

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on September 10, 2014, at 4:58 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia.

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 5:00 p.m., by the Chair, Ms. Dittmar.

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Agenda Item No. 2. Closed Meeting.

At 4:58 p.m., Mr. Sheffield **moved** that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under subsection (1) to discuss the assignment and appointment of three specific County employees that are appointed by the Board; 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; and under subsection (7) to consult with and be briefed by legal counsel and staff regarding probable litigation concerning a violation of a subdivision agreement because a public discussion would adversely affect the litigating posture of the County. Mr. Boyd **seconded** the motion.

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

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

NAYS: None.

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Agenda Item No. 3. Call to Order Night Meeting.

At 6:03 p.m., the Board reconvened into open meeting, and Ms. Dittmar called the Board to order.

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Agenda Item No. 4. Certify Closed Meeting.

At 6:03 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. McKeel **seconded** the motion.

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

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

NAYS: None.

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Agenda Item No. 5. Pledge of Allegiance.

Agenda Item No. 6. Moment of Silence.

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Agenda Item No. 7. Adoption of Final Agenda.

Mr. Boyd requested that appointments be added to the end of the agenda, as Item 15A; he then **moved** to adopt the amended agenda. Mr. Sheffield **seconded** the motion.

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

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

NAYS: None.

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Agenda Item No. 8. Brief Announcements by Board Members.

Ms. Palmer announced that she and Ms. Mallek had attended a celebration of the County's receipt of the land for the William S.D. Woods Natural Heritage Area, which is a new kind of park – a natural area park. She said that it would be few years before it would be open to the public and the

Natural Heritage Committee would lead the process of documenting the plants and animals that are present. She said that the County would also need a management plan, and the Ivy Creek Foundation would be helping with trail building. Ms. Palmer said that the foundation could use additional assistance in the many projects they have taken on over time.

Ms. Mallek said that another partner in the park is the Rockfish Nature Sanctuary, whose building and rehabilitation center is in Nelson County, and they are looking to the new natural heritage area as a release site for rehabilitated birds.

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Ms. Dittmar said that she would attend the Scottsville Community Service Day on the following Saturday, which is a celebration for people to find out about services in the town.

She said that the wireless policy would be on the Board's agenda on October 1, and Bill Fritz has offered to meet with any Board members who would like more information, prior to that meeting.

Ms. Dittmar reported that she and Ms. Mallek had recently met with Kurt Burkhardt at the Charlottesville Albemarle Convention and Visitors Bureau. She said that the Board would discuss the jobs report at the end of the meeting if time allowed.

Ms. Dittmar reported that she had represented the Board at the opening of the Virginia Institute of Autism on Greenbrier Drive. Ms. Dittmar stated that there is no other institute like it in the country, and they are dealing with four areas of autism across the entire spectrum.

She asked if anyone who stayed for the "Walkable Cities" event would report on it.

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Ms. Palmer said that she stayed for almost the entire event, which she found very interesting, and stated that Jeff Speck had written a book about walkability addressed the group as to how to make the urban area in Charlottesville more walkable. She stated that he is more about "place-making," and Charlottesville Tomorrow has a video of the talk online now. Ms. Palmer said that Mr. Speck showed pictures of the City streets of Charlottesville and applied some of his planning techniques specifically to the community, including making parking more efficient.

Ms. McKeel thanked Charlottesville Tomorrow for providing the opportunity to hear Mr. Speck, and said that he challenged some of her notions about how to do things – parallel parking being one. She said that he also talked a little bit about the County, specifically Stonefield and Hollymead.

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Ms. Mallek reported that the Heritage Harvest Festival would be held the following Friday and Saturday at Monticello, with speakers, exhibits, etc.

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Mr. Boyd announced that he and Mr. Sheffield would hold a town hall meeting at Baker-Butler Elementary School on September 15 at 6:30 p.m., with an open discussion about the Solutions 29 package and specifically the possibility of extending Ashwood Boulevard over to Berkmar Drive extended. He said that VDOT would be there, and there would be illustrations of some of the solutions projects.

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Agenda Item No. 9. Recognitions:

a. Proclamation recognizing *September 13, 2014, as Scottsville Founders Day and the 270<sup>th</sup> Anniversary of the Founding of Albemarle County in Scottsville.*

Ms. Dittmar presented the following proclamation in honor of Scottsville Founders Day and the 207<sup>th</sup> anniversary of the founding of Albemarle County and Scottsville, and recognized Founders Day as September 13, 2014.

**PROCLAMATION  
RECOGNIZING SCOTTSVILLE FOUNDERS DAY AND THE 270TH ANNIVERSARY OF THE  
FOUNDING OF ALBEMARLE COUNTY IN SCOTTSVILLE**

**WHEREAS,** *in 1744 the House of Burgesses acted to create Albemarle County with Scott's Landing as its county seat in recognition of the site's value as a river crossing and logistical hub in the growing Virginia Piedmont; and*

**WHEREAS,** *from 1744 to 1762 Scott's Landing served as the centrally located county seat and civic center of a larger Albemarle County which included all or part of today's counties of Amherst, Appomattox, Buckingham, Campbell, Fluvanna, and Nelson; and*

**WHEREAS,** *through much of the 18<sup>th</sup> and 19<sup>th</sup> centuries, Scottsville served as the principal river port above Richmond on the James River, through which passed busy land and river traffic in commodities and manufactured goods, travelers, immigrants, and enslaved persons, all important aspects of Albemarle County's diverse history; and*

**WHEREAS,** *Scottsville and its residents have weathered destruction through natural disaster and war, rebuilding the town and providing vital commercial and civic services for southern Albemarle County; and*

**WHEREAS,** *the town's present charm and economic development is a significant part of Albemarle County's strong future;*

**NOW, THEREFORE, BE IT RESOLVED,** *that we, the Albemarle County Board of Supervisors, do hereby honor and congratulate the Town of Scottsville on the occasion of the 270th Anniversary of Albemarle County's founding with Scottsville as its seat, and urge all citizens of the Town of Scottsville and the County of Albemarle to join in Scottsville's celebration of Founders Day on September 13<sup>th</sup>, 2014.*

Ms. Mallek **moved** to adopt the proclamation in honor of Scottsville Founders Day. Ms. McKeel **seconded** the motion.

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

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

NAYS: None.

Ms. Nancy Gill, Vice-Mayor of Scottsville, addressed the Board and stated that she is grateful for their accepting participation in the recognition. She thanked the Board for the recognition and said that as the town moves forward with developing Community/Founders Day it will only make Scottsville stronger and give more recognition to their place in history.

Mr. Dan Gritscko, Scottsville Town Councilman also addressed the Board and thanked them and pointed out that historically Scottsville was a booming commercial town in the 1700's at the time that it was the County's seat. He said that that it was again a booming commercial area in the 1840's and 1850's at the time of the canal and are hoping that it will grow as it is now and continue to be a booming town in the future. He thanked the Board for both supporting the town and the proclamation.

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b. Proclamation recognizing *September 13, 2014, as Pride Festival Day.*

Ms. Palmer presented the following proclamation in honor of Pride Festival 2014, recognizing September 13, 2014 as Pride Festival Day.

***Pride Festival Day***

**WHEREAS,** *the County of Albemarle is a community that values human rights, and respects the dignity of each person; and*

**WHEREAS,** *the Board of Supervisors of the County of Albemarle is committed to equal rights for all Americans, and opposes discrimination in all forms; and*

**WHEREAS,** *the cultural diversity and heritage of the County of Albemarle has been enriched by the contributions of its lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) community; and*

**WHEREAS,** *the County's LGBTQ community members are integrally and actively involved with the County's health and safety, learning and innovation, economic energy, and quality of life; and*

**WHEREAS,** *the Pride Festival celebrates the lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) community and its proud presence in the County of Albemarle; and*

**NOW, THEREFORE, BE IT RESOLVED** *that the Albemarle County Board of Supervisors recognizes with pride the lesbian, gay, bisexual, transgender, queer and questioning community in Albemarle, and*

**FURTHER RESOLVED** *that the Board of Supervisors proclaims*

***Saturday, September 13, 2014***

***as***

***Pride Festival Day in the County of Albemarle.***

Ms. Mallek **moved** to adopt the proclamation in honor of Pride Festival. Ms. McKeel **seconded** the motion.

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

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

NAYS: None.

Ms. Amy Sarah Marshall addressed the Board and thanked them for the proclamation.

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Agenda Item No 10. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. John Martin from the White Hall District addressed the Board, stating that the Rivanna Water and Sewer Authority has scheduled the dedication for the new Ragged Mountain Dam for September 18, 2014. Mr. Martin encouraged the Board to think about that event as proof positive that a regional approach to providing these kinds of community services works and is best for the community. He said that he had read a paragraph from the Articles of Incorporation from the Rivanna Solid Waste Authority, which describes its regional responsibilities, and it shows that the authority is there and ready to go to work. Mr. Martin said that many citizens feel that solid waste should be approached on a regional basis and hold conversations with the City – perhaps even the University – and try to work something out for community residents. He stated that all the effort going into dealing with solid waste now is really good, and they just need to make sure to have an open conversation with their partners.

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Ms. Letha Mathers addressed the Board, stating that she was a resident of the Rivanna District and lives in the Pavilions at Pantops community on the north side of Route 250. Ms. Mathers said that she was before them to ask that they install a pedestrian crossing bridge at the intersection of Rolkin Road and Route 250. She stated that she and her husband purchased their townhome in 2010 because they liked the walkability of the Pavilions neighborhood and the convenience of the stores and restaurants on the other side of 250. Ms. Mathers said that they have lived in both Boston and Amsterdam – both very walkable areas – and felt that being able to walk places greatly increased their quality of life. After moving in, she said, they found out that there was no pedestrian crossing at the intersection – which is surprising given the amount of traffic – and there was a fatality at that spot just a few months ago. Ms. Mathers said that she and her husband started an online petition to gather support for a pedestrian crossing, and it currently has 143 signatures. She stated that many people would benefit from a crossing at this location, which would also strengthen the connection between the communities on both sides. Ms. Mathers asked the Board to consider the proposal, which she said would serve to enrich both residential and business communities and make it a more desirable place to live.

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Agenda Item No. 11. Consent Agenda. Mr. Boyd **moved** to approve Items 11.2 and 11.3 on the Consent Agenda. Ms. McKeel **seconded** the motion. (**Note:** Discussions on individual items are included with that agenda item.)

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

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

NAYS: None.

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Item No. 11.1. Approval of Minutes: November 13, 2013 and February 24, 2014.

Ms. Dittmar pulled the minutes of November 13, 2013 and carried them forward to the next meeting.

Ms. Palmer pulled the minutes of February 24, 2014 and carried them forward to the next meeting.

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Item No. 11.2. ZMA-1976-00002. Ednam – Special Exception to Authorize a Variation from the Application Plan.

The executive summary states that the Ednam property was rezoned from R-1 Residential (“R-1”) to Residential Planned Neighborhood (“RPN”) on June 2, 1976. Section D of the development contains 12 single-family attached dwelling units that lie on the western side of Worthington Drive and are adjacent to a set of office buildings in the Ednam Business District (Attachment A). The applicant purchased a dwelling on June 5, 2014 and is proposing to enclose an existing rear patio (Attachment B). The footprint of the existing patio would not change, however enclosing the area would encroach on the 50 foot building setback from the rear property line (Attachment C).

This variation allows for an already existing patio to be enclosed without encroaching into the rear setback. See Attachment D for staff analysis. Other property owners in Section D have also enclosed their rear porches in a substantially similar manner, but were able to do so without encroaching into the setback. Additionally, this proposal has the support of adjacent property owners (see Attachment E).

No budget impact will result from authorizing this special exception.

Staff recommends that the Board approve the Special Exception to vary the setback requirement in the approved rezoning application plan by allowing a 40 foot rear setback for Lot 3, Section D of Ednam.

**(Discussion:** Ms. Palmer asked if they would be getting more information about the crosswalk mentioned. Mr. Boyd said that the Pantops Community Advisory Council would like to bring the matter forward as part of their annual report.

Mr. David Benish, Chief of Planning, said that there's a study for those crosswalks in the Office of Facilities Development program, and there is funding set aside to work on the study – and the OFD has also had contact with VDOT regarding what might be possible to do at some of the crosswalks.

Mr. Boyd suggested that he come meet with the Advisory Council.

Mr. Benish said that he would be glad to do so, and said that he would also check with Jack Kelsey on an update. He stated that the idea was to study the whole segment – from Rolkin Road to Route 20 – to determine where the best crossings would be.)

**By the above-recorded vote, the Board approved the Special Exception to vary the setback requirement in the approved rezoning application plan by allowing a 40 foot rear setback for Lot 3, Section D of Ednam.**

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Item No. 11.3. Belvedere Resolution.

**(Discussion:** Mr. Sheffield stated that he has filed a Conflict of Interest statement with the Clerk regarding this matters related to Belvedere, as he is a resident of that community.

**By the above-recorded vote, the Board adopted the following Resolution:**

**RESOLUTION AUTHORIZING THE COUNTY ATTORNEY TO PURSUE  
RECOVERING THE COUNTY'S COSTS TO COMPLETE  
CONSTRUCTION OF BELVEDERE BOULEVARD**

**WHEREAS,** the State Subdivision Law and the Albemarle County Subdivision Ordinance require that all improvements in a subdivision be completed by the subdivider; and

**WHEREAS,** by agreement with the County as a condition of its approval of a final subdivision plat, the subdivider agrees that it will properly complete construction of required improvements subject to the agreement, including streets; and

**WHEREAS,** the final subdivision plat of the first phase of the Belvedere Subdivision therefore required the subdividers of the Belvedere Subdivision – Belvedere Station Land Trust and Dunlora, LLC (hereinafter, the "Subdividers") – to construct the streets shown on the plat, including the segment of Belvedere Boulevard from Rio Road East to Free State Road (hereinafter, "Belvedere Boulevard"), a street depicted on the final subdivision plat to be a public street, designed and constructed to Virginia Department of Transportation (hereinafter, "VDOT") standards, and accepted into the secondary system of State highways; and

**WHEREAS,** VDOT has informed the County that the extent of Belvedere Boulevard constructed to this date by the Subdividers or their contractors was not constructed according to VDOT standards and, therefore, the street is not eligible to be accepted into the secondary system of State highways until repairs are made and construction is thereafter completed to VDOT standards; and

**WHEREAS,** the Subdividers have neither performed the necessary repairs nor completed the construction of Belvedere Boulevard despite demand by the County to do so; and

**WHEREAS,** because the incomplete condition of Belvedere Boulevard has caused the street to deteriorate, thereby posing a safety risk to the traveling public and increasing the eventual cost to repair and complete the street before it may be accepted into the secondary system of State highways, the Board of Supervisors on September 3, 2014 appropriated funds to allow the County and its contractors to perform repairs and complete construction of Belvedere Boulevard, and this work is now proceeding.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors authorizes the County Attorney to pursue any appropriate remedies against the Belvedere Station Land Trust and its trustees and beneficiaries, Dunlora, LLC, and any other necessary parties, to recover the County's costs to repair and complete construction of Belvedere Boulevard and to enforce the requirements of the Albemarle County Subdivision Ordinance.

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Agenda Item No. 12. **Public Hearing: PROJECT: SP-2014-00012. Westgate/Barclay Place (Signs #5&12).** Jack Jouett Magisterial District.  
TAX MAP/PARCEL: 06100-00-00-042D0.  
LOCATION: 2617 Hydraulic Road (Westgate Apartments).  
PROPOSAL: Request to amend conditions of existing special use permit to allow relocation and expansion of office space within apartment complex on 4.677 acres. No additional dwellings are

proposed. ZONING: Planned Residential Development, PRD – residential (up to 35 units/acre) with limited commercial uses, professional offices by special use permit under Section 19.3.2 of zoning ordinance.

ENTRANCE CORRIDOR: Yes.

COMPREHENSIVE PLAN: Urban Density Residential (in areas around centers) residential (6.01 – 34 units/ acre), supporting uses such as religious institutions, schools, commercial, office and service uses in Neighborhood 1 of Places 29 Development Area.

*(Advertised in the Daily Progress on August 25 and September 1, 2014.)*

Senior Planner, Ms. Rachel Falkenstein, addressed the Board, stating that this is a request to amend a previously approved special use permit associated with Westgate Barkley approved in 1994, and the applicant is Great Eastern Management – which is asking to relocate existing office space within the apartment complex. She said that the location of the apartments is along Hydraulic Road, with apartments and townhouse units, and the zoning on the property is Planned Residential Development; professional offices within PRD are considered a special use and thus require the special use permit. Ms. Falkenstein said that the conceptual plan the applicant is proposing shows that the offices will be relocated to another area on the site, and the reason for the amendment is that the previously approved SP had a condition that required the office to be located at a specific address. She stated that they would use the existing buildings and would swap out some existing apartment complexes and move those apartments to the existing offices; a small expansion is also proposed that was also approved with the previous SP that was never built.

Ms. Falkenstein said that the favorable factors include the fact that this is a redevelopment within an existing apartment complex, and no new uses are proposed. She said that this is in an Entrance Corridor, so it would require ARB approval for the new construction of the expansion, and staff found no unfavorable factors. She stated that the Planning Commission held their public hearing on July 15, and they voted unanimously to recommend approval with three conditions: that the development be in accordance with the conceptual plan; the new construction shall not commence prior to an ARB approval; and use shall be limited to property management services.

The Chair opened the public hearing.

The applicant's representative, Mr. David Mitchell, addressed the Board on behalf of Great Eastern Management, and offered to answer questions. He stated that they are moving their offices from one side of the parking lot to the other, and said that he still has to go through ARB and site plan approval. Mr. Mitchell said that he started this process March 10, and there is overwhelming bureaucracy with the zoning text. He emphasized that Great Eastern is allowed to have this office – and it was specific to these two townhomes – but he has to get a special use permit modification just because they want to use different units for the offices. Mr. Mitchell said that he wanted to just have a certain amount of square footage on the property, and said that in the future as they look at the zoning text, they should think about how restrictive some of these ideas become. He stated that maybe something as simple like this could have been handled by staff, and said that they would be updating the design of the buildings to keep them current.

Ms. McKeel **moved** to adopt the proposed resolution to approve SP-2014-00012 with the three conditions as presented. Mr. Sheffield **seconded** the motion.

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

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

NAYS: None.

Ms. Mallek said that in the 30 years since the property was built, she hoped the County had done some standard rewriting of conditions – and noted that things are much more conceptual now, rather than prescriptive.

## RESOLUTION

**WHEREAS**, Westgate/Barclay Place LLC (“Westgate”) is the owner of Tax Map and Parcel Number 06100-00-00-042D0 (the “Property”); and

**WHEREAS**, Westgate filed an application to amend Special Use Permit 1994-18 to allow the relocation of office space within the Westgate Apartment complex on the Property, and the application is identified as Special Use Permit 2014-00012 (“SP 2014-12”); and

**WHEREAS**, on July 15, 2014, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2014-12 with the conditions recommended by County staff; and

**WHEREAS**, on September 10, 2014, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2014-12.

**NOW, THEREFORE, BE IT RESOLVED** that, upon consideration of the foregoing, the staff report prepared for SP 2014-12 and all of its attachments, the information presented at the public hearing, and the factors relevant to a special use permit in Albemarle County Code § 18-33.8, the Albemarle County Board of Supervisors hereby approves SP 2014-12, subject to the conditions attached hereto.

**(Conditions of Approval:)**

1. Development of the use shall be in general accord with the conceptual plan received by staff on April 7, 2014, as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the application plan, development and use shall reflect the following major elements within the development essential to the use, as shown on the plan:
  - a. Office building mass and location;
  - b. Office parking.Minor modifications to the plan may be made to ensure compliance with the Zoning Ordinance.
2. New construction shall not commence prior to the issuance of a Certificate of Appropriateness by the Architectural Review Board.
3. The use shall be limited to property management services.

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Agenda Item No. 13. **Public Hearing: PROJECT: ZMA-2013-00004. Hollymead Town Center (Block VI)**, Rio Magisterial District.

TAX MAP/ PARCEL: 032000000041L0.

LOCATION: West of Route 29 North at the intersection of Laurel Park Lane and Meeting Street.

PROPOSAL: To amend proffers, code of development and application plan to allow (Total acreage tax map/parcel 032000000041L0: 5.74 acres - Block VI - 2.858 acres and Block IV - 2.882 acres) construction of 44 townhouse units for a density of 15.4 dwellings/acre in Block VI and to eliminate the requirement to construct 32,000 square feet of non-residential use in Block IV.

ZONING: PD-MC [Planned Development-Mixed Commercial] which allow for large-scale commercial uses; residential by special use permit (15 units/acre) to PD-MC[Planned Development-Mixed Commercial] which allows for large-scale commercial uses; residential by special use permit (15 units/acre).

ENTRANCE CORRIDOR: Yes.

AIRPORT IMPACT AREA: Yes.

PROFFERS: Yes.

COMPREHENSIVE PLAN: Hollymead-Places 29-Commercial Mixed Use – commercial, retail, employment uses, with supporting residential, office, or institutional uses.

*(Advertised in the Daily Progress on August 25 and September 1, 2014.)*

The executive summary forwarded to Board members states that on July 29, 2014, the Planning Commission held a public hearing for The Hollymead Town Center, Blocks VI and IV, Area C rezoning request. The Commission, by a vote of 6:0, recommended approval of ZMA201300004 provided technical revisions are made to the application plan, code of development and proffers, as recommended by staff, and with the following additional recommended amendment to the application plan:

1. Eliminate five (5) lots (17 through 21) in order to accomplish a more effective open space system and to unpack what would be an otherwise crowded and congested development. Working with the county engineer further, it is possible to have the alternate circulation and regain two (2) of those lots.

In response to the Planning Commission recommendation, the applicant has provided the following:

Application Plan

The applicant has eliminated three (3) of the five (5) lots recommended for elimination by the Planning Commission. Lots 16 and 17 on the proposed plan were not eliminated as recommended by the Planning Commission. As a result, the proposed open space system shown on the proposed application plan is not consistent with the Commission's recommendation. The application plan would need to be amended prior to approval of this ZMA request, should the Board agree with the Commission's recommendation regarding the open area. All other outstanding issues with the application plan have been addressed. (See Attachment A)

Code of Development (COD)

Table A in the COD has been revised and all other outstanding technical issues have been addressed. (See Attachment B)

Proffers

The proffers have been revised to address all outstanding technical issues, and found to be acceptable by the County Attorney and planning staff (See Attachment C).

The Planning Commission's recommendation to enlarge the open space area by eliminating five lots has not been fully addressed on the proposed application plan; therefore, staff cannot recommend approval of this request. Please note that all other outstanding technical issues from the Planning Commission recommendation have been addressed. Should the Board want to approve this re-zoning as proposed by the applicant, the application plan, code of development and proffers are technically and legally acceptable.

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Ms. Claudette Grant, Senior Planner, addressed the Board, stating that the application focuses on a portion of the Hollymead Town Center known as blocks 4 and 6 in Area C. Ms. Grant said that this area is located west of Route 29 North at the intersection of Laurel Park Lane and Meeting Street. Ms. Grant said that the property is zoned "planned district mixed commercial," which allows large scale commercial uses in residential by special use permit. She stated that the Places 29 Master Plan designates this property in Hollymead as commercial mixed-use, which focuses on commercial, retail and employment uses with supporting residential, office or institutional uses. Ms. Grant said that the applicant is requesting to amend the approved ZMA 2001-0020 application plan, code of development and proffers. She presented two plans to the Board: one that went to the Commission, and one that was revised since the Commission's public hearing.

Ms. Grant noted the area of Block 4 and Block 6 on the map provided, and said that this proposal is to construct 41 townhouse units in Block 6 instead of an approved parking area. She said that this is a relocation of the approved maximum 120 units, and no additional dwellings are proposed; she noted the presence of green space in both blocks, and said that this proposal also eliminates the required minimum square footage of non-residential uses in Block 4. Ms. Grant said that the Planning Commission held a public hearing on July 29 and unanimously recommended approval providing that technical revisions are made to the application plan, the code of development, and proffers as recommended by staff. She stated that there is also a recommendation for amendment to the application plan, which was to eliminate five lots in order to accomplish a more effective open space system. Since the Commission meeting, she said, the applicant has eliminated three of the five lots recommended, and as a result the open space system shown on the proposed application plan is not consistent with the Commission's recommendation. Ms. Grant said that the code of development, the proffers, and other aspects of the application plan have all been revised, and outstanding technical issues have been addressed.

Ms. Grant said that the Planning Commission's recommendation to enlarge the open space area by eliminating five lots has not been fully addressed on the proposed application plan, and staff cannot recommend approval of the rezoning. Should the Board choose to approve the rezoning as proposed by the applicant, the application plan, the code of development and the proffers are technically and legally acceptable.

Mr. Boyd said that the County always tries to get the most density possible in the development area, and asked what prompted the Commission to eliminate five of the lots. Ms. Grant said that the concern from the Commission had to do with the open space and connections to making it more available, and the plan shows it as being a bit small, so the Commission wanted more accessibility to the existing tot lot.

Ms. Dittmar asked if staff had recommended approval as it went to the Planning Commission. Ms. Grant said that was correct.

Mr. Benish explained that the Planning Commission's recommendation of approval was conditioned upon the applicant making the change to enlarge the open space area to meet their needs and expectations for the site – and the applicant has chosen not to fully do that, and has only addressed a portion of what the Commission identified.

Mr. Sheffield asked if the Commission had the authority to vote against the application even though there wasn't a regulatory requirement for more open space. Mr. Davis said that the application plan is something that can be a matter of legislative discretion by the Board of Supervisors, and the Planning Commission is giving their recommendation on the Board's legislative action – so if that change is a reasonable change, it could be a basis for approval or denial of the application. He clarified that the Commission just makes a recommendation to the Board, which in turn acts on the matter because it is a legislative action for them. He stated that the open space issue is a basis for which the Commission could recommend that the Board deny the application.

Ms. Palmer asked if the Commission had seen this again after the applicant had changed the plan. Mr. Benish and Mr. Davis said they had not.

Ms. Mallek noted that three of the five lots have been removed, and it adds some nice width to the whole park system.

Ms. McKeel said that the Commission seemed concerned about congestion that would happen on the site. Mr. Benish said they felt the site was tight and densely developed, so more open space would help reduce the congestion created by the additional units.

Mr. Sheffield asked if it was the applicant or staff that had suggested the alternative road alignment – right-angle turn – to get the two lots back. Ms. Grant said that the applicant has always had an alternative in their plan.

Mr. Benish said that this plan the way it's structured would allow that change to be consistent with the application plan without having to come back to the Board, and would just need approval from the county engineer.

Ms. Grant said that the county engineer has said that he can work with the applicant on that alternative if that's what is chosen.

The Chair then opened the meeting for comments from the applicant.

Mr. Katorah Roell addressed the Board on behalf of the applicant, stating that they've been working on this for 18 months now and noting that the process is to correct the code of development for Block 4 to relieve the requirement for the commercial use in that block. When this was conceived of in 2001, he said, it was envisioned to be more like the Downtown Mall at this point – so at this stage, the land has sat vacant for this entire amount of time. Mr. Roell said that the demand for residential to support the commercial in the front is what is moving things in this direction, and it creates more of a cohesive block and a neighborhood element there at the back of the property, rather than just a small row of townhouses isolated from the rest of the development. He stated that since the parking is provided for on Block 4 for those units, the parking lot to the right of Block 6 is no longer necessary, and the density that is approved for this development is moved to Block 3 – where Rosewood Village stands in a high rise, so all the units can't fit in that block either.

Mr. Roell said that he's been in favor of the right-hand turn lane in pretty much from the onset other than the alignment of the roads, and the curved road – which is designed as a VDOT state-standard road at 110-degree radius – allows traffic to move through there freely and fairly quickly. He stated that they wanted to purposefully put the right-hand turn in and come to a stop before you turn into the townhouses and go behind the garages. He said that this allows for enough open space and sidewalk – 40 feet across the open space to the left of the units – and that would essentially be a greeting entry to direct people to the tot lot. Mr. Roell said that the tot lot is a small internal rectangle, but there is an additional 20 feet surrounding it, planting 100+ trees in this area, which is currently vacant. He stated that this provides for walkability, and under this configuration he is able to break the units into 3, 4 and 5-unit blocks so that there is separation between them rather than having them 10 units long. Mr. Roell said that this creates green space and movement through them, and there are also sidewalks that go from parallel parking through and between the units, across the lane and alley, and into the tot lot to a sidewalk network that surrounds the entire area, then out to Meeting Street where there is parallel parking. He stated that he has worked on this project for a long time and has tried to give some thought to a design that is livable and green, and this is intended to try to absorb a reasonable amount of density in this development – a good buildable, model that provides for safe pedestrian and vehicular access.

Ms. Mallek asked Mr. Roell to address the characterization of the interior as alleys as opposed to streets, because they seem to be only for the people who live there. Mr. Roell said that they are not cut-through for anything and are strictly for the garage access, and said that every unit has a two-car garage and a parking apron for an additional car. He stated that this poses a problem because the ordinance only provides for 2¼ parking spaces for a townhouse complex, and this development provides three. Mr. Roell said that guests have to park in the street, and that's an issue that the County may need to consider overall.

Mr. Boyd said that the roads were always intended to be private alleys, and he wasn't sure why they would require VDOT standard roads in that case. Mr. Roell said that they're alleys – not even VDOT roads or streets – and the only public roads are Timberwood Boulevard and Meeting Street, and Berkmar Drive was planned to run all the way to the southern end of Hollymead; the northern end of Meeting Street, which is the Hollymead intersection to the South, was intended to go all the way to Airport Road and tie into the entrance for the University Research Foundation. He said that this may be something to consider adding onto the last leg of the road that would complete that, rather than leaving it as a blank spot that isn't dealt with. Mr. Roell stated that everything else is a private road, and the County Attorney's office has reviewed the homeowners' documents and approved them – and they are consistent for Block 4 and Block 6. He confirmed that the curvature in the road was the suggestion of the county engineer, because he felt that a radial road in there following VDOT standards would look better – but Mr. Roell said that he didn't feel it created as safe a condition, and that was his concern about having stops and turns in that type of traffic movement.

Mr. Sheffield asked why Lots 16 and 17 were not eliminated. Mr. Roell said that he still exceeds the amount of green space and recreational area required by the ordinance by at least 20%, and creating more green area that has to be mowed and maintained wouldn't mean it was usable functional area. He said that the courtyard area in the center of Block 4 is where he has hardscape and a community center that is intended to serve this neighborhood area, and his intention was to keep the tot lot area somewhat closed and protected.

Ms. Mallek said that the connecting sidewalks within each block would allow many different options for people walking, and they wouldn't all have to take one narrow path at the end.

Mr. Sheffield stated that he didn't have a problem with the rezoning for the townhomes, and wasn't even that concerned about Lots 16 and 17 – but he wasn't completely comfortable with the lack of

clear direction on this from the Planning Commission. He said that the Planning Commission should have worked out their recommendations with the applicant so that the Board didn't have to hear an entirely new discussion that the Commission hadn't even considered. Mr. Sheffield said that he was inclined to send it back to them to consider the revised plan, and he wasn't comfortable with the Board being the last leg of the Planning Commission, as they were appointed to do this work. He stated that he has told his Commissioner his concerns, and would prefer that they vote on it after changes have been made, rather than in between the Planning Commission and the Board reviews.

Mr. Boyd said that the Planning Commission is not an elected body, they are an advisory group that advises the Board as to what to do. He said that this isn't the first time he's seen changes in between the Commission's review and the Board's consideration of an item, but he doesn't appreciate them adding subjective data and interjecting their own personal thoughts that go beyond what the code stipulates.

Mr. Davis clarified that the application meets all the minimum requirements of the Zoning Ordinance, but with a zoning map amendment – which this is – there is legislative discretion as to whether it's an appropriate plan. He said that even if it meets the minimum requirements, that doesn't mean it has to be approved at those minimum requirements. Mr. Davis stated that this is different from the ministerial plans such as site plans, which have to be approved if they meet minimum requirements. He said that there is greater discretion with ZMAs, which are legislative decisions, and with planned developments a lot of design elements become important to the decision-making. Mr. Davis said that the Commission weighs in on how the design should be improved, or whether or not the minimum requirements are adequate or a basis for moving forward with a plan.

Ms. Mallek said that's advisory to the Board, and many times the public gets the first shot at the Planning Commission hearing, and there are often good ideas that get incorporated in between the two meetings. She stated that she would not want the items to have to go back to the Commission each time to be hashed out, because it would make the process even longer. Ms. Mallek said that if there was more of an ordinance-based reason to do this, she might have more concerns, but her understanding with this application is that it was a personal preference.

Mr. Sheffield stated that the Planning Commission hasn't seen the drawing on the right, and their decision has been made on the drawing on the left – and he wants them to see the information the Board is seeing when those decisions are being made. He said that he didn't want to see modifications between the Commission and Board meeting, and he has a problem with seeing last-minute information because to him that's like doing their job.

Ms. McKeel said that she tended to agree with Mr. Sheffield, and if her Commissioner was concerned about open space availability and congestion, then she is too – and she would support sending it back to the Commission. She stated that once this is done, it's done, and her comfort level would be to send it back to the Planning Commission.

Ms. Mallek said that the rationale for that would be the fact that the Commission wanted the five lots removed, which they had directed for no reason other than personal preference.

Mr. Sheffield said that the Commission has asked for that, and the Board is deciding if it's satisfactory, and they need to finish their work before they send an item onto the Board.

Mr. Boyd said that he didn't want the Board to be a rubber stamp body for the Commission's work, and they should have finished this before they sent it to the Board.

Ms. Mallek said that she didn't think it was unanimous to require the removal of the five lots, and based on what one person said there was a big shift in opinion. She added that the Commission was relying on the Board to do its job.

Mr. Boyd said that it's not unusual for the Board to be the appeal process for the Commission.

Mr. Sheffield said that it's becoming the status quo at this point.

Mr. Boyd said that Mr. Sheffield hadn't been on the Board long enough to say that.

Mr. Sheffield said that he had watched the Board long enough to see it.

Ms. Palmer said that she empathized with the applicant's situation, and said that she was trying to establish whether the congestion problem on the site was taken care of but didn't know the answer to that. She stated that the Board has been talking a lot about process, and feels that they need to get this process down. Ms. Palmer said that they've had many complaints about neighborhoods that aren't particular livable for one reason or another, and maybe they are small reasons but she didn't want to overlook them going forward. She stated that she was sympathetic to applicant as he's encountered bureaucracy with his application, but she wants to make sure they're not approving a neighborhood that would eventually have a problem – so she agrees with Mr. Sheffield and Ms. McKeel on this.

Ms. Mallek said that this is basically changing the process, and if they're going to do it this way they need to do it from the beginning, not at the end when the applicant has worked all the way through it.

Ms. Dittmar said that the Board's objection seems to be that the applicant didn't do everything the Commission had asked him to do, and she asked if the Commission had approached this from the perspective of just wanting to reduce the congestion or whether they were more specific.

Ms. Palmer said that the question is whether this resolves the congestion problem.

Ms. Mallek asked if there really was a congestion problem. Mr. Benish clarified that the congestion problem was related to having a lot of townhouse units that could create traffic and parking issues, and wasn't just a walking or access issue. Related to the open space, he said, there was a situation of opening up the access to the tot lot area, and the congestion was related to the overall density of development and what gets created by having over 100 total units in those three blocks. Mr. Benish said that the Commission made a very specific recommendation in an area that would be enlarged, and the applicant discussed the option of doing three instead of two, but the Commission continued to recommend elimination of all five lots. He stated that it was for more green space, but the congestion issue was related to an evaluation by the Commission that this was an intensive residential development that had no onsite parking internal to it, and could create some internal congestion issues.

Mr. Benish emphasized that the code of development for this plan was for a non-residential office building with a large public plaza and a parking area – so this is a new proposal for this area.

Ms. Mallek said that looking across the street to the south, and also to the north on Timberwood, there is a single row of these that have guest parking on the front and garages underneath – and they are all inhabited – and this would be filling in a similar neighborhood character.

Ms. Dittmar said that the Commission voted to approve this with the conditions as presented, with the goal of creating more green space and to lower the density they objected to, and she wanted to feel comfortable with the reasons they would send it back to them as well as how much longer it would take for the applicant.

Mr. Benish noted that the Planning Commission is the citizen planning body appointed by the Board to advise them on land use planning issues, with expertise and judgment provided by staff, and they established the rationale for their decision. He said that he wasn't certain how long it would take to go back through the process, but there are Commission meetings available in October if the applicant can modify his plan in time.

Ms. Mallek said that the only reason to send it back to the Commission would be to force him to take out the two lots, and to send it back and say the Board doesn't agree with them, she wasn't sure what they were doing here.

Mr. Boyd asked if the Planning Commission had asked for any financial analysis on the decision they were making to eliminate five saleable lots. Mr. Benish said that they did not.

Ms. Mallek noted that this was almost \$1 million in value.

Mr. Boyd said that he didn't understand what they had based this on, and he wasn't sure they had the right to do this.

Ms. Dittmar said that the problem may not be with the application, it may be with the Commission.

Ms. Mallek said that she didn't want to hold the applicant hostage for that.

Mr. Sheffield said that if the Commission is asking for five lots to be eliminated and he didn't understand why – or if a developer came to him with objections to the Commission's recommendations – he would need to address it with his Commissioner. He stated that he didn't want the Board to be dealing with these issues because they're incomplete or in contradiction to what's going on at the Commission level.

Ms. McKeel said that she would like for the Commission to go back and look at the design presented here, since it doesn't follow what they're asking for.

Ms. Dittmar asked the applicant to re-address the Board, noting that the Commission was very specific in what they recommended – but the applicant took their general intent and came to the Board with a different plan. She asked why he didn't just stop and follow the Planning Commission's recommendation.

Mr. Roell said that the Board has the choice to follow the Planning Commission's recommendation, but he chose to offer an alternative because he didn't agree with their thought process – and they did see the 44 units, and Block 5 just behind it is 42 units on even less acreage with no green space. Mr. Roell said that what he presented to them is the alternative road to the right, and he could remove three units at the front and create a larger green space with a straight left turn in with two units, so he would have a loss of just three. He noted that the Planning Commission has not been able to address the right-hand turn, but after 120 days he acquiesced and put the curved road in so he could get engineering approval and get it to the Commission. Mr. Roell emphasized that staff had recommended his plan, but the Planning Commission felt it needed more green space – and there is more green space on this plan than any other place on this property. He said that he would be happy to knock off three end units to plant more trees and create more green space to the entrance to the tot lot.

Mr. Sheffield said that his frustration is not with the plan, it's with the process they are following – and he isn't comfortable with it anymore. Mr. Roell agreed, stating that he couldn't even meet with the Commission or half the Board to determine what the process was going forward – just to move density from one block to another.

Ms. Dittmar said that when he contacted her the previous week, she didn't have enough time to come out and see the site. She stated that she doesn't want to send him back to the Commission when what they really need to do is sort out their process and send a clear message as to how the Board wants their recommendations. Ms. Dittmar emphasized that the applicant has said he disagreed with the Planning Commission's recommendations, then made modifications and is asking the Board to disagree with the Commission – which is their right to do. She said that the applicant is following their process, and if they're going to change it they shouldn't do it at his expense, and she wants to make sure they're not using this as a way to communicate with the Planning Commission.

Mr. Sheffield said the applicant disagreed with the Commission on one site plan, yet presented the Board with another. He stated that if the information is going to change between the Planning Commission and the Board, that's not fair to them as decision-makers because they're relying on the Commission to give advice on materials for which the context has changed. Mr. Sheffield said that the Board has been in the mode of doing the last mile for the Commission, and he's not comfortable with that.

Ms. Dittmar reminded the Board that the Planning Commission passed the Rivanna Village project unanimously, and at their public hearing a number of residents came forward and spoke clearly about their concerns. She said that in the meetings in between the Commission hearing and the Board hearing, there were changes made. Ms. Dittmar said that staff had brought forward two pictures: one without the second entrance onto Piper Way, and one with, and the reason they brought two is because the Planning Commission didn't want to have the second entrance. She stated that the difference with the two situations is in that case the applicant didn't send forth strong recommendations; they just wanted the applicant to close off that road.

Mr. Sheffield said that he needed the Commission to look at the changes and let him know whether they're comfortable or not, so that he can make a better decision.

Ms. Mallek stated that the only difference is the question over the removal of the two lots.

Mr. Sheffield asked what else had not been reviewed by the Commission. Mr. Benish said that those were mostly technical issues, and the primary issue was the application plan and the open space.

Ms. Dittmar asked if they would be able to do a quick turnaround. Mr. Benish responded that they can't guarantee that until they get the applicant's resubmittal, but it should be a fairly straightforward change, and they could put it on the earliest possible agenda.

Mr. Davis said that the question would be whether the applicant would want to do a resubmittal, or whether he would want them to just consider what we had presented to the Board.

Mr. Benish said that the applicant could submit either this one, or one that better meets the Planning Commission's direction.

Mr. Davis said that it would be more straightforward if the applicant submitted the plan presented here, and it wouldn't need to be re-advertised for the Board meeting if there were no changes.

Mr. Wayne Cilimberg, Director of Planning, said that the Commission had canceled their October 7 meeting because the Board was using the room for the Comp Plan work session.

Board members said that they could just move across the hall to another room.

Mr. Cilimberg said that staff could talk to them about having a meeting, and the first possible meeting in October would be the 7<sup>th</sup>. He stated that if it comes back to the Board, it would be October 8<sup>th</sup>, which is the next night. Mr. Cilimberg said that staff could arrange for an earlier date, but that would be under the assumption that the applicant would just provide the plan as he's presented to the Board. He added that technical changes can be an endless loop with the Commission, but it seems that the Board is saying that substantive matters should come to them. Mr. Cilimberg explained that the applicant could just ask for a vote up or down, because the Commission cannot defer these projects without the applicant's agreement – and there's a much tighter timeline for a public hearing to be scheduled for the Commission than for the Board. He said that if the applicant doesn't ask for a deferral and asks for an up or down vote, the Board could be in the same position, but they could send it back to the Commission. Mr. Cilimberg said that if applicants know that the substance of Planning Commission's interest in a particular project needs to be addressed by the applicant before it is acted upon and sent to the Board, applicants would likely do that as quickly as possible with the Commission. He stated that staff could get that on a Commission schedule as soon as possible, by October 8 if they desire.

Ms. Mallek said that she is not happy about making a sweeping process change right now, and informing all applicants of it – and if the Planning Commission is going to make very specific recommendations, she needs to know the rationale behind those decisions. She stated that she didn't agree with the Commission's congestion argument because there are sidewalks all over the place, as well as ample parking.

Ms. Dittmar stated that the applicant should still have the right to disagree with the Commission, and if the applicant disagrees with them, they need to reach out almost immediately so the Board can understand the situation with the details, so they can make an informed decision. She added that she is willing to disagree with the Planning Commission in the right ways, for the right reasons.

Ms. Mallek said that there have been numerous times when the Commission has approved applications that that the Board has subsequently denied – such as the Howardsville campground, which was sent to the Board with unanimous approval; and three weeks after the Board's denial, it was four feet underwater.

Mr. Sheffield asked Mr. Cilimberg if he had said the applicant would prefer having the Board vote up or down tonight. Mr. Cilimberg clarified that what he had said was that the applicant could ask the Planning Commission to vote up or down rather than agree to a deferral.

Mr. Roell said that he understands their position, but he simply presented a third alternative – which was different from what the Commission saw and their recommendation – for the Board's intelligent consideration. If that is not what the Board chooses to approve, he is willing to accept the Planning Commission's recommendation and their acknowledgement of a plan that they see fit to be done. Mr. Roell asked that if the Board did so, he would like to have the right-turn road in, because the Commission didn't have an opinion on that road. He stated that he didn't need to go back to the Commission and retread the same ground with the removal of the five units, because if he went with fewer units removed they would probably deny it again.

Mr. Sheffield stated that it's possible that in 30 days he could have it go back to the Planning Commission, and back to the Board, and be on Consent, and still only remove three lots. Mr. Roell said that's not necessarily the case, because the Commission may very well approve exactly what they did before. He added that the Board has the option to remove what the Commission recommended.

Ms. Palmer said that she was very comfortable with doing that. Mr. Davis said that the problem is that they don't have a plan before them with that provision.

Mr. Benish stated that they don't have proffers that refer to that application plan, so they can't approve that tonight.

Mr. Cilimberg said that they would need a plan that shows the agreement to drop two more houses, but the Board could deal with that as a Consent Agenda item as an action at their next meeting – October 1 or October 8 – with the applicant providing that plan.

Mr. Davis clarified that there would have to be a plan reviewed by the staff that does that, and some other technical amendments to the proffers that would change the dates and the references to that plan. He said that because there's already been a public hearing, the item could be on a Consent Agenda. Mr. Cilimberg said that staff would want to make sure that if changes are made and lots move toward the road, it would be something doable at site plan, so the Board may want to give themselves to October 8.

Ms. Mallek said that the road element isn't a surprise to anyone because it's been an alternative on the plan from the beginning. Mr. Cilimberg agreed that it had been, and the applicant is offering to drop lots as requested and work from the right-angle plan.

Mr. Roell pointed out that this is not a proffered plan – it is an approval of a rezoning to move a certain number of residential units from Block 3 to Block 6.

Mr. Davis said that there's an application plan that's part of the rezoning.

Mr. Roell said that he would gladly resubmit and provide a plan within days for review.

Mr. Benish said that the proffers refer to a "dated plan," and the date needs to change to the most recent plan – and that's all that needs to be done.

Mr. Roell said that he would be happy to resubmit a revised plan that would remove the five lots at the entrance to the green space, and putting the right-hand turn in – which would add back in two lots.

Mr. Davis said that the Board could defer this until October 8, and the applicant would resubmit a plan that eliminates the five lots, which staff would then review to ensure it meets the Commission's conditions – and if it did, it could be put on the Consent Agenda for that date. If the applicant did not want to amend the plan, he said, the Board could refer it back to the Planning Commission to a date certain; the applicant could appear before the Commission, and the Board could get their recommendation on the plan before them today; whether the Commission recommends approval or denial, the Board would hear it on the deferral date and at that time make a decision to approve or deny. Mr. Davis stated that the Board seems to be leaving it up to the applicant to choose one of those paths.

Mr. Roell clarified with staff that the five lots would be removed to allow for more green space, but the two would be added back in at the turn.

Mr. Sheffield said that if staff is certain they will bring it back to the Board by October 8, the applicant doesn't lose either way because the fallback position would be eliminating all five, and

suggested that the applicant go back to the Commission so they are accountable for their recommendation.

Ms. Palmer said that she would prefer that the applicant work with staff to take the lots out and make it the way the Commission wanted it, with the addition of his safe road. Mr. Roell stated that if he puts the right-hand turn road in and shows the units that way, staff or engineering would likely recommend denial – as he was for three previous reviews. He said that this time around, staff is recommending approval and he is appealing to the Board to have some understanding of planning.

Ms. Dittmar pledged to visit the property in between now and October 8, and she understood his need to add the two lots back in for financial reasons.

Ms. Mallek asked how long it would take to find out when the Planning Commission can meet.

Mr. Cilimberg said that because of the way the schedule played out, staff has not indicated to the Commission that there would be a meeting in October – but if the plan isn't changing, he would suggest to the Commission chair that they look at it at their next September meeting under old business. He stated that the right-turn issue is not part of the Planning Commission's discretion, that was an engineering issue – and if the county engineer accepts it, that can be demonstrated to the Commission, so the only remaining issue would be the removal of the lots.

Mr. Sheffield **moved** to refer ZMA-2013-0004 to the Planning Commission, to be reviewed and returned to the Board no later than October 8, 2014. Ms. McKeel **seconded** the motion.

Mr. Boyd pointed out that in a Republic style of government, he was not elected so that he could abdicate his responsibility to committees and commissions. He emphasized that he objected to the idea that they can't disagree with the Commission to decide on what's best for the community, because that's what they all got elected for – and the Planning Commission is not an elected board.

Mr. Sheffield said that he wasn't looking for the Commission to vote on his decision, but he was looking for them to vote on clarity of their understanding of the site plan.

Ms. McKeel agreed.

Ms. Mallek said that she would vote against this because she didn't think it was fair to change this in the middle of the application process.

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

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

NAYS: Ms. Mallek and Mr. Boyd.

Ms. Dittmar said that there was more work to be done with the Planning Commission, with their individual Commissioners and then as a group, so that another applicant wouldn't be put through this in the future.

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Agenda Item No. 14. **Public Hearing:** To receive comments on the request that the Board **consider granting sewer line easements to the Rivanna Water and Sewer Authority (RWSA) and to the City of Charlottesville (City) and an electric line easement to Dominion Virginia Power (DVP) on the County Office Building property located at 401 McIntire Road in the City of Charlottesville (City Parcel ID 350134000).** The RWSA and City request is for a sewer line easement for the Upper Schenks Branch sewer line project to be located along McIntire Road crossing the baseball field and extending to Preston Avenue. The DVP request is for an underground electric line easement along a portion of McIntire Road and Preston Avenue to enhance electric service to the City and the University of Virginia.

*(Advertised in the Daily Progress on September 1, 2014.)*

The executive summary forwarded to Board members states that the Rivanna Water and Sewer Authority ("RWSA"), the City of Charlottesville ("City"), and Dominion Virginia Power ("DVP") have requested underground utility easements on the County Office Building property located on McIntire Road. The RWSA and the City request is for a sewer line easement for the Upper Schenks Branch sewer line project to be located along McIntire Road crossing the baseball field and extending to Preston Avenue. The sewer line project is required by a Department of Environmental Quality consent order mandating that the RWSA and the City replace a 1950's era 21-inch clay pipeline with a 30-inch ductile iron pipeline with sufficient capacity for future and wet weather flows. It is the last phase of a multi-phase project in the City. The DVP easement is for an underground electric line project along a portion of McIntire Road and Preston Avenue to enhance electric service to the City and the University of Virginia. The RWSA, the City, and DVP have determined that the County property is the preferred location for the easements to minimize their cost and to avoid construction within the streets.

The RWSA and City sewer line easements have been located as closely as possible to the McIntire Road right of way to impact the County property as little as possible. (See Plats; Attachments A & B) However, the easements will cross a portion of the outfield and batting cage of the baseball field

and will impact some existing trees on the County property along McIntire Road. The RWSA has agreed to special conditions that will require that the construction be limited to the baseball off-season and will restore the field to its previous condition. Both RWSA and the City have agreed to special conditions to mitigate the impact to County property, including replacement and protection of trees and the boring under County entrances. In addition, the City has agreed to compensate the County \$153,000 for the value of the sewer easements and to modify certain deed restrictions previously placed on the property when it was sold to the County by the City in 1978. The location and widths of the easements are shown on the attached plats. A complete list of the agreed terms and conditions for the RWSA and City sewer line project is attached.

The DVP power line easement is located within the same area as the City sewer line easement on McIntire Road and is located as closely as possible to the Preston Avenue right of way to impact the County property as little as possible. (See Plat; Attachment D) The City and DVP have agreed to coordinate their projects to minimize any installation conflicts. DVP has agreed to be responsible for any relocation costs if the County requests the line be relocated in the future. Accordingly, the County is not requesting DVP to compensate the County for the easement.

Virginia Code § 15.2-1800 requires the Board to hold a public hearing to receive public comments prior to the granting of the requested easements.

The County will receive \$153,000 to compensate it for the value of the underground sewer easements. The County will not incur any cost for the projects or for the restoration of the County property necessitated by the projects.

At the conclusion of the public hearing staff recommends that the Board adopt the attached Resolution approving the granting of a sewer line easement to the RWSA and the City and an electric line easement to DVP and authorizing the County Executive to execute all documents necessary to complete these transactions subject to the recommended terms and conditions after such documents have been approved as to content and form by the County Attorney.

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Mr. Davis reported that this was a request by the Rivanna Water and Sewer Authority, the City of Charlottesville, and Dominion Virginia Power for underground utility easements on the County Office Building property. He said that the purpose of the sewer easements is to extend the upper Schenk's Branch sewer line project, to be located along McIntire Road, and he presented a visual indicating the proposed location of the sewer line, noting that the path of the sewer easement crosses the baseball outfield and is designed to hug the right of way as much as possible along McIntire Road to minimize the impacts to the County property. Mr. Davis said that the Dominion Virginia power easement runs along McIntire Road and along Preston Avenue, and in the same path as the City underground sewer easement – again designed to hug the right of way to minimize impact.

Mr. Davis said that there have been a number of conditions that have been negotiated and agreed upon to minimize the impacts and address the easement; they are reflected in Attachment C of the Board's executive summary. He stated that the matter requires a public hearing by the Board before County property can be transferred in this manner, and there is an attached resolution to the summary that would authorize the County Executive to execute all agreements necessary to formally transfer the easements, once they are approved as to content and form by the County Attorney. He said that there doesn't appear to be any disagreement to the terms and conditions at this point, but they are still being drafted by the Rivanna and Dominion attorneys. Mr. Davis said that there is some urgency on Rivanna's part to finalize the easements as soon as possible, so it is anticipated that the documents will be finalized soon. He stated that Bob Crickenberger was available to answer questions about the impact on the baseball field.

Ms. Mallek said that the attachment showing the City portion indicates a 40-foot section that they're allowing them to work in, and she wanted to make sure they were as close to the street as possible. Mr. Davis said that the visual didn't reflect the final drawings, but it has been pushed closer to the street; the attached plats are the specific plans. He confirmed that the plan would be to work as close to the street as possible within that 40 feet, to minimize impacts to trees, and to the baseball field – and would only do the construction across the baseball field in the off-season, and would restore it to the same condition or better. Mr. Davis said that there would be a tree replacement plan, and there were several small trees that will be removed as part of this project but would be replaced with replacement trees and landscaped, and there would be reasonable efforts to not impact the historic oak tree near the entrance way. He said that the entrances that can be bored under would be so as to minimize disruption to parking lots, and a lot of these conditions are being addressed in the details of the special conditions or the easement documents.

The Chair opened the public hearing.

Ms. Susan King, of Dominion Virginia Power, addressed the Board and offered to answer questions.

There being no further public comment, the Chair closed the public hearing.

Ms. McKeel **moved** to adopt the proposed Resolution approving the granting of a sewer line easement to the RWSA and the City and a electric line easement to DVP and authorized the County Executive to execute all documents necessary to complete these transactions subject to the recommended terms and conditions after such documents have been approved as to content and form by the County Attorney. Ms. Mallek **seconded** the motion.

Mr. Boyd said that he would vote against this, because he felt they were getting inadequate compensation for easements from the City and felt they were undercutting the value of the property.

Mr. Sheffield said that he shared his frustration, but would be voting for it.

Ms. Palmer stated that there were others on the Board who did feel that the compensation was adequate, and they would like to work with the City and move forward. She said that they would also like to get the easement in for Dominion so that they can get in and serve the areas they need to serve.

Ms. Dittmar commented that it was a very complicated negotiation with lots of factors beyond just compensation.

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

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

NAYS: Mr. Boyd.

**(The adopted resolution is set out below:)**

**RESOLUTION APPROVING THE GRANTING OF  
UTILITY EASEMENTS ON  
THE COUNTY OFFICE BUILDING PROPERTY  
LOCATED ON MCINTIRE ROAD**

**WHEREAS**, the County of Albemarle owns certain property located at 401 McIntire Road, Charlottesville, VA (Charlottesville City Tax Map Parcel 350134000); and

**WHEREAS**, sewer line easements across this County-owned property are necessary for the Rivanna Water and Sewer Authority (RWSA) and the City of Charlottesville to complete the Upper Schenks Branch sewer line project; and

**WHEREAS**, electric line easements across this property are necessary for Dominion Virginia Power (DVP) to enhance electric service to the City and the University of Virginia; and

**WHEREAS**, on September 10, 2014, the Board held a duly advertised public hearing to receive public comments on the easement requests; and

**WHEREAS**, the Board finds that granting the easements is in the public interest subject to the terms and conditions set forth in the executive summary dated September 10, 2014, documented as to content and form in such manner as approved by the County Attorney.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby approves the granting of these certain easements to the RWSA, the City, and DVP, and authorizes the County Executive to sign all documents, approved as to content and form by the County Attorney, necessary to convey these easements across Charlottesville City Tax Map Parcel 350134000 and to implement the terms and conditions thereof.

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Mr. Davis said that there was another item that came up in conjunction with this project, as the City has an interest in extending the Schenk's greenway trail across the County property, from the existing greenway trail to Preston Avenue – and the City has requested that the Board indicated its support for the concept of that extension. He stated that the details of that would come back to the Board at a later time, and would require an easement to be granted to the City; at that time, they would deal with the location, design, maintenance plan, and other issues of that kind. Mr. Davis said that the motion would be for the Board to express support for the extension of the greenway trail across County property.

Ms. Mallek **moved** to support the extension of the Schenk's Branch Greenway Trail across the County property. Ms. McKeel **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

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

NAYS: None.

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Agenda Item No. 15. Update on Regional Legislative Meeting.

Mr. David Blount, Legislative Liaison, addressed the Board, stating that after meeting with all the Boards and Councils in the region, the legislative program has been completed and distributed via email to all elected officials and managers in the region. He stated that the top legislative priority and request as part of the program would be the equal taxing and revenue-generating authority issue as identified; the program also has a number of other legislative priorities that are consistent with what they've had in the past – issues related to transportation, land use, and public education funding. Mr. Blount said that he'd tried to do some repackaging with the program that moves some of the issues outside of their priorities into more legislative positions and policy statements. He said that he would return for their first meeting in October to talk with them about the program and get their approval on it.

Mr. Blount reported that his office had sent out a "save the date" for October 29 for a legislative meeting, with the notice sent out to General Assembly members, all elected officials, County managers and other staff, and School Board members. He said that the Mayors and Chairs group had recently discussed the format for the meeting, and they wanted to use some history to make the case and show legislators the need or some relief in what localities have faced in an attempt to provide needed services, follow mandates, and utilize the same resources they've had. Mr. Blount said that they would likely feature a speaker from VACO, and he would take the legislative priorities and make them look slicker than they have in the past. He stated that in conversations with Mr. Foley, they identified the importance of doing more outreach for the event, and Board members as well as staff could call or write to encourage attendance among legislators.

Ms. Mallek said that when he was preparing for this same event several years ago, he had large lists that went county by county to describe impacts – and she found that very effective because it was impossible to escape the information. She asked if they should be reaching out now about the event. Mr. Blount said that it wouldn't be premature for them to reach out to legislators now, and he has received similar responses from both sides of the aisle regarding enabling authority – with a clear message that if localities gain new authorities, they will have to give up others.

Ms. Dittmar said that the Board would soon receive information from Ms. Allshouse regarding what BPOL taxes will generate, so they would at least know what they were looking at with that versus other taxes. She asked how many years equalized revenue authority had been on the legislative agenda. Mr. Blount stated that it's been on the agenda dating back as far as he's been in his role – about 15 years – and it's gone through committee and as far as the Senate, but has never gotten through the House.

Mr. Davis said that equalizing authority with cities has been a VACO priority for 2012, 2013, and 2014, but has been a discussion for decades.

Ms. Dittmar said that she didn't want to put all of their eggs in that one basket.

Ms. Mallek indicated that there would be other items on it as well.

Ms. Dittmar said that in Albemarle, the urban area is paying underneath what a normal urban or suburban area would pay – yet expects a lot of services that can't be provided because they don't have the revenue. She asked if the General Assembly might be interested in looking at ways to help counties that are in that same position, and asked if it would be acceptable to have issues that were not shared across the entire district.

Ms. Mallek said that that's what traditionally happens, with some independent initiatives from localities, and those that others have piled onto after they've heard about them. Mr. Blount said that it's appropriate to have those discussions at the meeting on the 29<sup>th</sup>, and there are always individual initiatives – and he is in Richmond working on those in addition to what he's representing for the entire district.

Ms. Mallek asked if there were counties that already had made changes to their charters to address the equalized levels. Mr. Davis said that there is specialized legislation – such as Fairfax and Arlington having authority to impose a cigarette tax; there are three counties that have charters: Chesterfield, Roanoke and James City, but they receive no special taxing authority by having those charters approved, with the exception of Roanoke County, which has general authority for a 5% transient occupancy tax. He stated that the charter approach hasn't worked with the General Assembly, and there are probably 12 or 13 instances where localities have received additional taxing authority – but it's always been dedicated to tourism, advertising or a tourism-related project. He said that a special legislation approach hasn't usually worked because it's always tied to something, not granted for general fund purposes to support the services the County is concerned about. Mr. Davis noted that there are examples of specific projects or needs related to tourism, where the General Assembly has granted additional taxing authority under the transient occupancy tax for those purposes.

Ms. Dittmar asked about higher caps on meals or cigarette taxes. Mr. Davis said that he wasn't aware of any precedent for that, with a cap of 30 cents per pack for Arlington and Fairfax Counties, which go to general revenue – but that was approved decades ago – and he wasn't aware of the meals tax being allowed to go beyond the 4%. He noted that the TOT tax was allowed at 2-9%, but is always tied to special purposes.

Ms. Dittmar asked if VACO might have the data on the peer localities – ones that have 100,000 or more population. Mr. Blount said that the census numbers would show that information, and Spotsylvania and Stafford have jumped above Albemarle now.

Mr. Davis stated that in the back of Title 15.2 there is a chart with that census data.

Mr. Foley said that staff knows the groups who would be peers, and said that there is a high-growth coalition group in that range.

Mr. Davis said that it would depend on if they use Weldon Cooper Center data or census data.

Mr. Foley thanked Mr. Blount for all of his extra work on the meeting, which was an idea generated by the Board.

Ms. Mallek said that even if they are turned down, they need to continue to ask.

Ms. Dittmar said that in the past, perhaps sometimes the requests were philosophical – but now they are at a point where they must have a strategy that doesn't rely on property tax.

Mr. Blount said that they need to have a discussion at the state level as to what the economy will look like in the future and what the primary revenue sources will be – so localities have an opportunity to provide input on that now.

Ms. Dittmar asked if they had an approach for Albemarle County specifically, and a deadline by which to have priorities clarified.

Mr. Davis said that they normally come back with a final legislative package for the Board to consider in November at the latest, and they had approved a preliminary set of priorities a few months ago. He stated that the Board could tweak anything on that list, as well as adding any revenue-generating priorities identified. Mr. Davis said that the process in the past has been to listen to the Board's initiatives, and then put that together with technical type requests from staff into one overall package.

Ms. Mallek said that an example of a staff item was the ag/forestal district process, which used to require three hearings but is now streamlined.

**(Note:** Ms. Palmer left the meeting at 8:18 p.m.)

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Agenda Item 15.A. Appointments.

Mr. Boyd **moved** to appoint Mr. Bill Letteri and Mr. Doug Walker as Deputy County Executives, and Ms. Lee Catlin as Assistant County Executive. Ms. Mallek **seconded** the motion.

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

NAYS: None.

ABSENT: Ms. Palmer.

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Agenda Item 16. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Mallek said that she had circulated an item by email related to the proposed Constitutional amendment on nonpartisan redistricting.

Ms. McKeel said that she had sent an email in support of it.

Ms. Dittmar said she hadn't had time to read the language, and said that the way they redistrict Albemarle every 10 years is a total disaster – and having five Delegates and two Senators representing them can't possibly help them understand what's going on. She used the example of Matt Farris, who represents a tiny part of her district but also counties that have very little in common with Albemarle, and suggested that they have fewer representatives with greater understanding.

Ms. McKeel said that the Jack Jouett District is completely carved up, and residents there are often confused about their representation.

Ms. Mallek asked if the Board had heard anything about the School Board working on composite index legislation, because she didn't want to be surprised by it again. Mr. Foley stated that there was a working group from the joint meeting that could be asked.

Ms. Dittmar said that she would find out, but her understanding was that it was not a legislative item.

Ms. McKeel asked Mr. Morris to send out the list of Board member rotation for the WINA radio broadcast interview.

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Ms. Dittmar said that they had received information about the Virginia Resources Authority and the Governor's plans regarding support of infrastructure, and said that she had recently attended a workshop on public/private partnerships – and asked if anyone was going to the conference in Roanoke in December.

Ms. Mallek said that she had thought Ms. Susan Stimart might attend.

Mr. Foley said that if one of them would forward the email, he would have staff follow up.

Ms. Dittmar stated that in their ongoing review of Board processes, Ms. Jordan was preparing a spreadsheet of all agencies who report to the Board – such as RWSA – so that the Board could discuss how often they'd like to hear from them, how they should report, and other details.

Mr. Foley said that he would also coordinate times and dates for workgroups to meet.

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Ms. Mallek commented that the jobs meeting was very valuable, and placed a strong emphasis on the need for education to meet changing workforce needs. She said that there is a shift back to the importance of vocational training, and the focus on everyone going to college is probably not realistic.

Ms. McKeel said that there needs to be a larger community discussion about the need for vocational education, and one good reason to move CATEC to PVCC is the accountability and the credibility it brings to vocational education.

Ms. Mallek said that in many ways, the citizens have been following the schools' lead – and they need to take a leadership role in changing perception.

Ms. Dittmar said that the sea change is the impact of the business community on the educational community.

Ms. McKeel said that they've been trying to send that message through CATEC for years, and it's wonderful that the Chamber and the business community are also embracing it.

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Agenda Item 17. From the County Executive: Report on Matters Not Listed on the Agenda.

There was no report.

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Agenda Item 18. Adjourn.

At 8:47, with no further business to come before the Board, the meeting was adjourned.

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Chairman

Approved by Board
Date: 05/06/2015
Initials: EWJ