An adjourned meeting and a regular night meeting of the Board of Supervisors of Albemarle County, Virginia, were held on September 12, 2018, Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. The adjourned meeting was held at 2:00 p.m., and adjourned from September 7, 2018. The regular meeting was held at 6:00 p.m.

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

ABSENT: Mr. Norman G. Dill.

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 2:01 p.m., by the Chair, Ms. Mallek.

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Agenda Item No. 2. Authorization to Execute Performance Agreements for Project Turtle and Daffodil.

The Executive Summary forwarded to the Board states that Albemarle County is partnering with the Commonwealth of Virginia to provide support for a project at the Woolen Mills site. The County is providing financial support for the relocation and expansion of WillowTree, Inc., to become the anchor tenant in a redeveloped Woolen Mills site. WillowTree was at significant risk of relocating out of state, and both the State and County determined that the stimulation of the additional tax revenue and economic activity constitutes a valid public expenditure. Albemarle also is providing investment in infrastructure to support the general redevelopment of this valuable and unique site. Justification for County use of incentives:

- Consistent with Comp Plan in areas of land use, economic development and transportation
- Supports redevelopment, placemaking and economic development in FY 17 - 19 Strategic Plan
- Supports growth of a target industry
- Catalyzes business development and vibrancy in a unique economic corridor
- Adaptively reuses historical industrial site
- Activates the Rivanna River corridor and connects recreational assets
- Creates positive tax revenue growth in first year, ROI increases significantly in Year Six
- Helps shift commercial vs residential tax base
- Reduces future service demands
- Stimulates growth in other economic sectors

Founded in 2007, WillowTree, Inc., is a computer software company committed to helping clients realize the potential of rapidly evolving mobile technologies, from developing a mobile strategy to launching mobile products. WillowTree's clients range from medium and large businesses to Fortune 500s, and include Regal Cinemas, Wyndham Hotels, GE, AOL, PepsiCo, and the University of Virginia. WillowTree considered other locations around the country for its headquarters but ultimately decided to stay in this community and create a best in class corporate campus. The culture, tech ecosystem, the University of Virginia, and quality of life made this location their first choice.

The new Woolen Mills location will allow space for growth and flexibility. Woolen Mills once was a large wool mill that manufactured uniforms for soldiers and workers. It will now become the headquarters for the largest digital product agencies - a manufacturer of the future. The Woolen Mills is an iconic site where WillowTree can grow and realize a state-of-the-art corporate campus. The significant infrastructure investment and job growth supports the County's vision for site redevelopment. The WillowTree presence at the Woolen Mills connects recreational assets, creates urban vibrancy, and helps activate the Rivanna River corridor.

<u>WillowTree Relocation/Expansion Support:</u>

1. Commonwealth's Development Opportunity Fund (COF)

WillowTree committed to the following measures for obtaining a $500,000 COF grant from the State, to be governed by a performance agreement involving the State, WillowTree, the County and the EDA (Attachment A):

- Anticipated investment - $12.3 million
- Anticipated job growth
  - retain 160 existing jobs
  - add a minimum of 200 new jobs in 3 years
  - provide career ladder jobs
  - pay wages far above County average

The COF requires a match from the locality. The County would provide $500,000 in tax rebates ($100,000 annually) over five years to match the State's $500,000 grant as described below. This will be governed by a performance agreement involving WillowTree, the County and the EDA (Attachment B):

- fifty percent (50%) of the business license tax the Company pays to the County - BPOL tax refund grant
- fifty percent (50%) of the difference between the annual real estate tax levied upon the

Property after the certificate of occupancy is issued and the real property taxes levied upon the property in the year preceding the execution of this agreement that the Company pays to the County - real property tax refund grant

2. Virginia Jobs Investment Program grant (VJIP)
The County and the EDA would provide a combined maximum of $200,000 to match the State VJIP grant program - $500 from the County and $500 from the Albemarle County EDA for each new full-time job created in Albemarle County with a maximum of 200 jobs, to be governed by a performance agreement between WillowTree, the County and the EDA (Attachment C).

3. Three Way Transit Partnership
The County will provide a $160,000 match for a transit partnership - $40,000 (maximum) annually for four years to match equal contributions from the property owner and from the tenant for a downtown shuttle (first year of a five-year agreement paid through Woolen Mills public infrastructure investment - details regarding this partnership including performance agreement still being developed and will be brought to the Board for final approval)

<u>Woolen Mills/Corridor Redevelopment Support</u>

1. Public Infrastructure Investment Grant
$1 million investment in public infrastructure to revitalize riverfront development, surrounding business village and recreational amenities - $40,000 of this amount will fund the County's first year commitment to the transit partnership as mentioned above. This investment would target the following specific public serving uses, to be governed by a performance agreement between the property owner, the County and the EDA (Attachment D).

- publicly available parking for recreational amenities
- pedestrian bridge and associated trail linkage
- transit improvements - specifically the shuttle partnership described above

2. Broadway Corridor Economic Revitalization Action Plan
$50,000 investment to catalyze further development of 45 commercial acres in the County.

- Albemarle County matching Commonwealth Opportunity Fund award - $500,000 minimum - will come from tax rebates from the General Fund
- Albemarle County matching VJIP award - $200,000 total - $100,000 from County to come from Economic Development Opportunity Fund, $100,000 from EDA to come from their budget
- Albemarle County share of transit partnership - $160,000 max - will come from the Economic Development Investment Pool
- Albemarle County infrastructure investment award total - $1,000,000 - will come from the Economic Development Investment Pool
- Broadway Corridor Economic Revitalization Action Plan - $50,000 - will come from Economic Development Investment Pool

The cost for these agreements can be paid from existing appropriations.

Staff recommends that the Board adopt the attached Resolution (Attachment F) to approve the following agreements and to authorize County Executive to execute the agreements on behalf of the County once they have been approved as to form and content by the County Attorney:

- Commonwealth's Development Opportunity Fund Performance Agreement
- Commonwealth's Development Opportunity Fund - Albemarle Match Performance Agreement
- Virginia Jobs Investment Program - Albemarle County Match Performance Agreement
- Albemarle County Public Infrastructure Investment Grant Performance Agreement

Staff also recommends the Board:

1. direct staff to:
   a. finalize the transit partnership; and
   b. initiate the Broadway Economic Redevelopment Corridor Study
2. authorize use of funds for those purposes.

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Mr. Doug Walker, Deputy County Executive, stated that this was an action item, and the Board has in their packets the actions they are being asked to consider. Mr. Walker explained that they would discuss the Woolen Mills project, which received some good attention in the last week with the Governor's visit, in conjunction with the WillowTree project. He stated that staff has been characterizing this, as was often done for confidentiality to avoid compromising proprietary information, with code names: Project Turtle (Woolen Mills) and Project Daffodil (WillowTree).

Mr. Walker stated that economic development requires a team effort, and the work involving the Board, staff, property owner, and business was not grounded in luck; it was good hard work. He recognized the Economic Development Authority, the Weldon Cooper Center for Public Service, the Virginia Department of Economic Development, the City of Charlottesville, and several County departments involved in this work. He noted that this does not include the private sector partners, which he would discuss in this presentation. Mr. Walker also recognized Ms. Lee Catlin as a valued consultant, Mr. Bill Fritz in Community Development as the point of contact, as well as Mr. Mark Graham, Mr. Bob

Crickenberger, and Mr. Dan Mahon. Mr. Walker noted that this project has significant community amenities aspect, with a bridge across Moores Creek and extensive involvement with Parks and Recreation in terms of the amenities and how they relate to the trail system in that area. He stated that Mr. John Blair, of the County Attorney's office, also did a tremendous amount of work on the agreements before the Board for consideration.

Mr. Walker reported that in 1980, the project was zoned for light industrial, and in May 2017 there was a special use permit approved to add a residential component to this use, adding 94 units. In July 2017, in conjunction with the projects, the business plan to lower the residential component and increasing the non-residential component would ultimately result in the entire use being non-residential. He explained that WillowTree was a primary business exporting software and mobile applications, and they represent a $12 million capital investment in this project, helping to retain 165 existing jobs within the region and creating a minimum of 200 new jobs within the region, with an average salary of $80,000.

Mr. Walker said that the County was committed to the project because it was consistent with the Comprehensive Plan, provides career ladder and high paying jobs, reuses an historic industrial site and puts it back into productive commercial use, activates the Rivanna River and provides connectivity both across Moores Creek and elsewhere within the area. In addition, the project increases the commercial tax base, stimulates growth in other economic sectors, and provides a net increase in tax revenue going forward.

Ms. Palmer stated that she had some questions about why the project needed to be kept secret, and her understanding from Mr. Walker was that it was to protect the interests of the two property owners. Mr. Walker responded, "yes"; and said this was consistent with his experience in all economic development projects where there was information shared with local government by private property owners that could compromise the ability to move forward with a deal. In this case, the private property owners were the Woolen Mills property owner and the business itself. Mr. Walker said that he does not know about other negotiations the owners may be having that do not involve the County.

Mr. Roger Johnson, Director of Economic Development, stated that they would talk about these in two separate projects. He explained that Project Turtle was an agreement with the developer, Mr. Brian Roy, who was present at the meeting. He explained that there was an agreement in the Board's agenda package, in which the County agrees to provide a $1 million investment and in return got shared parking for the benefit of the Woolen Mills, corridor, and river activity; trail linkages, which include the bridge as Mr. Walker mentioned; and some pedestrian and transit improvements to connect the village to the area.

Mr. Johnson reported that Project Daffodil has three agreements associated with it: A Commonwealth Opportunity Fund agreement, which is an agreement with the state, WillowTree, and the County. He said that the state would provide $500,000 to the County, which would serve as the financial steward; and the County's match to the fund would have a floor of $100,000 annually, which could be exceeded if the performance of WillowTree improves over expectations. He stated that they also have an agreement for a VGIP grant amount to help with the costs of hiring and training, with $500 from the County for each new full-time job created in a four-year period with a maximum of 200 jobs.

Mr. Johnson stated that there was a footnote with the second agreement (Attachment B) in terms of how that would be funded, and he explained that they would rebate 50% of BPOL taxes paid to the County, as well as 50% of the real estate taxes paid. He said that WillowTree would make those payments and the County would reimburse them 50%, which was how the County would fund the Commonwealth match. Mr. Johnson stated that overall, this means a direct increase in revenues projected at more than $2.7 million, with the three agreements and some ancillary expenses to total $810,000, resulting in a total of $1.9 million in tax revenue to the County for the first five years, with property tax revenues expected to increase to $550,000 or more annually.

Mr. Johnson stated that there were some obstacles to this project that came late in the game, particularly as it related to the changing use of the facility, particularly parking complications, so the County had to engage in both short and long-term strategies to help overcome the issues for making this particular campus work for the developer and the business itself. He said the County agreed to participate in a downtown shuttle bus for five years, with the costs being shared by the landowner, tenant, and County, respectively. Mr. Johnson noted that there was a longer-term strategy to help overcome some of those issues: by creating a Broadway corridor economic revitalization action plan, or "Broadway blueprint," which would be more comprehensive and would result in the review of technology zones, public/private partnerships, placemaking, and other things that would improve and catalyze the whole community rather than looking at it as just a Woolen Mills project itself. Mr. Johnson presented an illustration of the area encompassed in the project.

Mr. Johnson stated that WillowTree is a "primary business" that produces a good or service locally, selling it outside the Metropolitan Statistical Area to clients such as Time Warner, GE, etc. He stated that the County enlisted the Weldon Cooper Center at UVA to do an economic impact analysis, which was done on a software program that is generally accepted around the U.S. as an estimate of how much wealth was being brought into the community. Mr. Johnson said that the program estimates direct impact in economic impact, indirect impact, and induced impact. He stated that direct impact would be the impact WillowTree provides when selling an app to a company like GE, as all of that money comes directly back into the community and could be used for many things. He explained that an indirect impact was more business-to-business related, with that money coming back in through WillowTree to buy computers, etc. He stated that the employees that work there get paid and spend locally as well. Mr.

Johnson stated that UVA completed an “implant analysis,” which includes things such as an economic multiplier.

Mr. Johnson stated that when a dollar comes directly into the community, the money is re-spent in the community by the employees or WillowTree, but a certain percentage leaks out of the community, such as spending it on buying a car or traveling out of town. He said that economists estimate that about 60% of the initial investment would leak on the first sell, and those who sell products to employees would retain some of that in the community, with 24 cents of every dollar leaking out and 16 staying here. Mr. Johnson said that the scenario continues until eventually all of the money WillowTree brought in was negligible.

Mr. Johnson reported that the multiplier effect for WillowTree, as acknowledged by Weldon Cooper, was $1,000, and, after it was spent once, $400 remains in the community; after that particular person spends money, another $160, then $60, then $30, and then $10. He stated that the total effect of the money coming into the community was greater from a primary business than a normal business just bringing a dollar in; 1.66 times the normal value. Mr. Johnson said that Weldon Cooper indicated that in 2019, if WillowTree has 305 jobs, that would result in $62 million of direct spending in the community. He stated that there would also be indirect spending of $21 million or more and induced spending of $26 million or more, for a total of $109 million coming into the community to support all of the community desires and wants; parks, restaurants, quality of life aspects. Mr. Johnson stated that primary jobs create other jobs in the community, with indirect and induced impact of 686 jobs projected as a result of a primary business like WillowTree, which was an overall public good for the community.

Mr. Johnson stated that they would discuss the next steps and action items, with the Governor recently announcing that this project would land in Albemarle County. He said they would be asking both the Board and the Economic Development Authority to take action to approve the incentives, the performance agreements, to endorse the funding support for the shuttle, and endorse moving forward with a Broadway corridor economic revitalization action plan. Mr. Johnson read staff’s recommendation for adoption of the resolution as represented in Attachment F, and to approve agreements A, B, and C which are associated with Project Daffodil: The Commonwealth’s Development Opportunity Fund Performance Agreement; the Commonwealth’s Development Opportunity Fund Albemarle Match Performance Agreement; and the Virginia Jobs Investment Program (VJIP) Albemarle County Match Performance Agreement.

Mr. Johnson said that staff was also asking the Board to provide the authority to execute Attachment D, which was for Project Turtle, the developer, which was the Albemarle County Public Infrastructure Investment Grant Performance Agreement. He stated that staff also recommends that the Board provide direction to finalize the transit partnership, initiate the Broadway corridor economic revitalization action plan, and authorize the use of these funds for these purposes.

Ms. Palmer stated that she has received some questions from constituents, and asked Mr. Johnson to give the total amount of County taxpayer dollars that goes into this. She said that she has also received a question about the EDA funding, and asked Mr. Johnson to explain where the EDA money comes from. Mr. Johnson responded that for WillowTree, the combination expenses was estimated at $810,000, with the company making the initial investment and creating the jobs in order to receive the grants. He said if the company fails to do that, public tax dollars would not be at risk, provided only if they meet the performance agreements.

Ms. Palmer commented that there was also $1 million for infrastructure. Mr. Johnson confirmed this, noting that this was just for the company. He said that the second would be the $1 million mentioned before, which was not the same as a performance agreement. He noted that the language states that the Parks and Recreation and Engineering departments would ensure that the developer builds the public infrastructures to a standard and has authority to do so before that transaction was complete.

Ms. Palmer stated that she was trying to total up everything. Mr. Walker clarified that the EDA’s money could come through the County but does not in this case, with money derived from transactional revenue from tax-exempt bond activity. He stated that they maintain that account and uses it for other economic development activities, with a $100,000 match from the EDA for VJIP. He added that the County was required to maintain confidentiality for activity associated with the Commonwealth Opportunity Fund and the VGIP program, which was why they are having this public discussion after the Governor announced both of those.

Mr. Randolph stated that a former Board member who works in the transit field was confident that the money in this for transit was eligible for federal funds, which was a huge part of the overall cost here. He said that while it was not a guarantee, this project would likely fit the profile for federal funds, and it could cover the entire amount of transit, totaling about 25% of the total project cost.

Ms. Mallek commented that the Weldon Cooper Center indicated that there would be a significant return on investment with this project.

Mr. Gallaway stated that he would like further information by email about the jobs numbers extrapolation.

Ms. Palmer asked if they look at the impact on other businesses when doing these types of deals; i.e., other software companies. Mr. Johnson responded that they look at the overall impact socially and

environmentally, and impacts on other businesses, and while they do not have direct numbers, there would be other technology companies affected by the increase of hiring by WillowTree.

Mr. Gallaway said that from what Ms. Mallek said, it sounds like the new job creation would be outside recruitment bringing in, although there would be internal competition from local people.

Mr. Johnson stated that WillowTree expects to have internships from UVA as a feeder pool into its organization.

Ms. Mallek mentioned that one of her constituents, a 21-year-old Western Albemarle graduate, has been hired by the company.

Mr. Randolph **moved** to adopt the proposed Resolution to approve the agreements and to authorize the County Executive to execute the agreements on behalf of the County once they have been approved as to form and content by the County Attorney:

- Commonwealth's Development Opportunity Fund Performance Agreement
- Commonwealth's Development Opportunity Fund - Albemarle Match Performance Agreement
- Virginia Jobs Investment Program - Albemarle County Match Performance Agreement
- Albemarle County Public Infrastructure Investment Grant Performance Agreement

Mr. Gallaway **seconded** the motion.

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

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

**RESOLUTION TO APPROVE THE AGREEMENTS FOR THE
FOR THE RELOCATION AND EXPANSION OF WILLOWTREE, INC.**

WHEREAS, the Board of Supervisors finds that it is in the best interest of the County to enter into the following Agreements for the relocation and expansion of WillowTree, Inc., to become the anchor tenant in a redeveloped Woolen Mills site:

- Commonwealth's Development Opportunity Fund Performance Agreement
- Commonwealth's Development Opportunity Fund – Albemarle Match Performance Agreement
- Virginia Jobs Investment Program – Albemarle County Match Performance Agreement
- Albemarle County Public Infrastructure Investment Grant Performance Agreement

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia hereby approves the above-referenced Agreements and authorizes the County Executive to execute the Agreements on behalf of the County once they have been approved as to substance and form by the County Attorney.

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COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of September, 2018, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **WILLOWTREE, INC.** (the "Company"), a Virginia corporation, the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth, and the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** ("VEDP"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive $500,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to relocate a portion of its mobile application product development operations, lease and improve a building, and equip and operate a mobile application product development facility in the Locality (the "Facility"), thereby making a significant Capital Investment, relocating and retaining a significant number of Baseline Jobs to the Facility, and creating and Maintaining a significant number of New Jobs at the Facility, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment, Baseline Jobs and New Jobs;

WHEREAS, the Locality, the Authority, the Company, and VEDP desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of the Company regarding Capital Investment, Baseline Jobs, and New Jobs, and the repayment by the Company of all or part of the COF Grant under certain circumstances;

WHEREAS, the relocation, lease, improvement, equipping, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately $12,302,000, of which approximately $2,802,000 will be invested in furniture, fixtures and equipment and approximately $9,500,000 be invested in the renovation and up-fit of the building;

WHEREAS, the relocation, lease, improvement, equipping, and operation of the Facility will further entail the relocation to and retention of 160 Base Jobs, as such capitalized term is hereinafter defined, and the creation and Maintenance of 200 New Jobs at the Facility

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment, Baseline Jobs, and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. <u>Definitions</u>.

For the purposes of this Agreement, the following terms shall have the following definitions:

"Baseline Job" means an existing full-time position at the Company's facility in Charlottesville, Virginia ("Charlottesville Facility") as of December 31, 2017. One hundred and sixty (160) Baseline Jobs are expected to be relocated from the Charlottesville Facility and retained at the Facility.

"Capital Investment" means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. A capital expenditure related to a leasehold interest in real property will be considered to be made "on behalf of the Company" if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least seven years, and the real property would not have been constructed or improved but for the Company's interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as "Capital Investment." The purchase or lease of furniture, fixtures and equipment, including under an operating lease, and expected building renovation and up-fit by or on behalf of the Company will qualify as Capital Investment. The Capital Investment must be in addition to the capital improvements at the Facility as of December 31, 2017.

"Maintain" means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company's employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

"New Job" means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least $80,000. Average annual wage means the average annual salary of full-time positions at the Facility, determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the

Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth (except for the expected shift of positions between the Facility and the Charlottesville Facility), and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 160 Baseline Jobs.

"Performance Date" means March 31, 2023. The Performance Date is not subject to extension.

"Targets" means the Company's obligations to make Capital Investments at the Facility of at least $12,302,000, to relocate and retain 160 Baseline Jobs, and to create and Maintain at least 200 New Jobs at the Facility, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. <u>Targets; Statutory Criteria</u>.

(a) *Targets*: The Company will lease, improve, equip, and operate the Facility in the Locality, will make a Capital Investment of at least $12,302,000, relocate and retain 160 Baseline Jobs, and create and Maintain at least 200 New Jobs at the Facility, all as of the Performance Date.

(b) *MEI Project Approval Commission*: Pursuant to Virginia Code Sections 2.2-115 and 30-310, the MEI Project Approval Commission ("MEI Commission") must review economic development incentive packages in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality. The MEI Commission has reviewed and approved the state-level incentives offered in conjunction with the Company's Capital Investment, the relocation and retention of 160 Baseline Jobs, and the creation and Maintenance of 200 New Jobs at the Facility.

(c) *Relocation:* The Commonwealth's Secretary of Commerce and Trade has delivered to the Co-Chairs of the Senate Finance Committee and the Chair of the House Appropriations Committee a letter indicating that, although the Company is relocating a portion of its mobile application product development operations from Charlottesville, Virginia ("Charlottesville") to the Locality, the reasons for the move and the desire to retain the Company's operations in Virginia justify the use of incentives to move such facility from one Virginia locality to another. The Locality and VEDP have informed Charlottesville of the move and of the use of incentives. Charlottesville has indicated to VEDP that it is supportive of these efforts.

(d) *Encouragement to Offer New Jobs to Residents of the Commonwealth*: The Locality, the Authority, and the Locality hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to "Residents" of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

(e) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least $80,000, is more than the prevailing average annual wage in the Locality of $53,374. The Locality is not a high-unemployment locality, with an unemployment rate for 2017, which is the last year for which such data is available, of 3.3% as compared to the 2017 statewide unemployment rate of 3.8%. The Locality is not a high-poverty locality, with a poverty rate for 2016, which is the last year for which such data is available, of 8.5% as compared to the 2016 statewide poverty rate of 11.0%.

(f) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. The Company acknowledges that within 18 months of the date of this Performance Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than $100 provided by the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company's application for the COF Grant through the one-year period immediately after the date of this Agreement.

Section 3. <u>Disbursement of COF Grant</u>.

(a) *Disbursement of the COF Grant:* By execution and delivery of this Agreement, the Locality requests that the COF Grant be disbursed to it. VEDP will promptly arrange for the payment of the $500,000 COF Grant to the Locality.

The disbursement of the COF Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets at the Facility.

The COF Grant proceeds shall be retained by the Locality and shall be disbursed in two payments as follows:

First Payment: The Company will provide notice and evidence reasonably satisfactory to the Locality, the Authority, and VEDP that it has received a Certificate of Occupancy for the Facility. Such evidence will be subject to verification by the Locality and VEDP. Within 30 days of the verification, the Locality will disburse $250,000 of the COF Grant proceeds to the Authority. Within 30 days of its receipt of such COF Grant proceeds, the Authority will disburse such COF Grant proceeds to the Company.

Second Payment: The Company will provide notice and evidence reasonably satisfactory to the Locality, the Authority, and VEDP that it has made Capital Investments of at least $10,900,000 at the Facility and created at least 100 New Jobs at the Facility as of the date of such notification and evidence and that it will Maintain these positions. Such evidence will be subject to verification by the Locality and VEDP. Within 30 days of the verification, the Locality will disburse the remaining $250,000 of the COF Grant proceeds to the Authority. Within 30 days of its receipt of such COF Grant proceeds, the Authority will disburse such COF Grant proceeds to the Company.

If any COF Grant proceeds have not been disbursed to the Company within 90 days after the Performance Date, the Locality shall return such proceeds to VEDP for redeposit to the Commonwealth's Development Opportunity Fund.

(b) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to pay or reimburse for the costs of build-out at the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. <u>Break-Even Point; State and Local Incentives</u>.

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

Category of Incentive:	Total Amount
COF Grant	$ 500,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	200,000
Virginia Economic Development Incentive Grant ("VEDIG") (Estimated)	1,500,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3(b). The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The proceeds of the VEDIG may be used by the Company for any lawful purpose.

(b) *Locality-Level Incentives:* The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility by the Performance Date:

Category of Incentive:	Total Amount
Property Tax Grant and Business License Grant (Estimated)	$ 500,000
Workforce Development Matching Funds (Estimated)	200,000

If, by the Performance Date, the proceeds of the Property Tax Grant and Business License Grant, as well as the value of the Workforce Development Matching Funds, disbursed or committed to be disbursed by the Locality to the Company total less than the $500,000 COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The proceeds of the Property Tax Grant and the Business License Grant may be used by the Company for any lawful purpose. The Workforce Development Matching Funds shall be used as matching funds for VJIP funding provided to the Company and will reflect cost savings to the Company.

(c) *Other Incentives:* This Agreement relates solely to the COF Grant. The qualification for, and payment of all State-Level Incentives and Locality-Level Incentives, except for the COF Grant, will be governed by separate arrangements between the Company and the entities offering the other incentives.

Section 5. <u>Company Reporting</u>.

(a) *Progress Reporting*: The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit A, detailed information reasonably satisfactory to the Locality, the Authority, and VEDP of the Company's progress on the Targets. Such progress reports shall be filed annually, starting at March 31, 2019, and covering the period through the prior December 31. Further, the Company shall provide such progress reports at such other times as the Locality, the Authority or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax or related pass-through taxes paid by its members. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

(b) *Final Report:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit B, detailed information reasonably satisfactory to the Locality, the Authority, and VEDP of the Company's achievement of the Targets. The final report shall be filed at March 31, 2023.

Section 6. <u>Verification of Targets</u>.

(a) *Verification of Capital Investment*: The Company hereby authorizes the Locality, including the Locality's Director of Finance, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality or the Director of Finance should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority, or VEDP may request. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive the Company's real estate tax, business personal property tax and machinery and tools tax information from the Locality's Director of Finance.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VEDP, the Locality, the Authority or VEDP, respectively, may require such other documentation, including invoices, or audits as may be required to properly verify the Capital Investment.

(b) *Verification of New Jobs and Wages*: The Company must submit a copy of its four most recent Employer's Quarterly Tax Report (Form FC-20) with the Virginia Employment Commission with the final report. The form shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the New Jobs Target. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the Virginia Employment Commission ("VEC")

Should the Company ever have business locations in the Commonwealth outside of the Locality and Charlottesville, the Company agrees that it will report to the VEC with respect to its employees at those other locations at the facility-level and not at the company-level.

In addition to the verification data described above, in the sole discretion of the Locality, or of the Authority, or of VEDP, the Locality, the Authority, or VEDP, respectively, may require such other documentation or audits as may be required to properly verify the New Jobs.

Section7. <u>Repayment Obligation</u>.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least $5,000,000 in the Facility and create and Maintain at least 50 New Jobs at the Facility in order to be eligible for the COF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the Company must repay to the Authority all of the COF Grant proceeds previously disbursed to the Company. In such event, the Locality will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company.

(b) *Allocation of COF Proceeds:* For purposes of repayment under subsection (c), the COF Grant is to be allocated as 50% ($250,000) for the Company's Capital Investment Target, and 50% ($250,000) for the Company's New Jobs Target.

(c) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (c) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). If the Company has met at least 90% of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the COF Grant. If the Company has not met at least 90% of either or both of its Targets as of the Performance Date, the Company shall repay to the Authority that part of the COF Grant previously disbursed to the Company that is proportional to the Target or Targets for which there is a shortfall. For example, if as of the Performance Date, the entire $500,000 COF Grant has been paid to the Company, but the Capital Investment is only $9,226,500 (reflecting achievement of 75% of the Capital Investment Target), and only 150 New Jobs have been created and Maintained (reflecting achievement of 75% of the New Jobs Target), the Company shall repay to the Authority 25% of the moneys allocated to the Capital Investment Target ($62,500) and 25% of the moneys allocated to the New Jobs Target ($62,500). In such event, the Locality will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company.

(d) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay to the Authority all of the COF Grant proceeds previously disbursed to the Company. In such event, the Locality will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

(e) *Repayment Dates:* ***Such repayment shall be due from the Company to the Authority within ninety days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality and shall be repaid by the Locality promptly to VEDP for redeposit into the Commonwealth's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums payable by the Company hereunder unless said sums have been received by the Authority from the Company.

(f) *Failure to Repay*: If any repayment due pursuant to this Section 7 is not made by the Company when due, the Board of Directors of VEDP (the "Board") may determine that further

collection action is required, and the Board may refer the matter to the Office of the Attorney General (the "OAG") for collection pursuant to Section 2.2-518 of the Virginia Code. In such event, by their signatures below, the Locality and the Authority will be deemed to have assigned to the Commonwealth all of their rights, title and interest in and to this Section 7. In any matter referred to the OAG for collection, the Company shall be liable to pay interest, administrative charges, attorney fees and other applicable fees. Interest on any outstanding repayment referred to the OAG shall accrue at the rate set forth in Section 6.2-301 A. of the Virginia Code (currently 6.0% per year) for the period from the Performance Date or the Determination Date, as applicable, until paid.

Section 8. Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

WillowTree, Inc.
Facsimile: 866 530 9107
Email: michael.signer@willowtreeapps.com
Attention: Michael Signer, VP and General Counsel

with a copy to:

WillowTree, Inc.
Facsimile: 866 530 9107
Email: abby.cook@willowtreeapps.com
Attention: Abby Cook, Controller

if to the Locality, to:

County of Albemarle, Virginia
401 McIntire Road
Charlottesville, VA 22902
Facsimile: 434-296-5841
Email: jrichardson@albemarle.org
Attention: Jeffrey Richardson, County Executive

with a copy to:

County of Albemarle, Virginia
401 McIntire Road
Charlottesville, VA 22902
Facsimile: 434-972-4068
Email: gkamptner@albemarle.org
Attention: Greg Kamptner, County Attorney

if to the Authority, to:

Economic Development Authority of
Albemarle County, Virginia
401 McIntire Road
Charlottesville, VA 22902
Attention: Chair, EDA

with a copy to:

if to VEDP, to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smoret@vedp.org
Attention: President and CEO

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@vedp.org
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments*: This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto and consented to by VEDP. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue*: This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

(c) *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability*: If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Attorney's Fees:* Except as provided in Section 7(f), attorney's fees shall be paid by the party incurring such fees.

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

Approved as to form:

County Attorney

COUNTY OF ALBEMARLE, VIRGINIA

By _____
Name: JEFFREY B. RICHARDSON
Title: COUNTY EXECUTIVE
Date: 9/13/18

ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA

By _____
Name: W. Rod Gentry
Title: Chairman
Date: 9/18/18

WILLOWTREE, INC.

By _____
Name: Tobias Dengel
Title: CEO
Date: _____

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY

By _____
Name: _____
Title: _____
Date: _____

Exhibit A: Annual Progress Report Form
Exhibit B: Final Report Form

Exhibit A

ANNUAL PROGRESS REPORT
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

PROJECT PERFORMANCE:

Performance Measurement	Target	As of _____	% Complete
New Jobs (over ____ baseline)[1]			
Confidence level target will be reached by Performance Date shown above (check one)	High ☐	Moderate ☐	Low ☐
Capital Investment (provide breakdown below)[2]			
Confidence level target will be reached by Performance Date shown above (check one)	High ☐	Moderate ☐	Low ☐
Average Annual Wage			N/A
Confidence level target will be reached by Performance Date shown above (check one)	High ☐	Moderate ☐	Low ☐
Standard Fringe Benefits (check one)	Yes ☐	No ☐	N/A
Virginia Corporate Income Tax Paid in Prior Calendar Year[3]	$		

[1]Data will be verified using Virginia Employment Commission records.
[2]Data will be verified with locality records.
[3]This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA.

Capital Investment Breakdown	Amount
Land	$
Land Improvements	$
New Construction or Expansion	$
Renovation or Building Upfit	$
Production Machinery and Tools	$
Furniture, Fixtures and Equipment	$
Other	
Total	**$**

COMMENTS:

Discuss project status, including the current level of new jobs and capital investment, progress on targets, changes or likely changes in project's nature that may impact achievement of targets, and other information relevant to project performance. If the project is not on track to meet targets, please provide an explanation.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____
Submitted By: _____
Signature of Official
Name: _____
Print Name
Title: _____
Date: _____

Please return to: Kim Ellett, Incentives Coordinator, Virginia Economic Development Partnership, 804-545-5618, kellett@vedp.org

Exhibit B

FINAL REPORT
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Date	

PROJECT PERFORMANCE:[1]

Performance Measurement	Target	As of March 1, 2021	% Complete
New Jobs (over __ baseline)[2]			
Capital Investment (provide breakdown below)[3]			
Average Annual Wage			N/A
Standard Fringe Benefits			
Virginia Corporate Income Tax Paid in Prior Calendar Year[4]	$		

Capital Investment Breakdown	Amount
Land	$
Land Improvements	$
New Construction or Expansion	$
Renovation or Building Upfit	$
Production Machinery and Tools	$
Furniture, Fixtures and Equipment	$
Other	
Total	**$**

[1]Final, actual performance will be reported on VEDP's public reporting website.
[2] Attach the company's four most recent Quarterly Tax Report (Form FC-20) filed with the Virginia Employment Commission.
[3] Data will be verified using records from the Commissioner of the Revenue and invoices.
[4]This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA

LOCAL MATCH:

Goal	
Actual	

COMMENTS:

Discuss Project status or the important of the Project to the locality and region.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____
Submitted By: _____
Signature of Official
Name: _____
Print Name
Title: _____
Date: _____

Please return to: Kim Ellett, Incentives Coordinator, Virginia Economic Development Partnership, 804-545-5618, kellett@vedp.org

*****

PERFORMANCE AGREEMENT

This Performance Agreement made and entered into this 18th day of September 2018, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter the "County"), a political subdivision of the Commonwealth of Virginia, **WILLOWTREE, INC.**, (hereinafter the "Company") a Virginia corporation, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (hereinafter the "Authority"), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, the Commonwealth of Virginia will grant the Company a Commonwealth Opportunity Fund of five hundred thousand dollars ($500,000.00) contingent upon the County providing a sum that equals the Commonwealth's grant; and

WHEREAS, the County is willing to provide funds (hereinafter "County Grant") to the Authority as its local match to the Commonwealth Opportunity Fund with the expectation that the Authority will provide the monies to the Company; provided that the Company meets its lease obligation and workforce location commitment pursuant to this Agreement; and

WHEREAS, the County, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the County Grant, the lease obligation and the workforce location commitment of the Company, and the termination of all or part of the County Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Company's location in the County constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the County Grant.

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

Section 1. <u>Lease Obligation and Workforce Location Commitment</u>.

Lease Obligation. The Company will lease and occupy at least forty thousand (40,000) square feet of real property at 2100 East Market Street, Albemarle County Tax Map Parcel 07800-00-00-021B0, located in Albemarle County, Virginia (hereinafter the "Property") beginning for a period of at least five (5) years after the issuance date of the certificate of occupancy for the Property. For purposes of this Agreement, this leasing arrangement shall be referred to as the "Lease Obligation".

Workforce Location Commitment. The Company agrees that seventy-five percent (75%) of its full-time Virginia employees shall work at the Property at all times for at least five (5) years after the issuance date of the certificate of occupancy for the Property. For purposes of this

Agreement, a full-time employee shall be defined as an employee that is employed by the Company at least i) 35 hours per week for at least 48 weeks per year, or ii) one thousand, six hundred and eighty (1,680) hours in a calendar year. For purposes of this Agreement, this workforce arrangement shall be known as the "Workforce Location Commitment".

Section 2. Refund of Business License and Real Estate Taxes.

The County agrees to appropriate a grant to the Authority on an annual basis in an amount equal to fifty percent (50%) of the business license tax that the Company pays to the County pursuant to Albemarle County Code §8-100, et seq. (hereinafter "BPOL tax refund grant").

The County agrees to appropriate a grant to the Authority on an annual basis in an amount equal to fifty percent (50%) of the difference between the annual real estate tax levied upon the Property after the certificate of occupancy is issued to the Company and the real property taxes levied upon the Property in the year preceding the execution of this agreement that are paid to the County pursuant to Albemarle County Code Chapter 15 (hereinafter "real property tax refund grant").

The County agrees to appropriate the BPOL tax refund grant and the real property tax refund grant on an annual basis to the Authority before June 30 of the applicable calendar year.

The Authority agrees to disburse the BPOL tax refund grant and the real property tax refund grant to the Company within thirty (30) days of receipt from the County.

In no event shall the annual sum of the BPOL tax refund grant and the real property tax refund grant equal a sum of less or more than one hundred thousand dollars ($100,000.00) regardless of the amount of business license taxes paid by the Company and real property taxes levied upon the Property.

If, at the end of the term of this agreement, the total annual sums of the BPOL tax refund grant and the real property tax refund grant (hereinafter "total rebated tax liability") exceed five hundred thousand dollars ($500,000.00), the County agrees to make a grant to the Authority in the amount of the difference between the total rebated tax liability and $500,000.00 (hereinafter "final payment").

The Authority agrees it will disburse the final payment to the Company within thirty (30) days of receipt from the County.

Section 3. Termination.

If, at any time during the term of this Agreement, the Company fails to meet the Lease Obligation or the Workforce Location Commitment or both, this Agreement shall automatically terminate. The Company shall not receive any payments pursuant to Section 2 of this Agreement after the date of termination.

The Company agrees to notify the County within seven (7) calendar days of its inability to meet its Lease Obligation or Workforce Location Commitment or both.

If, at any time during the term of this Agreement, the Company fails to pay any taxes due to the County, the County shall notify the Company of its overdue tax liability. The County shall provide the Company thirty (30) days from receipt of the notice to pay any overdue taxes to the County. If the Company does not pay the overdue taxes to the County at the expiration of the 30 day curative period, this Agreement shall automatically terminate, and the Company shall not receive any payments pursuant to Section 2 of this Agreement after the date of termination.

Section 4. Company Reporting.

The County's Chief Finance Officer will submit requests for information to the Company concerning its lease status and the geographic location of the Company's full-time employees. The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the County and the Authority that the Company is fulfilling its Workforce Location Commitment and its Lease Obligation. Upon submission of the County's request for information, the Company shall respond to the request within thirty (30) days. These requests for information will be submitted to the Company at such times as the County or Authority may require.

Section 5. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return or certified mail or overnight courier package not accepted by the addressee):

If to the Company, to:

WillowTree, Inc.
2100 East Market Street
Charlottesville, Virginia 22902
Attention: Tobias Dengel

With a copy to:

WillowTree, Inc.
2100 East Market Street
Charlottesville, Virginia 22902
Attention:

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Jeff Richardson

Albemarle County Finance Department
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Bill Letteri

If to the Authority, to:

Economic Development Authority
Albemarle County

Economic Development Authority
Albemarle County

401 McIntire Road
Charlottesville, Virginia 22902
Attention: Rod Gentry, Chair

401 McIntire Road
Charlottesville, Virginia 22902
Attention: Roger Johnson

Section 6. Miscellaneous.

A. *Entire Agreement; Amendments*: This Agreement constitutes the entire agreement among the parties hereto as to the COUNTY Grant and may not be amended or modified, except in writing, signed by each of the parties. This Agreement shall be binding upon and inure to the benefits of the parties and their respective successors and assigns. The Company may not assign its rights and obligations pursuant to this Agreement without the prior written consent of the County and the Authority.

B. *Governing Law; Venue*: This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of Albemarle County, and such litigation shall be brought only in that court.

C. *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be the same instrument.

D. *Severability*: If any provision of this Agreement is determined to be unenforceable, invalid, or illegal, then the enforceability, validity, and legality of the remaining provisions will not in any way be affected or impaired, and the unenforceable provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

E. *Term*: This agreement shall run for a period of five calendar years from the issuance date of a certificate of occupancy for the Property.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

COUNTY OF ALBEMARLE, VIRGINIA

Approved as to form:

County Attorney

By: _____
Jeffrey Richardson, County Executive

Date: 9/13/18

ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA

By: _____
W. Rod Gentry, Chairman

Date: 9/18/18

WILLOWTREE, INC.

By: _____
Tobias Dengel, CEO

Date: August 10, 2018

*****

ECONOMIC OPPORTUNITY FUND
PERFORMANCE AGREEMENT

This Performance Agreement made and entered into this 18th day of September, 2018, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter the "County"), a political subdivision of the Commonwealth of Virginia, **WOOLEN MILLS LLC**, (hereinafter the "Company") a Virginia limited liability company, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (hereinafter the "Authority"), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, Company is the owner and developer of the property located at 2100 East Market Street and known as Albemarle County Tax Map and Parcel No. 07800-00-00-021B0 (the "Property");

WHEREAS, the County is willing to provide one million dollars (hereinafter "County Grant") to the Authority from the County's Economic Opportunity Fund with the expectation that the Authority will provide the monies to the Company subject to the requirements set forth herein that the Company meet its public parking obligation, transit obligation, and pedestrian bridge and trail construction obligation pursuant to this Agreement; and

WHEREAS, the County, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the County Grant, the parking, transit, and pedestrian bridge and trail construction obligations of the Company, and the termination of all or part of the County Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Company's location in the County constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the County Grant.

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

Section 1. <u>Parking and Trail Construction Obligations</u>.

Parking Obligation. The Company shall execute, subject to the County Attorney's approval, an agreement allowing the County and members of the public access to and exclusive use of ten (10) parking spaces on the Property (the "Parking Spaces") by December 31, 2019. The exact location of the Parking Spaces and route of access thereto shall be determined by the Company in consultation with the County, including without limitation, Parks and Recreation and Facilities and Environmental Services staff.

Pedestrian Bridge and Trail Construction Obligation. The Company shall provide an easement of adequate area for the construction of a Class A Trail, as defined in the Albemarle County Design Standards Manual, including construction of a pedestrian bridge over Moore's Creek, providing a public pedestrian connection between the Property and Albemarle County Tax Map Parcel 07800-00-00-022A0. Parks and Recreation and Facilities and Environmental Services staff from the County will participate on the project team for design and precise location of the bridge and trail. Final design of the pedestrian bridge and trail connections must be approved by the County Department of Parks and Recreation and the County Engineer before construction of the pedestrian bridge and trail by the Company commences. The County Engineer shall review and approve all plans for the trail's construction before construction of the trail commences. Upon inspection and final approval by the County Engineer, the Company shall execute a deed of dedication and easement to the County. The deed of dedication and easement shall be in a form acceptable to the County Attorney.

Transit Obligation. The Company shall pay a maximum of forty thousand dollars ($40,000.00) to the County to fulfill the first year of a five-year County obligation to fund a transit service to the Property to the extent such payment is required by a future three party agreement between WillowTree, Inc., the Company, and the County.

Section 2. <u>County Grant</u>

The County agrees to appropriate a grant to the Authority in the amount of one million dollars ($1,000,000.00) within thirty days of this Agreement's execution. The Authority agrees to pay the $1,000,000.00 to the Company within thirty days of receiving the appropriation from the County.

The Company agrees that it will use the grant funds to fulfill its parking and pedestrian bridge and trail construction and transit partnership obligations.

Section 3. <u>Clawback</u>

Unless otherwise mutually agreed upon in writing, the Company agrees that it will fulfill its parking, transit, and pedestrian bridge and trail construction obligations by December 31, 2019. If the Company has not fully achieved the parking, transit, and pedestrian bridge and trail construction obligations by December 31, 2019, the Company shall repay the Authority the sum of $1,000,000.00, and the Authority shall return that sum to the County within 30 days after the Authority receives the repaid sum from the Company.

Section 4. <u>Company Inspections</u>.

The Company shall permit the County Engineer to inspect the construction of the trail and bridge after receiving twenty-four (24) hours' notice from the County.

Section 5. <u>Notices</u>.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return or certified mail or overnight courier package not accepted by the addressee):

If to the Company, to:

Woolen Mills LLC
Attention: Brian H. Roy
1012-C Druid Ave
Charlottesville, VA 22902

With a copy to:

Peter J. Caramanis, Esq.
Royer, Caramanis & McDonough, PLC
200-C Garrett St.
Charlottesville, VA 22902

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Jeff Richardson

If to the Authority, to:

Economic Development Authority
Albemarle County
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Rod Gentry, Chair

Section 6. Miscellaneous.

A. *Entire Agreement; Amendments*: This Agreement constitutes the entire agreement among the parties hereto as to the County Grant and may not be amended or modified, except in writing, signed by each of the parties. This Agreement shall be binding upon and inure to the benefits of the parties and their respective successors and assigns. The Company may not assign its rights and obligations pursuant to this Agreement without the prior written consent of the County and the Authority.

B. *Dispute Resolution*: If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and if the dispute is not settled through negotiation in 30 days; the parties agree first to try in good faith to settle the dispute by mediation, also within 30 days; before resorting to litigation. In the event that parties are unable to agree on a mediator, an experienced mediator shall be randomly selected. The mediation process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

C. *Governing Law; Venue*: This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of Albemarle County, and such litigation shall be brought only in that court.

D. *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be the same instrument. A scanned or electronic signature shall be as effective as an original.

E. *Severability*: If any provision of this Agreement is determined to be unenforceable, invalid, or illegal, then the enforceability, validity, and legality of the remaining provisions will not in any way be affected or impaired, and the unenforceable provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

F. *Term*: This agreement shall run from September 18, 2018 to February 28, 2020.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

COUNTY OF ALBEMARLE, VIRGINIA

Approved as to form:

County Attorney

By: _____
Jeffrey Richardson, County Executive

Date: 9/18/18

ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA

By: _____
W. Rod Gentry, Chairman

Date: 9/18/18

WOOLEN MILLS LLC

By: _____
Brian H. Roy, Manager

Date: 9/19/18

Mr. Randolph **moved** to direct staff to finalize the transit partnership and initiate the Broadway Economic Redevelopment Corridor Study, and to authorize use of funds for those purposes. Mr. Gallaway **seconded** the motion.

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

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

Mr. Johnson then presented a video pertaining to the project.

Mr. Brian Roy addressed the Board and stated that when he first started the development, he was concerned that it was in the County because he had not gone through a development process with the County. He stated that he is now grateful that it was in the County, as he met some really good people and was impressed with County staff; never receiving a “no” for an answer. He stated that several things aligned up well with this project, and it was a great opportunity along the way. He commented that a textile museum in Massachusetts that went out of business happened to have a bit stash of historical items from Woolen Mills, which they sent down to UVA, and he has reproductions made of those items. Mr. Roy stated that there are still many challenges to build what was put forth, but the greenlight from the Board and from Tobias’s group makes it all worthwhile, and he looks forward to getting it open over the next 12-15 months.

Mr. Tobias Dengel thanked Mr. Roy for his work, noting that it has been a long journey requiring a lot of vision and tenacity. Mr. Dengel stated that this was an amazing result and project, and he thanks Mr. Roy for his vision in seeing what the building has to offer. Mr. Dengel said that partnerships or events like this are only possible through a strong public/private partnership, and there is no way for a company like WillowTree to do this type of project on its own. He commented that without partnerships, projects like this tend to get done on the Route 29 North corridor in a square building, which do not serve the community as well and would make it very difficult to attract these employees.

Mr. Dengel stated that the vast majority of employees come from outside the area, with a big portion of recruiting every year being college graduates; students from the top universities in Virginia who typically go to New York or San Francisco for these types of jobs. He said that these students are highly subsidized, as they go to Virginia schools, and for the state to subsidize these students and have them picked off by California was out of balance, so it was a priority to keep them here. He stated that these are the manufacturing jobs of this century and the future, and the U.S. would be about 1-1.5 million software developers below what it needs by 2020, according to the Department of Labor. Mr. Dengel said that the communities that could attract and retain this type of talent and personnel would do really well because of the multiplier effect, etc.

Mr. Dengel commented that they are most excited about how this project works with the community at large to open up the Rivanna Trail and to have a shuttle connecting everything together with a lower environmental footprint, which was only possibly through this type of partnership. He stated that the community has been investing in this community for a number of years, such as decreasing the odors coming out of the RSWA's wastewater treatment plant, and this project would not have been possible had that not been done.

Ms. Palmer thanked Mr. Dengel for recognizing the wastewater treatment plant upgrades, as they are part of a $40 million project that a lot of people worked very hard on.

Mr. Gallaway commented that one of the reasons he joined the Board was to be able to take a vote like this, and this was the type of economic development project that could enable the County to provide necessary services to the community.

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Agenda Item No. 3. Proposed 2019 Legislative Priorities.

The Executive Summary forwarded to the Board states that each year the Board considers and approves its legislative priorities and submits them to the Thomas Jefferson Planning District Commission (TJPDC), the Virginia Association of Counties (VACo), and the Virginia Municipal League (VML). Generally, the TJPDC's legislative program incorporates the County's legislative priorities. Other initiatives are sometimes added prior to the General Assembly session.

Seven legislative priorities are proposed and discussed below.

Impact Fees

Priority: Support legislation that would repeal current Virginia Code §15.2-2328, which limits impact fees to only those localities that had established an urban transportation service district and adopted an impact fee ordinance on or before December 1, 2008, and enable impact fees to be available to all localities. Support legislation that would grant localities the authority to develop impact fee programs to meet the capital needs attributable to new development as specified in §15.2-2329. Staff anticipates that impact fees would be in lieu of any cash proffers.

Rationale: Under the current State law, the financial burden of addressing the impacts on public facilities resulting from new residential development falls on those projects that go through the rezoning process for which cash proffers are accepted, or by current residents and businesses, through taxes. A proper impact fee program would replace the cash proffer program. An impact fee could have at least four positive effects: (i) it would be more fair by spreading the cost of addressing the impacts to all new development, including by-right development; (ii) the per unit cost to address impacts should be reduced because the impact fee draws from a base that is much larger than those residential development for which proffers are accepted; (iii) it would eliminate the disincentive to rezone land in the development area because of cash proffers; and (iv) developers may be incentivized to rezone their land for residential development in a way that is consistent with the Comprehensive Plan.

Courts

Priority: Initiate legislation to amend Virginia Code §§ 15.2-1638 and 16.1-69.35 to enable certain options identified for the Courts project.

Rationale: State law requires the General District Court to be located in the County's "courthouse," which is Court Square. For certain options for the Courts project to be possible, State law must be amended to allow the General District Court to be located outside of the County courthouse and in the City. State law also requires that the fee simple ownership of the land and buildings for the courts be in the name of the County. Option 1 (Downtown Levy) proposes to locate the County's General District Court sets, as well as a City General District Court set, to the Levy property. State law must be amended because the Levy property is jointly owned by the County and the City. The current State law is unclear as to whether jointly owned land and buildings satisfy the requirements of the statute.

Stormwater Management

Priority: Initiate legislation that would cause State stormwater regulations to be amended to authorize the Department of Environmental Quality ("DEQ") to accept stream restoration as a stormwater management ("SWM") best management practice ("BMP"), and add stream restoration to Virginia's SWM BMP clearinghouse for non-proprietary BMPs.

Rationale: Currently, stream restoration projects can be used by localities to achieve pollutant discharge reductions to meet Total Maximum Daily Load (TMDL) mandates. DEQ publishes methods to determine the amount of pollution reduction resulting from a stream restoration project. However, DEQ does not currently allow stream restoration to be used as a water quality BMP for new development or redevelopment. While stream restorations are recognized to reduce pollutant discharges they can't be used by developers to meet water quality requirements that call for the same pollutant discharge reductions.

Zoning: Mailing Notices of Violation and Orders

Priority: Initiate legislation to amend Virginia Code §15.2-2311(A) to allow certified mail to be used instead of registered mail to send notices of violation of the Zoning Ordinance or written orders of the Zoning Administrator.

Rationale: Virginia Code § 15.2-2311(A) was amended in 2017 to prohibit the use of certified mail and to require the use of registered mail. Certified mail serves functionally the same purpose for verification of mailing and receipt as registered mail but costs substantially less.

Broadband

Priority: Support continued and increased funding for the Virginia Telecommunications Initiative (VATI).

Rationale: VATI provides supplementary funding for broadband infrastructure construction to projects in underserved areas. Continued and increased funding for VATI will help the Albemarle Broadband Authority's efforts to extend broadband service to underserved areas of the County.

Environmental

Priorities: Initiate legislation what would prohibit businesses from using disposable plastic bags and plastic straws. Initiate legislation that would require businesses selling bottled beverages to collect a deposit from the purchaser at the time of sale.

Rationale: Plastic bags and plastic straws have been identified as causing environmental harm and harm to wildlife. Bottles can be recycled and reused for various purposes and a deposit program may discourage them being from being discarded as litter or in landfills.

Public Safety

Priority: Initiate legislation to amend Virginia Code § 18.2-287.4 to add Albemarle County to the list of localities in which carrying specified loaded weapons in public areas is prohibited. This was a priority of the Board last year as well, its patrons were Delegate Toscano and Senator Deeds, but the respective bills failed in committee.

Rationale: The current State law makes it unlawful for any person to carry specified semi-automatic weapons and shotguns on any public street, road, alley, sidewalk, public right-of-way, or in any public park or any other place of whatever nature that is open to the public. The authority, if granted, would improve public safety in public areas where many people may be present.

Other Initiatives for Further Discussion

Animals: Initiate enabling authority to expand the subject matter in which localities' regulations may be more stringent.

Homestays: If the Board proceeds with the homestay zoning text amendment, initiate legislation to require homestay platforms to report all homestay businesses operating in each locality each year.

Public Safety Volunteers: Consider tax deduction incentives for public safety volunteers similar to those available for volunteers with other entities (further research required).

The County's legislative priorities seek to ensure that the state adequately funds its mandated responsibilities and does not jeopardize the County's ability to effectively and efficiently implement the policies (including fiscal) and programs that it deems necessary. There are no specific, identifiable budget impacts.

Staff recommends that the Board review the 2019 Proposed Legislative Priorities and recommend any additions it determines to be appropriate, to be brought back at a later date so desired by the Board for submission to the TJPDC, VACo and VML.

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Mr. Kamptner recapped Albemarle's requested bills in the 2018 General Assembly:

- **SB 677** amended Virginia Code § 15.2-1535 to allow a member from the Board of Supervisors and the City Council to be **named** by each body **to the CACVB**
- **HB 775** amended Virginia Code § 15.2-2025 to add counties that have adopted the county executive form of government (Albemarle County and Prince William County) to those counties that may adopt an ordinance that **requires landowners to remove snow and ice from abutting public sidewalks**
- **HB 776** amended Virginia Code § 46.2-1222 to add Albemarle County to the list of counties that may adopt an ordinance that **restricts or prohibits parking on secondary highways**
- **FAILED SB 665** would have amended Virginia Code § 18.2-287.4 to add the County and the City of Charlottesville to the list of localities that may prohibit persons from carrying certain loaded rifles, pistols, and shotguns in specific public places

Mr. Kamptner said another key bill from 2018 was HB 1546 which amends Virginia Code §15.2-1644 to require a referendum to relocate Albemarle County's courthouse from its current County location in Court Square to any other location.

Mr. Kamptner stated that he, Mr. David Blount, and Mr. James Douglas, Paralegal in County Attorney's office, met and have been reaching out to the Board of Supervisors and to County departments on proposed legislation. The first priority he reviewed was support of a repeal of Virginia Code §15.2-2328 and to amend Code §15.2-2329. The purpose was to enable impact fee programs to be available to all localities, and enable localities to develop impact fee programs to meet the capital needs attributable

to new development. The impact fee would be collected in conjunction with issuance of the building permit. The rationale was that a proper impact fee program would replace the cash proffer program and potentially create the following positive effects:

- would apply to all new residential development
- per unit impact fee should be much less than a per unit cash proffer
- should reduce disincentives for rezoning property
- may incentivize rezonings to zoning districts that meet community needs
- may provide opportunities for localities to proactively rezone (up-zone) areas to match Comprehensive Plans

He explained that the legislative committee recommends bringing this bill to a vote. Mr. Kamptner next presented on a priority to initiate legislation to amend Virginia Code §15.2-1638 and §16.1-69.35. He presented a slide that indicated that the purpose was to enable the County to pursue certain options for the courts project, with the following rationales:

Rationale 1: State law requires the General District Court to be located in the County's "courthouse" which was Court Square or in other location as directed by the presiding Judge of the General District Court. For certain options being considered by the Board to be possible, State law must be amended to allow the General District Court to be located in the City.

Rationale 2: State law also requires that the fee simple ownership of the land and buildings for courts to be in the name of the County.

- The current State law was unclear as to whether jointly owned land and buildings satisfy the requirements of the statute.
- Because one of the options being considered proposes to locate the County's General District Court sets, as well as a City General District Court set, to the jointly owned Levy property, State law must be amended.

Ms. Palmer recalled that when the Board first discussed this issue they specifically said "across the street" and mentioned the degree of move in order to get it through the General Assembly, and she asked if this was still part of the consideration. Mr. Kamptner responded that it was but not all the options are across the street, although they are still within the City and in close proximity. He agreed that they would want to propose legislation that has the best chance of passing.

Mr. Kamptner said the next priority was a proposal to initiate legislation to amend Virginia Code §15.2-2311(A). The purpose was to allow for certified mail to be used to send notices of violation of the Zoning Ordinance or written orders of the Zoning Administrator. The rationale was that Virginia Code §15.2-2311(A) was amended in 2017 to prohibit the use of certified mail and to require the use of registered mail. Certified mail serves functionally the same purpose for verification of mailing and receipt as registered mail but costs substantially less. Staff was still determining whether this needed to be a Board initiative because a solution may already be under consideration.

The next priority presented was to initiate legislation to amend Virginia Code §18.2-287.4. The purpose was to add Albemarle County to the list of localities in which carrying specified loaded weapons in certain public areas was prohibited. The weapons that may be prohibited are:

- Semi-automatic center-fire rifles or pistols that expel single or multiple projectiles by action of an explosion of a combustible material and were equipped at the time of the offense with a magazine that would hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock: and
- Shotguns with a magazine that would hold more than seven rounds of the longest ammunition for which it was chambered.

Rationale: The authority to prohibit the carrying of certain weapons, if granted, would improve public safety in public areas where many people may be present. The areas where this law would apply are public streets, roads, alleys, sidewalks, public rights-of-way or public parks or any other places of a nature that are open to the public.

Mr. Kamptner noted that this bill failed last year, and he listed several cities and counties in Virginia that would be enabled by the statute: Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Newport News, Norfolk, Richmond and Virginia Beach; and the Counties of Arlington, Fairfax, Louden, Henrico and Prince William.

Mr. Kamptner next reviewed the priority of broadband and explained that they are seeking continued and increased funding for the Virginia Telecommunications Initiative (VATI). The rationale was that VATI provides supplementary funding for broadband infrastructure construction to projects in underserved areas. Continued and increased funding for VATI would help the Albemarle Broadband Authority's efforts to extend broadband service to underserved areas of the County. He said a resolution would be considered by the Board.

Mr. Kamptner next reviewed environmental priorities. This priority would support or initiate legislation that would grant local authority to:

- Regulate or prohibit the use, sale, or offer of disposable plastic bags
- Regulate or prohibit the use of plastic straws
- Require businesses selling bottled beverages to collect a deposit from the purchaser at the time of sale.

Rationale: Plastic bags and straws have been identified as being harmful to the environment and to wildlife. Bottles could be recycled and reused for various purposes and a deposit program may discourage them being discarded as litter or in landfills.

Ms. McKeel commented that Kroger recently announced that it was phasing out plastic bags, as well as Harris Teeter.

Mr. Kamptner noted that a state study conducted several years ago reviewed what other states have been doing with bottled beverages. He remarked that previous bills have not been successful although there was interest statewide and at the local level.

Ms. Palmer asked if there has ever been an effort at the state level to have large businesses recycle, such as take back of electronics.

Ms. McKeel said they should get the schools involved as they could potentially substitute paper for plastic straws, and she contacted Ms. Christina Pitzenberger, who was investigating the price differential.

Ms. Mallek said she would like to ban Styrofoam, which lasts from 500 to 5,000 years. She said she was open to adding this to the existing legislation or creating separate legislation. She said she also supports a bottle deposit and learned during a presentation by students at Albemarle High that 300,000 plastic bottles are used annually at the school, with those students requesting that the school invest in water bottle filling stations.

Ms. Palmer commented that the County staff should stop using plastic bottles. Ms. Mallek agreed.

Ms. McKeel said she supports this idea and suggested that staff reach out to the schools about having water filling stations.

Ms. Palmer stated that SWAC and RWSA discussed the potential of having someone visit restaurants and bars to collect glass bottles. She explained that three years ago, North Carolina passed a statewide law to require bars and restaurants to recycle 35% of their glass in order to feed a newly opened beneficiation plant in the Danville area. She added that a bill was introduced last year in Virginia to establish a beneficiation plant, although it did not pass. She remarked that it may be easier to do things locally than to get the state to do anything.

Mr. Randolph said he attended a solar workshop this morning and suggests the Board advocate that the state lift its cap of 15 MW of new solar that was permitted per annum to 200 MW per planning district commission region. He said he observed on a map of solar projects that there was very little going on in the southwest part of the state or Shenandoah Valley and that most projects are in the eastern portion of the state or the Blue Ridge with the exception of Blacksburg and Harrisonburg. He said they should allow solar, wind, and any type of alternative energy to grow without any type of restriction.

Ms. Mallek stated that Ms. Kathy Tran, from Northern Virginia, was working with localities on changes to net metering and would be sending out a draft. She added that Mr. Jeff McKay, from Fairfax, was working on a bill to remove a limit that allows municipalities to use solar generated electricity only on their property.

Mr. Kamptner next reviewed stormwater management, with the following priority:

- Initiate legislation that would cause state storm water regulations to be amended to authorize the Department of Environmental Quality to accept stream restoration as a stormwater management best management practice and add stream restoration to Virginia's storm water management best management practice clearinghouse for non-proprietary best management practices.

Rationale: DEQ does not currently allow stream restoration to be used as a water quality best management practice for new development or redevelopment. While stream restorations are recognized to reduce pollutant discharges they cannot be used by developers to meet water quality requirements that call for the same pollutant discharges reductions.

(Note: Mr. Randolph left the meeting at 3:06 p.m.)

Mr. Kamptner then presented Other Possible Initiatives for Further Discussion:

- Animals: initiate enabling authority to expand the subject matter in which localities' regulations may be more stringent.
- Homestays: If the Board proceeds with the homestay zoning text amendment, initiate legislation to require homestay platforms to report all homestay businesses operating in each locality each year.
- Antique Motor Vehicles: Initiate legislation to amend the definition of antique motor vehicle to increase the age of the vehicle from 25 to 30 years
- Public Safety Volunteers: Initiate legislation that would amend state tax laws to provide a deduction that might provide incentives for public safety volunteers.

Ms. Mallek asked if they could obtain assistance with fair labor standards from the General Assembly. Ms. McKeel remarked that some use antique vehicle licenses inappropriately, and adding five years to the requirement would increase safety.

Mr. Kamptner presented a slide with the following next steps:

- Direction from Board to staff to begin work on certain initiatives, including contracting potential patrons
- Staff would return to the Board in October for next action
- Staff would return to the Board in November
- Meeting with legislators would be scheduled in late November or early December

Ms. McKeel asked what the next step would be to address blighted abandoned properties as well as rental properties in the urban neighborhoods which are not maintained by the owner. Mr. Kamptner responded that the Code provides for some authority, although the County has not implemented all of it. He said that considering that the revitalization of urban areas was a Board priority, he would be glad to hold a work session to review the tools they could utilize for a potential ordinance.

Ms. Mallek commented that they have the enabling authority to have a maintenance code but have chosen not to utilize it, and she suggested they enact one before making a request to the legislature.

Ms. McKeel addressed the issue of parking regulation on secondary roads and noted that Mr. Kamptner used the word “highway.” She explained that the intent was to address the parking of commercial vehicles in urban neighborhoods. Mr. Kamptner explained that the language was from the state statute, and a street was a highway and a highway was a street according to the state’s definition.

Mr. Gallaway said that at the previous Friday’s strategic session, he spoke to Mr. Roger Johnson and Mr. J.T. Newberry about the JLARC study regarding workforce incentives. He said it was worth it to scrutinize some of the recommendations and noted that Delegate Steve Landes was the vice-chair. He suggested that the Board inform the legislators that they agree with some recommendations. He said they could add in some incentives for consideration that other states have but Virginia does not.

Mr. Gallaway referred to the July/August issue of *Virginia Town and City* magazine and said the cover story was about providing educational opportunities to low income children. He said the author of the article, Mr. Jim Regimbal, was a principle who provided research on state and local budget and tax policy issues to local governments and businesses and has 34 years of experience with state level budget and tax policy analysis, including 12 years on the staff of the Virginia Senate Finance Committee. Mr. Gallaway stated that he has started to think about what happens every year with legislative priorities. He said the schools typically ask for more money and state funding has not kept pace, particularly in the southeastern states, so localities are picking up the bill. He said the article focused on how funding not keeping pace has an impact on low income students. Mr. Gallaway stated that if they could persuade the state to increase its funding for education, it would free up local dollars that go to education. He said they need to start reversing the trend of state funding reductions and asked Supervisors to support his idea. He said a key suggestion was to change the SOQ funding formula.

Ms. McKeel remarked that the County has supported the School Division on this in the past, though this may take it to another level.

Mr. Gallaway suggested that they have housing incentives for new teachers, which would support the Board’s strategic priorities and could help resources on the school side and loosen up where the dollars go.

Ms. McKeel remarked that they should be more vocal about the connection between schools and economic development, as businesses avoid areas with poorly performing public schools. She said she does not believe the County schools are back to the 2008 funding level.

Mr. Gallaway said the average Virginia teacher salary of $53,000 ranks 31st among the states, according to a National Education Association salary survey, and if northern Virginia was taken out of the equation Virginia ranks in the bottom five. He said that the average salary would be $64,000 today if it kept pace with inflation, adding that school facilities have been neglected in order to protect instruction.

Mr. Kamptner stated that when they come back in October, they would have further refined the environmental issue dealing with plastic bags, bottles, straws, and Styrofoam.

Ms. Palmer expressed support for having schools use compostable cutlery.

Mr. Kamptner said that staff would investigate Mr. Randolph’s idea to increase the cap on the opening of new solar facilities and would review net metering and the restriction on localities’ ability to move solar facilities offsite. He said they would look at the JLARC study and could support a resolution that calls for additional state funding. Additionally, he said they would look to schedule a work session this fall to review available tools. He said they would reach out to local legislators to see if anyone was interested in courts-related legislation. He suggested that representatives from the County Attorney’s and County Executive’s offices and Supervisors sit down and meet.

Ms. Mallek remarked that at the annual luncheon with local elected officials was only a couple of people doing most of the talking with the rest listening, and she wondered if they might be more successful if they met with them one or two at a time.

Mr. Kamptner explained that the idea was to engage with legislators about the courts project earlier in the legislative process, and talk with them in a different setting.

Ms. McKeel remarked that legislators are writing bills now and by December it would be too late.

Mr. Randolph suggested that they hold a morning bagels and coffee meeting rather than a luncheon, as he noticed that legislators are already distracted as they are engaged in dialogue by email with constituents, other legislators, and their own staff during the meeting. He said he expects that in the morning they could be more fully engaged and that the current format was too predictable.

Ms. McKeel suggested they shorten their priority list document to one page from four to five pages.

Mr. Kamptner stated that last year they did that and would do so again this year.

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Agenda Item No. 4. **Work Session:** ZTA 2017-01 Transient Lodging (aka - Homestays).

The Executive Summary forwarded to the Board states that this zoning text amendment (ZTA) was initiated by the Board of Supervisors on May 3, 2017 to consider expanding opportunities for transient lodging, including whole house rental when the owner/manager is not present and rental in attached or multifamily dwelling units. Since it was initiated, a work session was held with the Board to determine the scope and process for the ZTA, a series of public input meetings was held in September 2017, followed by a series of works sessions with the Planning Commission The Commission voted at an April 24, 2018 public hearing to recommended approval of the attached ordinance amendment to the Board. (Attachment A) The Board began a series of work sessions on the recommended ordinance on June 13 and last discussed the topic in a work session on July 9, 2018. Attachment B provides a summary of current zoning regulations, proposed changes recommended by the Planning Commission in the attached ordinance, and Board recommendations and discussions to-date.

The purpose of this work session is to finalize what regulations the Board would like to advertise for public hearing and next steps in the public process for this zoning text amendment:

1. Discuss potential regulations for smaller Rural Area lots (neighborhoods)
2. Discuss whether to also regulate based on the number of guests as well as the number of guest rooms
3. Discuss next steps in public process prior to public hearing for ZTA

1. Potential Regulations for smaller Rural Area lots (neighborhoods)

The Board has expressed concern that Rural Area neighborhoods may need to be treated similarly as Residential zoned parcels in terms of transient lodging regulations because of the potential for nuisance impacts (such as noise). The zoning ordinance does not distinguish Rural Areas zoned properties based on residential development patterns. However, transient lodging regulations in the zoning ordinance are distinct between Rural and Residentially zoned properties. In the Rural Areas, there are three areas of flexibility that a Residentially zoned parcel does not have:

- Location of Guest Rooms-Guest rooms may be located in accessory structures. If accessory structures are used, they must meet primary structure setbacks (75' from a public road or 25' private road, 25' side setbacks, 35' rear setbacks). There is an administrative process to reduce setback requirements should abutting property owner(s) not object.
- Owner or Manager requirements-Owner or manager may reside anywhere on the parcel, not in the single family dwelling, as required on residentially zoned parcels. Typically, only larger Rural Area parcels that contain a second dwelling have an owner/manager that does not reside in the dwelling where guest rooms are located.
- Allowance for a Second BNB use-Properties that have a second single family dwelling, are more than 4 acres in size and, have development rights, may have a second bed and breakfast use, which may allow up to 10 guest rooms on a parcel.

Of the 91 BNB applications processed since 2012, 39 of those have been on parcels less than 5 acres in size and 11 of those have been on parcels less than 2 acres in size. Lot size varies across the Rural Area. Smaller lots are not just located in rural subdivisions but may include historic, family subdivision, or farm-owned parcels. Based on complaint data to-date, it appears that concerns with transient lodging rental in the Rural Area have not resulted from these areas of flexibility currently in the ordinance. The most commonly received complaints have been for properties doing whole house rental which is not currently permitted.

Should the Board wish to further restrict transient lodging in Rural neighborhoods, staff suggests a tiered approach using minimum lot size. Based on review of Rural Area properties that have developed in more of a residential pattern, staff recommends that a minimum lot size of 5 acres be required before properties are allowed the additional opportunities for tourist lodging as indicated in the table below. Staff

believes that a special exception process should be available for circumstances where there are no impacts to adjoining properties, or adjoining properties are under the same ownership, similar to the provision that already exists in the ordinance for setbacks.

Regulations	**Rural Area Parcels <5 acres**	**Rural Area Parcels >5 acres**
Number of Guest Rooms	No more than 2 guest rooms	No more than 5 guest rooms
Location of Guest Rooms	Within Single Family Dwelling uses as such	Within Single Family Dwelling or accessory structures
Second Bed and Breakfast	Not permitted	Permitted if development rights available
Whole House Rental	Not permitted	Permitted

2. Discuss whether to also regulate based on the number of guests as well as the number of guest rooms

During discussions about potential impacts to neighbors, the issue of also regulating the number of guests has arisen. Currently, up to five guest rooms may be rented; but there is no limit to the number of guests per room. The Board has recommended no more than two guest rooms be rented in Residentially zoned areas of small lot Rural zoned properties. Adequate parking must be available and is verified by staff before a zoning clearance can be approved for guest rooms. Historically, the County has only regulated the number of guest rooms because this provides continuity with how other codes regulate the use. For example, the Health Department regulates based on the number of rooms. Also, the Building Code limits the number of guest rooms to five for proprietor occupied structures. During the permit process, applicants provide a floor plan sketch showing where guest rooms are located and where owners/managers reside and this is field verified by staff. Based on staff experience, this approach has worked well and is easier to enforce than a guest limit. Properties where there have been issues, include those that are non-compliant and engaging in whole house rental. With the reduction in guest rooms and limits on whole house rentals, staff believes that there is little benefit to also regulating the number of guests.

If the Board would like to add a limit to the number of guest rooms, then staff would suggest no more than two guests per room. This would place a limit of no more than four guests for Residentially Zoned areas and up to no more than 10 guests for Rural Area properties. Based research of other localities, the maximum number of guests allowed ranges from 6-10 guests.

3. Discuss next steps in public process prior to public hearing for ZTA

A work session will be scheduled in November to discuss the level of enforcement and compliance details desired by the Board.

Following the November work session, staff will determine how soon a public hearing can be scheduled. While the Board recommendations are more restrictive than the ordinance advertised for public hearing at the Planning Commission, an additional public hearing and action by the Commission is not legally required. However, because of the level of changes, staff believes the Board should consider offering another public input opportunity prior to ordinance public hearing.

The ordinance changes will not result in budget impacts. The effort to bring operators into compliance may need additional staff resources, depending on the level of enforcement set by the Board. Enforcement will be discussed at a November work session, after the Board decides on whether to make changes to the existing ordinance.

Staff recommends that the Board provide direction on the proposed ordinance changes to be advertised for public hearing.

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Ms. Rebecca Ragsdale, Senior Permit Planner, stated that that the draft ordinance now refers to “homestays”. She stated that this effort was initiated in 2017 during two work sessions followed by a series of Planning Commission work sessions, an April 2018 Planning Commission public hearing on the draft ordinance followed by a June 2018 Board work session. She said that staff has now broken this down into steps for which they need the Board to provide input so they could package everything together for a future work session at which they would discuss compliance issues.

She reminded Supervisors that they contemplated whether to allow whole-house rentals in townhouses or other dwelling units and have had discussion about adding requirements to the process.

Ms. Ragsdale said the work session topics today are:
1. Should parcels less than 5 acres in the Rural Area be subject to the same zoning regulations as the residential zoning districts?
2. Should the number of guests be regulated, as well as the number of guest rooms?
3. Discuss next steps in the public process prior to public hearing for ZTA.

Ms. McKeel stated that what she wants to take away today was clarity as to how staff defines a residential area, and whether it was in the rural or development area. Ms. Ragsdale responded that they

do not have a rural residential zoning district but rather a rural and a residential zoning district. She said the Board's information includes a summary of where they left off with regulations of rural areas. She said the residential zoning districts was another tier that would get at those areas and characteristics that are zoned rural areas.

Ms. McKeel remarked that they could create whatever they need to have a residential area in the rural area.

Ms. Mallek asked Ms. Ragsdale if she would return to the questions on the previous slide. Ms. Ragsdale confirmed this.

Ms. Ragsdale reviewed homestay zoning regulations in residential districts. She explained that the current regulations allow five rooms inside a single family detached structure and the owner/tenant must reside in the dwelling. She said, as part of this process, they have been contemplating whether to allow rentals where the owner does not reside onsite, and this has not been supported by the Planning Commission or the Board. Ms. Ragsdale said the ordinance recommended by the Planning Commission that came before the Board would allow up to two guest rooms in townhouses and single family attached units with the owner present, though the Board has recommended that this not be permitted and has recommended that the number of guest rooms permitted be reduced from five to two in a single family detached structure.

Ms. Ragsdale reviewed homestay zoning regulations in the rural areas. She explained that the current regulations allow five guest rooms inside a single family detached structure, the guest rooms may be located in accessory structures, and information on setbacks has been provided to the Board. Additionally, she said a second bed and breakfast was allowed for properties that are large enough with development rights, which essentially have second homes on them. She said the Planning Commission recommended an ordinance that would allow whole house rentals, with limitations, which the Board continues to have in the draft ordinance. She said that in this discussion, they would focus on how to regulate smaller rural neighborhoods with smaller lots.

Mr. Gallaway recalled that at the last Board discussion on the topic, the issue was whether a person would have to be onsite. Ms. Ragsdale clarified that what staff wants to do today was wrap up the changes the Board wanted to make and advertise for the Planning Commission's public hearing. She said that staff's understanding was that the recommendation would be to not allow it in the other unit type at all.

Mr. Randolph suggested that they get out of the paradigm of the owner being present and should instead get into a responsible agent profile. He said they should look to identify a responsible agent who could be held legally responsible for all related matters such as violations of health, safety, or welfare clauses of local government. He stated that their primary concern was twofold: 1) to ensure they have a database of properties in residential transient usage and collect a dedicated fee; and 2) to ensure that the health, safety, and welfare of the community and neighbors was addressed. He identified common complaints of neighbors as parking, trash, and noise. He gave the example of the Town of Breckenridge, CO, which has dealt with this issue for many years. He said they held an agent responsible for compliance 24 hours/365 days per year and had a hotline paid for by fees to call for complaints and then notify the police to go out to a property. He described this system as being very effective with minimal regulation.

Ms. Mallek emphasized that not every property was suitable for this use, she does not know of any townhouses with four or five bedrooms, and it does not seem reasonable to offer two bedrooms and not have someone present. She said this was not local government's problem to solve and some landowners simply do not have the ability to do what they want to do.

Ms. Palmer asked Ms. Ragsdale if she would go through the entire presentation and then come back to specifics or if she wants Supervisors to comment on specifics as she presents. Ms. Ragsdale responded that the plan was to go through the two questions and then in November bring everything back, with the next work session focused on compliance and issues that have been set aside.

Ms. Palmer recalled that at last year's public hearing, a number of operators attended who were seen as "models of the good actors". She asked if Ms. Ragsdale was aware of issues with single family dwellings in the development area that operates these with more than two guest rooms. Ms. Ragsdale responded affirmatively.

Ms. Palmer said she would like to delve into this at the November work session in order to understand the impact it would have on those who are doing it correctly.

Ms. Mallek remarked that these people are not compliant with the current law, and her goal was to not have the County's laws somehow make all these people who are acting outside compliant. She said bed and breakfasts are something different and a whole separate issue to be addressed. She said they should not lump bed and breakfasts that meet standards and are licensed in with the same pot with those who are running a Motel 6 out of their house.

Ms. Ragsdale said she understood Ms. Palmer's question to be if there are operators with transient lodging permits approved for up to five bedrooms in the development areas that are working okay, and the answer was "yes". She added that the townhouses staff has seen that are being rented and for which they have received complaints are in River Run and Willow Lake, where parking was limited.

Ms. Ragsdale resumed her presentation and posed the following question for the work session: Should parcels less than five acres in the Rural Area be subject to the same zoning regulations as the residential zoning districts? She presented a slide with a map of Dunlora, Key West, and River Run as examples of subdivisions with smaller lots and larger lots that are zoned RA. She explained that a tiered approach could be taken with parcels of less than five acres subject to the same set of regulations. The differences are in the primary areas where the RA has additional flexibility in terms of guest rooms and accessory structures, allowing second bed and breakfast on the larger parcel, and not permitting whole house rental. She presented a chart that compared staff proposed regulations for RA parcels of less than five acres and those greater than five acres. Ms. Ragsdale noted that since the regulations were changed in 2012, they have processed 92 homestay applications, and a large majority have been on parcels of less than five acres. If they take this approach, while they could get at residential neighborhoods, they would also be adding restrictions on family parcels, historic properties, and farm parcels. She said staff recommends a special exception provision in the ordinance.

Ms. Palmer remarked that currently whole house rentals are not allowed in the county. She asked if, considering that there are so many types of parcels, they could require that whole house rentals in the rural areas require a special exception process, so that situations where there are larger lots and the owner was close by could be considered. Ms. Ragsdale responded that currently, a larger parcel with two dwellings and development rights was allowed to have whole house rental. She said she thinks this proposal would allow a certain amount of activity by right without requiring a special exception, as it was staff's understanding from the Board's previous discussion that they were not concerned with whole house rentals on larger parcels where neighbors would not be as affected. She said the County Attorney could weigh in on where special exceptions would be required, adding that the way Section 5 of the ordinance was set up, one could request a special exception for any regulation unless it specifies otherwise.

Ms. Palmer expressed a desire for the simplest approach, understanding that there was so much variability with shape and size of parcels. Mr. Bart Svoboda, Chief of Zoning, responded that that is the hard part, defining what is a residential neighborhood in the rural areas.

Mr. Randolph asked if an owner of a property that was less than five acres who purchased two adjoining acres would now have seven acres and be eligible to have five guest rooms and a whole house rental. He said the County has to think this through as they may indirectly stimulate existing homestay operators to purchase neighboring properties and qualify for a higher level of business. He said the Board needs to be clear as to whether this applies to a single plot of land or if it could apply to multiple plots owned by the same person. Ms. Ragsdale clarified that the regulations are set up so that they apply to a single tax map parcel, and in the event an adjoining parcel was purchased they would have to do a boundary line adjustment.

Ms. Mallek pointed out that a five-acre parcel could have the house situated on the corner of the property and only 50 feet from a neighbor, so she was not sure that acreage was the answer and suggested a requirement of a 500-feet distance from a neighbor's house. She said they would then have fewer zoning compartments and categories to deal with.

Ms. Ragsdale noted that bed and breakfasts and homestays with accessory structures must meet primary structure setback regulations for the accessory structures. She said they could increase the setback requirement and if this was not met, the owner would have to comply with more stringent regulations. She said the primary setback requirement for rural area structures was 75 feet on the front, 25 feet on the side, and 35 feet in the rear.

Ms. Mallek said that at the last meeting they discussed how this was supposed to be for existing structures only, to avoid a stampede of people building houses in the rural areas and turning them into little hotels. She suggested they do more voting and less generalizing or they would be going around in circles in November.

Mr. Svoboda agreed that they need to have a definition of an existing structure.

Ms. Mallek suggested a 5 or 10-year holding period for family divisions as a good standard. Mr. Kamptner clarified that the holding period for a family division was authorized by state law and it has to be a structure that was in existence on the date the ordinance was adopted.

Mr. Randolph suggested staff go out to several Airbnb locations in the rural area of the County and look at the acreage, the surrounding neighborhood, and setbacks. He remarked that they have been talking in generalities and it would be helpful to look at some practical applications and case studies of what was currently working and what could be problematic in that location with a different owner than was currently occurring.

Ms. Mallek suggested they look at the right side column of the chart, from the slide presentation, and take some things out. Ms. Ragsdale commented that the tiered approach would go from acreage to greater setbacks and they would not be able to do anything with the column on the right unless they meet the greater setback number which they could study and come up with some examples. She reiterated that most complaints the staff receives in the rural areas concern whole house rentals. She said that from today's feedback it seems the staff should add existing structures back to the list.

Ms. Mallek remarked that three Supervisors want existing structures only.

Mr. Svoboda asked Ms. Mallek if she wants to consider a special exception for existing structures. Ms. Mallek responded that she would support an existing accessory old barn that has been turned into something but was not interested in new construction.

Ms. Palmer asked if it was easier to have no whole house rentals without the owner's present in the rural areas, as it was now, unless staff goes through a process that looks at that particular property and incorporate factors such as acreage and setbacks. Ms. Ragsdale responded that it would be easier to come up with the right setbacks and not have to deal with a special exception every time. She said it would be easier to come up with standards while still preserving special exceptions for those cases where they could not cover everything.

Mr. Svoboda remarked that if they required a special exception for each one, it would entail many applications.

Mr. Randolph expressed concern that they would create a situation where they were inundated with applications.

Ms. Ragsdale said the higher-level discussion was whether they want to encourage or discourage this type of activity in the community, and the staff would like input to make sure the public was fully informed and following along. She said that when staff comes back in November, they could include finance as part of the discussion to provide a cost benefit analysis.

Ms. Palmer remarked that she did not ask her question because she wanted to learn about the larger policy, but because she wants to make it less complicated and straightforward as there would be too many special exceptions. She asked if the setbacks they are considering would eliminate whole house rental in a place such as Whippoorwill.Ms. Ragsdale confirmed that they would.

Ms. McKeel remarked that communities all over the U.S. and the world that were open for business for these uses a couple of years ago are now closing their doors because of the ramifications of what has happened in their communities. Ms. Ragsdale responded that the staff crafted regulations so that they do not run into these problems.

Ms. Mallek said she does not want people to feel they have to adopt a loose/open door because they have a lot of people breaking the law.

Ms. McKeel said that she was concerned about compliance and how they structure this, as there are many loopholes and they must be careful not to put staff in a position where they have to figure out compliance but lack the tools to do so.

Mr. Randolph added that the burden should be on the responsible parties that apply for the license and not on County personnel and the police.

Ms. Mallek said that owners are the ultimate responsible party and should sign off. She urged the Board limit this to owners.

Mr. Randolph said they should ensure in the ordinance that there are ramifications for those who do not follow the ordinance.

Ms. McKeel brought up an example of an Airbnb that was bringing in $5,000/week and that a $200 fine would be the cost of doing business. Mr. Svoboda commented that the fees are set by state code.

Ms. Ragsdale posed the second question to the Board: Should the number of guests be regulated, as well as the number of guest rooms? She presented a slide that indicated the zoning ordinance limits the number of guest rooms and that parking was based on the number of guest rooms. She noted that parking, building code regulations, and the health department regulate based on the number of guest rooms for which they could inspect.

Ms. Mallek asked if there was a definition of how many people could be in a room. Mr. Svoboda said that generally the number of rooms was what regulates it and they do not have a number in the code.

Ms. McKeel remarked that if they do not limit the number of guests, the other limits are meaningless.

Ms. Mallek added that a lot of private managers have contracts with homeowners and require them to limit the number to eight or fewer since they know that difficulties rise exponentially once the number was above this.

Mr. Randolph commented that a way to address this would be to allow no more than two adults and one child under age 12 per room.

Ms. Palmer said she was perusing listings on Airbnb and noticed that many are four rooms with two beds advertising for four guests to a room.

Mr. Randolph said that if they do not have a standard, they are setting themselves up for frustration.

Mr. Gallaway expressed support for regulating the number of rooms but not the number of guests per room as this would be difficult to enforce. He indicated that an onsite owner would not want to have a lot of guests and he loves the idea of requiring that a business license accompany online ads.

Ms. Palmer mentioned that she often travels with her adult children on vacation and three would share a room. She agrees with Mr. Gallaway that an onsite owner would not want to have a lot of guests.

Ms. McKeel speculated that there could be an owner-occupied unit with an owner who leaves every time it was rented.

Mr. Gallaway expressed support for having a responsible agent that must be able to respond within one hour to deal with a nuisance complaint, such as the Town of Breckenridge, Colorado requires. He pointed out that Breckenridge has dealt with this issue since the 1980s and he trusts that this requirement works since that town has so much experience with the issue.

Ms. Ragsdale said they are looking for some consensus around this issue so that staff can bring back a proposal.

Ms. Palmer said she would vote to base the requirement on the number of guest rooms and not the number of people.

Ms. Mallek said she wonders if there was a definition of what a room is.

Ms. McKeel said she supports regulating the number of rooms.

Mr. Randolph expressed a willingness to not limit the number of adults and children per room if they take the approach he outlined earlier and that Mr. Gallaway had referenced.

Ms. Ragsdale suggested that at the next meeting they focus on compliance tools available to include in the ordinance. She said that staff would bring back the setback approach for rural areas rather than the acreage approach.

Ms. Mallek said that it should be a combination of a minimum of five acres and 125-feet setbacks, noting that the setback was to address a house on a large lot located on one side.

Ms. McKeel said she agrees with Ms. Mallek.

Ms. Palmer asked how many people who are in compliance with the current rules would be impacted if the County were to increase the acreage from two to five. Ms. Ragsdale responded that they could grandfather existing owners.

Mr. Ragsdale remarked that what they tried to do in Colorado was regulate externalities, and they have to be careful to not regulate the whole process. He said that if they establish setback and acreage requirements and set up a 24-hour complaint hotline that works well, they may look at the issue of acreage and setbacks as something that was less relevant. He emphasized that problems are with noise and behavior of guests.

Ms. Palmer said she would like to know how many extra zoning compliance officers they expect to hire and how they would recruit them.

Mr. Randolph remarked that their approach was to not have a compliance officer. He said that if it has been demonstrated that an owner was not compliant, then the owner would lose their license, which creates a positive incentive to comply.

Mr. Svoboda indicated that at the next meeting, staff would focus on compliance issues and tools they could utilize.

Ms. Mallek pointed out that nuisances often occur after hours and on weekends and she wonders who would carry the ball then, assuming it would be the police.

Ms. McKeel stressed that Section 4.12.6 and Section 4.12.8 were in direct conflict with each other regarding off-street parking. Ms. Ragsdale said staff fixed that in the draft. She said that her intention for this discussion was a check-in on the process and determining if the Board would like to create a public input opportunity.

Ms. Mallek remarked that they have received lots of input from roundtables and groups, and now the Board has to figure out how to put this all together. She said there would be an additional public input opportunity at the public hearings with the Planning Commission and the Board.

Ms. Ragsdale asked for confirmation that the Board would like staff to think about how to take things back to the Planning Commission before the Board set its public hearing. Ms. Palmer agreed with this.

Mr. Randolph offered the option of having a suggested number of people per room such as two adults and no more than one child under age 12, rather than establishing a standard. He said that as long as they have teeth in the ordinance that licenses could be withdrawn, it would lead owners to comply.

Ms. Mallek asked Mr. Kamptner if they have the legal ability to require licenses to operate a homestay. Mr. Kamptner responded that this would typically be a special use or special exception that could be revoked. He said that a zoning clearance was a determination that a use was in compliance with the zoning ordinance.

Ms. Ragsdale offered the option of a three strikes rule for the short-term rental registry.

Ms. Mallek said she thought the registry had already been established.

Ms. Ragsdale explained that the Board approved a transient occupancy tax amendment. She said the zoning ordinance gives them the ability to require zoning clearances, and they have the enabling authority to require a transient occupancy tax. She said the state created a short-term rental registry with helpful enforcement tools, and they could talk about an annual registry and annual inspection at the next meeting.

Ms. Mallek said she would like to know the consequences if someone were not to register and comply and whether the County could issue a ticket or go to civil court. Mr. Kamptner responded that under the registry statute, the consequences are fairly severe and do not allow the violator to engage in this activity.

(Note: Ms. Palmer left the meeting at 4:35 p.m. and returned at 4:37 p.m.

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Agenda Item No. 5. **Work Session:** Rio29 Small Area Plan.

The Executive Summary forwarded to the Board states that at a January 30, 2018 joint meeting, staff and consultants shared the Phase 2 designs and framework with the Board and Planning Commission. Staff presented a plan for connectivity demonstrating transportation facilities and green infrastructure/amenities. The designs also included renderings and a sample quadrant plan to demonstrate community form. The Board and Planning Commission expressed support for the framework and designs, but wanted further discussion on implementation and more detail about the plan concepts prior to moving the project forward to a Comprehensive Plan Amendment (CPA).

Staff will be presenting the latest draft designs for the Rio29 Small Area Plan. Concepts presented will include refined connectivity, parks & trails, place types/character, and transformative projects. Staff is looking for the Board's feedback and endorsement of the concepts before moving forward to a CPA, with the goal of a CPA by the end of 2018. At an August 21 Work Session the Planning Commission recommended staff move the design concepts forward to a CPA.

This Connectivity plan (Attachment A) addresses the community's desires to be able to easily walk, bike, drive, or take transit to locations within the Rio29 area - and from the area to other nodes. The proposed network addresses these desires by providing more direct routes to destinations and recommends that streets be upgraded to or constructed as "complete streets", which are designed for all users. The Plan proposes a hierarchy of streets based on street capacity and design to ensure that streets are designed to be functional and that development is appropriately scaled along the streets.

The Parks & Trails plan (Attachment B) proposes to integrate green infrastructure elements throughout Rio29. The plan shows how we can capitalize on existing green features and publicly owned parcels to provide public amenity spaces, increase environmental sustainability through the use of low impact development techniques and stormwater management best practices, and establish a much-desired trail network to enhance access and mobility between public amenities and private attractions. This integrated green infrastructure network will also enhance quality of life, strengthen sense of place, and reflect the County's environmentally-friendly identity.

To facilitate the creation of different, better places, the Small Area Plan recommends prioritizing the form of development above overly specific land uses. The Place Types/Character plan (Attachment C) designates parts of Rio29 as Urban Core, Core, Flex, and Edge areas and recommends form guidelines for each place type, in addition to general use categories. These guidelines will also encourage the development of vibrant communities with a mixture of living, working, and entertainment spaces while continuing to give landowners flexibility in how they develop and use their property.

Recognizing that change will happen over time, a series of Transformative Projects (Attachment D) have been identified as catalysts and necessary steps in implementing the Small Area Plan. These recommended projects will take place over the short, mid, and long-term, dependent on when conditions such as financing and redevelopment permit. A more detailed breakdown of each project, including stakeholders and funding sources, will be included in the full Plan document.

It is hoped that moving the plan forward will enable the County to use the Plan as an "invitational or opportunity plan" to encourage landowners to redevelop Rio29 consistent with the County's vision for the area. The subsequent Comprehensive Plan Amendment, if adopted, will enable expedited review of development applications in the pipeline that are consistent with this vision, as well as laying a clear set of

parameters to transform the area's zoning into a new hybrid form-based code to promote development in the area in general to meet the County's vision.

Portions of consultant services for Phases 1 & 2 of the Small Area Plan were funded through two $65,000 Urban Development Area Planning Grants through the Office of Intermodal Planning and Investment. Additional funds for Phase 2 & 3 consultant work have been covered by the $120,000 FY17 budget allocation for the Small Area Plan.

Staff recommends the Board endorse the Small Area Plan design concepts and direct staff to advance the presented information to a Comprehensive Plan Amendment.

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Ms. Rachel Falkenstein, Senior Planner, introduced Mr. Andrew Gast-Bray, Director of Planning.

Mr. Gast-Bray said the purpose of this discussion was to look at design concepts and then presented the following meeting agenda:

- Plan Introduction
- Revised Design Concepts
- Implementation
- Modeling and Next Steps

Mr. Gast-Bray presented a slide with the following:

BOS/PC Feedback from January 2018 Joint Meeting

- Desire for this area to be unique
- Green infrastructure as an organizing feature
- Provide for a mix of housing types
- More detail about form and feel
- Work with property owners and provide flexibility

Questions for today

- Do the revised designs reflect the feedback we've heard so far?
- Do you support advancing design concepts to a Comprehensive Plan amendment?
- Any additional feedback?

Mr. Gast-Bray stated that the Board enabled staff to create an expedited review process, which has been extremely helpful to engage with stakeholders to figure out what works in a potential form-based code. He said that as a result of this enabling authority, they have a number of mixed-use applications and a Comprehensive Plan (Comp Plan) amendment would have to be in place.

Mr. Gast-Bray listed the following four concepts that Ms. Falkenstein would present: connectivity, character, conservation, and implementation. He stated that this was an integrated plan and that all the concepts must work together.

Ms. Falkenstein explained that staff saw the plan as an opportunity and an invitation for people to reimagine what they could do with this area in terms of a walkable community, economic development, and for property owners to have expanded options. She said they have been working on the project for about two years, are at the end of Phase 3, and hopes to move forward with a Comp Plan amendment after this meeting. She presented an aerial photo of the Rio/29 area intersection, around which they drew a half-mile radius to comprise the study area, removing areas of single-family residential neighborhoods, as they are not looking to change land use. She said she hopes the takeaway from this presentation would be an understanding of the overall vision and recommendations for each of the components and concepts.

Ms. Falkenstein reviewed the concept of "Connectivity", which she explained presents a vision for a multimodal area; connected street network for motorists, transit, and pedestrians; and attempted to anticipate future changes in transportation. She presented a map of the plan and pointed out the different street types and remarked that final street alignment would be determined when the property was developed. She reviewed the street types beginning with Boulevard, which would be the Rio Road section. The next was Avenue, which would be Berkmar and Hillsdale Drives. The last were Local Streets, most of which would be constructed through private redevelopment.

Ms. Falkenstein reviewed the concept of "Conservation", which she explained was the preservation of natural resources as well as the provision of public amenity spaces for the area. She explained that they have built a framework around critical resources in the area and would look to create a network of usable public spaces while protecting natural resources and using sustainable design choices. She said the conservation plan identifies parks and trails types as well as existing natural areas and areas for protection of natural resources. She noted that park design would occur at a later planning process and this was to establish the general location and function of public places. She said the first park type was the Square, a central amenity space. The other park types were Plazas and Greens, Linear Parks, Floodable Parks, and Natural Areas. She next presented a list of four trail types as follows: Urban Type A, Type A, Urban Type B, Type B. She explained that Urban Type A was a new standard that establishes a wider multi-use path that could accommodate more foot traffic.

Ms. Falkenstein reviewed the concept of "Character", which she explained was the feel, form, and use of a place. She explained that the Character chapter envisioned what the redevelopment would look like and how the area could transform into a more diverse and mixed-use community with human-scale

development that was pedestrian-oriented, has a vibrant street life, and offers a range of housing options. She presented a map of the Development Character Street Plan, which she said identifies the different place types. She pointed out the areas known as the core, flex, and edge areas. She said that each place type has corresponding standards and recommendations, with the urban core being the area with the most intense development and the largest buildings, while the flex type could accommodate a range of building types and intensities, and the edge area having the least intense development.

Ms. Falkenstein remarked that they conducted quite a bit of public engagement that included a public meeting, several stakeholder/property owner meetings, and a Planning Commission work session. She said staff feels they could address all input to some degree and could refine things a little bit more. She said the Planning Commission recommends the advancement of the concepts for public hearing, though they would like to see some more detail and refinement.

Ms. Falkenstein reviewed the last component of the Small Area Plan, which was "Implementation", consisting of three areas: Policy and Zoning, Partnerships and Incentives, and Transformative Projects. She explained that policy and zoning would entail setting up the area for form-based code. She said that transformative projects would help achieve the vision by bringing the area to life with specific projects that would be catalysts for redevelopment. She listed some transformative projects: parks and plazas, streetscapes, bike/ped improvements, and transit projects. She presented a map that indicated the areas of proposed transformative projects, which she stated was intended to be flexible and driven by private development. She said they would have cost estimates associated with each project available at the next meeting. She then presented photographs and descriptions of the transformative projects. She turned the presentation over to Mr. Gast-Bray to review modeling.

Mr. Gast-Bray said he would provide a summary and presented a list of four Rio Road intersections, which he said the County would have to address to manage anticipated traffic. He said they would be able to handle additional traffic as well as the future anticipated land use for that area. He said the new network would keep auto traffic functioning, even with the land use proposed, and modifications such as roundabouts would improve traffic as well as multimodal performance, and internal capture would increase capacity by approximately 15% and possibly more if they did it right.

He stated that the County was not buying land or designing things and thus most development would not happen exactly as planned. He said he asked his planners to create models for the presentation, using conservative estimates for retail which was not a growing sector, and anticipating additional office space. He said the estimated net revenue from property taxes would be over $8 million/year which would allow them to support a range of transformative projects. He estimated the total cost to the County of the initial catalyst projects during the first five years as $9.5 million which he expects they could pay back with property tax revenues based on forecasted land use assumptions.

Ms. Falkenstein resumed the presentation with a summary of the following next steps: refine design as needed, draft Small Area Plan document and public comment period, public hearings and adoption, on track for adoption by December 2018. She played a video of the Rio 29 Small Area Plan and noted that it was available on the County's web site under Hot Topics.

Ms. Palmer said she noticed a lot of green infrastructure while viewing the video and asked how they expect to get so much green infrastructure. Ms. Falkenstein responded that it would be a mix of public and private and requires a set-aside of 15% to 20% for amenities.

Mr. Gast-Bray added that what the Board saw was a spine of green though there would be much more green infrastructure as each developer would have to provide some.

Ms. Palmer remarked that the Board was told that structured parking would have to be a public investment. Mr. Gast-Bray responded that staff has been exploring this in great detail and do not have an easy answer. He said that the topography may require the idling of two floors in some cases, which could make it work for the developer to supply decks of parking. He explained that in other cases, in order to get the orientation they need, they think they need the parking themselves and so the County would encourage them to share and make this an amenity which they could take fiscal advantage of by sharing the parking with neighbors which would allow the County to provide more pad-ready sites in adjacent areas. There is no way to know if this will all happen in the way they hope.

Ms. Mallek commented that she hopes they are considering both horizontal and vertical mixed-use. She said she was thrilled with the green space heading towards the lagoon. Ms. Falkenstein responded that they plan to obtain community input as to what they want to see in the green space rather than have the County try to dictate what would be there.

Mr. Randolph remarked that six years ago, he could never have imagined that they could be looking at something like this in the County and that it was really exciting.

Ms. McKeel added that people are already approaching the Board about it.

Mr. Gast-Bray stated that they have to engage often and present this as an opportunity.

Mr. Gallaway said that for the most part, public concerns turn into the features that are being conceptualized, and once you engage people in conversation, solutions that they would like to see is

what the plan is designed to solve. He commented that it was just getting over an initial fear of change, and some communities fear the edge communities, a concern the County should be mindful of. He added that the feedback he received has been encouraging.

Ms. Falkenstein commented that staff would move forward with the concept and public hearing on the Comprehensive Plan Amendment.

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Agenda Item No. 6. Closed Meeting.

At 5:14 p.m., Mr. Gallaway **moved** that the Board go 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; and
- Under Subsection (3), to discuss and consider the disposition of real property in the City of Charlottesville related to court facilities, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the County; and
- Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to actual litigation between the Board and Route 29 LLC, where the consultation or briefing in an open meeting would adversely affect the negotiating or litigating posture of the County and the Board; and
- Under Subsection (8), to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice relating to the negotiation of an agreement for, and the possible relocation of, court facilities; and
- Under Subsection (19), to discuss plans related to the security of the County Office Buildings.

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

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

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

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Agenda Item No. 7. Certify Closed Meeting.

At 6:18 p.m., the Board reconvened in open meeting, and Mr. Gallaway **moved** that the Board certify by a recorded vote that, to the best of each member's knowledge, only public business matters lawfully exempted from the open meeting requirement 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: Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph and Mr. Gallaway.
NAYS: None.
ABSENT: Mr. Dill.

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Item No. 7a. **Boards and Commissions:** Ms. Palmer **moved** that the Board appoint Mr. Ned Gallaway to the Regional Housing Partnership. The motion was **seconded** by Ms. Mallek.

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

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

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Agenda Item No. 8. Call back to Order.

At 6:19 p.m., Ms. Mallek called the night portion of the Board meeting to order.

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Agenda Item No. 9. Pledge of Allegiance.
Agenda Item No. 10. Moment of Silence.

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Agenda Item No. 11. Adoption of Final Agenda.

Ms. Mallek asked that the Board include Item 15.3a, Resolution Confirming the County Executive's Declaration of a Local Emergency (Hurricane Florence).

Ms. Palmer **moved** that the Board adopt the final agenda, as amended by the Chair. The motion was **seconded** by Ms. Mallek.

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

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

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Agenda Item No. 12. Brief Announcements by Board Members.

Ms. Mallek introduced the staff and presiding Security Officer, Officer Dana Reeves, at the dais.

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Mr. Gallaway announced that the National Drug Takeback event would take place on Saturday, October 27, 2018, from 10:00 a.m.–2:00 p.m. He provided the website www.takebackday.dea.gov, and said that a zip code could be entered to determine where nearby receiving areas are located.

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Mr. Randolph said he attended a solar conference at the University of Virginia earlier in the day and learned that total solar capacity in Virginia was 825.82 megawatts and that Dominion's goal was to increase this to 3,000 megawatts of solar and wind by 2022. He said he asked Mr. Jonah Fogle, of the University, to consider providing annually breakdowns, by city and county, levels of megawatts of solar in each unit of government across the Commonwealth so the County could evaluate where it stands compared with other counties. He said the state law caps the net metered solar and wind to 1% of each utility's peak load in a service area, and he supports changing this. He said there was a recommendation by a professor from VCU to ease zoning restrictions for distributed solar systems and that the removal of setback and height restrictions would facilitate solar. Mr. Randolph stated that the professor advocated for using GIS to assess the overall rooftop potential, which some believe would have a more lasting and immediate effect than distributed solar farms. He said it was also proposed that commercial zones be created as incentives, and he would like to look at ways to integrate solar in the Rio/29 projects.

Ms. Mallek commented that the City of Roanoke placed solar panels in parking decks several years ago.

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Ms. Mallek announced that the third annual Rivanna River Renaissance Conference would be held Friday, September 28, 2018, in Lane Auditorium. She said the space and speakers are being shared with the Urban Land Institute, which was bringing a speaker from Greenville, S.C., and another from Roanoke to share successes they have had with river redevelopment. She said the conference would include a river park announcement as well as a public input session on Phase 1 of the Rivanna River Corridor Plan, for which a study was being carried out by the TJ Planning District Commission.

Ms. Mallek announced that on Saturday, September 29, 2018, there will be a ceremonial float from the new river at Rio 29 to the Rivanna River company pull out. She invited people to register for the conference, reserve kayaks, and learn about the float at www.rivannariverbasin.org.

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Ms. Palmer that announced the Yancey School Heritage History Committee would meet October 27, 2018, 10:00 a.m.-3:00 p.m., to listen to stories of those who have a connection to Esmont and the school.

Ms. McKeel said she knows someone who lives in a facility who was not very mobile, could not attend the meeting and asked her to email the information.

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Agenda Item No. 13a. Proclamations and Recognitions. Proclamation Recognizing September 15, 2018 as Pride Festival Day.

Mr. Randolph read and **moved** adoption of the following Proclamation recognizing September 15, 2018 as Pride Festival Day.

Proclamation

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

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

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

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

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

NOW, THEREFORE, we, the Albemarle County Board of Supervisors recognize with pride the lesbian, gay, bisexual, transgender, queer and questioning community in the County, and proclaim Saturday, September 15, 2018, as Pride Festival Day.

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

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

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

Ms. Amy-Sarah Marshall accepted the Proclamation and expressed appreciation to the Board. She acknowledged Mr. Randolph's words as very moving. She stated that the Pride Festival was on Saturday from 11:00 a.m. – 7:00 p.m. She said they kicked off the week with a youth pride event involving hundreds of children from Albemarle, Charlottesville, and surrounding counties last Saturday. She said she would challenge the Board today and commented that there was built-in bias that lingers within a lot of institutions and structures, and that subtle elements perpetuate shame and depression. She said they were often cloaked as a respect for privacy, politeness, and protection. She said that when forms, conversations, public dialog, language, and leadership lacks the visibility and explicit acknowledgement of the experience of marginalized people, like the LGBTQ community, the result remains an invisibility and a devaluation.

Ms. Marshall said they have the power to start chipping away at some of these barriers to inclusion. She said she was recently at a meeting where they were afraid to use the word transgender which may have been an attempt to protect people though it communicates that there was still a reluctance to actually use the word. She explained that shame was what hurts those in the LGBTQ community.

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Agenda Item No. 14. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Jeff Hemanski, resident of Whippoorwill Hollow for nearly 18 years in the Samuel Miller District, addressed the Board. He said he felt compelled to come before this body in June to give feedback on what it was like to live next to a transient lodging whole house rental (agenda item #4). He reminded the Board of his previous comments about many cars in the driveway, pool parties, and UBER cars pulling up into his driveway at 2:00 a.m. He said that things have not been going well and he filed a complaint after which the homeowner submitted an Airbnb application and was going through the process. He said he told the County that the homeowner had no intent to comply with current regulations as they are still actively listing a whole house rental. Mr. Hemanski said the County assured him that it would fully inform the homeowner of the requirements under the regulations. The homeowner then received approval in mid-August and soon left and in came nine or 10 cars with people who stayed an entire week. He said he made another complaint and the homeowner was served with a zoning ordinance violation after which the homeowner approached him in what he felt was an intimidating posture to ask what his problem was and that everybody was doing this. He said the VRBO still shows the whole house as being available for rent at $750/night. He believes that the homeowner has no intent to follow the rules, was a bad actor, and the people in the neighborhood are being penalized. He asked that the Board use his example to inform its decision making.

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Mr. Joe Jones, resident of White Hall District, addressed the Board. He suggested that, as a farmer, solar farms be referred to as solar parks as this was a commercial activity placed in an agricultural setting that has nothing to do with farming. He then addressed his comments to Ms. McKeel and Mr. Doug Walker, who sit on the Jail Board which would meet tomorrow afternoon. He said he heard in the media that the Jail Board plans to change the policy about notifying ICE when an illegal alien was released from the jail; he encouraged them to not change the policy. He commented that some on the Board may be having their heart strings pulled because they say that some of those being released are non-violent and are not true criminals. He gave an example of a drunk undocumented immigrant driving without a license and insurance who gets arrested. He said an accident could occur that causes a young woman to become a paraplegic in a wheelchair for the rest of her life, and asked if the driver was less guilty after or before the accident.

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Mr. Walker Catlett, senior at Charlottesville High School, addressed the Board. He remarked that the Brooks Family YMCA building has been killing birds through window strikes. He said they have put in hawk decoys that are ineffective. He said he began monitoring the building last October and has found eight birds, which he believes was a vast underestimate. He said that many of these birds are in decline

across the country and the YMCA has an obligation to protect the environment around its building, considering that the County donated $2 million to it.

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Agenda Item No. 15. Consent Agenda.

Ms. McKeel **moved** that the Board approve the consent agenda. The motion was **seconded** by Ms. Mallek.

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

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

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Item No. 15.1. Yancey Advisory Panel Charter, ***was received for information.***

The Executive Summary forwarded to the Board states that in May 2017, the Albemarle County School Board voted to close B.F. Yancey Elementary School and on September 25, 2017, the building transferred to the County's Board of Supervisors. A Yancey Transition Advisory Committee was established shortly thereafter and comprised of County staff and local community stakeholders.

The group was charged with developing recommendations to the Board for the continued use of the Yancey Elementary School building. The Yancey Transition Advisory Committee met monthly for approximately a year, and developed a set of recommendations for both the short-term and long-term use of the building, which included a framework for the use of the school building as a community center.

The recommended framework was endorsed by the Board in March 2018. At its June 6, 2018, meeting, the Board affirmed its support of the County staff's approach to operationalizing the Yancey School Community Center, including the formation of a County Executive sponsored standing advisory panel moving forward.

In July, staff met with members of the Yancey Transition Advisory Committee to discuss the makeup/responsibilities of the standing group. A draft charter for the advisory panel was developed by staff following that meeting and shared with the Yancey Transition Advisory Committee for feedback/input.

A final charter was developed collaboratively and is provided as Attachment A.

An initial meeting of individuals interested in participating on the Yancey Advisory Panel is expected to be scheduled this September.

There is no impact to the budget anticipated.

Staff recommends the Board receive this item for information purposes.

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Item No. 15.2. CCP201800002 - Yancey Elementary, ***was received for information***.

The Executive Summary forwarded to the Board states that the Albemarle County Planning Commission, at its meeting on July 17, 2018, found by a vote of 7:0, that the location, character and extent of CCP-2018-00003 Yancey Community Center public facility and public use thereof, as proposed, to be in substantial accord with the Comprehensive Plan.

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Item No. 15.3. VDOT Monthly Report (September) 2018, ***was received for information***.

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Item No. 15.3a. Resolution Confirming the County Executive's Declaration of a Local Emergency (Hurricane Florence).

By the above-recorded vote, the Board adopted the following resolution:

**RESOLUTION CONFIRMING THE COUNTY EXECUTIVE'S
DECLARATION OF A LOCAL EMERGENCY
(Hurricane Florence)
(Virginia Code § 44-146.21)**

WHEREAS, the County Executive is designated as the Director of Emergency Management for the County of Albemarle; and

WHEREAS, Hurricane Florence is forecast to bring heavy rain, flooding, and wind to the Commonwealth, including Albemarle County, beginning Thursday, September 13, 2018 (the "Event"); and

WHEREAS, the Event may result in the loss of life, human suffering, damage to public and private property, and the loss of utility and other public services; and

WHEREAS, the Governor declared a state of emergency on September 8, 2018 related to the Event; and

WHEREAS, because of the potential adverse impacts of the Event, County Executive Jeffrey B. Richardson, acting in his capacity as the Director of Emergency Management, declared a local emergency on September 11, 2018 pursuant to Virginia Code § 44-146.21; and

WHEREAS, the declaration of a local emergency enables the County Executive to exercise the powers conferred to him as the Director of Emergency Management pursuant to Virginia Code § 44-146.21 and other sections of the Emergency Services and Disaster Law (Virginia Code § 44-146.13 *et seq.*); and

WHEREAS, the Albemarle County Board of Supervisors could not timely convene on September 11, 2018 to declare the Event to be a local emergency.

NOW THEREFORE, BE IT RESOLVED, that the Albemarle County Board of Supervisors confirms the declaration of a local emergency by the County Executive on September 11, 2018.

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Agenda Item No. 16. Community Use of County Facilities.

The Executive Summary forwarded to the Board states that since first adopting a Community Use of County Facilities Policy (the "Policy") on February 10, 1982, the Board has encouraged the use of County facilities by Local Government and the Schools Division for their activities, as well as by outside organizations and groups, as long as their activities do not interfere with County business. The Board reviewed and approved the most recent changes to the Policy on June 13, 2018, which amended among other things, the policies pertaining to the parking lots. The policy was revised to authorize the parking lots to be closed to general public use when the County Executive determines that their being open at any other times would conflict with County business ((subsection 10(b)(3)) or when a state of emergency or a local emergency has been declared (subsection 10(b)(4)) (See Attachment A).

The issue for the Board is whether the policy regarding the use of the parking lots should remain as it is or be further amended.

Before the August 10-12 state and local emergency declarations, the parking lots at COB-McIntire were open to general use by the public when the County was not open for business. The only restriction was that parking was not allowed between 2 a.m. and 6 a.m. each day. Since the emergency declaration, after hour public parking has not been allowed. The purpose of this presentation and discussion is to allow the Board to consider options for public use of County grounds, and for staff to explain considerations associated with each option.

To be determined once final policy is in place.

Staff recommends that the Board consider options and provide direction related to the Community Use of County Facilities Policy.

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Mr. Trevor Henry, Assistant County Executive, stated that this item was intended for the Board to discuss changes on near-term and longer-term planning related to the policy. He said that one recommendation was to do a more comprehensive study of the building and grounds use, which would take more time. He said that while staff was seeking Board feedback, they request that the Board delay action until the October 3 meeting to provide an opportunity to work with constituents and for Mr. Dill to return.

Mr. Henry presented an aerial photograph of the County Office Building with the parking lots and public sidewalk highlighted, and he said the current policy was established in 1982 with the latest revision on June 13, 2018. He stated that the purpose of the policy was to optimize building and grounds use for local government and school functions, and the use by outside organizations was encouraged. He noted that safety and care are primary considerations. Mr. Henry stated that there was a protocol for the renting of space as well as a separate facilities program that allow an outside entity to reserve the Auditorium, with the policy including designated costs. He said the grounds are generally not open for public use, with some exceptions.

Mr. Henry reminded the Board of a policy change in June that authorized the County Executive to make a change to grounds use when a local emergency was declared. He reviewed some aspects of the policy, including that the lobby was not available for use on days when public meetings are held, hallways are not available for rent or public meetings, overnight public parking was not allowed, parking was free to the public after business hours or public meetings until 2:00 a.m. He continued that internal grass, steps, and sidewalk areas are not available for public gatherings unless decreed by the County Executive during a local emergency. He reminded the Board that a local emergency was declared on August 8 and rescinded by the Board of Supervisors on September 5.

Mr. Henry presented the Board with three considerations: A) Restoration to current policy, B) Adjust policy to keep current parking restrictions in place, C) Hybrid option. He said that Option A would

have the least restrictive use of parking, causes more of a reaction from a security posture, and would likely require additional enforcement of the grounds and parking policy. He said they have received some complaints that on evenings when School Board meetings are held parking was hard to get because of some other uses that are not County business related. He reviewed the second option which was to keep the current restrictions, eliminates parking for any non-County business use, increases the security posture for the grounds and building, and eliminates other uses that commonly occur.

Mr. Henry remarked that if approved, staff recommends additional structures such as gating to help with enforcement. He explained that under Option C, they would more formally define the perimeter around the building and restrict the use of the upper middle lot as well as parking adjacent to the building to County business only, with no public parking permitted at any time. He indicated that gating would allow staff with badges to gain access and allow for stronger security in the immediate perimeter. He said the staff suggests opening the lower parking lot to the public after normal business hours from 5:00 p.m. to midnight to provide access to sidewalks towards downtown and for users of the ballfields.

Ms. McKeel remarked that Board members have received several letters and emails from members of a group that expressed that their demonstration was peaceful, and she asked Mr. Henry to explain to the public that they do not have the ability to pick and choose. Mr. Henry responded that the policy cannot be bias to any use, and there was always a subjective view as to whether a use was agreeable to a specific position that a person or group may represent, so anything they do on the policy has to be neutral. He asked Mr. Kamptner to provide a legal explanation.

Mr. Kamptner explained that when they open up County property to the public, they must be open to everybody and cannot distinguish based on their viewpoint or the content of their speech. He added that they do not regulate or control those who want to demonstrate on public sidewalks.

Mr. Henry said he failed to mention that the Public Works Division would install a paved path from the middle parking lot area connecting to the sidewalk. He asked Mr. Richardson if he had anything to add.

Mr. Richardson said the upper area of the parking lot serves a significant number of citizens during the week, as the County Office Building was a very busy building. He said that for after-hours public parking, it was most logical to him to look to the property at the far right that was adjacent to the baseball field, as they have realized that some members of the public use this in the evening and on weekends. He said that staff has been looking at how to segregate the two areas in a way that they could identify public safety needs at the property up top while understanding the importance of public parking to members of the public that visit the downtown area. He said he would like the Board to consider this as a viable option.

Ms. Palmer expressed a desire to keep as many public spaces open as humanly possible as they are important and that demonstrations are part of the American way.

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Agenda Item No. 17. **PUBLIC HEARING: Community Development Block Grant - Southwood.** To solicit input on a proposed Vibrant Communities Initiative application submitted to the Virginia Department of Housing and Community Development for the Southwood Redevelopment Project. Residents of the project area are encouraged to attend. The proposed funding will support the installation of infrastructure and the development of fifteen homes in the first village of Southwood. All beneficiaries shall be low- and moderate-income families. Citizens will also be given the opportunity to comment on past uses of Community Development Block Grant funds by the County.
(Advertised in the Daily Progress on August 27 and September 3, 2018.)

The Executive Summary forwarded to the Board states that Virginia Community Development Block Grant (VCDBG) program is a federally-funded grant program administered by the Virginia Department of Housing and Community Development (DHCD). Since 1982, the DHCD has provided funding to eligible units of local government (in non-entitlement communities only) for projects that address critical community needs, including housing, infrastructure, and economic development. Albemarle County has received numerous grants in previous years to support housing and community improvement initiatives.

The VCDBG application process requires that two local public hearings be conducted. The first public hearing was held on December 6, 2017, at which time information was provided on eligible activities that may be funded by a VCDBG grant, the amount of funding estimated to be available, past activities undertaken with VCDBG funds, and the process for applying for funding. The purpose of this public hearing is to provide information on the proposed project application and to accept public comment on the application. Applications are submitted by the County to DHCD; however, the proposed activities may be undertaken by other agencies. Albemarle County can submit one or more applications, but is limited to awards totaling no more than $2.5 million.

In early June 2018, Albemarle County was invited to submit an application for the Vibrant Communities Initiative (VCI), which is a program created by DHCD and the Virginia Housing Development Authority (VHDA). The program is funded through VCDBG, VHDA, and the state's Housing Trust Fund. The invitation was a result of the Greater Charlottesville Habitat for Humanity (Habitat) submitting a proposal for the Southwood Redevelopment Project for VCI funding. Based on the initial proposal, DHCD determined that the project may be eligible for VCDBG funds as a part of VCI to support infrastructure

costs associated with the construction of twenty houses built by Habitat for existing residents of Southwood.

The deadline for the application submission was June 26, 2018. Due to the inability to hold a public hearing prior to the submission date, DHCD agreed that the County could conduct the hearing after submission. It was noted in the application that the County would conduct the hearing in September 2018. DHCD also suggested that the County request a total of $2.25 million in VCI funding. Based on Habitat's proposal, DHCD indicated that the project could receive up to $1.25 million in VCDBG funds and $1 million in VHDA funds. As previously noted, VCDBG funds must be awarded to an eligible unit of local government. VHDA funds would be awarded directly to Habitat. DHCD also indicated that a portion of the VCDBG funds could be used for administration and project management and this would be determined during future contract negotiations if funding is awarded.

There is no budgetary impact unless and until an application is made and a grant is awarded, at which time the Board will be asked to appropriate the funding. There is no required match from the County.

Upon receiving information on the proposed VCI application and taking public comment on the proposal, staff recommends that the Board adopt the attached Resolution approving the County's submission of the application for the Southwood Redevelopment Project and authorizing the County Executive to execute all documents required to obtain or accept this grant and to take any further action required for this application.

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Mr. Ron White, Chief of Housing, reported that since 1982 the Virginia Department of Housing and Community Development has provided federal funds in the form of community block grants to eligible units of local government including Albemarle, which has been awarded several grants for various projects. He listed the uses of the funds as housing, community improvement, economic development, and infrastructure. Earlier this year, the Department of Housing and Community Development and the Virginia Housing Development Authority issued a notice to accept proposals for a new program called the "Vibrant Communities Initiative," which combines grants from several organizations into a pool of money to target projects that would have a transformational nature in their community.

Mr. White stated that the initiative allows local governments, for-profit and nonprofit developers to submit proposals, under which Habitat for Humanity has submitted one for Southwood. He said that VHCD invited the County to apply for funding in the amount of $2.5 million, based on Habitat's proposal to put in infrastructure and construct 20 homes in the first Southwood village. The funding was expected to be in the form of a community development block grant. In December he appeared before the Board to provide information on available block grant funds and noted at that time that he would return for a required second public hearing if any project were to come forward in the future. The application was submitted June 26, 2018 and he was seeking the Board's endorsement, not its approval. Mr. White said there was no current budget impact to the County and anything that may come up as far as a match or the availability of administrative funds would be done after the receipt of an award. He asked the Board to hold the public hearing and take comments from the public, and then adopt the proposed resolution. He commented that Habitat's Director, Mr. Dan Rosenzweig, was present in the audience and could answer questions about the block grant proposal.

Ms. Mallek opened the public hearing.

As no one came forward to speak, Ms. Mallek closed the public hearing.

Ms. McKeel **moved** that the Board adopt the proposed resolution. The motion was **seconded** by Ms. Palmer.

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

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

RESOLUTION

WHEREAS, the County of Albemarle is committed to ensuring that safe, decent, affordable, and accessible housing is available for all residents and to improving the livability of all neighborhoods; and

WHEREAS, the County of Albemarle has recognized the redevelopment of the Southwood Mobile Home Park as a strategic priority; and

WHEREAS, the County of Albemarle executed a public/private partnership agreement with the Greater Charlottesville Habitat for Humanity (Habitat) in September 2016 to support and provide resources to Habitat to assist with rezoning, pre-development, and redevelopment initiatives; and

WHEREAS, the Virginia Department of Housing and Community Development invited the County of Albemarle to submit an application under their Vibrant Communities Initiatives Program (VCI); and

WHEREAS, after holding public hearings on December 6, 2017 and September 12, 2018, the County wishes to apply for up to $1,250,000 in Virginia Community Development Block Grant ("VCDBG") funds which are a part of the VCI funding requested for the Southwood Redevelopment Project ("Project") to support site development and infrastructure for the construction of 20 new homes as the first village in the redevelopment; and

WHEREAS, the County of Albemarle has committed $675,000 and significant staff resources to Habitat to support pre-development activities; and

WHEREAS, all households proposed to receive assistance are low- and moderate-income; and

WHEREAS, the projected benefits of the Project are improved living conditions for 20 families currently residing in the mobile home park.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby endorses the County's submission of the VCI application for the Southwood Redevelopment Project and authorizes the County Executive to execute the application and any required certifications and assurances, as well as any supporting or related contracts or documents required to obtain or accept this grant, and to take any further action required for this application.

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Agenda Item No. 18. **PUBLIC HEARING: ZMA201700007 Hogwaller Farm.**
The purpose of this public hearing is to consider and act on the Project, including amended proffers submitted after the close of the public hearing held on the Project on August 1, 2018 to limit the total square footage of farm sheds on the Project property to 600 square feet.
PROJECT: ZMA2017-00007 Hogwaller Farm.
MAGISTERIAL DISTRICT: Scottsville.
TAX MAP/PARCEL(S): 07700000002000.
LOCATION: East side of Nassau Street near intersection with Florence Road; west side of Moores Creek across from Moores Creek Treatment Plant. Adjacent to properties within the City of Charlottesville.
PROPOSAL: Rezone property from Light Industrial (LI) to Rural Areas (RA).
PETITION: Rezone the 7.52-acre parcel from Light Industrial (LI) which allows industrial, office, and limited commercial uses (no residential uses) to Rural Areas (RA) which allows agricultural, forestal,and fishery uses as well as residential uses (maximum density of 0.5 unit/acre in development lots). The proposed uses are agriculture, forestry, and fishery uses except as otherwise expressly provided. No residential units are proposed.
OVERLAY DISTRICT(S): Flood Hazard and Steep Slopes – (Preserved).
ENTRANCE CORRIDOR (EC): Yes.
POTENTIALLY IN MONTICELLO VIEWSHED: Yes.
PROFFERS: Yes.
COMPREHENSIVE PLAN: "Parks and Green Systems" – parks, playgrounds, play fields, greenways, trails, paths, recreational facilities and equipment, plazas, outdoor sitting areas, natural areas, preservation of stream buffers, floodplains and steep slopes adjacent to rivers and streams. In the Development Area in Neighborhood 4 (Southern and Western Urban Neighborhoods).
(Advertised in the Daily Progress on August 27 and September 3, 2018.)

The Executive Summary forwarded to the Board states that at the August 1, 2018 Board meeting, a public hearing was conducted on ZMA201700007 Hogwaller Farm. The staff report for that meeting included a recommendation for approval, and the Board voted to adopt Ordinance 18-A(5) to approve ZMA201700007. However, the County Attorney's Office has since concluded that another public hearing and Board action is required because the proffers were amended after the August 1 public hearing was closed. Due to the length of the August 1, 2018 staff report and attachments, it is not included with this Transmittal Summary, but may be found with the Board's August 1, 2018 meeting materials.

The applicant has submitted revised proffers (Attachment A), which include all of the proffers the Board previously considered during the August 1 public hearing, as well as an additional proffer (#5) to establish a maximum limit of six hundred (600) square feet (aggregate total) for any structure(s) within the Flood Hazard Overlay District. This additional proffer formalizes the verbal commitment which was discussed and found to be acceptable at the August 1 Board meeting.

Please note the revised proffers do not include a commitment to specify gravel as the parking lot surface material. Although the applicant's intent is for the parking lot to be gravel, the applicant has expressed reluctance to have this material specification become a legislative requirement established through this ZMA petition. After extensive coordination with Mr. Frank Pohl, County Engineer and Floodplain Administrator, staff is in agreement with the applicant that the appropriate method and time to address the issue of parking lot materials is during the detailed review of the Floodplain Development Permit application, which is required for improvements within the Flood Hazard Overlay District. The Floodplain Development Permit application and review process would include project-specific and property-specific details that are necessary in order for the Floodplain Administrator to make an informed decision about the design and material specification(s) of proposed improvements.

Staff recommends that the Board adopt the attached Ordinance (Attachment B) to approve ZMA201700007 with proffers.

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Mr. Kamptner explained to the Board that this item returned because there was a discussion to amend the proffer after the public hearing was closed and under the County's regulations relating to proffers a second public hearing was required.

Mr. David Benish, Chief of Planning-Development Review, explained that the proposal was to amend zoning for TMP 77-20 from Light Industrial (LI) to Rural Areas (RA) and would allow the parcel to be used for agricultural production as part of urban farm residential development; residential units only on an adjacent parcel in the City. He presented a zoning map and indicated that the parcel was located on Nassau Street north of I-64 and east of Monticello Avenue, adjacent to Moores Creek. The property lies entirely within the 100-year floodplain and contains floodway and floodway fringe. He reminded the Board that it adopted this ZMA on August 1, 2018, and, as outlined by Mr. Kamptner, there were reasons to reconsider and act on this proposal. He said the applicant has submitted proffers which include all the proffers that were previously reviewed by the Board as well as a new Proffer #5 that recognizes the agreed to limitation for building square footage on the site as an aggregate area of 600 square feet that was discussed and agreed to at the prior meeting.

He said there was also discussion and understanding that the parking area would be gravel. He explained that the applicant has requested that this not be a proffer so as to provide for greater flexibility to review what sort of surfaces are needed based on a detailed assessment of streamflow floodplain velocities. He said the County Engineer agrees with this position and stated that any development within the floodplain requires a floodplain development permit which gives the County the ability to decide on the appropriate surface area. Mr. Benish said that staff recommends approval of the submitted proffers, which includes the five proffers outlined on August 1, 2018, including the limits on square footage for the shed areas, and acknowledging that there was no proffer specifying a particular surface area for parking. He said the proposed ordinance reflects that action. Mr. Benish then invited questions from Board members.

Ms. Mallek opened the public hearing.

As no one came forward to speak on the matter, Ms. Mallek closed the public hearing.

Mr. Randolph thanked staff members for their deep interest in asking him if he was comfortable with the change.

Mr. Randolph **moved** that the Board adopt the proposed Ordinance to approve ZMA-2017-000007, with proffers. The motion was **seconded** by Ms. Mallek.

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

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

ORDINANCE NO. 18-A(5)
ZMA 2017-07 HOGWALLER FARM

AN ORDINANCE TO REZONE 7.52 ACRES
FROM LI LIGHT INDUSTRIAL TO RA RURAL AREAS
FOR TAX MAP PARCEL NUMBER 07700-00-00-02000

WHEREAS, the application to rezone 7.52 acres from LI Light Industrial to RA Rural Areas for Tax Map Parcel Number 07700-00-00-020000 is identified as ZMA 2017-00007 Hogwaller Farm ("ZMA 2017-07"); and

WHEREAS, staff recommended denial of ZMA 2017-07 for reasons set forth in the May 1, 2018 Planning Commission staff report; and

WHEREAS, the Planning Commission held a duly noticed public hearing on ZMA 2017-07 on May 1, 2018 and recommended denial; and

WHEREAS, subsequent to the Planning Commission meeting, the applicant submitted a revised conceptual plan and revised proffers, which staff believes address the issues of concern raised by staff and the Planning Commission; and

WHEREAS, on August 1 and September 12, 2018, the Albemarle County Board of Supervisors held duly noticed public hearings on ZMA 2017-07.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the staff report prepared for ZMA 2017-07 and its attachments, including the proffers dated August 20, 2018, which include the use restrictions and the establishment and maintenance of a riparian buffer as recommended by staff, as well as the establishment of a maximum aggregate limit of 600 square feet for any structure(s) within the Floor Hazard Overlay District as requested by the Board on August 1, and the rezoning application plan entitled "TMP 07700-00-00-02000: Hogwaller Farm, ZMA Application: 2017-00007", prepared by Shimp Engineering, P.C., dated January 16, 2018 and last revised on June 27, 2018 (the "conceptual plan"), the information presented at the public hearing, the material and relevant

factors in Virginia Code § 15.2-2284, the intent of the RA Rural Areas zoning district stated in County Code § 18-10.1, and for the purposes of public necessity, convenience, general welfare, and good zoning practices, the Board hereby approves ZMA 2017-07 with the proffers dated August 20, 2018 and the conceptual plan dated January 16, 2018 and last revised on June 27, 2018.

*****

Original Proffers ___X_____
Amendment _____

PROFFER STATEMENT

ZMA Number: 2017-00007

Tax Map and Parcel Number: 07700-00-00-02000

Owner: Franklin St. Land Trust II; Charles Wm Hurt & Shirley L Fisher, Trustees
PO Box 8147
Charlottesville, VA 22906

Date of Proffer Signature:

7.52 Acres to be rezoned from LI to RA

Franklin St. Land Trust II, is the owner (the "Owner") of Tax Map and Parcel Number 07700-00-00-02000 (the "Property") which is the subject of rezoning application ZMA No. 2017-00007, a project known as "Hogwaller Farm" (the "Project").

Pursuant to Section 33 of the Albemarle County Zoning Ordinance (Chapter 18 of the Albemarle County Code), the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the requested zoning district, rural areas (RA). These conditions are proffered as a part of the requested rezoning and the Owner acknowledges that the conditions are reasonable. Each signatory below signing on behalf of the Owner covenants and warrants that it is an authorized signatory of the Owner for this Proffer Statement.

1. **SITE DEVELOPMENT:** The property will be developed in general accord with the conceptual plan titled "TMP 07700-00-00-02000: Hogwaller Farm" dated 01-16-2018 and last revised 06-27-18, as determined by the Zoning Administrator. The property will be developed to feature the major elements shown on the conceptual plan, which includes an undisturbed riparian buffer and riparian buffer signage. The conceptual plan is attached herein as Attachment A.

2. **RIPARIAN BUFFER:** An undisturbed riparian buffer area ("riparian buffer") managed in accordance with the Albemarle County stream buffer protection regulations (County Code § 17-600, et seq.) will be established and maintained for perpetuity, provided that the area within the riparian buffer shall not be eligible for the "silvicultural activities" exemption that is otherwise provided by County Code § 17-602(c) . The riparian buffer will extend to 100' from the top of bank of Moore's Creek or to the limits of the

floodway, whichever is greater. A copy of County Code § 17-601 is attached herein as Attachment B for reference purposes.

3. **RIPARIAN BUFFER AREA DESIGNATION:** Signage denoting the extent of the riparian buffer along the property shall be installed by the property owner prior to the commencement of uses/activities listed in Proffer #4 "Agricultural Uses." Signage shall be maintained as long as the property is in operation with uses/activities stated in Proffer #4. Signage will be maintained by the property owner at the time the signage is in need of repair. The size, type of material(s), content, number, and locations of the signs shall be approved by the Zoning Administrator and County Engineer.

4. **FUTURE USES:** Agricultural Uses: The use of the property shall be restricted to the following by right uses pursuant to Section 10.2.1(3), (6), (7), (9), (21), (27), and (30) of the Albemarle County Zoning Ordinance, as in effect on August 1, 2018, a copy of which is attached hereto and incorporated herein as Attachment C, inclusive of modifications as shown in underline or strikethrough typeface:

   - 3. Agriculture, forestry, and fishery uses, excluding livestock activity involving swine or cows, and excluding agriculture, forestry, or fishery uses within the designated "riparian buffer" area.
   - 6. Water, sewer, energy, communications distribution facilities (reference 6.1.12)
   - 7. Accessory uses and building including ~~major home occupations (reference 5.2A), minor home occupations (reference 5.2A), and~~ storage buildings.
   - 9. Public uses (reference 5.1.12)
   - 21. Stormwater management facilities shown on an approved final site plan or subdivision plat.
   - 27. Farm stands (reference 5.1.47).
   - 30. Events and activities at agricultural operations authorized by right under section 5.1.58(d).

   Additionally, the property may also be used for the following special uses pursuant to Section 10.2.2 of the Zoning Ordinance, as in effect on August 1, 2018, a copy of which is attached hereto and incorporated herein as Attachment C, subject to the applicable requirements of the Zoning Ordinance, provided that a special use permit is approved:

   - 39. Hydroelectric power generation (reference 5.1.26).

5. **STRUCTURES:** Any structure(s) within the Flood Hazard Overlay District shall:
   (a) not exceed six hundred (600) square feet of aggregate improved space, and
   (b) be subject to both
   (i) the applicable Required Permits and Certifications Prerequisite to Development, pursuant to Section 30.3.12 of the Albemarle County Zoning Ordinance (in effect on August 1, 2018), and
   (ii) the applicable Construction Standards, pursuant to Section 30.3.15 of the Albemarle County Zoning Ordinance (in effect on August 1, 2018).

OWNER:
Franklin St. Land Trust II

(to be signed upon final submission of proffer statement)

_____

By: Charles Wm Hurt

Title: Trustee Charles Wm Hurt

Tax Map and Parcel Number: 07700-00-00-02000

The undersigned Owner hereby proffers that the use and development of the Property shall be in conformance with the proffers and conditions herein above. This document shall supersede all other agreements, proffers or conditions that may be found to be in conflict. The Owner agrees that all proffers shall be binding to the property, which means the proffers shall be transferred to all future property successors of the land.

WITNESS the following signature:

Franklin St. Land Trust II
By: Charles Wm Hurt

COMMONWEALTH OF VIRGINIA

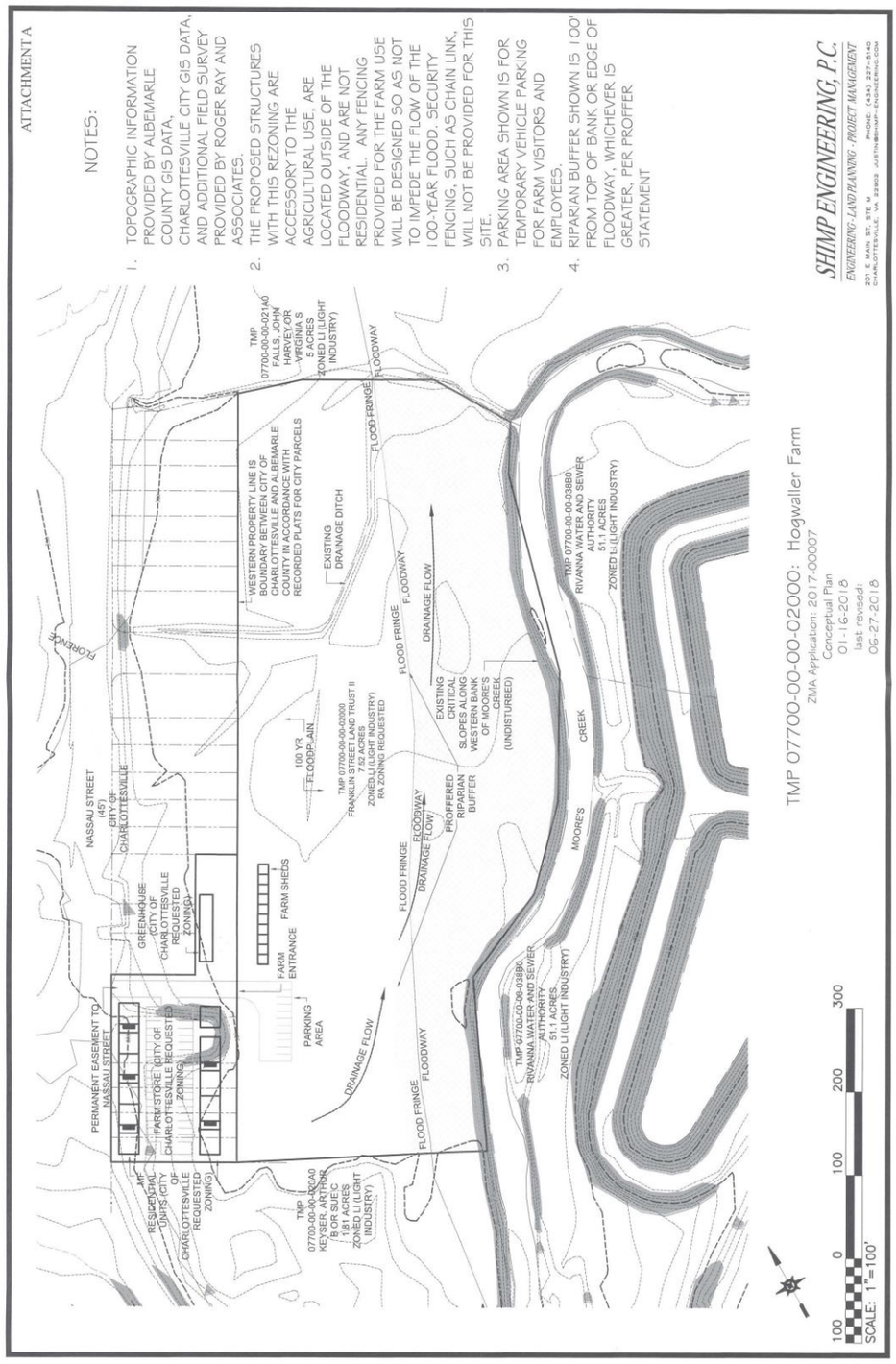
~~CITY~~/COUNTY OF Albemarle, to wit:

The foregoing instrument was acknowledged before me this 20th day of August 2018 by Dr. Charles Wm Hurt, Trustee of Franklin St. Land Trust II.

My Commission expires: May 31, 2021

Gail B Watkins
Notary Public

GAIL BREEDEN WATKINS
NOTARY PUBLIC
REG. #101082
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MAY 31, 2021


ATTACHMENT A
NOTES:
1. TOPOGRAPHIC INFORMATION PROVIDED BY ALBEMARLE COUNTY GIS DATA, CHARLOTTESVILLE CITY GIS DATA, AND ADDITIONAL FIELD SURVEY PROVIDED BY ROGER RAY AND ASSOCIATES.
2. THE PROPOSED STRUCTURES WITH THIS REZONING ARE ACCESSORY TO THE AGRICULTURAL USE, ARE LOCATED OUTSIDE OF THE FLOODWAY, AND ARE NOT RESIDENTIAL. ANY FENCING PROVIDED FOR THE FARM USE WILL BE DESIGNED SO AS NOT TO IMPEDE THE FLOW OF THE 100-YEAR FLOOD. SECURITY FENCING, SUCH AS CHAIN LINK, WILL NOT BE PROVIDED FOR THIS SITE.
3. PARKING AREA SHOWN IS FOR TEMPORARY VEHICLE PARKING FOR FARM VISITORS AND EMPLOYEES.
4. RIPARIAN BUFFER SHOWN IS 100' FROM TOP OF BANK OR EDGE OF FLOODWAY, WHICHEVER IS GREATER, PER PROFFER STATEMENT
SHIMP ENGINEERING, P.C.
ENGINEERING · LAND PLANNING · PROJECT MANAGEMENT
TMP 07700-00-00-02000: Hogwaller Farm
ZMA Application: 2017-00007
Conceptual Plan
01-16-2018
last revised:
06-27-2018
SCALE: 1"=100'
100 0 100 200 300
PERMANENT EASEMENT TO NASSAU STREET
NASSAU STREET (45) CITY OF CHARLOTTESVILLE
GREENHOUSE (CITY OF CHARLOTTESVILLE REQUESTED ZONING)
PARKSTORE (CITY OF CHARLOTTESVILLE REQUESTED ZONING)
MF RESIDENTIAL UNITS (CITY OF CHARLOTTESVILLE REQUESTED ZONING)
TMP 07700-00-00-02040 KEYSER, ARTHUR B OR SUE C 1.46 ACRES ZONED LI (LIGHT INDUSTRY)
FLORENCE
FARM ENTRANCE
FARM SHEDS
PARKING AREA
DRAINAGE FLOW
FLOODWAY
FLOOD FRINGE
100 YR FLOODPLAIN
TMP 07700-00-00-02200 FRANKLIN STREET LAND TRUST II 7.52 ACRES ZONED LI (LIGHT INDUSTRY) RA ZONING REQUESTED
PROFFERED RIPARIAN BUFFER
EXISTING CRITICAL SLOPES ALONG WESTERN BANK OF MOORE'S CREEK (UNDISTURBED)
WESTERN PROPERTY LINE IS BOUNDARY BETWEEN CITY OF CHARLOTTESVILLE AND ALBEMARLE COUNTY IN ACCORDANCE WITH RECORDED PLATS FOR CITY PARCELS
EXISTING DRAINAGE DITCH
TMP 07700-00-00-02140 FALLS, JOHN HARVEY OR VIRGINIA S 5 ACRES ZONED LI (LIGHT INDUSTRY)
TMP 07700-00-00-03880 RIVANNA WATER AND SEWER AUTHORITY 51.1 ACRES ZONED LI (LIGHT INDUSTRY)
MOORE'S CREEK

ATTACHMENT B

Sec. 17-601 Management of stream buffer.
Each stream buffer required to be retained or established pursuant to section 17-600 shall be managed as provided herein:

A. Target vegetative cover. The preferred vegetative cover in a stream buffer shall be a native riparian forest with ground cover, shrub, and tree canopy layers.

B. Preservation of native vegetation. When evaluating a development design under subsection (C),when native vegetation may be disturbed or removed under subsection (D) and sections 17-603 and 17-604, and when stream buffers are maintained under subsection (E), native vegetation shall be preserved to the fullest extent possible.

C. Incorporation into development design. Each stream buffer shall be incorporated into the design of the development by keeping stream buffers in open or natural spaces, and out of residential lots or areas of active use, to the fullest extent possible.

D. Retaining native vegetation; disturbance or removal. In order to maintain the runoff, erosion, nonpoint source pollution control, stream temperature, and ecological values of the stream buffer, no native vegetation within the stream buffer shall be disturbed or removed, regardless of the size of the area affected, except to maintain the stream buffer as provided in subsection (E), provided that native vegetation may be removed to construct, install, operate or maintain any improvement, or engage in any activity, authorized by sections 17-603 and 17-604.

E. Maintaining the stream buffer. Each stream buffer shall be maintained in as natural a condition as possible.

(§ 19.3-42, 2-11-98, § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-8, 19.3-42; § 17-318, Ord. 98-A(1), 8-5-98; § 17-601, Ord. 14-17(1), 5-7-14, effective 7-1-14)
State law reference –Va. Code § 62.1-44.15:73; 9VAC25-890-40.

ATTACHMENT C

ALBEMARLE COUNTY CODE

CHAPTER 18. ZONING

SECTION 10. RURAL AREAS DISTRICT, RA

Sections:

10.1	**Intent, where permitted.**
10.2	**Permitted uses.**
10.2.1	**By right.**
10.2.2	**By special use permit.**
10.3	**Application of regulations for development by right.**
10.3.1	**Conventional development.**
10.3.3	**Rural preservation development.**
10.3.3.1	**Definitions.**
10.3.3.2	**Intent; design standards.**
10.3.3.3	**Special provisions.**
10.4	**Area and bulk regulations.**
10.5.2	**Where permitted by special use permit.**
10.5.2.2	**Materials to be submitted by the applicant.**

Sec. 10.1 Intent, where permitted.

This district (hereafter referred to as RA) is hereby created and may hereafter be established by amendment of the zoning map for the following purposes:

-Preservation of agricultural and forestal lands and activities;

-Water supply protection;

-Limited service delivery to the rural areas; and

-Conservation of natural, scenic, and historic resources.

Residential development not related to bona fide agricultural/forestal use shall be encouraged to locate in the urban area, communities and villages as designated in the comprehensive plan where services and utilities are available and where such development will not conflict with the agricultural/forestal or other rural objective. Where development does occur, rural residents should expect to receive a lower level of service delivery than will be provided to residential developments in designated growth areas. In relation to residential development, agricultural/forestal activities shall be regulated only to the extent necessary to protect public health and safety.

In regard to agricultural preservation, this district is intended to preserve the county's active farms and best agricultural and forestal lands by providing lot areas designed to insure the continued availability of such lands for preferential land use tax assessment in order to enhance the economy, and maintain employment and lifestyle opportunities. In addition, the continuation and establishment of agriculture and agriculturally-related uses will be encouraged, and landowners will be encouraged to employ Virginia State Water Control Board best management practices.

(§ 20-10.1, 12-10-80, 11-8-89; § 18-10.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01)

It is intended that permitted development be restricted to land which is of marginal utility for agricultural/forestal purposes, provided that such development be carried out in a manner which is

compatible with other purposes of this district. Roadside strip development is to be discouraged through the various design requirements contained herein.

Sec. 10.2 Permitted uses.

Sec. 10.2.1 By right.

The following uses shall be permitted by right in the RA district, subject to the applicable requirements of this chapter:

1. Detached single-family dwellings, including guest cottages and rental of the same; provided that yard, area and other requirements of section 10.4, conventional development by right, shall be met for each such use whether or not such use is on an individual lot subject to section 10.3.

2. Side-by-side duplexes subject to the provisions of section 10.4; provided that density is maintained and provided that buildings are located so that each unit could be provided with a lot meeting all other requirements for detached single-family dwellings except for side yards at the common wall. Other two-family dwellings shall be permitted provided density is maintained.

3. Agriculture, forestry, and fishery uses except as otherwise expressly provided.

4. Game preserves, wildlife sanctuaries and fishery uses.

5. (Repealed 5-5-10)

6. Water, sewer, energy, communications distribution facilities (reference 5.1.12).

7. Accessory uses and buildings including major home occupations (reference 5.2A), minor home occupations (reference 5.2A), and storage buildings.

8. Temporary construction uses (reference 5.1.18).

9. Public uses (reference 5.1.12).

10. Temporary sawmill (reference 5.1.15 and subject to performance standards in 4.14).

11. Veterinary services - off-site treatment only.

12. Agricultural service occupation (subject to performance standards in 4.14).

13. Divisions of land in accordance with section 10.3.

14. Bed and breakfast (reference 5.1.48).

15. Manufactured homes, individual, qualifying under the following requirements (reference 5.6):

    a. A property owner residing on the premises in a permanent home wishes to place a manufactured home on such property in order to maintain a full-time agricultural employee.

    b. Due to the destruction of a permanent home an emergency exists. A permit can be issued in this event not to exceed twelve (12) months. The Zoning Administrator shall be authorized to issue permits in accordance with the intent of this ordinance and shall be authorized to require or seek any information which he may determine necessary in making a determination of cases "a" and "b" of the aforementioned uses.

16. Temporary manufactured home in accordance with section 5.7.

17. Farm winery uses, events, and activities authorized by section 5.1.25(a),(b), and (c)(2).

18. Borrow area, borrow pit, not exceeding an aggregate volume of fifty thousand (50,000) cubic yards including all borrow pits and borrow areas on any one parcel of record on the adoption date of this provision (reference 5.1.28).

19. Manufactured homes on individual lots (reference 5.6).

20. Commercial stable (reference 5.1.03).

21. Stormwater management facilities shown on an approved final site plan or subdivision plat.

22. Tier I and Tier II personal wireless service facilities (reference 5.1.40).

23. Farm worker housing, Class A (up to ten occupants and up to two sleeping structures) (reference 5.1.44).

24. County store, Class A (reference 5.1.45).

25. Small wind turbines (reference 5.1.46).

26. (Repealed 11-12-14)

27. Farm stands (reference 5.1.47).

28. Family day homes (reference 5.1.56).

29. Farm brewery uses, events, and activities authorized by section 5.1.57(a), (b), and (c)(2).

30. Events and activities at agricultural operations authorized by right under section 5.1.58(d).

31. Farm distillery uses, events, and activities authorized by section 5.1.59(a), (b), and (c)(2).

32. Group home (reference 5.1.07).

(§ 20-10.2.1, 12-10-80; 12-16-81; 7-6-83; 11-1-89; 11-8-89; 11-11-92; 5-12-93; Ord. 95-20(5), 11-15-95; § 18-10.2.1, Ord. 98-A(1), 8-5-98; Ord. 02-18(6), 10-9-02; Ord 04-18(2), 10-13-04; Ord. 06-18(2), 12-13-06; Ord. 08-18(7), 11-12-08; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 11-18(1), 1-12-11; Ord. 12-18(3), 6-6-12; Ord. 13-18(5), 9-11-13; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15; Ord. 17-18(1), 1-18-17; Ord. 17-18(4), 8-9-17; Ord. 18-18(1), 1-10-18)

Sec. 10.2.2 By special use permit.

The following uses shall be permitted by special use permit in the RA district, subject to the applicable requirements of this chapter:

1. Community center (reference 5.1.04).

2. Clubs and lodges (reference 5.1.02).

3. Fire and rescue squad stations (volunteer) (reference 5.1.09).

4. Swim, golf, tennis or similar athletic facilities (reference 5.1.16).

5. Private schools.

6. Energy and communications transmission facilities (reference 5.1.12).

7. Day care centers (reference 5.1.06).

8. (Repealed 3-5-86)

9. Manufactured home subdivisions (reference 5.5).

10. (Repealed 11-11-92)

11. (Repealed 3-15-95)

12. Horse show grounds, permanent.

13. Custom slaughterhouse.

14. Sawmills, planing mills and woodyards (reference 5.1.15 and subject to performance standards in 4.14).

15. (Repealed 8-9-17)

16. (Repealed 11-15-95)

17. Commercial kennel (reference 5.1.11 and subject to performance standards in 4.14).

18. Veterinary services, animal hospital (reference 5.1.11 and subject to performance standards in 4.14).

19. Private airport, helistop, heliport, flight strip (reference 5.1.01).

20. Day camp, boarding camp (reference 5.1.05).

21. Sanitary landfill (reference 5.1.14).

22. Country store, Class B (reference 5.1.45).

23. Commercial fruit or agricultural produce packing plants.

24. (Repealed 11-8-89)

25. Flood control dams and impoundments.

26. (Repealed 11-8-89)

27. Restaurants, taverns, and inns that are:

    a. Located on a site containing a structure that is a historic structure and/or site as defined in section 3.1 or located on a site containing a structure that is identified as contributing to a historic district as defined in section 3.1, provided: (i) the structure was historically used as a restaurant, tavern or inn or previously approved for such use by special use permit; and (ii) if renovation or restoration of the historic structure is proposed, such changes shall restore the structure as faithfully as possible to the architectural character of the period(s) of its significance and shall be maintained consistent therewith; and (iii) that any additions or new structures shall serve a restaurant, tavern or inn use existing within the historic structure and lawfully operating on December 14, 2016; or

b. Nonconforming uses, provided the restaurant or inn is served by existing water and sewerage systems having adequate capacity for both the existing and proposed uses and facilities without expansion of either system.

28. Divisions of land as provided in section 10.5.2.1.

29. Boat landings and canoe livery.

30. Permitted residential uses as provided in section 10.5.2.1.

31. (Repealed 1-12-11)

32. Cemetery.

33. Crematorium.

34. (Repealed 3-21-01)

35. Religious assembly use.

36. Gift, craft and antique shops.

37. Public garage.

38. Exploratory drilling.

39. Hydroelectric power generation (reference 5.1.26).

40. Borrow area, borrow pit not permitted under section 10.2.1.18.

41. Convent, Monastery (reference 5.1.29).

42. Temporary events sponsored by local nonprofit organizations which are related to, and supportive of the RA, rural areas, district (reference 5.1.27).

43. Agricultural Museum (reference 5.1.30).

44. Theatre, outdoor drama.

45. (Repealed 11-12-14)

46. Off-site parking for historic structures or sites (reference 5.1.38) or off-site employee parking for an industrial use in an industrial zoning district (reference 5.1.39).

47. Animal shelter (reference 5.1.11).

48. Tier III personal wireless service facilities (reference 5.1.40).

49. Historical centers, historical center special events, historical center festivals (reference 5.1.42).

50. Special events (reference 5.1.43).

51. Farm worker housing, Class B (more than ten occupants or more than two sleeping structures) (reference 5.1.44).

52. Sale of gasoline and other fuels in conjunction with a country store, Class A or Class B (reference 5.1.45).

53. Farm winery uses, events, and activities authorized by section 5.1.25(c)(3).

54. Farmers' markets (reference 5.1.47).

55. Farm brewery uses, events, and activities authorized by section 5.1.57(c)(3).

56. Events and activities at agricultural operations authorized by special use permit under section 5.1.58(d).

57. Farm distillery uses, events, and activities authorized by section 5.1.59(c)(3).

58. Solar energy systems.

(§ 20-10.2.2, 12-10-80; 3-18-81; 2-10-82; 4-28-82; 7-6-83; 3-5-86; 1-1-87; 12-2-87; 11-8-89; 6-10-92; 11-11-92; Ord. 95-20(1), 3-15-95; Ord. 95-20(3), 10-11-95; Ord. 95-20(5), 11-15-95; § 18-10.2.2, Ord. 98-A(1), 8-5-98; Ord. 99-18(4), 6-16-99; Ord. 00-18(6), 10-18-00; Ord. 01-18(2), 3-21-01; Ord. 02-18(6), 10-9-02; Ord. 04-18(1), 5-5-04 effective 7-1-04; Ord.04-18(2), 10-13-04; Ord. 05-18(7), 6-8-05; Ord. 05-18(8), 7-13-05; Ord. 06-18(2), 12-13-06; Ord. 08-18(7), 11-12-08; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 11-18(1), 1-12-11; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15; Ord. 16-18(7), 12-14-16; Ord. 17-18(1), 1-18-17; Ord. 17-18(2), 6-14-17; Ord. 17-18(4), 8-9-17; Ord. 18-18(1), 1-10-18)

Sec. 10.3 Application of regulations for development by right.

The following provisions shall apply to any parcel of record at 5:15 p.m., the tenth day of December, 1980 (reference 6.5).

(§ 20-10.3, 12-10-80; 11-8-89; § 18-10.3, Ord. 98-A(1), 8-5-98)

Sec. 10.3.1 Conventional development.

Regulations in section 10.5 governing development by right shall apply to the division of a parcel into five (5) or fewer lots of less than twenty-one (21) acres in area and to the location of five (5) or fewer dwelling units on any parcel in existence at the time of adoption of this ordinance (reference section 1.3). The aggregate acreage devoted to such lots or development shall not exceed thirty-one (31) acres, except in such case where this aggregate acreage limitation is precluded by other provisions of this ordinance. The second sentence of this provision shall not be applicable to land divided between the effective date of this ordinance (reference section 1.3) and November 8, 1989.

(§ 20-10.3.1, 12-10-80; 11-8-89; 9-9-92; § 18-10.3.1, Ord. 98-A(1), 8-5-98; Ord. 00-18(4), 6-14-00)

10.3.2 In addition to the foregoing, there shall be permitted by right any division of land into parcels each of which shall be twenty-one (21) acres or more in area. No such parcel shall be included in determining the number of parcels which may be created by right pursuant to section 10.3.1; provided that (a) no such division shall affect the number of parcels which may be divided pursuant to section 10.3.1; (b) there may be located not more than one (1) dwelling unit on any parcel created pursuant to this section; (c) at the time of any such division, the owner of the parcel so divided shall designate the number of parcels into which each parcel so divided may be further divided pursuant to section 10.3.1 together with aggregate acreage limitations in accordance with section 10.3.1; and (d) no such division shall increase the number of parcels which may be created pursuant to section 10.3.1.

(§ 20-10.3.2, 12-10-80; 11-8-89; 9-9-92; § 18-10.3.2, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01)

Agenda Item No. 19. **PUBLIC HEARING: Ordinance to Amend County Code Appendix A.1 (Acquisition of Conservation Easements (ACE) Program).** To receive public comment on its intent to adopt an ordinance to amend Appendix A.1 (Acquisition of Conservation Easements Program) of the Albemarle County Code by: 1) amending § A.1-108 (ACE ranking criteria) pertaining to points awarded for streams and stream buffers; 2) amending § A.1-109 (ACE deed terms and conditions) to require a stream buffer at least 35 feet wide along each side of perennial streams in future ACE easements, to require livestock exclusion from streams (with certain exceptions), to define structures and uses not permitted in the stream buffers, and to eliminate existing deed provisions for voluntary stream buffers; and 3) making other non-substantive stylistic amendments.
(Advertised in the Daily Progress on August 27 and September 3, 2018.)

The Executive Summary forwarded to the Board states that the Acquisition of Conservation Easements (ACE) Committee is charged with reviewing the program's ordinance and recommending any changes needed either to maintain the program's consistency with the County's Comprehensive Plan and policies, or to improve the administration, implementation and effectiveness of the program. The ACE ordinance was most recently amended in 2011.

The ACE Committee's most recent review of the ACE ordinance has focused primarily on protecting water quality. The Committee specifically recommends excluding livestock from all perennial streams in future ACE easements.

The ACE ordinance is implemented primarily through two County Code sections:

1. § A.1-108 provides an objective scoring system for ranking properties during their application phase.
2. After the highest-scoring properties are selected for easements, § A.1-109 then requires deed protections corresponding to the property-specific conservation values identified

and scored in § A.1-108.

Along those lines, the Committee recommends the following substantive amendments to these two County Code sections:

ACE ranking criteria (§ A.1-108):

- Point values for frontage on any perennial stream(s) -- § A.1-108(C)(8) would award one point per thousand feet of frontage along any perennial stream(s), up from one-half point along certain named streams.
- Voluntary stream buffers - The proposed amendment would delete the existing scoring bonus for voluntary stream buffers (§ A.1-108(C)(9)), as stream buffers would be mandatory going forward.

ACE deed terms and conditions (§ A.1-109):

- Stream buffers -- § A.1-109(B)(3) would require a minimum 35 foot wide buffer along all perennial streams in future ACE easements. The Committee recommended the minimum 35 foot stream buffer because farmers may be eligible for federal funding to install fencing at least 35 feet from their streams, and this standard would eliminate the need for farmers who had installed fencing under this federal standard to not be required to remove and relocate existing fencing. In addition, the proposed amendment would require livestock exclusion from streams (with certain exceptions) and define structures and uses not permitted in the stream buffers.
- Voluntary stream buffers - The proposed amendment would delete the existing deed provisions for voluntary stream buffers (§ A.1-109(B)(6)), as stream buffers would be mandatory going forward.

The Committee is also recommending certain other minor wording revisions throughout the ordinance.

No budget impact is expected.

Staff recommends that following a public hearing, the Board adopt the proposed amendments to the ACE Ordinance. (Attachment A).

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Mr. Andy Herrick, Senior Assistant County Attorney, stated that before the Board was a proposed amendment to the Acquisition of Conservation Easement (ACE) ordinance, a program under which the County purchases conservation easements from property owners. He stressed that the program was voluntary and has a two-step process whereby submitted applications are scored based on conservation attributes, with those scoring highest subjected to deeds of easement where the use of the property was restricted. He said that the current system in place considers stream buffers as a conservation value for which properties receive positive points.

Mr. Herrick reviewed the two types of streams, with the first being “named” streams such as the Rivanna, James, and Hardware Rivers, on which property owners are required to offer buffers; there are also other streams for which an owner may offer a voluntary buffer and receive points. He said the ACE Committee recommends that all perennial streams that apply for the ACE program be required to place buffers on the property as a term of the deed, applying only to properties that are voluntarily participating. He addressed questions raised earlier about the proposed width and said they took this back to the ACE Committee, which reaffirmed the 35-foot buffer, primarily because this was the same standard that was the basis of federal subsidies for construction of fencing on rural properties. He said the proposed ordinance allows for a buffer of at least 35 feet, which could be expanded if future standards increase. He noted that the proposal in the Board’s agenda package includes amendments to Sections A1-108 and A1-109 of the County Code.

Ms. McKeel asked if a property was accepted into the ACE program and the County changes the stream buffer requirement whether it would be grandfathered. Mr. Herrick explained that properties under an ACE easement are subject to the ACE deed but also the County zoning ordinance in effect at the time they enter the program, and if the ordinance becomes more restrictive, the property would be subject both to the ACE deed and ordinances.

Ms. Palmer asked if there was any feeling on the committee that this might restrict the people who would apply for the ACE program. Mr. Herrick responded that there was always a concern that making it so restrictive would deter applicants, but the committee decided that the 35-foot minimum buffer, given the federal standards for fencing, was the appropriate balance.

Ms. Palmer asked how much of the federal money covered the fencing. Ms. Mallek responded that it was about 80% and changes according to federal funding.

Ms. Palmer asked what would happen if the farmer needs water access. Ms. Mallek responded that it would be included.

Ms. Mallek then opened the public hearing.

Mr. Neal Williamson of the Free Enterprise Forum addressed the Board. He remarked that conservation easements are voluntary, citizens are given a tax break, and in this case the citizens are

buying the tax break for the landowner. He emphasized that the public was never consulted in a public hearing for conservation easements, which he feels was wrong.

Ms. Peggy Scott, resident of the Samuel Miller District, addressed the Board. She said she has a stream on her property but does not have a conservation easement. She agreed that easements are seldom brought before the public and she feels that if farmers own land they need to be accountable and to pay the same amount of taxes as she does. She stated that some areas are in poverty and people cannot afford to hold on to their homes or 100 acres or greater. She said she supports having easement conversations brought to the community for discussion.

Ms. Mallek closed the public hearing.

Mr. Randolph **moved** that the Board adopt the proposal to amend the Acquisition Conservation Easements Ordinance. The motion was **seconded** by Ms. McKeel.

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

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

ORDINANCE NO. 18-A.1(1)

AN ORDINANCE TO AMEND APPENDIX A.1, ACQUISITION OF CONSERVATION EASEMENTS PROGRAM, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Appendix A.1, Acquisition of Conservation Easements Program, is hereby amended and reordained as follows:

By Amending:

Sec. A.1-108 Ranking criteria.
Sec. A.1-109 Easement terms and conditions.

Appendix A.1

Acquisition of Conservation Easements Program

. . . . .

Sec. A.1-108. Ranking criteria.

In order to effectuate the purposes of the ACE program, parcels for which conservation easement applications have been received shall be ranked according to the criteria and the point values assigned as provided below. Points shall be prorated and rounded to the first decimal.

A. *Open-space resources*.

1. The parcel adjoins an existing permanent conservation easement, a national, state or local park, or other permanently protected open-space: two (2) points, with one (1) additional point for every five hundred (500) feet of shared boundary; or the parcel is within one-quarter (1/4) mile of, but not adjoining, an existing permanent conservation easement, a national, state or local park, or other permanently protected open-space: two (2) points.

2. Size of the parcel: zero (0) points for parcels of less than fifty (50) acres; one (1) point for parcels of at least fifty (50) acres; one (1) additional point for each fifty (50) acres over fifty (50) acres; one (1) additional point for each fifty (50) acres over two hundred (200) acres.

B. *Threat of conversion to developed use*.

1. The parcel is threatened with forced sale or other hardship: three (3) points.

2. The number of division rights to be eliminated on the parcel: one-half (1/2) point for each division right to be eliminated, which shall be determined by subtracting the number of retained division rights from the number of division rights.

C. *Natural, cultural and scenic resources*.

1. Mountain protection: one (1) point for each fifty (50) acres in the mountain overlay district, as delineated in the comprehensive plan; an additional one (1) point may be awarded for each twenty (20) acres within a ridge area boundary. For purposes of this section, the term “ridge area boundary” means the area that lies within one hundred (100) feet below designated ridgelines shown on county mountain overlay district elevation maps. The deed restriction set forth in section A.1-109(B)(1) shall apply if the parcel is eligible for points under this criterion.

2. Working family farm, including forestry: five (5) points if at least one family member's principal occupation and income (more than half) is farming or foresting the parcel; three (3) points if at least one family member has as a secondary occupation farming or foresting the parcel so that it is eligible for or subject to land use taxation as land devoted to agriculture, horticulture or forest use under Albemarle County Code § 15-800 *et seq*.: one (1) additional point if the parcel is certified as a Virginia Century Farm by the Virginia Department of Agriculture and Consumer Services.

3. The parcel adjoins a road designated either as a Virginia scenic highway or byway, or as an entrance corridor under section 30.6.2 of Chapter 18 of the Albemarle County Code: two (2) points, with one (1) additional point for each six hundred (600) feet of road frontage if the parcel is subject to a deed restriction as provided herein; otherwise, one (1) point for each one thousand (1000) feet of road frontage; the parcel adjoins a public road: two (2) points, with one (1) additional point for each one thousand (1000) feet of road frontage; or, the parcel is substantially visible from, but is not contiguous to, a public road designated either as a Virginia scenic highway or byway, or as an entrance corridor under section 30.6.2 of Chapter 18 of the Albemarle County Code: two (2) points. The deed restriction set forth in section A.1-109(B)(2) shall apply if the parcel is eligible for points for adjoining a Virginia scenic highway or byway.

4. The parcel contains historic resources: three (3) points if it is within a national or state rural historic district or is subject to a permanent easement protecting a historic resource; two (2) points if the parcel is within the primary Monticello viewshed, as shown on viewshed maps prepared for Monticello and in the possession of the county; two (2) points if the parcel contains a site of archaeological or architectural significance as determined by a qualified archaeologist or architectural historian under the United States Department of Interior's professional qualification standards. The deed restriction set forth in section A.1-109(B)(5) shall apply if the parcel is eligible for points under this criterion.

5. The parcel contains an occurrence listed on the Virginia Natural Heritage Inventory or a qualified biologist submitted documentation of an occurrence of a natural heritage resource to the program administrator and the Virginia Division of Natural Heritage on behalf of the owner: five (5) points.

6. The parcel contains capability class I, II or III soils ("prime soils") for agricultural lands or ordination symbol 1 or 2 for forest land, based on federal natural resources conservation service classifications found in the United States Department of Agriculture Soil Survey of Albemarle County, Virginia: one (1) point for each fifty (50) acres containing such soils to a maximum of five (5) points.

7. The parcel is within the South Fork Rivanna Reservoir Watershed, the Chris Greene Lake Watershed, the Ragged Mountain Reservoir Watershed, or the Totier Creek Reservoir Watershed: three (3) points.

8. The parcel adjoins or contains perennial stream(s), as that term is defined in Chapter 17 of the Albemarle County Code: one (1) point for each one thousand (1000) feet of frontage.

9. The parcel adjoins or contains a waterway designated as a state scenic river: one-half (1/2) point for each one thousand (1000) feet of frontage. The deed restriction set forth in section A.1-109(B)(4) shall apply if the parcel is eligible for points under this criterion.

10. The parcel is within a sensitive groundwater recharging area identified in a county-sponsored groundwater study: one (1) point.

11. The parcel is within an agricultural and forestal district: two (2) points.

12. The parcel is subject to a professionally prepared Forestry Stewardship Management Plan approved by the Virginia Department of Forestry: one (1) point.

D. *County fund leveraging*. State, federal or private funding identified to leverage the purchase of the conservation easement: one (1) point for each ten (10) percent of the purchase price for which those funds can be applied.

(Ord. 00-A.1(1), 7-5-00; Ord. 02-A.1(1), 12-11-02; Ord. 04-A.1(1), 10-6-04; Ord. 07-A.1(1), 12-5-07; Ord. 11-A.1(1), 5-4-11)

Sec. A.1-109. Easement terms and conditions.

Each conservation easement shall conform with the requirements of the Open-Space Land Act of 1966 (Virginia Code § 10.1-1700 *et seq*.) and of this appendix. The deed of easement shall be in a form approved by the county attorney, and shall contain, at a minimum, the following provisions:

A. *Restriction on division*. The parcel shall be restricted from division as follows: (i) if the parcel is less than one hundred (100) acres, it shall not be divided; (ii) if the parcel is one hundred (100) acres or larger but less than two hundred (200) acres, it may be divided into two (2) lots; (iii) if the parcel is two hundred (200) acres or larger, it may be divided into as many lots so as to maintain an average lot size of at least one hundred (100) acres, plus one additional lot for any acres remaining above the required minimum average lot size (*e.g.*, an eight hundred fifty (850) acre parcel may be divided into as many as nine (9) parcels, eight (8) of which maintain an average lot size of at least one hundred (100) acres, and the ninth of which consists of the remaining acres).

B. *Protection of conservation resources*. The deed of easement shall include the following restrictions if the owner is eligible for points under section A.1-108 for the resources identified therein:

1. *Mountain resources*. If the parcel is eligible for points in the evaluation process under section A.1-108(C)(1) for mountain protection, the deed of easement shall prohibit establishing all primary and accessory structures and other improvements, provided that one or more farm buildings or agricultural structures may be permitted within the mountain overlay district with the prior written approval from each grantee; the deed of easement also shall assure that the parcel is used and maintained in a manner consistent with the comprehensive plan as it pertains to mountain resources and, in particular, the Mountain Design Standards in the Natural Resources and Cultural Assets Component of the comprehensive plan.

2. *Scenic highways and byways*. If the parcel is eligible for points in the evaluation process under section A.1-108(C)(3) for adjoining a Virginia scenic highway or byway, the deed of easement shall provide that each new dwelling (a) have a two hundred fifty (250) foot setback from the edge of the right-of-way of the scenic highway or byway or (b) if within two hundred fifty (250) feet of the edge of the right-of-way of the scenic highway or byway, be sited in a location approved by each grantee prior to issuance of a building permit to assure that the dwelling is not visible from the scenic highway or byway at any time of the year.

3. *Stream buffers.* If the parcel is eligible for points in the evaluation process under section A.1-108(C)(8) for adjoining or containing perennial stream(s), the deed of easement shall provide for a stream buffer at least thirty-five (35) feet wide from the top of each bank of any perennial stream, as that term is defined in Chapter 17, Water Protection, of the Albemarle County Code. At a minimum, the deed of easement shall provide that within the stream buffer, there be:

(a) no livestock, except (i) during times of drought or other emergencies, (ii) for stream crossings, or (iii) for watering at limited access points;

(b) no buildings or other substantial structures constructed;

(c) no timber harvest(s); and

(d) no plowing, cultivation, filling, dumping, or other earth-disturbing activity, except as may be reasonably necessary for the limited permitted activities set forth in the deed.

4. *Scenic rivers*. If the parcel is eligible for points in the evaluation process under section A.1-108(C)(9) for adjoining or containing a Virginia scenic river, the deed of easement shall provide that each new dwelling (a) have a two hundred fifty (250) foot setback from the top of the subject stream bank or (b) if within two hundred fifty (250) feet of the top of the subject stream bank, be sited in a location approved by each grantee prior to issuance of a building permit to assure that the dwelling is not visible from the scenic river at any time of the year.

5. *Historic resources*. If the parcel is eligible for points in the evaluation process under section A.1-108(C)(4) for sites of archaeological or architectural significance, the deed of easement shall provide that no such site shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by each grantee.

C. *No buy-back option*. The owner shall not have the option to reacquire any property rights relinquished under the conservation easement.

D. *Other restrictions*. The parcel also shall be subject to standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel. These standard restrictions shall be delineated in the deed of easement and shall include, but not necessarily be limited to, restrictions pertaining to: (i) the accumulation of trash and junk; (ii) the display of billboards, signs and advertisements; (iii) the management of forest resources; (iv) grading, blasting or earth removal; (v) the number and size of primary and secondary dwellings, non-residential outbuildings and farm buildings or structures; (vi) the conduct of industrial or commercial activities on the parcel; and (vii) monitoring of the easement.

E. *Designation of easement holders*. The county and one or more other public bodies, as defined in Virginia Code § 10.1-1700, and designated by the board of supervisors shall be the easement holders of each easement. The public body or bodies who may be designated by the board shall include, but not be limited to, the Albemarle County Public Recreational Facilities Authority and the Virginia Outdoors Foundation.

(Ord. 00-A.1(1), 7-5-00; Ord. 02-A.1(1), 12-11-02; Ord. 07-A.1(1), 12-5-07; Ord. 11-A.1(1), 5-4-11)

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Ms. Palmer asked if the Board had ever considered making this public. Ms. Mallek responded that this was part of the County's budget, discussed during the budget process, and the public can speak to it at any time during that process.

Ms. Palmer remarked that the Board also holds work sessions on the ACE program, during which staff reviews the rules.

Ms. Mallek remarked that staff and the committee have worked on the ordinances and criteria for the entire 18 years to make sure the evaluation process was clinical, factual, and technical.

Mr. Kamptner stated that there are public steps throughout the process from the time a landowner applies to the time the Board authorizes the purchase of the easements. He said the process does not require a public hearing and these various steps could show up on the agenda and the public was welcome to come and speak during other matters.

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Agenda Item No. 20. **PUBLIC HEARING: Yancey School Community Center Lease Agreement: Education Transformation Center.** To receive comments on a request by the Education Transformation Centre to lease from the County approximately 4,704 square feet of space (along with certain common areas) at the former Yancey Elementary School, located at 7625 Porters Road, Esmont, VA 22937 (TMP 128A2-00-00-01800).
(Advertised in the Daily Progress on September 3, 2018.)

The Executive Summary forwarded to the Board states that at the Board of Supervisors' June 6th meeting, the Board endorsed the Yancey Advisory Committee's long-term recommendations for use of the Yancey School Community Center, which included a recommendation for the allowance of leasing for dedicated, long-term uses of the space. The Yancey Advisory Committee, through its community outreach and deliberative processes, identified and supported the Education Transformation Centre (ETC) as a candidate for long-term use of the space.

The Education Transformation Centre is a 501(c)(3) organization and alternate education course designed to prevent encounters with the justice system and reduce frequent instances of detention and suspension (Attachment A). Staff has determined that having an educational component in the form of a private school, such as ETC, is an appropriate use, similar to the Field School in Crozet.

The County has, on a case-by-case basis, leased excess property to private sector entities when there was no immediate government need/use identified. Rents for such leases are typically based on market rates which helps in recouping the cost of maintaining those facilities. Staff has calculated an appropriate rental rate for the Yancey School Community Center spaces. Details on the annual rate for the Education Transformation Centre are provided in Attachment B.

The proposed lease agreement (Attachment C) includes six classrooms Monday-Friday and daily use of the cafeteria and gym for a period of one hour each. ETC leadership is invested in partnering and collaborating with other prospective occupants in the Community Center and with the larger Esmont community where appropriate. Outreach has already begun to potentially neighboring organizations in the Yancey School Community Center on how partnering activities may be developed.

Research shows that inappropriate, delinquent, anti-social, and defiant behaviors put teenagers at risk for drug use and dependency, school drop-out, incarceration, early pregnancy, and adult criminality. The Education Transformation Centre describes itself as an innovative, "short term-high impact" program designed to increase academic achievement, reduce dropout rate, prevent encounters with the justice system and reduce frequent instances of suspensions and detentions over the span of six weeks.

ETC explains that its unique alternative education program (Attachment D) has a three-fold focus:

1. life skills of conflict resolution, self-control, and anger management;
2. passion identification to identify gifts and to formulate a plan to exercise them; and
3. targeted counseling to explore behavior modification.

ETC states it will provide services to students from the City of Charlottesville, Albemarle County, and the surrounding localities. Its Board members include:

- John Baldino, retired Director of Blue Ridge University,
- Adam Hastings, Principal, Walker Elementary,
- Mary Frye, retired vocational high school teacher, and,
- Dr. Dolores Carr, (Doctorate in Education: curriculum and instruction), Founder, Education Transformation Centre, Adjunct for Liberty University and Piedmont Community College.

Initial operational funding for the program has been provided by private donations and will support the rental agreement for the Yancey School Community Center space. Future funding will come from student enrollment. Relationships have been established with social workers, school superintendents, and law enforcement in all counties served, as well as Charlottesville. ETC leadership has had conversations with the Albemarle County Police Chief and Charlottesville's Juvenile and Relations District Court judge regarding the potential to have first time offenders of minor offences sent to the Education Transformation Centre instead of detention and will continue to engage on this issue.

ETC leadership anticipates enrolling student towards the middle or end of October pending approval from the Board of Supervisors. Initially, the program will operate with a certified lead teacher endorsed in special education who will supervise tutors (former educators and current students in education) (Attachment E). ETC is in contract negotiations with Wahoo Tutors to fulfill this need. As student enrollment is solidified, tutors will be replaced with full-time certified teachers.

The FY 19 Budget includes $147,349 for the operation of the Yancey school building. The $48,458.61 annual rental rate paid by ETC would offset some of those operational costs.

Staff recommends that the Board adopt the attached resolution (Attachment F) to approve a lease agreement with the Education Transformation Centre.

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Mr. Michael Freitas, Chief of Public Works, stated that the item before the Board was a proposed lease for a certain part of the former Yancey Elementary School, The Education Transformation Center. He explained that this was the continuation of a conversation started in June when staff presented recommendations of the Yancey Transition Advisory Committee to the Board on future uses of the facility, one of which was long term leases, which the Board endorsed. He noted that the committee was a 501(c)(3) organization and the Education Transformation Center would provide services to students of City of Charlottesville and Albemarle County as well as surrounding localities. He noted that Dr. Carr with ETC was in the audience to address questions.

Mr. Freitas presented the following key provisions of the lease:
Initial Term: October 1, 2018 – September 30, 2019
Renewal: Automatic unless written notice by either party
Initial Annual Rent: $48,458.61 ($9.75/square foot)
Subsequent Years Rent: Index for inflation based on CPI
Included in Base Rent: Electric, water, sewer, use of dumpster
Improvements: Up to $4,038.22 may be deducted from first term rent for approved, tenant paid upgrades (this was consistent with other leases)

He presented a diagram of the building which has the leased space in blue with the cafeteria, kitchen, and gym in yellow as they have asked for the ability to use these facilities. He noted that the Center would be charged for this intended use. He explained that the County takes into consideration two issues when determining rent; the first being to determine that it was consistent with the market rate for the area and the second being an attempt to recoup County costs. He said that Office of Economic Development provided a market rate survey which found the cost to be $9.87/square foot. He explained that they examined the current operating budget for the facility and what they should be investing based on plant replacement value of the building which equals $9.75/square foot. He said the rate would be sufficient to recoup costs and still be attractive to get a tenant. Mr. Freitas said that staff recommends the Board adopt the proposed resolution (Attachment F) to approve a lease agreement with the Education Transformation Center. He invited questions.

Mr. Randolph asked if new refrigerators would be installed since they were taken out when the school closed. Mr. Freitas responded that the tenant would provide the refrigerators. Ms. Siri Russell, Management and Policy Analyst, added that there are still refrigerators at the school but the stoves were removed.

Mr. Randolph asked who would provide the stoves. Mr. Freitas responded that the concept was to use warming ovens as most groups would bring in prepared food and warm it themselves.

Ms. Mallek opened the public hearing.

Ms. Berlinda Mills, Samuel Miller District, addressed the Board. She said she would share what the Yancey Transition Committee has been doing for the past year. She said they have a very dedicated group that have worked collaboratively with the Board to make the community center a success. She thanked the Board and Ms. Palmer for their support. She said they have a mission and a vision going forward and invited Supervisors to visit the school to see what has been accomplished. They already have Girl Scouts, the food bank, JABA, and an open gym at the facility. She said the food pantry operates every fourth Friday and they hope to have a community garden ready by next spring as well as a farmers' market. She said the closing of the school was still bittersweet but they are on a journey and asked the Board for its continuing support.

Ms. Mallek closed the public hearing.

Ms. McKeel said she recently received a call from a member of the Board of Elections who wanted to make sure the school could be used as a polling place on Election Day. Ms. Russell responded that they have spoken with the Registrar and there was no reason why the site cannot continue to be used as a polling location.

Mr. Randolph said he was pleased that Yancey would continue to function as a school. He expressed concern with the County taking responsibility for the maintenance of former educational plants and the cost to taxpayers of providing low cost rental to non-profits. He pointed out that this was a bona fide business that would help defray a significant portion of the building maintenance cost to taxpayers, while still permitting the building to be utilized by the immediate community.

Ms. Mallek said they were told the full culinary ability would remain and it was disheartening to learn that the stoves were removed.

Ms. Palmer remarked that the community has worked very hard, she was very excited about this, and she hopes there would be more educational opportunities at the school in the future.

Ms. Palmer then **moved** that the Board adopt the proposed resolution to approve a lease agreement with Education Transformation Centre. The motion was **seconded** by Ms. Mallek.

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

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

RESOLUTION APPROVING THE AGREEMENT OF LEASE BETWEEN THE COUNTY OF ALBEMARLE AND THE EDUCATION TRANSFORMATION CENTER

WHEREAS, the Board finds it is in the best interest of the County to lease a portion of the space at the former Yancey Elementary School, located at 7625 Porters Road, Esmont, VA 22937 (TMP 128A2-00-00-01800), to the Education Transformation Centre.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive to execute an Agreement of Lease between the County of Albemarle and the Education Transformation Centre, in a form approved by the County Attorney.

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AGREEMENT OF LEASE

THIS LEASE AGREEMENT, dated this 12th day of September, 2018, is by and between the COUNTY OF ALBEMARLE, VIRGINIA, Landlord, and the EDUCATION TRANSFORMATION CENTRE, a Virginia corporation, Tenant.

ARTICLE I. PREMISES AND IMPROVEMENTS

In consideration of the rents and covenants herein set forth, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the premises shown as "ETC" on Exhibit A attached hereto and made a part hereof, together with any and all improvements thereon (the "Leased Premises"). Except as otherwise provided herein, the Tenant shall have exclusive use of Rooms 8, 9, 10, 11, 12, and 13, and shall have shared use of the Cafeteria, Kitchen, Gymnasium, and common areas. Upon mutual written agreement of the parties, this Lease may be amended to add additional square footage to the Premises.

ARTICLE II. TITLE: QUIET ENJOYMENT

So long as Tenant is not in default hereunder, Tenant shall have peaceful and quiet enjoyment, use and possession of the Leased Premises without hindrance on the part of the Landlord or anyone claiming by, through, or under Landlord.

ARTICLE III. TERM

Section 3.1. Commencement and Expiration. The term of this Lease shall commence on October 1, 2018 (the "Date of Commencement") and shall expire on September 30, 2019. All references to the "term" of this Lease shall, unless the context indicates a different meaning, be deemed to be a reference to the term described herein.

Section 3.2. Renewal. This Lease shall automatically renew for additional 12-month terms unless written notice is given by either Landlord or Tenant no later than 60 days prior to the expiration of any term.

ARTICLE IV. RENT

Section 4.1. Annual Rent. Commencing upon the Date of Commencement, during the first year of this Lease, Tenant agrees to pay to Landlord annual rent of $48,458.61, payable in equal monthly installments, in advance, on the first day of each month during the term hereof. Gross square feet shall be calculated within the perimeter of the area to be used solely by the Tenant.

After the first year of this Lease, the rent for subsequent years of the term of the Lease shall be indexed for inflation and shall be calculated by first establishing a fraction, the numerator of which shall be the level of the CPI Index (as defined herein) as of the first day of that month which is two months before the month in which the Date of Commencement occurs in the subsequent years, and the denominator of which shall be the level of the CPI Index as of the first day of that month which is two months before the initial Date of Commencement. The resulting fraction shall be multiplied by the rent agreed upon or established for the first year of the term of the Lease to determine the annual rent due for the year. The rental figure shall be revised each year based upon this formula. The CPI Index shall be the U.S. Bureau of Labor Statistics

Consumer Price Index (all items, all urban consumers, 1982-1984 = 100). If the CPI Index shall be discontinued, Landlord shall designate an appropriate substitute index or formula having the same general acceptance as to use and reliability as the CPI Index and such substitute shall be used as if originally designated herein. Notwithstanding the foregoing, in no event shall the rent due for any lease year decrease below the rent payable for the first year.

If additional square footage is added to the Premises during any term of this lease, the total rent will be increased by the product of multiplying the additional square footage by the base rental rate for the term during which the additional square footage is to be added and prorated for the number of months remaining in that term. The base rental rate is defined as the then-current total rent for the term during which the additional square footage is to be added divided by the then-current gross square feet for the term during which the additional square footage is to be added.

Section 4.2. Address for Rent Payment. All payments of rent due Landlord pursuant to Section 4.1 shall be made to Landlord at the address specified in Section 18.3, or to such other party or at such other address as hereinafter may be designated by Landlord by written notice delivered to Tenant at least ten (10) days prior to the next ensuing monthly rental payment date.

ARTICLE V. UTILITIES AND SERVICES

Landlord shall provide water, sewer, electricity, and heating and cooling services as part of Tenant's rent. Landlord shall further provide custodial services (to common areas only) and arrange for the regular collection of a shared dumpster as part of Tenant's rent. Tenant shall exercise reasonable and responsible care to conserve these services. The Tenant agrees that the monthly rent stipulated above may be adjusted to reflect any change in the cost to the Landlord of providing those services above. The Landlord shall provide the Tenant with prompt notice of any such change, and shall make evidence of its actual costs. Tenant shall provide telephone, custodial (including clean-up of Cafeteria, Kitchen, and Gymnasium when used), and all other services to the Leased Premises.

ARTICLE VI. USE OF PROPERTY

Section 6.1. Permitted Use. Tenant shall have use of the Leased Premises as a school. No other use of the Leased Premises is permitted without the prior consent of the Landlord.

Section 6.2. Parking. Tenant shall be entitled to the shared use of parking spaces in the parking lot and an access easement to the Leased Premises. Landlord reserves the nonexclusive right to use the parking lot.

ARTICLE VII. ALTERATIONS, IMPROVEMENTS, FIXTURES AND SIGNS

Section 7.1. Installation by Tenant.

(a) Tenant may, from time to time, make or cause to be made any interior non-structural alterations, additions or improvements which do not damage or alter the Leased Premises, provided that Landlord's consent shall have first been obtained in writing, and provided that Tenant shall obtain all required governmental permits for such alterations, additions or improvements. Except as provided in Section 7.1(c), all such alterations, additions or improvements shall be at the sole expense of the Tenant.

(b) Tenant may, from time to time, make interior structural alterations, additions or improvements, only with Landlord's prior written consent to plans and specifications therefor, which consent shall not be unreasonably withheld. Except as provided in Section 7.1(c), all such alterations, additions or improvements shall be at the sole expense of the Tenant. Upon the expiration or sooner termination of this Lease, Landlord shall have the option (exercisable upon sixty (60) days notice to Tenant except in the case of a termination of this Lease due to a default by Tenant, in which case no such notice shall be required) to require Tenant to remove at Tenant's sole cost and expense any and all improvements made by Tenant to the Leased Premises or to elect to keep such improvement as Landlord's property. In the event Tenant is required to remove any improvements, (i) Tenant shall be responsible for the repair of all damage caused by the installation or removal thereof, and (ii) if Tenant fails to properly remove such improvements or provide for the repair of the Leased Premises, Landlord may perform the same at Tenant's cost and expense.

(c) During the first term of the lease, certain costs associated with alterations, additions, or improvements made pursuant to Section 7.1(a) and Section 7.1(b) may be deducted from the rent due during that term. With prior approval from the Landlord, documented paid costs for labor or material (excluding costs of donated labor or material) may be deducted. Documentation will consist of the original invoice from a business duly licensed to provide such material or services. The total deductions authorized under the provisions of this section shall not exceed $4,038.22.

Section 7.2. Signs. Tenant shall have the right to place signs on the interior or exterior of the Leased Premises with the prior written approval of Landlord.

ARTICLE VIII MAINTENANCE OF LEASED PREMISES

Section 8.1. Maintenance. Tenant shall keep the Property clean, neat, orderly, presentable, and in good repair at all times. Landlord shall deliver the Property to Tenant at the beginning of the term in its present condition. Landlord shall be responsible for all repairs and maintenance for the Leased Premises, except as provided below, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, including, but not limited to, plumbing, heating, electrical, plate glass and windows. Tenant shall be responsible for routine repairs and maintenance (excluding repairs and maintenance of the building and structural components identified above), except that the Tenant's obligation for such routine repairs and maintenance shall not exceed $2,500.00 in any one year of the initial or subsequent term(s). Notwithstanding the foregoing, Tenant shall be responsible for all maintenance and repairs necessitated by the negligence of Tenant, its employees and invitees.

Section 8.2. Right of Entry. Landlord reserves the right for itself, its agents and employees to enter upon the Leased premises at any reasonable time to make repairs, alterations or improvements; provided, however, that such repairs, alterations, or improvements shall not unreasonably interfere with Tenant's operations. Such right to enter shall also include the right to enter upon the leased premises for the purposes of inspection.

Section 8.3. Surrender of Leased Premises. At the expiration of the tenancy hereby created, Tenant shall surrender the Leased Premises and all keys for the Leased Premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations on locks, safes and vaults, it any, which Landlord has granted permission to have left in the Leased Premises. At such time, the Leased Premises shall be broom clean and in good

condition and repair, commensurate with its age. If Tenant leaves any of Tenant's personal property in the Leased Premises, Landlord, at its option, may remove and store any or all of such property at Tenant's expense or may deem the same abandoned and, in such event, the property deemed abandoned shall become the property of Landlord.

ARTICLE IX. INSURANCE

Section 9.1. Liability Insurance of Tenant. Tenant covenants and agrees that it will, at all times during the term of this Lease, keep in full force and effect a policy of public liability and property damage insurance with respect to the Leased Premises and the business operated by Tenant and any sub-tenants of Tenant on the Leased Premises in which the limits of public liability for bodily injury and property damage shall not be less than One Million Dollars ($1,000,000) per accident, combined single limit. The policy shall name Landlord as additional insured. The policy shall provide that the insurance thereunder shall not be cancelled until thirty (30) days after written notice thereof to all named insured.

Section 9.2. Fire and Extended Coverage. Landlord agrees that it will, during the initial and any renewal term of this Lease, insure and keep insured, for the benefit of Landlord and its respective successors in interest, the Leased Premises, or any portion thereof then in being. Such policy shall contain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as "extended coverage," as the same may exist from time to time. Landlord agrees to name Tenant as an additional insured on such policy, as its interest may appear.

Section 9.3. Evidence of Insurance. Copies of policies of insurance (or certificates of the insurers) for insurance required to be maintained by Tenant and Landlord pursuant to Sections 9.1 and 9.2 shall be delivered by Landlord or Tenant, as the case may be, to the other upon the issuance of such insurance and thereafter not less than thirty (30) days prior to the expiration dates thereof.

Section 9.4. Waiver of Subrogation. Landlord and Tenant each hereby release the other from any and all liability or responsibility to itself or anyone claiming through or under it by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty results from the negligence of itself or anyone for whom it may be responsible, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as any such release shall not adversely affect or impair the releasor's policies or insurance or prejudice the right of the releasor to recover thereunder.

ARTICLE X. WASTE, NUISANCE, COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Section 10.1. Waste or Nuisance. Tenant shall not commit or suffer to be committed any waste or any nuisance upon the Leased Premises.

Section 10.2. Governmental Regulations. During the term of this Lease, Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Leased Premises or Tenant's use and occupancy thereof.

ARTICLE XI. FIRE OR OTHER CASUALTY

If the Leased Premises shall be damaged so as to render two-thirds (2/3) or more of the Leased Premises untenantable by fire or other casualty insured against under the insurance required to be carried by Landlord pursuant to Section 9.2, Landlord may elect to either terminate this Lease as of the date of damage or repair the Leased Premises. Unless Landlord elects to terminate this Lease, such damage or destruction shall in no way annul or void this Lease except that Tenant shall be entitled to a proportionate reduction of the rent payable under Article IV while such repairs are being made, such proportionate reduction to be based upon the proportion of the Leased Premises rendered untenantable as a result of such damage. Notwithstanding the foregoing, if any damage or destruction from any cause whatsoever has not been repaired and such repairs have not commenced within one hundred eighty (180) days of the date thereof, Tenant may, as its exclusive remedy, terminate this Lease upon thirty (30) days written notice to Landlord.

ARTICLE XII CONDEMNATION

If the whole or any part of the Leased Premises shall be taken under the power of eminent domain, then this Lease shall terminate as to the part so taken on the day when Tenant is required to yield possession thereof, the Landlord shall make such repairs and alterations as may be necessary in order to restore the part not taken to useful condition; and the rent payable under Article IV shall be reduced proportionately as to the portion of the Leased Premises so taken. If the amount of the Leased Premises so taken is such as to impair substantially the usefulness of the Leased Premises for the purposes for which the same are hereby leased, then either party shall have the option to terminate this Lease as of the date when Tenant is required to yield possession.

ARTICLE XIII DEFAULT OF TENANT

Section 13.1. Default. The occurrence of any of the following shall be deemed a "default" under this Lease:

(a) Tenant fails to pay when due any amount of rent, additional rent or other monies due under this Lease, including Articles IV and V, and such payment is not received by Landlord within ten (10) days after written notice of such failure is received by Tenant; or

(b) a default in any of the other provisions of this Lease, and such default continues uncured for a period of thirty (30) days after written notice thereof from Landlord.

Section 13.2. Remedies. In the event of any default or breach hereof by Tenant, Landlord shall have the right (in addition to all other rights and remedies provided by law) to terminate this Lease or to re-enter and take possession of the Leased Premises, peaceably or by force, and to remove any property therein without liability for damage to and without obligation to store such property, but may store the same at Tenant's expense, and to collect from Tenant all rent then due and which would accrue for the unexpired portion of the term hereof, together with reasonable attorney's fees. In addition, in the event of a failure to pay rent, additional rent or other money within five (5) days of its due date, Tenant shall pay to Landlord the greater of Twenty-Five and no/100 Dollars ($25.00) or one half (1/2) of one percent (1%) of such sum for each day after the fifth day such rent or other money is late.

ARTICLE XIV HOLDING OVER, SIGNS, SUCCESSORS

Section 14.1. Holding Over. Any holding over after the expiration of the term hereof, with the consent of Landlord, shall be construed to be a tenancy from month-to-month at the same rent herein specified (prorated on a monthly basis) and shall otherwise be on the terms and conditions herein specified as far as applicable.

Section 14.2. Showing the Leased Premises. During the last ninety (90) days of the term hereof, Tenant shall allow Landlord, or its agents, to show the Leased Premises to prospective tenants or purchasers at such times as Landlord may reasonably desire.

Section 14.3. Successors. All rights and liabilities herein given to, or imposed upon the respective parties hereto, shall extend to and bind the heirs, executors, administrators, successors and permitted assigns of the parties. All covenants, representations and agreements of Landlord shall be deemed the covenants, representations and agreements of the fee owner from time to time of the Leased Premises and Landlord shall be automatically released of all liability under this Lease from and after the date of any sale by Landlord of the Leased Premises. All covenants, representations and agreements of Tenant shall be deemed the covenants, representations, and agreements of the occupant or occupants of the Leased Premises.

ARTICLE XV. BROKER'S FEES

Tenant and Landlord hereby warrant that there are no brokerage commissions due in connection with this Lease.

ARTICLE XVI. NO ASSIGNMENT

Tenant shall not assign this Lease or sublet all or any portion of the Leased Premises, either directly or indirectly, without the prior written consent of Landlord. No assignment, sublease or transfer of this Lease by Tenant shall (i) be effective unless and until the assignee, subtenant or transferee expressly assumes in writing Tenant's obligations under this Lease, or (ii) relieve Tenant of its obligations hereunder, and Tenant shall thereafter remain liable for the obligations of the Tenant under this Lease whether arising before or after such assignment, sublease or transfer.

ARTICLE XVII. SUBORDINATION OF LEASE

This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to (1) any mortgages, deeds of trust and building loan agreements affecting the Leased Premises, including any and all renewals, replacements, modifications, substitutions, supplements and extensions thereof, and (2) each advance made or to be made thereunder. In confirmation of such subordination, Tenant shall promptly upon the request of Landlord execute and deliver an instrument in recordable form satisfactory to Landlord evidencing such subordination; and if Tenant fails to execute, acknowledge or deliver any such instrument within ten (10) days after request therefor, Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on behalf of Tenant. Tenant further agrees that in the event any such mortgagee or lender requests reasonable modifications to this Lease as a condition of such financing, Tenant shall not withhold or delay its consent thereto.

ARTICLE XVIII. MISCELLANEOUS

Section 18.1. Waiver. The waiver by landlord or Tenant of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition contained herein. The subsequent acceptance or payment of rent hereunder by Landlord or Tenant, respectively, shall not be deemed to be a waiver of any breach by Tenant or Landlord, respectively, of any term, covenant or condition of this Lease regardless of knowledge of such breach at the time of acceptance or payment of such rent. No covenant, term, or condition of this Lease shall be deemed to have been waived by Tenant or Landlord unless the waiver be in writing signed by the party to be charged thereby.

Section 18.2. Entire Agreement. This Lease, and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises; and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced in writing and signed by them.

Section 18.3. Notices. Any notice, demand, request or other instrument which may be, or is required to be given under this Lease, shall be in writing and delivered in person or by United States certified mail, postage prepaid, and shall be addressed:

(a) if to Landlord, at
County of Albemarle
County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
or at such other address as Landlord may designate by written notice;

(b) if to Tenant, at
Education Transformation Centre
Post Office Box 7203
Charlottesville, VA 22906

or at such other address as Tenant shall designate by written notice.

Section 18.4. Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease nor in any way do they affect this Lease.

Section 18.5. Partial Invalidity. If any term, covenant or condition of this Lease, or the application thereof, to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 18.6. Recording. Upon request of either party, a memorandum of lease will be executed and recorded. Such memorandum shall contain any provisions of this Lease which either party requests except for the provisions of Article IV, which shall not be included. The cost of recording such memorandum of lease or a short form hereof shall be borne by the party requesting such recordation.

Section 18.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 18.8. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

TENANT

EDUCATION TRANSFORMATION CENTRE

By: Dolores Carr
Dolores Carr, President

LANDLORD

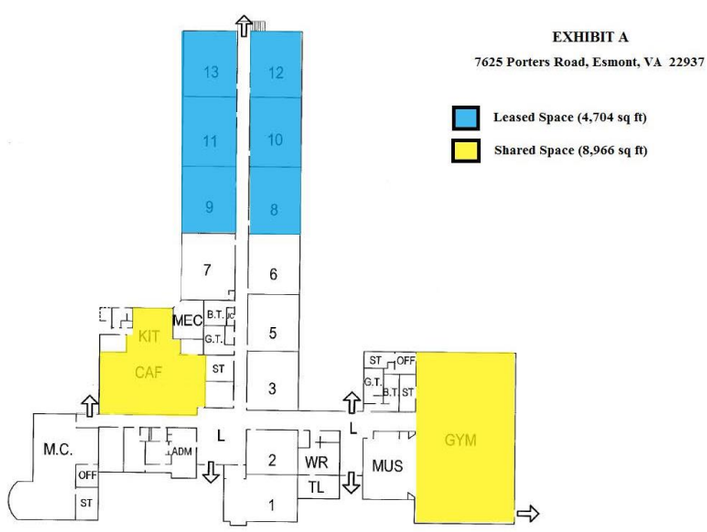
This Lease is executed on behalf of the County of Albemarle by Jeffrey B. Richardson, County Executive, following a duly-held public hearing, and pursuant to a Resolution of the Albemarle County Board of Supervisors.

COUNTY OF ALBEMARLE, VIRGINIA

By: Jeffrey B. Richardson, County Executive

Approved as to form:

Albemarle County Attorney



Agenda Item No. 21. **PUBLIC HEARING: SP 2017-26 - Western Albemarle High School Tier III.** PROJECT: SP201700026 Western Albemarle High School - Tier III Personal Wireless Service Facility.

MAGISTERIAL DISTRICT: White Hall.
TAX MAP/PARCEL: 056000000017C0.
LOCATION: Western Albemarle High School located at 5941 Rockfish Gap Turnpike, Crozet, VA 22932.
PROPOSAL: Construction of a one hundred and forty five (145) foot tall steel monopole with three (3) antenna arrays. The tower is located behind the bleachers adjacent to the football field on the eastern side of the parcel. Included are special exceptions to Section 5.1.40(b)(2)(b) (size

of antenna), Section 5.1.40(b)(2)(c) (antenna projection), and Section 4.2.5 (disturbance of critical slopes).
PETITION: Section 10.2.2(48) of the zoning ordinance which allows for Tier III personal wireless service facilities in the RA, Rural Areas district.
ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).
OVERLAY DISTRICT: EC - Entrance Corridor.
PROFFERS: No.
COMPREHENSIVE PLAN: Rural Area 3 - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/ acre in development lots).
(Advertised in the Daily Progress on August 27 and September 3, 2018.)

The Executive Summary forwarded to the Board states that at its meeting on June 26, 2018, the Planning Commission voted 4:1 (Bivins Nay)(Spain, Riley absent) to recommend denial of SP201700026 and all associated Special Exceptions.

The Planning Commission's Staff Report, Action letter, and Minutes from the June 26th meeting are attached. Additionally, staff received significant citizen communication after the PC meeting and has provided these communications in Attachment D.

Staff recommendation is unchanged from the staff report. Staff recommends denial of SP201700026 and the SE to Section 5.1.40(b)(2)(b) (size of antenna). Staff has no objections to the approval of the special exceptions for Section 5.1.40(b)(2)(c) (antenna projection), and Section 4.2.5 (disturbance of critical slopes).

If the Board approves this special use permit application, staff recommends that the Board adopt the resolution to approve SP201700026, subject to the conditions contained therein (Attachment E).

Attachments F, G, and H are the proposed Resolutions approving the three special exceptions.

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Mr. Chris Perez, Senior Planner, presented. He said the Planning Commission recommended denial of the request and all special exceptions at its June 26, 2018 meeting by a vote of 4-1. He explained that the proposal was for a 145-foot-tall steel monopole with three flush-mounted antennae with associated ground equipment. He said one special exception would apply to critical slopes and allow an entrance road, and a second applies to flush-mount provisions of the ordinance. Mr. Perez stated that the applicant requested that more than the permitted 12 inches be granted from the monopole since the tower would not have tilt, though it would still be flush-mounted and maintain the maximum standoff of 18 inches. He reviewed the third special exception, which was that the antenna size not exceed 14 inches. He noted that the tower was on the eastern side of the property behind the bleachers adjacent to the football field

Mr. Perez reported that the County has received 68 emails from citizens, of which 26% were in favor and 65% were opposed. The reasons cited by those in favor were increased service, increased finances to the school, and an increase in property values due to improved cellular service. He explained that those opposed cited the negative visual impacts to the community and the fact that the facility does not comply with the County ordinances for concealment. He said the remaining 9% who contacted staff cited health and environmental effects, which may not be considered by localities and are disqualified from the report. Mr. Perez reported that the Crozet Community Advisory Committee signed a resolution in opposition to the proposal, which was included in the report. He presented an aerial photograph of the facility site and surrounding area, noting that the parcel was zoned Rural Area, was owned by the County, and consists of 75 partially developed acres with a high school and recreational fields and facilities. He said that Old Trail, a high-density mixed-use development was to the north, as well as Henley Middle and Brownsville Elementary schools. He said the remaining surrounding area was zoned RA and contains small residential lots.

Mr. Perez presented a blueprint of the property and pointed out the location of the facility, noting that it meets the fall zone and setbacks. The applicant has proposed a 200-foot tree preservation area behind the facility, as well as a second 200-foot tree preservation area at the southernmost section of the property. He presented a blueprint drawing of the tower and explained that the 145-foot-tall array would be used by the school, the 135-foot array would be used by Shentel, and the 105-foot array would be for an unknown carrier. He said the Shentel antenna was proposed at 2,388 square inches in size, with the antenna RAD center at 1,375 square inches, almost the maximum amount. He pointed out that directly below are three radio heads, which combines to a total of 988 square inches, adding to a total of 2,388 square inches. He added that the top array to be used by the school was 5,027 square inches, comprised of the antenna at the top and radio dishes directly below.

Mr. Perez stated that staff does not recommend approval of the special exception because it increases the bulk and mass at the top of the tower which increases its visibility beyond what they are comfortable with. He said the next special exception was related to the flush-mount provisions of the ordinance and would maintain the 18-inch maximum standoff distance, but the applicant needs to request that the closest point to the monopole be permitted to go beyond 12 inches, and staff recommends approval because it still maintains flush-mount provisions and was somewhat of a technicality. He said the third special exception was related to critical slopes at the entrance road, with the site plan depicting critical slopes on Sheet Z-1A, the County's run topography. However, he said, the applicant provided field-run topography through a surveyor that the County has accepted as being more accurate, so it

would be the topography used for the proposal. He noted that this map shows that the only critical slopes that would be disturbed are for the entrance road, and staff recommends approval because these slopes were man-made and created as part of the football field.

Mr. Perez next reviewed the results of the balloon test conducted in December when there were no leaves on trees. He said they reviewed mitigated views from the entrance of Old Trail and a second along the frontage of the high school property, and they reviewed unmitigated views from several adjacent residential properties. He presented a photograph taken from the entrance to Old Trail and noted that the applicant has proposed to plant evergreen trees along the fence line to create a screen, which has been deemed by staff to be adequate. Mr. Perez presented several additional photographs of mitigated and unmitigated views from various locations and stated that there are significant visual impacts. He next presented a County GIS-produced map of the viewshed known as a “heat map” which took into consideration the tower height, topography, tree heights, and the canopy. He said the staff identified 16 adjacent properties that were impacted by the view.

Mr. Perez presented two factors favorable and five unfavorable. He said the favorable factors are that the applicant agrees to provide evergreen landscaping along the entrance corridor, which helps mitigate some of the views from the ARB; and the facility would improve the areas wireless coverage. He reviewed unfavorable factors, the first being that the proposal fails to meet ordinance requirements for location and height of the monopole, it does not provide adequate opportunities for screening, and it was not sufficiently sited to minimize visibility from adjacent property. He said the second unfavorable factor was that the facility does not meet the size requirements, and the applicant has requested a special exception and there was a condition that could mitigate this, though it added to visual impacts. He reviewed the third unfavorable factor, pointing out that the ARB does not recommend approval of the facility since most of the screening was on offsite properties not owned by the School Board and that the view would be substantially impacted if those property owners were to cut down trees. For the fourth unfavorable factor, he said that FCC regulations permits the monopole to be increased in height by 20 feet and to extend 20 feet on the sides for the standoff distance. He said the County has a condition that would mitigate this by lowering the approved tower height by 20 feet. He concluded with the fifth factor unfavorable, which was that the facility was inconsistent with the Comprehensive Plan and the personal wireless facility policy.

Mr. Perez stated that the County prefers multiple small towers spread out with less visibility, and this type of tower was specifically mentioned in the policy as something they do not want; one large tower to cover a large area. He summarized that staff recommends denial of this special permit and the special exception to size, though they did not have an objection to the other two special exceptions for antenna projection and disturbance of critical slopes.

Ms. Mallek remarked that she attended the balloon tests and their simulations were much clearer than what a balloon test could demonstrate.

Ms. Mallek then opened the public hearing.

Ms. Lori Schweller, Attorney with LeClair Ryan and representing the applicant, presented. She said that representatives from Milestone Communications, Shentel, and the School Board were present to answer questions. She explained that Milestone Communications has an agreement with the School Board to provide a wireless facility with free high-speed broadband internet service to students of Western Albemarle High School at home, which would also provide direct financial benefits to the County through leases to commercial providers. She reminded the Board of the community meetings at the Crozet Community Advisory Committee (CCAC) on December 20, 2017 and February 21, 2018, as well as a public balloon test on December 14, 2017. She said that all 233 property owners within one half mile of the school were notified.

Ms. Schweller presented a list of benefits and concerns gathered from community feedback. The listed benefits were as follows: home internet access for students, better communications at schools, a safer school campus environment, more and better internet options, and revenue to schools. The listed concerns were as follows: site selection, tree removal, visibility, and compliance with the zoning ordinance. She presented an aerial photograph of the school grounds and surrounding area and explained that site selection was chosen by the schools to avoid interference with school activities and future school expansion. She said that Shentel also conducted its own search for its network, evaluated seven candidates, and determined that this site was the best option, and they would give money to the schools via the contract with Milestone.

Ms. Schweller presented a map of the access easement along the tree line behind the bleachers as well as ground level photographs. She said that 117 trees were surveyed, 41 would remain and 76 would be removed, of which only 8 were live trees that have a caliper of 10” or greater and the remainder are dead. She said the design was for a brown monopole, with flush-mounted antennas and three arrays. She noted that a special exception requested an 18-inch standoff rather than 12 inches at the closest point and has routinely been granted with prior applications. She said the same special exception of 18 inches was requested for the Shentel antenna. She presented a photograph of an actual Shentel monopole and noted that the proposed monopole would be colored a flat java brown, as this was what the County prefers.

Ms. Schweller next presented an architectural drawing of the monopole and explained that the height was dictated by the needs of the school in this area. She remarked that Shentel would use the second height and they hope to find a third collocation for Verizon Wireless or another carrier. She

presented a propagation map provided by the schools, which showed the homes which would benefit from free wireless service provided by the schools. She reviewed information requested by the Planning Commission in the event the schools were not able to use this site. She said there were multiple components to providing wireless service, including the leasing of land, which could cost $12,000/year for a 25-year term as compared to Milestone's estimate that the schools would receive $400,000/year in rent benefits. She said that if the school were to build a facility with multiple shorter towers, it would be more expensive than building a single tower. She said that Milestone's average cost for the construction of a single tower was $420,000, including design, engineering, leasing, zoning, permitting, and construction. She said they typically build towers for multiple carriers which makes it more cost-effective, though a shorter monopole could cost $200,000 to $300,000. The schools would receive a $20,000 lump sum, plus $5,000 per provider, plus 40% of all rent. She acknowledged that an option for laying fiber was discussed and the school engineer estimated a cost of $50,000+ per mile, and a private company would charge for that service. She presented a Shentel propagation map and pointed to coverage gaps which the new site could provide for Shentel users.

Ms. Schweller next reviewed the results of the balloon tests, noting that it was not clear how the monopole would be visible from some residential locations surrounding the site. She noted that they did not receive any comments in opposition from families around the site, except for one family that was present at this meeting. She presented photographs taken from several sites during the balloon test as well as photographs taken by the homeowner who would speak in opposition. She said her firm believes that visibility has been minimized by the design and siting, the application was compliant with the zoning ordinance for a Tier III wireless facility, and would directly promote the welfare of students and others by providing internet access and improve communications for emergencies. She said they believe the project was consistent with many attributes of the Comprehensive Plan as it would improve wireless internet infrastructure and emergency communications.

Mr. Robert Merrige, resident of White Hall District, expressed support for the tower as his family lives in a portion of the County that was not served by a broadband provider. He recalled that his high school age son often had to take trips to a coffee house or the library to use the internet for school work. He said this could be a boom for families that do not have line of site for internet access or for whom the cost was prohibitive.

Ms. Barbara Cruickshank, resident of White Hall District, asked the Board to deny the project as it does not meet the County ordinance requirements. She noted that there are enormous obstructive towers along Hydraulic Road, by the Airport, and at Hollymead Town Center. She described them as ugly and said they disturb the viewshed. The County has ordinances for a reason and should not amend and toss them aside arbitrarily. Additionally, the tower should not be placed in such a crowded area as there are many other areas that would be more appropriate.

Mr. Jeff Claman, resident of Crozet, addressed the Board. He described wireless service inside and outside the school as being very poor and said his daughter relies on WIFI in school to stay in touch by text and phone. He said that having the peace of mind that he could communicate with his child was more important than aesthetics. He expressed full support of the tower to provide better coverage in the area, and especially for the safety of students.

Mr. Jeff Hoffman, resident of Rivanna District, addressed the Board. He said his family does not have access to DSL or to cable modems, which was a real problem. He asked the Board to approve the tower.

Mr. John Cruickshank, resident of Earlysville, said that he would make a personal statement that has been endorsed by the Executive Committee of the Piedmont Group of the Sierra Club. He taught at Henley Middle School and was the Principal of Brownsville Elementary School for 12 years. One of the reasons he enjoyed his time there was the beauty of the area. He recalled that about 18 years ago he was asked by the Assistant Superintendent of Schools to represent the western schools on the Route 250 West Citizens Advisory Committee during a time when VDOT had plans to widen Route 250 West from Charlottesville to the I-64 interchange to six lanes. He said he was impressed when members of the committee vetoed this proposition. He pleaded with the Board to not approve the permit and said that it was his understanding that it was not in compliance with Board-adopted standards as it was too tall, would cause a disturbance of critical slopes, was an eyesore for area residents, would cause the removal of trees, and described the balloon test as a farce. He remarked that the tower was many times larger than the balloon. He urged the Board to find other locations for a tower. He added that he read an article in the Crozet Gazette that mentions that ideas are being sought for the Greenwood Superfund site.

Mr. Jamie Foreman, resident of Scottsville District and Acting Department Head for the School Division's Learning Access Engineering and Design Programs and Initiatives, addressed the Board. One of the Division's most important responsibilities was to work with teachers and administrators on a daily basis for the integration of technology in the classroom. He remarked that new technology and devices are developed each year with the capability to expand the learning opportunity and potential of each student. The School Board has identified the need and value to ensure that all students benefit from these new and powerful resources and has invested in programs and infrastructure to meet its mandate that "all" means "all" in the County. He said they have students across the division that are at a disadvantage when accessing broadband and this would not change without a commitment on the County's part to address this imbalance. The monopole at Western Albemarle High School was part of a comprehensive response by the School Division to inequities in student access to learning resources and would serve to narrow the digital divide that exists in the County. He expressed the School Division's support for the proposal on behalf of student fairness and equity.

Mr. Dan Meenan, resident of White Hall District and employed by Shentel, addressed the Board. He said his family has lived in the Crozet area for 23 years and his two youngest children attend Western Albemarle High School He said he initially had concerns with treetop towers when this opportunity was first presented to him but his position changed once he realized the benefits to students, schools, and to the community. Underserved students would get free internet access at home and kids without home internet access are not on a level playing field; cable and DSL would never get to every rural home in the County, and kids need access now to compete. He emphasized that the facility would make a big difference with no cost to the County. The parcel was large with significant tree buffers and the community and educational benefits would far outweigh the minimal visibility that would result. Wireless access would improve school safety as 70% of 911 calls are placed from wireless phones, according to the FCC. During the Stoneman-Douglass School shooting 81 calls were placed to 911, most from wireless phones inside the school. He pointed out that two other County high schools, as well as, some other County schools have towers.

Ms. Emerald Young, resident of Scottsville District, asked the Board to deny approval of the request. She referenced the 2014 Survey of the National Institute for Science, Law, and Public Policy which found that 94% of respondents living within the vicinity of a cell tower report a lower property value. She asked who would bear liability for any damages caused by the tower as she believes that Milestone was limited to a $50,000 per incident liability. There should be a special process for the consideration of a special exception and the matter should not be rolled into the Board's regular business. Once a tower has been established then other carriers may attach their equipment. She suggested the Board wait until there was a safer alternative as technology evolves.

Mr. Thomas Jackson, senior at Western Albemarle High School and resident of White Hall District, addressed the Board. He said that View D presented earlier was the view from his household. He said he would share a story as to why his household and property means so much to him as an individual and as a learner. In the seven years he has spent in the school system he has experienced much stress and learned that he has both anxiety and depression. He has found that a powerful coping mechanism was to use the environment, to write about it, and to find healing away from society. He explained that during the day he enjoys looking at the sky and not having to see structures or development. He remarked that while equality was a level playing field, equity was adapting to the individual needs of each student and coming up with a plan that fits all of those needs. He said this treats him as an expendable value as a cost to the tower and, while he does not disagree with the benefits to students in terms of access, he refuses to be treated as expendable to serve the goals of the County. He said he believes the Board was held to a community standard for which there was an ordinance already in place that binds the Board to a value. He remarked that if they allow certain bodies to come in with some pre-disposed clout and be able to believe that they could allow them to waive these values that they have set forth in tangible legislation all because they believe it serves students, that was an abandonment of the process of lawmaking and serving the community. He noted that community organizations deny towers again and again.

Mr. Sean Tubbs of the Piedmont Environmental Council and a resident of Charlottesville, addressed the Board. He asked the Board to deny the request for a special use permit for a Tier III facility at Western Albemarle High School. The project does not meet the spirit of the County's wireless policy or the overall Comprehensive Plan. He asked that they follow the June 26, 2018 recommendation of the Planning Commission as well as staff's recommendation to deny the permit. He acknowledged that the Board approved a similar request from Milestone, which his organization also opposed, for a tower at Albemarle High School. He expressed hope that the Board would balance the perceived need for increased wireless coverage with the desire of citizens to keep Albemarle's viewshed free of clutter that detracts from the beauty of the landscape, which was the essence of much of the Comprehensive Plan. He commented that Milestone pointed out in its application that the County's wireless policy was outdated because wireless has become a necessity and not a luxury, which may or may not be the case, though it was important to remember that the Board's responsibility was to comply with the Comprehensive Plan and policies in place now.

Mr. Tubbs stated that while the School Board supports the project, it was the Board of Supervisors that has the final say. He remarked that the balloon test demonstrates that people would be impacted by a change to the viewshed and no longer be able to enjoy a landscape unmarred by the tower. He remarked that the expansion of broadband was at a high cost with a 145-foot tower, and he suggested that there must be another way to meet this need, perhaps with small 5G cells. He said his organization echoes the concerns expressed by staff in Attachment G of the Planning Commission's packet that there could be a loophole in the January 2015 FCC decision indicating there may be an additional 20 feet allowed as a right. Mr. Tubbs emphasized that this was troubling and needs to be answered, and he hopes it would be clarified at this meeting. He requested that if the Board approves the permit, they follow staff's recommendation to only allow a monopole at a height of 125 feet, which would match the height of the tower at Albemarle High School

(Note: Mr. Randolph left the meeting at 8:28 p.m. and returned at 8:31 p.m.)

Mr. Matthew Wallace, 20-year resident of Crozet, addressed the Board. He expressed support for the tower and described how he sometimes has difficulty communicating with his 15-year-old daughter who attends the school. He said the tower would help parents communicate with their children, especially in an emergency.

Ms. Amanda Alger, resident of White Hall District, addressed the Board. She has three children in the County schools and expressed strong support and understanding of the County's equity goals, but urged the Board to vote "no" based on the reasons detailed in the Planning Commission's report. She said she does not believe property values would be increased by the tower, as some have expressed in emails to the Board. She said she knows of at least two neighbors that are on record as opposing the tower and urged the Board to vote "no".

Mr. Matthew Davis, 20-year resident of Crozet, said he lives on Savannah Court and immediately to the right of the Jackson household. He described the tower as a gargantuan behemoth and said he was opposed to it. He said they bought their house because it has a very nice mountain view which would not be improved by a gargantuan antenna looming up in the trees. He said he was convinced that the tower would have a manifestly negative effect on his property value. He said he opposes the tower not only for NIMBY reasons, but also because the County has a policy that should be applied equally. He said it was not true that only one resident of the immediate neighborhood opposes the tower as he also opposes it.

Ms. Allie Pesch, Chair of Crozet CAC, addressed the Board. She reminded the Board that the CAC passed a resolution in March unsupportive of the permit. She said that changes the applicant made have addressed a couple of their concerns, mainly the number of arrays, but they are not substantial enough for the committee to update the resolution. She said their main concern was that approval of a tower that does not comply with the ordinance would set precedents for other towers and undermine the ordinance's goal to preserve the visual landscape. She said the committee was also concerned with visual impacts at the high school and entrance corridors. She noted that the applicant and schools are not able to furnish specific data about the number of students that would gain access. She said she would now express her personal opinion. She said she was a former student at Western Albemarle High School, parent to three future students, and was concerned with the visual impact and that there would be towers at every school. She remarked that she uses Verizon and has perfect access. She said that the point of having a growth area was to concentrate services and that the County cannot be expected to provide WIFI access to every household.

Mr. Matt Winkler, resident of White Hall District, addressed the Board. He said he has three children who have attended or are attending Western Albemarle High School He said he volunteers with youth in the community, he has great internet service, his kids got a great education, and he wants to support the youth in the community that do not have this advantage and equity. He said he was a former police officer and it frightens him that some emergency services are not available to all parts of the County.

Ms. Jillian Behrens, resident of White Hall District, addressed the Board. She noted that she was an employee of Shentel but was not speaking on behalf of the company but on her own behalf as a County resident. She said she resides in a rural area without cell coverage and this has been a safety issue for her. She said that after the recent flood her land line telephone service was out for 14 days, did not work well once service was restored, and she had no access to emergency services. She expressed full support for the tower at Western as well as at other rural locations to provide both equity and life safety benefits.

Ms. Deborah Judson-Evets, resident of White Hall District, urged the Board to deny the project as it does not comply with the ordinance on cell phone towers and would negatively affect the viewscape.

Mr. Marcello Zapatero, resident of Crozet, said he supports improved communications and faster internet but was not in favor of the tower. It would probably reduce the value of his home considerably. He observed that those in favor of the tower do not live within eyesight of it while those opposed are in direct line of fire. He described the tower as ugly, not complimentary to the landscape, would stick out like a sore thumb above the tree line, would reduce property values, and he emphasized that new 5G technology was just around the corner.

Ms. Katie Clausen, resident of White Hall District, asked that the Board vote "no" and expressed her agreement with comments made by Mr. Cruickshank and the previous speaker.

Mr. Mark Judson-Evetts, resident of White Hall District, addressed the Board. He acknowledged that technology has come a long way since he was in school and that he was an internet user. He said he works in quality assurance and the company has policies and procedures and monitors internal departments against those procedures. He encouraged the Board to stick to its rule about cell towers, expressed agreement with Mr. Cruickshank, and urged the Board to vote against the proposal.

Mr. Brian Garry, resident of Crozet, addressed the Board. He said he opposes the tower, though he has no personal interest in terms of property value or line of sight. He expressed understanding and support for expanding wireless opportunities throughout the entire region. He asked the Board to follow the ordinance and the recommendation of the Planning Commission and to consider the implication that this was the only way to expand access. He said there has to be other ways and they have heard of 5G and alternative towers.

Ms. Allison Miller, resident of White Hall District, expressed agreement with previous speakers and urged the Board to vote against the proposal. She remarked that there were other ways to address equity beyond increasing internet access.

Mr. Doug Barrese, resident of White Hall District, addressed the Board. He said he does not envy the Board's position as it has heard strong arguments on both sides this meeting and he appreciates their time and patience to allow everyone to have their say. He said his home has bad internet service and he would define what this means to his family. He has two children who are students at the school. He said the FCC defines broadband as access of 25 megabytes per second or faster. He said there was only one provider that he could use, Verizon, which provides him with only 1 megabyte per second. He said his home was located at 299 Field Pine Lane, two miles from the high school and three miles from downtown Crozet, which was not a deeply rural area. He said he has contacted all the land-based providers and no one was planning to provide service in his area. He expressed strong support for the tower as his two sons would obtain educational opportunity and for all the people who are underserved.

Mr. Joe Barrese, resident of White Hall District and senior at Western Albemarle High School, addressed the Board. He expressed how important internet access was to complete coursework and how he often has to drive to public spaces to gain WIFI access or arrive at school an hour early to use the internet in the library. He said that internet access would benefit thousands of students and he strongly supports the proposal.

Ms. Valerie Long, Attorney with Williams Mullen law firm and representing Shentel, addressed the Board. She said she was also speaking as a resident of White Hall District and a parent of a student at Western Albemarle High School and an 8th grade student at Henley Middle School. She asked the Board to support the application. She said her family lives in Old Trail and was fortunate to have robust wireless and internet service, though she noted that both have deteriorated over the past few years as the population has increased. She remarked that many who have spoken in opposition have mentioned that the application does not comply with the County Code, but this was not accurate. Ms. Long stated that the wireless ordinance has a tiered approval process and, this is nearly but not quite compliant with a Tier II application. A Tier II application enables an accelerated review process and administrative approval if one complies with all regulations. She said the application meet the requirement under every respect except for the height. Tier III applications have great flexibility with regard to the ordinance, which requires a special use permit. She noted that she has been working on wireless applications in the County for 18 years, long before the policy and ordinance existed, and she thinks the argument has been false. Addressing the question of how many students would really be served by the facility, she said she does not know the number but every student that lacks service deserves it. She said that fiber was not coming any time soon, 5G was not a different technology but just the next generation, and if the tower was approved Shentel would eventually have 5G service on the tower.

Mr. Sean Jackson said he was the father of Thomas Jackson who addressed the Board earlier and a daughter who graduated a few years ago from Western. He said they moved to the area eight years ago when he took a position at the University of Virginia where he works in technology support. He said the tower was not needed and that they would be setting a precedent to have future 145-foot towers. The County has a process and a means by which to modify that process, and this was not the means by which to do that. He said that his colleagues and neighbors at Savannah Court who have spoken at this meeting have never had broadband access and there was neither cable nor fiber. He said they share DSL which, at most, provides 10 megabits. He remarked that the manipulation of what was considered broadband was done to enable groups to apply for federal grants, these numbers were moved, and 10 years ago 10 megabits would have been considered to be broadband. He said that everything was fine, 10 megabits works, Verizon works and they need to focus on those individuals who, not by choice, are living in an area that was underserved. He stated that many live where they do by choice, as his family does, and they do not complain but figure out how to deal with technology limitations.

Ms. Valerie Long readdressed the Board. She suggested the Board review the Planning Commission's minutes as there were representative from the schools and the School Board including Ms. Acuff, Chair of the School Board, who spoke very eloquently in support as well as the Principal of Western Albemarle High School and Principals of Brownsville Elementary School and Henley Middle School

With no further comments from the public, Ms. Mallek closed the public hearing.

Ms. Palmer said she would like staff to address some of Ms. Long's comments about this application meeting County regulations as this is a special use permit request. Mr. Perez stated that Ms. Long was correct; this was a special use permit process. Staff was going through that process with two public hearings and there were special exceptions the applicant requested. He said that to say this was close to a Tier II was wrong by definition as a Tier II has a reference tree and there was no reference tree. He added that a Tier II has a limitation of 10 foot above the reference tree.

Mr. Kamptner added that every Tier III, like a Tier II, has to be designed, located, and maintained to meet several requirements with one being that the site shall provide adequate opportunities for screening and the facility shall be sited to minimize its visibility on adjacent parcels and streets regardless of their distance from the facility. He said the paragraph goes on to further explain how it is to be sited to minimize its visibility from other features such as an entrance corridor overlay district, state scenic rivers, national parks, and other features.

Ms. Mallek asked if mitigations are being met. Mr. Perez said they are definitely not, which he said he mentioned over and over in the staff report.

Ms. Palmer said she had a comment to make. She reminded all that a broadband authority was formed to work with the state and certain grants to try to get broadband to homes and the County has

some projects in the general Greenwood area. She invited residents to contact their Supervisor who would contact Mr. Mike Culp, the County's Information Technology Director.

Mr. Gallaway asked Mr. Kamptner why, if this was as simple as driving the ordinance or not, this was before the Board for a decision. Mr. Kamptner responded that it was before the Board because it was a special use permit application.

Mr. Gallaway remarked that once he makes a decision, he wants people to know what he bases it on. He said that as he has stated at other times when wireless issues have come before the Board, they have an 18-year-old wireless policy that was vastly overdue for reconsideration, if for nothing more than for the Board to debate the issues rather than piecemeal with each application. He indicated they should quit putting the community through having to come out to support or not support based on where the tower was located. Mr. Gallaway encouraged the Board to have a philosophical conversation without delay. He said he reread the minutes from the special meeting the Board had in January 1999, and it was clear that visibility was the only thing to be taken into consideration, which was currently in the ordinance. He said there are other things to discuss and value beyond visibility. He was not saying that visibility was not important but when people come to him and ask for a vote, he wants it to be very clear that he was comparing visibility to something else, and in different instances the something else has changed. He said that one of the notes from the 1999 meeting indicated that wireless carriers are hoping they could get into 50% of homes and get rid of landlines. He remarked that these are different times and the Board should dive into those values if they are going to be making these decisions.

Mr. Gallaway said he has a question for the applicant about wireless coverage needed. He referred to Page 3, of the report, and read an excerpt as follows: "If built at the requested height this tower would do two critical things. First, it would allow our dedicated LTE signal to reach the homes of approximately 400 students, many of whom have no access to broadband. Second, the tower, if high enough to meet commercial needs, would provide a dedicated revenue stream that would help make our network self-sustaining after buildout. That revenue would pay for system maintenance, systems upgrades, and individual connecting devices." He said the first statement says, "high enough to meet the school division needs" and then, "if high enough." He asked if there has to be more height to meet the commercial needs or if the 145 feet would meet the commercial needs. Ms. Schweller responded that the 145 feet maxed out would meet the commercial needs but this height was solely directed by the schools needs which was needed to get coverage to students in western Albemarle. She remarked that Shentel was fine with 130 to 135 feet.

Ms. McKeel recalled that a police officer recently told her he was excited by this tower because he thought he would be able to get access all the way down to Greenwood.

Mr. Gallaway asked about how many kids would benefit from the tower and if the number cited as being 400 was just for the high school or if it includes other area schools. Ms. Schweller responded that initially the number came from the schools' evaluation using a propagation map which was done with computer modeling based on the antennas and equipment it was planning to put on the site and then actually looking at homes in the area that have students and identifying them on the map. She recalled that the schools explained at the council meeting that there were approximately 400 homes in the propagation area with school students. She said the applicant does not know which of these homes have good internet, any internet, great internet, or no internet.

Ms. Mallek recalled that at the advisory council meeting several questions were posed to the school representative such as how they assess where students are. She said he responded that these were just the raw students and that everybody north of Route 250 had complete coverage.

Ms. McKeel invited a school system representative to clarify this question. Mr. Foreman confirmed that 400 addresses the correct number, though he said they do not know the percentage of students that do not have internet. He said the school system values any opportunity to broaden internet coverage.

Ms. Palmer noted that she and Mr. Randolph have learned from serving on the Broadband Committee that much of this was proprietary information that the providers do not give out, which has made it difficult to identify those who do not have service.

Ms. McKeel commented that the Rural Electric Cooperative Consortium was just awarded $186 million for rural broadband and remarked that it was interesting that Rappahannock Electric was not included in the list.

Mr. Gallaway asked why the Architectural Review Board changed the suggested color to brown. Mr. Perez responded that the ARB recommended silver but this only took into account the view from the entrance corridor and he changed the color based on the overall view from area neighborhoods. He said they allowed silver at Albemarle High School because it was sky-lit from almost every view and blended with the sky and other light bulbs.

Mr. Gallaway said he understands there are costs and he wants to be clear that he understands what the ordinance says, but he also wants to have a broader discussion about the ordinance. He said that he was valuing other things in this decision, so it was clear for everybody what he was weighing. He stated that access to education and providing that access to students was something he has been on the record for in the past, and he would continue to support this.

Ms. McKeel said she wholeheartedly endorses the comments Mr. Gallaway made about educational access. She said she served for three years on the School Division's Equity and Diversity Team to try to work on closing the achievement gap for children at-risk. She said they struggled to close this divide since she joined the School Board almost 20 years ago. She said that university towns have the largest achievement gaps which was a fascinating data point that most do not realize. She remarked that some of the largest gaps are in Albemarle County and Charlottesville and part of it was because there are haves and have nots. She said there are wealthy people that value their children and make sure they have every benefit while there are others that cannot afford internet. She stated that this was a critical piece for young people who need the access so that they have the same advantage as other children when they graduate from high school, and they cannot wait four years as they would be adults out of school. She said these children need someone to stand up for them and make sure they have the same opportunities that her child had.

Ms. Mallek agreed with Ms. McKeel and said the most important question that has not been answered was to identify where those kids are so they would have the information.

Ms. McKeel remarked that they have heard from people at this meeting who could identify where these spots are.

Ms. Palmer said that bringing internet service to our children was very important and they all take this very seriously; however, she does not think that this particular cell tower was the right approach. She agrees with Mr. Gallaway that there was enough interest on the Board to review the internet policy. She said that a 145-foot tower that could soon become a 165-foot tower was not compliant with current regulations. She expressed support for smaller towers and for other efforts to make sure that children have adequate broadband capacity and applauds the schools for their initiative to try to get to that point.

Ms. McKeel remarked that four Supervisors have expressed support for a review of the broadband policy so this decision has been made.

Mr. Randolph reminded the Board of its opposition to Cassell Combs' request to construct an approximately 170-foot tower along the south side of I-64 in an open field in the Scottsville District, which was a Tier III application. He said that since then they have struggled with the policy and had a chance to revisit this with the Fry's Spring application, when the Board voted 3-2 to undertake an exception to the County's wireless ordinance. He listed the following four reasons for this: 1) location within a commercial zone, 2) monopole proposed to be sited along an interstate, 3) minimal visibility demonstrated from the balloon test, and 4) Verizon agreed that if the reference tree nearest the pole was removed they would replace it in VDOT's right-of-way, although VDOT has refused right-of-way access if this were to occur. He said the wireless policy was not seriously or significantly breached by the Board's decision, but, in his judgement, appropriately refined with the collective judgement of the Board majority. He noted that he sent additional criteria to the Board, based on those criteria, which he thought about but did not apply to that I-64 application at the time. He listed these criteria as follows: 1) The proposed location was within a commercial or industrial zone where the cell facility would not significantly alter the character of the immediate located and surrounding property. He remarked that this tower does not meet this test as it was not in a commercial or industrial zone and it does significantly alter the character of the immediate and surrounding properties, due to its height. 2) There would be a major highway adjoining the proposed monopole. Mr. Randolph stated that Route 250 was located 1,450 feet away so the tower was not proposed in the right-of-way of a major highway and so the application does not meet the second criteria. 3) Reference and surrounding trees sufficiently shield all but the top 10 feet of the proposed pole. He indicated that this criterion would not be met with the proposed tower. 4) Minimal visibility from any neighboring residential properties. He remarked that with this proposal there was significant visibility. 5) Applicant was committed to replace a reference tree that has fallen with a similar tree. He said he did not see in the application a willingness on the part of the applicant to import Redwoods so they would have reference trees to cover the possibility if one falls down. 6) Cell facility would provide critical communications capacity for the County's emergency communications network used by police and fire personnel. He said he did his due diligence, talked to individuals involved, and in his judgement the location and height of this tower was not critical to the emergency communications network. 7) The new cell facility would significantly increase business and residential cell and internet access. Mr. Randolph remarked that based on the number of people who spoke at this meeting and the emails received, support and opposition was almost evenly divided, although at this meeting there were more "nays" than "ayes". He explained that he has to oppose the proposal based on the criteria he has proposed for future cell tower applications. He added that he serves on the Broadband Authority and realizes the value and necessity of connectivity. He remarked that it was unfortunate they have established connectivity expectations of students when there was a digital divide in our society which was really based on income. He said he reviewed the coverage maps for 80 and 140 feet and noted that they are not dramatically different. He said he was very receptive to the applicant returning with a Tier II proposal that was closer to 80 feet, which could be concealed by surrounding trees.

Ms. Mallek remarked that one of the things that bring them together as a community when they disagree was the process and the fact that there are policies they rely on, and the fact they make consistent decisions based on adopted policy. She said that if they are going to change the policy, it should be in a separate discussion when an application was not before the Board. She stated that this would provide predictability and stability, and this application does not meet the consistency she needs in the way they decide about other towers, such as the successful towers along I-64. Ms. Mallek mentioned that she has supported them because of the tremendous long-distance coverage due to their location, which was completely backed by forest and mountainside and does not create the images presented with the current application. The intent of the Tier III process was to hash out these issues, with expectations

that the applications comply with certain elements as Mr. Kamptner reported to them. She acknowledged the concern of Crozet residents that a local government entity was treated differently than an ordinary citizen who would not want to have a 145-foot tower, which was a perception that was very damaging. She commented that the rules should be predictable. She acknowledged the concerns of her constituents and said she would oppose the proposal.

Mr. Gallaway said he was impressed with the students who spoke and thanked them for getting involved and engaged.

Mr. Kamptner asked the Board to take a recess, so he could prepare a resolution for consideration. There is also the issue of addressing Mr. Randolph's suggestion that the applicant propose a shorter tower. Mr. Kamptner asked if the applicant would like to adjust the application or come back with a separate one. Mr. Bill Fritz, Chief of Special Projects, responded that the Board has several options. The applicant could request a deferral to submit a revised application or the applicant could submit a new application, which the County would not consider to be substantially the same application.

Ms. Mallek remarked that during the community meeting, the applicant was asked several times if they would consider a shorter tower and they expressed that they were only interested in the proposed height. She expressed hope that they could make a final decision at this meeting considering how lengthy the process had been.

(Note: The Board recessed its meeting at 9:29 p.m. and reconvened at 9:51 p.m.)

Ms. Mallek referred to a proposed resolution to deny the application prepared by the County Attorney for the Board's consideration.

Ms. Lori Schweller asked to address the Board again. She said the applicant was willing to modify the request to a 100-foot tower at the same site.

Ms. Mallek remarked that the Board does not have any materials or anything to go with this new information to be able to deliberate and said this was asked three different times. She said she feels a little bit out of sorts to have it be asked now and put the Board on the spot without any background or pictures.

Ms. Palmer said she would not be in support of anything over 80 feet.

Mr. Gallaway said his understanding of the previous application was they have an option to do 125 and a maximum of 145, and he needs clarification of what 100 means. Mr. Fritz responded that when you hear 100, that means 120.

Mr. Gallaway said he thinks it was clear where he was going to stand and this was a question for the three who stated they would oppose the application.

Ms. Mallek stated that the Board should remember that the same clause that allows an extra 20 feet up also allows an extra 20 feet wide, which completely changes what the pictures looks like that describing 18 inches off and not 12 feet on each side.

Mr. Gallaway surveyed the Board to see if they wished to reconsider or want the applicant to return with a new application.

Ms. Palmer reiterated that she would not go over 80 feet.

Ms. Mallek reminded Ms. Palmer that a 60-foot approval would go to 80 feet.

Mr. Gallaway asked for confirmation that this would be 80 with the extra 20. Ms. Schweller confirmed this.

Mr. Randolph said he could allow the applicant 80 feet and under FCC regulations, they could add 20 feet.

Ms. Palmer said she would like to hear from staff with a change of this magnitude.

Ms. Mallek remarked that the community has asked for something lower and was told it was unacceptable because it would not deliver the service they wanted, and now the Board was expected to make a change at 10:00 p.m. without any background.

Ms. McKeel encouraged the Board to deal with it now and asked Mr. Fritz for comments.

Mr. Fritz said that if the tower was approved at 80 feet, it would not be considered a concealment element because it was not concealed by the trees, and also would not be a treetop tower. He said that unless it could be found that the specified height was a concealment element, the tower could be increased in height by 20 feet. He said that with the standoff from the antenna from the tower, if it was not a concealment element, they could replace the antenna with antennae that stand off 20 feet.

Mr. Perez said that during the review of the special use permit and before the applicant resubmitted, staff suggested that Shentel drop it to 100-feet, which would really mean 80 feet with the 20,

because it would be consistent with visibility of a Tier II, similar to what the County had for Stony Point. He said he would feel comfortable saying that it would minimize visibility as it would drop down to the tree line. He presented a photo taken from a nearby home property to demonstrate the appearance of a 100-foot tower and remarked that it would blend in with the tree line. Ms. Mallek responded that they would not at 20 feet wide.

Mr. Randolph then **moved** that the Board approve SP 2017-26 Western Albemarle High School - Tier III Personal Wireless Service Facility and related special exceptions with a change in height of the monopole from 145 feet to 80 feet. Ms. McKeel **seconded** the motion.

Ms. Palmer said, before the Board takes a vote, she needs some more clarity. She recalled that at previous consideration of cell towers, she thought she understood what staff was telling the Board, only to find out later that she had missed something. She asked Mr. Perez if he would have approved this at that height, in all its entirety with all its arrays. Mr. Perez responded that he would have recommended approval based on visibility in the tree line, which he informed the applicant. He said they told him they did not re-submit because they could not make that number.

Ms. Mallek remarked that they ought to be held accountable for that.

Ms. McKeel said she cannot blame the applicant for trying to get it higher, as this provides the better access in terms of connectivity for more people. She said they are in a good place now with a compromise.

Mr. Kamptner asked staff to look at Condition 1 and asked if it works or if it needs to be amended. He said the condition refers to a conceptual plan that reflects a 145-foot facility.

Ms. Mallek said if the Board does not properly refer the paperwork and all the proposed conditions, they are going to make a mistake.

Mr. Randolph said they could work through this very carefully and deliberately.

Mr. Kamptner directed Supervisors to look in their materials at Attachment E (on file), which contains the special permit resolution.

Mr. Gallaway referred to the resolution to deny provided by the County Attorney and asked about its relevance. Mr. Kamptner responded that the language in the denial resolution refers to a new state law requirement that became effective July 1, 2018. If the Board is aware of any modifications to the application, it has to identify those in its written reasons for its action.

Ms. Mallek added that the community asked the applicant to consider different locations throughout the process which were not considered.

Mr. Kamptner stated that the resolution for denial is no longer relevant because there was a motion on the floor to approve the special permit at 80 feet. He added that if the Board were to deny the application, it has to inform the applicant of things it should do to modify the project which may allow the Board to approve it. Mr. Kamptner then asked Mr. Fritz if Condition 1 should be revised and if the conceptual plan could work. Mr. Fritz responded that they only have to amend 1a to change it to 80 feet. The conceptual plan works with the change.

Ms. Palmer asked Mr. Perez if the array was okay with him as she thought it was too wide. Mr. Perez responded that the arrays are flush-mounted. He said Condition C addresses flush-mounting and the 18-inch maximum.

Mr. Fritz stated that if the Board believes that even granting this modification to allow a slight increase in the standoff and the increase in the antenna size constitute a concealment element, that may be sufficient to prevent the placement of antennae that extend up to 20 feet from the tower. He added that he does not think the height was a concealment element based on surrounding trees, although he encourages the Board to say, if it approves the resolution, that the mounting technique and size of the antennae constitutes a concealment element and they are able to support it.

Ms. Palmer asked if, suppose the proposal had come before staff at 80 feet with the array as a concealment issue staff would have approved it. Mr. Perez responded that he would have recommended approval, which he told the applicant.

Ms. Mallek asked if the lower height was fine suddenly, why the Board does not put this at the height where it meets the criteria for the Tier II and goes to 10 feet above the trees, which is 80 feet. Mr. Perez responded that this was because a reference tree was not cited. Ms. Mallek said they could just go back and identify a reference tree. Mr. Perez responded that if the applicant goes that route, they would not need a special use permit. This is a special use permit for a Tier III.

Mr. Gallaway asked for confirmation that at 80 feet, if they were to deny the proposal, it could come back as a Tier II approval. Mr. Perez responded that it would come back as a Tier III with staff's recommendation for approval.

Mr. Gallaway asked what makes this not a Tier II. Mr. Perez responded that this was because there was no reference tree cited within 25 feet of the monopole that would be 10 feet below the highest

point of the tower. He added that this was similar to the Stony Point Tier III tower that does not have a reference tree but met the visibility requirements of a Tier II, which was why he recommended approval of that one. Ms. Mallek added that it was located in a faraway ravine and was a completely different situation in terms of community impact.

Ms. Palmer asked if there was a tree within 25 feet of the tower. Mr. Perez responded that he thought there was.

Ms. Palmer asked Mr. Fritz what the height would be if this were approved as a Tier II with a reference tree. Mr. Fritz responded that it would be approximately 75 feet. He said the closest tree was 55 feet away and to qualify as a treetop tower, it would have to be within 25 feet of the tree. He said that if another taller tree were found within 25 feet, then they could do 10 feet taller than this. He clarified that the motion before the Board was for an 80-foot tower and height was not a concealment element, which would allow an increase to 100 feet. He added that the antenna, the standoff, and the modifications to allow the increased size of antennae still constitute concealment elements, which should not be sufficient to prevent the 20-foot standoff from the tower.

Mr. Kamptner informed the Board that there were two revisions to resolution Attachment E. He said that the reference to Section 18-33.8 should be changed to 18-33.40 because of the zoning text amendment the Board approved last week. Under Condition 1a, the tower height should be changed from 125 feet to 80 feet.

Ms. McKeel restated the **motion** before the Board as made by Mr. Randolph and **amended** by Mr. Kamptner, as follows: to adopt the proposed Resolution to approve SP-2017-26 and related special exceptions, with a change in monopole height from 145 feet to 80 feet. Mr. Randolph agreed and **seconded** the motion.

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

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

*****

Ms. Mallek said that Attachment E still says 145 feet and asked Mr. Kamptner if he would make sure that everything was corrected. She also asked about preventing the expansion of the width.

Mr. Kamptner said the application was for 145 feet, staff recommended 125 feet in Condition 1 but in the revised condition it was reduced to 80 feet. He said the width was addressed in the next resolution and asked Mr. Fritz to confirm.

Mr. Fritz responded that it was also included in the action just taken which was their specification that they believe the antennae are a concealment although it should come up in the direct action taken on the special exception.

Mr. Kamptner asked for a motion to reconsider to get that into this resolution for the special permit.

Ms. Palmer **moved** that the Board reconsider its previous motion. The motion was **seconded** by Mr. Randolph.

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

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

Mr. Kamptner stated that the resolution would be revised so that a second “Be It Further Resolved” paragraph would be added as follows: “Be It Further Resolved that the antenna design and mounting techniques are concealment elements.”

Ms. McKeel **moved** that the Board adopt the proposed resolution, Attachment E, subject to conditions, with the amendments as discussed: in the “Now, therefore” paragraph reference Section 18-33.8 was changed to 18.33-40 and an additional paragraph added to state: “Be it further resolved that the antenna design and mounting techniques are concealment elements and on Page 2, Condition 1a revised to reduce the tower height from 125 feet to 80 feet.”

The motion was **seconded** by Mr. Randolph.

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

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

RESOLUTION TO APPROVE
SP 2017-26 WESTERN ALBEMARLE HIGH SCHOOL - TIER III
PERSONAL WIRELESS SERVICE FACILITY

WHEREAS, Albemarle County School Board is the owner of Tax Map Parcel Number 05600-00-00-017C0 (the "Property");

WHEREAS, the Owner filed an application for a special use permit to install a personal wireless service facility consisting of a 145-foot tall monopole with three flush-mounted antenna arrays, associated ground equipment in a 2,625 square foot fenced compound, and an access road on the Property, and the application is identified as Special Use Permit 2017-26 Western Albemarle High School – Tier III Personal Wireless Service Facility ("SP 2017-26"); and

WHEREAS, on June 26, 2018, after a duly noticed public hearing, the Albemarle County Planning Commission recommended denial of SP 2017-26; and

WHEREAS, on September 12, 2018, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2017-26.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the staff report prepared for SP 2017-26 and all of its attachments, the information presented at the public hearing, and the factors relevant to a special use permit in Albemarle County Code §§ 18-5.1.40, 18-10.2.2(48), and 18-33.40, the Albemarle County Board of Supervisors hereby approves SP 2017-26, subject to the applicable performance standards for personal wireless service facilities in Albemarle County Code § 18-5.1.40, and the conditions attached hereto; and

BE IT FURTHER RESOLVED that the antenna design and mounting techniques are concealment elements.

* * * *

SP-2017-00026 Western Albemarle High School – Tier III Personal Wireless Service Facility
Special Use Permit Conditions

1. The development of the site, and any modifications to the arrays, shall be in general accord with the plan titled *"Milestone Communications – Shentel at Western Albemarle High School 5941 Rockfish Gap Turnpike Crozet, VA 22932"* dated June 6, 2018 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, including but not limited to all concealment elements, concealment technique, and concealment elements of the eligible support structure, as shown and described on the Conceptual Plan and mentioned below:

   a. Tower height eighty (80) feet tall;
   b. Color (equipment and monopole – Sherwin Williams – Java Brown);
   c. Flush mounting of antenna eighteen (18) inch maximum standoff distance;
   d. Tree preservation areas
   e. Location of ground equipment

   Minor modifications to the plan which do not conflict with the elements above may be made to ensure
   compliance with the Albemarle County Zoning Ordinance.

2. The facility shall comply with subsection 5.1.40(b), 5.1.40(c), 5.1.40(d), 5.1.40(e), and 5.1.40(f) – (j) of the Albemarle County Zoning Ordinance unless modified by the Board of Supervisors by special exception.

3. Prior to the issuance of a building permit, the Owner shall obtain a VSMP permit.

4. The VSMP plan shall depict both County provided topography from the County GIS and the field run topography used for the Conceptual Plan. Each shall be labeled appropriately.

5. Prior to the issuance of a building permit, the Owner shall submit revised landscape plans depicting a slightly modified location of the row of Eastern Red Cedars being planted along the frontage of the Western Albemarle High School property in order to avoid interfering with the overhead power lines. Architectural Review Board staff shall review and approve this modification.

Milestone COMMUNICATIONS

SHENTEL

MILESTONE COMMUNICATIONS - SHENTEL AT WESTERN ALBEMARLE HIGH SCHOOL 5941 ROCKFISH GAP TURNPIKE CROZET, VA 22932

entrex communication services, inc.
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BETHESDA, MD 20817
PHONE: (202)408-8990
FAX: (202)408-0961

SUBMITTALS

VICINITY MAP

SYMBOLS AND ABBREVIATIONS

SHEET INDEX

T-1	TITLE SHEET
Z-1	SITE PLAN
Z-1A	TOPOGRAPHIC MAP PLAN
Z-1B	ADJOINERS
Z-1C	CONTOURS PLAN
Z-2	EROSION AND SEDIMENT CONTROL PLAN AND DETAILS
Z-3	COMPOUND PLAN
Z-4	MONOPOLE ELEVATION
Z-5	SHENTEL ANTENNA LAYOUT, SECTION, DETAILS AND SCHEDULE
Z-6	SHENTEL EQUIPMENT LAYOUT AND DETAILS
Z-7	SHENTEL FIBER DISTRIBUTION AND PTC CABINET DETAILS
Z-8	SCHOOL ANTENNA AND RRH DETAILS
Z-9	SITE DETAILS
Z-10	TREE SURVEY PLAN
Z-11	TREE SURVEY - TREES TO REMAIN
Z-12	LANDSCAPE PLAN

PROJECT DESCRIPTION

PROJECT INFORMATION

Milestone COMMUNICATIONS

WESTERN ALBEMARLE HIGH SCHOOL
5941 ROCKFISH GAP TPKE
CROZET, VA 22932

TITLE SHEET

T-1

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SUBMITTALS

VICINITY MAP

SITE PLAN NOTES

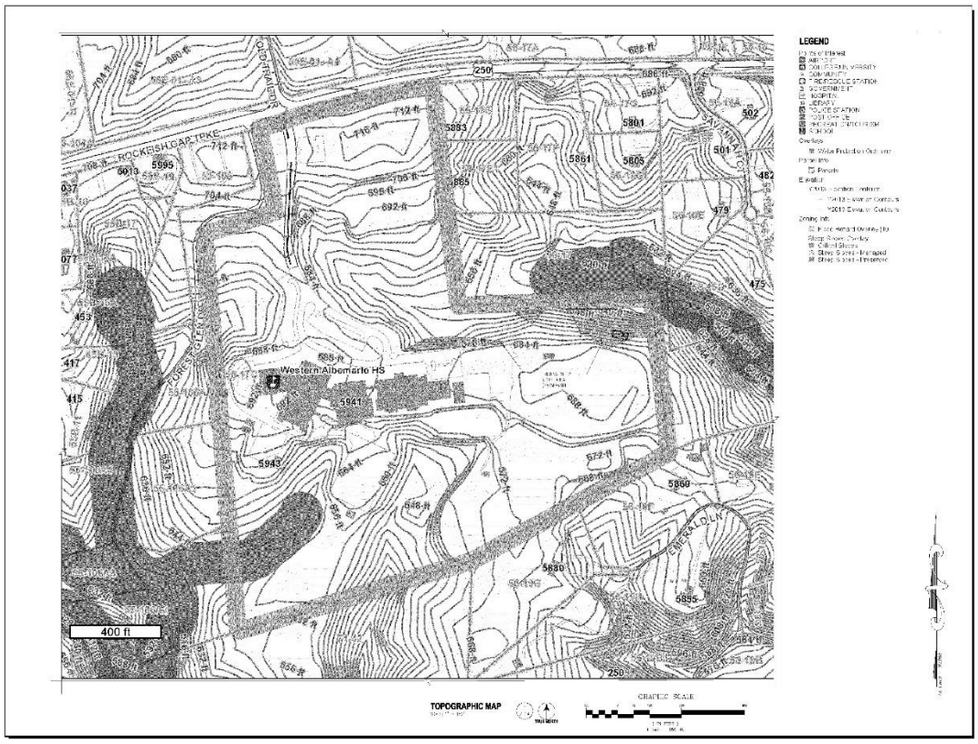
SITE PLAN

Milestone COMMUNICATIONS

WESTERN ALBEMARLE HIGH SCHOOL
5941 ROCKFISH GAP TPKE
CROZET, VA 22932

SITE PLAN

Z-1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Western Albemarle HS
400 ft
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GRAPHIC SCALE
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SUBMITTALS
Milestone
COMMUNICATIONS
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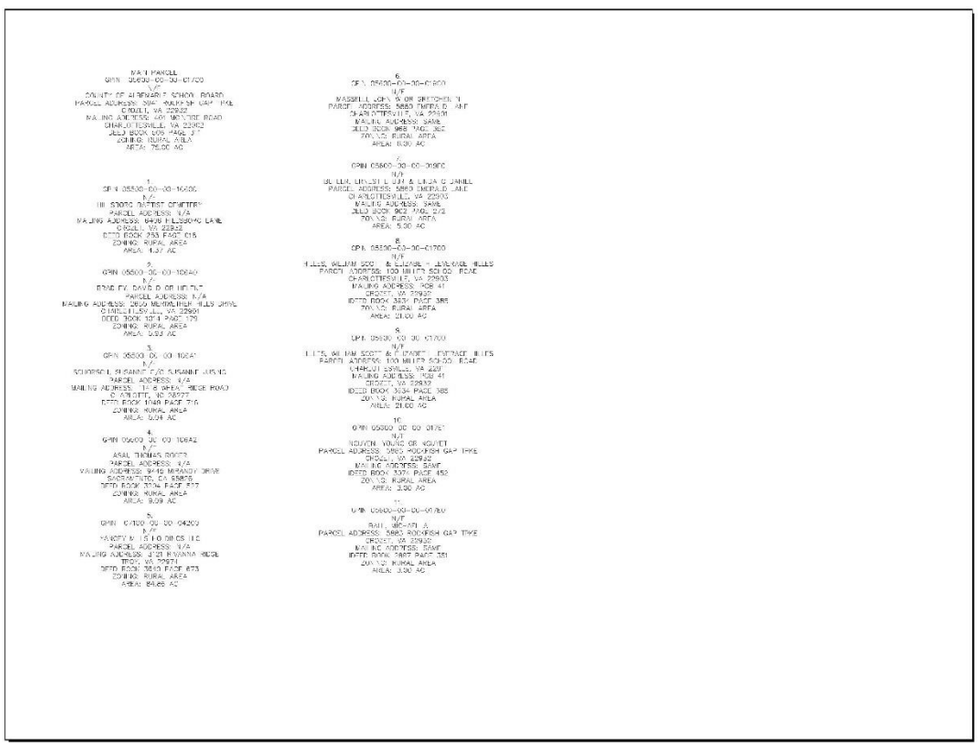
HIGH SCHOOL
5941 ROCKFISH GAP TPKE
CROZET, VA 22932
TOPOGRAPHIC
MAP PLAN
Z-1A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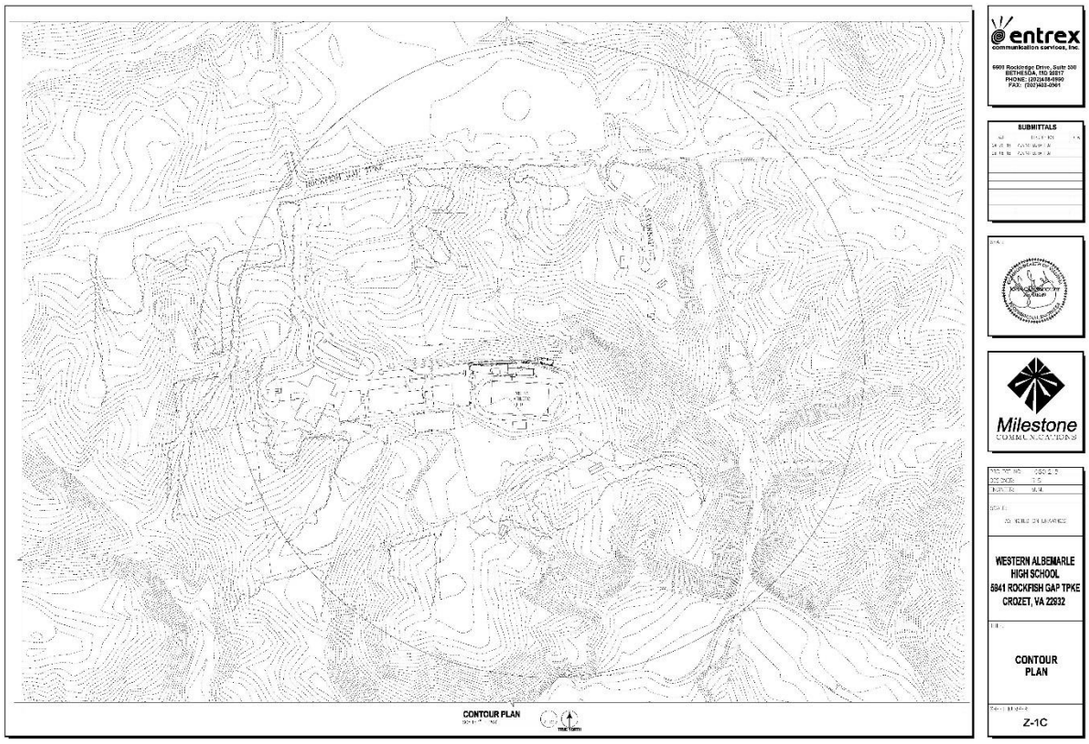
ADJOINERS
Z-1B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SUBMITTALS
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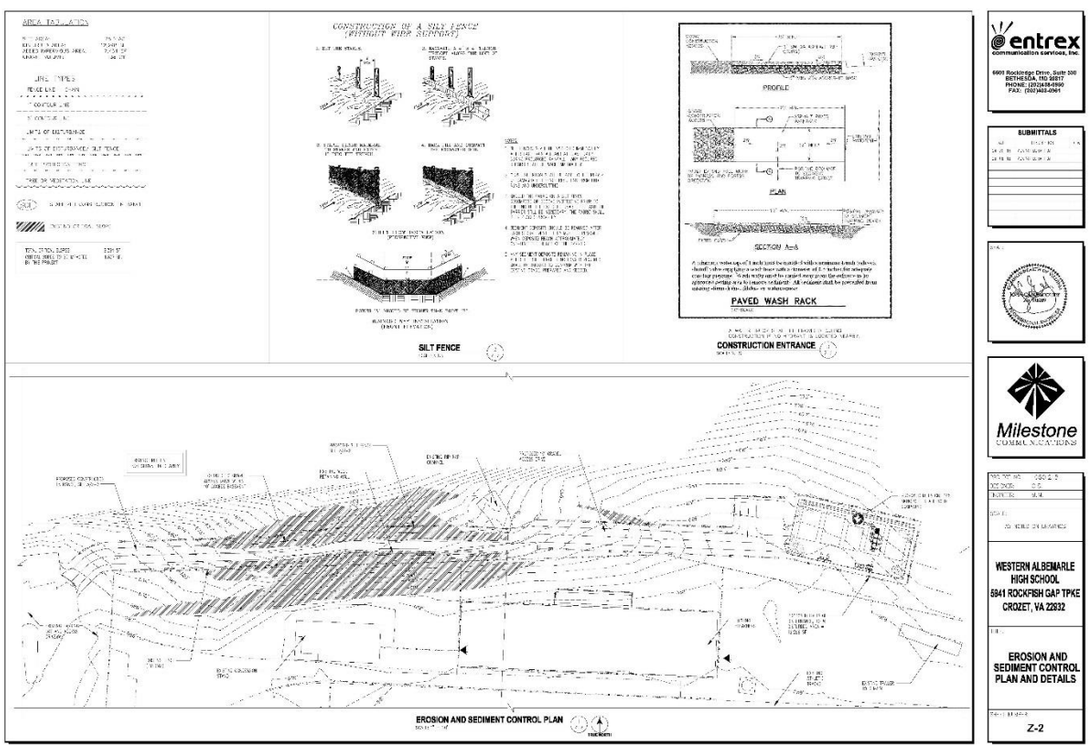
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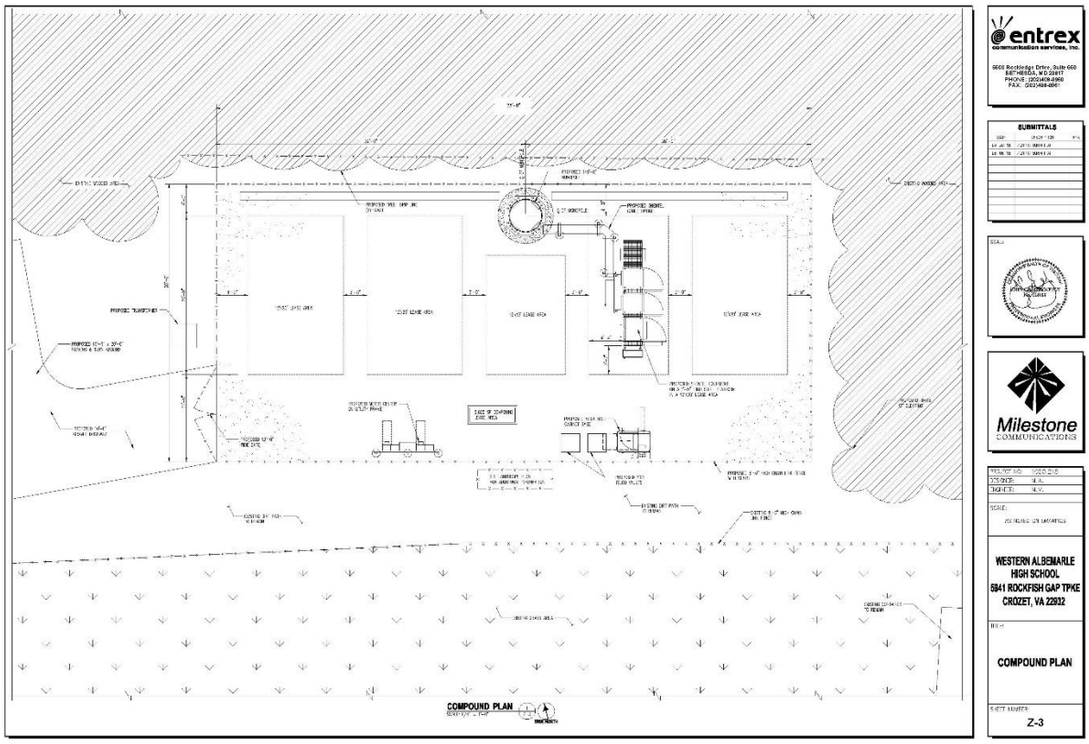
WESTERN ALBEMARLE
HIGH SCHOOL
5941 ROCKFISH GAP TPKE
CROZET, VA 22932
EROSION AND
SEDIMENT CONTROL
PLAN AND DETAILS
Z-2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HIGH SCHOOL
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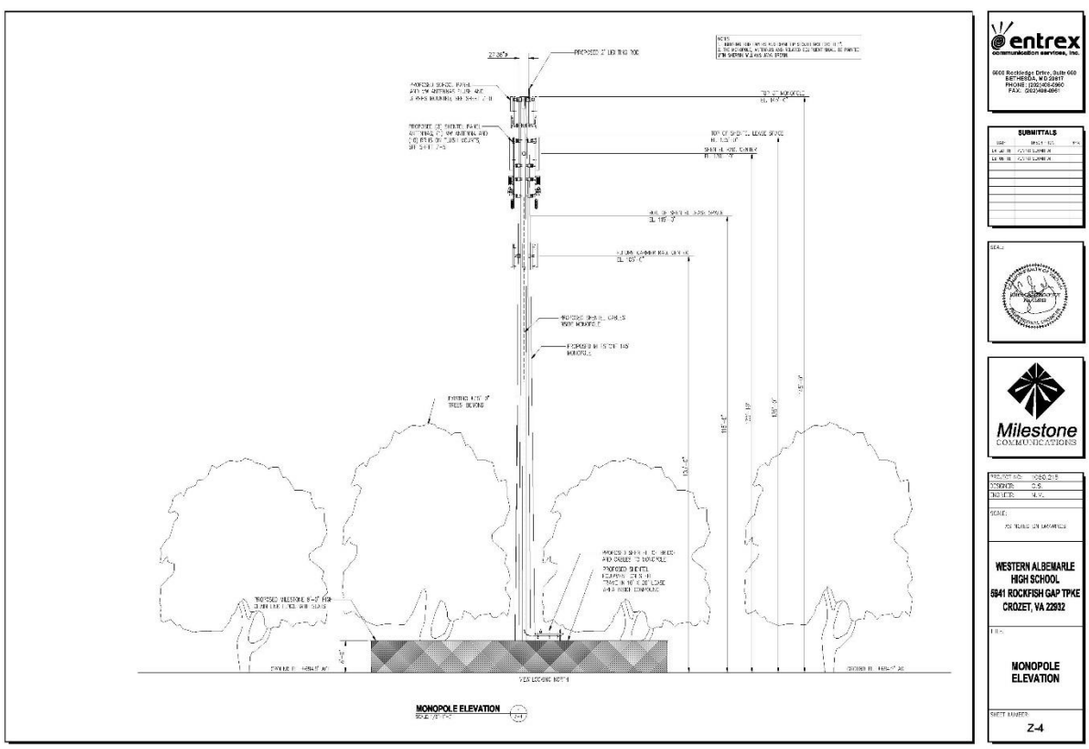
CROZET, VA 22932
COMPOUND PLAN
Z-3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communication services, inc.
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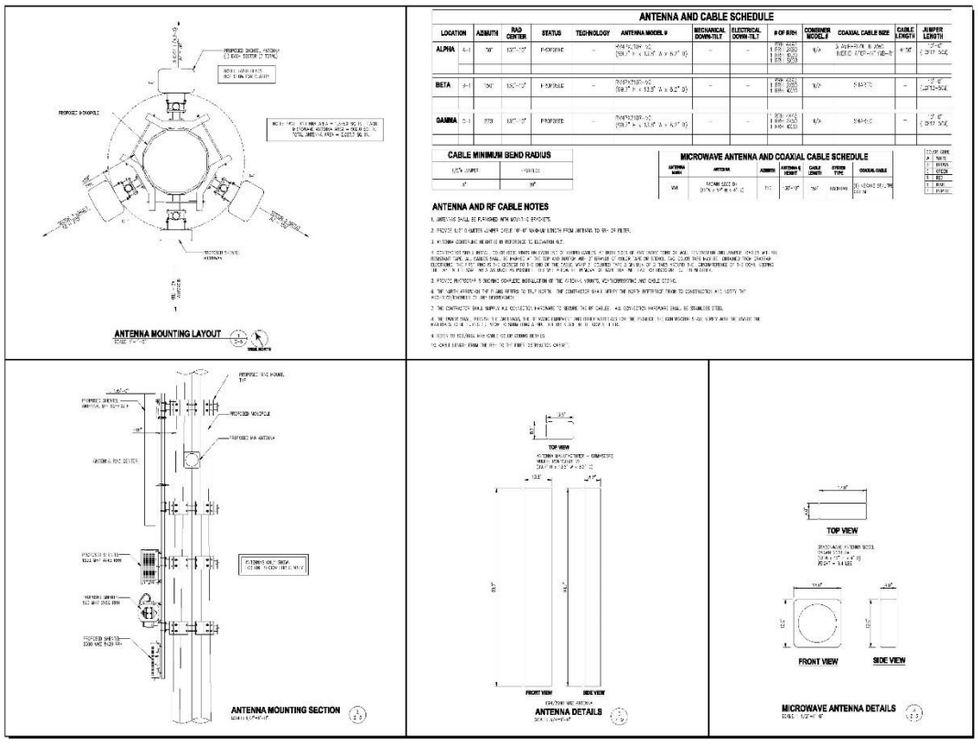
CROZET, VA 22932
MONOPOLE
ELEVATION
Z-4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CABLE MINIMUM BEND RADIUS
MICROWAVE ANTENNA AND COAXIAL CABLE SCHEDULE
ANTENNA AND RF CABLE NOTES
ANTENNA MOUNTING SECTION
ANTENNA DETAILS
MICROWAVE ANTENNA DETAILS
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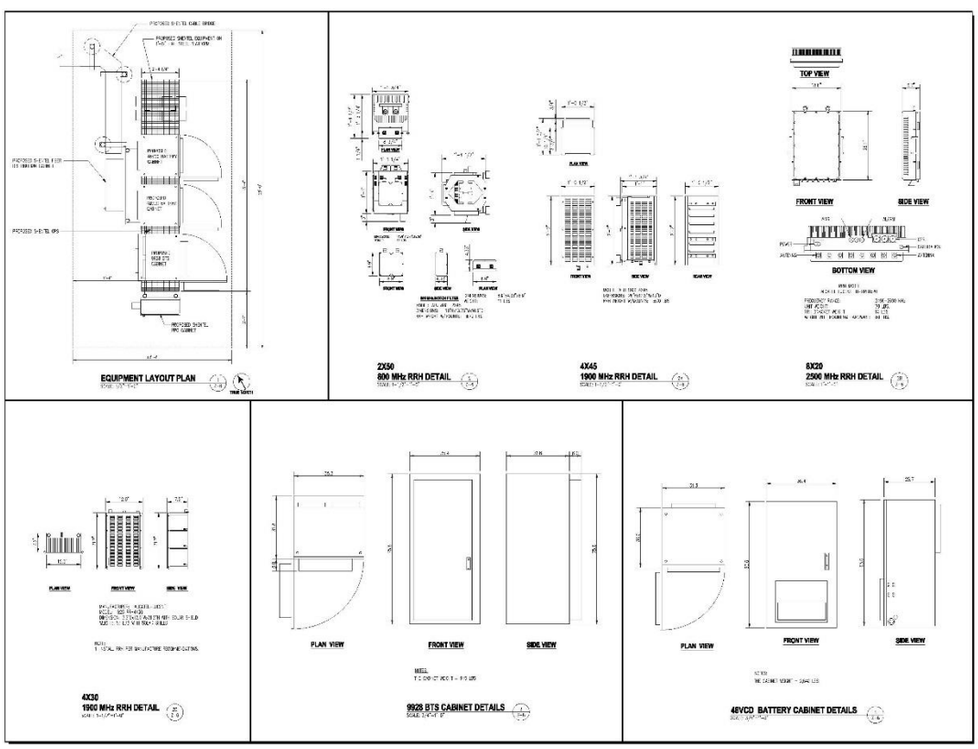
SUBMITTALS
Milestone
COMMUNICATIONS
WESTERN ALBEMARLE
HIGH SCHOOL
5841 ROCKFISH GAP TPKE
CROZET, VA 22932
SHENTEL
ANTENNA LAYOUT,
SECTION, DETAILS
AND SCHEDULE
Z-5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2X50
800 MHz RRH DETAIL
4X45
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8X20
2500 MHz RRH DETAIL
4X30
1900 MHz RRH DETAIL
PLAN VIEW
FRONT VIEW
SIDE VIEW
9928 BTS CABINET DETAILS
48VCD BATTERY CABINET DETAILS
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WESTERN ALBEMARLE
HIGH SCHOOL
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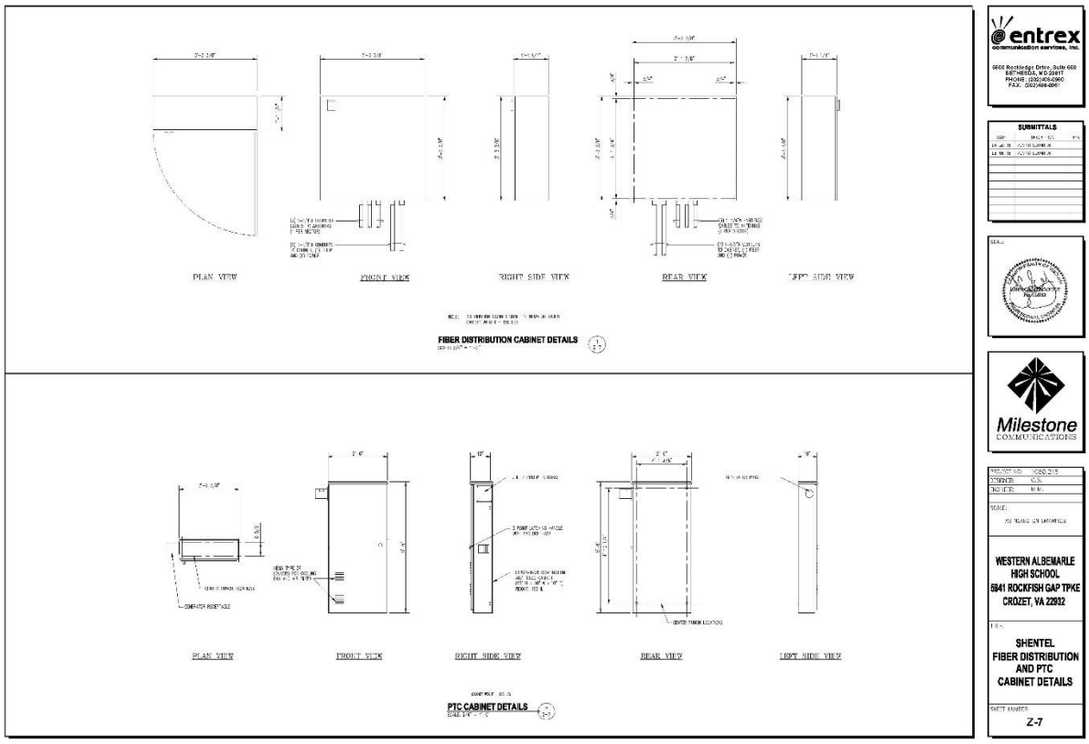
SHENTEL
EQUIPMENT
LAYOUT AND
DETAILS
Z-6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COMMUNICATIONS
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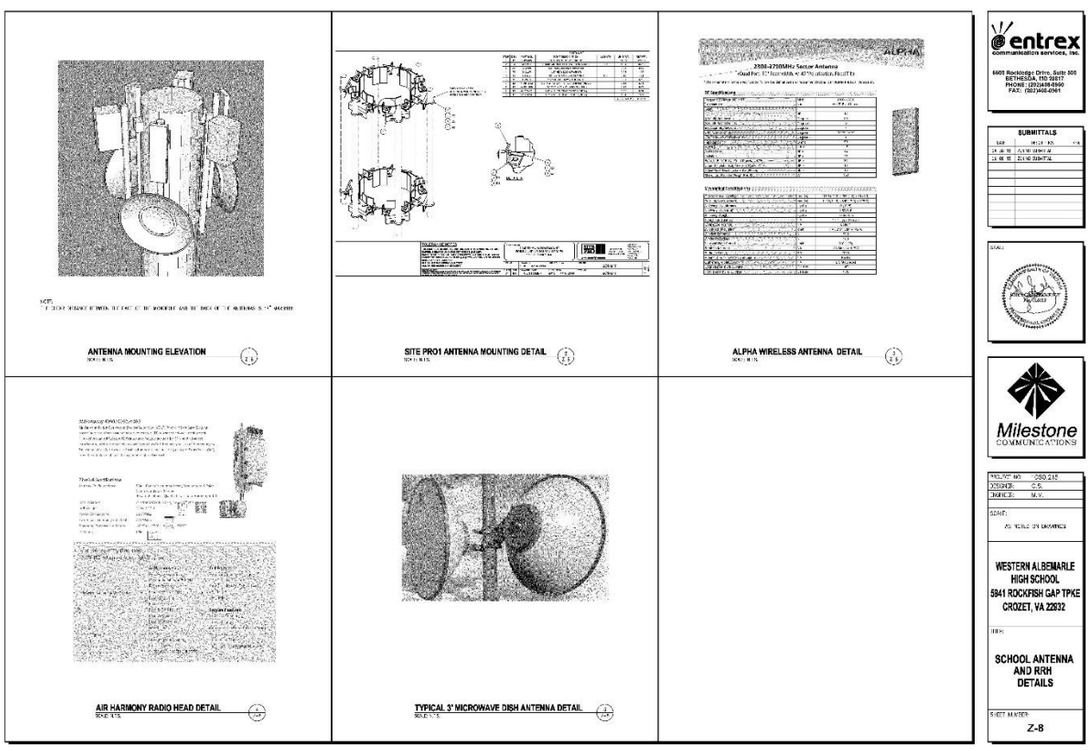
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AIR HARMONY RADIO HEAD DETAIL
TYPICAL 3' MICROWAVE DISH ANTENNA DETAIL
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SUBMITTALS
Milestone
COMMUNICATIONS
WESTERN ALBEMARLE
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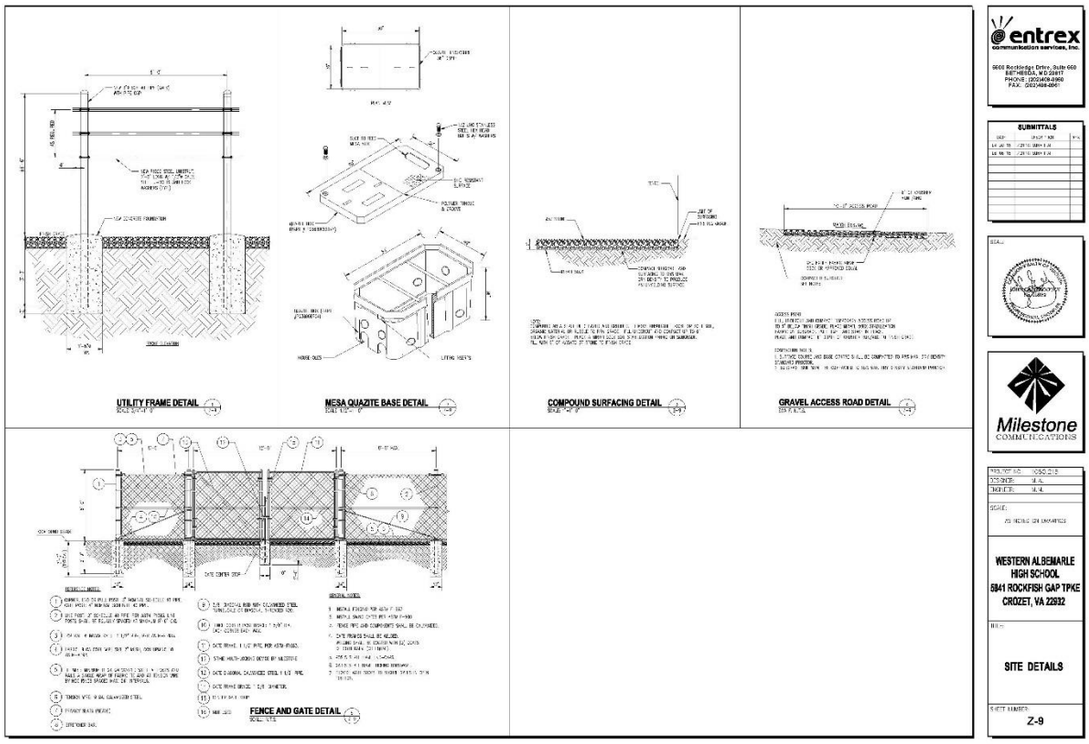
SCHOOL ANTENNA
AND RRH
DETAILS
Z-8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MESA QUAZITE BASE DETAIL
COMPOUND SURFACING DETAIL
GRAVEL ACCESS ROAD DETAIL
FENCE AND GATE DETAIL
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SUBMITTALS
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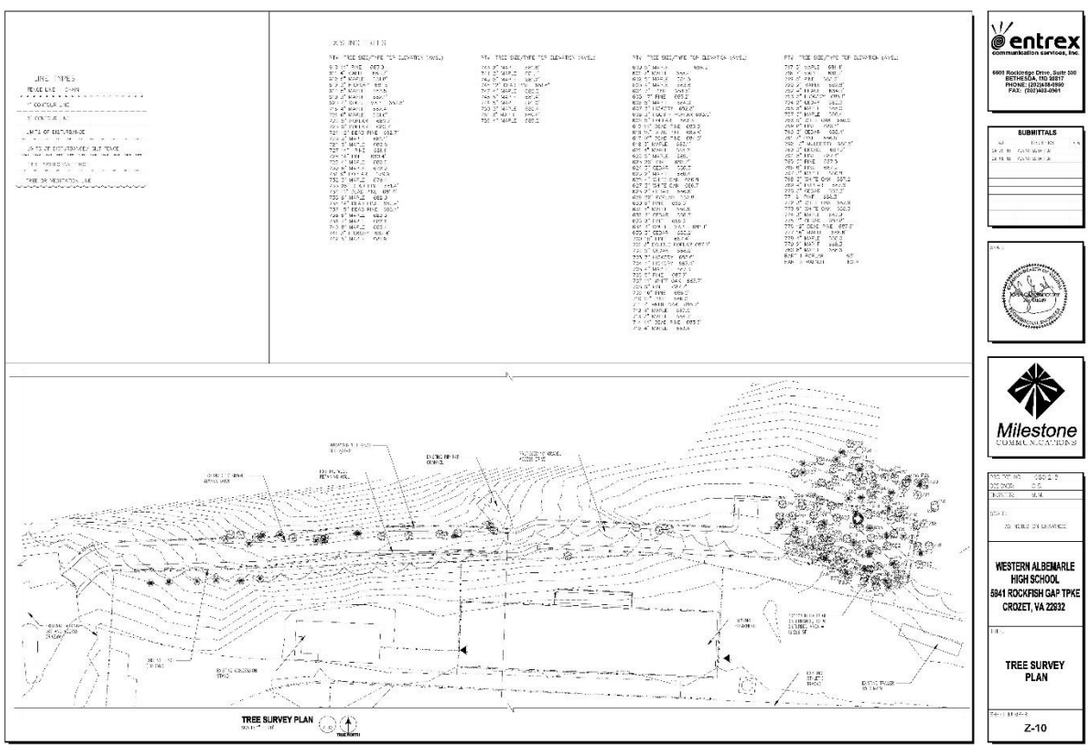
SITE DETAILS
Z-9


TREE SURVEY PLAN
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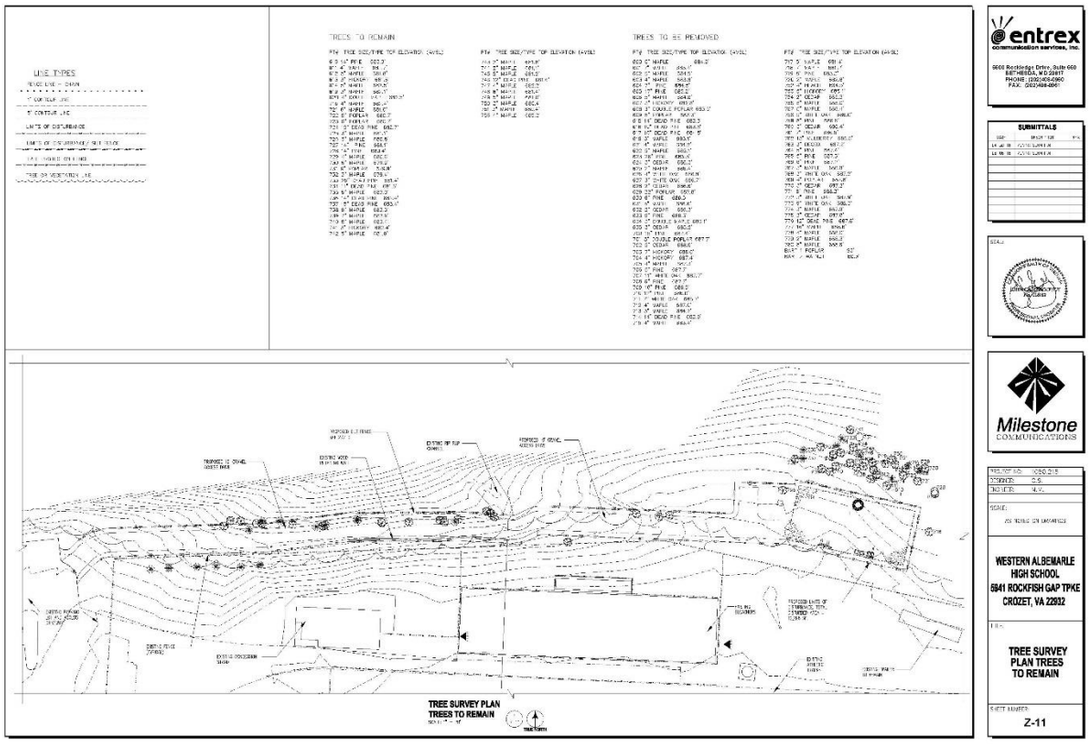
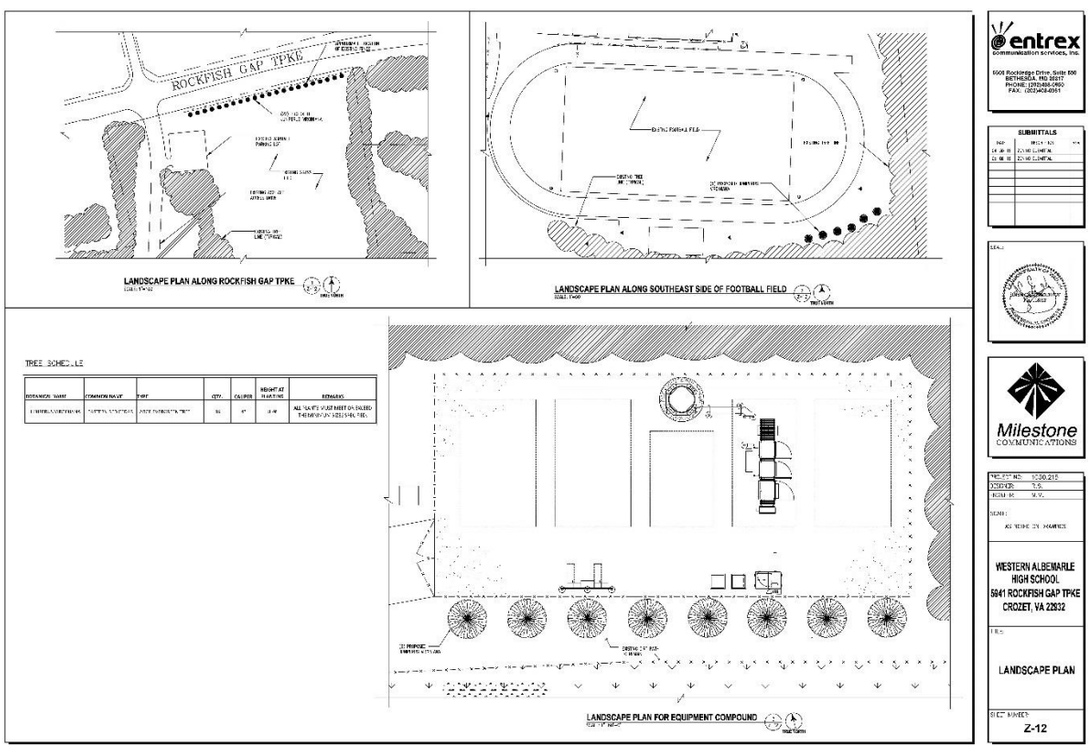
TREE SURVEY
PLAN
Z-10





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Mr. Kamptner noted that there are three special exceptions; the first was set out in Attachment F, which deals with the set off of the back of the antenna that allows for a tilt mount. Mr. Perez responded that the applicant indicated they were not doing the tilt mount which is the reason for the special exception for the closet point, but still needs the maximum stand-off distance of 18 inches.

Mr. Kamptner added that the proposed resolution also needs to be amended to include the additional paragraph, “Be it further resolved that the antenna mounting technique was a concealment element.”

Mr. Randolph then **moved** that the Board adopt the proposed resolution to approve the special exception for SP 2017-26, with conditions, and amended to include that same additional paragraph, “Be it further resolved that the antenna mounting technique was a concealment element.”

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

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

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

Ms. Mallek asked for confirmation that the back of the antenna closest to the pole was now 18 inches instead of 12 inches. Mr. Perez clarified that 18 inches was the furthest it could be set back. He added that the ordinance allows for a tilt and the closest point could be no further than 12 inches from the monopole. He said with this they wanted up and down, which makes it 18 and 18.

Ms. Mallek asked if what they adopted also restricts the size of the outward dimension. She remarked that if they are pretending to be concealing something then they need to make sure it would be effective. Mr. Fritz said the question concerns the distance from the base of the tower to the outer face of the antenna, not to the back of the antenna, and the concern was that the back of the antenna may be mounted 18 inches from the tower but there was no controlling or limiting feature regarding the antenna's thickness. He said the applicant was stating that there was nothing in the ordinance that regulates the depth of the antenna, which was correct. Mr. Fritz stated that they are asking for a modification and since they are asking for something that was beyond the ordinance, the Board could place reasonable restrictions on it, such as a limit on antenna depth. He said the antenna depth proposed was 8.2 inches plus 18 inches. He said the Board could specify this as the maximum distance from the base of the tower to the outer face of the antenna.

Ms. Mallek said this would grant the applicant what they are asking for and also recognizes that the concealment elements are real. Mr. Fritz said the plan shows the outer face of the antenna as 26.2 inches from the base of the tower.

Ms. Schweller asked that the Board keep in mind that the schools have a different set of equipment than Shentel and that the antennas are different. She said they would not want to limit the dimensions at the schools, as what they are trying to accomplish was to get service to students. She stated that she was concerned that what the Board was talking about was going to prevent them from getting the equipment they need, and they are already at a height that may not be fully beneficial.

Mr. Fritz remarked that he does not believe the schools antennae are subject to the same regulations as they are not a personal wireless service facility, which are subject to Section 5.1.40. He said the Board could and has, by the action of approving the special use permit, reference back to the plan. He added that this would be one of the features on the plan and it would limit the size of the antenna the school could place on the tower.

Ms. Mallek said that was what the applicant asked for in the application, not cutting their request in size down, and they should be accountable for what is being requested. She asked if the Board could figure out a way to get that wording into it.

Mr. Fritz proposed the following and asked Mr. Kamptner for comment: "The closest point of the back of the antenna may be more than 12 inches from the facility and the farthest point of the back of the antenna may not be more than 18 inches from the facility as depicted on the conceptual plan titled. The outer face of the antenna shall not be more than 26.2 inches from the facility."

Mr. Kamptner stated that the Board needs a motion to reconsider the previous special exception motion.

Mr. Randolph **moved** that the Board reconsider the first special exception. The motion was **seconded** by Ms. Mallek.

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

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

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Mr. Kamptner read the new language to Condition 1 of Attachment F: "… conceptual plan… June 6, 2018, and the outer face of the antenna shall not be more than 26.2 inches from the facility."

Ms. Mallek asked about a sentence regarding the school distance. Mr. Fritz responded that he does not believe the schools have the same issue and no special exception needs to be granted for them; the school's antennae size and distance are regulated by the first condition on the special use permit that says development has to be in accord with the conceptual plan. The conceptual plan shows those antennae.

Mr. Fritz added that this motion should also include Mr. Kamptner's previous language: "Be it further resolved that the antenna mounting technique was a concealment element."

Mr. Kamptner then restated the proposed amended language: Add the following to the resolution "Be it further resolved that the antenna mounting technique was a concealment element." Amend Condition 1 to add to the end of the sentence: "… June 6, 2018, and the outer face of the antenna shall be not more than 26.2 inches from the monopole." To be internally consistent, references to "facility" should be changed to "monopole".

Mr. Randolph then **moved** to adopt the proposed resolution with the changes as read by Mr. Kamptner. The motion was **seconded** by Ms. McKeel.

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

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

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SP 2017-26 WESTERN ALBEMARLE HIGH SCHOOL-TIER III
PERSONAL WIRELESS SERVICE FACILITY**

WHEREAS, Albemarle County School Board is the owner of Tax Map and Parcel Number 05600-00-00-017C0 (the "Property");

WHEREAS, the Owner filed an application for a special use permit to install a 145 foot tall monopole with three flush-mounted antenna arrays, associated ground-equipment in a 2,625 square foot fenced compound, and an access road on the Property (SP 2017-26); and

WHEREAS, the Applicant filed a request for a special exception to modify the requirements of County Code 18-5.1.40(b)(2)(c) in conjunction with SP 2017-26; and

WHEREAS, Albemarle County Code § 18-5.1.40(b)(2)(c) requires that antennas be mounted so that in no case shall the farthest point of the back of the antenna be more than eighteen (18) inches from the facility, which may be modified by special exception.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary and staff report prepared in conjunction with the application, all of the factors relevant to the special exceptions in County Code §§ 18-5.1.40(b)(2)(c) and 18-33.49, and the information provided at the Planning Commission and Board of Supervisors' meetings, the Albemarle County Board of Supervisors hereby approves the special exception to authorize the modification of County Code § 18-5.1.40(b)(2)(c) as set forth above, subject to the condition attached hereto; and

BE IT FURTHER RESOLVED that the antenna mounting technique is a concealment element.

* * *

**SP 2017-26 Western Albemarle High School -Tier III Personal Wireless Service Facility
Special Exception Condition**

1. The closest point of the back of the antenna may be more than twelve (12) inches from the monopole and the farthest point of the back of the antenna may not be more than eighteen (18) inches from the monopole as depicted on the Conceptual Plan titled *"Milestone Communications – Shentel at Western Albemarle High School 5941 Rockfish Gap Turnpike Crozet, VA 22932"* dated June 6, 2018, and the outer face of the antenna shall be not more than 26.2 inches from the monopole.

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Mr. Kamptner said that Attachment G was a critical slopes waiver, for which staff has recommended approval.

Ms. Palmer **moved** that the Board adopt the proposed resolution to approve the critical slopes waiver, with conditions, as set out in Attachment G. The motion was **seconded** by Mr. Randolph.

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

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

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SP 2017-26 WESTERN ALBEMARLE HIGH SCHOOL-TIER III
PERSONAL WIRELESS SERVICE FACILITY**

WHEREAS, Albemarle County School Board is the owner of Tax Map and Parcel Number 05600-00-00-017C0 (the "Property");

WHEREAS, the Owner filed an application for a special use permit to install a 145 foot tall monopole with three flush-mounted antenna arrays, associated ground-equipment in a 2,625 square foot fenced compound, and an access road on the Property (SP 2017-26); and

WHEREAS, the Applicant filed a request for a special exception to waive the requirements of County Code § 18-4.2.3(b) in conjunction with SP 2017-26; and

WHEREAS, Albemarle County Code § 18-4.2.3(b) provides that no land disturbance to establish a structure or improvement shall be located on critical or preserved slopes, which may be waived by special exception pursuant to County Code § 18-4.2.5.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary and staff report prepared in conjunction with the application, all of the factors relevant to the special exceptions in County Code §§ 18-4.2.3(b), 18-4.2.5, and 18-33.49, and the information provided at the Planning Commission and Board of Supervisors' meetings, the Albemarle County Board of Supervisors hereby approves the special exception to authorize the waiver of County Code § 18-4.2.3(b) as set forth above, subject to the condition attached hereto.

* * * *

SP 2017-26 Western Albemarle High School -Tier III Personal Wireless Service Facility Special Exception Condition

1. Disturbance of the critical slopes shall be limited to that necessary to construct a single access road providing access to permitted uses on the RA, Rural Areas zoned portion of the Property as depicted on the Conceptual Plan titled *"Milestone Communications – Shentel at Western Albemarle High School 5941 Rockfish Gap Turnpike Crozet, VA 22932"* dated June 6, 2018.

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Mr. Kamptner explained that the final action was a special exception which would modify the permitted antenna size as regulations require that they not be more than 1,400 square inches. He added that the reference in the resolution to Section 18-33.9 needs to be updated.

Mr. Perez commented that he likes the condition as it was written already as it essentially takes the radio heads, drops them to ground level, and allows them to keep the current proposed size. He said the applicant seems to have some objections.

Ms. Palmer and Ms. Mallek remarked that they have already held a public hearing and this issue was not raised.

Ms. Palmer **moved** that the Board adopt the proposed resolution to approve the special exception that modifies the permitted antenna size. The motion was **seconded** by Ms. Mallek.

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

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

Ms. Long said they were asking that the antennas be permitted to be exactly the size as shown in the plans and that, in their opinion, the antennae comply with the 1,400 square inch size limitation. She said that staff was counting remote radio heads toward the aggregate size of the antenna, which does exceed the 1,400 limits. She reiterated the applicant's request that the Board approve the special exception with antenna size as shown in the plans. Ms. Long stated that Mr. Perez indicated that his recommended condition would not allow the remote radio heads to be mounted at the top of the pole with the antenna handles but would instead require that they be placed on the ground, where they are not effective.

Ms. Mallek said that what they want to put at the top of the pole was 900 square feet, which was double what was supposed to be on there.

Ms. Long asked the Board to refer to the lower left corner of Sheet Z5, which was what the applicant proposes.

Mr. Fritz clarified that the applicant was saying the antenna and remote radio head, when the ordinance was originally written remote radio heads were not being used, and when they first were being used they were put behind the antennae. He said the applicant was saying that it would not work if it was on the ground and therefore it was part of the antenna. He said that staff considers that to be part and parcel of the 1,440 square inches and noted that this has been the consistent practice of the Zoning Administrator. Mr. Fritz stated that staff realizes the applicant does not agree with that and has applied for a special exception to allow them to go up to 2388.46, which would be the modification to allow an increase from 1,440 to 2388.46, with the finding that this size was still a concealment element.

Ms. Palmer said she was not interested in revisiting the vote.

Ms. Schweller commented that the applicant accepted staff's interpretation by asking for the special exception, and those things go together. She said there was no special exception needed unless staff's interpretation was accepted. This is a change that does not comply with the applicant's plans.

Ms. McKeel **moved** that the Board reconsider action on the previous resolution Attachment H. The motion was **seconded** by Mr. Randolph.

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

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

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Mr. Fritz stated that the proposed resolution should be amended to strike the first condition, condition 2 becomes condition 1, and the maximum size of the three flush-mount antenna arrays to be installed shall not exceed 2,388.46 square inches as depicted on the conceptual plan. The motion should also include Mr. Kamptner's previous language: "Be it further resolved that the antenna size is a concealment element."

Mr. Kamptner said the reference to Section 18-33.9 is revised to Section 18-33.49.

Mr. Randolph **moved** that the Board adopt the proposed special exception for SP 2017-16, subject to the condition, and as amended by staff. The motion was **seconded** by Ms. Mallek.

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

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

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SP 2017-26 WESTERN ALBEMARLE HIGH SCHOOL-TIER III
PERSONAL WIRELESS SERVICE FACILITY**

WHEREAS, Albemarle County School Board is the owner of Tax Map and Parcel Number 05600-00-00-017C0 (the "Property");

WHEREAS, the Owner filed an application for a special use permit to install a 145 foot tall monopole with three flush-mounted antenna arrays, associated ground-equipment in a 2,625 square foot fenced compound, and an access road on the Property (SP 2017-26); and

WHEREAS, the Applicant filed a request for a special exception to modify the requirements of County Code 18-5.1.40(b)(2)(b) in conjunction with SP 2017-26; and

WHEREAS, Albemarle County Code § 18-5.1.40(b)(2)(b) requires that each proposed antenna shall not exceed the size shown on the application, which size shall not exceed one thousand four hundred (1,400) square inches, which may be modified by special exception.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary and staff report prepared in conjunction with the application, all of the factors relevant to the special exceptions in County Code §§ 18-5.1.40(b)(2)(b) and 18-33.49, and the information provided at the Planning Commission and Board of Supervisors' meetings, the Albemarle County Board of Supervisors hereby approves the special exception to authorize the modification of County Code § 18-5.1.40(b)(2)(b) as set forth above, subject to the condition attached hereto; and

BE IT FURTHER RESOLVED that the antenna size is a concealment element.

* * * * *

**SP 2017-26 Western Albemarle High School -Tier III Personal Wireless Service Facility
Special Exception Conditions**

1. The maximum size of the three flush-mount antenna arrays to be installed shall not exceed 2,388.46 square inches as depicted on the Conceptual Plan titled *"Milestone Communications – Shentel at Western Albemarle High School 5941 Rockfish Gap Turnpike Crozet, VA 22932"* dated June 6,

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Ms. Mallek expressed concern that Mr. Kamptner review all of these actions to ensure they are all correct, as this was so ripe for disaster. She added that it would have been so much better to take a week, adopt these actions on a consent agenda after making sure everything was correct. She said she hopes the Board never take action like this again.

Ms. McKeel stressed the urgency of having the wireless policy reviewed and updated by the Board.

Ms. Palmer said she is not particularly concerned with the wireless policy and cannot say that she would have gone to 145 feet for the height of the tower.

Mr. Gallaway said the public deserves a debate on whether visibility should be the only factor, as there are other factors. He said he has reviewed all the minutes and a decision was made on visibility

with no conversation on other competing factors. He noted that the public values access and they should have a discussion and debate about whether visibility should be the primary factor.

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Agenda Item No. 22. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. McKeel said that based on the outcome of the Roslyn Farms community meeting on Monday, the Board needs to have a discussion around the definition of "farm-to-table," as the state has not given a definition and they need to decide on that as soon as possible.

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Ms. Mallek urged the Board to discuss the zero lot line "first person in gets to build" discussion that was happening around infill, noting that this had been on the books for a number of years. She said the rule was designed for new properties where nobody lived and accessory properties were put on the lot line, but now this was happening in established neighborhoods. She said the first person to get there has the right to put the building right up to zero, which means they cannot take care of the side of the building without trespassing on their neighbor, and the neighbor loses the ability to put something on their property. Ms. Mallek emphasized that the County should go back to proper setbacks on each side of the line.

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Agenda Item No. 23. From the County Executive: Report on Matters Not Listed on the Agenda.

There were none.

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Agenda Item No. 24. Closed Meeting.

There was no need for an additional Closed Meeting.

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Agenda Item No. 25. Adjourn to September 27, 2018, 3:00 p.m., Lane Auditorium.

At 10:50 p.m., Ms. Mallek adjourned to September 27, 2018 3:00 p.m. Lane Auditorium, Room 241.

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Chairman

Approved by Board
Date 08/21/2019 Initials CKB