought her house, but she had premature twins and decided to stay home to look after them – so she decided to bring other children in to make it work. She stated that she is very sensitive about noise, and is careful to keep the house quiet with activities inside. Ms. Sankoh said that her care center is a service to parents who do not work normal hours that allow them to use regular daycare centers.

Ms. Palmer asked if she had an employee. Ms. Sankoh said that she used to have an employee, but now she has an assistant on call that just comes in when needed, and she doesn't need her unless she exceeds her current capacity.

Ms. Palmer asked if Ms. Sankoh kept children overnight. Ms. Sankoh said that she advertises 24 hours, but children don't really stay overnight – although sometimes parents work night shift.

Ms. Palmer noted that most kids are left at the center by 11:00 p.m., and are picked up by 2:30 p.m. Ms. Sankoh said that is the case, and also stated that she doesn't allow for parents to play loud music as they are driving through her neighborhood to drop their children off.

Ms. McKeel asked if she kept infants as part of her childcare. Ms. Sankoh responded that she only keeps one infant per shift.

Mr. Howard Donaldson addressed the Board, stating that he was a Four Seasons board member and has been living in the neighborhood for 25 years. He stated that they have their problems – some small and some large – and he didn't feel that the daycare center would be a good fit. Mr. Donaldson said that he represents 165 people and tries to do what's best for that community, and there are issues with garbage collection – with just one day per week pickup – and this could increase those costs. He stated that the driveways are intended for the residents who live there and park, and typically there are two spaces per unit; it's not intended to be a drop-off. Mr. Donaldson said that he has an end unit and added a parking space so he wouldn't be a nuisance to neighbors, adding that while the proposal might sound nice now, there's a lot more traffic in the community than they realize.

Ms. Mallek said that the business had been there for five years, and asked if the neighborhood had difficulties with it. Mr. Donaldson stated that he didn't know the business was there.

Ms. Mallek said that this might be an indication that it's fairly quiet.

Ms. Doris Ruchling addressed the Board, stating that she owns a home in the area and it is a residential area, not commercial. Ms. Ruchling said that it's all attached, there are no detached homes, there's no garage, and there's a carport to park, a 12'x12' patio, and 750 square feet inside. She stated that she worried about the kids, as this wasn't enough room for them, and she was aware that there was babysitting going on there. Ms. Ruchling said that the common area is not that big, and there is no play area for kids. She stated that there are three bedrooms and a bath upstairs, so the upstairs is probably used for the family, so the kids are occupying a 750-square foot area.

Mr. Justin Watson addressed the Board, stating that he was an attorney at Lewis Law Offices, which was retained by the homeowners association to represent them in their objections to this and the concurrent application. Mr. Watson said that they set forth their objections in the letters presented to the Board, and wanted to make clear one of the neighborhood's primary values as set forth in their covenants and restrictions. He stated that Article 10 regarding use restrictions states: "No owner shall occupy or use his lot, or permit the same or any part thereof, to be occupied or used, for any purpose other than as a private, single-family residence." Mr. Watson said that a 12-child daycare operation is a commercial operation, and it has continuously been referred to as a "business," even though it is a small business. He stated that there is an impact to placing businesses in the middle of a neighborhood, and the association believes that safe, healthy, affordable childcare is a noble goal and policy objective for any municipality to have – but it cannot be a one size fits all policy and must be something that takes into account all of the unique factual and contextual circumstances of the neighborhoods where they will be placed. Mr. Watson said that they need to take a common sense approach here, and while there may be some self-imposed restrictions informally happening, that's not what the requested application is for; the requested application wants 12 people at any given time, without any hour restrictions.

Ms. Palmer said that she is perplexed by the legal aspects of this, because it seems that if the homeowners association has restrictions, they could just ban the daycare use.

Mr. Watson said that the process for enforcing private restrictions is through the courts, and what that requires is for the association to sue its neighbors – but for pragmatic reasons and for goals of keeping communication open in the neighborhood, they try to avoid doing that. He stated that the association board wanted to make sure that the entire community's concerns were taken into consideration.

Ms. Palmer asked if the childcare center on the end unit already in operation with 12 children had created problems that were brought forth by the homeowners association. Mr. Watson said that the

homeowners association hadn't sought legal recourse to enforce any of its covenants against any operation to this point.

Ms. Palmer asked if they were going to enforce those, if they would have to do it to all of the daycare facilities – including the one on Four Seasons Drive. Mr. Watson clarified that the homeowners association is only for the townhouse community, not the ACAC facility, the Four Seasons neighborhood, etc.

Ms. Mallek said that it's basically everything on the east side of the lake. Mr. Watson agreed, noting that the lake is fenced off and isn't part of the neighborhood and emphasizing that there is a dearth of green space. He emphasized that children are children; they need space and they make noise – which is what makes them great, but also creates collateral effects for neighbors.

Ms. Best stated that last Wednesday, she along with two representatives from Children, Youth and Family Services went to the job fair held at the John Paul Jones arena, with their sole purpose for attending being the limited amount of in-home daycare providers. She stated that a lot of the centers have regular hours that don't accommodate the dietary workers at UVA who get off at 6:00 p.m., and they also need to recruit providers for kids with special needs and people who do daycare on the weekends – as Delois does. Ms. Best said that they really need this type of daycare for children, and some of the problems she's heard from the community is that people in the neighborhood are doing daycare underground – and she wished that the HOA would investigate those people instead of those who were trying to follow the rules. She stated that Delois and Tewa provide services for parents who live in those neighborhoods, and "commercial" areas make her think of drills and trucks and loud vehicles – not kids.

Mr. Boyd said that some of the people who had objections to the centers were concerned about having enough space for kids, and asked if the licensing required them to have an adequate size based on their standards.

Ms. Best responded that that's absolutely true, and if the spaces are small they can only have up to five children – but they can be licensed as long as they have enough space.

Ms. Tewa Sankoh addressed the Board and said that most of the noise is coming from homes in the neighborhood that are doing unlicensed daycare, and said that the state licensing inspectors provide no exceptions to any violation. She said that those homes also have more than the 12 kids allowed, and they are running around making noise without any concern from the homeowners association.

Ms. Delois Grady addressed the Board, stating that she has been doing childcare in her home for 14 years without one complaint, and she has been licensed for 12 kids since 1995 – even though there are rarely 12 children there at any given time. She stated that if they look at the arrival times, they can see that, and her first child arrives at 6:30 a.m. Ms. Grady said that for an hour between 7:00-8:00 a.m., there are no arrivals, and by 10:00 a.m. there are seven to nine kids in her care. She stated that there is no playtime until 10:00 a.m., and they get at least an hour outside unless it is very cold out. Ms. Grady said that the kids are in her backyard, and if she needs another play area she opens up her carport. She stated that she has one assistant who comes in for three hours each week, and her son who lives with her also assists with her business. Ms. Grady said that centers can't offer what home daycares offer, such as flexible hours, smaller groups, and lower costs – and they hear this frequently from parents.

She presented the license from the state, which shows that she is licensed for 12 children. Ms. Grady said that she has insurance that covers everything on her property, which is required for more than five children. She stated that the children occasionally use the common area, but they are not loud, wild kids – and the objections even state that they are under control. Ms. Grady said that some parents couldn't attend this meeting, but they did sign her petition. She also presented an article showing that the cost of infant daycare is \$10,600 per year, and when you put that same infant in in-home care, the cost is around \$6,000 per year. Ms. Grady stated that she has an older son with special needs, so that allows her to be home while she is also helping other children. She said that there seem to be a lot of changes with childcare regulations, but people need to realize that they didn't make those rules – they're just trying to live by them. Ms. Grady added that children get safety, education and love when they come to her house.

Mr. Boyd said that there were some people who mentioned excess trash, and the impact of that.

Ms. Grady said she wasn't aware of any trash problems, and her center had two trash cans – which were set outside every day like everybody else does.

Ms. Doris Rachling stated that she doesn't have a problem with people doing childcare, and she herself had kept five children at one point – but it was in a detached home with plenty of space and yard. Ms. Rachling said that she wasn't sure who was paying for people to use the services so they could go to work, and asked why they couldn't get together and rent a building or a house that would accommodate that many kids and have parking areas. She asked why the home childcare operators let the homeowners association know that they were doing babysitting in their home when it was against the bylaws, and also asked why they didn't turn the unlicensed babysitters into the homeowners association. Ms. Rachling asked where this would end, if there were 10 people that started babysitting there. She emphasized that there is just not the room out there for this.

Mr. Watson addressed the Board, stating that there had been discussion earlier about the use of the driveways that service the rear of the townhomes for parking, and whether there was enough available parking. He said that to see if there's available space, a person must drive up a hill past a few residences to find a space, and residents have complained about being blocked in and delayed because cars are double parked or trying to maneuver into the spots behind the buildings. Mr. Watson said that this is a type of collateral effect of having a commercial operation placed in a residential area. He stated that there is no requirement under the licenses requested that there is a staggering, and it is possible that 12 families could show up at the same time, so unless there is a restriction placed those can change. Mr. Watson said that with parking and traffic on the main road, the peak times would be during commute times, with people parallel parking and opening doors, maneuvering in and out – all while small children are moving in and about – and there's not even a crosswalk there or any safety measures.

Mr. Sheffield asked what the composition of the HOA board was, and how often they meet. Mr. Watson said that it's volunteer residents, and there is a property manager on staff who is also involved.

Mr. Donaldson stated that they are an elected board, nominated by residents, and they typically meet once per month.

Mr. Sheffield said that the reason he asked is that part of the recommendations from staff to approve these applications is contingent to the HOA allowing use of the common areas, and he wanted to make sure there was ample time to discuss it.

Mr. Donaldson said that they had talked about it one time and hadn't drawn a conclusion or voted, and from his understanding of the covenants, they would have to have a majority rule by the board to move this forward – so he didn't think the HOA board could just approve this.

Mr. Sheffield said that he would be happy to attend that meeting as a representative, should these applications move forward.

Ms. Palmer asked how many members were in the HOA. Mr. Donaldson said that there are 165 members, which brings up the issue of how many people could open businesses like this or others.

Ms. Palmer asked if most of the people were homeowners, or if there were rentals. Mr. Donaldson stated that there were some rental properties, but he wasn't sure about the ratio. He said that he has lived there 25 years, and he isn't saying that the home daycare centers would be negative, but how they are implemented and the closeness of all the properties are concerns. Mr. Watson said that the daycare center on Four Seasons Drive has a big, fenced area – and when there are a lot of people coming and going at all hours, it makes a difference. He stated that there have been issues with school busses getting in and out of the parking areas, and with another resident having a lot of cars, and he is only bringing up the issues as a representative of the property owners there. Mr. Watson stated that Four Seasons has been there a long time and has an elected board, with some of their HOA dues going to property management. He said that they have tried to improve the community and would like to continue to do so.

Ms. Best addressed the Board, stating that she had recently been to Ms. Sankoh's home and had parked behind her house, and there was plenty of room for people to pull out and not be blocked in. She also said that there was no trash at either of the daycare centers. Ms. Best stated that these children were from poor parents, and Ms. Sankoh and Ms. Grady are not "getting rich" off of their businesses, nor are they able to save a lot of money to be able to open a daycare center. She said that if they did open a center, the hours of care would change, the prices would go up, and parents couldn't pay – and DSS doesn't have a lot of money available to help them set up playgrounds. Ms. Best stated that DSS also works with a number of City childcare providers, but doesn't hear from those neighbors, perhaps because they don't have HOAs.

Ms. Grady said that the concern that they wouldn't know the time schedule of the children coming in wasn't valid, because they have to set up those times and manage them around available vacancies and openings.

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

Mr. Boyd stated that he and Ms. Mallek were on the Board when they passed the ordinance to allow home daycare, at which time there was a lot of public input, and he was convinced that night – as he is tonight – that there is a great need in the community for this type of service.

Ms. Mallek said it was one of those instances where the County was bringing its laws in compliance with state requirements, and it is challenging on both sides of the issue.

Ms. Palmer stated that she is totally perplexed by the HOA aspects, because it's not the Board's job to enforce their covenants, but at the same time she isn't sure why it's allowed in the first place. She said that she lives in an area where there is an HOA and would be pretty upset if someone was breaking the rules. Ms. Palmer stated that she drove over to the property, and there was plenty of room to get around, with a circular drive – but apparently there are a lot more cars in the evening. She said that she

was concerned about the space available for the kids to play, although Ms. LaLa's has a nice big area for the kids to play, but Ms. Tewa's is in the middle with no place for them to play other than a tiny outdoor area. Ms. Palmer said that she wasn't quite sure with their ordinance where their decision lies, because the state decides how big a place is supposed to be, and the County's criteria is "[substantial] detriment" – which she guessed would be the noise issue.

Mr. Davis stated that the standard set forth in the ordinance, which is a local standard, is "[substantial] detriment" – determining whether there's a significant detriment to abutting properties. He said that a common definition of substantial detriment would be, "significant, negative or injurious impacts," so it has to be significant, and it has to be injurious or negative to abutting property owners. Mr. Davis said that would be a working definition for what the standard is in this matter. He said that under the state statutory scheme, the state mandates that if it's up to five children, it must be treated as a residential use that isn't regulated by local ordinances – so what the Board is really looking at is whether they can have the 6-12 children under this permit review. Mr. Davis stated that even if the Board was to deny the application, they can continue to operate with five children, so the standard is really whether the 6th through 12th child is creating the substantial detriment to abutting property owners.

Ms. Mallek asked if it was 6-12 at one time, or at any time in one 24-hour period.

Mr. Sheffield clarified that it was 6-12 "unique children," but not necessarily at the same time. Mr. Davis confirmed that was the correct standard.

Ms. Dittmar asked if this was the first set of applications under the new ordinance. Mr. Davis said that it wasn't, although it may be the first the Board has heard – but there have been other applications where there were no objections. Ms. Ragsdale stated that three have been approved administratively, and these are the first they have reviewed with the abutting owner objections.

Ms. Dittmar asked if they were setting any precedents with these approvals. Mr. Davis said that they are under a "special exception" process, so it's a legislative decision of the Board, and each one is dealt with under their own facts and circumstances. He stated that consistency is always an admirable goal, so if there are very similar facts and circumstances, this would to some extent be a precedent – but many of these applications will not have the same facts and circumstances. Mr. Davis added that these two applications may be the most similar they will see, with the same location and the same impacts.

Ms. Palmer said that they're not really the same impacts, with one having an enclosure for outdoor play and another that's in between two units with no outdoor space other than the common area and the tiny backyard. Mr. Davis said that on that factor, they may be different.

Ms. Ragsdale clarified that they both have an outdoor area and the carport area, and while the end unit may be a little bit larger, they both have the same layout and setup as far as the outdoor space behind them, the parking spaces, and the front.

Ms. Palmer said that the corner unit has a larger outdoor space. Ms. McCulley agreed, but stated that they both have outdoor space.

Mr. Boyd said that they both have whatever is appropriate by state standards to have the kind of facility that will accommodate 12 children, so somebody is looking at those dimensions and approving it.

Mr. Sheffield said that if the Board was to approve this, he would recommend two changes: the HOA covenants, as Ms. Palmer points out, are a little bit of a gray area – and he would like for them to officially chime in on whether or not this is allowed. He stated that they touch on this with the third condition that this is contingent on the HOA's consent of use of the common area. Mr. Sheffield said that the other change would be to allow this for a year only, to see if there are concerns and complaints from residents. He stated that the uniqueness of this situation is that these are adjacent townhomes, and while there may not have been recorded complaints from neighbors, this is an opportunity for them to express their approval or disapproval, and also have a record of what's happening. Mr. Sheffield commented that this is a tricky situation, because it's their livelihood in the balance here.

Mr. Boyd asked if they had the ability to put a time limit on this. Mr. Davis said that they do.

Ms. McKeel asked if they were able to tie this to the homeowners association as well. Mr. Davis suggested that they not do that, because the County does not enforce restrictive covenants, and that would be a bad precedent.

Mr. Sheffield said they were recommending that already. Mr. Davis said that the distinction is that staff was saying that in order to use the HOA property, they would need permission – but they don't need that to operate a business.

Ms. Palmer said that if the HOA doesn't allow them to use the common area, the children have to stay in that little backyard area. Ms. McCulley said that perhaps they could make arrangements to transport them to a park or something like that, adding that there are other options.

Ms. Palmer said that would be hard to do with 12 children.

Mr. Sheffield said that he would like for the HOA to provide input on this, and said that the intent of the state having localities looking at this was to make sure they're allowing these to legally operate.

Ms. Mallek said that it was more of a zoning and community look, and in the past when she's tried to rope them into those provisions she's been told that the circumstances in private agreements change – and there's no way for them to know that, so they're left enforcing something they can't possibly have the information needed to enforce. She stated that she's having a difficult time envisioning the impacts of people coming and going, since she's a rural person, but she also understands the tremendous need for people who work to have this type of childcare. Ms. Mallek said that she liked the idea of a one-year review, and asked if it would require an entirely new review process or if it could be done by staff administratively.

Mr. Davis said that it would require them to reapply, because the Board cannot designate a legislative function to terminate a permit based on a complaint at a staff-level decision, so if they put a time limit on it, the applicant would need to reapply and go through the process again in a year.

Mr. Boyd asked what the cost would be for that. Ms. Ragsdale said that the zoning clearance process was a \$50 fee and an application to the zoning office, and the County would proceed with the same process.

Mr. Palmer asked what they would do if they got the same number of complaints at that time, noting that they had a list of complaints already about noise. Ms. Mallek asked if those were complaints to zoning, or if they were just in response to the notification of the application. Ms. Ragsdale confirmed that they were in response to the notice, and zoning had no record of any prior complaints about these businesses.

Ms. Mallek said that in inquiring about this, it seemed that nobody even knew these businesses were there – after 11 and 14 years.

Mr. Sheffield said that they could defer action until the HOA meets and provides an opinion. He said that he sympathizes with the neighbors and would like for them to come together as an association and provide an opinion – because if it causes for other home daycare operations to crop up, then they will have a problem.

Ms. Palmer said that she was also concerned after hearing the comment about having more than these two centers spring up.

Mr. Sheffield said that would put the Board in the situation of picking winners and losers.

Ms. Palmer agreed, stating that she does understand the tremendous need for this, and said that she would love to hear from the HOA.

Ms. McKeel asked if there was something about the 6-12 range, and wondered if there was some middle ground. Mr. Davis said that the state classification provides for 6-12.

Ms. McCulley said that the Board has the option of conditioning a lower number than 12, if they deemed that to be a way to offset what they consider to be a "substantial detriment."

Ms. Ragsdale said that the state licensing division determines the capacity, and if they determine there isn't adequate area or other reasons, DSS may limit the capacity to 8, 10 or a lower number – but staff didn't find anything in their analysis that would point to a specific number.

Ms. McKeel said that these are townhouses that butt up against each other, and the more children, the more noise – and she wondered if there might be a lower number.

Ms. Dittmar stated that if you go into the 6-12 range, regulations ramp up and businesses get into additional costs for things like insurance.

Ms. Palmer said that she would like to hear from the HOA to fully understand what the problems are here.

Mr. Sheffield said that he would like to have the HOA vote on this, and to get a more formal legal opinion.

Mr. Boyd asked if he didn't think the HOA had already voted on this, if they'd hired an attorney and was expending money to oppose it.

Mr. Sheffield said that they hadn't received any documentation from the HOA to indicate that.

Mr. Mallek noted that Mr. Donaldson said they had not yet voted on this.

Mr. Sheffield said that he was still willing to vote on this now, but he wanted to make sure that the residents had a chance as an HOA to address issues like this. He stated that they could either defer it or add a fourth recommendation for a time limit – a year or six months, and asked if they could waive the fee. Mr. Davis said that they could not.

Ms. Palmer asked how long it would be for the HOA to weigh in, and she would hate to have the applicants go through the entire process again. Mr. Davis asked if the purpose of the HOA was to determine whether or not there were substantial detriments.

Ms. Palmer said that it was, and stated that her feeling is that there is “substantial detriment,” but would hate to make that assumption without hearing from people in the neighborhood.

Ms. McCulley stated that they have letters before them, including from their attorney, that address what they consider to be “detrimental impacts.” She said that the Board could either defer it for a period of time for something specific to happen or to receive more information, or approve it for a limited time period – a trial period – and see how it goes, with the applicants coming back before them to extend that approval.

Ms. Ragsdale said that the County’s approval doesn’t prevent the HOA from deciding on any of the range of options they may have at their disposal to deal with these uses, and however they want to enforce or address their covenants, they will always have that option separate from this process.

Mr. Sheffield said that either way this will come back to the Board, with approval or deferral.

Mr. Davis suggested that since this is an ongoing business, he would recommend that approval with a time limit would be the appropriate way to go – and that would give the homeowners association an opportunity to say it’s OK or say it’s not OK with them, and then determine in the next round of approval if there are detriments. He said that the HOA could also take their own legal action if they think it’s in violation of their covenants.

Ms. Mallek said that it would also give the HOA an opportunity to address other activities in the neighborhood, rather than just addressing two and leaving others unaddressed, and she felt that 12 months would be better than six since the application process was a lot to go through.

Mr. Davis suggested a fourth condition that would read, “This approval shall expire May 14, 2015, and shall be subject to reapplication and approval for continued use after that date.”

Mr. Sheffield **moved** to approve CLE-2014-00025, with the conditions as modified to include a fourth condition as stated. Ms. McKeel **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Sheffield, Mr. Boyd, Ms. Dittmar and Ms. McKeel.

NAYS: Ms. Palmer and Ms. Mallek.

(The conditions of approval are set out below:)

1. No outside activities before 10:00 a.m. or after 7:30 p.m. associated with this use;
2. Parking for child pick-up and drop-off and any employee not residing in the home shall be on-street only;
3. Before the family day home for six (6) to twelve (12) children uses HOA common area for activities, the applicant shall provide evidence to the Zoning Administrator that it has obtained the consent of the HOA to use the HOA common area for that purpose; and
4. This approval shall expire on May 14, 2015 and shall be subject to reapplication and approval for continued use after that date.

Mr. Sheffield **moved** to approve CLE-2014-00041, with the conditions as modified to include a fourth condition as stated. Ms. McKeel **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Palmer, Mr. Sheffield, Mr. Boyd, Ms. Dittmar, Ms. Mallek and Ms. McKeel.

NAYS: None.

Ms. Dittmar thanked the applicants and the staff for their work.

Ms. Mallek said that her votes were consistent with how she had voted on these types of applications in the past, specifically in the Four Seasons area.

(The conditions of approval are set out below:)

1. No outside activities before 10:00 a.m. or after 7:30 p.m. associated with this use;
2. Parking for child pick-up and drop-off and any employee not residing in the home shall be on-street only;
3. Before the family day home for six (6) to twelve (12) children uses HOA common area for activities, the applicant shall provide evidence to the Zoning Administrator that it has obtained the consent of the HOA to use the HOA common area for that purpose; and
4. This approval shall expire on May 14, 2015 and shall be subject to reapplication and approval for continued use after that date.

Agenda Item No. 16. **WPO-2012-00066. Ragged Mountain Dam Borrow Area; WPO-2011-00029. Marshall Area; and WPO-2011-00068. New Ragged Mountain Dam** - Request to extend the deadlines for installing permanent vegetation, New Ragged Mountain Dam Project – Request for Extension of Time Limit for Permanent Seeding.

The executive summary states that County Code § 17-207(B)(2) requires that permanent vegetation be installed on all denuded areas within nine (9) months after the date the land disturbing activity commenced. County Code § 17-207(B)(3) allows the Program Authority to extend the deadline for up to six months and the Board to extend the deadline beyond that period.

This request is to extend the time limit to install permanent vegetation for the borrow areas adjacent to the reservoir, the marshalling area on Reservoir Road, and the dam itself. Below are the relevant dates for the three Water Protection Ordinance (WPO) permits issued for the project:

Permit for the Ragged Mountain Dam (WPO201100068)

- April 19, 2012 Permit issued
- Jan. 19, 2013 Original 9-month deadline
- May 1, 2014 Extended deadline pursuant to Board action on Dec 5, 2012

Permit for the Borrow Areas (WPO201200066)

- Sept. 5, 2012 Permit issued
- June 5, 2013 Original 9-month deadline
- May 5, 2014 Extended deadline pursuant to Board action on April 3, 2013

Permit for the Marshall Area (WPO201100029)

- April 19, 2012 Permit issued
- Jan. 19, 2013 Original 9-month deadline

No extensions are required under County Code § 17-207(B)(2) for this permit because the area is stabilized. This site functions as a contractors storage yard, and is mostly covered in gravel, which is a “non-erosive surface”. The other portions of the marshall area have a surface that prevents erosion. Therefore, under County Code § 17-207(B)(2), the marshall area is not subject to the nine-month deadline.

The Board may grant an extension under County Code § 17-207(B)(3)(b) if it finds: (1) the additional time is necessary due to factors beyond the control of the owner; (2) the owner had made good faith efforts to comply with the time limit; and (3) the owner has plans to effectively control or has effectively controlled erosion and sedimentation on the property during the land disturbing activity. In granting an extension, the Board must set a new deadline to install permanent vegetation on all denuded areas.

This project is moving forward as anticipated. Due to the project’s size and the amount of fill and borrow areas on-site, it was never expected that permanent vegetation could be installed within the nine-month period after the land disturbing commenced. The applicant is now requesting a short (three-month) extension of the deadline previously extended by the Board.

In considering an extension to the Erosion and Sediment Control Permit, County Code § 17-207(13)(3)(b) requires that the Board make three findings. Those findings and staff’s analysis of those findings are as follows:

- (i) **the additional time is necessary due to factors beyond the control of the owner;**
The size of this project is such that it cannot be done in this timeframe without considerably more resources than is feasible.
- (ii) **the owner had made good faith efforts to comply with the time limit; and**
The owner has made a good faith effort.
- (iii) **the owner has plans to effectively control or has effectively controlled erosion and sedimentation on the property during the land disturbing activity.**
The owner has measures that effectively control erosion and sedimentation from leaving the property. This has not been an issue. Most of the site drains to the reservoir itself.

Based on the above analysis, staff’s opinion is that the evidence supports all three findings, taking into account the size of the project.

County Code § 17-207(B)(3)(b) requires that the Board set a new deadline to install permanent vegetation on all denuded areas and may include reasonable conditions in granting an extension. Staff's opinion is that extending the deadline to August 14, 2014 is reasonable. Staff does not recommend any other conditions.

The Water Protection Ordinance requires yearly renewal fees of \$100 per disturbed acre. No changes to funding or staff resources are anticipated as a result of this request.

Staff recommends approval of the request for an extension under County Code § 17-207(B)(3) for WPO 2011-00068 New Ragged Mountain Dam and WPO 2012-00066 Ragged Mountain Dam Borrow Area with the following condition:

1. Permanent vegetation on all denuded areas shall be installed by Aug 14, 2014.

Ms. Palmer **moved** to approve the request for an extension under County Code § 17-207(B)(3) for WPO 2011-00068 New Ragged Mountain Dam and WPO 2012-00066 Ragged Mountain Dam Borrow Area subject to the recommended condition. Ms. McKeel **seconded** the motion.

Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Palmer, Mr. Sheffield, Mr. Boyd, Ms. Dittmar, Ms. Mallek and Ms. McKeel.

NAYS: None.

(The condition of approval is set out below:)

1. Permanent vegetation on all denuded areas shall be installed by Aug 14, 2014.

Agenda Item No. 17. **Appeal:** SDP-2013-00048. Durkin Property – AT&T Tier II Wireless Facility.

The executive summary states that a Tier II personal wireless service facility ("Tier II facility") may be no more than 10 feet taller than the crown of the tallest tree within 25 feet (the "reference tree"). (County Code §§ 18-3.1 (definitions of "Tier II facility" and "treetop facility") and 5.1.40(d)(6)) Among the standards applicable to Tier II facilities, County Code § 18-5.1.40(d)(2) requires that: "the site shall provide adequate opportunities for screening and the facility shall be sited to minimize its visibility from adjacent parcels and streets, regardless of their distance from the facility." Although a site plan under County Code § 18-32 is not required for a Tier II facility, County Code § 18-5.1.40(b)(5) provides that a Tier II facility is "subject to the requirements of section [18-]32 and the applicant shall submit all schematics, plans, calculations, drawings and other information required by the site plan agent to determine whether the facility complies with section [18-]32." County Code § 18-5.1.40(d) authorizes the County's site plan agent to approve a Tier II facility provided that all of the applicable requirements of County Code § 18-5.1.40 are satisfied.

The applicant proposes to construct a 131.5 foot tall Tier II facility on the parcel located at 4798 Stony Point Road, which is also identified as Tax Map and Parcel Number 03400-00-00-07000 (the "Durkin Parcel" or the "Parcel"). The Durkin Parcel is located in the Rivanna Magisterial District, is 29.37 acres in size, and is partially wooded with an existing dwelling on it. The Parcel fronts on Route 20 (Stony Point Road), is within the Rural Areas (RA) zoning district and the Entrance Corridor (EC) overlay district. The Parcel also abuts the Southwest Mountains Rural Historic District on two sides, but it is not within the district (See Attachment B for a map of the district). Some of the abutting parcels are relatively small, ranging from 0.79 acres to 5 acres, and are used for residential purposes. Other parcels in the area, some abutting the Durkin Parcel, are fairly large and unwooded, and some have dwellings and some are vacant (See Attachment I for aerial photograph of the surrounding area).

The agent's designee (staff) disapproved the application because the proposed facility failed to satisfy County Code §§ 18-5.1.40(d)(2) (facility not screened and sited to minimize its visibility) and 18-5.1.40(b)(5) (failure to provide all information required by County Code § 18-32; specifically, an erosion and sediment control plan required by County Code § 18-32.7.4.1(a)). The applicant timely appealed the decision.

Screening and siting to minimize visibility (County Code § 18-5.1.40(d)(2))

Balloon tests were conducted on September 25, 2013 and February 20, 2014 (See Attachment C for balloon test photographs). A balloon test consists of raising one or more balloons from the site to a height equal to the proposed facility (County Code § 18-5.1.40(a)(6)(c)). During the balloon tests for this proposed Tier II facility, staff traveled Stony Point Road (Route 20), Gilbert Station Road (State Route 640) and Turkey Sag Road (State Route 640), and visited abutting and surrounding parcels to observe the visibility of the balloons. The applicant also submitted photo simulations of the proposed Tier II facility (See Attachment D for photo simulations). The owners of several abutting parcels submitted letters detailing the visual impacts to their properties that would be caused by the proposed facility (Attachment F).

Following are excerpts of key passages from staff's disapproval letter (Attachment A) and comments from abutting landowners (Attachment F):

- During the balloon tests, the balloon was highly visible from the residence on an abutting parcel (TMP 03400-00-070C0). The facility was highly sky lit, meaning that the sky served as its backdrop. Page 57 of the County's Wireless Service Facility Policy, which is part of the County's Comprehensive Plan, explains that "in order to minimize visibility, the backdrop of the facility must be considered." (Attachment A, page 1)
- The proposed location for the tower is northeast of the reference tree and the trees in front of or behind the tower when viewed from the residence on TMP 03400-00-070C0 and from the Piedmont Manor house and grounds on TMP 03500-00-00-02100 are significantly shorter than the proposed tower, in some instances between 19' and 41' shorter, resulting in significant skylighting. (Attachment A, pages 1 and 2) The owner of TMP 03400-00-070C0 stated that "it impacts my view shed tremendously as the area is not nearly wooded enough to cover the width nor height" of the facility. (Attachment F, Jones, March 6, 2014) The representative for the Piedmont Manor Land Trust, the owner of not only the parcel on which the Piedmont Manor house (a contributing structure to the Southwest Mountains Rural Historic District) is located, but also several abutting parcels, stated that the proposed tower would be "located east of the reference tree and deliberately positioned so that the tower is generally 30' or more taller than the trees lying between the tower and the majority of the adjacent properties with a view of the proposed tower." (Attachment F, Piedmont Manor Land Trust (Sipe), February 28, 2014) The representative noted that the applicant's Tree Height Diagram showed that "[a]lmost all of the trees shown on this diagram actually lie west of the tower and provide no screening whatsoever of adjacent properties along the Route 20 corridor." (Attachment F, Piedmont Manor Land Trust (Sipe), February 28, 2014) The owner of TMP 03400-00-00-070B0 stated that the tower's proposed location would affect "the surrounding residents, and the view shed we've come to enjoy" (Attachment F, Critzer, January 22, 2014), that "it will affect one of the areas that give Albemarle County the prestige and beauty and that is talked about by many as they pass through the county, from those getting their first impression, to the people traveling the corridor on a daily basis" (Attachment F, Critzer, March 7, 2014), and that it would "most certainly negatively affect the view shed of Rt 20" (Attachment F, Critzer, March 12, 2014).
- The proposed location for the tower is located to one side of the Durkin Parcel and relatively close to the property line, which increases the visual impacts on abutting parcels. The proposed location fails to provide adequate opportunities for screening the tower and its related facilities. (Attachment A, page 2) The representative for the Piedmont Manor Land Trust stated that the proposed location is "very close to the backyards of several residences to the east and the proposed monopole will loom over them" (Attachment F, Piedmont Manor Land Trust (Sipe), January 22, 2014) and that it "has been deliberately located at a point on the Durkin property that actually maximizes its visibility and negative visual impact on adjacent properties" (Attachment F, Piedmont Manor Land Trust (Sipe), February 28, 2014).
- Although possible alternatives to reduce the proposed tower's visibility were suggested by staff, no efforts were made by the applicant to mitigate the proposed facility's visibility. The suggestions provided by staff included increasing the distance and buffering of trees between the tower and neighboring parcels, and reduce the height or bulk of the tower. (Attachment A, pages 1 and 2) The owner of TMP 03400-00-070B0 stated that the proposed tower would be less visible from his parcel if it was 50 to 100 feet further back in the woods on the Durkin Parcel. (Attachment F, Communication Summary, page 1 (Critzler)). This sentiment was repeated by the representative of the Piedmont Manor Land Trust, who added that "plantings should be provided to ensure the facility is screened from these neighboring residences." (Attachment F, Piedmont Manor Land Trust (Sipe), January 22, 2014).

Based on the foregoing, it is staff's opinion that the proposed Tier II facility fails to satisfy the requirements of County Code § 18-5.1.40(d)(2).

Providing all information required by County Code § 18-32 (County Code § 18-5.1.40(b)(5))

The proposal contains over 10,000 square feet of proposed land disturbance and requires an erosion and sediment control plan to be submitted and approved. County Code § 18-5.1.40(b)(5) requires that the applicant submit all plans required by the agent to determine whether the facility complies with County Code § 18-32. The applicant has not submitted an erosion and sediment control plan as required to determine whether the proposed facility complies with the applicable requirements of Chapter 17 of the County Code, as required by County Code § 18-32.7.4.1(a).

Staff recommends that the Board affirm the disapproval of SDP 2013-00048. If the Board reaches such consensus, staff recommends that the Board provide direction to staff on the basis for its decision and instruct staff to return to the Board on June 4, 2014 with a written decision for the Board's consideration and action.

Ms. Dittmar said that she had two calls from constituents wanting to know if this was in the Scottsville District, and she couldn't figure out the confusion – but the district wasn't listed on the agenda, and asked Mr. Foley if staff could be sure to add it.

Mr. Chris Perez, Senior Planner, addressed the Board, stating that they would be considering an appeal for SDP 2013-00048, a Tier II treetop tower on the Durkin property. He said that this tower was reviewed administratively per the County's wireless policy, and it can be no more than 10 feet above the

reference tree – and the applicant has followed through with that. Mr. Perez said that the agent and the designee disapproved the application on May 27, 2014, and the applicant had since appealed the decision. He stated that the denial was based on two factors in the ordinance, Section 5.1.40.D2 – facility not screening and siting to minimize visibility; and 5.1.40.B5 – failure to provide all information required by the County code; Section 32 – specify an ENS plan. Mr. Perez stated that staff was up against a 90-day review process on this, as dictated by Section 5.1.40.H1, and they must make a finding within 90 days of application. He said that they got their third review done at approximately 89 days, and requested to the applicant that he extend the 90-day review process so he could continue to go over the issues with regard to visibility, but the applicant was not at liberty to extend the period. Mr. Perez said that staff went ahead with final action and disapproved the proposal, and staff believes that the visibility could be mitigated for the proposal if the applicant were amenable to that – but through the reviews that happened, no efforts were made to mitigate visibility, and that's where things stand today.

Mr. Perez reported that the Durkin property is Tax Map Parcel 34-70, zoned Rural Areas, and is 29 acres. He said that it is located on Route 29, Stony Point Road, which is an entrance corridor overlay district, and the project was reviewed by the ARB, which did find approval as the visibility on Route 20 was deemed to be “minimal, in very small segments.” Mr. Perez said that the property abuts the Southwest Mountains Historic District, and while this property is not specifically in that district, it is in the avoidance area. He stated that the surrounding areas of this property are some small lots – 0.79 acres to 5.0 acres – mostly residential, and the other surrounding areas are larger, unwooded properties. Mr. Perez pointed out the location of the tower, stating that it's near the Critzer property and the former Davis property.

Mr. Perez stated that the proposed tower is 131.5 feet tall, 10 feet above the reference tree, which is within 25 feet of the tower, and presented a site plan. He presented slides and noted the location from where he took the pictures, on the Jones property, and said there were two balloon tests that happened on the property – one in the fall when there were no leaves, and one in the summer when there were leaves. Mr. Perez stated that the Jones property is approximately 1,600 feet away from the tower, and pointed out where the picture was taken from her property as well as where the tower is located. He said that the first balloon test was held on September 25, 2013, with the second taking place on February 20, 2014, and from the Jones property the balloon was highly visible and extremely skylit. Mr. Perez said that the County's wireless policy states that the backdrop of the facility must be considered, which staff did. He stated that Ms. Jean Jones contacted staff on numerous occasions, and she is opposed to the project for visibility issues, with regard to enjoyment of her property as well as property values. Mr. Perez said that staff requested photo simulations from the applicant from this viewpoint because of the extreme visibility, and he presented to the Board what was provided.

He presented views from other properties, including Tax Map 35-21, owned by the Piedmont Manor Land Trust, and said that during the first balloon test staff was not invited to that property – but during the second balloon test, when all the neighbors were notified by the applicant, staff was invited to that property and was able to take photos. He presented photos taken during that visit, noting the distances as generated from the County's GIS system. Mr. Perez reported that the Piedmont Manor Land Trust had hired Mr. Sipe as their legal counsel, and he is present at the meeting, with his correspondence in the staff report. He said that he and Margaret Malizewsky of the ARB staff had driven around the property to see areas where they could see the, but because of the mountain backdrop, the visibility was minimized. Mr. Perez presented a view from a property 3,000 feet away, and while the ordinance doesn't consider distance, it does discuss minimizing visibility – so to go 3,000 feet back wouldn't be a stretch.

Ms. Mallek asked if there were also photo simulations from that view, because a large brown tower would look different than a small pink balloon. Mr. Perez said that they didn't get one because the view was so minimized by the mountain and the trees.

He presented additional balloon test photos from other properties including the Critzer property, noting the mountainous backdrop and minimized visibility, and noted that staff didn't have issues with the height of the tower but did have concerns about the ground equipment. He said that staff discussed this with the applicant, given that the pine trees are not all on the Critzer property and could be removed at any time, which would mean increased visibility of that equipment. Mr. Perez said that staff had suggested putting in a six-foot tall wooden fence for screening purposes, as other towers have done, but no efforts were made to provide that screening prior to reaching the 90-day window. He said that the proposal includes a 12-foot wide gravel access road and a 25-foot wide access easement, which contains over 10,000 square feet of proposed land disturbance, and because it is over that limit, an erosion and sediment control plan is required. Mr. Perez emphasized that the applicant didn't submit that plan nor does one exist for the property.

Ms. Dittmar asked if the applicant had given any reason as to why they didn't want to provide an extension in order to allow more time to get everything done. Mr. Perez responded that the applicant said they weren't at liberty from AT&T to extend the time period, and wanted to stick to the 90 days, so staff took action before the shot clock expired.

Ms. Mallek asked if there was any response from the applicant as to why they refused to provide the E&S report. Mr. Perez said that the applicant said they wanted to wait until they knew the County would approve the location of the tower, and then submit the E&S plan.

Ms. Mallek said that's not the way the County's procedures work. Mr. Perez confirmed that was the case.

Ms. Dittmar noted that the ARB had gone ahead and approved it. Mr. Perez explained that the views from the Entrance Corridor, Route 20, were fairly quick when driving down Route 20, and one of the things that the ARB considers is how long the visibility is – so there may be a little blip before you hit a tree line. He also stated that Route 20 is a scenic byway, but because the tower is far more than 200 feet away from the road, it wouldn't be considered an avoidance area – and if it wasn't an avoidance area, it would be a Tier III tower, which would have to go through the special use permit process.

Ms. Dittmar asked what would happen if the Board upheld staff's disapproval of this application. Mr. Davis said that the application would be denied, and the applicant could make a resubmittal with a different location on the property or appeal it to the courts.

Ms. Dittmar said they could remedy what the problems were.

Ms. Mallek said they would have to resubmit the application and then remedy, because once it's denied they can't just come back with more information – and that was their choice.

Mr. Davis said that was correct, and if the Board approves the appeal, the recommended scenario would be to approve it contingent upon them submitting an approved E&S plan before disturbing any area for the driveway, and that approval would allow them to proceed under the plan they've submitted.

Ms. Dittmar stated that this would buy time to take care of the second objection from staff, but doesn't address the first objection. Mr. Perez said that there was nothing to address with what is in the proposal in front of them.

Mr. Davis said that the criteria considered is whether or not the facility has been sited to minimize its visibility from adjacent parcels and streets, and staff's position is that it had not been sited to minimize the visibility and that there could be other locations on the site that might meet that standard if they chose to do so – but the applicant didn't want to resubmit or work further to find a different site on this parcel.

Ms. Dittmar asked staff if they felt there might be another site on this parcel. Mr. Perez said that staff doesn't site these locations for the applicant, and he didn't know any other sites on the property that had been presented. He said that they could lower the height of this tower, move it to the left where it is closer to a tree where the visibility is less, add buffer by moving it back a little bit – but at this point what he has in front of him is what he has reviewed.

Ms. Dittmar asked if people could withdraw their appeals, and asked if it kept them in the process if they wanted to remedy this, because it sounds as if everyone was running out of time. Mr. Davis said that the applicant could request a deferral and work with staff in the meantime to see if there was a solution – but withdrawing their appeal would leave them in a state of denial. He also confirmed that the applicant would have as long as they want, and there wouldn't be a one-year holdback after the denial because this is a ministerial application.

Mr. Preston Lloyd addressed the Board, stating that he represents Williams Mullen law firm and was before them on behalf of AT&T. Mr. Lloyd said that the essence of the appeal is to answer one single question – what is the appropriate standard for minimizing visibility. He said that they got to a point in the application process where staff and the applicant disagreed on how that was being applied, and at that point they felt the Board needed to weigh in on this. Mr. Lloyd stated that they feel there is “a major misunderstanding” between the County and a major carrier that operates here, which they need to clarify before they move forward. He said that the next step involves a lot of engineering – the E&S report – and typically that would be submitted after some indication from staff that the general tower location is acceptable. Mr. Lloyd said that this would provide AT&T with the confidence needed to move forward with the expense, figuring out the layout of the road, and if the Board says that the site doesn't work, that money would have been wasted. He stated that what they're looking for tonight is a recommendation for staff to find that this is a site that has effectively minimized the visibility and that it's approvable, and AT&T then needs to submit an E&S report – and upon its approval, this would be an approvable site. Mr. Lloyd said that this was the process that AT&T was looking for.

Mr. Lloyd reported on the process that AT&T goes through when finding a new site, stating that there are a lot of reasons they may need a new facility – the two major ones being there is infill needed where there is a lack of coverage, especially in rural areas, and the other is a capacity issue whereby too many people are trying to ping onto the same towers. He said that AT&T hires an outside consultant – a site acquisition specialist – and then provide them with a search ring in which they must site a new facility. Mr. Lloyd stated that the specialist then goes out and searches that ring to try to find properties within that ring that meet three criteria: it's leasable, it's constructible, and it's zonable. He said that the County

sends a signal to the provider in terms of what they want in terms of the facilities that can be approved from a zoning perspective. Mr. Lloyd said that originally, when the technology was new, it was the Wild West – without a lot of guidance available from the County – so every single facility had to be brought before the Board and considered on its merits every time. Mr. Lloyd said that it was a very cumbersome process that took a lot of the Board's time, staff time, and there wasn't a lot of confidence from the carrier as to what would be approved because the decision would change every single time based on the variables associated with each individual site. He stated that over time, Congress got involved due to NIMBY reasons, but they felt it was a necessary technology and decided that the best way for the siting to be regulated was local governments. Mr. Lloyd said that local governments were given the power to figure out where the towers would go, but there was a limit to that power, which was that you can't prevent them from coming or create regulations that deny certain areas service. He stated that this set the boundaries for the counties and what they would do in trying to develop the zoning policy that was then given to the wireless providers to determine where to put facilities in the community.

Mr. Lloyd said that in December 2000, Albemarle adopted a personal wireless facilities policy that said this is the guideline from a policy perspective for the carriers, and that had one specific policy recommendation for the rural areas – and that was for treetop towers, those just visible above the trees. He noted that these are "line of sight" technologies which means there must be an antenna that has a clear line of sight to the area they're trying to reach, or the "coverage objective," so when the site acquisition specialist has a ring to work with, they have a coverage objective they're trying to hit. Mr. Lloyd said that the treetop tower concept is that it would be shielded by the trees for 90% of the tower, but all of that antenna must be above the treetops, and if not then it won't be effective, and it won't be worth sinking the money into the construction. He stated that the County adopted the Zoning Ordinance to essentially codify that policy; they took the policy recommendations and they made them law, creating a three-tiered process with existing facilities as Tier I; new facilities that meet design criteria provided by the County as Tier II; and facilities built into an avoidance area as Tier III. Mr. Lloyd said that there is great advantage to both the County and the providers in having a clear articulation of the policy; it has to be predictable from the carrier's perspective, and if the carriers don't know what's approvable, the system doesn't work. He stated that there must be a clear expectation, and the skylit criterion has multiple viewpoints, and what may be skylit from one perspective may be back dropped from another perspective – as was the case with staff's review of this particular site.

Mr. Lloyd said that the zoning ordinance states very clearly that the site must provide adequate opportunities for screening and shall be sited to minimize visibility. He said that there is a misunderstanding, which is why he is before them, because "minimize" visibility does not equal "invisible," and if it is an invisible cell phone tower it will never work, because that means it doesn't have a line of site to its coverage objective. Mr. Lloyd stated that the question is how you design a facility to be built and constructed in such a way that they've shielded the ground equipment and have tried to prevent it from being something that obstructs the rural view to the greatest degree possible. He said that the County's wireless policy shows two photographs of a treetop tower, and states that this is the type of facility supported by the County – which looks very similar to pictures they saw today. Mr. Lloyd said that this is what carriers are being told the County will approve, and yet they have a staff recommendation that says the AT&T facility is too visible. He presented examples of sites that have been approved over the past decade that look just like the one before them, including an example of a balloon test that's labeled "highly visible," and it doesn't have to be invisible so the question is whether it's highly visible. Mr. Lloyd said that they must use the context from what's been approved before this application to decide what the comparison is – what's in the County and what they've seen in their communities and districts. He said that the adjacent neighbor has said that the trees will not totally cover the width and height of the tower – but that's not the standard, as it doesn't have to be totally covered. Mr. Lloyd stated that there are other sites around the County as well, and he presented pictures from Walton Middle School, which was approved as a Tier II; Scottsville Elementary School; and Mill Creek from Snow's Garden Center. He mentioned that there is a big difference when there are leaves on the trees, and presented a photo of a site that was taken in wintertime and stated that many of the pictures from staff for the AT&T site were taken when there was snow on the ground, so this is "apples to apples."

Ms. Mallek said that the thickness of the trees on the AT&T site was radically different from the site that he was showing. Mr. Lloyd also presented images of Taylor's Gap and Monancan Trail South, and an excerpt from the policy – which says that "Albemarle County requires less visible and less intrusive solutions, such as those shown here." He said this was a best practices picture that carriers were supposed to use when siting facilities in the County, and noting that they were much less screened than the AT&T facility before them. Mr. Lloyd said that they are just looking from guidance from the Board and seeking a recommendation that this meets the County's policy for visibility.

Ms. Dittmar asked where the closest towers were to this facility. Mr. Lloyd presented a signal propagation map, which showed two other facilities located to the north and south of this proposed facility, with the southern facility being the fire station on Route 20. He said that the reason they didn't want to move the facility back from Route 20, as proposed by staff, was that it created gaps in two specific locations, and also because they felt confused by the visibility standard.

Ms. Jean Jones addressed the Board, stating that she was the owner of the property that is affected dramatically by this proposed tower installation. She presented a picture of her property taken earlier that day, showing a swing in her front yard – and a picture of her sitting in the swing with the proposed cell tower in the view. Ms. Jones said that she is not opposed to progress and technology, and

was on her cell phone all the time. She stated that she bought this piece of property to retreat from the assault of social media, the scenic views, the rolling meadows, the farm across the street, and the beautiful mountains. Ms. Jones said that the installation of this cell tower in this location is an assault on her quality of life, and she has heard four Supervisors mention that their job is to protect that. She stated that she cannot fight "this giant gorilla" who has arrogantly started the installation of this tower, drawn lines, and even started an access road without even having approval. Ms. Jones said that this isn't about stopping progress or "not in my backyard," as this is in her front yard. She stated that this needs to be stopped, and it isn't about enhancing services, it's about money and greed. Ms. Jones said that she went to the County when she bought her house, which was assessed for just under \$1 million, but the bank assessed it at \$300,000 less because they don't like funding land. Ms. Jones said that she went to the County, and the assessor said that he "would not lower the value of her property" because she was living in one of the most beautiful corridors of Albemarle – and if they lowered her taxes, they would have to do the same for all of her neighbors. She stated that that the County probably couldn't make that assertion today.

Ms. Dittmar asked Ms. Jones if she had good cell service. Ms. Jones said that it was not as good as what she got in the City, but it was fair and she was able to talk on her cell phone when she was in her farmhouse and on her property.

Ms. Nicole Lewis addressed the Board, stating that she lives at 4894 Stony Point Road, a few doors down from Ms. Jones, and the impact on her farm is significant – but not as much as on Ms. Jones farm, which is "right in your face." Ms. Lewis said that the pictures shown by AT&T look like commercial sites, and they aren't even remotely similar to the Stony Point corridor, which is the most beautiful corridor in Albemarle County. She stated that they have nesting bald eagles behind her farm, and she didn't know how this tower might impact them. Ms. Lewis said that the Piedmont Manor property is the most pristine property she's ever seen in her life, and the impact of this tower on it would be huge.

Mr. James Critzer addressed the Board, stating that he lives at 4742 Stony Point Road and noting that the proposed tower would be 220 feet from his property line, and the pictures they showed with the balloon were taken when the foliage was on the trees. He said that what the balloon test doesn't show is that the tower would be visible six months out of the year. Mr. Critzer said that it's visible from his deck out back, it's visible the minute he turns onto his driveway, and from different parts of his yard he would be able to see all of the structure that supports this – the building, the fencing, and other ground equipment. He stated that he uses all of his yard, with playgrounds for the kids and a built-in pool, and they would be able to see the tower from everywhere on his property. Mr. Critzer said that when people come from Orange into Albemarle on Route 20, he has heard for the 30 years he's been there how beautiful it is there, and it really is beautiful. He stated that it is one of the most beautiful corridors in Albemarle, and when this tower is put there it will change that. Mr. Critzer said that staff has done a good job in approving many towers around the County, and when they got to this tower proposal they didn't approve it – and there was a reason. He emphasized that staff has done a very good job in their review of towers, and added that they really know what they're doing.

Mr. Maynard Sipe addressed the Board, stating that he represents Piedmont Manor Trust, a historic property located directly across the road from the proposed cell tower site. Mr. Sipe said that the trustee and owner of the property, Ms. Ellen Hampton, is at the meeting. He stated that she had contacted him because of her concerns about the visibility of the tower and its negative impact on her properties; she owns Piedmont Manor as well as a small house that directly abuts the site. Mr. Sipe said that she wanted to have someone analyze this who had experience dealing with cell towers, and he has worked on over 30 sites in the County and is well acquainted with the ordinance. He stated that he feels that staff got this one right and did a proper analysis, and the Board should uphold their decision. Mr. Sipe said that the ordinance is well-crafted as a scheme to balance service provision with limitation of visual impacts in the rural areas. He said that this is a Tier II, a treetop facility, but in each case the applicant must meet the specific requirements of the ordinance like setbacks, the width and size of the tower, and the size of antennas; and the second and most important part is to meet the ordinance requirement to minimize visibility from adjacent properties – which they did not do in this case. Mr. Sipe said that the ordinance provision that's at the heart of this is cited as 5.1.40.D2, and it's important to recognize that and in doing so, to uphold the decision. He stated that he was present at the balloon test in February, and presented a general location map showing properties in the area surrounding the tower site. Mr. Sipe said that from Piedmont Manor, you can see the balloon directly across the road, and it is visible from almost the entire property. He presented an image from a parcel to the south of the tower, owned by the Wilson's, and stated that the balloon is substantially more than 10 feet above the average tree line. Mr. Sipe presented a photo from a site that's over 4,000 feet from the property, noting that you can still see the balloon and would be able to see the tower with the naked eye, which would be skylit. He stated that there aren't a lot of problems from the west, but the reason the visibility to the east is so intense because the terrain rises.

Mr. Boyd asked if he felt there were other locations on this particular site where the tower could be placed so that it wouldn't be so visible, as previously mentioned. Mr. Sipe said that there absolutely were, and there's proof of that in the County's records – including an application from another carrier that shows a site on the same property, and they had designed and engineered an application to provide coverage to the 20 corridor in the same area – and that tower is 105 feet tall, and located in an area that's less visible from adjacent properties. He stated that other steps could have been taken, and other choices the applicant had but did not make.

Mr. Lloyd said that the Verizon proposal that was put in previously was closer to the road, within 200 feet of a scenic byway, making it a Tier III proposal – but it was withdrawn because it wasn't going to be approved by the Board. He stated that the site has been scoured for alternatives, and it is very difficult for AT&T to get coverage on Route 20 – but the challenge is the topography. Mr. Lloyd said that this is the only big stand of trees within the search ring, and this is the ideal site, with topography playing a role. He stated that this is not a perfect site, without a big hill where they can put a facility and have it back dropped; and they've used the best screening that they have. Mr. Lloyd said that to deny this site would essentially say this isn't good enough, and they should come back with something better. He stated that if they move further away from the road, the land drops in topography, which would require greater height – meaning they would need to go more than 10 feet above the reference tree in order to shoot back down at Route 20, which is not what the policy wants. Mr. Lloyd said that the industry had tried to do the big lattice towers, just a few around the County, but the County said they would allow short towers at just 10 feet above the reference tree – which is essentially screening and mitigating visibility. He stated that the ordinance builds in a little bit of a cushion that provides for extenuating circumstances in the event a tower meets the easy requirements for design but still may be too visible. Mr. Lloyd said that “minimize visibility” is a very subjective standard, and that's the standard AT&T is asking the Board to clarify today – what the standard means, and what constitutes “appropriate” amounts of visibility. He stated that if it is dropped down into the trees so it's invisible to all the surrounding property owners, it won't work, and they are asking for a consistent application. Mr. Lloyd said that this is a good site that will provide service, and it's a health and safety issue, including for school buses as they use AT&T for their service. He stated that this site has been scoured for a number of years, and this is the site that has produced the least visibility – and the question is how many times AT&T has to bring an application forward before they finally get one approved. He added that the question is what burden is legitimate to put on AT&T, so it's also an economic development issue, which is one the County struggles with.

The Chair closed this portion of the meeting for public comments and the matter was placed before the Board.

Mr. Boyd asked if the visibility determination as to whether something was skylit or not was done by a single planner, or if it was a group effort. Mr. Benish explained that the planner brings it to a staff meeting where they discuss it and try to look at the comparables, but recognize that there are unique circumstances to each site that bear unique consideration, but they do try to remain as consistent as possible. He noted that the applicant did a good job of outlining the issues.

Mr. Boyd said that he wanted to ensure that it was a joint decision to determine that this tower was too visible from too many vantage points.

Mr. Benish said that the applicant provided a good presentation of the issue, and the intent of the policy and the ordinance is to try to be as prescriptive as possible – and going into their Tier II analysis, there is still additional information and guidance that can help in their decision-making, but there are still gray areas and staff felt there were ways to further improve the site.

Mr. Boyd said that he couldn't support the application as presented and would agree with staff's finding, and suggested that the applicant consider deferral to look at a different location either on that site or in a different location.

Ms. Mallek said that there didn't seem to be any middle ground, based on what Mr. Davis had said.

Mr. Davis said that the applicant could choose to defer to try to improve their application, but if the applicant doesn't want to do that, then the Board would need to either approve or deny the appeal.

Ms. Palmer said that Mr. Critzer had mentioned that the tower was 220 feet from his property line, and to her that seemed really important in deciding where a cell tower should be – as it is would be really visible at that distance.

Mr. Benish said that it depends on the vegetation, and these towers were never intended to be stealthy – it's just impossible, as there would always be some visibility. He stated that given the circumstances of that site, they have located them as close as that or even closer. Mr. Benish said that there isn't a rule other than the fall zone, and an applicant would need easements if it was beyond the distance – and depending on the type of coverage, vegetation and angles, they could be acceptable or not acceptable.

Ms. Dittmar asked about the comparable towers shown by Mr. Lloyd, and asked if staff agreed that they were comparable. Mr. Benish said that there were two in which the Board weighed varying benefits, including the Scottsville tower, which staff had recommended for denial – and the Board's desire was to have service in a lacking area. He said that the Walton Middle School site skylighting was from the school, and staff has given deference to allowing schools to be target sites, accepting the fact it may be more visible from those sites.

Ms. Mallek stated that the photo shown was taken looking almost straight up, and the photo that was part of the Scottsville application showed much more protection than this view. She said that she didn't like having this game played with her, and it made her mad.

Mr. Benish said that there are sites that are skylit, and there are certain angles and mountainous areas, so staff tries to look at the preponderance and the amount of the visibility, the distance, etc. – and try to be as consistent as possible, but all sites are somewhat unique.

Ms. Dittmar asked Mr. Perez if either of the reasons for disapproval were more important than the other, or if they were considered to be fairly equal. Mr. Perez said that it was more the visibility, and if the applicant had been willing to come back and do the E&S plan, staff would have just waited until that was done.

Mr. Boyd said that's why he had suggested that there be a deferral, because it may be possible for the applicant to find another location on this site. Mr. Lloyd said that they would be willing to defer, but if the Board feels the tower is too visible, then it would be helpful if they would say why. He said that they don't want to end up in a situation where they keep submitting applications only to have them told they were not quite there yet, and to try again.

Mr. Boyd said that's why he asked staff how the decision process was done at their level, and the reality of the situation is that it's a somewhat subjective observation by individuals – and unfortunately, they can't provide any more than that.

Ms. Mallek pointed out that the County went to court for the ability to use aesthetics for the reason for their siting choices, and it's important that they not relinquish that too easily. She said that hundreds of tower applications that have gone through in the seven years she's been on the Board, so there are obviously many proposals that are meeting the requirements and who don't withhold the information needed to start the process. She stated that she is very concerned that this "running out of time" is being used as a weapon against the staff to be able to make the proper decision. Ms. Mallek said that staff has done exactly what the Board has asked them to do, and it's up to the applicants to live up to requirements.

Ms. Dittmar said that she's in no position to give any feedback, and perhaps when they get through the changes to the ordinance, there may be more clarity.

Ms. Mallek said that "scenic view" looks different to every set of eyes, and they just have to face that.

Mr. Davis clarified that the standard is "visibility," not "aesthetics," and contrary to what the applicant said, a facility doesn't have to be invisible – and that is recognized throughout the policy – but there is a requirement under the ordinance to minimize visibility on any particular site, and in this particular instance, they have not met the burden at this point. He said that there is substantial evidence before the Board that would justify upholding staff's recommendation, but ultimately that's a determination that must be made by the Board.

Mr. Boyd said that he was willing to let the applicant work on another site for this facility.

Mr. Lloyd said that the Board has signaled that the applicant should go back to the drawing board with staff, and they would follow that instruction.

Ms. Mallek said that if it's a new location, it would require a new application.

Mr. Davis said that they can work with this particular parcel, and the application has been made for this parcel – so they could choose to relocate it on this parcel or decide to improve the existing site to ensure visibility is appropriately minimized.

Ms. Mallek asked if they had the enabling authority to make sure the clock doesn't start until all required elements have been submitted and the applicant has complied with the requirements.

Mr. Davis said that in this case staff met the clock requirements, and at this point it would be a deferral from the applicant, and staff will work as expeditiously as possible.

Ms. Mallek said she didn't want staff to feel as though they were backed into a corner again with an 89-day response.

Mr. Benish stated that staff would work as expeditiously as possible so that the applicant can get a decision on this, and find out whether this is the best possible site and assess it from there.

Mr. Boyd **moved** for an indefinite deferral until the applicant and staff reach a position as to whether or not the application is approvable. Mr. Sheffield **seconded** the motion.

Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Palmer, Mr. Sheffield, Mr. Boyd, Ms. Dittmar, Ms. Mallek and Ms. McKeel.
NAYS: None.

Agenda Item No. 18. **Discussion and Possible Action**, re: Route 29 Advisory Panel Recommendations. (**Removed from agenda by previous vote**).

Agenda Item No. 19. From the Board: Committee Reports and Matters Not Listed on the Agenda.

There were none.

Agenda Item No. 20. From the County Executive: Report on Matters Not Listed on the Agenda

There were none.

Agenda Item. No. 21. Adjourn.

Mr. Davis said that it was his understanding that more than four Board members were going to attend the roundtable for the proffer discussion, and they would not need to adjourn to that if they were only going to observe.

Ms. Palmer **moved** to adjourn the meeting to May 27, 2014 for the public hearing on the Route 29 proposed solutions. Mr. Sheffield **seconded** the motion.

Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Palmer, Mr. Sheffield, Mr. Boyd, Ms. Dittmar, Ms. Mallek and Ms. McKeel.
NAYS: None.

Chairman

Approved by Board
Date: 11/12/2014
Initials: EWJ