

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on July 13, 2016, at 3:00 p.m., Room 241, Second Floor, County Office Building, McIntire Road, Charlottesville, Virginia. The meeting was adjourned from July 6, 2016. The regular meeting was held at 6:00 p.m., in the Lane Auditorium, County Office Building.

PRESENT: Mr. Norman G. Dill, Ms. Ann Mallek, Ms. Diantha H. McKeel, Ms. Liz A. Palmer, Mr. Rick Randolph, and Mr. Brad L. Sheffield.

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas C. Foley, County Attorney, Greg Kamptner and Acting Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order. The meeting was called to order at 3:02 p.m., by the Chair, Ms. Palmer.

Ms. Palmer also introduced staff present and the presiding security officer, Officer Levy.

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Agenda Item No. 2. **Joint Work Session with Economic Development Authority.**

Economic Development Authority Members Present: Mr. James Atkinson, Ms. Lettie Bien, Mr. Rod Gentry, Mr. Vernon Jones, Mr. Donald Long, Mr. Elton Oliver and Mr. David Shreve.

Absent: None.

Also Present: Mr. Jim Bowling, Attorney.

Mr. Rod Gentry, Chair, called the Economic Development Authority meeting to order at 3:02 p.m.

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Item No. 2a. The Powers, Duties, and Role of the Albemarle County Economic Development Authority.

The Executive Summary presented to the Board stated that County Code § 2-605 requires that all by-laws, standards, and priorities of the EDA, and any amendments to those documents, be approved by the Board of Supervisors prior to their adoption by the EDA. The EDA's By-laws and Rules and Procedures (Attachments E and F), along with its Fiscal Services Agreement with the County (Attachment G), each include provisions that implement County Code § 2-605 by requiring either Board approval or County agreement before the EDA may act on many matters (e.g., By-laws, Article VIII, Section 1; Rules and Procedures, Section 4.3(c); Fiscal Services Agreement, Section 6).

Since the EDA was created by the Board on May 12, 1976, its primary role has been to serve as a conduit issuer of bonds. More recently, it also has served as a conduit for providing grants to businesses (Route 29 Solutions, and those under the Board's Economic Opportunity Fund in conjunction with State programs) and a loan to a non-profit organization (Lewis & Clark Exploratory Center).

The purpose of this work session is to discuss the powers, duties, and role of the EDA and whether the County Code should be amended to lift the restrictions in County Code § 2-605. Over the past several years, the Board has taken steps to promote economic development. Most recently, on April 1, 2015, the Director of Economic Development joined the County in the newly established Economic Development Office to "lead the County's efforts to foster and encourage best practices in economic development activities that provide for quality job creation and sustainable employment opportunities, increased business tax base, and an improved quality of life for all citizens." County February 19, 2015 Press Release. On June 10, 2015, the Board adopted a new Comprehensive Plan, which includes a chapter on Economic Development. The stated goal for economic development in the County is: "Albemarle's economy will be diverse, strong, and sustainable, and retain and benefit County citizens, existing businesses, and new local ventures." Comprehensive Plan, page 6.1. The Economic Development Office, with assistance from other County staff, is currently developing a draft Economic Development Strategic Plan.

By establishing the Economic Development Office, adding an Economic Development chapter to the Comprehensive Plan, and developing an Economic Development Strategic Plan, the Board has recognized the need to plan for and to facilitate economic development. The EDA can play a vital role that can assist the County in achieving its economic development goals and objectives. However, the current constraints in County Code § 2-600 et seq., which are also reflected in the EDA's By-laws and Rules and Procedures, have not kept up with other Board-initiated economic development actions, and the role of the EDA is currently limited by these constraints.

If the Board desires to proceed with amending the County Code, a proposed draft ordinance is included as Attachment A. A memorandum prepared by the County Attorney is included as Attachment B. The memorandum explains the history of the EDA, its legal status as a political subdivision, the general powers of economic development authorities, and tools and practices available to ensure that, if the County Code is amended, the activities of the EDA will remain aligned with the policies, goals, and objectives of the Board. The purposes and powers of economic development authorities conferred by state law are included as Attachment C. A table summarizing the results of an informal survey of other

economic development authorities is included as Attachment D. The EDA's By-laws and Rules and Procedures, and its Fiscal Services Agreement with the County, are included as Attachments E, F, and G, respectively.

There is no budget impact.

Staff recommends that the Board schedule a public hearing for August 3, 2016 on the proposed draft ordinance amending County Code § 2-600 et seq. (Attachment A) and provide other direction to staff as it determines to be appropriate.

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Mr. Kamptner stated to the Boards that they will be looking at the powers, duties and role of the EDA, and noted that there are two objectives for today: to provide further understanding, looking at publications developed by Virginia entities and the County's policy statements and regulations, as well as how the County has developed different policies pertaining to economic development and how they see the County developing residentially and commercially; and to obtain direction from the Board of Supervisors. He mentioned that they will be setting a public hearing pertinent to amendments to County Code Section 2-600, the article that pertains to the EDA, and a proposal provided in the draft ordinance to repeal 2-605.

Mr. Kamptner said that he will make a PowerPoint presentation to the Board, and his first item will be to discuss a confluence of issues that all pertain to economic and land development simultaneously. He displayed a list of eight issues encountered on a daily basis, stating that they should all be moving together and citing the broadband initiative as an example. He noted that the VEDP Guide for Elected Officials underscores the importance of internet broadband capacity to economic development.

Mr. Kamptner showed a photo from the website of the City of San Pablo, CA that provides mission statements, comprehensive plan policies, core values, etc., to illustrate why economic development is important, and noted the similarity to Albemarle County's policy. He displayed information from the Virginia Economic Developers Association (VEDA) on the importance of an economic development policy, and said that while the EDA can be the tool for economic development, it is the Board of Supervisors that establishes a lot of the policy direction. Mr. Kamptner stated that a successful economic development policy must have good policy as a foundation, and noted that elected officials establish the philosophical framework. He used the term "team sport" to emphasize the participation of the EDA, the community and business organizations.

Mr. Kamptner said the Virginia Economic Development Partnership (VEDP) is an agency created by the General Assembly, and the partnership has created a 37-page guidebook that contains good information on the process of formulating an economic development policy. He stated that there are several prevailing themes, including the importance of jobs, the importance of existing businesses and allowing them to expand, and having an educated workforce. He said that leadership plays a key role, as does an assessment of a community's strengths and weaknesses, which is being addressed by Ms. McClintic's office in the process of developing an economic development strategic plan. Mr. Kamptner added that they know the community's strengths but need to identify its weaknesses, of which some are evident and some are not, so that they can be addressed. He said that another prevailing theme throughout his presentation is building upon our unique assets and attributes, both in terms of humans as resources and physical attributes of the area.

Mr. Kamptner stated that the next slides show three key elements of successful economic development, with the first being working with and retaining existing businesses. He said these are the primary source of new job creation and put local residents in those jobs, and can have a more meaningful impact on underemployment, which is more of an issue in Albemarle County given that the unemployment rate is low. Mr. Kamptner stated they can also be a source for future business opportunities as they attract suppliers to work with them. He reported that the next element is workforce development, and said it would be interesting to see if workers trained locally are going to other localities to work. He asked Ms. McClintic if she knows how Albemarle is retaining skilled people.

Ms. Faith McClintic, Director, Economic Development, stated that they work closely with Piedmont Workforce Network, which is part of the Central Virginia Partnership for Economic Development, and they have several programs: the Incumbent Worker Training Program, which uses federal funds to provide existing businesses with new training opportunities to enhance skillsets of their employees so that they can be retained and moved up the career ladder to other positions within the organization. She stated that PVCC serves a large region and provides many workforce development programs, and although not all participants are staying in Albemarle County, many are, and it is primarily Albemarle County residents that utilize the Small Business Development Center's Central Virginia Office.

Mr. Kamptner added that this is an important part of the public school system and ties back to the bond referendum, as overcrowding affects the learning experience for County children.

Mr. Gentry mentioned that there is a segment of the workforce from neighboring localities, such as Rockingham and Nelson Counties, who come to Albemarle to work but do not use any County services and do not pay taxes here.

Ms. Mallek noted that there was a statistic from a few years ago showing that 35,000 people were migrating either in or out to work every day into the urban core.

Mr. Kamptner said that one Charlottesville City Council candidate runs a website that provides a map of local commuting patterns.

Ms. McClintic said she has not looked at this particular website but the Board, Planning Commission and EDA members will be getting some more recent data on commuting patterns as part her office's comparative analysis.

Mr. Kamptner continued with the third of the three elements: sites and buildings. He stated that businesses expect ready-to-go properties, preferably with by-right development and site plans already approved. He said that to a limited extent, the new proffer legislation gives the County a strong motivator in a different direction, whereby it may be more desirable for the County to proactively up zone areas for the kind of development desired, which the comp and master plans are calling for, instead of being reactive to applicants coming in. Mr. Kamptner said that this addresses part of it, and over the last five years the County has been amending its land use procedural rules to facilitate this process. He stated there are still some complaints about the length of time it takes for applicants to get through the process, although some of this burden falls on the applicants in terms of responding promptly to comments and submitting complete information. He stated that ensuring there is adequate infrastructure is important in terms of telecommunications, and having wireless/broadband is part of the equation for being ready.

Mr. Kamptner next focused on County zoning policy, and said the County's mission is for a strong economy and education system, with students who are ready to enter the workforce. He stated that there is a balance of the development areas and rural areas, which will be another repeating theme as the County does not want to lose its positive identity. Mr. Kamptner noted that the County's mission is: "well-being and quality of life for all citizens," and said that core values include innovation, creativity, and positive change. He stated that there are some new forces, such as the new proffer legislation, that are requiring the County to start innovating and looking at zoning in a different way to achieve necessary objectives; other factors are stewardship in terms of managing human, natural and financial resources, and learning/education.

Mr. Kamptner stated that the County's strategic plan reflects goals to attract quality employment to the development areas, provide services and infrastructure, encourage redevelopment and private investment, and foster diversified job creation, capital investment and tax revenue. He said that tax revenue is part of the County's long-term strategy for financing County government, as having a sustainable tax base is part of the long-term strategy for financing County government.

Mr. Kamptner stated that the comprehensive plan, including attachments, is 2,713 pages, and highlights of the plan are to have development in specified areas and to have attractive, vibrant areas for residents and businesses. Mr. Kamptner provided a hypothetical example of a person arriving at the airport and driving to downtown on Route 29, and wonders if the view to the traveler is attractive and vibrant. He mentioned the presence of weeds on Branchlands, and the empty lot near the abandoned Teppan-Yaki site, where a vacant parking lot remains. He said the economic development goal in the comprehensive plan calls for a diverse, strong and sustainable economy that retains existing businesses and attracts new ventures, and said that one objective of the plan is to build on the County's assets and recognize the difference between development and rural areas. Mr. Kamptner noted that the development areas section contains similar language to the growth management policy, pertaining to a desire for active and attractive neighborhoods and vibrant businesses, and redevelopment is part of this strategy. He stated that the purpose of the zoning ordinance is to accomplish those three primary goals, among other lesser priority goals.

Mr. Kamptner stated that he will now focus on the EDA itself, noting that it has been in existence for 40 years and in its original creation it was authorized to perform the very limited function of issuing bonds, with 12-16 bonds issued at any time. He said the mission expanded in 1994 when the issuance type and number restriction was eliminated. Mr. Kamptner said the EDA has functioned under the Board of Supervisors, and all bylaws, priorities, and strategies must obtain prior approval from the Board of Supervisors. He stated that EDAs are political subdivisions of the Commonwealth, and are separate and distinct legal entities as determined by decisions of the Virginia Supreme Court.

Mr. Kamptner said the Attorney General of Virginia has stated that the only restrictions a locality can put on an EDA are those pertaining to the type and number of facilities, and the ordinance for the County's EDA provides that it has all the powers granted under state law, which signifies that they have very broad authority. He stated that a 2015 opinion by the Virginia Attorney General regarding a Louisa County case stipulated that there is no express authority to require an EDA to comply with a locality's economic development goals, and there are other ways for the two entities to work together.

Mr. Kamptner next displayed a list of public purposes that the EDA is enabled to accomplish. He stated that the first requirement of an EDA is that its actions must serve a public purpose, and the General Assembly has identified public purposes as listed on the slide. Mr. Kamptner noted that the Westminster Canterbury bond issue that came to the Board for public approval in June fell under "residential care for the aging," which has been identified as a public purpose even though Westminster Canterbury is a private entity. He stated that the EDA collects approximately \$104K per year from bond issues, which is the EDA's revenue, but most EDAs in Virginia also depend on the locality's governing body for funding. Mr. Kamptner mentioned that Fairfax County's EDA receives \$7.5 million from its Board of Supervisors, and Henrico's EDA receives \$14-15 million from its Board of Supervisors. He stated that the Board has the authority to impose conditions on the spending of funds it appropriates to the EDA, and some EDA matters require approval by the Board of Supervisors under state law. Mr. Kamptner noted that the comprehensive and strategic plans for economic development will provide direction for both the

Board of Supervisors and the EDA, and stated that they would need to be in synch with one another.

Ms. Mallek asked if Mr. Kamptner would come back later and explain how it will happen, as that is the biggest issue. Mr. Kamptner replied that joint meetings, as well as communication between the staffs of both bodies, would help keep them in synch. He stated that some localities hold joint meetings, some send monthly reports of their EDA's activities, some have board or city council member liaisons. He stated that in the event of small localities like Albemarle, the EDA depends on County staff.

Mr. Kamptner stated that in the area of risks and concerns of economic development, he mentioned sprawl as referenced in an article from the U.S.D.A., and noted that a lot of localities would pursue economic development first and plan later. Mr. Kamptner stated that Albemarle's planning ethic is well entrenched and has been for 40 years, with a strong comprehensive plan, a growth management policy, a development areas policy, and a rural areas policy that have been adhered to by the Board over the years with remarkable consistency. He noted that there are occasional deviations, such as adjusting the development area boundary, which is always a possibility following a study of the County's needs, the continuing application of existing zoning policies should enable them to deal with this issue.

Mr. Kamptner said that in terms of preserving the County's identity, there is usually a vision of the rural areas and creating that identity, such as Crozet, but it is harder to define an identity for the urban ring. He emphasized that it is important to carefully select development projects and not accept all that come along, with the County having already identified target industries; and it is important to have a vision and develop a sense of place, and to have high expectations for developments looking to locate here. Mr. Kamptner stated that it is important to create a place rather than just a site for businesses to locate, and to analyze data and to recognize what is working and what is not, examining options that other localities have done and find out whether they have worked or not.

Mr. Randolph surmised that what Mr. Kamptner is saying is that not all economic development is created equal. Mr. Kamptner agreed with Mr. Randolph's comment, and said the challenge will be to create economic development that works in Albemarle County and follows the County's mission, vision, comprehensive plan, and economic development strategic plan.

Mr. Kamptner next offered to respond to questions.

Ms. Palmer said she had not received some of the information that was included in the presentation. Mr. Kamptner said he would send the information, and what he sent them today was a link to the Virginia Economic Development Partnership Guidebook.

Ms. Mallek asked how it will happen that decisions made by the EDA will reflect the comprehensive plan, and asked if they should write into the ordinance things like not putting industrial parks in the rural area, which will put people's minds at ease. Mr. Kamptner responded that one way is to have both the EDA and the Board follow the comprehensive plan and the economic development strategic plan, and suggested that a memorandum of understanding between the two bodies would be a great way to identify them. He stated that there are some pockets of commercial and industrial zoning within the rural area which they are stuck with, but the County does not have to encourage development of these areas. Mr. Kamptner noted that another way the Board can ensure some control is to implement conditions on appropriations granted to the EDA, and can include conditions that stipulate that use must be consistent with the comprehensive plan.

Ms. McClintic clarified that the ordinance and amendment they are considering only enables the EDA to operate as the state code designed it to operate, but it will not preclude the zoning requirement and the EDA would not be able to make zoning changes without a comprehensive plan amendment or proper zoning, requiring both Board of Supervisors and Planning Commission approval. She stated that the ability for the EDA to do that would simply not happen.

Ms. Palmer stated that her understanding in looking at the presentation materials is that the EDA does not have to follow the comprehensive plan, and that either party to a memorandum of understanding can step out of it. She said that as the state is continually changing the rules and expanding the definition of what a company is that "serves the public good," with Westminster Canterbury and its landscaping being an example of a stretch of that term in her mind, but not in the state's opinion. Ms. Palmer stated that she does not think the Board should ever restrict the number of loans the EDA could do because that would restrict the amount of money the authority could make. She said that one could envision a situation where the EDA applies for and obtains a Go Virginia grant and decides to use land to lure a company to come in, which could be politically precarious for the County, and she wonders whether they could include some creative language in the ordinance to be sure that this type of situation would not occur.

Mr. Kamptner first addressed the issue of the General Assembly expanding the definition of "public purposes," and said the Board has the authority to restrict the type of facility that can be financed and amend the ordinance to prohibit a specific type of facility if it is not desirable for the County. Regarding the concern of the EDA "running amok" or deviating from policies, he stated that he cannot give a 100% guarantee, although the Directors are appointed by the Board for four-year terms and could be removed, but having an MOU in place is beneficial in providing that assurance. Mr. Kamptner added that the EDA appointed has done what the Board wants, but statutorily the authority is independent and separate, although it must fulfill a public purpose.

Mr. Gentry stated that over the years there has been a noticeable lack of partnership among the Planning Commission, Board of Supervisors and EDA, and suggested developing, outside of a

memorandum of understanding, an active, ongoing partnership among these entities that is focused on the same goal. He emphasized that there is no point or momentum among EDA members to create something on their own, as this serves no purpose or the greater good of Albemarle County. Mr. Gentry said the EDA wants a partnership, which does not mean they cannot disagree and debate issues, and he is confident that as a group they can all get to the same place, and be consistent and committed to working together.

Mr. Randolph stated that this is a significant, evolutionary step for the EDA and because of that it is important to build trust and confidence in all aspects of the community. He stated that the business community is eager to see the EDA unleashed and operating as a fully functional body similar to EDAs in other localities. At the same time, he said, due to the community's unique charter, shared with only one other County, the Board is charged with greater operational responsibility. Mr. Randolph said that a key aspect is to have some Board members regularly attend EDA meetings, and it is critical to have representation by the Planning Commission and Board of Supervisors on the EDA as liaisons. He stated that they are creating an organization that has the potential to have a huge impact on the comprehensive plan and the way the County utilizes resources in the community. Mr. Randolph said that Board and Commission members serve on other committees as liaisons, but he would put the EDA near the top of all priorities in service, adding that there is a potential for an organization to go in a different direction, which should be avoided. He emphasized that the community would be better off with Board of Supervisors and Planning Commission participation in EDA meetings, and the worst thing possible would be a situation in which the EDA recommends something that has unanticipated consequences.

Mr. Foley asked Mr. Kamptner to clarify the statement that the EDA does not have to follow the comprehensive plan.

Ms. Mallek stated that it is very clear in the briefing papers that the Board of Supervisors cannot require the EDA to follow the comprehensive plan. Mr. Kamptner said the EDA cannot approve a project on a piece of land for industrial use if it is designated for a rural area in the land use plan. He stated that any actual physical change has to comply with the comprehensive plan, and explained that the Attorney General's determination in the Louisa County case stipulated that there is nothing that expressly requires an EDA to follow the Board of Supervisor's economic development policy goals.

Mr. Foley asked if the land use plan must be followed. Mr. Kamptner replied in the affirmative that any physical change must comply with the comprehensive plan, and said that any project supported by the EDA must be consistent with the comprehensive plan and zoning regulations.

Ms. Mallek said it is more than number and type of facilities, and that is what concerns her. Mr. Kamptner clarified that the type and number is limited to EDA's enabling authority, and water protection and land development protections are independent of that, with any particular use required to comply with all of those other regulations.

Ms. McClintic noted that EDAs are already restricted by federal statute as to types of private activity bonds, for-profit business ventures for which the EDA provides financing, and that amount is already capped at \$20 million per year. She added that any bond inducement resolution would still require Board approval.

Mr. Kamptner noted that nothing compels the Board to adopt that resolution.

Mr. Dill asked Mr. Kamptner what the EDA is not allowed to do now that it wants to do, and he asked for examples of things the EDA would like to do that they do not think the Board of Supervisors will allow. Mr. Gentry replied that part of that answer is in the paper sent out by Mr. Kamptner. He explained that the ability of the EDA to play a key role in economic development has been constrained, in part, by current County regulations that requires virtually anything the EDA does to obtain prior approval by the Board of Supervisors, which hinders the work of the EDA. Mr. Gentry said one example would be the requirement for the EDA to wait for a response from the Board prior to providing its own response to a situation in which they need to act quickly. He stated that if this aligns with the direction the Board wants to go in and what they have previously approved, then the EDA needs to be able to actualize that and make it happen consistent with what the Board wants.

Ms. Palmer asked Mr. Gentry for an example of that situation. Ms. McClintic responded and gave an example of a key property that the County wanted to preserve to ensure it was utilized in a way that is critical to redevelopment efforts, the EDA would have to come before the Board for approval to execute that purchase, which would become a public discussion, causing delays leading to the potential loss of the opportunity. She stated that this example is predicated on the assumption that the EDA had money to be able to execute the purchase, which is currently not realistic because they do not have those funds. Ms. McClintic said if there was ongoing dialog with the EDA and the Board regarding these types of opportunities, the Board could identify focus areas such as small area plan designated areas, and the EDA could act on those opportunities. She stated that the current timeline for these approvals poses a risk to missing opportunities, and they need to be poised and ready to pursue strategic properties to carry out the Board's economic goals. She cited recent examples of Kelly's Turkey and Twenty Paces Cheese Makers, where it took almost four months to obtain Board approval to provide an \$11,000 check.

Ms. Palmer said that in the memorandum provided by Mr. Kamptner, he explains a way that these grants can be taken care of without a change to the ordinance, and asked if there is a way to address the property issue without amending the ordinance. Mr. Kamptner responded that the EDA's documents, the bylaws, the rules and procedures, and the fiscal services agreement, require Board

approval for the actual expenditure of any funds by the EDA. He stated that with the APHID grants, his thought is that the Board could just appropriate funds from the Economic Opportunity Fund to the EDA in advance, with conditions stipulating certain parameters for allocation. Mr. Kamptner noted that the APHID grants can technically go directly to any political subdivision, including the EDA, and the matching funds could be provided by the EDA very quickly. He stated that it is a very clunky process that takes a lot of staff time, just to end up in the same place.

Mr. Randolph proposed a hypothetical example to Ms. McClintic of the EDA having assets of \$25 million, and an out-of-state brewery inquired about relocating to the area. He asked if the EDA would have stepped in and had the authority to negotiate directly with the company and be able to purchase a property. Ms. McClintic replied that technically speaking, the EDA could have gone out and procured the land from the owner, however, the entity would never have been able to develop that project on that property without an amendment to the comprehensive plan and appropriate zoning, which is still solely controlled by the Board of Supervisors. Ms. McClintic emphasized that this will not change under the new scenario.

Ms. Palmer stated that this is a wonderful example of increased political pressure that could occur if the EDA did purchase the property and wanted to go ahead with it, and it could change the decision making of the Board because of that extra weight.

Ms. McClintic commented that a good business would not have an EDA purchase something that they could not utilize.

Mr. Shreve stated that it does happen though, and his bias in this is that there are some communication delays in this process, and perhaps focusing on those would make the most and best improvements, including having ex-officio members in closer contact, and stated that some of the issue could be related to meeting calendars. He emphasized that he is not particularly eager to eliminate political barriers, as public comment is beneficial and could temper some choices and decisions, but if they are going to arrive at the same point anyway then they should fix the process.

Ms. Palmer said she agrees with the point that establishing authorities creates an extra layer of unelected government, and she wonders about creative ways to fix the problem of communication without giving up some control by the Board, as they give up enough control of land use in Virginia.

Mr. Sheffield said that he has a different view of authorities, as they function very well when they have very focused goals and are given the ability to implement them. He emphasized that he would rather see the EDA more empowered to achieve the goals as stipulated, and if they are not achieving the Board's goals, they should be replaced.

Ms. Palmer cited the example of the Rivanna Water and Sewer Authority Board, where an elected City Councilor and elected Supervisor were placed on the Board to give the public more input, which had both down sides and up sides.

Mr. Gentry stated that the public currently does not have a clear picture of what economic development is, which is the fault of everybody in the room because the public must be brought along, and what is being proposed today is a way to address this collectively, which would involve trust and partnership. He stated that they are in competition every day with other localities, and being clear and having a fast-track with a cooperative spirit will help the County get what they want rather than having to choose from what everyone does not want.

Mr. Foley said that in the past the role of the EDA was very narrowly focused and now they are talking about an authority with a much broader focus is broadened to a point where the limits are uncertain. He stated that they must follow the comprehensive plan, but there are some things they could address such as land zoned for industrial use in the middle of the rural area, which the EDA may not know about. Mr. Foley said that rather than talking about this in broad terms, a memorandum of understanding could clarify the role of the EDA and move them from simply a financing mechanism to an organization that promotes economic development in a way that aligns with the Board's direction.

Mr. Kamptner said that an MOU could address the purchase of land by the EDA, and that planning needs to come first, so this would certainly be an appropriate provision for an MOU between the two bodies.

Ms. Mallek responded that the questions the Boards are raising are ones that the public would have, so the Boards want to be prepared and articulate in their explanations.

Mr. Foley stated that this is a huge change for Albemarle County, and it would be unfortunate to have the public think this is something that it is not, so they should define more clearly where they are going in this evolution.

Mr. Dill said the role of the Economic Development Department within the County is important too, and whether the Director is working for the EDA, the County, or the Board. Mr. Kamptner stated that the Economic Development Director works for the County, as he does, not the EDA.

Mr. Foley said that she works for the County Executive, who works directly for the Board of Supervisors, and she would never answer directly to the EDA.

Ms. Palmer said the Board has directed the Economic Development Director to devote only a small fraction of her time in attracting companies from the outside, and having more people move to the County does not help the bottom line. She suggested that they first look at ways of reducing lag times without amending the ordinance and to wait a while before making changes, to try to correct the problems they have now.

Mr. Kamptner said he appreciates her concern, but the Attorney General opinions are advisory and when that office issues an opinion and does not change the law, if the General Assembly has not changed it then they will presume that the Attorney General's opinion reflects the intent of the General Assembly in the particular language. He stated that currently, that particular section is an aberration of the enabling authority and gives the Board direct control over all bylaws, standards, and priorities. Mr. Kamptner confirmed that there are no court decisions that further clarify this, other than stating they are independent and separate, and the statute itself identifying them as political subdivisions.

Mr. Sheffield said that deliberating on this issue even further will lead to concern and frustration among the public, and his constituents often express surprise that the County has only now established an Economic Development office, and they are also surprised that the EDA has such limited authority.

Mr. Foley stated that the intent is not to have the Board take an action on this tonight, but to have staff bring an ordinance back to them, based on this discussion. He suggested that they stay on the same schedule and not delay this too much further.

Mr. Sheffield responded that it is important that they have a clear economic strategy before they enter into another budget process or they will get beat up as a County for tapping into residential and commercial property taxes but not building up the business base, and emphasized that his constituents are going to run out of patience.

Ms. McKeel said she is not as fearful about the EDA "running amok" or "going rogue." She said that communication is key, but they need to address some of the other issues of EDA empowerment. Ms. McKeel stated that she would be interested in an MOU that leads to a common understanding so the EDA can move forward without having to constantly ask the Board for permission.

Ms. Palmer suggested having a public hearing on this issue for the second Board meeting in September, as many people will be out of town during the August meeting.

Mr. Foley said this extra time will allow them to develop and flesh this out a little.

Ms. Mallek suggested having another joint discussion meeting in August first to help the public understand, rather than just seeing a staff report on paper. She expressed her appreciation for the EDA's capabilities and devotion to the values of the County, and said the barriers to compliance often involve technical and financial issues that could be fixed separately from the ordinance. Ms. Mallek said the EDA could also share with the Board in executive session some details on specific pending projects.

Mr. Foley noted that this is another good reason for a liaison.

Ms. Palmer agreed with Ms. Mallek and stated that if they knew the current Board and EDA Board were to be comprised of existing members indefinitely, they would have nothing to worry about, but by making changes they are ensuring against problems in the future.

Mr. Kamptner invited members to call him or come to his office to discuss any issues that could not be fully addressed in today's meeting.

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Agenda Item No. 3. Recess.

At 4:23 p.m., the Board recessed and then reconvened at 4:30 p.m., into open meeting in the Auditorium.

At 4:23 p.m., the EDA recessed and the reconvened at 4:30 p.m., into open meeting in the Auditorium.

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Agenda Item No. 4. **Discussion:** Legislative position regarding County authority to establish 'economic revitalization zones'.

Mr. Kamptner stated that he will be discussing Economic Revitalization Zones (ERZ). He then presented a slide showing portions of the state code that pertain to ERZs. He said that under State law, only cities have authority over these zones. Mr. Kamptner noted that Subsection A deals with the purposes for creating such zones, and Subsection B deals with incentives, but this is not an exclusive list and localities may add other incentives, and he noted some examples of the incentives listed. He stated that Subsection C concerns the time period that an incentive may remain in effect, which is up to 10 years; Subsection D concerns regulatory flexibility available to localities in establishing an economic revitalization zone; Subsection E allows for establishment of a service district; Subsection F restricts power of localities to only those authorized; and Subsection G requires notice and a public hearing prior to adopting or amending an ordinance.

Ms. McClintic stated that she wants to offer a point of clarification about Economic Revitalization Zones, explaining that the purpose of a zone is to designate a geographic area so that each time a business wishes to take advantage of the incentives they do not have to come forward to request them because they are essentially "statutory." She noted that ERZs are similar to Enterprise Zones and offer certainty and clarification to a business that may wish to move to an area. Ms. McClintic added that she feels it is worthwhile to make the request to the General Assembly to allow counties to establish ERZs, as counties face similar issues to cities.

Ms. Palmer invited questions.

Mr. Randolph cited Virginia Code Section 15-2-1129.2, which states that any city may establish an ERZ, and asked if there is another section that mentions counties. Mr. Kamptner replied that there is not, and said they may potentially wish to introduce this as part of the County's legislative priorities to allow counties to establish ERZs.

Ms. Mallek mentioned that this is a case where they should have a coalition of counties.

Ms. McKeel asked Mr. Kamptner if they have checked with other counties about partnering with this legislation. Mr. Foley replied that they intend to have a meeting with David Blount and then Delegate Steve Landes to discuss this strategy, and it is possible that all Virginia counties would like to have this authority, but it is of particular concern to counties struggling with urban issues.

Ms. Palmer asked if it would be best to have a small area plan in place first, although that was a long way off and they must deal with the General Assembly first, just in case the legislation were to be approved quickly. Mr. Foley stated that this is the way they are proceeding and they will want the broadest authority possible as they would develop additional small area plans in the future that they are not thinking about today, although local approval would still be needed before it would apply to any zone.

Mr. Randolph stated that, in essence, they would have a small area plan in vitro.

Mr. Foley mentioned that the Board's top strategic priority is to develop a small area plan concerning development around Rio Rd and Route 29, and the County sees this as one of the tools that will help them be successful and fit within their economic development strategies.

Mr. Randolph said that on July 4 in Scottsville, he spoke with Senator Creigh Deeds, who urged that there be consultation with representatives and feels that there had not been enough dialog about proffers and said that by the time the legislature was advised, "the horse was out of the barn." Mr. Randolph emphasized that the legislative session is short with many priorities to address, and they should consult with representatives in advance as they build a coalition, as Ms. Palmer had suggested.

Ms. Palmer stated that they could add this issue to their agenda for the legislative luncheon they will be having in September.

Mr. Randolph suggested not waiting until the luncheon and using that event as an opportunity to further their case, noting that more progress could be made with state representatives in small discussions than at a luncheon with many people offering different ideas. Mr. Foley replied that this is the path they are on, starting with Delegate Steve Landes, and said that by reaching out prior to the luncheon they can obtain feedback and potentially change the way they present this issue.

Mr. Sheffield asked Mr. Foley how many conversations they have had with the development community about this legislation. Mr. Foley replied that they have not had any.

Mr. Sheffield said he would like to see conversations with the development community and be "hip to hip" with them, adding that he imagines the legislators would respond positively if the development community were involved. Mr. Foley agreed and stated that they have been having discussions with some developers about partnerships.

Ms. Mallek mentioned the downtown Crozet zone as an example, and asked if the ERZ is the next level in implementing that, to help people support the J.B. Barnes project and give them incentives to bring jobs there. Mr. Kamptner offered to reply to Ms. Mallek's question, and said the ERZ can help facilitate the process, citing incentives such as reduced fees for things like the BPOL tax.

Ms. Mallek asked if machinery and tools was in that category. Mr. Kamptner responded that it is limited to the gross receipts tax and not a tax on machinery and tools, however, they could find something else as an incentive for machinery and tools.

Ms. Mallek said that this is good because for years they were told they could not make different fees for things even in a simple case of fireworks for public vs. private use. Mr. Kamptner replied that with the ERZ enabling authority, and with technology zones and in BPOL legislation, the General Assembly is carving out these incentives.

Mr. Foley stated that they do not have this authority yet but they will be pursuing it, and tonight is just an overview to see if the Board supports this direction. He acknowledged that based on a lot of nodding from Board members, they will proceed.

Ms. Mallek thanked Mr. Foley and said that she has a manufacturer in mind that she thinks would



benefit a lot from this.

Ms. Palmer asked if any Economic Development Authority (EDA) members would like to further discuss this issue. There were no replies. She asked if there was a reason for the Board to have a closed session. Mr. Kamptner replied that there is.

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Mr. Gentry then **moved** for the EDA to adjourn until Monday, July 25, 2016, at 4:00 p.m., in Room 241. The motion was **seconded** by Ms. Bien. On a voice call vote, all voted aye.

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Agenda Item No. 5. Closed Meeting.

At 4:46 p.m., Mr. Dill **moved** that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (7) to consult with and be briefed by legal counsel and staff regarding specific legal matter requiring legal advice relating to the negotiation of an agreement for court facilities. Mr. Sheffield **seconded** the motion.

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

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph and Mr. Sheffield.  
NAYS: None.

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Agenda Item No. 6. Certify Closed Meeting.

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

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

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph and Mr. Sheffield.  
NAYS: None.

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Agenda Item No. 7. Call back to Order. At 6:14 p.m., Ms. Palmer called the meeting back to order.

Ms. Palmer reintroduced County staff and the presiding security officer, Officer Levy.

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Agenda Item No. 8. Pledge of Allegiance.  
Agenda Item No. 9. Moment of Silence.

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Agenda Item No. 10. Adoption of Final Agenda.

Ms. McKeel **moved** to adopt the final agenda. Ms. Mallek **seconded** the motion.

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

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph and Mr. Sheffield.  
NAYS: None.

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Agenda Item No. 11. Brief Announcements by Board Members.

Mr. Sheffield mentioned an email from a constituent that addressed an assessment and talking before the Board of Equalization, and asked Supervisors if they wish to discuss this now or later.

Ms. Palmer suggested they discuss it at the end of the meeting after "From the Board: Matters not Listed on the Agenda."

Mr. Sheffield stated that in terms of public comments at Commission meetings, etc., he feels strongly that members of the public should be able to speak about any matter being discussed.

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Ms. Mallek stated that she wishes to bring attention to the Blue Ridge Heritage Project to build a memorial chimney to honor families of Shenandoah National Park who were displaced, and said there will be an informational meeting on July 14 at 7:00 p.m. at the Whitehall Community Center. She added that the project members are especially interested in hearing about renters who are not listed on deeds, so that they can be added to the memorial plaque.

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Mr. Dill mentioned the unveiling of a plaque in the McIntire Room of the library memorializing Gregory Swanson, the first African-American accepted to The University of Virginia. He stated that Mr. Swanson was already a lawyer and was accepted to the law school in 1950 with unanimous support of the law school faculty, but it was opposed by the Board of Visitors. Mr. Dill said this was a pivotal decision that involved several key lawyers hired by the NAACP, including Thurgood Marshall, Oliver Hill, and Spotswood Robinson, who argued the case. Mr. Dill noted that the McIntire Room used to be a courtroom and was the location of the actual decision, and stated that retiring Public Defender, Mr. Jim Hingeley, is the nephew of Mr. Robinson.

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Agenda Item No. 12. Proclamations and Recognitions:

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Item No. 12a. Resolution of Appreciation – James “Jim” Hingeley.

Mr. Dill **moved** to adopt and present the following resolution recognizing Mr. James Hingeley, the retiring Public Defender for the County of Albemarle and City of Charlottesville, for his many years of service. Ms. McKeel **seconded** the motion.

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

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph and Mr. Sheffield.  
NAYS: None.

*Resolution of Appreciation for*

**JAMES “JIM” HINGELEY**

**WHEREAS,** Jim Hingeley opened the Office of the Public Defender for the County of Albemarle and the City of Charlottesville in 1998, with the mission of defending the accused in serious criminal cases and managing a community-oriented public defender office that provides high quality criminal defense services to indigent clients; and **WHEREAS,** Jim Hingeley received his A.B. from Harvard College and his J.D. from the University of Virginia School of Law, and is admitted to practice law in the states of Virginia and West Virginia, all federal courts in Virginia, and the United States Supreme Court; and

**WHEREAS,** Jim Hingeley has been a clinical supervisor of the Criminal Defense Clinic at the University of Virginia School of Law since 1999, providing first rate training for the next generation of criminal defense attorneys; and **WHEREAS,** Jim Hingeley has received several prestigious awards to include the Virginia Bar Association’s Roger D. Groot Pro Bono Publico Service Award in 2014 and has served on innumerable state and local advocacy groups as a contributing member or in a leadership capacity in his ongoing mission to provide the best defense for all; and **WHEREAS,** Jim Hingeley, in addition to being a lawyer and public servant, has also been a certified welder; a VISTA volunteer in West Virginia; a high school social studies teacher in Pocahontas County, West Virginia; and an all-around nice guy to have in your corner.

**NOW, THEREFORE BE IT RESOLVED** that, we, the Albemarle County Board of Supervisors, present to James “Jim” Hingeley on the occasion of his retirement as The Public Defender for the County of Albemarle and the City of Charlottesville, with this Resolution of Appreciation for the immeasurable and excellent public service that he has provided to this community; and

**BE IT FURTHER RESOLVED** that, this Resolution be spread upon the minutes of this meeting of the Albemarle County Board of Supervisors.

Signed this 13th day of July, 2016.

Ms. Palmer invited Mr. Hingeley to speak.

Mr. Hingeley thanked the Board for the recognition and expressed his appreciation for their support throughout the entire process, stating that this community is committed to equal justice and using evidence-based practices to improve the criminal justice system.

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Agenda Item No. 13. From the Public: Matters not Listed for Public Hearing on the Agenda.

Mr. Jim Morris addressed the Board asked them to provide relief and guidance regarding a parking situation at Albemarle High School, stating that the church has about 40 parking spaces next to the school that will go vacant unless they are allowed to park there, and with the growth of the high school, there is already going to be a critical shortage. He stated that he was discouraged in speaking with Francis McCall in the Zoning Department, and said that County Code Section 5.1.39 pertaining to offsite employee parking for industrial use had to be changed to make that a special item. Mr. Morris suggested that the Board make a similar exception for the school parking, and said the preacher of the church is willing to allow parking on church property, but does not have the time to deal with a rezoning

process. He stated that the church has been charging students \$200/year to use their parking lot, and the church does provide a parking monitor.

Ms. Palmer noted that Mr. Morris has provided information to his Supervisor, Ms. Diantha McKeel, so the Board can get back to him at a later date.

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Mr. Salam Altallal introduced himself as a Charlottesville resident who has lived in this area since 2003, and stated that he owns six vans that transport handicapped persons. He said that he now wants to establish and obtain a license for a dealership and body shop to buy and sell the cars that he repairs.

Ms. Palmer asked him to hold his discussion until later in the meeting agenda when the Board will hold a public hearing to discuss Items 17 and 18.

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Ms. Marta Keane of JABA addressed the Board and stated that the agency is 41 years old and recently had to make some strategic decisions regarding their staffing levels, with a focus on keeping direct services intact. Ms. Keane reported that the gap between seniors served and resources available has increased beyond increases in their budget. She emphasized that this will not impact services provided, but will result in some belt-tightening and doubling up on duties of managers. She thanked the Board for its support.

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Ms. Liz Russell of the Albemarle County Historic Preservation Board addressed the Board regarding a project the Preservation Board is working on, a manual for owners and prospective owners of historic properties in the County, with a lot of information and links to other information. Ms. Russell said this includes eligibility information, appropriate treatment methods for historic properties, tax incentive programs, local preservation stories, and a section on "lost Albemarle" that talks about structures and buildings that have been lost over the years.

Mr. Randolph noted that the project had been in the works for four years, and he expressed his appreciation to the Historic Preservation Board for their efforts.

Ms. Mallek mentioned that the Preservation Board has put together some case studies of properties in the area, both residential and commercial, that have been restored, along with lessons learned in the process.

Ms. McKeel asked Ms. Russell to share the link to the Historic Preservation Board's information with the Board.

There being no further public comment, the Chair closed this portion of the meeting.

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#### Agenda Item No. 14. Consent Agenda.

Ms. McKeel **moved** to approve Item 14.1 on the Consent Agenda. Ms. Mallek **seconded** the motion.

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

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph and Mr. Sheffield.  
NAYS: None.

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Item No. 14.1. County Property on Founders Place in the Mill Creek area (TMP 09100-00-00-002E0) and on Polo Grounds Road (TMP 04600-00-00-02600).

The Executive Summary forwarded to the Board stated that the County owns undeveloped property on Founders Place in the Mill Creek area (TMP 09100-00-00-002E0) and on Polo Grounds Road (TMP 04600-00-00-02600). County staff was contacted by two separate entities who expressed an interest in purchasing these parcels from the County. These properties are currently part of the County's "land-banked" properties and are being retained for future public use.

The property on Founders Place (TMP 09100-00-00-002E0) is a 13.27 acre parcel located on the south side of Mill Creek Drive, between Avon Street Extended and Scottsville Road (SR20). The Monticello Fire/Rescue Station is located on this site. The parcel has a partially built access road (Founders Place) in the center of the site providing access to the fire/rescue station. The fire/rescue station is located on the east side of Founders Place and the portion of the parcel on the west side of Founders Place is currently undeveloped. In 2013, the undeveloped portion of the parcel was being considered as a potential location for a convenience center; however, in January 2014, the Board suspended further consideration of any convenience center location until such time as the County evaluates long term strategies for solid waste management services. This site was also considered for a library.

Habitat for Humanity requested that the County sell the undeveloped portion of this parcel so that it could create affordable and mixed-income housing in the growth area and save on costs associated

with displacement of Southwood residents.

The property on Polo Grounds Road (TMP 04600-00-00-02600) is a 27.48 acre parcel located on the south side of Polo Grounds Road (SR643) at its intersection with Powell Ridge (private road), between US Route 29N and Proffit Road (SR649). The site is wooded and has an old dilapidated residence and outbuildings. The parcel was originally purchased around the time that the County was looking for land for the Baker Butler Elementary School. It was determined that the property topography and shape could be challenging for a school site, and because the parcel was land-banked, the adjacent property, TMP 04600-00-00-026D0 would also likely need to be acquired to provide a viable school site. The Baker Butler Elementary School was ultimately built at another location.

Silvergate Realty, representing a potential buyer/developer, requested that the County sell this parcel for the purpose of redevelopment.

The Facilities and Environmental Services Department took the lead in assessing the requests for the County to sell these parcels and approached several departments (Community Development, FES-Public Works Division, Schools Building Services, Parks & Recreation, Police, and Fire/Rescue) to solicit feedback and input on the potential sale of these properties. The consensus was that the properties should be retained as landbanked property, as they may serve the County in future public uses.

The County's Property Committee met on May 11, 2016 to review the requests for the County to sell these properties. The Committee consists of two Board members and the Deputy County Executive. The Committee was provided a May 6, 2016 staff report as background prior to the meeting. Staff's recommendation to the Committee was to retain the property because the property locations have strong potential for a future County use and similar property would likely be more costly to acquire in the future. Staff was unable to identify any compelling benefit to the County in selling the properties. There was consensus among the Committee members that the properties should remain land-banked at this time. A copy of the Committee meeting minutes, with staff report, are attached (Attachment A).

There are no significant costs to maintain the property under County ownership.

The Property Committee and staff recommends that the Board retain these parcels in the land-banked properties and not dispose of the property as this time.

**By the above-recorded vote the Board agreed to retain the subject parcels in the land-banked properties and not dispose of the property as this time.**

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Item No. 14.2. Albemarle County Service Authority Quarterly Report, ***was received for information.***

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Agenda Item No. 15. Business License Ordinance Amendments deferred from July 6.

The Executive Summary presented to the Board states that upon review of the County's business license ordinance, the Finance Department is recommending updates and improvements to seven sections of Chapter 8 (Licenses) of the Albemarle County Code. These proposed revisions are intended both to improve the County's collection practices and to align the County Code with current State law.

The attached proposed ordinance (Attachment A) would amend seven sections of Chapter 8 (Licenses) of the Albemarle County Code.

1. Sec. 8-402 - License Fee - due date - Would require payment of a business, professional, and occupational license (BPOL) fee at the time of application in the case of any license not based on gross receipts, as enabled by *Virginia Code* § 58.1-3703.1(A)(2)(b).
  - Purpose: To align the County Code with state enabling authority and to receive more timely payment of flat license fees, at the time of a license application.
  - Consequence: Would assess a 10% late payment penalty on businesses subject to a license fee that failed to remit the fee with their business license application.
2. Sec. 8-403 - License Fee - proration - Would repeal the proration of a flat license fee for beginning businesses, as enabled by *Virginia Code* § 58.1-3710(A).
  - Purpose: To simplify the license fee schedule, in alignment with state enabling authority.
  - Consequence: A small number of affected County businesses would pay a full license fee. However, the proposed change would be easier both for business owners to understand and for County to administer.
3. Sec. 8-406 - Failure to File Penalty - Would allow a 10% penalty for the failure to file a business license application, as enabled by *Virginia Code* § 58.1-3703.1(A)(2)(d).
  - Purpose: To identify the failure to file a business license application as a separate offense from the failure to pay the applicable license tax or fee. This proposal would be more fair and equitable for businesses that timely file their license applications and would discourage late filing.
  - Consequence: Based on 2016 filings, 29% of County businesses failed to timely file the required license application and would have been assessed a 10% penalty. The timely 71% of businesses would be treated more equitably for having timely filed their BPOL applications by the due date.

4. Sec. 8-502 - BPOL Penalty - Would eliminate the 50% additional penalty for the fraudulent or evasive failure to obtain a business license, in alignment with the maximum allowable collections under *Virginia Code* § 58.13703.1(A)(4)(b).
  - Purpose: To align the County ordinance with state enabling authority.
  - Consequence: Because staff does not recall having imposed this penalty in the past, staff does not expect a significant consequence from this proposed change.
5. Sec. 8-600(E) - Allowable Deduction for Alcohol License - Would eliminate the ability to deduct amounts paid for County alcoholic beverage business licenses from the license tax due on retail sales generally. This proposal is system driven, in that the current system is not programmed to allow for this deduction.
  - Purpose: To align Albemarle County with all the other jurisdictions in Virginia served by the County's Revenue Administration System vendor, none of which allow this deduction. A vendor customization for this purpose would be costly.
  - Consequence: Businesses that report gross receipts for alcoholic beverages would not be able to deduct the amount of the County's flat alcoholic beverage license fee from their retail gross receipts. However, few businesses would be affected by this change.
6. Sec. 8-603(C) - License Tax - threshold for out-of-County contractors - Would lower from \$100,000 to \$25,000 the minimum gross receipts threshold over which out-of-County contractors are subject to County business license taxes, as enabled by *Virginia Code* § 58.1-3715(A). This proposed amendment would allow the County to collect business license taxes that would otherwise go to other localities.
  - Purpose: To collect business license fees and taxes from contractors not located in the County that operate within the County, making more equitable tax treatment for businesses with primary offices in the County.
  - Consequence: Out-of-County contractors with County-based gross receipts of \$25,000-\$100,000 would be required to file for an Albemarle County business license and pay the applicable County license fee or tax.
7. Sec. 8-620 - License Tax Rate - Federal Research and Development Contractors - Would add a new classification for federal research and development contractors to the business license ordinance: *Virginia Code* § 58.1-3706(D) provides a special (low) \$0.03 license tax rate for certain principal or prime contractors receiving identifiable federal appropriations for research and development services. Though County staff is already correctly assessing these businesses in accordance with state law, adding this section to the County Code would conform the County code language to the Virginia Code, and would make it less likely to be overlooked in the future.
  - Purpose: To align the County ordinance with state enabling authority.
  - Consequence: Because County staff is already correctly assessing these businesses, no negative consequences are expected from this change.

Though the budgetary impact of these proposed amendments is difficult to predict with any certainty, staff anticipates a budgetary impact from only three of the proposed revisions:

- Sec. 8-403 - License Fee - proration - projected \$1,000 revenue gain per year.
- Sec. 8-406 - Failure to File Penalty - projected \$150,000 one-time revenue gain. Some revenue gain may occur in subsequent years, but would likely decrease as more businesses timely filed their required license applications.
- Sec. 8-603(C) - License Tax -- threshold for out-of-County contractors - projected \$10,250 revenue gain per year. Staff does not anticipate a significant budgetary impact from the other proposed revisions.

Following a public hearing, staff recommends that the Board adopt the attached proposed ordinance (Attachment A).

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Ms. Betty Burrell, Director of Finance, addressed the Board regarding the amendment to County Code Section 8-603C, and said the Board had asked staff to clarify the implications to County contractors and ensure nothing would impede the Economic Development Director's plan. She stated that the proposed amendment would require a flat \$50 license fee from contractors outside of Albemarle County with gross receipts of \$25,000-\$100,000 annually, and the fee has been allowed by Virginia law since 1952. Ms. Burrell stated that businesses are not subject to both a license fee and a license tax, and if receipts are above \$100,000 they would be subject to a rate-based tax, but not both a tax and the fee. She said that this change would level the playing field for Albemarle-based businesses, and it would not subject the contractor to double taxation as the tax paid on Albemarle gross receipts is deductible from their home County's business license fees. Ms. Burrell stated that the Finance Department had met with the Economic Development Department, the County Attorney's Office, and the County Executive, and all have agreed that the language does what it intends to do, so that contractors in the prescribed range pay a flat fee. Ms. Burrell presented a slide that showed some examples and said that in some cases, the contractors would actually save money vs. the current tax rate because they get to deduct the receipts from their home County business license.

Ms. Burrell stated that neighboring jurisdictions also have a \$25,000 threshold for their contractors, and emphasized that it is a flat fee and not double taxation. She noted that staff recommends adoption of the proposed ordinance as approval of the amendment.

Ms. Mallek asked if out of county contractors must first obtain a license before working in

Albemarle. Ms. Burrell replied that they should if they expect to do \$25,000 or more of business, and stated that 78 businesses that are not technically required to get a license have gone ahead and paid the \$50 fee just in case.

Mr. Sheffield asked for the number of out-of-county contractors that would have been or will be impacted by the amendment. Ms. Burrell replied that they do not have any empirical evidence as to how many because they are not required to report unless they do \$100,000+ of business.

Ms. Palmer asked for an example of an out-of-county business that is not a contractor. Mr. Kamptner responded that a consultant would be one example, and Subsection C that they are considering pertains only to contractors.

Mr. Dill asked if landscapers would not be considered contractors. Ms. Palmer said she was thinking of landscapers as well.

Ms. Burrell stated that the County's subject matter experts have said they have to have a state license.

Mr. Dill asked about housecleaning services. Mr. Kamptner clarified that the term "contractor" is defined in Chapter 8 and provides a thorough list of the occupations covered.

Ms. Jian Lin, Revenue Administrator for County Assessments, explained that a contractor must be licensed by the state first for certain businesses and they would need to talk to the state contract board to determine if a license is needed.

Mr. Kamptner said that paving, excavation work, maintaining rights of way, constructing sewers of stone, brick and other materials, remodeling, drilling wells, erecting buildings for sale, etc., are examples of contract work.

Mr. Sheffield asked how they came up with an estimate of a \$10,000 revenue gain from the amendment as he saw mentioned in the executive summary. Ms. Burrell responded that it was based on 280 businesses that had been contacted.

Ms. Rocio Lamb, Chief of Revenue Administration, clarified that there were approximately 210 out of county contractors that would pay the \$50, as of May 17 when the data was gathered, and in running the report again July 1, the number decreased to 145, 78 of which already were paying for their license.

Mr. Sheffield noted that the \$10,000 does not take into account those who are not paying taxes on the \$75,000 difference, which is about \$120 in revenue.

Mr. Randolph thanked Ms. Burrell for her memo sent the previous day, and said that it will be beneficial to have the County Attorney's Office and Communications Office look at correspondence prior to mailing and he urged her to look at the dunning letters that go out when someone has failed to make a payment, as the tone of the letters should not assume that a person has intentionally not paid. He also recommended that an explanation be provided to recipients of refund checks, as his wife recently received a refund and did not know why, and had also previously received a dunning letter. Ms. Burrell responded that the memo section of the refund check is supposed to contain information and provide this and she would look into why the checks did not include this.

The Chair opened the meeting for public comments.

Mr. Scott Watkins, a landscape contractor, addressed the Board regarding the ordinance amendment after reading about it in the newspaper, and said that this seems to be a case of "government myopia. He said that rather than being concerned with \$50 for out-of-town contractors, they should question the existence of the BPOL tax. Mr. Watkins explained that the origin of the BPOL was to fund the War of 1812, and localities have become addicted to this tax. He stated that the Board should look at the BPOL tax and consider its fairness to small businesses, and if they tried to assess a tax on the general citizenry on gross income, there would be an uproar, but because the small business lobby is small, the tax continues. Mr. Watkins emphasized that they are missing the boat with the \$50 fee for out-of-town contractors, as the County is a difficult place to do business and gave his personal example as well as that of another local business. He stated that they should look to ways to make it easier to do business in the County, and find a way to keep businesses and contractors in the County.

There being no further public comment, the Chair closed the item for public comment.

Mr. Kamptner clarified that the license fee pertains to out-of-town contractors who do \$25,000-\$100,000 of businesses, as a flat fee of \$50, whereas the license tax pertains to those who exceed that amount. He noted that this ordinance is really just a language change to provide more clarity.

Ms. McKeel asked if this essentially levels the playing field for contractors operating within the County. Mr. Kamptner responded that in-county contractors' license fees kicks in at \$5,000, but this amendment lowers the threshold to the minimum allowed by state law for out-of-county contractors, and said that this brings those two closer, but not completely level.

Mr. Sheffield stated that the Board is always challenged with finding additional revenue and he appreciates staff's work in that regard, but he is wrestling with the actual benefit this provides.

Ms. Palmer said she is always wrestling with their dependence on these small taxes and the way the state pushes these things down to localities, and if they have an income tax, she would be happy to abandon BPOL and all of the other small taxes.

Mr. Foley stated that staff has analyzed whether this put them at a competitive disadvantage, but determined that they are not in comparison to other localities, which was the original concern that the Economic Development Office had.

Mr. Dill said the issue is having the tax at all, and this is part of a bigger issue in economic development, noting that there are staff costs involved in the administration related to this \$50 tax. He added that the entire thing is frustrating and annoying to the small business owner to have to remember to file the paperwork, and he would vote against it in protest.

Mr. Randolph commented that he is happy to see the County now in parallel with the Town of Scottsville

Ms. Mallek **moved** to adopt the proposed ordinance amending Chapter 8 of the Albemarle County Code. The motion was **seconded** by Ms. McKeel

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

AYES: Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.

NAYS: Mr. Dill and Mr. Sheffield.

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

#### **ORDINANCE NO. 16-8(1)**

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 8, LICENSES, 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 8, Licenses, of the Code of the County of Albemarle, Virginia, is hereby amended and reordained as follows:

##### **By Amending:**

Sec. 8-402	License fee.
Sec. 8-406	Penalty on delinquent license tax or license fee.
Sec. 8-502	Assessment when license tax not assessed or under-assessed; fraudulent intent.
Sec. 8-600	Alcoholic beverages.
Sec. 8-603	Contractors, developers, electricians, plumbers, steamfitters and speculative builders.

##### **By Repealing:**

Sec. 8-403	Proration of license tax based on a flat rate for beginning businesses.
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##### **By Adding:**

Sec. 8-620	Federal research and development contractors.
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#### **CHAPTER 8. LICENSES**

##### **ARTICLE IV. LICENSE TAX AND LICENSE FEE**

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##### **Sec. 8-402 License fee.**

Each person required to obtain a license, who is not required to pay a license tax based on gross receipts or gross expenditures, shall pay a fee of fifty dollars (\$50.00). The license fee shall be paid with the license application.

(Ord. 96-11(1), 11-13-96, § 11-4.2; Code 1988, § 11-4.2.; Ord. 98-A(1), 8-5-98)

**State law reference**--Va. Code § 58.1-3703.

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##### **Sec. 8-406 Penalty on delinquent license tax or license fee.**

A penalty of ten percent (10%) of the tax shall be imposed upon the failure to file an application or the failure to pay the license tax or the license fee by the appropriate due date, subject to the following:

A. If additional taxes are determined to be due as provided in section 8-501, but the director of finance determines that the license application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the person, a late payment penalty shall not be imposed on the additional tax, except as provided in paragraph (B).

B. If any taxes assessed by the director of finance as provided in section 8-500 or 8-501 are not paid within thirty (30) days, the director of finance shall impose the penalty.

C. A penalty shall not be imposed, or if imposed, shall be abated by the director of finance if the failure to file or pay was not the fault of the person. In order to demonstrate lack of fault, the person must show that he acted responsibly and that the failure was due to events beyond his control.

1. The term "acted responsibly" means that: (i) the person exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; and (ii) the person undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions where applicable, attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

2. The term "events beyond the person's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the person's reasonable reliance in good faith upon erroneous written information from the director of finance, who was aware of the relevant facts relating to the person's business when he provided the erroneous information.

D. If an assessment of additional or omitted tax by the director of finance is found to be erroneous, the penalty imposed and collected on the amount of the assessment found to be erroneous shall be refunded to the person, together with interest on the refund from the date of payment or the due date, whichever is later.

(3-15-73, § 7; 4-21-76; 3-10-82; 4-13-88; 4-20-88; Ord. 3-20-91; Ord. 94-11(9), 8-3-94; Ord. 96-11(1), 11-13-96, § 11-12; Code 1988, § 11-12; Ord. 98-A(1), 8-5-98)

**State law reference**--Va. Code § 58.1-3703.1.

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## **ARTICLE V. CORRECTION OF TAX ASSESSMENTS**

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### **Sec. 8-502 Assessment when license tax not assessed or under-assessed; fraudulent intent.**

If the director of finance determines that a person has fraudulently, or with intent to evade the payment of proper license taxes, failed or refused to obtain a proper license as required by this chapter, for any one or more of the six (6) license years last past, or for the then current license year, and the liability therefor is ascertained, the omitted or additional license tax and the penalty and interest provided by this chapter shall be assessed for each and every year of the six (6) license years last past and for the current license year, for which he was assessable. The failure to obtain such license as is required by the provisions of this chapter shall be taken as prima facie evidence of an intent to evade such taxes.

(3-15-73, §§ 16, 18, 19; 4-21-76; Ord. 96-11(1), 11-13-96, § 11-15; Code 1988, § 11-15; Ord. 98-A(1), 8-5-98)

**State law reference**--Va. Code § 58.1-3903.

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## **ARTICLE VI. SCHEDULE OF TAXES**

### **DIVISION 1. GENERALLY**

#### **Sec. 8-600 Alcoholic beverages.**

Each person engaged in the following alcoholic beverage businesses shall be subject to the applicable license tax, and other provisions, set forth herein:

A. The following annual tax rates shall apply:

1. For each distiller, if more than 5,000 gallons but not more than 36,000 gallons manufactured during such year, seven hundred fifty dollars (\$750.00); if more than 36,000 gallons manufactured during such year, one thousand dollars (\$1,000.00); and no license shall be required for any person who manufactures not more than five thousand (5,000) gallons of alcohol or spirits or both during the license year.

2. For each winery, fifty dollars (\$50.00).

3. For each brewery, if not more than 500 barrels of beer manufactured during the year in which the license is granted, two-hundred fifty dollars (\$250.00), and if more than 500 barrels of beer manufactured during the year in which the license is granted, one thousand dollars (\$1,000.00).

4. For each bottler, five hundred dollars (\$500.00).

5. For each wholesale beer distributor, seventy-five dollars (\$75.00).



6. For each wholesale wine distributor, fifty dollars (\$50.00).
  7. For each retail on-premises wine and beer license for a hotel, restaurant or club, and for each retail off-premises wine and beer license, thirty-seven dollars and fifty cents (\$37.50).
  8. For each retail on-premises beer license for a hotel, restaurant or club, and for each retail off-premises beer license, twenty-five dollars (\$25.00).
  9. For each fruit distiller, five hundred dollars (\$500.00).
  10. In addition to the foregoing for each license issued to a hotel, restaurant or club for the sale of mixed alcoholic beverages, as defined in Title 4.1 of the Code of Virginia, and acts amendatory thereto, the tax shall be two hundred dollars (\$200.00) for areas seating fifty (50) to one hundred (100) persons; three hundred fifty dollars (\$350.00) for areas seating one hundred (100) to one hundred fifty persons (150); five hundred dollars (\$500.00) for areas seating more than one hundred fifty persons (150+) and three hundred fifty dollars (\$350.00) for nonprofit clubs.
- B. For purposes of this section, the term "beer" includes porter, ale, stout and other malt beverages, but not vinous beverages.
- C. No license shall be issued to any person under the provisions of this section unless the applicant therefor holds at the same time, or simultaneously procures, a state license from the alcoholic beverage control board.
- D. All dining rooms, restaurants, lunchrooms and club rooms, wherein the beverages defined in this section are sold for consumption on the premises, shall at all times be open to inspection by the state police and the police authorities of the county. Any store, room or other building from which deliveries are made either at wholesale or retail by bottlers, wholesalers or retailers shall at all times be open to the inspection of state police and the police authorities of the county.

(3-15-73, § 25; 4-21-76; Ord. 96-11(1), 11-13-96, § 11-27; Code 1988, § 11-27; Ord. 98-A(1), 8-5-98; Ord. 14-8(1), 9-3-14; Ord. 15-8(1), 7-1-15)

**State law reference**--Va. Code § 4.1-233.

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#### **Sec. 8-603 Contractors, developers, electricians, plumbers, steamfitters and speculative builders.**

Each person engaged as a contractor, developer, electrician, plumber, steamfitter or speculative builder shall be subject to a license tax, and other provisions, as set forth herein:

- A. Each contractor, developer, electrician, plumber, steamfitter or speculative builder shall be subject to a license tax of sixteen cents (\$0.16) for each one hundred dollars (\$100.00) of gross receipts from the business conducted during the preceding fiscal or calendar year.
- B. Each person engaged in the business of a contractor shall include in his gross receipts all work done, whether such work is done by contract, subcontract, day labor or time and material.
- C. Each contractor who has paid a local license tax or fee to another locality in which his principal office or branch office is located shall be exempt from obtaining a license and from paying a the applicable license tax or fee to this county, as provided in sections 8-101 and 8-402, for conducting any such business within this county unless the amount of business done by any such person in this county is equal to or greater than twenty-five thousand dollars (\$25,000.00) but less than one hundred thousand dollars (\$100,000.00), in which case the person shall be subject to the license fee provided in section 8-402, and if the amount of business done in this county is equal to or greater than one hundred thousand dollars (\$100,000.00), the person shall be subject to the license tax provided in section 8-101 at the rate established in subsection (A) of this section. The amount of business done in the other locality in which the license tax or fee is paid may be deducted by the person from the gross receipts reported to this county. The director of finance shall have the power to require such periodic reports as he may deem necessary of all persons claiming exemption under this paragraph.

(3-10-82; Ord. 96-11(1), 11-13-96, § 11-55; Code 1967, § 11-14; 3-10-82; Ord. 96-11(1), 11-13-96, § 11-58; Code 1988, §§ 11-55, 11-58; Ord. 98-A(1), 8-5-98)

**State law reference**--Va. Code §§ 58.1-3714, 58.1-3715.

#### **DIVISION 4. PERSONAL, PROFESSIONAL, BUSINESS, AMUSEMENT OR REPAIR**

##### **SERVICE BUSINESS, OCCUPATIONS AND PROFESSIONS**

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**Sec. 8-620 Federal research and development contractors.**

Each person, person, firm, or corporation designated as the principal or prime contractor receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences in the county shall be subject to a license tax of three cents (\$0.03) per each one hundred dollars (\$100.00) of such federal funds received in payment of such contracts upon documentation provided by such person, firm or corporation to the director of finance confirming the applicability of this subsection.

**State law reference**--Va. Code § 58.1-3706(D).

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Agenda Item No. 16. **Discussion:** Rental By Owner (RBO) Business License Requirements Update.

Ms. Palmer invited Ms. Burrell to address the Board regarding the rental tax letter that was recently sent to owners of rental properties.

Ms. McKeel acknowledged some good points made by Board members during their discussion about the amendment just passed, and asked members for input as to a future discussion regarding the larger picture of taxation beyond BPOL. Ms. Palmer responded that they could, but the BPOL tax really does provide a significant amount of income.

Mr. Sheffield asked staff if they know how much revenue it provides. Ms. Burrell clarified that it provides \$10.6 million annually.

Mr. Foley said that staff will provide information as to how the County compares to other jurisdictions as part of their economic development plan analysis, to be presented to the Board on July 26 for review and discussion.

Mr. Sheffield asked Ms. Burrell how long it will be before they can gauge the increase of the revenues received as a result of the new fee. Ms. Burrell speculated that it would be a year and will look into potentially coding out of County license fees separately so that they can provide this information.

Mr. Sheffield requested an update in one year regarding the revenue impact of the new fees. Ms. Burrell stated that Finance has a new computer system and may be able to code out-of-county licenses to more efficiently track them.

Ms. McKeel commented that she was pleased to know they would be discussing the bigger picture as part of their economic development efforts rather than just piece-mealing it.

Ms. Palmer asked Ms. Burrell to provide an update on business license requirements. Ms. Burrell reported that there were 135 letters sent to residential property owners who had not applied for or received a business license, who were identified by comparing Schedule E returns filed with Virginia Department of Taxation. Ms. Burrell explained that the letters stated that the County could not identify an active business license and requested more information, and she noted that schedules C, D, E, and F are provided to jurisdictions in the state from the Department of Taxation. She stated that there are very strict regulations related to confidentiality of those records, with everyone in Finance required to sign a confidentiality agreement and special training done with staff.

Ms. Burrell reported that the County has enforced the rental by owner (RBO) code for some time, and it has been on the County's books since 1973, providing that "each person as principle engaged in the business of renting houses, apartments, or commercial property in the county, shall be subject to the license tax." She noted that the language also stipulates that this applies to buildings or a portion thereof, designated exclusively to residential occupancy, including single family and multi-family dwellings. Ms. Burrell stated that rental property owners whose gross receipts from rentals exceed \$5,000 but are less than \$100,000 must pay a \$50 annual fee. Ms. Burrell noted that due to statute of limitations, the County can only go back six years in its collections, for any year where gross receipts exceeded \$5,000. She said that staff would prepare a follow-up letter with clarifying language indicating that the property owner has until October 31, 2016 to provide the requested information, and if a tax is assessed it will be done on November 5 and they will have until December 5 to pay the taxes. Ms. Burrell stated that the department's communication plan includes having any correspondence of 100 mail pieces or more reviewed by the County Attorney's Office and the Communications Department to ensure they put it in plain language for the receiving audience, to clear up any possible miscommunication.

Ms. Mallek asked how it is determined who will receive the letter as there are thousands of rental properties in the County, yet only 135 letters were sent. Ms. Burrell replied that it is determined by determining those who filed Schedule E forms but did not have a business license in Albemarle, and said that as it pertains to RBO, staff looks at Schedule Es and determines which individuals do not also have the license.

Ms. Palmer asked if there are already a lot of people paying this. Ms. Rocio Lamb confirmed that there are, and said the state provides the Schedule E returns on a monthly basis, so in the future more letters will be going out to property owners on an ongoing basis, and this would be true for other

businesses as well that do not have a license, as identified by Schedule C and Schedule D forms.

Ms. McKeel said there is a lot of misinformation that people are arbitrarily being selected, and she has spoken with constituents who have owned properties for many years and this is the first time they have been sent a letter about the fee.

Ms. Mallek commented that people who had notified her have owned properties since the 70s and have asked very direct questions about rentals but were told not to worry about it, so her concern is that the County should not assume that people intentionally skipped paying this tax, given that up to now the County has not done a very good job of explaining this to constituents. Ms. Burrell responded that customer service is very important and Finance will do a better job of communicating with these property owners, and staff tries to be cognizant of their tone, but they are also aware that there is a small percentage of people who play “catch me if you can.”

Ms. Mallek asked if the flat fee applies to up to \$100,000 in rent receipts, and there seems to be a discrepancy in the seven years of documents requested, as the code stipulates three years. Ms. Burrell explained that they will go back seven years including this year, so some will be assessed \$350 total to cover seven years, pertaining to those with \$5,000–\$100,000 of rental revenue annually.

Ms. Mallek expressed her opinion that it is not fair to assess the fee retroactively for seven years since there had been no educational program or prior notice to renters about the fee. Ms. Burrell responded that she does not have discretion as the code uses the word “shall” and not “can” in terms of assessing the back fees, and if the County had the ability to forgive, they could certainly consider it, but the current code does not provide the authority to adjust the timeframe.

Mr. Dill asked if the Board has the ability to make the policy decision that they would not ask for taxes retroactively beyond two years. Ms. Mallek responded that it had not been enforced for 25 years, which is what makes this difference.

Mr. Kamptner said that Section 8-500 applies to collection of back taxes where they have not been assessed, and 8-502 applies when there is evidence of fraud or intent to evade, and the question is whether those two provisions apply to this particular situation.

Ms. Mallek commented that she does not see how people can be billed for this when the County has not sent them an assessment in seven years.

Mr. Sheffield expressed his opinion that taxes are a general responsibility of living in this country and gave a personal example of when he was young and had failed to file tax returns but still had to pay back taxes.

Mr. Andy Herrick, Senior Assistant County Attorney, said that the County nor the Board has the authority to waive collection of erroneously under-assessed taxes, and staff will need to look into what the appropriate statute of limitations is.

Mr. Kamptner mentioned that the penalty can be waived in very limited circumstances when it is at no fault of the taxpayer, and that is very narrowly defined in the County Code based on a number of attorney general opinions developed over the years, with the state having interpreted those exceptions quite narrowly.

Mr. Herrick stated that a bill only becomes late after it is generated, so there is no penalty and interest assessed unless that bill is unpaid, it is not based on the date the tax assessment period started.

Ms. Mallek said that she had performed a Google search that indicated the statute of limitations was three years, so there seems to be confusion about this, and also pointed out that none of these rental owners had received any kind of notice, as personal property taxpayers do.

Mr. Kamptner stated that penalties and interest can be waived if the delinquency is not the fault of the taxpayer.

Ms. Burrell explained that the purpose of delaying the filing deadline until October is to give the property owners a lot of time before the County makes an assessment, and once that assessment is made, the property owner will have 30 days. She said that property owners will go through their records and file by October 31, with staff making an assessment in November and payment due by December, so recipients will have time to comply without any penalties if they file within the 30-day period.

Ms. Palmer requested that the Board be notified once the statute of limitations has been determined to be three or six years.

Mr. Sheffield asked if there is a way for the County Attorney's Office to determine if the County is at fault, so the fees can be waived.

Ms. Mallek commented that it might have been done verbally, by former staff telling property owners that they did not have to pay.

Mr. Foley suggested that the County Attorney's Office clarify all of those details, including waiver possibilities and the number of years allowable under the statute of limitations.

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

Agenda Item No. 17. **Public Hearing: PROJECT: SP-2015-00031. Salam LLC – Motor Vehicle Sales.**

MAGISTERIAL DISTRICT: Rio.

TAX MAP/PARCEL: 061W0020A00200.

LOCATION: 1189 Seminole Trail. East side of Seminole Trail (Rt. 29), 200 feet south of intersection with Greenbrier Drive (Rt. 866).

PROPOSAL: To permit the sale of motor vehicles associated with existing auto repair shop and proposed body shop.

PETITION: Motor vehicle sales in communities and the urban area as designated in the Comprehensive Plan under Section 22.2.2(8) of the Zoning Ordinance. No dwelling units proposed. Concurrent with SP application SP201500034.

ZONING: C1 – Commercial, which allows retail sales and service; residential by special use permit (15 units/ acre).

ENTRANCE CORRIDOR: Yes.

AIRPORT IMPACT OVERLAY: Yes.

COMPREHENSIVE PLAN: Urban Mixed Use (in Centers) – retail, residential, commercial, employment, office, institutional, and open space and Urban Density Residential – residential (6.01 – 34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses within Places29 Master Plan.

*(Advertised in the Daily Progress on June 27 and July 4, 2016).*

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Agenda Item No. 18. **Public Hearing: PROJECT: SP-2015-00034. Salam LLC – Body Shop.**

MAGISTERIAL DISTRICT: Rio.

TAX MAP/PARCEL: 061W0020A00200.

LOCATION: 1189 Seminole Trail. East side of Seminole Trail (Rt. 29), 200 feet south of intersection with Greenbrier Drive (Rt. 866).

PROPOSAL: To permit a body shop in conjunction with the existing auto repair shop and proposed motor vehicle sales.

PETITION: Body shop under Section 22.2.2(12) of the Zoning Ordinance. No dwelling units proposed. Concurrent with SP application SP201500031.

ZONING: C1 – Commercial, which allows retail sales and service; residential by special use permit (15 units/ acre).

ENTRANCE CORRIDOR: Yes.

AIRPORT IMPACT OVERLAY: Yes.

COMPREHENSIVE PLAN: Urban Mixed Use (in Centers) – retail, residential, commercial, employment, office, institutional, and open space and Urban Density Residential – residential (6.01 – 34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses within Places29 Master Plan.

*(Advertised in the Daily Progress on June 27 and July 4, 2016).*

The Executive Summary presented to the Board stated that at its meeting on May 3, 2016, the Planning Commission voted 6:0 to recommend approval of SP201500031 (Motor Vehicle Sales) and SP201500034 (Body Shop) with conditions.

Attachments B, C and D are the Planning Commission's action letter, staff report, and minutes from the May 3, 2016 meeting. Since the Planning Commission meeting, the County Attorney has made a few technical corrections to the proposed conditions for both SP201500031 (Motor Vehicle Sales) and SP201500034 (Body Shop). These changes improve the clarity of the existing conditions and are not substantive.

Staff recommends that the Board adopt the attached Resolution (Attachment A) to approve SP201500031 (Motor Vehicle Sales) and SP201500034 (Body Shop) with the conditions attached thereto.

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Ms. Palmer invited Mr. J.T. Newberry, County Planner, to speak about the proposed Salam LLC Motor Vehicle Sales and Body Shop.

Mr. Newberry reported that the applicant had mandatory pre-application meetings in early and mid-2015 and submitted their application in December 2015, with the required community meeting held during the Places 29-Hydraulic Community Advisory Committee meeting on January 11, 2016.

Mr. Newberry presented an enlarged area map of the proposed location, noting that they will be focusing on the rear portion of the site, and he referenced the applicant's concept plan with customer parking area, a sales area, and storage area, as well as vehicle storage area. Mr. Newberry pointed out the front of the building where the applicant currently has his auto repair business and the sales area for vehicles outside of the fence. He noted the location of the realigned Hillsdale Drive location and pointed out the existing visibility obscured by development on the site.

Mr. Newberry cited favorable factors as: the request is consistent with the comprehensive plan, and the proposed plan will utilize an existing building, which provides for a more economical use of the

land; and said that the one unfavorable factor related to the consolidation of entrances along Route 29. He stated that at the proposed site and scale, staff recommends approval of both special use permit requests, subject to the following conditions: use of the site shall be in general accord with the concept plan; not more than five vehicles may be made available for sale at any time, and not more than five vehicles may be stored for body shop work at any time.

Mr. Randolph stated that the Planning Commission approved the limit on five vehicles stored outdoors for sale, but staff's special use permit conditions stipulate that the vehicles may be available for sale or may be stored for body shop work at any time. He stated the proposal only addresses the number of vehicles that may be displayed for sale or worked on outside, but does not address whether vehicles may be stored inside, and his opinion is that the owner should be provided flexibility and allow him to store extra vehicles above the five vehicle limit inside. Mr. Newberry said the resolution reflects the outdoor language.

Mr. Kamptner stated that it actually does not and it was left out for some reason, and said that the Board can amend this.

Ms. Mallek said that there may be more cars at a given time with people coming and going, and stated that she does not want to put someone in a position where they cannot succeed because the limit is too tight.

Mr. Dill stated that five seems like such a small number, and he asked staff how that was derived. Mr. Newberry replied that the vehicle limit has to do with VDOT preferences to limit the number of entrances, as they wanted the applicant to just create one entrance at the center of the site, and Mr. Altallal will describe how the five vehicle limit would work and will explain why consolidation of entrances would not be necessary.

Ms. Mallek asked if there is a different landowner for the front whose property would be involved in the consolidation. Mr. Newberry responded that all three buildings are rented for different tenants, so there is one owner for the property, and his understanding is that the owner does not want to do any improvements.

Ms. McKeel commented that this has been the case for many years.

Mr. Randolph emphasized that the property has been approved for both commercial, but the property behind it is light industrial use, which the subject property also had been at one point. He stated that by approving the proposed resolution they will be taking away property for light industrial along Route 29, although he does support Mr. Altallal's application.

The Chair opened the public hearing.

Mr. Salam Altallal explained how he decided to go into the business of having a dealership, and he needs to work on four or five cars to make his business viable, and said he often purchases vehicles from dealerships for his business of transporting handicapped individuals. He stated that he feels he is overcharged and can buy vehicles himself at auction and use them for the business, noting that he would mainly be buying vehicles to use in his business. Mr. Altallal stated that only a portion would be sold to the public, and those sold would be vehicles that he can no longer use in his business of transporting of wheelchair-bound individuals.

Ms. Palmer asked Mr. Altallal if he is satisfied with the vehicle limit as presented in the condition. Mr. Altallal replied that he is.

Mr. Randolph asked Mr. Altallal for a chronology of events leading to his application to the County for a business license. Mr. Altallal replied that it was about three years ago that he moved from Charlottesville to Albemarle County, and said that he is confused about the question.

Mr. Newberry interjected that the application process started in early 2015, when Mr. Altallal came to the County to expand further from the existing auto repair shop.

Mr. Randolph noted that it had been almost a year and a half.

Mr. Altallal replied that it is one year, three months.

Mr. Randolph commented that the County needs to do much better than that.

There being no other comments from the public, the public hearing was closed.

Mr. Newberry noted that staff and the applicant had looked at several different ways to accomplish the request, which added to the time.

Mr. Kamptner read the revised conditions to clarify that the vehicle limit of five applied to outdoor sale of vehicles at any time, as well as five auto body shop vehicles.

Mr. Sheffield **moved** to adopt the proposed resolution approving SP 2015-31 Salam LLC – Motor Vehicles and SP 2015-34 Salam LLC – Body Shop. The motion was **seconded** by Ms. Palmer.

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

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph and Mr. Sheffield.  
NAYS: None.

**(The adopted resolution and conditions are set out below:)**

**RESOLUTION TO APPROVE  
SP 2015-31 SALAM LLC - MOTOR VEHICLE SALES  
AND SP 2015-34 SALAM LLC - BODY SHOP**

**WHEREAS**, RMD Properties, LLC (the “Owner”) is the record owner of Tax Map and Parcel Number 061W0-02-0A-00200 and the three buildings located thereon (collectively, the “Property”); and

**WHEREAS**, Salam Altallal (the “Applicant”) leases one of the buildings at the back of the Property in which he runs the C’ville 29 Auto Repair shop; and

**WHEREAS**, the Applicant submitted applications for Special Use Permits to permit the sale of motor vehicles and a body shop in conjunction with the auto repair shop, and the applications are identified, respectively, as Special Use Permit 2015-00031 Salam LLC – Motor Vehicle Sales (“SP 2015-31”) and Special Use Permit 2015-00034 Salam LLC – Body Shop (“SP 2015-34”); and

**WHEREAS**, on May 3, 2016, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2015-31 and SP 2015-34 with conditions; and

**WHEREAS**, on July 13, 2016, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2015-31 and SP 2015-34.

**NOW, THEREFORE, BE IT RESOLVED** that, upon consideration of the foregoing, the staff report prepared for SP 2015-31 and SP 2015-34 and all of its attachments, the information presented at the public hearing, and the factors relevant to a special use permit in Albemarle County Code §§ 18-22.2.2(8), 18-22.2.2(12), and 18-33.8, the Albemarle County Board of Supervisors hereby approves SP 2015-31 and SP 2015-34, subject to the applicable performance standards for the body shop use in Albemarle County Code § 18-5.1.31, and the conditions attached hereto.

\* \* \* \*

**SP-2015-31 Salam LLC – Motor Vehicle Sales  
and SP 2015-34 Salam LLC – Body Shop  
Special Use Permit Conditions**

1. Use of the site shall be in general accord with the concept plan “Concept Plan for Salam, LLC” dated May 3, 2016, as determined by the Director of Planning and the Zoning Administrator. To be in general accord with this plan, development and use of the site shall reflect the general size, arrangement and location of the sales area, parking area for sales vehicles and parking area for body shop vehicles. Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.
2. Not more than five (5) vehicles may be made available for sale outdoors at any time.
3. Not more than five (5) vehicles may be parked or stored outdoors for body shop work at any time.

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**Recess.** The Board recessed at 7:43 p.m., and reconvened at 7:53 p.m.

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Agenda Item No. 19. **Public Hearing: ZMA-2016-00003. Out of Bounds cash proffer amendment.**

MAGISTERIAL DISTRICT: Jack Jouett.

TAX MAP/PARCEL: 06000000006500; 060L0000501900; 060L0000502000; 060L0000502100; 060L0000502200; 060L0000502300; 060L0000502400; 060L0000502500; 060L0000502600; 060L0000502700; 060L0000502800; 060L0000502900; 060L0000503000; 060L0000503100; 060L0000503200; 060L0000503300; 060L0000503400; 060L0000503500; 060L0000503600; 060L0000503700; 060L0000503800; 060L0004A00400; 060L0004A00500; 060L0004A00600.  
LOCATION: Located on Barracks Road (Route 654) across from its intersection with Georgetown Road (Route 656). 225 Out of Bounds Road, Charlottesville, Virginia 22901.

PROPOSAL: Reduce cash proffer amount from ZMA201500005.

PETITION: Request to amend proffers on property zoned NMD Neighborhood Model District - residential (3 – 34 units/acre) mixed with commercial, service and industrial uses.

OVERLAY DISTRICT: Entrance Corridor (EC); Airport Impact Area (AIA).

PROFFERS: YES.

COMPREHENSIVE PLAN: Neighborhood Density Residential- residential (3-6 units/acre); supporting uses such as religious institutions, schools, and other small-scale non-residential uses in Neighborhood 7.

*(Advertised in the Daily Progress on June 27 and July 4, 2016).*

The Executive Summary presented to the Board stated that at its meeting on April 26, 2016, the

Planning Commission voted 7:0 to recommend denial of ZMA201600003, due to the fact that the cash proffered by the applicant and accepted by the Board when the property was originally rezoned was consistent with the cash proffer policy and was a reasonable condition intended to address the impacts from the rezoning.

Attachments A, B, and C contain the Planning Commission's action letter, staff report and minutes from the April 26, 2016 meeting. Since the Planning Commission meeting, the cash proffer policy was repealed by the Board of Supervisors on June 8, 2016.

The County Attorney has prepared the attached Ordinance (Attachment D) for adoption should the Board wish to approve the rezoning and accept the amended proffers.

The Planning Commission recommends that ZMA201600001 be denied. However, if the Board wishes to approve this ZMA, staff recommends that the Board adopt the ordinance to approve ZMA201600003 in Attachment E.

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Ms. Megan Yaniglos, Principal Planner, reported that Out of Bounds is a neighborhood model development approved in December 2013, containing a maximum of 56 units including single-family attached townhouses, eight affordable units, and an existing single-family historic home. She said that some of the development had been built, but the majority had not yet been built, and she noted the location of the property off of Barracks Road and Georgetown Road Extended. She said at the time of the rezoning, the applicant offered cash proffers of \$20,460.51 for each single-family detached unit and \$13,913.18 for each single family attached or townhouse unit. Ms. Yaniglos reported that with ZMA 2016-03, the applicant requests changes to the cash proffer amounts to \$4,918 for each single-family detached unit and \$3,845 for each single-family attached or townhouse unit.

Ms. Yaniglos stated that this review and recommendation was done at a time when the County had a cash proffer policy, as well as a recommendation from the Fiscal Impact Advisory Committee. She said that since the Planning Commission meeting, the cash proffer policy has been repealed, and staff's recommendation is to align with the recommended amounts. Ms. Yaniglos stated that favorable factors include: the applicant's requested cash proffer amounts would be consistent with the Capital Improvements Program (CIP) and Capital Needs Assessment (CNA), and would be consistent with the amounts recommended by the Fiscal Impact Advisory Committee (FIAC). She stated that the cash proffer by the applicant and accepted by the Board when the property was originally rezoned was consistent with the cash proffer policy and was a reasonable condition at the time, intended to address the impacts from the rezoning.

She said the Planning Commission's recommendation is to deny this request, with a vote of 7-0, and the Board's options are to deny the request, approve the amendment, or request consideration of a different per-unit proffer amount based on further study.

Ms. Palmer invited questions.

Mr. Randolph asked why the staff report summary indicates that staff "must" recommend approval rather than just saying staff recommends approval, as he has never seen the word "must" used in a report.

Mr. David Benish, Acting Director of Planning, stated the recommendation was based on advice for new numbers approved by FIAC, which were estimated for the cash proffer policy when it was in place, and the language urged that the numbers be approved as a result of changes made to the law in 2013. He said this is still the recommendation from staff and conceded that strong language was used, although it is the Board's prerogative to decide based on the options outlined.

Mr. Randolph expressed his view that the lowered proffer amount request is based upon a per-capita multiplier technique that does not take into consideration several demographic changes, such as the move of some low-income residents from Charlottesville to Albemarle's urban ring, millennial demographic changes, and a plan to construct a new high school. He said the Cost Revenue Impact Model (CRIM) analysis technique is the least accurate cost estimation method available and tends to leave out the full measure of services. Mr. Randolph stated that he believes the analysis used to determine the proffer amounts is based upon a flawed technique that does not take into consideration the full range of cost variables over the next four years, and the future cost of development.

Mr. Benish responded that the analysis was based upon an evaluation of capacity-enhancing projects in the CIP, and recent CIPs have included primarily maintenance projects, not those that build capacity. He agreed that there are current needs that were not captured by the process at the time, but the process was following the constraints of the state code in terms of the calculations used to come up with the new FIAC numbers.

Mr. Randolph said that state code does not require inclusion or exclusion of certain variables, and the per-capita multiplier technique in the CRIM analysis holds constant the estimated costs of various public services, the composition of the population in the urban ring, and the distribution of expenditures. He stated that if the Board follows staff's advice they must approve this, they will be approving a tool that is seriously underestimating a whole range of variables and did not include qualitative variables such as quality of life or protection of natural resources, and did not take into account costs of development such as water and sewer lines.

Mr. Kamptner replied that the use of “must” was unfortunate, but staff felt compelled to make their recommendation based upon the cash proffer policy in effect and the FIAC committee’s recommendation. He emphasized that the landscape has completely changed now as the cash proffer policy is no longer in effect, and that policy had been tied to projects in the CIP, but the enabling authority for proffers stipulates that projects do not have to be tied to the CIP, so that analysis was essentially reopened.

Mr. Randolph once again discussed his dislike of the term “must” and said that it makes him feel pressured to have to recommend something he does not feel comfortable with.

Ms. Yaniglos pointed out that she did not change the recommendation between the Planning Commission and the Board, and noted that the cash proffer has been repealed and the recommendation had been made when they had a cash proffer policy.

Ms. Mallek asked Mr. Kamptner to clarify that they were following the rules in existence at the time when this particular rezoning was done. Mr. Kamptner explained that the state law in issue is an amendment to state law effective July 1, 2013, which says that cash proffers for existing capital improvements had to be used to expand capacity and not for operating expenses. He said that since that date, staff has not used proffers received for the purposes now prohibited, and confirmed that they are following the new rules. He emphasized that the cash proffer amount in the cash proffer policy was always stated as a maximum, with several variables, and applicants could make the case that they could proffer a lesser amount. Mr. Kamptner added that most applicants proffered the maximum amount, but the option was there for them to state their case for a lesser amount.

Ms. Mallek stated that there are more than enough projects in the CIP and CNA to be able to validate the numbers being used, and she does not think the Board had acted on the recommendations of the FIAC committee, so there is an existing number that has not changed.

Mr. Kamptner said that is true, and said that more work needs to be done by the Commission and the Board regarding FIAC’s recommendations.

Mr. Randolph asked Mr. Kamptner if the agreements on the proffers were voluntarily entered into. Mr. Kamptner replied that the County’s standard proffer statement form, which is signed, includes statements that the proffers are voluntarily given and the developer agrees that the proffers are reasonable.

Mr. Randolph asked if they are signed with free will. He asked Mr. Kamptner if there is a doctrine respecting the sanctity of contracts, constitutionally in Virginia and the United States. Mr. Kamptner replied in the affirmative.

Mr. Randolph asked if contracts are “sacred.” Mr. Kamptner replied that proffer statements are not contracts, and are offered by the owner and accepted by the Board and become part of the zoning regulations that apply to the property. He stated that unlike most contracts, the proffers run with the land.

Ms. McKeel addressed Mr. Kamptner and stated that she finds this change with the “must” language very confusing and unfortunate. Mr. Kamptner agreed that the use of the word “must” was unfortunate, and stated that the Board is not compelled to follow staff’s recommendation, which was made under different factual circumstances.

Ms. Palmer opened the public hearing.

Ms. Valerie Long of Williams Mullen, representing the Barracks Height and its principle, Vito Cetta, addressed the Board.

Ms. Long stated that the record is very clear regarding staff reports prepared for the Planning Commission review of the application that at the time the cash proffer policy was in effect, the changes were consistent with the FIAC Committee and state law, and were deemed reasonable under the analysis. She said that the time the Fiscal Impact Committee was convened, it was all about fixing the formula, and the formula that the policy was based on included, from its inception in 2007, all the projects in the CIP, which has been a maintenance program for the past few years. Ms. Long said that since the state law was enacted in 2013, making it clear that those funds could not be used for projects that do not increase capacity, the formula was always based on the entirety of the CIP projects, which included many projects that did not increase capacity, and the formula and the numbers in the cash proffer policy state clearly what they are based on. She stated that it may well be that funds were used that way, but it is disingenuous to say that the proffer policy is in compliance with state law when it was based on a formula that generated numbers based on the entirety of the CIP project.

Ms. Long stated that she disagrees with Mr. Kamptner regarding his statement that the County was compliant with state law when it accepted these proffers. She said the cash proffer policy should have been immediately adopted when the state law changed on July 1, 2013 or shortly thereafter to adjust the formula to remove any references to projects that did not increase capacity. She said this may have resulted in lower numbers, and said that when the FIAC committee came up with lower numbers, there are statements in the record that clearly indicate the lower numbers would be compliant with state law and the higher numbers are not compliant.

Ms. Long stated that when the Planning Commission and the Board were considering repealing



the cash proffer policy there were statements in the public record indicating that there were two options: amend the proffer policy to include the new, lower numbers recommended by the FIAC Committee; or repeal the cash proffer policy and go back to the old way of evaluating projects on a case-by case-basis. She stated that even before the policy was repealed, there had been a case-by-case analysis of the Spring Hill project, which said that the lower proffer amount requested by the applicant were sufficient to offset the impacts caused by the project. Ms. Long stated that the applicant is requesting a similar analysis for Out of Bounds, but staff indicated they did not think it was worth their time as the CRIM model would generate the same numbers as the FIAC Committee. She said the numbers that would likely have resulted would have been higher if a case-by-case analysis had been done, but at a minimum the numbers proffered by the applicant are sufficient to offset the impacts of the proposed development. Ms. Long emphasized that the purpose of proffers is to mitigate the impact of the proposed development, and the numbers should be sufficient to offset impacts of the project and also be compliant with state law.

Ms. Long stated that Mr. Cetta is developing a wonderful project, and it has never been controversial. She said it is about complying with state law and if that is not enough, the applicant is appealing to the Board's sense of fairness and reasonableness. She said that at the time the original proffers were made, the proffer policy was not compliant with state law but the proffers were accepted anyway, and they should now be reduced to be consistent with the FIAC Committee's recommendations and compliant with state law. Ms. Long asked that the Board request approval of the zoning amendment.

Mr. Vito Cetta introduced himself as an architect and developer, and mentioned several projects he has built in the County based on a Neighborhood Model which were all unanimously approved by the Board and Planning Commission, with Wickham Pond being the most recent, including 22 affordable units. Mr. Cetta stated that he has invested in the County and supports the comprehensive plan, which constrains residential development to maintain rural areas, and he pointed out areas just outside of the urban area that look similar to how they looked many years ago. He said the only reason he is appealing the proffer amount is because he has been told the County is violating state law, not because he needs the money for Out of Bounds as it is already a successful project.

Mr. Neil Williamson of the Free Enterprise Forum addressed the Board, stating that he has told the Board multiple times that their proffer policy was in violation, and said the committee appointed by the Board to look at the issue had reported to them last February, but nothing has happened. Mr. Williamson stated that there were significant resources dedicated to this item. He said he does not have an opinion regarding the Out of Bounds case, but does have a position on process, and their planning process is broken.

Ms. Long addressed the Board and asked to review some statements she had made to make sure they are added to the record. She said that the January 26, 2016 executive summary on CPA 2105-002, Fiscal Impact Advisory Committee and Planning Commission Recommendation on Cash Proffer Policies, states: "The County may now only consider those projects that expand capacity. The change in the state code alone would necessitate the need to recalculate the figures in the cash proffer policy....The new numbers are dramatically lower due to the fact that the CIP/CNA is primarily a maintenance program. When the policy was originally developed, all facilities in CIP/CNA that served the development were included in calculating the proffer amount. Because now, only projects that expand capacity may be included and relatively few expansion projects are in this CIP/CNA, the amounts are significantly lowered."

In response to Mr. Randolph's comments about the shortcomings of the CRIM model, Ms. Long said she agrees that it is not a perfect formula, but it is the formula in place and has worked well enough for nine years. She emphasized that it is the only model they have, and it is the closest thing to anything anyone else has put forth as to how to measure projects on a case-by-case basis as required by state law.

Ms. Long read from the minutes of the August 5, 2015 Board of Supervisors regular day meeting, Agenda Item 12: Fiscal Impact Advisory Committee Recommendations on Cash Proffer Policy. She stated that there were some questions raised about the model, and Mr. Fritz of the Community Development Department had stated the following: "If they increase the number of eligible projects the numbers will go up, but the numbers of eligible projects now is smaller than it was when the policy was originally done, so if they increase the CIP and CNA capacity projects the numbers will change," and Mr. Foley had said, "Even with a more fully fleshed-out future impact to the CIP, they would be nowhere near the numbers they previously had. There had been some dramatic changes in state law in addition to reduced County investment." Ms. Long emphasized that the applicant is not trying to change the rules after the fact, but is trying to comply with the rules in effect at the time that should have been applied at the time.

Ms. Palmer closed the public hearing and invited discussion among the Board members.

Ms. Palmer asked Mr. Kamptner to respond to Mr. Cetta's comments that they are violating state law with the new proffer amount request.

Mr. Kamptner replied that his office disagrees with the assertion that the County was not in compliance with state law because the cash proffer amount was always a maximum amount, and the discussion of impacts addressed under the old policy was probably accurate, but that policy is no longer in place, and impacts are no longer tied to the CIP. He stated that there has been a disagreement dating back to July 1, 2013, when the law came into effect, and said that there is an estimate of 10-12 future potential challenges to the new proffer rules.

Mr. Benish stated that there are at least four in the pipeline.

Mr. Randolph emphasized that if they make a decision this evening this will frame and set policy for the status quo for all previous applications that have run through the Board. He stated that if they accept this, then they implicitly accept the CRIM model as the operational model, but it does not factor in the impacts of population growth on schools, social services, and natural resources. Mr. Randolph pointed out that there are different models used nationally to measure this, and each has a certain bias, and the community would be well served to look at the best model to use going forward in light of increasing costs. He stated that the Board's decision on this one application may color their policy and imply that they are already setting a level of contributions made to capacity, and in looking at projected population for Cale Elementary School, for example, is 697, with 2020 preschool enrollment already projected at 670. Mr. Randolph said there are two other developments coming to the Board that will have an impact on population projections, and he did not think the School Board had factored in school population for Avinia II, Avon Park, and Springhill. He emphasized that if they accept the model, they build in assumptions for growth that are currently not in the model.

Ms. McKeel pointed out that Cale currently has 703 students, and it is second only to Greer Elementary in terms of disadvantaged students, with 43% of students meeting that classification, which means the classrooms need to be smaller, with more space for pullout classrooms. She then asked Mr. Kamptner about a decision being precedent setting and how they would be locked in, in regards to other proffer change requests.

Mr. Kamptner said the Board wants to be consistent in analyzing these issues, but each of these projects has its own unique attributes, qualities and impacts, and it is possible for a particular project to be distinguished, given the facts presented.

Mr. Dill asked Mr. Kamptner about retroactively changing a model, and what the implications would be for changing the CRIM model. Mr. Kamptner replied that without the cash proffer policy in place, and the whole analysis that tied the projects to the CIP and CNA, the Board has the discretion to decide which impacts to consider. He noted the cash proffer policy had previously restricted the projects to five areas: transportation, schools, public libraries, recreation, and public safety, and it is within the discretion of the County for other areas to be addressed.

Mr. Dill asked if they could go back to July 1, 2013 and change the formulas to make it look like they were related to capacity, and asked if they could find a way to make the proffers legal by the new standards. Mr. Kamptner replied that his interpretation is that they are legal now, and like other types of commitments, they are accepted and not challenged, and the County is now three or four years past when this rezoning was granted.

Mr. Dill asked what the best way would be to resolve the issue if the way they collected the proffers at the time was against the law. Mr. Kamptner stated they did not break the law, and as the legislative body, the Board has the discretion to accept proffers of a varying range, with no single identified reasonable number. He said that the numbers in the proffers pending before the applicant are based on the FY16 CIP/CNA, because that is what the FIAC analysis was based on, and he does not know what the FY17 numbers are. He stated that if the impacts wanted to be evaluated under the current playing field, that is an option for the Board.

Mr. Randolph said that they have a choice as to whether to hold the line on the original proffer amount agreed to with the developer, and allow the developer to decide whether he will honor it. He suggested that they request the Planning Commission come up with alternatives to the CRIM Model and make a recommendation to the Board about whether the FIAC should be reconstituted with a mission to implement a set of recommendations for a new generation of fiscal impact measurement. He stated that they could bring in the CRIM model and other models, and within six months the Planning Commission should be able to come up with a recommendation and report to the Board.

Ms. Palmer asked Mr. Randolph if he is suggesting that they put off a decision until the Planning Commission comes up with recommendations, or vote on it tonight. Mr. Randolph said he would offer Mr. Cetta the option of deferring until the Planning Commission makes a recommendation or having a decision made today, and said he thinks it is likely that a new formula would result in larger proffer amounts than the FIAC amounts.

Ms. Palmer expressed concern that they would have to offer the same to all other applicants in this situation. Mr. Kamptner interjected that, without the applicant's consent, the Board needs to act within 12 months, and he is not sure of the date the process began.

Mr. Benish stated that they were already several months into the process.

Ms. McKeel expressed her frustration with the process as Mr. Cetta does quality work, has great projects and works with the community, and she does not want Mr. Cetta to think they are demeaning his work. She said that while Mr. Cetta indicated he will not have a problem making the original proffer payments, he feels they are doing something against the law, and she asked Mr. Kamptner for assurance that they are not violating the law.

Mr. Kamptner pointed out that after the original proffer amounts were accepted, the applicant had 30 days to challenge the proffers, and once that did not happen, the decision was final.

Mr. Benish stated that whenever staff is unsure, they check with the County Attorney.

Ms. Mallek asked Mr. Kamptner if population increases at two schools, which will necessitate future expansion, will affect what can be used now in changing the \$5,000 number. Mr. Kamptner replied in the affirmative, and said the Board can refer to the CIP and look to the CNA, but they are not compelled to refer to it.

Ms. McKeel stated that when the Board receives the staff report summary, she would like it to address not only the magisterial district but also the schools that are affected. She suggested that they should request an impact statement from the school division as to what a particular development would do for the school, and said the schools are currently working with Weldon Cooper to get better yield data, which will be critical in the future for projecting school capacity.

Mr. Dill asked Ms. Long if she wishes to make final comments regarding their discussion. Ms. Long stated that she respectfully disagrees with Mr. Kamptner, and said that at the time the proffers were accepted, they were based on a policy that included a formula that was not compliant with state law, which changed July 1, 2013. She said in her opinion, that means the proffers were not legal at the time, and it is her contention that the legal and reasonable thing to do is amend the proffers to a figure that is based on a compliant formula. She said the comments made by Board members about inadequacies in the CRIM formula are compelling, but they are not relevant to the legality of this case, and no one seemed to object to the formula when it was generating figures upwards of \$21,000. Ms. Long stated that the numbers from the FIAC committee are reflected in the proffer amendment request, and just having repealed the cash proffer policy in June 2016 does not suddenly make the Out of Bounds proffers legal.

Mr. Dill asked Ms. Long why she did not challenge the proffer amounts at the time. Ms. Long replied that she was not involved in the project at that time, and Mr. Cetta represented himself. She stated that the premise of proffers under state law is that they are voluntarily, and after addressing substantive issues of an application, things like proffers are then addressed, and without proffers, it is very unlikely that an application would be approved.

Mr. Randolph asked Mr. Kamptner for the name of the County Attorney at the time of the proffer approval. Mr. Kamptner replied that the County Attorney had been Mr. Larry Davis.

Mr. Randolph wished to point out that it is not just Greg Kamptner's interpretation, but it was the interpretation of the County Attorney's Office, and this is not a new issue as there have been objections raised about proffers in the past. Mr. Randolph said his recommendation is to deny the request and set up a mechanism by which they can evaluate an alternative way of assessing impacts, having a report prepared as soon as possible so that they can assess how to proceed in the future because of the state's action.

Ms. Palmer said she would accept that as long as they are sure they will deny the ones that were done in the past.

Ms. Mallek recalled that the repeal of the County proffer policy was procedural rather than dollar amounts.

Mr. Kamptner presented draft motions for the Board to consider.

Ms. McKeel **moved** to adopt a resolution denying ZMA-2016-0003 Out of Bounds Cash Proffer Amendment. Mr. Randolph **seconded** the motion.

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

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph and Mr. Sheffield.  
NAYS: None.

Ms. Mallek stated that she wants to make sure they continue with the work on this.

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

**RESOLUTION DENYING  
ZMA 2016-00003 OUT OF BOUNDS  
PROFFER AMENDMENT**

**WHEREAS**, the application to amend the proffers that were approved with ZMA 2015-00005 for Tax Map and Parcel Numbers 06000-00-00-06500; 060L0-00-05-01900; 060L0-00-05-02000; 060L0-00-05-02100; 060L0-00-05-02200; 060L0-00-05-02300; 060L0-0-005-02400; 060L0-00-05-02500; 060L0-00-05-02600; 060L0-00-05-02700; 060L0-00-05-02800; 060L0-00-05-02900; 060L0-00-05-03000; 060L0-00-05-03100; 060L0-00-05-03200; 060L0-00-05-03300; 060L0-00-05-03400; 060L0-00-05-03500; 060L0-00-05-03600; 060L0-00-05-03700; 060L0-00-05-03800; 060L0-00-4A-00400; (the "Property") is identified as ZMA 2016-00003, Out of Bounds ("ZMA 2016-00003"); and

**WHEREAS**, ZMA 2016-00003 proposes to amend Proffer #3 to reduce the amount of cash proffered to address the impacts from the rezoning from \$20,460.51 to \$4,918.00 for each single family detached unit and from \$13,913.18 to \$3,845.00 for each single family attached or townhouse unit; and

**WHEREAS**, staff recommended approval of ZMA 2016-00003 because the applicant's requested cash proffer amounts are consistent with the County's current Capital Improvements Program (CIP), with the Capital Needs Assessment (CNA), and with the cash proffer amounts recommended by the Fiscal Impact Advisory Committee (FIAC); and

**WHEREAS**, on April 26, 2016, after a duly noticed public hearing, the Planning Commission recommended denial of ZMA 2016-00003.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Albemarle, Virginia, that, upon consideration of the foregoing, the staff report prepared for ZMA 2016-00003 and all of its attachments, the information presented at the public hearing, the factors articulated by the Planning Commission in its recommendation for denial, the material and relevant factors in County Code § 18-33.6 and Virginia Code § 15.2-2284, the Board's repeal of the Cash Proffer Policy on June 8, 2016, and because Proffer #3 was stated by the original applicant in ZMA 2012-00003 (where the per unit cash proffer was identified as Proffer #2) and in ZMA 2015-00005 to be reasonable and to have been voluntarily made, the Board hereby denies ZMA 2016-00003.

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Agenda Item No. 20. **Public Hearing: ZMA-2015-00009. Spring Hill Village – Proffer Amendment.**

MAGISTERIAL DISTRICT: Scottsville.

TAX MAP/PARCEL: 09000000002800.

LOCATION: 1776 Scottsville Road, Charlottesville.

PROPOSAL: Reduce cash proffer amount from ZMA201300017.

PETITION: Request to amend proffers on property zoned NMD Neighborhood Model District - residential (3 – 34 units/acre) mixed with commercial, service and industrial uses; Entrance Corridor Overlay.

PROFFERS: Yes.

COMPREHENSIVE PLAN: Community Mixed Use – residential (up to 34 units/acre), community scale retail, service and office uses, places of worship, schools, public and institutional uses.

*(Advertised in the Daily Progress on June 27 and July 4, 2016).*

The Executive Summary presented to the Board stated that at its meeting on February 23, 2016, the Planning Commission voted 7:0 to recommend denial of ZMA201500009 for the reasons outlined in Attachment A. One of the reasons for denial was that an analysis had not yet been conducted of the actual costs of the development to the County. This analysis has now been completed, and can be found in Attachment E. This attachment shows an analysis of the proposed plan of development for Spring Hill Village using the County's Cost Revenue Impact Model (CRIM). The analysis did not show a significant difference in the per unit fiscal impact or the total amount of funds potentially contributed to address impacts of the development.

Since the Planning Commission meeting, the cash proffer policy was repealed by the Board of Supervisors on June 8, 2016.

Attachments A, B, and C are the Planning Commission's action letter, staff report and minutes from the February 23, 2016 meeting. The County Attorney has prepared an Ordinance (Attachment D) for adoption should the Board wish to approve the rezoning and accept the amended proffers.

The Planning Commission recommends that ZMA201500009 be denied. However, if the Board wishes to approve this ZMA, staff recommends that the Board adopt the Ordinance to approve ZMA201500001 (Attachment D).

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Ms. Rachel Falkenstein, Senior Planner, showed an orientation map of the project area, noting that it lies between Route 29 and Avon Street. She said the proposal was approved in 2014 under the Neighborhood Model, allowing between 80-120 units and 10,000–60,000 square feet of non-residential development. Ms. Falkenstein stated that construction has not begun on the site, but the applicant is in the process of final site plan review. She stated the applicant would like to reduce the cash proffer amounts, which are similar to Out of Bounds and in line with what FIAC recommended. She stated that the Planning Commission's recommendation is for denial. Ms. Falkenstein noted that the CRIM model was run on two scenarios for Springhill Village, and the one she is projecting on the screen is the one that matches the application plan concept, 66 single-family detached and 24 single-family attached townhouses. She stated that the amounts per unit are about \$4,000, which are close to what the applicant is requesting.

Ms. Falkenstein stated that favorable factors are that the applicant's requested cash proffer amounts satisfy the requirement that proffers be reasonable in light of the current Capital Improvements Program (CIP) and Capital Needs Assessment (CNA), and are consistent with the amounts recommended by the Fiscal Impact Advisory Committee (FIAC). She said there are no unfavorable factors noted, but the Board's options are to deny the request as recommended by the Planning Commission for the reasons stated in the resolution; to approve the ordinance for the proffer amendment as requested by the applicant; or request to consider a different per-unit cash proffer contribution based on further study of the issue.

Ms. Palmer invited questions from members of the Board, but there were none. She then opened

the public hearing.

Ms. Long asked that all of her comments regarding the prior request for Out of Bounds be incorporated into the record for this case, and stated that there are a few differences. Ms. Long pointed out that the favorable factors state clearly that the cash proffer amounts satisfy the requirement that proffers be reasonable in light of the current CIP/CNA and are consistent with the amounts recommended by FIAC. She emphasized that this is the basis of the rezoning request, with the proffers mitigating the impacts of the proposed development, as provided by state law. Ms. Long said the Planning Commission, staff and the County Attorney recommended approval as they did with Out of Bounds, and the fact that the policy was later repealed does not suddenly make the proffers legally valid, as it is not retroactive.

Ms. Long estimated that the amended proffer amounts for this project, if adopted, would generate \$427,420, which is about one third of the amount of proffers if the project were developed in accordance with the higher proffer numbers. She stated the money could be used for the CIP projects, and if the application is not approved, then Mr. Cetta is not able to build the project as it does not work financially. Ms. Long stated that this is a great project, but it cannot happen at the higher numbers, and approving the amendment enables the project to move forward while generating more than \$427,000 in proffers. She emphasized that most importantly, is fair and reasonable and consistent with state law.

Mr. Cetta addressed the Board, and stated the project meets everything they want in the comprehensive plan, is a perfect site, and he has already spent \$50,000 to run a sewer offsite. He stated he is sorry he purchased the land, and he is competing with projects like Cascadia, which has proffer amounts of \$2,500 versus the \$22,000 he is paying, in addition to by-right developments. Mr. Cetta stated that he is wondering if he will have the right to rezone the property, and said that he tries to contribute to the County, and the Board should try to resolve this recurring issue.

Ms. Bevin Cetta, a realtor with Roy Wheeler Real Estate and daughter of Mr. Cetta, came forward to address the Board. She provided the hypothetical case of a developer asking her how much the cash proffers would be on a community of 50 homes, for single-family and townhouses in the future.

Mr. Kamptner responded that currently, each project is evaluated on a case-by-case basis.

Mr. Bill Dickerson addressed the Board and pointed out that in addition to the proffer amounts, there is \$13,000 per unit multiplied by 90 units for water and sewer. Mr. Dickerson stated that the County is projected to be "underhoused" in the future based upon growth projections.

As there were no further questions from the public Ms. Palmer closed the public hearing and opened up discussion among the Board.

Mr. Kamptner suggested that all of the discussion regarding cash proffer policy, CIP/CNA be included in the public hearing record.

Board members stated this is a good idea, given the overlap of the issues related to these items.

Mr. Randolph noted that in the letter sent to Mr. Cetta by Ms. Rachel Falkenstein, the third point said a full analysis should be conducted of the actual cost to the County of the development as recommended by the Planning Commission, and this is consistent with his recommendation that they have a more reliable and thorough tool to assess the cost of development. He said it also stated in the fourth point that the Board should set a new proffer policy or substitute therefore, and hoped the recommendation to be provided by FIAC will be to look at up-zoning and form-based zoning consistent with a master plan and to use this as a prototype. Mr. Randolph commented that when Rivanna Village finishes its buildout, the County will be at or over capacity at Stone Robinson, and those things are not measured into the CRIM model.

Ms. Mallek stated there is nothing they can legally do to stop growth. She asked what the number is being referred to in Springhill, because she did not recall anyone suggesting a reduced amount with the original rezoning. Mr. Kamptner responded that the number is specific to this application, not referring back to a previous amount.

Ms. Palmer said that regarding the water and sewer fees mentioned by Mr. Dickerson, these fees go only to water and sewer to address future costs of the system, and are carefully calculated by the Albemarle County Service Authority to reflect just a few years growth. Regarding Ms. Cetta's question about what proffers would be in the future, her understanding was that the proffer policy, as set in 2007, stipulated that each project would be considered independently.

Mr. David Benish explained that each project is evaluated based on the impacts of the development against the capacity of the infrastructure and its consistency with the goals and objectives of the comp plan, and there was no methodology that was an agreed-to process to provide a calculated dollar amount. He stated that ultimately the Commission and Board of Supervisors decided the merits of that proposal for its consistency with the comp plan and its impact on infrastructure.

Ms. Palmer said that as a result of the state changing the rules, things are back to the way they were before a proffer policy had been established by the County under which each project is evaluated individually. Mr. Benish responded that they will be looking at a method to provide some standardization, consistency, and predictability, but by its nature, it is a less predictable process.

Mr. Kamptner said the new law prevents them from things like relying on averages, and one of the recommendations in dealing with the new law was for the County to develop a new proffer policy to deal with the issues that arise. He stated that they would also be moving forward with a zoning text amendment that will require studies to evaluate the four issues that can be addressed by proffers for new rezonings.

Mr. Dill expressed his opinion that it seems there is a difference between a development that has not been built yet and one that has already been started or is mostly built, and he feels it is better to change proffer amounts before ground has been broken on a project.

Mr. Kamptner said that this project affects a different housing buyer and can be weighed in that way, although the impacts are the same, and the Board can evaluate the facts as they are presented. He stated that the fact that they have reached a decision on Out of Bounds does not necessarily compel them to reach the same decision on the Springhill case.

Ms. Palmer asked for clarification of when these proffers were agreed to. Mr. Kamptner responded that the original ZMA was approved in 2014.

Ms. Palmer commented that apparently the financial situation with this project has changed.

Ms. Mallek said that it has actually improved, and she is concerned about making changes before they have a replacement proffer policy. She emphasized that she hopes they will make quicker progress than they have for the last six months.

Mr. Kamptner said that considerations that can be made include the requirement for housing, as well as current and future requirements of the community for various purposes.

Mr. Randolph **moved** to deny the amendment ZMA 2015-0009. Ms. Mallek **seconded** the motion.

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

AYES: Ms. Mallek, Ms. Palmer, Mr. Randolph and Mr. Sheffield.  
NAYS: Mr. Dill and Ms. McKeel.

Ms. Palmer and Ms. McKeel commented that they have a lot of work to do.

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

**RESOLUTION DENYING  
ZMA 2015-00009 SPRING HILL VILLAGE  
PROFFER AMENDMENT**

**WHEREAS**, the application to amend the proffers that were approved with ZMA 2013-00017 for Tax Map and Parcel Numbers 00000-00-00-02800 (the "Property") is identified as ZMA 2015-00009, Spring Hill Village Proffer Amendment ("ZMA 2015-00009"); and

**WHEREAS**, ZMA 2015-00009 proposes to amend Proffer #2 to reduce the amount of cash proffered to address the impacts from the rezoning from \$20,460.57 to \$4,918.00 for each single family detached unit and from \$13,913.18 to \$3,845.00 for each single family attached or townhouse unit; and

**WHEREAS**, staff recommended approval of ZMA 2015-00009 because the applicant's requested cash proffer amounts are consistent with the County's current Capital Improvements Program (CIP), with the Capital Needs Assessment (CNA), and with the cash proffer amounts recommended by the Fiscal Impact Advisory Committee (FIAC); and

**WHEREAS**, on February 23, 2016, after a duly noticed public hearing, the Planning Commission recommended denial of ZMA 2015-00009.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Albemarle, Virginia, that, upon consideration of the foregoing, the staff report prepared for ZMA 2015-00009 and all of its attachments, the information presented at the public hearing, the factors articulated by the Planning Commission in its recommendation for denial, the material and relevant factors in County Code § 18-33.6 and Virginia Code § 15.2-2284, the Board's repeal of the Cash Proffer Policy on June 8, 2016, and because Proffer #2 was stated by the original applicant in ZMA 2013-00017 to be reasonable and to have been voluntarily made, the Board hereby denies ZMA 2015-00009.

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Agenda Item No. 21. From the Board: Committee Reports and Matters Not Listed on the Agenda.

**Discussion: Public comment at "Other Meetings".**

Mr. Sheffield mentioned that members of the public are interested in commenting/participating on Board matters and asked Board members if they are interested in conveying that to the other boards/commissions, in this case the Equalization Board, and this opportunity given in a reasonable manner. He

mentioned a recent case where a resident wished to speak about an assessment and was not able to, but a previous chair of that Board allowed it.

Mr. Randolph agreed and said there should be consistency in allowing public comment, and the public cannot differentiate at meetings as to whether there is a forum for public comment. He stated there may be constituents who speak in front of numbers boards and say the same thing, but that is part of the public process and it is up to each chair to maintain control.

Mr. Peter Wiley addressed the Board and stated that the six members appointed to the Equalization Board are very professional. He stated that the case mentioned by Mr. Sheffield involves a dispute among two residents of a condominium, and he brought up the issue with his staff. Mr. Wiley stated that while the resident was allowed to speak last year, after consideration it was decided that it would not be productive to allow them to speak this year as it would likely create a disruption. He said that in this case, the person coming for tax relief had a running argument with a third party who was not involved with the assessment. Mr. Wiley stated that the past Chairman of the Equalization Board was present when the decision was made this year, and there was some consideration given to that. He said that public comment is allowed for those individuals who are challenging their assessment.

Ms. McKeel asked for clarification that the individual in question was disruptive to the meeting. Mr. Wiley confirmed that this was the case, and said this individual attended these meetings repeatedly.

Ms. Mallek said the hearings are intended for those who have an issue with their assessments, not for general public comments. Mr. Kamptner said there is a difference between disallowing a person to speak because there is fear of what she might say and a situation where the person is disruptive.

Mr. Wiley said it was not the content of what this person was going to say, it was the manner of saying it and the back and forth with the person coming to the hearing and this third party. Mr. Kamptner stated that they may not know that in advance.

Mr. Sheffield said that it usually only takes one explanation to a person who wants to speak publicly that their demeanor is unproductive, and a warning to someone saying that the policy might change. Mr. Foley stated that assessment meetings are set up for the specific purpose of hearing an appeal to an assessment so that individuals can discuss their particular case, but they are not public hearings where anyone can comment.

Ms. Mallek said that allowing random public comments diminishes the ability for a landowner to appeal their assessment without having other people involved. Mr. Kamptner clarified that it is a public meeting, but it is not guaranteed for people, other than the landowners, to be allowed to speak.

Mr. Foley stated that it is a hearing on an appeal for an assessment.

Mr. Sheffield commented that he feels they should err on the side of allowing comment.

Mr. Randolph suggested that the solution seems to be to explain to this person that she would be allowed a few minutes at the beginning of equalization hearings for public comment.

Mr. Sheffield said there is no public comment period.

Mr. Wiley said it is his understanding that it is up to the Equalization Board as to whether to allow public comment, and last year they allowed this individual to comment, but this year they decided not to allow her to speak.

Mr. Randolph said that he understands the need to have a meeting between the constituent, and what he is suggesting is that third parties be given the opportunity to comment at the beginning of the meeting. He stated that he feels better when they err on the side of caution and allow for public comments, so they do not run the risk of trouncing First Amendment rights.

Mr. Foley asked Mr. Randolph to clarify his intention, and asked if he means to say that at all County public meetings there should be an opportunity for public comment. Mr. Randolph confirmed that was his intent, and suggested that public comment be allowed in the beginning of the meeting, similar to what the Board of Supervisors allows.

Mr. Dill said they could have a gadfly problem with people coming to committee meetings instead of just Board of Supervisors meetings, and he thinks this will open a can of worms. He stated that he has mixed feelings about it and asked if she could have come to this Board meeting.

Ms. McKeel asked why she did not come to this Board meeting. Mr. Sheffield responded that he offered to this individual to bring her concerns before the Board.

Mr. Wiley pointed out that this person had the right to appeal her assessment to the Board of Equalization, and they could have arranged for her hearing to be on the same day and time as the one she was complaining about.

Mr. Dill stated that he did not think it was reasonable to have the assessors listen to speakers who want to talk about anything for three minutes, as their job is to listen to appeals on assessments.

Ms. Palmer suggested that someone take a look at committees where public speaking is allowed now, and where it would make sense, and people using profanity and so forth are not allowed to continue speaking at the Board meetings.

Mr. Sheffield commented that citizens just want to be heard.

Mr. Dill asked why she could not just come before the Board of Supervisors. Ms. McKeel said she does not see the need to change a policy for all committees as a result of one case.

Mr. Sheffield commented that he believes they should assess the policy on public comments for all boards, and there is a problem if they have different policies.

Ms. McKeel responded that there are very different types of boards/committees and very different types of work that each does.

Mr. Foley said they can take a look at all of the boards, committees and commissions, and there are a lot of them. He stated that they could use the Board of Equalization as the example as to whether the Board wants them to allow general open public comment, even if that committee's business is not for general public business but is for individual appeals from taxpayers.

Ms. Palmer asked for clarification of the charge of the Equalization Board. Mr. Foley responded that their charge is set by state code, and they are required to hear from taxpayers who are appealing their assessment, and the Board can say they would like public comment to happen, but they should probably consider the purpose of the board or committee to begin with.

Mr. Dill asked if the advisory councils are public meetings. Mr. Foley responded that they are, and said the Community Policy and Management Team, which identifies the services provided to children, is also technically a public body.

Ms. Mallek suggested the Board members provide the input to Ms. Lee Catlin regarding the individual bodies on which they serve and the public comment opportunities on each.

Ms. McKeel stated they should not change policy as a result of one situation and the individual involved could speak before the Board of Supervisors, and she emphasized that the Equalization Board is a very specialized entity doing a very specific type of work. She commented that it concerns her to react to one problem by changing it for all committees.

Mr. Sheffield said there should be a policy regarding public comment before boards, committee and commission meetings, and it should be clear and not an ad hoc policy that changes when the chair changes, as it sends a mixed message.

Mr. Foley said that staff will look into the issue.

Ms. Palmer asked the Board if it would be okay to have staff report back with some framework. Board members agreed.

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Ms. McKeel stated that she would like to comment on the staff report summaries the Board members are getting regarding impacts of development, as she would really like to see impact statements from the affected schools and other entities such as fire and safety, etc.

Mr. Sheffield commented that fire and safety already weighs in on site plans.

Ms. Mallek said that the Site Review Committee already does this.

Mr. Benish stated that with legislative reviews, special use permits and rezonings, they would have to go back to more of an impact analysis format.

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Agenda Item No. 22. From the County Executive: Report on Matters Not Listed on the Agenda.

Mr. Foley said that without cash proffer policy, they need to think about these issues. He stated that the FIAC Committee and its future role is something they must address soon, and noted that there is a plan to have a joint meeting with them in October, but given the urgency, he would try to move it up. Mr. Foley stated that staff will try to pull in a few Supervisors to have a conversation before that joint meeting.

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Agenda Item No. 23. Adjourn to July 19, 2016, 9:00 a.m., Lane Auditorium.

At 10:02 p.m., Ms. Mallek **moved** to adjourn the Board meeting to July 19, 2016, at 9:00 a.m. Mr. Sheffield **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph and Mr. Sheffield.  
NAYS: None.



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Chairman

Approved by Board
Date 04/05/2017
Initials CKB