

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on October 14, 2009, at 6:00 p.m., in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. Ken C. Boyd, Mr. Lindsay G. Dorrier, Jr., Ms. Ann Mallek, Mr. Dennis S. Rooker, Mr. David Slutzky and Ms. Sally H. Thomas.

ABSENT: None.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry W. Davis, Deputy Clerk, Meagan Hoy, and, Director of Planning, V. Wayne Cilimberg.

Agenda Item No. 1. The meeting was called to order at 6:00 p.m., by the Chairman, Mr. Slutzky.

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

Agenda Item No. 3a. Recognition: Proclamation recognizing October, 2009 as Community Planning Month.

Mr. Slutzky read the following proclamation into the record:

PROCLAMATION

WHEREAS, change is constant and affects all cities, towns, suburbs, counties, boroughs, townships, rural areas, and other places; and

WHEREAS, community planning and plans can help manage this change in a way that provides better choices for how people work and live; and

WHEREAS, community planning provides an opportunity for all residents to be meaningfully involved in making choices that determine the future of their community; and

WHEREAS, the full benefits of planning requires public officials and citizens who understand, support, and demand excellence in planning and plan implementation; and

WHEREAS, the month of October is designated as National Community Planning Month throughout the United States of America and its territories, and

WHEREAS, The American Planning Association and its professional institute, the American Institute of Certified Planners, endorse National Community Planning Month as an opportunity to highlight the contributions sound planning and plan implementation make to the quality of our settlements and environment; and

WHEREAS, the celebration of National Community Planning Month gives us the opportunity to publicly recognize the participation and dedication of the members of planning commissions and other citizen planners who have contributed their time and expertise to the improvement of Albemarle County; and

WHEREAS, we recognize the many valuable contributions made by professional community and regional planners of Albemarle County and extend our heartfelt thanks for the continued commitment to public service by these professionals;

NOW, THEREFORE, BE IT RESOLVED THAT, I, David Slutzky, Chairman of the Albemarle County Board of Supervisors, do hereby designate the month of **October 2009** as **Community Planning Month** in the *County of Albemarle* in conjunction with the celebration of National Community Planning Month.

Agenda Item No. 4. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Ms. Rae Ely, President of Historic Green Springs, spoke. She said they oversee the Green Springs National Historic Landmark in western Louisa County. She came tonight with a delegation of landowners from Green Springs who all own land which fronts on Route 15 – together they own approximately four miles. Also present is Mr. Noel Harrison who is the liaison for the Green Springs National Landmark from the Secretary of the Interior, National Parks Service. They wish to express their extreme dismay over the resolution passed by this Board last week recommending that a Route 29 eastern bypass travel through the Green Springs National Historic Landmark on Route 15. This was done without any notice and apparently without any investigation. This delegation joins with their friends, and with their historic delegation colleagues in opposing any site that goes through, or touches, or adversely affects the Southwest Mountains Historic District.

Ms. Ely said a number of the Supervisors who have been friends of or participated with the preservation efforts of the Green Springs National Historic Landmark District know Green Springs is more than a historic district as is the Southwest Mountains Historic District. It is a unit of the National Parks

Service and it is a National Historic Landmark District. Being a national landmark it has the same designation as Monticello, Mount Vernon, the Alamo, or Montpelier. In case someone told the Board that Route 15 can be, or is going to be widened, they were given wrong information. Green Springs is 14,000 acres and is under conservation easement and six and one-half miles of Route 15 on both sides of the road is under conservation easements, most of which are held by the Secretary of the Interior.

Ms. Ely said those easements that are held under a particular act – a Federal statute – can withstand eminent domain by the Federal or State Department of Transportation. (**Note:** The buzzer rang, and Ms. Ely asked for the Board's indulgence because this is a matter of importance.) She came tonight to ask the Board to rescind that portion of the resolution as being ill founded and maintain its position as opposing the eastern bypass in the current configuration. She does not know where that recommendation came from, but that eastern bypass should not follow the Southwest Mountains proposal, and by all means it should not follow Route 15. She said Historic Green Springs has been working with VDOT for about 15 years to find an alternate route for Route 15 outside of the Historic Green Springs National Landmark because it bisects the landmark and should not. Someday the roadway will have to be moved.

Ms. Ely said she had talked with Ms. Thomas, and maybe this can be used as a springboard for working together to find alternative routes, but this is not the way to do it. She asked that the Board, tonight, before this goes any further, modify and rescind that portion of the resolution. She said Mr. Harrison is present to answer questions, and there are other members of the Historic Green Springs Historic Landmark who can also speak.

Mr. Slutzky asked that those in support stand (approximately ten people stood to show support).

Ms. Ely said the effort to preserve Green Springs has been going on for 40 years.

Mr. Slutzky said he had spoken in favor of exploring the possibility of using the Route 15 corridor, and he did that because of his strong desire not to have an eastern bypass go through a bunch of valuable, historically relevant, preserved land in Keswick, which was the way VDOT had marked the map. He does not know how the other Board members feel about the resolution, but in the future he will be careful to admonish VDOT not to draw lines on maps until there has been enough studying done to document that where the road goes is possible, and that the public has been engaged in a way that indicates they would be receptive to having that line converted into a roadway.

Mr. Rooker said he would like to address the notice issue raised by Ms. Ely. He said the corridor study by VDOT which had been going on for about 18 months never had a public hearing – only a number of onsite meetings – small gatherings – over this 18-month period of time. There were “studio sessions” where people could drop in and express themselves to the consultants. About two weeks ago, they came to a meeting at the Charlottesville/Albemarle MPO and unveiled the draft report. They had one public meeting after that which was not advertised in the newspaper - VDOT had hired a consulting group to do the study.

Mr. Rooker said he thinks the people who attended that meeting did so because of “word of mouth” or e-mails. At that meeting they said the comment period with respect to the draft report (it contains many recommendations) closes on October 16. If the Board was going “to weigh in on it” that had to be done quickly. He said the Board received many e-mails about this proposal – people understood the Board was talking about building an eastern bypass. The Board does not express support for any eastern route in its resolution – it says that if a corridor is to be studied the Route 15 corridor should be followed avoiding certain historic areas. He thinks the Board should have added Historic Green Springs on that list of historic areas.

Mr. Rooker said he thinks the Board can amend that resolution because it has not been sent yet. The letter that would accompany that resolution is being signed by the Chairman today. One thought might be to simply add Historic Green Springs to the list of areas that should be avoided when looking at an eastern corridor – he would support doing that.

Ms. Ely said it can't follow Route 15 and avoid Historic Green Springs because Route 15 bisects Green Springs.

Mr. Rooker said the resolution says “generally follow.” There is a lot of Route 15 that is not around the Green Springs area. He does not know if some resolutions are still standing, but about ten years Louisa, Orange and Fluvanna counties and the town of Orange all passed resolutions asking that Route 15 be upgraded to a four-lane facility.

Ms. Ely asked if it is wise for Albemarle County to make a recommendation as to a specific route without a detailed study. It would run into the historic Town of Gordonsville – it's a “can of worms” since it was said tonight that the Board had a very short period of time to reflect on it. She does not think Albemarle County should take it upon itself to recommend Route 15. She said going along Route 15 there are the Hallowed Ground areas and it is nothing but a “can of worms.” Since I-64 intersects within a couple of miles of Historic Green Springs, this is simply an invitation to trouble. She hopes the Board will take out the recommendation on Route 15 altogether and let VDOT handle that.

Mr. Slutzky said he will not support not commenting on it because the way it is now in the hastily put together VDOT exercise without adequate public input, they are putting a line on a map through Keswick, and the County does not want that to happen. The Board has received numerous communications from constituents saying this is a problem. He thinks it is appropriate in the Board's

resolution to acknowledge the inappropriateness of that line on the map. It might try and word it in a way that makes it clear the Board wants historic districts and other sensitive areas to be considered and avoided.

Ms. Thomas said she has a copy of the resolution the Board passed last week and it says "Resolved, the eastern bypass study corridor generally follow Route 15 and avoid the Southwest Mountains and Keswick Historic Districts." She thinks that if the resolution said "Resolved that any eastern bypass study corridor avoid sensitive areas such as the Southwest Mountains, Keswick, and Green Springs" that would recognize that the Board wants to avoid the Keswick area that it meant to honor and protect in this resolution. She told Ms. Ely that she was personally embarrassed because she had thought it was not a good idea to mention Route 15 but she did not speak up. She asked Ms. Ely what she would think of changing the resolution in that way.

Ms. Mallek said she would definitely like to remove the reference to Route 15 because it is stepping out of the Board's role of responsibility based on what it knows now, but describing historic districts and sensitive things in general is appropriate.

Mr. Slutzky said he is fine with that recommendation.

Mr. Boyd said he wants to support this change, because he is opposed to an eastern connector going through Keswick or through any areas of Route 15. He did not vote for the resolution last week, not because of this issue, but because of other sections. He would like for this motion to be an amendment to that resolution so he can then support the amendment.

Mr. Davis said that procedurally the Board should have a motion to rescind the resolution adopted at the last meeting, and then another motion to adopt a new resolution.

Mr. Rooker said that will be an entirely new resolution and Mr. Boyd won't be able to vote for it.

Mr. Boyd asked if the Board could just move to modify the resolution. Mr. Davis said there would then be two resolutions which had been adopted – the Board can have two resolutions adopted and have the second resolution impact the first, but his recommendation is to rescind the prior resolution.

Mr. Rooker then offered **motion** to RESCIND the prior resolution regarding the Route 29 Corridor adopted on October 7, 2009, and to ADOPT the resolution with the change read by Ms. Thomas at this meeting.

Mr. Slutzky **seconded** the motion.

Mr. Boyd said he voted against the first resolution, but not because of the eastern connection which he is vehemently opposed to. He agrees with everybody that it was thrown at the Board at the last minute; he did not even have the advantage of the MPO meeting. He is not as opposed to some of the routes on the western part of the area that follow along the land already purchased for a western bypass, and that is why he voted against this resolution. The way this amendment is being done he will also have to vote against this new resolution. He said he is definitely opposed to any kind of an eastern connector road and he has sent that information to VDOT.

Mr. Slutzky said he would like to say that he was misinformed by VDOT – he was led to believe that the Route 15 corridor had been examined and evaluated and there were many people along that route that had embraced the idea of having more of an expressway scale road. He said that is another disadvantage of the haste with which this was done.

Mr. Rooker said that over the years there have been resolutions passed by some of the communities along Route 15 – not requesting an expressway type route – but requesting that sections of it be upgraded to a four-lane facility.

Ms. Thomas said this shows that the Board should stick to the areas it knows. She thinks this statement will put the Board's emphasis on not going through sensitive areas and leave it at that.

Mr. Dorrier said that as a technical matter, it is not something that will be built any time soon.

Mr. Slutzky said there is a danger when VDOT puts a line on a map. Even if the road will not be built for 50 years, or if ever, people own property along that line and it impacts the value of their property, it disrupts their sense of well-being, it is a negative impact, and that is why they should not draw a line on a map. He then asked that the roll be called.

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

AYES: Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Dorrier and Ms. Mallek.

NAYS: Mr. Boyd.

RESOLUTION

Whereas, the Route 29 Corridor is a major north-south link for through and local traffic. The Virginia Department of Transportation, in association with the Virginia Department of Rail and Public Transportation, the Commonwealth Transportation Board and various state and local elected officials, have initiated the Route 29 Corridor Study which covers approximately 219 miles

of roadway between the North Carolina border and I-66 in Gainesville; and

Whereas, the goal of the study is to develop a Blueprint for the Route 29 Corridor that will guide future transportation improvements. The study is supposed to determine the transportation needs and identify recommendations to meet those needs while building on the commonalities of citizen concerns along the corridor. All recommendations should be context sensitive and sensitive to all environmental concerns, including historical and cultural resources; and

Whereas, the Albemarle County Board of Supervisors is in agreement with many of the concepts in the Corridor-Wide Recommendations, such as controlling access on Route 29, integration of land use and transportation planning, and enhanced transit, as reflected in its Comprehensive Plan, Long Range Transportation Plan, participation in the 29H250 Study, and commitment to integration of land use and transportation planning as reflected in Places 29 and other growth area adopted master plans; and

Whereas, the Board of Supervisors strongly opposes any of the extensions of Leonard Sandridge Road in the final Route 29 Corridor Report for the following reasons:

- the Southern interchange would still need to be built, an interchange or major intersection with Hydraulic Road would be required, and the cut through Stillhouse Mountain would still be necessary, so the cost would exceed \$100.0 million; and
- none of the proposed routes would likely qualify for federal funding and there is no possibility that any of these routes could be funded from the County's modest Secondary Road allocations; and
- the result of leaving these routes on the map in the final report would be to diminish property values and interfere with the lives of a number of citizens for an indefinite period of years to perpetuate lines on a map that will never become actual transportation projects. This would include residents living in the Canterbury Hills, Colthurst, Montvue, Georgetown Road, Hessian Hills, Old Forge, Terrell, Georgetown Green, Lambs Road, Ivy Ridge Road, Roslyn Heights, and Roslyn Ridge neighborhoods; and
- Route 1C would also impact two churches and take substantial acreage from the four school complex on Hydraulic Road; and
- the current best parallel road system we have to Route 29 is Georgetown Road to Hydraulic Road to Berkmar Drive. What is being suggested is to spend more than \$100.0 million to build a parallel road to the parallel road system that is functioning reasonably well; and
- there is no traffic study that even suggests that any of these proposed roads would take any substantial vehicle trips off of Route 29 or that they would even shorten travel time for people presently using Georgetown and Hydraulic Roads. There would be a significant wait to get the traffic onto Hydraulic Road; and
- for the cost of constructing any of the proposed extension roads, we could complete the widening of Route 29 from Hydraulic to the Route 250 Bypass, add the additional ramp at Best Buy onto the Route 250 Bypass, widen Route 29 from Polo Grounds Road to Hollymead and possibly have funds to build a grade separated interchange at Rio Road and Route 29. If the bypass right of way were sold, we would also have enough funds to build the Hillsdale Drive connector, which traffic studies show will take 8,000 to 10,000 vehicle trips per day off of Route 29 at its most congested point. These improvements have been traffic modeled, are included in the area's Long Range Transportation Plan and will significantly improve the flow of traffic in the Route 29 Corridor; and
- the aforesaid projects can be done as funds are available; the "southern bypass" project is all or nothing. It can't be built incrementally; and
- a recommendation to "study" this issue would result in more money being diverted to a study that will go nowhere at a time that we have little or no transportation funds for actual projects; and
- the MPO removed the study of the "southern bypass" from the area's Long Range Transportation Plan, demonstrating that it has no local support. This vote was unanimous and included the VDOT representative on the MPO.

Now, Therefore, Be It Resolved that, the Albemarle County Board of Supervisors commends the consultants and VDOT for their work on the Route 29 Corridor Study; and

Further Resolved that, the Hillsdale Drive connector, the additional southbound lane on Route 29 from Hydraulic Road to the Route 250 Bypass (with the additional ramp lane) and the additional lanes on Route 29 between Polo Grounds Road and Hollymead be included in the

report, as they are in the area's long range and six year transportation plans and have been demonstrated through traffic modeling to be cost effective ways of improving traffic flow and safety in the corridor; and

Resolved that, any Eastern Bypass Study Corridor avoid sensitive areas such as the Southwest Mountains, Keswick historic district areas, and historic Green Springs; and

Resolved that, localities should not be required to include specific transportation projects in their comprehensive plans that are not approved by the locality and/or by the applicable MPO.

Agenda Item No. 5. From the Board: Matters Not Listed on the Agenda.

Ms. Thomas asked if staff was going to mention the recent award from VML (Virginia Municipal League). Mr. Tucker said the County has been notified by VML that it has received and tied for a first place "Go Green Virginia" award. The award will be presented next Tuesday in Roanoke.

Ms. Thomas said she attended the VML Conference last year and got to stand in for the County and be handed an award. She hopes staff can attend the meeting this year to receive the award. Last year the County barely squeaked into the winning category so to be number one this year and to tie with Arlington County is magnificent. Mr. Tucker said Ms. Sarah Temple, the County's Environmental Manager, gets the "kudos" for that.

Mr. Slutzky said she certainly deserves to travel to that meeting and accept it on the Board's behalf.

Ms. Thomas said this month is Hispanic Month. She was at a meeting of Creciendo Juntos which is an organization that draws together social service groups and the police, and churches and organizations working with the Latino community. She learned that the County police are regarded as sensitive and helpful to the Latino community. That is a big step forward – people in that community are often hindered, not only by language, but also by their perceptions brought from their native countries.

Mr. Slutzky said there is an officer who is assigned that duty. The police have worked hard to earn that recognition, so it is good to hear that it has worked.

Ms. Mallek said the proposed Greenwood/Afton Rural Historic District is nearing the next phase of its activity. They have completed fundraising. The initial report has been submitted to DCR, and the follow-up report is to be submitted in January. She handed to the Board members a copy of a map showing the outlined district which they are hoping "will be fully blessed" in 2010.

Ms. Mallek said October 31 will be the 50th anniversary of the plane crash at Buck's Elbow Mountain in Crozet. It was a sad occasion, but a good occasion for Mr. Phil Bradley, the lone survivor at age 30. He is coming back to an event at Mint Springs Park at 10:00 a.m. on the 31st. He put up a memorial at Mint Springs and his family tends it. She invited everyone to attend.

Ms. Mallek said she recently took a field trip with Ms. Cathy Mays, the president of the American Chestnut Foundation. The Foundation is looking at areas in the White Hall District as nursery locations for their seedling project hoping to bring back the American Chestnut tree. It is another wonderful thing that will be offered from the rural area.

Agenda Item No. 6. Consent Agenda. **Motion** was offered by Mr. Rooker, **seconded** by Mr. Boyd, to approve the consent agenda in its entirety.

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

AYES: Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd, Mr. Dorrier and Ms. Mallek.
NAYS: None.

Item 6.1. Approval of Minutes: July 2, 2008.

Mr. Boyd had read his portion of the minutes of July 2, 2008, pages 38 – end, and found them to be in order.

The minutes were approved as read, by the above-recorded vote.

Item 6.2. FY 2010 Appropriation.

It was noted in the Executive Summary that Virginia Code § 15.2-2507 provides that any locality may amend its budget to adjust the aggregate amount to be appropriated during the fiscal year as shown in the currently adopted budget; provided, however, any such amendment which exceeds one percent of

the total expenditures shown in the currently adopted budget must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The total of the new requested FY 2010 appropriation itemized below is \$171,000. A budget amendment public hearing is not required because the cumulative appropriations will not exceed one percent of the currently adopted budget.

This request involves approval of one FY 2010 appropriation - Appropriation No. 2010-038 totaling \$171,000 re-appropriating an uncompleted local government project from FY09. A description of this request is provided in Attachment A. Staff recommends approval of the budget amendment in the amount of \$171,000.00 and the approval of Appropriation No. 2010-038.

Attachment A: Appropriation No. 2010-038, \$171,000.00. Revenue Source: General Government CIP Fund Balance \$171,000.00. This request re-appropriates the costs related to the Fire/Rescue Emergency Radio Notification System which was not completed as of June 30, 2009. Reappropriation of funds supports the purchase of radio equipment (550 pager/radios) for a system currently being installed which is set to be online by the first of the year. Delaying the purchase will not allow for proper programming of the equipment and will ultimately impact its ability to go online.

By the above recorded vote the Board approved the FY 2010 budget amendment in the amount of \$171,000.00 and approved Appropriation No. 2010-038, as set out below.

COUNTY OF ALBEMARLE
 APPROPRIATION NO. 2010-0038
 DATE: 10/14/09
 EXPLANATION: Reappropriation of project from FY '09 General Government CIP

TYPE	FUND	DEPT	OBJECT	ACCOUNT DESCRIPTION	SUB LEDGER		GENERAL LEDGER	
					CODE	AMOUNT	DEBIT	CREDIT
1	9010	32010	800313	Fire Dept - Emergency Radio Notification	J1	171,000.00		
2	9010	51000	510100	Appropriation - F/B	J2	171,000.00		
	9010		0501	Est. Revenue			171,000.00	
			0701	Appropriation				171,000.00
TOTAL						342,000.00	171,000.00	171,000.00

Item 6.3. Voting Credentials for VACo Annual Business Meeting.

The Board approved Ms. Sally Thomas as it's Voting Delegate at the 2010 VACo Annual Business meeting with Ms. Ann Mallek as the Alternate Delegate.

Item 6.4. ZMA-2006-008. Berkmar Business Park; Applicant request for 12-month extension.

The following letter had been received:

STONEHAUS

September 24, 2009

David Slutzky, Chair
 Albemarle Board of Supervisors
 Albemarle County
 401 McIntire Road
 Charlottesville, VA 22902

RE: ZMA200600008 Berkmar Business Park

Dear Mr. Slutzky and other members of the Board:

I am writing you on behalf of Berkmar Business Park LLC, Stuard & Margaret Wood, Brian McMahon and Steve von Storch, property owners who are party to the rezoning request referenced above, to request a 12 month extension of the deferral period for our current Berkmar Business Park rezoning application to allow us the time to resolve challenging proffer issues that have arisen from the severe market downturn and credit crisis of the past year. I will offer additional justification for the request at the end of this letter but, first, I would like to briefly recap the history of the application to put the current request into context.

As you know, Stonehaus is the applicant of record for this project and initially had contracts to purchase TMP45-112, owned by Stuard and Margaret Wood, and TMP45-112E, owned by Brian McMahon and Steve von Storch. Berkmar Business Park LLC (a Stonehaus related company) owns TMP45-112G and agreed to contribute about 1.2 acres of its property to this rezoning. The expectation was that Stonehaus, as development manager, would secure rezoning on the subject properties and then close on the purchase of those properties.

In July of 2008, we began seeking bank financing for the two acquisitions scheduled to close in December 2008. In September, the banking industry had a near meltdown and the credit markets have been near frozen ever since. In November, 2008, we crafted an alternative plan to complete the rezoning. It amounted to a joint venture among the existing property owners. Under the terms of this plan, each party would retain ownership of their own property and execute independent proffer agreements with the County. All parties verbally agreed to this approach and I spent time with Elaine and Greg Kamptner in March and April to revise the proffers in a way that satisfied the County and met the needs of the property owners. The final versions of these amended proffers were distributed for signature in April.

In May, Steve von Storch's partner, Brian McMahon, informed him he didn't want to execute the revised proffers and the whole process came to a grinding halt. In July, Wayne Cilimberg granted us a six month extension to allow time to work out a solution with von

Storch and his Partner. Since then Steve and I have worked diligently to find a solution that enables us to move this application to the Board of Supervisors for a final review. After consulting with Greg Kamptner it appeared feasible for each property owner to execute separate proffers tied to the same plan and code. The proffer terms could be identical with the exception of the cash proffer for transportation which would need to be allocated among owners in accordance with their respective acreage. In late July, Steve secured the consent of this partner to this approach and in late August, we resubmitted proffers and requested a Board hearing in October.

Unfortunately, we've now hit another snag. Zoning is concerned about the logistics of the transportation proffer enforcement and have requested that we either consolidate control of the properties or modify the proffers again to address their concerns. In short, Staff is worried about how the cash proffers would be enforced if, and when, parcel boundaries change in the future to respond to the proffered design and logical phasing of the project.

We understand and respect the concerns that Zoning has raised and believe we can address those concerns to their satisfaction but it will take more time than we currently have before the application lapses. We ask the Board to extend the current application for up to 12 addition months and offer the following in support of the request:

1. The extra time will allow us time to either consolidate control of the properties or revise the proffers in a way that Zoning staff believes can be more easily administered.
2. Efforts to consolidate ownership of at least two of the properties will become more feasible as the availability of credit improves. We don't expect this to happen in the next 6 months but it could happen within the next 12 months.
3. Allowing the application to lapse will result in the extension, indefinitely, of residential zoning on the property that does not conform to the Comprehensive Plan or Places 29.
4. We've worked very hard on this project for almost 3 years now and I think the final result is a development code and plan that is consistent with the Comprehensive Plan, Places 29, and the Neighborhood Model.
5. The plan, when executed creates a durable infrastructure pattern while allowing enough flexibility within each block to meet the demands of an ever changing market.
6. When approved, the plan will provide a steadily increasing boost in property tax revenue and net positive economic impact on the County that will, at build-out exceed \$600K per year. We believe that the merits of the project warrant the additional time and effort that will be needed to address the concerns of staff.

Thank you for consideration of this request. I look forward to your reply.

Sincerely,



Frank R. Stoner
Stonehaus LLC, Developer of Record

Cc: Steve von Storch & Brian McMahon
Stuard & Margaret Wood
Berkmar Business Park LLC

By the recorded vote set out above, the request for a 12-month extension was approved.

Item 6.5. Cancel November 11, 2009, Regular Night Board of Supervisors' meeting.

By the recorded vote set out above, the Board's regular meeting scheduled for November 11, 2009, was cancelled.

Agenda Item No. 7. **Public Hearing:** To amend the Six-Year Secondary Road Priority List that was approved by the Board of Supervisors on May 13, 2009. The proposed amendment will remove Dickerson Road (Rt. 606) and add the Broomley Road bridge over the Buckingham Branch railroad. *(Notice of this public hearing was published in the Daily Progress on September 28 and October 5, 2009.)*

Mr. Cilimberg said the Board discussed this change recently. The change would move moneys from the Unpaved Road Fund for Dickerson Road to the ultimate reconstruction of the Broomley Road Bridge. Last week, staff gave the Board the report (a copy of that report is in the package for this week's meeting). There is also a draft resolution included that would provide for that change – the result of which would be a potential reduction in the County's Unpaved Road funds "whenever they reappear, if they ever do." He said staff estimated that reduction to be about \$150,000 over a six-year period – the Residency Administrator recalculated that number to be closer to \$105,000.

Mr. Slutzky said this action assumes the General Assembly would not provide for localities who try to be reasonable and prudent in the face of the State's inability to fund transportation. Mr. Cilimberg said it will be one of the Board's legislative initiatives this year.

Mr. Boyd asked if this money will be put to use immediately even though it is short of the amount needed for that project. Mr. Cilimberg said that initially the money will be used for engineering. It is hoped that Federal moneys will be available for construction, but that is several years into the future.

Mr. Boyd said there will be a new General Assembly next year. He asked if this action has to be taken now, or could the Board simply authorize shifting of that money at some future date. If that were possible, the money could be spent when the opportunity arose, but if things changed, the Board would not have "burned that bridge."

Ms. Mallek said that would be based on the public hearing tonight.

Mr. Boyd said that is correct.

Mr. Rooker said the Board always has the right to move the money and that is the action being contemplated tonight. There is nothing that prevents the Board from making any change in the Six-Year Plan at any time.

Mr. Boyd said he thought this had to do with the Board's having to notify VDOT of its intentions. If the money is moved from "one pot to another" he assumes it can't be undone. However, if the money is not going to be spent now, then why put it "over into that separate pot?"

Mr. Rooker said it makes it possible that the Broomley Road project might get built sometime in the next six or seven years with the addition of Federal bridge money. Without Federal money, there is no schedule for it to be done. He has been talking about this project for a very long time, and has met with people in Flordon Subdivision and people from VDOT several times. VDOT has actually done some preliminary engineering work on this project to determine how the bridge might fit into the existing terrain. When work is done on a railroad bridge now, they provide for double-tracking, so the bridge has to cover a longer space – that will be true of any bridges that fall into that category. The current bridge is not high enough – it does not meet the new standards, so must be higher. There are a lot of issues, and hopefully work can begin on the issues because there is some money allocated to the project. He is concerned that without money being allocated to the project, none of the preliminary work will be completed.

Mr. Boyd said that was his original question – will this money do some good now, or is it just put aside "in a pot" to be used several years into the future if additional money becomes available to go forward with it. If that is the case, he does not know why the Board needs to take this action today. He is in favor of the project.

Mr. Slutzky said there is no way this money could be used on Dickerson Road. Frankly, leaving money sitting there for that project creates an expectation that is unfair to folks on Dickerson Road.

Mr. Boyd asked if it makes a difference whether the money is sitting "in that pot" or sitting "in this bridge pot."

Mr. Rooker said he thinks it makes a difference. Also, the "pot" it is in now is the "pot" that is completely disappearing. The County is not getting any Unpaved Road Funds now to add to that pot, and second, notice has been received from the Secretary of Transportation that the entire Secondary Road Program will not be funded.

Mr. Boyd said he just had a question – he is not arguing about that.

Mr. Rooker said he will point out that the money is "being put into a pot" that is, under the current funding scheme, attracting some money. There is some Federal bridge money – this money added to that money may put the County in a position where a project can actually be done as opposed to having money just sitting and declining in value from inflation.

Mr. Slutzky said if there were no further discussion at this time, he would open the public hearing.

Mr. Thomas Albro said he lives in Far Hills Subdivision which is located off of Old Ballard Road. He is on the board of their property owners' association and came to speak in favor of the adoption of the resolution before the Board tonight. Far Hills is a subdivision of 20 lots, most of which are built on. Their

concern is that heavy emergency equipment cannot use the Broomley Road bridge because of its weight limit. He has driven over that bridge twice a day for almost 13 years, and it is chronically in a state of disrepair. The road surface is potholed and disintegrating, the guardrails are falling down and broken and it takes a long time to get them fixed. The property owners are concerned that fire trucks cannot get to their subdivision quickly because they can only access the subdivision through West Leigh and that takes considerably longer than using the Broomley Road bridge. For all those reasons, plus the fact that it would be more beneficial to the people in Flordon, they strongly support the resolution.

Mr. Bill Gray congratulated the Board on receipt of the green award announced earlier in the meeting. He has been a resident of Flordon for 27 years and came to ask the Board to transfer those moneys to the bridge project. He said a number of people from that area came in support (approximately 15 people stood). He said it is a matter of safety, particularly for the older people in the area. He asked the Board to pass that resolution.

Ms. Caylee Ferguson said she represents the Ivy Creek neighborhood at the end of Broomley Road. She came to ask that the Board support the amendment to the Six-Year Secondary Road program by transferring road-paving funds to the Broomley Road bridge project. Over 100 homes and families will benefit from passage of this amendment. They recognize that this allocation of resources is an important and necessary first step toward addressing a real need for a wider bridge across Broomley Road. They are committed to seeing this project through and to assisting in its completion when possible. She knows this is a time when resources are smaller and the list of wants and needs does not shrink. She will remind the Board that this project and the problem it addresses is not one of development, property values, beautification, convenience or time-saving, but one of safety. The need for the project is to allow fire trucks to access their homes and their families quickly enough to save lives. She asked that the Board consider this project as a high priority to save lives.

Mr. Tommy Everett said he is a resident of Flordon. He said there are over 50 children residing in Flordon, alone. This is really a safety issue. A couple of years ago there was a power outage – a generator exploded and dropped sparks between his and his neighbor's house and started a fire. They called the fire department, and then in about 25 minutes Virginia Power trucks showed up. They had noticed that there was a power outage and came to the scene – 20 minutes later the fire trucks showed up. Obviously they put the fire out before the fire trucks got there, but if it had been a house it would have burned down. He asked that the Board reallocate these funds so that bridge may be built.

Mr. John Wilson said he is president of the homeowners' association from the Candlewick Subdivision. He represents about 35 households, and will say that they strongly support this resolution. They urge its passage for all of the reasons described tonight. He thanked Mr. Rooker for his leadership in this matter. He said if the Board needs more information, getting response times from the fire department might help in reaching a decision.

With no one else from the public rising to speak, the hearing was closed and the matter placed before the Board.

Mr. Boyd said he wants everyone to understand that his question earlier was not for lack of support of this amendment. He thinks this is something the Board has supported for a long time – it was just a question about the process.

Ms. Thomas said she is delighted with this shuffling of money, but needs to remind everybody that this is not enough money to do the project. It is a good time to make this change because preliminary engineering work is needed. The road might have to be rerouted quite drastically in order to take care of the sharp curve that trucks can't get around at this time. It is not an easy project – it is not just widening an existing bridge. It is also not unique. There is a bridge on Dry Bridge Road that has kept fire trucks from a large section of the Samuel Miller District for many years, but that bridge is on the Six-Year list so if there ever is anymore money the project should move along. She is not opposed to putting this money into this project. She can't resist saying there is not enough money at the State level, and the State is strangling communities because they will not put enough money into the roads in the State. She points that out for the benefit of some people who might want "to bend the ear" of some State legislators.

Mr. Rooker said the County had \$5.0 million in Secondary Road Funds six years ago, and now it has \$1.6 million and that is scheduled to be cut in half about six months from now. The Board has a letter from the Secretary of Transportation saying Secondary Road Funds will be entirely eliminated in the next two years if something is not done about transportation funding. The State is finding it difficult to even come up with enough money to provide the 20 percent match needed to get Federal funds. The one area where there is still some funding is in the Federal bridge fund "pot." If there is an improvement in transportation funding at the State and Federal levels it may help accelerate the three projects on the County's list.

Ms. Mallek said timing is important – after waiting for 21 years to get the right design for the Advance Mills Bridge, because the design was ready so the project could begin, the County was able to get the money. Even a matter of weeks later, it would not have been possible. She is glad the Board is doing this tonight so the project can get going.

At this time, Mr. Rooker offered **motion** to adopt the following Resolution which was included in the Board's agenda packet tonight and denoted as "Attachment A" to the executive summary on this subject (basically, requesting that VDOT amend the Albemarle County Six-Year Secondary System Construction Program to: 1) add the Broomley Road Bridge Improvement Project; 2) remove the Dickerson Road Project; and, 3) request that the Unpaved Secondary Road Funds currently allocated by

VDOT for the Dickerson Road Project be added to the County's Secondary System Construction Funds to be used for the Broomley Road Bridge Improvement Project.

The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd, Mr. Dorrier and Ms. Mallek.

NAYS: None.

RESOLUTION

WHEREAS, on May 13, 2009, the Albemarle County Board of Supervisors approved the County Priority List of Secondary Road Improvements for Fiscal Years 2009/10 through 2104/15 (the "Priority List") and authorized the County Executive to sign the VDOT Secondary System Construction Program for Albemarle County (the "Albemarle County VDOT Construction Program"); and

WHEREAS, the Priority List included road improvements for State Route 606 (Dickerson Road) between Route 850 and Route 1575 which would include replacing two bridges and reconstructing and surface treating the existing non-hard surfaced road, and these improvements are identified in the Albemarle County VDOT Construction Program as VDOT Project Numbers 0606002296, 0606002297 and 0606002P75 (the "Dickerson Road Project"); and

WHEREAS, the Dickerson Road Project is being funded from the Unpaved Secondary Road Fund provided by Virginia Code § 33.1-23.1:1 but, to date, only \$1.6 million of the estimated \$11.6 million cost to make the improvements has been allocated by VDOT; and

WHEREAS, the Board has identified a more urgent need for a bridge replacement project on Broomley Road, referred to as the Broomley Road Railroad Bridge Improvement Project (the "Broomley Road Project") because the existing bridge has an eight ton limit that restricts its use by certain emergency vehicles.

NOW, THEREFORE, be it hereby resolved that the Board of Supervisors requests that VDOT amend the Albemarle County VDOT Construction Program to add the Broomley Road Project, and to remove the Dickerson Road Project; and

BE IT FURTHER RESOLVED that the Board requests that the Unpaved Secondary Road Funds currently allocated by VDOT for the Dickerson Road Project be added to the County's Secondary System Construction Funds to be used for the Broomley Road Project as provided by Virginia Code § 33.1-23.1:1(C); and

BE IT FURTHER RESOLVED that the Board acknowledges that, as provided by Virginia Code § 33.1-23.1:1(C), for each \$250,000 or portion thereof added to the County's Secondary System Construction Funds, the amount of the County's non-surface treated roads used to distribute Unpaved Secondary Road Funds in subsequent years shall be reduced by one mile or proportional part of one mile; and

BE IT FURTHER RESOLVED that the County Executive is authorized to sign the VDOT Construction Program that is amended consistent with this resolution.

Mr. Slutzky thanked Mr. Allan Sumpter, Residency Administrator, for attending this meeting tonight, and for doing the recalculation referred to earlier.

Agenda Item No. 8. **Public Hearing:** SP-2008-009, Animal Wellness Center.

Proposed: Veterinary Clinic for small animals.

Zoning Category/General Usage: DCD Downtown Crozet District-variety of commercial uses including office, retail, service and civic uses; residential uses if mixed use (up to 36 units/acre); light industrial uses by special use permit.

Section: 20B.2.E.17 Veterinary offices and animal hospitals. Veterinary office and hospital; 5.1.11 Commercial Kennel, Veterinary Service, Office or Hospital, Animal Hospital, Animal Shelter.

Comprehensive Plan Land Use/Density: Community of Crozet, CT5 Neighborhood Center in the Crozet Master Plan which allows for a mix of uses and residential types at net densities of up to 12 units per acre; up to 18 units per acre if in a mixed use setting and CT 1 Development Area Preserve.

Entrance Corridor: Yes.

Location: 1100 Crozet Avenue/Route 240, approx. 400 feet south of the intersection of Jarmans Gap Road and Crozet Avenue.

Tax Map/Parcel: 056A2-01-00-00700.

Magisterial District: White Hall.

(Notice of this public hearing was advertised in the Daily Progress on September 28 and October 5, 2009.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this request is for a special use permit for a

veterinary clinic in an existing building on property on Crozet Avenue south of the downtown Crozet district. The area is designated in the Crozet Master Plan as Urban Center and Preservation (preservation reflects the fact that a stream and drainage area come through the site). He showed on the screen pictures of the location of the building which is presently being used for residential purposes.

Mr. Cilimberg said a new entrance would be established off of Crozet Avenue in order to obtain the sight distance necessary for a small parking area associated with the business and the building. Factors favorable are: the veterinary use can be supported by the Master Plan, it will be a new business located in downtown Crozet, and it adaptively reuses a currently vacant building. There are no detrimental impacts on surrounding properties and no unfavorable factors were found.

Mr. Cilimberg said the Planning Commission and staff both recommended approval subject to six conditions.

Ms. Mallek asked the meaning of Condition No. 6 (Use shall not commence until the building is served by public sewer.). Mr. Cilimberg said it means the applicant cannot get a zoning clearance until the building is served by public sewer.

Ms. Mallek said the back of this property is adjacent to the stormwater wetland that will be installed in that area. Mr. Cilimberg said the frontage is also on the ultimate streetscape.

With no further questions for staff, the public hearing was opened, and Mr. Slutzky asked the applicant to speak.

With no one rising to speak, the hearing was closed and the matter placed before the Board.

Ms. Mallek offered **motion** to approve SP-2008-009 with the six conditions recommended by the Planning Commission. The motion was **seconded** by Ms. Thomas. Roll was called, and the motion carried by the following recorded vote:

(**Note:** The conditions of approval are set out in full below.)

1. Development of the use shall be in accord with the concept plan, entitled "Animal Wellness" prepared by TCS Engineering Co., LLC and last revised July 14, 2009, as determined by the Director of Planning and the Zoning Administrator. To be in conformity with the plan, development shall reflect the following elements only and all other elements of the plan may be modified during site plan review and approval: entrance relocation, general location of parking areas, and outside area for walking animals. Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance;
2. This special use permit applies to the existing building and any new buildings for the veterinary use will require a new special use permit;
3. No overnight boarding use, other than for those animals under medical care shall take place at the veterinary hospital;
4. The building shall be sound-proofed in accordance with Section 5.1.11(b) and air-conditioned;
5. No outdoor exercise area shall be permitted. However, walking of animals is permitted and shall be separated from access by the public and limited to the area behind the building as identified in Attachment D (on file); and
6. Use shall not commence until the building is served by public sewer.

Agenda Item No. 9. **Public Hearing:** STA-2008-001, Rural Areas 2-lot street standard; single point of access.

Amend Sections 14-207, Rural subdivisions, 14-224.1, Waiver of certain requirements by the agent, 14-225.1, Waiver of certain requirements by the planning commission, 14-404, Lot location to allow access from lot onto street or shared driveway, 14-412, Standards for private streets only, and 14-434, Completion of on-site improvements required prior to plat approval, of Chapter 14, Subdivision of Land, of the Albemarle County Code. **This ordinance would amend:**

- Sec. 14-207 by making rural subdivisions subject to Sec. 14-404 if any proposed lot would have less than 500 feet of frontage on a major rural street identified on the map adopted as Appendix A to the Subdivision Ordinance;
- Secs. 14-224.1 and 14-225.1 by transferring from the planning commission to the subdivision agent the authority to grant waivers permitted under Secs. 14-404 and 14-412;
- Sec. 14-404 by requiring that a subdivision plat establish a single public or private access into the subdivision from an existing public or private street by requiring that the proposed street provide such access for all lots within the subdivision, and, by amending the procedure for waiving that requirement and the criteria for approving a waiver;
- Sec. 14-412 by establishing new design standards for private streets serving 2 lots (by requiring that such streets not exceed a 16% grade over 50 feet, have a travelway at least 10 feet wide, and maintain a 10 foot by 14 foot unobstructed zone) and private streets serving 3 to 5 lots in the rural areas (by requiring that such streets not exceed a 16% grade over 50 feet, allowing streets having a grade of less than 7% to be gravel, and maintain a 10 foot by 14 foot unobstructed zone);
- Sec. 14-434 by deleting the exception for certain private streets from the requirement that all on-site improvements be completed prior to approval of the final plat where surety in lieu of completion of the improvements is not authorized.

(*Notice of this public hearing was advertised in the Daily Progress on September 28 and October 5, 2009.*)

Mr. Bill Fritz, Chief of Current Development, said that at a meeting in June the Board discussed several options related to this text amendment and directed staff to prepare the final Subdivision Ordinance text amendment for single-point-of-access and private street standards. Currently, rural subdivisions are defined as "Subdivision of rural lots of five acres or greater, 250 feet of frontage on an existing public street." These types of subdivisions are not subject to the single-point-of-access requirements currently in the ordinance. This ordinance will classify several rural roads in the County as "major rural streets" and state that in order to be exempt from the single-point-of-access requirements all the lots created have to be five acres or greater and must have 500 feet of frontage. If the lots are not on a major rural street, no change in regulations is proposed. This amendment will also establish an administrative waiver process for single-point-of-access. The process will be administrative and criteria will also be established – this was very important to the people who attended the roundtable and the Board also directed that it be included. He drew the Board's attention to the screen which showed the administrative procedure.

Mr. Fritz said as to private street standards, the proposal is that a private street serving two lots be subject to the same design standards as driveways – currently it is just reasonable access so "reasonable access" will be defined. Private streets serving three to five lots will have a maximum grade and a clear zone established – currently there is neither. Those will be at least to the minimum standards for a driveway. Also, it will be specified that grade measurements will be taken over 50 feet because there can be undulations in the roadway. Also administrative waivers for all private street design standards will be established.

Mr. Fritz said there are other minor changes – there is a clarification that use of an internal street applies to all the lots in the subdivision. Currently, if there is a subdivision of say 15 lots, and one of those lots is large enough to divide further, all 15 of those lots would have to be served by an internal private street. However, if the one lot is further divided (under the ordinance now it has to create its own internal street), but this change would allow it to use the same internal streets that were established at the time of the original subdivision. Language associated with construction and bonding of two-lot streets is "cleaned up." No bonding or construction is required now and none is proposed under the change.

Mr. Fritz said that staff recommends approval of the text amendment with delayed application. He handed to the Board some additional language – a delayed application of the ordinance for projects that have already been submitted. It says that any projects approved by January 14, 2010, would be subject to the ordinance under which they were originally submitted. There are very few projects that would fall under this provision. He said the single-point-of-access only addresses lots that are on major rural roads - lots not on a major rural road or a rural street are not affected by these ordinance provisions. He showed a map on the screen which was a graphical depiction of the multiple pages of text in front of the Board outlining those roads. He then offered to answer questions.

Mr. Rooker said it seems like a common sense approach to the issue.

Ms. Mallek said these changes are responsive to the concerns expressed by the public when the Board discussed whether to have the three to five lot standards apply to two lots. That would have been a major change. She applauded the citizens who participated throughout this process, and who took Board members around the County to be sure they understood the consequences of the changes being proposed.

M. Boyd said the way this is written, and the map that was shown on the screen, all of those roads have been included in the language. He asked how often this will be updated. Mr. Fritz said those roads are based on having 1,400 vtpd, so staff would have to periodically analyze traffic counts.

Ms. Thomas said she thinks the Board is somewhat "shooting itself in the foot" in the sense that the ordinance says if there is already a big traffic flow on a particular road, entrances are limited, but if there is not, it is wide open for development. She is thinking of Dick Woods Road from Taylors Gap Road to Miller School Road which was recently paved, and it is totally unprotected in this ordinance. She understands going with an objective standard, so the County is "stuck" with that standard. She said it is bad to have the citizens go to a lot of work to help the County develop an ordinance if it does not do much of what it was hoped it would do.

With no further questions for staff, Mr. Slutzky opened the public hearing.

Mr. Roger Ray said he is and has been a land surveyor for a long time. He did not come to oppose the ordinance, but wants to reflect on the process. In February, 2007 the Board adopted a resolution of intent to amend certain sections of the ordinance in reference to access to subdivision lots. The Planning Commission came back with an amendment to the ordinance which seemed to most rural folks to be overwhelming and destroyed a lot of property rights, in particular division rights. Then came a public outcry for help, and it started with a "town hall" meeting. After that meeting, there still being concern, two people organized additional work and asked individual members of the Board to go on "a drive around" so the unintended consequences of this very strict rule could be pointed out. Several members of the Board were receptive to doing that and they looked at the real impact of the proposed amendment on properties.

Mr. Ray said there was a public hearing and the Board asked staff to have a roundtable discussion, and they did so. From that they gave the Board a list of options to go forward with a month or so ago. The Board instructed staff which options to consider, and they did a good job of rewriting the ordinance to make it clear what can and cannot be done. He said he would like to thank a lot of people, particularly, Cathy Rash, Joe Jones, Ann Mallek, each member of the Board individually and the Board as

a group. Of all the years he has been doing this kind of work, this is the first time he has seen County government work the way it should. He hopes he speaks for all rural property owners who have division rights. He thanks everybody for this process.

Mr. Ray said there is one sentence he would like to add on the last page – Section 14.434(b) – “The subdivider shall certify to the agent that all of the construction costs for the improvements including those materials of labor have been paid to the person constructing the improvement.” He would like to add and further certify that all fees have been paid for surveying and engineering expenses.

Mr. Boyd asked Mr. Ray if he was serious about that comment.

Ms. Cathy Rash said she came to thank everybody who worked on this amendment. She said it is amazing what can be done when everybody works together with the Board of Supervisors.

Mr. Joe Jones said he would like to thank Mr. Ray for helping with all of the legalese in the ordinance and using his expertise to put it in laymen’s terms so it can be understood. He endorses the amendment Mr. Ray recommended for the payment of the surveying. He said the roundtable process seemed to have a good benefit as opposed to a committee that might meet often but not get anything solved.

With no one else from the public rising to speak, the hearing was closed and the matter was placed before the Board.

Ms. Mallek thanked Mr. Ray. She said he came to the town hall meeting in White Hall and he came with large charts and lots of informational maps. A lot of landowners also attended to give a real frame of reference.

Mr. Davis said Mr. Fritz had referenced a replacement page No. 9 which adds an effective date provision which provides the grandfathering of plats that were submitted prior to October 13, 2009, and are approved no later than January 14, 2010.

Ms. Thomas said she appreciates the work that Ms. Mallek did on this ordinance. She asked if Ms. Mallek thinks this will accomplish anything.

Ms. Mallek said “yes.” It has helped to make various parts of the County’s governmental documents consistent. There were things in the Subdivision Ordinance which were not in the Zoning Ordinance, etc. It will make actual requirements clearer. Hopefully, the waivers are detailed enough to make it a smooth process without being a burden for the enforcement staff. She is optimistic and hopes the citizens will continue to stay in touch because that is what made this different. They jumped right in and became engaged.

Ms. Mallek then offered **motion** to approve ZTA-2008-001, private streets and single-point-of-access as modified with the extra paragraph added October 6, 2009, regarding delayed application of the ordinance for projects that have already been submitted by **adopting** Ordinance No. 09-14(2), An Ordinance to Amend Chapter 14, Subdivision of Land, Article II, Administration and Procedure, and Article IV, On-Site Improvements and Design, of the Code of the County of Albemarle, Virginia, by amending Sec. 14-207, Rural subdivisions; Sec. 14-224.1, Waiver of certain requirements by the agent; Sec. 14-225.1, Waiver of certain requirements by the commission; Sec. 14-404, Lot location to allow access from lot onto street or shared driveway; Sec. 14-412, Standards for private streets only; and, Sec. 14-434, Completion of on-site improvements required prior to plat approval.

The motion was **seconded** by Mr. Boyd. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd, Mr. Dorrier and Ms. Mallek.

NAYS: None.

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

ORDINANCE NO. 09-14(2)

AN ORDINANCE TO AMEND CHAPTER 14, SUBDIVISION OF LAND, ARTICLE II, ADMINISTRATION AND PROCEDURE, AND ARTICLE IV, ON-SITE IMPROVEMENTS AND DESIGN, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 14, Subdivision of Land, Article II, Administration and Procedure, and Article IV, On-Site Improvements and Design, are hereby amended and reordained as follows:

By Amending:

Sec. 14-207	Rural subdivisions
Sec. 14-224.1	Waiver of certain requirements by the agent
Sec. 14-225.1	Waiver of certain requirements by the commission
Sec. 14-404	Lot location to allow access from lot onto street or shared driveway
Sec. 14-412	Standards for private streets only
Sec. 14-434	Completion of on-site improvements required prior to plat approval

Chapter 14. Subdivision of Land

Article II. Administration and Procedure

Sec. 14-207 Rural subdivisions.

The following sections of this chapter shall apply to each rural subdivision:

- A. *General:* Sections 14-100 through 14-108.
- B. *Administration and procedure:* Sections 14-200 through 14-204 and sections 14-209, 14-226, 14-229 and 14-236.
- C. *Plat requirements and documents to be submitted:* Sections 14-300, 14-301, 14-302(A)(1), (3), (4), (5), (6), (7), (9), (10), (11), (14) and (15), 14-302(B)(1), (2), (4), (5), (6), (7), (8), (9) and (10), 14-303(A), (B), (C), (D), (E), (F), (H), (I), (L), (O) and (P), 14-304, 14-305(B), 14-308.1, 14-309, 14-310, 14-312, 14-314 and 14-316.
- D. *On-site improvements and design:* Sections 14-400, 14-403, 14-404 if any proposed lot would have less than five hundred (500) feet of frontage on a major rural street identified in subsection 14-207(E), 14-406, 14-414, 14-416, 14-421, 14-426, 14-427, 14-433 and 14-438.
- E. The following streets in the rural areas are major rural streets:
 1. Barracks Road (SR 654) from Old Garth Road (SR 601) to Georgetown Road (SR 656).
 2. Black Cat Road (SR 616) from Richmond Road (US 250) to Interstate 64 east of Charlottesville.
 3. Blenheim Road (SR 795) from Coles Rolling Road (SR 712) to the Town of Scottsville line.
 4. Browns Gap Turnpike (SR 810) from White Hall Road (SR 810) to Bluffton Road (SR 672).
 5. Buck Mountain Road (SR 663) from Earlysville Road (SR 743) to Simmons Gap Road (SR 664).
 6. Buck Mountain Road (SR 664) from Markwood Road (SR 664) to Simmons Gap Road (SR 663).
 7. Buffalo River Road (SR 664) from Simmons Gap Road (SR 663) to Frays Mountain Road (SR 664).
 8. Buffalo River Road (SR 604) from Frays Mountain Road (SR 664) to Lexington Lane (SR 1540)
 9. Burnley Station Road (SR 641) from Seminole Trail (US 29) to Watts Passage (SR 600).
 10. Critzers Shop Road (SR 151) from Rockfish Gap Turnpike (US 250) to the Nelson County line.
 11. Crozet Avenue (SR 810) from Three Notch'd Road (SR 240) to Buck Road (SR 789).
 12. Dick Woods Road (SR 637) from Interstate 64 to Taylors Gap Road (SR 708).
 13. Earlysville Road (SR 743) from Hydraulic Road (SR 743) to Buck Mountain Road (SR 663).
 14. Frays Mill Road (SR 641) from Seminole Trail (US 29) to Spring Hill Road (SR 606).
 15. Free Union Road (SR 601) from Garth Road (SR 676) to Chapel Spring Lane (SR 668).
 16. Garth Road (SR 601) from Barracks Road (SR 654) to Free Union Road (SR 676).
 17. Garth Road (SR 614) from Browns Gap Turnpike (SR 810) to Owensville Road (SR 676).
 18. Garth Road (SR 676) from Garth Road (SR 614) to Free Union Road (SR 601).
 19. Gordonsville Road (SR 231) from Louisa Road (SR 22) to the Louisa County line.
 20. Hansens Mountain Road (FR 179) from Richmond Road (US 250) to its end.
 21. Hydraulic Road (SR 743) from Georgetown Road (SR 656) to Rio Road (SR 631).

22. Irish Road (SR 6) from the Nelson County line to the Town of Scottsville line.
23. Ivy Road (US 250) from Three Notch'd Road (SR 240) to the US 29/US 250 interchange.
24. Ivy Depot Road (SR 786) from Ivy Road (US 250) to Dick Woods Road (SR 637).
25. James Monroe Parkway (SR 795) from Carters Mountain Road (SR 627) to Thomas Jefferson Parkway (SR 53).
26. James River Road (SR 726) from Blenheim Road (SR 795) to Irish Road (SR 6).
27. Lego Drive (SR 1090) from Hansens Mountain Road (FR 179) to its end.
28. Louisa Road (SR 22) from Richmond Road (US 250) to the Louisa County line.
29. Markwood Road (SR 664) from Buck Mountain Ford Lane (SR 776) to Buck Mountain Road (SR 665).
30. Miller School Road (SR 635) from Rockfish Gap Turnpike (US 250) to Dick Woods Road (SR 637).
31. Milton Road (SR 729) from Thomas Jefferson Parkway (SR 53) to Richmond Road (US 250).
32. Monacan Trail (US 29) from Interstate 64 to the Nelson County line.
33. Monticello Avenue (SR 20) from Interstate 64 to the City of Charlottesville line.
34. Old Ballard Road/Broomley Road (SR 677) from Ivy Road (US 250) to Owensville Road (SR 676).
35. Old Garth Road (SR 601) from the US 29/US 250 interchange to Barracks Road (SR 654).
36. Old Lynchburg Road (SR 631) from Red Hill Road (SR 708) to Country Green Road (SR 875).
37. Owensville Road (SR 676) from Decca Lane (SR 678) to Garth Road (SR 614).
38. Owensville Road (SR 678) from Ivy Road (US 250) to Owensville Road (SR 676).
39. Plank Road (SR 692) from Monacan Trail (US 29) to Miller School Road (SR 635).
40. Proffit Road (SR 649) from Stony Point Road (SR 20) to Pritchett Lane (SR 785).
41. Reas Ford Road (SR 660) from Earlysville Road (SR 743) to Loftlands Drive (SR 1555).
42. Red Hill Road (SR 708) from Monacan Trail (US 29) to Dudley Mountain Road (SR 706).
43. Reservoir Road (SR 702) from Buckingham Circle (SR 820) to its end.
44. Richmond Road (US 250) from Interstate 64 east of Charlottesville to the Fluvanna County line.
45. Rio Road (SR 631) from Seminole Trail (US 29) to Hydraulic Road (SR 743).
46. Rockfish Gap Turnpike (US 250) from Three Notch'd Road (SR 240) to the Nelson County line.
47. Rolling Road (SR 620) from Presidents Road (SR 795) to the Fluvanna County line.
48. Rolling Road (SR 795) from Rolling Road (SR 620) to Carters Mountain Road (SR 627).
49. Scottsville Road (SR 20) from Interstate 64 to the Town of Scottsville line.
50. Seminole Trail (US 29) from Rio Mills Road (SR 643) to the Greene County line.
51. Simmons Gap Road (SR 663) from Buck Mountain Road (SR 664) to Buffalo River Road (SR 664).
52. Stony Point Road (SR 20) from its southern intersection with Dorrier Drive (SR 1422) to the Orange County line.
53. Thomas Jefferson Parkway (SR 53) from Scottsville Road (SR 20) to the Fluvanna County line.
54. Three Notch'd Road (SR 240) from Ivy Road (US 250) to Crozet Avenue

(SR 810).

55. Union Mills Road (SR 616) from Richmond Road (US 250) to the Fluvanna County line.
56. White Hall Road (SR 810) from Browns Gap Turnpike (SR 680) to Buck Road (SR 811).
57. Woodlands Road (SR 676) from Free Union Road (SR 601) to Earlysville Road (SR 743).

(9-5-96, 7-9-86, 12-21-83, 2-4-81, 5-2-79, 11-13-74, 8-28-74; 1988 Code, § 18-13(b); Ord. 98-A(1), 7-15-98; Ord. 05-14(1), 4-20-05, effective 6-20-05; Ord. 09-14(2), 10-14-09)

State law reference--Va. Code § 15.2-2241(9).

Sec. 14-224.1 Waiver of certain requirements by the agent.

The agent may waive requirements as provided in sections 14-313, 14-401, 14-404, 14-405, 14-407, 14-409, 14-412, 14-419 and 14-420, as follows:

A. A subdivider shall submit to the agent a written request stating the reason and justification for the request and all proposed alternatives. The subdivider shall have the burden of producing the evidence to enable the agent to make the findings required by this section.

B. The subdivider may appeal the disapproval of a waiver, or the approval of a waiver with conditions objectionable to the subdivider, to the commission as provided in section 14-226. In reviewing a waiver request, the commission may approve or disapprove the waiver based upon the applicable findings set forth in this section, amend any condition imposed by the agent, and impose any conditions it deems necessary.
(Ord. 05-14(1), 4-20-05, effective 6-20-05; Ord. 09-14(2), 10-14-09)

Sec. 14-225.1 Waiver of certain requirements by the commission.

The commission may waive requirements as provided in sections 14-234, 14-409, 14-410, 14-414 and 14-422, as follows:

A. A subdivider shall submit to the agent a written request stating the reason and justification for the request and all proposed alternatives. The subdivider shall have the burden of producing the evidence to enable the commission to make the findings required by this section. The agent shall review the request and transmit his recommendation of approval, approval with conditions, or disapproval to the commission. If the agent recommends approval or approval with conditions, the recommendation shall be accompanied by a statement by the agent as to the public purpose served by the recommendation, particularly in regard to the purpose and intent of this chapter, the zoning ordinance and the comprehensive plan. The director of planning and the county engineer shall provide recommendations to the commission as to whether and how the waiver would accomplish county goals, policies, good planning practice and good engineering practice.

B. The subdivider may appeal the disapproval of a waiver, or the approval of a waiver with conditions objectionable to the subdivider, to the board of supervisors as an appeal of a disapproval of the plat as provided in section 14-226. In reviewing a waiver request, the board may approve or disapprove the waiver based upon the applicable findings set forth in this section, amend any condition imposed by the commission, and impose any conditions it deems necessary.
(9-5-96, 8-28-74 (§ 10); 1988 Code, § 18-3; Ord. 98-A(1), 8-5-98, § 14-237; Ord. 05-14(1), 4-20-05, effective 6-20-05; Ord. 09-14(2), 10-14-09)

State law reference--Va. Code § 15.2-2242(1).

Article IV. On-Site Improvements and Design

Sec. 14-404 Lot location to allow access from lot onto street or shared driveway.

Each lot within a subdivision shall be located as follows:

A. *Single point of access required.* Each lot, other than a corner lot within the development areas, shall have reasonable access to the building site from only one street, shared driveway or alley established at the same time as the subdivision; provided that, if the subdivision is in the rural areas, each lot created from the subsequent division of any lot within the subdivision shall enter only onto such street(s) established at the same time as the original subdivision and shall have no immediate access onto any other public street.

B. *Conditions when single point of access not required.* Notwithstanding subsection (A), a lot may be located so that it has reasonable access to the building site from a public street abutting the subdivision if: (i) the agent approves a waiver under subsection (C); (ii) the subdivider obtains an entrance permit from the Virginia Department of Transportation for the access; (iii) the entrance complies with the design standards set forth in sections 14-410(F) and 14-410(G); and (iv) the subdivider demonstrates to the agent prior to approval of the final plat that the waiver does not violate any covenants to be recorded for the subdivision.

C. *Standards for waiver.* The requirements of subsection (A) may be waived by the agent as provided in section 14-224.1. A request for a waiver may be made prior to or with submittal of a preliminary or final plat, as follows:

1. *Information to be submitted.* A request shall include a justification for the waiver and a conceptual plan. The conceptual plan shall: (i) be drawn at a scale no smaller than one (1) inch equals two hundred (200) feet showing surveyed boundaries of the property or an alternative scale approved by the agent; (ii) show the topography of the property at the best interval available from the County including delineation of proposed building sites; (iii) show the locations of streams, stream buffers, critical slopes, floodplains, and known wetlands; and (v) show the proposed layout of lots, location of existing features such as buildings, fences, drainfields, existing driveways or other access ways, or other significant features.

2. *Consideration and findings.* In reviewing a waiver request, the agent shall consider whether: (i) installing a single point of access would substantially impact environmental resources such as streams, stream buffers, critical slopes, and floodplain; (ii) construction of a single point of access would substantially impact features existing on the property prior to October 14, 2009; (iii) granting the waiver would contribute to maintaining an agricultural or forestal use of the property; and (iv) granting the waiver would facilitate development of areas identified in the open space plan as containing significant resources. In approving a waiver, the agent shall find that requiring the extension would not forward the purposes of this chapter or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the area, to sound engineering practices, and to the land adjacent thereto.

D. *Terms defined.* For purposes of this section, the term "reasonable access" means a location for a driveway or, if a driveway location is not provided, a location for a suitable foot path from the parking spaces required by the zoning ordinance to the building site; the term "within the subdivision" means within the exterior boundary lines of the lands being divided. (§ 18-36 (part), 9-5-96, 8-28-74; § 18-39 (part), 9-5-96, 10-19-77, 5-10-77, 8-28-74; 1988 Code, §§ 18-36, 18-39; Ord. 98-A(1), 8-5-98, §§ 14-500(C), 14-505; Ord. 05-14(1), 4-20-05, effective 6-20-05; Ord. 09-14(2), 10-14-09)

State law reference--Va. Code § 15.2-2241(5).

Sec. 14-412 Standards for private streets only.

In addition to the minimum design requirements set forth in section 14-410, the following minimum design requirements shall apply to private streets authorized by this chapter:

A. *Residential private streets.* Each private street serving detached residential uses authorized under sections 14-232 or 14-233 shall satisfy the following:

1. *Streets serving two lots.* Each private street serving two (2) lots: (i) shall not exceed a sixteen (16) percent grade calculated over a distance of fifty (50) feet; (ii) shall have a travelway that is at least ten (10) feet in width; and (iii) shall include a rectangular zone superjacent to the driveway that is clear of all obstructions, including any structures and vegetation, that is at least ten (10) feet in width and fourteen (14) feet in height. The subdivider shall demonstrate to the satisfaction of the county engineer that the street will meet the requirements of this subsection.

2. *Streets serving three to five lots.* Each private street serving three (3) to five (5) lots shall satisfy the following: (i) vertical centerline curvature shall meet a minimum design K value of five (5) for crest curves and fifteen (15) for sag curves; (ii) sight distances shall not be less than one hundred (100) feet; (iii) turnarounds shall be provided at the end of each street per American Association of State Highway and Transportation Officials guidelines; (iv) street easements or right-of-way widths shall be thirty (30) feet minimum; and (v) the radius for horizontal curvature shall be forty (40) feet or greater, unless otherwise authorized by this chapter. Any standard in this paragraph (2) may be reduced to the standard for streets serving two (2) lots where a driveway departs from the street and two lots remain to be served, and a turnaround is provided. In addition, the following shall also apply:

(a) *Private streets in the rural areas.* For such private streets in the rural areas: (i) travelway widths shall be fourteen (14) feet minimum, with three (3) feet minimum shoulder widths, and a minimum of four (4) feet from the edge of the shoulder to the ditch centerline; (ii) the grade shall not exceed sixteen (16) percent calculated over a distance fifty (50) feet; (iii) if the grade of any portion of the street exceeds seven (7) percent, the entire street shall be surfaced as required by Virginia Department of Transportation standards; streets having a grade of seven (7) percent or less may have a gravel surface; and (iv) the street shall have a rectangular zone superjacent to the street that is clear of all obstructions, including any structures and vegetation, that is at least fourteen (14) feet in width and fourteen (14) feet in height.

(b) *Private streets in the development areas.* For such private streets in the development areas: (i) an urban cross-section street design shall be provided, with a minimum width of twenty (20) feet measured from the curb faces or such alternative design, including a street easement or right-of-way width, deemed adequate by the county engineer to be equivalent to or greater than the applicable standard in the design standards manual, so as to

adequately protect the public health, safety or welfare; additional widths shall be provided for gutters to control drainage at the discretion of the county engineer; and (ii) the entire street shall be surfaced as required by Virginia Department of Transportation standards.

3. *Streets serving six lots or more.* Each private street serving six (6) or more lots shall satisfy Virginia Department of Transportation standards, provided:

(a) *Private streets in the rural areas.* For such private streets in the rural areas, the commission may approve Virginia Department of Transportation standards for mountainous terrain if the subdivider demonstrates, for a specific, identifiable reason, the general welfare, as opposed to the proprietary interests of the subdivider, would be better served by the application of those standards.

(b) *Private streets in the development areas.* For such private streets in the development areas, the agent may approve Virginia Department of Transportation standards for mountainous terrain or an alternative standard deemed adequate by the county engineer to be equivalent to or greater than the applicable standard in the design standards manual, so as to adequately protect the public health, safety or welfare.

4. *Streets serving family subdivisions.* Each private street authorized to serve a family subdivision under section 14-232(B)(1) shall satisfy the following: (i) easement or right-of-way widths shall be ten (10) feet minimum; and (ii) the surveyor shall include the following wording on the plat: "The existing and/or proposed right-of-way is of adequate width and horizontal and vertical alignment to accommodate a travelway passable by ordinary passenger vehicles in all but temporary extreme weather conditions, together with area adequate for maintenance of the travelway, as required by section 14-412 of the Albemarle County Code."

B. *Private streets serving non-residential, non-agricultural, attached residential, multi-unit residential and combined residential and non-residential uses.* Each private street authorized to serve non-residential, non-agricultural, attached residential, multi-unit residential and combined residential and non-residential uses under sections 14-232 or 14-233 shall satisfy Virginia Department of Transportation standards or an alternative standard deemed adequate by the agent, upon the recommendation of the county engineer, to be equivalent to or greater than the applicable standard in the design standards manual, so as to adequately protect the public health, safety or welfare. The agent may require minimum travelway widths to provide for on-street parking upon a determination that the provisions for off-street parking may be inadequate to reasonably preclude unauthorized on-street parking.

C. *Clearing land for improvements.* A private street constructed to Virginia Department of Transportation standards shall not be subject to that department's clear zone requirements.

D. *Landscaping and other improvements permitted.* Subsequent to construction of a private street, a subdivider may install ornamental plantings and any other improvements provided that they do not conflict with sight distance, drainage facilities or other required improvements.

E. *Waiver.* The standards of sections 14-412(A)(1)(i) and 14-412(A)(2)(a) relating to street easement or right-of-way widths may be waived by the agent as provided in section 14-224.1, as follows:

1. *Waiver of section 14-412(A)(1)(i).* The agent, with the recommendation of the county engineer and the fire marshal, may waive the standard in section 14-412(A)(1)(i) and authorize a street having a grade that exceeds sixteen (16) percent if the subdivider demonstrates to the satisfaction of the county engineer and the fire marshal that public safety vehicles would be able to access each lot even though the grade may exceed sixteen (16) percent. In developing their recommendation to the agent, the county engineer and the fire marshal shall consider: (i) the length of the segment of the street that would exceed sixteen (16) percent; and (ii) whether the segment that would exceed sixteen (16) percent would require the public safety vehicle to travel uphill towards each lot. In authorizing such a grade, the agent may impose reasonable conditions to assure that the public safety vehicles may access the lot including, but not limited to, a condition limiting the maximum length any segment of the driveway may exceed sixteen (16) percent.

2. *Waiver of section 14-412(A)(2)(a).* In reviewing a waiver request for a lesser street easement or right-of-way width under section 14-412(A)(2)(a), the agent shall consider whether: (i) the subdivision will be served by an existing easement or right-of-way of fixed width that cannot be widened by the subdivider after documented good faith effort to acquire additional width; and (ii) the existing easement or right-of-way width is adequate to accommodate the required travelway and its maintenance. If the waiver pertains to minimum street easement or right-of-way widths over an existing bridge, dam or other structure, the agent shall consider whether: (i) the long-term environmental impacts resulting from not widening the bridge, dam or other structure outweigh complying with the minimum width requirements, as determined by the county engineer; or (ii) whether the bridge, dam or other structure is a historical structure. In approving a waiver, the agent shall find that requiring the standard street easement or right-of-way widths would not forward the purposes of this chapter or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the area, to sound engineering practices, and to the land adjacent thereto.

G. *Eligibility for future acceptance into the system of state highways.* Any and all streets that are not constructed to meet the standards necessary for inclusion in the system of state highways shall be privately maintained and shall not be eligible for acceptance into the system of state highways unless improved to current Virginia Department of Transportation standards with funds other than those appropriated by the General Assembly and allocated by the Commonwealth Transportation Board.
(§ 18-36, 9-5-96, 8-28-74; § 18-37, 9-5-96, 11-21-79, 3-29-78, 8-28-74(part); 1988 Code, §§ 18-36, 18-37, 18-38; Ord. 98-A(1), 8-5-98, § 14-514; Ord. 02-14(1), 2-6-02; Ord. 05-14(1), 4-20-05, effective 6-20-05; Ord. 09-14(2), 10-14-09)

State law reference--Va. Code §§ 15.2-2242(3), 33.1-72.2.

Sec. 14-434 Completion of on-site improvements required prior to plat approval.

Except as provided in section 14-435, all on-site improvements required by this chapter shall be completed prior to approval of the final plat. Prior to approval of the final plat:

A. The subdivider shall submit to the agent a certificate of completion of all of the improvements prepared by a professional engineer or a land surveyor, to the limits of his license; and

B. The subdivider shall certify to the agent that all of the construction costs for the improvements, including those for materials and labor, have been paid to the person constructing the improvements.
9-5-96, 12-15-82, 4-21-76, 2-19-76, 8-28-74 (§ 3); 1988 Code, § 18-18; Ord. 98-A(1), 8-5-98, § 14-412; Ord. 05-14(1), 4-20-05, effective 6-20-05; Ord. 09-14(2), 10-14-09)

State law reference--Va. Code § 15.2-2241(5).

This ordinance shall be effective on and after October 14, 2009; provided, however, that any subdivision plat submitted on or before October 13, 2009, and approved on or before January 14, 2010, may be approved under the subdivision ordinance in effect on October 13, 2009.

Agenda Item No. 10. **Public Hearing:** ZTA-2008-002. Planned Developments and Neighborhood Model District. Amend the following sections of Chapter 18, Zoning, of the Albemarle County Code:

- 3.1, Definitions, to amend and delete several definitions;
- 8.2, Relation of planned development regulations to other zoning regulations, to change section heading, to clarify the regulations applicable to planned developments ("PD"), to require that waivers and modifications be expressly granted, and to reorganize the section;
- 8.3, Planned development defined, to revise the definition of "planned development";
- 8.5.1, Applications and documents to be submitted, to revise the standards and information accompanying an application to establish a PD district;
- 8.5.2, Pre-application conferences, to revise the parties in a pre-application conference;
- 8.5.3, Review and recommendation by the planning commission, to revise the matters considered by the planning commission in acting on an application for a PD district;
- 8.5.4, Review and action by the board of supervisors, to change section heading and to clarify the documents applicable to a PD upon approval of the PD rezoning;
- 8.5.5, Final site plans and subdivision plats, to change section heading;
- 8.5.5.1, Contents of site plans and subdivision plats, to revise a cross-reference;
- 8.5.5.2, Review of site plans and subdivision plats, to provide that when subdivision plats and site plans are reviewed, they shall be reviewed for compliance as follows: (a) if the PD district was established on or before December 10, 1980, the zoning and subdivision regulations currently in effect apply unless vested rights are established; (b) if the PD district was established after December 10, 1980, at the option of the developer, the zoning and subdivision regulations in effect when the PD district was established or those currently in effect apply, provided that if the developer elects the former, six delineated subjects of regulation are not so grandfathered and the developer must comply with current regulations pertaining to those 6 subjects unless vested rights are established; to revise the zoning administrator's and director of planning's review for compliance and add the county engineer's review, to define "applicable regulations," to declare the applicability of Chapter 17 of the County Code, and to declare that vested rights are not impaired;
- 8.5.5.3, Variations from approved plans, codes, and standards of development, to revise the provisions of a plan, code or standard the director of planning may vary, and to authorize the director to require that specified information be provided;
- 8.5.5.4, Building permits and erosion and sediment control permits, to revise references to county officers and bodies and to clarify other clauses;
- 8.5.5.5, Site plan and subdivision plat requirements for planned development zoning districts established without an application or application plan, to change the section heading and to clarify the procedure and requirements for reviewing a site plan or subdivision plat where there was no application plan when the PD district was established;
- 8.6, Amendments to planned development districts, to revise and expand the procedure to amend a PD district by establishing requirements for who is an eligible applicant, submitting a map if the rezoning affects less than the entire district, notice, and factors considered during review;
- 20A.3, Application requirements; required documents and information, to change the reference from "general development plan" to "application plan" and to provide circumstances when applicant may delay submitting parking and loading needs study until site plan;
- 20A.4, General development plans, to change section heading and the required elements of an application plan in a neighborhood model district (hereinafter "NMD");
- 20A.5, Codes of development, to clarify that any substantive or procedural requirement of the Zoning Ordinance applies in an NMD unless the subject matter is expressly addressed in the code of development (hereinafter the "code"), to expressly require that the code be in a form required or

approved by the director of planning, to change the required elements of a code, and to limit the applicable architectural standards in pre-existing codes to only the new required elements unless determined to be key features;

- 20A.6, Permitted uses, to change the reference from "general development plan" to "application plan" and to allow a code to provide that any use allowed by right or by special use permit in any other zoning district be a use allowed by special use permit in an NMD;
- 20A.7, Residential density, to correctly state the formula for calculating residential density in an NMD;
- 20A.9, Green spaces, amenities, conservation areas and preservation areas, to change references from "site area" to the "area proposed to be rezoned" when calculating the areas of green spaces and amenities; and,
- 20A.10, Streets, to change a reference from "department of engineering and public works" to the "department of community development."

(Notice of this public hearing was advertised in the Daily Progress on September 28 and October 5, 2009.)

Ms. Mallek said she would first like to announce that there is a farm tour in the White Hall area this Saturday from Noon until 5:00 p.m. There are six farms to visit and lots of fun at the pony grounds.

Mr. Cilimberg said this amendment came from a work session in August where there were no recommendations made for changes from what the Planning Commission recommended regarding planned district regulations in the Neighborhood Model District (NMD). Much of the text amendment is for clarification, cleanup and change of titles. There is additional language for the park and study requirement in the NMD regarding vesting. The biggest section of clarification and change is in the vesting and architecture section in the NMD. The amendment regarding vesting came from the Commission. As to the parking study element of the NMD, it is suggested that the ordinance allow the parking study to be provided either at the time of the rezoning application or with the site plan in order to allow some flexibility.

Mr. Cilimberg said that in the vesting area, the old zoning allowances and subdivision regulations applied with new development when there was a development that had been approved prior to zoning ordinance changes. The proposed amendment would say that current regulations apply for all planned districts approved prior to December 10, 1980, unless vesting can be established for any of those projects approved prior to December 10, 1980. For all planned developments approved after December 10, 1980, they can choose which regulations to use except that current Entrance Corridor, Flood Hazard Overlay, landscaping, lighting, parking and sign regulations apply unless vesting can be established.

Mr. Cilimberg said the architecture piece of the NMD has been simplified and "trimmed" down a great deal. There were many provisions included in that section and it was cutback to focus on form, massing and proportions for facade treatments and preservation of historic structures. Architectural styles, materials, colors and textures would only "play in" if there were a question of compatibility with adjacent neighborhoods. Otherwise that will not be part of the review under these ordinance amendments.

Mr. Cilimberg said there are other minor changes as well. The recommendation from staff and the Planning Commission is for approval of this amendment. He offered to answer questions.

Ms. Thomas asked Mr. Cilimberg to explain again what the recommendation is for the architectural part of the NMD. Mr. Cilimberg showed on the screen a list of the current information required. There is not only form and massing, but architectural ornamentation, and roof form and pitch. The proposal is to deal with form, massing and facade treatments in the preservation of historic structures only.

Ms. Thomas said since Kenridge and White Gables are such striking examples of a place where nothing was required in terms of height. Then, when it was built by a second builder, it destroyed the views of the other buildings which had been built nearby. Assuming there was a roof height agreed to because it was on the original drawings, but was not required or in any formal way approved by the County, is there anything in this amendment that would keep that mistake from being a repeated mistake. Mr. Cilimberg said in the case of those two projects, they were special use permits. There is nothing that prevents the Planning Commission or the Board from including provisions within their approval or asking that provisions be included in their Code of Development to address proportions and massing. He said the Commission did not want to have that as an automatic requirement in every case because it would get into some areas of judgment that staff does not always feel comfortable dealing with.

Mr. Rooker said there are height limitations in the various districts, so he does not know how a single property could be singled out to have different height limitations on its buildings. Mr. Cilimberg said it would not be about height - it would be about form and massing.

Ms. Thomas said she realizes that her example is of a small, contiguous development, so it is not directly applicable to this. It is such a vivid situation that she wanted to make sure about the amendment.

Ms. Mallek said she hopes the section on compatibility with adjacent properties would get that matter discussed during the hearing so conditions could be placed. Mr. Cilimberg said that would keep it as a possible provision as it is reviewed by the Planning Commission and ultimately the Board.

With no further questions for staff, Mr. Slutzky opened the public hearing.

Mr. Morgan Butler said he is present to speak on behalf of the Southern Environment Law Center (SLEC). He said the staff report shows that this amendment went through much iteration before the Planning Commission, and he gave several suggestions along the way. For the most part, staff was responsive and made some changes. He thanks Mr. Cilimberg and Mr. Greg Kamptner for their work on

this amendment. He has two questions about the draft ordinance. Section 8.5.5.3 deals with variations from approved codes which staff may approve – Subsection 8.5.5.3.a.6 is a new category which allows staff to grant variations for “Minor changes to the design and location of stormwater management facilities, land disturbance including disturbance within conservation areas, and mitigation subject to a recommendation for approval by the county engineer.” He thinks it is clear that the word “minor” qualifies the three different clauses that come after it. He thinks it would be helpful to make clear that the land disturbances that may be approved also need to be minor.

Mr. Butler also asked the meaning of “mitigation” in that sentence. He knows there is mitigation in terms of stream buffer impacts, but it is not entirely clear to him. He asked that the word “minor” be added before “land disturbances.” Also, he asked that the meaning of mitigation be made clear.

Ms. Thomas asked what word Mr. Butler would suggest. Mr. Butler said he does not know what that word refers to.

Ms. Mallek said a square footage amount for disturbance might be easier for people to understand because minor can mean something different to different people. Mr. Butler said he thinks setting an objective number like that would be arbitrary.

Mr. Rooker suggested wording this sentence as “Minor changes to (i) the design and location of stormwater management facilities, (ii) land disturbances including disturbance within conservation areas, and, (iii) mitigation subject to a recommendation for approval by the county engineer.” He had assumed the word “minor” was intended to modify each of those three categories. If it was, there could simply be a (i), (ii) and (iii) which would make it clear. He asked Mr. Davis if that was the intent. Mr. Davis said he thinks staff was trying to address a specific instance where this came up.

Mr. Rooker asked if the word “minor” was intended to modify each of those three categories or just two of them. He also thinks the language needs to be made clearer. Mr. Cilimberg said he thinks the word “minor” was to apply to any of those cases. Since mitigation can vary, he thinks the mitigation is only to take care of something that otherwise is being affected through the design. As an example, conservation areas are different than preservation areas. Typically, conservation areas have some level of disturbance allowed, for example, for utility locations. In a conservation area there could be a utility location that ended up disturbing the area more than what the original plan anticipated, so that disturbance would have to be mitigated.

Mr. Slutzky asked if it would help to call it “restorative mitigation.”

Mr. Boyd said the mitigation would not always be restorative.

Mr. Rooker said the term is used in planning. He suggested styling it as “Minor changes to (i) the design and location of stormwater management facilities, (ii) land disturbances including disturbance within conservation areas, and, (iii) mitigation, each subject to a recommendation for approval by the county engineer.” That would make it clear that it is modifying all three things before it. Mr. Davis said mitigation was the only one subject to a recommendation for approval by the county engineer. Mr. Cilimberg said there was a stormwater relocation case where the engineer recommended that there be a relocation allowed.

Mr. Rooker said he thinks there needs to be some clarification in the wording. He took it to modify all three of the phrases. Mr. Davis said he thinks it does. He said another way to do it would be just to say: “Minor changes to the design and location of stormwater management facilities, minor land disturbances including disturbance within conservation areas, and mitigation subject to a recommendation for approval by the county engineer.”

Mr. Rooker said minor would apply to mitigation also. Mr. Cilimberg said if talking about mitigation the Board might want something that is a little more comprehensive just because of the nature of the mitigation needed. He said that is probably not one that should be qualified as minor. Mr. Davis suggested the sentence read: “Minor changes to the design and location of stormwater management facilities, minor land disturbances including disturbance within conservation areas, and mitigation, all subject to a recommendation for approval by the county engineer.”

With no one else from the public rising to speak, the hearing was closed and the matter placed before the Board.

Motion was then offered by Mr. Rooker to adopt Ordinance No. 09-18(9), An Ordinance to Amend Chapter 18, Zoning, Article I, General Provisions, Article II, Basic Regulations, and Article III, District Regulations, of the Code of the County of Albemarle, Virginia, by amending Sec. 3.1, Definitions; Sec. 8.2, Relation of planned development regulations to other zoning regulations; Sec. 8.3, Planned development defined; Sec. 8.5.1, Applications and documents to be submitted; Sec. 8.5.2, Preapplication conferences; Sec. 8.5.3, Review and recommendation by the planning commission; Sec. 8.5.4, Review and action by the board of supervisors; Sec. 8.5.5, Final site plans and subdivision plats; Sec. 8.5.5.1, Contents of site plans and subdivision plats; Sec. 8.5.5.2, Review of site plans and subdivision plats; Sec. 8.5.5.3, Variations from approved plans, codes, and standards of development; Sec. 8.5.5.4, Building permits and erosion and sediment control permits; Sec. 8.5.5.5, Site plan and subdivision plat requirements for planned development zoning districts established without an application or application plan; Sec. 8.6, Amendments to planned development districts; Sec. 20A.3, Application requirements; required documents and information; Sec. 20A.4, General development plans; Sec. 20A.5, Codes of development; Sec. 20A.6, Permitted uses; Sec. 20A.7, Residential density; Sec. 20A.9, Green spaces,

amenities, conservation areas and preservation areas; and, Sec. 20A.10, Streets, changing Subsection 8.5.5.3.a.6 to read: "Minor changes to the design and location of stormwater management facilities, minor land disturbances including disturbance within conservation areas, and mitigation, all subject to a recommendation for approval by the county engineer."

The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd, Mr. Dorrier and Ms. Mallek.
NAYS: None.

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

ORDINANCE NO. 09-18(9)

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

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

By Amending:

Sec. 3.1	Definitions
Sec. 8.2	Relation of planned development regulations to other zoning regulations
Sec. 8.3	Planned development defined
Sec. 8.5.1	Applications and documents to be submitted
Sec. 8.5.2	Preapplication conferences
Sec. 8.5.3	Review and recommendation by the planning commission
Sec. 8.5.4	Review and action by the board of supervisors
Sec. 8.5.5	Final site plans and subdivision plats
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Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions.

Application plan: The graphic depiction of a proposed development containing the information required by section 8.5.1(e) and, within the neighborhood model district, section 20A.4. A plan designated and approved as a general development plan for a neighborhood model district between March 19, 2003 and October 14, 2009, is an application plan for the purposes of this chapter. (Added 3-19-03)

Block: An area shown on an application plan that is typically surrounded by streets and within which land use activities occur. Although blocks usually imply a grid street system, where steep topography exists blocks may exist in non-rectilinear shapes. (Added 3-19-03)

Article II. Basic Regulations

Sec. 8.2 Applicable regulations; waivers and modifications.

Planned developments shall be subject to the following regulations in this chapter:

- a. *Sections applicable.* Unless expressly superseded by a regulation of the applicable planned development district, the regulations of this chapter, other than those pertaining to conventional development districts stated in sections 10 through 18, 20B, 22, 23, 24, 27 and 28, shall apply to each planned development district unless the subject matter is expressly addressed in the code of development under section 20A.5, or the regulation is waived or modified as provided in subsection 8.2(b).
- b. *Waivers and modifications.* An applicant may request that any requirement of sections 4,

5, 21, 26 and 32, or the applicable planned development district regulations be waived or modified by the board of supervisors, as follows:

1. *Submittal of request for waiver or modification.* If the applicant requests such a waiver or modification as part of the application plan, the applicant shall submit its request in writing as part of the application plan, and shall demonstrate how the findings required by subsection 8.2(b)(3) would be satisfied.
2. *Timing of request.* Notwithstanding any regulation in sections 4, 5, 21, 26 or 32 establishing a procedure for considering a waiver or modification, any request for a waiver or modification shall be reviewed and considered as part of the application plan; provided that an owner within a planned development may request a waiver or modification of any requirement of sections 4, 5, 21, 26 or 32 at any time, under the procedures and requirements established therefore.
3. *Findings.* In addition to making the findings required for the granting of a waiver or modification in sections 4, 5, 21, 26 or 32, a waiver or modification may be granted only if it is also found: (i) to be consistent with the intent and purposes of the planned development district under the particular circumstances, and satisfies all other applicable requirements of section 8; (ii) to be consistent with planned development design principles; (iii) that the waiver or modification would not adversely affect the public health, safety or general welfare; and (iv) in the case of a requested modification, that the public purposes of the original regulation would be satisfied to at least an equivalent degree by the modification.
4. *Express waiver or modification.* Each waiver and modification must be expressly granted and no waiver or modification shall be deemed to have been granted by implication.

(12-10-80; Ord. 03-18(2), 3-19-03; Ord. 05-18(5), 6-8-05)

Sec. 8.3 Planned development defined.

A planned development is a development that meets all of the following criteria at the time it is established or amended: (1) the area proposed to be rezoned or the area within the planned development district is under unified control and will be planned and developed as a whole; (2) the development conforms with one or more approved application plans; and (3) in all planned development districts other than a planned historic district, the development will provide, operate and maintain common areas, facilities and improvements for some or all occupants of the development where these features are appropriate.

(12-10-80; Ord. 03-18(2), 3-19-03; Ord. 05-18(5), 6-8-05)

Sec. 8.5.1 Applications and documents to be submitted.

Each application for a planned development district shall be submitted as provided for other zoning map amendments. The documents required by subsections (a) through (e) below shall be submitted with the application. After the application is submitted, the director of planning may request additional plans, maps, studies and reports such as, but not limited to, traffic impact analyses, identification of specimen trees, and reports identifying potential non-tidal wetlands which are deemed reasonably necessary to analyze the application:

- a. A regional context map at a scale of not less one (1) inch equal to one thousand (1000) feet showing topography at a maximum of ten (10) foot intervals, surrounding properties, improvements to those properties, surrounding public streets, private roads, and other thoroughfares;
- b. An accurate boundary survey of the area to be rezoned showing the location and type of boundary evidence and the source of the survey;
- c. A map at a scale of not less than one (1) inch equal to one hundred (100) feet, provided that another interval and/or scale may be required or permitted by the director of planning where the size of the area proposed to be rezoned or topographic considerations warrant, showing:
 1. The following existing physical conditions: streams, wooded areas, potential non-tidal wetlands, slopes in excess of twenty-five (25) percent, historic structures and sites included in the records of the Virginia Department of Historic Resources, cemeteries, floodplain, and any identified features in the open space element of the comprehensive plan;
 2. Existing topography accurately shown using the county's geographic information system or better topographical information, and the source of the topographical information;
 3. Existing roads, easements, and utilities;
 4. The name of the proposed development; the names of all owners; the name of the developer, if different from the owner; the name of the person who prepared

- the plan; all tax map and parcel numbers in fourteen (14) digit format; the zoning district and all overlay zoning districts; the magisterial district; the north point; the scale; one datum reference for elevation; if any part of the area proposed to be rezoned is within the flood hazard overlay district (section 30.3), United States Geological Survey vertical datum shall be shown and/or correlated to plan topography; sheet numbers on each sheet and the total number of sheets; the date of the drawing; and the date and description of the last revision;
5. The present use of abutting parcels; ~~and~~ the location of structures on abutting parcels, if any; and departing lot lines; and
 6. The existing location, type and size of ingress and egress to the site;
- d. A traffic impact statement meeting the requirements of state law including, but not limited to, 24 VAC 30-155-10 *et seq.*;
- e. An application plan at a scale of not less than one (1) inch equal to one hundred (100) feet, provided that another interval and/or scale may be required or permitted by the director of planning where the size of the area proposed to be rezoned or topographic considerations warrant, showing:
1. The areas to be designated as preservation areas, if appropriate, and areas to be designated as conservation areas, such as streams, wooded areas, specimen trees, non-tidal wetlands, and other significant environmental features;
 2. Conceptual grading/topography using the county's geographic information system or better topographical information, and the source of the topographical information, supplemented where necessary by spot elevations and areas of the site where existing slopes are twenty-five (25) percent or greater;
 3. The general location of proposed streets, alleys, sidewalks, and pedestrian paths;
 4. Typical street cross-sections to show proportions, scale, and streetscape;
 5. Connections to existing and proposed streets, as well as proposed thoroughfares shown on the comprehensive plan;
 6. The general layout for the water and sewer systems, conceptual stormwater management, and a conceptual mitigation plan;
 7. The location of central features or major elements within the development essential to the design of the development, such as major employment areas, parking areas and structures, civic areas, parks, open space, green spaces, amenities and recreation areas;
 8. A summary of land uses including dwelling types and densities, and the gross floor areas for commercial and industrial uses;
 9. A conceptual lot layout; and
 10. Standards of development including proposed yards, building heights, open space characteristics, and any landscape or architectural characteristics related to scale, proportions, and massing at the edge of the district.

(12-10-80; Ord. 03-18(2), 3-19-03)

Sec. 8.5.2 Preapplication conferences.

Each applicant for a planned development shall attend a joint meeting with the staff of the department of community development as well as other qualified officials from outside agencies such as the Virginia Department of Health, the Virginia Department of Transportation, and the Albemarle County Service Authority to review the application plan and the proposed development before the application is submitted. The purpose of the pre-application conference shall be to assist the applicant to assure that the application and the documents to be submitted with the application comply with all applicable regulations, and to identify as soon as possible conflicting regulations and necessary waivers or modifications.

Each applicant is encouraged to use the guidance provided in the preapplication conference process to develop an application for a planned development that, when submitted with its supporting documents, will be as complete and comprehensive as possible.

(§ 8.5.3, 12-10-80; Ord. 03-18(2), 3-19-03)

(Former § 8.5.2 Planning Commission Procedures Repealed 3-19-03)

Sec. 8.5.3 Review and recommendation by the planning commission.

Each application to establish or amend a planned development district shall be reviewed and acted on by the planning commission as follows:

- a. The commission shall consider and make its recommendation to the board of supervisors on each application for a planned development district as it does for other zoning map amendments. Within the time provided to make a recommendation, the commission may hold work sessions on the application and proceed to a public hearing after it determines that no further work sessions are necessary, or at any time the applicant requests a public hearing.
- b. In addition to any other factors relevant to the consideration of a zoning map amendment, the commission shall consider the following:
 1. Whether the proposed planned development or amendment thereto satisfies the purpose and intent of the planned development district.
 2. Whether the area proposed to be rezoned is appropriate for a planned development under the comprehensive plan; the physical characteristics of the area proposed to be rezoned; and the relation of the area proposed to be rezoned to the surrounding area; and
 3. The relation of the proposed planned development to major roads, utilities, public facilities and services.
- c. The commission shall either recommend approval of the application as proposed, approval of the application with changes to be made prior to action on the application by the board of supervisors, or disapproval. The commission shall also make recommendations on all requested waivers and modifications.
(§ 8.5.4, 12-10-80; Ord. 03-18(2), 3-19-03)

Sec. 8.5.4 Review and action by the board of supervisors; effect of approval.

Each application to establish or amend a planned development district shall be reviewed and acted on by the board of supervisors, and approval of the application shall have effect, as follows:

- a. *Review and action.* The board of supervisors shall consider and act on each application for a planned development district as it does for other zoning map amendments. If the board approves the application, the approving action shall constitute approval of the application plan, all standards of development submitted by the applicant, and the code of development, as applicable. The board's action shall also identify which proffers it has accepted and which waivers or modifications it has granted.
- b. *Effect of approval.* Upon approval of an application, the application plan, all standards of development submitted by the applicant, the code of development, as applicable, all accepted proffers, and all approved waivers and modifications shall be included as part of the zoning regulations applicable to the planned development.
(§ 8.5.5, 12-10-80; Ord. 03-18(2), 3-19-03)

Sec. 8.5.5 Site plans and subdivision plats.

Sec. 8.5.5.1 Contents of site plans and subdivision plats.

Each site plan and subdivision plat submitted for development in a planned development shall comply with the following:

- a. *Generally.* Each site plan for a planned development shall comply with section 32 of this chapter, subject to the waiver or modification of any such regulation pursuant to section 8.2(b). Each subdivision plat for a planned development shall comply with chapter 14 subject to the waiver, variation or substitution of any such regulation pursuant to section 14-237.
- b. *Within the neighborhood model zoning district.* In addition to the requirements of subsection (a), each site plan or subdivision plat for a planned development within the neighborhood model zoning district shall pertain to a minimum area of one block and shall include a phasing plan, and each site plan shall include building elevations for all new or modified structures.
(§ 8.5.6.1, 12-10-80; 9-9-92; § 8.5.5.1, Ord. 03-18(2), 3-19-03)

Sec. 8.5.5.2 Review of site plans and subdivision plats.

Each preliminary and final site plan and subdivision plat for a planned development shall be reviewed for compliance with the applicable regulations, as follows:

- a. *Planned development districts established on or before December 10, 1980.* Each preliminary and final site plan and subdivision plat within a planned development district established on or before December 10, 1980, shall be reviewed for compliance with the applicable regulations when the site plan or subdivision plat is under county review; provided that, at the option of the developer or subdivider, each preliminary and final site plan and subdivision plat may be reviewed for compliance with the applicable regulations

in effect when the planned development was approved if the developer or subdivider establishes a vested right as provided in Virginia Code §§ 15.2-2296 *et seq.* or 15.2-2307 to develop under the previously approved planned development district.

- b. *Planned development districts established after December 10, 1980.* Each preliminary and final site plan and subdivision plat within a planned development district established after December 10, 1980, shall be reviewed for compliance with the applicable regulations in effect when the planned development district was established or, at the option of the developer or subdivider, in effect when the site plan or subdivision plat is under county review; subject to the following:
 1. *Election to comply with regulations in effect when district established; exception for certain current subjects of regulation unless vested rights established.* If the developer or subdivider elects to have its site plan or subdivision plat reviewed for compliance with the applicable regulations in effect when the planned development district was established, all of the following subjects of regulation in effect when the site plan or subdivision plat is under county review shall apply unless vested rights are established under Virginia Code §§ 15.2-2296 *et seq.* or 15.2-2307: (i) entrance corridor overlay district (section 30.6); (ii) flood hazard overlay district (section 30.3); (iii) landscaping and screening (section 32.7.9); (iv) outdoor lighting (section 4.17); (v) parking (section 4.12); and (vi) signs (section 4.15). If rights are determined to have vested, the regulations for these six subjects in effect when rights vested shall apply. For the purposes of this section 8.5.5.2(b), an application plan approved on and after March 19, 2003 that complies with the requirements of an application plan under section 8.5.1(e) or section 20A.4, or a prior version thereof in effect on and after March 19, 2003, is a significant governmental act within the meaning of Virginia Code § 15.2-2307.
 2. *Election to comply with regulations in effect when district established; election to comply with certain current subjects of regulation.* If the developer or subdivider elects to have its site plan or subdivision plat reviewed for compliance with the applicable regulations in effect when the planned development district was established, the developer or subdivider may also elect to comply with one or more of the subjects of regulation listed in subsection 8.5.5.2(b)(1) in effect when the site plan or subdivision plat is under county review instead of with the corresponding regulations in effect when the planned development district was established.
- c. *Review for compliance and conformance.* A site plan or subdivision plat shall be reviewed to determine whether it complies with the applicable regulations and other requirements of law, and whether it conforms to the application plan, as follows:
 1. *Zoning administrator.* The zoning administrator shall determine whether a site plan or subdivision plat complies with the applicable regulations. In addition, the zoning administrator, after consultation with the director of planning, shall determine whether the proposed permitted uses comply with the applicable regulations and, in doing so, may permit as a use by right a use that is not expressly classified in this chapter if the zoning administrator further determines that the use is similar in general character to the uses permitted by right in the district or by the code of development and is similar in terms of locational requirements, operational characteristics, visual impacts, and traffic, noise and odor generation.
 2. *Director of planning.* The director of planning shall determine whether a site plan or subdivision plat conforms to the application plan. In determining conformity, the director shall determine whether the central features or major elements within the development are in the same location as shown on the application plan and if the buildings, parking, streets, blocks, paths and other design elements are of the same general character, scope and scale as shown on the application plan.
 3. *County engineer.* The county engineer shall determine whether an erosion and sediment control plan, grading plan, stormwater management plan, road or street plan, and mitigation plan conform with the concept grading, stormwater management, streets, and mitigation shown on the application plan.
- d. *Applicable regulations defined.* For the purposes of this section 8.5.5.2, the term “applicable regulations” means, as appropriate and applicable, all zoning regulations, all subdivision regulations, the application plan (except for those elements authorized to be shown at a conceptual or general level), including those plans formerly referred to as general development plans, conditions of approval, accepted proffers, the code of development, special use permits, variances, and waivers, modifications and variations.
- e. *Applicability of chapter 17.* Each preliminary and final site plan and subdivision plat within a planned development district shall be reviewed for compliance with chapter 17 of the Albemarle County Code in effect when the site plan or subdivision plat is under county review, regardless of when the planned development was established or whether the developer or subdivider elects, or establishes vested rights, under sections 8.5.5.2(a) and

(b) to proceed with review under the applicable regulations in effect when the planned development was approved.

- f. *Vested rights not impaired.* Nothing in this section shall be construed as authorizing the impairment of a vested right that may be established under Virginia Code §§ 15.2-2261(C), 15.2-2297, 15.2-2298, 15.2-2303 or 15.2-2307.
(§ 8.5.6.2, 12-10-80; 9-9-92; § 8.5.5.2, Ord. 03-18(2), 3-19-03)

Sec. 8.5.5.3 Variations from approved plans, codes, and standards of development.

The director of planning may allow a site plan or subdivision plat for a planned development to vary from an approved application plan, standard of development and, also, in the case of a neighborhood model district, a code of development, as provided herein:

- a. The director of planning is authorized to grant a variation from the following provisions of an approved plan, code or standard:
1. Minor changes to yard requirements, build-to lines or ranges, maximum structure heights and minimum lot sizes;
 2. Changes to the arrangement of buildings and uses shown on the plan, provided that the major elements shown on the plan and their relationships remain the same;
 3. Changes to phasing plans;
 4. Minor changes to landscape or architectural standards;
 5. Minor changes to street design and street location, subject to a recommendation for approval by the county engineer; and
 6. Minor changes to the design and location of stormwater management facilities, minor land disturbance including disturbance within conservation areas, and mitigation, all subject to a recommendation for approval by the county engineer.
- b. The applicant shall submit a written request for a variation to the director of planning. The request shall specify the provision of the plan, code or standard for which the variation is sought, and state the reason for the requested variation. The director may reject a request that fails to include the required information.
- c. The director of planning is authorized to grant a variation upon a determination that the variation: (1) is consistent with the goals and objectives of the comprehensive plan; (2) does not increase the approved development density or intensity of development; (3) does not adversely affect the timing and phasing of development of any other development in the zoning district; (4) does not require a special use permit; and (5) is in general accord with the purpose and intent of the approved application.
- d. The director of planning may require that the applicant provide an updated application plan and, in the case of changes to a code of development, a complete amended code of development, reflecting the approved variation and the date of the variation. If the director requires an updated application plan or code of development, the granting of the variation shall be conditional upon the applicant providing the plan or code within thirty (30) days after approval of the variation and a determination by the director that the plan or code were revised to correctly reflect the granted variation.
- e. Any variation not expressly provided for herein may be accomplished by zoning map amendment.
(§ 8.5.6.3, 12-10-80; 9-9-92; § 8.5.5.3, Ord. 03-18(2), 3-19-03)

Sec. 8.5.5.4 Building permits and grading permits.

Building permits and grading permits may be issued as provided herein:

- a. A building permit, including any special footings or foundation permits, may be issued for any work within a planned development, excluding the installation of street signs, only after the approval of the final site plan or final subdivision plat in the area in which the permit would apply.
- b. A grading permit may be issued for site preparation grading associated with an approved planned development if the erosion and sediment control plan measures, disturbed area and grading are in conformity with the concept grading and measures shown on the application plan as determined by the county engineer, after consultation with the director of planning.
- c. If, after consultation with the director of planning, the county engineer finds that there is not enough detail on the application plan to assure that the proposed grading and other

measures are consistent with the application plan, a grading permit shall not be issued until the final site plan is approved, or the final subdivision plat is tentatively approved.

- d. Within each neighborhood model district, the department of community development shall review each building permit application or modification to determine whether the proposed structure conforms with the architectural and landscape standards in the approved code of development.

(§ 8.5.6.4, 12-10-80; 9-9-92; § 8.5.5.4, Ord. 03-18(2), 3-19-03)

Sec. 8.5.5.5 Site plan and subdivision plat requirements when there is no application plan.

Site plans and subdivision plats within a planned development district for which an application plan was not approved shall be subject to the following:

- a. *No valid site plan or subdivision plat at time district established.* If a planned development district was established before an application plan was required by section 8 to be approved as part of the zoning map amendment and neither a final site plan or subdivision plat pertaining to the entirety of the planned development district was valid at the time of the zoning map amendment nor was approved in conjunction with the approval of the zoning map amendment, then neither a site plan nor a subdivision plat shall be approved for any lands within the district unless and until an application plan and all other documents required by section 8.5 are submitted by the owner and are approved as provided therein.

- b. *Valid site plan or subdivision plat at time district established.* If a planned development district was established before an application plan was required by section 8 to be approved as part of the zoning map amendment but a final site plan or subdivision plat pertaining to the entirety of the planned development district was valid at the time of the zoning map amendment or was approved in conjunction with the approval of the zoning map amendment, the valid or approved site plan or subdivision plat shall be deemed to be the application plan, and the site plan or subdivision plat shall be reviewed as provided in section 8.5.5.2. (Amended 7-16-86)

(§ 8.5.6.5, 12-10-80; 9-9-92; § 8.5.5.5, Ord. 03-18(2), 3-19-03)

Sec. 8.6 Amendments to planned development districts.

A planned development district may be amended after it is established, either by the addition or removal of land, or by an amendment to the application plan, code of development, proffers or any waiver or modification, in accordance with the procedures and requirements of section 8 and those applicable to zoning map amendments generally, and subject to the following additional requirements:

- a. *Eligible applicant.* Any owner, contract purchaser with the owner's consent, or any authorized agent of the owner, of one or more parcels within a planned development district may apply to amend the existing planned development district as it pertains to the owner's parcel(s). The owner of each parcel to which the proposed amendment would result in or require a physical change to the parcel, a change in use, density or intensity on that parcel, a change to any proffer or regulation in a code of development that would apply to the parcel, a change to an owner's express obligation under a proffer or regulation in a code of development even if the proffer or regulation is not expressly changed, or a change to the application plan that would apply to the parcel, shall be an applicant.
- b. *Amendment affecting less area than the entire district; map.* If the proposed amendment would affect less area than the entire district, the applicant shall submit a map showing the entire existing planned development district and identifying any area to be added to or deleted from the district, or identifying the area to which the amended application plan, code of development, proffers or any waiver or modification would apply.
- c. *Individual notice.* In addition to any notice required by Virginia Code § 15.2-2204 and sections 33.4 and 33.8 of this chapter, written notice of the proposed amendment shall be provided to the owner of each parcel within the planned development district. The substance of the notice shall be as required by Virginia Code § 15.2-2204(B), paragraph 1, regardless of the number of parcels affected.
- d. *Factors to consider during review of proposed amendment.* In addition to any other applicable factors to be considered in the review of a zoning map amendment, the following shall also be considered:
1. Whether the proposed amendment reduces, maintains or enhances the elements of a planned development set forth in section 8.3.
 2. The extent to which the proposed amendment impacts the other parcels within the planned development district.

Article III. District Regulations

Sec. 20A.3 Application requirements; required documents and information.

Except where the option is exercised as provided in subsection 20A.3(b), below, the following documents and information shall be submitted in addition to any other documents required to be submitted under section 8.5 of this chapter:

- a. A statement describing how the proposed NMD satisfies the intent of the zoning ordinance and is consistent with the applicable goals and objectives of the comprehensive plan, the land use plan, the master plan for the applicable development area, and the Neighborhood Model; if one or more characteristics of the Neighborhood Model delineated in section 20A.1 are missing from an application, the applicant shall justify why all of the characteristics cannot or should not be provided;
 - b. A parking and loading needs study that demonstrates parking needs and requirements and includes strategies for dealing with these needs and requirements, including phasing plans, parking alternatives as provided in section 4.12.8 of this chapter, and transportation demand management strategies as provided in section 4.12.12 of this chapter; provided that the applicant may elect to submit the parking and loading needs study in conjunction with the preliminary site plan for the development if it determines that the uses that may occupy the buildings are not sufficiently known at the time of the zoning map amendment.
 - c. Strategies for establishing shared stormwater management facilities, off-site stormwater management facilities, and the proposed phasing of the establishment of stormwater management facilities.
 - d. An application plan, as provided in section 20A.4, including all information required by sections 8 or 20A to support any element of the plan.
 - e. A code of development, as provided in section 20A.5, including all information required by sections 8 or 20A to support any element of the code.
- (Ord. 03-18(2), 3-19-03)

Sec. 20A.4 Application plans.

In addition to the application plan requirements of section 8.5.1(e), the following are required elements of an application plan in the NMD:

- a. The general location of proposed streets, alleys, sidewalks, and pedestrian paths;
- b. The location of proposed green spaces, amenities, conservation areas or preservation areas, as provided in section 20A.9;
- c. A conceptual lot layout;
- d. Conceptual grading/topography using the county geographic information system or better topographic information supplemented where necessary by spot elevations and areas of the site where existing slopes are twenty-five (25) percent or greater;
- e. Typical street cross-sections to show proportions, scale, and streetscape, which, alternatively, may be provided in the code of development;
- f. Any proposed connections to existing and proposed streets, as well as proposed thoroughfares shown on the comprehensive plan;
- g. The general lay-out for the water and sewer systems, conceptual stormwater management, and a conceptual mitigation plan; and
- h. The location of central features or major elements within the development essential to the design of the development, such as building envelopes, major employment areas, parking areas and structures, civic areas, parks, open space, green spaces, amenities and recreation areas.

(Ord. 03-18(2), 3-19-03)

Sec. 20A.5 Codes of development.

A code of development shall establish the unifying design guidelines, the specific regulations for the district, and the use characteristics of each block; provide for certainty in the location of and appearance of central features, and the permitted uses in the district; and provide a flexible range of a mix of uses and densities. Any substantive or procedural requirement of this chapter shall apply to an NMD unless the subject matter is expressly addressed in the code of development. Each code of development shall be in a form required or otherwise approved by the director of planning. To satisfy these requirements, each code of development shall establish:

- a. The uses permitted in the district by right and by special use permit, as provided in section 20A.6.
- b. The amount of developed square footage proposed, delineated for the entire NMD and by

block by use and amenity. The developed square footage may be expressed as a proposed range of square footage.

- c. The maximum number of residential dwelling units, dwelling units by type, and delineating at least two (2) housing types, as provided in section 20A.8.
- d. The amount of land area and percentage of gross acreage devoted to green space and amenities, as provided in section 20A.9.
- e. All requirements and restrictions associated with each use delineated in subsection 20A.5(a).
- f. All uses expressly prohibited in the district, so that they may not be considered to be uses accessory to a permitted use.
- g. Architectural standards that will apply in the NMD, which shall address the following:
 1. The form, massing, and proportions of structures which may be provided through illustrations;
 2. Façade treatments;
 3. The preservation of historic structures, sites, cemeteries, and archeological sites identified by the Virginia Department of Historic Resources; and
 4. Architectural styles, materials, colors and textures if these elements are determined to be necessary in order for a proposed development to be compatible with its contiguous developed surroundings. The provisions in a code of development adopted prior to October 14, 2009 pertaining to subsections 20A.5(g)(1) through (4) shall be the only architectural standards in the code of development that apply to the planned development.
- h. Landscape treatments where landscaping in addition to that required by section 32 is proposed. The provisions in a code of development adopted prior to October 14, 2009 pertaining to landscape treatments as required under former subsection 20A.5(g)(7) shall apply to the planned development.
- i. For each block:
 1. The uses permitted on the block by right and by special use permit;
 2. Build-to lines or ranges, which are the required distance from the right-of-way to a structure;
 3. Minimum and maximum lot dimensions;
 4. Minimum number of stories and maximum building heights;
 5. Location of sidewalks and pedestrian paths;
 6. Acreage devoted to and characteristics of green space, amenities, and recreational areas and facilities as required by section 4.16;
 7. Location, acreage and characteristics of conservation areas and preservation areas as defined in section 3.1, if applicable;
 8. Location of parking areas;
 9. Location, acreage and characteristics of civic spaces, which are public areas for community or civic activities (e.g., libraries and their associated yards, schools and places of worship);

(Ord. 03-18(2), 3-19-03)

Sec. 20A.6 Permitted uses.

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

- a. *By right uses.* The following uses are permitted by right if the use is expressly identified as a by right use in the code of development or if the use is permitted in a determination by the zoning administrator pursuant to subsection 8.5.5.2(c)(1):
 1. Each use allowed by right or by special use permit in any other zoning district, except for those uses allowed only by special use permit delineated in subsections 20A.6(b)(2) and (b)(3); provided that the use is identified in the approved code of development.

2. Electric, gas, oil and communication facilities, excluding tower structures and including poles, lines, transformers, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations and appurtenances owned and operated by the Albemarle County Service Authority. Except as otherwise expressly provided, central water supplies and central sewerage systems in conformity with Chapter 16 of the Code of Albemarle and all other applicable law.
 3. Accessory uses and buildings including storage buildings.
 4. Home occupation, Class A, where the district includes residential uses.
 5. Temporary construction uses.
 6. Public uses and buildings including temporary or mobile facilities such as schools, offices, parks, playgrounds and roads funded, owned or operated by local, state or federal agencies, public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations and the like, owned and/or operated by the Rivanna Water and Sewer Authority.
 7. Tourist lodgings, where the district includes residential uses.
 8. Homes for developmentally disabled persons, where the district includes residential uses.
 9. Tier I and Tier II personal wireless service facilities (reference 5.1.40).
(Added 10-13-04)
- b. *By special use permit.* The following uses are permitted by special use permit if the use is expressly identified as use permitted by special use permit in the code of development:
1. Each use allowed by right or by special use permit in any other zoning district.
 2. Drive-through windows serving or associated with permitted uses.
 3. Outdoor storage, display and/or sales serving or associated with a by right permitted use, if any portion of the use would be visible from a travelway.
- (Ord. 03-18(2), 3-19-03; Ord 04-18(2), 10-13-04)

Sec. 20A.7 Residential density.

Residential density within each NMD shall be as follows:

- a. The gross residential density should be within the applicable recommended gross density range established in the land use element of the comprehensive plan. In its deliberations regarding the appropriate residential density for the district, the board of supervisors shall take into account the amount of land devoted to non-residential uses.
 - b. The gross residential density shall be measured in dwelling units per acre and calculated by dividing the proposed number of dwelling units in the proposed district by the gross acreage of the district.
- (Ord. 03-18(2), 3-19-03)

Sec. 20A.9 Green spaces, amenities, conservation areas and preservation areas

Each NMD shall include the following:

- a. *Green space.* The minimum area devoted to green space is as follows:
 1. For areas shown in the land use element of the comprehensive plan as neighborhood density residential, urban density residential, transitional, neighborhood service, community service, or office service, the area devoted to green space shall be at least twenty percent (20%) of the gross acreage of the area proposed to be rezoned.
 2. For areas shown in the land use element of the comprehensive plan as regional service, office regional or industrial service, the area devoted to green space shall be at least fifteen percent (15%) of the gross acreage of the area proposed to be rezoned.
 3. For areas having a land use designation not addressed in subsections 20A.9(a)(1) and 20A.9(a)(2), the recommendations of the applicable provisions of the comprehensive plan shall be guidance on the minimum area devoted to green space.
 4. The minimum area devoted to green space may be reduced by the board of

supervisors at the request of the applicant. In acting on a request, the board shall consider these factors: the relationship of the site to adjoining or nearby properties containing public green space such as parks or natural areas; the known future uses of the adjoining properties; and whether a reduction would better achieve the neighborhood model goals of the comprehensive plan.

- b. *Amenities.* The minimum area devoted to amenities is as follows:
1. For areas shown in the land use element of the comprehensive plan as neighborhood density residential, urban density residential, neighborhood service, and community service, the area devoted to amenities shall be at least twenty percent (20%) of the gross acreage of the area proposed to be rezoned.
 2. For areas shown in the land use element of the comprehensive plan as regional service, office service, office regional service or industrial service, the area devoted to amenities shall be at least ten percent (10%) of the gross acreage of the area proposed to be rezoned.
 3. For areas having a land use designation not addressed in subsections 20A.9(b)(1) and 20A.9(b)(2), the recommendations of the applicable provisions of the comprehensive plan shall be guidance on the minimum area devoted to amenities.
 4. The minimum area devoted to amenities may be reduced by the board of supervisors at the request of the applicant. In acting on a request, the board shall consider these factors: the relationship of the site to adjoining or nearby properties containing amenities; the proportion of residential uses to non-residential uses proposed; the known future uses of the adjoining properties; and whether a reduction would better achieve the neighborhood model goals of the comprehensive plan.
- c. *Additional requirements for amenities.* Amenities shall also be subject to the following:
1. At least ninety percent (90%) of the residential units in the NMD shall be within a one-quarter mile walk of an amenity.
 2. The size, location, shape, slope and condition of the land shall be suitable for the proposed amenity.
 3. The amenity shall be suitable for the specific population to be served.
 4. The design of any recreational facilities shall meet the minimum design requirements from recognized sources of engineering and recreational standards.
 5. In nonresidential areas of the development, amenities shall be located so that they are easily accessible to patrons and employees of the development.
- d. *Green space within parks and recreational amenities.* Any portion of an amenity that is covered in grass or other vegetation may be counted as both green space and an amenity.
- e. *Preservation areas within green space.* Preservation areas that preserve environmental features shall be included as green space area.
- f. *Conservation areas within green space.* Conservation areas that maintain environmental features shall be included as green space area.
- (Ord. 03-18(2), 3-19-03)

Sec. 20A.10 Streets.

Each street within an NMD shall meet the street standards for a traditional neighborhood development established by the department of community development.
(Ord. 03-18(2), 3-19-03)

Agenda Item No. 11. From the Board: Matters Not Listed on the Agenda.

Mr. Davis handed to the Board members a memorandum. He said that at the last meeting the Board had discussed the extension of the lease for the Northside Library. He said there is a draft resolution and a lease amendment, and he would request that the Board authorize the County Executive to execute the lease amendment as set forth in the resolution.

Mr. Rooker asked if the agreement incorporates the financial terms previously discussed. Mr. Davis said that is correct.

Mr. Rooker then offered **motion** to adopt a Resolution Approving the Second Lease Modification and Extension Agreement between the County of Albemarle and Rio Associates Limited Partnership for

the Northside Library. The motion was **seconded** by Ms. Thomas. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd, Mr. Dorrier and Ms. Mallek.
NAYS: None.

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

RESOLUTION APPROVING THE SECOND LEASE MODIFICATION
AND EXTENSION AGREEMENT BETWEEN THE COUNTY OF ALBEMARLE AND RIO
ASSOCIATES LIMITED PARTNERSHIP
FOR THE NORTHSIDE LIBRARY

WHEREAS, the County of Albemarle leases from Rio Associates Limited Partnership 15,572 square feet located at 300 Albemarle Square for use as the Northside Library; and

WHEREAS, the original lease for the Northside Library was first dated January 31, 1991, and was extended by a First Lease Modification and Extension Agreement entered into on November 1, 2004; and

WHEREAS, the current lease term expires October 31, 2009; and

WHEREAS, the attached Second Lease Modification and Extension Agreement extends the lease of the Northside Library through October 31, 2014.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive to sign, in a form approved by the County Attorney, the Second Lease Modification and Extension Agreement between the County of Albemarle and Rio Associates Limited Partnership to extend the Northside Library lease through October 31, 2014.

Mr. Thomas said there have been several bits of praise given out tonight, so she would like to point out that the ordinance just adopted was the subject of six work sessions by the Planning Commission. She thinks the Board should express its appreciation to the Commission for that work on the Planned Developments and Neighborhood Model District ordinance.

Mr. Tucker said he had received a letter from Ms. Emily Nelson of the Thomas Jefferson Soil and Water Conservation District requesting appointment of Mr. Steve Murray to the Thomas Jefferson Water Resources Protection Foundation Board. The previous Albemarle County appointee, Mr. Will Cochran, has moved out of the County.

Motion was offered by Mr. Rooker, **seconded** by Ms. Mallek to appoint Mr. Steve Murray to the Thomas Jefferson Water Resources Protection Foundation Board, with said term to expire January 31, 2011.

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

AYES: Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd, Mr. Dorrier and Ms. Mallek.
NAYS: None.

Mr. Slutzky said there is an issue that has come up several times in some of his neighborhood meetings. People have been appreciative of the Board's efforts to pass a mowing ordinance. However, there is a problem where properties have gone through a rezoning but are in a holding pattern before development starts, and there are abandoned buildings still standing on those properties. He asked if the Board could have a policy that would routinely require that upon the granting of a rezoning any structures that would not be used would be demolished within a short period of time. He asked if the Board members would be interested in making that a policy. Having drug deals and other nefarious activities taking place in these abandoned structures is disruptive of neighborhoods - there have been some real issues along Rio Road with some of the abandoned structures.

Mr. Rooker said he is sympathetic with the issue, but there is some limitation on what the Board can do. Mr. Davis said the current County Code allows the Board to take action if a building is deemed to be unsafe by the building official or is in danger of falling down. The owner can be required to board up the buildings, but there is no authority to deal with aesthetics.

Mr. Slutzky said this is a public safety issue, not one of aesthetics. These are structures which are sound and not subject to that existing ordinance, but because they are abandoned people pry the boards off and use the building. Mr. Davis said the Board has limited authority to deal with that issue. There is a building maintenance code that staff used when the Board was considering the mowing issue. Mr. Tucker asked if Mr. Slutzky was suggesting a policy.

Mr. Slutzky said for future rezonings, at the very least staff could make it known that it is a concern. Mr. Davis said this will require some additional research to see if an ordinance could address this question - he does not think it is for the circumstances mentioned, but any applicant could make a proffer to address the existing condition.

Ms. Thomas said she is thinking of a situation where a property sat ugly for 15 years after it was rezoned. It has finally been turned into some major buildings, but for all of those years it sat with a burned out motel, and huge boxwoods. She said if the Board might expect a proffer at the time of the rezoning committing to cleaning up the land before development took place.

Mr. Slutzky asked if something could be included in the Proffer Policy to let it be known that such a proffer would be expected. Mr. Davis said the Proffer Policy only addresses financial impacts, so it would not fit into that policy. There are lots of issues staff can make known to developers, and this can be added to the list. Typically, staff has been successful in getting those types of proffers.

Mr. Rooker said it would have to be done on a case-by-case basis. There are properties that are not occupied that are not eyesores. There have been times when people ultimately moved a building to another location. He agrees that blight should not be allowed to exist, and to the extent that it can be done, the Board should do it on a case-by-case basis. There have been situations in neighborhoods where homes sat vacant for ten years and deteriorated and diminished the value of neighborhood property throughout the entire neighborhood. The Board is not enabled to deal with that situation. At least with a rezoning the Board knows something about the property coming before it and he thinks those issues should be raised on a case-by-case basis.

Mr. Slutzky said unless somebody disagrees, this is something staff should look at routinely.

Agenda Item No. 12. Adjourn to October 16, 2009, 9:00 a.m., Department of Forestry Building.

At 7:38 p.m., Mr. Rooker offered **motion** to adjourn this meeting until Friday, October 16, 2009, at 9:00 a.m., at the Department of Forestry building in Fontaine Research Park for the Board's Annual Strategic Planning Retreat.

The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd, Mr. Dorrier and Ms. Mallek.

NAYS: None.

Chairman

Approved by the Board of County Supervisors

Date: 12/02/2009

Initials: EWJ
