

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on August 8, 2018, at 2:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. The meeting was adjourned from August 7, 2018.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Jeff Richardson, County Attorney, Greg Kamptner, Clerk, Claudette Borgersen, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order. The meeting was called to order at 2:04 p.m., by the Chair, Ms. Mallek.

Agenda Item No. 2. Albemarle County FY 19 Smart Scale Applications.

The Executive Summary forwarded to the Board states that the Smart Scale grant program is the primary method for funding large-scale transportation projects in the State. The Program provides State and Federal funds for the design/engineering, right-of-way, and construction of transportation projects and runs on a biennial cycle. The Board has previously reviewed and approved the list of proposed projects that applications are being submitted for at its April 4, 2018 meeting. A requirement of the Smart Scale application is submittal of a Resolution of Support for the applications from the local governing body. This Resolution is due on September 1, 2018.

Albemarle County has a four-application limit but the Thomas Jefferson Planning Commission and the Charlottesville-Albemarle Metropolitan Planning Organization are each allowed to submit four applications as well. No other jurisdictions in the planning district requested those entities to submit projects on their behalf and so there will be nine applications for projects within Albemarle County and another three applications for projects that make up the Hydraulic Road improvement package. These are the same projects that the Board of Supervisors approved in April with the addition of the US 29 Hydraulic Road Intersection Improvement Package.

Following is the list of Smart Scale applications for the FY 2019 Cycle:

Albemarle County:

1. Berkmar Drive Extension to Airport Road
2. US 250/Route 20 Intersection Improvement
3. Route 20/Route 53 Intersection Improvements
4. Rio Road East/Pen Park Road Roundabout

Thomas Jefferson Planning District Commission:

5. Route 29 Shared Use Path - Carrsbrook Drive to Riverside Center
6. East Bound Barracks Road US 250/29 Bypass Ramp Right Turn Lane
7. I-64 Exit 107 Park and Ride Lot
8. Frays Mill Road/US 29 Intersection Improvement

Charlottesville-Albemarle Metropolitan Planning District Commission

9. US 29 Hydraulic Road Intersection Improvement Packages
10. Fontaine Avenue/US 29 Bypass Interchange Improvement

These applications are for State and Federal funding to implement these projects. No County match is required with the applications and, if approved, the projects will be administered by the Virginia Department of Transportation and the facilities will be maintained by VDOT as well. Therefore, no County funds are necessary to support the projects.

Staff recommends the Board of Supervisors approve the Resolution in Support of the Smart Scale Applications in Albemarle County provided in Attachment A.

Mr. David Benish, Chief of Planning-Development Review, explained that the purpose of this meeting is for the Board to approve a resolution of support for Smart Scale projects to be submitted in the current year's round of applications. He said that Smart Scale is the primary funding source for major projects and funds engineering, design, right-of-way acquisition, and construction of major projects in the state, and the County's primary source of funding for transportation projects. Mr. Benish noted that in April, 2018, the Board approved the projects listed in the resolution and directed staff to move forward. There have been no major changes to the projects. He reminded the Board that each locality, Planning District Commission, and Metropolitan Planning Organization (MPO) can submit applications for up to four projects. For this round the County is applying for four, and the MPO and TJPDC are applying for a combined total of six in Albemarle.

Mr. Benish presented a list of the County's submissions:

- 1) Rt 20/US 250 Intersection Improvement
 - #1 on County priority list
 - Initial phase of more extensive improvements applied for previously under the Free Bridge Project
- 2) Berkmar to Lewis & Clark Connector (Southern segment and Roundabout at Airport Rd)
 - County funding design of both segments through SSYP funds
 - Northern segment being completed by the UVA Foundation
- 3) Rt 20/Rt 53 Intersection Improvements – Roundabout
 - Initial phase of corridor improvements ranked #6 on County priority list
- 4) Rio Rd/Pen Park Rd Roundabout
 - Initial phase of corridor improvements ranked #15 on County priority list

The following list are the MPO/TJPDC submissions:

- 1) Barracks Rd/SB 250/29 Bypass Ramp Right Turn Lane
 - Not on First Tier Transportation Priority list but previously a prioritized project
 - Worsening congestion, innovative design, and potential funding had made it a good consideration
- 2) Fontaine Ave/US 29 Bypass Interchange Improvements (Diverging Diamond)
 - Phase of the I-64/Rt 29 Exit 118 Interchange Improvements (#2 on Second Tier Transportation Priority List)
- 3) US 29 Shared-Use Path – Rivanna River to Carrsbrook Dr
 - Segment of the Northtown Trail (#2 on Count Priority List)
- 4) US 29/Frays Mill/Burnley Station Road Intersection Improvements (R-Cut)
 - Not on First Tier Transportation Priority List but recently identified as top safety priority in the VDOT Culpeper District
- 5) Park & Ride Lot at Exit 107
 - Not on First Tier Transportation Priority List but recently identified as need through the CA-MPO SHRP2/I-64 Corridor Study

Mr. Benish reiterated that a resolution of support for the projects is required as part of the County's submittal process. The resolution is due by September, 2018; the actual applications were due today, and were submitted.

Mr. Dill asked how many cars the park and ride lot in Crozet will hold. Mr. Benish responded that he does not know as he has not followed the project closely, but noted that it is an important link as the County tries to address commuting from the Valley area. He added that he can find out.

Ms. Mallek commented that she hopes it will start out on the church at Patterson Mill.

Ms. McKeel said that in several of the meetings where this item has been discussed, she did not hear a number related to parking.

Ms. Mallek stated that it will have to grow as the use grows, and hopefully some of the commuters will ride the commuter buses.

Mr. Benish stated that the parking areas are usually a dozen or two parking spaces.

Mr. Dill stated that he was envisioning 200 or so vehicles.

Mr. Benish commented that he hopes they have that demand.

Ms. McKeel **moved** that the Board adopt the proposed Resolution in support of the Smart Scale project applications in Albemarle County as set out. The motion was **seconded** by Ms. Mallek.

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

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

RESOLUTION IN SUPPORT OF THE SMART SCALE PROJECT APPLICATIONS IN ALBEMARLE COUNTY

WHEREAS, the County of Albemarle desires to submit applications for projects to be funded through the Smart Scale Program in the Fiscal Year 19-24 Six-Year Improvement Plan; and

WHEREAS, the County of Albemarle also desires the Thomas Jefferson Planning District to submit applications for projects located within Albemarle County on the County's behalf, to be funded through the Smart Scale Program in the Fiscal Year 19-24 Six-Year Improvement Plan; and

WHEREAS, the County of Albemarle also desires the Charlottesville-Albemarle Metropolitan Planning Organization to submit applications for projects located within Albemarle County on the County's behalf, to be funded through the Smart Scale Program in the Fiscal Year 19-24 Six-Year Improvement Plan; and

WHEREAS, these applications are requesting funds to implement the following projects:

Albemarle County:

1. Berkmar Drive Extension to Airport Road
2. US 250/Route 20 Intersection Improvement
3. Route 20/Route 53 Intersection Improvements
4. Rio Road East/Pen Park Road Roundabout

Thomas Jefferson Planning District Commission:

5. Route 29 Shared Use Path – Carrsbrook Drive to Riverside Center
6. East Bound Barracks Road US 250/29 Bypass Ramp Right Turn Lane
7. I-64 Exit 107 Park and Ride Lot
8. Frays Mill Road/US 29 Intersection Improvement

Charlottesville-Albemarle Metropolitan Planning District Commission

9. US 29/Hydraulic Road Intersection Improvement Packages
10. Fontaine Avenue/US 29 Bypass Interchange Improvement

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby supports the submittal of the Smart Scale applications for funding for the above listed projects on behalf of Albemarle County.

Mr. Benish introduced Mr. Daniel Butch, the new County Transportation Planner, to the Board. He said Mr. Butch moved here from Scranton/Wilkes-Barre, Pennsylvania.

Ms. McKeel asked Mr. Butch to tell the Board about his experience and focus. Mr. Butch responded that he was a transportation planner for the Lackawanna MPO in northeast Pennsylvania for several years. He also worked with Penn DOT as well as the local district, doing GIS work, data collection, and studies and presentations. He said he moved his family and is excited to be here.

Ms. Mallek asked if the ICNA finding the money for the Ivy Creek improvement design money being searched for “under some rock” so that the County can get this done before the donor and bucket of money gets away. Ms. McKeel clarified that they are trying to get information about the Ivy Creek turn lane she brought up at last weeks’ meeting. Mr. Benish replied that Mr. Kevin McDermott is working on trying to figure out what sources are available as the project is surprisingly expensive but is a priority.

Ms. McKeel remarked that Mr. DeNunzio has money and someone is willing to donate right of way.

Ms. Mallek added that the County just needed design money.

Mr. Benish commented that due to the frontage, they want to look at the opportunity to create a bicycle connection to the Hydraulic Road area though this would not delay the project, but will have an impact on the design and land acquisition.

Ms. McKeel commented that it has been a year since this got underway.

Agenda Item No. 3. **Work Session:** Ordinance to Amend County Code Chapter 4, Animals and Fowl.

The Executive Summary forwarded to the Board states that the Board has directed the County Attorney’s Office to conduct a comprehensive review and recodification of the County Code. Chapter 4 of the County Code pertains to animals and the regulations in the chapter range from licensing dogs, dangerous dogs, vicious dogs, and dogs running at large to animal welfare. Chapter 4’s animal welfare regulations include standards of care to be provided to companion animals; prohibits cruelty to animals, abandonment, and other acts; establishes requirements for rabies control; and establishes penalties for animals owners and procedures and requirements for seizing, impounding, and disposing of animals under prescribed circumstances.

Chapter 4 is enabled by the Comprehensive Animal Care Law (Virginia Code § 3.2-6500 et seq.) (“State Law”). State Law enables localities to adopt local ordinances pertaining to some, but not all, of its subjects, and requires that local ordinances be consistent with State Law. There are subjects, however, where State Law enables localities to adopt regulations that are “more stringent” than State Law. For example, the definitions and regulations pertaining to commercial dog breeding are two subjects where State Law does not enable local regulation. On the other hand, regulations pertaining to cruelty to animals and dispositions following a court determination that an animal has been abandoned, cruelly treated, or subjected to other mistreatment, are two subjects that the State Law enables local regulations to be more stringent (Virginia Code § 3.2-6543(A)).

To ensure consistency with State law, the definitions have been revised so that they are substantively identical to the definitions established in State Law and the regulations pertaining to commercial dog breeders (current County Code §§ 4-215, 4-216, and 4-217) are recommended to be

deleted. As noted in the preceding paragraph, commercial dog breeding is one of the areas of animal-related regulations that the State has not authorized local regulation.

Chapter 4 is also proposed to be revised to expand those regulations where localities are enabled to be more stringent. Virginia Code § 3.2-6570 is the primary State law prohibiting animal cruelty. It is implemented in current County Code § 4-207 and would be implemented in the proposed draft of Chapter 4 in County Code § 4-301. Some animal cruelty regulations that are more stringent than State Law already exist in the definitions in current Chapter 4. It is recommended that these animal cruelty regulations be relocated to proposed County Code § 4-301. Other more stringent animal cruelty regulations are proposed to be added. Sample more stringent animal cruelty-related regulations are included in Attachment B. The more stringent regulations in current Chapter 4 and those new regulations are each identified in County Code § 4-301(B) of Attachment B. Before a public hearing is scheduled on the amendments to Chapter 4, staff seeks Board direction on possible regulations pertaining to animal cruelty that are more stringent than the regulations in State Law.

Virginia Code § 3.2-6569 is the primary State Law pertaining to the disposition of animals that have been found by a court to have been abandoned, cruelly treated, or subjected to other mistreatment. Virginia Code § 3.2-6569 is implemented in the current County regulations in County Code § 4-208 and would be implemented in the proposed draft of Chapter 4 in County Code §§ 4-306 and 4-308, which are also included in Attachment B.

There is no expected budget impact.

Staff recommends that the Board: (1) provide direction on including more stringent regulations pertaining to animal cruelty and the disposition of animals in the proposed amended Chapter 4; and (2) schedule a public hearing on the proposed amended Chapter 4 on October 3, 2018.

Mr. Kamptner addressed the Board and credited Ms. Amanda Farley, Senior Assistant County Attorney; Lt. Terry Walls; and Officer Larry Crickenberger, Supervisor of the Animal Protection Unit, for their work. He said staff is still working its way through recodification of the County Code. Chapter 4 is one of 18 chapters they will bring before the Board. He said the primary focus of this work session will be on animal cruelty and to adopt additional regulations that bring clarification or a better description of types of behavior that constitute animal cruelty under State law. He pointed out that the enabling authority for this chapter is found under the comprehensive animal care law. Large portions of this State law are self-executing – so a number of localities do not have to adopt any regulations but can still enforce everything within the law. Mr. Kamptner explained that parts of the law, however, such as the general leash law, are delegated to local discretion. He emphasized that any provisions that do not fall under local ordinances are still under State law, which is enforced by Animal Control and prosecuted by the Commonwealth's Attorney. He continued that under certain provisions, such as animal cruelty, they are authorized to adopt parallel and potentially more stringent regulations.

Ms. Palmer asked if this has always been so or if it was something that had been given to the County over the last few years. Mr. Kamptner replied that this was not a recent change and added that the statute granting this authority was last amended in 2009.

He presented a slide with the current and proposed changes to Chapter 4 and emphasized that staff sought to make all chapters more user friendly so they could be used for both enforcement and educational purposes. He said they propose to also make some stylistic changes as some provisions of the State Code are very lengthy and do not follow a logical order, and they would add headings for better organization and inject the use of plain English.

Mr. Kamptner presented a slide with substantive changes to Chapter 4:

Definitions: Definitions are proposed to be revised to mirror the definitions in State law.

Commercial Breeders: Regulations pertaining to commercial breeders are proposed to be removed because State law does not expressly enable localities to regulate commercial breeding and would continue to be enforced under State law.

Acts Punished as Felonies: Acts punishable as felonies are being deleted and would be enforced under State law because localities are not enabled to punish violations of their ordinances as felonies (e.g., certain acts related to dangerous and vicious dogs)

Animal Cruelty: Animal cruelty regulations would be clarified to describe a number of acts that fall within the State law categories of animal cruelty. Some are in existing definitions, some are new.

He explained that State enabling authority does not allow the County to vary from the definitions in State law, so it is easier to incorporate State definitions as they are written.

Mr. Kamptner presented a slide with Categories of Animal Cruelty in Virginia Code § 3.2-6570 and County Code § 4-301:

- Inflicting death, injury, or pain generally (A)(1)
- Depriving food, drink, shelter, or treatment (A)(2)
- Roping, lassoing, or otherwise obstructing or interfering with an equine (A)(3)

- Soring an equine (A)(4)
- Willfully pursuing any act of cruelty (A)(5)
- Transporting animal in manner that produces torture or unnecessary suffering (A)(6)
- Causing or permitting another to engage in acts of cruelty described above (A)(7)

He next presented a slide titled: Descriptions: Inflicting death, injury, or pain generally (A) (1)

Person places any animal, including any dog, on a tether:

- That does not terminate at both ends with a swivel. (existing)
- That is shared with other animals. (existing)
- For more than two hours cumulative in any 24-hour period (new)
- During a heat advisory issued by a state or local public entity (new)
- During a severe weather warning issued by the National Weather Service, including any hurricane, tropical storm, tornado, severe thunderstorm, or winter storm warning (new)
- On uninhabited or abandoned property in the County (new)
- Person places any female dog in heat on a tether or tethers a dog that is six months old or younger (existing)

Mr. Kamptner remarked that the proposed new descriptions are suggested by local animal rights organizations. He said that the current enforcement staff consists of three Animal Control Officers; they expect to hire one additional person, and these personnel would cover a huge territory.

Ms. Mallek said her hope is that once they have specific things to talk to people about and citizens understand that accountability is required, staff will not have to go back to a house repeatedly – which would make their job a whole lot better.

Ms. Palmer wondered why six hours was chosen as the time requirement for being in the shade on a hot day. Mr. Kamptner replied that six hours was presented by one of the groups and an upcoming slide shows proposed temperature requirements. He added that staff is open to suggestions.

Ms. McKeel recounted that she saw someone in a local park training a puppy that was hanging on a ball from a tree that was over water and forcing the dog to hold on to a rope. She asked if this is considered to be animal cruelty. Mr. Walls responded that this would require an investigation; one factor alone might not be enough, so Animal Control would look at the totality of the circumstances such as the condition of the dog, the weather, whether the dog had injuries, and a determination of the dog's living conditions based on a home visit. He added that all the proposed conditions are considered on an animal welfare basis in which they look at the totality of the circumstances.

Ms. Palmer asked if it must be proven that there is willful neglect. Mr. Walls replied that the court would determine this.

Ms. Palmer said she asked the question to determine whether they are covering forgetful neglect and noted that it could be a fine line. Mr. Walls remarked that he believes it will be difficult to pursue charges on a specific condition without a thorough investigation that looks at the totality of the circumstances. He speculated that the temperature at the Airport, which is what they use as a reference point, could be different than the temperature in another part of the County.

Ms. Mallek commented that one could determine the temperature by zip code. Mr. Walls replied that this would be for the court to determine.

Mr. Kamptner presented a slide titled: Descriptions: Depriving food, drink, shelter, or treatment (A) (2):

- Person provides a shelter for a dog or cat that was located so that it did not receive at least six hours of shade when the ambient temperature during that period exceeds 80 degrees (Fahrenheit). (new)
- Person provides a shelter for a dog or cat that was not insulated or otherwise heated when the ambient temperature was below 35 degrees (Fahrenheit). (new)
- Person provides shelter for a dog or cat that was infested with mold, insects, or parasites. (new)
- Person provides a shelter for a dog or cat that had vents, cracks, or holes, other than the entrance, that allows rain or other moisture into the shelter (new)

Mr. Kamptner commented that Animal Control would have to have calibrated and verifiable thermometers to confirm the temperature to present it to the court.

Ms. Amanda Farley said the statute requires intentional, willful acts in order to be punishable with a Class I misdemeanor, and incidental mis-care would not be enforceable under this section. She added that a pet owner could be put on notice and that, if they have disregarded instructions over time, it could be easier to prove that something was willful.

Ms. Palmer emphasized that the conditions enable County staff and animal welfare organizations to educate pet owners, though she has some concerns about unintended consequences.

Mr. Randolph said it would be critical to provide information on the website that pet owners could view when renewing licenses.

Ms. Farley remarked that Animal Control staff informed her that the establishment of specific conditions, such as a specific temperature requirement, could cripple their ability to take appropriate action when they otherwise would be able to. She reiterated that there is a balance between establishing community guidelines and hampering the ability to take enforcement action.

Ms. Mallek asked what would be done instead to give the staff the ability to act, as the status quo is not acceptable to her. Mr. Kamptner replied that this will be addressed in the way the staff restructured the provision. He next presented a slide titled: Descriptions: Inflicting death, injury, or pain generally (A) (1):

Person places any animal, including any dog, on a tether that, if it was on a pulley or running line:

- That restricts movement of the animal (existing)
- Is inappropriate for the animal's age and size (existing)
- Is not attached to the animal by a collar (existing)
- Is less than 15 feet in length (existing)
- Is more than seven feet above the ground (existing)
- Is configured to allow the animal to be injured, strangled, or entangled with other animals or objects (existing)
- Person who transports an animal in an open-bed truck or similar vehicle either when the animal was tethered or was in a carrier that was not secured to the vehicle so that it was unmovable and allows normal postural movements of the animal (existing)

Mr. Kamptner presented the next slide titled: Descriptions: Depriving Food, drink, Shelter, or treatment (A)(2):

- Person provides a shelter for an animal that was composed of metal or plastic barrels, airline crates, or carrying crates. (existing)
- Person deprives an animal of clean, fresh, potable water that is a drinkable temperature at least once every twelve hours (existing) (enforcement)
- Person provides a shelter for a dog or cat that was without a floor or the floor is not raised off the ground by at least two inches. (existing/new)

Ms. Palmer asked the condition relating to a floor means that a metal or plastic barrel cannot be used as a shelter; she does not believe that should not be allowed. Ms. Mallek agreed. Mr. Kamptner replied that this would be a violation as it falls under the conditions established in the first bullet.

Ms. Palmer remarked that she wants to be sure the new condition states that no metal or plastic barrels may be used as housing.

Ms. Mallek said she has been told that plastic domes are permitted and had heard that they are for sale all over the place.

Mr. Walls remarked that these dog houses meet State requirements stipulating that there be three sides to a structure, with three sides and the ability to stand.

Mr. Gallaway asked why they are allowed to be more stringent than the State in some instances but not in others. Mr. Kamptner replied that the General Assembly allows the County to be more stringent in the area of animal cruelty and dogs running at large.

Ms. Mallek added that they were probably trying to thread the needle as a result of very vocal pressure to do a better job yet did not want to step on the toes of breeders, and thus left this portion of the Code alone.

Ms. McKeel suggested that some of these be part of the Board's legislative packet in the fall.

Mr. Kamptner added that the last slides in the presentation deal with heat and cold, shelters infested with mold, insects, or parasites, and shelters that have vents, cracks, or holes, other than the entrance, that allows rain or other moisture into the shelter. Mr. Walls added that similar to other concerns is the ability to enforce these items. For example, he does not know what a Judge would say about a half inch crack in a house. He said, in his opinion, it could get even more difficult in a situation of a neighbor dispute.

Ms. Farley said even if there are provisions that were not codified in the County Code does not prohibit Animal Control from educating people. The Board needs to balance how to encourage educational elements without setting unreasonable enforcement standards; standards that will not ultimately be enforced in a judicial setting.

Ms. Palmer remarked that the way the Zoning Ordinance works is with carrots and sticks, and she assumes that Animal Control only go after the most egregious cases.

Using as an example the noise ordinance, Mr. Kamptner remarked that the County has two ordinances, one of which is enforced by the police, and they may provide multiple warnings. He said that Zoning enforces the noise ordinance in a way that requires specific, measurable data.

Ms. Mallek remarked that only a tiny percentage of matters go to court while there would be an understanding of stronger expectations, for which enforcement personnel could go to a residence and explain the rules. She recounted that for years Animal Control officers expressed frustration that the County did not have laws they could enforce and their only recourse was to go out to a residence multiple times, and this requires the use of a lot of time. She explained that her goal is to give the officers reasonable rules to provide the ammunition to make something stick on the first visit. The County would make a big difference in the quality of care, if it does something rather than just walk away. She added that she is very frustrated with the status quo.

Ms. McKeel concurred with Ms. Mallek and said she wants to give staff the ability to address issues without having to spend years dealing with the same people on complaints.

Mr. Kamptner next presented a slide titled: Animal Cruelty: Proposed Approach for County Code § 4-301, as an example of how it could be set up:

- A. Unlawful acts. The following acts were unlawful:
 - 2. Depriving food, drink, shelter, or treatment. Any person who deprives any animal of necessary food, drink, shelter, or emergency veterinary treatment. In addition, evidence of any of the following establishes a rebuttable presumption that this subsection had been violated:
 - The person provides a shelter for an animal that was composed of metal or plastic barrels, airline crates, or carrying crates.
 - The person provides a shelter for a dog or cat that was without a floor or the floor was not raised off the ground by at least two inches.

Mr. Kamptner remarked that this provides specificity but also gives an Animal Control officer the ability to look to the more general language to assess the totality of the situation.

Ms. Mallek asked what was different in the proposal if they took out the specific bright lines that people remarked were difficult and did not establish standards. Mr. Kamptner replied that they could look to the overarching standard or evaluate the situation and require further investigation to determine if an animal is being ill-treated.

Mr. Crickenberger commented that currently they analyze if the temperature is too cold for a dog based on the breed, as short-haired dogs cannot tolerate the cold as much as longer-haired breeds. He said they also look at hydration and whether water is provided or is frozen. He said they use intent to determine if the issue is one of animal welfare, which is a Class 4 misdemeanor and subject to fines, or whether an owner did something repeatedly, which could constitute cruelty. The frustration is some of the education is not with the person, but with the court system, which is where they get stone-walled. He noted that the length of a chain has to be three times the length of the dog from the tip of its nose to the base of the tail, according to State Code. He remarked that defendants sometimes fight the fact that the County Code is more stringent than the State Code and sometimes won in court.

Ms. Mallek remarked that just because they lose every now and then does not mean they should not include it. Mr. Crickenberger expressed his approval that the County requires a longer chain than stipulated by State Code and suggested they leave this provision as it is.

Ms. McKeel remarked that it probably varies from judge to judge. Mr. Crickenberger commented that they are better positioned now than in the past in that regard.

Mr. Palmer emphasized the importance of changing the word “may” to “shall” for not allowing those convicted of cruelty to retain their animals. Mr. Crickenberger replied that only the court can make a decision to take an animal away, though an owner can petition the court after two years to have the animal returned.

Ms. Farley addressed Ms. Mallek’s question about what they lose or gain by having particular standards, explaining that by not having specific standards, they gain some flexibility and the ability to have uniformity in enforcement. She cited the example of some dog breeds that can withstand colder temperatures than others and said that if they have hard lines and use discretion, it might look like they are selectively enforcing.

Ms. Mallek noted that in the draft there is language that relates to species and breeds and asked why they cannot have this. Mr. Kamptner replied that they can do this at the front end, though they rely on the expertise and experience of officers to make these calls in the field. He added that once an owner has been cited, the standards create a rebuttable presumption. He said they can make changes to build in additional discretion for officers.

Ms. Palmer said she would like to make changes that are more stringent while allowing officer discretion. She asked what the Board is sending to the public on October 3, 2018. Mr. Kamptner replied that the public would get the revised complete ordinance as in the staff report attachment, with comments, as well as the typical strikethrough and underlined version, with comments stripped out. He said it is the second version that the Board would adopt.

Ms. Palmer noted that in Attachment A, Page 61, under “Additional Authority,” it uses the wording that the court “may” prohibit an owner from owning or possessing a companion animal, while in Attachment B the word “shall” is used. Mr. Kamptner replied that everything in Attachment B is for the Board’s consideration at this work session, and Attachment A would be what comes out of the work session.

Ms. Mallek asked for confirmation that they are setting a date for the public hearing, would receive drafts back between this meeting and then, and would not be voting on the draft today. Mr. Kamptner replied that staff sought Board direction on what has been discussed today and noted that they have barely touched on § 4-306 and § 4-308, which converted the “mays” to “shalls” where related to the disposition of animals.

Ms. Palmer asked if they could delay the public hearing to November to make sure the Board is seeing these changes and would have time to pose questions about them.

Ms. Mallek asked Mr. Kamptner how long it would take for him to have a document for the Board to review. Mr. Kamptner replied that these changes are not significant and he can have them ready by September 1.

Ms. Palmer said she would like the public to have time to comment on what would actually go out.

Mr. Kamptner offered to have the revisions available on the consent agenda on September 5, 2018.

Ms. Palmer asked that they revisit this during the evening meeting of the second week in October to allow the public and Supervisors more time. She commended staff for a great job and stressed the importance of doing this right.

Mr. Randolph complimented Mr. Kamptner and his office for improving the dangerous dog language to make it crisper, clearer, and more comprehensive. He asked if the Board can dictate to a court what the court “shall” do, as it is his understanding that the court is allowed an element of judicial discretion. Mr. Kamptner said State enabling authority is one of those provisions where the County can be more stringent, but he pauses because “may” is not a word always used in exercising discretion; it is a grant of power.

Ms. Mallek commented that “may” is less emphatic than “shall”. Mr. Kamptner said he is fairly neutral and will defer to judges. The General Assembly has said that localities can be more stringent and this is one of the statutes in which the County can. As long as the County’s regulations are reasonable, it is a proper exercise of its authority.

Mr. Gallaway said if the State enables the County to be more stringent in a regulation, and a court opposes that action, it is contingent upon the County to get that corrected. He asked if the County is doing that. Mr. Crickenberger responded that he does not have the answer to that.

Mr. Kamptner commented that between now and the public hearing, staff can talk with the Commonwealth’s Attorney office to get some clarity. From personal experience, he was involved with the County’s enforcement of the Zoning Ordinance as a criminal prosecution. Several times he came before a visiting judge, from another locality, who did not want to be bothered with localities enforcing their Zoning Ordinance, and even though the County got a conviction, the penalty would only be a \$25 fine. That spurred the County to adopt the civil penalties approach which has been more successful, with some exceptions.

In response to Mr. Gallaway, Ms. Farley said no ordinance has been invalidated or found to be unreasonable by a judge. She is understanding that there are differing levels of investment in finding someone guilty. That is why it is also important to educate the judiciary about the importance of the ordinances. She does not think the Board will ever hear a judge say the Board should not adopt Code changes. It will more likely be couched in terms of whether the judge feels the evidence is sufficient in finding someone guilty.

Mr. Gallaway mentioned that in some places, the language reads “Animal Control officer” and in other places the language reads “Animal Control officer or law enforcement officer”. Mr. Kamptner said where the language reads “Animal Control officer or law enforcement officer” it is because that is what the State law provides. Mr. Walls added that in the last two years, they have transitioned two of their civilian Animal Control officers into sworn police officers that are doing animal protection.

Ms. Farley reiterated that the language is a reflection of State Code. There are some Police Departments where their Animal Control officers and Animal Control units are entirely non-sworn, and it is important to make that distinction.

In conclusion, Mr. Kamptner said the consensus of the Board is for staff to provide direction on some adjustments, look at the use of “may” or “shall” in § 4-306 and § 4-308, bring back a revised draft for the Board’s September 5 consent agenda, schedule the public hearing for October 10, 2018.

Agenda Item No. 4. **Work Session:** ZTA201800002 Commercial and Industrial Zoned Properties Not Served By Public Water or Central Water Supply Systems in the Rural Area of the Comprehensive Plan.

The Executive Summary forwarded to the Board states that this zoning text amendment (ZTA) was initiated by the Board of Supervisors with a resolution of intent adopted on February 7, 2018. The proposed ZTA would affect properties zoned commercially or industrially that are not served by public water or a central water system. The resolution of intent stated the desire was “to amend the regulations by specifically delineating water-consuming uses not served by public water as by-right or by special use permit rather than by water consumption”.

Staff developed a proposed ordinance intended to:

- Eliminate the special use permit for uses permitted by right, not served by public water, involving water consumption exceeding four hundred (400) gallons per site acre per day
- Create a list of by-right uses for properties not served by public or central water and sewer and a list of those that should remain as special use permit uses
- Better align the Zoning Ordinance with not only the goals for resource protection, but also with other Rural Area goals and strategies of the Comprehensive Plan
- Provide clarity and remove ambiguity in zoning regulations

A public input meeting was held on April 17 and the Planning Commission held a public hearing on the proposed ordinance on May 8 and May 22, 2018. The Planning Commission voted 6:0 to recommend approval of ZTA 2018-02 with the addition of a grandfathering provision for existing or vested structures and a recommendation for a second phase of study and potential ordinance amendments. While the Commission was supportive of a text amendment to begin addressing inconsistencies between the Comprehensive Plan and the Zoning Map, it believed that additional study and solutions should be explored to address the issue in a second phase ZTA.

The Board held a public hearing on June 13, 2018 to discuss the proposed ordinance. The Board deferred action on the proposed ordinance and requested an additional work session to address the comments and concerns raised at the meeting.

A number of concerns were raised by those commenting on the proposed ordinance at the June 13 public hearing, including:

- a lack of clarity about what the proposed ordinance was trying to address,
- not enough time in the process to consider the ordinance changes and their impacts to property owners,
- property owner concerns about impacts to their property values,
- concerns the ordinance was not going far enough to protect the Rural Area,
- support from Rural Area residents for a change that would potentially help protect their water supply and protect them from other impacts, and
- support from Rural Area residents for continuing to allow businesses in the Rural Area.

Because of all of these issues, staff recommends that the Board table the proposed ordinance considered on June 13, and provide direction to staff regarding the preparation of a new ordinance.

Staff has identified three options for the Board to consider in clarifying the purpose of a new ordinance:

- Option 1) The proposed ordinance should address water only, or
- Option 2) The proposed ordinance should address land use only, or
- Option 3) The proposed ordinance should address water and land use.

Staff recommends that the process begin with developing a water only ordinance. Following completion of that process, the Board would have the opportunity to process a ZTA addressing land use issues for Commercial/Industrial properties not served by public water or for all Commercial/Industrial properties located in the Rural Area of the Comprehensive Plan.

Attachment A outlines a possible process for each option. For whichever option is endorsed by the Board, staff will present a more detailed outline for the chosen option and prioritizing of the project within the Community Development work program in October. Any option will require a new resolution of intent, which will also be presented to the Board in October.

Each option has different budget impacts based on staff hours. These impacts are outlined in Attachment A.

Staff recommends that the Board: 1) table the proposed ordinance considered on June 13, 2018; and 2) direct staff to proceed with Option 1, 2, or 3 above.

Mr. Bill Fritz, Development Process Manager/Ombudsman, thanked Supervisors for their input and effort working on this issue. He reminded them that a zoning text amendment was prepared that focused on land use and faced significant public opposition, and the Board decided not to pursue this during a public hearing. He said the issue could be broken down into three categories: 1) water use, 2)

land use, or 3) water and land use, and they each have a different process to address each category. He said that if it is purely water-related, it would be left as a technical issue for which staff could develop several options and hold round table discussions with interested and affected parties, followed by a work session and potential development of an ordinance to be presented at a public hearing.

Mr. Fritz stated that a land use-only issue is complex and involves natural resources, growth management, historic cultural scenic resources, economic development, interstate interchange policy, rural crossroads communities, and community facilities. He said that addressing this topic would involve a work group of rural stakeholder representatives that would need to take the time to develop recommendations for consideration and develop ordinance language. He said a combination of land and water use would involve a mix of the previous processes, with one option to break this into two processes involving a relatively quick technical amendment to ease administration of the ordinance, followed by a work group that would examine water and land use issues. He said the second option would be to have the work group consider both issues and make a single recommendation.

Mr. Fritz stated that staff is prepared to move forward with a limited technical amendment, followed by the creation of a work group to address the land use issue immediately. If the Board endorses this approach staff will return with a new resolution of intent to amend the ordinance and will outline all the processes, followed by consideration of the land use.

Ms. Mallek asked Mr. Fritz to explain what he meant by "technical." Mr. Fritz replied that staff has not pursued all options but there are some things that could be done purely with technical changes, citing the example of having water consumption measures changed from a per-day to an average or using a water meter to monitor if consumption has been exceeded. He said they could limit withdrawal by a flow control device or focus on it from a recharge angle by eliminating the amount of impervious coverage or the type of impervious coverage that is available on the property.

Ms. Mallek remarked that a drawback to technical is that it allows perfectly atrocious uses that do not use much water to go in by right.

Ms. Palmer commended staff and the Planning Commission for their good and valuable work. She said she thought the Board was tweaking or removing some uses that were not compatible and became surprised when she saw this matrix.

Ms. Mallek said she does not agree with Mr. Fritz's assessment that the Board decided not to adopt, adding that they were not quite there but did not want to throw out everything they had done so far. Mr. Fritz replied that it was a poor choice of words. Ms. Mallek said starting over is not a reasonable option.

Ms. Palmer asked Mr. Fritz to elaborate. Mr. Fritz said that based upon public comment, staff believed the land use matter required more than a tweaking and would require engagement with property owners and abutting owners to ensure staff has the right list of the type of uses. He said this was coupled with the realization that there are different types of properties that do not have water available, with some in or adjacent to development areas, some in interstate interchanges, some in crossroads communities, and some that are gone. He explained that they could not identify a single thing to grab onto and needed to step back and look at the locational specifics of a property.

Mr. Randolph emphasized that the issue of land use incorporates water and that what is missing among the possible techniques are traffic impacts and character of the neighborhood. He said it was untenable to talk about the completion of work on this in two years or more. He pointed out that individuals have purchased property and proposed development that does not fit with the Comprehensive Plan because it is in the rural area but would be a positive for the community. He said they are setting up a collision course between those who have exercised reasonable economic decision making and a 2.5-year delay, which is why he had suggested they come up with performance measures as a way to expedite this. He emphasized that if they only address water, they would miss other pieces and thus should take a comprehensive look and use all available measuring tools to assess whether a proposed application for a rural area site works. He said he is not pleased with the options and having to wait so long for staff to conduct a review.

Mr. Fritz replied that they are saying it would take 2.5 years if all commercial and industrial properties outside of the development areas are included, regardless of whether they are served by public water or not, and for properties that are not served by public water or a central system, staff estimates 12 months.

Ms. Mallek remarked that there are many places where they would have common agreement on the charts and emphasized that they are really close. She commented that staff has done the hard work and they should schedule a meeting between the Planning Commission, staff, and the Board to discuss differences.

Ms. Palmer said she likes Ms. Mallek's idea and wondered if it might be easier to have Supervisors meet with staff to discuss only what is in their district as a way to narrow the focus of the meeting.

Mr. Randolph liked Ms. Palmer's suggestion and said they should try to find a subset of problematic properties that should be areas of focus and not expend energy on properties that are no-brainers.

Ms. Mallek said she appreciates that there was an approach in the original matrix so that people would not feel as if they were losing a lot of rights, though there were many items that were never going to be approved and it was a false impression that the Board was giving rights that it was never going to approve. She said it would be fairer to land owners if the County were to explain what was viable, with special permits or zoning clearances, to create more certainty. She emphasized that while there was opposition from landowners, they also have to be mindful of aggrieved neighbors that would be affected. She suggested they consider whether the reuse of an existing building should be different from one that is new.

Mr. Dill said he would like to keep this simple and clear, and he wondered how consistent they should be in the context of establishing precedent. He said that every one of the 80 properties have an individual story. Mr. Fritz commented that he has some ideas as to how this might be addressed.

Mr. Kamptner remarked that properties that are similar have to be treated similarly and that all land within a zoning district is subject to the same standards, though some variability can be created by changing the uses subject to a special use permit or by creating performance standards that deal with the scale of a particular use according to parcel size.

Mr. Randolph expressed reluctance to relying on special use permits as a solution as that would bog down Community Development, entail a cost to applicants, and require work by the Planning Commission and the Board. Mr. Kamptner replied that objective performance standards could substitute for that.

Mr. Randolph agreed, as performance standards allow for the evaluation of the individual nature of a property, the neighborhood, and impacts. He suggested that standards be used generally.

Mr. Dill asked if the standards would have to be determined ahead of time. Mr. Kamptner responded, "yes", and said they would need to be objective to allow staff to easily administer.

Ms. Mallek remarked that a complete pass has been given to agricultural and forestry use in the rural area, though there are some uses that may not be appropriate in certain areas, such as tree stump grinding/mulching and agricultural processing. She expressed support for Ms. Palmer's suggestion that Supervisors review properties in their respective districts prior to a general meeting.

Mr. Gallaway agreed with Mr. Randolph's point that there are differences among properties based on where they are located, and he is interested in finding ways to get at this.

Ms. McKeel said it is hard for her to separate land use from economic development, although she agrees with what has been said and suggested they obtain input from the Director of Economic Development.

Mr. Kamptner indicated that this would be appropriate, as the Comprehensive Plan speaks to economic development for the rural areas.

Ms. Mallek expressed the importance of having residents of the rural areas served by local businesses for convenience and as community builders.

Mr. Fritz summarized what he believed to be the Board's direction, stating that he will work with the Director of Economic Development, develop a list of properties by magisterial district, establish some standards, review parcels with each Supervisor, and report back to the Board in a work session.

Mr. Gallaway emphasized that the Board's decisions could affect property values and suggested they have future discussions about this.

Ms. Mallek agreed that this was important.

Ms. McKeel remarked that the Board needs to figure out where and how they are doing things, as delays causes uncertainty and affects property values.

Recess. The Board recessed its meeting at 3:59 p.m. and reconvened at 4:16 p.m.

Agenda Item No. 5. Agency Budget Review Team (ABRT) Process.

The Executive Summary forwarded to the Board states that the City of Charlottesville and Albemarle County have conducted a joint application process for local government funding of nonprofit organizations since the 1980s. The Agency Budget Review Team (ABRT) was created in 1991 and the agency review process has been refined over the years to include the use of an objective rating tool and outcome measures.

The current ABRT process provides a single application process for agencies that apply for funding from both the City and the County, community involvement in the review of applications, and a focus on the achievement of identified outcome metrics. Art and cultural agency applications for County funding are not currently included in the ABRT application review process.

Following the adoption of the City's FY 19 Budget, Charlottesville City Council suggested that there be a comprehensive review of the ABRT process. On July 16, City Council approved City staff's recommendation to conduct a comprehensive review of the ABRT process and stated that currently funded ABRT agencies would be provided the same level of funding in FY 20 as the City provides them in FY 19. City Council stated that further details regarding the review process will be finalized after the Board of Supervisors determines whether the County will be participating with the City in the comprehensive review.

On August 1, County staff requested that the Board direct staff as to whether the County would participate in the comprehensive review of the ABRT process with the City of Charlottesville and whether the County would mirror the City's funding approach to provide FY 19 funded agencies with the same level of funding provided in FY 20. Staff also requested the Board provide direction as to the use of the \$18,900 in administrative support funding currently included in the FY 19 budget to support the joint City/County ABRT application process.

On August 1, staff provided information to the Board of Supervisors regarding the City's desire for a comprehensive review of the ABRT process and their plan regarding the freezing of the FY 20 application process. The Board of Supervisors requested that County staff meet with City staff to obtain additional information so that the Board of Supervisors can provide direction prior to the end of August. Per the Board's direction, staff will meet with City staff to obtain additional information as to the City's reasons for conducting the comprehensive review, the focus of the review, and to ascertain whether the City could allocate staff time to conduct the FY 20 ABRT agency application process for the County while the City is suspending the FY 20 ABRT agency application process for the City. Staff will provide this additional information to the Board of Supervisors at its August 8 meeting.

The County's FY 19 Budget currently includes \$18,900 in administrative support to the City to manage the FY 20 ABRT application process. If the County desires to conduct its own FY 20 agency application process review, the \$18,900.00 could be re-purposed to support the County's application process.

Staff recommends that after receiving this additional information, the Board will direct staff as to: a) whether the County will participate in a comprehensive review of the ABRT process with the City of Charlottesville; and b) the approach the County will undertake regarding the FY 20 ABRT application process and use of the \$19,000.00 in administrative support funding for the ABRT process currently included in the FY 19 Budget.

Ms. Lori Allshouse, Director of the Office of Management and Budget, stated that this conversation is a follow up from August 1 when they discussed whether or not they would join the City in a comprehensive review of the ABRT process. The Board asked staff to obtain more information from the City. She reminded the Board that on July 16, City Council authorized a comprehensive review of the ABRT process. She said that FY20 agency funding would mimic the process undertaken during the previous comprehensive review, funded agencies would receive the same amount of funding as in FY19, and new applications would not be accepted. She reviewed the County's two options: 1) participate in the comprehensive review and adhere to the City's recommended FY20 agency funding request; or 2) do not participate in the review and conduct a separate County agency application process for FY20.

Ms. Allshouse listed the questions posed by Supervisors at the August 1 meeting: 1) what are the City's reasons for conducting a comprehensive review; 2) what are the City's focus, goals, and process for the comprehensive review; and 3) would the City be able to conduct a separate FY20 ABRT agency application process for the County.

Addressing the first question, Ms. Allshouse said she had met with Cathy Demic, Charlottesville Director of Human Resources, and was informed that the City wanted to determine if the ABRT process is as transparent as possible, is meeting community needs, is consistent with best practices, and whether it can meet competing expectations. An example given was providing capacity-building support to agencies at the same time supporting high-performing agencies. Ms. Allshouse said she also learned how the comprehensive review process would be conducted. She said the process has not yet been identified but the Mayor has identified community members that could serve on a steering committee that would also include two Council members. Ms. Allshouse stated that the County could provide a similar number of members, should it join in the review, and the steering committee would hold a strategic planning session to identify the study's focus to include consideration of the last comprehensive review and the results of the Batten School completed last year. Regarding the third question, she said the City staff prefers that the County participate; however, they could conduct a County-only application process this year while the City's is suspended. She said the City also proposed the option of freezing all funded agencies for the City and County and utilize an approach they take to out-of-cycle agency applications so that in the City an agency can apply for funding outside of a process.

Ms. Palmer asked about the Batten School review. Ms. Allshouse replied that it was a well-done 20-page document with nine recommendations, and she will provide a copy to the Board.

Mr. Dill asked who authorized the study. Ms. Allshouse replied that she believes it was the City's Director of Human Services.

Ms. Mallek asked if there was any indication the City would use the same consultant again. Ms. Allshouse replied that she believes they might consider this.

Ms. Palmer remarked that they have had discussions around whether the process provided capacity-building support to agencies so she understands why the City wants to explore it more.

Ms. Allshouse listed the following considerations for determining whether the County should participate in the review:

1. Participate in the comprehensive review of the ABRT process with the City and adhere to the City's recommended FY20 agency funding approach.
 - ABRT is an established joint process
 - If the County participates it would have input in the review process and steering committee member selection.
 - Overall the County has been satisfied with the current ABRT process
 - Focus of review and staff resources are not still unidentified.
 - FY20- ABRT application policies (If they mimic the City's approach there would be no ABRT application process for FY20.
2. Do not participate in the review and conduct a separate County agency application process for FY20.
 - City staff would keep the County staff informed throughout the process
 - County staff could observe public review meetings
 - County would receive results of the review

She then listed the FY20 ABRT application process steps:

- OMB would lead the process in close coordination with Department of Social Services.
- County would model the County-only application process after the current ABRT process, with potential slight modifications.
- \$18,900 in ABRT administrative funding would be retained by the County to support the County's process.

Ms. Allshouse concluded and asked the Board for direction, including the use of the \$18,900 budgeted for ABRT administrative funding in FY19. She added that after the comprehensive process is completed, the County could then decide whether to rejoin the City and does as a joint process.

Mr. Gallaway said a speaker addressed this at the City Council meeting on Monday and the Mayor acknowledged that the staff memo provided to the Board was not as clear as it should have been regarding the reasons for the review. He said the speaker's rationale for supporting the review sounded reasonable, as they wanted to consider allowing agencies to participate in the scoring process. He expressed concern over the freezing of funding for second year groups to the amounts funded in the first year and indicated the County would have to come up with its own rating. He said he would like to have conversations with City Council to pose some questions.

Mr. Randolph remarked that it was good that there was public acknowledgement, though it would have been refreshing for the Board to have received a letter from City Council explaining the rationale. He agreed with Mr. Gallaway's remarks and emphasized that the Board could have an in-house discussion and decide whether to maintain a system under which an agency had to apply the first time and be rejected and then reapply after a year. He said an advantage of conducting this in house is they can discuss the rules by which they operate and who is eligible for funding.

Ms. McKeel commented that Charlottesville is evaluating some different organizations than the County and is providing funding more in the way of cultural and arts organization support that the County does not address. She said the second option would benefit staff, and the organizations that have received funding from the County that would be applying this year.

Ms. Palmer remarked that housing and assistance to the disadvantaged are areas of focus for the City. She said she thought there was a perception among some in the community that the nonprofit world in the area is more about "who you know" and relationships. She said she likes the joint ABRT process with the City because it sometimes dilutes that impression, as it demonstrates they are doing this collectively and in a methodical way. She added that she does not want to freeze the process. She also expressed concern that the City might change the process and the County is not in agreement.

Ms. McKeel said the Board would then have to decide what it wants to do with the process.

Mr. Dill said this is an opportunity for the County to look closely at, not only the ABRT process, but the whole relationship with nonprofits, many of which are effective and supported by the County.

Ms. Allshouse clarified that the City has said it could do a modified process for the County.

Ms. Mallek remarked that uncertainty over the timetable and the personnel weighs heavily upon her.

Mr. Dill said they could just do the freeze aspect of it.

Mr. Randolph remarked that he feels Mr. Dill has mixed two different concepts. He said the first is the ABRT and they go with the City or do they autonomously develop their own capability in-house. He

said the second question is looking at the strategic direction as they get into the strategic planning process as to how they are utilizing nonprofits, developing a comprehensive strategy, and determining if support for nonprofits matches the Board's strategic priorities. He noted that this would be a separate discussion from the ABRT, as a process needs to be in place for the ABRT and they would not be able to do everything in one year.

Mr. Dill replied that this is why he said they could go along with the freeze.

Mr. Randolph responded that he does not see freezing as an option as the County is more elastic and creative and could do this autonomously in house and also do the study, which he supports and views as being valuable over the long term.

Mr. Dill said the key part is to take a comprehensive look at the role of nonprofits in the budget cycle in performing the County's strategic goals, and giving nonprofits the same amounts as the previous year affords the County the space it needs to conduct the analysis.

Mr. Mallek recalled that the previous week, someone commented that they could separate out the agencies with exemplary records and focus more attention on those in the next category –and also look at the nine agencies from last year that have exemplary ratings but are not funded to make sure the County is not doing them more harm. She said she does not see this as a capacity-building exercise but a funding of exemplary organizations that can leverage funds. She emphasized the multiplier effect and said she heartily supports the effort, though she is not in a position to say that they should turn this into job training.

Mr. Randolph then **moved** that Albemarle County not participate in the comprehensive review of the ABRT process with the City of Charlottesville, but instead conduct a separate County agency application process for FY20 and use the \$18,900 already budgeted for ABRT administrative support funding in FY19 for the application process in the County. The motion was **seconded** by Ms. Mallek.

Mr. Gallaway emphasized that although the County will not participate with the City in the review, he will keep an open mind.

Ms. Palmer suggested the County send a letter to the City with an explanation of why they are not participating in the review.

Ms. McKeel asked Ms. Allshouse if there was sufficient staff capability for the County to conduct its own review. Ms. Allshouse said she will work with Ms. Phyllis Savides, of the Department of Social Services, to set up a process. She described the review process as intense, which the County will attempt to mimic. Staff can bring something back to the Board for review at the September meeting.

Mr. Dill commented that it is as if they were setting up a whole new department with a budget of less than \$20,000 when they are pressed for time.

Ms. Mallek interjected that they can use the same questionnaire that has been used and improved for years, separating out the exemplary organizations.

Ms. McKeel said she thinks the City's study will inform the Board for the next discussion.

Ms. Palmer added that Ms. Gretchen Ellis informed the Board that they can provide some level of help and asked whether they can engage her as a consultant to assist County staff in doing things more smoothly.

Ms. Allshouse responded that City staff is very open to being helpful and uses Zoom Grants, an electronic portal whose cost was shared by the County.

Mr. Dill asked Mr. Richardson to comment on the workload this would add to County staff. Mr. Richardson replied that the Office of Management and Budget and Department of Social Services works closely with the nonprofits, are familiar and confident with the process in place, and can replicate what the City has done in the past. He recognized the \$18,900 as placeholder money, described the process as a cobbling together of a Plan B, and remarked that he does not believe it is putting the County in a terribly bad situation. He asked Ms. Allshouse for comment.

Ms. Allshouse replied that staff has been involved as its representatives serves on the ABRT, there is a strong correlation with DSS work, and Ms. Savides has demonstrated that she would be supportive.

Mr. Randolph said that when the Board engages in its retreat to review the Two-Year Strategic Plan, it should look at ways they currently use nonprofits to have a broader reach of governmental services the County cannot provide itself and to see if they could be more effective. He said this could help inform them long term as they look at nonprofits, their relationship with ABRT, and their relationship with the County outside of ABRT.

Mr. Dill remarked that this was a good idea.

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

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

Agenda Item No. 6. Board of Supervisors Operating Guidelines.

The Executive Summary forwarded to the Board states that at the Board's July 9, 2018, meeting the County Executive presented the Board's Operating Guidelines for High Quality Governance (Attachment A) as developed during the May 2-3, 2018 Board Retreat for the Board's review.

After discussion, the Board agreed to revisions to guideline numbers 4 and 6. The revised Operating Guidelines are provided in Attachment B.

The County Executive has since received additional feedback on the language of the Operating Guidelines, and will present the additional concerns to the Board at its August 8 meeting.

Board members expressed additional concern specifically regarding #2 and #7 of the Operating Guidelines.

- As currently written #2 states: *We will honor the will of the majority and respect the interests of minority opinions.*
 - o Regarding guideline #2, a Board member expressed concern that this guideline as written requires clarification on what is meant by "the interests of minority opinions."
- As currently written #7 states: *We ensure that we work with a careful and unified voice when we are dealing with other jurisdictions or units of government, including both the Board and the County Executive.*
 - o In the interest of supplying clarity around the intent of guideline #7, a Board member has suggested two possible revised versions:
 - **Revised Version 1:** When dealing with other jurisdictions or units of government regarding a matter that has been the subject of a vote of the Board, and when the vote on the matter is not unanimous, we ensure that we acknowledge lack of unanimity in the vote in the interest of openness and fair dealing, and encourage contact with Board Members with Minority views, while confirming that the Majority vote constitutes the position of Albemarle County, thereby allowing the Board to speak with a unified voice with respect to both Majority and Minority views.
 - **Revised Version 2:** When dealing with other jurisdictions or units of government regarding a matter that has been the subject of a vote of the Board, and when the vote is not unanimous, we ensure that Board Members who voted in the Minority defer to Members of the Majority for any and all necessary contact/communication/negotiations with the other jurisdiction or unit of government, and withhold any further statement or communication of Minority views from the other jurisdiction or unit of government, the media, the public and constituents, to ensure that the County may speak with a the unified voice of Majority Board Members.

There is no budget impact anticipated with the adoption of these guidelines.

Staff recommends that the Board consider the proposed revisions.

Mr. Richardson stated that the Board reviewed a draft of its operating guidelines for high quality governance at the July 9 meeting, which was developed at the May 2-3 Board retreat. After discussion, the Board agreed to minor revisions of Numbers 4 and 6, which are provided in Attachment B (copy on file). He said that Ms. Palmer worked on some additional edits for the Board's consideration, and she proposed two revisions, which are contained in the staff report. He suggested that the Board vote on the operating guidelines, after which staff would check in later in the year to report on how things are going under the new guidelines.

Ms. Randolph expressed appreciation to Ms. Palmer for having flagged what he termed as exceedingly broad statements, Numbers 2 and 7, as there is a need for greater clarity. He said he would like to make a slight change to what Ms. Palmer has proposed for #7 as he believes there are implicit First Amendment issues which he can separate out. He read statement #2: "We will honor the will of the majority and respect the interests of minority opinions." He proposed the following: "We will honor the expressed will of the majority." He explained that without this adjustment, it indicates that they should all honor what they have interpreted to be the implicit will of the majority. He emphasized that when the Board votes on an item, it is a legal expression. He said he believes the intent of the word "interests" is really "concerns" and suggested they change this to "respect the concerns of the minority." He indicated that there should be no confusion that the Board's responsibility is to always honor what has been voted on and expressed by a majority, though this does not mean that they ride roughshod over concerns expressed by the minority.

Ms. Palmer said she is fine with that.

Ms. McKeel added that it is a lot simpler.

Mr. Randolph suggested a change to No. 7. He read the current proposed language: "We ensure that we work with a careful and unified voice when we are dealing with other jurisdictions or units of government, including both the Board and County Executive." His proposed language is: "We, including both the Board and County Executive, ensure that we carefully work with a unified voice when we are dealing with other jurisdictions or units of government."

Ms. Palmer expressed concern with the use of the word "dealing," as she feels is meaningless given that they have all kinds of interactions with different governments and individuals. She said she does not want this kind of thing to be used inappropriately to attempt to pressure somebody to vote one way or another, and is why she gave the two extremes. She described the word "dealing" as being nebulous.

Mr. Randolph asked Ms. Palmer if she would accept the word "interfacing" as a substitute for "dealing." Ms. Mallek remarked that "negotiating" may be more appropriate. Ms. Palmer said they want to be clear, but she also does not think the use of "interface" is clear enough.

Mr. Randolph replied that the danger is if they use "negotiating" and there is not a negotiation, then it would be permitted. He said there is value in having something that is broader. He used "arbitrating" as an example of something that is not the same as negotiating.

Ms. Palmer replied that this is why No. 1 makes it very clear as it specifies "after a vote is taken." She said she wants to make sure that a new Board member is not taken advantage of in certain situations.

Mr. Randolph asked if it would be helpful if he were to go on to her revised version No. 2, as he made changes to add this as an addendum. He said that the substitution of "interfacing" with "dealing" would not preclude clarification that they are working with a unified voice when interfacing with other jurisdictions or units of government. He said the revised version would say that "when dealing with other jurisdictions or units of government regarding a matter that has been the subject of a vote of the Board and a vote is not unanimous, we ensure that Board members who voted in the minority defer to members of the majority for any and all necessary contact, communications, negotiations with other jurisdictions, units of government or other outside parties and withhold any further statement or communication of minority views from the media, the public, and constituents to ensure that the County may speak with the same unified voice of majority Board members."

Ms. Palmer recounted that Ms. Mallek commented that if they did that, she could not have gotten anywhere with the bypass.

Ms. Mallek interjected that she would have been gagged for four years. She said the first half of Mr. Randolph's wording is great but she is concerned with the second half.

Mr. Randolph said he meant to strike that and read, "or other outside factors and withhold any further statement or communication of the minority's views from the same entities to ensure that the County may speak with a unified voice of majority Board members."

Ms. Palmer described the second option as a gag order that she put in for demonstration purposes but did not expect the Board to approve.

Mr. Randolph read his proposed changes again: "When dealing with other jurisdictions or units of government regarding a matter that has been the subject of a vote of the Board and when the vote is not unanimous we ensure that Board members who voted in the minority defer to members of the majority for any and all necessary contact, communications, or negotiations with other jurisdictions, units of government, or other outside parties."

Mr. Kamptner commented that to the extent that any discussion would be considered to be government speech, the First Amendment does not apply, though he recognizes that they do not want to have a gag order.

Ms. Palmer expressed that when a vote is not unanimous, she would like there to be an acknowledgement of this in the interest of openness and fair dealing and to encourage contact with Board members that have minority views. She said this would be done while confirming that the majority vote constituted the position of Albemarle County, thereby allowing the Board to speak with a unified voice with respect to both the majority and the minority views. She asked Mr. Randolph if he disagreed with this. Mr. Randolph responded that he thinks this is implicit in the statement above and is redundant. Ms. Palmer replied that then they do not need what he had just added.

Ms. Mallek recounted how between the years 2010–2014 she was in the minority, and although she was Chair for a portion of this time, she did not yell from the rooftops that she did not get her way. She added that when interviewed, she would say that "the majority voted this way and here is what they said."

Ms. Palmer said she would take out "for any" and replace this with "for all necessary contact, communication, or negotiation with the other jurisdiction." She said she would remove the words "contact" and "communication" and just use the word "negotiation."

Mr. Gallaway emphasized that they have operating guidelines and procedures in the County and it states that procedural rules not addressed by these rules shall be governed by Roberts' Rules of Order. He said Roberts Rules are specific about protections of the minority and specifies that though the majority rules, the minority has a right to be heard and its ideas taken seriously. He read excerpts from Roberts' Rules which calls for those who voted on the losing side to respect the vote and cheerfully carry out the membership's wishes.

Mr. Gallaway said he is fine with No. 2 because it says "the expressed will of the Board" and that after a vote happens, individuality stops as it is now the expressed will of the Board. He said that for No. 7 they should not be having individual conversations as it should be dictated by the expressed will of the Board. He said they have the responsibility to understand what majority rule means and that those in the minority should not do anything to undermine the expressed will of the Board once a vote is taken. He said that No. 7 is not the proper place to mention minority views, as it is the expressed will of the Board that drives communications with everybody though this does not in any way undermine the rights of the minority.

Ms. Palmer expressed a willingness to go with Roberts' Rules and said she would be fine with striking No. 7 entirely.

Mr. Gallaway reminded the Board that this issue was brought up with the intent of these six individuals getting along, and he expects that it be revisited every year at the Board's retreat.

Ms. McKeel commented that every Board will revisit this and they cannot hold a future Board to these rules.

Ms. Palmer emphasized that her intent is to show how nebulous their policy is and how it can be interpreted ambiguously.

Ms. Mallek remarked that having the discussion has helped to seal the deal even if they remove No. 7, as it would point them back to the direction of what they already live by.

Ms. Mallek surveyed the Board to see if there was agreement with the striking of No. 7. There was no objection expressed.

Mr. Gallaway said a constituent expressed concern with No. 4 because he did not want a Board member to feel restricted in carrying out work on behalf of a constituent. He said he is not restricted by this rule in carrying out constituent services, and regardless of whether they call him or Mr. Richardson or a staff member, the point is that the County needs to get going on it. It does mean that if an individual Supervisor tries to dictate a policy change and there is not a majority view, then it is their responsibility to come back to the Board and see if there is interest in a change.

Mr. Gallaway said the other item is around communication with staff and the nature of copying the County Executive and department heads when communicating with staff. He remarked that if he sends a communication to a staff member and does not carbon copy the County Executive or department head, then he would not know if he has contacted the appropriate person – and it is management's responsibility to make sure subordinates are doing the work properly.

Ms. Mallek added that another benefit of copying management is that it prevents staff from feeling isolated and feeling that a Board member is "after them." She added that a research request is different from a carrying out of a constituent request.

Board members agreed that this item would be added to the Consent Agenda of the September 5 meeting and that the opportunity for public comment would come during the Matters From the Public portion of the meeting.

Agenda Item No. 7. Community Remembrance Project Update.

Ms. Siri Russell, Management and Policy Analyst, presented the following overview of the Equal Justice Initiatives (EJI) Community Remembrance project:

- Progress Overview
- Progress to Date
- Proposed John Henry James Soil Exhibit
- Marker/Monument
- Opportunities for Continued Collaboration/Next Steps

Desired Outcome:

- Board endorsement of approach for the exhibition of the soil
- Board agreement to continue community collaboration activities regarding the Community Remembrance Project
- Direction to pursue exploration of County specific remembrance opportunities

Ms. Russell said that the EJI Community Remembrance project is a national campaign to bring awareness of terror lynchings. The EJI spent six years gathering information on over 4,000 racial terror

lynchings – with 85 having happened in Virginia. She listed the values the Initiative expected communities to embrace: authenticity, forthrightness, collaboration, listening with respect, and empowered courtesy. The values come with expectations: communities establish a community coalition that include diverse individuals representing the community/organizations, institutions/government actors, to focus on building awareness and enabling truthful conversations and promote collaborative activities.

Ms. Russell presented a timelines of project progress and reminded the Board that on July 5, it adopted a resolution in support of the project; on July 7 Board members participated in a soil collection ceremony at the site of Mr. James' lynching and had community discussions about lynching. She said this was followed by a six-day pilgrimage to Montgomery, AL, to deliver the soil, in which Board members participated. On July 11 the Board adopted a resolution proclaiming July 12, 2018 as John Henry James Day, marking the 120th anniversary of the lynching. She said a report of the pilgrimage was delivered on August 5, at which time participants spoke to the community and relayed what they took from the experience with a major theme being an emphasis on education and truth telling.

Ms. Russell explained that the proposed John Henry James soil exhibit would involve collaboration with Jefferson-Madison Regional Library and Thomas Jefferson School African-American Heritage Center, with the exhibit traveling among local library branches, libraries in neighboring communities, and historical societies. She presented photographs of what the exhibit might look like with a glass case, large imagery, narrative text on lynching in general as well as the story of Mr. James, an iPad kiosk with content to include video from the soil collection ceremony, the discussion on lynching, the Board's adopted resolutions, educational content, and a recommended reading list. She said she anticipates a kickoff event to be held at the County Office Building, with the exhibit returning to the County Office Building after it travels.

Mr. Randolph suggested the exhibition also include the proclamation declaring John Henry James Day so people can read and contextualize the resolution. Ms. Russell replied that the intention is to have the resolution available for reading in the iPad and can potentially include a video of the proclamation being read out loud by the Board.

Ms. Mallek suggested the staff also post the proclamation. Ms. Russell agreed.

Ms. Mallek speculated that they could have multiple soil jars with one that remains at the County Office Building and the others as part of the traveling exhibit. Ms. Russell pointed out that Charlottesville also has a soil jar that is currently at the Jefferson School, where they hope to build an exhibit.

Ms. McKeel expressed support for having a permanent display in the County Office Building.

Mr. Randolph pointed out that Lord Albemarle's father was a slaveholder with extensive holdings in the West Indies, and this is a good counterbalance to that as it represents the logical conclusion of slavery as both stories represent the history of the County. He remarked that the Board has devoted a lot of work and a sincere commitment to the recognition of John Henry James and a permanent exhibit is appropriate.

Ms. Russell asked if it would make sense to have a limited travel schedule and have the exhibit rest in the County Office Building for most of the year, or whether they preferred to have separate soil containers.

Ms. Mallek expressed support for having different venues to reach a broad audience. She said that the Board will need to learn more from Ms. Russell about the feasibility of this.

Ms. McKeel indicated that it may not be appropriate to move the exhibit among other counties unless they have reached out to Albemarle and requested this.

Mr. Gallaway expressed support for having a traveling exhibit, though he believes that having multiple soil containers might be disrespectful. He asked Ms. Russell if having a traveling exhibit would help in doing the things they need to do to establish themselves for the permanent marker.

Ms. Russell replied that it is a demonstration of the educational component, which is part of the eligibility guidelines to receive the monument. She presented photographs of a historical marker as well as the Equal Justice Initiative monument. She said they hope to receive the historical marker in 2018, though there are a few eligibility guidelines they have to meet. She said the County is working with State Department of Historic Resources to get the marker from EJI included in the State registry. If this occurs, Albemarle would be the first in Virginia. She said that the EJI is not releasing any of the monuments until 2019; with the Coalition and Albemarle hoping to be among the first selected.

Ms. Mallek added that there will be some discussions about location. Ms. Russell responded, "yes". She added that prior to obtaining the monument, they will have to demonstrate that they have secured a contractor and identified a location.

Mr. Randolph asked where the monuments would be manufactured and who would pay for shipping. Ms. Russell replied that the monuments are all in Montgomery, and the County will have to pay for shipping.

Ms. Russell next reviewed opportunities for continued collaboration, which include collaboration with County public schools that would involve an essay contest focusing on, racial justice, the Jim Crow

period and could also involve a music composition, poetry, and painting. She noted that Charlottesville is also collaborating with schools, and the County could mirror its schedule with a joint celebration of contest winners on March 3 at Jefferson School, recognized by Charlottesville as “Freedom and Liberation Day.”

Mr. Randolph noted that 10–15% of County children attend private schools, and he hopes they can also reach out to these schools.

Mr. Dill proposed that the County consider the recognition of March 3 as Freedom and Liberation Day.

Ms. McKeel encouraged Ms. Russell to make an outreach to Mr. Matt Haas, and other officials, of the County schools. Ms. Russell replied that she has done so and was directed to their designee, Mr. John Hobson, as a point of contact.

Ms. Mallek expressed support for having the essay contest include other modalities and that they also reach out to homeschooled students. She suggested that the County have the contest ceremony on the same day but at a different time and location from the City so that parents can come and watch their children perform, if that ends up being one of the modalities.

Ms. Russell continued her presentation of opportunities for collaboration and said that they will continue a partnership with the local coalition, which is led by Dr. Andrea Douglas and Dr. Jalane Schmidt. She said a new planning group is being formed that will develop programming and educational opportunities going forward. She said the third initiative under opportunities for collaboration will be opportunities to tell the story of Albemarle County to acknowledge that this story is separate and unique from that of Charlottesville.

Ms. Mallek referred to recognition of the Rosenwald School, located in the Rio District, and the Piedmont School in Hillsboro, where the African-American children went to school.

Ms. Russell summarized her understanding of the Board’s direction. She said there is Board support for the soil exhibit with some details still to work out, agreement to continue with community collaboration activities, and strong support to explore County-specific remembrance opportunities.

Ms. Mallek remarked that she has unanimous support.

Ms. Gallaway suggested that this presentation be given to the School Board.

Ms. McKeel agreed and suggested she expand the presentation, as the Board had some background information but this may all be new to the School Board.

Ms. Mallek concurred and remarked that it is shocking to her that she did not learn this in school when she attended in the 1950s and 1960s.

Ms. McKeel suggested that Supervisors donate the books they received in Montgomery, AL, to the school libraries.

Ms. Mallek suggested that they consider having a general remembrance project so that members of the community can tell their own stories.

Ms. McKeel complimented Ms. Russell for conducting a well-organized trip.

Agenda Item No. 8. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Mallek asked the two Supervisors who had not responded to her email about the “We Are Still In” Declaration in Support of Climate Action, if they would like to participate.

Ms. McKeel said she would.

Mr. Kamptner asked if he could be filled in on this. Ms. Mallek responded that localities across the country were saying they were still in the Paris Accords.

Mr. Kamptner instructed that a vote of the Board to authorize the Chair to sign would be appropriate.

Ms. Palmer suggested that the Board place this on a future Consent Agenda.

Mr. Randolph said that Supervisors will receive copies of the Thomas Jefferson Planning District Commission’s organizational strategic plan, followed by a presentation by Mr. Chip Boyles, at a future meeting. He said they will also receive the 2040 Rural Long Range Transportation Plan for the entire region. He said the Plan includes graphs and statistical information that compares the individual counties.

Agenda Item No. 9. From the County Executive: Report on Matters Not Listed on the Agenda.

There were none.

Agenda Item No. 10. Closed Meeting.

At 6:02 p.m., Mr. Gallaway **moved** that the Board enter into a Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:

- Under Subsection (1), to consider appointments to boards, committees, and commissions in which there are pending vacancies or requests for reappointments.
- Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to actual litigation between the Board and Global Signal Acquisitions, and between the County and County employees and Benjamin Burruss, where the consultation or briefing in an open meeting would adversely affect the negotiating or litigating posture of the County and the Board.

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

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

NAYS: None.

Agenda Item No. 11. Certify Closed Meeting.

At 6:28 p.m., Mr. Gallaway **moved** that the Board of Supervisors certify by a recorded vote that, to the best of each Supervisor'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. The motion was **seconded** by Ms. Mallek.

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

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

NAYS: None.

Agenda Item No. 12. Boards and Commissions: Vacancies and Appointments.

Mr. Dill **moved** that the Board appoint/reappointment the following individuals to boards and commissions:

- **reappoint**, Ms. Charlotte Buttrick to the Acquisition of Conservation Easements (ACE) Committee, with said term to expire August 1, 2021.
- **reappoint**, Ms. Lauri Wilson and Mr. Richard Hiss to the Pantops Community Advisory Committee, with said terms to expire June 30, 2020.
- **reappoint**, Mr. Vito Cetta and Ms. Sue Friedman to the Places 29 (Hydraulic) Community Advisory Committee, with said term to expire August 5, 2020.
- **reappoint**, Mr. David Mitchell to the Places 29 (North) Community Advisory Committee, with said term to expire August 5, 2020.
- **appoint**, Ms. Victoria Waterfield to the Region Ten Community Services Board, with said term to expire June 30, 2021.

The motion was **seconded** by Ms. Mallek.

Ms. Mallek conducted a survey of Board members to determine who planned to attend the August 21, 2018 Economic Development Authority appreciation gathering at the UVA Research Park. It was not clear how many planned to attend, so Ms. Mallek said she would assume that at least three Supervisors would attend and would adjourn to that date.

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

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

NAYS: None.

Agenda Item No. 13. Adjourn.

With no further business, at 6:30 p.m., the Board adjourned its meeting to August 21, 2018 at 5:00 p.m. 995 Research Park Boulevard Town Center III.

Chairman

Approved by Board
Date 1/16/2019
Initials CKB