

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on October 16, 2019, at 1:00 p.m., Lane Auditorium, Second Floor, County Office Building, McIntire Road, Charlottesville, Virginia.

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

ABSENT: Ms. Diantha H. McKeel.

OFFICERS PRESENT: County Executive, Jeffrey B. Richardson; Deputy County Executive, Doug Walker; Deputy County Attorney, Andy Herrick; Clerk, Claudette Borgersen; and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order. The meeting was called to order at 1:01 p.m., by the Chair, Mr. Gallaway.

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

Agenda Item No. 4. Adoption of Final Agenda.

Motion was offered by Ms. Malek to adopt the final agenda. Mr. Randolph **seconded** motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Ms. McKeel.

Introduction. Mr. Gallaway introduced staff present and the presiding security officers, Officers Eric Reuschling and David Huffman.

Agenda Item No. 5. Brief Announcements by Board Members.

Ms. Mallek said that over 500 area high school and middle school students had recently visited nearly 60 local businesses to experience what technology and science in Charlottesville is all about. She said that for the fifth year, she was chaperone to students from Henley and that they visited BrightSpec, where machinery is developed for industry and medical testing, and Linden Lab in the Downtown area.

Ms. Mallek said that that Saturday would mark the 5th anniversary of the Earlysville Exchange Thrift Store. She read a congratulatory recognition, "Congratulations to all citizens supporting the great success of the Earlysville Exchange over the last 5 years. You have raised and returned more than \$170,000 to the community to date. You moved into an empty store front and returned it to a vibrant country crossroads destination. The Exchange is a perfect example of the power of one – one person with an idea, one family to support, that person, one neighborhood and one congregation to take on the challenge, one community who bands together to strengthen the whole and to help individuals. Many more than one neighborhood and congregation has joined the effort. Many more than one families who have been restored and equipped following a fire or disaster. Many individuals who have found friendship and connections at the Exchange, and many individuals who have found job training and employment there. For many successful days and years ahead, our community thanks you."

Ms. Mallek said that Apple Butter Day would take place on Saturday, October 26 at the White Hall Community Building for the White Hall Ruritans. She said the event would start around 1:00 p.m. but that the community could arrive earlier to help.

Ms. Palmer said that Batesville Apple Butter Days would happen that weekend, which was a family event and fundraiser to benefit the Batesville community. She said children were welcome and serve as major contributors to the event. She said in 2018, they sold 1,400 pint-sized jars of apple butter. She said that a breakfast takes place that many local businesses and farms contribute food to and later in the afternoon, the apple butter is sold.

Ms. Palmer said the Apple Butter Harvest Festival (held by Virginia Vintage Apples and Cove Garden Ruritans) will take place November 2 from 10:00 a.m. to 5:00 p.m. She said the Ruritans will make apple butter and Brunswick stew to raise funds for their organization. She said the event would take place at Albemarle Cider Works, with live music happening all day long as well as artisans, workshops, and contests.

Mr. Randolph recognized Lieutenant Stoddard of the Albemarle County Police Department as well as Mr. Walker for looking into an issue over the weekend that was raised by residents in the Rio District regarding the Fall Classic Half-Marathon. He said there was a very detailed response from Lt. Stoddard back to the constituents and recognized him for providing a factual and helpful account.

Mr. Randolph said there was significant backup on I-64 on Saturday heading west due to bridge

work being done by VDOT. He said this resulted in a major tie-up all over the eastern side of the County in the Scottsville and Rivanna districts. He said that he hoped in the future they could prevail upon VDOT to do this kind of bridge work at night rather than on a Saturday in the daytime.

Mr. Randolph expressed to the Board that he hoped they could have a discussion, at some point, regarding Mr. Neil Williamson's piece on the reduction in the number of overall units the County had planned for in the development area and a discussion about what is viewed by some as a need to expand the development area from 5% to a higher percentage. He said that though he didn't agree with that conclusion, he did agree with some of Mr. Williamson's figures. He said he believed the result of this is that the County ends up building much more livable communities rather than simply packing density in.

Mr. Randolph said the piece creates an opportunity for the Board to talk about the 95% to 5%, especially in terms of looking at ways of going more vertical in the 5% with growth in the development area as a way of accommodating additional people. He said Mr. Williamson noted that many people are not interested in living in higher stories, but if it was the only housing available and it was attractive, it could be appealing.

Mr. Randolph said he also hoped the Board could talk about the Planning Commission approval of an application and the applicant's interactions with CACs, citing a case in which the applicant had come back to the 5th and Avon CAC on multiple occasions. He recalled when the Board discussed utilizing the CACs on any kind of development proposal, it was to be an opportunity for community input to be provided as the proposal was being framed, before it goes to the Planning Commission. He said he didn't think the Board imagined the CAC as being a body that would then see repeat occasions of an application altered, improved, or changed coming back to it.

Mr. Randolph suggested the Board should establish some rules about applications that would be helpful to the CACs, and perhaps this could be discussed at the end of the meeting.

Agenda Item No. 6. Proclamations and Recognitions.

Item No. 6.a. Proclamation Recognizing October as Domestic Violence Awareness Month.

Mr. Gallaway moved to adopt the resolution as he read it into the record.

Mr. Gallaway **moved** to adopt the Proclamation Recognizing October as Domestic Violence Awareness Month. Ms. Malek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Ms. McKeel.

PROCLAMATION

WHEREAS, the problems of domestic violence are not confined to any group or groups of people but across all economic, racial and societal barriers, and are supported by societal indifference; and

WHEREAS, the crime of domestic violence violates an individual's privacy, dignity, security, and humanity, due to systematic use of physical, emotional, sexual, psychological and economic control and/or abuse, with impact of this crime being wide-ranging; and

WHEREAS, no one person, organization, agency or community can eliminate domestic violence on their own; we must work together to educate our entire population about what can be done to prevent such violence, support victims/survivors and their families, and increase support for agencies providing services to those community members; and

WHEREAS, the Shelter for Help in Emergency has led the way in the County of Albemarle in addressing domestic violence by providing 24-hour hotline services to victims/survivors and their families, offering support and information, and empowering survivors to chart their own course for healing; and

WHEREAS, the Shelter for Help in Emergency commemorates its 40th year of providing unparalleled services to women, children and men who have been victimized by domestic violence;

NOW, THEREFORE, we, the Albemarle County Board of Supervisors, in recognition of the important work being done by the Shelter for Help in Emergency, do hereby proclaim the month of

OCTOBER 2019
as
DOMESTIC VIOLENCE AWARENESS MONTH

and urge all citizens to actively participate in the scheduled activities and programs sponsored by the Shelter for Help in Emergency, and to work toward the elimination of personal and institutional violence against women, children and men.

Signed this 16th day of October, 2019

Agenda Item No. 7. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Ms. Caren Roper (White Hall District) said she was proud to live in Earlysville, as the community is special and the quality life is good. She said she would like to bring up an issue to the entire Board and community of barking dogs, stating that it is a problem for those living in large subdivision tracts of land, but are surrounded by other larger, rural land.

Ms. Roper said the Board of Supervisors, five years earlier, went through a detailed description on how to file and solve complaints about barking dogs. She said that though she appreciated the hard work on this, with the exception of those that live on more than 5 acres in a rural area, there is no barking dog ordinance that can be enforced in those areas. She said she was unfortunately living next to a tract of land that is 9.95 acres, surrounded on one side by a subdivision (The Villages at Chestnut Hills) and on the other side of the barking dog's property is a subdivision called Chestnut Ridge. She said in the middle is a narrow property that stretches down, with the dogs in the middle. She said they are constantly exposed to barking.

Ms. Roper played a recording of the barking dogs for the Board. She explained that the person owned more than five hunting dogs, with a dog in heat that is kept on a leash that barks constantly, as well as puppies and a dachshund. She said the distance between her house and the dogs' kennels is about 200 feet, and the distance between the neighbor and the subdivision behind her on the narrow side of the property is less than 100 feet. She said the neighbor has children in elementary and middle school who are exposed to the barking noise night and day and that there was nothing they could do about it.

Ms. Roper said she would like the Board to address the issue. She added that she had a letter from one of the neighbors that she would turn in to the clerk. She also said that she and another neighbor have submitted emails.

Dr. Charles Battig (Scottsville District) said he was trying to figure out the mindset of the County regarding its embrace of the U.N.'s ICLEI proposals. He showed a chart of temperatures and warnings over the past 10,000 years and said that the "climate hysteria" seemed to be focused on a tiny red blip on the chart. He said many papers had been written and arguments have been falsified. He said Nature magazine was forced to retract a paper that purported climate and ocean warming.

Dr. Battig said that there were professors stating that the climate was sensitive to CO2 and that future warming will be large and will happen. He said that this was not supported by any direct evidence, but only a "shaking line of circular reason." He said last month, the County record said it would "reaffirm commitment to support local action to reduce climate pollution." He asked what climate pollution is, proposing that it was a meaningless and nonsense term that doesn't exist except for in the political realm.

Dr. Battig said the County was following the U.N., who says that climate is too complicated for them to predict the future climate states. He said the IPCC is not a climate research entity, but a political body targeting human energy activities. He asked why the County was following it and where the proof was. He indicated to a red line on a chart, explaining that it was what IPCC and the U.N. says will happen with global temperatures. He said the County was following something that was three times worse than it really was.

Dr. Battig said that people were dropping out of ICLEI and now, the County wants to go back to it. He said ICLEI is an international council, and that "sustainability" combines vagueness, fosters unaccountable bureaucratic control, ignores future scientific progress, and offers no recognized end point of success. He said the ultimate aim is to justify bureaucratic control of all personal property rights to save the environment.

Mr. Patrick Jackson (Samuel Miller District) said he was a member of the steering committee for Indivisible Charlottesville and would speak about the proposed rules for the public's use of County office buildings. He said Indivisible Charlottesville is an organization composed of thousands of members in Charlottesville, Albemarle, and surrounding counties who are involved in petitioning the government for addressing grievances and for making better policy. He said the organization has held rallies on the grounds of the County Office Building in the past, including supporting action on the scientific consensus of global warming, and that they would continue to hold rallies in the future.

Mr. Jackson said the proposed rules were an improvement over the current policy, which he said was blatantly unconstitutional. He said, however, that they do not go nearly far enough in protecting the First Amendment rights of the County's citizens. He said the classification of most of the grounds of the building is "Free Speech Free Zones" is arbitrary and is out of step with historical practice. He expressed that the absurdity of the rules was highlighted by the fact that the proposed policy includes an extensive section governing how many people wearing expressive T-shirts can transit from the parking lot to the Free Speech zones without violating the proposed policy.

Mr. Jackson said that every member of the Board has engaged in campaign events in areas that the proposed policy would put off limits to the free speech of the citizens of the County. He said the Board

members did this because they recognize that they are areas that are good places for doing politics in public without doing damage to the grounds of the building, and because they can practice free speech there without inhibiting any functions of the County government.

Mr. Jackson urged the Board to reject the proposed amendment to the policy and to look at expanding, as far as possible, the rights of citizens to engage in free speech on the grounds of the building that the community collectively owns. He said that when citizens come together to do politics in public, they should be celebrated and not restricted.

Ms. Jennie Moody (White Hall District) said she was offering her comments not only as a concerned citizen, but as one with specialized training as a research meteorologist. She said over the course of a 30-year career on the faculty in the Environmental Sciences department at UVA, she has worked with teams of atmospheric scientists from NASA and NOAA, and with several universities characterizing the large-scale transport of man-made pollution from urban and industrial sources to remote locations of the globe.

Ms. Moody said that experience has taught her that, at its best, scientific knowledge can be applied to informed policy, and policies can lead to mitigation of a problem. She said this was the case with acid rain, that a large consensus of research illustrated that precipitation acidity was driven by high emissions associated with transport from coal-fired power plants. She said when these emissions were reduced, or capped, as a result of the Clean Air Act Amendments passed during the George H.W. Bush administration, it led to lower sulfate, and a corresponding increase in the recovery of pH.

Ms. Moody said that addressing climate change is a bigger challenge with a complex set of issues. She said that to affirm this reality, she wanted to commend the Board of Supervisors for taking a step at the local level to establish ambitious greenhouse gas reduction goals. She said she was excited that there was expanding awareness that switching from fossil fuels to renewable energy makes sense in both economic and environmental terms. She said there is public recognition of the dual payback of emissions reductions and money saving from energy efficiency upgrades, and that there is increasing public understanding of the important role that land use decisions can play in efforts to remove carbon from the atmosphere.

Ms. Moody said that forward-thinking work that addresses climate change is integral to many programs at UVA, from the Sustainability major to the Resilience Institute. She said those in Central Virginia are lucky to live in a thoughtful, vibrant community with a strong renewable energy sector, with climate justice awareness, and with climate action leadership offered by non-profit organizations such as the Local Energy Alliance Program, the Charlottesville Climate Collaborative, and Generation 180. She said that together, these organizations raise the level of local cooperation.

Ms. Moody acknowledged her personal interests have turned from her own air pollution research to a larger interest in raising awareness for climate solutions. She said the challenge requires broad citizen engagement. She encouraged the Board to allow them to set ambitious goals and do the important work to implement them at the local level and beyond. She said it was their responsibility to the future, and that the Board's action today gave her hope.

Mr. Jim Andrews (Samuel Miller District) said he was a retired physics professor from the University of Ohio, with long-term connections to the area through family, noting that his mother-in-law was Jane Hayward (conservationist and environmentalist). He said he has had connections to the Samuel Miller District for a long time and that he was very concerned about climate change. He urged the Board to pass the resolution on community-wide greenhouse gas emission reduction targets.

Mr. Andrews acknowledged that one weather event was not an indication of climate change, but that in recent years, extreme weather has become more common. He said on his property, he has experienced severe flooding, drought, and wildfires and that these extremes were likely to get worse, especially if no effort is made across the Board to reduce greenhouse gas emissions. He said leadership was needed on this.

Mr. Andrews said he has personally added 35 solar panels to his farm, put in numerous trees, changed light bulbs, and gave his neighboring family additional solar panels. He said that leadership is needed from local government and beyond, and he urged the County to take on the task of reducing greenhouse gas emissions. He expressed that the County doing this would be an example not only to area leadership, but to counties throughout Virginia and beyond. He said it was important for everyone's futures, energy security, land use, rural inefficiencies, etc.

Mr. Jeff Walden (North 29/Hollymead) said he was representing Peace Lutheran Church at Broad Crossing Road in the Hollymead area. He said the congregation is a part of the Evangelical Lutheran Church of America, and that this organization has published a statement on climate change endorsing advocacy on climate issues. He said the congregation has established a Creation Care workgroup, which he chairs, and the group has evaluated and taken actions to reduce emissions and was in the process of receiving bids for solar panel installation at the church.

Mr. Walden said the need to address the climate change issue at all levels of society is fundamentally important to the future of children and the communities in which they will live. He said the

Creation Care participants at Peace Lutheran fully endorse and support the Board's adoption of a resolution on greenhouse gas emission reduction goals.

Mr. Walden said that on a personal note, he has started multiple businesses since 2009 focused on climate change, greenhouse gas emissions reductions, land conversation, and bioenergy. He said he was convinced that addressing climate change can be an economic growth engine for counties in Virginia by attracting new businesses, reducing energy costs, and making localities more resilient as climate change impacts are felt in coming years. He thanked the Board for its work on the issue and offered his assistance to them in a volunteer capacity to County staff as it prepares its climate action plan.

Ms. Andrea Bostrum (Rio District) said she was the new residential program manager at the Charlottesville Climate Collaborative and that in her time away from the office, she manages the home she shares with her two young sons. She said in her previous career, she was an environmental engineer and that in this career, she designed solutions for extreme weather occurrences – occurrences that destroy homes, city and county infrastructure, and tragically in some cases, lives. She said she was a mom who lives in the County and cares deeply about climate change, having seen its impacts on a local level.

Ms. Bostrum said she aimed to channel her passion, and what sometimes feels like a sense of urgency, into her work at C3. She said she hoped to develop and implement strategic plans that can both build on the collective power of individuals and also yield tangible results, meaning the ability to measure the impact of their efforts against a baseline greenhouse gas emissions inventory. She said she would need the Board's help to do this.

Ms. Bostrum said that adopting a resolution to establish community-wide greenhouse gas emissions encompasses both the collective and the tangible and is also the foundation of any strategic planning that the Board will do around climate action. She said establishing a numerical goal, specifically, one that includes reducing countywide emissions by 45% by 2030 and carbon neutrality by 2050 is a powerful tool for action, and a fundamental first step towards reducing the collective carbon footprint.

Ms. Bostrum noted that this was not the sum total of what the community needs from its County government. She said investment in renewable energy is also needed towards creating energy efficiencies and making them more accessible to a wider range of households in the County. She said the community needs the promotion of public- and private-led initiatives that can increase public awareness around climate change and that can support programs that help individuals reduce their own carbon footprint.

Ms. Bostrum said that data is needed in the form of an emissions inventory every two years to mark the County's progress. She said numbers are empowering, authentic, and can be inspiring. She urged the Board to make a numerical commitment to reducing the County's greenhouse gas emissions.

Mr. Rex Linville, Piedmont Environmental Council, said he is on the Board of Directors for the Virginia United Land Trust. He said he would specifically talk about the Board's legislative priorities as they relate to open space easements and the role that the Albemarle County Conservation Easement Authority plays in the County.

Mr. Linville said the Easement Authority has become one of the dominant easement holders in Virginia, which holds nearly 160 easements on about 25% of all the protected land in the County of about 25,000 acres. He said that more and more, the landowners he is working with in encouraging to preserve their properties, are putting easements on their properties with the County Easement Authority.

Mr. Linville said the legislative priorities he wanted the Board to consider adding to its list that could help the Easement Authority are two-fold. He said the first is that there is a 2% transfer fee in Virginia when landowners who put properties under easements sell their land preservation tax credits. He said that a portion of the 2% transfer fee is supposed to be used to help fund the long-term stewardship of conservation easements in Virginia, but for the past few years, a portion of this money, about \$600,000 a year, has been diverted into the General Fund and is not going back to easement holders.

Mr. Linville said the land conservation community, state-wide, is trying to encourage the governor's budget to include the full \$600,000 to go back to land conservation and go where it was legislatively intended, which is to easement holders such as the local authority. He said this would help with their funding stream.

Mr. Linville said the second item was also related to the land preservation tax credit, which was that the users of those credits, starting in 2020, are supposed to be able to use as much as \$50,000 in credit per year. He said in 2019, it was \$20,000, and every so often, the General Assembly throws in a bill for budgetary reasons that tweaks this back down to \$20,000. He said he would like to see it go where it is supposed to, which is back up to \$50,000. He said that adding this into the open space portion of the Board's legislative priorities would help with land conservation efforts in Albemarle County.

Mr. Linville said that both issues were very timely and that he was glad the Board was looking at them presently. He said the governor's budget would be released soon, and having more local bodies impressing upon the governor's office and his administration about how important local land conservation is would be helpful.

Ms. Palmer asked Mr. Linville if he could email the Board this information.

Mr. Linville replied yes, adding that he has shared this with the chairman of the Easement Authority Board, and that Richard DeLoria has seen a draft letter that he prepared to this effect.

Ms. Beth Kuhn (Jack Jouett District) said she recently retired from Albemarle County Public Schools and was becoming involved in the sustainability and climate action movement. She said she has read the Climate Action Plan and was thrilled with the proposals that will both strengthen the community and will address its climate action goals. She said she spoke in support of the resolution to establish a community-wide greenhouse gas emissions reductions target.

Ms. Kuhn said that as she was reading the Climate Action Plan, the Soil Conservation and Farm and Land Use section at the beginning, she felt as if small farms in particular, which could also include urban farms in Charlottesville and community gardens, deserve some special mention and consideration. She said they are an important part of the local food security system, add value to the community and restaurants with artisan products, and often are already organic and invested in soil sustainability. She said those farms also may be able to pilot new projects, not only to go beyond soil sustainability, but into soil regeneration. She said she felt as if this would be a valuable addition to the plan.

Ms. Kuhn thanked the Board for its efforts in supporting the County's needs for climate action.

Mr. Morgan Butler, with the Southern Environmental Law Center (SELC), said that SELC would like to add its voice to the course of individuals and groups urging the Board to adopt the resolution establishing a serious, countywide climate emissions reductions goal. He said it has been more than eight years since a slim majority of a prior Board of Supervisors was convinced to "bury the County's head in the sand" on climate change. He said with an issue of this urgency, when the stakes are so high and where the changes needed are so major, that time that was lost was an eternity.

Mr. Butler said to be sure, subsequent boards dedicated County staff members, and countless members of the community have taken important steps in the meantime. He noted that had the County, during that time, been able to consistently exercise the full-throated leadership that was needed on the issue, it would be much further along in its efforts to cut local greenhouse gases.

Mr. Butler said adopting the resolution would help to gain back some of the ground – not just in a narrow sense that it sets a strong goal that will help galvanize the development of a robust, local climate action plan in the County, but in a broader sense, it will set a powerful example for other localities. He said it would put Albemarle's influential name on the small, but growing, list of Virginia localities who understand the crucial role that local government must play on the issue and who are finally prioritizing climate action at the local level.

Mr. Butler said that by adopting the resolution, the Board will inspire other localities around Virginia, and hopefully, the entire country to step up and make a serious commitment to tackling climate change. He said the hardest work still lies ahead, but the resolution shows that Albemarle County is once again ready to claim the mantle of leadership on the issue. He urged the Board to adoption the resolution.

Mr. Sean Tubbs, with the Piedmont Environmental Council, said that the Board was set to take a vote on a target for greenhouse gas emissions, which was a noble goal, and one that PEC predicts will pay dividends in terms of the environment, the economy, and quality of life. He said that in addition to the goal, PEC also salutes the Board for the investments the Board has been making in community mobility. He said that emissions from transportations are the largest contributor to GHGs in the Commonwealth, and therefore the PEC feels it is important for everyone to consider how they move around the world and choose to drive less.

Mr. Tubbs said he has made a personal commitment to make transit work for him, and that he arrived at the meeting on the Route 6 of CAT in the rain. He said he chooses not to drive because he knows there is an alternative and one that he personally feels is better for him in terms of quality of life. He said he embraces this adventure every day and will continue to use transit to inform PEC's work on trying to make a much more functional regional transit system and bike-ped network.

Mr. Tubbs said that as the Board considers the resolution, PEC wanted to draw attention to the language in the resolution that recognizes the co-benefits of investment in multi-modal infrastructure. He read the section out loud, "Actions that reduce GHG emissions and increase energy efficiencies often have multiple co-benefits such as a cleaner environment, energy security, long-term cost savings, and a better quality of life for residents."

Mr. Tubbs added that if the County can pull off the transit part and the bike-ped connectivity, it will also result in a reduction of traffic congestion. He said this is what PEC has been expressing for years as it has encouraged the implementation of a Comprehensive Plan that respects the rural landscape while promoting better urban places.

Mr. Tubbs said that the County was heading in the right direction in terms of growth management, and efforts like the Rio Road Small Area Plan will provide guidance towards the more efficient use of land

and the creation of a vibrant urban center. He said that many of the younger people who have spoken previously to the Board on this matter are looking for this sort of environment, and they want to live closer to work and want options. He said the County was not there yet, but PEC views the vote on the resolution as a commitment to smart growth from the Board and making thoughtful decisions about land use and development. He said PEC salutes and applauds the Board for getting climate action back on track.

Mr. Richard Fox (Jack Jouett District) disclosed that he is Steve Harvey's campaign manager, but that he was speaking on behalf of himself and his farm, Roslyn Farm, as well as about some rumblings he has heard in the Scottsville and White Hall Districts that relate to the dog ordinance. He said if the Board strikes the language it is discussing striking, he could be facing a fine if he allows his dog to go out at night to use the restroom 5 feet away from his porch. He said that someone could call the police, who is already understaffed and overworked. He said he has concerns with his dog being able to run freely on his farm, and about others in this scenario, and not having to tie their animals up.

Mr. Fox said although the community understands that the intentions are coming from a good place, but that this would be an unintended consequence that is taking the matter one step too far. He said that not everyone can afford, nor they should be forced to have to install, electric fencing or physical fencing barriers along their properties.

Mr. Fox said that speaking personally, he was glad that the County was acting on climate to determine how it can be the best stewards of its environment, climate, and community. He said that farmers were concerned that they would end up like California and that local government would be looking at their tractors that don't meet compliance requirements, or that there could be taxes on cattle or that organic fertilizers would be imposed. He said the conversation was great to have, but that the unintended consequences should always be understood.

Mr. Fox said that that Saturday at Mount Moriah Church, there would be an Apple Butter Day with a bake sale to benefit the Ashley Walton Foundation.

Mr. Dave Redding, with Eco Village Charlottesville, thanked the Board for the work it has been doing on climate change. He said that there was a small thing that could be done to increase density and perhaps increase the amount of green space in the County as they get to the fifth story that people want to live in. He said most people are driving smaller cars, and if the County made the parking spaces 8 feet wide instead of 9 feet, it would increase the density and green space. He said he has talked to people in the County about doing this, and it seems as if no one has ever asked to do this, which seemed strange to him as it would be a good way of creating more space.

Ms. Mallek said this was an example of how the Board receives wonderful ideas from citizens and encouraged them to continue.

Mr. Gallaway closed the public comment portion of the meeting.

Agenda Item No. 8. Consent Agenda.

Ms. Palmer brought up the amendment to the Woolen Mills Economic Opportunity Fund Performance Agreement, stating that she had already contacted staff about it and wanted to let the Board know what she said and asked for. She said she was concerned because the Board has already given the company the \$1 million in the Performance Agreement, and the construction is taking longer than expected.

Ms. Palmer said she thought it was appropriate to request a construction update so the public could see where they were in the construction. She said this was a good idea, especially when the County has Performance Agreements where they have already given money, as a grant, to the company. She said if there is an extension of construction, there should be a construction memo provided as an update. She said that Roger Johnson agreed that this would be a reasonable thing to do, and in November, the Board will receive a construction update, as will the EDA.

Ms. Mallek **moved** to adopt the Consent Agenda, with the exception of Agenda Item 8.4. Ms. Palmer **seconded** the motion.

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

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

NAYS: None.

ABSENT: Ms. McKeel.

Item No. 8.1. Authorization to Schedule Public Hearing for Ordinance to Amend County Code Chapter 4, Animals.

The Executive Summary forwarded to the Board states that County Code § 4-225 provides that a dog is deemed to be running at large and subject to seizure when it is "not under the owner's or

custodian's immediate control." Under this description, a dog may be "under the owner's or custodian's immediate control" even when it is not on a leash. As a result, dogs may be walked unleashed on public streets and sidewalks. Since Chapter 4 was comprehensively amended in October 2018, some Board members have received complaints from constituents encountering dogs in public places that were not on leashes. The County already requires that dogs in County parks, which include any County-owned property used for recreational purposes, to be leashed and under owner or custodian control except in designated areas where dogs may be unleashed. (County Code § 11-120)

The attached proposed Ordinance (Attachment A) would amend County Code § 4-225, Dogs running at large is prohibited, to require that dogs be on a leash rather than under its owner's or custodian's immediate control to not be deemed a dog running at large.

The proposed ordinance provides five exceptions to the leashing requirements under prescribed circumstances: (1) when the dog is fenced (physical or electronic) on the owner's or custodian's property; (2) when hunting with a licensed hunter; (3) during field trials or training; (4) within a fenced dog park or exercise area; and (5) when the handler of a service dog is unable to use a leash or other equipment to leash the dog.

Any increased workload could be managed by existing staff.

Staff recommends that the Board schedule a public hearing to consider the adoption of the attached proposed Ordinance (Attachment A).

By the above-recorded vote, the Board authorized the Clerk to schedule a Public Hearing to consider the adoption of the attached proposed Ordinance (Attachment A):

Draft: October 3, 2019

ORDINANCE NO. 19-4()

AN ORDINANCE TO AMEND ARTICLE 2, DOGS, OF CHAPTER 4, ANIMALS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Article 2, Dogs, of Chapter 4, Animals, is hereby amended as follows:

By Amending and Renaming:

Sec. 4-225 Dog running at large is prohibited; when a dog is required to be leashed.

Chapter 4. Animals

Article 2. Dogs

Division 4. Dogs Running at Large and Dogs Damaging Livestock or Poultry

Sec. 4-225 Dog running at large is prohibited.

An owner shall not allow his dog to run at large in the County, subject to the following:

- A. *When a dog is deemed to run at large.* For the purposes of this section, a dog is deemed to “run at large” ~~while roaming, running, or self hunting off the property of its owner or custodian and not under its owner’s or custodian’s immediate control if it is not firmly secured by a physical leash or lead attached to a collar or harness and under the control of a responsible person capable of physically restraining the dog.~~
- B. *When a dog is not considered to be running at large.* A dog is not considered to “run at large” in the following circumstances:
 1. Physical or electronic fence on the owner’s or custodian’s property. When a dog is in a securely fenced space on the owner’s or custodian’s property. The fence may be either physical or electronic.
 2. Hunting. If, during the hunting season, it is on a bona fide hunt in the company of a licensed hunter ~~or~~.
 3. Field trials or training. ~~During~~ field trials or formal obedience, agility, or similar training periods when the dog is accompanied by its owner or custodian.
 4. Fenced dog park or exercise area. When the dog is in a securely fenced, specifically designated dog park or dog exercise area established by the County or another governmental entity, a homeowner’s association, or community organization, where the fence enclosing is designed to prevent a dog from escaping.
 5. Service dog; when leashing is not required. The dog is a service animal whose handler, because of a disability, is unable to use a harness, leash, or other tether, or the use of such device would interfere with the service dog’s safe and effective performance of work or tasks, provided that the service dog is otherwise under the handler’s control through voice control, signals or other effective means.

Draft: October 3, 2019

C. *Seizure, impoundment, and disposition.* Any dog observed or captured while unlawfully running at large and not in the presence of its owner or custodian shall be seized, impounded, and disposed pursuant to Virginia Code § 3.2-6546(B), (C), and (D).

(§ 4-225; (§ 4-200: 7-19-73; 8-22-73; 9-26-73; 11-15-73; 12-19-73; 1-3-74; 1-23-74; 3-24-77; 5-22-74; 10-9-74, 1-22-75; 3-10-76; 4-21-76; 12-7-77; 5-22-78; 6-21-78; 10-7-81; 5-21-86; 5-13-87; 9-16-87; 11-4-87; 12-16-87; 9-8-88; Ord of 1-17-90; Ord. of 8-8-90; Ord. No. 94-4(2), 8-17-94; Ord. No. 94-4(3), 12-7-94; Ord. No. 95-4(1), 1-4-95; Ord. No. 95-4(2), 9-6-95; Code 1988, § 4-19; Ord. 98-A(1), 8-5-98; Ord. 98-4(1), 12-2-98; Ord. 00-4(1), 5-3-00; Ord. 03-4(2), 3-5-03; Ord. 04-4(1), 5-12-04; Ord. 05-4(1), 12-7-05; Ord. 06-4(1), 12-6-06, § 4-213; Ord. 09-4(1), 7-8-09; Ord. 09-4(2), 10-7-09; Ord. 12-4(1), 4-11-12)(§ 4-213; Code 1967, § 4-26; 4-13-88; Code 1988, § 4-29; Ord. 98-A(1), 8-5-98, § 4-309; Code 1967, § 4-31; 4-13-88; Code 1988, § 4-34; Ord. 98-A(1), 8-5-98, § 4-314; Code 1967, § 4-32; 4-13-88; Code 1988, § 4-35; Ord. 98-A(1), 8-5-98; Ord. 05-4(1), 12-7-05, § 4-315; Ord. 08-4(2), 9-3-08, § 4-308; Ord. 09-4(1), 7-8-09); § 4-225, Ord. 18-4(1), 10-3-18)

State law reference - Va. Code §§ 3.2-6538, 3.2-6539, 3.2-6544(B);

I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Dill	_____	_____
Mr. Gallaway	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Palmer	_____	_____
Mr. Randolph	_____	_____

Item No. 8.2. Amendment to Woolen Mills Economic Opportunity Fund Performance Agreement.

The Executive Summary forwarded to the Board states that Albemarle County partnered with the Commonwealth of Virginia to support a project at the Woolen Mills site for the relocation and expansion of WillowTree, Inc. to become the anchor tenant in a redeveloped corporate campus. Albemarle County also provided a \$1 million investment in infrastructure for the redevelopment of this unique site. Due to revisions in the construction schedule, the target date of the infrastructure investment performance agreement needs to be amended with an updated date of completion.

On September 12, 2018, the Board authorized the County Executive to execute a performance agreement with Woolen Mills, LLC and the Albemarle County Economic Development Authority on behalf of the County regarding the \$1 million infrastructure investment associated with this project (Attachment A). This investment targeted the following specific public serving uses:

- public parking for recreational amenities
- pedestrian bridge and trail linkage
- transit improvements - shuttle partnership.

Justification for County incentives for the Woolen Mills redevelopment/WillowTree relocation is as follows:

- Consistent with Comp Plan in areas of land use, economic development, and transportation
- Supports redevelopment, placemaking, and economic development
- 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.

When the performance agreement was executed in 2018, the completion date for the project was expected to be December 31, 2019. As the construction progressed, that date has been adjusted by the developer to June 30, 2020. This date change is acceptable to the tenant, WillowTree. The dates referenced in the performance agreement need to be amended to reflect this updated schedule. The attached First Amended Agreement (Attachment B) includes the revised date of June 30, 2020, acknowledges the County's and EDA's timely performance, and extends the term to August 31, 2020.

No budget impact.

Staff recommends that the Board adopt the attached Resolution (Attachment C) to approve the First Amended Agreement and to authorize the County Executive to sign the First Amended Agreement on behalf of Albemarle County once it has been approved as to substance and form by the County Attorney.

By the above-recorded vote, the Board adopted the attached Resolution (Attachment C) to approve the First Amended Agreement and to authorize the County Executive to sign the First Amended Agreement on behalf of Albemarle County once it has been approved as to substance and form by the County Attorney:

**RESOLUTION TO APPROVE THE
FIRST AMENDED ECONOMIC OPPORTUNITY FUND
PERFORMANCE AGREEMENT FOR THE
REDEVELOPMENT OF THE WOOLEN MILLS SITE**

WHEREAS, the Board of Supervisors approved a Performance Agreement between the County, Woolen Mills, LLC, and the Albemarle County Economic Development Authority regarding the redevelopment of the Woolen Mills site in anticipation of WillowTree, Inc.'s expansion and relocation to the site; and

WHEREAS, the Board finds it is in the best interest of the County to enter into a First Amended Agreement to revise the project completion date and contract term.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia hereby approves the First Amended Agreement between the County, Woolen Mills, LLC, and the Albemarle County Economic Development Authority, and authorizes the County Executive to execute the First Amended Agreement on behalf of the County once it has been approved as to substance and form by the County Attorney.

Item No. 8.3. ZMA201500007 Brookhill Special Exception to Code of Development.

The Executive Summary forwarded to the Board states that the applicant is requesting a special exception to vary the Code of Development (COD) for Brookhill approved with ZMA201500007 as follows:

Variation #3: Variation to rearrange the maximum number of units and densities between Blocks 4 and 8 in the Code of Development.

The applicant's proposal and plans are included in Attachment A. Staff's analysis of the criteria in County Code §18-8.5.5.3 are included in Attachment B.

Staff recommends that the Board adopt the attached Resolution (Attachment C) to approve the special exception.

By the above-recorded vote, the Board the attached Resolution (Attachment C) to approve the ZMA201500007 Brookhill Special Exception to Code of Development:

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
TO VARY THE CODE OF DEVELOPMENT
APPROVED IN CONJUNCTION WITH ZMA201500007 BROOKHILL**

WHEREAS, the Owner of Tax Parcels 04600-00-00-01800; 04600-00-00-018A0; 04600-00-00-019A1; 04600-00-00-019A2; 04600-00-00-019B1; 04600-00-00-019B3; and 04600-00-00-019B4 filed a request for a special exception to vary the Code of Development approved in conjunction with ZMA201500007 Brookhill to allow a minor modification to rearrange the maximum number of units and densities between Blocks 4 and 8.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the Memorandum prepared in conjunction with the special exception request and the attachments thereto, including staff's supporting analysis, and all of the factors relevant to the special exception in Albemarle County Code §§ 18-8.5.5.3, 18-33.43 and 18-33.49, the Albemarle County Board of Supervisors hereby approves the special exception to vary the Code of Development approved in conjunction with ZMA201500007 Brookhill as requested, subject to the condition attached hereto.

* * *

**Special Exception to Vary the ZMA201500007 Brookhill
Code of Development Condition**

1. The Code of Development modification to rearrange the maximum number of units and densities between Blocks 4 and 8 shall be limited as set forth in the correspondence from Collins Engineering to Cameron Langille, Senior Planner, Department of Community Development, dated May 6, 2019, revised on July 15, 2019, including a graphic of Table 5 setting forth the Density Regulations by block as proposed in this special exception request.

Item No. 8.4. Special Exception for Disturbance of Critical Slopes for B2019-01427-SF on TMP 63-19E.

The Executive Summary forwarded to the Board states that the applicant has requested a special exception to allow the disturbance of critical slopes for the construction of a single-family dwelling unit on Tax Map Parcel 06300-00-00-019E0 as follows:

1. Request to disturb critical slopes in the Rural Area for construction of single-family dwelling unit on Tax Map Parcel 06300-00-00-019E0 pursuant to County Code §18-4.2.5(a).

Please see Attachment A for staff's analysis and recommendation.

Staff recommends that the Board adopt the Resolution (Attachment G) to approve the special exception request with the condition contained therein.

* * * * *

Mr. Randolph said that Ms. Palmer had raised a question about the sewage field and that his major issue was that he has never before seen a case where there was a piece of property in the rural area where a road has been put in for the purpose of withdrawing the trees, thereby utilizing the trees on the property and farming them. He said the road was then built in such a way that it is designed not as a farm road for the extraction of trees, but as an access road for not a permitted agricultural activity, but for residential activity that was otherwise not going to be permitted. He said that having the road more or less constructed, Mr. Butler's letter to the Board raised good questions about the degree of completion of that access road.

Mr. Randolph said he thought it would be valuable for the Board to discuss the precedent and implications of the issue, moving forward.

Ms. Palmer said that the forestry loophole has been used before, and that Ms. Mallek has brought it to the Board's attention. She said she did not know about the degree of the road construction and asked the question as to if there was an alternative sewage field because from her understanding, it seemed as though there may not be. She said it seemed as though there was, but that staff was going to come back with a more complete answer on this.

Ms. Palmer said that it was clear that the road was built as a house site. She said she would also like to know what the elevation is. She said that in reading the Comprehensive Plan two weeks earlier, she saw in the Natural Resource section that there is a Mountain Contour List and that this was another thing to consider because it seemed as though the elevation was over 750 feet. She said she was just receiving a note from Mr. Randolph that it was 990 feet, noting it was quite high.

Ms. Palmer agreed that the suggestion to send this to the Planning Commission to make sure that the issue has been looked at completely and determine if there were any other restrictions on this would be a very reasonable thing to do. She said the issue was very problematic and that in reading the information from the County's planning staff, it was very clear that staff struggled with it. She said that perhaps this was the only building site and that they would build in the water protection area if they didn't build on the mountaintop, but that this was clearly where they wanted to build.

Ms. Palmer suggested having more time for the Planning Commission to look at other disturbances and see if more restrictions should be put on the critical slopes as they go through the process.

Mr. Randolph agreed. He said the only correction he would make was that according to the figures on the topographical map, they would be building on the slope, rather than at the top. He said the map runs out at about 1,266 feet, and the building site as indicated was somewhere around 990 feet on the slope leading up to it.

Ms. Palmer said this could be an even more important reason (building on the slope) to have the Planning Commission look at the issue.

Ms. Mallek said she was glad the issue resulted in further discussion and that she did support sending it to the Planning Commission, if this is what the process already dictates, to allow them more time to weigh in. She said her question was to the timing of when the forestry was done first, and then in a short period of time, another action was taken to do something else. She said she knew there had been

discussion for a number of years and supposed that nothing was accomplished, that Mark Graham had talked about having a time lapse between when one put in an unregulated road for an agri-forestry situation, and the time when it could be turned around to become something else, a residence or multiple residences.

Ms. Mallek said that the previous occasion she had was in Advance Mills more than 20 years earlier where a farm road was put in 50 yards away from the 100-year-old farm road and the County did not interact at the time to stop it. She said it very quickly because a subdivision and resulted in serious environmental consequences to the north fork of the Rivanna River because of the runoff that was not properly prepared for. She said this was a good example of what happens in the transition between agriculture or forestry and residential, and that this was a trap that the County has fallen in multiple times. She said there were learning opportunities and that she hoped the issue would be taken up with the Planning Commission.

Mr. Greg Kamptner, County Attorney, said this was what was called an "agricultural road" under the Water Protection Ordinance and that it has been problematic over the years. He said that, in a large part, the loophole that existed was closed and that the County established a waiting period in which one could not apply for a rezoning or submit a subdivision plat, site plan, or Special Use Permit within 24 months within the creation of the agricultural road. He explained that this application only needs a building permit and that it falls outside of the current regulations. He said the loophole was closed, but it was not entirely closed. He said that when something has been built in a non-agricultural way, this is what raises a concern.

Ms. Palmer asked if it was possible to close this remaining part of the loophole.

Mr. Kamptner said this could be tried, and that the rule was put in place before the 2014 state stormwater laws that the current ordinance implements. He said he would like to look at this to make certain that the County is still consistent with the state law.

Ms. Palmer asked if, in the meantime, the Board could send the issue back to the Planning Commission to determine if more restrictions should be put in place to protect the critical slopes.

Mr. Kamptner replied that the Water Protection Ordinance was something within the Board of Supervisors' domain, but to have the Planning Commission to look at this particular Special Exception application was within the policies as to how the Board deals with Special Exceptions.

Ms. Mallek asked if this would also give the Board the opportunity to receive more feedback from staff about alternatives.

Mr. Kamptner explained that it was difficult to fully extract, the staff report notes that all the land disturbing activity has been completed. He said the applicant's letter does seem to state that there will be future disturbances of critical slopes and that this ambiguity needs to be resolved. He said there may be a simple answer to this.

Mr. David Benish, Chief of Planning, said that staff's evaluation was based on the fact that with the agricultural activity and the road construction, there have been impacts to the critical slopes. He said there may be additional impacts with the construction, but that the road was largely in, and that the critical slopes have been impacted.

Mr. Benish said that conversely, the stream buffers have not been impacted, and having a choice between the option under the Water Protection Ordinance (WPO) for allowing construction within the stream buffer, staff's preference was to protect the stream buffer over the already impacted critical slopes. He said staff was simply acknowledging that there had been some impacts, and that this was something that could further be vetted with the Planning Commission.

Ms. Mallek said that part of the mystery of the application was that the lot had existed before and that the rules had changed, which complicated the matter.

Mr. Benish said this was correct, that the lot was created in 1984, which was prior to the WPO. He said it was a building site that included some of the areas that are now considered streams. He said when the ordinance was adopted, it created stream buffers in areas that were available for development. He said under the WPO, when a site does not have a building site on it any longer, there was the option of one building site location to be located within a stream buffer on the existing property that existed prior to the ordinance. He said that this was the option that was available to the property owner, since it was an existing lot. He said staff's preference, given the circumstance, was to allow for a building on the already-impacted critical slopes.

Ms. Palmer said that clearly, the applicant wanted to build on the higher ground, and that she couldn't imagine that there would be any objection to having the Planning Commission make sure that they are looking at all the impacts.

Mr. Benish said that as Mr. Kamptner indicated, this was the policy that is set, that if the applicant doesn't agree with conditions of staff or if staff recommends it goes to the Planning Commission first, the Board of Supervisors has the option to refer back to the Commission.

Ms. Palmer asked if this was not a mountain that was listed on the Mountain Contour list.

Mr. Benish replied that the County did not adopt a Mountain Protection Ordinance and that the Comprehensive Plan still identifies what the County considers to be mountain resources. He said in the subject area is a 700-foot contour that was identified, and the building site would be within what the County would consider to be a Mountain Protection Area.

Ms. Palmer said she thought there was a list of things that were suggested in the Comprehensive Plan.

Mr. Benish replied that there are guidelines in the plan as to how the County would like to see development take place.

Mr. Gallaway asked Mr. Dill if he had any objection or support for sending the matter back to the Planning Commission.

Mr. Dill replied that he supported it.

Ms. Palmer asked if a vote was needed.

Mr. Gallaway replied yes. He said he would likely vote against this, not having any counterpoints or objections to the points and concerns being made on the property, but that a few weeks earlier, there was a Community Development workplan put before the Board and that they were voicing their frustrations over the time that it takes to get things done. He said coming into this matter, which staff has vetted and given a recommendation on, it takes up capacity in the Community Development area to get to other things that the Board has prioritized.

Mr. Gallaway said he read the full packet for the application and felt compelled to move forward in support on the consent agenda. He pointed out he was happy that it goes back and receives extra vetting as this was the consensus of the Board, and that he was not actually in objection to any points, but anytime the Board decides to take on extra items, it adds to the capacity load of an overworked department and getting to the priorities the Board has set.

Ms. Palmer said she considers the critical slopes a priority of the Board, which is why she brought up the matter.

Ms. Mallek agreed, expressing that this would prevent other items from following the same path.

Mr. Randolph moved that the Board send the Special Exception for Disturbance of Critical Slopes for B2019-01427-SF on TMP 63-19E to the Planning Commission. The motion was seconded by Ms. Palmer.

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

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

NAYS: Mr. Gallaway.

ABSENT: Ms. McKeel.

Item No. 8.5. Resolution to accept road(s) in the Old Trail Subdivision Blocks 28 and 29 into the State Secondary System of Highways.

By the above-recorded vote, the Board adopted the Resolution to accept road(s) in the Old Trail Subdivision Blocks 28 and 29 into the State Secondary System of Highways:

R E S O L U T I O N

WHEREAS, the street(s) in **Old Trail Block 15 Subdivision**, as described on the attached Additions Form AM-4.3 dated **October 16, 2019**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Old Trail Blocks 28 29**, as described on the attached Additions Form AM-4.3 dated **October 16, 2019**, to the secondary system of state highways, pursuant to §33.2-705, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right- of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for

the Virginia Department of Transportation.

* * * * *

In the County of Albemarle

By resolution of the governing body adopted October 16, 2019

The following VDOT Form AM-4.3 is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee
Signed (County Official):

Report of Changes in the Secondary System of State Highways

Project/Subdivision Old Trail Blocks 28 And 29

Type Change to the Secondary System of State Highways: Addition

The following additions to the Secondary System of State Highways, pursuant to the statutory provision or provisions cited, are hereby requested; the right of way for which, including additional easements for cuts, fills and drainage, as required, is hereby guaranteed:

Reason for Change: New subdivision street
Pursuant to Code of Virginia 33.2-705, 33.2-334
Statute:

Street Name and/or Route Number

Ashlar Avenue, State Route Number 1913

Old Route Number: 0

From: Route 1815, Old Trail Drive

To: 0.05 Miles West to Orion Lane (PVT), a distance of: 0.05 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

Street Name and/or Route Number

Ashlar Avenue, State Route Number 1913

Old Route Number: 0

From: Orion Lane (PVT)

To: 0.05 Miles West to Belgrove Street (PVT), a distance of: 0.05 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

Street Name and/or Route Number

Golf View Drive, State Route Number 1835

Old Route Number: 0

From: Birchin Lane (PVT)

To: 0.03 Miles North to Route 1831, Belgrove Street, a distance of: 0.03 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

Street Name and/or Route Number

- ☐ **Golf View Drive, State Route Number 1835**

Old Route Number: 0

- ☐ From: Existing ESM

To: 0.03 Miles North to Birchin Lane (PVT), a distance of: 0.03 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

Street Name and/or Route Number

- ☐ **Ashlar Avenue, State Route Number 1913**

Old Route Number: 0

- ☐ From: Route 1831, Belgrove Street

To: 0.06 Miles West to Route 1830, Addle Hill Road, a distance of: 0.06 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

Street Name and/or Route Number

- ☐ **Addle Hill Road, State Route Number 1830**

Old Route Number: 0

- ☐ From: Birchin Drive (PVT)

To: 0.02 Miles South to Route 1913, Ashlar Avenue, a distance of: 0.02 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

Street Name and/or Route Number

- ☐ **Belgrove Street, State Route Number 1831**

Old Route Number: 0

- ☐ From: Fennel Road (PVT)

To: 0.01 Miles North to Birchin Drive (PVT), a distance of: 0.01 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

**Street Name and/or Route
Number**

- ☐ **Addle Hill Road, State Route Number 1830**

Old Route Number: 0

- ☐ From: Route 1913, Ashlar Avenue

To: 0.06 Miles South to Hazel Grove Lane (PVT), a distance of: 0.06 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

**Street Name and/or Route
Number**

- ☐ **Addle Hill Road, State Route Number 1830**

Old Route Number: 0

- ☐ From: Route 1835, Golf View Drive

To: 0.02 Miles South to Birchin Drive (PVT), a distance of: 0.02 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

**Street Name and/or Route
Number**

- ☐ **Belgrove Street, State Route Number 1831**

Old Route Number: 0

- ☐ From: Oldham Drive (PVT)

To: 0.02 Miles North to Route 1835, Golf View Drive, a distance of: 0.02 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

**Street Name and/or Route
Number**

- ☐ **Addle Hill Road, State Route Number 1830**

Old Route Number: 0

- ☐ From: Hazel Grove Lane (PVT)

To: 0.02 Miles South to Route 1816, Golf Drive, a distance of: 0.02 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

**Street Name and/or Route
Number**

- ☐ **Belgrove Street, State Route Number 1831**

Old Route Number: 0

- ☐ From: Birchin Drive (PVT)

To: 0.03 Miles north to Oldham Drive (PVT), a distance of: 0.03 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

**Street Name and/or Route
Number**

☐ **Belgrove Street, State Route Number 1831**

Old Route Number: 0

☐ From: Route 1913, Ashlar Avenue

To: 0.02 Miles North to Fennel Road (PVT), a distance
of: 0.02 miles.

Recordation Reference: DB 4556, PGS 173-179

Right of Way width (feet) = 0

Item No. 8.6. VACo 2019 Annual Meeting Voting Credentials.

By the above-recorded vote, the Board authorized Ann Mallek to serve as the Board representative to cast votes at the Annual Business Meeting of the Virginia Association of Counties.

Item No. 8.7. Rio29 Form Based Code Planning Commission Work Session Summary 9-17-2019., **was received for information.**

Agenda Item No. 9. **Action Item** – Resolution to Establish a Community-wide Greenhouse Gas Emissions Reduction Target.

The Executive Summary forwarded to the Board states that on September 18, 2019, staff presented a Resolution to establish a community-wide greenhouse gas emissions reduction target for consideration by the Board (See Attachment A for September 18 executive summary). During that meeting, many members of the public spoke in favor of the target, and the Board directed staff to submit the Resolution for its consideration and approval at a future meeting.

The Resolution is presented for the Board's consideration and approval.

Budget requests associated with the final Climate Action Plan will proceed through regular Operating and Capital budgeting processes.

Staff recommends that the Board adopt the attached Resolution to Establish a Community-wide Greenhouse Gas Emission Reduction Target (Attachment B).

Mr. Andy Lowe, Environmental Manager from Facilities and Environmental Services (FES), presented. He personally thanked the Board for the opportunity to present the resolution. He recalled that work has been ongoing since 2011, when the previous target and resolution was rescinded.

Mr. Lowe said it was a resolution to establish a community-wide greenhouse gas emissions reduction target, which was specifically to reduce the community-wide emissions by 45% by the year 2030, and be net zero by 2050, basing it on calendar year 2008 emissions inventory as the baseline. He said the target was in line with the recommendations from the Intergovernmental Panel on Climate Change and that the Charlottesville City Council approved the same goal and milestones earlier that year, as well as many other communities, local and state governments, businesses, utilities, and other organizations. He said it was the "gold standard" in community emissions reductions targets with the information that is currently available.

Mr. Lowe said that staff first presented the goal as a recommendation from the Coordination and Steering Team, which comprised more than 20 staff and leaders of the organization, and other organizations such as UVA and the Thomas Jefferson Planning District Commission (TJPDC). He said there has been consensus throughout their public engagement about the goals being the right target for Albemarle County. He said they have heard from many individual citizens, advocates, groups, businesses, schools (both public and private), and even that morning he had received many emails from the Renaissance School, Tandem, and Peabody School.

Mr. Lowe said the focus is on making substantial emissions reductions in Albemarle County with the Climate Action Plan that is forthcoming. He said staff was present to answer any questions the Board has regarding the target and that they would need a motion after the discussion to get to approval.

Mr. Randolph said that Mr. Lowe cited on page 2 of the resolution that the annual cost for the use of the software, Clear Path, for ICLEI members is \$1,750. He asked if there was any cost for the County to be a member of ICLEI, outside of the software cost.

Mr. Lowe replied no, that the membership includes resources and a couple of tools, including the

Clear Path software. He said the \$1,750 cost includes membership, the resources, and access to individual professionals.

Ms. Palmer said she would vote in support of the resolution and that her comments would not affect that. She said the County has not yet developed a clear and consistent method of incorporating the greenhouse gas emissions into its criteria of decision making. She said that the day before, she attended the CIP subcommittee and that Ms. Mallek had pointed out that on the joint meeting with the School Board, the Climate Action Plan was being considered as integrated and interwoven in everything that is done, and therefore it didn't make it to the top 10 project priorities. She said the discussion was pointing out the problem here in how the boards go through their CIP planning.

Ms. Palmer pointed out that the Board was already doing much of this work when talking about bringing health services, for instance, to Yancey because they are taking people off the road and providing services closer to where people live. She said when they talk about putting in places to drop off trash and recycling, the County is providing services to an area where people won't have to drive as far to do this. She said if the recycling community ever gets a good footing in the United States, the County will be able to respond because they will have the infrastructure in place.

Ms. Palmer commented that this would be a lot of hard work, admitting that she was somewhat frightened of the initiative. She said this was being deemed as "aspirational," but she was not keen on taking on something that she simply says is aspirational. She said she wanted to make sure that the County truly tries to achieve it and makes an honest approach to do so. She said the initiative was daunting and that she didn't necessarily see the path forward, though she was hoping that it would be developed as quickly as possible with help from the community and staff.

Mr. Randolph said Ms. Palmer identified that the way to approach it is not as a whole, but as a series of pieces that constitute the whole. He said she cited numerous examples of where the Board has undertaken actions that will contribute to overall reductions in greenhouse gases, but that the Board also must recognize that within the strategic priorities, it did cite transportation and public transportation as a priority. He acknowledged that as they move into a future where they increasingly see electric-based vehicles for public transportation, there must be CO2 generated to charge the batteries, which presents an efficiency question that he wasn't prepared to evaluate. He said the fact is that they are looking at something that will contribute over time to a reduction in CO2 regionally.

Mr. Randolph said that one of the consequences of increased CO2 is more precipitation, and so stormwater management is also a priority. He said the Board had lamented that they didn't cite climate aspects in a detailed, objective-centered way. He said, however, that there are many aspects of the Board's strategic priorities that do pick up on related elements of climate change and CO2 that the Board needs to give itself credit for. He said it can be overwhelming, especially as the County is one local government, but as long as they approach it from the standpoint of the related pieces that are being addressed, this is all going to contribute to an improved local environment.

Ms. Palmer agreed but noted that they did not currently have the metrics. She said they were using a number from 2008 and that the methodology has changed dramatically. She said not having the metrics in place was what was uncomfortable for her. She recognized that the Board has kept climate action in the forefront.

Mr. Randolph recalled that Ms. Bostrum, in her remarks, had spoken to the need to have much more valid and reliable data than the County currently has.

Mr. Dill agreed with much of what Ms. Palmer had said. He said that in terms of the initiative being difficult, it would be very challenging, but that there were many things that the Board could not know at that time. He said one possible opportunity was getting a first grant from Dominion Power to receive over 100 electric school buses. He said the County's school buses drive 14,000 miles per school day and that the grant would be huge. He said this could possibly work with the Lake Anna Nuclear Plant where the buses could be charged at night, noting that Lake Anna puts much of its electricity in the ground because not much is used during the day, and they cannot shut off the plant.

Mr. Dill said that though there were things that the County hasn't figured out yet, climate action was incredibly important and that there was not much choice in the matter. He said that having the goal was important and for him, it was satisfying because the environment was his top reason for wanting to run for office and that he was glad to have played a small part in it. He said that though he was not running for re-election, he wanted to be involved with the community.

Mr. Dill said the County must take personal responsibility for the environment and quoted Gandhi in saying, "There is enough for everyone's needs. There is not enough for everyone's greed." He said that another quote he had heard was, "Stay put and buy less." He expressed that perhaps individuals of the community will need to make sacrifices, rather than simply relying on new technology, for the initiative to be successful. He said he would support the resolution.

Ms. Mallek said she would also be supporting the resolution. She said she was grateful for the support from the community members over the nine years they have been waiting to return to the initiative, where they had left off on June 8, 2011. She said the resolution puts the County on its way towards measuring its progress and having a way to become inspired by seeing small steps forward. She expressed that small steps are what the County needs because they help to garner more support, rather than having dramatic, larger steps that can intimidate.

Ms. Mallek said the LCAP was adopted in a public process in 2011 and has provided suggestions and plans on which the County can build on presently. She said that regarding the building weatherization that was done to the County Office Building and other County buildings, in addition to the plants on the roof keeping the building cooler in the summer and warmer in the winter, they were contributing to carbon reductions while saving taxpayers money. She said the Climate Action Plan was an opportunity to save taxpayers money as well as help the local housing stock become better weatherized, increase transportation availability for many people, and give people options to get out of their cars and live in a more comfortable home.

Ms. Mallek said the agricultural side also sees benefits and increasing the growing of perennial crops that sequester carbon is another opportunity that may benefit local farmers. She said that the hilly areas don't have much opportunity to do row cropping because it is too silty and shallow of soil, and is also too steep, but if one is planting a perennial crop that also has extra benefits and works 365 days a year to do its job in sequestration, it will be a huge benefit. She said she hoped there would be programs like this that would come forward as the whole country moves forward with climate action.

Mr. Gallaway said it struck him over the past month how the topic of whether the County is in a climate crisis, the politicized argument, can take over a conversation. He said whether one is in a climate crisis, it seems as if the action is something that makes good sense to do. He said he would not wait until he is in a health crisis to do things in order to promote his own health, and it seemed as if climate action would make good sense to do because there would be positive outcomes from it regardless of what the politicized debate is.

Mr. Gallaway said that it was important, like with anything the Board implements or prioritizes strategically in the County, that there are actionable goals, as has been mentioned, but when tax dollars are spent, there is transparency and accountability of what those dollars are going to and what the County gets in return. He said he felt as if the Board does a good job of this with all its budget items and that the Climate Action Plan should be no different. He said that regardless of where someone stands on climate change, it is important to see the return on the investment.

Ms. Palmer **moved** that the Board adopt the attached Resolution to Establish a Community-wide Greenhouse Gas Emission Reduction Target (Attachment B). Mr. Randolph **seconded** the motion.

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

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

NAYS: None.

ABSENT: Ms. McKeel.

RESOLUTION TO ESTABLISH A COMMUNITY-WIDE GREENHOUSE GAS EMISSION REDUCTION GOAL

WHEREAS, there is scientific consensus regarding the reality of climate change and the recognition that human activity, especially the combustion of fossil fuels that create greenhouse gases (GHGs), is an important driver of climate change; and

WHEREAS, climate change has been widely recognized by government, business, academic, and other community leaders as a worldwide threat with the potential to harm our economy, safety, public health, and quality of life; and

WHEREAS, the County of Albemarle on September 6, 2017 approved a Resolution to Reaffirm Commitment to Support Local Actions to Reduce Climate Pollution; and

WHEREAS, the County of Albemarle on September 5, 2018 authorized the Board Chair to sign the "We Are Still In" Declaration, an open letter to the international community supporting climate action to meet the Paris Agreement; and

WHEREAS, the County of Albemarle adopted climate action planning as a high-priority initiative as part of the Board of Supervisor's Fiscal Year 2020-2022 Strategic Plan; and

WHEREAS, the County of Albemarle's Comprehensive Plan calls for recognizing "changes occurring to the earth's climate to anticipate and mitigate impacts to the County"; and

WHEREAS, actions that reduce GHG emissions and increase energy efficiencies often have multiple co-benefits, such as a cleaner environment, energy security, long-term cost savings, and a better quality of life for residents; and

WHEREAS, taking steps to increase energy efficiencies and community resiliency can attract jobs and economic development opportunities to our community and increase our long-term economic competitiveness and wealth; and

WHEREAS, the County of Albemarle recognizes the role of local governments in influencing the community's impact on climate change; and

WHEREAS, the County of Albemarle is committed to demonstrating leadership in energy efficiency and GHG emission reductions at the local level, equipping the community to make informed

decisions about the impacts of GHG emissions, and promoting actions that enable the community to reap the health, economic, and environmental benefits that accompany sound climate mitigation actions; and

WHEREAS, the County of Albemarle has begun the first phase of developing a Climate Action Plan, which includes setting long-term GHG emission reduction targets and identifying high-level goals and strategies for major emission sectors to achieve these reductions;

WHEREAS, the Intergovernmental Panel on Climate Change (IPCC) has concluded – as communicated in the 2018 “Special Report on Global Warming of 1.5° C” – that, for global warming to be limited to 1.5° C, “global net human-caused emissions of carbon dioxide (CO₂) would need to fall by about 45 percent from 2010 levels by 2030, reaching 'net zero' around 2050”. Net zero – or carbon neutrality – means that any emissions are balanced by absorbing an equivalent amount of GHGs from the atmosphere.

NOW, THEREFORE, BE IT RESOLVED that the County of Albemarle, based on IPCC guidance, adopts GHG emission reduction targets of 45% by 2030 and ‘net zero’ by 2050 using the County’s 2008 GHG inventory as a baseline.

Agenda Item No. 10. **Action Item** – Resolution Supporting Funding for Biscuit Run Park.

Mr. Jeff Richardson, County Executive, said there was recent history outlined with the resolution for state’s funding to develop Biscuit Run Park. He said most recently, the Board of Supervisors and senior staff held a public meeting on September 5 with the County’s local delegation of the General Assembly, and the Board’s legislative priorities for 2020 were shared. He said Mr. Kamptner would be talking about those later. He explained that this included a request for a state commitment, or earmark of funding, for future funding for Biscuit Run to bring the park online. He said the park is not just a County park, but a regional park that would serve the region once operationalized, and that a master plan was in place.

Mr. Richardson said that Bob Crickenberger, Director of Parks and Recreation, was in attendance if the Board has any specific questions on the resolution. He said that Mr. Crickenberger and his staff have been instrumental, in addition to the Board, in moving the process forward. He said that the County received very encouraging direction when speaking with the local delegation, which led to a discussion and consideration with the Board. He said staff has followed the Board’s guidance and that they stand ready to work with the Board under its direction along with state leaders and other key partners as they move forward with the planning for Biscuit Run.

Mr. Randolph **moved** to adopt resolution supporting state funding to develop Biscuit Run Park in Albemarle County as he read it into the record. Ms. Malek **seconded** the motion.

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

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

NAYS: None.

ABSENT: Ms. McKeel.

**RESOLUTION
SUPPORTING STATE FUNDING TO DEVELOP BISCUIT RUN PARK
IN ALBEMARLE COUNTY**

WHEREAS, the State acquired the approximately 1,200 acre property located in Albemarle County known as “Biscuit Run” in 2009 and thereafter developed a master plan to develop it as a State park; and

WHEREAS, the cost to the State to develop Biscuit Run as a State park was estimated in 2017 to be approximately \$42,000,000, an amount that was never funded; and

WHEREAS, on January 4, 2018, the County entered into a 99-year lease of Biscuit Run with the State for the purpose of developing it as a County and regional park; and

WHEREAS, the Governor’s January 4, 2018 press release stated: “This new partnership will allow for the park to open sooner than expected and will provide high-quality recreational opportunities for Albemarle County and the surrounding communities”; and

WHEREAS, the Board of Supervisors adopted a master plan for Biscuit Run Park on December 15, 2018, and it was thereafter reviewed and approved by the Virginia Department of Conservation and Recreation; and

WHEREAS, the estimated cost to develop Biscuit Run Park over three phases as planned is estimated to be between \$31,000,000 and \$34,000,000; and

WHEREAS, despite Biscuit Run Park being characterized as both a County and a regional park, other localities in the region have declined to provide funding to develop the park; and

WHEREAS, on September 5, 2019, the Board held a public meeting with its local delegation of the General Assembly or their representatives to share the Board's legislative priorities for the 2020 General Assembly session, and they included a request for a State commitment to provide \$15,000,000 in funding for Biscuit Run Park over three years.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Albemarle, Virginia that it supports including \$5,000,000 in the Governor's Fiscal Year 2021 budget to fund, in part, the development of Biscuit Run Park by Albemarle County.

Agenda Item No. 11. **Action Item** – Legislative Priorities:

Item No. 11.a. Proposed 2020 County Legislative Positions and Policy Statements.

The Executive Summary forwarded to the Board states that each year the Board considers and approves a slate of legislative positions and policy statements and submits them, together with the Board's legislative priorities to the Thomas Jefferson Planning District Commission (TJPDC), the Virginia Association of Counties (VACo), and the Virginia Municipal League (VML). In prior years, the Board has considered and approved its legislative priorities and its legislative positions and policy statements at the same time. This year, to ensure that the local General Assembly delegation learned of the County's legislative priorities earlier in the legislative cycle, the Board approved its legislative priorities on August 7, 2019 and met with some members of the local General Assembly or their representatives on September 5, 2019.

The proposed 2020 County Legislative Positions and Policy Statements (Attachment A) updates the version approved by the Board for 2019 to support legislation: (1) that would ensure net neutrality; (2) to further amend the current proffer law applicable to residential development (Virginia Code § 15.2-2303.4); and (3) to give counties, particularly urban counties, the same taxing authority that cities have. Net neutrality: The proposed County position is to support legislation that would prohibit internet service providers from slowing down or blocking access to websites, charging companies extra to deliver their services faster, and other acts that adversely affect consumers and discourage competition. At present, nine other states have adopted net neutrality legislation and approximately two dozen have pending legislation. The recent decision by the federal D.C. Circuit Court of Appeals concluded in part that federal law does not preempt states from adopting net neutrality legislation.

The Board may also wish to consider adding this initiative as a legislative priority. Proffers: Although the 2019 amendments to Virginia Code § 15.2-2303.4 are a significant improvement to that law, it is still problematic and needs further amendments because it remains unbalanced and impractical. Related to this issue, impact fees continue as a Board legislative priority and County position as a better and more equitable way to address the impacts to public capital facilities arising from new development. Taxing authority: The Board elected to defer as a legislative priority County-specific, limited focus enabling authority regarding the transient occupancy tax until the new Charlottesville-Albemarle Convention and Visitors' Bureau's executive director, the new chamber of commerce director, and other new regional interests have an opportunity to consider and provide feedback. However, the Board may want to consider approving a broader position to support legislation granting urban or high-growth counties the same taxing authority as cities.

Cities and counties have different authority to levy excise taxes on cigarettes, admissions, transient room rentals, and meals. Through their general taxing authority or by charter, cities have broad authority to levy these taxes, without caps and without the need to hold a referendum. Counties, to the contrary, cannot levy cigarette and admissions taxes. Counties may levy transient occupancy taxes subject to a restrictive cap and the requirement that the revenue generated be spent only for designated purposes. Many counties, including Albemarle County, are subject to a five percent cap and are required to spend all taxes in excess of two percent on tourism-related purposes. Counties may impose a food and beverage tax which is subject to a cap and, for all but a very limited number of counties, the tax may be established only if it is approved by the voters in a referendum.

The distinction in taxing authority between cities and counties exists due to historical differences in the levels of services provided by cities (urban level) and counties (rural level). Urbanizing counties such as Albemarle County are facing increasing obligations and demands for services traditionally provided by cities. In addition, the state requires counties as well as cities to provide, deliver, and fund services in the areas of education, the environment, human services, and public safety, among others. The counties' ongoing dependency on the real property tax to fund these services and facilities is likely to grow in a way that is commensurate with the needs of the respective counties. A dependency on the real property tax adversely affects those counties with tax-exempt property, those that established real property tax programs such as land use valuation that promote other policies of the state, and those with a high number of "daytime" residents who come into the county to work, shop, or for other reasons but pay no real property taxes in the county to support the burdens they place on county capital facilities and services.

There are no specific, identifiable budget impacts.

Staff recommends that the Board approve the Proposed 2020 Legislative Positions and Policy Statements.

* * * * *

Mr. Kamptner said he would lead with the Board's position and policy statement and that he

would be joined by David Blount, who would be sharing his Planning District Commission's draft statement.

Mr. Kamptner said he would talk about Mr. Linville's request before moving into his presentation. He said that Mr. Linville had sent a draft letter that outlines what the Albemarle County Easement Authority (ACEA) is requesting.

Mr. Kamptner said that Mr. Linville outlined two bullet points with explanatory text, and that the Board's positions typically do not go into great depth. He said the first request was, "A request to fully allocate the land preservation tax credit transfer fee to stewardship of protected land." He explained that the reason for this request was that the funds are being regularly diverted to the General Fund so that the benefit or purpose of this tax credit transfer fee is not reaching its full potential to help support organizations and entities like ACEA.

Mr. Kamptner said the second request was, "To allow restoration of the individual cap on the land preservation tax credit usage to \$50,000 per year." He explained that the periodic reductions down to \$20,000 per year has a harmful effect on the desirability of putting land under an open space or conservation easement.

Ms. Palmer asked if the Board did this, they would implement the first more general sentence and would not include the explanatory text.

Mr. Kamptner said Ms. Palmer was correct. He explained that it would be amending the paragraph that currently exists in the Board's 2019 Position and Policy Statement. He said that currently, the Board was looking at the 2020 version, which has some minor edits that he would be reviewing with the Board.

Mr. Kamptner said that the third request in the letter was to maintain the land preservation tax credit. He said the current statement on open space easements could be found in the Board's packet in Attachment A. He proposed that staff could come back to the Board on November 6 with the final changes for adoption, as there were some other recommended changes that would be discussed in his presentation.

Mr. Kamptner presented a slide that was shared with the local delegation on September 5. He said these were the Board's priorities and the equal taxing authority for counties was an item that was being deferred, recognizing that there is a new director of the CACVB and a new Chamber of Commerce director. He explained that he wanted to give those individuals time to look at the issue which, as presented on September 5, was limited to the Transient Occupancy Tax.

Mr. Kamptner gave the Board an update on broadband deployment. He said no changes were being recommended to the language at that point. He noted that his presentation was not current, but the numbers were correct for the Batty awards, which totaled approximately \$875,000 over the last three years. He said he received new information the day before that there has also been an award of up to approximately \$6 million in federal funding and that it was not expected that all of that funding will be used by the Internet Service Providers, but that the money is available.

Mr. Kamptner presented information he pulled from Mr. Blount's periodic newsletters on state activity. He said Go Virginia is looking at broadening their policies with respect to awards to allow support for funding regional planning and expansion. He said the Broadband Advisory Council received some reports on challenges being faced in expanding broadband, with one of those areas being in the rural areas.

Mr. Kamptner said he would talk about net neutrality, but needed to download the information.

Mr. Gallaway suggested taking a moment to allow Mr. Kamptner to download the information.

Ms. Palmer suggested that Mr. Blount go ahead and speak on the Regional Legislation Program for 2020.

[At 2:57 p.m. Mr. Kamptner continued the discussion.]

Mr. Kamptner said that regarding net neutrality, it was added at the request of the Board at the October 2 meeting, the day after the Mozilla FCC decision came out. He said it was a federal appellate court that upheld the FCC's decision to repeal its own prior net neutrality order. He said the one thing critical to states now is the fact that the court did conclude that states are not preempted, under current federal law, from having their own net neutrality provisions. He noted that the Virginia Attorney General did join a brief in support of Mozilla, who was the lead petitioner, among several other states and localities around the country.

Mr. Kamptner said 34 states already have net neutrality laws in place, and from his reading over recent weeks, his conclusion was that whatever state has the most restrictive net neutrality-related rules will become the standard until the federal government changes things. He said ideally, it would be best to have a national standard on net neutrality.

Mr. Kamptner said there were three net neutrality bills in the 2018 General Assembly, none of which made it out of the various respective committees. He said that in various levels of detail, the Carter

bill is a 1-2 sentence piece of legislation, with SB 948 being the most detailed of the three that he found. He said there were no bills that he could find from doing a term search in 2019, and that this may be due to the General Assembly waiting to see the outcome of the Mozilla case. He said there was a statement that would be added to the Board's position, proposed for the current year.

Ms. Mallek said that if it were to pass, it would seem to bring a great benefit to every citizen, with all the services that come into homes.

Mr. Kamptner said that the Rivanna Solid Waste Authority (RSWA) was looking at land application as a disposal alternative, which would save approximately \$245,000 per year. He indicated to a second bullet point, noting that the Board has taken a position up until then that the supporting legislation would give the County and other localities additional authority in regulating where biosolids can be applied. He explained that if the RSWA does go this way, and if the General Assembly expands local enabling authority regarding the regulation of the land application of biosolids, the two public bodies will need to collaborate.

Ms. Palmer pointed out that the \$245,000 savings is split between the County rate payers' water and sewer rate payers.

Ms. Mallek said they would be coming back to the Rivanna issue.

Ms. Palmer acknowledged this, stating that she completely understood and that this was one of the reasons why she wanted Bill Mawyer (RSWA) to go over the issues, as it was something people would be interested in.

Mr. Kamptner said impact fees have been in the Board's position and policy statement for a while. He said in the middle of page 1, there was a simple statement supporting impact fee legislation "that allows for effective implementation through simple, locally-based formula and reasonable administrative requirements and does not cap or limit the locality's impact fee updates."

Mr. Kamptner recalled that during the several work sessions regarding impact fees, staff put together five elements, clarifying that it would be imposed on all new residential development and would allow the localities to determine a range of capital facilities, with the amounts being based on economic and other studies that meet reasonable, minimum standards. He said it would give localities flexibility to establish and implement impact fee programs that meet community desires and have an enabling authority that is not so prescriptive that it will be undesirable for localities to adopt a program.

Mr. Kamptner said he would have the Board consider whether it wants to be more specific to establish Albemarle County's position on an impact fee program recognizing this would be a state-wide, multi-year effort, subject to amendment for 2021.

Ms. Palmer asked if other localities have done this as well.

Mr. Randolph said there were other high-growth communities that were supportive of this.

Ms. Palmer acknowledged that there were, but that she wondered if they have expanded their statements.

Mr. Kamptner replied that he did not know.

Mr. Randolph said there was great value in having the points listed, but to go into a higher level of specificity may restrict the Board, going forward, from having Mr. Blount to adjust.

Mr. Kamptner said that these would be the ideas that Albemarle County staff would share. He said that knowing this, the question was there for the Board's consideration and they could continue with the statement they have, knowing that they have this to take to the table when the process begins.

Ms. Mallek said she didn't have any concerns with the five bullets because the Board was not saying that it was "all or nothing." She said these were just examples of things that would help the community.

Mr. Blount said that several years before when impact fee discussions were a hot topic, the position in the regional program was even more broad to incorporate similar ideas. He said he didn't have any qualms one way or the other.

Mr. Randolph complimented Mr. Kamptner on the specificity, noting that it was helpful going forward.

Mr. Kamptner said that when he and Mr. Blount attended the meeting in Spotsylvania County put on by the High Growth Coalition, there was someone who had worked on the programs around the country. He said the state enabling authority ranges from a simple grant of authority to the other extreme, where there is a lengthy, detailed and prescriptive program. He said that he currently did not know what kind of idea would satisfy the General Assembly.

Mr. Randolph asked if Mr. Kamptner could send the Board the presentation.

Mr. Kamptner replied yes.

Mr. Kamptner said that regarding revised proffers and revised text in the Position and Policy statement from the previous year, because there is the 2019 legislation, staff recommended a tweak to the text. He said this has been discussed with the Board throughout the process, explaining that the 2019 amendment is a great improvement but that there were still problems with it. He said it was in the beginning stages of implementation, but that it still puts parties in an adversarial relationship from the start.

Ms. Mallek asked if the scope of impact's limitation is schools, fire, parks, no libraries, etc. as far as what the expansion would mean, if there could be more categories in the capital budget that would qualify.

Mr. Kamptner replied that under the impact fees, they would be looking for the proffer authority as well and would like to see everything rolled back, even allowing localities and the community decide what capital facilities are valued that need to be addressed as a result of rezonings.

Ms. Mallek said they would not have the Crozet Library if it were not for proffers.

Mr. Kamptner said the statement in the Board's position is not recommended for change. He said it was relating back to what they were considering when working through the legislative priorities. He said the position statement is the broader statement and is not getting the same authority the cities have with the transient occupancy tax caps but is a statement that covers all the different taxes.

Mr. Kamptner said the County's services and infrastructure are impacted by tourism and by what Mr. Richardson has referred to as the "daytime residents." He said there is a study underway to identify the amount of this, and that the broader taxing authority would reduce the reliance on the real property tax, which is paid only by those who own land in Albemarle County.

Ms. Palmer asked if there were any known bills that were expected to come up in the next legislation in terms of net neutrality.

Mr. Kamptner replied that Mr. Blount had said there would very likely be a bill. He said it was possible that the same bills that died in committee in 2018 could come back.

Mr. Blount said it would depend on how things would look after the elections in terms of what gets introduced and what is the likelihood of a bill progressing.

Ms. Mallek recalled that 34 states have already created bills on net neutrality, and that whichever regulations are the strictest would become the standard. She asked if there was any common ground amongst the regulations of the 34 states or if they varied widely.

Mr. Kamptner replied that the bills all revolved around the concept of net neutrality, but that it was Wexton's bill that goes into some of the other issues. He said there was a term called "zero rating," explaining that for instance, if one's phone service is through AT&T and they are streaming Netflix, AT&T cannot charge extra for streaming a non-AT&T service or for having that account. He said the statement he prepared for net neutrality is broad enough in using more generalized language that would allow all the different pieces that fall under the broader umbrella of net neutrality to be covered.

Ms. Palmer said that the last time the Board discussed the matter, one of the Board members had recommended that they should not add anything else to the legislative agenda because they should concentrate on the things that have passed in the General Assembly that they have not yet had a chance to write ordinances on. She asked how much time net neutrality, if included, adds to Mr. Kamptner's work.

Mr. Kamptner replied that adding net neutrality to the Position and Policy Statement does not increase the attorneys' workload in any way other than hoping that the bills are introduced by an organization that they would be commenting on and coming to the Board during the General Assembly session. He said that perhaps once or twice a session, there may be a piece of legislation that is so important that he may come to the Board and ask for a motion or resolution.

Ms. Palmer asked if the only time it really adds to Mr. Kamptner's workload is when the Board wants to get a bill.

Mr. Kamptner replied yes.

Mr. Randolph added that it strengthens those members of the General Assembly that have introduced bills to know that there is a county that has come out in favor of net neutrality and is showing up on the local governmental radar. He said it is not just a state issue, but also a local issue because it affects what the Board will be doing in ABA and their relationship with ISPs.

Ms. Palmer agreed and said she was not debating this. She said she simply wanted to bring up the previous discussion and wanted to make sure that they are clear that this was not adding to Mr. Kamptner's workload.

Mr. Kamptner said regarding the consensus on impact fees, the current statement is broad. He said he heard Ms. Mallek speak to supporting the additional items and didn't hear anyone else. He said it

sounded as if the consensus was to leave the statement as is for now, knowing that the more specific bulleted items would be the talking points when they get to the table.

Ms. Palmer expressed her support.

Ms. Mallek asked what Ms. Palmer meant, if she meant keeping the statement short or adding the bulleted points.

Ms. Palmer replied that she would keep it short but know that the bullets are the talking points.

Mr. Kamptner said regarding proffers, the statement encourages further revisions to make it more amenable that the language is in the draft. He said he did not hear any concerns about those changes.

Mr. Kamptner said regarding taxing authority, they had reviewed the slide, but that there was no proposed recommended change to the language and would suffice as-is.

Mr. Randolph asked if Mr. Kamptner wanted the Board to support the statement.

Ms. Palmer noted there were some changes.

Mr. Kamptner replied that they were leaving everything as it is.

Ms. Palmer noted that the open space was an exception.

Mr. Kamptner agreed. He said with the one change to the open space language, he could bring it back to the Board on November 6, or he could re-read the statements and the Board could approve it with the two bullet point statements incorporated.

Mr. Randolph suggested the Board could state they approve it as amended.

Ms. Palmer said this would be included on the consent agenda in November.

Mr. Kamptner said they could also approve it immediately.

Ms. Mallek said she had sent around a request from someone about the support for Stormwater Local Assistant Fund (SLAF) stormwater funding, and that there was a blanket letter like what Mr. Kamptner had talked about for the conservation fund. She suggested giving Mr. Kamptner a couple weeks to determine if it was a good idea. She asked Mr. Kamptner if he could send the Board a response to this for them to incorporate it or send a letter in support, as requested.

Mr. Kamptner said page 2 of Attachment A includes an item called "Water Quality and Resources" that reads, "Support new state funding for the following agriculture best management practices to stormwater grants initiatives and wastewater treatment plant upgrades." He said that language for the additional support of the SLAF could be added to that paragraph.

Ms. Mallek said that this was something that comes up each year in the legislature and that working on the language now would save Mr. Kamptner and Mr. Blount time.

Mr. Kamptner said that supporting the Virginia Agricultural Cost Share Program would be a new paragraph or position.

Ms. Palmer said that if they were adding language, it should be brought back before the Board again.

Mr. Gallaway said that after the election, there could be a seat change as far as who is in control of what, which starts the political calculus on Mr. Blount's part. He asked him if he would be sending out updates to the Board, noting that a slew of bills, even if the power doesn't change, could be coming out from new General Assembly members, and that especially locally, there would be new people added there. He asked if this would be an email with a legislative update.

Mr. Blount replied yes. He said that with the elections, it would be the week before Thanksgiving that the Board would start to see the introduction of bills for the 2020 session. He said this would continue through December, when the governor introduces his budget in the first part of the session. He said that in addition to those that he highlights in the newsletter, Mr. Kamptner and his staff has access to a bill-tracking system that he uses, which is a more expansive listing of bills that are not only being actively worked, but also those that are being monitored. He explained that spreadsheets could be created from the system and can be used to provide information the Board needs on bills of particular interest.

Item No. 11.b. Draft 2020 Thomas Jefferson Planning District (TJPD) Legislative Program.

Mr. Blount said that also before the Board was the draft "Regional Legislative Program" for 2020. He said this was not unlike the Board has seen in years past. He said he included in the Board's packet a one-page summary of the substantive changes from the 2019 version that are being proposed.

Mr. Blount pointed out that in the first three top priorities, there were some changes to the

broadband position. He said he has made some updates to the funding numbers that were technical in nature and added some language that expresses support for local broadband authorities.

Mr. Blount said the language also supports the more effective use of railroad crossing easements, which was an issue that had recently come before the Broadband Advisory Council. He said that the other issue that recently came before the council was a concern in other parts of the state where the experience has been less than cooperative in terms of working with the railroad utility to facilitate crossing the rail lines with broadband infrastructure. He said he expected legislation on this in the coming session that then, hopefully the Board would be in position to support.

Mr. Blount said there were some technical changes to the other two top priority positions concerning the budget and public education funding. He said regarding the other priorities, there were changes to two areas. He said in local revenue authority, the draft proposes to delete a position that had been put in the previous year concerning local sales tax related to the Wayfair internet sales decision that had come from the Supreme Court. He said there was some favorable legislation in the past year, and the Board could view this as a win and remove it.

Mr. Blount said a new position had been added opposing changes to the existing tax assessment appeals process. He explained there was legislation in the past couple years and a study that was directed in the past year, so this issue has received closer examination, and the evidence that has been put forth so far points to much satisfaction at the local level in terms of the number of appeals that have been made that have been able to be resolved administratively. He said that only a very small number of the appeals have proceeded to court, and a number of those have been decided both ways. He said in terms of local government, he did not see a change needed to the current process.

Ms. Mallek asked if the burden of proof issue had gone away, or if it could be back.

Mr. Blount replied that he expected to see legislation again that the proponents looking to make changes will put forward, which would get to the burden of proof issue. He said according to the latest numbers on Fiscal Year 2017, there were 20,000 state-wide appeals that were made, and about half of those, rounded to about 10,000, were resolved administratively. He said that of the 20,000, there were less than 20 that made their way to court, with 7 of those being decided in favor of those that were making the appeal. He said there was ample opportunity at the local level to do this free of charge, as opposed to hiring an attorney, resolving these things administratively and utilizing the Board of Equalization.

Mr. Blount said that regarding land use and growth management, he proposed revising the language under "Proffers," in light of the legislation from the past year, but still supporting changes currently in the law that limit the scope of impacts that can be addressed through proffers. He said this was included in the local position statement as well. He said that the position statement includes the addition of a new statement concerning tree preservation, which the Board had been discussing in recent months.

Mr. Blount said that in the legislative position statements, under "Environmental Qualities," there were some new statements regarding solar power as well as recycling. He recalled that discussion had been held over the past several months about having incentives to recycling markets as well as provisions for the adequate reporting of data. He said the changes in the statement mirror the discussions the Board had had, as well as other discussions that had come up with other localities.

Mr. Blount said that under "General Government," there was a new statement that adds to the position on elections, including to support state funding for new early voting requirements that will take effect in 2020.

Mr. Blount said that under "Public Safety," there were some new statements to the position under "Public Safety on Funding," including several things to request state funding for authorized positions for Commonwealth's attorneys. He said this comes into play with the ongoing discussions about use of body-worn cameras. He said the statements also include support for transitioning to Next Generation 911 in a way that is fair to local governments so that they do not become burdened with the cost of this transition, as well as support for state funding for alternative options for transporting mental health patients.

Mr. Blount pointed out a new position titled "Volunteers" to endorse having tools at the Board's disposal for supporting emergency services personnel.

Mr. Randolph asked about the housing section under "Affordable Housing," which cited four factors in support of affordable housing. He said that regarding Factor 3, "Grants and loans to low or moderate income persons stayed in purchasing dwellings," he was curious as to why it didn't include a fifth item which would be to try to have the General Assembly provide greater tax incentives for developers to construct affordable housing. He expressed that all the factors outlined are needed, but the additional fifth factor would be to try to get private-public partnerships to encourage developers to provide additional affordable housing.

Mr. Randolph noted that the Planning Commission discussed this issue last night regarding Galaxie Farm and cut back (by 7) the number of affordable housing units because of the inconsistency with the Comprehensive Plan. He said that at the state level, there is at least the opportunity to raise the issue as to whether the state is doing enough to incentive it.

Mr. Randolph said that regarding "Transportation Funding and Devolution," under "Smart Scale," the first bullet reads, "There should be adequate funding and local authority." He suggested that this language should be made stronger by stating that there should be increased state funding. He said state-wide, there is recognition that increasingly, there is less and less money available on a state level to address the large transportation projects in a growing state such as Virginia.

Mr. Randolph said that wherever possible, the Board should be asking for increased state funding as Smart Scale because the reality is that the burden is being put on county government, and with so many other mandated expenditures imposed by the General Assembly, the County is cash-strapped, especially being in a higher-growth county. He said the County must address infrastructure challenges, and that rather than simply stating that the state should provide "adequate" funding, there needs to be increased funding.

Mr. Randolph said the state is very reliant on the gasoline tax, expressing that this was an outdated tax that increasingly generates less and less money as the landline tax on telephones generates money for the County. He said perhaps consideration should be made towards having a different way of measuring contribution to roads because if there is an all-electric car, the owner is paying nothing to utilize or improve the roads outside of having a driver's license. He said perhaps there should be another measure, such as miles driven per year, so that all vehicles using the road can contribute to the maintenance of those roads and the addition of road infrastructure. He clarified he was not asking for this to be included in the statement immediately, but that it should be considered moving forward.

Ms. Palmer asked how many years ago the Prius tax was implemented.

Mr. Blount replied that it had been at least 6-7 years. He said 2013 was the last time a transportation package was done.

Ms. Palmer said the gasoline tax has been discussed for a long time and asked if there was any active discussion or legislation coming through to change any of it.

Mr. Blount replied that the governor's budget that year would be the only budget that he would see through from introduction to completion before he leaves office in two years. He said he had not heard anything but recognized that the need for additional funding has existed for a while and that it has been recognized by the Commonwealth Transportation Board.

Ms. Mallek said there is still talk about the transportation bill that Governor B___ passed in the mid-1980s and that for once, there was adequate funding to do building and maintenance for about three years. She said the state must get back to this point.

Mr. Blount said there had been several years where maintenance needs were rising so much that they were taking funds from the construction budget. He said this started to decline.

Ms. Palmer asked how this translates to what Mr. Blount does when he goes to the General Assembly. She said each year, there is a legislative program, and asked how many of the priorities end up in bills.

Mr. Blount replied that he looks at the program as the basis for his advocacy efforts, and that it gives him the authority on behalf of the localities in the region to be able to state positions, needs, and desires on budget issues as well as legislation. He explained that this was why they try to keep the language in the program relatively broad, that there are many particulars, but not much drill-down in terms of specifics so that there is flexibility to be able to have discussions about what legislation ultimately looks like and if the Board likes it or doesn't like it.

Ms. Palmer asked Mr. Blount if he was meeting with others from other Planning District Commissions.

Mr. Blount replied that he mostly meets with larger localities in the state from Northern Virginia, Hampton Roads, Richmond, and some contract lobbyists that represent localities in other parts of the state, in addition to partners at VACO, VML, High Growth Coalition, and Virginia First Cities. He said these bodies make up a large team that work together and while they do not always agree on the particulars, they agree to disagree and represent their clients the best they can.

Ms. Mallek expressed that one of the most important benefits from the process the Board undertakes is that it helps Mr. Blount represent the County.

Mr. Blount said that Dominique Lavorata was new to his staff and will be assisting with the session. He said she would be doing background work in terms of communications, research, and position papers that will contribute to their efforts.

Mr. Randolph echoed Ms. Mallek's statements, stating that Mr. Blount does an extraordinary job for the planning district commission membership in terms of providing a general, but well-thought-out series of issues and where the Board stands. He expressed his appreciation for Mr. Blount.

Mr. Blount said that with the Board's concurrence, he would be glad to incorporate the changes that Mr. Randolph discussed regarding affordable housing tax incentives as well as stronger language around transportation. He said that with affordable housing, the position had not changed much for the

past several years and that Mr. Randolph's suggestion would be a good addition.

Ms. Palmer said regarding the new statement on the position on recycling to support improvements to recycling markets and provision of accurate reporting of recycling data, she wanted to know if and where it had been written.

Mr. Blount replied that this statement could be found in the "Environmental" section in the last bullet. He said there was an existing statement concerning a plastic bags issue, and that the title was revised to make it "Recycling" and to take into consideration the most recent discussions that were had.

Ms. Mallek noted that this would help provide the County with data so that it can comply with DEQ's rules.

Ms. Palmer said that the County would hopefully be looking at changing its own ordinance.

Mr. Randolph asked Mr. Blount if it would help him to have an endorsement from the Board.

Mr. Blount replied yes.

Mr. Randolph **moved** that the Board approve the Proposed 2020 Thomas Jefferson Planning District Legislative Program. The motion was **seconded** by Ms. Palmer. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Ms. McKeel.

Agenda Item No. 12. **Presentation** – Rivanna Water and Sewer Authority (RWSA) Quarterly Report.

Mr. Bill Mawyer, Executive Director Rivanna Water and Sewer Authority, said there will either be a press release planned for after that Tuesday to recommend the localities go into a drought watch, meaning the conditions are ripe for a drought, or a less significant press release that will announce a drought alert. He said the conditions are still possible, but that most of the reservoirs are full. He acknowledged that agriculture was struggling with the drought, but that he was pleased to say that the public water supply was in good shape and hoped that it stayed that way.

Ms. Mallek said it was alarming that three of the five reservoirs are down by 6 feet. She said there was a huge drop at Beaver Creek and that it makes people nervous. She expressed that the water levels can change quickly from one year to the next and create challenging situations.

Mr. Mawyer said he has been monitoring the reservoirs for weeks, expecting South Rivanna to stop overflowing. He said this was a sign to begin increasing production at the Observatory Treatment Plant, decrease production from South Rivanna, and begin using more water from Ragged Mountain which is where most of the water is. He said, however, that they can only get 4 million to 4.5 million gallons of water per day out of the Observatory Treatment Plant.

Mr. Mawyer said as an example, the day before, South Rivanna produced 8.8 million gallons of water and Observatory produced 1.5 million. He said they make this more like a 50-50 shift when South Rivanna Reservoir stops overflowing, which is when they start using the water in Ragged Mountain. He said this was the strategy that as long as the water is going over the dam at South Rivanna, they want to maximize the use of it.

Mr. Mawyer said that a few weeks before, he had sent the Board a written package with an update on the RSWA's capital projects, including improvements in the refuse disposal they have had at the transfer station. He indicated to a graph, explaining that in January 2018, RSWA processed 23 tons per day of refuse from the transfer station. He said when they opened the new transfer station in September to October, it was about 34 tons per day. He said at the Board's request in January 2019, they reduced the tip fee, and the amount jumped up to 64 tons per day.

Mr. Mawyer said that again, at the Board's request, in March they added Monday to their open schedule and now they are open Monday through Saturday, resulting in an intake increase to 86 tons per day in March. He said the peak was 115 tons per day for the month of August 2019, and the trend was going up, with the RSWA successfully meeting its goals and the Board's goals in increasing its tonnage through the transfer station.

Mr. Mawyer said there was a recent discussion about the Buck Mountain surcharge and a misunderstanding about the bonds that were issued and paid off. He said the reality was that RSWA issues bonds against its revenue, not against its facilities, so they are not secured by the Buck Mountain property or the South Rivanna Water Treatment Plant. He said that through best management financial practices, they combine bonds periodically when the interest rates are lower.

Mr. Mawyer said that in 1984, around the time the Buck Mountain property was purchased, a bond activation anticipation loan was initiated for \$14 million, of which \$4.6 million of that amount was for the Buck Mountain property. He said two years later, it was refinanced into another bond which totaled

\$26 million through which other funding needs were combined with the Buck Mountain property to get a better interest rate.

Mr. Mawyer said in 1993, this was done again, and the 1986 bond was refinanced as well as a bond from 1979, one from 1988, and from 1990. He said ten years later in 2003, they again re-bundled the debt and refinanced it to a better rate. He said they repeated this same bond refinance in 2012, and they would be proposing in the next week to refinance the 2012 bond.

Mr. Mawyer said RWSA knows exactly when they issue bonds and when they are due, but they pay them off by re-bundling and refinancing them to get a better rate. He said when they make a bond payment, it is not so simple to say how much of the payment paid for the Buck Mountain property because it has been re-bundled and refinanced several times.

Ms. Palmer added that as far as the RWSA notifying the approximate level that is left on the Buck Mountain surcharge, she has been attending RWSA meetings since 1998 and she was on the ACSA Board for 8 years from 2006 to 2014. She said she received regular updates when she was on the ACSA Board as to what was approximate and what was left, with Mr. Mawyer's explanation. She recalled sitting in the RWSA meetings many times when this discussion came up and reports were done by staff as to approximately how much, in the explanation of the early combinations, were done.

Ms. Palmer said she assumed that if there was ever a situation like this on a project where they were expecting the public to pay this back as part of a fee, it would be tracked more carefully.

Mr. Mawyer said they could write the agreement somewhat differently, as this one said that the bond would support some of the costs of the purchase, implying that they would issue one bond for the one property purchase, monitor for 30 years, and pay it off. He said the reality is that this is not the way the finances are done. He said that RWSA is very debt-heavy with about \$200 million in debt. He said that half of their annual budget is debt service payments from the city and the ACSA. He said they were very aggressive in monitoring the financial markets and where they can improve interest rates. He said that the current refinance that will be proposed in the following week to the Board will save an estimated \$112,000 per year in debt service costs.

Mr. Randolph asked if once the bond was paid off, customers were no longer charged the amount they were previously charged for retirement on the bond. He asked, in other words, if bills had gone down commensurately.

Mr. Mawyer explained that the resolution says that when the last of the four localities (City, County, ACSA, and RWSA) approves the resolution, the charge will stop. He said it was continuing now and that he understood that the ACSA would have it on their agenda in November, with the city having it on their agenda in October.

Ms. Mallek asked if the ACSA approves the resolution, they would then send it to the Board of Supervisors.

Mr. Mawyer asked if they had not received it yet.

Ms. Palmer said she didn't know if the supervisors were supposed to receive it since it is ACSA and the city who collect the fee. She said they could receive a copy of it, but it was not something the supervisors would have to vote on.

Mr. Randolph asked if Mr. Mawyer could check on this.

Mr. Mawyer said that it does need to come to the supervisors. He said the ACSA and the city stop making the surcharge, but the joint resolution is a four-party resolution and Mr. Kamptner had worked with RWSA's attorney. He said the supervisors do need to support the resolution, and then when the ACSA's Board and City Council approve it, the surcharge will stop.

Mr. Randolph asked if Mr. Mawyer could get this to them, the Board could put it on its consent agenda for November.

Mr. Mawyer said he would do this.

Mr. Richardson apologized to Mr. Mawyer if he had missed this in a previous discussion with him. He asked if he could get the item to him to put on the November agenda.

Mr. Mawyer said he would. He said that the supervisors are on the signature page and would have to approve it.

Mr. Kamptner said he had worked with this in previous months with John Blair and Kurt Krueger.

Mr. Mawyer said that the main presentation that Ms. Palmer had asked him to provide was about the composting program that RSWA manages. He said that there was a presentation about this at the joint City-County meeting a few weeks prior. He said food waste is collected at the McIntire Recycling Center, which is then taken about 120 miles away to Waverly, VA where it goes to the McGill Composting Facility.

Mr. Mawyer said the County also accepts food waste compost at Ivy, and UVA has a vendor that collects their compostable food waste from its cafeterias and takes it to Ivy, where they are charged. He said coincidentally, the same vendor, Black Bear Composting, works for the County and takes the food waste to Crimora to be composted. He noted that through the regional program, about 550 tons of compost is produced, with 500 tons of this coming from UVA.

Mr. Mawyer said the third product that is composted is biosolids from the wastewater treatment plant. He said that at the end of the wastewater digestion process, the organics that are left are dried out in a centrifuge, which suspends them like a large dryer, and they then come out as a dark material onto the trucks, which are hauled about 120 miles almost four days a week to the compost facility in Waverly. He said that RSWA is looking at all the processes, particularly the biosolids process since they spend \$600,000-700,000 per year taking the biosolids to Waverly, to determine if there are other options.

Mr. Mawyer said that biosolids are nutrient-rich, organic materials that can be used as fertilizer and are regulated by DEQ. He said the community creates about 550 tons per year, but RSWA's consultant projects that by 2030, they could be up to 4,000 tons per year, an increase of over seven times. He said the County produces 14,000 tons of biosolids.

Mr. Mawyer said that the city is completing a landfill diversion study on what they do with their waste and where it might go. He said there was an effort to think collectively with the County, city, and Rivanna as far as what the options are for food waste, biosolids, and composting alternatives.

Mr. Mawyer said the consultant came up with some alternatives to build a composting facility at Ivy, which ranged from \$650,000 to \$950,000 to construct. He said if they wanted to include biosolids at Ivy, building a facility for this would cost around \$6 million.

Mr. Mawyer said that other options for biosolids are the current Waverly facility, and one in Spotsylvania County, which is half as far, but more expensive. He said there were negotiations underway with Spotsylvania County. He also said that land application is an alternative, as well as landfilling. He said a combination could be used in which the compost could be land-applied when possible, but when the land is too wet such as during snow, it could be landfilled to get rid of it as the County has it every day. He said doing this would save the ACSA about half of the \$245,000 that Mr. Kamptner had mentioned. He said if they landfilled only, the estimated savings would be about \$85,000 to the ACSA.

Mr. Mawyer said that after this information was presented, the RSWA Board asked to continue composting biosolids offsite, presumably at the Waverly facility, although other facilities are being looked at to create some competition without having to negotiate a sole source of contract.

Mr. Mawyer said they would be looking at an opportunity to bring food waste to Moore's Creek and get them into the biosolids truck that goes to Waverly. He said currently, there was a NOPE contractor taking food waste to Waverly, then a biosolids contractor going to the same place, and so a study was being done as far as what it would cost to modify the facilities in order to get the food waste onto the same truck as the biosolids and send both at the same time to optimize the process. He said it was a phased start for the community for composting.

Mr. Mawyer said the RSWA was approached by a company about privatizing a facility at Ivy. He said this was being explored with the company, but the present thought was that they wouldn't be any less expensive. He said they could have a "put or pay" contract in which so many tons per day must be delivered to them per day to operate, or they must pay for it anyway.

Ms. Mallek said this had been done before.

Mr. Mawyer agreed, expressing that RSWA was not optimistic about this option, but remained open to all options. He recommended that if the RSWA Board and Board of Supervisors wanted to build a compost facility for food waste only at Ivy, they move forward with a facility that would be capable of 2,000 tons a year, about four times what they have presently. He said this would cost \$725,000 to build and about \$75,000 per year to operate it.

Ms. Palmer added that one of the reasons she wanted Mr. Mawyer to present was because when the city gave its presentation to the RSWA Board, she asked specifically what their goal was for their solid waste program they were considering. She said Kristel Riddervold stated that the city's goal was landfill diversion. She said there may be opportunities for the County to work with the city on this, which would reduce their costs.

Ms. Palmer said there was much more work to do, as putting the County's food waste, including UVA's food waste, with the biosolids was being considered which, if cheaper, would give the County some time to establish a program to see if it would work locally and what this would look like looking at businesses versus residential drop-offs. She said this also possibly rolls into the Climate Action Plan, depending on what the Board of Supervisors decides to do with the plan. She said that given all these pieces coming together quickly, she wanted to keep everyone up to date on the discussion.

Mr. Mawyer said that one unique service that was added at the McIntire Recycling Center, at a community group's request, was a container to collect oyster shells that come from restaurants that the group collects. He said once a year, the container is taken to Richmond where VCU receives the oyster shells and replants them in the James River.

Ms. Mallek asked if the composting facility that would be built at Ivy would negate the need to haul to Waverly and if this was close to balancing out money-wise for food waste only.

Mr. Mawyer replied yes.

Ms. Mallek said there used to be a biosolids Class A processing at Rivanna.

Mr. Mawyer said it had been at Moore's Creek.

Ms. Mallek said it was sent away. She expressed this should still be going on rather than putting the biosolids on fields. She said that she personally thought that there were so many components in the sludge that no one knows about because it cannot be and does not have to be tested for. She noted that RSWA is doing what it is supposed to do but expressed that there was still mystery around PFOS and PFAS that are dangerous. She stated her preference to continue composting the biosolids.

Mr. Mawyer agreed. He said that one benefit of the County's watershed and wastewater shed is that there are not many industries of PFAS coming from metal plating industries, carpet-making facilities, and fire foam facilities, which are huge contributors of PFAS into the environment. He said testing has been done in the reservoirs and RWSA did not find any. He said that at the Biosolid Council conference, it was stated that if every wastewater plant in the country was tested, PFAS will be there because almost every person in the country has PFAS in their bodies.

Ms. Mallek said it was a "forever pollutant" to be aware of. She said that every Teflon pan and non-stick surface contains it, and it comes off every time dishes are washed.

Mr. Mawyer added that it is also found on wrappers and pizza boxes.

Agenda Item No. 13. Closed Meeting.

At 3:41 p.m., Mr. Dill **moved** that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:

- Under Subsection (1), 1) to discuss and consider the annual performance of the County Executive, 2) to discuss and consider appointments to the Region Ten Community Services Board and three County committees;
- Under Subsection (3), to discuss the disposition of County-owned property in the Scottsville Magisterial District, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of 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 public's access to and use of the County Office Buildings and their grounds located on McIntire Road and 5th Street.

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

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

NAYS: None.

ABSENT: Ms. McKeel.

Agenda Item No. 14. Certify Closed Meeting.

At 6:07 p.m., Ms. Palmer **moved** that the Board of Supervisors certify by a recorded vote that, to the best of each Supervisor's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting. The motion was **seconded** by Ms. Mallek.

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

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

NAYS: None.

ABSENT: Mr. Dill and Ms. McKeel.

Agenda Item No. 15. Boards and Commissions

Item No. 15.a. Vacancies and Appointments.

Mr. Randolph **moved** that the Board make the following Board Committee appointments:

- **Appoint** Mary Catherine King to the 5th and Avon Community Advisory Committee to fill an unexpired term ending September 30, 2021.

- **Reappoint** Francis Hooper to the Citizens Transportation Advisory Committee with said term to expire April 30, 2020.
- **Appoint** Nancy Takahashi, Carter Montague, and Craig Jacobs to the Historic Preservation Committee to the Historic Preservation Committee to fill an unexpired term ending June 4, 2021.
- David Szwedo to the Region Ten Community Services Board to fill an unexpired term ending June 30, 2021

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

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

NAYS: None.

ABSENT: Mr. Dill and Ms. McKeel.

Agenda Item No. 16. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Dr. Charles Battig (Scottsville District) continued his remarks from his afternoon presentation. He said there was a lot of talk about going carbon neutral in the County, but that no one ever speaks up with any sort of facts, expressing that it was rather a “feel good” initiative that was being done because someone else says so. He said a study was done, and to reach net-zero emissions by 2030 would mean deploying about four nuclear power plants per day globally and for the United States, a deployment of a nuclear plant every other day.

Dr. Battig asked why the County was starting all over again from Governor Kaine’s climate commission in 2008. He expressed his opinion that the Climate Action Plan would not have any measurable effect on the climate. He said no County officials have provided any scientific evidence that a specific change in the climate will result from a specific County climate plan. He said that no County officials have put a taxpayer dollar cost for a specific change in the climate. He said if it cannot first be measured, it is a misuse of County taxpayer funds to claim to “achieve the unachievable.”

Dr. Battig said there was lots of talk about renewable energy, but it always turns out being most costly when all associated costs are included and are often more damaging to the environment and human health, needlessly making energy more expensive by offering rebates on more expensive appliances. He said this was a sham and a money-maker.

Dr. Battig said there was a sustainable population group in 1967 that forecasted that in 1975, there would be a dire forecast and that he was still waiting for this. He said that Al Gore had said the polar ice cap may disappear by 2014. He said it was still there. He said in 1974-1979 there was supposed to be an ice age and there was not. He said they heard about acid rain from someone from UVA, and that a headline had said that acid rain kills life in lakes. He said ten years and half a billion dollars later, a study found that there were no environmental risks associated with acid rain.

Dr. Battig said that he would mention polar bears for Mr. Randolph’s sake. He said the polar bears are being decreased when hunted, but their increase was unprecedented.

Ms. Kat Maybury, representing Indivisible Charlottesville, said she wanted to read aloud what some of the First Amendment experts have said about the new rules for public use of the County Office Buildings and their grounds. She first gave a brief history, explaining that in June 2018, she was called by the interim Director of Facilities and Environmental Services who sent her what was, at the time, a brand new policy that said, “The grounds of the County Office Building are not open for public use.” She said the interim Director told Indivisible Charlottesville and other people planning a rally to keep off the grass.

Ms. Maybury said a few days later, there was a planned rally at the County Office Building, with 700 people in attendance. She said it was difficult to keep all 700 people completely off the grass. She said someone brought a large inflatable chicken to one of the smaller rallies and they couldn’t keep completely off the grass.

Ms. Maybury said they had felt this was a civic space and that the grass belonged to everyone, and that keeping completely off it was odd. She said they set out to find out more about the policy and that in the meantime, they received new proposed rules and realized that the County was now admitting that the original rules were, in fact, illegal. She said the proposed rules say that, “For purposes of the First Amendment, the front lawn is a public forum.” She said the County is saying that it is compatible with expressive conduct.

Ms. Maybury said that Joshua Wheeler from the Antonin Scalia Law School at George Mason University said, “It is our opinion that the proposal still falls short of meeting constitutional standards. As a seat of legislative and/or executive power, the grounds of the County Office Building are a class of property which, by history and tradition, has been open and used for expressive activity. The rules state that for purposes of a First Amendment analysis, the front lawn is a public forum. Nevertheless, the rules proceed to divide the front lawn into three zones, applying different restrictions on expressive activity without justification. Based on the map of County Area, 1, 2, and 3 are similarly suitable for expressive activity as area 1, yet the rules only allow expressive activity in the latter zones. The County admits that

political candidates and demonstrations in the past have used the front steps.” She said this was one of the areas that the County does not allow expressive activities for announcements. She pointed out that many of the Board members have used this area. She continued to read Mr. Wheeler’s statement: “In sum, we encourage the County to open up the vast majority of outdoor grounds surrounding the County Office Building to expressive activity.”

Ms. Maybury said she wanted to quote another expert, Mr. Bill Tucker, who offered to work with the County collaboratively to revise the proposed rules.

Ms. Palmer asked if Ms. Maybury wanted to leave anything with the clerk.

Ms. Maybury said the documents had been submitted to Mr. Kamptner.

Mr. Matthew Christianson (Rio District) said it was clear from some of the proposed rule changes were in response to what has happened both in the Board of Supervisors and School Board meetings, and outside with the regular protests and rallies. He said the Board needed to understand where these protests came from. He said the School Board protests came as a result of people not being heard, explaining that the School Board ended public comment early at a meeting because people were snapping. He said they then held a meeting without any public comment, making it clear that they were not interested in hearing what their constituents had to say.

Mr. Christianson said constituents often feel unheard and that their voices do not matter. He said it was difficult to express themselves when they were in fear of being arrested or being sent to the hospital by police. He said the policy is worrisome, as it marks public meetings as “limited public forums,” which restricts free speech. He said much of the language he sees in it is vague, unclear and open to interpretation. He asked who determines what is disruptive to a meeting.

Mr. Christianson said he understood that it is hard to be challenged when one truly and genuinely believes that they are doing what is best and right in helping with the community. He said he knew what this felt like, as he has done much work doing what he thinks is best for him, his friends and community, and for those whose voices are not heard. He said he has had difficulty then sitting with those same people telling him what he is doing wrong. He said it was important, however, to listen to those voices and that they cannot make it any harder for them to be heard. He said this must be made as easy as possible.

Mr. Christianson said it is hard to listen to criticism and hear people saying how they have been hurt. He said each supervisor has given their time, and even some of their privacy, to become an elected official. He said he realized that civic engagement is important to the Board, noting it was also important to him. He said that for average citizens, the way to take part in civic life and do their patriotic duty to be engaged in the legislative process is to use their voices to talk to their elected officials, such as they do in Board meetings, vote in elections, and inform their fellow citizenry and advance causes that are important to them.

Mr. Christianson said that since they are all civic-minded people, he knew the Board would not do anything to limit the patriotic and necessary civic engagement of residents. He said they would do what they need to do to keep their employees safe but would build in checks and balances to review decisions and will champion their constituents and neighbors to the best of their ability as elected leaders. He said he believed that the Board wants to do the right thing and does want to progress things as well as they possibly can while hearing from their constituents. He encouraged the Board not to restrict this in any further way.

Mr. Gallaway closed matters from the public.

Agenda Item No. 17. **Action Item** – Rules for the Public’s Use of the County Office Buildings and Their Grounds.

The Executive Summary forwarded to the Board states that the Board’s Community Use of County Facilities Policy (the “Policy”), first adopted on February 10, 1982, governs the public’s use of the County’s Office Buildings located at 401 McIntire Road (COB-McIntire) and 1600 5th Street (COB-5th). The Policy has been amended numerous times over the years in a piecemeal manner, most recently on October 3, 2018 when the Board amended the policy pertaining to the public’s use of the parking lots at COB-McIntire.

A team composed of representatives from the County Attorney’s Office, the County Executive’s Office, the Police Department, and the Department of Facilities and Environmental Services has met several times to discuss amendments to the Policy for the Board’s consideration. The proposed draft Rules for the Public’s Use of the County Office Buildings and Their Grounds (the “Rules”) (Attachment A) are the result of that team’s work.

The August 7, 2019 executive summary explaining the proposed Rules in depth is included as Attachment B.

The draft Rules address several issues regarding the public’s use of COB-McIntire and COB-5th with the objectives to: (1) ensure that the County (including the School Division) and the public are able to

conduct County business with minimal or no disruption; (2) enable the public to use the COB-McIntire and COB-5th in a reasonable manner; (3) recognize the public's interest in exercising First Amendment rights; (4) clarify the County's interests, as a property owner, in making certain areas of COB-McIntire and COB-5th available for public use while other areas are closed to the public; and (5) clarify the role of the County Executive and his designees as persons in charge of COB-McIntire and COB-5th.

The Rules have since been revised to clarify definitions, make minor organizational changes, correct the days that rooms in COB-5th may be available for organizations to meet (i.e., Monday through Friday if the County is open for business, as compared to Tuesday through Thursday at COB-McIntire), and make other changes to improve stylistic consistency. Staff also has received written feedback regarding the Rules from members of the public. Those comments were not received in time to be fully analyzed. Very briefly, the feedback recommends making more of the Front Lawn and the sidewalk area around the Visitors' Entrance available for First Amendment activities. Other feedback pertaining to clarifying some of the descriptions and the definition of "Expressive Activity" required only limited analysis and has been incorporated into the Rules. Staff will present its completed analysis of the feedback on October 16.

Improvements to secure the parking lots have already been budgeted and appropriated. The cost to provide the gate at the Preston Avenue entrance is approximately \$40,000. Staff will recommend that the front lawn of COB-McIntire be improved to clearly delineate the location of the front lawn that will be available for the exercise of First Amendment rights. Several options for physical improvements continue to be developed by staff and will be presented to the Board for consideration when ready.

Staff recommends that the Board adopt the attached Rules (Attachment A), inclusive of any changes requested by the Board on October 16.

Mr. Kamptner said his presentation would cover both the grounds and the interior of the building with a comprehensive overview of the draft rules. He said feedback was received from Mr. Wheeler and Mr. Tucker, and that some of their minor suggestions were incorporated into the draft rules that were before the Board. He said there were suggestions made that were more significant which he would be discussing in his presentation. He said the presentation would be made available to the public.

Mr. Kamptner said there were several reasons for rewriting the rules. He said the set the Board currently operates under was originally adopted in 1982. He said that during the summer of 2018 alone, the parking lot rules were amended three times, which extended into the fall. He recognized that particularly since August 2017, the County is in a different time. He said that for those who do their business in the building who can recall when every door in the building leading outside was left unlocked, they recognize that this is a continuation of the evolution to ensure that the building is maintained at acceptable levels of security. He said there are also new issues that have arisen in the last three years that need to be dealt with.

Mr. Kamptner said that over the past nine months, the team has met periodically. He said the objectives are to provide clarity and comprehensiveness to the rules. He said there were gaps found in the current rules that the team tried to address. He said the County Office Building is the seat of the School Board and Board of Supervisors, which are legislative bodies, but it is also the place where the County and the public conduct County business. He said as far as the dual role, the County wants to make sure that the public can do the business they come to the building to do. He said the County also wants to preserve public access and ensure compliance with First Amendment case law.

Mr. Kamptner presented a broad overview of what the team is trying to accomplish in the rules. He said currently, as Ms. Maybury mentioned, the current rules do not expressly allow any First Amendment activities on the grounds. He said the Area 1 portion of the front lawn has been designated for what the rules refer to as "expressive activity."

Mr. Kamptner said they are also expressing in the rules that the open meeting portion of public meetings are public forums. He said that during "Matters from the Public," the Board has no rules as to what anybody can speak to, that the public has their three minutes, and can talk about any topic. He said the concept of the limited public forum comes up related to the next item on the Board's agenda, which is an ordinance amendment to deal with trespassing and disorderly conduct. He said in this kind of situation, the public is invited to speak as part of the public hearing, but they are obligated to speak within a realm of relevance to the topic at hand, which is this ordinance. He said this is where the term "limited public forum" comes into play.

Mr. Kamptner said the team also wanted to clarify where the public can go in the County Office Building, where they can take pictures, and where they can make recordings. He said the rules lay this out, as it was not a topic that was addressed in the existing rules. He said that particularly considering the events following the School Board meeting the summer before, they have tried to outline all of this expressly in a document that is available not only to County staff and elected officials, but also to the public.

Mr. Kamptner said there were several issues that were raised in the feedback received. He said it was expressed that Area 1 is not large enough and that there was a request for the entire front lawn to be designated, with the front steps and landing plaza being available for expressive activity. He said the visitor's entrance should also be designated, as well as the internal sidewalks, for expressive activity.

Mr. Kamptner said that one of the Board members requested that the rules expressly address the issue of people flying drones on County property. He said that staff would have a recommendation for this.

Mr. Kamptner said that various portions of the property, primarily the front lawn, has been used at various times for various purposes. He said the County was in litigation in the late 1980s because the Board had authorized the Jaycees to erect a nativity scene, which was challenged. He said in the appendix to the appellate materials, there was a laundry list of the kinds of things that had been allowed over the period from 1982 to 1990. He said that by 1990, the case was appealed in the 4th Circuit Court of Appeals.

Mr. Kamptner said he has had a first-hand view of many things, as he has been working in the County Office Building for 24 years. He presented a photograph that showed a spontaneous rally held in 2004 during a Board of Zoning Appeals hearing, where approximately 1,200 people attended. He said the fire marshal closed the auditorium to all but 400 people, the people who had seats at the time, and asked everyone else to leave. He said both sides of the argument had spontaneous representation show up outside, along the sidewalk, and on the front lawn. He said he did not know who took the picture.

Mr. Kamptner presented a compilation provided by Michael Frietas, Facilities and Environmental Services, of protests from over the past six years in response to a Freedom of Information Act request.

Mr. Kamptner said that as the team worked through developing the principles and rules, they followed some guiding principles, recognizing that not only is the County a government, but they are also a landowner and thus, the courts recognize the County's rights just as private property owners have. He said they were very mindful of the First Amendment rights that may attach to a local government building and its grounds. He said he had a stack of printed cases he had been working through over several months.

Mr. Kamptner gave an overview of the three public forums that are recognized in the rules: lawn, Lane Auditorium, and the other rooms when a public body is in an open meeting, as well as the rooms at COB 5th that are available to the public. He said regarding the front of COB McIntire, most of the cases he reviewed deal with state capitols. He said there were a handful of cases that deal with local governments and that they were not unanimous in how the grounds, in this case, the front lawn, are going to be classified. He said the courts look at various factors, and that the team has looked at those and will do so again as they continue working on the rules.

Mr. Kamptner said that regarding the front lawn at COB McIntire, what they can do under the First Amendment is to designate reasonable time, place, and manner provisions. He said Area 1, all part of the front lawn, is the place where First Amendment activity would be designated under the rules. He said the in-between area was called Area 2, and what is referred to as the "extended plaza" is Area 3, which is an area under the trees with some picnic tables and some elements of a park.

Mr. Kamptner explained that within Area 1, the public is free to exercise First Amendment rights between 7:00 am and 9:00 pm, with several limitations on what can happen there. He said the public cannot use loudspeakers if they are pointed at the building during County business hours, or when there is a public meeting going on in the front-facing office rooms, because of the possibility that they will disrupt work.

Ms. Palmer asked if, with the "Keep off the grass" signs, people would be allowed to walk on the grass.

Mr. Kamptner replied that those would change.

Mr. Kamptner said that camping would not be allowed. He said signs are allowed, but they need to be attended to by whoever is there and cannot be placed in the ground and left overnight or indefinitely.

Mr. Kamptner presented a map, recalling that the Board and public saw it on August 7, showing the area identified as Area 1. He said this area will be modified, with the team proposing to come back to the Board in December. He said the dimensions of the area will likely be revised because they were established because of a prior re-landscaping plan for the front of the County Office Building (COB) and the limits of Area 1 coincided with a proposed fence, and the Board is moving away from the idea of having a fence.

Mr. Kamptner said at present, Area 1 exceeds 15,000 square feet and abuts the public sidewalk, which the County does not regulate as it is owned and controlled by the city. He said public sidewalks are what are known as traditional public forums, and the County was not attempting to regulate them at all. He said that under State law, the only restriction that exists is that protestors cannot impede traffic or people walking on the sidewalk. He said the sidewalks are 1,715 linear feet and are also 6 feet wide, which makes up a significant space.

Mr. Kamptner said in its current configuration, Area 1 would be approximately 50 feet deep from the McIntire/Preston Avenue intersection. He reiterated that the team was reexamining the dimensions, as the redesign of the COB's front lawn has changed. He presented a picture of the public sidewalks, front steps, and the landing plaza, explaining that the rules identified this space as non-public forum in the draft rules and was an issue that the team would look at. He said between the rules being drafted and

present time, they received feedback that the rules have attributes that lend it to not being considered a public forum due to its proximity to the COB and that it is not attached to public sidewalks. He said the team would be looking into this topic.

Mr. Kamptner presented a panorama photo that was taken from the mid-step landing to provide an idea of what the view is from there and how this place might serve as a place for First Amendment activity.

Mr. Kamptner said that looking at the landscape architect's draft drawings, from the balustrade, which is at the front-most portion of the plaza area, it is about 160 feet from the intersection. He said if one goes up to the top of the stairs, about 220 feet, it is separated from the rest of the front lawn by a balustrade. He showed a picture explaining that the view was from 6 feet tall looking straight out at eye level. He said this spot has been sporadically used as a place for candidates to announce their candidacy, and that the team would be looking into this.

Mr. Kamptner said regarding the visitor's entrance, the proposed rules do not designate this as an area of public forum. He said it is a small area and is rarely, if ever, used for expressive activity. He said he could not recall it ever being used. He acknowledged that there was the inflatable chicken on the grounds in 2018. He said if someone is trying to communicate their message to the passers-by on McIntire Road, the visitor's entrance has limited visibility, but would be attractive to anyone trying to get the attention of people coming in or leaving the COB.

Mr. Kamptner said that with travel ways, sidewalks, and parking lots as other interior spaces, both the case law and the rules designate those various areas as non-public forums, meaning that the County controls the access. He said the parking rules were liberalized in 2018 and have been carried over and clarified, pointing out that the lower parking lot would remain open to the public until 11:59 pm each night and is available to anyone, including anyone wishing to engage in expressive activity in Area 1, provided that it doesn't conflict with COB uses. He said similar rules will apply to County Office Building 5th Street (COB 5th).

Mr. Kamptner presented a diagram to show the three parking lots, noting that the upper parking lot would also include the portion that wraps around the front at the visitor's entrance. He said that the County recently installed a paved travel way that provides access from the lower parking lots to the public sidewalk to provide easy access to Area A-1 without having to climb stairs.

Mr. Kamptner said the County Office Building (COB) is open to members of the public. He said that when people are conducting public business during Board meetings, School Board meetings, or meetings of other public bodies, the public has First Amendment rights, provided they do not disrupt the meeting. He said photography and audio recording are permitted, with the same rules applying to COB 5th.

Mr. Kamptner said regarding the rooms being available after hours, when they are not being used for the County's or school's purposes, one change in the rules is a limitation to the days of operation when the rooms are available to outsiders to Tuesdays through Thursdays. He explained that part of the reason for this is to reduce costs to heat, cool, or maintain the building, as well as to ensure that as much space is available for ad-hoc County or school division related meetings.

Mr. Kamptner continued that there was, what the team thinks will be, a simple and straightforward process with fees required to cover the County's cost. He said the same rules would apply to COB 5th, except that those rooms will be available throughout the work week where the County's government is open for business.

Mr. Kamptner said that the Lane Auditorium lobby would be preserved for County or school division use and will not be available for outside organizations. He said that photography and audio recording there will be permitted. He said there is some case law that deals with public officials who have refused to allow the media to take pictures or conduct recorded interviews in areas like this that are generally open to the public, and that this is being addressed straightforward. He said the public hallways would be treated the same way, with the public hallways being used by people to get to various places within the COB. He said the same rules apply at COB 5th.

Mr. Kamptner said that with department offices, there were not many cases of this, but that the public had no First Amendment rights to come in and go where they please within various department offices and take pictures of whatever they choose. He said that the public is welcome to come in to discuss County business, as well as any invitees of those departments. He said photographs will be allowed. He noted that several of the departments in COB and COB 5th have many confidential files within their offices.

Mr. Kamptner said that other interior spaces, such as bathrooms and stairwells, are open to the public for coming and going. He said that closets and storage rooms are not open, and photography and audio recording is prohibited.

Mr. Kamptner said he would clarify the role of the County Executive in the rules. He said that one additional amendment to clarify allows the County Executive to authorize security officers within the building to request that people leave the premises if they are trespassing or disrupting County business. He said the County Executive, or whoever he delegates, as provided in the rules, would have the ability to have those people removed.

Mr. Kamptner said one of the sections being amended in the Board's next action was included as an attachment to the rules in order to provide as much information as possible in one place.

Mr. Kamptner said the three topics are still being evaluated and it was not a simple process because the courts have laid out some factors that need to be examined. He said the team wants to go through this process and come back with recommendations between present time and December.

Mr. Kamptner presented staff's recommendations and next steps. He said that there were a couple of minor revisions, and that one he did not cover in his presentation was allowing the County Executive additional authority to make some additional spaces within COB McIntire available for organizations, provided that they do not pose conflicts for County or school use.

Mr. Randolph said that Mr. Kamptner devised a series of prudent, sensible steps to guarantee an effective, easily understood balancing of staff safety, public access, and assured First Amendment rights.

Ms. Palmer said that with respect to amplification, she heard Mr. Kamptner say that there would be no amplification in Area 1 if directed towards the building. She asked if she was to assume that people can use amplification if directed towards the street. She said she was concerned about not being heard if having a rally and that it was difficult with the traffic.

Mr. Kamptner replied that the public would be able to use sound amplification to direct it outward.

Ms. Palmer expressed that she hoped Mr. Kamptner would find a way to leave the front steps of the building open for certain activities. She recalled her announcing of her candidacy on the front steps, recognizing that some people having louder voices while others, like herself, do not. She said it was hard to talk over the traffic and that she hoped amplification would be allowed directed out towards the street if people are up on the steps. She said typically, one is not on the top steps, but down on the platform with the steps behind.

Ms. Palmer noted there were not many public spaces for people to do what they need to do, and that the County wants citizens to engage, run for election, etc. She said given that most of the County's land is private all around, and that some public spaces, like libraries, are not conducive to making announcements and having groups around them. She expressed that it was vital that the County makes sure its people can be heard.

Ms. Mallek agreed that the availability of the Board to listen and people to speak in the auditorium according to their agendas, and outside, was incredibly important. She said the plan was a good start and that she understood there would be further analysis and tweaks to review in December.

Ms. Palmer asked if the Board would have a chance to vote on something in December. She recognized the need to change the rules the County has and was not happy with what the Board had before it. She said this was a conundrum for her, recognizing that something must be done.

Mr. Kamptner replied that he couldn't guarantee that there would be a recommended change. He said he will reach out again to the people who have provided feedback so far. He said he was playing a dual role in representing the Board while also representing the public. He said he could not guarantee that all three topics will be recommended. He said that when he completes his review, they may all be recommended in some way.

Ms. Palmer said that the Board also represents its constituents. She expressed appreciation for all of Mr. Kamptner's efforts and explained she was not trying to be critical but recognized that an action needed to be taken and that she was very concerned.

Mr. Kamptner noted that the visitor's entrance has never been used that he knew of.

Ms. Palmer agreed and said it was more problematic.

Mr. Kamptner said there was the idea of limiting the number of people there to do leafletting. He reiterated that he could not guarantee recommendations on all the topics. He apologized that he did not have a more definitive answer.

Ms. Mallek said a definitive answer was not expected immediately and that she knew Mr. Kamptner had more analysis to do.

Ms. Palmer agreed, expressing that she was thinking about voting that evening versus voting in December.

Ms. Mallek said she thought there would be enough Board interest to consider it again in December, regardless.

Mr. Gallaway said that he was interested in making the area along the sidewalk open, as it was the logical place where everything is collected and gathered, and it is a popular intersection. He said it always seemed problematic to keep people off the grass and that he was glad it was being opened immediately so that conflict doesn't exist. He said he appreciated that Mr. Kamptner would be bringing back recommendations but that the authority did lie with the Board, meaning they could always make its

own changes and decisions. He said that anything could be tweaked as well.

Mr. Gallaway expressed appreciation for recognizing the feedback received and continuing the conversation, noting that they try to work with both sides to get everyone's concerns addressed and move forward in a way that makes the most sense.

Mr. Randolph **moved** that the Board approve the guidelines on Use of the County Office Building and 5th Street County Office Building that include the three revisions authorizing the County Executive delegates specific authority to security officers to ask a person to leave the building; authorize the County Executive to make other rooms available to organizations in COB McIntire, provided their use does not conflict with County or school use; and prohibit third parties from flying drones at COB McIntire and COB 5th Street. The motion was **seconded** by Ms. Mallek.

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

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

NAYS: None.

ABSENT: Mr. Dill and Ms. McKeel.

Rules for the Public's Use of the County Office Buildings and Their Grounds

1. Purpose.

These rules are intended to ensure fair and equal access by the public to the County Office Buildings and their grounds without unreasonably impairing the public's need to conduct business with the County of Albemarle and Albemarle County Public Schools (the "School Division"), and for the County and the School Division, and their officers and employees, to conduct their business. To accomplish this, the Board of Supervisors establishes the following rules that balance the right of members of the public to exercise their First Amendment rights in a designated area in the front of the County Office Building on McIntire Road and during public meetings of public bodies.

Accordingly, these rules are intended to establish when and to what extent the members of the public are authorized to engage in conduct and activities that are not directly related to the conduct of County business, and to allow members of the public to exercise their First Amendment rights pursuant to content-neutral time, place, and manner rules.

These rules are balanced with the need to preserve the County Office Buildings for the uses to which they are dedicated, to maintain control over the County Office Buildings and their grounds, to minimize disruptions to members of the public and County officers and employees while they are conducting County business, to maintain the safety of the public, including County officers and employees, to conserve County resources, and to maintain the aesthetics of the County Office Buildings and their grounds.

2. Definitions.

The following terms apply to these Rules:

- A. **COB-McIntire** means the real property owned by the County on which the County Office Building is located at 401 McIntire Road, and includes both the interior of the buildings and the exterior of the buildings including parking areas, sidewalks, lawns and other landscaped areas, and other exterior spaces on the property.
- B. **COB-5th** means the real property owned by the County on which the County Office Building is located at 1600 5th Street and includes both the interior of the buildings and the exterior of the buildings including parking areas, sidewalks, lawns and other landscaped areas, and other exterior spaces on the property.
- D. **Commercial Activity** means any act involving buying, selling, trading, producing, or exchanging goods, products, or services, and includes offering goods, products, or services for sale, trade, or exchange, and engaging in, or soliciting, any business.
- E. **County** means the County of Albemarle, Virginia.
- F. **County Business** means County or School Division business being conducted at COB-McIntire or COB-5th during the County's or the School Division's regular business hours or during meetings of the Board of Supervisors, the Planning Commission, or the School Board.
- G. **County Business Day** means any time between 8:00 a.m. and 5:00 p.m., Monday through Friday, during which COB-McIntire is open for business by the County or the School Division.
- H. **County Executive** means the County Executive appointed by the Albemarle County Board of Supervisors or the County Executive's designee.

- I. **County Office Building** means COB-McIntire or COB-5th.
- J. **Designated Public Forum** means a public forum that is not a traditional public forum but is expressly designated by the County as a public forum.
- K. **Director** means the Director of the Department of Facilities and Environmental Services.
- L. **Event** means a meeting or other gathering held by an Organization in an authorized location within the County Office Building.
- M. **Expressive Activity** means a non-commercial activity in which a person intends to convey a lawful message through speech or conduct that is likely to be perceived by an observer of the speech or conduct, and includes any lawful public gathering, demonstration, procession, or parade in which the primary purpose is to exercise the rights of free speech or peaceable assembly.
- N. **General Access** means those areas of the County Office Building that are Public Forums where members of the public may be without any prior permission from the County.
- O. **Invitees** means persons expressly invited by the County or the School Division to conduct government- or education-related business or training and includes officials and agencies of the State or Federal government, a public university or college, members of programs of a State cooperative program, and State or regional organizations of which the County or the School Division are members such as the Virginia Association of Counties, the Virginia School Boards Association, and the Thomas Jefferson Planning District.
- P. **Limited Public Forum** means a subclass of a Designated Public Forum in which the government is not required to and does not allow persons to engage in every type of speech and by which the government may be justified in reserving the forum for certain groups or for discussing certain topics.
- Q. **Nonpublic Forum** means property which is not by tradition or designation a Public Forum.
- R. **Organization** means a youth, educational, recreational, cultural, political, civic, charitable, social, veterans, religious, or other organization that is reputable, will be reasonably expected to hold Events that neither disrupt County or School Division business, nor cause damage to the County Office Building, and whose membership is primarily from the County and abutting localities.
- S. **Photography** means creating photographic or video images.
- T. **Public Body** means a public body within the meaning of the Virginia Freedom of Information Act (Virginia Code § 2.2-3701).
- U. **Public Forum** means a place which by long tradition or by government fiat has been devoted to assembly, debate, and other Expressive Activity. Parks, public streets, public sidewalks, and the grounds of the seat of legislative and executive power are Public Forums.
- V. **School Division** means the Albemarle County Public Schools.
- W. **Selective Access** means those areas of either County Office Building that are Nonpublic Forums where the County reserves eligibility for access to a particular class of members of the public who must obtain permission from the County to use it, either expressly by these Rules or by a permit as provided in Section 7.

3. **Applicability.**

- A. **Properties to which these Rules apply.** These Rules apply only to COB-McIntire and COB-5th.

- B. **Persons to whom these Rules apply.** These Rules apply to any persons at COB-McIntire and COB-5th who are not elected officials, officers, employees, volunteers, contractors, or Invitees of the County or the School Division.
- C. **Maps.** Maps depicting COB-McIntire and COB-5th are Attachments A and B. Specific references in this Policy to various interior and exterior spaces are identified on the maps.
- D. **Prior Designated Public Forums.** Any previous policy, rule, or other act by the Board of Supervisors to designate any portion of COB-McIntire or COB-5th as a Public Forum is revoked and these Rules apply.
- E. **Prior Rules and Policies.** These Rules supersede any previous policies, rules, or acts pertaining to any person's or Organization's use of COB-McIntire or COB-5th, including the "Community Use of County Facilities Policy."

4. **Authority of the County and the County Executive.**

The County regulates the use of COB-McIntire and COB-5th pursuant to Virginia Code § 15.2-1800(E). In relation to this authority:

- A. **County Executive is authorized to administer and enforce these Rules.** The County Executive is authorized and has the duty to administer and enforce these Rules. The County Executive may also delegate this authority and duty to a Deputy County Executive, an Assistant County Executive, the Director, any other County department head, and the Superintendent of Schools. The delegation must be in writing and the writing must be kept on file in the Clerk of the Board of Supervisors' Office. The County Executive may rescind any delegation at any time for any reason.
- B. **County Executive is the "person lawfully in charge of the property" in trespass situations.** As provided in County Code § 10-120(B), the County Executive is designated as the "person lawfully in charge of the property" for the purpose of forbidding another person to go or remain at COB-McIntire or COB-5th and for the purpose of enforcing a trespass pursuant to County Code § 10-120(B) or Virginia Code § 18.2-119. The County Executive may delegate this authority as provided in County Code § 10-120(B).
- C. **County Executive may designate the Albemarle County Police Department as the "person lawfully in charge of the property" in trespass situations.** The County Executive may designate the Albemarle County Police Department, or any officer thereof, as the "person lawfully in charge of the property" for the purpose of forbidding another person to go or remain at COB-McIntire or COB-5th and for the purpose of enforcing a trespass pursuant to County Code § 10-120(A) or Virginia Code § 18.2-119. The County Executive may designate the Albemarle County Police Department as provided in County Code § 10-120(B).
- D. **County Executive is the "person in charge" in disorderly conduct situations.** As provided in County Code § 10-103, the County Executive is designated as the "person in charge" for the purpose of ejecting any person from COB-McIntire or COB-5th who violates County Code § 10-103 or Virginia Code § 18.2-415. The County Executive may delegate this authority as provided in County Code § 10-103(B).
- E. **Request to leave.** The County Executive may ask any person to leave COB-McIntire or COB-5th if the person is not on the property for a purpose authorized by these Rules. The County Executive may delegate this authority to security officers working under a contract with the County.
- F. **County Executive may make other rooms available in COB-McIntire.** In addition to Lane Auditorium and Rooms 235, 241, and 246, the County Executive may make other rooms available for use by Organizations as provided in Section 5(F), provided that their use will not conflict with County or School Division business.

Copies of County Code §§ 10-103 and 10-120 are attached as Attachment C.

5. Rules Applicable to the Exterior and Interior Spaces at COB-McIntire.

A. The Front Lawn.

1. **Location.** The Front Lawn at COB-McIntire is the lawn abutting McIntire Road and Preston Avenue and identified as “Front Lawn” on Attachment A. For reference and classification purposes in these Rules, the Front Lawn is further divided into Areas 1, 2, and 3.
2. **Status.** The Front Lawn is open to the public and is open for General Access for lawful purposes as provided in this Section 5(A). For purposes of First Amendment analysis, the portions of the Front Lawn composed of Areas 1 and 2 are either a Traditional or Designated Public Forum (*Smith v. County of Albemarle*, 895 F.2d 953 (4th Cir. 1989)); the portion of the Front Lawn composed of Area 3 is a Designated Public Forum by these Rules. Area 1 as identified on Attachment A is the “place” on the Front Lawn that is available for Expressive Activity, subject to the “time” and “manner” Rules in Section 5(A)(3).
3. **Rules Applicable to Area 1.** The following rules apply to persons in Area 1:
 - a. **When Area 1 is open.** Area 1 is open for General Access and Expressive Activity each day between 7:00 a.m. and 9:00 p.m., except when County staff are maintaining and cleaning Area 1 as required and appropriate.
 - b. **Permit is not required.** Persons and groups may engage in Expressive Activity in Area 1 without obtaining a prior permit from the County.
 - c. **Reservations are not required.** Persons and groups may use Area 1 on a first-come first-used basis.
 - d. **Using sound amplification equipment is restricted.** Sound amplification equipment directed at the County Office Building is prohibited between the hours of 8:00 a.m. and 5:00 p.m. on County Business Days and between 5:00 p.m. and 9:00 p.m. on County Business Days while the Albemarle County Board of Supervisors, the Albemarle County Planning Commission, or the Albemarle County School Board are holding public meetings in Rooms 235 or 241. Sound levels from sound amplification equipment on these days and during these times must not disrupt any person from conducting County or School Division business.
 - e. **Multiple forms of communication are permitted.** Photography, audio recording, signs, placards, banners, leafletting, and other forms of communication are permitted.
 - f. **Prohibited acts.** The following acts are prohibited in Area 1:
 1. **Obstructing sidewalks.** Persons may not obstruct or impede any pedestrian on a public sidewalk abutting Area 1 or any sidewalk connecting the public sidewalk or any parking lot at COB-McIntire to the County Office Building.
 2. **Displays, monuments, and signs; staking.** Unattended displays, monuments and signs are prohibited and must be attended to at all times by one or more persons or a group. Staking or otherwise affixing displays, monuments, or signs in the ground is prohibited.
 3. **Driving or parking motor vehicles.** Persons may not drive or park motor vehicles.
 4. **Open flames.** Open flames, other than flames from lighters used to light cigarettes and other similar products, are prohibited.
 5. **Alcoholic beverages.** Alcoholic beverages of any kind are prohibited.

6. **Commercial Activity.** Commercial Activity is prohibited. Soliciting donations is not Commercial Activity.
7. **Camping.** Camping, including erecting tents and other forms of temporary shelter, are prohibited.
8. **Chalking, painting, or using other means to write and draw on sidewalks and other surfaces of Area 1.** Writing and drawing on sidewalks and other surfaces of Area 1 with chalk, paint, or other means, are prohibited.
9. **Operating an unmanned aircraft system.** Operating an unmanned aircraft system (drone).
- g. **Physical separation.** If two or more persons or groups use Area 1 simultaneously, the County may take reasonable steps, including erecting barriers, to separate persons or groups in a manner to ensure their safety while preserving their ability to engage in Expressive Activity in general and with one another.
4. **Rules Applicable to Areas 2 and 3.** The following rules apply to persons in Areas 2 and 3:
 - a. **When Areas 2 and 3 are open.** Areas 2 and 3 are open for General Access each day between 7:00 a.m. and 9:00 p.m.
 - b. **Photography and audio recording permitted.** Photography and audio recording are permitted.
 - c. **Expressive Activity in Area 1 only.** Area 1 is the portion of the Front Lawn where Expressive Activity is permitted, as provided in Section 5(A)(3).
 - d. **Prohibited acts.** The following acts are prohibited in Areas 2 and 3:
 1. **Obstructing sidewalks.** Persons may not obstruct or impede any pedestrian on any sidewalk.
 2. **Displays, monuments, and signs.** Displays, monuments, and signs are prohibited.
 3. **Driving or parking motor vehicles.** Persons may not drive or park motor vehicles.
 4. **Open flames.** Open flames, other than flames from lighters used to light cigarettes and other similar products, are prohibited.
 5. **Alcoholic beverages.** Alcoholic beverages of any kind are prohibited.
 6. **Commercial Activity.** Commercial Activity is prohibited.
 7. **Soliciting donations.** Soliciting donations is prohibited.
 8. **Using sound amplification equipment.** Sound amplification equipment is prohibited during County Business Days if the sound level is such that it disrupts any person from conducting County or School Division business.
 9. **Camping.** Camping, including erecting tents and other forms of temporary shelter, are prohibited.
 10. **Chalking, painting, or using other means to write and draw on sidewalks and other surfaces of Areas 2 and 3.** Writing and drawing on sidewalks and other surfaces of Areas 2 and 3 with chalk, paint, or other means, are prohibited.
 11. **Operating an unmanned aircraft system.** Operating an unmanned aircraft system (drone).

B. Front Steps and the Landing Plaza.

1. **Location.** The Front Steps and the Landing Plaza at COB-McIntire are that portion of the County Office Building identified as the “Front Steps and Landing Plaza” on Attachment A.
2. **Status.** The Front Steps and the Landing Plaza are open for Selective Access. For purposes of First Amendment analysis, the Front Steps and Landing Plaza are Nonpublic Forums.
3. **Rules.** The Front Steps and Landing Plaza may be used by persons lawfully entering and leaving the County Office Building and by persons walking to lawfully enter or leave the Front Lawn.

C. Parking Lots.

1. **Location.** The parking areas at COB-McIntire are identified as the “Upper Parking Lot,” “Middle Parking Lot,” and “Lower Parking Lot” on Attachment B (collectively, the “Parking Lots”).
2. **Status.** The Parking Lots are open for Selective Access. For purposes of First Amendment analysis, the Parking Lots are Nonpublic Forums.
3. **Rules.** The following rules apply to persons using the Parking Lots:
 - a. **Permitted Uses of the Upper and Middle Parking Lots.** The Upper and Middle Parking Lots may be used only by persons parking vehicles to conduct County business, persons attending a meeting of a Public Body, Invitees, and persons parking their vehicles when it is related to an authorized Event of an Organization. In addition:
 1. **Civic events.** The County Executive may authorize the Upper and Middle Parking Lots to be open for parking for civic events sponsored, co-sponsored, or organized by the County, any locality, or an Organization.
 2. **Vehicle-oriented events.** The Director may authorize the Middle Parking Lot to be open for vehicle-oriented events sponsored, co-sponsored, or organized by an Organization. A vehicle-oriented event must be authorized by a written agreement between the County and the Organization. The agreement is in lieu of a permit.
 - b. **Permitted Uses of the Lower Parking Lot.** The Lower Parking Lot may be used by persons parking their vehicles to conduct County business, persons attending a meeting of a Public Body, Invitees, and persons parking their vehicles when it is related to an authorized Event of an Organization. In addition, the Lower Parking Lot may be used by persons parking their vehicles in order to dine, shop, or attend an entertainment event downtown, or to engage in Expressive Activity as provided in these Rules, subject to the following:
 1. **Vehicle parking on County Business Days.** Members of the public may park their vehicles in designated parking spaces in the Lower Parking Lot between 5:00 p.m. and 11:59 p.m. on each County Business Day, except during meetings of the Board of Supervisors, the Planning Commission, or the School Board. Before and during those meetings, the Lower Parking Lot is open only for persons attending the meeting or persons attending games and related activities at Lane Field.
 2. **Vehicle parking on weekdays that are not County Business Days.** Members of the public may park their vehicles in designated parking spaces in the Lower Parking Lot on any weekday that is not a County Business Day between 6:00 a.m. and 11:59 p.m. each day.
 3. **Vehicle parking on weekends.** Members of the public may park their vehicles in designated parking spaces in the Lower Parking Lot on Saturday and Sunday between 6:00 a.m. and 11:59 p.m. each day.

4. **Vehicle-oriented events.** The Director may authorize the Lower Parking Lot to be used for vehicle-oriented events sponsored or organized by an Organization. A vehicle-oriented event must be authorized by a written agreement between the County and the Organization. The agreement is in lieu of a permit.
- c. **Closing Any Parking Lot.** The County Executive may close any Parking Lot as follows:
 1. **Reasons for closing.** The Parking Lot may be closed for any of the following reasons:
 - (a) **County or School Division business.** When the County Executive determines that the Parking Lot should be available or used only for County and School officers and employees and persons conducting County or School Division business, or when the Parking Lot must be closed for any other County or School Division purpose.
 - (b) **Events.** When the Parking Lot will be used for a County or School Division-sponsored event or for a vehicle-oriented event authorized by Section 5(C)(3)(b).
 - (c) **Public threat.** When a credible threat of violence is received that would adversely affect the safety or welfare of any person at the County Office Building or pertains to damaging or destroying the County Office Building.
 - (d) **Weather emergency.** When a weather emergency exists that warrants closing a Parking Lot.
 - (e) **Declared emergency.** When a local emergency is declared by the County pursuant to Virginia Code § 44-146.21 or a state of emergency is declared by the Governor.
 - (f) **Maintenance and repair.** When a Parking Lot must be closed for maintenance and repair.
 2. **Procedure.** The County Executive may close any Parking Lot either in writing or verbally. The closure should be communicated to the Albemarle County Police Department and the Director. The County Executive should state the reason for closing the Parking Lot but the failure to do so does not invalidate the decision.
 3. **Duration of a closure.** The County Executive may close the Parking Lot in the circumstances described in Section 5(C)(3)(c) for a reasonable period before and after the actual use or necessity for closure. In addition, the duration of the closure is not required to be conterminous with the local or State emergency.

D. Internal Travelways and Sidewalks.

1. **Location.** The internal travelways and sidewalks at COB-McIntire are identified as the "Travelways" and "Internal Sidewalks" on Attachment A. The Internal Sidewalks are distinguished from the "Public Sidewalks" abutting McIntire Road and Preston Avenue, which are not subject to these Rules.
2. **Status.** The Travelways and Internal Sidewalks are open for Selective Access. For purposes of First Amendment analysis, the Travelways and Internal Sidewalks are Nonpublic Forums.
3. **Rules.** The following rules apply to persons using the Travelways and Internal Sidewalks:
 - a. **Permitted Uses of the Travelways and Internal Sidewalks.** The Travelways and Internal Sidewalks may be used by persons as means of ingress and egress to conduct County business, persons attending a meeting of a Public Body, Invitees, and persons parking their vehicles as authorized in Section 5(C)(3).

- b. **The County Executive may close Travelways and Internal Sidewalks.** The County Executive may close Travelways and Internal Sidewalks in the following circumstances:
1. **Interference with County or School Division business.** When the County Executive determines that using any Travelway or Internal Sidewalk interferes, or may interfere, with County or School Division business.
 2. **Parking Lots closed.** When the Upper, Middle, or Lower Parking Lots are closed as provided in Section 5(C)(3)(c) and, as a result, any Travelway or Internal Sidewalk is not a required means of ingress and egress.
 3. **Declared emergency.** When a local emergency is declared by the County pursuant to Virginia Code § 44-146.21 or a state of emergency is declared by the Governor, regardless of whether any Parking Lot is closed.

E. **Other Exterior Spaces.**

1. **Locations.** Any exterior spaces not otherwise identified in Sections 5(A) through (D) are regulated by this section and are referred to as “Other Exterior Spaces.”
2. **Status.** The Other Exterior Spaces are open for Selective Access. For purposes of First Amendment analysis, the Other Exterior Spaces are Nonpublic Forums.
3. **Rule.** The Other Exterior Spaces may be used by persons as a means of ingress and egress to conduct County business, persons attending a meeting of a Public Body, Invitees, and persons parking their vehicles as authorized in Section 5(C)(3).

F. **Interior Spaces.**

1. **Location.** Any space within the County Office Building at COB-McIntire is regulated by this section and is referred to as the “Interior Spaces.”
2. **Status.** As further described in Section 5(F)(3), below, some parts of the Interior Spaces are open for General Access and some parts are open for Selective Access. For purposes of First Amendment Analysis, when a Public Body is holding a public meeting either in Lane Auditorium or any other room, those locations are Limited Public Forums. Any other Interior Space is a Nonpublic Forum.
3. **Rules.** The following rules apply to Interior Spaces:
 - a. **Lane Auditorium and other meeting rooms when a Public Body is conducting a public meeting.** Lane Auditorium and Rooms 235, 241, and 246, and any other (collectively, “Lane Auditorium and the Rooms”) are open for General Access when a Public Body is conducting a public meeting in that room. Any person attending the meeting may engage in Expressive Activity within the location where the public meeting is held if it does not actually disrupt the public meeting. See Attachments D (The First Amendment Rights of Speakers at Public Meetings) and E (Guidance on Whether Particular Speech or Behavior at a Public Meeting is Disruptive). Photography and audio recording are permitted. For First Amendment analysis, when a Public Body is conducting a public meeting either in Lane Auditorium or any other room, the location is a Limited Public Forum. When a Public Body is conducting a closed meeting pursuant to the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*), the closed meeting location is a Nonpublic Forum and only those persons authorized to be in the closed meeting may attend.
 - b. **Lane Auditorium and other meeting rooms when a Public Body is not conducting a public meeting.** Lane Auditorium and the Rooms are subject to the following:

1. **Between 7:00 a.m. and 5:00 p.m.** On County Business Days, Lane Auditorium and the Rooms are open for Selective Access between 7:00 a.m. and 5:00 p.m., which is limited to persons who are in the County Office Building to conduct County Business and Invitees. For First Amendment analysis, Lane Auditorium and the Rooms are Nonpublic Forums when they are not being used for a meeting by a Public Body pursuant to subsection (a).
 2. **Between 5:00 p.m. and 9:00 p.m., Tuesday through Thursday.** On Tuesdays through Thursdays on which the County (but not necessarily the School Division) is open for business, Lane Auditorium and the Rooms, including any rooms made available by the County Executive as authorized by Section 4(F), are open for Selective Access between 5:00 p.m. and 9:00 p.m. Selective Access is limited to persons in Lane Auditorium or the Rooms to conduct County or School Division business, Invitees, and persons attending an authorized Event of an Organization. For First Amendment analysis, Lane Auditorium and the Rooms are Nonpublic Forums when they are not being used for a meeting by a Public Body pursuant to Section 5(F)(3)(a).
 - c. **Lane Auditorium lobby.** The Lane Auditorium lobby is open for Selective Access, which is limited to persons who are in the County Office Building to conduct County or School Division business, persons attending a meeting of a Public Body, Invitees, and persons attending an authorized Event of an Organization. The Lane Auditorium lobby may not be used by an Organization for an Event. Photography and audio recording are permitted. For First Amendment analysis, the Lane Auditorium lobby is a Nonpublic Forum.
 - d. **Hallways.** Hallways identified are open for Selective Access, which is limited to persons who are in the County Office Building to conduct County or School Division business, persons attending a meeting of a Public Body, Invitees, and persons otherwise authorized to be in the County Office Building to attend an authorized Event of an Organization. Photography and audio recording are permitted. For First Amendment analysis, Hallways are Nonpublic Forums.
 - e. **Department offices.** Department offices, including their lobbies, waiting areas, internal hallways, work spaces, and employee offices are open for Selective Access, which is limited to persons who are there to conduct County Business and Invitees of the department or its employees. Photography is not permitted without the express permission of an officer or employee of that department. Audio recording is permitted to the extent authorized by State law. For First Amendment analysis, department offices are Nonpublic Forums.
 - f. **Stairwells, elevators, and bathrooms.** Stairwells, elevators, and bathrooms are open for Selective Access, which is limited to persons who are in the County Office Building to conduct County or School Division business, persons attending a meeting of a Public Body, Invitees, and persons attending an authorized Event of an Organization. Photography and audio recording are permitted in stairwells and elevators. Photography is not permitted in bathrooms. Audio recording is permitted in bathrooms to the extent authorized by State law. For First Amendment analysis, stairwells, elevators, and bathrooms are Nonpublic Forums.
 - g. **Other interior spaces.** Any other interior spaces not described in this subsection, including any common area break rooms, closets, or other areas marked "Staff only" are not open to access by the public except as an Invitee of a County or School Division officer or employee. Photography is not permitted without the express permission of an officer or employee of that department. Audio recording is permitted to the extent authorized by State law. For First Amendment analysis, the other interior spaces are Nonpublic Forums.
- G. **Operating unmanned aircraft systems (drones).** Operating an unmanned aircraft system (drone) from COB-McIntire is prohibited.

6. Rules Applicable to the Exterior and Interior Spaces at COB-5th.

A. Parking Lots.

1. **Location.** The parking areas at COB-5th are referred to as the “Parking Lots.”
2. **Status.** The Parking Lots are open for Selective Access. For purposes of First Amendment analysis, the Parking Lots are Nonpublic Forums.
3. **Rules.** The following rules apply to persons using the Parking Lots:
 - a. **Permitted Uses.** The Parking Lots may be used only by persons parking vehicles to conduct County business, persons attending a meeting of a Public Body, Invitees, persons parking when it is related to an authorized Event of an Organization, and persons parking in conjunction with a “sale and exchange program” promoted by the Albemarle County Police Department.
 - b. **Closing Any Parking Lot.** The County Executive may close any Parking Lot as follows:
 1. **Reasons for closing.** The Parking Lot may be closed for any of the following reasons:
 - (a) **County or School Division business.** When the County Executive determines that the Parking Lot should be available or used only for County and School officers and employees and persons conducting County or School Division business, or when the Parking Lot must be closed for any other County or School Division purpose.
 - (b) **Public threat.** When a credible threat of violence is received that would adversely affect the safety or welfare of any person at the County Office Building or the threat pertains to damaging or destroying the County Office Building.
 - (c) **Weather emergency.** When a weather emergency exists that warrants closing the Parking Lot.
 - (d) **Declared emergency.** When a local emergency is declared by the County pursuant to Virginia Code § 44-146.21 or a state of emergency is declared by the Governor.
 - (e) **Maintenance and repair.** When the Parking Lot must be closed for maintenance and repair.
 2. **Procedure.** The County Executive may close any Parking Lot either in writing or verbally. The closure should be communicated to the Albemarle County Police Department and the Director. The County Executive should state the reason for closing the Parking Lot but the failure to do so does not invalidate the decision.
 3. **Duration of a closure.** The County Executive may close the Parking Lot in the circumstances described in Section 6(A)(3)(b)(1) for a reasonable period before and after the actual use or necessity for closure. In addition, the duration of the closure is not required to be conterminous with the local or State emergency.

B. Internal Travelways and Sidewalks.

1. **Location.** The internal travelways and sidewalks at COB-5th are referred to as the “Travelways” and “Internal Sidewalks.”

2. **Status.** The Travelways and Internal Sidewalks are open for Selective Access. For purposes of First Amendment analysis, the Travelways and Internal Sidewalks are Nonpublic Forums.
3. **Rules.** The following rules apply to persons using the Travelways and Internal Sidewalks:
 - a. **Permitted Uses of the Travelways and Internal Sidewalks.** The Travelways and Internal Sidewalks may be used by persons as a means of ingress and egress to conduct County business, persons attending a meeting of a Public Body, Invitees, and persons parking when it is related to an authorized Event of an Organization.
 - b. **The County Executive may close Travelways and Internal Sidewalks.** The County Executive may close Travelways and Internal Sidewalks in the following circumstances:
 1. **Interference with County or School Division business.** When the County Executive determines that using any Travelway or Internal Sidewalk interferes, or may interfere, with County or School Division business.
 2. **Parking Lots closed.** When the Parking Lots are closed as provided in Section 6(A)(3)(b) and, as a result, any Travelway or Internal Sidewalk is not a required means of ingress and egress.
 3. **Declared emergency.** When a local emergency is declared by the County pursuant to Virginia Code § 44-146.21 or a state of emergency is declared by the Governor, regardless of whether any Parking Lot is closed.

C. Other Exterior Spaces.

1. **Locations.** Any exterior spaces not otherwise identified in Sections 6(A) and 6(B) are regulated by this section and are referred to as “Other Exterior Spaces.”
2. **Status.** The Other Exterior Spaces are open for Selective Access. For purposes of First Amendment analysis, the Other Exterior Spaces are Nonpublic Forums.
3. **Rule.** The Other Exterior Spaces may be used by persons as a means of ingress and egress to conduct County business, Invitees, persons attending a meeting of a Public Body, and persons parking when it is related to an authorized Event of an Organization.

D. Interior Spaces.

1. **Location.** Any space within the County Office Building at COB-5th is regulated by this section and is referred to as the “Interior Spaces.”
2. **Status.** As further described in Section 6(D)(3), below, some parts of the Interior Spaces are open for General Access and some parts are open for Selective Access. For purposes of First Amendment Analysis, when a Public Body is holding a public meeting in Rooms A, B, or C, those locations are Limited Public Forums. Any other Interior Space is a Nonpublic Forum.
3. **Rules.** The following rules apply to Interior Spaces:
 - a. **Rooms A, B, and C when a Public Body is conducting a public meeting.** Rooms A, B, and C are open to persons when a Public Body is conducting a public meeting in the room. Any person attending the meeting may engage in Expressive Activity within the location where the public meeting is held if it does not actually disrupt the public meeting. See Attachments D (The First Amendment Rights of Speakers at Public Meetings) and E (Guidance on Whether Particular Speech or Behavior at a Public Meeting is Disruptive). Photography and audio recording are permitted. For

First Amendment analysis, when a Public Body is conducting a public meeting in Rooms A, B, or C, the location is a Limited Public Forum. When a Public Body is conducting a closed meeting pursuant to the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*), the closed meeting location is a Nonpublic Forum and only those persons authorized to be in the closed meeting may attend.

- b. **Rooms A, B, and C when a Public Body is not conducting a public meeting.** Rooms A, B, and C are subject to the following:
 - 1. **On County Business Days; between 7:00 a.m. and 5:00 p.m.** On County Business Days, Rooms A, B, and C are open for Selective Access between 7:00 a.m. and 5:00 p.m., which is limited to persons who are in the County Office Building to conduct County Business and Invitees. For First Amendment analysis, Rooms A, B, and C are Nonpublic Forums when they are not being used for a meeting by a Public Body pursuant to subsection (a).
 - 2. **On County Business Days; between 5:00 p.m. and 9:00 p.m.** On Mondays through Fridays on which the County (but not necessarily the School Division) is open for business, Rooms A, B, and C are open for Selective Access between 5:00 p.m. and 9:00 p.m. Selective Access is limited to persons who are in the County Office Building to conduct County Business, Invitees, and persons attending an authorized Event of an Organization. For First Amendment analysis, Rooms A, B, and C are Nonpublic Forums when they are not being used for a meeting by a Public Body pursuant to Section 6(D)(3)(a).
 - c. **The Entrance Lobby and Hallways.** The Entrance Lobby and Hallways are open for Selective Access, which is limited to persons who are in the County Office Building to conduct County or School Division business, Invitees, persons attending a meeting of a Public Body, and persons attending an authorized Event of an Organization. Photography and audio recording are permitted. For First Amendment analysis, the Entrance Lobby and the Hallways are Nonpublic Forums.
 - e. **Department offices.** Department offices, including their lobbies, waiting areas, internal hallways, work spaces, and employee offices are open for Selective Access, which is limited to persons who are there to conduct County Business and Invitees of the department or its employees. Photography is not permitted without the express permission of an officer or employee of that department. Audio recording is permitted to the extent authorized by State law. For First Amendment analysis, department offices are Nonpublic Forums.
 - f. **Stairwells, elevators, and bathrooms.** Stairwells, elevators, and bathrooms are open for Selective Access, which is limited to persons who are in the County Office Building to conduct County or School Division business, Invitees, persons attending a meeting of a Public Body, and persons attending an authorized Event of an Organization. Photography and audio recording are permitted in stairwells and elevators. Photography is not permitted in bathrooms. Audio recording is permitted in bathrooms to the extent authorized by State law. For First Amendment analysis, stairwells, elevators, and bathrooms are Nonpublic Forums.
 - g. **Other interior spaces.** Any other interior spaces not described in this subsection, including any common area break rooms, closets, or other areas marked "Staff only" are not open to access by the public except as an Invitee. Photography is not permitted without the express permission of an officer or employee of that department. Audio recording is permitted to the extent authorized by State law. For First Amendment analysis, the other interior spaces are Nonpublic Forums.
- E. **Operating unmanned aircraft systems (drones).** Operating an unmanned aircraft system (drone) from COB-5th is prohibited.

7. Rules for Permitting Events at COB-McIntire and COB-5th.

A. Purpose.

These rules provide for the safe and peaceful enjoyment of, and the fair and equal access to, COB-McIntire and COB-5th by Organizations. To accomplish this, these rules are intended to ensure that Organizations' Events do not disrupt or otherwise interfere with the primary purposes of the County Office Buildings, which is to conduct County or School Division business.

These rules are not intended to exclude any activity or communication having particular content, but to coordinate multiple uses of limited spaces, and to ensure financial accountability for damage caused by any Event.

B. Where and when Organizations may hold Events.

The Director may permit an Organization to hold an Event in Lane Auditorium and Rooms 235, 241, and 246 in COB-McIntire between 5:00 p.m. and 9:00 p.m., Tuesday through Thursday, and in Room A in COB-5th between 5:00 p.m. and 9:00 p.m., Monday through Friday, on any day on which the County, but not necessarily the School Division, is open for business.

The rooms are not available to Organizations if the room is scheduled to be used to conduct County Business or might otherwise conflict with, or adversely affect parking availability for a meeting of a Public Body.

C. Permit required; exemptions.

Each Organization seeking to hold an Event in Lane Auditorium or Rooms 235, 241, or 246 in COB-McIntire, or in Rooms A, B, or C in COB-5th, must first obtain a permit issued by the Director. A single permit may be obtained for multiple or recurring Events.

Invitees are exempt from the permit requirement.

D. Application.

An Organization may apply for a permit as follows:

1. **When to apply for a permit; waiving the application deadline.** Any Organization intending to conduct an Event must apply to the Department of Facilities and Environmental Services for a permit at least 15 calendar days before the date of the Event, but no more than six months before the date of the Event.

The Director is authorized to consider an application for a permit filed less than 15 days before the date of the proposed Event if the Director determines that waiving the application deadline will not pose a burden on, or a disruption to, the Department of Facilities and Environmental Services, and that good cause otherwise exists.

2. **Contents of the application.** The application must be on a form created and provided by the Department of Facilities and Environmental Services, and the applicant must provide the following information:
 - a. The name, address, email address, and telephone number of the person requesting the permit.
 - b. The name and address of the Organization the applicant represents.

- c. A description of the Organization demonstrating that it meets the definition of an eligible "Organization," as defined in Section 2.
 - d. The name, address, email address, and telephone number of the person who will act as the Event leader who will be responsible for managing or conducting the Event.
 - e. The type of Event intended to be held (e.g., a meeting), including a description of the activities planned for the Event.
 - f. The requested date and starting and ending times for the Event.
 - g. The requested room, if known, i.e., Lane Auditorium or Rooms 235, 241, or 246 in COB-McIntire, or Rooms A, B, or C in COB-5th.
 - h. The approximate number of people expected to attend the Event.
 - i. Whether the applicant wants additional chairs, tables, or both, set up for the Event.
 - j. Whether food or beverages (other than water) will be served at the Event.
 - k. Verification of liability insurance coverage as provided in Section 7(D)(5)(d).
 - l. Other information the Director deems reasonably necessary to provide for administrative arrangements and County staff assistance and supervision.
3. **Fees and deposits.** The applicant must pay the applicable fees and deposit with the application. If the applicant has applied for a permit for multiple or recurring Events, the applicant must pay the fees and deposit for the first Event requested to be held with the application.
- a. **Base Fee.** The County Executive is authorized to establish a reasonable base fee to cover the County's costs to use COB-McIntire Lane Auditorium or a room.
 - b. **Fee for additional chairs, tables, or both.** In addition to the base fee, the County Executive is authorized to establish an additional fee to cover the reasonable costs to the County to provide additional chairs, tables, or both, for the Event.
 - c. **Deposit if food or beverages will be served.** The County Executive is authorized to establish a reasonable deposit amount to be required if food or beverages (other than water) will be served at the Event. The deposit will be returned to the applicant in whole or in part depending on whether additional room cleaning is required because of the food or beverages served.
 - d. **Collection.** The Director may collect any unpaid or insufficient fee if food or beverages were served even though a deposit was not paid, and additional room cleaning was required because of the food or beverages served.

E. Acting on a permit application.

The Director will act on a permit application as follows:

- 1. **Approval deadline.** The Director will act on an application within seven days after receipt of a complete application; provided that the Director and the applicant may agree to change the date by which the Director will act on the application. An applicant is without a remedy if the Director fails to timely act and the Organization is unable to hold the Event as requested in the application.

2. **Order of review.** The Director will review applications on a first come, first served basis.
3. **Approval criteria.** The Director will apply the following criteria to determine whether to approve an application and grant a permit:
 - a. The date, time, duration, and size of the Event will not disrupt or conflict with the primary purpose of the County Office Building, which is to conduct County and School Division business.
 - b. The conduct or nature of the Event will not disrupt the primary purpose the County Office Building, which is to conduct County and School Division business.
 - c. The conduct or nature of the Event will not require diversion of police and fire and rescue personnel to properly police or respond to the Event and the County Office Building in general.
 - d. The Event will not interfere with another Event for which a permit has been granted for a room on a particular date and time.
4. **Denial criteria.** The Director may deny an application for one or more of the following reasons:
 - a. The conduct or nature of the Event will disrupt the primary purpose of the County Office Building, which is to conduct County and School Division business.
 - b. The conduct or nature of the Event will require diversion of police and fire rescue personnel to properly police or respond to the Event and the County Office Building in general.
 - c. The Event will conflict or interfere with another Event for which a permit has been granted for a room on a particular date and time.
 - d. The Event would conflict with previously approved planned programs or activities organized, planned, or sponsored by the County or the School Division for the same date and time.
 - e. The application contains materially false or misleading information.
 - f. The applicant is legally incompetent to contract or to sue or be sued, or the Organization is unable to be sued.
 - g. The applicant or the person or Organization on whose behalf the application was made has: (i) on a prior occasion damaged any County-owned real property; (ii) has not paid in full for prior damage to any County-owned real property; or (iii) has any other unpaid debt owed to the County.
 - h. The Event is inconsistent with the customary uses of the County Office Building or cannot be accommodated in the requested room because it lacks the physical improvements required for the Event.
 - i. The Event, or any activity planned or promoted to occur during the Event, is prohibited by law.
 - j. The Event, or any activity planned or promoted to occur during the Event, would present an unreasonable danger to the health, safety, or welfare of the applicant, the participants, the attendees, or any person in the County Office Building not participating in the Event, or would present a risk of damage to the County Office Building.

The Director may not deny an application: (i) for political, social, or religious reasons; or (ii) because of the content of the views expressed in the application or intended to be expressed at the Event.

5. **Permit granted; notice and conditions.** If the Director approves the application and grants the permit, the Director will promptly notify the applicant. The Director may impose reasonable conditions to ensure that the Event does not disrupt County Business and to ensure that the County Office Building is not damaged. In addition, each permit is subject to the following standard conditions, copies of which must be provided to the permittee:
- a. **Permit is a revocable license.** The permit is a revocable license to occupy the room or rooms applied for only during the dates and times approved, and for the Event's attendees to park in the appropriate Parking Lot, to drive on and walk on the Travelways and Internal Sidewalks, and to use the Hallways, stairwells, elevators, and bathrooms.
 - 1. **Revocation criteria.** The Director may revoke the license at any time, and any fees and deposits will be promptly returned to the applicant. The permit may be revoked either before or during the permitted Event if: (i) any information supplied by the permittee is discovered to be materially false or intentionally misleading; (ii) any material condition of the permit has been substantially violated; (iii) there is any continued violation of the conditions of the permit after the permittee or the permittee's agent or employee is notified of a violation of the permit by the Director; (iv) the permittee becomes unable to timely comply with the conditions of the permit; (v) the permit is for multiple or recurring Events and the permittee fails to timely pay any fees or deposits; (vi) the room becomes unavailable because it must be used to conduct County or School Division business or to conduct a meeting of a Public Body; (vii) the County Office Building is closed to the public because of weather conditions or a declared emergency; or (viii) unforeseen or emergency circumstances arise that would have warranted the Director to deny the application previously.
 - 2. **Notice of revocation.** The Director will notify the permittee that the permit has been revoked as soon as possible. The notice may be provided in person, by telephone, or by email. The notice of revocation must include the reasons the permit was revoked.
 - b. **Event attendees.** The permit entitles the permittee and its members and invitees to be in and at the County Office Building during the permitted period and for short periods before and after the permitted Event.
 - c. **Duty to indemnify, hold harmless, and defend.** The permittee is subject to the following:
 - 1. **Indemnification.** The permittee must defend, protect, indemnify fully, and hold the County of Albemarle and its boards, officers, employees, agents, and volunteers free and harmless from and against all claims, damages, expenses, loss, or liability of any kind resulting from any willful, reckless, or negligent acts or omissions of the permittee or the permittee's officers, agents, representatives, partners, employees, and invitees in connection with the permitted Event; and
 - 2. **Hold harmless.** At the permittee's own cost, risk, and expense, the permittee must defend any and all claims and all legal actions that may be commenced or filed against the County of Albemarle and its boards, officers, employees, agents, and volunteers, and to pay any settlement entered into and to satisfy any judgment that may be entered against the County or its officers, employees, agents, or volunteers as a result of the willful, reckless, or negligent acts or omissions of the permittee or the permittee's officers, agents, representatives, partners, employees, or invitees in connection with the uses, or activities occurring under the Event permit.
 - d. **Duty to maintain insurance.** The permittee must maintain in full force and effect on each day of the permitted Event a policy of insurance from a reliable insurance company authorized to do business in the State.

1. **The County as a named insured or additional insured.** The policy must include the “County of Albemarle, Virginia” and its boards, officers, employees, agents, and volunteers as named insureds or additional insureds.
 2. **Type and amount of insurance.** The policy must provide coverage that the Director, in consultation with the County’s Risk Manager, determines to be necessary based on: (i) the estimated number of persons that will be attending the Event; and (ii) the nature of the room that will be used during the Event.
 3. **Certificate of insurance.** The permittee must provide a certificate of insurance to the Director before the permit is granted.
- e. **The Director may waive the conditions to indemnify, hold harmless, and defend, and to maintain insurance.** The Director may waive the conditions requiring a permittee to indemnify, hold harmless, defend, and to maintain insurance if the permittee demonstrates in writing to the satisfaction of the Director that it is financially unable to perform the requirements.
1. **When an applicant is ineligible for a waiver.** A permittee is ineligible to obtain a waiver of the requirements to indemnify, hold harmless, defend, or hold harmless if there is a demonstrable history of personal injury or property damage claims attributable to the applicant, the applicant’s associates, or its assigns or successors in interest in the conduct of previous Events that were similar in nature to the proposed Event.
 2. **When the Director may reduce or waive the permittee’s requirement to maintain insurance.** The Director may reduce or waive the permittee’s requirement to maintain insurance if the permittee designs the Event in cooperation with the Director to limit specific risks and dangers to the Organization’s members and its invitees, and damage to the County Office Building.

F. Paying fees and deposits for multiple or recurring Events.

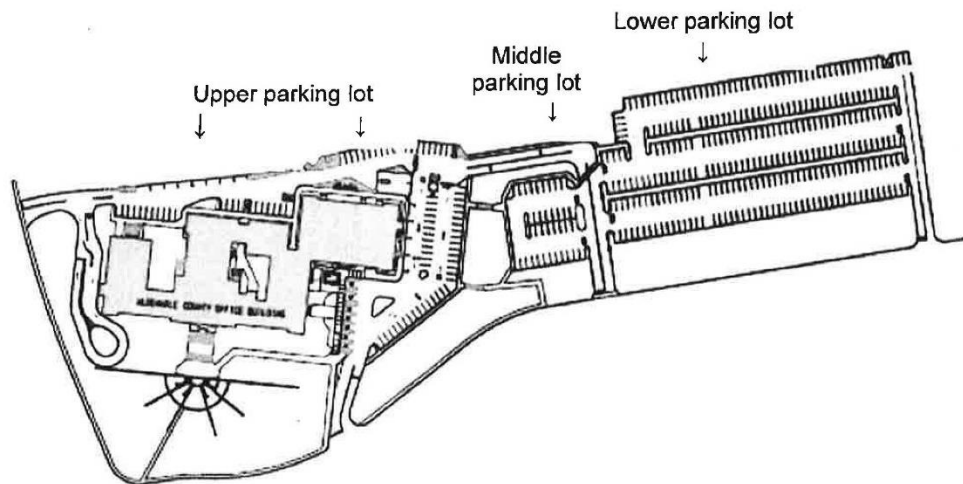
If the permittee’s permit allows multiple or recurring Events, the permittee must pay the fees and deposits required for each Event at least seven days before the second and each subsequent Event.

Appendices

- A. Map of County Office Building (COB-McIntire)
- B. Map of County Office Building (COB-McIntire) Parking Lots
- C. County Code §§ 10-103 and 10-120
- D. The First Amendment and Speakers at Public Meetings
- E. Guidance on Whether Speech or Behavior at a Public Meeting is Disruptive



- 1 Front Lawn – Area 1
- 2 Front Lawn – Area 2
- 3 Front Lawn (Extended Plaza) – Area 3
- 4 Front Steps and Landing Plaza
- 5 Other Exterior Spaces
- 6 Internal Travelways and Sidewalks
- 7 Upper Parking Lot



Appendix B

Agenda Item No. 18. **Public Hearing. Ordinance to Amend County Code Chapter 10, Offenses - Miscellaneous.** To receive public comment on its intent to adopt an ordinance to amend County Code Chapter 10, Offenses - Miscellaneous, by: 1) amending County Code § 10-103, Disorderly conduct in public places, to designate the County Executive as the “person in charge” for the purpose of ejecting any person from any County property any person who engages in disorderly conduct pursuant to County Code § 10-103, and to provide for the County Executive’s delegation of this authority to others; 2) amending County Code § 10-120, Trespass – After having been forbidden to do so, to: (i) provide that any owner, lessee, custodian, or person lawfully in charge of any real property may designate the Albemarle County Police Department as a “person lawfully in charge of the property” for the purpose of enforcing a trespass pursuant to County Code § 10-120; (ii) provide that any designation shall be in writing on County-approved forms and may be accepted or rescinded at the discretion of the Chief of Police; and (iii) designate the County Executive as the “person lawfully in charge of the property” for the purpose of enforcing a trespass on County property pursuant to County Code § 10-120, and to provide for the County Executive’s delegation of this authority to others; and 3) repealing County Code § 10-120.1, Designation of police to enforce trespass violations. *(Advertised in the Daily Progress on October 8, 2019)*

The Executive Summary forwarded to the Board states that the Board has been discussing the revision of the County’s Community Use of County Facilities Policy to ensure the County and the public are able to conduct County business with minimal or no disruption; enable the public to use the COB-

McIntire and COB-5th in a reasonable manner; recognize the public's interest in exercising First Amendment rights; clarify the County's interests, as a property owner, in making certain areas of COB-McIntire and COB-5th available for public use while other areas are not open for public access; and clarify the role of the County Executive and his designees as persons in charge of COB-McIntire and COB-5th. That policy is going to the Board as a separate agenda item for its consideration and adoption on October 16.

Amendments to County Code §§ 10-103 (disorderly conduct) and 10-120 (trespass) are also proposed to expressly state that the County Executive or his designee is the "person in charge" in disorderly conduct situations and the "person lawfully in charge of the property" in trespass situations.

The attached proposed ordinance (Attachment A) would:

1) Amend County Code § 10-103, Disorderly conduct in public places, to designate the County Executive as the "person in charge" for the purpose of ejecting any person from any County property who engages in disorderly conduct pursuant to County Code § 10-103, and to provide for the County Executive's delegation of this authority to others;

2) Amend County Code § 10-120, Trespass - After having been forbidden to do so, to: (i) provide that any owner, lessee, custodian, or person lawfully in charge of any real property may designate the Albemarle County Police Department as a "person lawfully in charge of the property" for the purpose of enforcing a trespass pursuant to County Code § 10-120; (ii) provide that any designation must be in writing on County-approved forms and may be accepted or rescinded at the discretion of the Chief of Police; and (iii) designate the County Executive as the "person lawfully in charge of the property" for the purpose of enforcing a trespass on County property pursuant to County Code § 10-120, and to provide for the County Executive's delegation of this authority to others; and

3) Repeal County Code § 10-120.1, Designation of police to enforce trespass violations. The substance of this section is being moved to County Code § 10-120, as summarized in 2(i) and (ii) above.

There is no budget impact related to the adoption of this Ordinance.

Staff recommends that the Board adopt the attached proposed Ordinance (Attachment A).

Mr. Kamptner said there were two purposes for the amendment. He said one was to clarify the roles and responsibility of the County Executive. He said that as he mentioned earlier, it was trying to bring the rules and County Code in sync with respect to how the County deals with its own property. He said the two sections apply countywide, particularly the Trespass section, but they also wanted to tailor it to incorporate the County Executive's roles and responsibilities. He said with this in mind, the ordinance has been amended to designate the County Executive as the person lawfully in charge of the property for the purposes of disorderly conduct and trespass.

Mr. Kamptner said regarding the Disorderly Conduct section, it gives the County Executive the authority to delegate the "person in charge" and makes stylistic changes. He said the changes to the Trespass section were similar and roll what had been in a separate section into this section so that it is all together. He said the stylistic changes were also to ensure that it matches the current State Enabling Authority. He said the statements in the ordinance have been reviewed by the Commonwealth Attorney's Office and that they were satisfied with its language. He said this is a public hearing.

Ms. Mallek indicated to a bullet point that said, "The landowner can designate to the police department," recalling that years before there were incidents happening in the middle of the night at shopping centers, and the shopping center owners asked for the ability, in advance, to designate the police officers so that they can take care of things and keep people safe.

Mr. Kamptner replied that this process remains in place. He said for the County Executive, he has the same ability to designate the police department as the person lawfully in charge. He said the procedure is somewhat different as it is an in-house designation, but that it does need to be in writing. He said that it is there now for them to use.

Mr. Gallaway asked if there were members of the public who wished to speak on this item. Hearing none, he closed the public hearing and brought the matter back before the Board.

Mr. Randolph **moved** that the Board approve the proposed Ordinance to amend County Code Chapter 10, Offenses – Miscellaneous. The motion was **seconded** by Ms. Mallek.

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

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

NAYS: None.

ABSENT: Mr. Dill and Ms. McKeel.

ORDINANCE NO. 19-10(1)

AN ORDINANCE TO AMEND CHAPTER 10, OFFENSES -- MISCELLANEOUS, OF THE CODE OF THE

COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 10, Offenses -- Miscellaneous, is hereby amended and reordained as follows:

By Amending:

Sec. 10-103 Disorderly conduct in public places.

Sec. 10-120 Trespass--After having been forbidden to do so.

By Repealing:

Sec. 10-120.1 Designation of police to enforce trespass violations

Chapter 10

Offenses – Miscellaneous

Sec. 10-103 Disorderly conduct in public places.

- A. Prohibited conduct. It is unlawful for any person who, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:
1. In any street, highway, public building, or while in or on a public conveyance, or public place, engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed; provided, however, the conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter; or
 2. Willfully, or being intoxicated whether willfully or not, and whether the intoxication results from self-administered alcohol or other drug of whatever nature, disrupts any funeral, memorial service, or meeting of the governing body of the county or a division or agency thereof, or of any school, literary society or place of religious worship, if the disruption: (i) prevents or interferes with the orderly conduct of the funeral, memorial service, or meeting; or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed; provided, however, the conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter; or
 3. Willfully, or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts the operation of any school or activity conducted or sponsored by a school, if the disruption: (i) prevents or interferes with the orderly conduct of the operation or activity; or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.
- B. Person in charge may eject persons violating this section. The person in charge of any building, place, conveyance, meeting, operation or activity referred to in subsection (A) may eject therefrom any person who violates any provision of this section, with the aid, if necessary, of any person who may be called upon for such purpose.
- C. Designating the county executive as the person in charge of county property. The county executive is hereby designated as the "person in charge" for the purpose of ejecting any person from any county-owned or county-leased lands, buildings, or premises who violates this section or Virginia Code § 18.2-415.
1. Delegation to others; rescission. The county executive may delegate this authority to a deputy county executive, an assistant county executive, any county department head, and the superintendent of schools. The county executive may rescind any delegation of authority.
 2. Delegation and rescission must be in writing; exception. Any delegation, and any rescission of a delegation, shall be in writing and the writing shall be kept on file in the office of the clerk of the board of supervisors. If the circumstances make it impracticable for the county executive to make a delegation in writing, he may do so orally and memorialize the delegation in writing and file it as soon as it is practicable to do so. The writing shall include the date and time that the oral delegation was made.
- D. Penalty. A person violating any provision of this section shall be guilty of a class 1 misdemeanor.
- (4-21-76; Code 1988, § 13-7; Ord. 98-A(1), 8-5-98; Ord. 10-10(1), 11-3-10; Ord. 19-10(1), 10-16-19)

State law reference-Va. Code §§ 15.2-516, 15.2-1501, 18.2-415.

Sec. 10-120 Trespass--After having been forbidden to do so.

If any person, without authority of law, goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by such persons or by the holder of any easement or other right-of way authorized by the instrument creating such interest to post such signs on such lands, structures, premises

or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to Virginia Code §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, 19.2-152.8, 19.2-152.9 or 19.2-152.10 or an ex parte order issued pursuant to Virginia Code § 20-103, and after having been served with such order, he shall be guilty of a class I misdemeanor. This section shall not be construed to affect in any way the provisions of Virginia Code §§ 18.2-132 through 18.2-136.

- A. Designating the police department as the person lawfully in charge of the property. Any owner, lessee, custodian, or person lawfully in charge of any real property may designate the Albemarle County Police Department as a “person lawfully in charge of the property” for the purpose of forbidding another to go upon or remain upon the lands, buildings, or premises as specified in the designation, for the purposes of enforcing a trespass pursuant to this section or Virginia Code § 18.2-119.
1. Form of designation. Any designation shall be in writing on forms provided by the chief of police and the county attorney and shall be kept on file with the police department.
 2. Discretion of the chief of police to accept the designation. The decision whether to accept or rescind a designation is solely within the discretion of the chief of police or his designee, who may base his decision on factors including, but not limited to, resource levels of the police department and the proper allocation of resources.
 3. Authority to establish rules. The chief of police, in consultation with the Commonwealth’s Attorney and the county attorney, may establish rules for accepting, using, and rescinding a designation.
- B. Designating the county executive as the person lawfully in charge of county property. The county executive is hereby designated as the “person lawfully in charge of the property” for the purpose of forbidding another to go upon or remain upon county-owned or county-leased lands, buildings, or premises for the purposes of enforcing a trespass pursuant to this section or Virginia Code § 18.2-119.
1. Delegation to others; rescission. The county executive may delegate this authority to a deputy county executive, an assistant county executive, any county department head, and the superintendent of schools. The delegation shall be in writing and the writing shall be kept on file in the clerk of the board of supervisors’ office. The county executive may rescind any delegation of authority.
 2. Designating the police department. The county executive may designate sworn personnel of the Albemarle County Police Department as a “person lawfully in charge of the property” as provided in subsection (A). The designation shall be in writing and the writing shall be kept on file in the clerk of the board of supervisors’ office. The county executive may rescind the designation.
 3. When a written delegation or designation is not required. If the circumstances make it impracticable for the county executive to make a delegation or designation in writing, he may do so orally and memorialize the delegation in writing and file it as soon as it is practicable to do so. The writing shall include the date and time that the oral delegation or designation was made.

(Code 1967, § 13-23; 4-13-88; Code 1988, § 13-21; Ord. 98-A(1), 8-5-98; Ord. 10-10(1), 11-3-10; Ord. 19-10(1), 10-16-19)

State law references-Va. Code §§ 15.2-516, 15.2-1218, 15.2-1501, 15.2-1717.1, 18.2-119.

Non-agenda Item. Rural Area Five-acre Exemption for the Barking Dog Ordinance.

Ms. Mallek said she was bringing this topic forward to see if there was input or further interest regarding issues going on in Earlysville and other places, and the impacts of barking from packs of dogs who are in very close proximity to neighbors, at times creating health issues for those people.

Ms. Mallek recalled that during the recent homestays discussion, there was talk about how there should be setbacks on properties so that even if the lots were 5 acres or more, if the properties were close to the edge of the boundary, this could have a significant impact on a neighbor who is also 50 feet or 100 feet from the boundary. She said she wondered if this type of consideration would help the County in a circumstance where the lot is very narrow, and the proximity is great.

Mr. Randolph agreed that barking dogs in a rural area where one believes they are enjoying the customary quietude of the countryside can be very disruptive and even psychologically and medically damaging. He said there was a need for the County to take steps to ensure that there is consistency, noting that it doesn’t make a difference between a barking dog versus a loudly playing saxophone, for instance, at 3:00 am if the property line is close enough so that one neighbor can hear another’s disturbance. He said the rules should be applied equally, regardless of what the source of the noise is.

Ms. Mallek said there were two alternatives, with one being to remove the 5-acre exemption, and the other being to have some kind of setback, noting that this would be more challenging because it was

difficult to determine what that distance should be.

Ms. Palmer said she had a couple of concerns. She said she knew what this was like because she lives in the rural areas and had a neighbor with a sheepdog who guarded her goats and barked constantly. She said she listened to this for nine years until the dog passed away. She said this neighbor already had five zoning violations and was in court, so she wasn't going to add one more thing to the list. She said her understanding was that the barking has to be recorded for 30 minutes and asked if this was correct.

Mr. Kamptner said it has to be proven that the dog was barking for 30 consecutive minutes without more than a 5-minute gap within that period. He said it may be that the courts have determined that this is the evidence required to prove beyond a reasonable doubt. He said he could track down this information to find out if this has been the case. He said he would pull up the County Code.

Ms. Palmer said it was problematic, as someone who has tried to go out and record the dog barking for 30 minutes, when batteries can run out and the loudness on the recording also must be achieved. She noted that some people are more sensitive to barking whether off in the distance versus in close proximity. She said she was asking about the decibel level. She also noted that everything being done by the Board is complaint-driven and that she had assumed there wouldn't be many complaints.

Ms. Mallek said the Board has avoided making helpful changes because it was fearful of what was going to happen. She said in this case, one of the speakers talked about how there is a process and they appreciated the process that exists. She said it is cumbersome and people must be willing to go to the magistrate and do their part of the job. She said there was not a request that she heard to change this, but that it was to allow the Board the opportunity to use the process that already exists for everyone else.

Ms. Mallek said that a neighbor over the hill, for instance, who happens to have a differently shaped lot does have the benefit of the protection of the law, whereas the other does not. She said this may not be a good application of equal protection but that it seems to make logical sense.

Mr. Kamptner said there was nothing in the County Code section that requires the barking to be recorded. He said that one critical consideration was that this was a provision in the County Code where the police officer either has to observe the violation, meaning they would have to be there for the full 30 minutes, or the complainant has to go to the magistrate. He said the extra step must be taken and that it was something beyond simply calling the police and complaining about the barking.

Ms. Palmer asked about the process of going into the magistrate.

Mr. Kamptner explained that the complainant lays out the evidence that would justify the magistrate making a preliminary determination that there is enough to show that there is a violation of the code and issuing what would likely be a summons.

Ms. Mallek asked if this would then allow the police department to investigate further.

Mr. Kamptner said it was really the evidence of the crime.

Ms. Palmer asked if the person would then be taken to court.

Mr. Kamptner replied yes, that the defendant would challenge whether the recording device was properly calibrated and was measuring minutes correctly and determining otherwise what the evidence was.

Ms. Mallek said she expected that cases where the people go to the length to follow the process the County has in place are the ones that are going to be extremely bad, possibly with health issues involved, and that the complainant would have already reached out to neighbors to follow the suggestions in the County plan and get some help. She said there was a case in 2012 that was never resolved, and that these cases can be debilitating in some circumstances.

Ms. Palmer asked what would be involved as far as staff time to make a change.

Ms. Mallek said that she hoped if there was enough interest from the four present members of the Board, they would discuss it again when the full group was present.

Mr. Kamptner asked if this discussion would involve either doing away with the 5-acre minimum or establishing some kind of setback.

Ms. Mallek said there could be other options.

Mr. Kamptner said he was thinking about the Animal Control officer out late at night trying to figure out setbacks.

Ms. Palmer said that setbacks in the rural areas bothers her in terms of noise. She said it also depends on elevation. She said, for instance, there is construction going on near her house that is a half mile away, but if one sat on her back porch, they could hear every squeak of the wheels on the dump trucks because they are at that level to her porch.

Ms. Mallek noted that the hollows can affect how the barking noises project and amplify.

Mr. Kamptner said he would be working further with police before bringing back the leash ordinance and that this topic could be rolled into that conversation to get some input from them and bring it back to the Board.

Ms. Mallek agreed that the Board needed to hear from those with expertise.

Ms. Palmer said regarding the leash ordinance, there was a speaker who complained that he couldn't walk across the yard with his dog off-leash. She said she walks with her own dog without a leash, and that it was problematic when the County passes rules that she herself knows she is going to break.

Ms. Mallek said that walking with one's dog without a leash on their own property is a given. She said it was on the parks trails that this was a problem.

Ms. Palmer agreed about the parks trails and said she wasn't debating this.

Ms. Mallek suggested clarifying the leash ordinance. She said that in her understanding, as long as one's dog is on their own property, they can run as freely as they want. She said it is when it runs next door and harasses livestock or causes other issues is when it is a problem. She said on one's own property, they have complete freedom to do whatever they want to.

Mr. Kamptner said the draft in the Board's package is very broad and could be narrowed. He said if there was direction from the Board, the draft could be narrowed to trails, sidewalks, public roads, etc. He said there was an earlier draft that would have it apply in all parts of the County, though not in the rural areas, but said this was changed. He said if the intention was to have it apply to roads, sidewalks, trails, etc. the language could be clarified.

Ms. Mallek asked if the overall rules could be made consistent with the park rules. She said she thought this is where the Board was headed.

Mr. Kamptner said the ordinance could be brought back this way.

Ms. Mallek said she thought this is where they had arrived to from the last discussion.

Ms. Palmer said she would read the ordinance again.

Ms. Mallek said she was glad to have discussed this topic with the Board.

Ms. Palmer said she was fine with this.

Agenda Item No. 19. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Mr. Gallaway said that Mr. Dill was restricted due to a family health issue. He said Mr. Dill had concerns he had addressed a few weeks before regarding his appointment to the CIP Committee and asked if someone could sub in for him. He said this would be at least through the end of the year, as new Board members would be elected after that, and the Board could rehash how to handle this moving forward. He noted that Ms. Mallek had been attending the committee meetings, but it was likely best to resubmit someone who will officially be there as the Board representative, noting that Mr. Randolph was the other representative. He said the Board would have to take an action on this.

Ms. Palmer asked how many more meetings this would be.

Mr. Randolph replied there were two more meetings.

Ms. Mallek said there were two Tuesday meetings in a row.

Mr. Gallaway said if there was no objection, he would move to have Ms. Mallek be the appointee through the end of the year.

Ms. Palmer agreed. She said she would not be able to go to the one on the upcoming Tuesday but would likely be at the one following that.

Mr. Gallaway said the Board members were all free to attend.

Ms. Mallek said she was happy to do it but encouraged everyone to come to hear the discussions firsthand.

Ms. Palmer agreed, noting that she was appreciative that she was able to make the last meeting. She said she could not make the next committee meeting due to a RWSA Board meeting.

Mr. Gallaway **moved** that the Board appoint Ms. Mallek as a Board representative to the CIP Committee, substituting for Mr. Dill. The motion was **seconded** by Mr. Randolph.

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

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

NAYS: None.

ABSENT: Mr. Dill and Ms. McKeel.

Mr. Randolph brought up that he had wanted to have two discussions with the Board, first about applicants coming back to the CACs after they have already had a meeting with them, met with staff, and revised their proposal. He said his concern was that in letting this happen, the Board is putting the CAC into a quasi-magisterial role, and that the CAC was not intended to provide advice and consent to applicants on second go-throughs. He said the CAC was designed to give an initial public community reaction to a proposal that helps the applicant shape it, and from there, it should go on to the Planning Commission and the Board of Supervisors.

Mr. Randolph said he also wanted to discuss the issue, citing a recent email, that the number of actual home-buildable sites in the development area will be lower than what was projected before, which gets into the question of whether or not the County has adequate capacity. He said he sent an email on September 26 to the Board in response to this, where he noted that what is happening now is because of changed inland wetland federal requirements that the state, and therefore the County, has to apply, the net buildable acreage in a piedmont, riparian environment has tended to go down. He said in turn, the density is tending to go down on projects.

Mr. Randolph said that at the same time, while the County is stressing the importance of affordable housing, the reality is that in some locations such as Rivanna Village, where currently there is no bus service, to have affordable housing units there without guaranteed public transit is setting people up for failure because they won't live there, even at 80% AMI, because there is no means of getting somewhere if the single car one owns breaks down. He said this means the other member of the family may not be able to get to work or appointments.

Mr. Randolph said the County has to become much more intelligent about what it wants to accomplish in the development areas, suggesting that they may need to take a look at the height of buildings, especially as they are back from the road, and that there must be setback requirements and scaling so as not to have five-story buildings on a main road, such as on 250 running east. He said the County may also need to look at setback standards in the development area to try to accommodate increased density.

Mr. Randolph said going forward, he was not looking for these two things to be resolved in a few months, but that it was something the Board should tee up for discussion as far as how they can achieve the density they are seeking in the development area given the fact that the net buildable density is tending to come in lower due to environmental factors and traffic impacts.

Mr. Randolph added that in some localities, the market for adjoining houses may not be as great as that for single-family homes, resulting in developers wanting to switch out of multi-family. He said the response he received from Tim Culpeper from Robinson Development in Rivanna Village was that there was not much of a market presently for multi-family and apartments. He said he believed transportation was part of this, but that it was not necessarily all of it.

Mr. Randolph encouraged the Board to discuss how to achieve more density in the development areas with the understanding that the County is now seeing less density under the existing rules.

Ms. Palmer said the Planning Commission has asked to discuss the density issue, expressing her support for this. She asked if it would be a good idea for the Commission to take the height of building questions and others into consideration when they do this first, and then the Board could have the Commission's comments guide its conversation.

Ms. Mallek suggested a joint meeting at the beginning and the end of the process.

Mr. Randolph agreed that having a joint meeting would be preferable so that both bodies can weigh in at the same time. He advised that this be done sooner rather than later so that the public is well-aware that the Board is conscious of the fact that some of the net density figures that were projected for some of the approved communities are coming in lower than what was originally expected within the Comprehensive Plan and Master Plans in some localities.

Ms. Mallek recalled the commitments that were made by former boards for 20 years, which were the basis of all the high-density zonings in the growth areas and have not been delivered. She said this is the reason why several different magisterial districts have people who are "done." She said the Crozet growth area, for instance, only has half of the population that it is projected to have in its most recent Master Plan, which is 30% lower than the first Master Plan that was made, which was completely unattainable. She said that without the major collectors having been built, there is gridlock at 250 and Crozet Avenue every morning.

Ms. Mallek said that all over the County, there are places where people want to live that are very appealing. She said builders had plans that were approved, and many of them being between 2000-2008. She said that in that time, 4,000 units came to Crozet by rezoning, then they sat on the shelf during the recession and all seemed to come off within three years.

Ms. Mallek expressed that the growth areas had been a good idea because of the infrastructure being provided to a more impact area for cost. She said that now, in order to gain the confidence of the population, if the next Board can focus on delivery of infrastructure, it will calm the temperature and help people feel good about living in the growth area. She expressed her empathy for the people who have lived in those areas for many years who have been buried by new neighborhoods. She said her gut reaction was to put the infrastructure on high-speed delivery.

Ms. Mallek said that regarding the height of the buildings, the Downtown Crozet District, the one form-based code the County has had since 2010, has 3-4 stories by right and 6 stories by some kind of process. She said Piedmont Place was a perfect example, which was the first "pioneer" building that was built under the form-based code and did not require the rezoning. She noted it has also relied heavily on shared parking which was something new with the Downtown Crozet Zone and often suggested by people who want to help, whether because of environmental impacts or to reduce costs to help build affordable housing. She said they were not quite there with getting everyone out of their cars and must find an intermediate transition step where people are able to park somewhere and get on a transit loop.

Ms. Mallek said the zero setback is also in this form-based code and that once the Rio code is further along, it will help people move to the street and benefit from the 10-foot maximum as opposed to a 30-foot minimum. She said she agreed with Mr. Randolph that his points need to be emphasized, noting that people are very frustrated and are taking it out on the Board and the applicants who come forward with their plans. She said those plans may be well thought-out but are perceived at the time as not being right because the County hasn't put in place the building blocks to make it work.

Mr. Randolph expressed that road infrastructure was key to cluster development. He said in European settings, there are enough road structures in place to accommodate having people clustered and, in most cases, takes the form of an excellent interstate system. He said I-64 is wonderful but doesn't begin to address the volume of traffic that needs to come into the city daily. He said to get to I-64 is a real challenge in the morning in many cases.

Mr. Randolph said he didn't want anyone to misinterpret his remarks to suggest that he thinks out 250, the County should go higher density because this would create more traffic and congestion on the road. He said, however, that consideration should be made to balancing these, and that previously, 15 years before, the County was not really looking at affordable housing or the road infrastructure. He said there was just the assumption that, with all other things being equal, it would take care of itself, but it has only continued to intensify and impose a major impediment, at least during peak hours. He likened those hours to driving in Northern Virginia or the L.A. Freeway, expressing that the traffic locks up.

Mr. Randolph suggested the Board meet with the Planning Commission to discuss density issues. He asked if the Board had any thoughts on his concerns about the original mission of the CACs becoming altered.

Ms. Mallek said the Crozet Advisory Council was created to be the buffer between a very angry constituency and the Board of Supervisors. She said the community committee was established to be able to hear from community members and try to involve the community in the discussion about Master Plan discussion and implementation, particularly at the beginning with the Old Trail rezoning in 2004. She said this radically changed the community and its perception of itself.

Ms. Mallek said that she found that a single meeting with the CAC happens most of the time when the applicant does enough homework to have something concrete to show. She said when people come in and say they have ideas about creating units and cannot answer specific questions from the community, this becomes frustrating. She said that often, in order to prevent an army of community members from coming to a Board or Planning Commission meeting, the applicants go back to the CAC to present more information. She explained that she always encouraged applicants to take enough time to come back and have something substantive to say to prevent this problem from happening, but that the Board has seen all different levels of interaction.

Ms. Mallek said that because of the evolution of different owners of Barnes Lumber, for instance, that interaction has happened multiple times over 10 years and it has been incredibly beneficial to have the community supporting the project and feeling like they are behind it.

Ms. Palmer said with 5th and Avon CAC, she thought as though the applicant was trying to bypass the system. She said the process needs to be very clear to CAC and staff. She said she would like to avoid trying to do end routes around the Planning Commission. She said she didn't have a problem with the applicant trying to get more input or reaction from the community on a controversial matter as long as there is time and the CAC wants to hear it, but that there needs to be clarity from the start that CACs do not make the final decisions, though they do provide community input.

Ms. Palmer said there was a situation in which people were angry and concerned about the traffic. She said she could understand the applicant coming back to express what they want to do about it. She said she heard what Mr. Randolph was saying and that it was important to reiterate it and make sure everyone understands the function of the CAC.

Ms. Mallek said she thinks the CACs understand their role. She said it is often debated when someone in the group will state they want a resolution on something, and others in the group will disagree.

Mr. Randolph said he thinks the CACs understand their role, but that this was an expansion of the original intent of the Board as their role and puts them in a situation where they are not going to be able to see the application unless they download it online. He said there is an element of persuasion that crops up in coming back to the CAC where the applicant is trying to sell them on the project. He said the first time around is about getting input, acknowledging that there is a small portion of marketing there, as the applicant wants to make their project look appealing. He said the second time around, when it is being repeated, it is much more of a marketing effort to try to persuade the CAC to be behind the project.

Mr. Randolph said the difficulty of this is that the CAC isn't necessarily aware of all the nuances of what has transpired after the original CAC meeting that the Planning Commissioners and Board members of 5th and Avon are aware of. He said Board and commission members are aware that information is not being shared that is relevant to the application.

Ms. Mallek said this was not a CAC issue, but a process issue.

Mr. Randolph said it was a CAC issue because the applicants are being permitted to come back again and therefore people are leaving from the CAC with an incomplete picture.

Ms. Palmer said that they need to have this not happen anymore.

Ms. Mallek said that this was the other side of the point she was making of when the applicant tries to meet with the CAC too soon and cannot provide the community with answers.

Ms. Palmer said that this was a matter of scheduling with staff, and that staff needs to be aware that this is not what the Board intended for the CAC.

Mr. Gallaway said he has not experienced this issue with this CAC where they are vetting the application. He said it is more of a response to what is presented and that his CAC understands what their role is.

Ms. Palmer brought up the issue of the leash ordinance again. She said there was a section in the code that says, "The proposed ordinance provides five exceptions to the leashing requirements under prescribed circumstances: (1) when the dog is fenced, physical or electronic, on the owner's or custodian's property, (2) when hunting with a licensed hunter, (3) field trials, (4) when in a fenced dog park or exercise place, (5) a handler of a service dog." She said she does not have a fenced-in yard, nor an electric fence, and thus she was breaking the law as far as not having her dog on a leash on her own property. She asked if Mr. Kamptner could consider the ordinance in terms of the dogs being on their owners' properties.

Mr. Kamptner said the draft was very broadly written to meet the minimum legal requirements.

Ms. Mallek asked if this was the law from seven years before.

Mr. Kamptner replied no, that it was the proposed ordinance in the Board's packet to set for public hearing.

Ms. Palmer said she suspected that this was why a speaker had raised his concerns earlier. She said this had to be fixed.

Ms. Mallek asked if Item 8.4, regarding the order of the transition of use and the roads, was a slippery slope that would provide others with a new way of accomplishing that transition. She said her concern was not the particulars of that specific project, but the way they were trying to bring it about.

Ms. Palmer said she had this same question.

Ms. Mallek encouraged this to be noted and discussed further. She said they have discussed agricultural-to-residential in many ways, whether it was stormwater, drainage, or roadways.

Ms. Palmer asked what was different about this project versus the other previous ones that the Board had corrected by getting rid of the loophole.

Mr. Kamptner replied that with the prior version of the legislation, the County must allow for agricultural roads. He said the loophole was recognized about 10 years before when there were pieces of property that would be timbered, then a road network shows up, with the explanation that they were agricultural roads used to log the property. He said a subdivision plat would then come in within a month of that, and the road network wouldn't match what was on the ground. He said the legislation years ago put a no-development hold on the property for 24 months so that when the logging roads are built, the builders are prohibited from coming in with a subdivision plat during that waiting period.

Mr. Kamptner noted that the current ordinance doesn't cover every situation. He said the subject project has a building permit, set aside from the fact that there is a critical slope issue.

Ms. Palmer asked if the other projects were plats.

Mr. Kamptner replied that they were plats or site plans. He said they could have had a particular

special use permit for a non-agricultural use.

Ms. Palmer asked if the subject project was not a site plan.

Mr. Kamptner replied that this project did not fit within any of those.

Ms. Palmer asked if this was because the site was already done.

Mr. Kamptner replied that it didn't trigger the need for a site plan, and the property is not being divided.

Ms. Palmer asked if it was not directed at single-family or just one house.

Mr. Kamptner replied no. He said another thing that makes this project different is that, as the staff report indicated, this may be the only place where a building site can be located, meaning that there will be a building site on the property.

Ms. Palmer asked if it was a requirement that every piece of property must have a building site and the County must make sure that there is a building site.

Mr. Kamptner replied that the way it has always been applied is to avoid there being a regulatory taking. He said the subject parcel was created before either the stream buffer or critical slopes regulations came into place. He said that if this is the only building site, in lieu of there being a regulatory taking, the County allows the encroachment or activity to happen so that there is a use of the property.

Ms. Mallek asked, with the rules that are in place currently, if it was true that a subdivision that is going through the process has to have a possible building site that meets the current rules, avoids 25% slopes, and has two leach fields, but that none of those things apply to the subject parcel because they were there before those rules were put in place.

Mr. Kamptner replied that the parcel was created before all those rules were put into place.

Ms. Palmer asked if it didn't have to have two leach sites or septic fields.

Mr. Kamptner replied that this was requested, but the landowner can use an alternative sewage system that was mandated by the state within the last decade.

Ms. Mallek said this was what she understood the staff report to say, that there was an engineer who had designed something for the subject site.

Ms. Palmer said it will be interesting on the mountainside as it would require more grading.

Ms. Mallek said it was a tank in the ground and not a leach field that would be an open area.

Ms. Palmer said she didn't think it could be put on a slope like that one.

Mr. Gallaway said that this topic would come back.

Agenda Item No. 20. From the County Executive: Report on Matters Not Listed on the Agenda.

Mr. Richardson presented a picture of what he said was a recent successful legislative luncheon with the state officials. He said it was aligned earlier in the calendar year and that there was ample time for discussion back and forth. He said the County Attorney outlined the legislative agenda in this meeting, which he had covered with the Board earlier.

Mr. Richardson presented a picture that represented celebrating a community partnership with the groundbreaking of the newest extension of Berkmar Drive, at Hollymead going towards the University Research Park. He said this occurred a couple weeks before with the University of Virginia Foundation.

Mr. Richardson said that on September 28, there were over 400 people that joined the County in celebrating Albemarle County's 275th year. He said it took place on a 17-acre tract where the outside area was manipulated down to the ballfield and into the COB, where they held events 10:00 am to 2:00 pm that day. He said the first event was for the CATEC food truck and that there were lines for the truck each day. He said the historic fire truck from Crozet, dating back to 1937, was also there and garnered attention from the community.

Mr. Richardson continued that at the event, there were several families with young children there, and that there was much interaction between those children and staff, especially public safety. He said a key partner included Perone Robotics and presented a picture of an autonomous vehicle. He said remarks were giving by Bill Crutchfield, Jane Kulow, and Ms. Mallek, who shared their personal ties and comments about Albemarle County, with Mr. Randolph closing the celebration with a reading of the proclamation that the Board adopted on September 4.

Mr. Richardson said that Phase I of the new history exhibit was complete on the first-floor corridor, which tells the history of many of the historic communities in Albemarle County. He thanked Siri

Russell for leading the effort, as well as James Swinger for taking on the installation of the project.

Mr. Richardson said that Community Development has been hard at work in the community. He presented images from the Crozet Master Plan meeting, noting that he attended the second meeting at which there were 55 community members present, and over 120 community members at the first Crozet Master Plan meeting and the housing policy update.

Mr. Richardson said he was proud to share that the Friday before, Doug Walker, Trevor Henry, and several key support staff put together a full-day conference at which they hosted all deputy county managers, assistants, and key upper-level management staff from across the state at the downtown library. He said the County's staff put on several presentations throughout the day, with over 50 county leaders from across the state of Virginia who were there. He said the key partnerships in the program, in addition to the regional library system, were the Jefferson School African-American Heritage Center and City of Charlottesville. He said they received great feedback. He added there was also a downtown walking tour by the courts.

Mr. Richardson said that National Fire Prevention Week was celebrated with two events at Hollymead Town Center and 5th Street Station to share fire prevention safety tips with area residents, including an agility test for future firefighters. He presented a picture of a firefighter in a pink work shirt, noting that October was Breast Cancer Awareness Month and some staff will be wearing pink shirts on Fridays throughout the month of October

Mr. Richardson presented a photo of three officers who attended the birthday party of a young man in Scottsville who wanted to have a police-themed party. He said the officers were in the area and made a surprise drop-in, noting that this went very well.

Mr. Richardson recalled that a new path was installed that serves as a connection from the COB McIntire parking area to the public sidewalk in the lower-lot area. He said this was strategically located to get people over to the public sidewalks for a variety of reasons and keeps them from having to climb stairs.

Mr. Richardson said there was now a Customer Service Ambassador working full-time at the front desk at COB McIntire. He said in recent weeks, there has been interaction with the public as far as the ambassador helping the public maneuver the building, and that the initial feedback was positive.

Agenda Item No. 21. Adjourn to October 22, 2019, 2:00 p.m., Room 228-B County Office Building, 401 McIntire Road, Charlottesville, VA

At 7:49 p.m., the Board adjourned its meeting to October 22, 2019, 2:00 p.m., Room 228-B County Office Building, 401 McIntire Road, Charlottesville, VA

Chair

Approved by Board
Date 04/21/2021
Initials CKB